# Coronavirus (COVID-19): Payroll Concerns

The coronavirus (COVID-19) pandemic has caused unprecedented business disruption and workplace changes. During this time, payroll professionals are under enormous pressure to keep operations running as smoothly as possible despite many unique challenges.

In addition to taking advantage of the payroll-related benefits offered under the Coronavirus Aid, Relief and Economic Security (CARES) Act, employers may also take advantage of other, seldom used tax-favored benefits under the Internal Revenue Code (IRC) that can help employees who have been adversely impacted by the pandemic. These include leave-sharing plans and disaster relief payments.

At the same time, payroll professionals must remain compliant with existing federal and state tax rules that have come to the forefront because of the increase in the number of employees working from home or other remote locations due to COVID-19 social distancing orders. Payroll personnel must also continue to comply with the day-to-day state wage payment laws even though they may be processing payroll while working from home. Keeping up with other, rapidly emerging state withholding and unemployment tax filing and payment developments can also complicate matters.

All of these key issues affecting payroll during the COVID-19 crisis are addressed below.

## Federal Developments

### CARES Act Payroll Provisions

The Coronavirus Aid, Relief and Economic Security (CARES) Act, signed into law on March 27, 2020, includes several payroll related provisions that are designed to help eligible employers keep workers on their payrolls, increase available cash flow to meet COVID-19 needs and ultimately provide economic stability despite experiencing economic hardship related to the coronavirus pandemic.

* Find out how to claim the fully refundable Employee Retention Credit (ERC);
* Discover the benefits of deferring payroll tax deposits; and
* Determine eligibility for a Paycheck Protection Program (PPP) loan.

Two other provisions of the CARES Act to be aware of temporarily change employers' withholding obligations while providing much needed financial assistance to employees.

* Learn about the expansion of employer-provided student loan assistance; and
* Find out about the suspension of student loan garnishment collections.

### Leave-Sharing Plans

If they have established a qualified leave-sharing plan, employers may be able to help employees who need to take paid time off (PTO) due to the COVID-19 pandemic but have exhausted their available leave. Under such a plan, employees may voluntarily donate their accrued, but unused PTO for the benefit of their fellow employees in need. There are two types of potential plans:

* Qualified medical emergency leave-sharing plans; and
* Qualified major disaster leave-sharing plans.

If the employer's plan satisfies certain requirements, the employees who donate PTO are not subject to income tax on the value of the time donated. Instead, the employees who are the recipients of the donated PTO are taxed on the value of the time as taxable wages.

In addition, state tax or leave laws in an employer's jurisdiction must be considered when deciding whether to implement either type of leave-sharing plan, as state requirements may be different from those under the federal Internal Revenue Code (IRC). State or local leave ordinances may also limit an employer's ability to permit employees to donate leave if it would reduce accrued leave to a level below that which is permitted under local law.

* Check the major leave requirements in each jurisdiction, and the employers to which they apply, before deciding whether to implement a leave-sharing plan.

#### Medical Emergency Leave-Sharing Plans

Under a qualified medical emergency leave-sharing plan, PTO donations either go to a specific coworker or into a general leave bank for any employee who may need such time. For COVID-19 purposes, if an employee needs time off from work because the employee (or a family member) is diagnosed with the coronavirus, this may qualify as a medical emergency for which leave-sharing under such a plan may be appropriate. However, it is not clear whether the IRS would consider time off appropriate under such a plan for an employee who has not been diagnosed with the coronavirus but must self-quarantine due to potential exposure to the virus.

* Review the IRC's requirements for qualified medical emergency leave-sharing plans before offering a plan to employees.

#### Major Disaster Leave-Sharing Plans

Under a major disaster leave-sharing plan, the disaster must have been declared a *major disaster* by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and the disaster must warrant individual assistance or individual and public assistance from the federal government under that Act.

Unlike medical emergency leave-sharing plans, major disaster leave-sharing plans do not allow donors to deposit leave for a particular coworker. Instead, accrued leave must be deposited into an employer-sponsored leave bank for use by *any* employee adversely affected by a specific major disaster. The recipient employee (or a family member of the employee) must have suffered severe hardship due to the disaster that requires the employee to be absent from work.

Although the President has declared all states as major disasters for COVID-19 purposes, not all states have been declared *major disasters that warrant individual assistance*. Therefore, an employer that wants to establish such a plan should check the relevant state COVID-19 websites to verify the nature of any such declarations.

* Review the IRC's requirements for qualified major disaster leave-sharing plans before offering a plan to employees.

#### Charitable Leave-Based Donations

On occasion, the IRS has allowed employees not impacted by a major disaster to cash out accrued time, which their employers then donated to tax-exempt relief organizations, such as charities. The IRS has permitted this in the wake of the following disasters:

* The attack on the World Trade Center on September 11, 2001;
* Hurricane Katrina in 2005;
* Hurricane Sandy in 2012;
* The Ebola crisis in 2014; and
* Hurricanes Harvey, Irma and Maria in 2017.

