



4/30/2024

Remote Employee Jurisdictional Considerations for Employers

For many employers and employees, the COVID-19 pandemic has ushered in a new era of “normal” in the workplace. One of the most notable changes we’ve seen because of the pandemic is the greatly increased prevalence of remote work. Given that companies are more likely than ever to have employees spread across the United States, an important question is raised: **can an out-of-state remote employee sue their employer in the employee’s home state?**

In order to exercise jurisdiction over a party to a lawsuit, a court needs either general or specific jurisdiction over that party. To briefly summarize, **general jurisdiction** is a state’s power over its citizens and corporations. This “all-purpose” jurisdiction requires there to be a close connection between the defendant and the forum. **Specific jurisdiction** refers to a party’s “minimum contacts” with a particular state. Some examples of minimum contacts include conducting business within the state, incorporating in the state, or advertising in the state.

The concept of specific jurisdiction has evolved over time, and a 2023 federal district court case, [Tripp v. Ascentage Pharma Group](#)

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Int'l, analyzed the issue of specific jurisdiction as it relates to employers being sued by remote employees. In Tripp, a former employee sued his out-of-state employer for employment-related claims while working remotely from his home in New Jersey. There, the court found the **plaintiff's presence in the forum state alone insufficient to establish specific jurisdiction over the employer**, as he failed to allege facts demonstrating the employer's purposeful actions targeting the state.

The court's analysis hinged on three main factors: **(1)** whether the employer purposefully availed itself of the forum state, **(2)** whether the claims related to the employer's in-state activities, and **(3)** if exercising jurisdiction over the employer would align with traditional notions of fair play and substantial justice. The plaintiff in Tripp failed to sufficiently allege the first two factors. **The court reasoned that merely having remote employees in the forum state was insufficient to establish that the employer had purposefully targeted the state.** Although the plaintiff claimed that the employer utilized his location to contact potential clients in the area, the court found this allegation vague and not supportive of the employer's purposeful targeting of the forum state for business purposes.

The implications of this case are significant for both employers and remote employees. The decision underscores a practical reality: an employer offering the convenience of remote work to an employee should not automatically be subjected to personal jurisdiction in every remote employee's home state. **To protect against potential jurisdictional issues, employers may begin incorporating into their employment contracts a forum selection clause and a statement explicitly indicating that the employer is not subjecting itself to jurisdiction in the employee's home state.**

A 2022 study analyzed the most desirable cities for remote workers to relocate to. This study was based on factors such as cost of living, apartments with short-term leases, rental demand, coworking spaces, percentage of remote workers, and much more. Of the top 20 most desirable cities according to this study, 8 of those cities are in South Carolina, North Carolina, or Georgia, with the #1 ranking city being Greenville, SC. In light of this substantial change in the composition of the workforce in our region, it is more important than ever for South Carolina employers to remain up-to-speed regarding legal developments relating to remote work.

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In conclusion, the evolving landscape of remote work and personal jurisdiction presents challenges for both employers and employees navigating legal disputes. As the legal system grapples with these issues, it is important for employers and remote employees to be proactive and strategic in understanding their rights and potential liabilities. Employers may implement protective measures such as forum selection clauses to mitigate jurisdictional exposure risks associated with remote work arrangements. On the other hand, remote employees and their legal counsel will have to carefully analyze the viability of filing claims in their home state. As these matters continue to unfold, staying informed and seeking legal advice from an experienced attorney will be essential for effectively navigating the jurisdictional implications of remote work in the context of employment-related disputes.

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Citations

Tripp v. Ascentage Pharma Grp. Int'l, No. CV225934KMJBC, 2023 WL 5425506 (D.N.J. Aug. 23, 2023)
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