

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

May 16, 2022

## IRS FORMS & REGS ALERT

The IRS is taking another look at many of the documents you use regularly, including tax forms. We'll keep you posted on any changes, such as new ways to report.

### ■ ASKING IRS FOR MORE TIME TO FILE RETURNS

**Reg:** Form 7004, *Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns.*

**Background:** Used by corporations and certain nonprofit institutions to request an automatic extension of time to file their income tax returns.

**Comments due:** 6/21/22.

**Cite:** *Federal Register*, 4/19/22.

### ■ MODEL SIMPLE IRA AGREEMENT TO USE

**Reg:** Form 5304-SIMPLE, *Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) – Not for Use With a Designated Financial Institution.*

**Background:** The form is a model SIMPLE IRA agreement to be used by an employer so employees who haven't designated financial institutions can make salary reduction contributions.

**Comments due:** 6/21/22.

**Cite:** *Federal Register*, 4/19/22.

Go to [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for copies of the forms.

## Medical child support goes electronic – what to expect

### ■ Plus, 3 predicaments you may encounter

The next time you receive a National Medical Support Notice (NMSN), don't be surprised if it's in an electronic format.

The Office of Child Support Enforcement (OCSE) created the e-NMSN for states to send to employers. The form notifies employers that an employee needs to provide health care coverage for a child.

And if you think the e-NMSN looks like the electronic child support notice, you're right. OCSE modeled it after the electronic Income Withholding Order (e-IWO).

The *April 2022 Child Support Report* spelled out several advantages to the automated format including:

- a reduction in errors that might result from manual processing
- convenience, especially for Payroll practitioners working in a virtual environment, and
- the elimination of printing and postage costs.

Each state can choose to use the standard or electronic form when communicating with employers about medical child support – whether that's health insurance, cash payments or both.

### Once you receive a form

Receiving a medical child support order is only the start. Predicaments

*(Please see Medical ... on Page 2)*

## IRS reveals new HSA and HDHP numbers – they're up!

Employees will be able to set aside quite a bit more from their pay for health savings account (HSA) contributions in 2023.

Next year's numbers for high deductible health plans (HDHPs) will also be higher. Makes sense, given that the amounts are adjusted for inflation.

According to IRS Revenue Procedure 2022-24, here's what's coming:

An individual with self-only coverage will be able to contribute \$3,850 to an HSA. That's up \$200. Typically, the number has gone up by only \$50 each year. If someone has family coverage, the contribution

limit will be \$7,750. That's up \$450. Compare that to the \$100 increase we've seen in recent years.

### Changes to note

As for HDHPs, the IRS said the annual deductible has to be at least:

- \$1,500 for self-only coverage, and
- \$3,000 for family coverage.

Annual out-of-pocket expenses for HDHPs can't exceed:

- \$7,500 for self-only coverage, and
- \$15,000 for family coverage.

**More info:** [www.irs.gov/pub/irs-drop/rp-22-24.pdf](http://www.irs.gov/pub/irs-drop/rp-22-24.pdf)

# They earned more than \$684 per week so why weren't they exempt from OT?

### ■ BE SURE PROFESSIONAL EMPLOYEES HAVE ADVANCED KNOWLEDGE

While employees' gross pay may equal at least \$684 weekly, which is \$1,368 biweekly, you may still need to pay them overtime – even if you've labeled them “exempt.”

Reason: They need to meet the duty requirements, too, to qualify for the exemption under the Fair Labor Standards Act (FLSA).

Recently, one employer had to pay \$112K in overtime back wages.

McKeen & Associates P.C., a Detroit law firm, wasn't paying overtime to its administrative and support staff, the U.S. Dept. of Labor (DOL) found during an investigation.

### Discretion and judgment

In order for an employee to qualify for the professional exemption from the overtime requirements of the

FLSA, that person's primary duty must be the performance of *work requiring advanced knowledge*.

So what's that? It's work that's mostly intellectual in character, calling for the exercise of discretion and judgment on a consistent basis.

