



## What to Consider When You Have Employees Working in New States

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February 17, 2022

\* Although we will be providing legal information during this webinar, we will not be providing legal advice.

# AGENDA

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How to meet  
state registration  
requirements and  
other  
considerations



Updating  
employee  
handbooks to  
include required  
policies



Must-do changes to  
tailor offer letters and  
employment  
agreements to state  
laws



POLL # 1

# Hiring Parameters



Limits on Inquiring about Criminal History



Limits on Requesting Credit Reports



Limits on Background Checks



Limits on Drug Tests

POLL # 2

# Employment Registration

- Register to do business
- Register with the Department of Labor
- Ensure workers compensation coverage includes new hire
- Register with paid family and medical leave authority (if applicable)

# Tax Registration

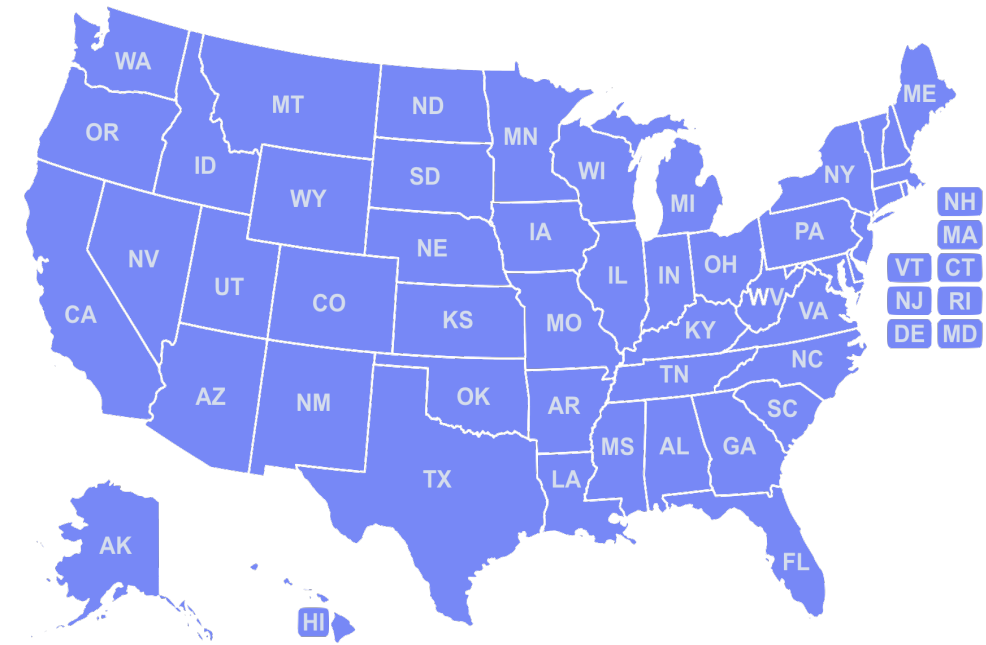
- Income or Payroll Tax
- Sales and Use Tax
- Unemployment Insurance



# Other Considerations

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- At-will employment
- Minimum wage
- Exempt/non-exempt implications
- Pay frequency requirements
- Required training
- COVID regulations
- Insurance coverage in new states





# Labor Law Posters



**Federal Signage**



**State Signage**



**Posting for Remote Workers**

# County and City Laws

A few of the ways county and city law can differ

Business Registration



Obtain a business license or permit, sales tax license...

Taxes



Sales tax, income tax, franchise tax, use tax...

Leave Requirements



Paid time off, family and medical leave, parental leave, COVID leave...

Minimum Wage Laws



Minimum wage rate and overtime laws

# Employee Handbooks



- With a remote and dispersed workforce, employee handbooks can be both:
  - More important and
  - More difficult to keep up to date than they have ever been before.
- An employer must ensure that its employee handbook:
  - Meets the requirements for each state where it has employees and
  - Stays current when the law changes in states where it has employees.

