

The logo for LSL, consisting of the letters 'LSL' in a white, sans-serif font, followed by a cluster of six white dots arranged in a 2x3 grid.

LSL

The word 'Webinar' written in a white, cursive script font, overlaid on a background image of a modern conference room with large windows and several orange chairs around a table.

Webinar

**Legal & Tax Pitfalls of
a Remote Workforce**

**THURS, MAR 3
9:00AM PST**

PAYNE & FEARS
ATTORNEYS AT LAW

DISCLAIMER

The content in this presentation should not be construed as legal or tax advice.

It is solely for an educational/informative purpose.



Mike Agresti
CPA, Partner
LSL CPAs

[Bio >>](#)



Leila Narvid
Attorney
Payne & Fears

[Bio >>](#)



Melissa Clarke
Attorney
Payne & Fears

[Bio >>](#)

1. TAX PITFALLS



Employer Issues

EMPLOYMENT MATTERS



The employer must determine the residence of the remote worker

Does the employee/remote worker have a “regularly” assigned location in a different State?

Employers should research reciprocity agreements between States



Employer Issues

INCOME & PAYROLL TAX MATTERS



An employee working in an out-of-state office could establish legal presence and nexus for income tax filing requirements

Some States have COVID-related nexus guidance for income tax purposes



Employer Issues

OTHER
CONSIDERATIONS
FOR INCOME &
PAYROLL TAX
MATTERS

- Managing payroll for multiple states/localities
- Is compensation based on employer market or remote worker market?
- Remote worker may have to file multiple State tax returns
- States that are losing revenue may implement market-based payroll sourcing rules



Employer Issues

RESIDENCY



Employees that move to another State need to make sure to establish a permanent home in the new State

Need to update their mailing address, drivers license, register to vote to establish new residency

Prior resident State may question residency in new State



Employer Issues

PHYSICAL PERFORMANCE



Employees working remotely are generally subject to the rules and laws of the jurisdiction where they're located

Could be subject to taxes in another State if traveling out of resident State to perform services

Can be tricky for the employees who are moving from one State to another (Domicile vs Residence)



Convenience Rules

1

A rule some States use for sourcing income earned by Non-Residents who work for In-State employers at a location outside the State

2

Income sourcing of wages is dependent on whether the employee is working remotely by necessity or for convenience

