

Rewards and risks of hiring in a virtual environment

By NICK STERN

The pandemic has prompted a sea change in the way the world conducts business, including the way employers interview job candidates.

Some 86% of organizations now carry out virtual interviews, according to the payroll company ADP.

Aside from eliminating the health risks of in-person interviews, virtual interviewing has other benefits, employment experts say.

Recruiters can quickly meet candidates face to face, instead of starting the interview process with a phone call or an email exchange.

Virtual interviewing can also, in theory, expand an organization's candidate search to the whole internet-connected world. At a minimum, it can open up a pool of job candidates who are not tied to a particular city or region.



Suzanne Decker, co-lead of Miles and Stockbridge's labor, employment, benefits and immigration practice said the shift to remote interviews and work can pose challenges for employers. (*The Daily Record* file photo)

Yet, experts say, employers should know that the shift to a virtual work environment exposes businesses to legal risks they may not have dealt with previously.

The advent of the virtual office has changed the composition of companies' workforces, said Suzanne W. Decker, co-

lead of Miles and Stockbridge's labor, employment, benefits and immigration practice.

While a virtual office may allow businesses to more easily fill open roles, having employees spread over a broad geographic range can pose challenges. An employer used to operating only in Maryland may not realize that an employee working from another state is covered by that state's labor laws.

For example, if an employee of a Maryland firm works from California or New York, where leave rules tend to be more generous, the employer may need to consider leave guidelines in those states. Likewise, rules concerning sexual harassment vary by state.

"It can be a bit of a gray area," Decker said.

In addition, experts say, companies that hire employees to work virtually from another state

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may have to register to conduct business in that state. They also need to determine how much to deduct in state taxes from an employee’s paycheck.

Many states maintain that out-of-state employers don’t have to worry about such matters, Decker said, adding that she believes state governments will provide guidance in the next year as they seek to maximize their tax revenues.

Decker advised businesses to consider consulting a tax professional to clarify such issues. She also pointed out that some states, such as California, have issued guidelines about remote workers’ business expenses, including printer ink and internet access.

“At the end of the day, each state is going to want an employee sitting in their state to receive the full benefit of their laws,” Decker said.

Stephen B. Stern, a partner at Kagan Stern Marinello & Beard in Annapolis, said employers that hire from out of state need to con-

sider other states’ laws governing wages and hours, termination of employment and discrimination.

“This is a new phase of life and we’re going to have to come to grips with it, as it may not be clear which state’s laws apply when you have employees telecommuting on a full-time or even part-time basis from other jurisdictions,” Stern said.

A potential issue is whether telecommuting will be considered a reasonable accommodation under the Americans with Disabilities Act (ADA).

Historically, Stern said, courts have deferred to companies that consider an employee’s physical presence in the office an essential function of a job. Today that dynamic is changing, he said — particularly if a company allows a hybrid work environment after the pandemic has passed.

“Now there may be a track record of showing that people can do these jobs remotely,” Stern said. “Businesses are going to have to take a hard look at what

are the essential functions of a job, particularly if they’re requiring a physical return to the office.”

Employers who conduct virtual interviews could also encounter disparate impact claims, since not everyone has access to the technologies needed for virtual interviews, Stern and Decker pointed out. Companies must have more than one way to conduct a remote interview and must accommodate job candidates with disabilities, they said.

In addition, employers in some states must tell job candidates that their remote interview will be recorded. Likewise, depending on the state, candidates who want to record an interview must inform the interviewer. In Maryland, it is illegal to record a conversation without the other party’s consent.

Employers can consider having job candidates sign a statement or make a verbal agreement that they will not record the interview, Stern said.