

# Common Myths of Modern HR Compliance

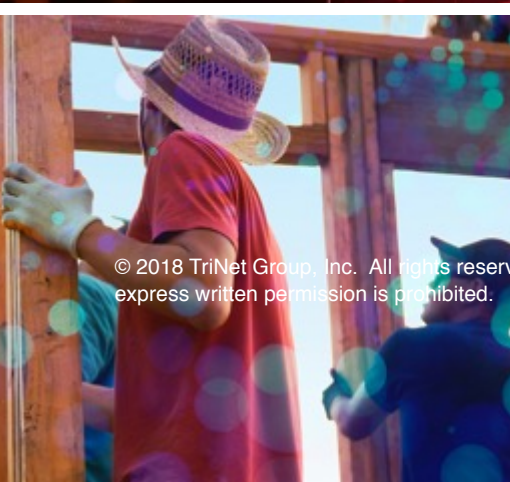
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# Common Myths of Modern HR Compliance



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# INTRODUCTION

Lurking behind modern day human resources lie common myths that many managers continue to believe.

Today we are going to discuss some of the typical, yet important, issues that may arise during the employee life cycle – from recruiting to offboarding – while establishing facts and dispelling myths along the way.



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# RECRUITING / ONBOARDING

## INTERVIEW QUESTIONS

### FACT OR MYTH?

During an interview an employer can ask a candidate who speaks with an accent whether they are in the United States legally?



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## MYTH

Employers cannot ask if the employee is in the United States legally. However, the employer can ask candidates, “Are you eligible to work in the United States?”

Best Practice Tips:

1. Ask questions consistently of all candidates.
2. Ask questions that relate to the requirements of the position.
3. Use your job description as a guide.



# RECRUITING / ONBOARDING

## INTRODUCTORY PERIODS

### FACT OR MYTH?

Probationary periods are a good idea as they typically allow the employer to monitor the competence, work habits, and overall fit of a new hire within the organization.



## MYTH

This is a myth as our best practice recommendation is to NOT have a probationary period because of the potential risks in creating an implied employment contract period. Employers should continuously monitor employee performance throughout the employment life cycle.

### Best Practice Tips:

1. When entering the employment relationship, the outlook should focus on developing successful results versus looking at it as a trial period.
2. Use your job descriptions as guides.
3. Address issues and set expectations.
4. Evaluate the new hire's performance during this timeframe, including a written performance evaluation at intervals such as 30, 60, or 90 days.
5. Identify areas where more training may be necessary.



# TRAINING

## TRAINING

### FACT OR MYTH?

Conducting harassment prevention training will just encourage employees to report false or frivolous complaints.



## MYTH

Conducting harassment prevention training is beneficial because it:

1. Conveys that your company takes employee well being and safety seriously.
2. Describes what types of behaviors and actions are considered workplace harassment.
3. Provides contact information on whom to report a concern to – an employee may not have known whom to contact or was uncomfortable bringing their concern forward.
4. Sets expectations on steps that will be taken as a result of a complaint being reported, e.g. investigation, any appropriate disciplinary action, etc...
5. Creates the opportunity to address any prior concerns and help prevent future incidents.
6. Can address concerns that could potentially affect employee morale and turnover.
7. Currently states such as California, Connecticut, Maine, and New York require training



# DISCRIMINATION

## FACT OR MYTH?

Small employers (less than 20 employees) do not need to worry about discrimination claims.

# DISCRIMINATION

## MYTH

All employers regardless of size need to be aware of the risks of discrimination claims.

- Costly Claims
- Employee Morale
- Employee Turnover



# DISCRIMINATION

## STATUTES PROHIBITING DISCRIMINATION

Title VII

Americans with Disabilities Act

Equal Pay Act

Age Discrimination in Employment Act

Pregnancy Discrimination Act

Many State Laws and Local Ordinances

# FAIR LABOR STANDARDS ACT

## FLSA STATUS – EXEMPT OR NON-EXEMPT



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# FAIR LABOR STANDARDS ACT

## EXEMPT VERSUS NON EXEMPT

What are the acceptable reasons to categorize an employee as a salaried exempt employee? Mark all that apply.

