

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

March 15, 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

- March 15, 2024: Deposit taxes for payroll on March 9, 10, 11, 12.
- March 20, 2024: Deposit taxes for payroll on March 13, 14, 15.
- March 22, 2024: Deposit taxes for payroll on March 16, 17, 18, 19.
- March 27, 2024: Deposit taxes for payroll on March 20, 21, 22.
- March 29, 2024: Deposit taxes for payroll on March 23, 24, 25, 26.
- April 3, 2024: Deposit taxes for payroll on March 27, 28, 29.
- April 5, 2024: Deposit taxes for payroll on March 30, 31 for Q1.
- April 5, 2024: Deposit taxes for payroll on April 1, 2 for Q2.

MONTHLY DEPOSITORS

- March 15, 2024: Deposit taxes for payments made during February 2024.
- April 15, 2024: Deposit taxes for payments made during March 2024.

ALL EMPLOYERS

• April 30, 2024: File Q1 Form 941. Note: If you properly deposited taxes on time and in full, you have until May 10, 2024, to file.

Updated version of Form 941 released for the first quarter

Form now available in Spanish, too, says the IRS

Form 941 will soon be due for the first quarter of 2024, and the IRS has made a few changes.

For one thing, a Spanish version of the quarterly federal tax return is available for the first time.

On Feb. 28, 2024, the IRS released final versions of the 941, Schedule B and their corresponding instructions, all written in Spanish.

With that, two other forms have been discontinued, the IRS noted during its March Payroll Industry Call. Those forms are:

- Form 941-PR, *Employer's Quarterly Federal Tax Return (Puerto Rico Version)*, and
- Form 941-SS, Employer's Quarterly

Federal Tax Return – American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.

Employers that once filed those now-discontinued forms can choose to submit either Form 941 (sp) or the version written in English, the IRS further explained.

Lines have been removed

The English versions of the 941, Schedule B and Schedule R along with their instructions have been available since Feb. 26, 2024.

You'll notice some minor changes. For example, lines 5a(i), 5a(ii) and

(Please see Form 941 ... on Page 2)

Pick a pay period - EEO-1 report due by June 4, 2024

It's almost time to file EEO-1 reports for 2024, and if it seems like you just wrapped up your 2023 reports, that's because you did.

Last year, the EEOC bumped the deadline for the 2022 EEO-1 Component 1 data collection from the spring to the summer and ultimately to the fall.

But this year, the EEOC is back on track with deadlines. In a February 2024 announcement, the EEOC said the 2023 EEO-1 Component 1 data collection will open April 30, 2024.

The deadline to file the 2023 EEO-1 Component 1 report is June 4, 2024. So, private employers with at least 100 employees will need to pick a pay period within that window to be their workforce snapshot period.

Resources coming soon

Employers can expect to see resources to assist with filing by March 19, 2024.

They are:

- 2023 EEO-1 Component 1 Instruction Booklet, and
- 2023 Data File Upload Specs. Also, the filer help desk will be available on April 30, 2024.

More info: www.eeocdata.org/eeo1

Employer had to pay security guards \$150K and provide info on FLSA

THEY WERE MISCLASSIFIED AS INDEPENDENT CONTRACTORS

A fter misclassifying security guards as independent contractors, a Northville, MI, company had to pay back wages and liquidated damages, for a total amount of \$151,208.

The incorrect classification led to overtime problems – Koda Group Inc. didn't pay the guards one-and-a-half times their regular rate of pay for hours worked over 40 in a workweek.

The Dept. of Labor (DOL) also found that Koda Group Inc. failed to display the mandatory Fair Labor Standards Act (FLSA) poster in a conspicuous location.

As part of a consent agreement, the employer will pay the amount owed in monthly installments through November of 2024.

In addition, during a two-year period, it must provide all current and



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Copyright © 2024 HRMorning. Please respect our copyright: Reproduction of this material is prohibited without prior permission. All rights reserved in all countries. newly hired employees with copies of two DOL documents. They are:

- Handy Reference Guide to the Fair Labor Standards Act (WH-1282) and,
- Work Hours Recordkeeper (WH-1497).

Federal poster revised last year

Make sure your company has the recently updated version of the federal poster called *Employee Rights Under the Fair Labor Standards Act*.

This federal poster was revised in April 2023, with the previous version dating back to August 2016.

Requirements of a new law – the Providing Urgent Maternal Protections (PUMP) for Nursing Mothers Act – were added.

