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2025

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HR Network: Coast-to-Coast Compliance – Navigating the Patchwork of Federal, State and Local Employment Laws

Agenda

- Common challenges and considerations
- What law applies
- Practical approaches
- Illustrative examples

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Common Challenges and Considerations

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Shifting approaches to work locations

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- **Individual work models**
 - **Onsite** – employee works at employer’s office
 - **Remote** – employee works outside employer’s office, typically from home or coworking space
 - **Hybrid** – employee splits time between on-site and remote work
- **Workforce structures**
 - **Distributed** – employer has employees across multiple jurisdictions
 - **Fully distributed and remote** – employer has no physical offices; all employees work remotely across multiple jurisdictions

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Distributed and remote work – the new ‘normal’?

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As of 2024:

- **40%** of US employees participate in full or partial remote work (slight decrease from prior years).
- **40%** of US employees say their employers prefer remote work.
- **54%** of US employees prefer remote work.
 - Flexible work models (including remote and hybrid) remain a top-three motivator for job changes, just behind pay and career opportunities.

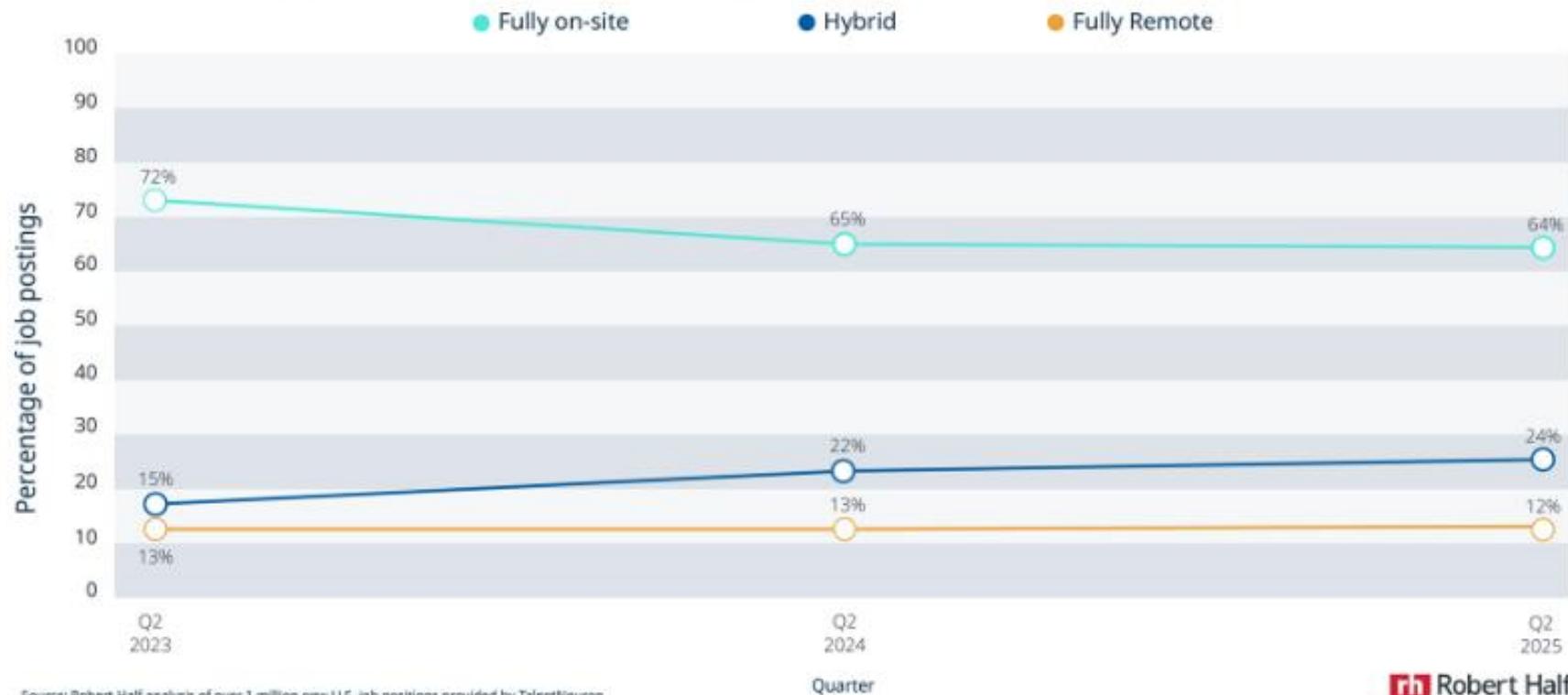
Source: McKinsey, June 2025

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U.S. Year-Over-Year Online Job Posting Trends



Source: Robert Half analysis of over 1 million new U.S. job positions provided by TalentNeuron
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Robert Half
Talent Solutions