- A. Employee desires to be exempt because they've always been exempt and it signifies status.
- B. Overtime is not required.
- C. Job duties & salary meet exempt job duty & salary requirement

# FLSA STATUS

## EXEMPT VERSUS NON-EXEMPT

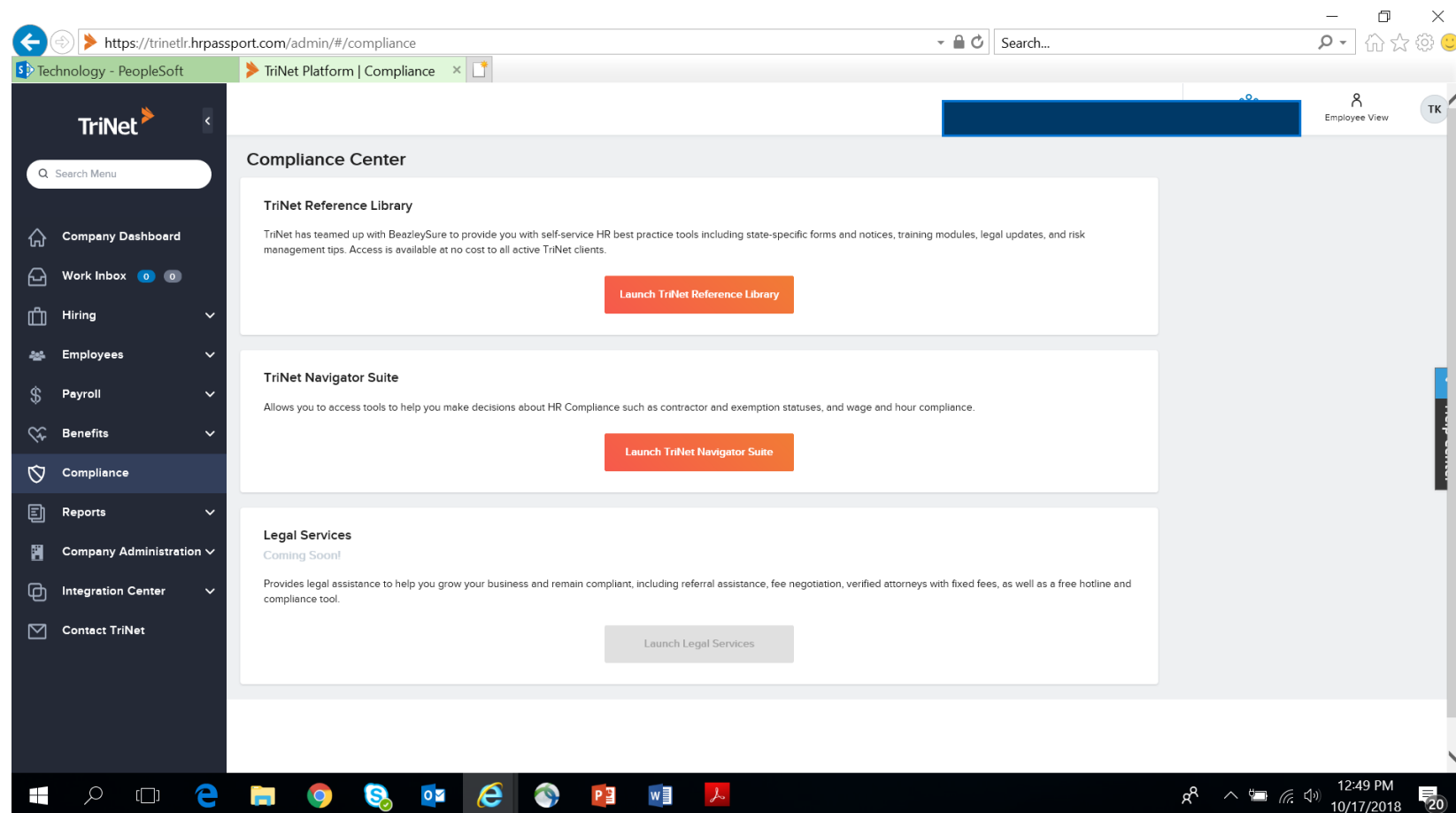
What are the acceptable reasons to make an employee a salaried exempt employee? **Answer**

- A. Employee desires to be exempt because they've always been exempt and it signifies status.
- B. Overtime is not required.
- C. Job duties & salary meet exempt job duty & salary requirement

**C. The job duties and the salary meet the FLSA exempt job duty and salary requirements**

# NAVIGATOR SUITE TOOL

Under the Admin View, the TriNet Navigator Suite can be found under the “Compliance” link on the TriNet platform (login.trinet.com)





# EMPLOYMENT CLASSIFICATION

## INDEPENDENT CONTRACTORS

### FACT OR MYTH?

The risk of misclassifying someone as an independent contractor applies to employers of all sizes.

