





Siting the Foundation: Remote Workers in Different States

2020 Employment Law Seminar
Day 1: COVID-19 Workplace Issues



Speaker Introductions



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Basic Jurisdictional Considerations

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- Why do I care about jurisdiction?



Consideration #1: Business Registration and Licensing Requirements

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- What, if any, registration and licensing requirements in the new telecommuting state does this trigger for the organization?



Consideration #1: Business Registration and Licensing Requirements


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Consideration #1: Business Registration and Licensing Requirements

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- In Washington:

 <p>Secretary of State <i>Tina Wynn</i></p>	<p>Corporations & Charities Division <u>Physical/Overnight address:</u> 801 Capital Way South Olympia, WA 98504 <u>Mailing address:</u> PO Box 40234 Olympia, WA 98504-0234 Tel: 360.725.0377 sos.wa.gov/corps</p>
<p><u>INSTRUCTIONS- FOREIGN REGISTRATION STATEMENT</u></p> <p>General Instructions: Use dark ink only. Complete the entire form and enter all requested information in the fields provided. An electronic, fillable version of this form is available online. To file online, visit: www.sos.wa.gov/corps</p>	

Consideration #1: Business Registration and Licensing Requirements

- For Oregon:



Consideration #1: Business Registration and Licensing Requirements

- California:



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Miller Nash is the exclusive representative of the Employment Law Alliance for Oregon, Washington, and Alaska.

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Consideration #2: Tax and Reporting Consequences

- Are there any state or local tax consequences that might arise out of the employee's teleworking arrangement?
- For example, are there any tax and/or withholding obligations by the employer?
- Or could the employer's business become taxable in a new state?

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Consideration #2: Tax and Reporting Consequences

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- **Washington Employees:**
 - Because Washington has no state income tax, no new income tax obligation is created by employees working from home in Washington
 - In fact, should apportion income out for time working from Washington
 - No special nexus rule for B&O tax, but broad economic nexus anyway

Consideration #2: Tax and Reporting Consequences

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- **Oregon Employees:**
 - Oregon residents taxed on their worldwide income, so working from home should not change the employee's tax liability
 - Many non-Oregon employers already voluntarily withhold. If not, may have to. Local taxes?
 - Oregon has COVID-related nexus relief, which was recently extended to December 31st

Consideration #2: Tax and Reporting Consequences

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- **California Employees:**
 - California residents taxed on their worldwide income, so working from home should not change the employee's tax liability
 - Withholding obligation if required to be registered as an employer
 - California has COVID-related nexus relief

Consideration #3: Unemployment Insurance

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- Will the employee(s) remain eligible for unemployment insurance in the employer's state?
- Or does the employer need to register for and pay the unemployment insurance premiums in the remote state?



Consideration #3: Unemployment Insurance

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- Oregon rules for “Multistate Employment” where employee performs work in additional states:
 1. Localization
 2. Base of Operations
 3. Place of Direction and Control
 4. Residence of Employee

Consideration #3: Unemployment Insurance

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- Washington uses a similar test to that of Oregon for determining where employment is considered to be “localized” in the state for purposes of unemployment:

Employment—Localized service.

Service shall be deemed to be localized within a state, if (1) the service is performed entirely within the state; or (2) the service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; for example, is temporary or transitory in nature or consists of isolated transactions.

- RCW 50.04.120.

Consideration #4: Workers' Compensation Insurance

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- Does the employer's current workers compensation insurance coverage extend to the remote work?

Consideration #4: Workers' Compensation Insurance

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- In Washington:

Washington State Department of Labor & Industries

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10000 | Insurance | INSURANCE REQUIREMENTS | Do I need a Workers' Compensation Account?

Out-of-State Employers and Out-of-State Workers

INSURANCE REQUIREMENTS

Do I Need a Workers' Compensation Account?

- Out-of-State Employers and Out-of-State Workers
- Corporate Officers
- LLC Members
- Taxi/Limo/Uber/Cab/Car
- Maritime

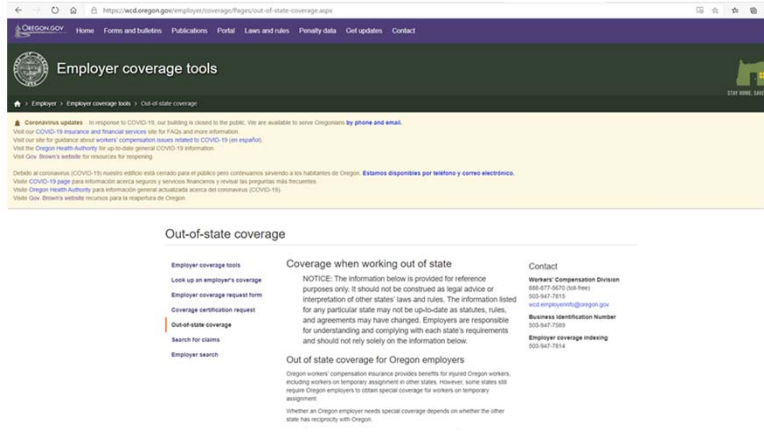
How to Get a Workers' Compensation Account

When workers travel across state lines, it is important to know which state's rules apply for workers' compensation coverage.

OUT-OF-STATE EMPLOYEES COMING INTO WASHINGTON	WASHINGTON EMPLOYEES TRAVELING OUT OF STATE	OUT-OF-STATE SUPPLEMENTAL REPORTING
<p>Employees in or traveling into Washington state</p> <p>Determine where each employee is reported</p> <p>Workers' compensation coverage decisions are made on an individual employee basis. You may have employees that are reported to Washington and employees reported to other states. You may need to have a workers' compensation policy in more than 1 state.</p> <p>Typically, we determine where the employee is reported by considering the state they:</p> <ul style="list-style-type: none"> Regularly work in if they work at or from a place of business in that state. Live in if they also work from that state (such as telework). <p>Primarily localized if the employee fits 1 of these categories, that is the state that</p>		

Consideration #4: Workers' Compensation Insurance

- For Oregon:



Consideration #5: Applicable Zoning/Occupancy Rules

- Does the remote work arrangement comply with local city or county zoning laws?
- Is a home occupation permit required?



Consideration #6: State and Local Employment Laws

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- Are there any other state-specific employment laws in the state where the employee is performing services:
 - Different discrimination protections?
 - Additional leave requirements?
 - Final pay and other wage rules?
- What about posting requirements?



State and Local Employment Laws

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- Scenario #1: Portland-based business, with employees working from home in Vancouver



State and Local Employment Laws

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- Scenario #2: Oregon college with professor working in California



State and Local Employment Laws

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- Scenario #3: Speech-language pathologist telecommuting temporarily from Hawaii



A Survey of Unique Local Employment Laws

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A Survey of Unique Local Employment Laws

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- There is a wide range of unique state and local workplace laws on the books across the country:
 - Special leave protections—paid and unpaid
 - Limits on the ability to terminate
 - Additional overtime entitlements
 - Different final pay rules
 - Discrimination protections
 - Reimbursement of business-related expenses



Consideration #7: Updates to Current Policies and Agreements

- Is remote work allowed under current policies? If so, does this comport with the policy or does the policy need to be updated?
- Does the remote work agreement with the employee(s) cover the necessary details?

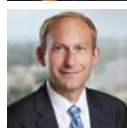


Thank You!



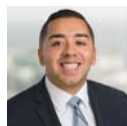
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