

# ComplianceHR Webinar Series: Spring Into Compliance

Session 3 - Wage & Hour Mistakes: How to Recognize and Avoid Common Landmines



This presentation is for educational purposes only. TriNet provides its clients with HR and best practices guidance. TriNet does not provide legal, tax, or accounting advice.



## Lori Brown

CEO, ComplianceHR

[brown@compliancehr.com](mailto:brown@compliancehr.com)

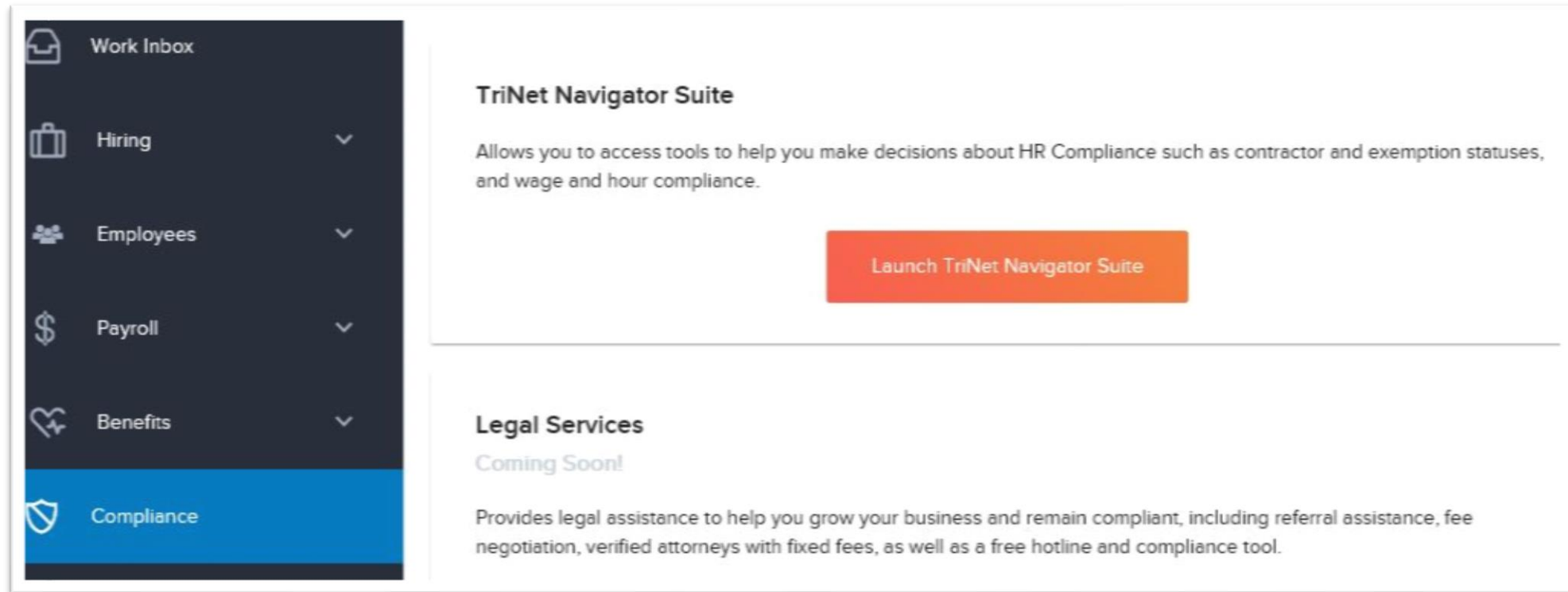
 [@labrown1419](https://twitter.com/labrown1419)

- Former Littler Shareholder
- Former General Counsel / HR Chief of Global Security Organization

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# Accessing Navigator Suite

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



# Accessing Navigator Suite

## Navigator IC



### Independent Contractor Assessment

Delivers an actionable risk assessment, a report on how to lower the risk of misclassification, and a summary of applicable laws

[+ Create New Evaluation](#)

[Q View Evaluations](#)

[▶ IC Agreement](#)

## Navigator OT



### Exempt Status Assessment

Provides a risk assessment of each applicable exemption, suggestions on how to lower the risk of misclassification, and a summary of the federal and state exemption standards

[+ Create New Review](#)

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## Navigator Pay Practices



### Wage and Hour Compliance

Delivers comprehensive reports on a federal and state-by-state basis for the most common wage and hour issues

[▶ Find Minimum Wage](#)

[▶ Use Rapid Reference](#)

## Navigator Onboarding



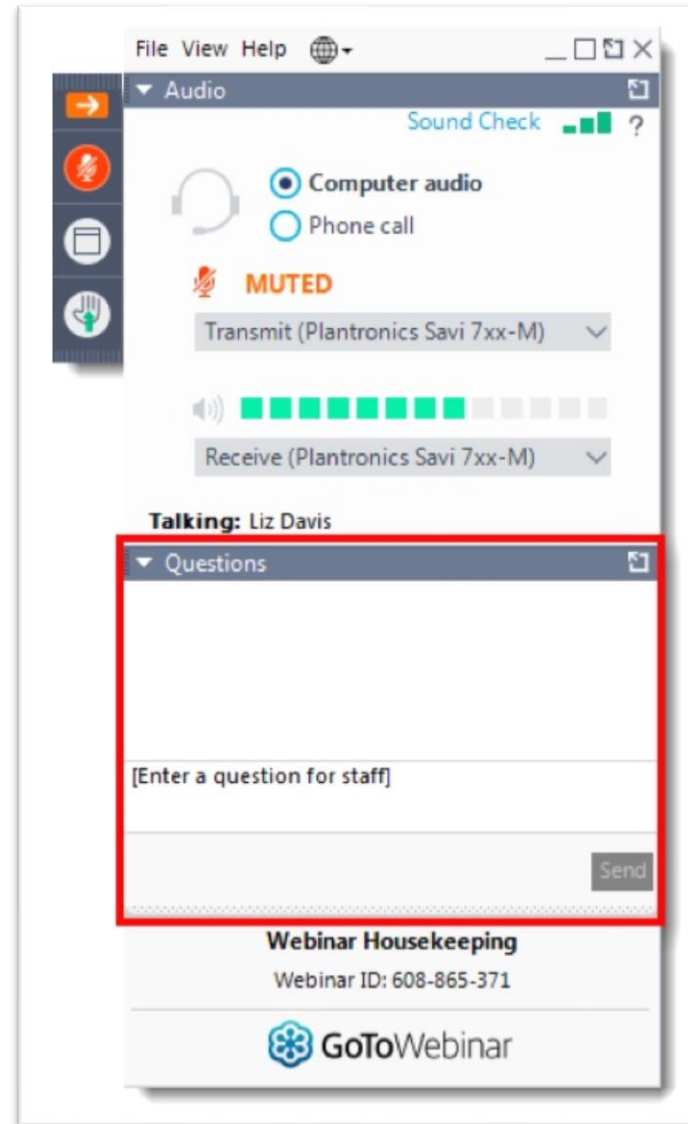
### Onboarding Document Production

Produces state and federal compliant employment applications, offer letters, and employee non-disclosure documents

[+ Create New Document](#)

# Answering Your Questions

Please submit your questions via the text questions pane:



# What You'll Receive:

1. Full slide presentation (pdf format)
2. Link to recorded audio presentation



# Agenda

- I. Top 10 Wage & Hour Mistakes**
- II. Leveraging Technology**
- III. Q&A**





# Cory Glen Walker

Littler Shareholder

Phoenix, AZ

[cgwalker@littler.com](mailto:cgwalker@littler.com)

- Represents employers in collective, class, and hybrid actions brought under the federal Fair Labor Standards Act and state wage and hour laws
- Focuses on consulting with a wide range of employers on wage and hour compliance
- Extensive experience with internal wage and hour and independent contractor audits aimed at ensuring best practices, and avoiding class litigation

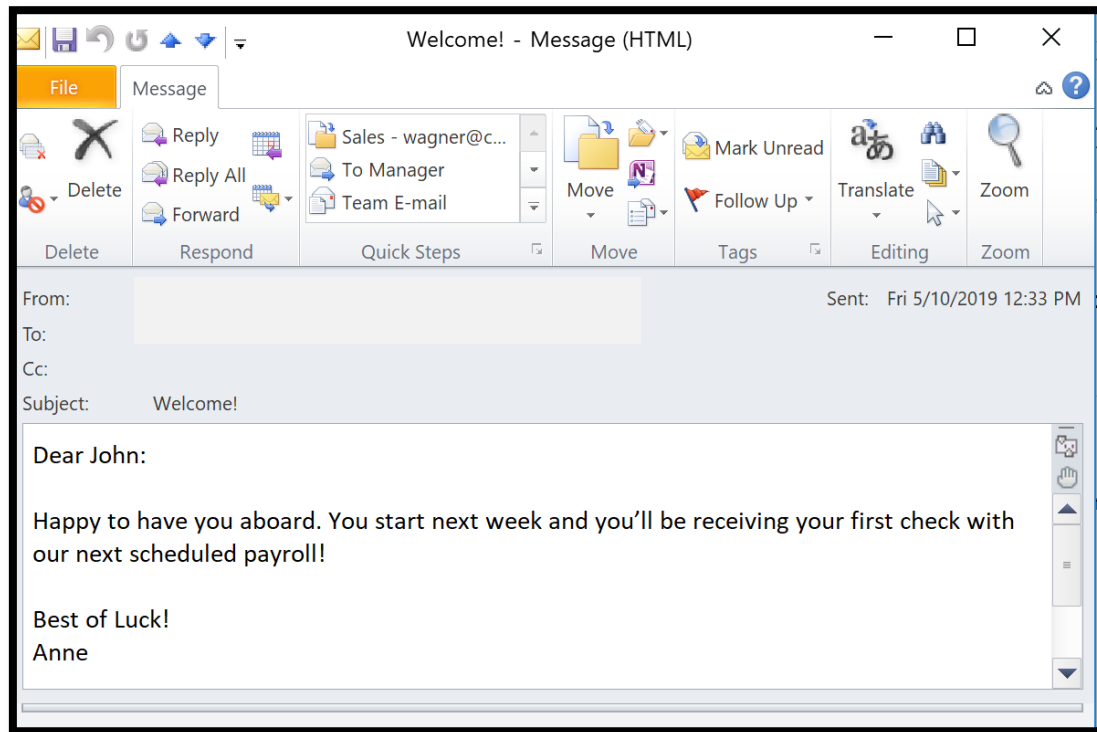
# Top 10 Wage & Hour Mistakes



10

Failure to  
clearly  
communicate  
on  
compensation

# Failure to clearly communicate on compensation



- **Many issues arise because employees do not understand their pay:**
  - Expected hours
  - Are they exempt or non-exempt?
  - Are they being paid a salary or by the hour?
  - How will their overtime be calculated?
  - Are they bonus eligible?
  - Wage notice?

