

# Out-of-state remote work guidance and resources

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## Issue overview

The COVID-19 pandemic drove a shift to full-time remote work for approximately half of the state workforce in 2020. Now, remote work as a long-term option is more attractive and more viable for employees than ever before. During the pandemic, teleworking from outside the state of Washington became a requirement for employees residing in Oregon or Idaho. Out-of-state telework, while previously rare, is not new. However, now agencies are getting more employee requests for out-of-state telework for many different reasons.

The state has a clear interest in investing workforce funding inside the state of Washington. The economic benefit of good state jobs strengthens our communities. However, there may be some exceptional circumstances where a state agency decides to allow a state employee to move out of the state of Washington and maintain employment. A state agency may also decide to recruit both within and outside the state if necessary to hire someone with the right skills for the job. No state agency is required to approve a request to work outside the state, or to present reasons why they have denied such a request.

**The guidance found here attempts to balance the critical goals of finding and retaining the best, most qualified candidates to perform the important work of our state government, while prioritizing the reinvestment of taxpayer dollars back into our Washington state communities.**

## Reasons to approve out-of-state telework

State agencies and higher education institutions may, but are not required to, decide to support out-of-state telework. They may do so where it helps them meet a business need or where there is a supporting policy rationale. These situations include:

- 1. Supporting military families.** Agencies should support military families in alignment with Executive Order 19-01, Veteran and Military Family Transition and Readiness Support. They can do this by continuing the employment of a military spouse if the active service member transfers to another state.
- 2. Providing care for others.** Agencies may allow a current employee to move if they are providing care to a family member. The agency can consider this for a spouse, child, sibling, sibling-in-law, parent or grandparent as defined under the Family Medical Leave Act or Paid Family Medical Leave Program.
- 3. Recruiting or retaining a rare skillset.** To meet business needs, an agency may seek to keep (or recruit) an out-of-state employee with a rare, hard-to-find skillset or background.

**4. Supporting victims of violence or stalking.** An employee may need to leave the state as part of a protective or restraining order, or to escape victimization. Supporting these employees as part of a safety-related accommodation is encouraged.

**5. Border state residents.** There is a question of fairness for employees living in Oregon or Idaho and working for a Washington state agency. Denying them out-of-state telework would deny them access to mobility that similarly situated employees residing in Washington may enjoy. This runs contrary to the spirit of Executive Order 16-07, Building a Modern Work Environment.

**6. Positions that must perform work out-of-state.** There are some positions that have customarily and historically worked outside the state, such as revenue agents. Their assigned work requires them to work beyond the borders of Washington state.

**7. Legacy agreements.** Agencies may also consider continuing to support previously approved out-of-state telework agreements that may not meet the criteria listed above as legacy agreements, if they are working well and based on continuing business needs.

## **Telework designation and agency discretion**

Nothing in this document is intended to reduce the employer's authority to determine which positions are eligible for telework generally or for out-of-state telework specifically. Not all positions that can work remotely are able to do so full-time. There are some types of work that must be performed on-site to meet operational needs, and identifying that work is the purview of the agency. The guidance above addresses only situations where an employee holds a position designated as telework-eligible and the agency may decide to allow them to work from outside the state of Washington.

## How to support out-of-state teleworkers

The purpose of this guidance is to provide executive branch agencies with information and increased awareness for how to support out-of-state telework. All other agencies, the legislative and judicial branches, higher education institutions, boards, commissions, and offices are encouraged to review this guidance and to use it as a resource where it applies for them. It is also meant to help HR staff spot the greatest areas of concern when employees work out-of-state and outline how agencies can address them, with the goal of mitigating risk while maximizing flexibility for the agency.

This guidance does not comprehensively address every scenario nor serve as a substitute for legal advice. There are nuances to payroll taxation or benefit eligibility that require research by agency HR or payroll staff and that are not answered by this guidance. In addition, this document does not explain how to support out-of-country telework. If you are considering approving out-of-country telework in Canada or another country and need legal advice about specific scenarios or taxation questions, we recommend you contact your agency's assigned AAG.

**External support:** If your agency intends to support one or more requests for out-of-state telework and would like to consider engaging the services of an external company, DES may be able to help. An external contractor may be able to assist with developing a compliance plan, or help your agency identify the details of payroll taxation for a particular employee. In the summer of 2021 DES put out a request-for-information (RFI) for contractors that perform this multistate taxation and compliance work and did receive some responses. For more information contact DES Contracts and Procurement Division at (360) 407-2210 or via [contractingandpurchasing@des.wa.gov](mailto:contractingandpurchasing@des.wa.gov).

