

ACCEPT THE CHALLENGE AND DEVELOP A 6-STEP PLAN TO LEGALLY MANAGE YOUR REMOTE EMPLOYEES

Insights
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COVID-19 changed work as we know it. For more than two years, countless employees have worked remotely from the comfort of their homes and have not stepped foot into an office. Although some debate its benefits, there is little doubt that it is the future of work for many industries. Businesses that do not offer remote work (or some hybrid version of it) face the possibility that employees will leave for an employer who does. So accept the challenge and develop a six-step plan to manage your remote employees.

A Whole Host of New Challenges

Remote work has created a whole host of challenges for employers. Some employers have simply been trying to manage remote workers in the states and communities in which they have had physical presence. However, given the tight labor market, employers are now hiring individuals or allowing current employees to work in states (and sometimes countries) in which they do not have physical operations. This may be new to Human Resources professionals unfamiliar with the state or local employment laws that apply to these remote employees.

Questions that may keep you up at night:

1. Does your HR team know that although the state of Pennsylvania does not require paid sick leave, the cities of Philadelphia and Pittsburgh do require it and it must be provided to employees there?

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2. Do your managers know they may face *criminal penalties* and fines if they ask an employee who will earn less than \$101,250 to sign a non-compete in Colorado?
3. Did you know you cannot conduct drug or alcohol testing in Maine without a written drug policy and procedure approved by the state's department of labor?
4. Does HR realize that if your business collects fingerprints, voiceprints, eye scans, or hand or face scans from Illinois employees that they need to provide a biometric privacy policy and consent form to employees?
5. Although most employees are at will, did you know that a Montana employee cannot be terminated except for "cause" after their probationary period ends?

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While employment laws differ from state to state and even city to city, the common thread is that non-compliance can lead to costly and time-consuming lawsuits.

Your 6-Step Action Plan

So, what can employers do to mitigate this risk? Although there are many issues to consider when hiring remote workers in other jurisdictions, we have developed a bird's eye view six-step checklist to help you formulate a plan:

1. **Decide Which Jobs Can Be Remote:** Determine the positions that you will allow to be fully remote in another state. If you require remote employees to visit an office location from time to time, who is going to pay for that travel? Under the law, you may have to.
2. **Approved Remote Locations:** Decide where you are going to hire or allow current employees to work remotely. For instance, you may not want to hire an employee in a different time zone. Some states and cities are more difficult for employers than others. You may want to consider whether the burden of compliance in a certain city or state is outweighed by the value the employee would bring to the business. And don't forget about non-US locations. Many employers are getting requests to work remotely from other countries. Laws in other countries are often far different than ours, sometimes in very surprising ways (see our Insight on international reimbursement issues [here](#)).

3. **Conduct a Legal Job Search:** Ensure compliance in hiring practices. Many states and cities have protected characteristics that are in addition to those under federal law. Many also have “ban-the-box” laws prohibiting employers from asking applicants about criminal history as well as salary history. Some states and cities even require employers to post salary ranges for positions in job advertisements. With that being said, ask yourself are you going to pay an employee who currently resides in NYC the same as if they worked remotely from a low cost-of-living area like rural Wyoming.
4. **Hire Properly:** Confirm you are following all state or local wage and hour laws. Keep in mind that minimum wage and overtime rules for non-exempt employees as well as salary thresholds for exempt employees differ throughout the country. Ensure your arbitration or restrictive covenants agreements are compliant in the remote jurisdiction. And check to see if there are any laws on reimbursement of employee expenses, especially given employees will be using their own internet, electricity, etc.
5. **Comply with Local Tax and Insurance Rules:** Work with your accountants to set up taxes correctly. Some states have family leave and disability insurance programs that require employers to deduct from employee wages and/or contribute themselves to a state-run fund. Make sure you have enrolled in the state unemployment insurance programs and confirm that your workers’ compensation insurance is compliant. You should also look into whether a business registration is required when you have one or more remote employees working in a state.
6. **Provide Employee Notices and Training:** Distribute any required employment law postings to your remote employees. You also need to review whether the state requires specific provisions be included in the employee handbook or other notices. It is highly recommended that employers draft and distribute state handbook addenda covering the pertinent state or local leave and other employment laws. Some states and cities also have mandatory anti-harassment training laws for employees.

Wrapping Up

Managing employees in new locations may present challenges for your business – but there is nothing new

about facing challenges for Human Resources professionals. For many employers, they have no choice but to allow some remote work if they want to be competitive – so challenge accepted!

Employers should consult with the authors of this Insight or their Fisher Phillips attorney with any questions or guidance as they navigate these issues. Make sure that you are subscribed to [Fisher Phillips' Insights](#) to get the most up-to-date information directly to your inbox.