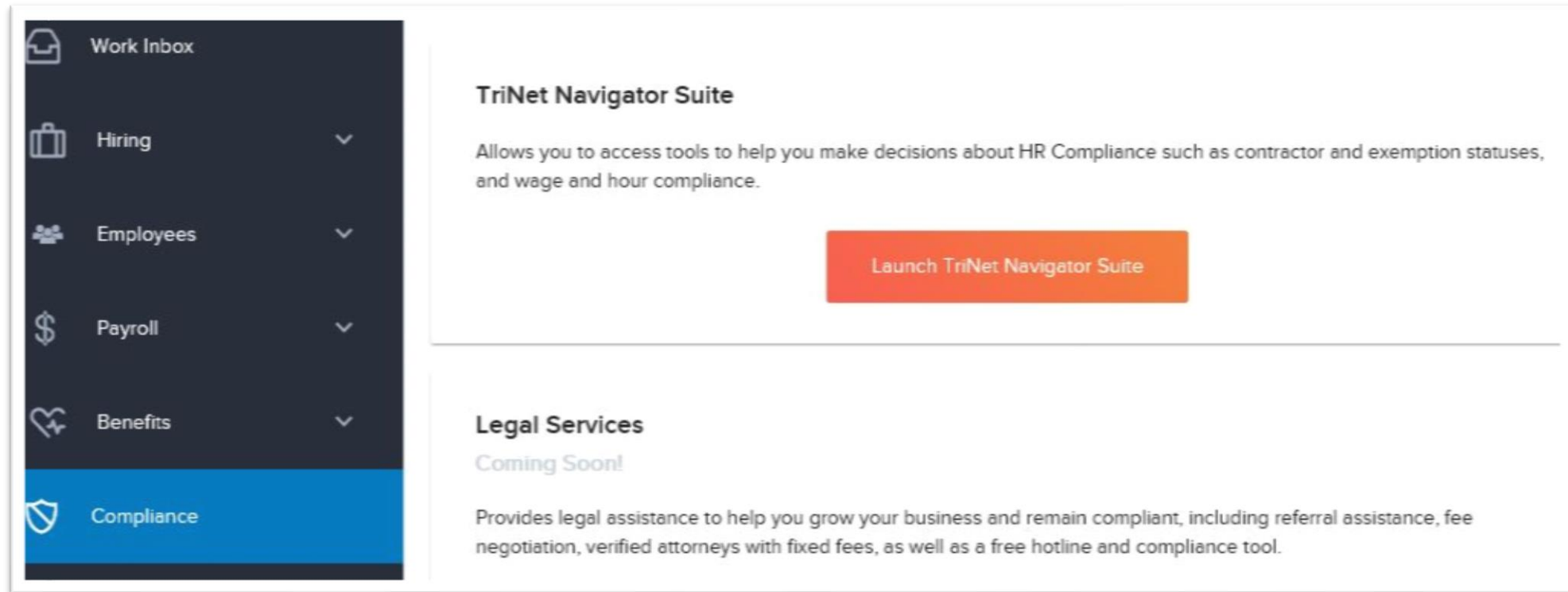
# Failure to clearly communicate on compensation

- Best Practice:
  - Be Clear.
  - Be Concise.
  - Be Consistent.
  - Be Comprehensive.



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# Navigator Offer Letter

Navigator Onboarding

Getting Started

To begin, select the application you want to launch. You may click on the name of an application to learn more about it.

- ☐ Navigator Employ ⓘ
- ☒ Navigator Offer ⓘ
- ☐ Navigator Non-Compete ⓘ
- ☐ Navigator NDA ⓘ

Next >

# Navigator Offer Letter

## Basic Information

\*Provide the Company's name as it should be listed in the letter:

ABC Corporation

Shorthand version of the company name:

If left blank, reference throughout letter will be "the Company".

ABC Corp

\*Select the prospective employee's work state, and then click the **Next** button below:

New York ▼

### Warning!

New York requires an employer to provide applicant with a Wage Theft Prevention Notice upon hire. If you do not already have a Wage Theft Prevention Notice form, the New York State Department of Labor provides [online model Wage Theft Prevention Act notices](#) in Spanish, Chinese, Haitian Creole, Korean, Polish, and Russian.

Next >

## Basic Information

List ABC Corp's main business address and telephone:

Address: 174 Meadow Lane, Big Apple 12345

Phone: 123-456-7890

What are ABC Corp's normal business hours? *Display as a time block, i.e. 9 am - 5 pm.*

7:30 am - 5:00 pm

## Prospective Employee Details

\*State how the prospective employee's name should be listed in the agreement:

Nicole

First Name

Smith

Last Name

\*Enter the prospective employee's address:

250 W 72nd St

Street Address 1

Apt. 14E

Street Address 2

New York

City

NY ▼

State

10023

Zip Code

# Navigator Offer Letter

## Position Details

\*Title of the position being offered to Nicole Smith:

Assistant VP

Name of the division where Nicole Smith will work:

If left blank, will not appear in Letter

Legal

\*Name of Nicole Smith's supervisor:

Sally Robertson

\*Nicole Smith's anticipated start date:

August 1, 2016

\*Offer Letter date:

May 8, 2019

\*Is the position temporary or permanent?

Permanent

\*Is the position full-time or part-time?

Part-time

\*Is the position exempt or non-exempt?

Exempt

\*Will you be enclosing with the letter any background check forms or other required forms for Nicole Smith to complete?

☒ Yes ☐ No

< Back

Next >

## Payment Details

\*Will you offer Nicole Smith compensation?

☒ Yes ☐ No

\*Enter any specifics regarding equity based compensation, executive deferred compensation plans, retention bonuses, other bonus plans, etc.

Enter exactly as you would like it to appear in the offer letter.

This offer includes an annual bonus.

\*Please specify by position who can approve:

Board of Directors

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Next >

## Time off and Benefits

\*What type of time off policy will apply to Nicole Smith? [More Information](#)

Vacation

\*How is the vacation given?

Accrued

\*When does vacation start to accrue?

Upon date of hire

\*At what rate will Nicole Smith accrue vacation?

1 day

per

pay period

\*What is the maximum amount of time off Nicole Smith can accrue?

3

week(s)

Number

Day(s) / Week(s)

\*Select the benefits option that best fits Nicole Smith: [Warning](#)

- ☒ Option 1: Nicole Smith will not be eligible for any additional employee benefits
- ☐ Option 2: Employee benefits are available and ABC Corp will enclose a benefits enrollment packet
- ☐ Option 3: ABC Corp will provide Nicole Smith with additional information about employee benefits once the offer is accepted

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Next >

# Navigator Offer Letter

\*How long do you anticipate the applicant screening process will take?

3 week(s)

Number Day(s) / Week(s)

\*By position title, who at ABC Corp can alter the terms outlined in the offer letter (e.g. president, etc.)?

CEO

\*Until what date will the offer remain open?

August 25, 2016

\*Who will Nicole Smith contact to begin the onboarding process?

Name: Lucy Jones

Title: HR

\*Who is signing the offer letter?

Name: Robert Jackson

Title: Head of HR

Phone: 518-266-2983

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Next >

## Additional Information

\*Will Nicole Smith's employment be subject to any of the following (check all that apply)?

- ☒ Code of Conduct
- ☐ Employee Handbook
- ☐ None of the Above

\*By position title, describe who in ABC Corp can alter the at-will relationship with Nicole Smith (e.g. president, board of directors, etc.):

CEO

\*Select the contingencies placed on this offer (check all that apply): Warning ⓘ

- ☒ Non-Disclosure Agreement
- ☒ Non-Compete Agreement
- ☐ Non-Solicitation Agreement
- ☐ Arbitration Agreement
- ☐ Drug And Alcohol Screening
- ☐ Background Check Of Employment
- ☐ Education History
- ☐ Criminal History
- ☐ Credit History
- ☐ Driving Record Verification For Placement On Insurance Policy
- ☐ Other
- ☐ All of the Above
- ☐ None of the Above

## You have completed the questionnaire

Use the links below to access your Offer Letter:

 [Offer Letter](#)

 [Offer Letter](#)

[Click to learn what this report does not cover ⓘ](#)

< Back

Start Over

# Navigator Offer Letter – Result!

May 8, 2019

Nicole Smith  
250 W 72nd St, Apt. 14E  
New York, NY 10023

Re: Offer of Employment

Dear Nicole Smith,

ABC Corporation ("ABC Corp") is pleased to extend to you this conditional offer of employment to work in the part-time position of Assistant VP in our Legal division. This offer and your employment relationship will be subject to the terms and conditions of this letter. This offer is contingent upon completion, to ABC Corp's satisfaction, of efforts to confirm your suitability for this position, which includes the pre-employment checks and reviews as described in this letter. To enable us to conduct thorough checks and other review, please fill out the enclosed documents and return them to us as soon as possible.

