NAVIGATING MULTI-STATE COMPLIANCE REQUIREMENTS

For organizations with a remote and hybrid workforce

Always Designing for People®

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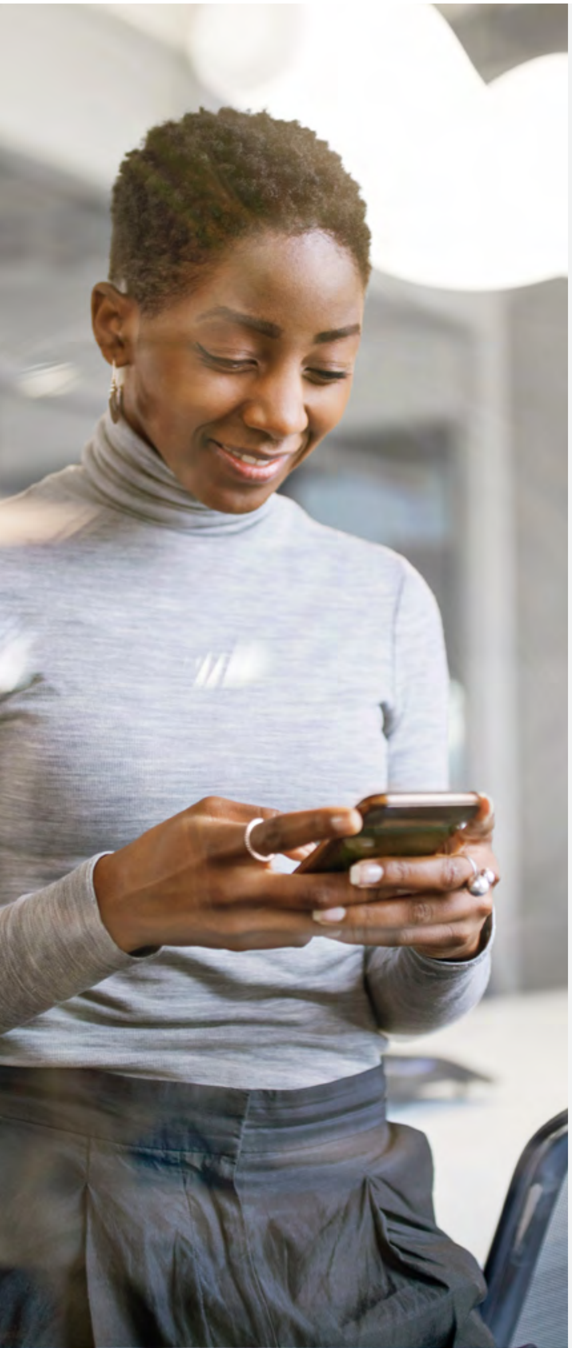


INTRODUCTION TO COMPLIANCE CHALLENGES

It is no secret that organizations want to recruit the best talent. In fact, almost half of organizations reported that building a talent pipeline is their top priority in the coming year.[1] And, as organizations look to engage with younger generations like Millennials and Gen Z workers — who rank a positive work/life balance as their top consideration when choosing an employer[2] — it is no surprise that remote and hybrid work arrangements maintain their appeal.

But laws affecting organizations' compliance responsibility have been rapidly evolving, and as more states propose and pass legislation, keeping up with laws affecting employer requirements has become more challenging than ever before.

As legal requirements develop, many organizations are met with more compliance complexity than they anticipated or were prepared to handle.

So how can organizations know what requirements they are expected to comply with when employees are spread throughout multiple states or relocate to new states? Keep reading to find out.

Need a short cut to checking your organization's compliance liability in other states?

Use this Compliance navigator:
The multi-state road map

THE LEGAL FOUNDATION FOR MULTI-STATE COMPLIANCE

Why is it important to know where remote employees live?

It is important to know where your remote employees are because the laws of their jurisdiction affect both employees and employers.

