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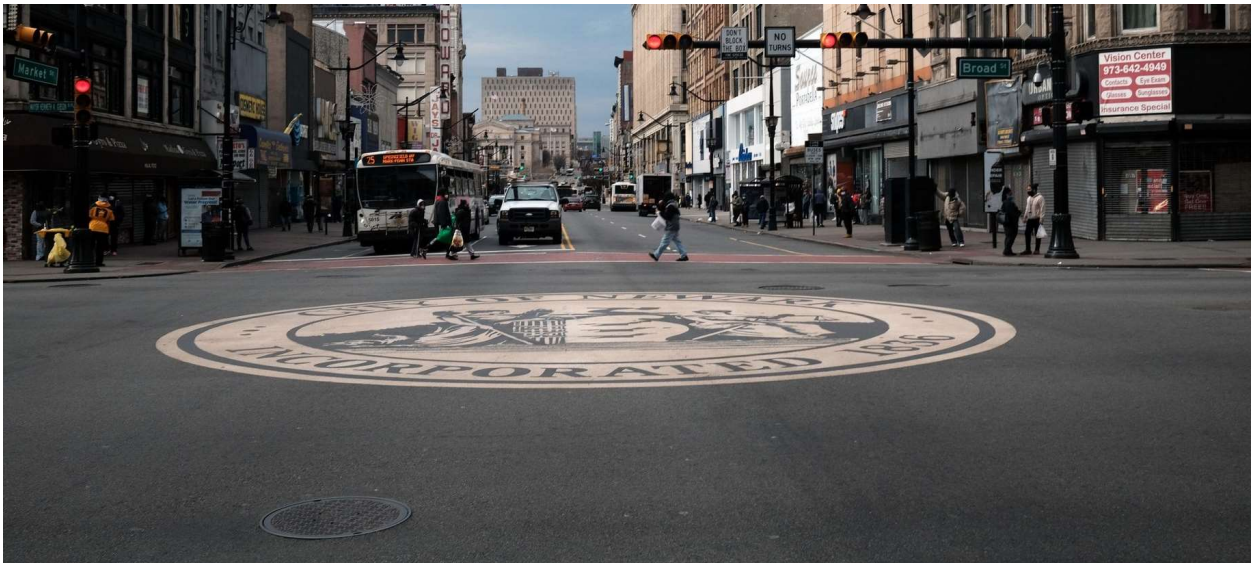

People walk through downtown Newark as the city experiences a rise in Covid-19 cases on November 25, 2020 in Newark, New Jersey. Photographer: Spencer Platt/Getty Images North America

Cities Are at a Turning Point on Taxing Employers for Remote Work

Many tax incentives hinge on employees coming to the office. Officials are deciding whether to enforce them as downtowns bear the cost of hybrid work arrangements.

By Jo Constantz and Sarah Holder
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Despite pleas from big-city mayors to get employees out of their pajamas and back into downtowns, US cities and states have been left with relatively few levers to jump-start office turnout.

But there is one tool that's been in their arsenal since before the pandemic: tax breaks.

Of the billions in tax incentives granted to US companies every year by cities and states, many agreements require workers to come into the office some of the time, or at least live in the region. For companies receiving these incentives, relaxing in-office attendance could be costly.

The contracts were crafted in a pre-pandemic era, at a time when commutes to the office were a given. Now governments are deciding whether to crack down or rewrite the rules entirely. In some states and cities, policy changes have already been proposed to account for the new reality of hybrid work.

“The idea of remote working wasn’t built into any of those contracts to the extent it should be now,” said Seth Martindale, senior managing director at real estate investment firm CBRE. “Covid disrupted that whole environment. It’s been a learning curve for everybody out there.”

The way jurisdictions choose to adapt could have implications for downtowns around the country — and for companies’ remote work policies.

“Our clients want it all,” said John Boyd, a corporate site selection consultant and principal at the Boyd Company. “If they feel they’re in jeopardy of losing a tax incentive, yes, that will be a motivating factor — along with productivity — to get workers back in the office.”

San Francisco’s Union Square is nearly empty around midday in August 2022. *Photographer: Justin Sullivan/Getty Images North America*

New Jersey and Texas are states that stand out for spelling out exactly how often employees must work from the office to qualify for tax breaks. Before the pandemic, several New Jersey tax programs required workers to show up at least 80% of the time, and one Texas program set the threshold at 50%.

Provisions like these were designed to ensure that the jobs boosted local revenue from income, sales and property taxes, and bolstered downtown economies.

Read more: Remote Work Is Costing Manhattan More Than $12 Billion a Year

New Jersey: Making Concessions

New Jersey paused its on-site requirement when Covid hit. Last summer, though, the state announced that companies receiving those benefits must bring employees back to the office about three days a week — a lower bar than before, but still challenging for firms struggling to hang onto workers in a red-hot labor market.

The concession wasn't enough. It wasn't long before some companies said they'd rather opt out of the state's incentives entirely rather than bring their workforce back.

Software company iCIMS, for example, chose to forfeit a tax break of at least $13 million, according to New Jersey Economic Development Authority records. The firm moved its headquarters to the storied Bell Labs complex in 2017, but has since adopted a "fully flexible, remote-first" policy with no set number of days for in-office attendance. "We frequently gauge workplace preferences and continue to hear how important a remote-first environment is to our team," company spokesperson Carlee Capawana said in an email.

Other firms that declined the tax breaks heard a similar message from their employees.

Faced with these anxieties, New Jersey's legislature rolled back the requirement even further in December, allowing companies to apply for a waiver that would drop in-office time to just one day a week through the end of 2023.

The adjustment buys companies time to iron out a consistent return-to-office policy, said Tim Sullivan, chief executive officer of the New Jersey Economic Development Authority. It also buys the state time to craft incentive packages that are more accommodating of hybrid work, as Governor Phil Murphy promised New Jersey would during his recent State of the State address.