Source: Robert Half, September 2025

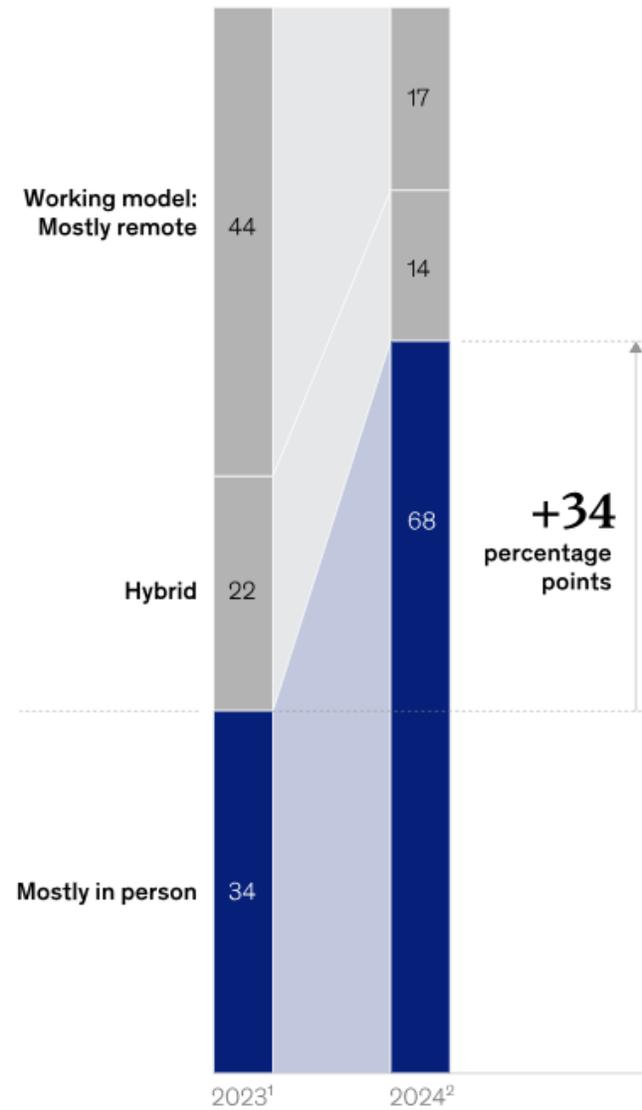


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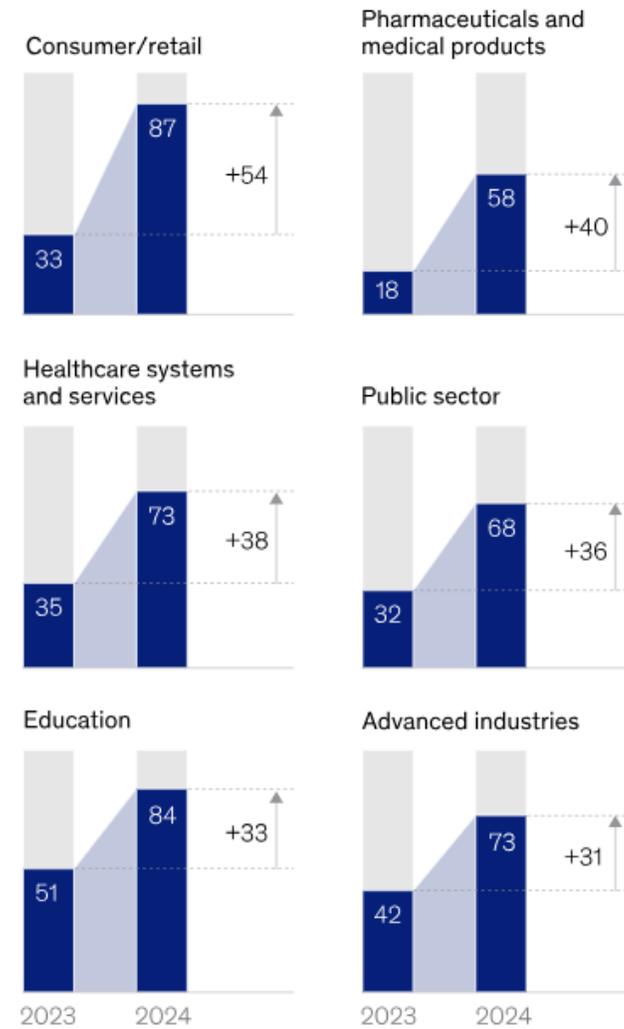
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More employees reported working in person in 2024 than in 2023.

Change in working model, 2023–24, %



Biggest increases in employees who reported working in person, 2023–24, by industry, %



Source: McKinsey, June 2025

Distributed and remote work – the new ‘normal’?