The IRS only allows this relief on a disaster-by-disaster basis. Amounts donated by an employee are not taxable to the employee, and the employee may not claim a charitable deduction for the time. The IRS limits the time during which an employee may make such a donation.

On June 11, 2020, the IRS issued [Notice 2020-46](https://www.irs.gov/pub/irs-drop/n-20-46.pdf), providing guidance regarding cash payments that an employer may make to charitable organizations described in IRC § 170. The Notice adds the COVID-19 pandemic to the above list by providing that such cash payments made in exchange for vacation, sick or personal leave that its employees elect to forgo will not be treated as wages (or compensation, as applicable) to the employees or otherwise be included in the gross income of the employees if the payments are:

* Made to a § 170(c) organization for the relief of victims of the COVID-19 pandemic; and
* Paid to such an organization before January 1, 2021.

Similarly, employees electing to forgo leave will not be treated as having constructively received gross income or wages (or compensation, as applicable).

Such cash payments should not be included in Box 1, 3 (if applicable) or 5 of an employee's Form W-2. In addition, electing employees may not claim a charitable contribution deduction under § 170 with respect to the value of forgone leave. An employer may deduct the cash payments under the rules of § 170 or § 162 if the employer otherwise meets the respective requirements of either section.

### Disaster Relief Payments

President Trump's declaration of the COVID-19 pandemic as a *disaster* under the Stafford Act allows employers to help employees cover certain disaster-related costs due to COVID-19 by providing them with tax-free disaster relief payments under IRC § 139.

To be tax-free to employees under § 139, disaster relief payments must be *qualified*. Disaster relief payments are *qualified* if they are reasonable and necessary for personal, family, living or funeral expenses incurred as a result of a qualified disaster and are not otherwise paid for by insurance or other means. Therefore, the payments may be made for expenses such as:

* Rent, utilities and other household maintenance or repair costs;
* Travel away from home (i.e., cost of transportation, meals and lodging);
* Certain medical expenses; and
* Child care expenses.

Qualified disaster relief payments are deductible by the employer and are not subject to withholding for federal income tax, Social Security or Medicare (FICA) taxes or federal unemployment tax. They also do not have to be reported on the recipient employee's Form W-2. However, because the payments may be subject to state income tax withholding, an employer considering making such payments should check state law first.

Further, employees do not have to substantiate such expenses to their employers so long as the expenses are reasonable in relation to the expenses they expect to incur. However, it is in an employer's best interest to keep records of such payments to substantiate any deductions the employer intends to claim and to have a detailed written policy that includes all the parameters of the employer's disaster relief payment plan.

Note that qualified leave wages under the FFCRA are *not* tax-free qualified disaster relief payments, [according to the IRS in its Frequently Asked Questions regarding COVID-19 related tax credits (*see* FAQ #58)](https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs). Instead, qualified leave wages are intended to replace wages or compensation that an individual would otherwise earn, rather than to serve as payments to offset any particular expenses that an individual would incur due to COVID-19. Therefore, qualified disaster relief payments do not include income replacements such as sick leave or other paid time off paid by an employer.

## Taxation of Home Office Equipment

The dramatic increase in the number of employees working from home or other remote locations due to COVID-19 social distancing orders raises the issue of federal taxation of home office equipment, such as computers, printers, fax machines and internet connections among other things. Changes made to the IRC by the 2017 federal tax reform law relaxed the substantiation requirements for such equipment. As a result, IRS guidance in regard to cell phone usage became applicable to computer equipment provided by an employer to remote workers.

Under that guidance, the IRS will treat an employee's use of an employer-provided cell phone and computer (and peripheral) equipment to carry out the employer's trade or business as a tax-free working condition fringe benefit. That means the value of the benefit is excluded from the employee's wages that are subject to federal income tax (FIT) and FIT withholding, Social Security and Medicare tax and federal unemployment tax, so long as the equipment is used primarily for noncompensatory business reasons. In addition, any *personal* use by an employee of an employer-provided cell phone is treated as a *de minimis* fringe benefit that may be excluded from the employee's taxable wages.

To ensure that the equipment will be viewed by the IRS as provided to employees for use in the employer's trade or business, and to achieve the desired tax-favored status, the equipment must be returned to the employer when its employees are no longer using it primarily for the employer's business purposes.

* Review IRS rules and guidance regarding working condition and *de minimis* fringe benefits;
* Implement an employer-provided cell phones policy; and
* Find out how to manage remote workers and create workplace policy templates.

## State Developments

### Nexus Issues for Home-Office Workers

If employees are working from their homes in states other than those to which they normally report or in which they normally perform work for their employer because of COVID-19 shelter-in-place orders, payroll professionals must consider whether income tax nexus has been triggered with the employees' home states if the employer did not already have nexus with those states.

