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## HRK'S REMOTE WORKFORCE PLANNER FOR EMPLOYERS

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# DISCLAIMER

This planner is for **informational and educational purposes only** and is not a replacement for, nor should it be taken as, legal or professional advice. These guidelines are not intended as a replacement for Federal, State, or Local guidance, but rather to summarize the requirements set forth in the relevant Federal statutes and regulations; states may require a different set of guidelines. Since laws change frequently, we recommend that employers follow the most updated set of guidelines and obtain legal advice for their specific situations.



# THE FUTURE OF THE WORKFORCE

COVID-19 forced many employers who never considered remote workers as a viable option for their business model, into the homes of their employees. Nearly overnight, organizations had a fully remote workforce that most of us were unprepared to manage. As organizations start to see the viability of a long-term remote workforce even after the pandemic, employers need to recognize that the “fly by the seat of our pants” model that the pandemic forced many of us into, won’t work long term, nor will it be a compliant way to run your business. Before implementing a remote-work model, employers need to be aware of the myriad of obstacles and carefully consider if remote work is in fact a viable long-term option for their business model.

This planner only touches on the basics of what a business needs to consider with a remote workforce. It is not an all-inclusive list, although it certainly highlights the need for employers to not make these decisions in a vacuum. The transition to remote workplaces will depend on a variety of factors, including an employer’s size, location, organizational structure, and industry.

This planner provides an overview of the many obligations and factors employers should consider before engaging with a virtual remote workforce. Our team develops tools and resources to support employers with the challenges they face. We’re not just another cloud-based technology company that also does HR, #WeAreHR. [Get the Scoop](#) on how we can help you simplify HR.

# TOP 10 CONSIDERATIONS

**1** Work with your payroll company to ensure you are meeting your tax and withholding obligations. Employers are required to withhold and pay income tax on any income (wages, salaries, bonus, commission, and other types of income) earned by employees.

- » **State Payroll Withholding:** Employers cannot just rely on an employee’s federal [Form W-4](#); state withholdings can have differing requirements. Normally, the employer’s state tax withholding obligation is owed to the jurisdiction where the work is actually performed. However, this general rule is subject to several exceptions, including state-to-state reciprocity agreements and other considerations. Some states have temporarily waived certain tax obligations for out-of-state employers with employees temporarily working remotely because of the pandemic. However, even in those states, the “home state” employer may still have to withhold and remit foreign-state income taxes on behalf of their out-of-state employees. Unlike unemployment taxes, which are paid to a single state, income tax withholdings may be required to be paid to several states at one time.
- » **State Unemployment Insurance (SUI) Tax:** There are several factors that should be considered when determining the correct state for Unemployment Tax:
  1. **Localization of Services:** Where the employee works the majority of the time
  2. **Base of Operations:** Where the employee has a base of operations, and performs some services
  3. **Place of Direction and Control:** Where the employee receives direction and control from the employer, and performs some services
  4. **Residence:** Where the employee resides, and performs some services
  5. **Reciprocal Agreements:** If the states [have reciprocity](#), the employer can choose the state of coverage



Employers need to be aware of the [State and Local Tax Requirements](#) in the locations where their employees are working.

The general rule of thumb is that employees must pay taxes to the state where they are located and performing the work; known as the “physical presence” rule, this rule requires the employer to withhold state and unemployment taxes in the state where their remote staff members work.

**State reciprocity** means that the state in which the employee works and the state in which they live have agreed to exempt the employee from one of the state’s taxes. Generally, the state of residency takes precedence. For example, someone who works in Virginia but lives over the state line in Maryland would pay only the Maryland income tax.

# TOP 10 CONSIDERATIONS

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**Ensure you understand that compensation requirements vary state by state and even on a local level.** When it comes to paying your employees across state lines, you need to be aware that there are state and local minimum wage, timekeeping, and other various compensation requirements.