# Different States = Different Requirements

## Utah

### Required State Policies

- Immigration Law Compliance (15 Employees)
- Outside Employment Policy
- Meal and Rest Breaks
- Military Service Leave (state-specific)
- Jury Duty Leave (state-specific)
- Voting Leave
- Witness Duty Leave

## Nevada

### Required State Policies

- Meal and Rest Breaks
- Paid Time Off
- Paid Sick Leave (50 Employees)
- Domestic Violence Leave
- Jury Duty Leave (state-specific)
- Voting Leave
- Witness Duty Leave
- Emergency Worker Leave (10 Employees)
- School Visitation Leave (50 Employees)

## California

### Required State Policies

- FMLA (state-specific) (5 Employees)
- Meal and Rest Breaks
- Health and Safety Policy
- Lactation Accommodation
- Outside Employment Policy
- Paid Time Off
- Paid Sick Leave (including separate policies for Berkeley, Emeryville, Los Angeles, Oakland, San Diego, San Francisco, and Santa Monica)
- Pregnancy Leave (5 Employees)
- Organ, Bone Marrow, and Blood Donor Leave (15 Employees)
- Domestic Violence Leave (25 Employees)
- Crime Victim Leave
- Military Service Leave (state-specific)
- Jury Duty Leave (state-specific)
- Voting Leave
- Witness Duty Leave
- Civil Service and Air Patrol Leave (15 Employees, 50 Employees)
- School Activity Leave (50 Employees)
- School Appearance Leave

# Employee Handbook Formats



- Universal: One handbook with all employees governed by one set of policies
- State-specific: One handbook with employees governed by separate state-specific policies included in the body of the handbook
- Addenda: One handbook with policies from one or two main states and addenda for other states
- Multiple: Separate handbooks for each state

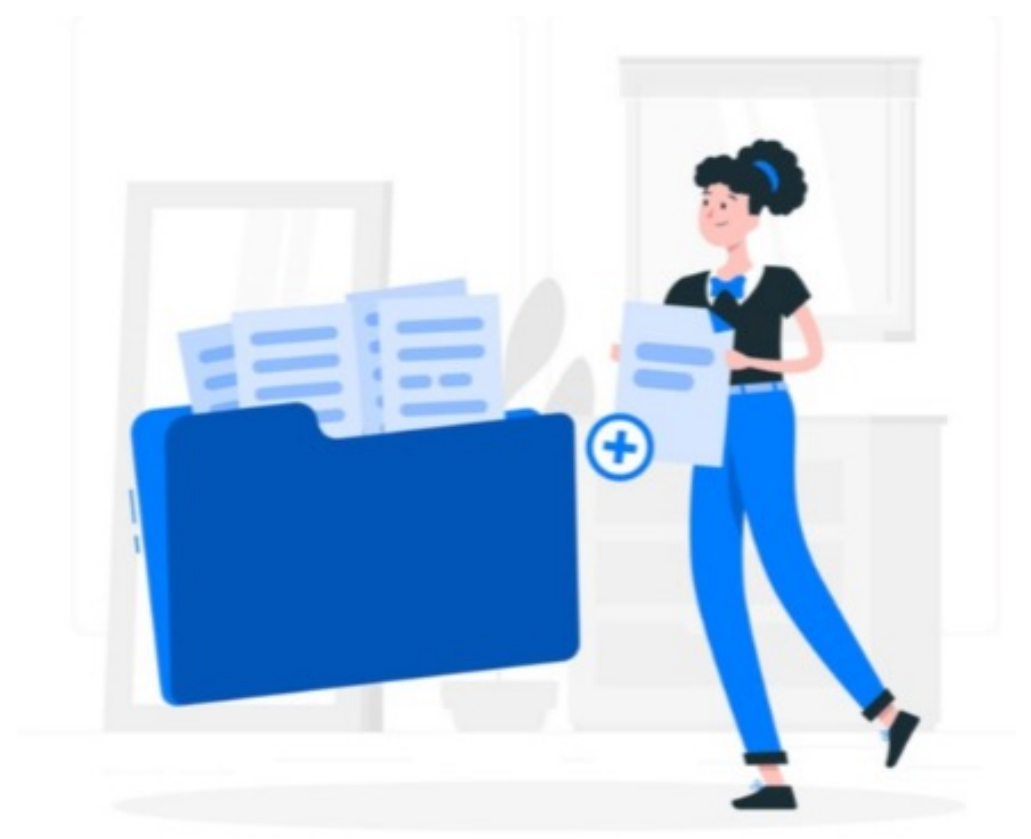
POLL # 3

# Handbook Updates

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Keeping employee handbooks up to date can be challenging.

- We are seeing more changes to state employment laws
- And employers are having to monitor the law in more states



POLL # 4



# Handbook Updates

- Create a plan to keep your employee handbook up to date.
  - We recommend that companies update their handbooks on a regular cadence.
  - Tools can help make the update process easier.

