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Electronic Alert

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Working From Home (Out-of-State)?
Best Practices for Managing Multi-State Remote Work

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We frequently receive questions about the implications for employers when an employee works from home in a state other than the state in which their employer's office is located. This was a common practice during the heat of work-from-home COVID-19 restrictions, but some employers have extended this flexibility beyond the end of their COVID-19-related work from home.

This often comes up in the context of payroll tax/income tax for the employee and especially if the State in question has a different income tax structure than the business. For example, Washington vs. Oregon. It is natural to want to accommodate employees and provide them the best possible flexibility and tax strategy. However, the state an employee works in has additional considerations for any employer including:

1. Registering for a business license in the state;
2. Establishing sales tax nexus with a state;
3. Unemployment and workers' compensation;
4. State-specific sick pay and leave laws; and
5. Payroll set-up and state reciprocity.

With COVID-19 and many employees working from home, most jurisdictions took a hands-off approach to determining state of residence during the temporary health crisis. Some states, especially those located on the East Coast, issued formal guidance and many out West continued to operate with current laws, but within an atmosphere of non-enforcement.

As COVID-19 work-from-home restrictions continue to loosen, we expect most states to return to a traditional view and require state-tax payments and employer registration where an employee performs work in a state. However, this return to the "norm" in a post-COVID-19 landscape raises more questions than it answers. How does an employer ensure legal compliance when an employee works from a state that is otherwise unrelated to an employer's business? Does the mere presence of the employee require compliance with that state's specific laws?

There are no one-size-fits-all approaches or definitive answers to these questions. Most of the risk lies with the employer and the compliance requirements make it critical that employers educate themselves as to the considerations related to an out-of-state employee. For example, failure to withhold wages in Oregon for a Washington employee working at home could lead the State of Oregon to require the employer to remit such tax withholding to the State of Oregon. An employer in Multnomah County may be required to withhold the Multnomah County preschool tax for a Washington-based employee while the State of Washington requires withholding from the employer for its Long-Term Care plan. Washington may require sales tax remittance related to the Washington employee's presence even though the company is solely in Oregon.

It is important to consider all aspects of a policy for out-of-state employees, ensuring such policies are drafted to ensure maximum protection for employers and provide employees with a clear roadmap of considerations for their own personal tax benefit (which does not obligate the employer to greater compliance or taxation risk and costs).

For questions related to multi-state remote work or for any other benefits and compensation questions, contact the Barran Liebman's Benefits Team at 503-228-0500. You can also learn more about recent benefits law changes, including those related to multi-state remote work, by registering for Barran Liebman's upcoming August 3rd webinar, presented by Iris Tilley: "Preparing for 2022: Your Benefits & Compensation Planning Guide."