

UNIVERSITY OF NEBRASKA SYSTEM

# FREQUENTLY ASKED QUESTIONS

## OUT-OF-STATE EMPLOYMENT



**Q: Who does the “Working Out-of-State” portion of the Alternative Worksite Policy apply to?**

**A:** The Alternative Worksite Policy applies to all administrative, managerial/professional, office and service, and student employees holding regular, temporary, or on-call appointments at the University of Nebraska, together referred to as “employees” in the Policy. The Out-of-State portion of the policy applies to any employee who lives outside the State of Nebraska, including those who may be living internationally for any period of time, and who performs any work for the University in that other location.

**Q: Are faculty impacted by the “Working Out-of-State” portion of the policy?**

**A:** While not included in the Policy, faculty members who live in other states should take note of the potential for changes to individual tax withholding if they are living and working in a comparable state. Please review the Tax Considerations section of the Policy and the Comparable States FAQs, below. Faculty members that fit that category are strongly encouraged to discuss this arrangement with their tax advisor. Additionally, the University is forming a working group, to include faculty members and administrators from all campuses, to evaluate issues related to faculty members who work in non-comparable states. More information will be provided to affected faculty once it is available.

**Q: When does this policy take effect?**

**A:** The University of Nebraska System’s Alternative Worksite Policy, including requirements for out-of-state workers, will take effect Jan. 1, 2023. For employees who currently live out-of-state, change won’t happen overnight. Employees living in “comparable” states may see their tax withholdings change sometime in 2023. Employees living in “non-comparable” states will have a full calendar year to consider whether they’d like to move to Nebraska, comparable state, or remain in their current state and be transitioned to a Professional Employer Organization.

**Q: Why is the University changing its practices on out-of-state employees now?**

**A:** The Covid-19 pandemic changed the landscape for remote work. As we’ve come out of the pandemic, there is a greater spotlight nationally on employers’ practices regarding out-of-state workers. That’s prompted us to take a look at our own practices and policies. With our new policy, we are establishing clear guidelines across the NU System that allow for out-of-state work where necessary, while also ensuring that the University is in full compliance with all relevant tax, workers compensation and employment laws.

**Q: Is the University saying there are some states where employees won’t be allowed to live?**

**A:** No. We are not prohibiting out-of-state work. What we are saying is when an employee lives in a state where tax and/or employment laws are significantly different than Nebraska’s (“non-comparable states”), or if the University needs to employ someone in one of those states for strategic reasons, then there is a specific,

clearly defined process that applies across the NU System that will need to be followed.

**Q: Private companies employ people in all 50 states all the time. Why can't the University do that?**

**A:** We are not a for-profit company. The University of Nebraska is a state agency that is generously supported by Nebraska taxpayers. The vast majority of University of Nebraska employees should be able to perform their work duties in Nebraska. While we recognize there will be exceptions, it is reasonable for us as a public, not-for-profit organization to have a clearly defined process for granting those exceptions.

**Q: I work out-of-state and no one has reached out to me about the new policy. What should I do?**

**A:** We reached out to employees based on the address they've provided in SAP. If no one has reached out to you, that likely means your address in SAP is out-of-date. We'd ask you to notify your campus HR office at your earliest convenience so we can walk you through the next steps.

**Q: I previously lived out-of-state and was contacted about the new policy, but I currently live in Nebraska. What should I do?**

**A:** You have an out-of-state home address listed in SAP. At your convenience, we'd ask you to update your address in SAP so that your correct information is on record.

**Q: I have questions that aren't answered in this document. Who can I call?**

**A:** The University of Nebraska System's full Alternative Worksite Policy is available [here](#). If you have other questions, we invite you to contact your campus Human Resources office for general employment questions and the NU Systems Tax office for tax questions.

## NON-COMPARABLE STATES

**Q: What states are "non-comparable"?**

**A:** The list of Non-comparable states is available [here](#). This list is subject to change as we continue to review and stay up-to-date on each state's tax and employment laws.

**Q: I/one of my employees live(s) in one of the non-comparable states. What are the next steps?**

**A:** Tax and employment laws in those states are significantly different than Nebraska's and being in compliance carries significant financial and administrative costs for the University of Nebraska. Thus, for the small number of employees who live in non-comparable states, the University will transfer their employment to a third-party "Professional Employer Organization" effective Jan. 1, 2024. We are currently in discussions with a PEO and expect to reach an agreement soon.

For these individuals, the PEO will become their formal employer and will administer pay, benefits, retirement, unemployment compensation, workers compensation, employment verifications, medical leave requests, and so on. While these colleagues will officially be an employee of the Professional Employer Organization, they will continue to work for the University of Nebraska.

**Q: Does this mean employees living in non-comparable states will be terminated by the University of Nebraska? Is their re-employment by the PEO guaranteed?**

**A:** Yes, unless the employee moves to Nebraska or a comparable state, the formal process requires employees to be separated from the University of Nebraska and re-hired by the Professional Employer Organization in order to continue working for the University.

**Q: For employees who will be transitioned to the PEO, will their job titles remain the same? Will they report to the same supervisor? Will their email addresses change?**

**A:** None of those things will change. Those individuals' titles, supervisors and email addresses will remain the same. They will be employees of the Professional Employer Organization performing work for the University of Nebraska, instead of being University of Nebraska employees.

**Q: What are my options if I want to remain an employee of the University of Nebraska?**

**A:** You have two options. First, you can move to Nebraska to work for the University of Nebraska. Second, if moving to Nebraska is not an option but you'd still like to remain a University of Nebraska employee, you could move to one of the "comparable" states. This will result in changes to your tax withholdings, but you would remain a University employee and would not be transitioned to the Professional Employer Organization. You would still need to fill out the University's alternative work arrangement form available [here](#).