In general, when employees work from home for an employer located in another state, the home offices are usually sufficient to establish *nexus* - substantial business presence or links with the state for income tax purposes. When an employer establishes nexus with a state, it is required to register as a withholding agent in that state and withhold that state's income taxes from the pay of employees working in that state. Income tax nexus may also cause an employer to be subject to other tax types as well.

However, during the COVID-19 crisis, some states have temporarily waived the nexus requirement or issued related guidance, including but not limited to the following:

#### Alabama

An [ADOR Operational Update Due to COVID-19](https://revenue.alabama.gov/coronavirus-covid-19-updates/), posted by the the Alabama Department of Revenue (ADOR), provides that during the federally declared period of emergency due to the coronavirus pandemic, the ADOR will not change withholding requirements for businesses based on an employee's temporary telework location within Alabama that is necessitated by the pandemic and related federal or state measures to control its spread. The ADOR will not consider temporary changes in an employee's physical work location during periods in which temporary telework requirements are in place due to the pandemic to impose nexus or alter apportionment of income for any business. Alabama residents are taxable on all of their income, regardless of whether they work within or outside the state.

#### District of Columbia

[Notice 2020-05](https://otr.cfo.dc.gov/release/otr-tax-notice-2020-05-covid-19-emergency-income-and-franchise-tax-nexus), issued by the District of Columbia Office of Tax and Revenue (OTR), provides that OTR will not impose corporation franchise tax or unincorporated business franchise tax nexus solely on the basis of employees working from home, or property used to allow employees to work from home (e.g., computers and similar equipment), temporarily in the District during the period of declared public emergency and public health emergency, including any extensions by the Mayor. It is not clear whether this also applies to income tax withholding.

#### Georgia

An [FAQ](https://dor.georgia.gov/coronavirus-tax-relief-faqs) posted by the Georgia Department of Revenue (DOR) provides that temporary remote work due to the COVID-19 pandemic will not be used as the basis for establishing Georgia nexus. Also, if an employee is temporarily working in Georgia due to COVID-19, wages earned during that time period will not be considered Georgia income and the employer is not required to withhold Georgia income tax.

The following rules also apply:

* If an employee remains in Georgia after the temporary remote work requirement has ended, the normal rules for determining nexus, the employee's wages and the employer's income tax withholding obligation will apply.
* An employer may not assert that solely having a temporarily relocated employee in Georgia due to COVID-19 creates nexus.
* Wages paid to a nonresident employee who normally works in Georgia but is temporarily working in another state due to COVID-19 will be considered Georgia wages and the employer should continue to withhold Georgia income taxes.

The temporary protections extend for periods of time when:

* There is an official work from home order issued by an applicable federal, state or local government unit; or
* The employee is working at home pursuant to the order of a physician in relation to the COVID-19 outbreak or due to an actual diagnosis of COVID-19. The subsequent 14 days are included in the time period to allow for a return to normal work locations.

#### Illinois

[Informational Bulletin FY 2020-29](https://www2.illinois.gov/rev/research/publications/bulletins/Pages/BulletinsYear.aspx?rptYear=2020) posted by the Illinois Department of Revenue (IDOR) provides income tax withholding guidance for out-of-state employers with Illinois resident employees temporarily working in Illinois due to the COVID-19 crisis.

Employee compensation is subject to Illinois income tax withholding when an employee has performed normal work duties in Illinois for more than 30 working days. If an Illinois resident employee has performed work for more than 30 working days from their home in Illinois for an out-of-state employer during the COVID-19 crisis, the employer may be required to register with the IDOR and withhold Illinois income tax from the employee's pay.

Out-of-state employers from states that have a reciprocal agreement with Illinois (i.e., Iowa, Kentucky, Michigan and Wisconsin) do not have to change their usual withholding practices. Out-of-state employers that are registered as a withholding agent in Illinois should continue to withhold Illinois income taxes.

The IDOR will waive penalties and interest for out-of-state employers that fail to withhold Illinois income taxes for Illinois employees if the sole reason for the Illinois withholding obligation is that the employee is working from home due to the COVID-19 pandemic. The IDOR encourages all employers that have withholding requirements to register with the IDOR and withhold Illinois income tax as soon as applicable to avoid processing delays and increased correspondence.

The Bulletin provides additional information on how to ensure that the correct amount of Illinois income tax withholding is reported.

#### Indiana

A [COVID-19 FAQ](https://www.in.gov/dor/7078.htm) posted by the Indiana Department of Revenue (DOR) states that the DOR will not use the relocation of employees as a direct result of temporary remote work requirements arising from and during the COVID-19 crisis as the basis for establishing Indiana nexus or for exceeding the protections provided by state law for the employer of such employees. This temporary measure will extend for periods of time where:

* There is an official work-from-home order issued by an applicable federal, state or local government unit; or
* Pursuant to the order of a physician in relation to the COVID-19 outbreak or an actual diagnosis of COVID-19, plus 14 days to allow for return to normal work locations.

