

# Nassau Lawyer



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## SAVE THE DATE



**NASSAU  
ACADEMY  
OF LAW  
BRIDGE  
THE GAP  
WEEKEND**

**FEBRUARY 4  
AND 5**  
See centerfold



**WE CARE  
CHILDREN'S  
FESTIVAL**

**THURSDAY,  
FEBRUARY 23**  
See pg.21



**123RD  
ANNUAL  
DINNER  
GALA**

**SATURDAY,  
MAY 13**  
See pg.11

## Nominating Committee Seeks Candidates for NCBA Board of Directors

The Nominating Committee is seeking active NCBA Members who want to serve on the Nassau County Bar Association Board of Directors. The deadline to apply is Monday, January 23, 2023.

The NCBA Board of Directors consists of the President, President-Elect, Vice-President, Treasurer, Secretary, 24 elected Directors, as well as the Dean of the Nassau Academy of Law, Chair of the New Lawyers Committee, NCBA delegates to the NYSBA House of Delegates, and all past presidents of the Bar Association.

NCBA Officers and a class of eight Directors are elected at the Annual Meeting on May 9 and take office June 1, 2023. Officers serve for one-year terms and Directors hold office for 3-year terms. Officers and Directors will be sworn in at the Installation on June 6, 2023.

Members who wish to be nominated must be a Life, Regular or Sustaining Member of the Association for at least three consecutive years, and an active member of a committee for at least two consecutive years. The Nominating Committee also considers each applicant's areas of practice, leadership positions in the Nassau County Bar Association and other organizations, and the diversity of experience and background a candidate would bring to the Bar's governing body.

In 2022, 20 NCBA Members applied for nine Director positions and five Members applied for Secretary. Directors are

encouraged to make a financial contribution to the NCBA of at least \$1,000 annually by becoming a Sustaining Member; purchasing or selling event tickets and sponsorships; or soliciting new members and corporate sponsorships.

The Nominating Committee consists of nine Members of the Association who previously served on the Board of Directors. Dorian R. Glover, NCBA Immediate Past President "once removed," is Chair of the Committee and Immediate Past President Gregory S. Lisi serves as Vice-Chair.

"The Nominating Committee is seeking candidates with diverse experiences and skills who are committed to serving our community and legal profession," says Glover. "We need Officers and Directors who can lead our Bar Association during these unprecedented times and help create value for Members."

Interviews with candidates will begin in early February; the Committee will nominate one person for each Officer—other than President—and Director position and issue its report at least one month prior to the 2023 Annual Meeting and Election to be held on Tuesday, May 9.

NCBA members interested in applying to become a Director or Officer should forward a letter of intent, application, resume or curriculum vitae no later than January 23 to Executive Director Elizabeth Post at [epost@nassaubar.org](mailto:epost@nassaubar.org) or NCBA, 15th & West Streets, Mineola, NY 11501. The application can be downloaded on the Bar's homepage at [www.nassaubar.org](http://www.nassaubar.org).

## NCBA 90th Annual Holiday Party



NCBA Members and their families came together at Domus on Thursday, December 8 to enjoy the 90th Annual Holiday Party—highlighted with signature cocktails like "Jingle Juice" and "The Mad Elf," a buffet dinner, and dessert bar.

This year's musical entertainment was led by Plainview-Old Bethpage High School's talented acapella singing group "Chock Full of Notes." The high school students performed a beautiful medley of holiday music for guests throughout the course of the evening.

As is tradition, NCBA Past Presidents joined in the mixing of the Wassail Bowl, and President-Elect Sanford Strenger told the "True Tail of Wassail" while adding his own creative spin to the annual telling of this anticipated story.

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**FOCUS:  
LABOR AND  
EMPLOYMENT LAW**



**Bozena M. Diaz and  
Ariel E. Ronneburger**

Since the beginning of the COVID-19 pandemic, the number of employees working remotely has increased significantly.<sup>1</sup> This includes employees working remotely both part-time and full-time. Many employees who work remotely have also relocated, both temporarily or permanently, to different states because of the pandemic. The ability to work remotely is considered a blessing by many, allowing for greater flexibility, more time with family, and less time spent commuting. But there are also severe downsides to remote work.

When an employee works from home or an office in a state other than the employer's home state, the arrangement can create a physical tax nexus for the employer, subjecting the employer to state and local taxation in that state. If such a nexus is created, there is a strong likelihood that the employer will have to "register to do business" in that state and subject itself to annual tax filings and other tax obligations, ranging from corporate income tax, gross receipts, tax, franchise tax, sales and use tax, excise tax, and employer/payroll withholding and taxes. Tax requirements imposed at the city or county level could also come into play.

