

The most current information on how Payroll professionals can avoid legal and procedural pitfalls, in a fast-read format, twice a month.

KEEP UP TO DATE on PAYROLL TM

May 1, 2024

UPCOMING DEADLINES

Use this checklist to help ensure your deposits of Social Security, Medicare and withheld income taxes are timely remitted to the IRS.

■ SEMIWEEKLY DEPOSITORS

- **May 1, 2024:** Deposit taxes for payroll on April 24, 25, 26.
- **May 3, 2024:** Deposit taxes for payroll on April 27, 28, 29, 30.
- **May 8, 2024:** Deposit taxes for payroll on May 1, 2, 3.
- **May 10, 2024:** Deposit taxes for payroll on May 4, 5, 6, 7.
- **May 15, 2024:** Deposit taxes for payroll on May 8, 9, 10.
- **May 17, 2024:** Deposit taxes for payroll on May 11, 12, 13, 14.
- **May 22, 2024:** Deposit taxes for payroll on May 15, 16, 17.
- **May 24, 2024:** Deposit taxes for payroll on May 18, 19, 20, 21.

■ MONTHLY DEPOSITORS

- **May 15, 2024:** Deposit taxes for payments made during April 2024.
- **June 17, 2024:** Deposit taxes for payments made during May 2024.

■ ALL EMPLOYERS

- **July 31, 2024:** File Form 941 for Q2. Note: If you properly deposited taxes on time and in full, you have until Aug. 12, 2024, to file.

Salary threshold set to increase July 1: What final rule requires

■ DOL is changing salary level test in 2 phases

The final overtime regs will raise the salary threshold for who's exempt from overtime – and the increase will occur in two phases.

The Dept. of Labor (DOL) released the regs on April 23, 2024.

Here are the details:

First, by July 1, 2024, executive, administrative and professional employees will need to earn at least \$844 per week (\$43,888 annualized) to pass the salary level test.

Then, by Jan. 1, 2025, the floor will go up again for these exempt employees to \$1,128 per week (\$58,656 annualized).

Compared to the current salary threshold of \$684 per week (\$35,568

annualized), the salary level will ultimately increase by almost 65%.

Also included in the final rule, the DOL announced the salary floor for highly compensated employees (HCEs) is also heading higher.

The total annual compensation threshold for HCEs currently sits at \$107,432 – that number will rise to \$132,964 starting on July 1, 2024. On Jan. 1, 2025, HCEs will need to earn at least \$151,164 per year.

Automatic adjustments, too

Among the other changes, the final rule adds a new component to the salary threshold rule: automatic

(Please see Salary threshold ... on Page 2)

Using IRS Document Upload Tool to respond to notices

If you receive an IRS notice, you may be able to use the IRS Document Upload Tool to respond.

The Service explained the benefits of this program during its April Payroll Industry Call.

You can digitally transmit certain documents, and that may be a more convenient alternative to faxing or mailing them.

Plus, it's a quick method.

But the program isn't for uploading tax returns, the IRS cautioned.

To upload a document, you'll need to verify your identity. Be ready to provide the following info:

- an access code (if provided) or the number and title of the notice or letter
- your first and last name, and
- the employer identification number of your business.

Make sure it's legit first

As a first step, if you receive a notice or letter that appears to be from the IRS in the mail, check it carefully to be sure.

For example, the document should include "https" and "irs.gov."

More info: www.irs.gov/help/irs-document-upload-tool

Seasonal workers not paid correctly, MO employer owes more than \$500K

■ ADVERSE EFFECT WAGE RATE
REQUIRED UNDER H-2A PROGRAM

Hiring seasonal employees during the summer can help employers in a variety of industries with their pressing staffing needs.

For agricultural employers hiring seasonal or temporary employees who possess H-2A visas, special rules apply when paying these individuals.

