

SIX COMPLIANCE CONSIDERATIONS FOR REMOTE EMPLOYEES



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Working from home has become the new norm for many American workers. Even before COVID-19 forced businesses to send their employees home there were around 4 million Americans who worked remotely for at least half of the week.

As many employers found out because of the pandemic, it’s a practice that has many benefits for companies, including access to a wider pool of employee talent (regardless of location), reduced employee turnover, and cost savings. And many workers, forced to work from home for the first time due to the pandemic, found that there were advantages for themselves as well. This has led many to believe that even after it is safe to return to the office, many businesses will continue to let workers work remotely — either part time or full time.

But working from home, as innocuous sounding as that may seem, can also mean dealing with some major compliance requirements. These can impact everything from business taxes to workers’ compensation. Unfortunately, such considerations are sometimes a surprise to employers who don’t have an HR department or lack an understanding of the implications of having remote employees.

Here are some of the things you need to know about maintaining compliance with the laws and regulations that govern remote employees.

1. PAYROLL REQUIREMENTS (WITHHOLDING AND UNEMPLOYMENT TAXES)

If your employees work remotely, out-of-state, where do you withhold taxes?

As a rule, employees pay taxes to the state in which the work is performed (known as the “physical presence” rule). For example, if your head office is in State A but your remote employee works at home in State B, under the physical presence rule you are required to withhold unemployment and state taxes in State B, even if you don’t have a physical office there. But there are exceptions.

Reciprocity: Some states that border each other have entered into agreements related to allowing an employee who lives in one state but works in a neighboring state to have their withholding tax paid to the work state.

Payroll can get tricky for employers who

- ▶ are located near state borders
- ▶ have employees travel to job sites in other states

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- have employees work remotely
- are expanding into new states

But in certain states the law is different. This may mean, for example, that remote employees are subject to income tax in both the state they reside and the state in which their employer operates.

And what if an employee only works a few days at home (out-of-state) and the remainder at the office? Now, things get more complex. And adding to the complexity is that if your employees are working from home because of COVID-19 and you are following state work-from-home orders, the states may suspend the usual withholding requirements. You (and your employees) will probably want to get the advice of a tax expert due to the complexity of this issue.

2. FOREIGN QUALIFICATION

Foreign qualification may come into play if you have formed a corporation or [limited liability company](#) and if you have employees working in a state other than the state in which your corporation or limited liability company was formed (which is referred to as a “foreign” state). Depending on your type of business, what your remote employee is doing, how many remote workers are in a state, and how long they will be doing that work in the foreign state, you may need to “qualify” your corporation or limited liability company in that state.

Foreign qualification is the process of applying for authority to do business in a state other than the one in which the corporation or limited liability company was formed. You may need to qualify if, for example, you have a physical presence in the foreign state, or if you routinely accept orders or execute contracts there. In addition, once qualified, the corporation or limited liability company will have other compliance obligations such as having to designate and maintain a Registered Agent and file an annual report. A Registered Agent is a person (which can be a corporation as well as an individual) with a physical address in the state who can receive legal documents on behalf of your business.

3. PERMITS FOR YOUR REMOTE EMPLOYEES

Many municipalities require that home-based workers obtain a home occupation permit. Certain states have very strict permitting and licensing requirements — especially at the local level. You may run into issues if you are paying payroll

taxes in these states and do not have any local-level, home occupation permits. Companies are starting to receive audit letters and notices of delinquency from interconnected government agencies. Even though they are not technically operating a business out of the home, as more work is done off-site and the more independence remote employees gain, the lines become blurred.

Check with your employee’s local city or county zoning laws to see if a permit is required. And again, if employees are working from home because of COVID-19 work-from-home orders, check to see if licensing requirements have been temporarily suspended.



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4. TAX NEXUS CONSIDERATIONS

The term “tax nexus” is used to describe a situation when a business has a tax presence or is “doing business” in a state other than its primary physical location. Depending on what your remote out-of-state employees are doing, your business may become subject to that state’s sales, income, or other tax laws. If your employees are working out-of-state temporarily due to COVID-19, the state may waive the remote worker nexus rules. It is best to talk to your tax adviser to find out for sure.

5. PRIVACY AND DATA SECURITY

As you add remote employees to your workforce, your network endpoints and potential avenues for a cyber-attack increase. Mobile devices, wireless networks, and even inadvertent disclosure of data in public spaces all expose your business to unwanted vulnerabilities. Ensure that you have security policies and guidelines in place to prevent data loss. Educate yourself on cross-border data transfer laws and the implications of sharing information about global customers with home office workers.

6. WORKERS’ COMPENSATION

Most states require that businesses provide workers’ compensation coverage for employees. But what if a remote worker is injured on-the-job? In most instances, they can

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claim benefits, but state laws differ on what constitutes a work-related injury. To avoid any confusion, set clear guidelines around the job duties and work hours of your remote employees so that you can more easily separate truly work-related claims.

LEARN MORE

Maintaining [good standing](#) requires constant attention, especially when you do business in multiple states. If you want to learn more about how to maintain your good standing, contact a CT representative at 855.316.8948 (toll-free U.S.)

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