3

Has implications in the ability to claim income tax credits



Employer Issues

**FOR INDEPENDENT
CONTRACTORS:
WHERE IS INCOME SOURCED?**



Market-based sourcing rules apply

**Where is the benefit of the
service received?**



2. LEGAL PITFALLS



Managing Workforces Across State Lines

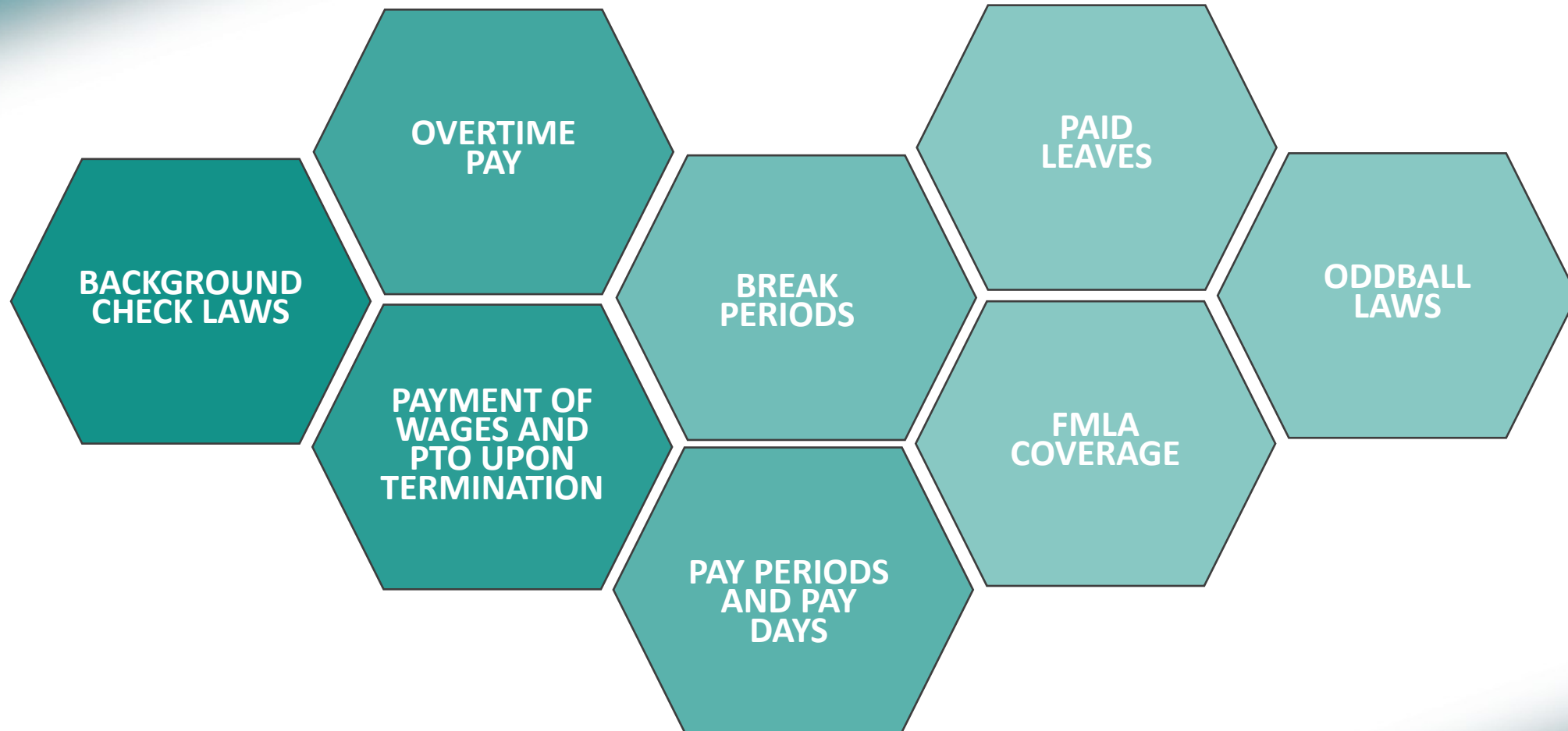


QUESTION

Can we establish a **single set** of policies or **standards** that will satisfy the requirements in **all** of the **states** where we have employees?



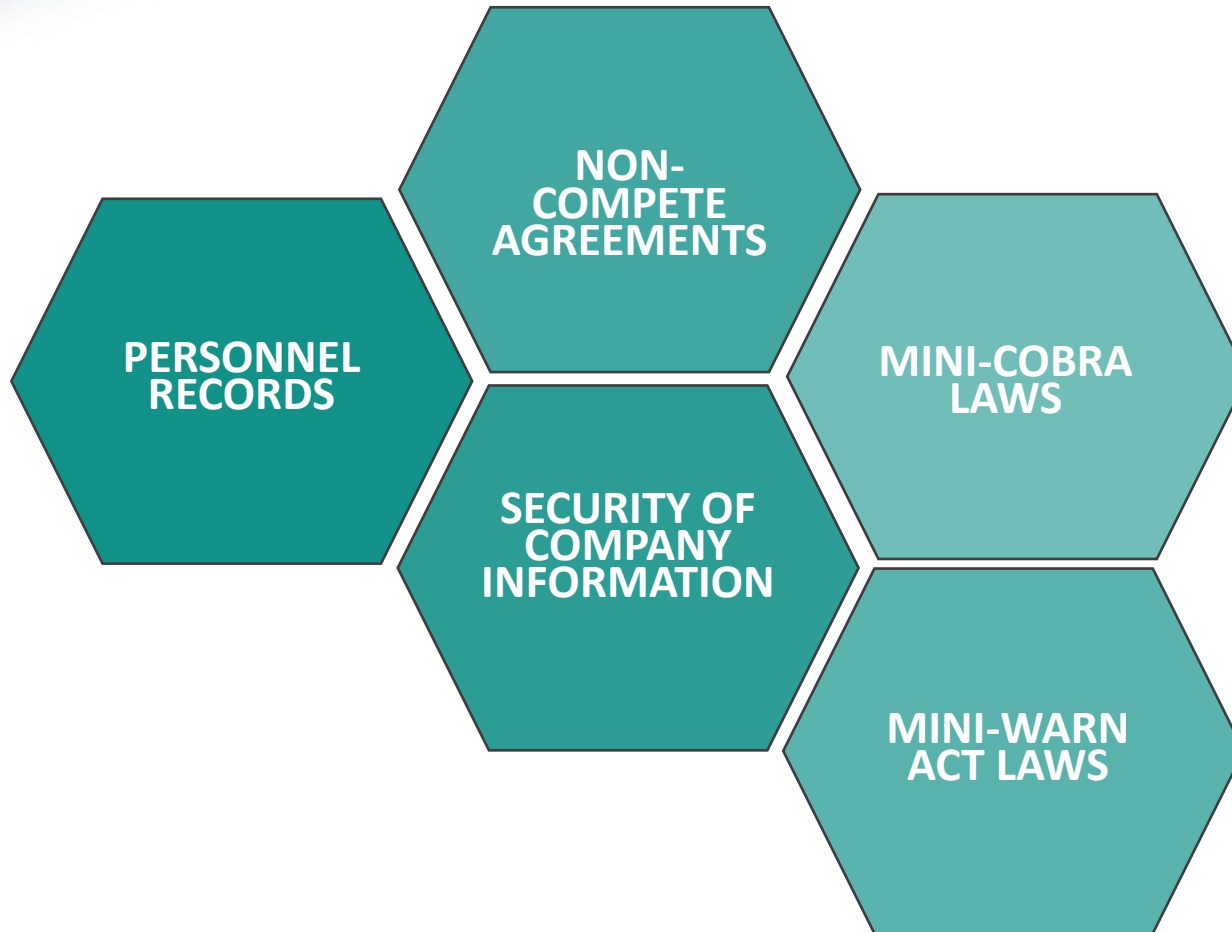
What Issues Vary from State to State?