- » **Fair Labor Standards Act (FLSA)/Overtime Obligations:** Your employee may have been exempt under the federal FLSA, but now you need to consider if they are exempt under the wage and hour laws of the state/ city in which they are regularly working. In addition, state laws vary regarding [overtime pay obligations](#), and may exceed federal requirements. In California, for example, the weekly salary threshold for certain categories of workers is calculated by doubling the state minimum wage and multiplying by 40 hours. As the state minimum wage goes up, typically so does the exempt threshold.
- » **Timekeeping Requirements:** Employers must have accurate means for tracking all time that nonexempt employees work. This means that employees need to record and report all start and stop times and time used for any work performed outside the normal workday (e.g., text messages, emails, and working on projects after normal working hours). Businesses may discipline nonexempt employees for violating overtime policies, but employers can never withhold overtime pay. Some states require time-tracking for all employees; for example, under [the Illinois Wage Payment and Collection Act](#) employers are required to keep daily time records for all employees “regardless of an employee’s status as either an exempt administrative employee, executive, or professional.”
- » **Minimum Wage:** In most cases, [minimum wage](#) is determined by the jurisdiction in which an employee performs the work. Currently, 29 states and many major cities have a minimum wage above the federal minimum wage of \$7.25. For example, in Massachusetts, the minimum wage is \$13.50 per hour; in the District of Columbia, it’s \$15.20, the highest state minimum wage in the US. The highest city minimum wage is in Emeryville, California, at \$17.13 per hour.
- » **Other State and Local Wage Obligations:** When it comes to payroll regulations, there’s a lot you need to keep track of. In addition to federal laws, each state has its own rules. Following federal laws is critical for payroll compliance; however, employers cannot dismiss state regulations. **Are you aware of the state and local regulations in the locations where your employees are working?:**
  - Commission Payments
  - Meal and Rest Breaks
  - [Termination Final Pay Requirements](#)
  - Pay Rate Changes Notices
  - [State Pay Frequency Requirements](#)
  - [Payment Methods](#)
  - Timekeeping Requirements
  - Overtime Obligations
  - Direct Deposits
  - Wage Theft Protection Laws



**Just paying employees is not as easy as it seems, and one state practice may not be legally sound in another state.**

# TOP 10 CONSIDERATIONS

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**Make sure that you understand the labor laws where your employees are working.** Multi-state compliance is challenging and a real pain point for employers with multi-state locations or remote workers. Many employers think that if they are following federal law they are in compliance; however, they must follow whichever law (federal, state, or local) is most generous to the employee. **Just a few examples of state-specific laws:**

- » **Pay Equity Laws:** The federal Equal Pay Act has been in place since 1963 and several states have had pay equity laws for years; however, new broadened guidelines are now forcing employers to take a closer look at their internal pay practices and correct any disparities. The following states have jurisdiction-specific equal pay laws in effect: California, Colorado, Connecticut, Hawaii, Illinois, Iowa, Maryland, Massachusetts, New Jersey, New York, Oregon, Puerto Rico, Vermont, and Washington State, and the list is growing.
- » **Pregnancy Accommodation Laws:** There are two federal laws that may require an employer to accommodate a pregnant worker: the Pregnancy Discrimination Act (PDA) and the Americans with Disabilities Act (ADA). However, 42 states and Washington, D.C., have state-level provisions for pregnancy accommodations, **most of which offer greater protections than the federal laws;** these laws may also come with certain written notification requirements.
- » **Workplace Notice Requirements:** As an employer, you have a multitude of employee notice and posting requirements. These notices detail your employees' employment rights relating to things like minimum wage, safety, time off, equal opportunities, and state- and local-specific laws that impact employees. Remote employees should have access to federal postings as well as state and local postings that apply to the location they're working from.

Employment laws can come from federal, state, or local sources and it can often be confusing to figure out which ones apply to your workforce. Employers cannot pick and choose which laws to follow, even if they overlap. They must comply with all federal, state, and local laws that are applicable, even if the laws have different legal standards for regulating behavior in the workplace. Sometimes, that means employers need to combine the laws and apply the provisions of the ones that are the most favorable to the employees.

