

Hiring Remote Employees in Other States? Make Sure Your Business is Compliant

Labor & Employment Law Update

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In today's age of technology and innovation, more and more employers are hiring remote employees who live and work in a geographic location outside of where their business is located. Remote work offers advantages, including expanding access to a wider pool of employee talent and savings on overhead costs. But managing a multi-state workforce can be challenging.

Some employers are surprised to learn that they must comply with employment laws in those other states and particular localities if there is a relevant city or county ordinance.

It is essential to know the employment laws of the state where the remote employee is located, as well as any applicable local laws or ordinances, including the following:

Pay Checks and Payday Laws

Payday laws set out the procedures an employer must follow when paying an employee (e.g., the timing or frequency of payments, including final paychecks) and define what is considered "wages." Some states include vacation and sick leave pay as wages and require employers to pay departing employees for accrued but unused leave upon termination, while other states do not. For example, in Indiana an employer can avoid paying out unused vacation upon termination if the employer has a clear written statement to this effect in its policies (and assuming there is no agreement to the contrary with the employee). In other states (including Illinois), such a policy would be unlawful. Some states also require a pay day notice to be given to the employee or posted in the place where the employee will be working.

Pay Deductions & Garnishments

The types of deductions an employer may make from an employee's paycheck vary from state to state. In Indiana, only certain types of deductions are allowed and an employer must have a written authorization that is revocable by the employee. Garnishment laws also vary from state to state.

Workers' Compensation

An employer should notify its workers' compensation carrier about the remote work arrangement and the employee's remote location. In most cases, remote employees will be considered localized in the state where they work remotely. Workers' compensation coverage obligations and systems vary by state. For example, Texas has an elective workers' compensation system which allows employers to opt out of workers' compensation insurance and allows injured employees to seek general tort damages against their employer. If a remote employee is injured in a work-related accident while working from home, it is still the employer's responsibility and most states will require proper coverage.

Payroll Taxes

The employer must review the other state's tax laws and determine what taxes should be withheld. In most cases, the employer will need to withhold state income taxes for the state in which the remote employee lives and works. This generally requires the employer to register with the tax authority in the other state. Some states make the tax registration process easy, while other states are more cumbersome. Some localities also have city or township registration requirements in addition to the state-level requirements.

Some states (e.g., Florida and Tennessee) do not have state income taxes, in which case, no state income tax should be required for remote employees living and working in those states.

Leave

Leave laws (including sick leave, voter leave, military leave) vary greatly from state to state and by locality. For example, Indiana does not require paid sick leave, but other states like Arizona, California, Maryland, and Massachusetts require paid sick leave. Tennessee recently passed a law requiring employers to allow employees who are veterans to take Veterans Day as a paid or unpaid holiday if certain conditions are met.

Minimum Wage and Overtime

Minimum wage and overtime laws vary from state to state. Local ordinances may also apply. Some states, like Indiana, generally track federal law, but many states have a minimum wage that is higher than the federal minimum wage. Some states require employers to pay overtime if an employee works more than a specified number of hours in *a day*. In California, for example, a non-exempt employee who works more than 8 hours in a day is entitled to overtime even if the employee does not exceed 40 hours in the workweek. Overtime exemption requirements can also vary by state. An employer (and payroll provider) must know the wage and overtime laws in the state (and in the city and/or county) where the remote employee works.

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Drug Testing

Drug testing laws vary from state to state, including what an employer can and cannot do with regard to marijuana and the workplace and what steps must be taken before an employee can be required to submit to testing.

There are a myriad of other employment laws that may apply (e.g., new hiring reporting forms, pay equity, harassment and discrimination training and reporting) depending upon where the remote employee is located. Employers who hire remote employees must know and stay compliant with each state's unique set of employment laws, as well as any applicable county or city regulations and ordinances.

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