



VIVENTUM®

**THE ULTIMATE
POST-ACUTE
CARE AUDIT
SURVIVAL GUIDE**

2024

Command The Payroll Compliance Spotlight

When it comes to the wild world of payroll compliance, you won't be able to get ahead by claiming ignorance. The compliance landscape can feel like a mosh pit of regulations, leaving your team headbanging to frustration. But fear not fellow rock stars! We have the behind-the-scenes scoop.

Here's what you need to know to survive an audit.

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The background is a purple-tinted photograph of a microphone and audio equipment. A microphone is positioned diagonally across the frame, with its handle in the upper left and its head pointing towards the lower right. Below the microphone, there is a rack of electronic equipment, possibly a mixer or amplifier, with various knobs and buttons visible. The entire image has a soft, out-of-focus quality, and the text is overlaid on the right side.

**Don't Miss A Beat
With W-2s!**

Don't Miss A Beat With W-2s!

When you hear the word “audit,” you probably think of the Internal Revenue Service (IRS) knocking at your door. And sure enough, while tax issues can sometimes trigger audits by the IRS, there are other regulatory bodies looking to steal the show. A prime one to watch out for is the Social Security Administration (SSA).

Every year when you file Form W-2s for your workers, you need to put people's names and Social Security numbers (SSNs) on the forms – at least in a truncated format. The SSA then processes this information to make sure the names and numbers match so earnings will be properly posted to employees' retirement accounts. This all sounds fairly straightforward, right?

Not always. If a number and name don't match (sometimes thanks to a simple typo), wages go into a giant “suspense account,” lost in the crowd of other people who have had this error occur to them. In other words, a caregiver will not get credit for their earned wages.

What You Can Do About This:

Until 2012, the SSA had sent out “mismatch” letters asking employers to fix their data. That practice was discontinued for six years. In the 2018 filing season, the agency again started sending out letters.



Keep Your Data In Tune

Keep Your Data In Tune

If the SSA discovers a mismatch at your agency, you will get an educational correspondence (EDCOR) letter asking you to correct the data. No penalties will be levied at that time, but don't think you've dodged the spotlight entirely. The IRS (You didn't think you were free of them completely, did you?) can fine you up to \$660 per mismatch. So, while an EDCOR letter itself does not mean you're getting audited, it does indicate that under audit, your data may not hold water. And you'll be at even greater risk if the SSA discovers a high number of mismatches.

What You Can Do About This:

After you hire someone, you can use the Social Security Number Verification Service (SSNVS) or E-Verify to verify the person's SSN. While the law forbids you to use the service as a screening tool, it can be a useful way to ensure that names and numbers match, keeping your organization in tune. And if you do discover a mismatch, remember not to take disciplinary action against the employee – rather, instruct the employee to check their Social Security card and visit their local Social Security office, if necessary.

It's especially important to do this verification upon hiring a caregiver because post-acute care has such a high level of turnover; it can be as hard to track down former employees to verify their information as trying to find a guitar pick in a mosh pit. Plus, the last thing you want to do during a busy filing season is go hunting for information on past workers.

Labor Law Alert:

If you believe a mismatch is the employee's fault, you should not discipline that person. You may be fired for doing so.

A person is shown from the chest down, playing an acoustic guitar. The image is heavily overlaid with a semi-transparent purple filter. In the background, there are out-of-focus, warm-toned bokeh lights. The text is centered over the image, with a thin white horizontal line above the first line of text.

Caregivers Are Employees – But Are They In Your Band?

Caregivers Are Employees – But Are They In Your Band?

When being judged by the Department of Labor (DOL), they set the stage with criteria that will have your head spinning faster than the “Free Bird” guitar solo. “Special rules apply to workers who perform in-home services for elderly or disabled individuals,” according to the DOL. And as you might expect, “special” often means “complicated” – especially when it comes to dealing with joint employment issues.

All states allow some form of consumer-directed home care. This often entails patients working with agencies but choosing their caregivers, who usually end up being close friends or relatives. The care then gets reimbursed, with the agency serving as the fiscal intermediary. Consequently, your role as an agency is not to act as a caregiver’s employer but as a middleman for reimbursement to a caregiver.

However, problems arise if you pay workers using your federal employer identification number (FEIN). Doing this can create a joint-employment arrangement, which may put you on the hook for a range of liabilities related to compensation, on-the-job injury, and damages. And some states, such as New York, require you to sign an agreement of joint employment in order to be a fiscal intermediary. Be sure not to confuse independent performers with the main stars of your band! not to take disciplinary action against the employee – rather, instruct the employee to check their Social Security card and visit their local Social Security office, if necessary.

