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Continuing Potential Pitfalls of Working Remotely

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Wage & Hour Issues



Wage and hour pitfalls are numerous and not always clear.

Timekeeping/Off-the-Clock Work

- Applicable Law:
 - Employees must be paid for all time spent working for their employers.
- Challenge:
 - How do we know when employees are working?
 - Not working?
 - What even counts as working?
- Real Life Example



Timekeeping/Off-the-Clock Work

- Preventative Measures
 - What measures can employers to minimize risk?
 - » Strong written policies
 - » Written Expectations
 - » Written Reiteration
 - » Consistent practices
 - » Effective time keeping methodologies
 - » Proactive enforcement

Timekeeping/Off-the-Clock Work

- New laws responding to work from home challenges
 - Continuous Workday Rule: Under the continuous workday rule, all time between the first and last principal activity of the day is generally considered compensable work time.



Meal Periods and Rest Breaks

- » Applicable laws
 - Federal requirements
 - State requirements

- » Preventative Measures
 - Written policies
 - Management oversight
 - Clear communication
 - Reporting



Reimbursement for Expenses

- With employees in a traditional office environment, many of the supplies and resources were provided by the employer. Now, the remote employee may incur the cost of these items. Some examples may include:
 - Paper
 - Pens/pencils
 - Computers/computer monitors
 - Internet
 - Phones
 - Electricity



Reimbursement for Expenses

- What is required?
 - FLSA: An employee is entitled to reimbursement of expenses incurred on the employer's behalf if that expense brings the earnings of an employee below the federal minimum wage.
 - Many states have separate reimbursement rules. Some states have more robust policies regarding reimbursement, including: CA, IL, MT
- **Note:** An employer is not typically required to reimburse an employee for business-related expenses when they are not required nor encouraged to work from home. However, employers will want to be mindful as to the location where work will be performed to ensure consistent with federal and state law.

Reimbursement for Expenses

- What is reasonable?
 - Stipend v. case-by-case basis

Reimbursement for Expenses

- Preventative Measures
 - What measures can employers to minimize risk?
 - » Clear written policy addressing how reimbursement will be handled
 - » Consistent practices



Worker Classifications

- Are Your Exempt Employees Still Exempt?
 - The shift to remote work and other alternative work arrangements may affect the duties upon which an employee's exempt classification depends.



Worker Classifications

- Exempt Employee Classification Chart

Most Common Exemptions

Executive Exemption

- Primary duty must be managing the enterprise or a department or subdivision of the enterprise. (But see state law differences)
- Must customarily and regularly direct the work of at least two employees
- Has the authority to hire or fire workers (or the employee's suggestions and recommendations as to hiring, firing or changing the status of other employees must be given particular weight).
- Must satisfy the minimum salary requirement.

Administrative Exemption

- Primary duty must be performing office or non-manual work that is directly related to the management or general business operations of the employer or the employer's customers.
- The employee's primary duty also must include the exercise of discretion and independent judgment with respect to matters of significance.
- Must satisfy the minimum salary requirement.

Professional Exemption

- The employee's primary duty must be to perform work requiring advanced knowledge in a field of science or learning that is customarily acquired by prolonged, specialized, intellectual instruction and study.
- Must satisfy the minimum salary requirement.

Tax Withholding Issues

- Generally, employers are required to withhold state and local income taxes from employee pay. Most states with personal income tax require businesses to withhold taxes on wages paid to:
 - (1) residents of the state; and
 - (2) non-residents who are working in the state.
- States define “resident” for tax purposes differently.
 - i.e., CA defines “resident” as every individual who is in CA “for other than a temporary or transitory purpose” or “domiciled” in CA who is out-of-state “for a temporary or transitory purpose.”

Tax Withholding Issues

- With a move to additional remote work, it is possible that employees will perform work from another location, including out-of-state. It is also possible that employers will be required to withhold in more than one state. Some states have also provided relief from withholding in that they have concluded that employees temporarily working in in the state due to COVID-19, are exempt from such withholding requirements.
- Remember to double-check state income tax withholding rules and consult with tax counsel.



Monitoring and Cybersecurity

Social Media

- Real Life Example
 - Employee calls out sick due to alleged COVID-19 symptoms. She obtains a test but receives negative results. The employee has no sick time remaining and employer informs her that any time off is unpaid. Employee agrees to return to work from home. After returning to work and during work hours employee posts a 30 minute rant on social media alleging employer is not accommodating her positive COVID-19 diagnosis.



