NOTE: The following preliminary analysis addresses only the most immediate and challenging legal, tax and policy practices that are implicated in any move to more regular or sustained "remote work."

Preliminary Analysis of Remote Work Challenges/Considerations
May, 2021, revised June 21, 2021

As a result of the global Covid-19 pandemic the University of Michigan has been required to take extraordinary measures to continue to meet its missions and obligations. These measures have impacted every aspect of the university and dramatically changed the workplace.

As the community plans for an innovative return to campus, we are doing so with four goals in mind:

- Enhance the ways we accomplish our teaching research and service missions, leveraging all that we have learned about new ways of working and learning.
- Increase efficiencies and reduce costs, in particular by reducing space needs;
- Reduce our environmental impact and help the university achieve its carbon neutrality goals as those are developed, and;
- Enhance our position as an employer of choice with particular attention to employee satisfaction.

Of particular interest in the near term is whether/how we expand and support "remote employees." Although many employees are currently working remotely, they are doing so in response to an emergency situation and many pre-pandemic requirements for remote work have been suspended (e.g., the majority of people working remotely during the pandemic are doing so without a Telecommuting Work Agreement [TWA] in place). Tax risks and costs associated with remote work have also been avoided throughout the pandemic due to temporary relief measures granted domestically and internationally. As we consider the many potential benefits that come from more flexible approaches to where employees live and work, we need to do so informed by the legal, tax, and policy environment that currently applies to "remote" work.

To those ends, the goal in developing this preliminary set of recommendations has been to identify *only the most immediate and challenging* legal, tax and policy practices that are implicated in any pivot to more regular or sustained "remote work." Over a longer timeframe, we anticipate that many policies will evolve, informed by the recommendations of the original Workforce Innovation and Staff Experience Committee (WISE), by the innovative practices and experiences of units across campus, and by the changing regulatory environment. But in the short run, there are a small number of issues that call for immediate attention, in large part because changes in these areas may be hard to unwind.

“Remote” work takes different forms:

- **Full Time remote work**, where the expectation is that the employee will work remotely 100% of the time.
- **Periodic remote work**, where the expectation is that the employee may work remotely full time for some period of the year (e.g., work remotely in the winter but work on campus the rest of the year).
- **Flex remote work**, where the employee regularly spends time working remotely and regularly spends time working on site (e.g., 3 days working remotely and 2 days on site).

Similarly, remote employees fall into three categories:

- **Remote workers located in-state**
- **Remote workers located out-of-state but within the United States**
- **Remote workers located outside of the United State**.

In this analysis, issues are prioritized where the actions of a single unit could inadvertently and directly impact the entire university (e.g., hiring remote employees located in foreign countries has the very real potential to make the university a taxpaying taxpayer in those countries) over issues where the actions of a unit have implications for their cost/risk, but have minimal direct impact on the rest of the university (e.g., some units may need to hire a professional employer organization [PEO] to manage compliance with local state employment practices in remote work locations, which would increase the cost of that employee to the unit but would have minimal impact beyond the unit). Also, while there are many opportunities and challenges associated with flex remote work, this analysis focuses on full time and periodic remote work.

Prioritized recommendations:

- ***Although many employees have been working this past year without Telecommuting Work Agreements (TWAs), TWAs should be re-established, with priority given to establishing TWAs for employees who will likely be remote for the foreseeable future and for those who might live outside of commuting distance***.

  In re-establishing TWAs, it is important to:

  - Understand that TWAs cannot override governing law. If, for example, another state determines that one of our remote employees in that state has been treated in ways that violate the laws of that state (e.g., workers compensation), we cannot contract our way out of that liability.
  - Avoid TWAs that establish the expectation of permanent remote work. Because we are still early in the process, and because conditions may change, TWAs should not set expectations for full time or periodic remote work, especially if the employee will be located beyond reasonable commuting distances. Remote work should, at least in the near term, continue to be seen as an exception rather than

as a default or an entitlement and TWAs should be put in place and updated regularly.
    - Cover expectations around the frequency of in person attendance, including who pays for travel to attend in person events and who covers costs associated with remote employment that are not typically incurred in on site work.

- ***At this point, the decision whether or not to allow remote workers to work from foreign countries other than Canada* is discouraged, absent compelling business reasons, and can be done only after careful review and permission from central administration***.

    In general, risk, complexity, and interdependence (i.e., a unit's action has implications beyond the unit) increase as remote work crosses county, state, and national boundaries. At the low end of the risk scale, employees who live and work in other cities/counties may incur new/different taxes and withholdings. And while that increases the complexity from the university's perspective, it is manageable and something we already encounter. At the high end of the risk scale, employees who live and work in another country raise a host of legal, tax, and compliance issues that impact the entire university.

    * Such agreements still require central review; permission is required if export-controlled research is involved.

- ***For units contemplating allowing remote work out of state, be aware of the added risks and costs that you may be incurred with out-of-state remote employees.***

    - Within the U.S., the "physical presence" rule dictates that withholding tax is paid to the state in which the work is performed. U-M is registered as an employer in the appropriate states and, in many states, is currently withholding on compensation for employees. Payroll has a form employees may use to begin withholding in another state.
    - Employees in other legal jurisdictions under circumstances where their presence is not merely transitory, will likely fall under that jurisdiction's laws and justice system and we cannot contract out of this exposure. Practically speaking, UM could be sued in state and federal courts in other states which could impact our legal expenses and risk. California, for example, has multiple unique requirements around hazard pay requirements, required leaves of absence, harassment and discrimination rules, including during selection process, paid leave, reimbursement, etc.
    - States generally require the employer to register for and pay the unemployment insurance premiums for the employee through the state unemployment insurance program where the employee is performing the services.
    - Certain states charge sales taxes to exempt entities (e.g., California). Other states require additional documentation or a more detailed process (e.g., the state collects taxes which they will refund only upon application).