



# *Recruiting & Hiring Compliance*

## Laws | Rules | Regulations

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## Recruiting and Hiring Laws | Rules | Regulations

Recruiting and hiring employees in the United States are governed by various federal, state, and local laws, rules, and regulations designed to ensure fairness, equal opportunity, and nondiscrimination in the workplace. Given the complexity and the potential for variation at the state and local levels, it is advisable for employers to seek guidance from HR professionals or employment legal counsel to ensure full compliance with all applicable laws, rules, and regulations. Here's an overview:

### Federal Laws

- 1. Title VII of the Civil Rights Act of 1964:** Prohibits employment discrimination based on race, color, religion, sex, or national origin.
- 2. Age Discrimination in Employment Act (ADEA):** Protects individuals 40 years of age or older from employment discrimination based on age.
- 3. Americans with Disabilities Act (ADA):** Prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public.
- 4. Equal Pay Act of 1963 (EPA):** Requires that men and women in the same workplace be given equal pay for equal work.
- 5. Immigration Reform and Control Act (IRCA):** Prohibits discrimination based on national origin or citizenship status and requires employers to verify the employment eligibility of their employees.
- 6. Genetic Information Nondiscrimination Act (GINA):** Prohibits employment discrimination based on genetic information about an applicant or team member.
- 7. Fair Credit Reporting Act (FCRA):** Governs the use of consumer report information, including credit checks conducted for employment purposes.

### State Laws

State laws can vary widely but often include additional protections against discrimination, including sexual orientation, gender identity, and pregnancy. Some states have more stringent requirements for minimum wage, overtime, family leave, and benefits than federal law requires. For example:

- **California** has the Fair Employment and Housing Act (FEHA), which offers protections similar to those at the federal level but includes more categories of protected individuals.
- **New York** has the New York State Human Rights Law, which provides broad protections against employment discrimination.
- **Anti-discrimination:** Some states include protections for additional categories like sexual orientation and gender identity.

- **Pay Transparency:** Some states require employers to disclose salary ranges for open positions or to existing employees upon request. States like California and Colorado have specific pay transparency laws.

### Local Ordinances

Local laws can also impose additional requirements on the recruiting and hiring process. These can include:

- **Ban-the-Box Laws:** Many cities and counties have passed ordinances restricting employers from asking about an applicant's criminal history on initial job applications.
- **Minimum Wage Laws:** Some cities have enacted minimum wage laws that are higher than both the federal and state minimum wages.
- **Paid Sick Leave Laws:** Certain municipalities require employers to provide paid sick leave to employees.
- **Pay Transparency:** Some local jurisdictions may have their own requirements for disclosing pay information in job postings or to employees.

### Accommodations

- **Disabilities and Religious Practices:** Employers must provide reasonable accommodations for applicants with disabilities and for religious practices unless doing so would cause undue hardship to the business, as mandated by the ADA and Title VII of the Civil Rights Act, respectively.

### Background Checks

- **Consent and Disclosure:** When conducting background checks, employers must comply with the Fair Credit Reporting Act (FCRA), which requires informed written permission from the candidate and proper disclosures before and after conducting a background check.
- **Relevance to Job:** Employers should ensure that any background check is relevant to the job for which the candidate is applying.

### Compliance

Employers must navigate this multifaceted legal landscape with diligence to ensure compliance:

- **Posting Notices:** Displaying required legal notices in the workplace.
- **Staying Informed:** Keeping abreast of updates in employment laws, including pay transparency requirements.
- **Non-Discriminatory Practices:** Adopting standardized, objective hiring practices to avoid discrimination.
- **Training:** Educating HR personnel and managers on legal requirements and best practices, including those related to pay transparency.

## Data Privacy and Protection

- **Applicant Data:** Employers must handle the personal data of applicants in compliance with data protection laws such as the General Data Protection Regulation (GDPR) in the European Union or the California Consumer Privacy Act (CCPA) in California. This includes obtaining consent to collect, use, and store personal data and providing information on how data is used.

## Immigration Compliance

- **Employment Eligibility:** Employers must verify that all employees, regardless of citizenship or national origin, are eligible to work in the United States using Form I-9. Employers should be familiar with the documents that can be used to verify employment eligibility and avoid discriminatory practices in the verification process.

## Internship Programs

- **Paid vs. Unpaid Internships:** There are specific criteria that must be met for an internship to be legally unpaid under the Fair Labor Standards Act (FLSA). Employers should ensure that unpaid internships primarily benefit the intern and are educational in nature. Otherwise, interns must be paid at least the minimum wage.

## Pay Transparency

Pay transparency is an increasingly important aspect of employment law, with various jurisdictions implementing regulations that require employers to disclose salary ranges for job vacancies or to current employees upon request. These laws are designed to promote equity in pay, reduce wage gaps, and foster open communication about compensation.

## Policy Development

- **Clear Policies:** Developing clear, written policies and procedures for recruiting can help ensure consistency and compliance throughout the organization.

## Social Media Screening

- **Privacy Concerns:** Employers should be cautious when reviewing candidates' social media profiles and ensure that this screening is done in a way that respects privacy and does not discriminate.
- **Consistency:** If social media screening is part of the recruitment process, it should be applied consistently across all candidates to avoid discrimination.

## Record Keeping

- **Retention of Records:** Employers should maintain records of recruitment activities, including job postings, applications received, and interview notes, for a specified period as required by various laws. This can be important for defending against potential discrimination claims.



## Training for Recruiters

- **Legal and Ethical Practices:** Providing training on non-discriminatory practices, interview techniques, and legal compliance to those involved in the recruitment process is crucial to prevent inadvertent violations of employment laws.

Note: It is important to research or engage a HR Professional to complete the research to ensure your company is compliance with all federal, state, and local laws, rules, and regulations.