More info: www.dol.gov/ newsroom/releases/sol/sol20240209

Form 941 ...

(continued from Page 1)

other lines have been removed because the credits for qualified sick and family leave wages related to COVID-19 are no longer available.

On the 941 instructions, the IRS reminds employers that they should use the March 2024 version of the form for the first quarter of 2024, instead of using earlier revisions.

Also, the IRS says it expects that the latest revision of the form and instructions will be used through the rest of the year – unless changes in the law require additional revisions.

Withholding FICA tax

Of particular note during this presidential election year, Social Security and Medicare taxes will apply to election workers who are paid \$2,300 or more in cash or an equivalent type of compensation, the 941 instructions explain.

That's up from \$2,200 in 2023.

More info: www.irs.gov/pub/irs-pdf/ i941.pdf

COMPLIANCE CHECK

FIRED AFTER ASKING FOR FMLA PAPERWORK

Cobb & Douglas Public Health, in Georgia, violated the Family and Medical Leave Act (FMLA). An employee stayed two days in the hospital and then requested FMLA paperwork for ongoing medical care. Instead, the employee was fired. The Dept. of Labor recovered \$200,000 for the individual.

More info: www.dol.gov/ newsroom/releases/whd/ whd20240206

IMPROPER TIP POOL LEFT 367 EMPLOYEES SHORTCHANGED

At Pizzicato Inc., a chain of 11 restaurants in Portland, OR, managers participated in tip pools. A Dept. of Labor investigation revealed another Fair Labor Standards Act violation: allowing a minor to participate in a hazardous occupation. In all, the employer owed:

- \$29,797 in penalties
- \$270,101 in back wages for 367 employees, and
- \$270,101 in liquidated damages.

More info: www.dol.gov/ newsroom/releases/whd/ whd20240207-5

ANTI-RETALIATION PROVISION OF FLSA AND OSHA BROKEN

The Dept. of Labor said that Milford Sports Bars LLC in Connecticut broke anti-retaliation provisions under the Fair Labor Standards Act (FLSA) and Occupational Safety and Health Act (OSHA). In the first court decision involving retaliation claims under both laws, the company had to pay:

- \$6,770 in back pay
- \$2,715 in withheld wages
- \$125,000 in emotional distress damages, and
- \$225,000 in punitive damages.

More info: tinyurl.com/ retaliation687

LAW & REG UPDATE

Latest info from the courts and EEOC on Pregnant Workers Fairness Act

STATE OF TEXAS SUED THE EEOC OVER FEDERAL LAW'S VALIDITY

A federal law that took effect in 2023 – the Pregnant Workers Fairness Act (PWFA) – recently met with some resistance.

On Feb. 27, 2024, a federal district court judge ruled the EEOC can't enforce the PWFA against the state of Texas.

The law shouldn't have been passed in the first place, according to the ruling. That's because the U.S. House of Representatives needed 218 members present to vote. But it had only 205. Not having a quorum was a violation of the U.S. Constitution, the state of Texas argued when it filed its lawsuit against the EEOC and other federal agencies in 2023.

The judge's ruling pertains to the state of Texas – not to private employers in the state or to other states. That said, the ruling could be a catalyst for additional lawsuits, and we'll monitor any developments.

The law took effect June 27, 2023

Even if legal opposition picks up, the PWFA isn't likely to disappear, so compliance remains a necessity, as it has been since the law's June 27, 2023, effective date. As a reminder, the PWFA says employers must provide reasonable accommodations – such as leave – to employees who are experiencing pregnancy, childbirth or related medical conditions, but not if doing so will cause an undue hardship.

The EEOC has already taken several steps to account for the new law. For starters, in June 2023, the agency updated the *Know Your Rights* poster to incorporate information about protections available to employees under the PWFA.

Next, in August 2023, the EEOC issued proposed regs on the law. One example of what's been proposed: Employees wouldn't have to put their requests for accommodation in writing.

Another step the EEOC just took: In mid-February the agency amended its procedural and administrative regs to include the PWFA. For example, in this interim final rule, the EEOC made clear that it'll investigate charges and complaints using the same procedures set out in Title VII of the Civil Rights Act of 1964 and the Government Employee Rights Act of 1991.

More info: Federal Register, 2/23/24.

Pay transparency rules popping up everywhere

Contractors and subcontractors that work with the federal government should keep an eye on a proposed rule released by several government agencies on Jan. 30, 2024.

The proposed rule seeks to amend the Federal Acquisition Regulation and put a new policy in place related to employees' compensation.