**I-9 Compliance:** While the Department of Homeland Security did put in place temporary policies related to COVID-19 for employers to process I-9 forms in a remote environment, outside of that temporary situation, employers hiring remote workers don't get any kind of break from the requirements. They are expected to verify employment eligibility by reviewing original documents **in person** with the employee and completing the Form I-9 within three business days of the new hire's start date. Employers are not able to use video technology during the verification process, creating challenges for remote workers to complete the Form I-9. Check out our [I-9 Do's and Don'ts](#).

# TOP 10 CONSIDERATIONS

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**Ensure that your company policies comply with the various state paid leave program requirements.** Employers need to update their leave of absence policies as they relate to leave for remote employees — from earned sick leave, to parental leave, to state-mandated paid time off. Over the last few years, state paid leave policies have drastically changed, and a number of states have adopted their own leaves, many of which are paid leave. Not to mention that this past year, some states have adopted their own COVID-19-related leaves. California, Connecticut, Hawaii, Massachusetts, New Jersey, New York, Rhode Island, Washington, D.C., and Washington State have all implemented [medical/family leave programs](#). **Are you aware of the leave of absence laws and regulations in the locations where your employees are working?**

- ✓ Paid Time Off
- ✓ Earned Sick Time
- ✓ Medical and Family Leave
- ✓ Holiday Pay
- ✓ COVID-19-Related Leave
- ✓ Domestic Violence Leave
- ✓ State small necessities leaves
- ✓ Other types of state-specific leave, such as jury duty, witness leave, and the list goes on and on...

**According to Family and Medical Leave Act (FMLA) regulations, an employee’s personal residence is not considered a “worksite.” In the instance of a remote employee, a worksite “is the office to which the employee reports and from which assignments are made.” Many states have stronger requirements above and beyond the federal FMLA and you need to be aware of all the local leave laws that apply to your remote employees.**



Check out our [FMLA Guide for Employers](#).

Don’t assume that because your employees are working from home they are not eligible for leave; remote workers are still eligible for all the leaves they would have been eligible for in a nonremote environment. It is critical for employers to monitor and enforce their time-off policies and train their managers to ensure they are complying with and understand these policies as well.

# TOP 10 CONSIDERATIONS

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**Make revamping your recruitment process a top priority.** Employment practices, including the hiring and interview process, are subject to numerous laws, and noncompliance — whether accidental or intentional — can have serious consequences. When conducting virtual interviews, organizations are tasked with a unique set of challenges. On top of the normal concerns, questions, and effort put into interviewing, you now also have to consider all of the differing requirements in the states and cities that your candidates and potential new hires are going to be working from.

- » **Background Checks:** “Ban-the-box” legislation is rapidly spreading, and new legislation is being passed in cities, municipalities, and states across the nation. Specific laws vary, but ban-the-box laws generally require removing any inquiry into past conviction records from the employment application. Employers with multiple locations in varying states or cities may want to adopt a universal ban-the-box compliant application.
- » **Noncompete/Arbitration Agreement Laws:** Some jurisdictions, such as Illinois, New Jersey, and New York City, have sought to prohibit noncompetes for low-wage employees. The Massachusetts law bans noncompetes for employees who are classified as “nonexempt” under the FLSA. These laws are driven by where the employee is located and working. In addition, many states have arbitration agreement clause laws; employers need to be sure they understand where their employees are working and address those employees’ agreements based on that information.
- » **Salary History Bans:** State and local governments are increasingly adopting laws and regulations that prohibit employers from requesting salary history information from job applicants. With the list continuing to grow, you need to ensure that your hiring managers understand what salary history bans entail and whether they apply in the states in which your new hires will be working. There is also a nationwide trend toward greater pay transparency, where states are passing salary range disclosure laws. The scope of these laws varies in terms of where, when, how, and to whom the necessary disclosures must be made.