However, if an employee remains in Indiana after the temporary remote work requirement has ended, nexus may be established for the employer. An employer may not assert that solely having a temporarily relocated employee in Indiana under the above circumstances creates nexus for the employer or exceeds the employer's protection under state law.

#### Iowa

[Income tax FAQs](https://tax.iowa.gov/COVID-19) posted by the Iowa Department of Revenue provide that Iowa personal income tax and withholding requirements are not modified by the COVID-19 pandemic. Compensation for personal services rendered within Iowa is subject to Iowa income tax, unless the income is exempted by a specific provision of Iowa law. Generally, an employer maintaining an office or transacting business within Iowa is required to withhold Iowa income tax from the wages paid to those employees.

Iowa residents are subject to personal income tax on their entire income, wherever earned. Therefore, an Iowa resident's income tax return filing requirements should not be affected by temporary telecommuting in Iowa or another state. Nonresidents of Iowa who normally work in Iowa but are temporarily telecommuting in another state, or who normally work outside of Iowa but are temporarily telecommuting in Iowa, may need to adjust their income apportionment or their Iowa income tax return filing requirement.

Because of the reciprocal agreement with Illinois, wages earned by an Iowa resident working in Illinois are taxable only to Iowa, and wages earned by Illinois residents working in Iowa are only taxable to Illinois. This may eliminate or reduce wage sourcing issues for such employees.

#### Kentucky

[FAQs](https://revenue.ky.gov/Individual/Pages/COVID-19-Tax-Relief-Frequently-Asked-Questions.aspx) posted by the Kentucky Department of Revenue (DOR) provide that Kentucky income tax withholding requirements remain unchanged by restrictions related to the COVID-19 emergency. The DOR will continue reviewing state income tax nexus determinations on a case-by-case basis.

The Wages paid to a Kentucky resident are subject to income tax and income tax withholding on wages paid for services provided both within and outside of the state. Wages paid to a Kentucky nonresident are subject to income tax and income tax withholding for services provided within the state, except for employees who are residents of states with which Kentucky has a reciprocal agreement and who have completed and submitted to their employer a Form K-4, Kentucky Withholding Certificate.

#### Maryland

A [Tax Alert](https://marylandtaxes.gov/pros/tax-alerts/index.php) from the Maryland Comptroller (updated May 4, 2020), provides that employer withholding requirements are not affected by the current shift from working on the employer's premises to teleworking because taxability is determined by the employee's physical presence. Generally, compensation paid to a Maryland nonresident who is teleworking in Maryland is Maryland-sourced income, and therefore, subject to withholding. However, Maryland has a reciprocal exemption agreement with several bordering states, including:

* Virginia;
* Washington D.C.;
* West Virginia; and
* Pennsylvania.

Therefore, residents of these states who earn wages, salaries, tips, and commission income for services performed in Maryland are exempt from Maryland state income tax and withholding. Because Delaware has not entered into a reciprocal agreement with Maryland, withholding would be required for wages paid to a Delaware resident for services rendered in a Maryland office, and those paid for services rendered while teleworking in Maryland.

The Comptroller does not intend to change or alter the facts and circumstances it has consistently used to determine nexus or income sourcing. As always, the Office will review and consider the specific facts and circumstances of each taxpayer in order to make a fair determination. In doing so going forward, the Comptroller understands that many businesses have been required or otherwise found it necessary during the COVID-19 health emergency to temporarily alter their workplace model and deployment of their employees. The Comptroller further understands that this was done in order to comply with the various gubernatorial executive orders and health department and CDC recommendations on social distancing. Consequently, the Comptroller will recognize the temporary nature of a business's interim workplace model and employee deployment in light of and during the current health emergency and will not use these temporary measures to impose business nexus, to alter the sourcing of business income, or to impose additional withholding requirements on an employer.

The guidance also includes FAQs on withholding requirements under various employee telework situations.

#### Massachusetts

[TIR-20-10](https://www.mass.gov/technical-information-release/tir-20-10-revised-guidance-on-the-massachusetts-tax-implications-of), posted on July 21, 2020, revises previous issued emergency regulations (i.e., CMR 62.5A.3). Effective until the earlier of December 31, 2020, or 90 days after the COVID-19 state of emergency in Massachusetts is lifted, all compensation received for services performed by a non-resident who, immediately prior to the Massachusetts COVID-19 state of emergency was an employee engaged in performing the services in Massachusetts, and who began performing services from another state due to a Pandemic-Related Circumstance, will continue to be treated as Massachusetts source income subject to personal income tax and personal income tax withholding.

