

Your (Brief) Guide to Remote Workforces and the Law

Working from home has been the norm for many of us for nearly a year. While some companies plan to open their doors this spring and return to working from the office full-stop, others intend to transition to a permanent remote workforce, while still others will implement a hybrid approach.

Whether you plan to bring your staff back to a physical office part-time or will remain fully remote, having a remote workforce raises a number of issues that can have wide-ranging legal and financial consequences if not taken into consideration. More on this below.

Headquarters Location

If your company no longer has a brick-and-mortar location or physical office space, you may need to choose a new mailing address for your business. Since business addresses are publicly available through state databases, you should not use a home or personal address. A convenient alternative is a virtual mailbox, such as Earth Class Mail or Anytime Mailbox, which can be located in any state.

When choosing a business address, keep in mind that your address and the location of your owners and executives may dictate which courts have jurisdiction over your company in the event of a lawsuit. Accordingly, you'll want to consider locating your company's business address in the state where you live or spend significant time. Otherwise, if you live in Hawaii full time but locate your business in Utah, you may be in for a surprise when you are hailed into court in Utah!

Also keep in mind that you could be subject to laws and regulations of the specific state you choose. Some states, like California for instance, have much more stringent rules for privacy rights and consumer protection. You should be aware of these state specific laws to avoid unintended consequences for your company.

Registering with State Authorities

Having employees working remotely in another state may require your company to register as a foreign corporation doing business in that state. Some states, such as California, require foreign companies to register to do business if they pay California-based employees wages above a specified threshold. Ultimately, this is a state-by-state issue so it's important to consult a lawyer if you're unsure about whether you need to register to do business in a particular state. There can be financial consequences for failing to register as a foreign corporation if you were required to. For example, under Florida law, a company can be liable for a civil penalty of between \$500 and \$1,000 for each year it transacted business without a certificate of authority.

Your company will also need to register with the tax authorities in the states where your remote employees are located. In addition to making standard payroll deductions and withholdings from employees' wages in those states, some states impose more extensive requirements for employer tax contributions. For example, California requires that registered employers pay an Employment Training Tax, which provides funds for workforce training and development. To stay on top of multi-state employer tax and withholding issues, you might want to sign up for a professional employer organization like Justworks or Gusto, which handles much of this automatically.

Employment Law Considerations

Remote employees are generally protected by the employment laws of the state where they live. As some or all of your employees work from home, you should review your internal policies to make sure they comply with the relevant states' employment laws. Three of the most important types of laws that differ greatly between states are those governing family leave, reimbursement of business expenses, and workers' rights notices, which we cover below.

Different states have different family leave laws, some requiring paid leave and some not. In Connecticut, certain employees are entitled to 16 weeks of *unpaid leave* in any 24-month period for certain family-related caregiving and medical reasons (as opposed to 12 weeks in a 12-month period required under federal law). But in Washington, workers are eligible for up to 12 weeks of *paid leave* a year for covered reasons. Moreover, some states provide for special types of additional family-related leave. In Illinois, the law entitles certain employees to take up to eight hours of unpaid leave in any school year to attend school conferences or classroom activities relating to their children, if they cannot be rescheduled outside of work hours.

Laws regarding reimbursement of business expenses also vary significantly between states. Certain states, including California, Illinois and Montana, legally require businesses to reimburse their employees for necessary business expenses incurred while working from home. Other states, such as Massachusetts and Oregon, only require reimbursement if an employee's expenditures on work-related expenses reduce their wages below the minimum wage rate.

Finally, state laws that require companies to give certain notices to employees about their legal rights also diverge. Typically, these notices are posted in the workplace but with respect to remote employees, it's the employer's responsibility to provide copies of the notices to employees. Failure to provide required state and federal employment law notices can result in fines--for example, \$1,000 in California for failure to display the required workplace safety and health protection posters. A pro tip--there are third party services such as Poster Guard that offer 50-state compliance, including notifying employers when updated notices must be distributed, that help you make sure you're providing the right notices.

Insurance

A company's insurance coverage can also be location-specific. For example, if you have an insurance policy that covers your company's property or facilities in New York, but you have employees in California, damage to company property used by those remote employees, such as IT equipment, may not be covered. Additionally, your insurance policies might only cover liabilities arising out of activities conducted on the premises or in the geographic region specifically listed in your policy documents.

We recommend that you check with your insurance carrier to confirm whether your coverage extends to, or can be updated to cover, jurisdictions where your remote employees live. In some cases, the specific locations of the company's employees may need to be added to the policies or supplemental coverage may be required.

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Keeping track of where your employees live and work is a critical part of managing a temporary or permanent remote workforce. We are regularly monitoring laws around the country related to these issues and would be glad to help you navigate the state law requirements relevant to your company.

Please contact us at hello@klukfarber.com or (646) 850-5009 with any questions--we look forward to hearing from you!