



Remote Workers: Not As Simple As You Think

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Employers' Involuntary Pivot to Remote Work

- First U.S. COVID case diagnosed Jan. 2020 and stay-at-home orders were widespread by March 2020
- 37% of U.S. jobs can be done entirely remotely, per 2020 U of Chicago study
- 52 % of managers will allow their employees to work remotely more often post-COVID, per a KPMG survey
- 71% of workers say they would want to work remotely at least a quarter of the time, per a KPMG survey



2

Employers Asking Employees to Return But . . .

- Study analyzing 50 million plus job postings in March 2023 found 12.2 explicitly mention remote work – a 4x increase since before the pandemic (“Do We Know How Many People Are Working From Home?” NY Times April 2, 2023)
- In Jan. 2022 Pew Research Center survey, 17% of remote workers say they are working from home because they relocated away from the workplace during the pandemic
- Hybrids - Percentage of days worked from home holding steady at 30% after a peak at 60% in May 2020 (“New Data Show Broad Shift to Remote Work During Pandemic” WSJ Sept. 15, 2022)



3

Taxes

- State income tax on the ee
- Business taxes on the er, if nexus
 - Many states find nexus with only one ee
 - Other taxes: sales, franchise, UI, gross receipt
 - Also, register with the SOS & tax authorities; ID registered agent
- Pre-COVID models
 - Convenience of the employer
 - Reciprocal agreements
 - Statutory definition of “resident”
- COVID response
 - States’ temporary waiver of state income tax on telecommuters expired
 - IL 2020 law requires withholding of state tax for remote ee in IL for more than 30 days



4

Which States' Law Applies?

- Varies by statute
- Coverage usually triggered by number of employees
 - Count only the employees in the state?
 - Count all U.S. employees?
 - New Seattle ordinance says count worldwide
- Changes to those thresholds after #metoo
 - TX reset “er” definition from 15 ees to 1 ee in 2021



Wage and Hour

- FLSA Exempt Workers
 - Varying duties' tests
 - Varying minimum salary amount
 - Changes in discrete state's law year to year
- FLSA Nonexempt Workers
 - State and local enactments
 - Higher minimum wage
 - Tiered minimum wage within a single state
 - By geography in NY and OR
 - Daily overtime
 - Off the clock work
- Meals and Breaks
 - See DOL Field Assistance Bulletin No. 2023-1 re: telework
- Notice of Wage Rate Deduction



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