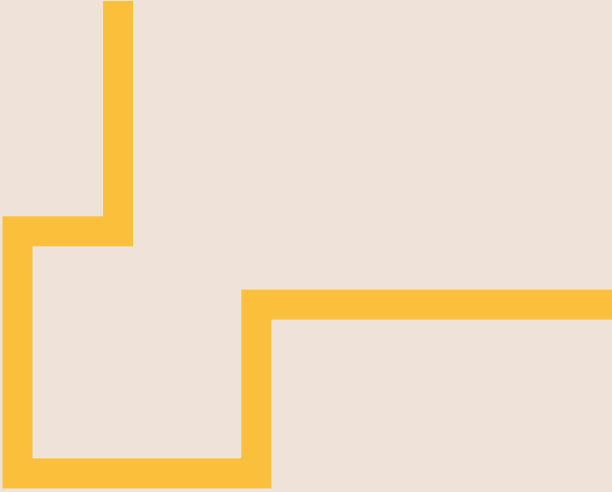


Mineral™



A Multistate Employer Primer

Presented by Kara G., JD, SPHR
Principal Legal Analyst



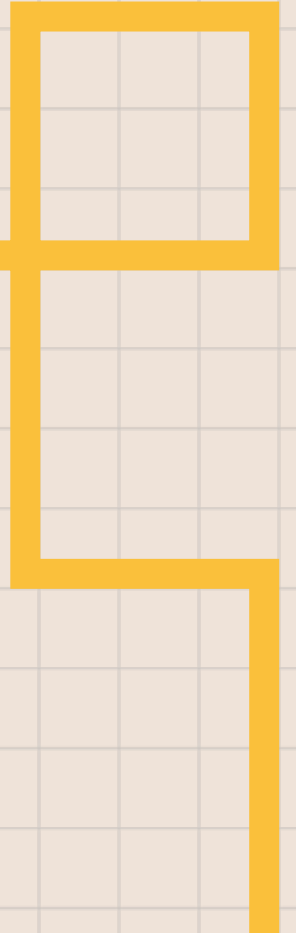
Agenda



- Nuts and Bolts
- Place-Based Rights and Rules
- Picking Policies
- This and That

Nuts and Bolts

(mostly money stuff)





Registration and Corporate and Business Activity Taxes

Even with just a single remote worker in the state, an employer might need to:

- Register with the Secretary of State
- Provide a registered agent and address
- Acquire licenses and business permits
- Pay corporate and business activity taxes, sales taxes, and employment taxes