The advanced knowledge must be in a field of science or learning, with the employee typically receiving a specialized education.

Of course, paying professional employees a set salary is a must, too. Currently, the threshold is \$684 weekly – which is \$35,568 annually – but the DOL said earlier in 2022 that it plans to increase the threshold this year.

More info: [www.dol.gov/newsroom/releases/whd/whd20220406](http://www.dol.gov/newsroom/releases/whd/whd20220406)

### Medical ...

(continued from Page 1)

can arise, so taking time to understand what's expected is important. Here are three points of clarification for Payroll pros:

1. Be careful of certain deductions, like pre-tax contributions for 401(k) plans. They don't reduce disposable income for child support. Make sure they're added in before multiplying disposable income by the Consumer Credit Protection Act (CCPA) limit.

2. The plan administrator may decide to select a different health insurance option for the employee, resulting in higher premiums. That's permissible. Also, those premiums *can* be deducted within the CCPA limit.

3. In some cases, the employee may no longer earn enough money to be able to make the payments within the CCPA limit. If so, stop withholding the premiums and notify the child support agency that sent you the order.

More info: [www.acf.hhs.gov/css/newsletter/ocsnewsletter/april-2022-child-support-report](http://www.acf.hhs.gov/css/newsletter/ocsnewsletter/april-2022-child-support-report)

## SHARPEN YOUR JUDGMENT

*This feature provides a framework for decision making that helps keep you and your company out of trouble. It describes a recent legal conflict and lets you judge the outcome.*

### ■ WHAT WAS THE TROUBLE WITH TERMINATION PAY?

“You know what our handbook says,” HR Manager Cheryl Jones told Payroll Manager Pat Gray. “Criminal activity of that nature is grounds for termination.”

“I know, I was just shocked to hear that Ella was convicted of larceny,” Pat said.

“So was I,” said Cheryl. “But of course I had to let her go. She got the letter I sent about today being her last day, and she called me to ask about her final paycheck. So, I'm just making sure we're getting her check out to her today.”

### Getting paycheck processed

“Done,” said Pat. “State law is pretty strict on this. We have to get paychecks out to people on the same date as their termination.

“However,” added Pat, “with such little warning, I'm still working on calculating how much vacation time we owe her. Needless to say, we don't want to get that number wrong – if we're off either way, that'll create problems for us.”

“I hear you,” said Cheryl. “And considering that Ella worked here for over 20 years and rarely took time off, I'm sure we owe her quite a bit.”

“Likely about \$8K,” Pat said.

Turned out, the employer owed her \$8,952.15 in accrued vacation time, which she received three weeks after her termination date. She sued under Massachusetts law, saying the employer should pay triple the late payment amount. The employer fought back. Did it win?

■ Make your decision, then please turn to Page 6 for the court's ruling.

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KEEP UP TO DATE ON  
**PAYROLL**

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## Avoiding 2 FLSA problems that can occur if employees work remotely

### ■ STEPS TO TAKE TO ENSURE YOU'RE PAYING OVERTIME CORRECTLY

Remote and hybrid work isn't going anywhere for now. As a result, Payroll pros will face ongoing challenges to ensure compliance with the Fair Labor Standards Act (FLSA).

Employers should watch out for a couple trouble spots, said Dr. James Castagnera, Esq., who presented a Resourceful Compliance webinar earlier this year.

#### Staying on track

First, you may have employees doing sales and working from home on some or all days, but that doesn't necessarily make them outside salespeople exempt from overtime, noted Castagnera at the 2022 Labor Law Poster Compliance webinar.

The Dept. of Labor (DOL) regs make it clear the term "outside sales" doesn't include sales made by mail, telephone or the Internet.

There's an exception: Someone may still qualify as an outside salesperson if contacting clients via those methods is merely supplemental to in-person contact with them.

To ensure compliance with the

FLSA, Payroll may want to work with HR, confirming that inside salespeople who work outside the office receive any overtime pay due them.

A second area to be careful of when you have remote employees? Recordkeeping, Castagnera told webinar attendees.

