

# Which state laws apply to remote employees

During the pandemic, many businesses allowed their employees to work from home as a matter of safety. Now, remote work has become the norm. However, it can be tough to navigate the switch from a compliance perspective, particularly when it comes to out-of-state remote staff members. Many businesses, even very small businesses, have started to open up remote positions to a wider audience by removing geographic barriers. Existing employees also may be planning to move out of state due to rising housing costs and the flexibility that permanent remote work provides.

Many employers hesitate to hire out-of-state workers due to confusion or concern over the legal implications. This can cause employers to miss out on great talent. Don't worry, it's not as complex as you might think. However, it does require some attention. Here is how to find out which state laws apply to remote employees.

## Which state laws apply to remote employees?

Hopefully you already have clear written employment policies and a firm understanding of your state and local laws. However, in most cases, you will have to adjust your policies to meet the requirements of the states in which your remote employees reside. Most employment laws are applicable depending on where the work is actually being performed. However, that isn't always the case. Sometimes you may even need to meet the requirements of multiple states. Find out how state laws apply to remote employees in the following categories.

### Payroll laws

Employees typically need to pay income taxes in the state where they live and work. For remote workers, this is their state of residence. They typically won't have any tax obligations in the state the business is based. Employers will need to collect the appropriate state tax forms and submit all required deposits and documentation to the appropriate state.

This can require a little extra paperwork. However, it shouldn't scare you off from hiring out-of-state remote employees. A good small business accountant will be able to help you stay compliant with payroll tax deadlines and requirements for all states in which you employ people.

### Employment classification

Another issue that can pop up is employment classification. If you are hiring full-time or part-time W-2 staff members, there won't be too much variation. Employment classifications for exempt and non-exempt W-2 employees are covered under federal law with the [Fair Labor Standards Act](#) (FLSA). The FLSA provides specific guidelines for which employees may be classified as exempt, making them exempt from overtime pay.

However, it is important to keep track of hours worked for non-exempt employees. You must abide by applicable laws regarding meal breaks, work hours, and overtime pay for employees in each state.

Where things can get more complicated is the use of freelance or contract labor. Many states, such as California, passed laws that place greater restrictions on who you can classify as an independent contractor. If your business plans to hire 1099 workers, it is best to investigate if state laws in the potential contractor's home

state could apply.

## **Sick leave and time off**

Different states have their own requirements regarding sick leave and time off of work. If a remote employee's home state requires sick leave to be offered, you will typically need to comply unless your existing PTO policy already meets the requirements. If you offer sick leave to in-person staff, you should generally offer it to remote staff too. Even if it is not legally required in their state, it's best to be equitable.

Federal leave policies will apply to all employees. However, remote employees will also generally be eligible for the leave programs available in their home state. These can include paid time off for short-term disability or maternity leave. Some states also offered special time off programs during covid-19 pandemic, but most of those have come to an end.

The last issue that can arise is the payout of unused sick leave or vacation time. In many states, employers are allowed to dictate what happens to unused PTO upon separation from the company. However, in some states that are laws that govern it. California considers vacation time to be part of an employee's compensation package. Thus, your company must pay it out promptly upon separation. Other states have more relaxed policies that simply require the employer to inform employees that they will not be paid out for their unused PTO on separation.

## **Minimum wage**

Employees will need to be paid at least the minimum wage in the area where they will be working. For remote workers, that is where they live. It is important to be aware that some cities or counties have higher minimum wages than the state minimum.

## **Sexual harassment and discrimination**

Workplace sexual harassment and discrimination should be forbidden regardless of the state where it occurs. However, there are some different legal considerations to be aware of.

The first is that some states have specific requirements in regards to sexual harassment training for managers and/or employees. The course requirements and training frequency can also vary by state. Remote employees in different states should take any courses required by their home state. Not all employees may be required by law to complete a sexual harassment prevention training course. However, it is a good idea to offer it to everyone. Some state courts do use this information when determining whether a company is liable for sexual harassment committed by an employee of the organization.

