

# Remote work compliance tips

Reduce compliance risk in the new world of work



# Reduce Compliance Risk in the New World of Work

COVID-19 has changed the world in lasting ways — and there's no doubt that the workplace has been one of the areas most impacted. Although remote work existed for years before the pandemic, only around [7%](#) of employees in the United States had access to a “flexible workplace” benefit prior to COVID-19.

As we all know, the global crisis forced companies to limit in-person interactions to curb the spread of the virus, and the world went into a massive work-from-home experiment. According to [Zenefits research](#), 81% of business leaders said they increased their number of remote workers in 2020 due to COVID-19. How has it been working for their workforces? 79% agreed or strongly agreed that remote work is working for their company.

If you have remote employees, you may be wondering how to stay on top of compliance requirements in the new world of work. This guide is for you.

Nearly [2 in 5](#) workers will be working remotely at the end of 2021, with variation across industries. Remote work is here to stay — and it's imperative for businesses to stay compliant when managing remote teams.

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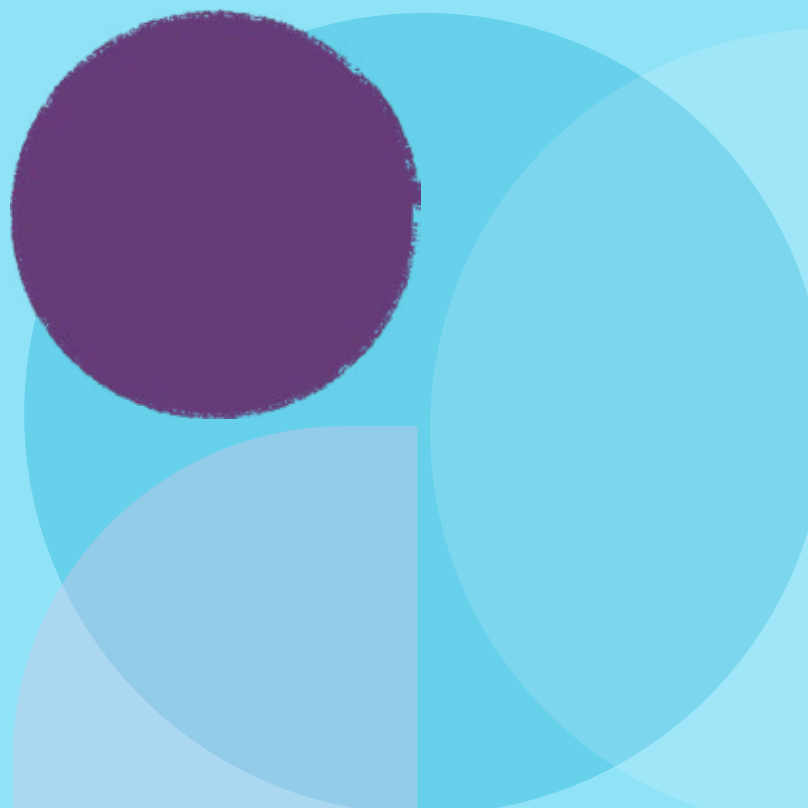
# Contents

|   |           |
|---|-----------|
| <b>Reduce Compliance Risk in the New World of Work</b>              | <b>2</b>  |
| <b>1. Work-from-home requests</b>                                   | <b>5</b>  |
| <b>2. Wage and hour considerations</b>                              | <b>8</b>  |
| – Hours worked  | 9         |
| – State recordkeeping rules   | 12        |
| <b>3. State tax withholding</b>                                     | <b>13</b> |
| <b>4. Foreign qualification</b>                                     | <b>16</b> |
| <b>5. Workers’ compensation</b>                                     | <b>18</b> |
| <b>6. Workplace posters</b>   | <b>22</b> |
| <b>7. Harassment prevention</b>                                     | <b>25</b> |
| <b>8. Updating your employee handbook with remote work policies</b> | <b>27</b> |



01

# Work-from-home requests



**As we continue to navigate the new normal, you may find current or future on-site employees requesting to work from home. Or, you may have office employees who have been working remotely during COVID-19 ask to continue doing so after the pandemic. Accepting such requests can depend on your company, the role, and the employee.**

Some questions to consider are:

- Can an employee perform the position well from home?
- Is the employee a good fit to work from home?
- Is the request to work from home due to an issue related to the Americans with Disabilities Act? (If yes, you would need to discuss possible reasonable accommodations with the employee.)
- What are the reopening requirements of your state?

It is also important to consider extenuating circumstances if the employee is forthcoming. You legally cannot ask an employee if health reasons are the reason they want to work from home. However, if an employee is forthcoming with you, you may find compassion playing a role in your decision. Remember to both abide by legal guidelines and make sure you treat all workers fairly.

It's inevitable that you may have to deny some requests. There are simply some positions and employees that are not a fit for remote work.