How do you know when a nonexempt employee is working if that person isn't in plain view?

As the DOL's Wage and Hour Division spelled out in *Field Service Bulletin 2020-5*, you can gather information from:

- their schedules, and
- reports or other notifications you've received from them.

Beyond that, employers must "exercise reasonable diligence" to find out if remote employees are working during unscheduled times.

One way to do that according to the DOL guidance? Establishing a procedure for employees to record and report uncompensated work hours.

So, if your company doesn't have a procedure in place for nonexempt employees, consider creating one.

**More info:** [www.resourcefulcompliance.com](http://www.resourcefulcompliance.com)

## Court looks at no-additional-cost service under Sec. 132

When trying to determine if a fringe benefit is taxable, Payroll often relies on Sec. 132 of the Internal Revenue Code (IRC).

That section of the IRC was in the spotlight recently when the Tax Court heard *Mihalik v. Commissioner*.

A retired pilot had received free stand-by airline tickets under a retiree benefits program. The question: Did tickets count as a no-additional-cost service fringe benefit under Sec. 132? Turns out, some did – some didn't.

The value of tickets his former employer, United Airlines, provided

for him, his wife and his daughter didn't need to be included in income.

But tickets given to two relatives – who weren't his dependents – were taxable income, the Tax Court said.

#### What's required

A no-additional-cost service must meet requirements. For example:

- it must be offered for sale to customers, and
- the employer can't incur substantial extra cost to provide the service to the employee.

**More info:** [bit.ly/tickets645](http://bit.ly/tickets645)

## NEWS YOU CAN USE

### ■ A LITTLE LEEWAY WITH 2021 EEO-1 REPORTING DEADLINE

You'll have a little extra time, if you need it, to meet the EEO-1 deadline this year.

The 2021 Component 1 Report is still officially due May 17, 2022. But the EEOC says it'll enter the "failure to file" phase after that.

If you miss the filing deadline, the EEOC will send you a notice regarding the failure to file. You'll be instructed to submit and certify your data as soon as possible. The latest you'll have? Until June 21, 2022. Warning: After that, the EEOC won't accept any additional reports.

**More info:** [eeocdata.org/EEO1/support/faq](http://eeocdata.org/EEO1/support/faq)

### ■ EMPLOYERS IN THESE STATES FACING FUTA TAX INCREASE

When employers in nine states file their 2022 Forms 940 at year-end, they may be hit with a reduction in their FUTA credit – i.e., they'll be subject to a higher FUTA tax rate.

As of April 22, 2022, the states are California, Colorado, Connecticut, Illinois, Massachusetts, Minnesota, New Jersey, New York and Pennsylvania. In addition, the Virgin Islands is on the list.

The credit reduction is due to states having outstanding federal loans for their unemployment insurance trust funds, stated the Dept. of Labor's Employment & Training Administration.

**More info:** [oui.doleta.gov/unemploy/budget.asp](http://oui.doleta.gov/unemploy/budget.asp)

### ■ FORM I-9 FLEXIBILITY ISN'T GOING AWAY YET

Form I-9 flexibility has been extended yet again, this time from April 30, 2022, to Oct. 31, 2022.

The COVID-related flexibility pertains to employees who work exclusively in a remote setting.

**More info:** [www.e-verify.gov/about-e-verify/whats-new](http://www.e-verify.gov/about-e-verify/whats-new)



## TEST YOUR KNOWLEDGE

### ■ 403(b) make-up contributions: What does the IRS allow?

In some ways, 403(b) plans are similar to 401(k) plans. For example, they're both subject to limits under Internal Revenue Code Sections 401(a)(30) and 402(g) – i.e., \$20,500 for 2022. But there's much more to know about 403(b) plans. Test your knowledge by answering *True* or *False* to the following:

1. The special 403(b) catch-up is for employees over age 50.
2. An employee needs 15 years of service with any organization that offers a 403(b) plan to be eligible for the special 403(b) catch-up.
3. A 403(b) plan has to be maintained by a qualified organization if employees are going to make elective deferrals under the special 403(b) catch-up.
4. The special 403(b) catch-up formula sets a lifetime limit for elective deferrals.