Under the H-2A program, nonimmigrant foreign workers must be paid the adverse effect wage rate (AEWR) – the purpose of this is to prevent U.S. workers who do similar tasks from being adversely affected. In addition to that, when workers with H-2A visas work overtime, they must be paid one-and-a-half times the AEWR.

What investigation showed

Recently, the Dept. of Labor (DOL) did an investigation of Missouri

Vegetable Farm in Park Hills, MO, uncovering violations of the H-2A program as well as the Fair Labor Standards Act. Hundreds of workers were impacted.

Pay records showed that the agricultural employers didn't use the proper overtime rate.

Plus, the DOL said the company failed to combine hours employees worked in both farming and packaging operations and to pay the workers the required wage rate.

So, the DOL said Missouri Vegetable Farm owed:

- \$479,983 in back wages to both H-2A temporary visa workers and U.S. workers, and
- \$38,289 in civil money penalties.

More info: www.dol.gov/newsroom/releases/whd/whd20240313

Salary threshold ...

(continued from Page 1)

adjustments every three years. So, employers would be on schedule to face the next salary change on July 1, 2027.

As in the past, this round of revisions to Section 13(a)(1) of the Fair Labor Standards Act (FLSA) has been contentious.

In fact, after the DOL posted the proposed rule in the *Federal Register* on Sept. 8, 2023, it received more than 30,000 comments. The proposed salary number had been \$55,086.

It's likely the final rule will face legal challenges. But for the time being, employers should plan to either:

- raise the salaries of currently exempt employees who earn less than \$43,888 per year, or
- reclassify them as nonexempt from the minimum wage and overtime requirements of the FLSA.

More info: www.govinfo.gov/content/pkg/FR-2024-04-26/pdf/2024-08038.pdf

COMPLIANCE CHECK

■ KANSAS EMPLOYER PAYS 158 WORKERS BACK WAGES

Supermart El Torito Inc. in Kansas City, KS, paid the overtime rate to 158 employees, but only when they worked between 41 and 58 hours per week. After that, the company reverted to the straight-time rate. The company also failed to record and retain accurate employee time records. So, it had to pay:

- \$187,546 in civil money penalties
- \$77,995 in back wages, and
- \$77,995 in liquidated damages.

More info: www.dol.gov/newsroom/releases/whd/whd20240312

■ EMPLOYEES DIDN'T ACCRUE SICK LEAVE AT PROPER RATE

Stone Art Inc., a Lawrence, MA, construction subcontractor for a federally funded project, failed to pay prevailing wages and fringe benefits as required by the Davis-Bacon Act. Also, in violation of the Contract Work Hours and Safety Standards Act, the company falsified payroll records and didn't pay overtime. In addition, employees didn't accrue one hour of sick leave for every 30 hours worked.

The company had to pay \$199,433 in back wages for 37 workers.

More info: www.dol.gov/newsroom/releases/whd/whd20240320

■ MORE THAN \$140K OWED FOR OVERTIME VIOLATIONS

Two Louisiana home healthcare providers failed to pay overtime, so the Dept. of Labor said they must pay:

- \$84,586 in back wages and liquidated damages to 98 employees of Twin City Home Care Services in Monroe, and
- \$56,067 in back wages and liquidated damages to 20 employees of Divine Services in Minden.

More info: www.dol.gov/newsroom/releases/whd/whd20240325-0

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Workers claimed wage law violations in suit that reached Supreme Court

■ THEY WERE DRIVERS, BUT WEREN'T PART OF TRANSPORTATION INDUSTRY

According to truck drivers who worked for Flowers Foods, their employer had violated state and federal wage laws.

Specifically, the workers claimed that Flowers Foods – the maker of Wonder Bread and many other products – had:

- taken unlawful wage deductions
- failed to pay them overtime, and
- unjustly enriched itself.

Their jobs involved more than simply driving products from the warehouse to local shops. After all, they were franchisees of one of the company's subsidiaries. As such, their responsibilities included distribution and operations, too.

For example, they had to find new retail outlets, advertise, set up promotional displays and maintain their customers' inventories by ordering baked good, stocking shelves and replacing expired products.

