

HUSCH BLACKWELL

Employing a Contemporary Health Care Workforce Across State Lines

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Agenda

1. The Problem
2. State Employment Laws
3. State Tax Law Considerations
4. Real-World Experiences
5. Compliance Strategies

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The Problem

McKinsey & Co Survey (June 2024)

45% healthcare support employees work remotely

- 31% full time
- 14% part time

What's driving the increase?

- 27% full time
- 16% part time

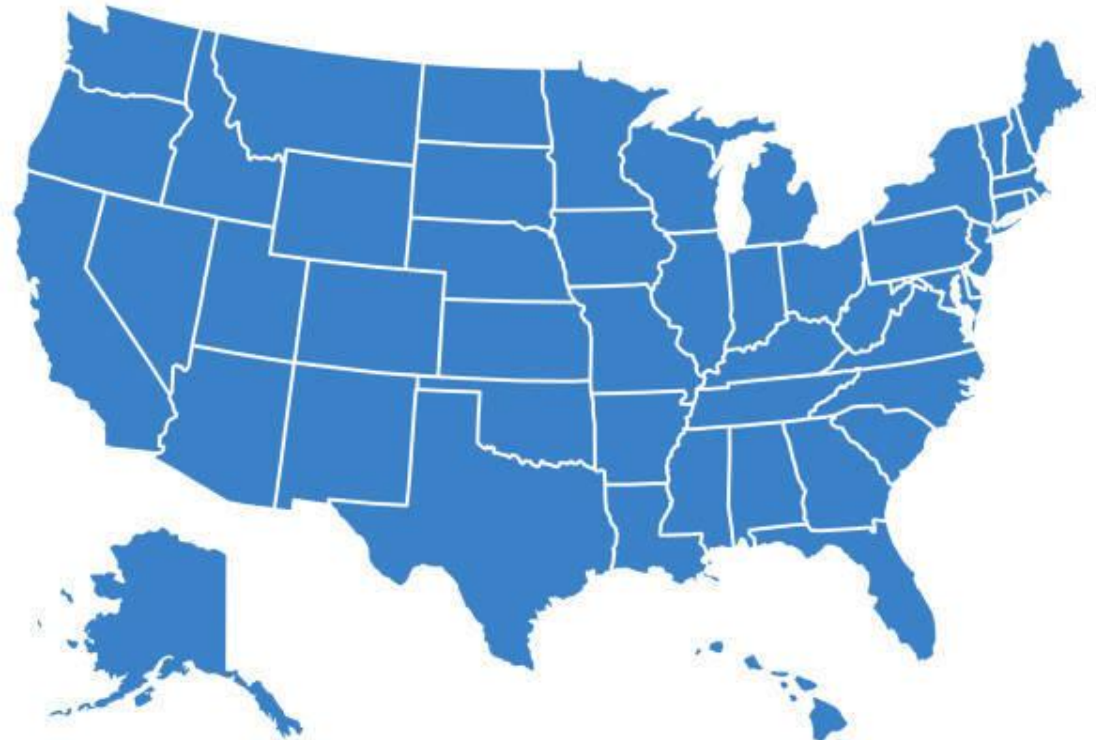
Average 2.6 remote workdays per week

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State Employment Laws: Areas of Potential Nuances

- Discrimination laws
 - E.g., LGBTQ
- Wage & Hour
 - Overtime
 - Exemptions
 - Over 8 hours in any day
 - Lunch breaks
 - Required reimbursements in some states (IL & CA)
- Record-keeping requirements
- Leaves of absence/sick leave
- Disability accommodations
- Licensing laws and requirements