What You Can Do About This:

Be sure to establish the patient as the sole employer of the caregiver. Don’t pay a consumer-directed worker using your FEIN. Use the patient’s own tax ID number and file Schedule R with Forms 941 and 940. This will help classify your agency not as an employer but as a reporting agent. Laws and regulations on joint employment are complex and vary from state to state. Be sure to consult legal counsel before making hiring or tax filing decisions.



Harmonize With Caregiver Companionship

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Indicating that caregivers provide companionship to patients is stating the obvious, but you and the government may not be in harmony on the definition of “companionship.”

In the previous section, we explored why you should serve as a middleman for reimbursement in consumer-directed programs – whereby a patient pays a caregiver through your agency. Now let’s talk about the classic hits – traditional programs, not consumer-directed ones. In many of these programs, the DOL deems you and the patient to be joint employers, similar to an artist and producer coming together to create the perfect song. However, even though they are an employer, patients may be able to pay less than minimum wage and not pay overtime – at least according to federal law – under what’s called a “companionship services exemption” if ALL of the following criteria are met:

- A home care worker spends no more than 20% of total working time in a workweek assisting with personal care (bathing, dressing, toileting, grooming, cooking, and cleaning).
- The worker does not perform any medically related tasks (which are usually done by a nurse or certified nursing assistant, such as tube feeding or catheter care).
- The caregiver does not perform any general household work that is mostly for members of the household other than the patient (laundry, cooking, etc.).

What You Can Do About This:

Even though patients and agencies can be considered joint employers to caregivers, overtime requirements can vary when it comes to companion compensation.

But be aware – this exemption only applies to individual patients, not to agencies. Your agency is still required to pay minimum wage and overtime while the patient is not.

As a DOL example explains: Suppose one of your regular (not consumer-directed) home health workers spends 10 hours a week with a patient, with one of the hours involving personal care and nine involving “fellowship and protection” (hobbies and providing company). The patient can claim a companionship services exemption because the caregiver spends only 10% of their time assisting with personal care.

Therefore, the patient can pay less than minimum wage. However, you as the agency cannot. You’re still standing on the compliance stage, ready to face the music if the employee’s pay does not strike the right chord with federal and state minimum wage laws.

What You Can Do About This:

Make sure your aides are all receiving at least minimum wage and compliant overtime premiums, even if patients or their families tell you they are entitled to compensation exemptions.

The background is a photograph of a drum set, heavily tinted with a deep purple color. In the foreground, a snare drum is visible, showing its metal rim and lugs. Above it, several cymbals are mounted on stands. The lighting is soft, creating a moody atmosphere. The text "Rock Around The Clock!" is overlaid in white, bold, sans-serif font, positioned in the upper right quadrant of the image.

Rock Around The Clock!

Rock Around The Clock!

One of the biggest hits auditors commonly find on their playlist is pay miscalculation. Should the DOL discover that you failed to pay a worker properly, it will likely force you to pay a caregiver 200% of back pay – that's 100% of what you owe and another 100% called liquidated damages. This can cost you big bucks because the government can go back up to two years for unintentional violations and up to three years for willful ones.

Mistakes in compensation often arise when not paying overtime correctly due to the complexity of caregivers having multiple clients across different locations. Trying to get this right is particularly frustrating, considering:

- Caregivers may work with multiple client at various rates and
- Employees often submit hours for previous weeks, quarters, or other time periods on an unrelated timesheet.

For instance, suppose a caregiver submits a time sheet showing 35 hours for a period ending in late June. Then, on a late November time sheet (five months later), they report 46 hours for that current week and an additional seven hours from the period that ended in late June. How much overtime should they receive in November and at what rate?

Feeling lost in the melody? We don't blame you! The answer is eight total overtime hours (six from November and two from June).

What You Can Do About This:

Use payroll software that automatically allocates hours appropriately between regular and overtime pay based on federal and state wage-and-hour laws. Also be sure to provide caregivers with access to pay information that clearly shows how many regular and overtime hours they worked, the regular rate for those hours, the overtime rate, and the overtime premium.



Viventium is here to help you every step of the way. Our flexible Human Capital Management software is built with you and for you, so your agency can streamline and optimize its HR processes to drive maximum caregiver retention. Manage all your scheduling, payroll, compliance, and onboarding needs with one user-friendly, all-in-one platform.

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