

# Inter-State of Mind: Best Practices for Supporting Employees Located Beyond North Carolina's Borders

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# The Journey Begins

- *Generally*, remote employees are subject to the laws of the city and state where they are physically located and perform work, not the law where the employer is based
- Often, the number of employees located in the different state will trigger compliance obligations, and the way employees are counted can also vary
- Failure to comply with state and local posting requirements, leave entitlements, wage and hour laws, etc., can result in liability for lost wages, penalties, non-economic damages, and attorney's fees
- Under what basis is the employee requesting out-of-state, or remote, work?
  - Is the request pursuant to University Policy 101.22?
  - Is the request within the context of an accommodation under the Americans with Disabilities Act (ADA)?



# Roadmap

1. Threshold considerations  
(with a deep dive into the more frequent topics)
2. Human Resources Considerations
3. Financial Services Considerations
4. Case Law Examples
5. Out-of-country employment Discussion
6. University Policy and Procedures – explained
7. Best practices and tips for success



# The First Speed Bump – Threshold Considerations

- Local employment laws (e.g. leave; antidiscrimination; wage and hour)
- Health Insurance Benefits
- Workers' compensation insurance
- Unemployment insurance
- Out-of-state or out-of-country payroll tax obligations
- Data security and record management practices and protocols
- Creating a business presence
  - Corporate Income tax, Franchise tax, Sales tax, Use tax
  - Does the employee create a sufficient nexus to establish that the nonresident employer is doing business in that state?



# Human Resources Considerations

- Conditions of Employment
- Security
- Travel Expenses
- Leaves of Absence, FMLA, and Work Hours
- Management Considerations



# Financial Services Considerations

- State definition of “wage” may vary with different requirements.
  - What’s the minimum wage?
  - Are there any mandatory payroll deduction regulations?
  - What are the payday frequency requirements?
  - What are the additional employer-related costs?
- Permitted and mandated deductions may vary depending on state-run insurance programs
- Recordkeeping and reporting requirements will likely differ from state to state
- 60 days notice for potential out-of-state new hire to allow for research and registration.



# Financial Services Considerations

## Potential Cost

- Pass-through costs (e.g., state-specific benefits) may apply to individual employees or their hiring departments.
- Costs are incurred every time the University must set up to withhold income taxes and set up unemployment insurance in other states.
- Out-of-country employment requires contracted service with a professional employer organization (PEO). Estimated additional cost is 40-60% of the employee's salary.



# Caution sign: *Matter of Zelinsky v. Tax Appeals Trib. of State of N.Y.* (801 N.E.2d 840 (2003))

- Facts:
  - Taxpayer – A law school professor in NYC who commuted to New York three days each week to teach his classes and meet with students. On the other two days, he worked from his home in Connecticut.
  - On his NY nonresident income tax returns, he apportioned to New York the percentage of his total salary that reflected the number of days he commuted to the law school and allocated the remainder to Connecticut.
  - NY State Dep't of Taxation issued notices of deficiency for the two years he filed in this manner, contending his entire salary was subject to New York taxation.





# *Matter of Zelinsky* (continued)

- Conclusion: Taxpayer required to pay income tax levied by two states on the same income
- Court's analysis:
  - “Although a state may tax all the income of its residents, even income earned outside the taxing jurisdiction, it may constitutionally tax nonresidents only on their income derived from sources within the state (see *Shaffer v. Carter*, 252 US 37, 57 (1920)),” 801 N.E.2d at 844.



# Caution sign: *Duggar v. Honeywell International Inc.*

(2021 WL 5961624 (N.D. Ohio Dec. 16, 2021))

- Facts:
  - Ms. Duggar worked for approximately 5 years out of Honeywell's location in Cleveland, OH, where she resided. Her work ultimately began spanning a multistate territory.
  - Her supervisor resided in Texas and remotely managed Ms. Duggar, including:
    - Performance reviews
    - Ms. Duggar's total compensation and commissions
    - Ms. Duggar's sales opportunities and client meetings
    - Attended at least one meeting with Ms. Duggar in Ohio
  - Ms. Duggar was fired and sued both her employer and supervisor in Ohio.
- Issue: whether the supervisor, a Texas resident, must defend this litigation in Ohio?