## ANSWERS

### Answers to the quiz:

1. *False.* Employees over age 50 can make catch-up contributions to 403(b) plans, and the amount is the same as for 401(k) plans: \$6,500 for 2022. However, 403(b) plans also allow special catch-up contributions that aren't related to the employee's age.
2. *False.* The 15 years of service must be with the same organization. In fact, for example, an employee would need to be with the same school, not just school district.
3. *True.* IRS has a list of qualified organizations, including educational institutions described under IRC Section 170(b)(1)(A)(ii), hospitals, home health service agencies, churches and more.
4. *True.* That limit is \$15,000.

More info: [bit.ly/retirement645](http://bit.ly/retirement645)

## COMPLIANCE CHECK

### See where other companies went wrong – and avoid their mistakes

*This feature highlights violations of federal and state laws. You can find out how other employers got off track – and help keep your company in compliance.*

#### **Persuaded employees to sign altered time records**

**Employer:** Thirsty Enterprise LLC, Memphis, TN.

**Business:** Gas station and convenience store.

**Law broken:** Fair Labor Standards Act's minimum wage, overtime and recordkeeping provisions

**Type of violation:** Thirsty Enterprise LLC failed to pay one worker minimum wage; he received a flat salary, but it didn't provide him with at least \$7.25 per hour. Cashiers, some of whom worked 80 hours per week, received checks showing fewer hours than actually worked and then they were pressured to sign altered time records. The company paid the balance of the hours in cash at straight-time rates.

**Penalty:** \$30,005 in back wages and an equal amount in liquidated damages for four workers, plus a \$2,324 civil penalty.

**Government office:** Dept. of Labor, Wage and Hour Division, Atlanta Regional Office.

#### **Prevailing wage rate was \$15.52, company paid \$11**

**Employer:** Turf Masters Inc., Bayville, NJ.

**Business:** Commercial landscaper.

**Law broken:** Immigration and Nationality Act's H-2B temporary nonagricultural visa program.

**Type of violation:** Turf Masters didn't pay the prevailing wage rate of \$15.52 per hour and instead paid \$11 per hour. The company had additional violations, including

failing to retain records and documents for three years from the date the H-2B application was certified.

**Penalty:** \$181,670.19 in back wages for 47 temporary employees. The company will also pay \$38,329.81 in civil penalties.

**Government office:** Dept. of Labor, Wage and Hour Division, Lawrenceville, NJ, district office.

#### **DOL: These workers aren't independent contractors**

**Employer:** B & L Foreign Car LLC, operating as B & L Auto Sales, West Columbia, SC.

**Business:** Used auto dealer.

**Law broken:** Fair Labor Standards Act's overtime requirements.

**Type of violation:** Paid straight time instead of overtime for hours over 40 in a workweek. The company also misclassified employees as independent contractors.

**Penalty:** \$64,566 in back wages and liquidated damages for 24 workers.

**Government office:** Dept. of Labor, Wage and Hour Division, Columbia, SC, district office.

#### **Placed limit on overtime: 16 hours per pay period**

**Employer:** AS&P Corp. LLC, d.b.a., Bordon Homes, San Francisco.

**Business:** Residential care homes.

**Law broken:** Fair Labor Standards Act's overtime requirements.

**Type of violation:** Placed a 16-hour cap on overtime each pay period.

**Penalty:** \$176,193 in back wages for nine healthcare workers. AS&P Corp. also had to pay \$6,534 in civil penalties.

**Government office:** Dept. of Labor, Wage and Hour Division, San Jose, CA, district office.

## Tracking local laws and regs

### ■ Philadelphia defines 'remote workforce' and more in FAQs

In February 2022, the Philadelphia Dept. of Revenue released *Frequently Asked Questions Regarding the Expiration of Philadelphia's Temporary Nexus Waiver*.

