

How Work is Changing — Effects of Remote Work & Artificial Intelligence on Tax Policy

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General Terms

- Mobile employees – employees who travel in the performance of their jobs but who reside in the same state in which their employer has the office or facility to which they report.
- Remote employees – employees who regularly work in a location that is different from the employer’s offices or other places of operation. (Typically these employees work from their home or some other regular location.)
 - Hybrid remote employees – workers who go into the employer’s office or work site part of the time.
 - Full-time remote employees – employees who work remotely virtually full time.

Important Effects of Remote Work

- Effect on the Employer:

- Tax on Business Income:

This issue is often raised but it is less important. Although it's true that employers that remote employees in a state may cause the employer to be subject to income tax there, if that employer has few if any sales into the state (which would, by themselves, create an obligation to pay tax), the employer will have little if any in-state taxable income.

- Compliance with State and Local Employment Laws:

Employers may be subject to the state and local employment laws where their remote employees are working. Also, some tax laws, such as the tax-free reimbursement for travel, will require that the employer know where the employee is regularly working.

Important Effects of Remote Work

- Effect on the Employee:
 - Employees may save money from working at home through lower costs for commuting, child care services, meals out, etc.
 - Employers report that many employees are willing to accept less in terms of salary in order to be able to work remotely, at least part-time.
 - Employees may have few resources or support from their employer in their remote working location.
 - Some believe remote work is more prominent in North America because many employees are able to afford homes that have sufficient space for a home office of some sort—and employees may have moved during the Pandemic in order to have less expensive, larger homes.

State Tax Effects of In-State Workers

- States, including New Mexico, generally impose unemployment taxes/fees and workers' compensation insurance requirements based on an employer's in-state employees and payroll.
- Most states, including New Mexico, impose income tax and tax withholding on the wages of residents and of non-residents working in the state. (Nine states have no personal income tax including—Alaska, Florida, Nevada, South Dakota, Tennessee, Texas, Washington, and Wyoming.)
- New Mexico is one of a minority of states that still use an in-state payroll-percentage (“factor”) as part of their formula in apportioning taxable corporate income.
- New Mexico imposes gross receipts on certain services based on the location of the performance of those services. See NMSA 1978 § 7-1-14 F.(5). But this applies only if the service is not delivered and initially used outside the state. See NMSA 1978 § 7-9-57.

Taxation of Wages

- Sourcing of wages is fairly uniform among the states—but there are some variations.
- Residents:
 - Most states, including New Mexico, tax 100% of wages of residents. Residency is generally defined in terms of the common law rules for residency as well as a statutory days-present in the state threshold. But all states that tax income of residents also give a credit for taxes paid to other states on that same income—with limitations.
- Nonresidents:
 - Most states, including New Mexico, tax the wages of nonresidents to the extent the compensated activity occurs in the state.
 - Some states, including New Mexico, provide for a threshold of days working in the state before a nonresident mobile employee must pay tax.

Taxation of Wages

- Variations Among States Include:
 - Treatment of “Residents”:
 - A handful of states have statutory residency rules that look not only to the days in the state but whether the individual has a place of abode there.
 - A handful of states source wages for work performed outside the state to the employee’s base of operations in the unless the reason the employee is working remotely is because of a need or requirement of the employer. Because other states may not give a credit for these taxes, the employee may end up paying tax on the same wages to two or more states.
 - During the pandemic, some states attempted to create rules that would maintain the sourcing of wages of certain workers who were forced to work in different locations.
 - Also, some states have reciprocity agreements so that employees from an adjoining state can file and pay tax only in their home state while the states get information from employers to determine whether one state should pay some portion of the total tax received to the other state.