## Taxes

Addressing payment of payroll taxes when your employee is working from another state is one of the most important compliance tasks involved in supporting out-of-state workers.

### State, local, and other taxes

Information on state, local, and other taxes is provided below for neighboring states Oregon and Idaho. Other states would have similar types of considerations, but it is important to check

on all applicable taxes, some of which are assessed against the employer and not just the employee.

## **Oregon**

### *Statewide Transit Tax*

- A payroll tax is imposed at the rate of 0.1% on wages of residents of Oregon or wages earned by nonresidents in Oregon. The tax is generally referred to as the “statewide transit tax.”
- The tax is required to be withheld by the employer from applicable employee wages.
- There is no minimum threshold for the requirement to withhold and pay the statewide transit tax.
- Oregon Resident Employee -The tax is imposed on all wages paid to an Oregon resident employee, regardless of where the work is performed. Wholly out-of-state employers that pay wages to Oregon residents for work performed outside of Oregon can choose to withhold and remit the statewide transit tax for the employee so that the employee is not required to file and pay that tax himself or herself. Notwithstanding this rule, the State may be required to collect and remit the statewide transit tax for Oregon resident employees working entirely outside of Oregon if the State has other employees working in Oregon (and therefore has a payroll tax filing obligation).
- Non-Oregon Resident Employee – The tax is imposed on wages paid to a nonresident of Oregon with respect to services performed in Oregon.

### *Local transit taxes*

- TriMet Payroll Tax
  - TriMet (the transit district that covers the Portland metro area) imposes a payroll tax on every employer that pays wages to employees for work performed within the district. An interactive map available through [TriMet’s website](#) can be used to determine if work is performed within the district.
  - For 2021, the tax is imposed at a rate of 0.7837% of applicable wages paid. The rate has scheduled annual increases through 2025, at which time the tax rate will be 0.8237%.
  - We have not seen any authority that would exempt the State from the obligation to withhold and remit the TriMet payroll tax. Although there are exemptions for wages paid by the U.S. federal government, entities exempt from tax under IRC § 501(c)(3), and certain Oregon state agencies and political subdivisions, there does not appear to be any exemption that would apply to the State of Washington.
- LTD (Lane Transit District) Payroll Tax
  - The Lane Transit District (the transit district that covers certain areas in Lane County, Oregon) imposes a payroll tax with respect to wages paid to employees

for work performed in the district. A map available through the [LTD website](#) can be used to determine if work is performed within the district.

- For 2021, the tax is imposed on the employer at a rate of 0.76% of applicable wages paid. The rate has scheduled annual increases through 2025, at which time the tax rate will be 0.8%

### *Other Payroll Taxes*

- Worker's Benefit Fund (WBF)
  - An employer is required to report and pay the WBF assessment with other applicable payroll taxes.
  - The tax is imposed at a rate of 2.2 cents per hour, or portion thereof, of employment. The employer is required to pay one-half of the tax and to withhold one-half from employee wages.

### **Idaho**

- Non-Idaho Resident Employees – If an employee is a resident of a state other than Idaho while working in Idaho, the employer must withhold income tax if it pays more than \$1,000 of wages to the employee with respect to services performed in Idaho.

## **Payroll**

The place of work is defined as where the employee is performing the bulk of their work. Put simply, it is where the employee sits.

W-2s need to be filed manually with each state where the employee has worked. Agencies should withhold taxes for the employee and OFM can assist agencies with adding the taxes withheld to the HRMS W-2. There is no reconciliation feature to assist with wage reporting or tax withholding. That has to be entered separately into each states tax system.

Warrants are issued for the taxes withheld although many states would prefer an electronic payment. Your agency will need to mail the warrants to the appropriate state.

### **Employee wage withholding for Oregon and Idaho**

#### **Oregon**

- Oregon Resident Employee – If an employee is an Oregon resident, the employer (whether an Oregon employer or non-Oregon employer) must withhold state income tax with respect to wages earned for services provided in Oregon. This obligation applies regardless of the amount of wages paid to the employee in any particular year. This obligation does not apply if the Oregon resident does not work in Oregon.