According to the [Society for Human Resource Management](#), here are some reasons you may need to deny requests:

- Business needs have changed in a way that physical presence in the workplace is required.
- Only those without disciplinary incidents may work from home.

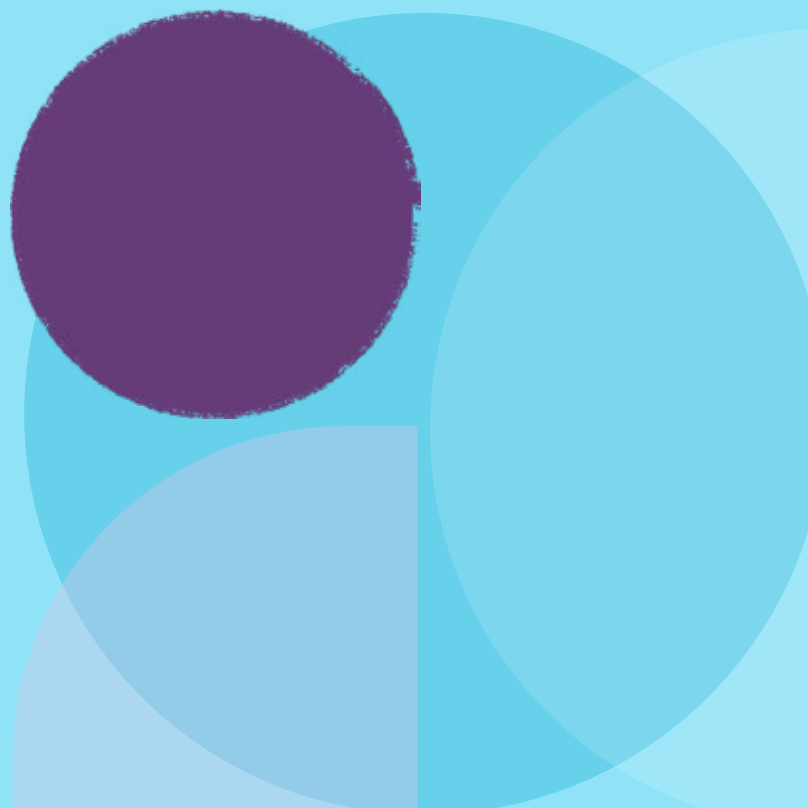
[SHRM](#) also shares that if you have employees who are requesting to continue working from home even after the pandemic, you can consider:

- Whether employee productivity has increased, and new methods of working have proven effective. If they have, you could think about allowing remote work for those individuals who wish to do so.
- Specific employees who have proven they can meet expectations while working remotely during the pandemic. If there are some who have not, can their performance issues be managed remotely once the pandemic is no longer the company's main focus?

It's imperative that you ensure you're compliant when denying these requests. Updating HR job descriptions can help you as you face work-from-home requests and approve or deny them. With [every request to work remotely](#) comes a reminder that there may be instances where accommodating an employee is required. You must always be aware of your obligations under the Americans with Disabilities Act and your state disability discrimination laws.

02

# Wage and hour considerations





If you have nonexempt employees — workers who are entitled to earn the federal minimum wage and qualify for overtime pay — you must fulfill [timekeeping](#) requirements from the Fair Labor Standards Act.

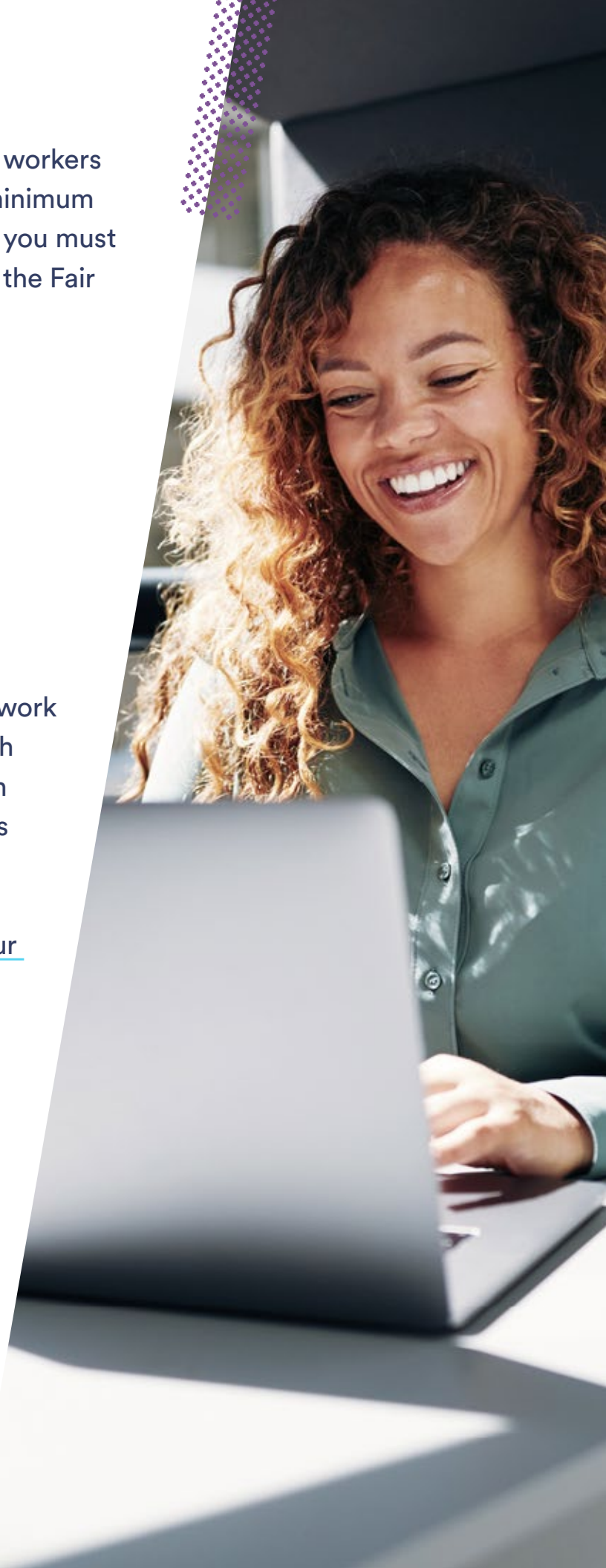
You are required to keep records of:

- ✓ Total hours worked per day and per week
- ✓ Wages paid

## Hours worked

Employers must pay employees who work remotely for all hours worked of which employers either know or have reason to believe were performed, regardless of whether the work was approved, according to the United States Department of Labor's [Wage and Hour Division](#).

If an employer knows or has reason to believe that work is being performed, the time must be counted as compensable hours worked, under the FLSA.



The requirement is based on both “actual knowledge” or “constructive knowledge” of performed work.

Courts go through a determination process to figure out whether an employer has actual or constructive knowledge of additional unscheduled hours worked by their employees. They consider whether the employer should have acquired knowledge of such hours worked through “reasonable diligence.”

It may be challenging to monitor hours worked in a remote work environment, however. To exercise such diligence, an employer can provide a reasonable reporting procedure for non-scheduled time and then compensate employees for all reported hours of work.

Employers can look at what [time tracking process](#) they have for nonexempt employees who usually work on site, and see if that system can be accessed remotely. Time and attendance software is a great way to log hours. Whether nonexempt employees are working on site or remotely, employers must provide them with tools to track their hours, such as timesheets or web-based timers.

If you round your employees’ time worked, you must do so consistently and accurately to avoid underpaying employees. The FLSA has specific rules — if you fail to follow them, your employees could submit a wage and hour grievance to the DOL.

Also be aware of special situations that need to be tracked and recorded, even in remote work environments, such as:

- ✓ Training time
- ✓ Travel time
- ✓ Split shifts

**// Whether nonexempt employees are working on site or remotely, employers must provide them with tools to track their hours. //**

## State recordkeeping rules

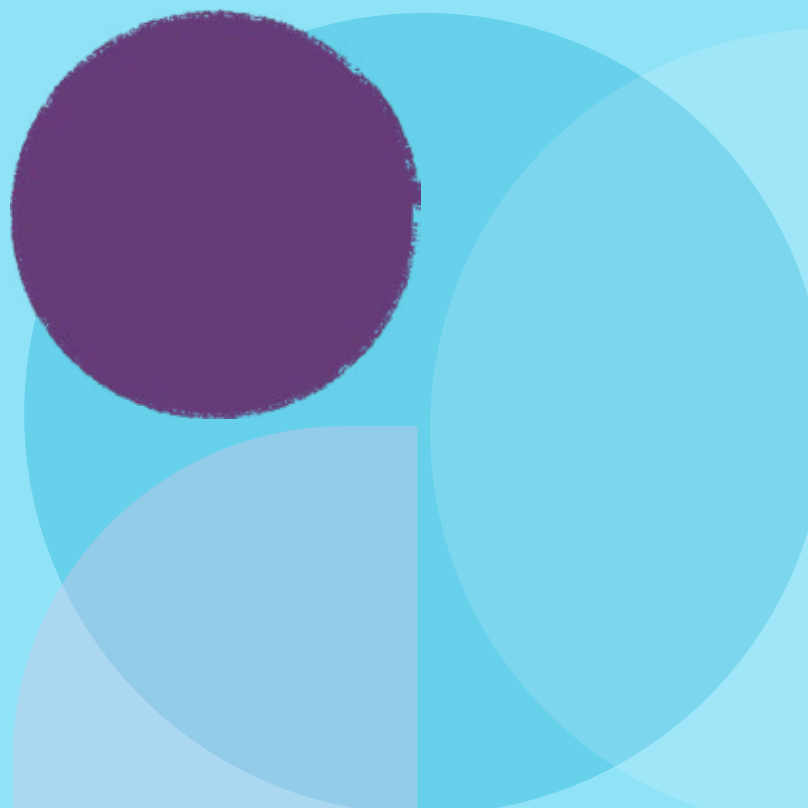
Some states have individual recordkeeping standards. For example, California employers must give nonexempt employees a pay stub each time they are paid showing their total hours worked, among other things.