Here's a summary:

Government contracts

First, the policy would prohibit contractors and subcontractors from seeking data on job applicants' compensation history if the individuals will be working on or in connection with a government contract. Furthermore, using such data when making employment decisions for certain positions would be banned.

Second, under the policy, when contractors and subcontractors post job announcements for certain positions involving work on or in connection with a government contract, they'd be required to disclose the compensation that'd be offered to the selected applicant.

More info: Federal Register, 1/30/24.

NEWS YOU CAN USE

DOL MOVES FORWARD WITH ITS FINAL RULE ON OVERTIME

On March 1, 2024, the Dept. of Labor sent its final rule on who's exempt from overtime to the Office of Management and Budget (OMB).

After the OMB reviews the rule (and it's anyone's guess as to how long that will take), it'll be released in the *Federal Register*. At that time, the public will be able to see how closely the DOL stuck to its proposed rule, which called for an increase in the annual salary threshold to \$55K.

More info: www.reginfo.gov/ public/do/eoDetails?rrid=429164

E-FILING REQUIREMENT DELAYED FOR FORM 1042

According to IRS Notice 2024-26, withholding agents are administratively exempt from the requirements to electronically file Forms 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, for returns due in calendar year 2024. That applies to withholding agents that are U.S. and foreign persons.

The administrative exemption from electronically filing Form 1042 will continue to apply for calendar year 2025 for withholding agents that are foreign persons.

More info: www.irs.gov/pub/irsdrop/n-24-26.pdf

IRS SAYS INTEREST RATES WON'T CHANGE FOR Q2

There are no surprises from the IRS when it comes to second quarter interest rates. The rates will remain the same. They'll be:

- 8% for overpayments and 7% for corporations
- 5.5% for the portion of an overpayment exceeding \$10,000
- 8% for underpayments, and
- 10% for large corporate underpayments.

More info: www.irs.gov/pub/irsdrop/rr-24-06.pdf

WHAT WORKS FOR PAYROLL

In some states, you're withholding income tax at a lower rate in 2024

BUT MICHIGAN INCREASED ITS FLAT RATE THIS YEAR

s of Jan. 1, 2024, which states A have changed their income tax rates and which ones have held the line for another year?

The Tax Foundation recently provided an update.

Here's a recap of the data released in State Individual Income Tax Rates and Brackets, 2024.

The tax rate system

No tax. In 2024, as in past years, seven states have no individual income tax.

Those states are: Alaska, Florida, Nevada, South Dakota, Tennessee, Texas and Wyoming.

Flat tax rate. In 14 states, the income tax rate is flat.

Two of those states don't tax wages and salaries - i.e., New Hampshire taxes only income from dividends and interest, and Washington taxes only income from capital gains.

Here are the 2024 rates from the remaining 12 states:

- Arizona 2.5%
- Colorado 4.4%
- Georgia 5.49% (decreased)
- Idaho 5.8%
- Illinois 4.95%
- Indiana 3.05% (decreased)
- Kentucky 4.0% (decreased)
- Michigan 4.25% (increased)
- Mississippi 4.70% (decreased) •
- North Carolina 4.50% (decreased)
- Pennsylvania 3.07%
- Utah 4.65%

Rates based on brackets. Finally, 29 states have set up a graduated-rate income tax system.

The number of brackets can vary from state to state. For example, Montana has the fewest (two) and Hawaii has the most (12).

A handful of states reserve their highest rates for individuals whose income reaches or exceeds \$1 million. Those states are California, Massachusetts, New Jersey and New York.

In several of the 29 states with bracketed systems, the top brackets



Changes in union membership As a wage or salary worker, are you a member of a union? 20% 10% 2023 1983

Source: Bureau of Labor Statistics, 2023 data

Among wage and salary workers, union membership in 2023 declined compared with 40 years ago - 1983 the first year for which there's comparable data.

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

have decreased for 2024. They include Arkansas (4.4%, was 4.90%), Iowa (5.7%, was 6%), Missouri (4.8%, was 4.95%), Montana (5.9%, was 6.75%), Nebraska (5.84%, was 6.64%), Ohio (3.5%, was 3.99%) and South Carolina (6.4%, was 6.5%).

More info: taxfoundation.org/data/ all/state/state-income-tax-rates-2024

REAL-LIFE SCENARIO: DID THEY GET IT RIGHT?

