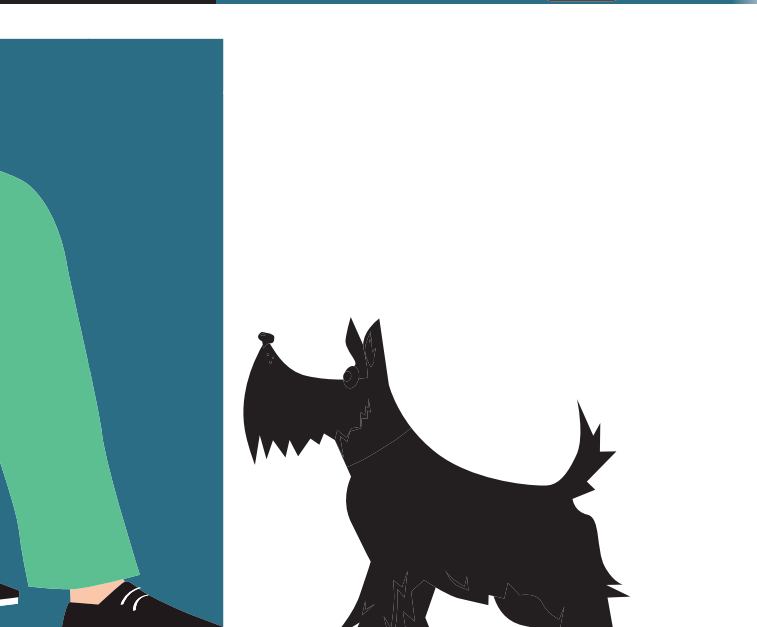


# ADAPTING LEGAL COMPLIANCE WITH EVERCHANGING REGULATIONS FOR HYBRID WORKFORCE

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**F**or payroll departments and everyone else, the working world still feels like some version of the film “Groundhog Day.” COVID-19 precautions, hybrid workforces, and “the new, new, new normal” are still here no matter how many times we wake up.

Hopefully, most payroll departments have adapted to handling remote employees and hybrid workforces along with the challenges that come with them. Still, since employees, technology, and payroll regulatory authorities all continue to adapt to the changing times, payroll professionals must also comply with those changing regulations. Here are the most common compliance issues that payroll departments are facing now when it comes to employees working remotely as part of a hybrid workforce.

### **Know Where Your Employees Are Located**

Managing payroll for a remote workforce is now past the point of no return. But as companies move into more of a hybrid workforce model (part working from home remotely and part in the office), you still will have employees who could live somewhere other than where the company is located.

Employees are getting increasingly comfortable with working remotely. What if employees—especially millennials and other transient members of the workforce—are working from multiple locations, all without telling you? They might spend a few days in one location, go stay with a friend in another location, and work in the office for a few days. Maybe their employer even allows for the flexibility of six months remote working and six months in the office. Where are their wages “earned” for payroll purposes? And what payroll and other tax obligations might your company face? To which city, county, state, or country would you owe taxes in the first place?

There are an infinite number of questions and challenges resulting from this scenario, and there are no easy answers. The scenario is much more common than most employers think it is. For instance, younger

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employees—many of whom have never been in a workplace other than a remote environment—don't feel obligated to communicate their whereabouts to anyone, as long as they are doing their job.

As a best practice, payroll departments should communicate to all company employees to provide their location if they are offered the opportunity to still work remotely full time. If remote employees decide to work from a different location—whether temporary or permanent—that may require changes to how their wages are reported and how taxes are paid. As employees move more frequently, local and state governments are adapting, and many of them are fishing for payroll tax revenue that may pass through their state.

Some states may even have specific remote worker guidance, so it is important to determine what laws and regulations may apply to even a single employee working in another state. In many states, the sudden presence of even one employee can impact the apportionment of income and taxes among the other states.

To avoid your company being unwittingly dragged by some employee into a state or country that may impose complicated payroll obligations, consider implementing a written policy about remote working. This policy should include limitations on geographic locations, advanced reporting, and approval of temporary or permanent moves.

### Know If Your Employees Are Working

Because of employers' frustrations with not being able to make sure that their remote employees are actually working while they are at home, a growing number of companies have implemented computer programs and apps that detect when employees have stopped using their computers. For computer-focused employees, an inactive

computer might be presumed to mean the employee isn't working. And if remote employees aren't working when they say they are working, the company might discipline them or even refuse to pay them for that time.

If you work for a company that has implemented an employee-monitoring program like this, you should proceed very carefully. A company's decision to discipline remote employees because their computers appear to be inactive is questionable at best, but it may also not violate the law. On the other hand, a company's decision to refuse to pay remote employees based solely on the employees' computer being possibly inactive is likely a violation of federal and state wage-and-hour law, and it will almost certainly lead to a class-action lawsuit. If you are ever instructed to deduct time from an employee's wages because the employee's computer was inactive, you should suggest that the company consult with a lawyer before taking any action.

### Know Laws State to State

Knowing where your remote employees, including those who are part of a hybrid workforce, are living and working means having to learn which laws may apply to them and to your company. These laws can include common workplace laws, such as minimum wage and overtime requirements, meal and break requirements, termination of employment, and employee benefits. However, they can also relate to the extent to which they may have a legal right to take leave from work for a wide range of reasons, such as to care for themselves or a relative.

In an everchanging world, both your company and your company's employees will look to you as payroll professionals to help guide them through the post-pandemic uncertainty. At least we are all in it together. ■