This position is Exempt and reports directly to Sally Robertson. Pending satisfactory completion of our pre-employment checks, your anticipated start date is August 1, 2016. Please be advised that the main business address and telephone number for ABC Corporation is 174 Meadow Lane, Big Apple 12345, 123-456-7890. ABC Corp's normal business hours are 7:30 am - 5:00 pm.

#### Compensation and Benefits

**Base Compensation:** Enclosed, please refer to the attached Wage Notice for information regarding your compensation. If your primary language is not English, please provide that information prior to your first day of employment so that we may comply with the requirements of New York's Wage Theft Prevention Act.

**Other Compensation:** This offer includes an annual bonus. The foregoing compensation arrangements are subject to the terms and conditions established under any applicable plans and/or policies of ABC Corp, as such may be amended from time to time, and, if applicable, subject to approval by the Board of Directors.

**Vacation Time:** You will begin to accrue vacation time upon date of hire at a rate of 1 day per pay period, up to a maximum of 3 week(s).

Carryover, if any, and payout of vacation upon termination, if any, will be governed by ABC Corp's paid time off policy in effect at the time of carryover and/or termination. ABC Corp's paid time off policy is subject to change at ABC Corp's discretion.

**Benefits:** In your position, you will not be eligible for any additional employee benefits.

**Tax and Other Withholding:** The amounts of compensation described in this letter are before taxation or other withholdings required or permitted by law. ABC Corp reserves the right to withhold all applicable federal, state and local income, Social Security and other employment taxes, along with any other amounts of required withholding, from all amounts of compensation and other remuneration payable to you, whether as direct compensation or pursuant to any of the compensation or benefit plans in which you may participate.

#### Guidelines for Employment.

If you accept this offer and become an employee of ABC Corp, you will be subject to our employment policies and employee code of conduct. In addition, ABC Corp reserves the right to modify the compensation or benefits arrangements described in this letter or otherwise maintained by ABC Corp, and also reserves the right to modify your position or duties to meet business needs and to use its discretion in deciding on appropriate discipline. Upon hire, you will be required to read and sign an acknowledgment of receipt of the Employee Handbook and any applicable state supplement.

**ABC Corp is an at-will employer. At-will means that an employee may resign at any time with or without advance notice to ABC Corp and with or without cause. Likewise, ABC Corp may terminate an employee at any time with or without advance notice and with or without cause. Except for the CEO, no director, manager, supervisor or representative of ABC Corp has any authority to enter into any agreement for employment for any specific period of time or to make any agreement contrary to the foregoing. Only the CEO of ABC Corp has the authority to make any agreement contrary to the foregoing and then only in writing. Nothing in this letter should be read to alter the at-will nature of your anticipated employment with ABC Corp.**

#### Offer Contingencies

This offer is contingent upon the following:

- Signing ABC Corp's non-disclosure agreement and non-compete agreement (see enclosed)
- Verification of the information contained in your employment application, including satisfactory results in the verification of references
- Confirmation that you are not subject to any legal restrictions on your activities (see below)
- Accepting this offer in writing by August 25, 2016

This offer will be withdrawn (whether or not you have already signed it) if any of the above conditions are not satisfied. **Unless and until all such steps have been completed, this conditional offer of employment may be withdrawn and you should not resign your current employment, otherwise alter your employment status, or alter any personal circumstances in reliance on this conditional offer.** Generally, the screening process takes 3 weeks. If you have any questions regarding where we are in the screening process, please do not hesitate to contact me.

In addition, on your first day of employment, please be sure to bring your identification card(s) to establish your identity and eligibility for employment in the United States, e.g., unexpired passport or driver's license and social security card. If you are unable to provide such verification within three business days of the date your employment begins, this offer of employment will be withdrawn.

This letter and the enclosed documents constitutes the entire agreement between you and ABC Corp relating to this subject matter and supersedes all prior or contemporaneous agreements, understandings, negotiations or representations, whether oral or written, express or implied, on this subject. Except as provided herein, this letter may not be modified or amended except by ABC Corp's CEO.

#### Restrictions on Employment

By signing this offer letter, you represent and warrant that you are not party to any agreement or subject to any policy applicable to you that would prevent or restrict you from engaging in activities competitive with the activities of your former employer or from directly or indirectly soliciting any employee, client or customer to leave the employ of, or transfer its business away from, your former employer, or if you are subject to such an agreement or policy, you have complied and will comply with it, and your employment with ABC Corp does not violate any such agreement or policy. You further confirm that you will not remove or take any documents or proprietary data or materials of

any kind, electronic or otherwise, with you from your current or former employer to ABC Corp without written authorization from your current or former employer. If you have any questions about the ownership of particular documents or other information, discuss such questions with your former employer before removing or copying the documents or information.

#### Acceptance

This offer will remain open until August 25, 2016. To indicate your acceptance of ABC Corp's offer on the terms and conditions set forth in this letter, please sign and date this letter in the space provided below and return it to me no later than that date. Upon receipt of your signed acceptance of this offer letter, Lucy Jones, HR, will contact you to begin your on-boarding processes.

We hope your employment with ABC Corp will prove mutually rewarding, and we look forward to having you join us. If you have any questions, please feel free to call me at 518-266-2983.

Sincerely,

Robert Jackson, Head of HR

\* \* \*

By signing below, I acknowledge that I have been furnished with a copy of this offer and that I understand and agree to the terms set forth above. I understand that I will be an at-will employee and that nothing in this document is intended to create a contract of employment or alter the at-will nature of my employment.

Acknowledgment and Acceptance of Terms:

Signature \_\_\_\_\_ Print Name \_\_\_\_\_ Date \_\_\_\_\_

Enclosure(s)



9

Timekeeping  
practices that  
fail to capture  
all hours  
worked

# Timekeeping practices that fail to capture all hours worked



- Paying employees based on their scheduled shift, rather than actual hours worked
- “Exception” time reporting
- Rounding time, which is only legal if time is rounded both up and down



- Best practices for capturing all hours worked include:
  - Electronic timekeeping;
  - Require employees to punch in and out when they begin and stop working, and when they leave and return from an unpaid meal period;
  - Pay to the punch, without rounding;
  - Require employees to review and certify that their reported work hours are accurate.



8

Forgetting  
about minimum  
wage  
compliance



# Forgetting about minimum wage compliance

Minimum wage is complicated.

- 29 states/DC are doing their own thing.
- Going local: 45 cities and counties now have their own minimum wages
- Wait there's more. Differing rates based on factors.
- Deductions for items required for work can bring wages below the required minimum: tools, equipment, uniforms, badge replacements, payments for lost company property.



# Giving You the Tools You Need!

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# Navigator Minimum Wage

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# Navigator Minimum Wage

## Welcome to Navigator Minimum Wage

This application provides the minimum wage requirements for non-exempt employees, along with basic information about tip credits that may be applied towards the minimum wage. It is primarily focused on the requirements within localities that have a population of at least 100,000 people.

[More about Minimum Wage Requirements](#)

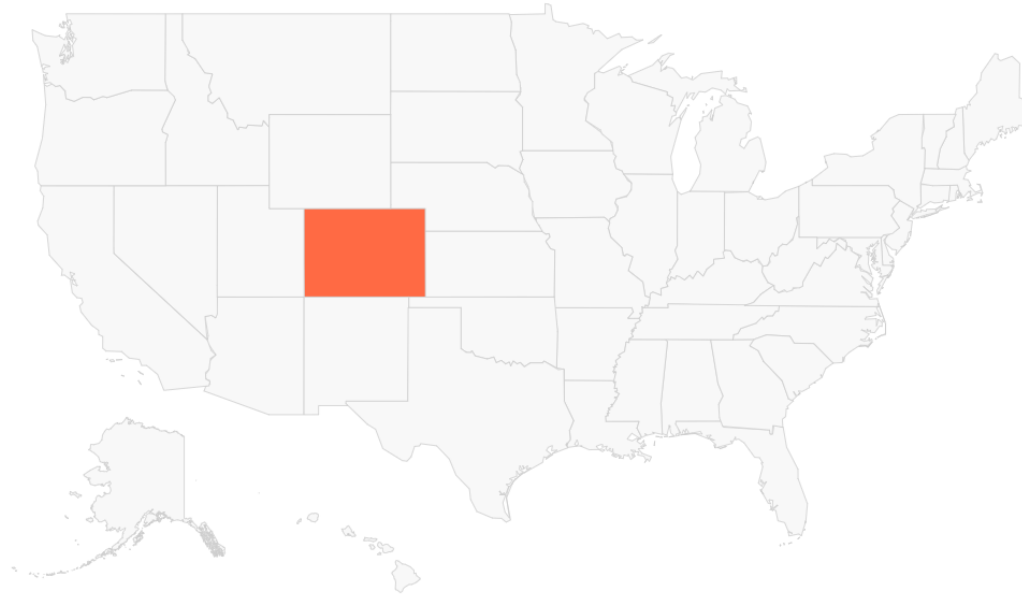
## Employee Work State

Would you like information on [tip credits](#)?

