



Multi-State Workforce Challenges: Legal and Practical Implications for Higher Education

Thursday, November 10, 2022 | 1:00 p.m. ET

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CUPA-HR Webinar

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Agenda

- University of Arizona Overview
- Legal and Practical Considerations
- University of Arizona Future Plans



Poll Question

What is your institution's primary stance on out-of-state employment?

- Not allowed
- Allowed for pandemic but now being recalled
- Case by case
- Allowed only for designated positions
- Allowed only for designated states
- Fully supported

Poll Question

Including out-of-state remote workers, in how many states does your institution employ employees?

- 1-4
- 5-9
- 10-19
- 20-29
- 30+

University of Arizona Overview

- About Us
- The Impact of COVID
- Our Multi-State Presence
- Our Current Review and Process
- Practical Implications and Insights



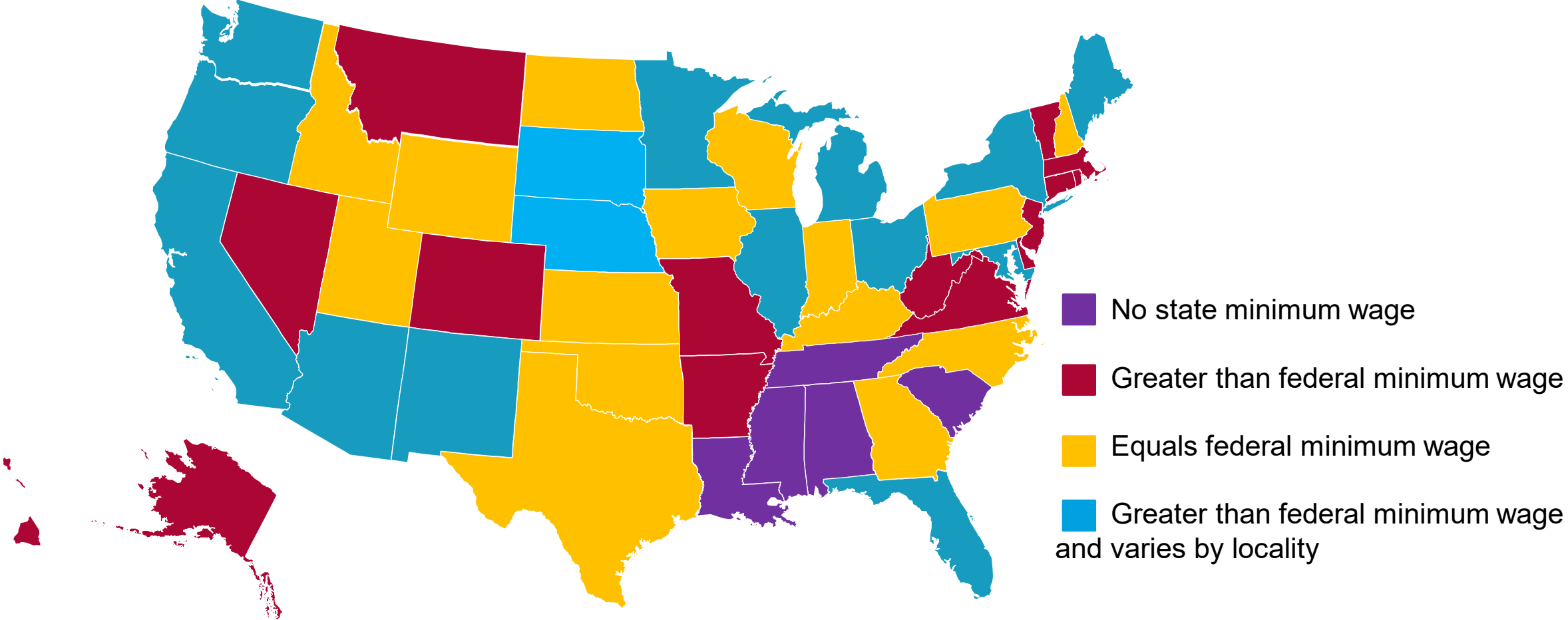
Exempt v. Non-Exempt Employees

- FLSA Exemptions - must meet salary and duties test
 - Professional
 - Administrative
 - Executive
- State Exemptions
 - California law classifying adjunct faculty as “professionals.”
 - Pennsylvania does not have “teacher” exemption.
- University Perspective: Practical Considerations

Employee v. Independent Contractor

- FLSA Independent Contractor Test
 - The Court's seven-factor, "economic reality" test
 - DOL developing new independent contractor test
- State Independent Contractor Tests
 - ABC Test (35 states)
 - Absence of Control
 - Business of Worker
 - Customarily Engaged
 - Common Law Test (IRS, 15 states)
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Minimum Wage Requirements