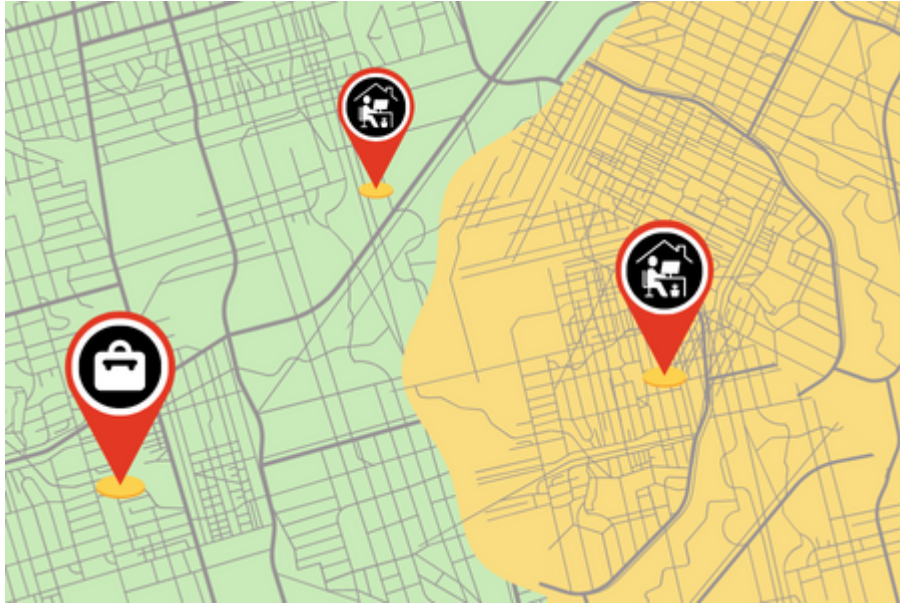
Employers also should adhere to any discrimination laws in both the state that the remote employee resides in and the state that the business primarily operates in. In [Trevejo v. Legal Cost Control Inc.](#), a remote employee from Massachusetts was able to win a discrimination lawsuit against her employer from New Jersey in a New Jersey court. The employee sued for age discrimination under a New Jersey law and won the right to prove she had enough contact with New Jersey. In the court opinion, it was mentioned that the law in question simply stated *persons* rather than *inhabitants*. This opened the door for out-of-state employees to potentially be covered under the New Jersey law. This is still a developing question in the legal field, but it is best to err on the side of caution as an employer. You don't want to be a test case for the applicability of state employment laws.

## **How do state laws apply to hybrid employees?**

As discussed, remote employees are often governed by the state laws of their home state regardless of where the company is located. But what does this mean for hybrid employees? In some areas, particularly on the east

coast, it is not uncommon for people to commute across state lines. For example, many people live in New Jersey but commute to New York. Similarly, employers in Washington DC likely have in-person or hybrid employees residing in the neighboring states of Virginia and Maryland. So what laws apply if an employee works out of the New York office two days per week and a home office in New Jersey for the rest of the week?

### **Which payroll tax laws apply to multi-state hybrid workers?**



If hybrid employees are splitting their time between their homes and an office that is across state lines, it is possible that the laws and tax requirements for both states could apply. This will largely depend on what states are involved.

States and territories that commonly share workers, such as Maryland and Washington DC, often have reciprocity agreements to simplify the income tax requirements. Reciprocity agreements allow a person to only pay taxes in the state where they live and avoid tax obligations for working in another state. If the employee's home state has a reciprocity agreement with the state that the office is in, they will only have to submit taxes for their home state.

In the absence of reciprocity agreements, the employer will often withhold taxes for the employees' primary work location. The employee will then file state taxes in both states at the end of the year and handle any outstanding tax obligations. However, in some cases the employer may need to withhold taxes for both states. It's also worth noting that there are several states that do not have state income taxes which does simplify this aspect. Those states are Alaska, Florida, Nevada, New Hampshire, South Dakota, Tennessee, Texas, Washington, and Wyoming.