☒ Yes ☐ No

Select the employee's [primary work state](#) below, and then click the **Next** button below:

Colorado ▼



# Navigator Minimum Wage

## Minimum Wage Requirements

Below are the minimum wage [requirements](#) for non-exempt employees in the selected location. The results are primarily focused on the requirements within localities that have a population of at least [100,000 people](#).

### Federal Requirements

#### Minimum Wage

The federal Fair Labor Standards Act requires employers to pay employees at least the federal minimum wage of \$7.25 per hour for all hours worked. However, states and local governments can require payment of a higher minimum wage for employees working in the state or locality. Employees must be paid the highest applicable federal, state, or local minimum wage.

#### Tip Credit under the FLSA

Tip credits are permitted under the FLSA. The required minimum cash wage is \$2.13 and maximum tip credit is \$5.12. For the tip credit to apply, the employee must have been informed by the employer of the tip credit provisions, and all [tips](#) received by the employee must be retained by the employee, with the exception of any legally compliant tip pooling arrangements. The tip credit cannot exceed the value of the tips actually received by the employee.

### Local Requirements in Colorado

#### Minimum Wage

A non-exempt employee must be paid no less than \$11.10 per hour for all hours worked, which is the minimum wage for non-exempt employees in Colorado.

#### Tip Credit

[Local Tip Definition](#)

Tip credits are permitted in Colorado. The required minimum cash wage is \$8.08 and maximum tip credit is \$3.02 (for tips actually received).

A tip credit is permissible for any employee engaged in an occupation in which the individual customarily and regularly receives more than \$30 a month in tips.

### Future Rate Increases

If a future state-level or city-level minimum wage is not listed, it likely means that either a future increase has not been contemplated or the amount of the increase has not yet been determined by the regulatory authority.

	Minimum Wage	Minimum Cash Wage	Maximum Tip Credit
January 1, 2020	\$12.00	\$8.98	\$3.02
January 1, 2021	Annual future adjustments will be based on cost of living	TBD	\$3.02



7

Failure to  
include “all  
remuneration”  
in the correct  
hourly rate

# Remember the Formula



**All Remuneration**

**÷**

**All Hours Worked**

# Compensation

## Included:

- Hourly wages or salary
- Commissions
- Non-discretionary team awards
- Prizes and awards related to work
- Shift or job differentials
- On-Call pay



## Excluded:

- Employee benefits
- Payments for time not worked
- Business expense reimbursements
- Certain premium pay
- Gifts for Christmas or special occasions
- Discretionary team awards



# Payments for Non-Work Time

Vacation, sick or holiday hours also do not count toward determining whether an employee worked more than 40 hours in the week



# Business Expenses

Reasonable payments for traveling expenses, or other expenses, incurred by an employee in furtherance of his employer's interests and properly reimbursable by the employer.





6

Not paying  
employees for  
meeting and  
training time

# Not paying employees for meeting and training time

**Employee must be paid for time spent attending meetings or in training unless all four of the following requirements are met:**

- Attendance is outside the employee's regular working hours
- Attendance is voluntary
- The meeting or training is not job related
- No productive work is performed during the training





5

Not paying  
employees for  
travel time

# Not paying employees for travel time



- Under the FLSA, employees must be paid when:
  - Traveling between work locations in the same city
  - Traveling to another city (although employers may deduct the normal commuting time)
  - Travel requiring an overnight stay when the travel occurs during normal working hours on any day of the week

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# Navigator Travel Time

## Navigator Pay Practices



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# Navigator Travel Time

## Getting Started

Select the application you want to launch.

- ☐ Navigator Final Pay ⓘ
- ☐ Navigator Frequency ⓘ
- ☐ Navigator Holidays ⓘ
- ☐ Navigator Meal & Rest ⓘ
- ☐ Navigator On Call ⓘ
- ☐ Navigator Posters ⓘ
- ☐ Navigator Rate Change ⓘ
- ☒ Navigator Travel Time ⓘ
- ☐ Navigator Voting Time ⓘ

## State

Would you like to run a report for a specific state or all 50 states?

Specific State ▼

Select a state.

Connecticut ▼



# Navigator Travel Time

## General Requirements

When travel time is compensable work time, an employer must pay non-exempt employees at least the applicable minimum wage for all hours spent traveling and include travel time hours when determining whether the employee is owed overtime pay for working more than 40 hours per week (and 8 hours per day in states which require daily overtime).

## Requirements for Connecticut

**Normal Commuting Time.** An employer is not required to pay an employee for time spent in normal travel from home to work before the regular workday or for normal travel from work to home at the end of the workday – whether the employee works at one fixed location or at different job sites. If the employee works at different job sites, the time spent traveling from home to the first work location at the beginning of the workday and the time spent traveling from the last work location back to home at the end of the workday is not compensable work.

**All Other Travel Time.** An employer must pay employees for all other time spent traveling at the control or direction of the employer, including travel between work sites, travel to another city and travel involving an overnight stay. If an employer requires an employee to report to a place other than his or her usual place of employment, the employer must pay the employee for the travel time spent in excess of the employee's normal commute. Of course, an employer also must pay an employee for any work he or she is required to perform while traveling.

## What This App Does Not Cover

This application does not cover state laws regarding reimbursement for travel expenses or the use of an employer's vehicle for travel by an employee. Under the federal Fair Labor Standards Act, use of a company vehicle for normal commuting and activities incidental to such use are not considered compensable work time if all of the following requirements are met:

- The vehicle involved is an automobile, pickup truck, van, minivan, SUV or other type of vehicle that does not impose substantially greater difficulties to operate than the type of vehicle which would normally be used for commuting (even if modified to carry tools or equipment, including having no passenger seats). Vehicles which do not meet this requirement include 18-wheelers, truck-mounted cranes, truck-mounted drilling rigs, concrete trucks, trucks equipped to haul other heavy equipment and other vehicles that would require the employee to drive a different route than normally used for commuting (due to such vehicular restrictions as weight allowances on bridges, size allowances in tunnels or chemicals transported);
- The use of the vehicle is subject to an agreement between the employer and the employee or employee's representative;
- The employee's use of the employer's vehicle is within the normal commuting area for the employer's business or establishment; and
- The employee does not incur any out-of-pocket or direct costs for driving, parking or otherwise maintaining the employer's vehicle (e.g., gas and tolls) in connection with commuting in the employer-provided vehicle.



4

Failing to  
provide or pay  
for meal or rest  
breaks

**Failing to provide or pay  
for meal or rest breaks**

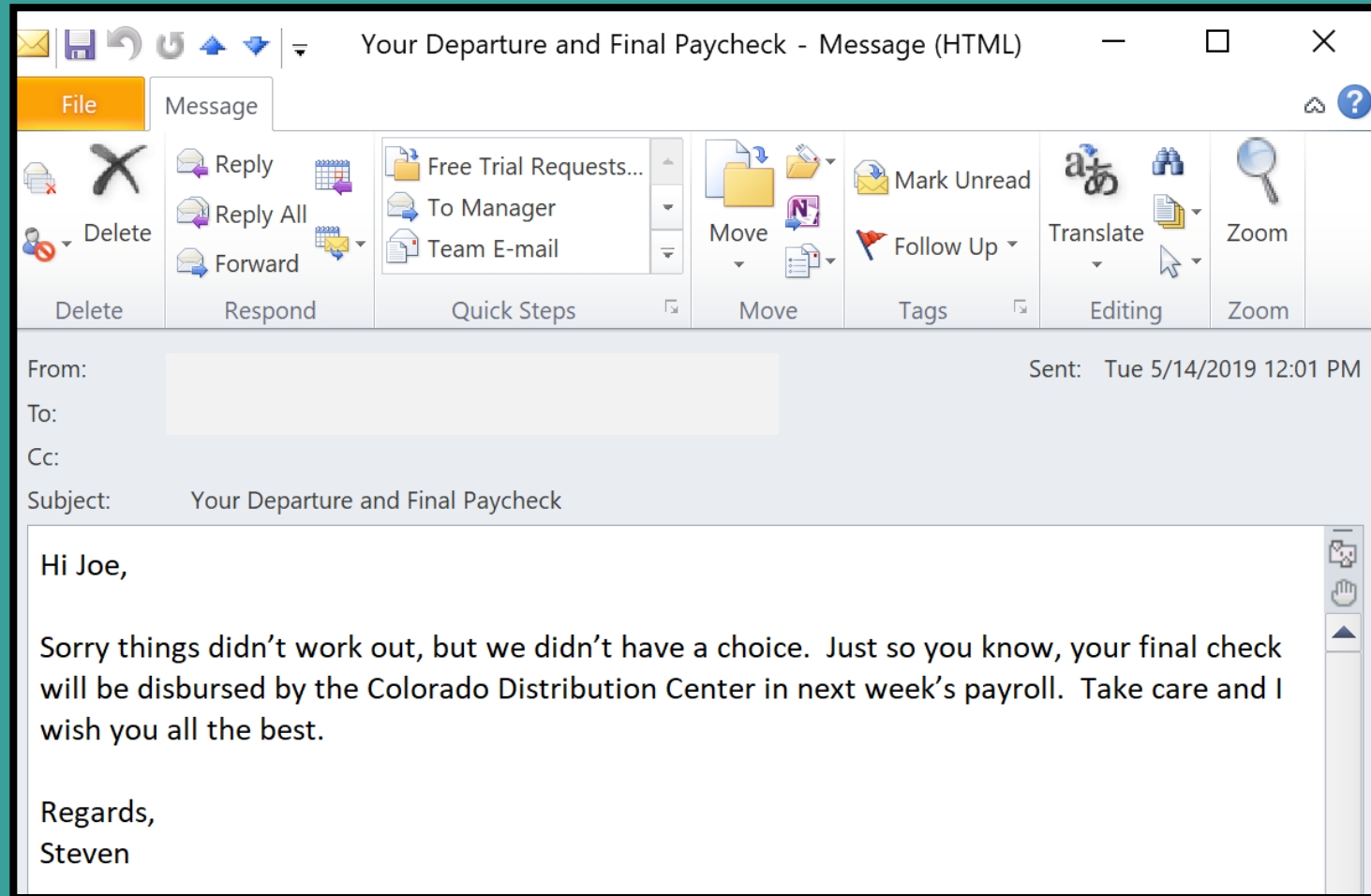




3

Late or short  
final pay  
checks

# Late or short final pay checks



# Late or short final pay checks

## Navigator Final Pay

### General Requirements

The federal Fair Labor Standards Act does not address the timing of final wage payment. In contrast, the wage and hour laws in many states regulate how soon employees must be paid their final wages after separation. These time frames often differ depending on whether the employee voluntarily terminated the employment relationship (i.e., resigned) or was involuntarily terminated by discharge or layoff.