Commuters arrive in downtown Newark through the city's Penn Station. *Photographer: Richard Levine/Corbis News*

JPMorgan Chase & Co. and RBC Capital Markets are among more than 100 firms that have negotiated billions of dollars worth of agreements under New Jersey's pre-pandemic programs. None have yet applied for the waiver, Sullivan said, meaning if they want their tax breaks, they'll have to prove the jobs are being done on site at least three days a week. JPMorgan and RBC declined to comment.

Another initiative created in New Jersey during the pandemic, the Emerge Program, hints at what future incentives might look: Rather than commit to a certain percentage of time spent in office, applicants have to prove that 80% of eligible employees' work time is spent in the state — and that they have enough space to accommodate at least half of their workforce on site, "without packing people in like a sardine can," Sullivan said.

The state wants businesses located in population centers like Newark and Jersey City "because that's where we think, from both an energy efficiency and a land use efficiency [standpoint], is the best place to build density, and it's where the job creation is needed the most," said Sullivan. But he said the government also wants to create options for companies that have different priorities, even if they "end up permanently hybrid, or even majority remote."

Texas: An Incentives Clawback

Texas is poised to be the next battleground.

The state said it will revoke benefits granted under the multibillion-dollar Enterprise Zone Program to companies whose employees no longer work on site at least half the time. But there are several bills working their way through the legislature that could let companies off the hook. One, introduced in the state senate this February, would allow employers to count remote workers as long as they report to and live within 50 miles of the office.

“We had a number of clients that were in these programs when the pandemic hit,” said G. Brint Ryan, the chairman and CEO of Ryan, a Texas-based tax consultancy firm. “And they are now faced with the ugly specter of having a clawback of those incentives, through no fault of their own. So the governor and the legislature are working this session to correct that.”

JPMorgan Chase & Co., Dell Inc. and over 100 other firms have negotiated agreements under the Enterprise Zone Program. JPMorgan has not yet requested or collected the incentive and has until 2027 to do so if the firm meets the requirements. Dell declined to comment.

If the legislature resists revising the program, Ryan says it could push some companies to put an unceremonious end to remote work.

“It would have some impact on the flexibility of an individual company’s hybrid work policy,” said Ryan. “I hope that doesn’t happen, but I think it could.”

States Versus Cities

In other states, employee location requirements are less specific. Many tax incentive programs include language tying the benefits to workers at a specific location, like a “facility” or “project site” but don’t elaborate much beyond that. Others, like California’s flagship incentive program, California Competes, limit benefits to state-based employees, but don't have any onsite-requirements for many beneficiaries.

That’s because many states are less concerned about whether an employee commutes to an office or works from their apartment, so long as they remain in the state and keep paying income tax.

Ohio, Kansas and North Carolina recently clarified that remote workers won’t be excluded for tax breaks there either so long as they stay in the state.

While this may be an easier criteria for some businesses to satisfy, employers will still have to grapple with workers who want to leave expensive states altogether.

Pedestrians walk by a boarded-up business in San Francisco, where empty offices have delivered a hit to nearby businesses. *Photographer: Justin Sullivan/Getty Images North America*

Compared to states, cities have much more to win or lose depending on where workers live and whether they commute downtown and buy lunch at the local deli. The ultimate fear is that without these workers, cities might drop into an "urban doom loop": retail and property taxes dry up, commercial real estate values slump, social services are cut and crime spikes.

Cities looking to stimulate their economies via office attendance walk a fine line: Set the return-to-office bar too high and risk losing out to more laid-back localities; get too soft and risk a gaping hole in the budget where sales and property tax revenue used to be.

Some cities have tried to strike a balance. Plano, Texas, has agreed to partially count remote workers toward employment benchmarks in incentive packages. Allen, Texas, has developed a sliding scale based on how many days hybrid workers show up to the office.

Others looking to avoid the messy business of tracking and enforcing attendance are focusing instead on rewarding real estate investments.

Miami, which has seen an influx of new businesses throughout the pandemic, created a program in 2021 that requires companies to sign a minimum five-year lease for office space. The city of Sugar Land, Texas, outside of Houston, launched a new incentive in November that requires

businesses to renew their existing leases for five to 10 years and invest a minimum of $1 million in office improvements.

Plano, Texas, has altered its tax breaks to partially count remote workers whose offices are located in the city. *Photographer: Gary Fink/iStockphoto*

In San Francisco, one of the downtowns hardest hit by new work-from-home norms, Mayor London Breed recently unveiled a plan to draw office-based companies with the promise of up to $1 million in annual tax breaks for three years. Notably absent from the proposal are any explicit sweeteners for companies that forsake remote work, a path that Kate Sofis, the executive director of San Francisco's Office of Economic and Workforce Development, says could make San Francisco "more forbidding" to businesses.

"We would not look to try to impose that threshold as a precondition for someone to choose to come here," said Sofis. Instead, the city's proposed tax breaks are designed for companies that are already looking to invest in physical space, but need a push to stay or grow in San Francisco.

Critics of tax incentives to attract businesses say the durability of hybrid work should be a wake-up call for governments. "Maybe company-specific incentives aren't the safest, lowest-risk form

of investment here," said Greg LeRoy, the executive director of Good Jobs First, a nonpartisan think tank that advocates for economic development accountability. "We would always arguethat the better strategy is to invest in public goods that make a place sticky," like infrastructure, education and amenities.

But as long as tax breaks play a central role in economic development, some site selection experts like Boyd say the only way forward is to set policies that embrace remote work.

"Cities and states are adopting these measures because they have to, not because they want to," said Boyd. "Because they'll lose projects in the pipeline and lose projects to competing municipalities."