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What Issues Vary from State to State?



Wage & Hour: General Rule

NON-EXEMPT EMPLOYEES

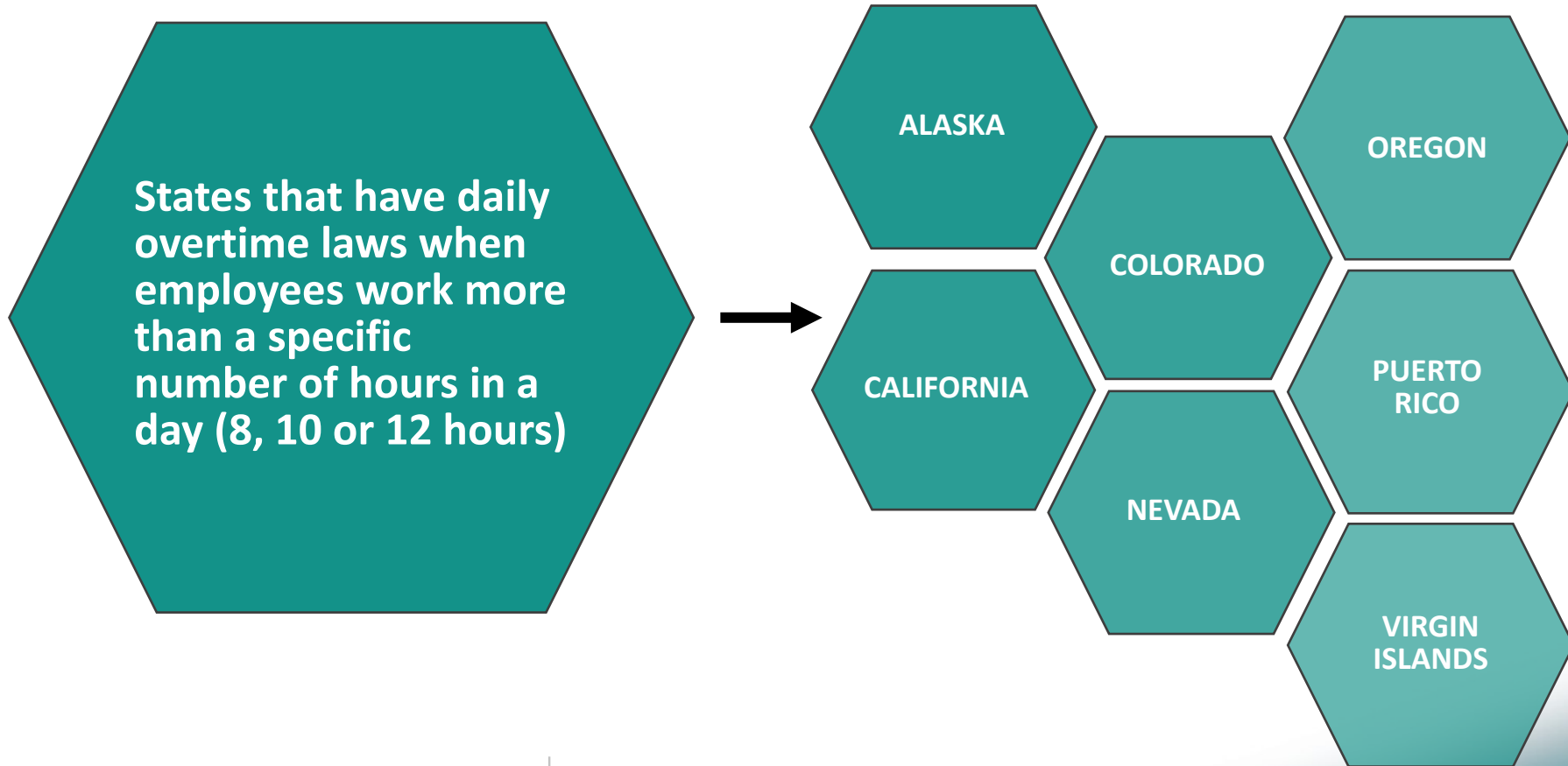
Non-exempt employees are covered by federal and state minimum wage, overtime, and record-keeping requirements