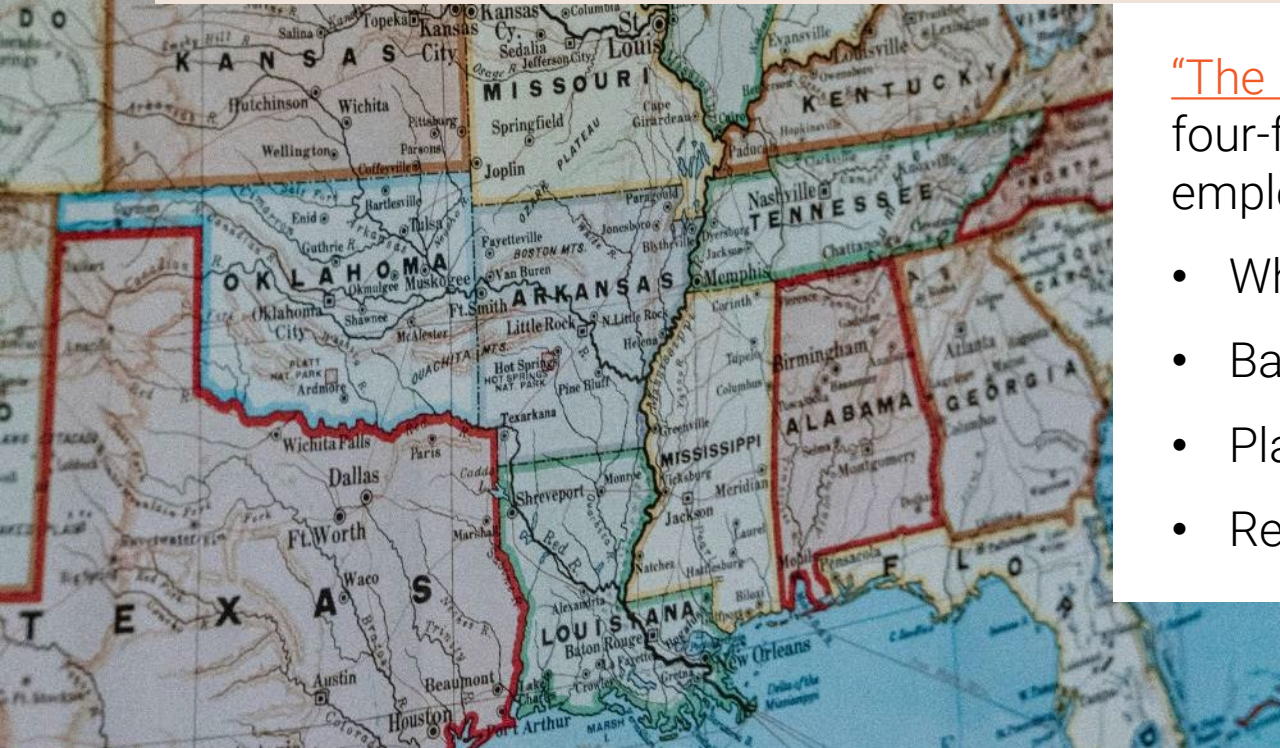
Income Tax Withholding

- Usually based on where an employee works (e.g., Oregon)
- Sometimes based on where an employee lives
- Some states have reciprocal tax agreements
- State temporary presence rules dictate how long an employee can be there before taxes are owed





Unemployment Insurance



[“The Localization of Work Provisions”](#) is a standard four-factor test used to determine which state an employer should report wages and pay UI to. It looks at:

- Where services are performed
- Base of operations
- Place and direction of control
- Residence of employee

Workers' Comp

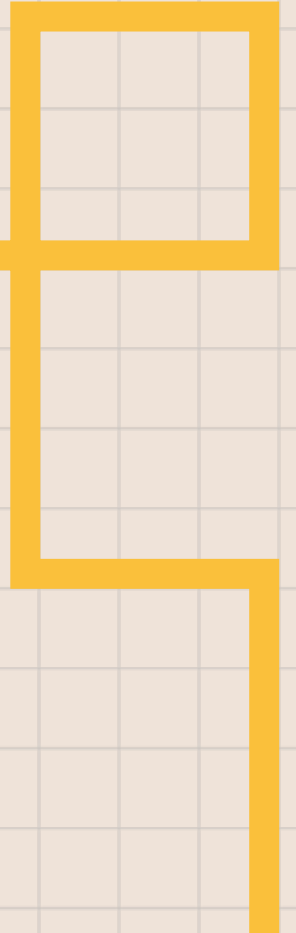
Employers must generally cover employees under Workers' Compensation policies based on where they are working.

Employees who travel may be covered during temporary employment in other states if they are traveling to a reciprocating state.

If the other state is not reciprocating, additional coverage is usually required before starting work.



Place-Based Rights and Rules



Generally, rights and rules will come from the state or locality where the work is performed.



White Collar Exemption Rules

- Some states have their own white collar exemption tests.
- Some states don't recognize certain exemptions, such as the "highly compensated employee" exemption.
- Some states don't let you off the hook for minimum salary and paying on a salary basis for teachers, doctors, and lawyers.
- Some (e.g., CA, WA, NY) require that you pay significantly more than the federal minimum to claim the exemption.



Independent Contractor Tests

IRS Test (factors/balancing):

- **Behavioral Control:** refers whether there is a right to direct or control how the worker does the work.
- **Financial Control:** refers to facts that show whether the business has the right to control the economic aspects of the worker's job.
- **Type of Relationship:** refers to facts that show how the worker and business perceive their relationship to each other.

ABC Test (must say yes to all three);

- A. The worker is **free from the control and direction of the hirer** in connection with the performance of the work, both under the contract for the performance of such work and in fact
- B. The worker performs work that is **outside the usual course of the hiring entity's business; and**
- C. The worker is customarily engaged in an **independently established trade, occupation, or business** of the same nature as the work performed for the hiring entity.

Pay Equity and Transparency

- Washington is on the cutting edge with pay transparency and pay equity.
- Oregon has one of the strongest pay equity laws in the country.
- Alaska and Idaho have essentially nothing, but they're in the 9th Circuit, which has a narrow view of what is "job-based" when it comes to pay differentials.
- The rest of the country is equally diverse on these issues.