# EMPLOYMENT CLASSIFICATION

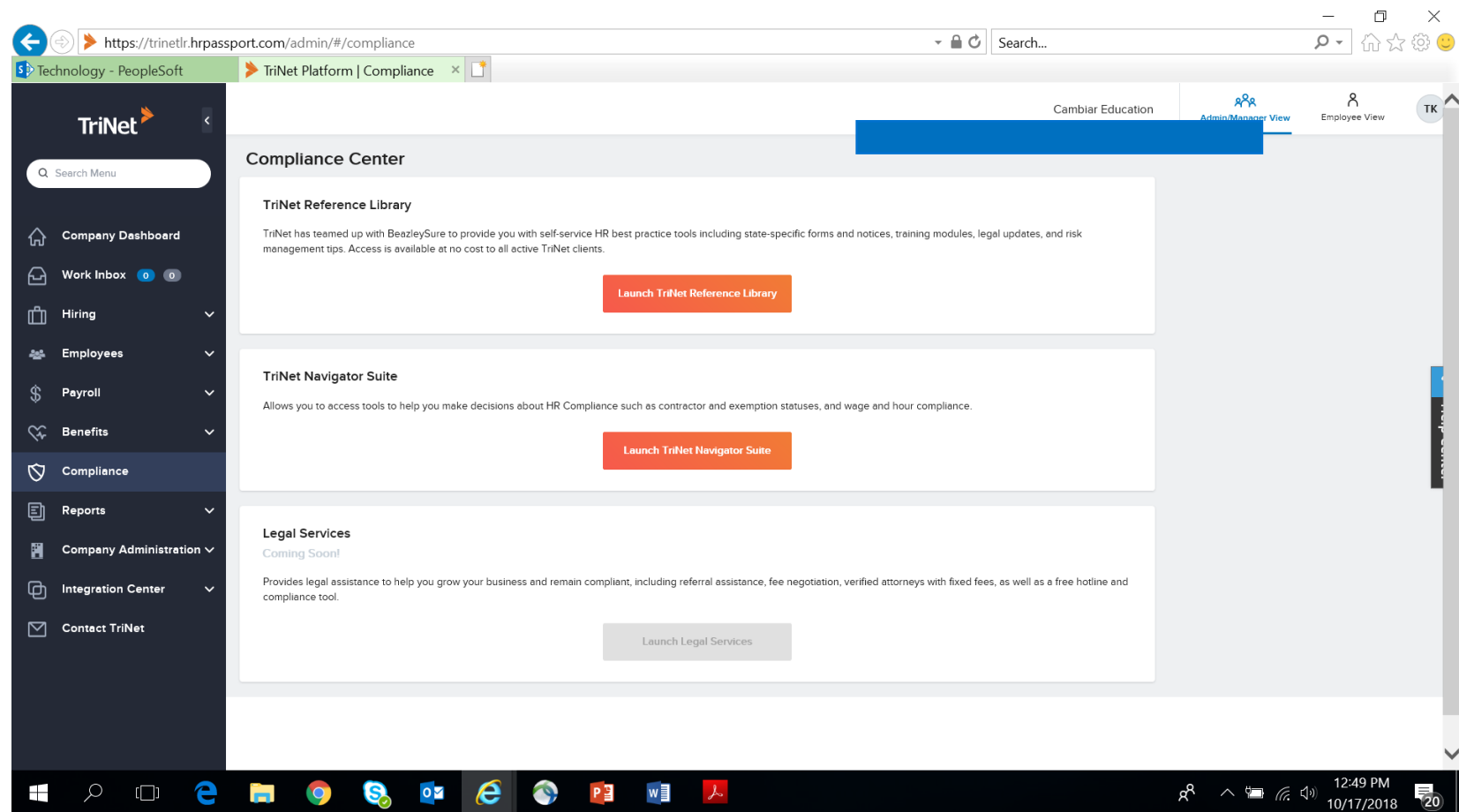
## INDEPENDENT CONTRACTORS

# FACT

Independent contractor misclassification is a serious risk and all employers should carefully analyze whether a worker truly qualifies as an independent contractor

# NAVIGATOR SUITE TOOL

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# AMERICANS with DISABILITIES ACT

## FACT OR MYTH?

You are a small employer with only 18 employees and have an employee that needs to take a medical leave of absence. You have a leave policy that allows for two weeks off due to a medical leave; however, this employee is stating he/she needs four weeks off. It is ok to automatically deny the leave and terminate the employee since your policy does not allow for that much time off.

# AMERICANS with DISABILITIES ACT

## MYTH

The Americans with Disabilities Act (ADA) requires that employers consider reasonable accommodations for an employee with a disability. An extended leave of absence beyond company policy may be considered a reasonable accommodation.