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- Distributed workforces have become the strategic norm for large and mid-sized US employers in 2025.
 - They allow for broader talent pool, potential cost savings and business continuity.
 - The share of job postings open to “location-agnostic” work (and thus, to candidates in any state) is higher post-pandemic.

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State employment law differences

- **Hiring**

- Varying worker classification tests (ABC test, control test, etc.)
- Pay transparency requirements in job postings
- Background check and fair chance laws
- New hire paperwork
- Arbitration requirements
- Invention assignment requirements
- At-will employment (e.g., Montana exception)
- Business registration requirements*
- Tax withholdings*
- Unemployment/workers' compensation insurance*
- Benefits compliance*

* Administrative considerations beyond employment law

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State employment law differences

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- **Employment relationship**
 - Wage and hour obligations (overtime, meal/rest breaks)
 - Mandatory training for managers and employees
 - Leaves of absence and accommodations
 - Paid leave requirements
 - Handbook policies
 - Restrictive covenants
 - Drug testing protocols
- **Termination of employment**
 - Final pay laws
 - Offboarding notices
 - Legal risks/claims
 - Nondisclosure and settlement limitations
 - Mini-WARN laws

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Business considerations

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- **Financial impact**
 - There may be increased payroll expenses, benefits premiums, and compliance/administrative costs with multistate workers.
- **Company culture and management**
 - Remote work can impact coverage, time zones, productivity, training opportunities, and career progression.
 - But it also can save time and increase productivity due to lack of commute, and it broadens the available talent pool.
- **Compensation differences**
 - There can be cost of living considerations; differing pay requirements (e.g., overtime for remote non-exempt workers).
- **Confidential information security**

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Key takeaways

- Where employees are located matters.
 - Business registration, tax and employment law considerations vary across states.
 - International hiring introduces additional complexity.
- Know where your employees are!

What Law Applies

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Federal and state/local laws apply

- Federal law provides us with a baseline.
 - Examples: FLSA, Title VII, FMLA
- Typically, state (and local) laws build upon and expand the federal minimum, adding more obligations for employers.
- Increasingly, we are seeing clashes between federal and state/local laws.

Recent federal executive orders

- “Ending Illegal Discrimination and Restoring Merit-Based Opportunity,” Jan. 21, 2025 (“DEI EO”)
 - Federal contracts and grants must include term requiring counterparty to agree it complies with federal anti-discrimination law for purposes of the False Claims Act.
- “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government,” Jan. 21, 2025 (“Gender EO”)
 - The federal government will only recognize male and female sex and is focused on eradicating “gender ideology” and “gender identity.”

Additional federal guidance and enforcement priorities

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- EEOC Chair Andrea Lucas’s enforcement priorities align with the executive orders.
- March 2025 EEOC/DOJ technical guidance:
 - Title VII protects all; no heightened standard for “reverse” discrimination.
 - Mentoring, networking, resource groups must be open to all.
 - DEI trainings can create a hostile work environment.
- July 2025 DOJ guidance:
 - Ostensibly neutral criteria cannot be used as a “proxy” to discriminate.
 - Avoid demographic targets and diverse slate requirements.

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Potential federal-state law conflicts

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- **DEI best practices and guidance**
 - **Federal:** January 2025 DEI EO and March and July 2025 guidance from EEOC and DOJ express deep concerns re “illegal DEI.”
 - **State:** February 2025 pro-DEI guidance from 16 state attorneys general.
- **Gender identity and expression, transgender protections**
 - **Federal:** January 2025 Gender EO and July 2025 DOJ guidance – “protect single-sex intimate spaces like bathrooms” (potentially conflicts with US Supreme Court decision in *Bostock*).
 - **State:** CA, CO, IL, MA, NJ, NY, OR, VT, WA require employers to allow employees to use bathrooms that align with gender identity.
- **Bottom line:** Workplace policies require careful calibration; these issues are all still in flux.

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Which state law applies?

- **Default:** The law of the state where the employee is performing work for the company.
- **Trend:** More employees are seeking protection of the state law in which the company is headquartered, if that state law is more favorable (e.g., California).
- **Other considerations:**
 - What happens if the employee moves to a different state during employment?
 - What happens if the employee spends some time in another state (e.g., attend training, etc.)?

Which state law applies?

- **Facts to consider**
 - Nature of the work
 - Amount of work performed in a certain state
 - Residence of employee
 - Employee's base of operations
 - Conduct that gives rise to liability
 - Employer's ties to the jurisdiction

Which state law applies?

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- **California: A case study**
 - California has a **presumption** against extraterritorial application of state laws (i.e., a non-California employee cannot claim California state law protection).
 - But results may vary based on the violation alleged.
 - **California Labor Code:** Presumption **may not apply** when the employee had some physical presence in California; presumption **did apply** when the employee worked outside California.
 - **FEHA:** California law may apply to non-California employee depending on whether the employee's work had substantial connection to the state through the site of employment and the cause of action.

