

# LABOR LAW

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## FRAGOMEN

### Implications of Remote Work on Foreign National Employment

It's no secret the labor landscape has drastically changed since the onset of the COVID-19 Pandemic, with remote work arrangements gaining a permanent foothold worldwide. Necessity has bred adaptation in the private sector—governments in turn are courting the growing global digital nomad population to make up for lost tourism dollars or are struggling to apply existing laws to this new reality. More than 25 countries worldwide now offer "digital nomad" visas, with many more adapting existing visa schemes to offer attractive options to travel-deprived remote workers to live and work in their territories. The United States' immigration framework is somewhat murky with respect to the digital nomad, but creative lawyering can offer solutions for those looking to stay and work in sunny California.

The United States does not have a formal special program dedicated to digital nomads, and temporary visitors (entering on B-1, B-2 or what is known as ESTA) are not permitted to work in the United States.

Restrictions for temporary workers in the United States vary considerably from one visa type to another. The temporary worker visas known as an H-1B or E-3, for instance, are strictly tied to work locations and the place of work is an essential part of the qualification process for the visa. Other visa types such as the O-1 (often for creative artists, musicians, actors, academics, or those in science or tech fields) and the L-1 visa require more in-depth analysis—the O-1 visa in particular is adaptable to the digital nomad lifestyle. The TN (for certain workers entering the U.S. from Mexico or Canada) and E-3 visas are not tied to work locations, and work may be performed from broad geographic locations with some caveats. Finally, the newly revived EB-5 investor visa offers great flexibility and is an employment creation visa rather than an employment visa. The program encourages investments in U.S. infrastructure projects, rural areas, and low-employment regions by offering attractive fast-track options for visa processing and a direct path to a green card.

Those interested in a digital nomad work arrangement should be sure to consult with immigration, labor and/or tax law professionals.

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## 4 Current Employment Trends That Affect Your Company

If you feel as if the work world has been in a state of flux through the last couple of years, you're not wrong. The COVID-19 pandemic that started in 2020 has had major ramifications on the employment market, with people quitting their jobs in masses in the so-called Great Resignation and difficulties attracting talent to certain job categories.

As we move through 2022, we're finally settling into some version of normal—but changes in where we work, when we work, who we work with and what we value in the workplace continue to change. Take a look at some of the most significant ongoing trends in the employment market and how they're affecting the employee experience and the policies that employers are enacting.

### 1. A Focus on Employee Well-Being

Employee satisfaction metrics have a new focus on the post-pandemic world: employee well-being. Whether they were jobless or working from home, employees shifted priorities drastically during Covid and are now demanding a level of work-life balance that was previously absent in far too many workplaces.

Most companies are already well on the way to meeting this demand, with 94% of companies investing in employee well-being during the pandemic year of 2020, with an 85% increase in support for mental health benefits. And those investments have paid off, with 23% of employees reporting better mental health and improved sleep—resulting in higher retention levels.

Going forward, companies should expect to continue policies that prioritize employee well-being and mental health, as well as paying attention to employees' family life. Organizational benefits that employees find attractive include:

- Increased compensation
- Financial education programs, including access to financial advisors or coaches
- Enhanced retirement plans
- A relaxed company culture
- An emphasis on and acknowledgement of the importance of work-life balance
- Tuition reimbursement
- Mentoring programs
- Access to internal mobility
- Mental health apps
- Mental health therapy or coaching opportunities and availability
- Wellness programs
- Access to exercise programs
- Boosted health insurance

In many cases, these well-being benefits have proven key to employee retention, especially among Gen Z employees. Expect to see the demand for mental health benefits continue to grow, with employees expecting to find a culture of care at their workplaces.

### 2. The Shift to a Hybrid Workplace

We all pivoted to a hybrid way of working rapidly in early 2020, little realizing that we were seeing the wave of the future. Fully 75% of workers who moved to hybrid or remote work acknowledge that they expect to continue this model going forward — and 39% of the employees of any given organization would quit if that company demanded that they work completely on-site. As a result, businesses must now design their work and their company culture around the concept of flexibility.

The move to a hybrid/remote workplace has massive effects on hiring and retention. Without the social connections made by being in person, many employees feel little pressure to stay put in a job. At the same time, remote work drastically widens the hiring pool for many positions, since geography no longer plays a dominant factor.

While remote/hybrid work makes employees happy, companies have to juggle their procedures and policies to make it work reliably. Not only does attrition become a more significant factor to deal with, but you may have to establish policies regarding employees holding down multiple jobs simultaneously. The need for robust collaboration tools and online whiteboards becomes greater. In

addition, companies must establish policies to make sure that remote and on-site employees are receiving the same treatment from managers.

At the same time, many employees, especially those in Gen Z, don't want to be fully remote. They want to make connections in person within the workplace. That affects the way you approach everything from onboarding to office design to employee development programs.

### 3. The Demand for Diversity, Equity and Inclusion

The issue of diversity, equity and inclusion came to the forefront of workplace discussions over the last couple of years — but the desire to hire, promote and treat all workers fairly has an uneasy relationship with the hybrid workplace. On-site workers are 76% more likely to be promoted, for example. While some executives have claimed that this occurs because remote workers underperform, this statistic raises the potential for claims of inequitable treatment. In addition, management should pay careful attention to raises, making sure they don't offer preferential treatment to the employees they see more often.

Managers and HR departments also need to establish clear policies regarding who has first access to remote or flexible work situations, to avoid accusations of unfair treatment on the part of management. Decisions surrounding how you execute the hybrid workplace also affects other issues surrounding diversity, equity and inclusion. For example, people of color and women are more likely to prefer a remote or hybrid work environment than are white men. Issues surrounding promotions and raises that seem to be tied to the question of whether a worker is on-site or remote could easily balloon into more serious territory if careful attention isn't paid to equity.

### 4. The Shortening of the Work Week

One major trend just getting started across the country is the shortening of the work week from the traditional 40 hours to a four-day, 32-hour model. Many companies are turning to this as a solution to competition for talent. They may not be able to attract the talent they need by offering higher compensation than their competitors — but many employees will happily accept a lower compensation offer if it offers the potential for work-life balance that comes with a four-day work week.

If your company doesn't have the financial resources to throw high offers at the talent you're hoping to recruit, consider the possibility of offering time rather than money. This trade-off is also increasingly popular with companies hoping to retain employees who may be tempted to go elsewhere. Those valuable employees may be willing to accept flat compensation if their leisure time increases.

At Marquee Staffing, we pay close attention to trends in the employment marketplace and how it affects the decisions you make for your own company. We're ready to be your partner as you face HR and other workplace challenges caused by rapid change in the workplace. Contact us today to see how we can help your company plan for the future, whatever it may bring.

#### **Claudia Perez** Sr. Vice President of Operations

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