NMSA 1978 § 7-2-11 Provides That

... (4) compensation of a nonresident taxpayer shall be allocated to this state to the extent that such compensation is for activities, labor or personal services within this state; provided that the compensation may be allocated to the taxpayer's state of residence:

(a) if the activities, labor or services are performed in this state for fifteen or fewer days during the taxpayer's taxable year;

(b) if the compensation is for activities, labor or services performed for a business in the manufacturing industry in New Mexico that is located within twenty miles of an international border, that has a minimum of five full-time employees who are New Mexico residents, that is not receiving development training funds under Section 21-19-7 NMSA 1978 and that meets the qualifications of . . . ; or

(c) if the activities, labor or services are performed in this state for disaster- or emergency-related critical infrastructure work in response to a declared state disaster or emergency during a disaster response period, as defined in the Tax Administration Act;

Tax Studies

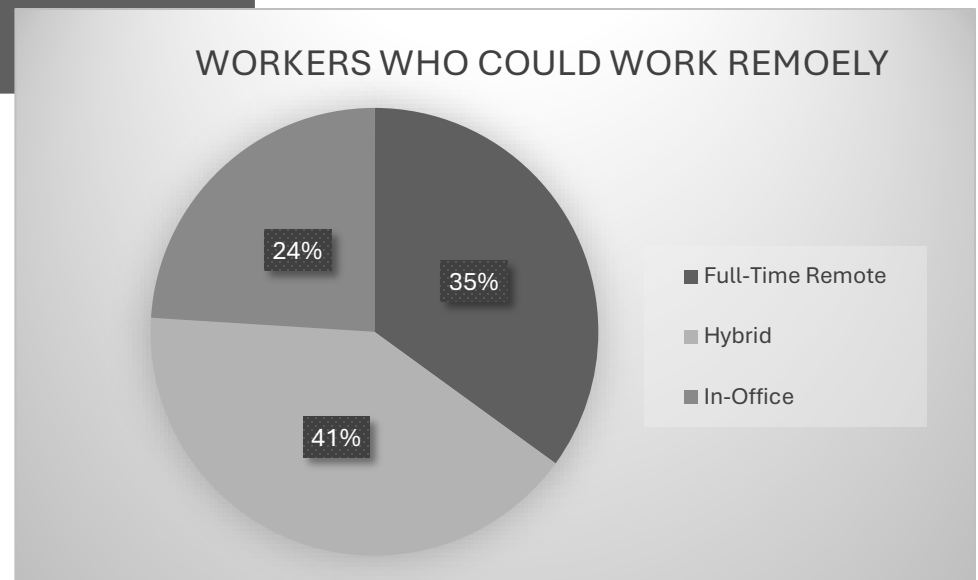
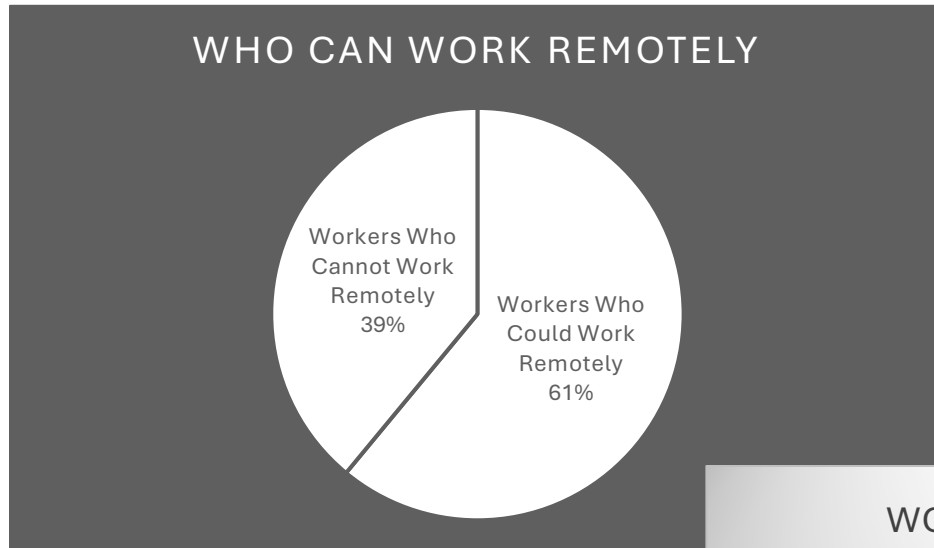
- The Multistate Tax Commission studied the issue of mobile employees and developed a threshold model statute, but this model would not affect remote employees.
See here: <https://www.mtc.gov/uniformity/sales-tax-on-digital-products/>.
- The Council On State Taxation also developed a model addressing the issue. At first, that model was drafted in the form of federal legislation. But when Congress failed to act on that legislation over a number of years, they reformatted it as a state statute.
See here: <https://www.mtc.gov/wp-content/uploads/2022/12/11-21-Update-to-MWF-Combined-Analysis-and-Chart.pdf>.
- The National Association of State Legislatures also studied the issue of both mobile and remote employees and produced a white paper on the subject with general findings.
See here: <https://www.ncsl.org/fiscal/state-and-local-tax-considerations-of-remote-work-arrangements>

