

*This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.*

## **When Employees Live in Other States: Remote Workforce Legal Considerations**

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Remote working became more common during the pandemic. For employers, having remote employees means that they likely will need to comply with certain laws of the states where employees work, in addition to those of the states where the employer is doing business. This is not limited to tax liabilities. The laws of the state (or the county and/or the city) where a remote employee works may impact other employment matters such as benefits, discrimination, and workers' compensation. This article provides an overview of notable areas where nonprofit employers need to pay attention.

### **Wage and Hour**

State labor laws may affect wage and hour requirements such as minimum wage, minimum paid rest periods, minimum meal periods, prevailing wages, and payday requirements. For example, 30 states (AK, AR, AZ, CA, CO, CT, DE, FL, HI, IL, MA, MD, ME, MI, MN, MO, MT, NE, NJ, NM, NV, NY, OH, OR, RI, SD, VA, VT, WA, WV), and DC, GU, and VI have minimum wages higher than the federal minimum wage.

The U.S. Department of Labor (DOL)'s Wage and Hour Division compiled certain state-specific requirements [on its website](#), which can be a good starting point. The following are links to selected resources from DOL's website.

- [State Minimum Wage Laws](#) (Updated January 1, 2022)
- [State Payday Requirements](#) (Updated January 1, 2022)

### **Unemployment Insurance**

Unemployment Insurance is a joint state-federal program and all states follow the same guidelines established by federal law. However, each state administers its own program and state-specific Unemployment Insurance laws may vary. For example, 21 states (AK, AR, CA, HI, IN, IA, MD, MA, MI, MN, MT, NV, NJ, NM, NY, OR, PA, RI, UT, WA, and WY), and DC, PR, and VI use different definitions of "employer" from the one used for the federal Unemployment Insurance purposes. In Georgia, nonprofit employers can even [opt out of regularly paying](#) into the unemployment system. As workers are generally covered by the Unemployment Insurance laws of the state in which the work is performed, employers should check the applicable state laws to determine their liabilities for Unemployment Insurance contributions.

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DOL's Employment & Training Administration put together Unemployment Insurance state law information [on its website](#). The followings are links to selected resources from DOL's website.

- [Comparison of State Unemployment Laws 2021 – Chapter 1. Coverage](#)
- [Significant Provisions of State Unemployment Insurance Laws](#) (July 2021 version)

### **Workers' Compensation**

Most states require every business to have some form of workers' compensation insurance (in Georgia, businesses with three or more employees must carry it). Usually, employers must obtain the insurance in the state where the employee is working. Some states may even require employers to purchase insurance from a monopolistic state fund. Contact the state's [workers' compensation officials](#) to confirm the requirements.

Though it is a little dated, the following link provides the basic information on each state's workers' compensation laws. Make sure to confirm the current information.

- [Workers' Compensation Laws by State](#) (Last updated September 30, 2019)

### **Vacation and Leave**

The Fair Labor Standards Act (FLSA) does not mandate paid or unpaid vacation. It is up to employers. However, if offered, paid vacation must comply with applicable state laws.

- [Vacation Pay State Laws Chart](#) (Current)

On the other hand, some states mandate paid sick leave. Also note that many states or localities have separate COVID-19-related paid leave laws.

- [Paid Sick Leave State Laws](#) (Last updated April 13, 2021)

The majority of states have some type of family and medical leave laws, and nine states (CA, CO, CT, MA, NJ, NY, OR, RI, WA) and DC offer paid family and medical leave (CO and OR laws are yet to be effective). Some other states' family and medical leave laws are more limited and cover pregnancy or COVID-19 only. (Please note that the information in the link below was updated after the outbreak of COVID-19, but does not seem to be the most recent.)

- [Family Medical Leave State Laws](#)

### **Discrimination**

Almost all states have adopted their own employment discrimination laws, separate from federal discrimination laws. They may offer broader protection than the federal civil rights laws. The following link contains state law information gathered in July 2015.

- [Discrimination – Employment Laws](#) (July 27, 2015)

## **Others**

- **Posting requirement**: Employers have responsibilities to inform their employees of their rights by providing notices and/or posting them in the workplace. These posters are generally available for download from states' labor office website. Contact relevant state labor offices for required posting materials and guidelines on when electronic posting is considered to be sufficient.
- **Disability insurance**: Some states require employers to withhold for Disability Insurance. Some locations also add other payroll requirements, so employers need to check what should be factored into calculations.
- **Paycheck delivery**: certain states mandate how employers provide pay information to employees and/or when an employer needs to provide an employee's last paycheck.

For official information, please consult the relevant state labor office. State labor offices' contact information can be found [here](#).

There are many considerations when you have employees working in other states. If you have any legal questions for your nonprofit related to an out-of-state workforce, contact your PBPA attorney for guidance.