### Requirements for Colorado

#### Timing - Involuntary Termination (Discharge)

An employer must pay final wages to discharged employees immediately at the time of termination.

#### Timing - Voluntary Termination (Resignation)

An employer must pay final wages to employees who voluntarily resign by the next regularly scheduled payday.

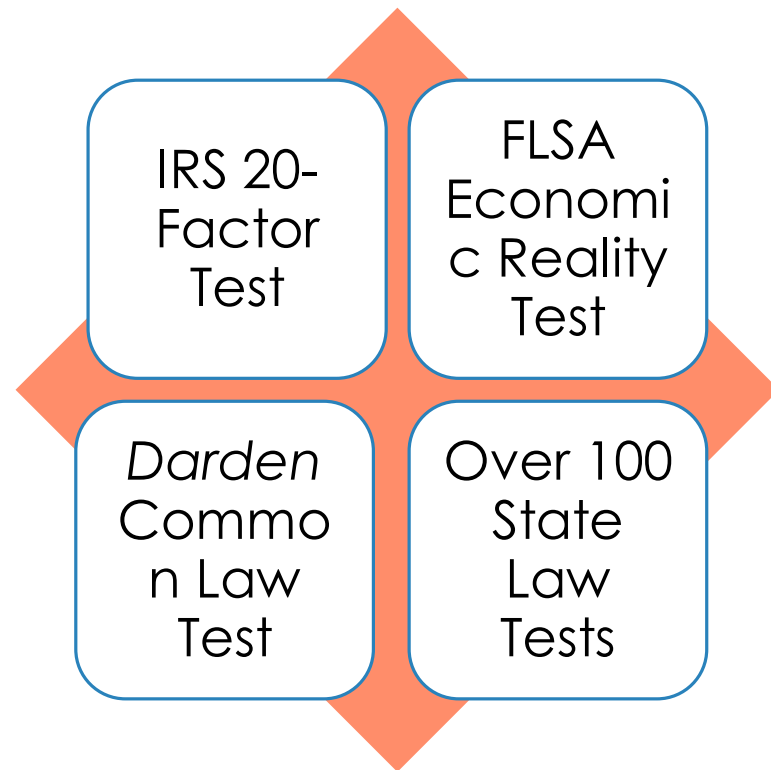


2

# Misclassifying employees as independent contractors




# Over 100 Different Legal Tests in the US



- Federal law alone has three different tests for determining IC status
- Layered on top of these, states may have up to six different tests under different laws

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## Navigator Pay Practices




### Wage and Hour Compliance

Delivers comprehensive reports on a federal and state-by-state basis for the most common wage and hour issues

[Find Minimum Wage](#) [Use Rapid Reference](#)

## Navigator Onboarding



### Onboarding Document Production

Produces state and federal compliant employment applications, offer letters, and employee non-disclosure documents

[+ Create New Document](#)

# Navigator IC

## Navigator IC



### Independent Contractor Assessment

Delivers an actionable risk assessment, a report on how to lower the risk of misclassification, and a summary of applicable laws

[+ Create New Evaluation](#)

[🔍 View Evaluations](#)

[▶ IC Agreement](#)

# Navigator IC Engagement Details

## Welcome to Navigator IC

Create a new evaluation by entering the information below. Click the following link for information about how Navigator IC handles [industry-specific standards](#).

Type of engagement:

State where work will be performed:

Please provide the following information about the prospective contractor:

**Prefix** ☐ Mr. ☒ Ms.

First Name

Last Name

Company (Optional)

Who will complete the questionnaire?

☒ Complete the questionnaire myself

☐ Assign the questionnaire to someone else

Would you also like the prospective contractor to complete a questionnaire? [More Information](#)

☐ Yes

☒ No

# Navigator IC Questionnaire

## Nicole Smith LLC: Computer programming work.

To what degree is the work to be performed by Nicole Smith LLC [core](#) to Abc Inc.'s business?

Somewhat, although not directly performing the core work, Nicole Smith LLC's work will be part of Abc Inc.'s primary workflow

Will Abc Inc. control where Nicole Smith LLC can perform the work under this engagement?

Yes, because the work cannot be performed elsewhere

Are Abc Inc. employees performing the same or similar work that Nicole Smith LLC is being engaged to perform?

☐ Yes ☒ No

Has Nicole Smith ever been an employee of Abc Inc.?

☐ Yes ☒ No

Please indicate the level of [instruction](#) Abc Inc. will give Nicole Smith LLC:

No instructions

Under the terms of the engagement, how much control can Abc Inc. assert over the [order](#) in which Nicole Smith LLC performs the work?

No control

Will Nicole Smith LLC's work hours be set by Abc Inc.?

No, Abc Inc. will not control Nicole Smith LLC's work hours.

## Nicole Smith LLC: Computer programming work.

Will Nicole Smith LLC have the right to turn down specific jobs or assignments from Abc Inc.?

☒ Yes ☐ No

Will Abc Inc. provide Nicole Smith, her employees or subcontractors' employees with training or direction in any of the following?

- ☐ Security or safety procedures
- ☐ Use of basic equipment (two-way radios, telephones, copy machines)
- ☐ Anti-harassment, discrimination or other codes of conduct
- ☐ Software programs required to perform the work
- ☐ General work rules dictating the terms of the engagement (hours of work, lunch and rest breaks, job location, security, etc.)
- ☐ How to perform the work (whether by a manual, seminar, classroom training, video demonstration or other similar means)
- ☐ Job shadowing or on-the-job training
- ☐ [Situational interviews](#)
- ☐ Use of tools or equipment required to perform the work
- ☐ Training for workers who do not have the experience or skills needed to complete the work
- ☐ Select All
- ☒ None of the above

Does the work that Nicole Smith LLC will perform during the engagement require a high-level of expertise or any specialized skills?

☒ Yes ☐ No

Could the work required under this engagement be performed by unskilled or low skilled workers after a [minimum of training](#)?

☐ Yes ☒ No

Will Abc Inc. require Nicole Smith LLC to follow Abc Inc. [policies](#)?

☐ Yes ☒ No

Who will ultimately bear the cost of any of the following:  
Select an answer for each item.

Office supplies	<input type="radio"/> Abc Inc.	<input checked="" type="radio"/> Nicole Smith LLC	<input type="radio"/> Unsure	<input type="radio"/> Not Applicable
Uniforms or protective gear	<input type="radio"/> Abc Inc.	<input type="radio"/> Nicole Smith LLC	<input type="radio"/> Unsure	<input checked="" type="radio"/> Not Applicable
Hand tools	<input type="radio"/> Abc Inc.	<input type="radio"/> Nicole Smith LLC	<input type="radio"/> Unsure	<input checked="" type="radio"/> Not Applicable
Cell phone	<input type="radio"/> Abc Inc.	<input checked="" type="radio"/> Nicole Smith LLC	<input type="radio"/> Unsure	<input checked="" type="radio"/> Not Applicable
Computer technology (desktops, laptops, tablets or similar technology)	<input type="radio"/> Abc Inc.	<input checked="" type="radio"/> Nicole Smith LLC	<input type="radio"/> Unsure	<input type="radio"/> Not Applicable
Vehicles	<input type="radio"/> Abc Inc.	<input type="radio"/> Nicole Smith LLC	<input type="radio"/> Unsure	<input checked="" type="radio"/> Not Applicable
Heavy machinery	<input type="radio"/> Abc Inc.	<input type="radio"/> Nicole Smith LLC	<input type="radio"/> Unsure	<input checked="" type="radio"/> Not Applicable
Other specialized equipment required to complete the job	<input type="radio"/> Abc Inc.	<input checked="" type="radio"/> Nicole Smith LLC	<input type="radio"/> Unsure	<input type="radio"/> Not Applicable
Repairs and maintenance	<input type="radio"/> Abc Inc.	<input checked="" type="radio"/> Nicole Smith LLC	<input type="radio"/> Unsure	<input type="radio"/> Not Applicable
Company samples	<input type="radio"/> Abc Inc.	<input type="radio"/> Nicole Smith LLC	<input type="radio"/> Unsure	<input checked="" type="radio"/> Not Applicable
Inventory	<input type="radio"/> Abc Inc.	<input type="radio"/> Nicole Smith LLC	<input type="radio"/> Unsure	<input checked="" type="radio"/> Not Applicable