- **Non-Oregon Resident Employee** – If an employee is a resident of a state other than Oregon, the employer must withhold income tax if it pays wages to the employee with respect to services provided in Oregon in an amount that exceeds of the Oregon standard individual income tax deduction. For the 2021 tax year, the Oregon standard deduction is \$2,350 in the case of an individual filing a separate return and \$4,700 in the case of an individual filing a joint return.

## **Idaho**

- **Idaho Resident Employee** – If an employee is an Idaho resident, the employer must withhold income tax on wages paid to such employee for any services performed in Idaho. This obligation applies regardless of the amount of wages paid to the employee in any particular year. This obligation does not apply if the Idaho resident does not work in Idaho.

## **Who is responsible for withholding?**

State agencies should plan to withhold income tax for out-of-state workers, since most other states have an income tax. Employers withholding income tax from employee wages are required to have an income tax withholding account and may be subject to a civil penalty of up to \$100 for each day such employer should have, but did not have, such an account. Although it is permissible for an employee to withhold and pay their own income tax in their state of residence, if the employee fails to pay the appropriate tax the onus will be on the employer to address the taxes due if a compliance issue arises. To avoid this complication and the risk of financial penalties, Washington state agencies should proactively withhold payroll taxes.

## **Unemployment insurance (UI)**

**If an employee is teleworking for the State of Washington but living in another state, the state agency should:**

- Contact the UI agency for the state in which the employee is physically located to see if an employee of Washington is covered by the state's unemployment insurance laws.
  - If the answer is YES: agencies should report and pay taxes to the other state in line with the state's employment insurance laws.
  - If the answer is NO: agencies should report and cover the employee here in Washington.

**Employees can be covered in Washington if the state of their physical presence will not cover them pursuant to RCW 50.04.110(3), which says employees are covered by Washington's unemployment laws if:**

1. The employee is working in the United States, the Virgin Islands, or Canada

2. The employee's service is not covered by the unemployment laws of that other state; and
3. The place from which the service is directed or controlled (which in this context is the equivalent to place where the employer's headquarters are located) is in Washington

### **Scenarios where an employee teleworks in another state less than full time**

#### *1. Claimant only occasionally works in a second state*

This could be an employee that primarily telecommutes from Oregon or Idaho, but on occasion, comes into Washington for a meeting or training. This could also be an employee that primarily works in a Washington office, but will occasionally work in their Oregon or Idaho home. The key legal language is that the work in the second state outside of their core/primary work location is "temporary or transitory in nature or consists of isolated transactions." RCW 50.04.120(2). In this scenario, their work is "localized" wherever the employee is primarily working. So the person primarily working at the Washington office would be covered in Washington, and the person primarily working in their Oregon or Idaho home would be covered in Oregon or Idaho

#### *2. Claimant works more than occasionally in a second state*

If the work is not "localized" in any one state because the transactions in a second state are not temporary, transitory or isolated, then the next step in the process is to determine the claimant's "base of operations." A claimant's "base of operations" can be difficult to discern in some circumstances. Federal guidance issued in 2004 defines the "base of operations" as:

"the place, or fixed center of more or less permanent nature, from which the individual starts work and to which the individual customarily returns in order to receive instructions from the employer, or communications from customers or other persons, or to replenish stocks and materials, to repair equipment, or to perform any other functions necessary to exercise the individual's trade or profession at some other point or points."

It is possible that an employee may have no "base of operations" in any one state.

This is going to be a highly fact-specific, employee-by-employee, individualized test. If an employee receives instructions and communications electronically, that can either occur in Washington, Oregon, or Idaho, depending on which state the employee is in at the time they log in. Whether the employee visits the Washington office to restock equipment or supplies or has equipment shipped to them at their Oregon/Idaho home office also has an impact on where their "base of operations" is located. Employees who can and do bounce back and forth regularly between the Washington office and their non-Washington home may not have a "base of operations" for purposes of this test. Employees who have a fairly clear and consistent work location may end up with a "base of operations" at that location.

#### *3. If there is no "base of operations," choose Washington*



If work is not “localized” in any one state, and if there is no “base of operations,” then the next legal step is to determine the state from which the employee’s service is directed or controlled. Federal guidance interprets this to mean “the place of basic authority,” or in more colloquial terms, the home/main office. The home/main office for any Washington agency is going to be located in Washington. As long as some service is performed physically in Washington, Washington will win on this test. An example of this is a truck driver that spends roughly equal time in many different states, but whose company or headquarters is located in Washington.

