

The Distributed Workforce:

A Multistate Employer Primer

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Welcome to the Webinar!

- We will email you a link to the recording + PDF of slides within 24 hours
- Please participate in our poll
- Please use the Q&A box for questions
- You can self-submit for HRCI and SHRM credits

Agenda

- Registration, Taxes, and Insurance
- Variation in Employment Laws
- Policy Approaches
- Best Practices for Distributed Workforces

Registration, Taxes, and Insurance

(oh my!)

Registration and Corporate and Business Activity Taxes

Even with just a single remote worker in the state, an employer will likely need to:

- Register with the Secretary of State
- Provide a registered agent and address
- Acquire licenses and business permits
- Pay corporate and business activity taxes





Income Tax Withholding

- Usually based on work location, but sometimes based on where an employee lives
- Some states have reciprocal tax agreements
- State temporary presence rules dictate how long an employee can be there before taxes are owed
- Employers must withhold employee income taxes, transit taxes, paid leave premiums, etc.

Unemployment Insurance

“The Localization of Work Provisions” is a standard 4-factor test used to determine which state an employer should report wages and pay UI to. It looks at:

- Where services are performed
- Base of operations
- Place and direction of control
- Residence of employee

Workers' Comp



Employers must generally cover employees under Workers' Compensation policies based on where they are working.

Employees who travel may be covered during temporary employment in other states if they are traveling to a reciprocating state.

If the other state is not reciprocating, additional coverage is usually required before starting work.

Variation in Employment Laws

Generally, rights and rules will come from the state or locality where the work is performed.



White Collar Exemption Rules

- Some states have their own white collar exemption tests.
- Some don't recognize certain exemptions, such as the Highly Compensated Employee (HCE) exemption.
- Some don't let you off the hook for minimum salary and paying on a salary basis for teachers, doctors, and lawyers.
- Some (CA, WA, NY) require that you pay significantly more than the federal minimum to claim the exemption.



Independent Contractor Tests

Economic Realities Test:

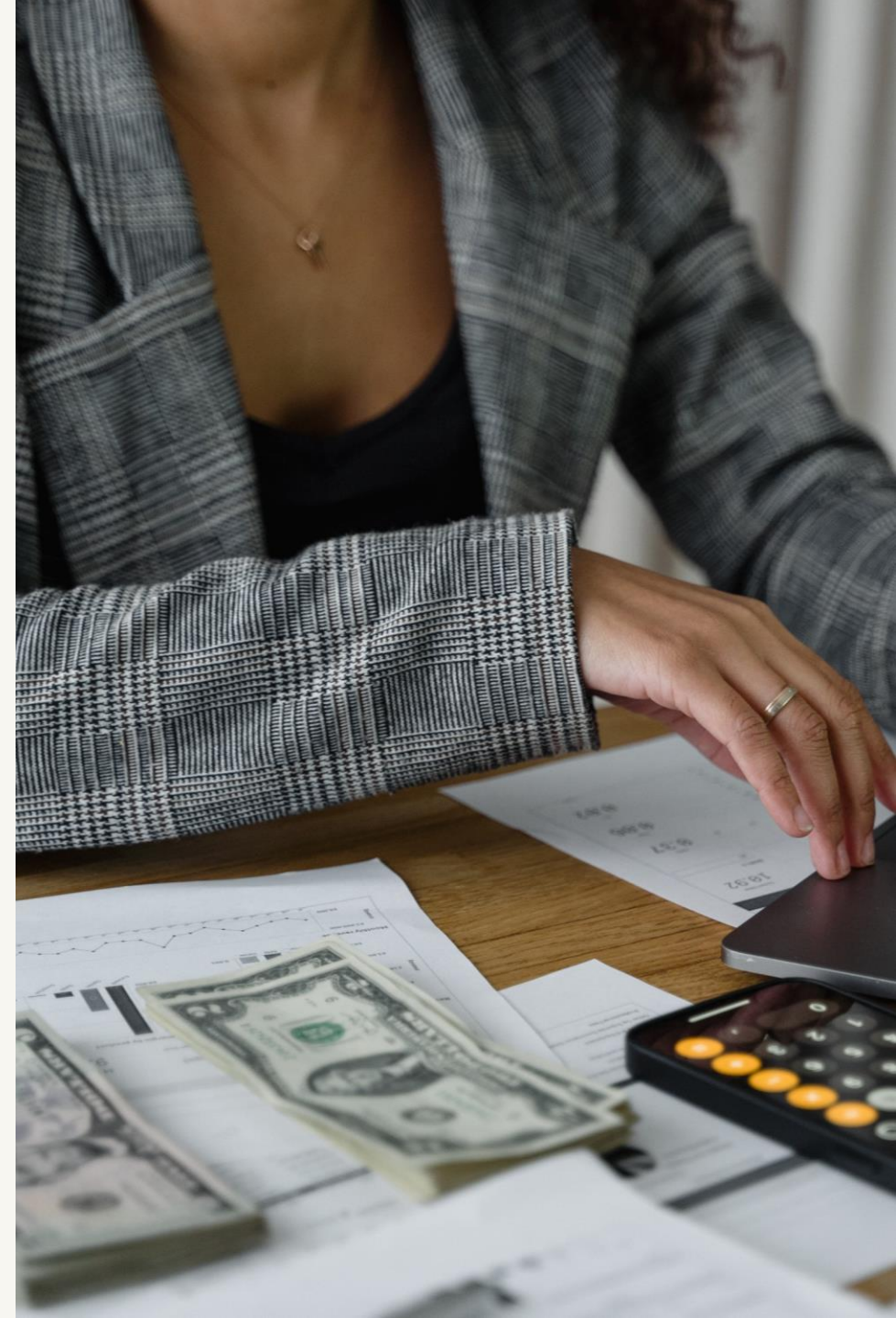
- Extent to which the work is **integral** to the employer's business
- Degree of **control** exercised by the employer
- **Permanency** of the relationship
- **Skill and initiative** required to perform the work
- Degree to which the worker's opportunity for **profit or loss** is determined by the employer
- Extent of the relative **investments** of the worker and employer

ABC Test:

- A. The worker is **free from the control and direction of the hirer** in connection with the performance of the work, both under the contract for the performance of such work and in fact
- B. The worker performs work that is **outside the usual course of the hiring entity's business**; and
- C. The worker is customarily engaged in an **independently established trade, occupation, or business** of the same nature as the work performed for the hiring entity.

Pay Equity and Transparency

- Washington, Oregon, California, New York, Colorado, Hawaii, and D.C. are on the cutting edge with pay transparency and pay equity.
- Some states have essentially nothing (usually a replica of the federal law) but may be in a Circuit with a narrow view of what is “job-related” when it comes to pay differentials.
- Other states have limited law and employer-friendly case law.





Meal and Rest Breaks

- Some states are *intense* about meal and rest breaks; this is an area of significant liability, so you want to follow the letter of the law.
- It's usually best to have a company-wide approach for both morale and productivity
- Breaks restore motivation, help us retain information, improve productivity, creativity, and focus, and reduce decision fatigue (*How Do Work Breaks Help Your Brain?*, Psychology Today)



Cutting Checks

States have wildly different views on:

- Allowable payroll deductions, by type and amount
- Timing of final paychecks
- Payout of vacation or PTO, and if or how you can get around it
- Expense reimbursement
- What needs to be displayed on paystubs
- Timing of pay

Recordkeeping and Statutes of Limitation

- Some states may not specify recordkeeping requirements at all, while others have long lists of info that needs to be kept for X number of years.
- Employees will have different amounts of time to file claims and sue for employment claims in different states. You'll want to have records if this happens, even if you're not technically required to keep them.