Monitoring Employee Work from Home

- Real Life Example
 - Can I force my employees to have the camera on during Zoom meetings?
- **Note:** There are also implications regarding physical hardware in connection with supplying employees with equipment v. employees using their own equipment.
 - Pros:
 - » Easier to protect proprietary information
 - » Control off-the-clock work (i.e., monitor when employee not working)
 - » Easier IT support
 - Cons:
 - » Cost of supplying
 - » Wage and hour / reimbursement concerns



Employee Accommodations

Employee Accommodations

- **Example 1:** *“I don’t want to commute to the office.”*
- **Example 2:** *“I’m scared of exposing my elderly live-in parent to COVID-19.”*
- **Example 3:** *“I need an ergonomic setting at home.”*
- **Example 4:** *“I have a vaccine appointment.”*





Handling Remote Worker Injuries

Handling Remote Worker Injuries

- Working from home poses new threats to employee health and safety as well as challenges in determining whether such injuries are work related.
 - Increase in claims and accommodation requests for:
 - » Depression
 - » Stress
 - » Anxiety
 - » Substance abuse
- Maintain adequate Workers' Compensation and consult your broker regarding potential claims.





Corporate Culture

Corporate Culture

- How do we maintain our corporate culture in a remote environment?



Questions?



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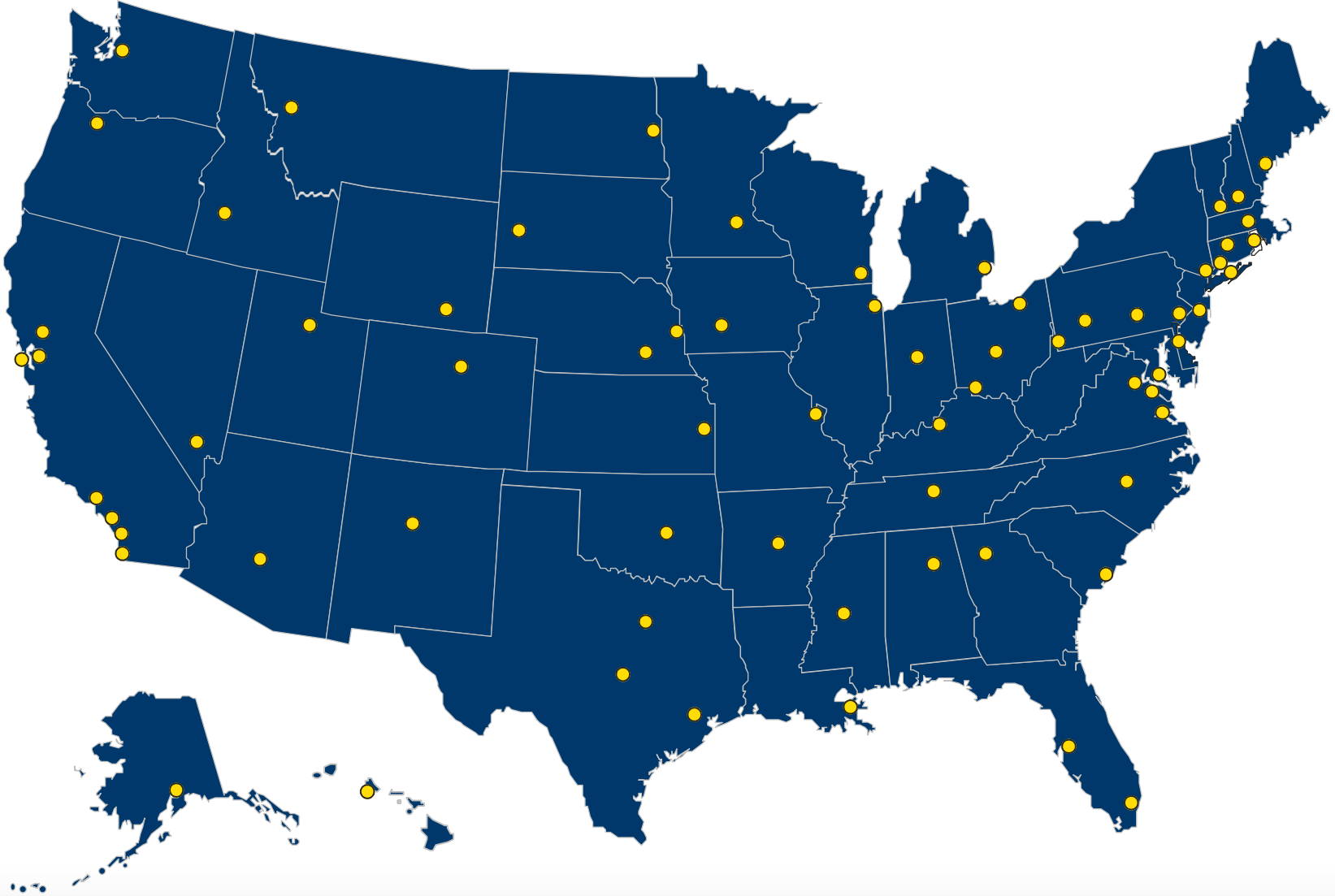
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