Many employers or managers may want to record interviews if another party that was going to interview the candidate could not attend as planned. This seems harmless enough; however, audio and video recordings come with legal risk. Depending on what state you or your candidate is in, recording someone speaking without their consent can be illegal as well as unprofessional. For example, California, Florida, and a number of other states have two-party consent, and others require all parties involved to consent to a recording. In Connecticut, consent must be either verbal and recorded or given in writing. The laws surrounding a recorded conversation are not simple; therefore, we suggest you adopt a policy that prohibits recording any employee/employer conversations.



Consider outsourcing your recruitment process to HRK. Learn more [here](#).

# TOP 10 CONSIDERATIONS

**6** Employee training and development should be a major focus for all employers, but especially multi-state employers, with a remote workforce, who now face a myriad of laws and challenges. The single most important thing you can do to protect your organization, is to ensure that your managers at all levels are aware of their responsibilities when complying with the numerous governmental workplace regulations. Regulations on the federal, state, and municipal levels are constantly increasing in number and complexity.

- » **Anti-Harassment Training:** While having an anti-harassment policy is certainly best practice, it is also a requirement in a number of states. Many states, such as [California](#), [Connecticut](#), [Delaware](#), [Illinois](#), [Maine](#), and [New York](#), as well as [New York City](#), all have mandatory sexual harassment training requirements in effect. Additionally, many states require specific information, language, and training to be incorporated into their company policies. HRK has developed a [Guide to Sexual Harassment Prevention](#) to assist organizations with this vital compliance requirement.
- » **Train your hiring managers:** Before beginning your interviews, you should ensure your hiring managers and recruitment team have a basic understanding of the federal, state, and local laws that affect the hiring process. Review your organization's practices to ensure your hiring managers are aware of effective and legal hiring practices for the states they are hiring in and that they [know what NOT to ask](#), both on a federal and state basis.
- » **Manager/Supervisor Training:** With regulations on the federal, state, and municipal levels becoming more and more challenging, providing HR compliance training is critical for every organization. Our experience tells us that well-intentioned, but untrained managers typically make things worse, not better. To be successful leaders, your managers need the tools to effectively manage your workforce, even more so in a remote environment. Check out our [Supervisory Management Fundamentals](#).



Our experience tells us that well-intentioned, but untrained managers typically make things worse, not better. Check out [HRK's Employee Training Programs](#).

Employers who are proactive and prepared can maintain or even improve employee morale and productivity; it will take a well-trained leadership team to successfully manage a fully or hybrid remote workforce.

# TOP 10 CONSIDERATIONS

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**Employers need to consider how to create a productive and safe work environment for remote workers.** By having an employee in a remote location, you as an employer may now be “doing business” in that jurisdiction. Different rules may apply depending on the city, county, state, or country.

- » **Business License Requirements:** Employers will need to confirm if the jurisdiction the employee is working from requires the business to have a general business license on behalf of the company; it is essential to check county zoning or local city laws where your remote employees are operating to see whether a permit for remote workers is required.
- » **Employee Benefits:** Companies with employees in multiple states face challenges when it comes to offering health insurance coverage. Currently, five states — Massachusetts, New Jersey, Vermont, California, and Rhode Island, as well as Washington, D.C. — have an individual mandate at the state level, and the list is growing. State individual mandates mean not only that employees may pay a penalty for not having coverage; the mandates also impact an employer’s state reporting obligations. In addition, there may be city-level requirements within a particular state. For example, in San Francisco, employers are subject to the San Francisco Health Care Security Ordinance. This ordinance requires covered employers to satisfy an employer-spending requirement by making health care expenditures for their covered employees, among other reporting and notice requirements.
- » **Workers’ Compensation:** States generally require that an employer obtain workers’ compensation insurance where the employee is performing the services. There are challenges around remote work and workplace safety, in that typically, workers’ compensation applies when a workplace injury arises out of a workplace incident...so is an employee tripping over their cat at home a workplace incident if it happens during working hours? It could be. When a person works from home, there are many more gray areas and potential loopholes compared to a traditional office. Employers need to establish guidelines for a home office, such as keeping a designated work area, and providing training on workstation setup and safety measures to help remote workers reduce chances of injury.
- » **Information Security and Privacy Issues:** Since the company assumes all risk related to data security, remote work presents a unique challenge; remote work environments don’t usually have the same safeguards as in the office. An employee at the office is working behind layers of preventive security controls. In addition, employers need to keep in mind the data privacy laws for the states their employees are located in; for example, Massachusetts has a comprehensive data protection act.