Pew Research Study - 2023

- The majority of U.S. workers (61%) do not have jobs that can be done from home.
 - Workers with lower incomes and those without a four-year college degree are more likely to fall into this category.
- Of those workers with jobs that can be done remotely –
 - 35% are working from home all of the time
 - 41% are working a regular hybrid schedule.

See this study here: <https://www.pewresearch.org/short-reads/2023/03/30/about-a-third-of-us-workers-who-can-work-from-home-do-so-all-the-time/>.

How Much Remote Work Is There?



Economic Effects of Remote Work

Short Answer – It's Not Clear

- A number of jobs and industries are not compatible at all with remote work. But they may nevertheless be impacted indirectly—e.g., through the changes in use of real estate, to the places where people eat or shop, etc.
- Those jobs and industries that are compatible with remote work have seen a significant increase in both full-time and hybrid remote work—especially during and after the pandemic.
- Many groups, including academics and think tanks, have attempted to study and assess the relative effects of remote work and have come to differing conclusions.
- The effects may depend on the nature of the job, the way in which productivity is measured, and other factors related to the employer or the way in which employees are managed. It may also depend on the status of the employees and their experience and expertise.

Economic Effects of Remote Work

Short Answer – It's Not Clear Yet

- The effects of some changes, no matter how large they are, may take longer to develop than people may expect.
- From the Economist - The fight over remote working will heat up in 2024, Nov. 13, 2023
 - The shift to remote work has so far had a curiously muted effect on the commercial-property industry. The long duration of office leases means that vacancy rates, though rising, have been relatively low. Goldman Sachs reckons that 12% of leases will come up for renewal in 2024, more than twice as many as in 2023.

