

Electronic Alert

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Where Do My Employees Work for Leave Law & Paid Time Leave Purposes?

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As you read in [last week's E-Alert](#) regarding an employee's tax home, remote work compliance remains a key area of concern for employers. In addition to the tax considerations we wrote about last week, we regularly receive questions regarding how to comply with leave laws when an employee works in a state other than the state in which an employer is headquartered or otherwise does business. Stay tuned for additional E-Alerts that will cover considerations such as wage and hour, workers' compensation, and insurance-based remote work compliance.

Leave Laws

With many states and even cities or counties developing their own unique leave laws, employers are drowning in Google searches and questions to advisors as they try to determine which leave laws to follow. Further complicating the calculus, coverage by state and local leave laws is often subject to the employee-counting considerations in which physical location of both the remote employee and other employees of the employer come into play.

While state and local leave laws require their own consideration, we can offer some certainty around the federal Family and Medical Leave Act (FMLA). Employees who are otherwise eligible for FMLA leave are only covered by the law if they work for an employer with at least 50 employees within 75 miles of the employee's work location. With that in mind, a single remote employee working out of a state other than the state in which the employer generally operates often will not be covered by FMLA.

For state and local leave laws, the first rule of thumb is the physical location of the employee. It is important to determine whether the company's general leave policies, including paid time leave, comply with each state in which an employee may work. Company policies requiring employees to inform the company about where they are physically performing work are also important. Employers may wish to mandate that employees perform work from the employer's office a designated number of days per week to control which leave laws govern a particular employee.

Practice Tip – Handbooks: Employers are often understandably resistant about creating handbooks or customized policies for a single out-of-state remote employee. However, identifying and documenting the contours of an employee's relationship with the employer is critical. Fortunately, an employer's current employee handbook can generally be amended to add an addendum for each

relevant state in the place of drafting complete handbooks each time an employee begins out-of-state remote work.

Whether you are considering your first out-of-state remote hire, looking to get into compliance after loose policies driven by COVID-19, or already operating as a seasoned multistate employer, our remote work team is ready to assist with any questions that may arise.

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