A resident employee who, immediately prior to the Massachusetts COVID-19 state of emergency was an employee engaged in performing services from another state, and who began performing the services in Massachusetts due to a state's COVID-19 state of emergency or other Pandemic-Related Circumstance, will be eligible for a credit for taxes paid to that other state. In addition, the employer is not obligated to withhold Massachusetts income tax for the employee to the extent that the employer is required to withhold income tax with respect to the employee in the other state.

To be eligible for this relief, employers are required to maintain written records sufficient to substantiate the existence of a Pandemic-Related Circumstance with respect to the employee(s) triggering the application of these rules. For example, an employer that seeks to rely on a work policy, quarantine or isolation directions must retain a written copy of the policy or directions to claim the applicability of these rules.

***Paid family and medical leave*.** In addition, during the period that the rules in TIR-20-10 remain in effect, an individual who previously performed services outside of Massachusetts and was not subject to Massachusetts paid family and medical leave (PFML) contributions will not become subject to PFML solely because the individual is temporarily working from home in Massachusetts due to a Pandemic-Related Circumstance. Likewise, an individual who previously performed services in Massachusetts but is temporarily working from home outside of Massachusetts solely due to a Pandemic-Related Circumstance continues to be subject to the PFML rules. The Executive Office of Labor and Workforce Development intends to issue additional guidance regarding the application of the PFML rules once the rules in TIR 20-10 are no longer in effect.

#### Michigan

[FAQs](https://www.michigan.gov/taxes/0%2C4676%2C7-238-73294-522100--%2C00.html) posted by the Michigan Department of Treasury (DOT) state that if an employer is located in a Michigan city that imposes a city income tax, the wages of nonresidents who are working from home at a location outside the city are not subject to the city income tax on those wages. Employers are advised to tell such employees to keep a work log of the days worked outside the city and to provide them with a letter stating the dates that they were directed to work from home. The employees are not required to submit the work log and letter with their city income tax returns, but they may be required to furnish the documents upon request of a city tax administrator in relation to their personal city tax returns.

#### Minnesota

[FAQs for businesses](https://www.revenue.state.mn.us/covid-19-faqs-businesses) and [FAQs for individuals](https://www.revenue.state.mn.us/covid-19-faqs-individuals) posted by the Minnesota Department of Revenue (DOR) provide that the DOR will not seek to establish nexus for any business tax, including withholding tax, solely because an employee is temporarily working from home due to the COVID-19 pandemic. The DOR will not impose added individual income tax or payroll withholding tax requirements for Minnesota resident employees who ordinarily work outside of Minnesota but are temporarily telecommuting from a Minnesota location due to COVID-19.

Minnesota residents do not have any additional payment or withholding requirements since they are already subject to tax on income earned both inside and outside of the state. For nonresidents of Minnesota, the apportionment of their income may change based on the number of days they physically work in Minnesota.

#### Mississippi

[Notice 2020-01](https://www.dor.ms.gov/Documents/COVID%20Extensions%20Press%20Release.pdf) issued by the Mississippi Department of Revenue (DOR) provides that, during the period of national emergency, the DOR will not change employer withholding requirements based on employees' temporary telework locations. Mississippi residents are taxable on their total income, regardless of where they work. The DOR will not use any changes in an employee's temporary work location due to the pandemic to impose nexus or alter apportionment of income for any employer while temporary telework requirements are in place.

#### Missouri

##### St. Louis

Guidance posted by the [St. Louis, Missouri, Collector of Revenue](https://www.stlouis-mo.gov/collector/earnings-tax-forms-info.cfm#covid19) states that employees who have been working remotely due to COVID-19 or in conjunction with the acting City of St. Louis Health Commissioner's Order (Order) should be treated as working at their original, principal place of work for Earnings Tax purposes. The Order required all nonexempt St. Louis employers to "facilitate employees working remotely" but is completely neutral to the location of the remote work site. It does not order employees to work outside St. Louis or require any individual employed outside of St. Louis to work remotely in their home city. Accordingly, employers should continue to withhold on those employees in the same manner as they did before the temporary relocation of their employees. Under these circumstances, days worked out of St. Louis due to a temporary reassignment caused by COVID-19 or the Order may not be included in the Non-Residency Deduction formula on Form E-1R when claiming a refund for tax year 2020.

#### Nebraska

[FAQs](https://revenue.nebraska.gov/businesses/frequently-asked-questions-about-income-tax-changes-due-covid-19-national-emergency) posted by the Nebraska Department of Revenue provide that employers do not have to change the state that was previously established in their payroll systems for income tax withholding purposes for employees who are telecommuting or temporarily relocated to a work location within or outside of Nebraska due to the COVID-19 pandemic. This policy applies between March 13, 2020, and January 1, 2021, unless the national emergency is extended.