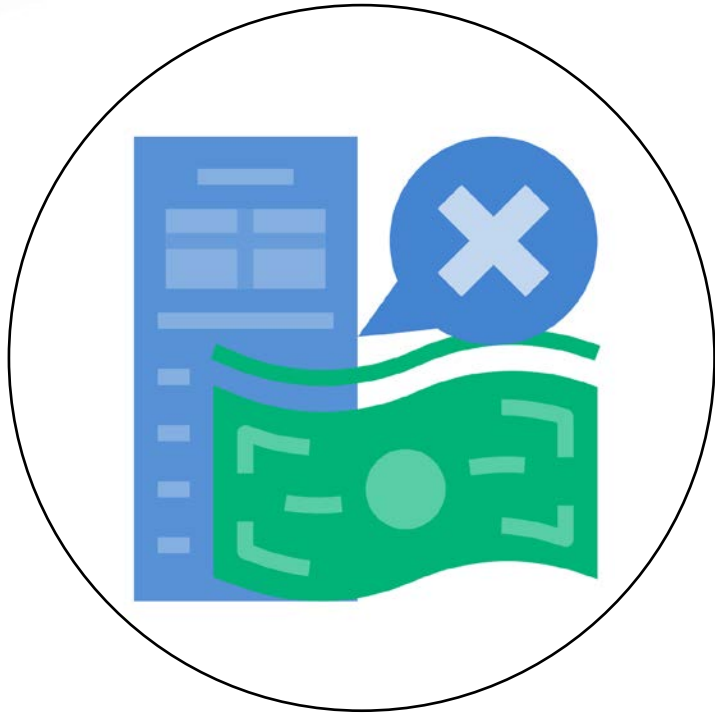
OBLIGATION TO PAY

The obligation to pay for hours worked “is also applicable to **work performed** away from the premises or the job site, or even at **home**. If the employers knows or has reason to believe that work is being performed, s/he must count the time as hours worked.”
[29 CFR section 785.12](#)

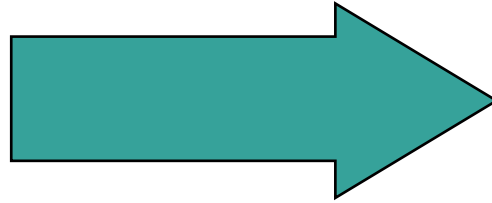
Overtime Pay



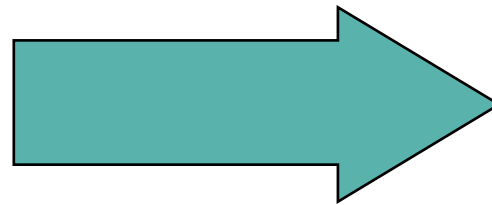
Exempt/Non-Exempt Status Across State Lines