## Oregon

- The state of Washington as an employer is not required to remit unemployment insurance taxes to Oregon for an employee working in Oregon in most cases. However, Washington may still need to file reports to the Oregon Dept. of Employment.

See, <https://www.oregon.gov/employ/Businesses/Tax/Pages/OPRS.aspx>.

- Note: Washington is working on a new reciprocal agreement with Oregon for unemployment insurance purposes. For more information, contact ESD.

## Idaho

- The state of Washington as an employer must remit unemployment insurance taxes to Idaho for an employee working in Idaho. The employing agency can choose to be a cost-reimbursing employer, which means that Idaho will send a bill for the state’s share of the employee’s benefits based on their earnings during the base period.
- If your agency chooses to be a cost-reimbursing employer you must still report employee wages to the Idaho Dept. of Labor. See, <https://www.labor.idaho.gov/dnn/Businesses/Help-with-Unemployment-Tax>, for more information on filing reports.
- If your agency does not choose to be a cost-reimbursing employer, the 2021 default tax is 1.0% on the first \$43,000 in earnings during the year, although the tax rate may be adjusted depending on an employer’s employment history.

## Workers' compensation

**Workers’ compensation jurisdiction is determined using the same laws and analysis whether a worker is teleworking in another state due to COVID restrictions or working in another state for any other reason. It is important to know that coverage determinations are made on an individual basis for each worker, based on their circumstances.**

This applies to all employees (employees of public agencies or private sector businesses). The Extraterritorial Coverage statute that governs these decisions is RCW 51.12.120, with specific sections cited below.

- Generally speaking, Washington accepts incoming workers' compensation coverage from the eight states that Washington has agreements with (OR, ID, MT, NV, ND, SD, UT, WY). Those agreements vary by state and can be found in WAC 296-17-31009. For example, the agreement with Montana and Nevada exclude construction work and the agreement with Wyoming is limited to 6 months. No other agreements have a specified time limit.)
  - The reciprocal agreements cover temporary work in the other state. Where each worker should be covered is determined by the specific circumstances of each worker, and not by the state where the employer is based. For example, a Washington employer may need to have Washington workers' compensation coverage for their Washington workers and Oregon workers' compensation coverage for their Oregon workers. The Washington workers' compensation coverage would also cover temporary work in Oregon that is performed by Washington workers, and the Oregon workers' compensation coverage would also cover temporary work in Washington that is performed by Oregon workers.
  - Washington state is not looking into reciprocity with any other states.
  - Washington can also accept incoming workers' compensation coverage from non-reciprocal states for non-construction work in some circumstances, according to RCW 51.12.120(4). These requests would need to be reviewed on a case-by-case basis. Washington workers' compensation coverage extends benefits for Washington workers injured outside of our state because that coverage is required by statute (RCW) regardless of whether there is a reciprocal agreement or not. However, non-reciprocal states may require separate coverage there, or they may accept Washington coverage on a case-by-case basis for temporary work in their state. Washington workers will retain their right to file a claim with Washington, regardless of whether they have additional coverage in the other state, per RCW 51.12.120(1,2) and RCW 51.04.060.
  - Washington extends workers' compensation coverage and benefits outside of Washington for Washington workers that are temporarily working in reciprocal states or non-reciprocal states, per RCW 51.12.120(1).
- **Whether the employee is a full-time or part-time employee is not a critical consideration, but where they spend their time working is.** It must be determined where the worker usually works, and whether the work in the other state(s) is 'temporary'. There are a number of questions that must be answered, including:
  - *Where is the work "principally localized"? "Principally localized" is defined in RCW 51.12.120(5), and it is simply the business address where the worker regularly works, or if the worker does not work at a physical business address, it is the state where the worker lives if they also work a substantial amount of time in that state.*
  - *If the work is not "principally localized" in any one state, are there other factors (according to RCW 51.12.120) that require providing Washington benefits, even for work outside of Washington?*

- *What does the work pattern look like, so that it can be determined which exposure is 'temporary' in nature?* (For example, does the worker work from home in another state on a regular schedule, and then work in a business location the other days? Do they pick up supplies, materials, vehicle, etc. or otherwise start/end their day at a designated location?)
- From a workers' compensation perspective, the same analysis would be used to determine workers' compensation coverage requirements regardless of whether the worker is teleworking, working at customer locations or attending conferences in another state. For more information, go to [www.Lni.wa.gov/OutofState](http://www.Lni.wa.gov/OutofState) or email [OutofState@Lni.wa.gov](mailto:OutofState@Lni.wa.gov).