Employee(s) and organizations can be subject to the laws of the state where the employee works (or where the employee lives, if the employee works remotely).

Failure to comply with the state laws can create improper tax withholding and other non-compliance liability.

A single remote employee could establish a nexus (see glossary) in another state.

Which state laws apply, worked-in or lived-in state?

Many organizations make the mistake of withholding taxes from employee pay based on the state where company headquarters are. In many cases, this is incorrect. A good guideline is to ask yourself: "Where does the remote employee live and work?" The answer will tell you which state laws apply. (Exceptions to this are possible through the employer convenience rule — see glossary.)

Employees with a hybrid work arrangement who cross a state line on their commute to the office may require tax withholdings from two states. In this case, the employee would be working from one state on their work-from-home days, and another state on their in-office days.

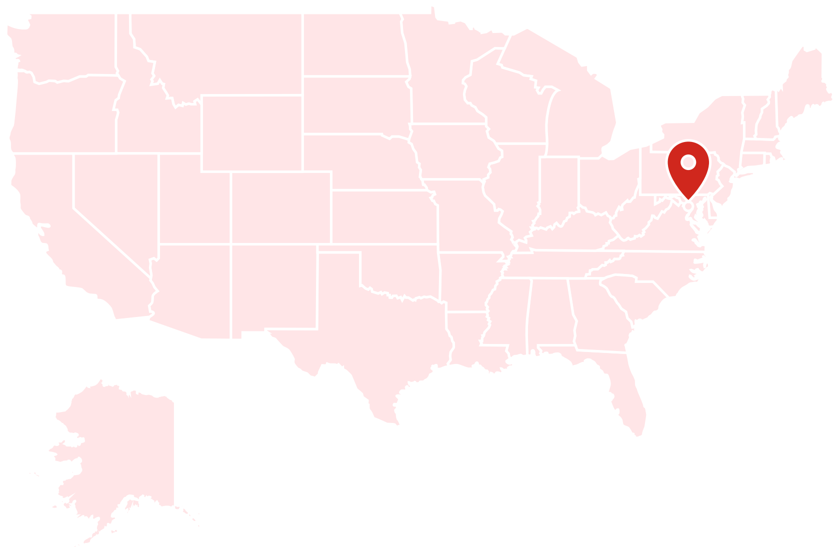
Employers should determine whether the two states have a reciprocity agreement, which would affect tax withholding. If a state reciprocity agreement exists between the states where the employee lives and works, they would generally only file and pay taxes in their state of residence.

If no state reciprocity agreement exists, an employee may need to file tax returns in both their state of residence and the state where they work. Employees are generally eligible for a tax credit on their resident state tax return for taxes paid to the worked-in state. This helps to avoid double taxation of the same income.

KEY LEGAL CONSIDERATIONS BASED ON LOCATION

Employers need to consider other laws applicable to employees in another state. As an example, assume a remote worker relocates to Washington DC. In this example, the employer now must consider laws DC has enacted, such as the list to the right.

Laws vary by state, and not every law may be applicable, but this list showcases the various laws employers may be subject to. The burden is on the employer to research, determine and take the necessary actions to comply.



List of DC laws to consider

- Accrued Sick and Safe Leave Act
- Wage payment and collection law
- Family and Medical Leave Act (DC FMLA)
- Parental Leave Act
- DC Minimum Wage Act
- Paid family leave law
- Living Wage Act
- Tipped Wage Workers Fairness Amendment Act
- Health coverage mandate and employer reporting of health coverage
- Jury duty leave law
- DC commuter benefits law
- Protecting Pregnant Workers Fairness Act
- Voting Leave Act
- Fair Criminal Record Screening Act
- Ban on Noncompete Agreements Amendment Act
- Unemployed Antidiscrimination Act

SETTING UP YOUR ORGANIZATION IN A NEW STATE

When you find out you have an employee living and working remotely in a state in which the organization is not registered, the best practice is to set up the organization in that state. This helps ensure accuracy for state taxes and all other state compliance items (e.g., pay data or other reporting requirements, labor laws, etc.).