There are also states that require “reporting time pay” for nonexempt employees. This type of pay applies to workers who are sent home early after showing up for their scheduled work time. Depending on the state, this may apply to remote workers too. California, for example, allows employees who present “themselves for work by logging on to a computer remotely” to be eligible for reporting time pay.



03

# State tax withholding



Employers are responsible for withholding federal taxes for their employees. Most states require employers to withhold state taxes for the state their employee is doing work in; this is referred to as the physical presence rule.

Remote work has made tax withholding more complex since many workers have moved to a state that is different than where their workplace is based. Some employees may have a dual tax burden and have to pay taxes in the state which their office is and the state in which they live. However, there are states with reciprocity agreements that allow employees to only pay taxes to the state where they work.

Although there is also the “convenience of employer rule” to consider. Under this rule, if a business is located in Connecticut, New York, New Jersey, Delaware, Pennsylvania, or Nebraska — or the employee’s principal office of the employer is located in one of those states — then compensation earned while working remotely will be treated as if it was earned in the employer’s location in those states. This applies if the employee is working from home for their own convenience and not the employer’s necessity.

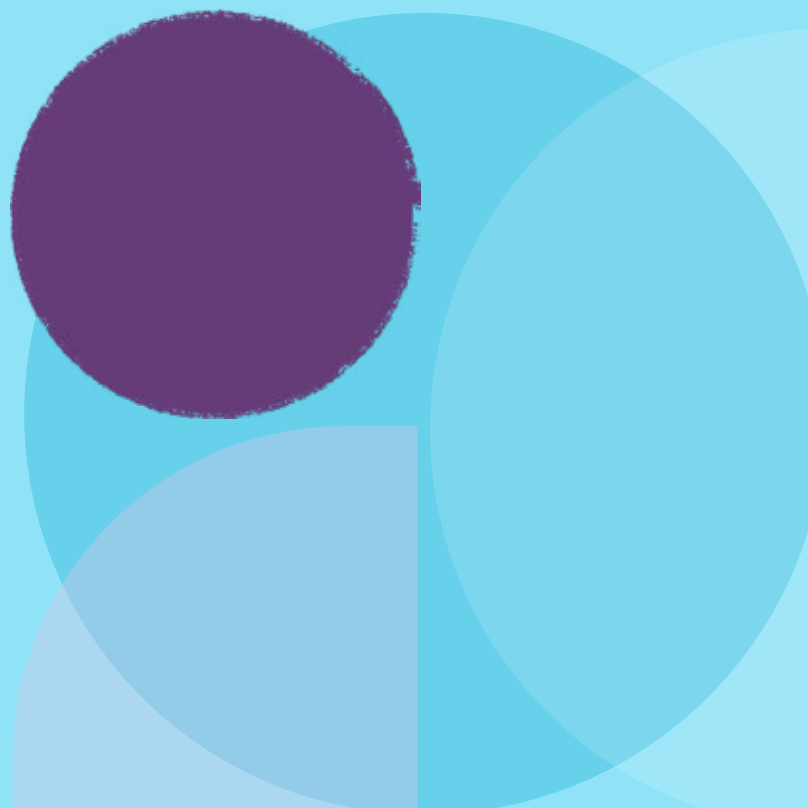
If you have remote workers working in a separate state than where your company is based, pay additional attention to tax withholding laws in your state and local jurisdiction.