### **How does L&I handle a situation if there is an employee teleworking out-of-state for our agency and they get hurt on the job?**

For workers' compensation purposes, if they are a Washington worker who is temporarily teleworking in another state then they would still be entitled to file a claim with us for their Washington workers' compensation benefits, and there would be no difference in the claim process. However, if the worker is NOT a Washington worker, but is regularly working in the other state, then they would be under that state's workers' compensation coverage.

Washington workers who temporarily work outside of our state are still entitled to their Washington workers' compensation benefits, per RCW 51.12.120(1). Their hours would still be reported as usual on their Washington workers' compensation policy/L&I quarterly report. Employers should also check with Department of Occupational Safety and Health (DOSH) on the requirements for reporting serious injuries such as hospitalizations if they happen outside of Washington.

### **What are the steps to follow for out-of-state teleworkers?**

- Confirm to which state the worker(s) should be reported. Contact [OutofState@Lni.wa.gov](mailto:OutofState@Lni.wa.gov) for assistance.
- Check with the other state to verify if they will accept WA L&I coverage for Washington workers temporarily working in their state.
- Inform Washington workers that they can still file their claim with WA L&I if they are injured while temporarily working out-of-state. They can file claims online or by phone, and can receive assistance finding a medical provider in another state. Employees can see [www.Lni.wa.gov/FileFast](http://www.Lni.wa.gov/FileFast) for assistance with filing a claim.
- DES administers a [Workers' Compensation Insurance program](#) for state workers. If your employee works outside of Washington in a single other state for more than 30 days (240 hours consecutively and non-consecutively) estimated deposit payroll each year, **your agency must work with DES** to insure your out-of-state employee. This policy is also audited and it requires the submission of audited payrolls for those employees who are working in a single state for more than 30 days (240 hours consecutively and non-

consecutively) during an annual period. For more information, contact Kimberly Haggard at [kimberly.haggard@des.wa.gov](mailto:kimberly.haggard@des.wa.gov).

**Is the liability different if the employee working out-of-state is doing manual work rather than telework? If so, what should agencies do prior to agreeing to telework and/or to prepare for that liability?**

For workers' compensation purposes, there is no difference whether the worker is performing manual labor or clerical telework. What is important is whether the work outside of Washington is temporary. Washington workers would still be entitled to file claims in Washington for temporary work in another state, regardless of the type of work performed. However, if a worker is performing construction work in another state, the employer should contact [OutofState@Lni.wa.gov](mailto:OutofState@Lni.wa.gov) to receive additional information for construction, based on the state the work is performed in.

See these webpages for more information from Washington State's Department of Labor and Industries (LNI):

- [Washington workers traveling out of state](#)
- [Out-of-state supplemental reporting](#)

## **Paid Family Medical Leave (PFML)**

### **Washington**

The only requirement for eligibility for the Washington state PFML program is that a person have at least 820 hours reported to the PFML program in a [qualifying period](#). It is not a requirement for an individual to be working or living in Washington to apply for the benefit. If a person has moved to another state, or lives and works in another state, if they still meet the minimum 820-hour requirement, they could still receive PFML from Washington. Over time, it may be less likely that they will be able to meet the 820-hour threshold. Note: The employee would still need to have substantiated a qualifying event.

Generally a person is not required to have Washington PFML premiums deducted from their wages if the work is performed in another state. But there may be exceptional circumstances to which premiums would apply. For instance, if some work is performed in Washington, and the direction and control is in Washington, the individual's work would be considered 'localized in Washington' and reportable.

Employees teleworking for the State of Washington but living in another state who do not meet the minimum 820-hour requirement may not need to pay PFML premiums. If they are living in a state without a PFML program, then they would not. However, if they are living in one of the jurisdictions with a PFML program (currently CA, HI, NJ, NY, RI, WA, and DC) (note: Oregon will begin premium collection in January 2022 with benefits available January 2023.) then agencies

should report to those states and have the employee pay into the other state's PFML program to ensure the employee is eligible for benefits if they need them. This would require the state agency to register as an employer in that state.

If the employee does not qualify in the state in which they are working, agencies are asked to email Washington Employment Security Department at [MDoelman@ESD.WA.GOV](mailto:MDoelman@ESD.WA.GOV).