“Duties tests” for overtime exemptions

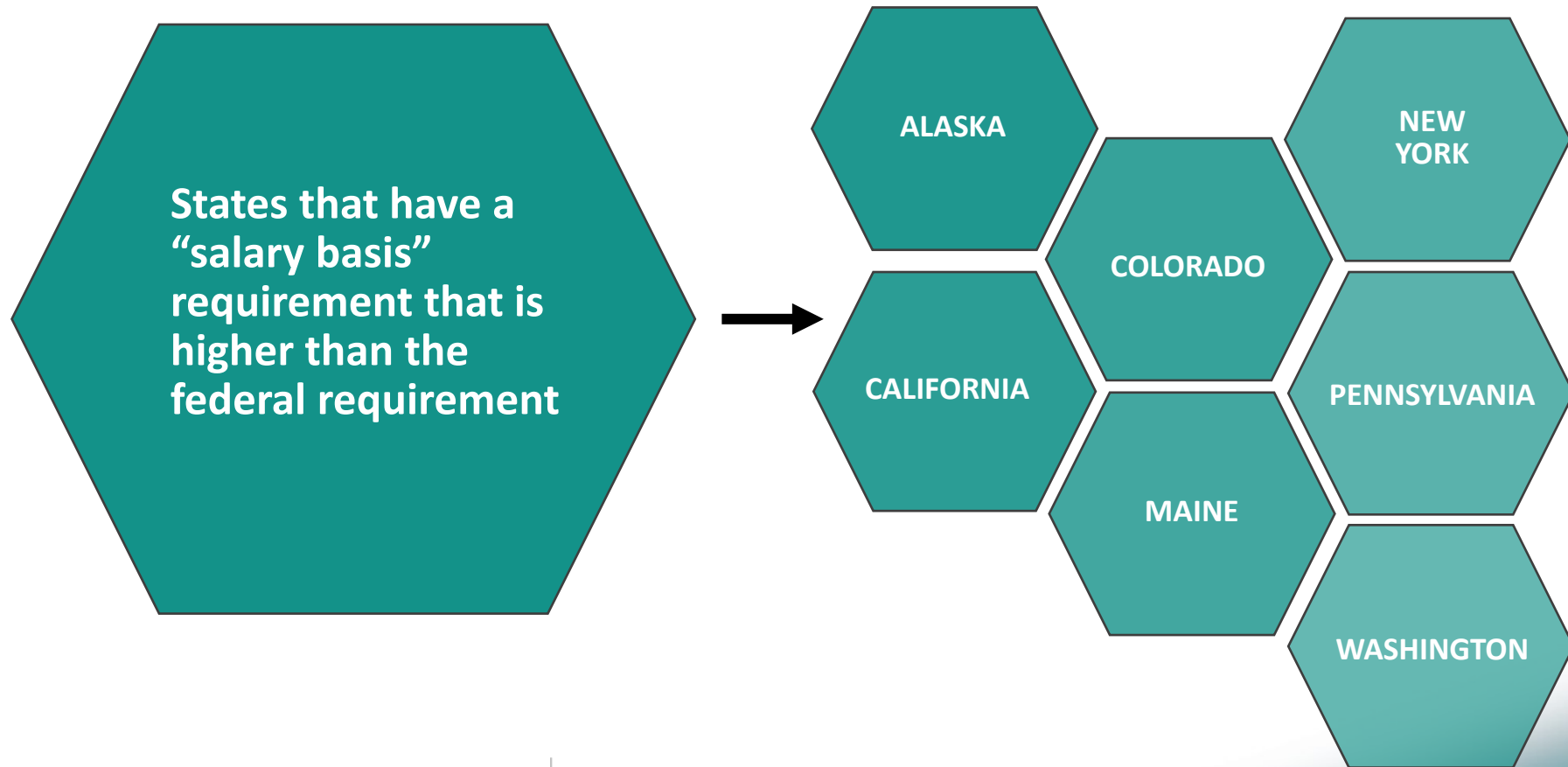


For example: California’s “outside sales” exemption requires that the employee “customarily and regularly spends more than 50 percent of working time away from the employer’s place of business,” engaged in sales activity; federal law has no minimum percentage



Is the employee’s home the employer’s place of business?

Salary Thresholds Vary



Rest Periods, Meal Breaks, and Days of Rest

**ADDITIONAL
REQUIREMENTS
IMPOSED
IN MANY STATES**



**ERRORS IN APPLYING
THESE LAWS CAN
LEAD TO HUGE
LIABILITIES**



Wages, Hours, & Timekeeping Best Practices

1

Double-check your classification of each remote employee – under state and federal law

2

For non-exempt employees, provide written instructions on how they are to record and report all time worked

3

Train managers and supervisors on these policies, and ensure they know when employees are on the clock

4

Think about the realities of remote work: reading, answering, or sending work-related messages or calls outside of the regular “work day”



How Does FMLA Apply to Remote Workers?

GENERAL RULE

Employees must work at a location that has 50 or more employees within a 75-mile radius