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# Foreign qualification





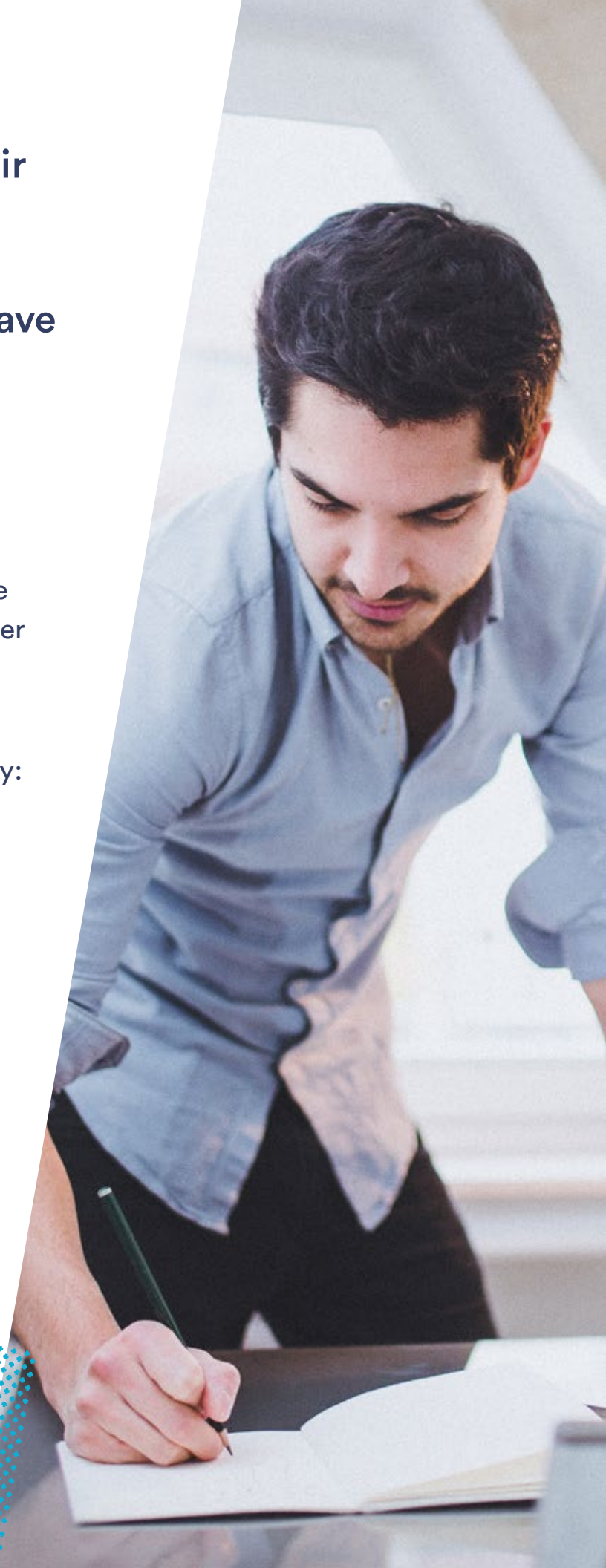
**Businesses that have their company registered in one state but employees working in another may have to qualify their business in that separate state.**

The foreign qualification procedure involves a corporation, LLC, or other statutory business entity receiving the authority to do business in a state other than the one they're registered in.

A company may be required to do foreign qualification in a state if they:

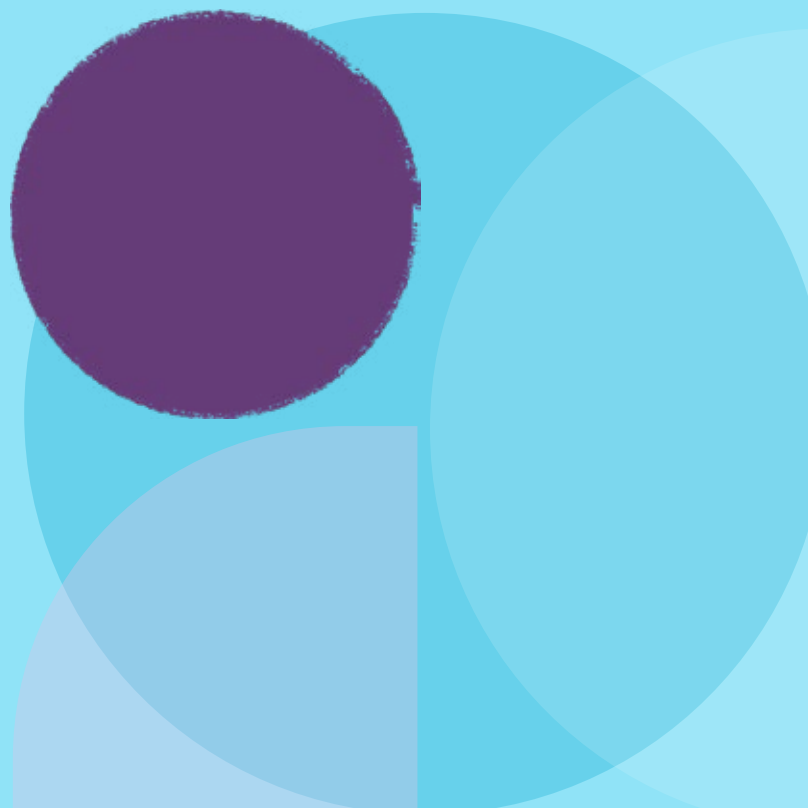
- Have workers in that state
- Routinely transact business — such as selling goods and services, meeting with clients, or executing contracts in that state

Each state has unique requirements for foreign qualification, so check with your state and business attorney to ensure you're in compliance.