**It is prudent for employers to create and publish policies detailing where their employees can and cannot work, based on where the business is licensed.**

# TOP 10 CONSIDERATIONS

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**Readjust your employee onboarding to ensure proper orientation for remote employees.** As more companies choose to hire remote workers, they face the challenge of creating an onboarding process that also covers virtual employees. When hiring remote employees, make sure you offer a structured onboarding process. One of the primary goals of onboarding is to help new hires acclimate to the professional expectations of their new work environment and prepare them for their role. A formalized onboarding process will benefit both the new hire and the organization and ensure the newly hired remote workers get the same onboarding experience as their on-site coworkers. **Here are some onboarding challenges employers should think through:**

- » **Workstation Setup Logistics:** There are a number of operational and technological factors employers need to consider for remote workers, such as the employee's workstation, software, technical support, and reliable internet connectivity. Here are a few areas for consideration, but the list is not exhaustive.
  - Technology (computer, monitors, printers, headset, webcam, telephone, and any supporting technology specific to your business)
  - Reliable internet connection
  - Workstation (desk, chair, and a space with minimal distractions and noise)
  - Support (who will the employee contact for issues with their technology?)
- » **Expense Reimbursement:** There is no federal requirement to provide reimbursement for remote expenses, except where those expenses would have the effect of lowering an employee's wages to below minimum wage, although several states do require employers to pay for such expenses. In California, for example, employers must reimburse "all necessary expenses" related to the employee's job, such as a desk, chair, and even home internet usage. Some states require an employer to pay for certain tools and equipment — either requiring that the employee not be held responsible for the cost or specifically requiring the employer to reimburse the employee or provide them with the supplies.



**Employers need to think about how they will communicate to, share information with, and onboard these employees in a way that maintains the company culture.**

**Providing Employees with Tools and Equipment:** All employers should be aware of their obligations to reimburse remote workers and update their expense reimbursement policies. The policy should clearly articulate the employer's expectations for the tools and equipment that are necessary to do the job from home and establish a fence around how, what, and why employees can purchase equipment. Employers will also need to be mindful of how they will accommodate requests, such as an ergonomic chair or a special headset. Having a policy with regard to accommodations under the Americans with Disabilities Act (ADA) as well as job descriptions that outline "essential functions" will become even more critical in a remote environment.

# TOP 10 CONSIDERATIONS

**9 Be prepared to handle cultural and management challenges.** Leadership should work with HR to create a plan to maintain a consistent organizational culture across state lines. Depending on where your employee is located, you and your team members may never meet face-to-face; this can create collaboration and social integration challenges. Helping an employee understand your organization's mission, vision, and values is more than just providing them with policies; it's about integrating them into the fold and modeling the behaviors that make your organization tick. This will be especially difficult for individual contributor roles that don't cross-collaborate with other teams or employees. Remote employees will be spending a significant amount of time alone, so employers and leaders need to be proactive about facilitating collaboration. **Do you have strategies in place to ensure that remote employees don't feel isolated? Here are some best practices you might consider:**