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Practical Approaches

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Quick take: Employee in a new state

- Generally (subject to certain exceptions) an employer must:
 - Register as an employer in that state.
 - Comply with that state's payroll requirements.
 - Assess whether that employee creates a taxable presence for the company in that state.
 - Comply with local worker compensation requirements.
 - Comply with local employment laws.
 - Review benefits coverages.

Multijurisdictional compliance: What approach to take?

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- **State-by-state approach**
- **“Most favored nations” approach**
- **“Anchor” approach**

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State-by-state approach

- Apply the most employer-favorable law in each state.
- **Pros**
 - This provides employers with maximum protections.
- **Cons**
 - It requires more regular updates to forms, policies (e.g., Cooley form of multistate CIIAA).
 - It may result in multiple forms, forms with long exhibits or forms with many brackets, to make sure each state's requirements are met.
 - There's an uneven employee experience across states.

‘Most favored nations’ approach

- Treat all employees equally by applying laws from the most employee-favorable state in which employer operates.
- **Pros**
 - There’s administrative ease, consistency of employee experience.
 - If you primarily operate in an employee-favorable state, waiving some employer-favorable protections may not be as concerning.
- **Cons**
 - Some employees receive greater protections than they otherwise would have under their states’ laws.
 - It can be a challenge to harmonize operationally.
 - “Most employee-favorable state” may be difficult to determine.

‘Anchor’ approach

- Anchor around the law of one or more locations (where company is headquartered or has the most employees) and honor additional state requirements as needed
- **Pros**
 - It reduces some administrative complexity.
 - It reduces variations in policies while still complying with requirements of outlier states where required.
- **Cons**
 - Some employees receive greater protections than they otherwise would have under their states’ laws.
 - Outlier state requirements still need to be tracked.

Leveraging vendors

- Law firms, HR and compliance vendors, and payroll and benefits providers can help you manage multistate compliance.
- Many employers leverage a **PEO** or other vendors to help keep track of multistate payroll, benefits, tax and leave considerations.
- **Pros:**
 - PEO may already be registered in a state, so the employer doesn't have to.
 - Employers can outsource operational complexity of managing employee protections – even HR compliance, benefits and leave administration.
- **Cons:**
 - There's less flexibility, with employers often required to follow the vendor's approach.
 - There's an additional cost.
 - Compliance is not a guarantee.

Illustrative Examples

Employment agreements

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- **State-by-state approach**
 - Different forms for each state or multistate form with detailed addenda or brackets
- **“Most favored nations” approach**
 - Single form with most employee-favorable approach
- **“Anchor” approach**
 - Single form applying law of where company is headquartered or has the most employees, plus additional forms for outlier states
- Be thoughtful about **governing law issues**.
California and Washington have legal quirks; avoid signing onto unnecessary legal obligations.

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Restrictive covenants

- **State-by-state approach**
 - Leverage noncompete, nonsolicitation, non-interference provisions to the maximum extent.
- **“Most favored nations” approach**
 - All employees are subject to same restrictions.
- **“Anchor” approach**
 - Employees are generally subject to one approach, with exceptions where state law requires.

Note: The trend is that non-California employees may file suit in California to take advantage of the state’s law banning noncompetes.

Employee handbooks

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- **State-by-state approach**
 - The handbook accounts for all state variations, either within the main handbook or in state-specific addenda.
- **“Most favored nations” approach**
 - The employer tailors policies to the most employee-favorable jurisdiction.
- **“Anchor” approach**
 - The handbook focuses on primary locations, with “catch-all” provisions or addenda for other states.

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Trainings

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- **State-by-state approach**
 - Provide what each state requires to only the employees in those states.
- **“Most favored nations” approach**
 - Provide the training that is required in one state to all employees.
- **“Anchor” approach**
 - Focus on compliance with “anchor” states and comply with any other state laws as required.

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Selin's practice encompasses employment counseling and litigation for a broad range of employers. She advises on all aspects relating to the workplace, including hiring, worker classification, equal opportunity, anti-harassment, diversity, equity and inclusion (DEI), wage and hour, leaves of absence, employee separations, noncompetition, nonsolicitation, trade secret misappropriation, and more.

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Joshua has practiced employment law in Cooley's labor and employment practice group for 20+ years. His practice includes a broad mix of litigation and employment counseling, as he provides strategic advice regarding the full spectrum of HR matters, from the beginning of the employment relationship to the end – drafting and negotiating contracts, implementing policies and practices, ensuring protection of trade secrets and compliance with complex statutory and regulatory matters, advising companies regarding worker classification, pay equity analyses, diversity initiatives and employee relations matters, advising executives and boards of directors through complex internal investigations, and investigating, negotiating and litigating pre-suit and filed actions. He also regularly assists clients with the employment-related aspects of M&A transactions, financings and initial public offerings.

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