

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

June 1, 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.

### ■ FORM 1099-MISC USED TO REPORT PAYMENTS

**Item:** 1099-MISC, *Miscellaneous Information.*

**Background:** The IRS requires payers to use this form to report payments of \$600 or more of rents; prizes and awards; medical and health care payments; nonemployee compensation and other types of payments.

**Comments due:** 6/28/22.

**Cite:** *Federal Register*, 4/29/22.

### ■ NOTICE REQUIRED UNDER AFFORDABLE CARE ACT

**Item:** Treasury Decision 9951, *Patient Protection and Affordable Care Act Patient Protection Notice.*

**Background:** Health plan sponsors and issuers must notify certain individuals of their rights, such as to choose a primary care provider when a plan or issuer asks them to designate a primary care physician.

**Comments due:** 6/15/22.

**Cite:** *Federal Register*, 4/14/22.

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

## Filing forms in 94x series on paper? Report calls for changes

### ■ IRS needs to make e-filing tax returns easier

If you decide to file Form 941 electronically, you'll have to jump through several hoops first – and that's a deal breaker for many employers, according to a new report.

In its May 2022 report, the Treasury Inspector General for Tax Administration (TIGTA) referred to the current process as “burdensome.”

The IRS will need to make changes, TIGTA said, if the e-filing rate for employment tax returns is going to increase from the current 49% (compare that with 93% for individual tax returns).

#### 4-step process

Under the current system, to e-file forms in the 94x series you must:

1. Purchase IRS-approved commercial software.
2. Apply for an IRS-issued Personal Identification Number (PIN). Then wait. The IRS may take 45 days after receiving the application to process it.
3. Look for the PIN and Letter 3083, *94x On-Line Signature PIN Acceptance*, in the mail.
4. Return the Statement of Receipt, found in Letter 3083, by mail. Be prepared to wait again, because once the IRS processes the Statement of Receipt, it can take 14 days before the PIN is active. Although certain business tax

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

## \$963-per-day salary didn't guarantee FLSA exemption

The Supreme Court said it'll hear a case involving paying employees on a salary basis.

The employee in the case, *Hewitt v. Helix Energy Solutions Group*, was a highly compensated employee (HCE). He earned more than \$200K per year, well above the HCE amount required in Sec. 541.601 of the Fair Labor Standards Act (FLSA) regs.

The company computed his earnings on a daily basis – and quite generously, as he earned \$963 per day.

But despite his high annual and daily earnings, the company failed to pay him on a salary basis – so he

should have received overtime pay, the employee contended in his lawsuit.

#### Amount paid on a weekly basis

According to Sec. 541.604 of the FLSA regs, an employee's salary can't be reduced if that person works less than a full week. That's what the employer in the case did, though, the Fifth Circuit Court of Appeals ruled in 2021. The court noted the company would have been better off to pay \$4K on a weekly basis.

Now, we'll wait for the High Court to weigh in.

**More info:** [bit.ly/salarybasis646](https://bit.ly/salarybasis646)

## Workers who took 15-minute breaks should have been paid for that time

■ EMPLOYER OWED \$77K IN BACK WAGES AND DAMAGES

Every six hours, employees at Freddy's Frozen Custard & Steakburger clocked out and took 15-minute breaks.

No problem there.

But at the end of the pay period, that time wasn't counted as hours worked like it should have been for 213 employees.

Then, the Dept. of Labor (DOL) showed up for an investigation of the restaurants.

The DOL said the company, which had nine locations throughout Arkansas and Missouri, had violated the Fair Labor Standards Act.

For that, the employer had to pay \$38,495 in back overtime and \$38,495 in liquidated damage, the DOL determined.

Clearly, paying workers for the

breaks in the first place would have been better for the bottom line.

### How long does break time last?

Federal law doesn't require employers to offer breaks, whether "coffee breaks" (lasting about five to 20 minutes) or meal breaks (lasting 30 minutes or more).

The former must be paid, but the latter doesn't need to be.

Payroll may need to work with supervisors to ensure accurate records on the length of breaks.

Let's say you find out an employee has been exceeding the time allotted for short breaks. Then, under certain conditions, that time might not need to be counted as hours worked.

