

Considerations For the Remote Employee Lifecycle

As Companies Compete for talent, many are finding the most qualified candidates may not be local or interested in relocating. As the ability to work remotely has increased via technology, companies also find that remote work offers the desired flexibility to support increased retention. Remote work arrangements may be convenient, but may require compliance with state or local employment laws. There is much to consider, but the following list can help address compliance considerations for employees in different states. As state requirements continue to evolve, working with a benefits broker, financial advisor, or retirement plan manager, and your payroll provider will also help ensure compliance.

Establishing a Business Presence

- In some states, having as few as one employee may establish a business presence that requires a business license. Employers should understand the requirements for each state, county, or city where employees reside and work.

Interviewing and Hiring--State law considerations

- Requirements for posting compensation ranges
- Boundaries of salary inquiries in the state
- Ban-the-box statutes
- State and local requirements regarding the use of artificial intelligence (AI) during the selection process
- Local background checking laws
- State/local drug testing laws and how the legality of cannabis may impact a current policy

Onboarding

- State-specific tax forms
- Remote I-9 compliance
- Legality of nondisclosure, confidentiality, and other employment agreements in the states your employees live
- Other state form requirements and notifications
 - Wage theft notices
 - State COBRA notification
- In-person or remote
- Technology
- Training

Compensation

- State minimum wage, salary threshold, and overtime requirements
- Meal and rest period requirements
- Maximum number of days or hours in a day worked
- Additional requirements related to overtime exemptions (e.g., Wisconsin has not adopted the FLSA's updated primary duty definition and continues to refer to the percentage of time spent on exempt duties to determine exempt status.)
- Adjustments necessary to align with the local market

Scheduling

- Employees in different time zones
- State or local predictive scheduling laws
- Availability
- Flexibility

This sample document is only an example and is based on the laws in effect at the time it was written. MRA-The Management Association, Inc. does not make any representations or warranties regarding the appropriateness or prudence of using this information for any particular individual or situation. Your company should add, delete, or modify the content of this document as needed to suit your purposes. This material is for your information only and should not be construed as legal advice. In some circumstances it may be advisable to have legal counsel review final documents prior to implementation.

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Benefits

- Plan coverage in remote worker states
- COBRA notice requirements
- Individual health coverage mandates for some states (such as California) including requirements for coverage and reporting
- State or local paid sick leave laws/ordinances
- State-specific FMLA guidelines
- State requirements for disability coverage

Payroll

- State biometric laws
- Tax accounts
 - Income
 - Unemployment
- New hire reporting
- Requirements for final pay and PTO payout upon voluntary/involuntary termination
- Reciprocity
- Forms
 - State and federal tax forms
 - County/local tax forms if required
 - Exemption forms for states with reciprocity (e.g., IL-W-5-NR – Employee’s Statement of Nonresidence in Illinois)
- Timekeeping policy that includes a reference to work location (important for tax purposes)

Workers Compensation

- Home office set-up (ergonomics)
- Injury reporting
- Right to inspect home office
- Private workers compensation insurance inclusion for remote workers (if private policy)
- Considerations for out-of-state/jurisdiction workers if covered by a state plan
- Protocol for workplace injuries at home or other remote locations
- State directives on the employer’s ability to direct care for work-related accidents/injuries

Security/IT Setup

- Company requirements for IT security (such as private work area, phone line, secure network, etc.)
- What are the minimum requirements (speed, reliability, etc.)?

Training

- Compliance-training requirements (e.g., Illinois’ mandatory annual harassment training)
- Delivery options to ensure compliance (e.g., webinar, in-person, etc.)
- Company requirements for onsite training

Other Federal and State Requirement Considerations

- What, if any, additional protected classes are covered under state law or local ordinances?
- Does the state have any employee expense reimbursement laws?
- What are the posting requirements for the state in which your employee is working?
- What are the options for providing federal and state required postings?
- Are there state privacy laws related to recording conversations held in virtual meetings (Teams, Zoom, or another format)?
- What is the legality of nondisclosure and noncompete agreements in the state where work will be performed?

Terminations

- Understanding at-will employment, public policy exemptions, implied contract exceptions, and implied-in-law contracts in the state
- State notification requirements
- Timeliness and requirements for the payout of sick, vacation, and PTO time

- Return of company property
- Final paycheck rules

Handbook

- Update the handbook or develop state addenda that reflect the laws in the state(s) where remote employees are located

Due to the complexity and depth of what needs to be considered, employers may feel more comfortable enlisting additional help or resources. MRA's HR Business Partners are able to provide assistance and resources at every stage of the employment lifecycle. Members may also contact the 24/7 HR Hotline at 866.HR-Hotline (866.474.6854) or InfoNow@mrnet.org.