The guidance defines "remote workforce" and explains tax issues related to its temporary nexus waiver which ended in 2021.

More info: [bit.ly/philadelphia645](http://bit.ly/philadelphia645)

### ■ Guidance for NYC employers on salary transparency law

According to a new law, employers posting jobs in New York City must comply with salary transparency requirements, and the New York City Commission on Human Right has provided details on that.

The guidance, *Salary Transparency in Job Advertisements*, says employers with four or more employees must incorporate the salary range for each job, promotion or transfer it posts.

That includes postings on internal bulletin boards, Internet ads, printed flyers distributed at job fairs and newspaper advertisements.

A job performed in New York City means work done from the office, in the field or remotely from home.

Make sure the advertisements include a minimum and a maximum. Simply saying "\$15 per hour and up" or "a maximum \$50,000 per year" wouldn't suffice. If there's no wiggle room, telling applicants the set rate – e.g., \$20 per hour – is also acceptable.

More info: [www1.nyc.gov](http://www1.nyc.gov)

### ■ Minimum wage reaches nearly \$17 per hour in San Francisco

Employers in San Francisco can get ready for a minimum wage increase on July 1, 2022. The rate will go up to \$16.99 per hour. Currently, the hourly rate is \$16.32.

Note: The city requires that all employees, including part-time and temporary workers, be paid the minimum wage.

More info: [sfgov.org/olse/minimum-wage-ordinance-mwo](http://sfgov.org/olse/minimum-wage-ordinance-mwo)

### ■ How part-time employees fit into San Jose's ordinance

In San Jose, CA, employers must comply with a wide range of labor

## PRODUCTIVITY BOOSTERS

### ■ Giving employees a heads-up about wage garnishments

When you receive a garnishment, calculating the correct amount to withhold is likely top of mind.

At the same time, proactively communicating with employees is critical, too. Otherwise, they may be blindsided on payday by the decrease in their wages – and you could end up fielding complaints.

One solution: Send a brief email, informing them that you've received the garnishment and stating the amount you'll need to deduct.

More info: [www.dol.gov/agencies/whd/wage-garnishment](http://www.dol.gov/agencies/whd/wage-garnishment)

rules, including the Opportunity to Work Ordinance.

According to FAQs on the ordinance, businesses that have 36 or more employees and that meet other requirements must offer additional work hours to part-time employees before hiring new workers or even using temporary staffing services.

Be sure to count both full-time and part-time employees when determining if your company has met the threshold for 36 employees.

More info: [bit.ly/sanjose645](http://bit.ly/sanjose645)

## REAL PROBLEMS, REAL SOLUTIONS

### How we reduced unclaimed paychecks to zero

The number of unclaimed paychecks we had to declare in our unclaimed property report to the state used to be in the hundreds.

It got even more complicated because the checks were for temporary employees who often moved after the end of their assignments.

These individuals would sometimes forget to leave a forwarding mailing address for us.

By the time we realized we had unclaimed property, the official addresses we had on file for those workers would be out of date.

We needed to come up with a plan

to get those paychecks where they belonged.

#### An alert from their flagged file

We started by making a list of all employees with unclaimed paychecks and turned that information into a spreadsheet.

That allowed us to sort the list by employees who were currently working for us.

For active-status workers, we'd void the check and transfer the funds to them by direct deposit or a payroll card, which works like a debit card, loaded with the outstanding income.

In cases where mailing the check would be a dead end, we'd flag the personnel files for those employees.

Many of our temporary employees return to work for us at a later date. When they do, an alert pops up from their flagged personnel file. Then we personally let them know there's a check waiting for them.

This process is so successful that we eventually eliminated all unclaimed paychecks. The next step is working on eliminating paper checks!

(Brinna Rischen, accounting manager, FirstFruits Farms, Prescott, WA)

## Direct deposit popularity is high, but Payroll faces new challenges

### ■ SOLUTIONS FOR OPTIMIZING THE ELECTRONIC PAYMENT METHOD

Most Payroll practitioners don't have to struggle to get employees to sign up for direct deposit the way they did in the past.

