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Employers face taxing time with remote work

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Angela Childers

When the COVID-19 pandemic shut down businesses across the country, workers fled confined cities, decamping to the homes of friends and family, second homes and rentals. While many companies have found success operating with a newly remote workforce, some employers may be unaware of the insurance and tax implications of now having employees working across state lines, experts say.

"The workers compensation challenge is what's puzzling me," said Tracy Heay, Phoenix-based solution architect for Origami Risk LLC, noting that not only are workers no longer performing their jobs in their offices and may be scattered around the country, but those who are going into work may be in a state that has a COVID-19 rebuttable presumption law that puts the onus on the employer to prove that a worker did not contract coronavirus in the workplace.

Remote workers can pose a challenge if an employers' workers compensation policy does not protect employees in other states.

Employers need to contact their brokers to ensure their workers comp policies will cover those working temporarily in other locations, said Paul Fires, Philadelphia-based chair emeritus at Weber Gallagher Simpson Stapleton Fires & Newby LLP.

While typically an "other states endorsement will cover a business trip," if an employee is working in another state for a year, an employer may need to purchase a policy specific to the states where workers are residing, he said. "When someone has changed location for more or less permanent reasons, the other state's endorsement might be insufficient," he said.

The lack of appropriate workers comp coverage can create a dollar-for-dollar obligation on the part of the employer for medical costs and penalties if a worker is injured — and the loss of protection from the exclusivity provision, said Bob Robenalt, partner in the Columbus, Ohio, office of Fisher Phillips LLP.

Employers need to find out where their employees are physically to determine whether they are covered by the company's insurance, Ms. Heay said. Employers may also want to look at occupational accident insurance as an option if they now have a widely spread workforce, she said.

Not knowing where workers are can also cause tax implications for employers, experts say.

"The majority of employers are in a situation where they may not know where their employees actually are," said Eira Jones, San Francisco-based national U.S. employment tax leader at Deloitte Tax LLP. "Unless they've made some adjustments internally, a lot of employers are actually surveying employees to find out where they actually are and leveraging that data ... to establish their compliance requirements."

In these "unprecedented times," employers need to consider whether their newly remote workers may trigger payroll withholdings, corporate tax and/or sales tax in the states where they are performing their work, she said.

The payroll impact of having a remote workforce has "been such a hot topic for the past six months," said Eugene Ruvere, New York-based state and local tax partner at accountancy and advisory firm Citrin Cooperman & Co. LLP.

Payroll tax exposure is tied to salary, so employers need to weigh the risk vs. the time and effort of compliance, Mr. Ruvere said. A company with one employee working out of state at a salary of $100,000 a year, for instance, would have a minimal tax exposure of a few thousand dollars, he said.

While a handful of states have announced that they will not require employers to change their payroll to the state where employees are temporarily working during the pandemic, most have not offered guidance, leaving employers to speculate, Mr. Ruvere said.

Having a remote workforce creates a "multifaceted tax challenge," Ms. Jones said, including the question of when "nexus" is created — or when it is determined that the state in which the work is performed for an out-of-state company can collect tax on sales made in that state.

Another issue is when companies have negotiated a credit or incentive within a state based on employing a certain number of workers in that location, said Ed Kenawell, Pittsburgh-based national multistate tax services principal for Deloitte Tax LLP. Companies that now have employees working in different states or jurisdictions may lose those incentives, which can be multimillion-dollar deals, he said.

Sales tax is also a concern, particularly if employees are buying items — software for example — to perform their work in a different state, Mr. Kenawell said.