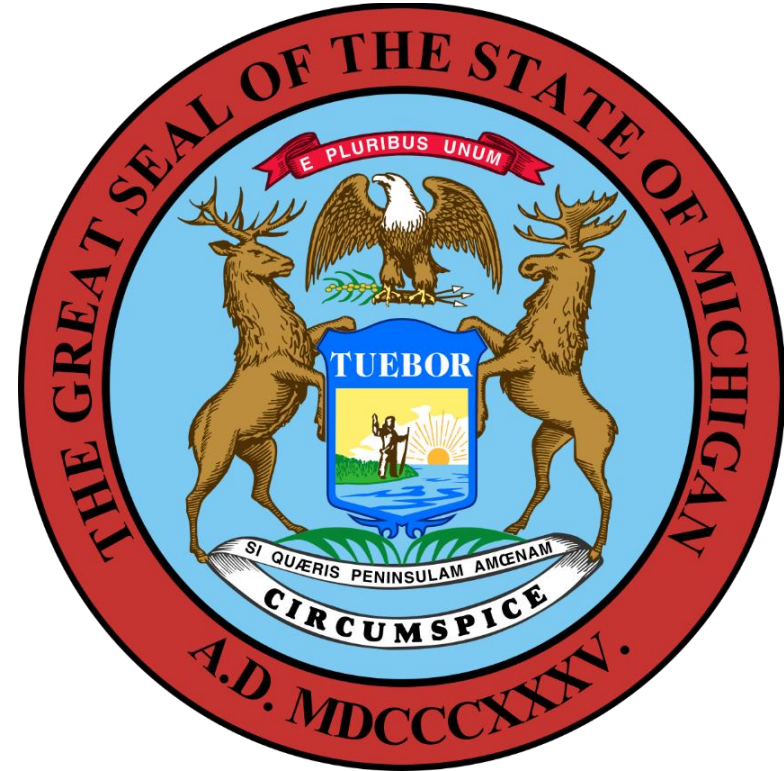
Specific State Nuances: Paid Leave Laws

- 13 states and the District of Columbia have laws that create paid family and medical leave programs for eligible workers.
- What's driving the increase?
 - Advocacy for employee well-being and mental health
 - Increased participation of women and caregivers in the workforce
 - The Family and Medical Leave Act (FMLA) provides unpaid leave but has gaps in coverage.



Michigan Paid Medical Leave Act (PMLA)

- Applies to employers with 50 or more employees in the US or any US territory, regardless of full or part-time status or how many hours they work.
- This act applies to eligible, nonexempt employees.
 - Exemptions include employees who worked less than 25 hours per week on average in the preceding calendar year, and overtime exempt employees.



Specific State Nuances: Unemployment Insurance

- May need to register to pay unemployment insurance taxes for an employee in any given state.
- State by state rules on what number of employees trigger the requirement and what the tax payments must include.
- Potential varying requirements for non-profit organizations.

Specific State Nuances: Workers' Compensation

- May need to register to pay or register for workers' compensation for an employee in any given state
- State by state rules on what number of employees trigger the requirement and what the payments must include.
- Potential varying requirements for non-profit organizations.

Differences between Michigan and Ohio by Category

State	Law Category	Difference from Federal Law
OH	Minimum Wage	\$10.70/hour for employers with annual gross receipts of \$394,000 or more (vs. \$7.25 federal)
MI	Minimum Wage	\$12.48/hour, increasing to \$13.29/hour in 2026 (vs. \$7.25 federal)
OH	Anti-discrimination	Ohio's Fair Employment Practices Act Covers employers with 4+ employees (vs. 15+ federal); protects military status, ancestry, AIDS/HIV status
MI	Anti-discrimination	Elliott-Larsen Civil Rights Act Covers employers with 1+ employee (vs. 15+ federal); also protects height, weight, marital status,
OH	Leave Laws	Family military leave for employers with 50+ employees (in addition to federal FMLA)
MI	Leave Laws	Paid sick leave accrual up to 72 hours/year for employers with 10+ employees (federal law offers no paid sick leave). Different requirements for small businesses.

Differences between Michigan and Ohio

By Category

State	Law Category	Difference from Federal Law
OH	Wage Payment	Requires payment at least semi-monthly (federal law has no frequency requirement)
MI	Wage Payment	Requires payment at least monthly (federal law has no frequency requirement)
OH	Breaks	Requires 30-minute break for minors working 5+ consecutive hours (federal law has no break requirements)
MI	Breaks	Requires 30-minute break for minors working 5+ consecutive hours (federal law has no break requirements)
OH	Whistleblower Protections	General whistleblower protection (broader than federal, context-specific protections)
MI	Whistleblower Protections	Whistleblowers' Protection Act (broader than federal protections)
OH	Equal Pay	Prohibits wage discrimination based on race, color, religion, sex, age, national origin, ancestry (federal law focuses on sex)
MI	Other Protections	Protects employees from discrimination based on use of lawful consumable products off-duty (no federal equivalent)

Differences between Michigan and Ohio: Wage and Hour

Wage and Hour Category	Ohio (OH)	Michigan (MI)
Overtime Pay	1.5 times the regular rate for hours over 40/week	1.5 times the regular rate for hours over 40/week
	<i>Statutory Section:</i> Chapter 4111, Ohio Revised Code	<i>Statutory Section:</i> MCL 408.934a et seq.
Meal and Rest Breaks	No breaks required for adults; minors get a 30-minute break after 5 hours	No breaks required for adults; minors get a 30-minute break after 5 hours
	<i>Statutory Section:</i> Chapter 4109, Ohio Revised Code (minors)	<i>Statutory Section:</i> MCL 409.101 et seq. (minors)
Wage Payment Frequency	At least semi-monthly (twice per month)	At least monthly
	<i>Statutory Section:</i> Chapter 4113, Ohio Revised Code	<i>Statutory Section:</i> MCL 408.472

