

Hybrid How-To Key Analysis Checklist

Legal and Compliance Thoughts When Employing Individuals Outside the Company's State of Operation

This document is meant to set forth many of the issues employers should keep at top of mind when employing individuals outside of their state of operation. It is not meant as legal advice and counsel should be sought to ensure that all essential tasks related to employing an individual out-of-state are completed.

Determine Which State and Local Laws Apply to Hybrid Employees

- ☐ Recognize that hybrid employees may be covered by the laws of two or more states or local jurisdictions depending on the laws' requirements and the time spent working in each jurisdiction.
- ☐ Carefully analyze which state and local employment laws apply to an employer's hybrid employees, including laws governing: hiring requirements; vacation, paid sick leave, and other leave or paid time off; payment of wages and overtime; meal and rest breaks; business expense reimbursement; and required new hire and other disclosures.
- ☐ Ensure that the employee handbook and any stand-alone employee policies comply with the laws of each state and local jurisdiction where hybrid employees work remotely.
- ☐ Evaluate the tax implications of employees' various work locations and ensure proper withholdings, which is complex and likely requires professional tax advice.

Ensure Compliant Employment Practices During Remote Working Time

- ☐ Employers must take special care to comply with applicable laws and engage in best business practices during the time employees work remotely. This may include registering to do business in the state the employee is working from.
- ☐ Implement and enforce policies that ensure non-exempt employees accurately record and are paid for all hours worked under the Fair Labor Standards Act (FLSA) and applicable state and local wage and hour laws.
- ☐ Recognize that employers must pay employees for any time the employer knows or has reason to believe the employee worked, even if not expressly authorized or in violation of the employer's policy (in which case the employer may discipline the employee).
- ☐ Determine whether the company will pay for any expenses, such as WiFi, computer monitors, office supplies, or cell phone expenses, incurred by employees while working remotely either: on a voluntarily basis; or because applicable state law requires certain business expense reimbursements.
- ☐ Comply with all applicable state and local leave laws, which may vary depending on the number of hours worked remotely if the laws in the remote work location differ from the in-person location.
- ☐ Comply with any continuing COVID-19 protocols that may vary by jurisdiction, and other health and safety laws and regulations.
- ☐ Implement and enforce policies and procedures to protect the company's trade secrets and confidential information.
- ☐ Manage employee conduct and performance consistently for all employee designations, including in-person, hybrid, and fully remote employees.

For more information on managing your hybrid workforce, contact Tawny Alvarez, talvarez@verrill-law.com.