Overtime Requirements

Federal

- 1.5 x regular rate for all hours over 40 per week
 - Include all compensation for hours worked
 - Not including PTO, holiday pay, sick pay, gifts, benefit contributions
- Regular rate calculation
 - Includes non-discretionary bonuses

By State/Territory

- Alaska – more than 8 hr/day
- California – more than 8 hr/day
- Colorado – more than 12 hr/day
- Nevada – more than 8 hr/day
- Puerto Rico – more than 8 hr/day

Payroll Withholding

- State tax withholding
 - Employee works in-person at an institution in State A, but lives in State B. Employee will pay tax to only one state.
 - Employee works and lives in State A, but works for an institution in state B. Employee will pay tax only to State A.
- County and municipal income tax withholding
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Final Pay

- Can vary by reason for separation from employment
- Most states require that pay be made on the next scheduled payday
- 5 states have no law regarding timing of final pay
- Outliers
 - California – immediately
 - Tennessee – within 21 days or the next regular payday, whichever is later
- Deductions from final pay
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Meal and Rest Breaks

➤ Federal

- No requirements for breaks
- Breaks between 5 and 20 minutes must be paid
- Breaks longer than 30 minutes need not be paid

➤ State

- California
 - Unpaid breaks: 30-minute meal period for employees who work 5 or more hours per day; a second 30-minute break if the employee works 10 or more hours per day
 - Paid breaks: 10-minute paid break for each 4 hours worked (or substantial fraction thereof)
- Illinois: Employees who are scheduled to work 7.5 consecutive hours must receive a meal period of 20 minutes no later than 5 hours after the shift starts

➤ University Perspective: Practical Considerations

Poll Question

Which of the following has your institution implemented to address out-of-state employment?
(please select all that apply)

- Professional employer organization
- Dedicated FTE/personnel
- Remote work policy
- Remote work oversight committee
- State-specific registrations (taxes, unemployment, etc.)

Poll Question

Does your institution track out-of-state remote workers for withholding tax purposes?

- Yes
- No
- I don't know

Leave Entitlement

- Family and Medical Leave Act (FMLA)
- States with leave over and above FMLA
 - Colorado – leave for reasons related to domestic violence, sexual assault, stalking, or harassment
 - Massachusetts – 20 weeks to manage personal serious health condition
 - Rhode Island – up to 30 weeks for worker’s own disability
 - Vermont – additional 24 hours in 12 months to attend children’s educational activities
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Union Considerations

- Public institutions – state labor relations laws
- Private institutions – NLRB
- Right to Work Laws
 - State laws that prohibit union security agreements between employers and labor unions requiring employees who are not union members to pay union dues.
 - Private sector right to work states: Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, Wyoming
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Unemployment Compensation

- DOL's Unemployment Insurance Program Letter 20-04 provides principles for determining where wages should be reported
 - Is the employee's service localized in this state or some other state?
 - If it is not localized in a state, does the employee perform some service in the state in which the employee's "base of operations" is located?
 - If the employee does not perform any services in the state of "base of operations," does the employee perform any service in the state from which the service is directed and controlled?
 - If the individual does not perform any service in the state from which the employee's service is directed and controlled, does the employee perform any service in the state in which the employee lives?
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Workers' Compensation

- Workers' compensation covers injuries that happen “in the scope and course of employment” or “in furtherance of employment.”
- The personal comfort doctrine: Workers should be compensated for injuries that occur while doing things like getting a drink of water or taking a bathroom break while working.
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Reasonable Accommodation Refresher

- An accommodation is not reasonable if it would cause an “undue hardship.”
- “Undue hardship” means significant difficulty or expense and focuses on the resources and circumstances of the particular employer in relationship to the cost or difficulty of providing a specific accommodation.
- “Undue hardship” refers to an accommodation that would create financial difficulty, or are unduly extensive, substantial, or disruptive, or would fundamentally alter the nature or operation of the business.

Reasonable Accommodation Process

- Interactive process
- Requests to work from home
- Allowing remote work during the pandemic and denying remote work as a reasonable accommodation
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Miscellaneous

- Expense reimbursement
- State EEO laws
- Mini-COBRA laws
- Wage theft laws
- Mini-WARN Acts
- Drug testing policies
- Handbooks
- Whistleblower laws
- Background and credit check requirements
- New hire notices/reporting
- Salary history inquiry regulations
- Contract enforceability
- Cybersecurity
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University of Arizona – Looking Ahead

- Technology
- Updated guidance for campus
- Requesting increased investment in FTE
- Considering a fee-based model

Takeaways

- ✓ Determine whether to limit states/localities from which employees can work
- ✓ Partner with vendors to navigate nuances (e.g., law firms, PEOs, consultants)
- ✓ Examine internal operating system capabilities (e.g., IT, payroll, HR)

Have a Question?



Submit questions to our presenters
using the Chat.

Thank You



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