Next stop: Arbitration?

The company said that instead of bringing the lawsuit under state and

federal wage laws, they needed to arbitrate under the Federal Arbitration Act (FAA) as required by the contracts they'd signed.

The workers disagreed. They insisted they were exempt from the FAA as a class of workers engaged in foreign or interstate commerce.

A federal district court and then a federal appeals court heard the case. They both ruled that although the workers drove trucks, they weren't part of the transportation industry – rather, the bakery industry. Therefore, the workers weren't exempt from the FAA, meaning arbitration would be a necessary step, those courts said.

The U.S. Supreme Court had a different take on the matter. The court's unanimous ruling in *Bissonnette v. LePage Bakeries Park St., LLC* came on April 12, 2024.

The High court said the employees didn't need to work in the transportation industry to be exempt from the FAA. The fact that they were transportation workers was enough.

Now, it's up to the Second Circuit to sort through the claims of state and federal wage violations.

More info: www.supremecourt.gov/opinions/23pdf/23-51_6647.pdf

IRS: Substitutes of Form 941 must follow latest specs

The IRS recently released the general rules and specs needed to create substitutes of Form 941 and related schedules – that's for both computer-generated and paper substitutes.

The information is contained in Revenue Procedure 2024-11 as well as Publication 4436, both issued at the end of March 2024. Here are some highlights of what's new for the 2024 substitute forms:

- All lines related to the credit for qualified sick and family leave wages have been removed. All lines

previously reserved for future use also have been deleted. So, the form is reduced to two pages, from three.

- The Privacy Act and Paperwork Reduction Act Notice has been moved to the instructions.

Spanish versions, too

The specs are also required of anyone creating a substitute Spanish version of Form 941.

That form went into use during the first quarter of 2024.

More info: www.irs.gov/pub/irs-pdf/p4436.pdf

NEWS YOU CAN USE

■ FMLA FORMS HAVE NEW EXPIRATION DATE

The Dept. of Labor has updated its Family and Medical Leave Act (FMLA) forms that employers can use instead of their own forms. The new expiration date on the forms is June 30, 2026.

Form WH-381 is one of the forms that's been updated. This form can be used to notify employees of their eligibility for FMLA leave and of applicable rights and responsibilities. That includes details on when paid leave will be used at the same time as FMLA leave.

More info: www.dol.gov/agencies/whd/fmla/forms

■ NACHA: 93% OF EMPLOYEES PAID BY DIRECT DEPOSIT

According to Nacha, 93% of employees receive their pay via direct deposit.

Earlier in 2024, Nacha launched a campaign aimed at educating people on the various uses of direct deposit that extend beyond payday.

For example, businesses could use direct deposit to reimburse employees for travel and other expenses. Also, bonuses and commissions could be paid using this method, says Nacha.

More info: www.nacha.org/news

■ EXTRA TIME TO COMMENT ON RETIREMENT PLANS

You still have time to comment on the effectiveness of reporting and disclosure requirements for retirement plans. Several agencies, including the Dept. of Labor, posted a joint request for information in January of 2024.

The comment period was scheduled to close on April 22, 2024, but has been extended by 30 days to May 22, 2024.

As directed by the Secure 2.0 Act, the agencies are trying to decide how to consolidate, simplify, standardize and improve existing requirements for retirement plans.

More info: *Federal Register*, 4/3/24.

Pay transparency laws: Survey shows impact on employers nationwide

■ HIRING PAINS PERSIST EVEN THOUGH EMPLOYEES KNOW SALARY INFO

As states and cities across the country continue to pass pay transparency laws, employers are facing new challenges during the hiring process.

In *Annual Employer Survey*, conducted last year by ZipRecruiter, employers answered a variety of questions about pay transparency.

Here's what the survey revealed.

Impact in the workplace

Most employers (72%) said they include salary information in all job postings. Meanwhile, 18% add the info only if required, and 10% don't mention salary at all.