Indeed, 96% of respondents said they receive their wages through direct deposit, according to the latest Getting Paid in America Survey from the American Payroll Association.

But with participation rates that high, Payroll is facing a new set of challenges. In honor of direct deposit month (May), we'll take a look at how Payroll can overcome the current obstacles involved with offering the electronic payment method.

### Dealing with employees and banks

First, you know getting accurate account and routing numbers from new hires is important. But what if you're dealing with someone who's working remotely and perhaps being onboarded off-site?

Instead of requiring a voided check from employees who are ready to

sign up for direct deposit, you could encourage them to verify their bank info as they're filling out the form – for example, they could utilize online and mobile banking.

Second, even if employees fill out your direct deposit form correctly, you can still run into problems, and you may need to contact your company's financial institution.

Reason: Originating banks need to regularly update their routing number validation tables. When they don't do that, they don't have up-to-date info about receiving banks.

Third, you can successfully get someone set up – but down the road that person will switch banks or close an account. Informing Payroll about these types of changes doesn't usually cross employees' minds. Instead, you might find out from your bank about transaction problems.

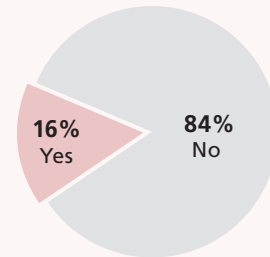
In addition to asking the employee to fill out a new direct deposit form, request that your bank return the funds to you ASAP so you can then re-issue the direct deposit.

Fourth, if you catch a mistake with

## WHAT PAYROLL PROS TOLD US

### Retirement intentions

Do you intend to stop working completely at retirement age?



Source: Mercer's 2022 Global Talent Trends Study

The full retirement age for someone born in 1960 or later is 67. Individuals waiting until age 70 to receive Social Security benefits get an 8% delayed retirement credit.

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

someone's pay early enough, you may be able to do a direct deposit reversal.

Nacha updated its rules on reversals last year, so double-check your formatting. For example, certain fields in the reversal – company ID, standard entry class code and amount – must be identical to the original.

More info: [bit.ly/directdeposit645](https://bit.ly/directdeposit645)

## SHARPEN YOUR JUDGMENT – THE DECISION

(see case on Page 2)

No, the employer lost.

The former employee had sued after the employer failed to pay her \$8,952.15 in accrued vacation time on her last day of work.

Under Massachusetts law, when an employee involuntarily separates from employment, that person must be paid in full on the day of discharge.

The definition of wages, according to The Wage Act, includes "any holiday or vacation payments due an employee under an oral or written agreement." Therefore, the employer should have paid the full \$8,952.15 on the employee's final day – no one disputed that.

The question was how much the employer owed for making the payment three weeks late.

The former employee hired a lawyer who told the company it owed triple damages, plus attorney's fees.

After subtracting the vacation payout already made to the former employee, that amounted to \$23,890.40. Instead of paying that amount, the employer paid the former employee triple interest, which added up to much less: only \$185.42.

The case went all the way to the Massachusetts Supreme Judicial Court, where the company lost its battle.

### Analysis: Consider a temporary suspension

Certain employee missteps, such as larceny, may be immediate grounds for dismissal at your company. But before you tell anyone they're fired, make sure you're ready to comply with state law regarding termination pay, including any paid-time-off payouts they're due.

In some situations, HR may decide to suspend someone temporarily until your company can get its paperwork and processes in order.

Cite: *Reuter v. City of Methuen*, No. SJC-13121, Massachusetts Supreme Judicial Court, 4/4/22. Note: Dramatized for effect.



## Industry news you can use

### ■ Not a fish tale: This type of compensation's exempt from UI

According to a new law, SB 3501, New Jersey exempts certain services of **commercial fishermen** from the state's unemployment insurance (UI) law. The legislation took effect Jan. 10, 2022.

Specifically, the exemption applies if the commercial fisherman's compensation is comprised solely of a percentage of:

- fish caught, or
- proceeds from the sale of the catch.