Meal and Rest Breaks



- Some states are *intense* about meal and rest breaks; this is an area of significant liability, so you want to follow the letter of the law
- Best to have a company-wide approach for both morale and productivity
- Breaks restore motivation, help us retain information, improve productivity, creativity, and focus, and reduce decision fatigue (*How Do Work Breaks Help Your Brain?*, Psychology Today)

Cutting Checks

States have wildly different views on:

- Allowable payroll deductions, by type
- Allowable payroll deductions, by amount
- Timing of final paychecks
- Payout of vacation or PTO, and if or how you can get around it
- Expense reimbursement
- What needs to be displayed on paystubs
- Timing of pay



Recordkeeping and Statutes of Limitation

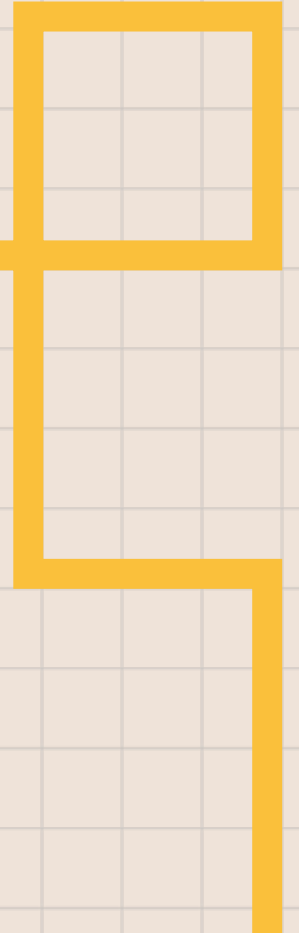
- Some states may not specify recordkeeping requirements at all, while others have long lists of info that needs to be kept for X number of years.
- Employees will have different amounts of time to file and sue for employment claims in different states. You'll want to have records if this happens, even if you're not technically required to keep them.

Minimum and Overtime Wages When Traveling

- Local minimum wages generally specify a minimum number of hours worked, but it's usually very low.
- States don't specify, but California at least has said when people are in their state, they need to get California's minimum wage and overtime.
- On the flip side, it's risky to *reduce* someone's pay while in a jurisdiction with a lower minimum wage.



Policy Selection and Adaptation



Handbook Options

- One handbook with mostly blended policies and special state policies added in the main body
- One handbook with mostly blended policies and state policies in state addendums (addendums for everyone or just employees in those states)
- One handbook with a shorter “core” section and state policies in addendums - no blending (addendums for everyone or just employees in those states)
- Different handbooks for each state, no addendums required





Multiple Policies v. Blended Policies

Consider:

- How employees are distributed
- Company ethos
- Policy administration



Equal Employment Opportunity (EEO)

- **Federally Protected Characteristics:** Race, color, national origin, age, religion, sex, sexual orientation, gender identity, disability, military or veteran status, genetic information, citizenship or immigration status
- **Protected Characteristics under Various State Laws:** Lawful off-duty conduct, political affiliation, marital status, familial status, arrest records, domestic violence victim status, credit information, traits association with race (e.g., natural hairstyles)





Leaves and Benefits

- Sick leave
- Extended family leaves (state FMLA or paid leaves)
- Jury service leave
- Vacation payout at termination
- Lactation accommodations
- School involvement leave

An Example: Voting Leave

VOTING LEAVE (CALIFORNIA AND DELAWARE)

Employees will be granted up to two hours of leave to vote in an election where they are registered to vote. This leave will be paid at the employee's regular rate of pay. Employees must give at least two days' notice of the need for leave to vote. The Company may specify the time of day when the leave may be taken.

VOTING LEAVE (GEORGIA)

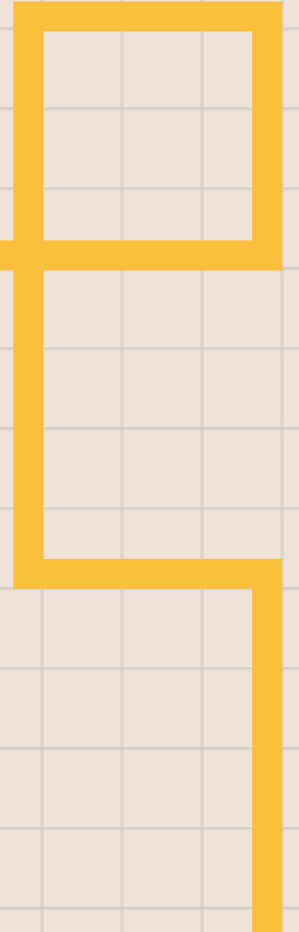
Employees will be granted up to two hours of leave to vote on the day of an election or on any in-person early voting day. The two hours will be unpaid. Exempt employees will be paid in accordance with the Fair Labor Standards Act (FLSA) requirements. Employees must give notice prior to Election Day. The Company may specify the time of day that leave can be taken.

