

Remote Employees: The Geographic Tax and Benefits Challenges

By Suzanne G. Odom & Raymond P. Turner

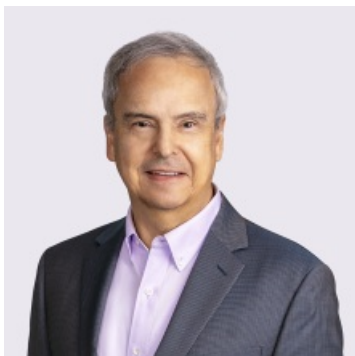
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As the COVID-19 vaccine has become readily available, and many employers contemplate employees returning to the office to work, both employers and employees have accelerated demands for new and permanent remote work location arrangements for a variety of jobs. Employers across the country are revisiting their business strategies, employment policies, and related legal and tax compliance measures with an eye toward improving their competitiveness for acquiring and retaining talent.

Offering employees the opportunity to work from home all or part of the time can help recruitment and retention — the younger generations of workers who grew up in an electronic world or workers who may need to stay near loved ones requiring care may find this especially attractive. The idea of reaching across state lines and picking the best person for the job without needing to convince them to move is appealing. Further, remote work can provide employees scheduling flexibility, improved work-life balance, and higher productivity. To many employees, availability of remote or “hybrid” work is a highly valued job benefit.

Yet, as with every significant change in the terms of employment, careful planning and a cost-benefit analysis should be undertaken before implementation. Remote or hybrid work options are riddled with legal compliance considerations, including some important tax and employee benefit issues.

State and Local Taxation – Wage Withholding, Unemployment, Other Payroll-Based Taxes

State and local taxation of wages and employer wage withholding generally is not linked to the state in which the employer has an office or facility.

State income tax on wages, for example, generally is imposed by both an employee’s state of residence and any other state in which the employee may work, even if the employer has no physical presence in the work state. Some states provide tax or withholding credits if taxes are paid or withheld in other states. Further, some states impose their wage withholding requirements only if the employer is doing business in the state or has other sufficient economic presence there. Increasingly, however, states are taking the position that mere payment of any wages to an employee for work in the state is sufficient to trigger employer registration and withholding requirements.

Every time an employer allows remote work from a new location for an employee, a new tax compliance review is required. The analysis involves a detailed study of both the state and local laws governing withholding and registration requirements in the employee’s residence state and the work state(s). Further, employers need to consider what impact, if any, the presence of a remote employee in a new state has on the employer from business taxation and licensing perspectives.

A remote employee's commencement of work in a new state also requires reevaluation of the state in which unemployment taxes must be paid under the Department of Labor's multistate rules. This reevaluation also often identifies the need to change or add payroll taxes for other state-sponsored benefits.

Therefore, the employer has important cost and compliance considerations when weighing the pros and cons of any proposed virtual office arrangement. Setting employee expectations, imposing employee communication responsibilities related to taxation requirements, and gaining internal controls over compliance in the new work locations are crucial. Normally, employers would need to establish or revise an existing remote work or telecommuting policy to address tax issues. Related remote work agreements with employees also may be desirable.

Employee Benefits – Coverage Considerations

Whether working remotely or from the office, there is generally little impact on employer-sponsored employee benefits other than the need to alter the method of distributing plan materials, conducting open enrollment, and educating employees about the benefit offerings. The core benefit offerings normally are not affected.

However, remote work can significantly affect group health plans and provider networks. For example, if the employer contracts for coverage using a network focused on providers in the Northeast, but permits employees to work from Oregon, the employee working from Oregon will lose access to in-network care, increasing the cost of medical services. Employers adopting remote work or hybrid work models should review their group health plan coverage options and determine if plan design, provider, or network adjustments are needed or are even feasible.

Remote or hybrid work requires important and extensive legal compliance and financial considerations that should be evaluated by all employers. Jackson Lewis attorneys regularly advise employers on these issues in a collaborative manner, including all employment law aspects of remote work. We have a cross-practice group of employment, tax, and benefits lawyers focused on the virtual office and can guide employers through the remote work design and compliance maze. Please contact the Jackson Lewis attorney with whom you regularly work if you have questions or need assistance.

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