# AMERICANS with DISABILITIES ACT

## FACT OR MYTH?

You are an employer with 100 employees and are subject to the federal Family and Medical Leave Act (FMLA). You have an employee that needs to take a medical leave of absence. They have already been granted the 12 weeks of job protected leave that the FMLA requires, however, your employee needs an additional two months off for medical reasons. It is ok to automatically deny the request since the employee has already taken the 12 weeks of job-protected FMLA.



# AMERICANS with DISABILITIES ACT

## MYTH

The Americans with Disabilities Act (ADA) requires that employers consider reasonable accommodations for an employee with a disability. An extended leave of absence beyond company policy or a state or federal law may be considered a reasonable accommodation.

# NATIONAL RELATIONS LABOR ACT

## FACT OR MYTH?

It is ok to discipline an employee for discussing what they are paid with other employees because it is a policy to keep that information confidential and the employee was informed to not discuss his compensation information with other employees.



# NATIONAL RELATIONS LABOR ACT (NLRA)

## MYTH

The National Labor Relations Act (NLRA) applies to both non-union and union employers. The NLRA protects employees' rights to engage in “concerted activity” such as discussing wages with coworkers.





# AGE DISCRIMINATION

## FACT OR MYTH?

An applicant or an employee becomes protected under the age discrimination law beginning at the age of 40.

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# AGE DISCRIMINATION

## FACT

Age 40 is when applicants and employees become protected under Age Discrimination Laws

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# WORKERS' COMPENSATION

## FACT OR MYTH?

A leave of absence due to an on the job workers' comp injury does not need to be tracked the same way as a regular medical leave of absence.

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# WORKERS' COMPENSATION

## MYTH

A workers' comp injury that requires a medical leave of absence or time off from work should be tracked in the same way as other medical leave of absences are tracked.

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# PREGNANCY DISCRIMINATION ACT

## PREGNANCY DISCRIMINATION ACT

The Pregnancy Discrimination Act amended [Title VII of the Civil Rights Act of 1964](#). Discrimination on the basis of pregnancy, childbirth or related medical conditions constitutes unlawful sex discrimination under Title VII.

### Title VII's pregnancy-related protections include:

- **Hiring** An employer cannot refuse to hire a pregnant woman because of her pregnancy, because of a pregnancy-related condition, or because of the prejudices of co-workers, clients or customers.
- **Pregnancy and Maternity Leave** If an employee is temporarily unable to perform her job because of her pregnancy, the employer must treat her the same as any other temporarily disabled employee. For example, if the employer allows temporarily disabled employees to modify tasks, perform alternative assignments, or take disability leave or leave without pay, the employer also must allow an employee who is temporarily disabled because of pregnancy to do the same.

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# EMPLOYMENT SEPARATION

## AT-WILL EMPLOYMENT

### FACT OR MYTH?

Since my company conducts business in an “at-will” employment state, there is no risk in terminating an employee at any time for any reason, or for no reason at all.



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# EMPLOYMENT SEPARATION

## MYTH

Employment At-Will generally permits employers and employees to terminate the employment relationship at any time, with or without cause, and with or without advance notice

- Does not permit termination for unlawful reasons
- Can be superseded by certain agreements
- Don't bet on at-will employment as protection against claims based on unsubstantiated termination decisions

# EMPLOYMENT SEPARATION

## MUTUAL EMPLOYMENT SEPARATION

### FACT OR MYTH?

An employee is not performing at expectations. To make the situation easier for the employee, the employer can give the employee the option of resigning or being fired. This is considered a “mutual agreement.”





# EMPLOYMENT SEPARATION

## MYTH

1. The employer is still making the decision to end the employment relationship. Therefore, it is not mutual. The separation is considered involuntary.
2. If the employee resigns, their ability to collect unemployment benefits may be affected.
3. Having the employee resign does not reduce the risks associated with employment separations.

# CONCLUSION

Today we discussed the importance of:

- Appropriate interview questions that relate to the job duties of the position.
- Risks of implementing a probationary period.
- Benefits of Conducting Harassment Prevention Training.
- Appropriately categorizing exempt / non-exempt employees and independent contractors.
- Knowing what classes are protected by anti-discrimination statutes and whether you are covered employer.
- Awareness and compliance with the NLRA – regardless of union or non-union status.
- Employment separation pitfalls related to employment at-will and mutual employment separations.

# QUESTIONS?

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# THANK YOU

Thank you for participating in TriNet's Executive Roadmap Webinar.



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