05

# Workers' compensation



## Remote workers may still be covered under workers' compensation if they're injured at home. The injury must meet certain requirements, however.

The Occupational Safety and Health Act states, "Injuries and illnesses that occur while an employee is working at home, including work in a home office, will be considered work-related if the injury or illness occurs while the employee is performing work for pay or compensation in the home, and the injury or illness is directly related to the performance of work rather than to the general home environment or setting."

When employees are working on site, it's easier to ensure that their workspace is ergonomically compliant. However, with work-from-home employees, that's harder to monitor, and injuries can occur at home workstations. For example, physical fatigue, carpal tunnel, and neck and back pain could result from sitting in front of a computer for too long of periods.



Musculoskeletal disorders (MSDs) affect muscles, nerves, blood vessels, ligaments and tendons, and they affect workers in many different industries and occupations. OSHA estimates that employers spend as much as \$15 to \$18 billion a year on direct costs for MSD-related workers' compensation — and up to 3 to 4 times that for indirect costs, such as hiring and training replacement workers.

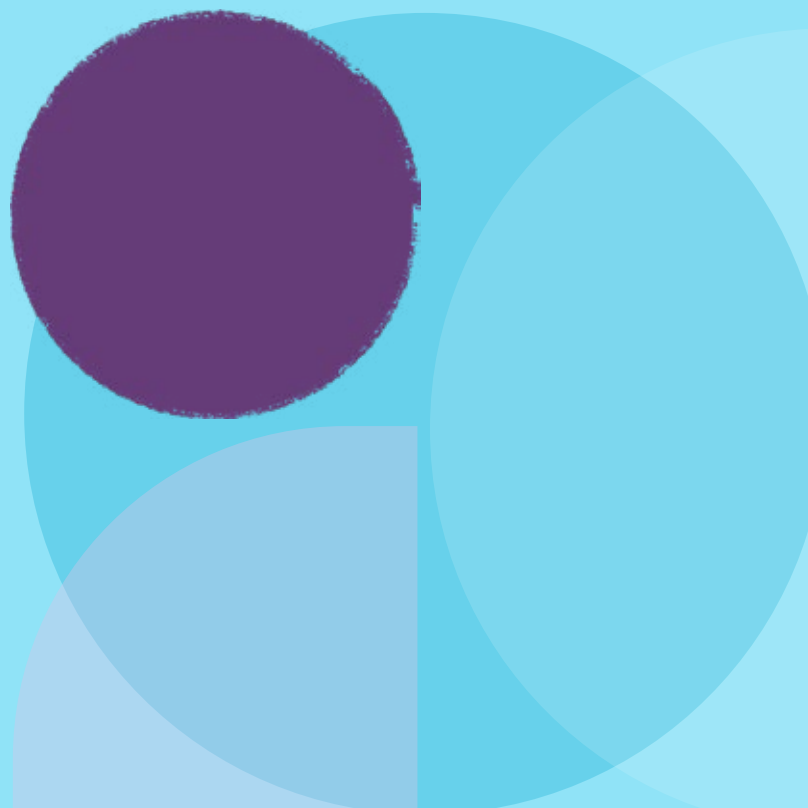
You can help prevent injuries by providing the right training. This could be in the form of a poster, short video, or checklist on proper ergonomics for remote environments. You can also provide your remote staff with the proper equipment for their home offices, such as ergonomic chairs and keyboards.



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# Workplace posters



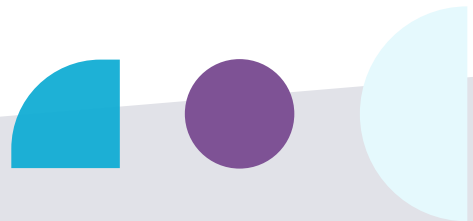
**Generally, employers must display federal workplace posters in places that are easily visible to employees.**

**BUSINESSES WILL HAVE TO DISPLAY CERTAIN FEDERAL AND STATE POSTERS DEPENDING ON FACTORS SUCH AS THE:**

- Nature and location of business
- Number of employees
- Annual dollar volume and whether the organization has Federal contracts or subcontracts

**THE MOST COMMON U.S. DEPARTMENT OF LABOR POSTERS YOU MAY SEE AT WORKPLACES INCLUDE:**

- Fair Labor Standards Act (FLSA)
- Family and Medical Leave Act (FMLA)
- Occupational Safety and Health Act (OSHA)
- Equal Employment Opportunity (EEO)



To ensure you are complying with posting requirements, you can mail hard copies of any applicable workplace posters to remote employees and allow them to use the posters however they like in their remote office. For employees in multiple states, you could send each employee the required federal posters and posters related to their state.