During the peak of the COVID-19 pandemic, many states have implemented temporary nexus waivers for corporate income tax, sales tax and withholding tax purposes, taking the position that the presence of remote employees in the state, due solely to COVID-19, would not create a physical nexus for the employer in that state.<sup>2</sup> However, at this time all states have ended this temporary relief, causing many employers to potentially be subject to other states' tax rules.<sup>3</sup>

Because every state has slightly different tax laws (in some states, for example, the presence of employees will establish a nexus only if it is a "substantial" presence defined by meeting certain payroll thresholds), having remote employees work outside of the company's home state could mean penalties for a business if a nexus

## A Blessing or a Curse? Employer Implications of Allowing Employees to Work Remotely

is created and the business failed to register "to do business" there in a timely manner. Not-for-profit entities may be exempt from such registration. However, often times, the exemption is not automatic and instead must be applied for. In addition, nexus rules, whether physical or economic, can also apply at the city level in some locations. For example, taxpayers may be subjected to the New York City business corporation tax.<sup>4</sup>

In addition to state and local taxes, remote employees also raise a number of employment-related, payroll tax and local labor law considerations.

### Payroll Considerations

Employers with remote workers in states other than their home states will need to review the other states' payroll and employment tax requirements to the extent that the employer does not currently have filing obligations in those states. Generally, states require an employer to withhold income taxes from their employees' wages.

Where an employee has connections with more than one state, the employer may be subject to withholding obligations based on where the employee is domiciled or resides and, often for nonresidents, where the employee's income is sourced. Again, state laws vary by state and must be analyzed carefully. In some states, for example, the employee is considered domiciled in that state, requiring full withholding on that employee's wages based on the laws of that particular state, even if the employee spends less than half the year in that state.

### Local Labor Laws

Employers should be aware of the labor laws of the state where remote employees are working, as such laws generally will apply to the employment relationship. This includes minimum wage and hour rules, termination of employment matters, noncompetition agreements, matters related to trade secrets, and rules related to family leave and unemployment compensation.

For instance, the majority of states require employers to register for and obtain workers' compensation insurance in the state where the employee is performing services, with failure to do so subjecting the employer to penalties and noncompliance for the employer with

the state's workers' compensation laws.<sup>5</sup> Again, because the laws are not always clear on when an employee is considered to be performing services from a particular state, employers are encouraged to comply with the worker's compensation requirements in all states where they have remote employees, which is likely to cause the employer administrative headaches, to say the least. This is especially the case when the employer's base is in another state.

Similar laws apply to state unemployment insurance, requiring employers to register and pay the unemployment insurance premiums for the employees through the state unemployment insurance program where the employee is performing services, or risk penalties for noncompliance with the state's unemployment insurance laws.

In addition, changes in income sourcing for unemployment tax purposes may be required. If an employee moved to a different state to work remotely during COVID-19, the employee's wages would be reported to the employer's base state so long as the relocation was temporary (less than 12 months). But an employee working in a different state for more than 12 months, or relocating to another state permanently, will implicate income sourcing rules, often requiring that income, for unemployment tax purposes, be sourced to the state of residency, again, creating additional administrative headaches for employers.

### Cybersecurity

Another area impacted by the explosion of remote work ushered in by the pandemic is cybersecurity. Almost as soon as the pandemic began, there was an onslaught of cybersecurity incidents for employers, due in part to so many people working remotely on personal computers and their home network rather than their employers.<sup>6</sup>

Employers must now be careful to take measures to ensure that employees working at home are using proper security measures to avoid potential data breaches, including making sure that employees are using proper anti-virus software and monitoring against phishing attempts. Moreover, employers with both full- and part-time remote workers should conduct a thorough review of insurance policies to be sure that proper coverage is in place for incidents that may occur offsite.

### Conclusion

Remote employment, while an excellent idea in concept and more popular than ever today, raises a variety of legal and compliance issues for employers, ranging from tax and reporting obligations, to compliance with payroll tax laws, unemployment-related rules and other labor laws as well as well as cybersecurity.

To better manage remote employment, businesses need to develop strong remote employment policies, keeping employees informed of all the state regulations and mandates, and providing regular updates on tax-related matters and how they affect both the employer and the employee, as well as a variety of other issues that impact remote workers. Both employers and employees need to understand that noncompliance with state law can result in severe consequences for employers, including tax and other penalties, to name a few. ⚖️

1. US Census Bureau, THE NUMBER OF PEOPLE PRIMARILY WORKING FROM HOME TRIPLED BETWEEN 2019 AND 2021 CENSUS.GOV (2022), <https://www.census.gov/newsroom/press-releases/2022/people-working-from-home.html> (last visited Dec 7, 2022).

2. Official site of the State of New Jersey, State of NJ - Department of the Treasury - Division of Taxation - COVID-19 Information - Telecommuting, <https://www.state.nj.us/treasury/taxation/covid19-payroll.shtml> (last visited Dec 7, 2022).

3. *Id.*

4. New York City, N.Y., Code § 11-602.

5. N.Y. Workers' comp. Law § 220 (McKinney).

6. Cedric Nabe, IMPACT OF COVID-19 ON CYBERSECURITY (2020), <https://www2.deloitte.com/ch/en/pages/risk/articles/impact-covid-cybersecurity.html> (last visited Dec 7, 2022).



**Bozena M. Diaz** is the chair of the firm's Tax Department and a member of the Corporate and Bankruptcy and Creditors' Rights groups. Her experience includes advising on the federal income tax aspects of mergers and acquisitions, spin-offs, and other divestitures.



**Ariel E. Ronneburger** is a partner in the firm's Commercial Litigation and Intellectual Property departments. She focuses her practice on intellectual property, employment, and energy-related matters.