Even if that employee is your only employee in that state, you may still need to register your organization there.

Setting up your organization in a new state might sound intimidating, but it can be quite simple. Two places you may need to register:

- Department of Revenue website (taxation).
- Department of Labor or Workforce Development website (labor laws and/or Unemployment Insurance).

Note: In some states, both agencies are combined into one (e.g., California Employment Development Department).

How to register your organization:

1. Review the registration instructions on both websites (Revenue and Labor/Unemployment Insurance).
2. Provide agencies with your organization's information.
3. Complete the registration steps via the instructions (depending on the state, this could be online or via mail).
4. Collect your Employer Identification number.

The process may vary by jurisdiction. Local registration may also be required. We recommend that you consult with legal and/or tax counsel.

OPERATIONS STRATEGIES AND BEST PRACTICES

Best practices for getting employees to share their location

Employees who work remotely can get their work done from anywhere, and it may not occur to them to advise the employer of a physical location change. But, as you know now, employers must withhold taxes in the state where employees are physically performing work (even if that work is performed at their kitchen table on a laptop) as well as comply with state labor and reporting laws.

Here are two principles to abide by:

1. **Make it easy for employees to share their location.**
2. **Be honest and clear about the potential legal consequences.**

Ideas for making it easy:

- Add an “update address” button on the employee portal home screen.
- Send quarterly notifications requesting confirmation of current address.
- Have an address change trigger an alert to HR staff to check with employees and confirm.

Ideas for honest communication about potential consequences:

- Send company-wide communications stressing the importance of location accuracy.
- Have managers communicate that corrections often cost extra money.
- Discuss in one-to-ones that amended withholdings could delay tax filings and tax returns.

WHAT TO DO IF YOUR EMPLOYEE FORGETS TO TELL YOU THEY MOVED

While many organizations have policies requiring remote employees to disclose and discuss relocation with management, there are times when employees do not disclose that they are planning to relocate or already have relocated. However, as discussed in the sections above, having the correct lived-in and worked-in location is crucial for tax accuracy and state compliance.

If the employee's relocation was to a state in which your organization did not previously have nexus and was not registered, you may be required to register your organization within that state.

What to do if you *find* out a worker has relocated outside of your organization's stated policy:

- Educate them on the importance of having their accurate location.
- Find out the date they relocated.
- Correct the location set-up moving forward so future taxes are accurate.
- Register your organization in that state if not already registered (see page 7).
- If needed, work with your payroll provider, accountant, and tax/legal counsel to correct any wages/ withholdings reported to the wrong state.
- If necessary, work with your payroll provider to produce a corrected Form W-2.
- Review any relevant licensing requirements (depending on occupation none may be needed)

Licensing may be an issue in some occupations such as legal, insurance, *financial* advisors and so on.

DETERMINING IF THE LAW APPLIES TO YOU BASED ON YOUR NUMBER OF EMPLOYEES

Some laws apply based on the the number of employees an organization has or the number of employee working in that state. Laws vary from state to state, so it is important to stay abreast of existing laws and pending legislation to help ensure you understand your employer liability and obligations based on the number of employees you have in each state.

For example, California's pay transparency law requires California organizations with 15 or more employees to include a pay scale — also known as pay or salary range — on all external job postings, even ones posted by third-parties, if the position may ever be filled in California, either in-person or remotely. Only one of the 15 employees must be in California for this law to apply.

Thresholds vary not only by state, but often also with respect to the various laws that may apply. Many state laws are enacted with exclusions for small businesses, so it may be helpful to review each applicable law to determine whether it may apply to a remote employee working in the state.

Many small business exemption thresholds are based on the number of employees nationwide.

STRATEGIC PLANNING FOR REMOTE EMPLOYEE MANAGEMENT

Can I limit the states in which I hire employees?