### **How is Washington Employment Security Department (ESD) notified that the employee/employer can stop paying premiums?**

- ESD depends on employers to know whether or not employees should be reported for PFML. At the time the employee's work is no longer localized in WA the employer should no longer deduct premiums from the employee's wages, per [RCW 50A.05.010\(8\)\(a\)](#). The employer should only report the employee for the hours that the work was localized in WA on the quarterly report.

### **Does ESD reimburse premiums?**

- To reach the 820-hour eligibility mark, ESD looks at the first 4 of the last 5 completed calendar quarters, or the last 4 completed calendar quarters. ESD would not reimburse employers for employees who do not meet the 820 hours requirement. ESD has received similar questions early in the implementation about retirees who may have worked a few quarters. PFML is like any other insurance program – there is no reimbursement for premiums paid, except perhaps in circumstances where an employer overpaid premiums erroneously. If there were reports that included employees that were not localized in WA, the employer would need to file an amended report to not include the employees, and then ESD may reimburse the employer if the reimbursement was over \$50, and the employer would have to reimburse the employee.

## **Oregon**

### **Oregon Family Medical Leave**

In addition to the federal Family Medical Leave Act, Oregon has its own Family Leave Act (OFLA). OFLA allows employees to take up to a total of 12\* weeks of time off per year for any of the following reasons:

- Parental leave - either parent can take time off for the birth, adoption, or foster placement of a child. \*If an employee uses all 12 weeks of OFL for parental leave, they can take up to 12 more weeks for sick child leave.
- Serious health condition – employee's own health condition, or to care for a spouse, parent, parent-in-law, or child.

- Pregnancy disability leave – before or after birth of child or for prenatal care. \*Employee can take up to 12 weeks of pregnancy disability leave in addition to 12 weeks for any reason listed here.
- Sick child leave - for employee's child with an illness or injury that requires home care but is not serious.
  - Employees can also take OFLA protected time if their child's school or childcare provider is closed due to a public health emergency, such as the COVID-19 pandemic school closures.
- Military family leave – up to 14 days if employee's spouse is a service member who has been called to active duty or is on leave from active duty.
- Bereavement leave – up to 2 weeks of leave after the death of a family member.

Employers must continue to provide employees with the same health insurance benefits when they are on leave as when they are working. When the employee returns to work they must be returned to their former job or a similar position if their old job no longer exists.

To be eligible, the employee must have worked an average of 25 hours per week for 180 days – except for parental leave, where the employee just needs to have worked for 80 days.

- [Oregon family leave](#)

### **Oregon Paid Family Medical Leave**

- Oregon's Paid Family Medical Leave has not begun to require contributions as of the publication date of this guidance (Sept 2021). Contributions are expected to begin on January 1, 2023, with payments for paid family leave to begin September 2023. The employee is to pay 60% of the premium with the employer to pay 40% of the premium. However, an employer may choose to pay all or part of the employees share.

## **Registering as an employer in other states**

### **Oregon**

- An employer that pays wages or other compensation to employees for services performed within Oregon is required to register with the State of Oregon by filing a Combined Employer's Registration Form ([Form 150-211-055](#)) with the Oregon Department of Revenue or by [registering online with the Oregon Business Registry through the Secretary of State](#).
- It appears that Oregon would consider each agency of the State to be a separate employer for registration and applicable tax withholding and payment purposes.

### **Idaho**

- An employer that pays wages or other compensation to employees for services performed within Idaho is required to register with the State of Idaho Department of Labor (for unemployment insurance) and Idaho State Tax Commission (for employee wage withholding) through [the Idaho Business Registration System](#).
- It appears that Idaho would consider each agency of the State to be a separate employer for registration and applicable tax withholding and payment purposes.

## Wage and hour laws

### Oregon

#### *Minimum wage for Oregon*

[Oregon has a minimum wage](#) that is dependent on the location where the employee works. The minimum currently ranges from \$11.50 per hour (Non-urban) to \$13.25 per hour (Portland metro).

#### *Meals and rest periods*

For each 8-hour work shift an employee works, an employer must provide the following breaks free from work responsibilities:

- Two 10-minute paid rest breaks
- One 30-minute unpaid meal break

If an employee works longer or shorter than eight hours, the entitlement to rest breaks may be different. For more information, see [Oregon laws surrounding meals and breaks](#). Keep in mind that CBA requirements for breaks may be different. Employers should follow the law or CBA rule for represented employees that is most generous to the employee.