Not reconciled: Health plan payments and paycheck deductions

A public employer in Georgia faced this real-life scenario:

An employee who worked in a supervisory role in financial services received a written reprimand/final warning for failing to do an assigned duty - i.e., starting an additional accounts payable disbursement day.

In that reprimand, the director of financial services stated that the supervisory employee should ensure that staff who reported to her carried out assigned duties. Otherwise, her employment could be terminated.

Three months later, an employee noticed that his health insurance

premiums weren't being deducted from his pay. Research revealed that 15 to 20 employees had been affected over a multi-month period. Past-due premiums had to be recouped from those employees via payment plans.

The individual responsible for the error – who reported to the supervisory employee - hadn't been reconciling heath plan payments and paycheck deductions on a monthly basis. So, she was dismissed. A month later, after more details of the errors unfolded, the supervisory employee was also dismissed. Complicating matters, during that month, she injured her knee and informed her

employer that she'd need knee surgery. After being fired, she brought claims under the Family and Medical Leave Act and the Rehabilitation Act.

The case reached a federal appeals court. The employer won the case because it could show the termination was connected to her performance, not her injury.

Checklist for compliance

- Consider whether additional monthly reconciliations would make sense for your department.
- Continue to document performance problems as they occur.

FEDERAL, STATE & LOCAL UPDATE

Tracking local laws and regs

Minimum wage reaches \$14.60 in these New Mexico localities

Two localities in New Mexico have increased their minimum wage rates as of March 1, 2024.

The city of Santa Fe has raised the living wage rate from \$14.03 per hour to \$14.60 per hour under its Living Wage Ordinance.

In the county of Santa Fe, the living wage rate has also increased to \$14.60 per hour. Note: Early in 2023, the county announced a rate of \$13.73, as we reported. Later in 2023, the county changed the rate to \$14.03 per hour. Therefore, the living wage rate went up by 57 cents on March 1, 2024.

More info: www.dws.state.nm.us/ Minimum-Wage-Information

Severe weather in California leads IRS to grant tax relief

Due to severe storms and flooding that occurred Jan. 26, 2024, in parts of California, the IRS has granted extra time to file business returns and make tax payments, according to IR-2024-51.

Businesses located in San Diego County have until June 17, 2024, to file quarterly payroll tax returns that would have been due at the end of the first and second quarters of 2024. As for payroll tax deposits due on or after Jan. 21, 2024, penalties will be abated as long as the deposits were made by Feb. 5, 2024.

More info: www.irs.gov/newsroom/ tax-relief-in-disaster-situations

Final rules released on updated sick and safe time ordinance

St. Paul, MN's Human Rights & Equal Economic Opportunity Dept. has updated its administrative rules in light of the Earned Sick and Safe Time Ordinance being amended.

The department published final rules on Jan. 8, 2024. Issues such as accruals, rehiring employees and documentation are covered.

More info: bit.ly/esst687

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.

Can we repay a portion of the employee retention credit?

- : If we want to participate in the Employee Retention Credit Voluntary Disclosure Program (ERC-VDP) with the IRS, can we reverse a portion of a quarter?
- A: The IRS strongly encourages employers to consider the ERC-VDP if they need to repay the credit, a representative said during the IRS March Payroll Industry Call. However, it's an all-or-nothing program – you can't reverse a portion of the

credit during any one quarter. You can utilize the program just for certain quarters, though. One of the benefits of the ERC-VDP is having to repay only 80% of the ERC claimed, and you won't be charged any penalties or interest. The end of the program is coming up fast, the IRS rep explained. The deadline to submit an application is March 22, 2024. But Form 15434 shouldn't take too long to fill out as it's only one-and-a-half pages long.

More info: www.irs. gov/coronavirus/employeeretention-credit-voluntarydisclosure-program

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 publications contains Payroll-related updates.

- Form SS-4, Application for Employer Identification Number. Revision date: December 2023. Posted date: 1/8/24.
- Publication 5875, *Top-Heavy Plans: Employee Plans Issue Resource Guide*. Revision date: October 2023. Posted date: 1/10/24.
- Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding. Revision year: 2024. Posted date: 1/16/24.
- Instructions for Form SS-4. Revision date: December 2023. Posted date: 1/16/24.
- Instructions for Form CT-1. Revision year: 2023. Posted date: 1/16/24.
- Form 8973, Certified Professional Employer Organization/Customer Reporting Agreement. Revision date: December 2023. Posted date: 1/17/24.
- Publication 525, *Taxable and Nontaxable Income*. Revision year: 2023. Posted date: 1/8/24.
- Publication 1281, Backup Withholding for Missing or Incorrect Name/TIN(s). Revision date: December 2023. Posted date: 1/23/24.
- Publication 2104, National Taxpayer Advocate Annual Report to Congress. Revision date: December 2023. Posted date: 1/31/24.