Artificial Intelligence

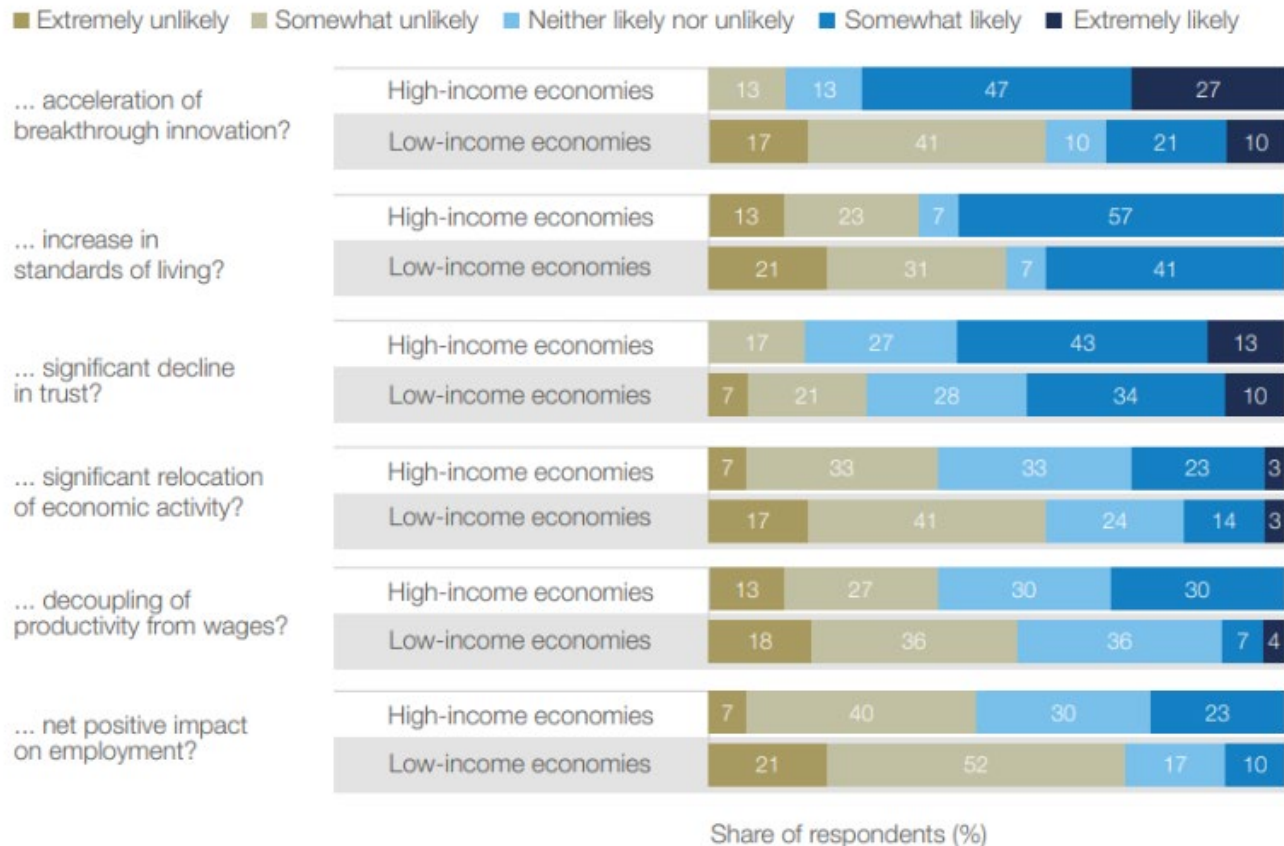
- Two workforce trends are likely to affect workers, businesses, and governments in the coming years –
 - Retirement of Baby-Boomers
 - AI replacing certain work or changing the nature of work
- Because these two trends are happening at the same time—along with other things—it’s hard to know what the overall effect will be.
- So – to predict the precise effects of AI on the workforce or on the economy or government is exceedingly difficult at this point (probably because AI isn’t powerful enough to do that yet . . .)

Artificial Intelligence – Impact on Economies

- From the World Economic Forum – Feb. 6, 2024 – here: <https://www.weforum.org/agenda/2024/02/work-and-workplace-trends-to-watch-2024/>

Figure 14. The impact of generative AI

Looking at the year ahead, how likely is it that generative AI will lead to...



Source: Chief Economists Survey, November-December 2023

Predictions about AI- On the One Hand

A Wharton professor explains why most jobs will be impacted by AI, FastCompany, April 4, 2024, here: <https://www.fastcompany.com/91072675/a-wharton-professor-explains-why-most-jobs-will-be-impacted-by-ai>

- One of the first questions people ask when they start using AI seriously is whether it will affect their job. The answer is probably yes.
- The question is important enough that at least four different research teams have tried to quantify exactly how much overlap there is between jobs that humans can do and jobs that AI can do, using a very detailed database of the work required in 1,016 different professions. Each study has concluded the same thing: Almost all of our jobs will overlap with the capabilities of AI.
- Only 36 job categories out of 1,016 had no overlap with AI. Those few jobs included dancers and athletes, as well as pile driver operators, roofers, and motorcycle mechanics (though I spoke to a roofer, and they were planning on using AI to help with marketing and customer service, so maybe 35 jobs)

Predictions about AI - On the Other Hand

AI May Not Be a Job Killer, After All

Peter Cappelli and Valery Yakubovich, (Wharton Professors), Wall Street Journal, July 2, 2024

- We have all heard the warnings and promises. AI will transform work completely, and put millions of jobs at risk. The prospect is ominous. But we've been studying the world of work for decades, and we believe that there are plenty of reasons to doubt this job upheaval will actually happen—no matter how much the technology improves.
- The big claims about AI assume that if something is possible in theory, then it will happen in practice. That is a big leap. Modern work is complex, and most jobs involve much more than the kind of things AI is good at—mainly summarizing text and generating output based on prompts. And whatever job AI does, it needs human oversight and vetting to get usable results.
- In short—the authors think AI will be a tool for certain complex tasks including research and processing of large amounts of information and data—but will not replace many workers and instead will free them to do other work.