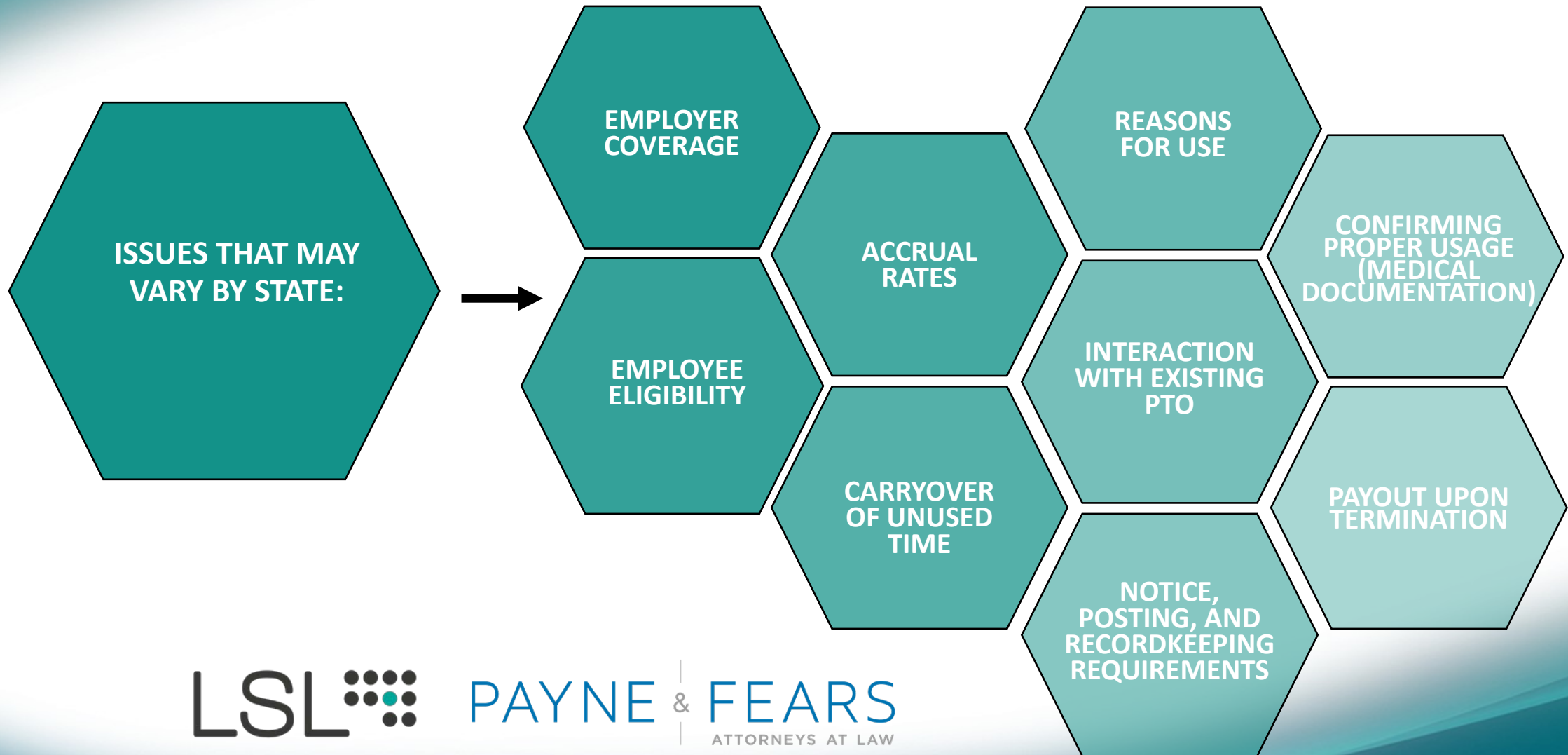


REMOTE EMPLOYEES

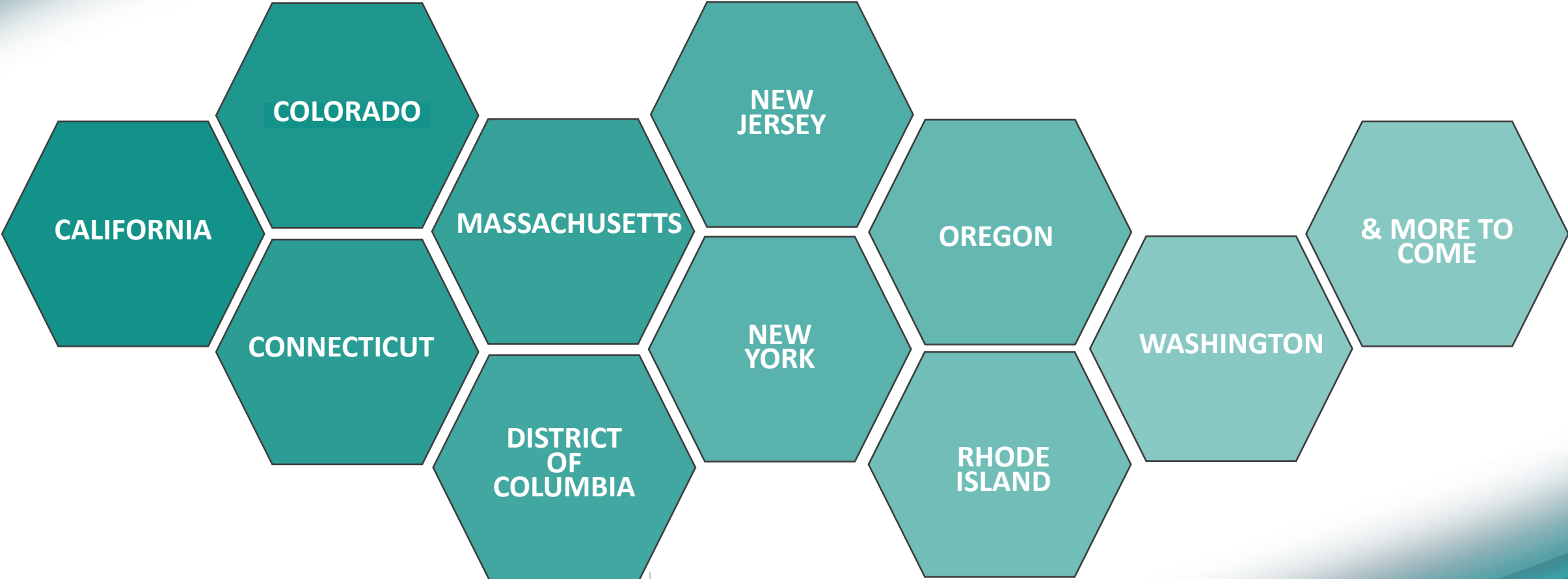
Family and Medical Leave Act (“FMLA”) regulations state that “an employee’s personal residence is not a worksite...rather, their worksite is the office to which they report and from which assignments are made.”