Will Abc Inc. provide Nicole Smith LLC, its employees or its subcontractor's employees (check all that apply):

- ☒ Keys or security passes to company property
- ☐ Company email address or access to company intranet or other systems that are provided to company employees
- ☐ Company business cards or letterhead
- ☐ A computer, cell phone, tablet or other standard company equipment
- ☐ [Other resources](#) similar to those provided to company employees
- ☐ Select All
- ☒ None of the above

Will Abc Inc. provide Nicole Smith LLC, its employees or its subcontractor's employees with any of the following? (check all that apply)

- ☐ Health insurance
- ☐ Disability insurance
- ☐ Paid vacations or holidays
- ☐ Paid sick days
- ☐ Retirement benefits
- ☐ Select All
- ☒ None of the above

# Navigator IC Questionnaire

## Nicole Smith LLC: Computer programming work.

Will Abc Inc. (check all that apply):

- ☐ Require Nicole Smith to wear a company uniform or a company name tag or security badge
- ☐ Require Nicole Smith to drive a vehicle or use other tools or equipment that display Abc Inc.'s logo
- ☐ Require Nicole Smith to attend regular meetings or conference calls with Abc Inc. employees
- ☐ Keep time, payroll or other records relating to Nicole Smith's work for Abc Inc.
- ☐ Grant Nicole Smith the authority to supervise or direct the work of Abc Inc. employees
- ☐ Select All
- ☒ None of the above

Is Nicole Smith required to perform the work herself?

Check all that apply to Nicole Smith LLC's employees or subcontractors:

- ☐ Nicole Smith LLC will need Abc Inc.'s approval to hire employees or to engage subcontractors.
- ☐ Abc Inc. will control how, when or where Nicole Smith LLC's employees or subcontractors perform the work.
- ☐ Abc Inc. will reimburse Nicole Smith LLC for Nicole Smith LLC's labor costs (employees' wages) or the subcontract price.
- ☐ Abc Inc. could require Nicole Smith LLC to fire employees or to end subcontracts.
- ☐ Select All
- ☒ None of the above apply

Will Abc Inc. require Nicole Smith LLC to [frequently](#) submit [reports](#) detailing the work completed for the day or week?

☐ Yes ☒ No

Will Abc Inc. [evaluate](#) Nicole Smith LLC's performance?

Will Nicole Smith LLC be required to correct defective or unsatisfactory work without additional compensation?

☒ Yes ☐ No

Can Nicole Smith be [disciplined](#) by Abc Inc. for performance issues?

☐ Yes ☒ No

## Nicole Smith LLC: Computer programming work.

What is the dollar value of this engagement?

Select the option that best describes how Nicole Smith LLC will be paid:

Will Abc Inc. reimburse Nicole Smith LLC for its [business expenses](#)?

☐ Yes ☒ No

Who will bear the cost of any losses or damages caused by Nicole Smith LLC (for example, expenses exceeding the contract price)?

☐ Abc Inc. ☒ Nicole Smith LLC

Other than not being paid, are there any [other ways](#) for Nicole Smith LLC to incur a loss?

☒ Yes ☐ No

Will Nicole Smith LLC be paid out of the same payroll accounts as employees?

☐ Yes ☒ No

## Nicole Smith LLC: Computer programming work.

Is there a written independent contractor agreement?

☒ Yes ☐ No

What is the anticipated length of this engagement between Nicole Smith LLC and Abc Inc.?

Before the work is completed, when does Abc Inc. have a right to terminate its relationship with Nicole Smith LLC?

Before the work is completed, when does Nicole Smith LLC have a right to terminate the relationship with Abc Inc.?

Is this Nicole Smith LLC's first engagement with Abc Inc.?

☐ Yes ☒ No

Select the answer that best applies to Abc Inc.'s previous engagements with Nicole Smith LLC:

## Nicole Smith LLC: Computer programming work.

What percentage of Nicole Smith LLC's income this year will come from Abc Inc.?

Which best describes Nicole Smith LLC's expected relationship with Abc Inc. during this engagement:

How many other clients has Nicole Smith LLC performed work for during the last six months?

Has Nicole Smith LLC already made [significant investments](#) in its business?

☐ Yes ☒ No

Does Nicole Smith LLC (check all that apply):

- ☐ Maintain a [business location accessible by the public](#)
- ☒ Advertise services on the open market
- ☐ Have a web page
- ☐ Select All
- ☐ None of the above

How many employees does Nicole Smith LLC have?

Does Nicole Smith LLC provide its employees with (check all that apply):

- ☒ Workers' compensation benefits
- ☐ Unemployment insurance
- ☐ None of the above

Are Nicole Smith LLC or its employees required to maintain a [professional or occupational license or certification](#) to perform the type of work required in this engagement?

☐ Yes ☒ No

Are the required professional or occupational licenses or certifications current?


☒ Yes ☐ No

Does Nicole Smith LLC do any of the following (check all that apply):


- ☒ Pay any [business-related taxes](#)
- ☒ Maintain a formal [business structure](#) OTHER than a sole proprietorship
- ☒ Use a Federal Employer Identification Number (FEIN) for tax purposes (not a Social Security Number)
- ☒ Operate under a business name different from its own name
- ☒ Maintain the [licenses, registrations or permits](#) required to operate a business
- ☒ Maintain business [insurance](#)
- ☐ Maintain records or documents relating to expenses, assets, income and liabilities
- ☐ Have a bank account (separate from an individual or family account) for the purpose of depositing business revenues and paying business expenses
- ☐ Maintain a [business office](#) not located in the family home
- ☐ Select All
- ☐ None of the above

# Navigator IC Results & OnScreen Summary


Independent Contractor Risk Report for Abc Inc.



**CONTRACTOR**  
Ms. Nicole Smith




**ENGAGEMENT**  
Computer programming work.



**JURISDICTIONS**  
California  
Federal  
[View Risk by Jurisdiction](#)


What is the risk of classifying Nicole Smith LLC as an independent contractor?





Under the facts that you have provided, it is unlikely that Nicole Smith LLC will be found to be an employee.

FOR MORE INFORMATION ABOUT YOUR RESULTS PLEASE SEE THE RESOURCES BELOW:

- [▶ How to Lower Your Risk Level](#)
- [▶ Summary of Independent Contractor Laws](#)
- [▶ Transcript of Your Questions and Answers](#)
- [▶ Disclaimer](#)

[PRINT THIS REPORT:](#) 

**Risk by Jurisdiction**

California	 It is unlikely that Nicole Smith LLC will be found to be an employee.
Federal	 It is highly unlikely that Nicole Smith LLC will be found to be an employee.

# Additional Report Resources

Question	Response
Has Nicole Smith ever been an employee of Abc Inc.?	No
Are Abc Inc. employees performing the same or similar work that Nicole Smith LLC is being engaged to perform?	No
To what degree is the work to be performed by Nicole Smith LLC <b>core</b> to Abc Inc.'s business?	Somewhat, although not directly performing the core work, Nicole Smith LLC's work will be part of Abc Inc.'s primary workflow
Will Abc Inc. control where Nicole Smith LLC can perform the work under this engagement?	Yes, because the work cannot be performed elsewhere
Please indicate the level of <b>instruction</b> Abc Inc. will give Nicole Smith LLC:	No instructions
Under the terms of the engagement, how much control can Abc Inc. assert over the <b>order</b> in which Nicole Smith LLC will perform the work?	No control
Will Nicole Smith LLC's work hours be set by Abc Inc.?	No, Abc Inc. will not control Nicole Smith LLC's work hours
Will Nicole Smith LLC have the right to turn down specific jobs or assignments from Abc Inc.?	Yes
Will Abc Inc. provide Nicole Smith, her employees or subcontractors' employees with training or direction in any of the following areas (check all that apply):	None
Does the work that Nicole Smith LLC will perform during the engagement require a high-level of expertise or any specialized skills?	Yes
Could the work required under this engagement be performed by unskilled or low skilled workers after a <b>minimum of training</b> ?	No
Will Abc Inc. require Nicole Smith LLC to follow Abc Inc. <b>policies</b> ?	No
Who will bear the cost of any of the following:	<ul style="list-style-type: none"> <li>• Applicable</li> <li>• Hand tools: Not Applicable</li> <li>• Cell phone: Nicole Smith LLC</li> <li>• Computer technology: Nicole Smith LLC</li> <li>• Vehicles: Not Applicable</li> <li>• Heavy machinery: Not Applicable</li> <li>• Other specialized equipment: Nicole Smith LLC</li> <li>• Repairs and maintenance: Nicole Smith LLC</li> <li>• Company samples: Not Applicable</li> <li>• Inventory: Not Applicable</li> </ul>

Will Abc Inc. provide Nicole Smith LLC, its employees or its subcontractor's employees (check all that apply):	<ul style="list-style-type: none"> <li>• Keys or security passes to company property</li> </ul>
Will Abc Inc. provide Nicole Smith LLC, its employees or its subcontractor's employees with any of the following? (check all that apply)	None
Will Abc Inc. (check all that apply):	None
<ul style="list-style-type: none"> <li>• Require the contractor to wear a company uniform or a company name tag or security badge</li> <li>• Require the contractor drive a vehicle or use other tools or equipment that display the company's logo</li> <li>• Require the contractor to attend regular meetings or conference calls with company employees</li> <li>• Keep time, payroll or other records relating to contractor's work for company</li> <li>• Grant contractor the authority to supervise or direct the work of company employees</li> </ul>	
Is Nicole Smith required to perform the work herself?	No, Nicole Smith LLC can hire employees or subcontractors
Check all that apply to Nicole Smith LLC's employees or subcontractors:	None
Will Abc Inc. require Nicole Smith LLC to <b>frequently</b> submit <b>reports</b> detailing the work completed for the day or week?	No