#### *Paid Sick Leave*

Similar to Washington, [Oregon has a paid sick leave law](#). Both overtime exempt and overtime eligible employees earn at least 1 hour of protected sick time for every 30 hours worked up to 40 hours per year. (Employers can choose to frontload at least 40 hours of sick time at the beginning of the year.) For additional information related to Oregon paid sick leave, see:

### Idaho

#### *Misc. provisions: Meals and Rest Breaks; Overtime; sick leave; FMLA*

Idaho follows FLSA and does not require meals or rest breaks. Additionally, they have no additional rules for overtime. Idaho also follows FMLA and does not have a separate family medical act. Idaho does not have a paid sick leave law, nor a paid family leave law.

## *Minimum Wage*

The minimum wage in Idaho is lower than that of Washington. Therefore, if you are paying the Washington minimum wage, you would currently be paying at least the minimum wage in Idaho.

## **Non-discrimination laws**

### **Discrimination law**

This area of policy can include laws related to gender, pregnancy, gender identity, disability, religion, race, ethnicity, and any other category protected by state law. State laws can vary in the list of categories; however, many states have a threshold number of employees working in the state in order to be covered employers, and some states have laws that apply to private employers but not public.

Washington public employers are covered under Federal anti-discrimination laws, under Title 7, and Federal pregnancy disability laws, including FSLA laws related to breaks and breastfeeding.

### **Pay equity: Employers should assume that they must comply with pay equity laws of other states**

- [California Equal Pay Act and California Fair Pay Act](#)
- [Idaho Wage Discrimination Law](#)
- [Oregon Pay Equity Act](#)

There also may be separate laws governing cities and counties; for example, a city ordinance in San Francisco prohibits employers from disclosing salary information of current or former employees without their consent. Employers may need to look at county and/or city requirements since there may be specific laws governing the location where the employee is working.

## **Technology of accounting and HR systems**

Currently Washington's payroll and HR system for general government agencies, HRMS (human resources management system), does not provide an automated way to manage tax or benefit withholding for employees working in different states. Currently HRMS is an SAP application and although there is a feature offered by SAP that could calculate the correct deduction more quickly based on work location, implementation of this feature would be costly and resource intensive and would pull technology services staff off of other priority projects. Because of this, the State of Washington does not intend to turn on this feature. With the implementation of a new ERP product, Workday, the hope is that this simpler automated withholding process will be



available. Target implementation for Workday as the state's primary payroll processing tool is 2025.

In the meantime, for agencies to accomplish the necessary withholding for an out-of-state teleworker, there are wage types that can be used. HR or payroll staff will need to research the correct amount of withholding and manually input the amount into the system.

**The available wage types are:**

- 2673 Other St. L&I
- 2674 Other St. Unemp.
- Both of these codes accrue amounts deducted to the State Payroll Revolving Account (035), GL 5199 (other payables)

Please note that these wage types can be used for other items such as local taxes as well.

For further questions, employers should contact their agency's payroll administrator or OFM Statewide Accounting.

## **How to handle time-zone differences**

There are a variety of issues that can arise when employees work in different time zones. Employers should consider the business needs, any potential wage and hour impacts, and pay considerations when reviewing requests to telework in a different time zone.

**Business needs**

- Agency will need to determine if business and service needs can be met across expanded hours.
- Agency will need to determine which time zone the employee lives in and which time zone the business is done and document this information on the telework agreement along with an attestation to their work schedule.
- Agency will need to determine whether and how employee expectations and hours worked can be tracked.

**Wage and hour issues for overtime eligible employees**

- Agency will need to ensure overtime eligible staff are tracking hours, working only their scheduled shift, not working in excess of their scheduled hours, and taking appropriate breaks. Employees not taking required breaks or otherwise working outside of their hours may lead to legal risk and potential financial liability due to wage and hour complaints.
- Agency will need to closely monitor OT eligible employees' work hours to ensure employees do not move into overtime status. Supervisors still need to monitor work

hours of employees with alternate schedules (e.g. convey expectations around hours, address if the employee appears to be working beyond shift by sending e-mails outside of work time, etc.). Supervisors will need to monitor employee schedule change requests that may cause an overlap in workweeks. If an overtime-eligible employee requests a change that might result in them working in excess of forty hours in either the previous or current workweek due to a schedule overlap, the employee must receive overtime compensation.[\[1\]](#)

WAC 357-28-255(3): (3) When an overtime eligible employee experiences a schedule change which causes an overlap in workweeks and requires work in excess of forty hours in either the previous or current workweek, the employee must receive overtime compensation.