**YOU CAN ALSO PROVIDE VIRTUAL NOTICE TO THEM. SOME IDEAS ARE:**

- Sharing posters with employees via email
- Posting posters to your company intranet
- Including posters in your company handbook and in onboarding docs that are accessible online

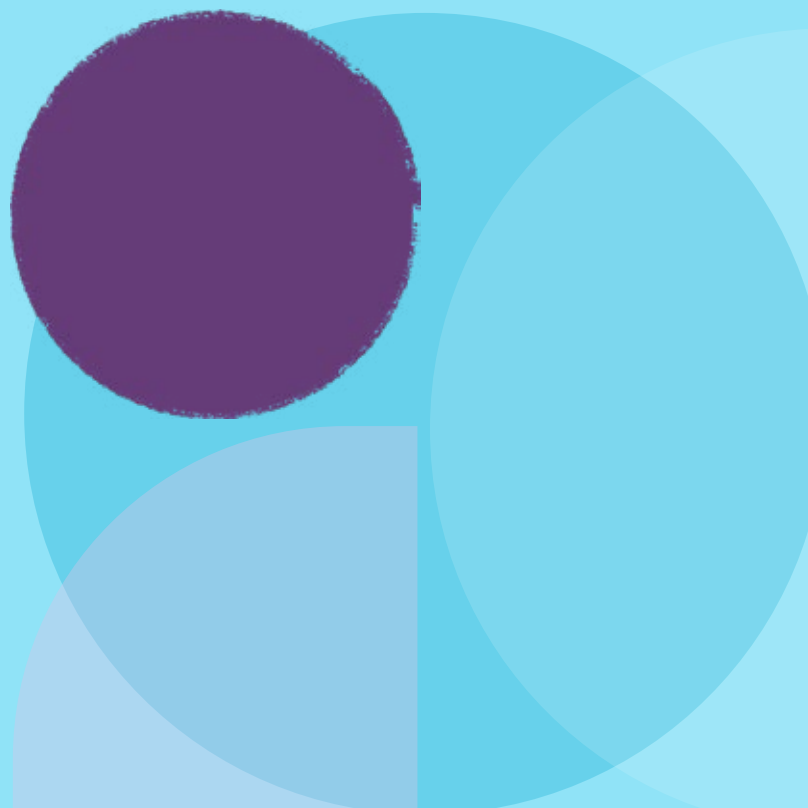
DOL guidance states that employers take reasonable steps to ensure that employees can access electronic posters easily. Posting on an unknown website equates to posting a tangible poster in an inconspicuous location — which fails to meet federal requirements. To stay in compliance, make sure to take reasonable steps to let your employees know where and how to access the required posters online.

Employers should remember to check their state and city for specific notice and posting requirements they must comply with.



