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Remote Workers and the Need for Foreign Qualification in Other States

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Determining whether a company must qualify in another state for “doing business” in such state has always been a tricky proposition. Rather than having clear and concise rules, states either look to see if a company has “regular, systemic or extensive” business activities within the state or they determine what activities are not considered “doing business.”

Remote workers have added an additional wrinkle to the qualification analysis. While the COVID-19 pandemic temporarily forced businesses to shut their offices and workers to work remotely, it also permanently changed the attitudes of business owners and their employees. Technology helped companies save money on physical office spaces and many employees enjoyed the benefits of working from home. Whether working full-time from home or via a hybrid schedule, businesses must now evaluate if their remote workforce requires qualification in one or more states.

The first step in a foreign qualification analysis is reviewing the individual state statutes, specifically looking at activities that are not deemed to be “doing business” within the state. Soliciting sales for orders to be shipped from other states, having a limited payroll or sales in the state would typically be deemed to be “not doing business.”

The second step is looking at what constitutes “doing business” within the state. Is this an isolated activity? Are there only a small number of remote employees residing in the state? What percentage of revenues come from those employees living in a foreign state?

The last step is individual case law. With many statutes open to interpretation, courts have determined what is “doing business” and their rulings often vary from state to state.

If in doubt, it is important to consult an attorney to determine whether a business should qualify in another state. With an ever-growing remote workforce, it is essential to ensure that your business is not fined or penalized for failure to qualify in a foreign jurisdiction.

Masuda Funai is a full-service law firm with offices in Chicago, Detroit, Los Angeles, and Schaumburg.