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!

MARYLAND

• FAMILY, MEDICAL LEAVE: The start date for contributions to the new Family and Medical Leave Insurance State Plan may be delayed, the Maryland Dept. of Labor said in its FAQs. Currently, contributions are set to begin in October 2024. However, legislation is being considered that'd move that date to July 2025. We'll keep you posted. More info: paidleave. maryland.gov/Pages/default.aspx

MASSACHUSETTS

EARNED WAGE ACCESS: The legislature introduced HB 4456 on Feb. 29, 2024. This bill says earned wage access (EWA) services won't be considered a loan or any form of credit or debt. Also, requirements for licensed EWA providers are spelled out, including that fees associated with EWA services must be fully and clearly disclosed. Another stipulation that the bill - as introduced - places on these providers: They can't share with an employer a portion of any fees or tips received from a consumer. We'll monitor this legislation for you. More info: legiscan.com/MA/text/ H4456/id/2946383

MINNESOTA

• PAY HISTORY: A new law that took effect Jan. 1, 2024, prohibits employers from asking about or considering a job applicant's pay history. SF 2909 does provide exceptions, though. For example, job applicants can voluntarily disclose their pay history to negotiate higher pay. Also, there's no prohibition against asking a job applicant about pay history if the information is part of public record under state or federal law. **More info:** *legiscan.com/MN/bill/ SF2909/2023*

NEW JERSEY

 RETIREMENT PLANS: The pilot for the new state-administered retirement savings program – RetireReady NJ – is set to begin in the spring of 2024. The full program will open in the summer of 2024. Employers in the state that have 25 of more employees and don't offer their own qualified retirement savings plan will need to register with RetireReady NJ. More info: www.nj.gov/treasury/ securechoiceprogram/employers/ index.shtml

NORTH CAROLINA

• ABSENCES: AB 589 amended the state's General Statutes to say that employers can't discriminate or retaliate against employees who are members of the Civil Air Patrol and who are absent to perform certain duties. An authorized absence must meet several requirements such as the absence can't exceed seven consecutive scheduled working days and total absences for the calendar year can't exceed 14 scheduled working days. The law took effect in 2023. More info: www.ncleg. gov/Sessions/2023/Bills/Senate/PDF/ S589v0.pdf

OREGON

• UNCLAIMED WAGES: If an employee doesn't cash a paycheck within one year after it becomes payable, the wages will be considered abandoned. The previous timeframe? Three years. This change affecting unclaimed wages is the result of HB 2160, which took effect Jan. 1, 2024. The law says "wages" includes payments like commissions and bonuses. The law also says "wages" doesn't refer to amounts held in a payroll card. More info: *legiscan*. *com/OR/text/HB2160/2023*

PENNSYLVANIA

DEPENDENT CARE: The state legislature passed HB 1300 on Dec. 14, 2023 - and it appliesretroactively. The law affects employers offering dependent care assistance programs. Amounts paid or incurred by an employer for this fringe benefit (up to \$5,000 annually) are excluded from state income tax, starting with TY 2023. So, some employers may need to file corrected W-2s with the Dept. of Revenue and provide employees with corrected forms. For TY 2024, ensure you're not withholding state income tax for this fringe benefit - at year-end, amounts should be included in box 10 but not box 16. More info: *www.revenue.pa.gov*/ TaxTypes/EmployerWithholding/ Pages/Dependent-Care-Assistance.aspx

THE LIGHTER SIDE

Do you like old movies? How about *really* old movies - say, 101 years old?

A 1923 movie starring Clara Bow will be shown at the San Francisco Silent Film Festival in April. It'll be the first public showing of *The Pill Pounder* in decades.

In fact, experts thought the movie had been long-lost. But then last year, Gary Huggins, whose hobby is rare and antique films, went to an auction. He paid \$20 for a bunch of film reels, not knowing what he'd purchased until later when he got his projector out and started watching the old film strips.

A Hollywood historian recognized the film's value and paid Huggins an undisclosed amount - but it's safe to say it was a lot more than \$20.

Cite: UPI, "Long-Lost Silent Film from 2023 Surfaces in Omaha," 3/8/24.