Small or medium-sized businesses are more likely than major enterprises to reveal wage data in job ads – it's 74% vs. 64%.

For those that don't disclose wage information up front, 71% make it known during the interview process. They know that at that point, they'll have the opportunity to explain how

salary fits into the total compensation package for the position.

Furthermore, sharing pay details too early in the hiring process can interfere with salary negotiations. In fact, 64% of employers indicated that candidates frequently negotiate pay, and due to this, they hesitate to make pay details publicly available.

Advertising pay that's too low is risky – 44% of employers worry that doing so could discourage top talent from applying for the job. But promising pay that's unnecessarily high would be a costly move.

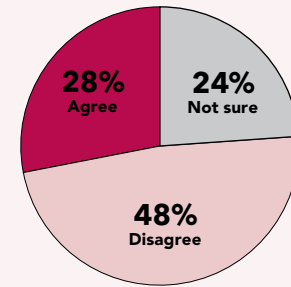
Matching employer and employee expectations about pay remains as tricky as ever, even with pay transparency laws in place. According to the ZipRecruiter survey, 41% of companies had unfilled positions in the last six months because the candidates wanted more pay than the employer could offer. The size of the organization wasn't a factor, as that sentiment was shared by 40% of small and medium-sized business and 44% of major enterprises.

Finally, it's not just new hires who are impacted when salaries are

WHAT PAYROLL PROS TOLD US

Tax Refunds

Do you agree or disagree with the following statement: Large tax refunds are a good thing?



Source: Tax Foundation National Tax Literacy Poll, 2,700 U.S. taxpayers surveyed

Now that tax season is over, employees who had too much or too little withheld from their pay last year may want to give you a revised Form W-4.

Each issue of KUDP contains an exclusive survey to give Payroll pros insight into what their peers nationwide are thinking and doing.

included in job postings. According to the survey, 44% of employers believe that pay transparency causes conflict among existing employees. These workers may think they're being treated unfairly, and that can lead to morale problems.

More info: www.ziprecruiter.com/blog/category/labor-market-insights

REAL-LIFE SCENARIO: DID THEY GET IT RIGHT?

Payroll records in the spotlight as employees try to prove joint employment

A networking association and its parent company, with locations in New York and Illinois, faced this real-life scenario:

Employees worked as sales reps, selling memberships to the networking association. In 2014, the association merged with another organization, a network. At that point, the association became a subsidiary of the network.

In 2018, employees filed a class action lawsuit against the association and network, alleging overtime and recordkeeping violations. During the legal process, a key question emerged: Were the association and network joint employers? To answer that

question, the court considered several factors such as employment records.

The association and network shared employee portals for storing employee records. They also shared cloud-based hosting platforms for a previously used customer relationship management system.

Even so, the network argued it wasn't a joint employer with the association. Reason? The association maintained its own time records and issued Forms W-2 to employees. It was true that employees' paystubs and tax forms listed the association as the relevant corporate entity – however, the network's corporate address

was the one used. Plus, their payroll operations were partly intertwined.

The court didn't grant summary judgment to the employers because questions remained regarding the organizations' joint employment.

Checklist for compliance

- Examine paystubs, tax forms and other records to confirm the info is consistent and accurate, especially if you've gone through a recent change such as a merger.
- Review the Dept. of Labor's recordkeeping requirements as summarized in *Fact Sheet #21*.

Tracking local laws and regs

■ Sports associations cry 'foul' on Pittsburgh's facility tax

According to a Pennsylvania appeals court, the city of Pittsburgh can no longer impose its facility tax. The facility tax sought a higher tax rate from nonresident professional athletes than on those who resided in the city. However, the state's Uniformity Clause says the method used to compute a tax can't produce arbitrary, unjust or discriminatory results. Players associations for professional hockey, baseball and football brought the lawsuit against the city.

