

Employee Relations LAW JOURNAL

How to Design a Legally Compliant Onboarding Program

By Kara M. Maciel and Jordan B. Schwartz

In this article, the authors explain that a thoughtfully structured onboarding process protects an organization legally, promotes business standards, and supports new employees.

Bringing a new hire into an organization is more than introductions, pleasantries, and paperwork; rather, it is an opportunity for an organization to continue to build a foundation of legal compliance and risk mitigation while simultaneously enhancing employee morale. To that end, a thoughtfully structured onboarding process protects an organization legally, promotes business standards, and supports new employees.

As employers create and refine their onboarding process, it is critical for them to keep in mind that state and federal laws change with remarkable frequency, and even more so when political conditions shift and leadership from a different party takes over federal agencies such as the U.S. Department of Labor (DOL) and the U.S. Equal Opportunity Employment Commission (EEOC).

Staying informed is not just prudent risk management; it is essential for legal, operational, and ethical integrity in today's ever-evolving employment landscape. Thus, employers must closely monitor these ever-changing laws affecting the workplace, as failing to keep policies and practices in line with current legal requirements exposes an organization to, among other things, litigation, penalties, and reputational harm.

The authors, partners in Conn Maciel Carey LLP, may be contacted at kmaciel@connmaciel.com and jschwartz@connmaciel.com, respectively.

LEGAL COMPLIANCE

From a legal compliance perspective, some important topics that have undergone recent changes that employers should be familiar with and at the very least touch on during the onboarding process include:

- *Anti Harassment Training:* Employers should provide anti-harassment training not only to meet legal requirements in states like California, New York, and Illinois, but also to establish a legal defense should harassment occur, known as the Faragher/Ellerth defense. Indeed, training enhances legal compliance (and therefore reduces legal risk) while simultaneously promoting respect, inclusion, and teamwork. Ultimately, providing such training is a proactive investment that mitigates legal risk and builds a healthier, more ethical workplace culture. One new law that went into effect on January 1, 2025, is California SB 1137, which prohibits harassment based on intersectional identities, such as being both Black and a woman, allowing claims based on combined protected characteristics under the Fair Employment and Housing Act and the Unruh Civil Rights Act.
- *Anti-Discrimination Training:* Anti-discrimination training is essential for building a respectful and inclusive workplace. It helps employees recognize and respond to discriminatory behavior, promotes fairness and equity, ensure legal compliance, and reduce the risk of lawsuits or reputational harm. This training also supports employee morale and retention by fostering a culture where everyone feels valued. Effective programs boost collaboration, engagement, and productivity. Employers with federal contracts should be aware that Executive Order 14173, issued on January 21, 2025, revoked affirmative action requirements in federal contracting, shifting to race-neutral, merit-based standards. While proactive diversity mandates were removed, Title VII of the Civil Rights Act still prohibits discrimination, making ongoing training as important than ever. As mentioned above, employers should also be aware of initiatives arising from the EEOC. For example, whereas the Biden administration encouraged policies rooted in diversity, equity, and inclusion, the current EEOC could now find that same policy to be discriminatory, in violation of Title VII. Thus, knowledge of federal agencies' current initiatives is critical.
- *Wage and Hour Laws:* Employers must ensure that managers and supervisors understand the basics of wage and hour laws, and in particular those relating to the "white-collar" exemptions under the Fair Labor Standards Act (FLSA), as misclassification

claims under the FLSA can be extremely costly for employers to defend. A notable decision by the U.S. Supreme Court in this context in January 2025 held that employers only need to prove exemption eligibility under the FLSA by a “preponderance of the evidence,” a lower standard than the “clear and convincing” evidence standard that had been promulgated by the U.S. Court of Appeals for the Fourth Circuit. This ruling simplifies the burden of proof for employers defending FLSA misclassification claims, particularly for those in the Fourth Circuit (Maryland, North Carolina, South Carolina, Virginia, and West Virginia). To take advantage of this decision, employers should maintain clear and accurate job descriptions and precise time records, as those documents can be crucial for defending against potential misclassification claims. Accordingly, we strongly recommend that employers have their legal counsel review their employee classification and record keeping practices to ensure compliance with the FLSA.