If at all possible, if you plan to move, we'd ask that you notify your direct supervisor and campus Human Resources office of your plans by September 15, 2023. The process of transitioning those employees who choose to remain in non-comparable states will take several months and it would be helpful to the University to know of your plans in advance.

**Q: What is a Professional Employer Organization? Do other universities use these?**

**A:** A Professional Employer Organization is a full-service human resource outsourcing organization that handles employment, payroll, administrative and tax reporting work for its clients. Yes, other universities use PEOs.

**Q: What happens to the employees' leave balances when they are transitioned to the PEO?**

**A:** Leave balances, up to the maximums, will be paid out based on the University of Nebraska's standard procedures.

**Q: Will the employees' benefits change when they are transitioned to the PEO?**

**A:** Yes, employees' benefits will change once transitioned over to the PEO because the employee will no longer meet the eligibility requirements for the University of Nebraska. The University of Nebraska is currently in discussions with the PEO. More information will be released in 2023 once an agreement is reached.

**Q: I work in student recruiting, and I'm based in a non-comparable state that's a key recruiting market for my campus. Will I still be transitioned to the PEO?**

**A:** Yes. We recognize that there are strategic reasons why the University may need to have a limited number of individuals working out-of-state. However, given the highly complicated workers compensation, employment

and tax laws of non-comparable states, individuals who live in those states and do work for the University will be transitioned to the PEO.

**Q: I/one of my employees currently lives in Nebraska, but is considering moving to a non-comparable state. Is that allowed?**

**A:** Our policy does allow for individuals to live in non-comparable states and do work for the University. However, if you're considering moving to a non-comparable state, you will need to secure proper approval through the process articulated in the policy, and you should be aware that if your request is approved, you will be transitioned to the Professional Employer Organization and will no longer be a University employee. We recommend that you talk with your supervisor and campus HR office before making a move.

**Q: I'm a hiring manager and would like to hire a candidate who lives in a non-comparable state. Can I do so?**

**A:** Our policy allows for individuals to live in non-comparable states and do work for the University, but requires a specific approval process. You should talk to your HR office before making the hire.

## COMPARABLE STATES

**Q: What states are comparable?**

**A:** The list of Comparable states is available [here](#). This list is subject to change as we continue to review and stay up-to-date on each state's tax and employment laws.

**Q: I live and work in a comparable state. Will my employment status with the University be impacted?**

**A:** No. You will remain an employee of the University of Nebraska. However, your tax withholdings may change. You may have double tax withholdings – for the State of Nebraska and for the state you live in – in accordance with the State of Nebraska's "Convenience of Employer" laws. In other words, assuming that you live outside Nebraska for your convenience and not the University's, you may be subject to withholdings for both states. You'll see this change reflected in your tax withholdings sometime in 2023 and on your 2023 W-2 that will be issued to you in 2024.

**Q: Why might employees living in comparable states see double tax withholdings?**

**A:** The State of Nebraska is a "Convenience of Employer" state. Per state law: "In general, compensation received by a nonresident for services performed outside of Nebraska for his or her own convenience, which are directly related to a business, trade or profession carried on within Nebraska, is considered income derived from Nebraska (Neb. Admin. R. & Regs. 316 Section 22-003.01C)." Accordingly, employees working out-of-state for their convenience and not the convenience of the University may see double tax withholdings for Nebraska and the state they live in.

**Q: What does the law mean when it says, "services performed outside the State of Nebraska for his or her convenience"?**

**A:** Essentially, Nebraska law says that if you are working outside the State of Nebraska because of your

choice and not because the University required you to, that arrangement is at your “convenience,” not the University’s. Therefore, you are still liable for Nebraska tax withholdings because your work is directly related to a business, trade or profession carried on within Nebraska, and you could have performed your work in Nebraska.

**Q: If I’m liable for Nebraska withholding while working 100% remote in another state, will I be liable for withholding in the state I’m working remote in?**

**A:** Yes, there is a strong likelihood that you are liable for withholding in that state if it has a state withholding requirement. We recommend you consult your tax preparer or advisor for further guidance.

**Q: If I’m liable for state withholding in Nebraska and the state that I’m working 100% remote in, is that double taxation?**

**A:** Technically, no, that it not considered double taxation because most states allow a credit to be applied when you are paying taxes to another state. We recommend you consult your tax preparer or advisor for further guidance.

**Q: If I work 100% remote in a state that does not have a state withholding requirement, will I still be required to have Nebraska withholding?**

**A:** Yes, you are still required to have Nebraska state withholding if you are working outside the state for your convenience and not the University’s.

**Q: I live and work in a comparable state because the University requires me to for strategic purposes. Will I see double tax withholdings?**

**A:** No, if you are in the comparable state for the convenience of the University you will not see double tax withholdings.

**Q: I’m a faculty member living in a comparable state. Will I see double tax withholdings?**

**A:** While faculty are not included in the Policy, the University strongly suggest that faculty members who live in comparable states for their convenience discuss this in detail with their personal accountants and/or tax advisors. After discussion with your personal accountant and/or tax advisor, if you would like to have your taxes corrected, please contact HR to get further information on next steps. The University will continue to withhold for the State of Nebraska.

## **INTERNATIONAL EMPLOYEES**

Employing individuals to perform work outside the United States is complex and involves increased costs and legal risks to the University due to employment laws, taxation rules, cybersecurity risks, and other compliance requirements in other countries. The University’s employee liability protections do not automatically extend to locations outside the State of Nebraska. In addition, employing individuals remotely in comparable and non-comparable states pose risks to the University as well. We ask that individuals in these situations contact your campus HR to notify them of your remote location. The University will assess the risks and liabilities between the University, identified campus offices or departments, and the employee. More information will be provided once it is available.