More info: law.justia.com/cases/pennsylvania/commonwealth-court/2024/1150-c-d-2022.html

■ Minnesota city says it no longer needs its sick time ordinance

Duluth, MN, has repealed its Earned Sick and Safe Time (ESST) ordinance as of Jan. 17, 2024. Reason? The state has expanded its

ESST ordinance, and employers will need to follow that stricter law.

More info: duluthmn.gov/city-clerk/earned-sick-safe-time/about-earned-sick-safe-time

■ NYC ups the minimum wage delivery workers must be paid

The New York City Dept. of Consumer and Worker Protection has increased the minimum wage rate that must be paid to delivery workers by online third-party:

- food delivery services, and
- courier services.

On April 1, 2024, the city raised the rate from \$17.96 per hour to \$19.56 per hour (not including tips).

Accordingly, *Notice of Rights: NYC Food Delivery Workers* has been updated and must be displayed by May 1, 2024. Additional notification requirements are in place.

More info: www.nyc.gov/site/dcal/workers/workersrights/Delivery-Workers.page

Answers to readers' most pressing Payroll questions

Whether you're a longtime Payroll person or new to the profession, no doubt you occasionally face situations that leave you scratching your head. Here, we answer common dilemmas.

Group health plans: What documents must be issued?

Q: What documents must be sent to participants related to our group health plan?

A: Plan administrators should automatically send several documents to employees and beneficiaries. The *Summary Plan Description* is a basic descriptive document – some specific information must be included such as a description of plan procedures governing medical child support orders.

The *Summary of Material Modification* keeps participants and beneficiaries informed of plan changes – if there's a material reduction in covered services or benefits such as an increase in premiums, it must be sent within 60 days. The *Summary of Benefits and Coverage* is a uniform template that uses plain language to summarize the key features of a plan. The *Summary Annual Report* includes financial info from Form 5500.

More info: www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center

Send questions to jweiss@HRMorning.com. Because of the volume of mail we receive, we regret we can't answer all submissions.

IRS FORMS ALERT

RECENT CHANGES TO FEDERAL FORMS AND PUBLICATIONS

This list of forms, instructions and other publications contains Payroll-related updates.

- Publication 1136, *Statistics of Income Bulletin*. Revision year: 2024. Posted date: 2/29/24.
- Publication 557, *Tax-Exempt Status for Your Organization*. Revision date: January 2024. Posted date: 3/1/24.
- Form CT-2, *Employee Representative's Quarterly Railroad Tax Return*. Revision date: March 2024. Posted date: 3/6/24.
- Form 15315, *Annual Certification for Multiemployer Defined Benefit Plans*. Revision date: February 2024. Posted date: 3/6/24.
- Form W-9, *Request for Taxpayer Identification Number and Certification*. Revision date: March 2024. Posted date: 3/6/24.
- Form 1099-G, *Certain Government Payments*. Revision date: March 2024. Posted date: 3/6/24.
- Publication 15 (sp), *Circular E, Employer's Tax Guide (Spanish Version)*. Revision year: 2024. Posted date: 3/7/24.
- *Instructions for Form 1099-K*. Revision date: March 2024. Posted date: 3/7/24.
- Form 1099-K, *Payment Card and Third Party Network Transactions*. Revision date: March 2024. Posted date: 3/7/24.

The Purpose of *Keep Up to Date on Payroll*

Keep Up to Date on Payroll helps Payroll practitioners stay current with all the changing laws and regs.

The quick-read, easy-to-understand format gets right to the point, so you don't have to waste any time.

Keep Up to Date on Payroll provides timely information about new laws and regs, and gives you a heads-up about coming changes – so you have plenty of time to prepare.

State law and reg changes Payroll needs to know

Don't see your state here? You can find additional state and local items online – it's included with your subscription. Check out our interactive map, too. Log on today!

