

## Working From Home Post-COVID: What Employers Need to Know

### Taxes

As a rule, wages are subject to income taxation based on where the worker physically performs the work. This raises withholding issues. If the employee working from home is in a state with a tax rate different from the tax rate of his normal place of work or no tax on wages at all, the Employer might have to adjust withholding. If it does not, it might be in violation of state and federal wage laws if it is withholding too much or state tax laws if it is not withholding enough. Further, some states have a “convenience of the Employer” rule. Under this rule, if the employee/taxpayer normally works in one state but works outside of that “normal” state for any reason other than the convenience of the employer, the income earned outside the “normal” state still is taxable in the “normal” state. It becomes important then, for Employers to determine if employees who normally work in one state but will be working from home in a different state are doing so for their convenience or for the convenience of the Employer. Employers must be familiar with applicable tax laws of not only those states where its employees normally work, but of the state from which they are actually working. Layering the complexity of this issue, some states tax a non-resident employee on income for days worked outside that state for the convenience of the employee if the nonresident’s state of domicile has adopted the “convenience of the Employer” test. This can lead to double taxation, although most states permit a credit for taxes paid on wages to another state.

A second tax issue that arises when employees work in a home state different from the Employer’s state, is whether the employee creates a sufficient relationship between the Employer and the employee’s state of domicile such that the Employer becomes subject to taxation in the employee’s state of domicile. Some states have adopted tax legislation dealing with these issues that is limited to the pandemic. Employer must familiarize themselves with these laws.

***If you have any questions, or would like additional information, please contact Joel Lubber and Stephen Asbel, Partners in Reger Rizzo & Darnall’s Business Succession Planning Practices Group..***

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