**More info:** [www.njleg.state.nj.us/bill-search/2020/S3501](http://www.njleg.state.nj.us/bill-search/2020/S3501)

### ■ New payroll responsibilities if you pay these drivers in WA

In Washington, Payroll pros at **transportation network companies** may want to prepare for increased responsibilities next year.

According to HB 2076, drivers at companies like Uber and Lyft must be paid a minimum wage. The complex rates will differ based on

the population of the city – whether small (600,000 or less) or large (over 600,000). The rates will be adjusted annually, being tied to the state minimum wage.

In addition, companies will need to provide drivers with a written notice on a weekly basis. Among the info to be included: driver's gross payment. That must be itemized by rate per minute, rate per mile and any other method used to calculate pay.

**More info:** [bit.ly/transportation645](http://bit.ly/transportation645)

### ■ Survey will help DOL set prevailing wage rates

The federal Dept. of Labor (DOL) has asked for input from Nevada **highway construction** employers.

Even if your company doesn't work on federally funded projects, you can help set accurate prevailing wage rates by participating in a survey. It covers the period from Aug. 1, 2020, to July 31, 2021.

**More info:** [www.dol.gov/newsroom/releases/whd/whd20220407](http://www.dol.gov/newsroom/releases/whd/whd20220407)

## 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:*

### Do we need to make the same contribution amounts to HSAs?

**Q:** We offer health savings accounts (HSAs) and plan to start making employer contributions. Do the amounts need to be the same for everyone?

**A:** For employees facing the costs of high deductible health plans (HDHPs), the chance to make pre-tax contributions to an HSA can bring financial relief – even better when employers agree to contribute as well. If you don't offer the HSA under a Sec. 125

plan, then either the dollar amount or the percentage of the HDHP's annual deductible limit must be the same when making contributions for comparable participating employees. Here's a quick checklist for determining who's comparable: 1. Employees are covered by your HDHP with eligibility to set up HSAs. 2. They have the same category of coverage – i.e., either self-only or family coverage. 3. They're assigned the same employment type. Beyond PT or FT, another category is former employee.

**More info:** [www.irs.gov/pub969](http://www.irs.gov/pub969)

Send questions to [jweiss@HRMorning.com](mailto:jweiss@HRMorning.com). Because of the volume of mail we receive, we regret we can't answer all submissions.

## WHERE TO GET HELP

### RECENT CHANGES TO FEDERAL FORMS AND PUBLICATIONS

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

- Publication 4450, *Congressional Budget Justification & Annual Performance Report and Plan*. Revised March 2022. Posted 4/7/22.
- Form 14039, *Identity Theft Affidavit*. Revised March 2022. Posted 4/12/22.
- Publication 5632, *Overview of Form 1024 E-Filing Course: Text Version*. Revised April 2022. Posted 4/13/22.
- Publication 3067, *IRS Disaster Assistance Federally Declared Disaster Area*. Revised April 2022. Posted 4/14/22.
- Publication 5084. *Congressional Update News for members of Congress and their staffs* – April 2022. Revised April 2022. Posted 4/14/22.
- Publication 5592, *Troubleshooting Tips – LB&I Audits*. Revised April 2022. Posted 4/20/22.
- Form 12339, *Internal Revenue Service Advisory Council Membership Application*. Revised April 2022. Posted 4/20/22.
- Publication 5640, *Tax Withholding Estimator: A powerful Online Tool for Small Businesses*. Revised April 2022. Posted 4/21/22.