Yes, you can absolutely limit the states in which you hire employees. If you are hiring for a remote role, you may consider hiring only in states in which you are already registered. If you are using sponsored job ads, be sure they are targeted toward residents of the states in which your organization is already registered or is willing to register.

If you are limiting the states in which you hire remote employees, consider releasing an internal relocation policy to existing remote employees so that they are aware they may not be able to continue their employment if they move to a specific state where the organization is not registered.

Remember, if you limit the states where your organization is willing to hire remote employees, you may also limit your talent pool. While it is perfectly acceptable to limit the states you hire in, there may come a time when you want to expand your organization's talent pool to include states you have not traditionally hired in before.

Looking to a multi-state future

As many organizations expand and grow, if leadership is open to sourcing the very best talent from across the country, their remote and hybrid workforces will expand. Being a multi-state employer with a multi-state workforce is here to stay, and the sooner organizations develop and implement policies and practices that set them up to stay in compliance and to handle remote employee relocations, the sooner they will learn to ask the right questions and develop the confidence they need to handle compliance for a multi-state workforce.

ADP's SmartCompliance Solution can help you with your compliance needs. From Affordable Care Act (ACA) compliance and wage garnishments to employment tax, wage payments and beyond, ADP SmartCompliance® enables you to stay ahead of post-payroll compliance obligations on a seamless platform.

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GLOSSARY OF TERMS

▪ Bona fide work location

A bona fide work location refers to a legitimate, genuine place of employment where organization activities are conducted. This can be an office, a factory, a shop or any other location where employees are regularly stationed or perform their work duties. It is often used in situations where the legitimacy of a work location affects legal, tax or regulatory considerations, such as determining eligibility for certain benefits or compliance with labor laws. What constitutes a bona fide work location can differ by state.

▪ Convenience of the of the employer rules

Convenience of the employer rules require that a work location and the associated state tax obligations are determined based on whether the employee's remote work location is for convenience of the employer or the employee. If an employee works remotely for the employer's convenience (e.g., the employer requires services to be performed outside the state), then the employee's income may be taxed based on where the remote work is being performed.

Conversely, if an employee works remotely for their own convenience and not as a job requirement, they may be subject to taxes in the employer's state, depending on local laws. This concept can affect where taxes are paid and how much, influencing decisions about remote work and the structuring of work locations. These rules are currently in effect in Alabama, Connecticut, Delaware, Nebraska, New Jersey, New York and Pennsylvania, adding another layer when determining how to withhold for employees working remotely. Convenience of the employer rules sometimes apply only if both states (lived in and worked in) have these laws in place.

GLOSSARY OF TERMS (CONTINUED)

▪ Nexus

Generally, having "nexus" in a particular state means that the employer has met the applicable threshold to establish a legal presence in the state. Organizations that meet state nexus thresholds are generally subject to state taxing authority and other applicable state laws. States have different definitions of what constitutes nexus, but generally, an organization will have nexus in a state when it has a physical location, economic activity or employees in that state. This means that even if your organization's primary physical location is in one state, remote employees in another state could establish legal nexus in another state.

▪ State reciprocity

State reciprocity refers to an agreement established between states that allows workers to live in one state and work in the other without paying state income tax in both states. This can mean that employees only pay state income tax to the state where they live rather than the state where they work.

▪ Thresholds

Thresholds refer to the amount earned in and/or number of days an employee can work in a given state without the employer incurring income tax withholding obligations within that state. If an employee exceeds the threshold (e.g., 14 days, 30 days, etc.), the employer must withhold state taxes from the employee's earnings. Thresholds vary from state-to-state..

CONCLUSION

Many local jurisdictions impose their own taxes and compliance obligations, in addition to state laws. While this toolkit focuses on state compliance, you should perform the same analysis for any local jurisdictions where your employees are working.

1. Symphony Talent. State of Recruitment Marketing in 2024, 2024.
2. Deloitte. 2024 Gen Z and Millennial Survey, 2024.

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