### **Potential need to pay a shift differential (represented) or shift premium (non-represented)**

- An agency would typically be required to pay a shift differential (represented) or shift premium (non-represented civil service) if employee works between 6 pm and 6 am. The differential or premium would be paid for whole shift if any hours are worked between 6 pm and 6 am. Represented employees may not waive shift premium; only the Union has the ability to waive the shift premium.
- Agencies may need to contact OFM Labor Relations to explore whether an MOU is an option to allow more flexibility. Absent an MOU, employees would be entitled to shift premium if the Collective Bargaining Agreement provides for it, even if the employee is asking for the change.
- WAC 357-28-190 clarifies when a non-represented employee requests a schedule change that falls within 6 pm and 6 am, they are not eligible for shift premium.
- For represented employees, notice may be required. It is recommended that agencies review the applicable CBA and work with OFM Labor Relations on this issue.

## **PEBB, medical insurance, and dental**

Most of the plans within the Uniform Medical Plan (UMP) and Uniform Dental Plan (UDP), in which most PEBB members are enrolled, have a worldwide network of providers. If a subscriber is enrolled in a medical plan that is specific to a certain geographic area (UMP Plus is an example) and the subscriber moves out of the area, they are entitled to (and often must) use a Special Open Enrollment to choose a plan that is available to them in their new location. Please refer to [Health Care Authority's Addendum 45-2A](#), which outlines Special Open Enrollment events.

## **Data privacy**

Certain states have robust data privacy protections in place, most notably [California](#). It is the employer's responsibility to ensure compliance with the other state's laws. It is recommended

that the agency consult with their AAG on questions related to data privacy for out-of-state workers.

## **International telework**

Currently, employees teleworking outside of the United States are required to have a U.S. permanent address and a U.S. bank account. Employees working outside the country should be strongly advised to ensure the safety and security of any physical technology tools (laptops, agency mobile phones) when working abroad to minimize risk to state systems and avoid the cost and challenges of replacing the equipment.

This guidance does not address the issues involved for out-of-country telework. It is strongly recommended that the agency consult with their AAG prior to approving telework outside of the United States. It is possible to support employees working from Canada or other international locations – but just like out-of-state telework, it requires research specific to each case in order to ensure compliance with the laws and rules of the out-of-country location where the employee will be performing their work.

## **Travel to Washington**

A telework agreement can – and should – document the approved location(s) for the employee to work remotely. Employers should consider [SAAM Chapter 10](#) when defining an employee's official duty station. If the employer and employee have agreed that the out-of-state teleworking employee will work set days within a state office, the telework agreement should include those details; including the official station designation for travel purposes for those set days. The telework agreement that the agency creates with the out-of-state teleworker will establish who covers the cost of travel after a review of SAAM requirements, and any other necessary details.

The SAAM does not require payment of mileage or travel time for a set "split" schedule or occasional pre-designated travel as described above, unless unanticipated or unplanned travel is required without sufficient notice. If the telework agreement has the employee scheduled to come into the office for certain dates, that travel into the office is a commute. The first and last trip within the employee's Official Residence/Official Station is not reimbursable. Employers may still want to consider virtual meetings instead due to cost considerations.

Agencies are advised not to imply verbally or in writing to the employee that they will never be asked to return, even if the out-of-state telework agreement is being approved. If the agency cannot confirm when establishing the agreement the exact dates when an employee might be asked to return to Washington for meetings or other business needs, the employee and the employer should establish a clear process for providing notice, and document that in the agreement. The employer should adhere to that process when asking employees to return.

If after reviewing this guidance and the SAAM you have more questions about travel and reimbursement, contact OFM Statewide Accounting.

## **Additional resources**

[Out-of-State workbook \[Excel\]](#): This is a draft resource spreadsheet to assist as you begin your research on necessary compliance details. This tool should *supplement* and not be used in lieu of careful research for each instance of out-of-state telework. We cannot guarantee its accuracy or freshness, but it may help, again, to get you started.

[DES Out-of-State Worker's Compensation \[link\]](#): This is an FAQ about the DES-administered insurance program that agencies must enroll in for their state employees working outside Washington for more than 240 hours per year. For additional information about this program, contact [Kimberly Haggard](#) at DES Risk Management.