# Caution sign: *Poudel v. Mid-Atlantic Professionals, Inc.* (2022 WL 345515 (D. Md. Feb. 4, 2022))

- Facts:
  - Two employees (Poudel & Dhakal) worked for a Maryland-based interpreter company as language interpreters.
  - Poudel – resident of Virginia
  - Dhakal – resident of North Carolina
  - Both employees worked at the U.S. Embassy in Afghanistan (never worked in Maryland)
- **Issue:** Does Maryland Wage and Hour Law and Maryland Wage Payment and Collection Law apply to employees' claims they were denied promised bonuses, training and travel reimbursement, and overtime?



# Out-of-Country Employment – Discussion

- Paying international employees requires costly infrastructure to comply with international tax and employment laws. The fewer and more sporadic the instances, the greater the cost per employee.
- Evolving compliance obligations and country-specific legal implications in managing a workforce in another country UNC Charlotte contracts with a Professional Employer Organization (PEO)
- The PEO is designated as the employer of record in the country where UNC Charlotte does not have a legal presence.



# University Policy 101.22

- While the general expectation is that most employees will conduct the bulk of their work from campus in order to provide the most effective services, [University Policy 101.22](#) provides appropriate flexibility for individual colleges, departments, and units to assess whether Flexible Work Arrangements can enhance the workplace experience without compromising service delivery.
- The [Supplemental Procedures](#) outline both UNC Charlotte and Employee Responsibilities
- Is there a business reason for the person to be located out of North Carolina?
- What is the funding source?
  - Grant funding v. state funding
  - Temporary v. permanent position
- Are you applying the policy “without regard to an employee’s race, color, religion, age, national origin, physical or mental disability, political affiliation, veteran status, genetic information, sex, sexual orientation, actual or perceived gender expression, or gender identity”(paragraph IV.D of UP 101.22)?



# University Policy 101.22

- Remote Work arrangements that are outside North Carolina or not within a reasonable commuting distance from the primary workplace require prior written approval of the Associate Vice Chancellor for Human Resources. Paragraph II.D of UP 101.22
- Any request for an arrangement outside of North Carolina must be submitted 60 days prior to the start of the arrangement.
- Out-of-state Remote Work arrangements may introduce tax withholding and reporting, unemployment insurance, and workers' compensation requirements in the employee's state of residence, among other considerations.



# Out-of-State Work Approval Form

- Considerations/tips for completing this form
- Managers and Supervisors must be involved throughout this process



# You have remote employees – now what?

## Best Practices and considerations to ensure success

- Have you notified HR?
  - When completing the hiring proposal you should let the HR Consultant know that you intend to request an exception and have the candidate work fully remote from a different state. Remembering, these have to be approved by the AVC for HR before making an offer, and ideally before posting the position.
- Do you have enough time?
  - It can take 60 days to review and approve an out of state hire, especially because employment in a new state will require additional coordination and registration
- Did you complete the appropriate form?
  - Payroll tax cannot process requests without documentation





# You have remote employees – now what?

## Continued

- Are you being equitable across your work unit/department/division
  - Work with your divisional leadership to ensure the division can support this arrangement.
- Have you taken the appropriate training?
  - Be sure that you have taken the required supervisor training so the approval will not be delayed.



# Resources

- [University Policy 101.22](#)
- [Procedures Supplement to Policy 101.22](#)
- [Out of State Work Approval Form](#)
- [Supervisor Training](#)
- [Flexible Work Arrangement FAQs](#)
- [OneIT Standard for Teleworking and Remote Work](#)



Questions?