#### New Jersey

[FAQs](https://www.state.nj.us/treasury/taxation/covid19-payroll.shtml) posted by the New Jersey Department of Revenue (DOR) provide that during the temporary period of the COVID-19 pandemic, for employees who regularly work in New Jersey but who are or will be working from an out-of-state home office, or who are or will be temporarily relocated at an out-of-state location of the employer, wage income will continue to be sourced as determined by each employer in accordance with the employer's jurisdiction. (New Jersey sourcing rules dictate that income is sourced based on where the service or employment is performed based on a day's method of allocation.) In addition, the DOR will not require employers to change the current work state setup in their payroll systems for employees who are telecommuting or temporarily located out of state during the COVID-19 temporary period.

#### North Dakota

[Guidance](https://www.nd.gov/tax/covid-19-tax-guidance/) issued by the North Dakota State Tax Commissioner (STC) provides that the STC will not assert income tax nexus where employers who are permitting employees to temporarily telework (i.e., telecommute, work from home or work remotely) due to COVID-19 restrictions and recommendations. In addition, STC will not require inclusion in the numerator of the payroll factor employees working remotely in North Dakota who normally work outside of the state due to the COVID-19 pandemic.

#### Ohio

[H.B. 197](https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-197) provides that, during the period of the emergency declared on March 9, 2020, and for 30 days after the conclusion of that period, any day on which an employee performs work at a location, including the employee's home, to which the employee is required to report for work because of the declaration will be deemed as a day performing personal services at the employee's principal place of work. In other words, the state will continue to tax the wages earned by such an employee in the state where the employee normally works.

#### Pennsylvania

An [FAQ](https://revenue-pa.custhelp.com/app/answers/detail/a_id/3741) posted by the Pennsylvania Department of Revenue (DOR) states that if an employee is working from home temporarily due to the COVID-19 pandemic, the DOR will not consider that to be a change to the sourcing of the employee's compensation for tax purposes. Therefore, the employee's compensation remains Pennsylvania source income and the employer is required to withhold on the compensation.

* *Philadelphia*. [Wage Tax policy guidance](https://www.phila.gov/media/20200414084820/Wage-Tax-guidance-covid-19-041420.pdf) posted by the City of Philadelphia provides that nonresident employees who work for Philadelphia-based employers are not subject to Philadelphia Wage Tax during the time they are required to work outside of Philadelphia during the COVID-19 pandemic.

#### Rhode Island

An [emergency regulation](http://www.tax.ri.gov/Advisory/ADV_2020_22.pdf) issued by the Rhode Island Division of Taxation (DOT) simplifies the withholding tax process for employers that have employees who are temporarily working remotely due to the COVID-19 pandemic. Specifically, the income of employees who are nonresidents temporarily working outside of Rhode Island solely due to the pandemic will continue to be treated as Rhode Island-source income for Rhode Island withholding tax purposes.

In addition, the DOT will not require employers located outside of Rhode Island to withhold Rhode Island income taxes from the wages of employees who are Rhode Island residents temporarily working within Rhode Island solely due to the pandemic.

The emergency regulation provides examples of these scenarios and the summary of the regulation provides links to further helpful information on the DOT's website.

The DOT also issued [Advisory 2020-24](http://www.tax.ri.gov/Advisory/) addressing income tax apportionment. It provides that, for the duration of Rhode Island's coronavirus state of emergency, services performed by employees who previously worked in another state but, solely due to the pandemic, are now working remotely from Rhode Island, will not be considered by the DOT to increase the numerator of the employer's payroll factor for purposes of apportioning income. This policy is predicated on the condition that the presence of such employees in Rhode Island will be temporary and that they will return to a regular workstation located outside of Rhode Island after the coronavirus state of emergency has ended.

#### South Carolina

[Information Letter #20-24](https://dor.sc.gov/resources-site/lawandpolicy/Advisory%20Opinions/IL20-24.pdf#search=Information%20Letter%2020%2D24) posted by the South Carolina Department of Revenue (DOR) provides that the DOR will not use changes in an employee's temporary work location due to the remote work requirements arising from, or during, the COVID-19 relief period of March 13, 2020, through December 31, 2020, as a basis for establishing nexus or altering income apportionment.

*South Carolina employers with employees who temporarily change their work location to outside of South Carolina.* South Carolina law requires employers located in South Carolina to withhold income tax on the wages of residents and nonresidents who work in South Carolina. During the COVID-19 relief period, a South Carolina employer's withholding requirements are not affected if employees who normally work on the employer's premises in South Carolina change to teleworking from outside of South Carolina. Accordingly, the wages of nonresident employees temporarily working remotely in another state instead of their South Carolina work location are still subject to South Carolina withholding.