Minimum and Overtime Wages When Traveling



- Some states (CA) may have more extensive travel time requirements than the federal DOL.
- Local minimum wages may kick in after just a few hours.
- State minimum wage and overtime laws likely apply. While state statutes don't specify, California at least has said when people are in their state, they need to get California's minimum wage and overtime.

Policy Approaches

Poll Question



Are the rights and benefits *you* grant to employees mostly consistent across states, even when state law requirements differ?

Handbook Options

- One handbook - mostly blended policies and special state policies added in the main body
- One handbook - mostly blended policies and state policies in state *addendums*
- One handbook - a shorter “core” section and many state policies in the body or addendums (no attempt to blend)
- If using addendums, give all employees all of them or give each employee just their applicable addendum
- Different handbooks for each state - no addendums required



Unique-to-State Policies v. Blended Policies

Consider:

- How employees are distributed
- Company ethos
- Policy administration



Equal Employment Opportunity (EEO)

- **Federally Protected Characteristics:** Race, color, national origin, age, religion, sex, sexual orientation, gender identity, disability, military or veteran status, genetic information, citizenship or immigration status
- **Protected Characteristics under Various State Laws:** Lawful off-duty conduct, political affiliation, marital status, familial status, arrest records, domestic violence victim status, credit information, traits association with race (e.g., natural hairstyles)



Leaves and Benefits

(hardest to easiest to blend or offer widely)

- Sick Leave
- Extended family leaves (state FMLA)
- Jury service leave
- Vacation payout at termination
- Lactation accommodations
- School involvement leave



An Example: Voting Leave

California and Delaware

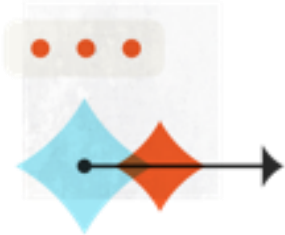
Employees will be granted up to **two hours** of leave to vote in an election where they are registered to vote. This leave will be **paid** at the employee's regular rate of pay. Employees must give at least **two days' notice** of the need for leave to vote.

Georgia

Employees will be granted up to **two hours** of leave to vote on the day of an election or on any in-person early voting day. The two hours will be **unpaid**. Employees must apply for leave **prior to Election Day**.

New York

If an employee does not have four or more consecutive nonworking hours while the polls are open, then they will be granted **enough time off** on Election Day so that they are able to vote. Up to **two hours** of that time will be **paid**. Employees must give at least **two days' notice** of the need for leave to vote.



Best Practices for Distributed Workforces

Posters and Notices

- Pick a reputable poster company, but also keep an eye on new requirements.
- Laws about postings are evolving but not as fast as we'd like.
- Post on the company intranet or virtual bulletin board.
- Scan and email or print and mail for remote employees.
- Non-compliance is low risk, but not no risk.



Safety Obligations

(you're not off the hook with worker's comp)

- Make sure employees aren't exposed to reasonably foreseeable hazards in their at-home employment or the set-up in an office you don't have eyes on.
- While you aren't responsible (as far as OSHA is concerned) for a home office space like you would be for a shared office, that doesn't mean you shouldn't offer suggestions if you see hazards or issues.





Time Tracking for Non-Exempt Employees

- Beware of off-the-clock (untracked) time
- All time worked must be tracked and paid
- Have a detailed policy and an open-door regarding workload and how things are going

Time Zones

If you have employees across time zones, but only operate solely in one of those zones, make that clear in your advertisements.

If it's not your intention to make everyone work within one time zone, think about this ahead of time and make sure your managers are doing the same.



Access to the Bosses and Interaction with Coworkers



Equal access may not be possible but do what you can to make sure employees who aren't in the same place as the C-Suite, their own managers, or the bulk of their coworkers still feel heard and included.

Focus on:

- Inclusive video meeting practices
- Increasing opportunities for interaction for remote workers
- A functional and fully adopted instant communication system (Slack, Teams, Discord, etc.)

Q & A

Thank You