Differences between Michigan and Ohio: Wage and Hour

Wage and Hour Category	Ohio (OH)	Michigan (MI)	Key Difference
Final Wage Payment	No specific state law; follows federal FLSA guidelines	As soon as practicable	Michigan specifies a loose deadline; Ohio does not.
	<i>Statutory Section: N/A</i>	<i>Statutory Section: MCL 408.475</i>	
Deductions from Wages	Allowed for taxes, garnishments, and authorized deductions; shortages/breakage deductible if due to gross negligence or willful misconduct	Allowed for taxes, garnishments, and authorized deductions; shortages/breakage require written employee agreement	Ohio allows deductions for negligence without consent; Michigan requires consent.
	<i>Statutory Section: Chapter 4113, Ohio Revised Code</i>	<i>Statutory Section: MCL 408.477</i>	

Differences between Michigan, Ohio and Federal Law

Category	Federal (FLSA)	Ohio	Michigan
EAP Exemptions	Salary threshold: \$684/week (\$35,568/year) as of Nov 2024 court decision. Requires meeting duty tests (e.g., management for executives).	Follows federal law; salary threshold is \$684/week (\$35,568/year). No state-specific higher threshold noted.	Follows federal law; salary threshold is \$684/week (\$35,568/year). No state-specific higher threshold noted.
Computer Employees	Exempt if paid at least \$684/week and perform advanced computer-related duties (e.g., systems analysts, programmers).	Follows federal law	Does not exempt computer professionals from overtime requirements, unlike federal law.
Outside Sales Employees	Exempt if primary duty is making sales away from the employer's place of business.	Follows federal law	Likely exempt, following federal law.
First-Responders	Generally covered for overtime unless meeting exemption criteria (e.g., EAP).	Specifically covers police, paramedics, firefighters for overtime; part-time public safety employees may be exempt.	Likely covered under general non-exempt rules; no explicit mention found.

Differences between Michigan, Ohio and Federal Law

Category	Federal (FLSA)	Ohio	Michigan
Agricultural Workers	Some exemptions based on farm size and worker type (e.g., small farms).	Exempts many farm workers and nonprofit children's camp workers.	Has exemptions for certain seasonal workers, aligned with federal law.
Small Business Exemptions	Exempts businesses with annual gross receipts < \$500,000 from some FLSA requirements.	Exempts businesses with gross annual receipts < \$150,000 from FLSA overtime requirements.	Requires employers with 2+ employees to pay overtime, regardless of gross receipts.
Compensatory Time	Only governmental employers can offer comp time in lieu of overtime pay.	Follows federal law; limited to governmental employers.	Allows private employers to offer comp time with employee agreement, more permissive than federal law.
State-Specific Exemptions	Broader exemptions include transportation industries (e.g., airlines, railroads), newspapers.	Exempts live-in babysitters, caretakers for sick/elderly (if duties exclude housekeeping), part-time police/firefighters, students employed by political subdivisions, nonprofit camp workers.	Exempts employees of amusement/recreational establishments open <7 months/year.

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State Tax and Legal Issues



Nexus- Minimum level of connections (by \$\$ or transactions) to before it becomes subject to state's laws?



Registering to do business – Some states may require you to register to do business as a “foreign” company.



Payroll tax withholding – Employee Domicile, Work Location(s), and Reciprocity?



Local Taxes- Are there local tax withholding requirements?