- *Family and Medical Leave Act (FMLA) and Americans with Disabilities Act (ADA) Awareness:* Employers should train supervisors and HR to recognize leave requests and accommodation needs and to appropriately engage in the legally required interactive process. A recent update to the FMLA occurred in January 2025, when the Department of Labor’s Wage and Hour Division issued an opinion letter clarifying that employers cannot require (nor can an employee unilaterally elect) the substitution of accrued paid time off during FMLA leave when an employee is also receiving paid benefits from state or local family and medical leave programs. The opinion letter explained, however, that employers and employees can mutually agree that the employee may use available accrued paid time off to supplement paid family and/or medical leave benefits during FMLA-qualifying leave, if permitted by applicable law. This mirrors existing rules for disability or workers’ comp leave.
- *Occupational Safety and Health Administration (OSHA) Style Workplace Safety Training:* OSHA training is vital for employees because it equips them to recognize, prevent, and respond to workplace hazards; helps reduce injuries, illnesses, and fatalities; ensures regulatory compliance to avoid fines; and boosts through a strong safety culture. One new law to note that went into effect on January 15, 2025, is that fines for serious or other-than-serious violations rose to a maximum of \$16,550 per violation, while willful or repeat violations now carry penalties up to \$165,514 per offense.

- *Code of Conduct, Ethics, Data Protection Training:* Trainings on privacy, social media use, and whistleblower reporting are vital for promoting an organization's integrity, compliance, and accountability. They help employees understand ethical behavior, data handling, and provide guidance on how to report misconduct safely, all of which reduce a company's legal risk and enhance workplace trust. These efforts protect a company's reputation and, at the same time, empower employees. Notably, employers should be aware that in May 2025, Senators Chris Coons and Chuck Grassley introduced the AI Whistleblower Protection Act, which safeguards AI workers from retaliation and offers remedies such as reinstatement, back pay, and damages for those who report legal violations or significant risks related to AI technologies.

STRATEGIES

There are several strategies that employers can utilize during the onboarding process to ensure that they are keeping up with the ever-changing employment and labor laws. These can include:

- *Ongoing Compliance:* Update handbooks, training materials, and legislative checklists whenever regulations change. Legal counsel can help assess whether policy updates, contract language modifications, or new procedural steps are needed based on their monitoring of ever-changing laws and regulations.
- *Automate, Monitor, and Track Compliance:* By creating an onboarding checklist, employers can clearly define who is responsible for what (human resources, hiring manager, information technology, legal, etc.) and ensure that nothing is overlooked. There are also several modern onboarding software tools that can send automated reminders, collect e-signatures, manage Form I9 and EVerify (when required), provide structured training modules, and flag missing or overdue documentation.
- *Regulatory Awareness and Auditing:* Employment and labor laws vary by state. Thus, employers should regularly review federal, state, and local requirements (or have their counsel review such requirements), especially for evolving areas like noncompete laws, miniWARN statutes, and mandatory separation notices, each of which can vary dramatically by state. Employers should schedule internal audits semiannually or annually to walk through onboarding documents, training

records, and process flows with HR and legal stakeholders to catch gaps and update materials proactively.

- *Customize and Communicate Clearly:* Employers should be sure to tailor onboarding materials, such as local labor laws, to regional or remote hires, as such laws could differ widely from those at the company's corporate headquarters. Employers also should provide precise timelines and deadlines to incoming employees for the completion of necessary legal documents (e.g., "Complete forms W4 and I9 by your third business day," etc.). Make resources accessible and inclusive. Offer employees open Q&A sessions or check-ins to clarify expectations about policies, conduct, benefits, or wage provisions. Transparent communication builds trust and deters misunderstandings.

CONCLUSION

A legally compliant onboarding program helps build trust, consistency, and a safe working environment. Through careful documentation (such as W4, I9, NDAs), timely training, automated tracking, frequent audits, and legal vigilance, organizations can reduce risk and start employees on day one supported and informed. By embedding compliance into a company's culture from the start, employers not only limit liability but also demonstrate their organization's commitment to fairness, respect, and shared values. By adopting a structured process, digital tools, clear communication, and legal oversight, an organization can ensure a robust onboarding framework that remains compliant, scalable, and reflective of its overall values.

Copyright © 2025 CCH Incorporated. All Rights Reserved. Reprinted from *Employee Relations Law Journal*, Winter 2025, Volume 51, Number 3, pages 27–31, with permission from Wolters Kluwer, New York, NY, 1-800-638-8437, www.WoltersKluwerLR.com