*Out-of-state employers with South Carolina resident employees who temporarily change their work location to within South Carolina*. South Carolina law provides that the wages of South Carolina residents who work in a state other than South Carolina are not subject to South Carolina withholding if their wages are subject to the withholding laws of the state in which the wages are earned and the employer withholds income taxes on behalf of the other state. During the COVID-19 relief period, an out-of-state employer is not subject to South Carolina's withholding requirement solely due to the shift of employees working on the employer's premises outside of South Carolina to teleworking from within South Carolina. Accordingly, the wages of a South Carolina resident employee temporarily working remotely from South Carolina instead of at their normal out-of-state work location are not subject to South Carolina withholding if the employer withholds income taxes on behalf of the other state.

#### Vermont

[Guidance](https://tax.vermont.gov/coronavirus#temporarily) posted by the Vermont Department of Taxes (DOT) provides that nonresidents temporarily living *and* working in Vermont due to the COVID-19 pandemic are required to pay Vermont income taxes on the income they earn while living and performing work in Vermont, regardless of whether their employer is located inside or outside of Vermont.

Employers that have remote employees working in Vermont on a temporary basis are not required to make Vermont the employees' income tax withholding state, unless the employees intend to be in Vermont for an extended temporary time period. The guidance does not define what would be considered an *extended* time period, but it includes a link to further information on [who is required to file a Vermont income tax return](https://tax.vermont.gov/individuals/income-tax-returns/who-needs-to-file) and defining who is a resident, part-year resident and nonresident.

Employees who have moved to Vermont permanently and make the state their domicile are subject to Vermont income tax withholding if their employer operates in Vermont and/or the employees work remotely in Vermont.

#### West Virginia

* *City of Charleston*. A [City Collector Opinion](https://www.charlestonwv.gov/index.php/documents/covid-19-city-user-fee-statement-tue-04142020-1447) clarifies that an employee who is teleworking or on paid leave is still considered employed by a location within the City and is not considered permanently assigned to an outside location. Therefore, employers are required to continue withholding and remitting the City User Fee. The Fee should not be withheld from the pay of Charleston residents who are temporarily working from home for employers located outside of Charleston. Such employees are not considered to be employed within the City and are only temporarily and involuntarily working from their homes in Charleston for a non-Charleston employer.

## State Tax Filing and Payment Relief

In response to employers' COVID-19 financial challenges, many state agencies have announced various temporary extensions of income and/or unemployment tax deposit and filing due dates or waivers of penalties and/or interest for late filing of returns or payments. These relief measures may be modified, or new ones announced, over the continuing course of the pandemic.

* Stay abreast of state tax filing and payment developments by periodically checking the state tax and labor department COVID-19 websites.

## Final Pay Laws

With millions of employees being laid off due to the COVID-19-related economic slowdown and social distancing, state final pay laws have taken center stage in the payroll arena. And because fines and penalties for violations of these laws can be severe, payroll professionals have good reason to do everything possible to ensure compliance.

Final pay timing requirements vary widely, not only *by* state but also *within* particular states' laws, depending on not only whether the separation from employment is voluntary or involuntary, but also on whether it is final or temporary. Sometimes the timing of final pay even depends on the type of work or industry involved.

In addition, besides regular wages, final pay may have to include other earnings such as commissions and/or the value of accrued but unused time, such as vacation time or paid sick leave. While some state final pay laws explicitly refer to payout of these earnings, others may require such payouts only if required by an employment contract, agreement or applicable policy of the employer.

* Check and compare final wage payment requirements by state;
* Understand how to pay an employee's final wages;
* Consider using a flowchart to ensure that wages and other earnings are properly paid either in accordance with or in the absence of a state final pay law, an applicable employer policy, an employment contract and/or a collective bargaining agreement or other type of agreement; and
* Check and compare state pay deduction laws to determine what may and may not be legally deducted from a separated employee's final payment (e.g., amounts for damage to or loss of employer property, salary advances, overpaid wages or debts owed to the employer).

## Direct Deposit and Payroll Debit Card Laws

One way to make it easier to process payroll while working from home is to pay all employees electronically, by direct deposit or payroll debit card. An employer's Employee Self-Service Portal (ESSP) should enable employees to enter their direct deposit or payroll debit card information from their homes. A contact person should be designated to help employees who need to set up remote access to the ESSP or are having trouble accessing it remotely.

If not all employees on the payroll have signed up to be paid by direct deposit or payroll debit card, and still insist on receiving paper paychecks, now is an excellent time to encourage them to finally accept one of these methods to ensure they receive their wages securely and on time. However, an employer may not switch such employees over to an electronic wage payment method unilaterally. Employers are required to comply with the requirements and limitations of state direct deposit and payroll debit card laws.

To pay by payroll debit card, the law in every state requires an employer to first obtain the employee's voluntary consent. For direct deposit, it varies. Some states allow mandatory direct deposit and some require voluntary consent.

