

Revisiting Remote Workforces - They May Be Here to Stay in Some Form

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Background

Early in the pandemic, I [reported](#) on the widespread newly created remote workforces resulting from stay-at-home orders issued by the governors of most states. In many cases, neither the employer nor the workers were prepared to take this journey.

Fears were rampant among employers that workplace productivity would diminish, quality of work would be impacted, technology would not support remote workers, culture would be compromised, employee recruiting and retention would be harmed, and customer goodwill would be tarnished. On top of that, many employers worried that employee fatigue (mental and physical) would accompany the new workforce model.

Preliminary Results

Now that we are over two years into the pandemic, employers and employees alike are surprised to find that their fears, for the most part, were misplaced. In most cases, it is reported that the remote workforce model is working quite well.

- Employees generally like the remote workforce model;
- In a large number of cases, employees desire to remain remote post-pandemic;
- The lack of commuting to and from work reduces employee disruption, stress and household expenses (commuting costs, daycare, meals and clothes), and allows more time for family and leisure activities;
- Workplace politics are diminished;
- It creates flexibility as to where employees may live, resulting in housing costs reductions in some cases; and
- Employee absenteeism is diminished.

The result is clear. What started out with the appearance of a mad science experiment is working. In fact, many employees are insisting on continuing their remote working arrangement.

For the employers, some advantages of having a continuing remote workforce exist, including the potential to diminish physical footprints, thereby reducing the overhead associated with owning or leasing real estate, and expanding the geographic area for recruiting talented workers.

As I reported previously, a multitude of issues arise for employers when their employees work in a jurisdiction that differs from the employer's physical location. These issues include being subject to the tax, labor and employment, workers' compensation insurance, and unemployment insurance laws of multiple states. Employers may be required to obtain authority to do business in several jurisdictions. The presence of a remote worker in a different jurisdiction may subject the employer to the jurisdiction of the courts of the remote worker location. Last, employer-provided benefits such as health insurance may be impacted when employees are working in multiple states.

Because of these issues, employers have to be vigilant and must keep track of where their workers are physically located when performing services. Failure to do so may result in numerous tax and legal noncompliance issues.

Potential Hybrid Arrangements

Since employees in large numbers are expressing a desire to continue working remotely, it is possible that some employers will allow the model to continue post-pandemic or adopt ongoing hybrid work arrangements for their workforces.

If a workforce or segments of a workforce remain remote, following the guidance I discussed in [previous posts](#) is recommended. Things get complicated, however, when employers adopt a hybrid remote workforce model.

Under a hybrid model, employees will work at the employer's place of business a portion of each work period (e.g., 50 percent) and work remotely the remainder of the work period (e.g., 50 percent). If the employer's work location and the employee's remote work location are in the same jurisdiction, that should be easy for the employer to navigate.

The complexity comes into play in a hybrid workforce model when the employer and the employees are not located in the same jurisdiction. The employer will need to consider and comply with the tax, labor and employment, workers' compensation insurance, and unemployment insurance laws of multiple jurisdictions.

This road may not be easy to navigate for many employers. The difficulty of navigating the road results from an employee working in more than one jurisdiction (i.e., the employer's location in Jurisdiction 1 a percentage of the time and the employee's location in Jurisdiction 2 a percentage of the time).

- For income tax and payroll tax matters, it may be a matter of tracking each employee's time by location and prorating wages.
- Although there is no clear guidance, for insurance benefits, there may be no issue as long as the insurer understands the arrangement (the workers are performing services partly within the employer's jurisdiction and partly in other jurisdictions) and underwrites the insurance accordingly.
- Unemployment insurance compliance may be a troublesome and uncharted territory. Whether the employer will be required to pay into the programs of one or both states (and if it is one state, it is not clear whether it is the state where the employer is located or the state where the employee is working remotely). The rules of the states may vary. Each state wants to fill its unemployment coffers.
- Compliance with workers' compensation insurance laws, like unemployment insurance, may be equally difficult.
- Compliance with labor and employment laws of multiple states will need careful attention. For example, in the situation where the hybrid workplace stretches over two states, it is unclear which state's wage and hour laws, sick leave laws, family leave laws, noncompetition laws or trade secrets laws apply. Maybe both apply. Caution is advised as these waters are likely unnavigated. One resort may be to comply with the laws of both states. While it may sound easy, with a large remote workforce, the task could be overwhelming.

Conclusion

The pandemic has taught us that workforces are mobile. Employees can work remotely from just about anywhere internet access exists. With employees demanding that employers continue the remote workforce model, it may be the new normal.

Employers need to know where their employees are performing services. Traps exist for employers who fail to keep an eye on the issues that accompany a mobile workforce.

While costs of tax and legal compliance with the laws of multiple jurisdictions must be considered, in many cases, the cost savings and enhanced employee morale make the continued venture well worth it.

The hybrid remote worker model has been adopted or is currently being considered by many employers. Additional complexities accompany that model. Carefully considering, monitoring and navigating these complexities is required.

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