- » **Use Technology to your Advantage:** We suggest employers provide communication channels that promote collaboration, such as video-based platforms like Zoom or Microsoft Teams. Creating opportunities for employees to connect and talk about each other's lives, rather than just work, can help remote employees feel more connected and engaged.
- » **One-on-One's:** Daily check-in's, even for five minutes, can help an employee feel less alone and also create a sense of belonging. It can be difficult for remote employees to feel connected without face-to-face interactions; using video-based check-in's can go a long way to helping them feel more connected to the team and to the organization as a whole.
- » **Team Check-In's:** These don't need to be formal or always have an agenda. They can be frequent (we suggest weekly as a minimum) check-in's to ensure all team members can share ideas, ask questions, and keep the team on the same page with the goals of the day or week.
- » **Company-Wide Events and Meetings:** Leaders can use virtual company meetings as an opportunity to share the organization's goals, accomplishments, and challenges; provide positive feedback; or present accolades or a state-of-the-union. These types of events, when you add a fun component such as a happy hour, can also build camaraderie. Check out HRK's list of [Virtual Employee Celebration Ideas](#).
- » **Remote Performance Evaluations:** Consider how you will adapt to having your annual evaluation conversations or dealing with performance deficiency in a remote setting. Zoom fatigue is real, but for these kinds of conversations, video is imperative.

**Employee Terminations:** Terminating employees is difficult under the best of circumstances, but a remote environment makes it that much harder. Employers need to take extra care with remote terminations and have a process in place to ensure all items have been considered prior to the termination meeting; from final paychecks to equipment being returned to ensuring the meeting is private and you have not just announced to the employee's entire family or the café they are working in that they have been terminated.

# TOP 10 CONSIDERATIONS

**10** **Establish a Framework. This is the most important thing an employer can do.** Make sure you enter into remote employee agreements with eyes wide open and understand all the complications and compliance requirements created when an employee works outside your business's primary state. You will want to create solid remote work policies and time and attendance policies, as well as recognize the cybersecurity risks in managing remote workers. The line between work and personal life may become blurred when an employee uses the same location for both purposes. Working remotely can be just as much a challenge for employees to navigate as it is for those managing remote employees.

» **Update Your Employee Handbook:** To avoid any confusion, set clear guidelines around the job duties and work hours of your remote employees, ensuring your employee handbook makes expectations clear for both on-site and remote workers. Does your organization have a telecommuting policy? If so, does it include all the necessary information and expectations about working hours, communication, cybersecurity, use of company property at home, and productivity? Has it been acknowledged and signed by your remote employees? **How will your organization encourage remote employees to preserve their work-life balance? Consider adding or updating the following policies:**

- ✓ [Remote Work](#)
- ✓ Timekeeping
- ✓ Expense and Mileage Reimbursement
- ✓ Confidential Information
- ✓ Workplace Safety
- ✓ Online Meeting Virtual Backgrounds
- ✓ [Travel Pay](#)
- ✓ Paid Time Off
- ✓ Leaves of Absence
- ✓ State-specific Addendums
- ✓ Pregnancy Accommodation/Break-Time for Nursing Mothers
- ✓ Earned/Paid Sick Time
- ✓ Medical Marijuana/Drug Testing
- ✓ Anti-Harassment/Anti-Bullying
- ✓ Pay History/References

Following state and local laws is key to staying compliant and avoiding penalties, but to do that, you need to know where your employees are working from. It may be time to resurrect the seldom-enforced policies that require employees to notify their employer of a change of contact information. Businesses could find themselves in hot water if they do not keep track of their employees' off-site work locations.



We advise you to speak with your accountants, IT, business consultant, and HR consultants regarding these complex issues.



WE ARE HERE FOR YOU

## HRK CAN HELP

Remote work has created both benefits and complications for employers. Be aware that this is not an exact science and there is not a set formula for all circumstances. As your organization grows — whether adding a new location or having employees work remotely — there are many HR, payroll, and operational considerations when entering a new state. From immersing your employees into the company culture to ensuring they are classified correctly, our team has put together this planner to help you understand and deal with the complexities and compliance issues involved in managing remote workers.



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