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MANAGING THE TAX IMPLICATIONS OF AN INCREASINGLY REMOTE WORK WORLD

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Af the pandemic, it has become clear that remote and flexible work are here to stay. While many employers and employees are embracing this trend, the tax implications of such arrangements are often still unclear to employers and can result in unexpected consequences for all involved.

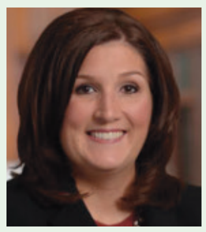
Perhaps the tax issue that has gained the most attention involves withholding. The majority of states impose a personal income tax, and as a result, employers are generally required to withhold taxes from wages based upon where those wages are earned. While withholding is often clear in the office context, remote and flexible work present challenges on both the state and local level. First, each state has its own standard for when withholding must begin, often measured in dollars or days, and those standards are highly variable. More problematic is that many states do not have specific guidance on when withholding should begin at all. This is particularly troublesome when an employer works a hybrid schedule, is allowed to work while travelling for extended periods, or maintains multiple work locations. Other states have reciprocal agreements with sister states which may further vary withholding rules. These problems are multiplied on the local level, with hundreds of jurisdictions imposing local income and withholding requirements and increasing tensions between suburban jurisdictions and urban centers.

Because withholding taxes are trust fund taxes, the stakes are higher for businesses who are collecting and remitting these taxes. Employers are also increasingly asked to provide verification for where an employee works to assist with employee refund claims or audits. All of this results in a need for more sophisticated tracking at the employer level and strong remote work policies that set forth the tax obligations of the parties.

While withholding and individual income tax issues have been at the forefront of the remote work push, businesses must also be aware of the implications to their own income tax situations. Physical presence has long been the gold standard for creating tax nexus, and a remote employee could inadvertently create nexus in a state. For example, a business that operates in a single state, but has a remote accounting employee in another state, has likely created both sales and use tax nexus and income tax nexus in the remote state. The employee creates a physical presence which may override remote seller thresholds for sales and use tax purposes, and because the employee is not performing sales solicitation activities, may also cause the business to lose any protection it enjoyed under P.L. 86-272, creating income tax nexus. Of course, there may be exceptions (e.g., a state's de minimis rules), that could lessen this impact.

Employers are advised to increase tracking to ensure all taxes and returns are paid and filed, and to establish clear policies and guidelines establishing which roles have remote work options; whether there are any limitations on remote work locations or frequency with which locations can be changed; and how the company can limit risk exposure while adhering to all applicable rules and regulations. Many employees may want the option of working from a beach in Bali, but it may not be worth navigating the myriad of issues.

MANAGING WORKERS' COMPENSATION CLAIM COSTS: NEWTON'S FIRST LAW OF MOTION AND THE LIGHT DUTY OFFER



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If an employee has been injured at work, oftentimes they will not be able to return to their former position. Ohio workers' compensation laws define the inability of an injured worker to return to their former position of employment as temporary total disability, or TTD. If this occurs, the employee may be entitled to receive TTD compensation during their recovery period.

However, this can be very difficult for employers who are trying to maintain full operations or holding positions open until the employee returns – which, sometimes, can last a lot longer than expected. Newton's First Law of Motion is that a body at rest will remain at rest unless an outside force acts on it. The same can be said of workers' compensation claimants, and sometimes, the employer has to be that "outside force."

Light duty offers

A proper light duty job offer is a safe and strategic way of returning an employee to work while at the same time saving employers significantly in claim costs.

Ohio workers' compensation laws provide that TTD compensation cannot be paid when work within the employee's physical capabilities is provided by the same employer, or a different employer. In other words, a light duty job offer can prevent or terminate TTD compensation – but it must be done properly.

With this said, not any 'ol light duty offer will do! A proper light duty offer must be:

- **made in good faith (many factors are considered here);**
- **of suitable employment (within the employee's capabilities);**
- **within a reasonable proximity of the injured worker's residence; and**
- **in writing.**

Another important step to creating a proper light duty offer is to have the physician of record approve the offer. While this is not required, it can be very helpful to proving that the offer was made in good faith. Whether an offer was made in good faith or of suitable employment are the most problematic elements of the offer for employers to navigate and have led to countless litigation.

In the end, if a proper light duty offer is made, and the employee refuses to return to work for reasons unrelated to the injury, then an employer may move to terminate TTD benefits as a result. Therefore, it is of utmost importance that light duty job offers are crafted carefully to ensure they are considered valid.

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