

WCET Policy Brief

Out-of-State Employment

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WCET POLICY BRIEF

Introduction

Many institutions have had years of experience in offering out-of-state activities, courses, or programs and in managing the compliance obligations that arise out of those activities. Recently, more employers (including institutions) have considered and/or embraced the concept of remote employment, allowing for the possibility of certain institutional faculty, instructors, or staff to work from a location other than the home state of the institution.

Management of employees in multiple jurisdictions is multifaceted and requires a holistic approach to ensure compliance with the employee's location for labor and employment related requirements.



Background

State laws typically designate the state Department of Labor as the state authority responsible for issues relating to labor, wage and hour issues, occupational safety and health of employees, child labor, workers' compensation insurance, and all other matters under its jurisdiction. A variety of employment-related considerations could fall within state labor law requirements:

- Minimum standards and mandatory benefits, such as, but not limited to, minimum wage, pension and insurance contributions, working hours, holidays, leave, and other mandatory benefits.

Affected Stakeholders

- Human Resources Department,
- Accounting/Payroll Department,
- General Counsel,
- Faculty and Staff who work remotely,
- Institution Leadership charged with decision-making for worker location.

Scope and Impact of the Issue

Flexible work location options may raise additional legal obligations to the institution when a faculty or staff member works from a different state. Employers may be subject to state employment laws and taxation policies imposed by the state where the employee is located when carrying out work for the employer. States vary widely as to the applicability of legal requirements which could include employees in a hybrid work arrangement. Related state laws to review include those addressing benefits, business registration, compensation, and more. Some states may have reciprocal agreements addressing income taxes with neighboring states. The important note is the variation in state requirements.

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- Worker's compensation insurance for employees and/or students completing a field placement.
- Hiring and termination considerations (such as pay transparency, job posting requirements, non-compete clauses in contracts).

Call to Action

- Engage campus stakeholders to determine the institution's position and strategy on the employment of out-of-state faculty and staff.
- Develop a policy and process to determine the location of remote employees.
 - It is important for these stakeholders to determine if, where, and under what circumstances, the institution will permit individuals to work remotely and/or from another location outside the home state of the institution.
 - Determining institution capacity should be informed through a review of state requirements to determine a cost-benefit analysis for the ability to offer a multi-state remote work option.
 - Policies must be communicated effectively to be clear about the parameters of location, the percentage of work time permitted remotely, and whether the employee is required to notify the institution of plans to move to another location.
- In states where the institution has current employees or may hire remote employees in the future:
 - Review state and local laws. It is important to determine and document the institutional obligations in the states where employees are located.
 - Register in the state(s) if needed. States may expect institutions who employ individuals to work from the state to register as an employer in the state for purposes of oversight and/or tax considerations.
 - Align institutional processes to consider the unique requirements of the employees' home states (ex. Where required, customize benefits to meet the requirements of the states).

Equity Considerations

The ability to offer employment to staff and faculty located in another state may provide an opportunity for a more diverse workforce for the institution.

For example, in a location with a homogeneous population, this opportunity to diversify may provide broader support to a wider variation of student populations. Additionally, the ability to broaden the pool of applicants may support expanded viewpoints to enrich institution culture.



Additional Resources

- [Compliance Requirements \(Non-SARA\) \(SAN Website\)](#).
- [What is “NEXUS” for higher ed? Considerations for a multi-state workforce](#) (WCET Frontiers, September 15, 2021).
- [5 Questions to Help You Develop Your Remote-Work Policy – for Now](#) (The Chronicle of Higher Education, August 9, 2021).
- [Tax Issues for Higher Education Institutions Operating Virtually](#), (KPMG).
- [What to Do When an Employee Moves to a Different State](#), (XpertHR, March 2023) .
- [Vacation and Paid Time Off Benefits by State](#), (XpertHR, April 2023).

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