

Remote Work Checklist for Employers

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With the health outlook uncertain and the vaccination process months away from completion, many companies that shifted to remote work environments during the beginning of the COVID-19 pandemic still have employees working from home. While some organizations intend to transition back to the office, many have seen improved productivity with their remote workers and expect to maintain this option long-term. While this option increases talent pools and enhances flexibility for current employees, it creates various employment and tax implications for employers. Given these important considerations, employers should challenge their prior assumptions on the viability of remote work.

Employer FAQs

- Is the employer tracking all remote work arrangements, including primary work location, remote work location and relevant dates?
- Is the tracker updated on a regular basis? Did any employees move to CA, IL, MA, NY, NV, OR, PA, WA and/or other states with substantial state and local employment laws differing from the federal standard?
- Does the employer have any formal policies on remote work arrangements?
- Must employees formally notify the employer (i.e., their supervisor or HR) before they perform services in a location other than their primary work location?
- Do different state or local employment laws apply given the number of remote workers in a particular location?(i.e., are local requirements on what constitutes an “employer” triggered?)
- Do state or local laws provide remote employees with more generous leave entitlements, including sick leave laws?
- Can employees avail themselves of leave entitlements in both the primary work location and the remote work location?
- Are there any additional accrual and/or recordkeeping requirements for the enhanced leave entitlements?

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- Do state or local laws in the remote work location have more stringent laws regarding wages, hours, overtime or meal/rest breaks?
 - Does the employer have a system for tracking these differences?
 - Are there any state professional licensure requirements for employees?
 - Do state or local laws require expense reimbursement?
 - Are remote employees subject to any restrictive covenants?
 - Are there differences in the laws of the primary work location and remote work location regarding the scope or enforceability of these covenants?
 - Is the employer's payroll department or third-party provider aware of all remote work arrangements? Do they have the adequate resources to handle the additional requirements of the remote locations?
 - Does the employer need to register with the state agencies, including the unemployment insurance agency?
 - Are there increased risks for discrimination, harassment or unfair dismissal claims given the state or local regulatory environment in the remote location?
 - If a furlough or reduction in force is contemplated, has the employer considered the locations of remote employees and how this affects federal, state and local requirements, including WARN and mini-WARN Acts?
 - Does the employer need to notify its workers' compensation providers and amend/supplement its policies?
 - Are there any state-specific employment posters that must be provided to employees and/or made available electronically?
 - Do current policies and procedures address confidentiality and record storage/data management in a remote work environment?
 - If an employer has administrators working remotely, are they ensuring compliance with HIPAA?
 - Must current policies of insurance (including general and professional liability, where applicable) be updated to cover remote work?
 - Has the employer provided the employee with all location-specific policies and trainings? (e.g., does the state require harassment prevention training?)

Employer FAQs: Tax

- How does a remote out-of-state worker affect the employer's state tax obligations?

- Will income sourced to employees working out of state potentially lead to double-taxation for the employer? How about for the employee?
- Do employers need/want to know where each employee is working remotely?
- Is one employee working in another state enough to expose the employer to that state's income tax?
- What are an employer's wage withholding obligations for employees working remotely from out-of-state?
- Are the rules for withholding employee income taxes the same as unemployment tax and workers' compensation?
- What are an employer's non-wage withholding obligations for payments made to independent contractors working remotely from out-of-state?
- What are an employee's personal income tax obligations if they are telecommuting from another state?
- What are a partnership's non-wage withholding obligations for payments made to partners working remotely from out-of-state?
- Will state or local income and social security taxes apply to the employee's income while working in the remote location?
- Do the employee's activities render the employer to be "doing business" in the remote location?
- Will the employee's out-of-state activities create a taxable presence (e.g., a permanent establishment or "PE") for the employer in the remote location?