Government's Role

How Government Can Embrace AI and Workers,
Zach Boren, Urban Institute, March 5, 2024.

- Artificial intelligence (AI) is set to shake up how we work.
- But businesses and Congress appear unprepared to meet the moment for workers.
- While predictions are still nascent, AI will likely have a significant but uneven effect on the workforce—creating new jobs while augmenting others and displacing workers.
- Studies from OpenAI and the McKinsey Global Institute estimate that AI will affect more than half of job tasks for one-fifth of workers, or automate up to 30 percent of work hours, respectively.

Government's Role

How Government Can Embrace AI and Workers,
Zach Boren, Urban Institute, March 5, 2024.

- The advancements in productivity ushered in by AI are estimated to increase global gross domestic product by 7 percent. But AI's introduction to the workplace also creates substantial risks to workers, especially knowledge workers.
- AI's workforce disruption will likely first affect professional jobs, like office support and the legal industry, where some workers may begin to lose their footing. The disruptions will not likely be limited to a few industries. It's estimated that 12 million occupational transitions may need to occur in the United States by 2030 because of the evolving nature of work and tech.

Government's Role

- Many writers on this subject site the need for “up-skilling” workers, especially those that use technology as part of their jobs, and retraining programs for those who have been in the workforce for longer periods and are not used to having to learn totally new skills.
- This means the current educational system—which focusses on “traditional students” may have to adapt and provide people of all ages with the appropriate training and educational programs for older students with extensive work histories.

AI—Impact on Government Workers

- There may be direct impacts on a number of government employees themselves.
 - Many government workers have professional or “white collar” jobs that may be greatly assisted or changed by AI.
 - Many jobs involve providing information to the public, another task that AI may make much more efficient.
 - Also—many governmental agencies have long been plagued by vacancies that they are unable to fill due to a lack of qualified applicants—especially accountants and lawyers.
 - While AI is likely to have a big impact on professional type jobs, government workers have noted that governmental organizations may be slower to adopt AI.

See Changing government work: Perspectives on AI usage, Thomson Reuters, Aug. 15, 2024 -<https://legal.thomsonreuters.com/blog/government-perspectives-on-ai-usage/>

AI– Impact on Tax Enforcement

Tax Enforcement – Artificial Intelligence May Help IRS Close the Tax Gap, U.S. Governmental Accountability Office, June 6, 2024.

- Hundreds of billions of dollars are potentially missing from what should be collected in taxes each year. Known as the “tax gap,” this money is the difference between what is owed and what is paid by taxpayers. The tax gap has been a problem for decades and it is growing larger.
- IRS will use AI to audit large partnerships –
 - More businesses are being organized into partnerships, which allows them to pass income and losses to their partners instead of being taxed as corporations. The number of large partnerships has increased substantially in recent years (by nearly 600% between 2002 and 2019). This shift has made it more difficult for the IRS to identify taxable income and catch potential tax cheats.
 - IRS audits few large partnerships’ tax returns because they are complex. And when IRS does audit them, the result is often no change to the audited return. IRS currently uses two AI models to help prioritize partnership returns for audit. The models are intended to help select the highest risk large partnership returns for audit.

Other AI Impacts on Taxation

- New digital products and services may be available in the marketplace and used by consumers and businesses, often replacing more traditional goods and services or even older digital products themselves.
- Many states do not have broad sales tax bases and are considering how they might best expand their tax to digital items.
- In the past – expansion typically occurred by including specifically defined types of digital items. But this has proven problematic because those items tend to change over time so that the specific definitions are no longer applicable.
- The Multistate Tax Commission and National Association of State Legislatures both have projects looking at the imposition of sales tax on these new digital products and services.