

The Hazards of Remote Employee Layoffs: Wage and Hour Issues, Severance Agreements, and Unemployment Claims

Article By:

Paul E. Cirner

Remote work has exploded since the COVID-19 pandemic began, with some employers hiring employees to work remotely anywhere in the United States. With the recent economic downturn, layoffs are beginning to occur, and for the first time a significant number of remote employees may be included in layoffs. Layoffs of remote employees present unique legal hazards for employers.

Final Paycheck and Access to Personnel Files

Generally, remote employees are subject to the wage and hour laws of the states and localities in which they are physically present and working. An employer's payroll practices for final paychecks in its home state may not be sufficient to meet the requirements of the out-of-state remote employee's locale. For example, Washington employees must be paid their final wages no later than the next regular payday following separation from employment. In Oregon, by contrast, discharged employees must be paid their final wages by the end of the next business day following a termination of employment. Final paycheck laws vary from state to state. Noncompliance may result in significant penalties, and in some cases, private causes of action with the ability to recover attorneys' fees. Employers may want to carefully review the final paycheck laws applicable to out-of-state remote employees prior to terminations of employment.

Nineteen states (including California, Illinois, and Minnesota) grant employees the right to access certain employment documents. State laws on personnel file access can differ greatly, regarding, for example, the types of documents subject to review and the permissible procedures for requesting and conducting such reviews. Employers laying off out-of-state remote employees may face requests for personnel files. Employers may want to review the state laws applicable to their out-of-state remote employees in order to prepare compliant responses to such requests.

Severance Agreement Restrictions

The layoff process may include the offer of a severance agreement that provides additional compensation to an employee in exchange for a release of claims against the employer. In recent years, several states—including the entire West Coast—have passed laws placing [restrictions on severance agreements](#) between employers and employees. [Oregon](#), for example, prohibits an employer from including terms that would prevent an employee from disclosing conduct constituting

discrimination and harassment (including sexual assault) prohibited under state law, or that would prevent an employee from seeking reemployment with the employer, except in narrow circumstances. Employers may want to consider creating state-specific severance agreements instead of adopting a one-size-fits-all approach. Employees subject to noncompliant agreements may be able to file complaints with state agencies or initiate private civil actions and pursue claims for damages and attorneys' fees.

Unemployment Claims Giving Rise to Potential Penalties for Noncompliance

A wave of layoffs can result in an increase in the number of unemployment claims filed against an employer. An employer may reasonably expect that remote employees will file for unemployment compensation in the states where they work. The state in which wages must be reported and unemployment tax is due can change as a result of remote work. Unemployment claim filings with out-of-state agencies may lead to state officials' closer examination of an employer's payroll practices with respect to out-of-state remote employees. If an employer was not properly reporting wages or paying unemployment tax in the appropriate state, the circumstances could result in significant penalties. Employers of out-of-state remote employees may want to carefully review their payroll practices to ensure appropriate reporting of wages and payment of applicable taxes.

Other Considerations

Compassionately communicating layoff announcements to remote employees may present challenges since communication will often not be in person. Employers may want to consider how such announcements will be made, including whether through telephone, videoconference, or in writing. Remote employment may also make it more difficult to retrieve company property as compared to an in-office announcement. Employers may want to consult with their IT departments to protect confidential information through limiting employee access to databases and email systems upon layoff.

© 2024, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., All Rights Reserved.

National Law Review, Volumess XII, Number 175

Source URL: <https://natlawreview.com/article/hazards-remote-employee-layoffs-wage-and-hour-issues-severance-agreements-and>