Unclaimed property – Duplicate payments, uncashed checks



Sales tax – Taxability of products and/or services, exemptions available

State Tax and Legal Issues: Nexus

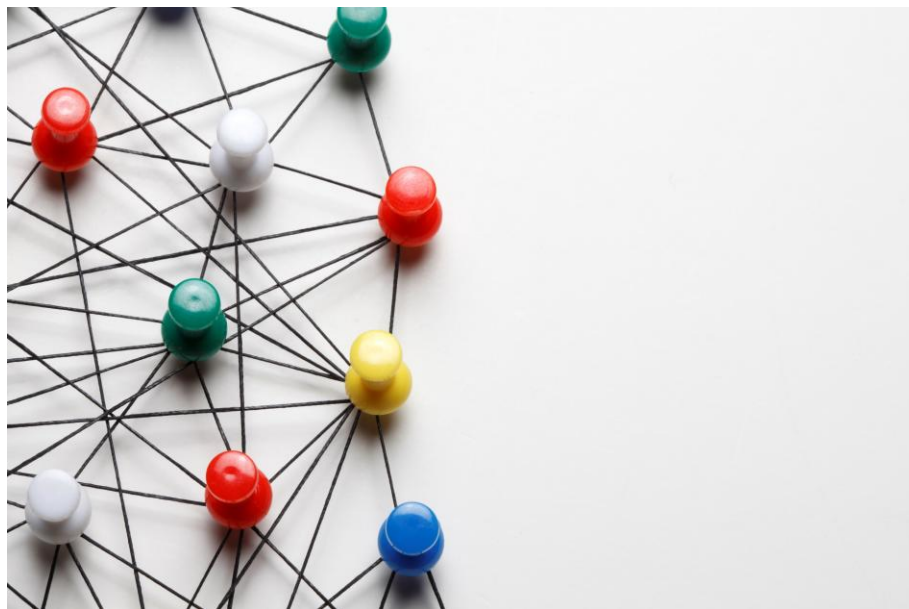


Nexus refers to the connection that a business has with a state which gives the state the authority to subject the business to its various taxes. A system can theoretically have nexus with multiple states.



Nexus is a constitutional concept that recognizes that states are sovereign governments with certain powers granted to the federal government.

State Tax and Legal Issues: Nexus



- Generally, for purposes of sales and use taxes, a business will be considered to have nexus, and thus be required to collect and remit sales taxes if:
 1. it has a physical presence in the state or
 2. a minimum of \$100,000 in sales that are delivered into the state.
- There are nuances to these requirements, depending on the state.
 1. The \$100,000 threshold is higher in a few states, and some states have a 200-transaction threshold
 2. What is included in determining if the \$100,000 threshold is exceeded
- Nexus for income taxes, franchise taxes, and other taxes can vary from the above

State Tax and Legal Issues: Registering to do Business

- Generally, will need to register to do business in the other state
- Usually, can be facilitated through an online form
- May need to register with other agencies such as the state taxing authority
- May need to file regular forms, even without any in-state activity other than employment

State Tax and Legal Issues for Consideration: Payroll Tax Withholding



Wages are sourced to the state where the employee is physically present when earned



States imposing an individual income tax require the employer to withhold state payroll taxes when certain thresholds are met.



Ohio has reciprocity with Indiana, Kentucky, Michigan, Pennsylvania, and West Virginia.

Applies to employee compensation
Residency should be indicated on Form IT-4



Employees traveling to other states may create a withholding requirement

State Tax and Legal Issues: Local Taxes



Most Ohio cities levy an income tax on wages, salaries, and business income.



More than 200 Ohio school districts also impose their own income taxes.



Filing for Ohio local income taxes can be complex.



Other states may have locally imposed income taxes.

State Tax and Legal Issues: Sales Tax

45 states, plus Washington, D.C. impose a state-wide sales tax

The sales tax is imposed on retail sales of tangible personal property

In some states, some services are also taxed

The breadth of any exemption for nonprofits can vary widely among states

Some healthcare examples include:

Prescription drugs versus over-the-counter

Durable medical equipment for home use versus use in a hospital

Transfer of human organs versus animal organs for transplant

State Tax and Legal Issues: Unclaimed Property

Amounts owed that have not been claimed by the owner must be escheated (transferred) to the state

Uncashed payroll checks

Uncashed vendor payments

Excess or duplicate payments
received from patients

Escheated based on owner address in books and records or
entity's state of incorporation

Annually reported by holder if dormancy period has
passed

Record retention laws are typically longer than most
company's policies

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Real world experiences

- What have you encountered in your organization?

Real world experiences

- Employees doing 2 jobs because they are working remote
 - Anti-moonlighting policies
- Use of a third-party provider to manage all the multiple states rules and laws.
- Equipment
 - Managing distribution of equipment and collection of equipment following end of employment
- Ensuring remote worker is available during work hours

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Compliance Strategies

Create or revisit remote worker policy:

- A must-have for any organization allowing remote work.

Consider a remote employee agreement:

- Sets forth expectations and responsibilities.

Require regular updates for residential addresses:

- Important to know where employees are physically located and working.

Recordkeeping Best Practices:

- Maintain accurate and consistent records for audits.

Compliance Strategies

Audit of Practices by State:

- Review policies and procedures for each state.

Compliance Framework:

- Develop a centralized system to manage multi-state compliance.

Training & Communication:

- Educate HR and management on state-specific laws.

Set Supervisor Expectations:

- Following training, ensure supervisors are held to expectations to monitor issues related to risk with remote employees.

Compliance Strategies: Tools and Available Resources

Third-party payroll provider

- They have experience and base knowledge available from other clients.

Internal or outside legal counsel

- The investment in time to get it right on the front end is worth the avoidance of potential greater costs for non-compliance later.

Real world experiences

- What have you encountered in your organization?

Questions?





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