Many states also have a time threshold for out-of-state workers. This means that employees that only come to the office for special events, board meetings, or other infrequent activities likely will not be subject to payroll tax withholding in the state.

### **Other legal considerations for remote workers**

Here are a couple of other legal issues to consider when moving to a remote work policy.

#### **FMLA Eligibility**

The [Family and Medical Leave Act](#) (FMLA) allows eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with the continuation of group health insurance coverage.

## **A business is considered a covered employer if they are a:**

- Private-sector employer, with 50 or more employees in 20 or more workweeks in the current or preceding calendar year.
- Public agency, including a local, state, or Federal government agency, with any number of employees..
- Public or private elementary or secondary school employees.

## **To be considered an eligible employee, an employee must:**

- Work for a covered employer.
- Have worked for the employer for at least 12 months.
- Have worked for at least 1,250 hours for the employer during the 12-month period immediately preceding the leave.
- Work at a location where the employer has at least 50 employees within 75 miles.

That last condition is where a lot of remote employees and employers run into confusion. With a distributed workforce, it is quite common to not have any coworkers within a 75-mile radius, much less 50 other employees. However, that actually doesn't matter.

Most employment laws and regulations apply based on the employee's worksite, which in the case of remote workers is their home. FMLA is a bit different. For the purpose of FMLA leave eligibility, the work location is considered to be the office or location through which remote workers receive assignments or reports to. Thus, if a small business has 50 employees working at its office, remote employees will likely be covered under the FMLA.

## **Telecommuting Expenses**

**Typically, state wage and hour laws require that employers reimburse employees for work-related expenses such as:**

- Equipment and supplies that they need to perform their assigned work tasks.
- Reimbursement for business travel including mileage.
- Work uniforms.

However, there are also costs that employees may incur when telecommuting. Some states do have laws

requiring employers to reimburse work-from-home employees for a portion of their phone or internet bills, as well as other related costs associated with remote work. Be sure to develop a written telecommuting agreement and to be clear about what expenses, if any, the employee will be reimbursed for. Some employers also provide a one-time telecommuting stipend to cover costs associated with setting up a home office or remote workstation.

## **Juggling applicable state laws**

Keeping track of what state laws apply to each of your remote employees can feel like a cumbersome task. Here is how to juggle all of the applicable state laws.

### **Keep employee addresses up-to-date**

Employers are typically subject to the employment laws of the state where a remote employee resides and works. Thus, it's very important to keep track of where your remote staff is primarily residing. Ideally, employees will notify HR or update their address themselves through a self-service HR portal. However, sometimes people forget. It can help to send out a reminder message quarterly to urge employees to update their information if anything has changed.

### **Labor law posting requirements**

Employers need to put up certain employment law posters in a visible area in their workplace to meet certain compliance requirements. These posters are typically updated each year. You don't have to make your remote employees put legal posters up in their home offices. However, you do need to provide them with appropriate employment law notices. This can be done electronically in most cases. When you update your employment law posters each January, be sure to download an electronic copy and email it to your remote staff. You could also send it out through your chosen HR software platform.

### **Have multiple versions of employee handbooks or policies**

Many businesses find that it is helpful for employees and management to update their written policies to reflect differences in state laws. Some employers have multiple versions of an employee handbook. Others will simply add a paragraph at the end of a written policy with state-specific adjustments. It isn't practical to have 50 versions of the employee handbook unless you are a giant enterprise-level business with worksites spread out all across the country. However, if you find that you have a large number of remote workers living in a specific state, it can help to create different policies and handbooks.

### **Research requirements before onboarding and termination**

Properly prepare for a new hire from a new state by researching the state laws and consulting with legal counsel if desired before the employee's first day. Prepare any necessary payroll forms and special paperwork. Be ready to explain any differences in employment policy if your handbook isn't updated with language for their state.

When you receive notice that a remote employee will be leaving the company, you should also review their state laws and prepare for a compliant termination. Many states have strict timelines regarding payment of any owed funds including unused PTO, bonuses, and the final paycheck.