

Navigating State and Local Laws Implicated by Remote Workforces

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As we start to come out of the pandemic, many businesses are deciding to embrace remote workforces on a more permanent basis for a variety of reasons, including cost saving, increased talent pool, and employee satisfaction. However, maintaining a remote workforce also presents the challenge of navigating various state and local laws that may be implicated. In general, the law of the state where the employee is physically located will govern their employment, regardless of where the company is located. Accordingly, it is critical for employers to determine which state and local employment laws apply to their workforce.

Among the most critical employment laws that can vary significantly state-to-state are those relating to wage and hour issues. Although some states simply follow federal law, many have their own minimum wage laws, and businesses with remote employees in multiple states will need to ensure they are paying each employee at least the minimum wage required by the state or local jurisdiction where the employee is located. Similarly, many states have their own overtime laws, which may provide for a higher rate of overtime pay or a lower threshold for the number of hours worked before overtime is required. Additionally, certain states have nuanced meal and rest period requirements. Moreover, many states have specific laws regarding the information that must be contained on wage statements, the frequency of pay days, the timing of final pay, and the payment of accrued but unused paid time off.

Employers with remote workforces should also be mindful of state and local leave requirements applicable to their employees in various jurisdictions, including family and medical leave and paid sick leave. Importantly, the applicability of these leave laws is often triggered by national employee headcounts (even if only applicable to employees in the state), whereas others are triggered by state headcounts.

Even beyond these most common employment laws, numerous other state and local laws can be implicated by having a remote workforce—including those relating to state-specific notices and posters, workers' compensation, harassment training, background checks, drug testing, and pay transparency laws. In fact, some of the more recent pay transparency laws may apply to job postings for positions open to remote employees across the country, regardless of whether the company ends up hiring an employee in a state with an applicable pay transparency law.

Finally, businesses with remote employees should be aware of the tax implications of remote work. Hiring even one remote employee in a new state could require a company to file a corporate tax return in that state or register in the state to withhold payroll taxes.

Businesses with remote employees need to consider and stay abreast of the different state and local laws that apply to their workforce and take steps to ensure that they are in compliance with all applicable laws.

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