### 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

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**ARIZONA**

- **INTERNAL REVENUE CODE:** Due to SB 1264, when state law mentions the Internal Revenue Code (IRC), that's now referring to the IRC of 1986 as amended and in effect on Jan. 1, 2022. **More info:** [www.azleg.gov/legtext/55leg/2R/laws/0041.pdf](http://www.azleg.gov/legtext/55leg/2R/laws/0041.pdf)

**MAINE**

- **VACATION PAYOUT:** Starting Jan. 1, 2023, private employers with more than 10 employees will need to comply with a new law, LD 255 (HP 160). Unused, accrued vacation time, given according to an employer's policy, must be paid to the employee when his or her employment ends. However, a collective bargaining agreement that addresses vacation payouts at termination would supersede the new requirements found in Maine's statute on the cessation of employment. The changes don't apply to public employers. **More info:** [bit.ly/maine645](http://bit.ly/maine645)

**NEW YORK**

- **PAY DATA REPORT:** New proposed legislation says employers should provide workforce demographics and equity measurements annually. The American Payroll Association (APA) recently submitted comments on A1955 and S2777. In the March 2022 comments to state legislators, APA expressed concern about the "expansive data requirements." For example, employers would need to indicate details such as whether they offer employees flexible scheduling, the ability to work from home or the option

of bringing children to work. **More info:** [bit.ly/newyork645](http://bit.ly/newyork645)

**SOUTH CAROLINA**

- **NEXUS:** In South Carolina, the Dept. of Revenue wants to put its temporary nexus relief back in place – it'd expired on March 13, 2022. According to a draft revenue ruling, the relief would be in effect retroactively and would extend to June 30, 2022. If the revenue ruling is finalized, that'd mean if an employee has a temporary change of a work location during the COVID-19 relief period, you wouldn't need to worry about the state's withholding requirements for that person. **More info:** [bit.ly/southcarolina645](http://bit.ly/southcarolina645)

**UTAH**

- **NEW HIRES:** Some private employers that have been required to use E-Verify or another status verification system no longer need to do so for new hires. Thanks to HB 252, the threshold changed from 15 to 150 employees, as of May 4, 2022. **More info:** [le.utah.gov/~2022/bills/static/HB0252.html](http://le.utah.gov/~2022/bills/static/HB0252.html)

**VIRGINIA**

- **OVERTIME:** The Virginia Overtime Wage Act, which went into effect in 2021, contained some difficult steps related to calculating overtime. But as of July 1, 2022, the state will follow the Fair Labor Standards Act's (FLSA's) overtime requirements as it did in the past. That's thanks to SB 631. **More info:** [bit.ly/virginia645](http://bit.ly/virginia645)

**WASHINGTON**

- **PAID LEAVE:** SB 5649 modifies Washington state's Paid Family and Medical Leave (PFML) Act, effective June 9, 2022. Paid leave benefits used in the postnatal period – i.e., the first six weeks after birth – by an employee whose pregnancy results in incapacity must be

considered medical leave unless the employee chooses to use family leave. Another change made to the PFML relates to bereavement leave. This leave can be taken during the seven calendar days following the death of a child whose birth or adoption occurred within the last year. **More info:** [bit.ly/washington645](http://bit.ly/washington645)

- **QUARTERLY REPORTING:** Get ready to add new info to your quarterly UI reports. The Standard Occupational Classification (SOC) code will need to be included with fourth quarter 2022 reports. The federal coding system is used by a variety of parties, including government agencies and employers that want to set salaries. Incorrect or incomplete SOC code reporting could lead to penalties. However, the Employment Security Dept. is offering help to employers at [socreporting@esd.wa.gov](mailto:socreporting@esd.wa.gov). **More info:** [esd.wa.gov/employer-taxes/about-soc](http://esd.wa.gov/employer-taxes/about-soc)

**THE LIGHTER SIDE**

Meet Walter Orthmann. He turned 100 this year – and that's impressive enough. But there's another feat the Brazilian man accomplished in 2022, which earned him a Guinness World Record.

He's been employed by the same company for more than 84 years.

At age 15, Orthmann started at the textile company ReneauxView. Then, it was known as Industrias Renaux S.A., and he went to work to help support the family. That's what kids did back then, he explained.

He clearly values hard work.

Of course, with that many years of service, let's hope for the company's sake that there's a cap on how much unused vacation time can be rolled over from year to year.

**Cite:** UPI, "100-year-old man celebrates 84 years working for the same company," [bit.ly/longevity645](http://bit.ly/longevity645)