Risk Factors	Steps to Lower Risk
The Contractor's Economic Dependence on the Company	An independent contractor is not economically dependent on the engaging company; it operates independently of the engaging company. The success of the contractor's business is not dependent on its continued relationship with the company. An independent contractor's business will continue to exist independently of and apart from the contract, and will survive the termination of the contract. Abc Inc. may be able to reduce its risk score by ensuring that the dollar value of this engagement will not be a high percentage of Nicole Smith LLC's business.

the relationship with Abc Inc.?	contract (for example, if one of the parties breaches the contract)
Is this Nicole Smith LLC's first engagement with Abc Inc.?	No
Select the answer that best applies to Abc Inc.'s previous engagements with Nicole Smith LLC:	The previous engagements were for different or distinct projects
What is the dollar value of this engagement?	\$25,001 to \$50,000
Select the option that best describes how Nicole Smith LLC will be paid:	Per task, job or project (a lump sum payable upon completion)





1

Misclassifying  
employees as  
exempt from  
overtime

# How do you define exempt vs. nonexempt employees?

- While most employees are eligible for overtime pay, some employees are “exempt” from the FLSA overtime requirements
- The most common exemptions are for “white collar” workers – executive, administrative, professional, outside sales, and computer employees

**To be considered exempt, employees must generally satisfy three tests:**

## Salary-level test

- Currently, employers must pay employees at least \$455 per week (the minimum salary requirement) to qualify for the executive, administrative, and professional employee exemptions.

## Salary-basis Test

- With very limited exceptions, the employer must pay employees their full salary in any week they perform work, regardless of the quality or quantity of the work.

## Duties Test

- To qualify for an executive, administrative or professional exemption an employee must meet specific duties tests.

# Exemptions


- Executive (from OT)
- Administrative (from OT)
- Professional (from OT)
- Computer (from OT)
- Outside Sales (from MW and OT)
- Motor Carrier Act (from OT)



# Giving You the Tools You Need!

- Online exemption analysis solution
- Expert level guidance on exemption decisions
- Assessment in as little as 15 minutes
- Tool applies federal and state exemptions tests, and over 2400 reported court decisions and DOL opinion letters
- Provides suggestions to lower risk of misclassification

### Navigator IC




#### Independent Contractor Assessment

Delivers an actionable risk assessment, a report on how to lower the risk of misclassification, and a summary of applicable laws

[+ Create New Evaluation](#) [View Evaluations](#)

[▶ IC Agreement](#)

### Navigator OT



#### Exempt Status Assessment

Provides a risk assessment of each applicable exemption, suggestions on how to lower the risk of misclassification, and a summary of the federal and state exemption standards

[+ Create New Review](#) [View Reviews](#)

[View Evaluations](#)

### Navigator Pay Practices




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[+ Create New Document](#)

# Navigator OT

## Navigator OT



### Exempt Status Assessment

Provides a risk assessment of each applicable exemption, suggestions on how to lower the risk of misclassification, and a summary of the federal and state exemption standards

[+ Create New Review](#)[View Reviews](#)[View Evaluations](#)

# Review Set Up

## Navigator OT

### Initialize Your Review

Please note that Navigator OT has been updated with 2019 Rates.

### Review Details

Please enter the following information. An \* indicates a required field. All other fields are optional.

Brief name to describe and identify this review :\*

How would you like to enter the evaluation data?\*

Would you like to evaluate employees or positions?\*

Who will complete the evaluation(s)?\*

Please fill out the fields below. Click the icon to add another entry

Employee First Name*	Employee Last Name*	Employee Email	Work State*	Employee ID	Employee Dept
Mark	McHenry	MMcHenry@abccompany.com	Illinois	12345	Retail Operations

# Navigator OT Questionnaire

## Navigator OT

Abc Inc.: Mark McHenry

### Work State

Where does Mark McHenry [work](#) ⓘ?

Illinois ▼

### Compensation Details

How is Mark McHenry paid?  
Select all that apply

☒ On a [salary](#) ⓘ


☐ On a [fee basis](#) ⓘ

☐ By the [hour](#) ⓘ

☐ Commissions

☐ A [nondiscretionary](#) ⓘ bonus

☐ None of the Above

 What is Mark McHenry's annual salary?

\$ 70000.00

Has Mark McHenry's salary ever been reduced for reasons other than standard payroll deductions for taxes, liens, and employee benefits?  
[More information](#) ⓘ

☐ Yes ☒ No

< Back   Next >

# Navigator OT Questionnaire

How many **employees** ⓘ does Mark McHenry supervise?

If no employees, enter 0

3

Does Mark McHenry perform work in a computer, software or information technology field?

☐ Yes ☒ No

Does Mark McHenry **sell** ⓘ Abc Inc.'s products or services?

☒ Yes ☐ No

## Exemption Analysis

What is the highest level of education Mark McHenry has achieved?

Associates Degree ▼

Does Mark McHenry perform work in any of the following artistic or creative fields?

Check all that apply.

- ☐ Acting
- ☐ Design (including web design)
- ☐ Drawing, Sketching or Cartooning
- ☐ Film/Video
- ☐ Graphic Arts
- ☐ Journalism
- ☐ Music
- ☐ Painting
- ☐ Performance Art
- ☐ Photography
- ☐ Writing
- ☐ Other Artistic Media
- ☒ None of the Above



# Navigator OT Questionnaire

## Business Operations

- ☐ Conducting business or sales research
- ☒ Creating, modifying, interpreting or approving departures from company policies, procedures or operating practices
- ☐ Managing projects or major assignments related to the operations of the business (e.g., projects in areas such as tax, finance, accounting, budgeting, auditing, insurance, quality control, purchasing, procurement, advertising, marketing, research, safety and health, personnel management, human resources, employee benefits, labor relations, public relations, government relations, legal and regulatory compliance, and similar areas impacting how the business is operated)
- ☐ Performing work that strictly follows established manuals, guidelines, policies or procedures
- ☐ Determining techniques and processes used to perform work or to carry out business programs or initiatives
- ☐ Determining type of materials, supplies, machinery, equipment or tools to be used to perform the work
- ☐ Conducting ordinary inspections, examinations or grading within closely prescribed limits to determine adherence to established standards described in manuals, check lists or similar sources (NOT including supervisors reviewing work of employees or ensuring adherence to company policies)
- ☒ Planning or controlling a budget
- ☐ Planning short-term or long-term business objectives
- ☐ Providing expert advice to the company or the company's customers in areas such as accounting, finance, tax, actuarial computation, benefits, insurance, law, legal compliance, engineering, architecture, the sciences (physical, chemical, biological), health and safety, public relations, media relations or government relations
- ☐ Providing for the safety and security of employees or property
- ☐ Purchasing, buying, procuring or managing inventory, materials or supplies
- ☐ None of the Above

# Navigator OT Questionnaire

## Selected Job Duties

Below is a list of all the duties you selected. If this list is complete, please answer the following questions about each duty. If you need to remove a job duty, you can select "None" from first drop down.

The total time spent should not exceed 100%, even if multiple duties are handled [concurrently](#) ⓘ. The total time spent **can** be less than 100%.

**You are currently allocating: 95%**

Selected Job Duty	Approx Time Spent ⓘ	Importance ⓘ	Authority ⓘ
Planning or controlling a budget	15% ▼	Important ▼	Sometimes Followed ▼
Managing performance of employees, including but not limited to coaching and conducting performance reviews, ensuring compliance with company policies and procedures, and evaluating the work of employees	10% ▼	Important ▼	Almost Always Followed ▼
Planning or directing the work of employees	35% ▼	Critical ▼	Always Followed ▼
Making Sales	35% ▼	Very Important ▼	Always Followed ▼

# Navigator OT Questionnaire

## Exemption Analysis

Select the statement that best describes Mark McHenry's management role:

Mark McHenry manages a department, subdivision or other functional group with permanent status and continuing functions ▼

Select the statement that best describes Mark McHenry's supervision of other employees:

Mark McHenry regularly supervises other employees ▼

Select the statement that best describes Mark McHenry's role in personnel management:

Mark McHenry makes recommendations on hiring, promoting, disciplining or firing employees ▼



How are Mark McHenry's recommendations on hiring, promotion, discipline, and firing employees followed?

Almost always followed ▼

How much time does Mark McHenry spend in a typical week performing the same work as direct reports or other non-managerial employees?

31 - 40% ▼

# Navigator OT Questionnaire

## Exemption Analysis

What percentage of time during a typical week does Mark McHenry spend on exempt work?

31-40% ▼

What percentage of time during a typical week does Mark McHenry spend on exempt work?

11-20% ▼

Does Mark McHenry perform sales or sales-related work at any of the following locations?

Check all that apply

- ☒ Abc Inc. office(s)
- ☐ Personal home
- ☐ Customer place of business
- ☐ Customer home
- ☐ Other locations away from a fixed home or Abc Inc. office

## Exemption Analysis

Is Mark McHenry currently in training for this position (e.g., manager-in-training, trainee engineer or an apprentice)?