VOTING LEAVE (NEW YORK)

If an employee does not have four or more consecutive nonworking hours while the polls are open, then they will be granted enough time off on Election Day so that they are able to vote. Up to two hours of that time will be paid. Exempt employees will be paid in accordance with the Fair Labor Standards Act (FLSA) requirements. Employees must give at least two days' notice of the need for leave to vote.

This and That

(other considerations,
especially for remote workers
and satellite offices)





Posters and Notices

- SO MANY! Pick a reputable poster company, but also keep an eye on new requirements
- Laws about postings are evolving but not quickly
- Post on the company intranet or virtual bulletin board
- Scan and email or print and mail for remote employees
- Non-compliance is low risk, but not no risk

Safety Obligations

(independent of workers' comp)

- Make sure employees are not exposed to reasonably foreseeable hazards created by their at-home employment or the set-up in an office you don't have eyes on
- While you aren't responsible (as far as OSHA is concerned) for a home office space like you would be in the workplace, that doesn't mean you shouldn't offer suggestions

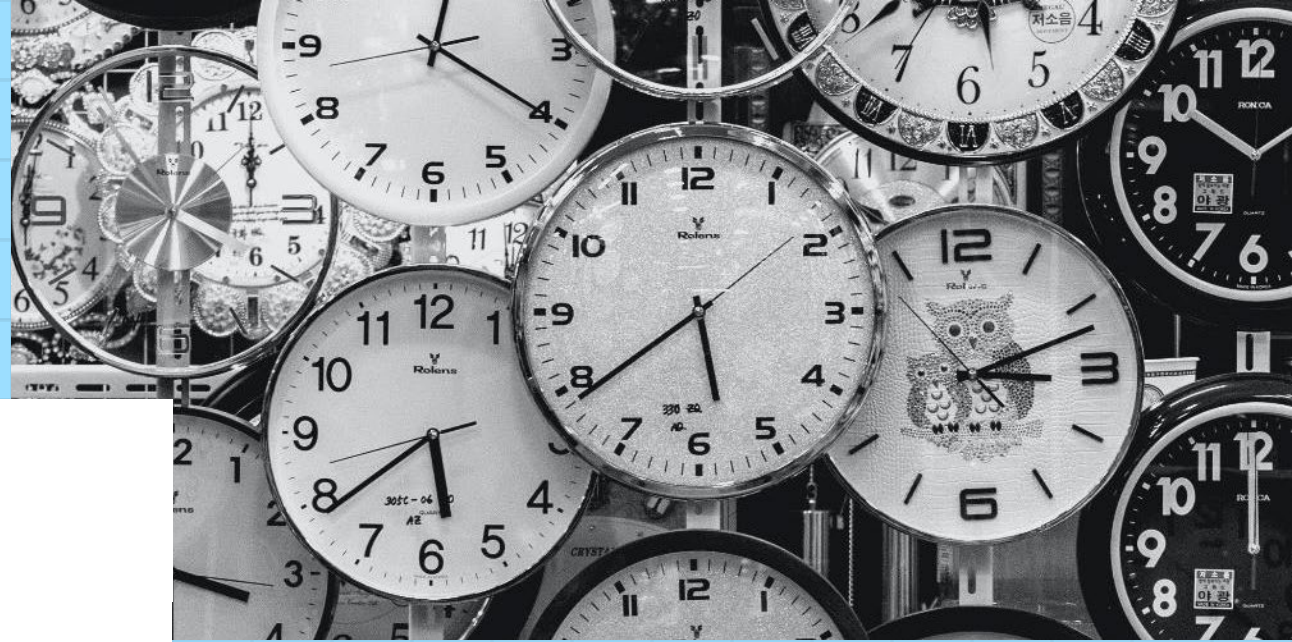




Time Tracking for Non-Exempt Employees

- Beware of off-the-clock (untracked) time
- All time worked must be tracked and paid
- Have a detailed policy and an open-door regarding workload and how things are going





Time Zones

If you have employees across time zones, but only operate based on one of those zones, make that clear in your job advertisements.

If it's not your intention to make everyone work within one time zone, think through how to make the best use of together time and alone time.



Access to the Bosses and Interaction with Coworkers

Equal access may not be possible but do what you can to make sure employees who aren't in the same place as the C-Suite, their managers, or the bulk of their coworkers still feel heard and included.

- Good video meeting practices
- Scheduled interactions, whether one-on-one or informal group chats
- Functional and fully adopted instant communication system (Slack, Teams, Discord, etc.)



Q + A