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# Harassment prevention

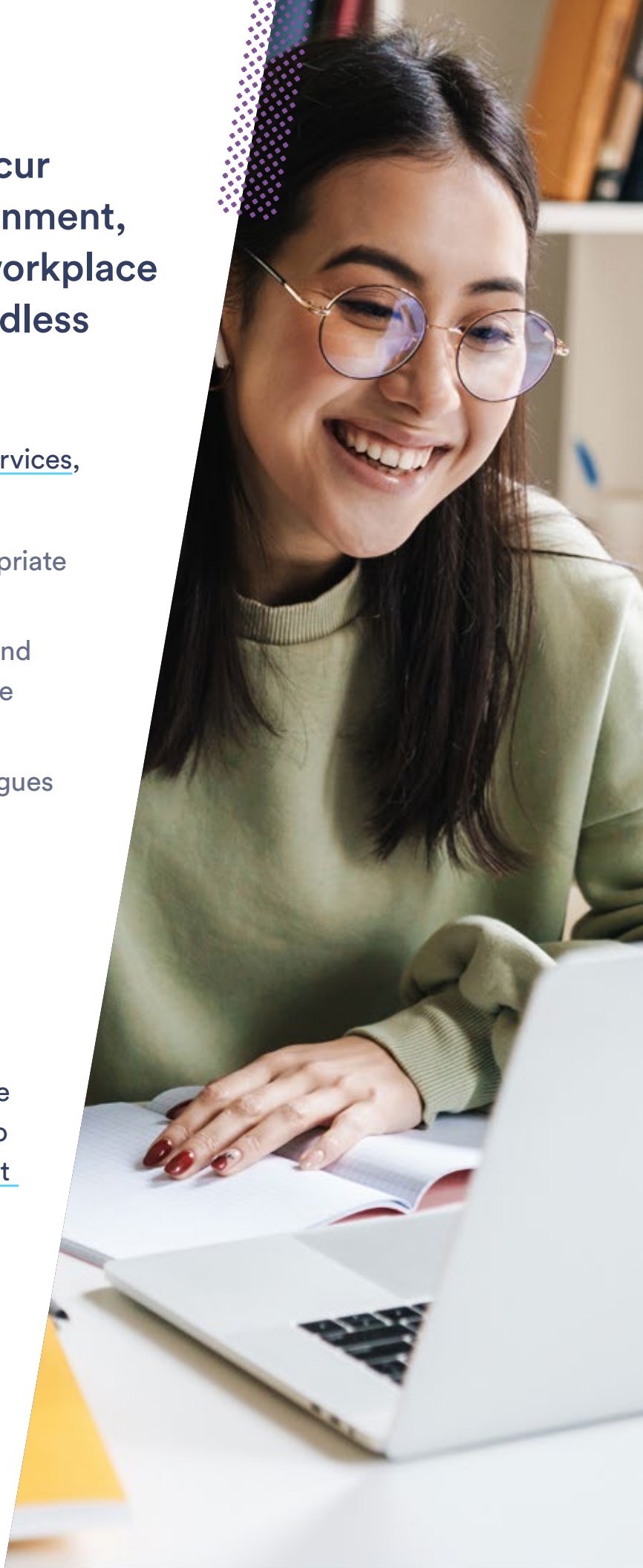


**Harassment can still occur in a remote work environment, and the laws that ban workplace harassment apply regardless of medium.**

According to [Corporate Payroll Services](#), some examples include:

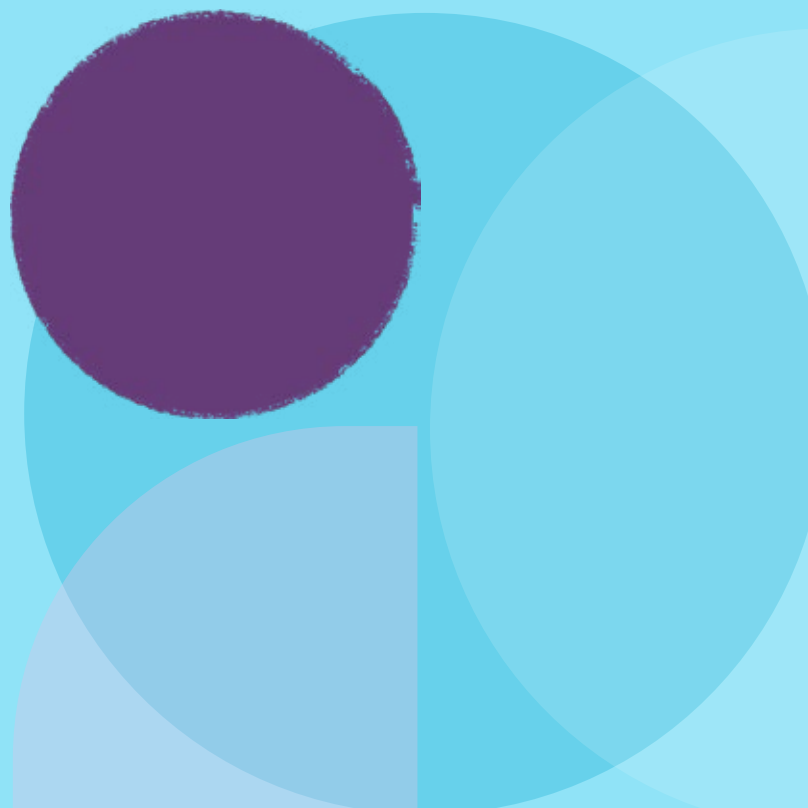
- Employees wearing inappropriate clothing
- Roommates in the background of a virtual meeting, unaware they are on camera
- Visible objects which colleagues may consider offensive

There are ways to prevent these sorts of incidents. You can set clear expectations about remote meetings, communicate these to your staff, update your employee handbook, and enforce accountability. It's a good time to review your company [harassment and discrimination handbook policies](#), and ensure they apply to all work environments, including remote work.



08

# Updating your employee handbook with remote work policies



**Creating remote work policies — and making them accessible in your employee handbook — helps make expectations clear for employees and can provide answers to questions they may have.**

**SOME TOPICS YOU CAN COVER IN REMOTE WORK POLICIES ARE:**

- How to access company-wide software remotely (if applicable)
- Tracking time standards for nonexempt employees
- Systems for submitting work each business day
- Any change in contact information or “chain of command” for remote workers
- Expectations on conducting virtual meetings

Some of your policies will directly affect your company staying in compliance, such as tracking time standards for hourly employees working from home and expectations on remote meetings. Also, always make sure to take the legality of new policies into consideration. All remote work rules should abide by labor and non-discrimination laws.

Here at Zenefits, we recognize the entrepreneurs and employees in small and mid-size businesses power the American economy. Their tenacity, perseverance, and dreams represent the backbone of our workforce.

We also realize these businesses face challenges disproportionate to their size and resources. Technology providers largely focus on the needs of large businesses, creating services out of touch and out of reach for small and mid-size businesses.



Our mission is to level the playing field for the other 99.7% — the underserved small businesses that fuel our economy. We provide innovative and intuitive HR, payroll, and benefits software and services purpose-built for these small and mid-size companies.

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