☐ Yes ☒ No

Select the statement that best describes how closely Mark McHenry is supervised:

Mark McHenry is not closely supervised (e.g., Mark McHenry provides updates to manager on a regular basis, but manager does not often direct or review work) ▼

Does Mark McHenry use any manuals, guidelines, or other established standard procedures (SOPs) in the performance of this job? [More information](#)

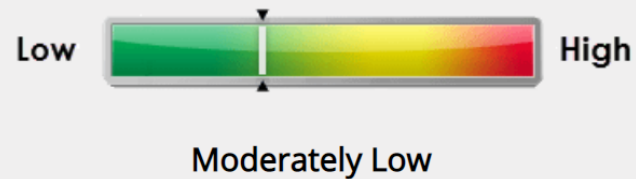
☐ Yes ☒ No

To what degree does Mark McHenry use any templates, checklists, computer assisted design or other computer applications in the performance of job duties?

Mark McHenry does not use any tools ▼

# Navigator OT Results & On Screen Summary

What is the risk of classifying Mark McHenry as an exempt employee?



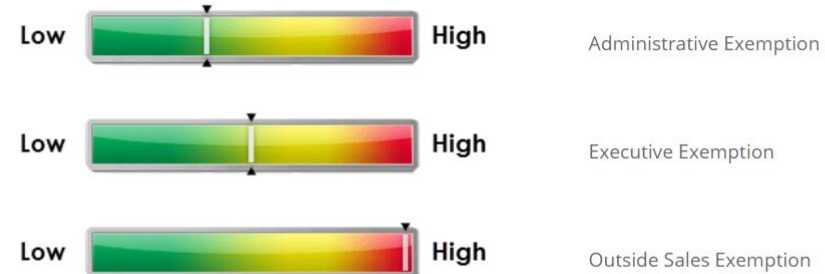
Mark McHenry is likely to meet the requirements for the following exemption: Administrative.

Mark McHenry does not clearly meet the requirements for the following exemption: Executive. However, in the "Understanding Your Risk" section below, there is more information about how to reduce the risk of classifying the employee based on this exemption.

Mark McHenry is extremely unlikely to meet the requirements for the following exemption: Outside Sales.

Mark McHenry does not qualify for the following exemptions: Computer, Creative Professional and Learned Professional.

## Individual Exemption Risks



Note: Mark McHenry does not qualify for the Computer, Creative Professional and Learned Professional exemptions.

## FOR MORE INFORMATION ABOUT YOUR RESULTS PLEASE SEE THE RESOURCES BELOW:

- ▶ Understanding Your Risk
- ▶ Summary of Law
- ▶ Profession-Specific Exemptions
- ▶ Transcript of Your Questions and Answers
- ▶ Disclaimer

PRINT THIS REPORT: Printable Report

# Additional Report Resources

## Riskiest Factors

Mark McHenry's risk may be lowered as follows:

Exemptions	Risk Factor	Steps to Lower Risk
Executive	Employees Supervised	<p>To qualify for the executive exemption, an employee must supervise the work of two or more full-time employees, or their equivalent on a regular basis. Under the FLSA and state wage-hour laws, full-time generally means 40 hours of compensable work. Thus, this requirement limits the exemption to employees who supervise at least 80 hours of work each week by other employees. This could be 2 employees working 40 hours per week, or 4 employees each working 20 hours each week. Also, the employee must supervise others on a regular basis, which means more than occasionally. For example, a relief supervisor is likely not an exempt employee if he only occasionally has some responsibility for directing the work of other employees.</p> <p>Even though Mark McHenry supervises 3.00 employees, Abc Inc. may be able to lower its risk by ensuring that Mark McHenry supervises well above 80 hours of work each week and by ensuring that Mark McHenry supervises those employees on more than one occasional basis.</p>

## Failure to Qualify

Mark McHenry has failed to meet the most basic qualifications required in order to be classified as exempt under the Computer, Creative Professional and Learned Professional exemptions.

Exemptions	Reason Not Qualified
Learned Professional	<p>The Learned Professional exemption requires that the employee have advanced knowledge "customarily acquired by a prolonged course of specialized intellectual instruction." This requirement restricts the exemption to professions where specialized academic training is a standard prerequisite for entrance into the profession. The best evidence that an employee meets this requirement is possession of the appropriate four-year advanced academic degree. However, the word "customarily" means that the exemption is also available to employees who have substantially the same knowledge level and perform substantially the same work as the degreed employees, but who attained the advanced knowledge through a combination of work experience and intellectual instruction. For example, the learned professional exemption is available to the occasional lawyer who has not gone to law school, or the occasional chemist who is not the possessor of a degree in chemistry.</p> <p>Mark McHenry doesn't clearly qualify for the Learned Professional exemption because Mark McHenry does not have at least a Bachelor's Degree. However, if you feel that Mark McHenry may nonetheless qualify for the learned professional exemption because they have substantially the same knowledge level and performs substantially the same work as the degreed employees also in the same job, it may still be possible for Mark McHenry to still qualify under this exemption. However, based solely on the information provided, Mark McHenry is not clearly qualified for this exemption.</p>

## Transcript of Questions & Answers

### Engagement Details

Employee First Name	Mark
Employee Last Name	McHenry
Job Title	Assistant Manager
Job Code	Assistant Manager
Department	Retail Operations
Work Jurisdiction	Illinois
Manager First Name	Robert
Manager Last Name	Smith
Manager Department	HR

### Compensation

How Mark McHenry paid?	On a salary
What is Mark McHenry's annual salary?	\$70,000.00
Has the salary ever been reduced for reasons other than standard payroll deductions for taxes, liens, and employee benefits?	No

### Applicable Exemptions

Does Mark McHenry perform work in a computer, software or information technology field?	No
Does Mark McHenry perform work in any of the following artistic or creative fields?	Not Applicable
How many employees does Mark McHenry supervise?	3.00
What is the highest level of education achieved by Mark McHenry?	Associates Degree
Does Mark McHenry sell Abc Inc.'s products or services?	Yes

### Duty Tests

Job Duty	Time Spent	Importance	Authority
Creating, modifying, interpreting or approving departures from company policies, procedures or operating practices	5%	Important	Almost Always Followed
Planning or controlling a budget	10%	Important	Sometimes Followed

# Top 10 Wage & Hour Mistakes

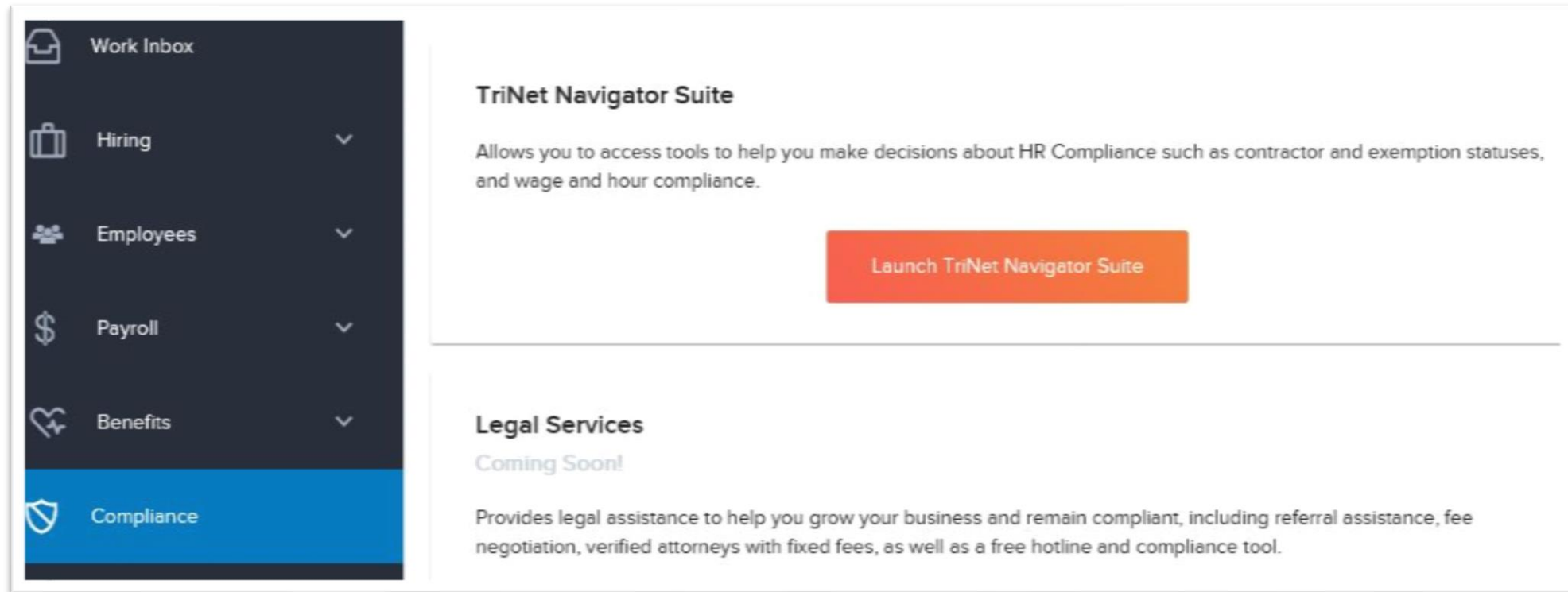
- 10: Failure to clearly communicate on compensation
- 9: Timekeeping practices that fail to capture all hours worked
- 8: Forgetting about minimum wage compliance
- 7: Failure to include “all remuneration” in the correct hourly rate
- 6: Not paying employees for meeting and training time
- 5: Not paying employees for travel time
- 4: Failing to provide or pay for meal or rest breaks
- 3: Late or short final pay checks
- 2: Misclassifying employees as independent contractors
- 1: Misclassifying employees as exempt from overtime





# Accessing Navigator Suite

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





# Questions?

## Thank You!



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