CALIFORNIA

- **MINIMUM WAGE:** Legislation from 2023, AB 1228, took effect on April 1, 2024. The new law requires that fast food restaurant employees earn a minimum wage of \$20 per hour. The law also establishes a Fast Food Council, which has the power to increase the minimum wage at the beginning of each calendar year and to adopt other standards for fast food restaurants. **More info:** leginfo.ca.gov

GEORGIA

- **INCOME TAX:** HB 1015 which became law on April 18, 2024, reduces the income tax rate, retroactive to Jan. 1, 2024. With the passage of the law, the rate went from 5.49% to 5.39%. In addition, the income tax rate will be reduced by 0.10% annually starting in 2025, until it reaches 4.99%. Also on April 18, 2024, HB 1023 became law. That legislation matched the income tax rate corporations pay to the income tax rate individuals pay. Therefore, the corporate income tax rate has been reduced from 5.75% to 5.39%, retroactive to Jan. 1, 2024. **More info:** www.legis.ga.gov/legislation

MARYLAND

- **PAYSTUBS:** The notice employers are required to give newly hired employees – i.e., rate of pay, regular paydays and leave benefits – will need to be provided in writing starting Oct. 1, 2024. That's if the governor signs SB 38/HB 385. Also included in the legislation, the pay period statement will need to be written and included on either

a physical paystub or an online pay statement. The statement must display several specific items, including a list of additional bases of pay such as bonuses or commissions on sales. **More info:** mgaleg.maryland.gov/2024RS/bills/hb/hb0385T.pdf

- **PAY TRANSPARENCY:** Under SB 525/HB 649, which the governor is expected to sign, employers will need to include a wage range and a general description of benefits in public and internal postings for open positions. The legislation also calls for the Dept. of Labor to develop a form that employers can use to comply with certain wage disclosure requirements. If signed into law, employers will need to comply with the changes by Oct. 1, 2024. **More info:** mgaleg.maryland.gov/mgawebsite/Legislation/Details/HB0649

NEW JERSEY

- **INCOME TAX:** On Feb. 23, 2024, the Division of Taxation updated *New Jersey Income Tax Withholding Instructions*. The revision added guidance on new legislation enacted in 2023. The law established a convenience of the employer test for nonresident income sourcing. It applies to employees who are residents of states with similar tests, such as Delaware and New York. A word of caution: It doesn't apply to Pennsylvania residents who work in New Jersey because those states have a reciprocal agreement regarding income tax. **More info:** www.nj.gov/treasury/taxation/pdf/current/njw.t.pdf

OREGON

- **PAYROLL TAXES:** The Secretary of State updated the *Oregon Employer's Guide* in February of 2024. The guide covers many topics including state withholding tax. A list of wages that are exempt from withholding can be found

in the guide. That includes, for example, wages earned by certain nonresident employees. **More info:** sos.oregon.gov/Pages/index.aspx

SOUTH CAROLINA

- **REPORTING:** Employers with 10 or more employees are now required to electronically file the portion of Employer Quarterly Contribution and Wage Reports that contains an employee's Social Security number, Standard Occupational Classification code, total number of hours worked and total wages. Also, if the Dept. of Employment and Workforce requests information regarding an individual's claim for benefits – such as job separations or wage audits – the response must be made electronically. That's due to the passage of HB 3726. The legislation took effect March 31, 2024. **More info:** legiscan.com/SC/bill/H3726/2023

THE LIGHTER SIDE

Are you a "Wookiee Rookie"?

FinanceBuzz, an informational finance website, is looking for someone who's never seen any of the *Star Wars* movies. If you're chosen, you'll watch all nine movies in the order of their release, from *Episode IV: A New Hope* to *Episode IX: The Rise of Skywalker*.

Watching all the episodes in the saga will come with a financial reward of \$1,000.

Plus, you'll get \$100 as reimbursement for streaming the movies and heading to the theater to see the upcoming re-release of *Episode I: The Phantom Menace*.

Hurry, applications are due soon – on Star Wars Day. As they say, "May the 4th Be With You."

Cite: UPI, "Star Wars' Novice Sought to Watch Nine Films for \$1,000," 4/22/24.