



Armstrong
Teasdale

Employee Mobility Issues – Immigration, Tax and Benefits

JANUARY 28, 2023

Marty Hereford
Sarah Sise

// *Always exceed expectations through teamwork and excellent client service.*

H-1B Nonimmigrants

- **H-1B visa is location specific – Define Remote**
 - Working from home
 - Working from a different location
- **Amend petition with USCIS**
- **Obtain new LCA and comply with wage obligations**
- **Posting LCA requirements**
- **Monitoring H-1B whereabouts**
 - Fair treatment of U.S. workers and H-1B employees
- **Nonimmigrant's responsibilities**

Other Nonimmigrant Visas

- **E-3 (Australia) / H-1B1 (Singapore and Chile)**
 - Similar to H-1B
- **TN NAFTA**
- **L-1A / L-1B**

- **Fraud Detection and National Security Unit – Unannounced site visits to investigate compliance with I-129 Petition for Nonimmigrant Worker**

Form I-9

- **DHS extended Covid-19 Flexibilities to July 31, 2023**
 - Exempt from physical inspection if the employee is working in a remote setting due to Covid-19 related precautions
 - Employers must inspect documents remotely (video link, fax or email) within three days of hire
 - Physically inspect documents within three days of employer returning to normal operations
- **Covid-19 Flexibilities do not apply to remote workers**
 - Employer must physically inspect the documents
 - Authorized Agent / Representative
 - Employer liable for any violations
 - Correcting deficiencies
 - Provide detailed instructions / tutorial

Green Card Applications

- **Initial Filing of PERM – For remote worker / hybrid schedule**
 - Recruitment
 - Indicate remote work / hybrid schedule available
 - Impact on the pool of candidates
 - Definition of “remote”? Anywhere or within commuting distance from office
 - Wages
- **Pending PERM – Worker goes remote**
 - Same location of employment
 - Different location

Remote Work – Tax and Benefits Issues

- **Creates exposure to tax and reporting obligations in state and local jurisdiction where remote work performed**
 - Wage withholding registration and remittance
 - Income tax for employer or owners
 - Gross receipts tax
 - Franchise or sales tax
 - Use tax
 - Local business registration and taxes

Employee Tax Withholding and Remittance

- Registration with state labor department
- Remittance of state income and employment tax required withholdings
- Registration to do business in the state may be required to register with state labor department
- These registration and remittance obligations signal to state authorities that employer or owners may have “tax nexus” with the state or local jurisdiction

Tax Nexus

- **Each state has its own rules**
- **Some common themes emerge among the states**
 - Physical Nexus
 - Amount of payroll
 - Is one remote worker in the state enough?
 - Economic Nexus
 - Revenue from products delivered/sold or services provided by employee in state or to clients/customers in state
 - Number of transactions performed in state

Impact on Benefits

- **Most ERISA benefits are not impacted by state in which work is performed**
 - Health benefits may not be as valuable in jurisdictions outside employer's main states of operation
- **PTO, vacation and sick leave may have state or local rules to follow**
- **Bonus and incentive compensation may be impacted by rules which require vesting of accrued compensation upon termination of employment**



Martha (Marty) Neville Hereford

314.342.4156

mhereford@atllp.com



Sarah Sise

314.342.8062

ssise@atllp.com