

Dear HR Knowledge: How do we know which state law to follow when it comes to benefits and leaves for our remote staff?

While COVID-19 has changed how many businesses view remote work, this question has always posed numerous challenges for employers. When you have employees working in several states that are different from the business's "home state" or physical location(s), there are a myriad of leave laws at both the state and local level that you will need to consider. Usually, the most generous law is upheld, but alas, there isn't a one-size-fits-all approach.

Leave laws typically apply based on where an employee physically works, but that's not an across-the-board rule. For example, for employers subject to the federal Family Medical Leave Act (FMLA), that law may seem straightforward, but there are nuances. To be eligible for FMLA, an employee must work at a worksite where 50 employees work within a 75-mile radius. That is in addition to the requirements of 12 months and 1,250 hours of service. Under the FMLA, an employee's personal residence is not considered a "worksite"; rather, the worksite "is the office to which the employee reports and from which assignments are made." So, FMLA eligibility is determined not by where the employee's home office is, but where they report to and where their work is being assigned from.

For the purposes of FMLA eligibility, what if an employee's boss is also remote? Unfortunately, this predicament isn't clear and neither the Department of Labor nor case law has given us guidance on how to resolve it. From a practical standpoint, when the FMLA regulations say "office" to which someone reports, we can assume that it's the organization's physical location. All of this demonstrates that you will have to assess each situation individually when determining FMLA eligibility.

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To add complexity, many states have stronger requirements above and beyond the FMLA that employers need to be aware of. For example, some states, such as Massachusetts, have a Paid Family and Medical Leave (PFML) program, which looks at eligibility differently from the FMLA. Eligibility for PFML is not dependent on how long someone has worked for the organization but, rather, is based on earnings within the last year. Therefore, if an employee worked at all in Massachusetts, and then moved out of state, they may be eligible for MA PFML.

In addition to leave protections, many states require paid sick time, and this can be a bit fuzzy when it comes to your remote employees. For example, if a Florida-based employer has an employee working remotely in California, does the employee receive paid sick time? There is no requirement for Florida employers to offer paid sick time; however, California does require it, so this employee should be awarded with paid sick time. To make things even more complicated, let's say this remote employee works from their home office in San Francisco, which has a more generous paid sick leave requirement than the California statewide benefit.

Most states do not require paid vacation; but for the ones that do, there are specific rules to follow. More and more states are adopting "paid leave," such as Maine, which requires employees to receive paid time off that can be used for reasons beyond just sick time. So, if you are an employer in New Hampshire and offer three paid vacation days per year and have a remote employee working over the border in Maine, that employee may need to receive more paid time off. As you can see, there are many different scenarios, and this patchwork of state and local paid time off requirements can seem like a jigsaw puzzle.

Other benefits to consider include health insurance. An organization's health plan is typically limited to the plan network. Many plans have greater coverages for in-network providers; so, when it comes to remote employees, you will want to discuss these issues with your benefits broker.

When considering leaves and benefits for remote employees, the common theme is that it's complicated, with many factors and nuances to consider. It is imperative, therefore, to ensure that you have clear remote work policies. Such policies should delineate the differences between mandatory and voluntary remote work arrangements and should require employees to notify you of any change in their work location so that you can ensure proper compliance under the appropriate authority. You do not need a separate handbook for each state you operate in, but we do recommend that your handbook contain the most significant law distinctions, which can be outlined in state-specific handbook addendums. The composition of an organizations' remote workforces can vary greatly, so there isn't one standard approach to managing leaves and benefits. If you are interested in learning more about the complexities of managing a remote workforce download [HRK's Remote Workforce Planner for Employers](#).

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