- **Connecticut** has expanded its Lactation Accommodation requirements via [House Bill No. 5158](#). Employers must now provide a room free from intrusion and shielded from the public for employees to express breast milk. This room must have access to an electrical outlet. Additionally, there must be a refrigerator or employee-provided portable cold storage device in or near the designated room for employees to store breast milk. The Lactation Accommodations Policy in both the Policy Library and Employee Handbook have been updated to reflect these changes.
- **Illinois** expanded the scope of its Domestic Violence Leave law (Victim's Economic Security and Safety Act) with [Illinois House Bill 3582](#). This change expanded the permitted uses for leave to include victims of crimes of violence. The bill also expanded the covered family groups to include parties to a civil union, grandparents, grandchildren, siblings, and "any other individual whose close association with the employee is the equivalent of a family relationship as determined by the employee." The Illinois Domestic Violence and Crime Victim Leave Policy in both the Policy Library and Employee Handbook has been updated to reflect these changes.
- **Nevada** passed [AB 190](#) also known as the Kin Care law. This law requires that employers allow employees to use a portion of their paid or unpaid sick leave to assist an immediate family member with an illness, injury, medical appointment or other authorized medical need. The Nevada Paid Sick Leave policy has been updated in both the Policy Library and Employee Handbook to reflect this change.
- **Missouri** passed [SB 16](#) creating a domestic and sexual violence leave requirement. All employers with 20 or more employees must provide 7 days of

# Employment Agreements – Which state’s laws apply?

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- Employment agreements can include broad employment contracts, non-compete/non-solicitation agreements, NDAs, PIAs, and arbitration agreements.
- With a few exceptions, state law governs the enforceability of these agreements. But with a dispersed and remote workforce, which state?
  - **General rule:** the law of the state where the person is working will apply



In Person	Hybrid	Fully Remote
State in which office is located	If multiple states, it depends	State from which employee is working

POLL # 5

## Non-Compete Agreements



- The law governing non-compete agreements is highly state-specific.
- Hypothetical:
  - Company headquartered in Texas
  - Employee works in Texas and signed 2-year non-compete that complies with Texas law
  - Employee makes \$100k/year
  - Employee relocates to Washington during pandemic, now works remotely
  - No new contract executed
  - 6 months later, employee quits, begins working for company's largest competitor, in violation of original non-compete
  - Non-compete void, because employee doesn't meet Washington's income threshold of \$107,301.04

- Every year, more states are passing laws limiting employer's use of NDAs.
- Hypothetical:
  - As a condition of employment, MA employee is required to sign an NDA that extends to the disclosure of unlawful employment practices
  - Employee relocates to IL, doesn't execute a new contract
  - Employee decides to publish tell-all book about what the employee believes is unlawful employment discrimination at work
  - Employer sues to stop publication of book under the original NDA's terms
  - NDA is void under IL law and company on the hook for employee's attorney's fees and costs

## Non-Disclosure Agreements



# Arbitration

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- At the state level, there is a trend toward attempting to limit employers' ability to require mandatory arbitration of employment disputes
- Hypothetical:
  - Florida employee enters employment contract on January 1, 2020, that includes a mandatory arbitration provision covering discrimination claims
  - Employee moves to California in June of 2020, then in August files discrimination claim in CA court against employer
  - Employer moves to compel arbitration under employment contract
  - Result: arbitration provision void, case continues in court, employer on the hook for attorney's fees, potentially subject to criminal and civil penalties



# Offer Letter

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Another trend: states are requiring notices/disclosures prior to the start of employment.

- Example 1: for CT employees, failure to disclose the wage range for the position for which the applicant is applying at the time of offer can subject the employer to compensatory and punitive damages and attorney's fees and costs.
- Example 2: Employer makes offer to OR employee on April 1 with employment to begin April 8. Employee signs employment contract with non-compete provision on April 7, begins work April 8. Result: non-compete unenforceable because employer failed to give notice in the offer letter at least 2 weeks before start of employment that non-compete was required

# Best Practices for Managing Employment Agreements in a Dispersed Workforce

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- Don't use the same form of employment agreements for employees in different states.
- Keep track of where your employees are located.
- Implement a relocation/telecommuting policy that requires employer's consent to relocate.
- If you approve relocation, execute modified agreements to comply with law of state where employee is located. Don't rely on choice of law provision to exempt you from state law where employee is located..