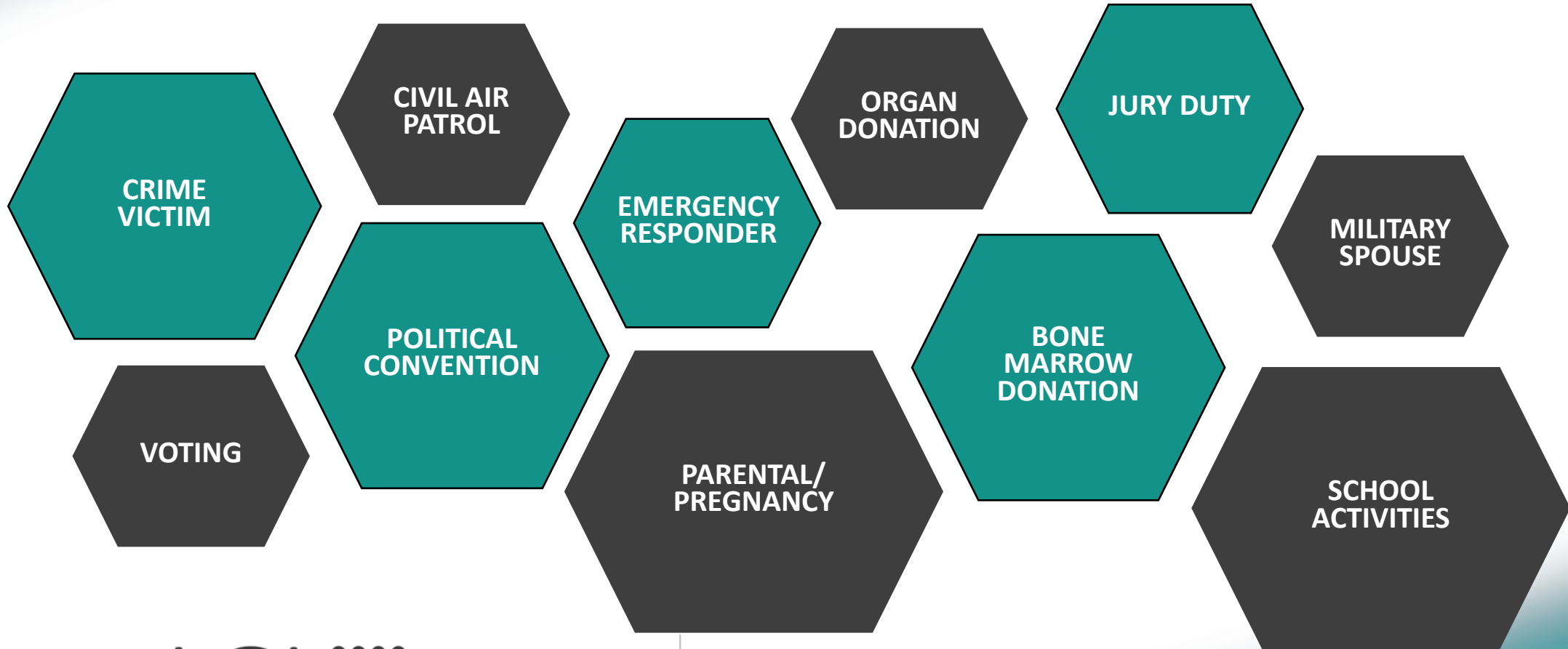
Paid Sick Time



States With Paid Leave Requirements



Other Types of Leave



Communication and Performance Management

**REGULAR MEETINGS &
CHECK-INS**



DOCUMENTATION

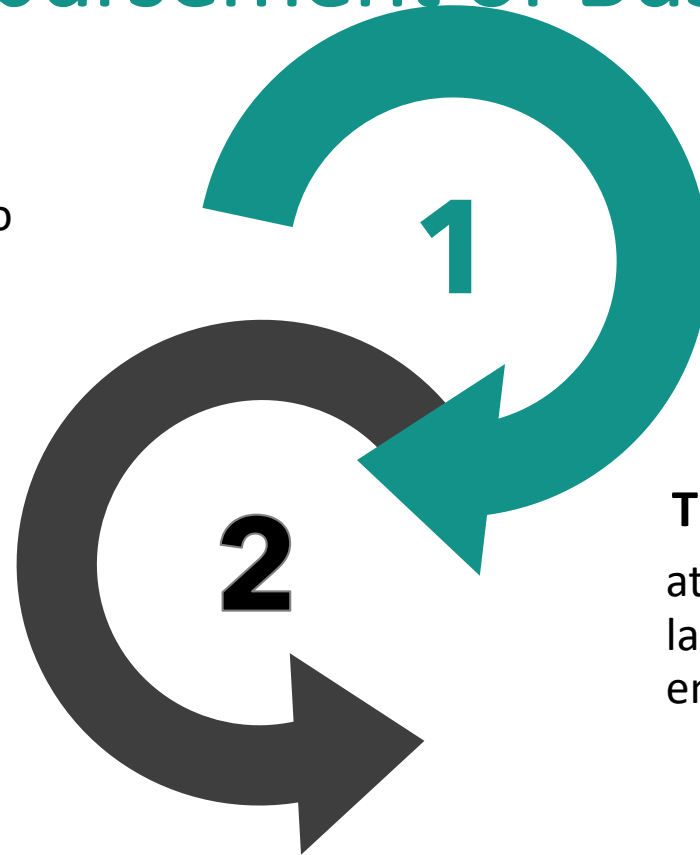
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Business Property and Reimbursement of Business Expenses

FEDERAL LAW STATES

that an employer only needs to reimburse their employees for work-related expenses that drop their earnings below the minimum wage



TEN JURISDICTIONS

at the state and local level have enacted laws requiring employers to reimburse employees for certain business expenses



Business Expenses

MANAGING COMPLIANCE

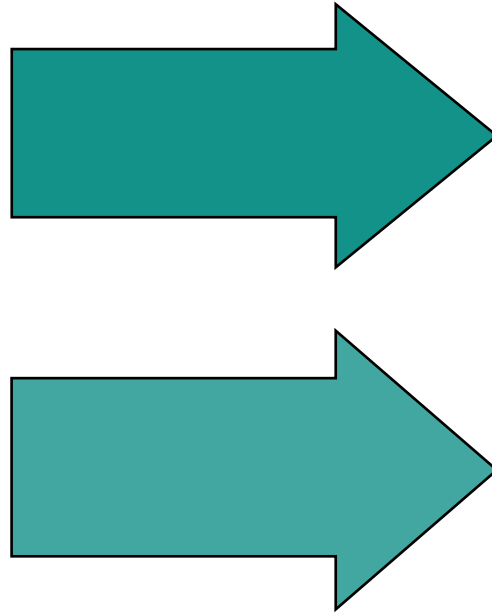


Fixed monthly stipend based on a good faith and reasonable estimate of an employee's reimbursable expenses

Reimbursement after submission of a receipt / other documentation



Non-Compete Enforcement



Re-examine employment agreements to ensure they comply with the law where the employee works

Closely consider the level of the employee being asked to sign a noncompete, where they live and work, and what legitimate business interest the company is trying to protect

Other Considerations

1

Salary disclosure and posting laws for applicants/current employees

2

Workers' compensation liability for remote illness or accidents

3

Expectation setting and performance management



Q & A

Thank you from



Melissa Clarke mec@paynefears.com

Leila Narvid ln@paynefears.com

Michael Agresti michael.agresti@lslcpas.com

Disclaimer

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