With both of these wage payment methods, almost all states have several additional requirements (e.g., notice and full disclosure of all terms and conditions and limits on fees, among others). Therefore, an employer must review the laws of the relevant states before attempting to make any changes to an employee's wage payment method to avoid the risk of incurring hefty penalties and fines.

* Check and comply with state direct deposit laws before requiring employees to be paid electronically;
* Be aware of what the state payroll debit card laws require before encouraging employees to switch to this wage payment method from paper paychecks; and
* Ensure that wage payments are made on time, in accordance with the applicable state wage payment laws, no matter which wage payment method is used.

## Return to Work Bonuses

The CARES Act gives states the leeway to decide how they want to use certain funds they have been provided by the federal government to deal with the effects on their residents of COVID-19. A [bill that was introduced](https://www.congress.gov/bill/116th-congress/house-bill/7066/actions?q=%7B%22search%22%3A%5B%22Reopening%2BAmerica%2Bby%2BSupporting%2BWorkers%2Band%2BBusinesses%2BAct%2Bof%2B2020%22%5D%7D&r=1&s=2) in Congress proposing to offer bonuses to employees receiving pandemic-related unemployment benefits if they return to work has not gained momentum. However, some state lawmakers have introduced similar bills and some employers may be offering, or thinking of offering, a cash bonus to such employees to encourage them to return to work. Currently, only the state of Idaho has instituted a formal bonus program.

* Before offering them as a return to work incentive, review the IRS's federal tax treatment of bonuses.

### Idaho

[Executive Order 2020-12](https://gov.idaho.gov/wp-content/uploads/sites/74/2020/06/eo-2020-12.pdf) signed by the Idaho Governor allots $100 million in federal COVID-19 relief funds to a program allowing eligible employees to receive a one-time [return to work cash bonus](https://rebound.idaho.gov/return-to-work-bonuses/). For many US employees displaced by COVID-19, their unemployment benefits amounted to more than the pay from their jobs due to expanded benefits provided under the CARES Act. To incentivize such employees to return to work rather than continue on unemployment, Idaho employers have the option, but are not required, to offer bonuses under the program to help offset the loss of unemployment benefits.

Bonus amounts are up to $1,500 for full-time employees and up to $750 for part-time employees. They are administered by the Idaho State Tax Commission. If an employer chooses to offer bonuses under the program, it must apply for them on an employee's behalf, electronically through [Taxpayer Access Point](https://tax.idaho.gov/). Applications for bonuses will be accepted on a first-come-first-served basis through August 7, 2020, or until the $100 million runs out, whichever occurs first.

The Tax Commission will accept employer applications on a rolling basis, starting:

* July 13, for employees who returned to work from May 1 through June 14; and
* July 20, for employees who returned to work from May 1 through July 15.

An employer is eligible to offer the bonuses if it issues [Forms W-2](https://www.xperthr.com/policies-and-documents/irs-form-w-2-wage-and-tax-statement-and-form-w-3-transmittal-of-wage-and-tax-statements-and-general-instructions/5825/) to employees directly or through a third-party payroll service provider.

An employee is eligible for a bonus if they:

* Are an Idaho resident who has worked for an Idaho employer in 2020;
* Have a valid Social Security number (those with only a taxpayer identification number are not eligible);
* Filed for unemployment benefits during COVID-19 on or after March 1, 2020;
* Returned to work (for a private employer) by July 1, 2020;
* Earn $75,000 or less annually;
* Work part-time (i.e., 20 hours per week) or full-time (i.e., 30 hours per week) in the four weeks immediately following their return to work;
* Returned to a position intended to be ongoing, beyond the four-week period; and
* Have not previously received a return to work bonus.

An employee who is a new hire that has not previously worked for the employer making the application is also eligible for a bonus.

## Processing Payroll From Home Tips

When a disaster like the COVID-19 pandemic strikes, payroll professionals who are working from home for the sake of social distancing are still obligated to process payroll in a timely and organized manner. Failure to do so increases the risk of exposure to penalties and fines for failing to report and remit payroll taxes or adhere to the wage and hour laws. And even if the IRS and the taxing agencies of the affected states provide employers with tax filing and payment extensions, these agencies do not always forgive interest for late deposits or reports.

### Disaster Planning

The first and perhaps most essential step to ensure that payroll operations remain under control during a disaster is to follow a pre-established immediate and long range payroll disaster recovery plan (PDRP). In fact, a PDRP should be part of every employer's overall strategic business plan.

For example, a good PDRP will ensure that employees who perform key payroll functions have the ability to work from home if the office has to be closed temporarily or for an extended period. The plan's budget should include the cost of providing these employees with the essential equipment (e.g., laptops and printers) and online access to essential payroll management and HRIS systems they will need to work efficiently from home.

* Learn how to keep payroll processes running smoothly during all types of disasters with a payroll disaster recovery plan; and
* Consider using a customizable checklist to help establish, maintain and implement all phases of a payroll disaster recovery plan.