**More info:** [www.dol.gov/newsroom/releases/whd/whd20220504-0](http://www.dol.gov/newsroom/releases/whd/whd20220504-0)

### IRS ...

(continued from Page 1)

returns must be e-filed, the IRS can't require that method across the board due to the lack of legislation, TIGTA noted in *A Service-Wide Strategy Is Needed to Address Challenges Limiting Growth in Business Tax Return Electronic Filing*.

### Recent example

One advantage to e-filing is the IRS will send you confirmation that it's received your employment tax return.

A recent example proves the value of that. In *Seaview Trading, LLC v. Commissioner*, the Ninth Circuit Court of Appeals considered when a taxpayer had filed Form 1065.

According to *Seaview Trading, LLC*, it'd filed the form on paper when it was originally due, in 2001. But the IRS had no record of receiving it.

As part of a later audit, the company provided a copy of the form in 2005 – that's when the return was filed, the court ruled last month.

**More info:** [bit.ly/electronic646](http://bit.ly/electronic646)

## 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.*

### ■ EMPLOYMENT AGREEMENT VALIDATED \$0 FINAL CHECK?

"With the labor market being tight, we really had no choice but to offer training new hires to do the job," HR Manager Cheryl Jones told Payroll Manager Pat Gray.

"Yes," said Pat, "and we've been able to bring in some great people who otherwise wouldn't have been qualified for the job."

"But," she added, "that employment agreement we had them sign makes me nervous."

"Why's that?" asked Cheryl.

"It's the part about recouping up to \$500 from their final paycheck to cover the cost of the training if they don't stay a full year with us," Pat explained.

"For example," Pat went on.

"I'm working on Jim Thompson's last check right now. If I take taxes, his 401(k) contribution and \$398.19 in training repayment out of his check, that brings it to \$0."

### Employee signed it

"I wish we didn't have to let Jim go after five months," Cheryl sighed. "But he signed the employment agreement just like everyone else. It wouldn't be fair to other people if we changed the rules just for him."

"Besides," Cheryl noted, "he's leaving us with training under his belt, so he's better off."

But when the former employee received his final paycheck, he sued, saying the employer failed to pay wages according to federal law and Louisiana law. The employer fought back. Did it win?

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

From: **HR MORNING** **KEEP UP TO DATE ON PAYROLL**

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## Form I-9 revisions in the works, says USCIS: Here are expected changes

■ REDUCTION IN PAGES WOULD EASE STORAGE BURDEN ON EMPLOYERS

Form I-9 may look different soon. That's because U.S. Citizenship and Immigration Services (USCIS) plans to revise the form, which is set to expire on Oct. 31, 2022.

USCIS recently proposed changes and announced it'd accept comments from stakeholders for 60 days.

Here's what's being considered:

### Changes to form and instructions

First, the form would have fewer pages, which would reduce employers' need for storage.

Specifically, Section 1 (which employees fill out) and Section 2 (which employers fill out) would be compressed.

Next, Section 3 would go through an overhaul. It'd become *Reverification and Rehire Supplement*, containing three separate areas to enter reverifications and rehires.

Employers would use this section within three years from when the employee first filled out Form I-9.

Employers would print and use this section only if needed, further

contributing to the reduced use of paper and need for storage.

*Lists of Acceptable Documents*, found on page three of the current I-9, would include links to:

- List C documents issued by the Dept. of Homeland Security, and
- acceptable receipts listed in 8 CFR Sec. 274a.2.

Another change USCIS included in its notice involved the instructions for Form I-9.

The instructions accompanying the current version of the form are lengthy – 15 pages. USCIS would like to see that reduced to seven pages. Again, a reduction in paper would result, the agency pointed out.

Finally, the notice called for electronic PDF enhancements. That way, Form I-9 could be completed on all electronic devices and wouldn't be software-dependent.

### Next steps

After the 60-day comment period ends on May 31, 2022, USCIS will ask for another round of comments.

That time, employers will have only 30 days to voice their thoughts.

More info: [bit.ly/verification646](https://bit.ly/verification646)

## New minimum wage for federal contractors challenged

Due to Executive Order 14026, *Increasing the Minimum Wage for Federal Contractors*, individuals performing work on (or in connection with) covered federal contracts have to be paid at least \$15 per hour.

But some states are fighting that.

### 8 states taking legal action

First, the attorneys general from Arizona, Idaho, Indiana, Nebraska and South Carolina filed a lawsuit on Feb. 8, 2022, challenging the federal wage hike in *Arizona v. Walsh*.

Next, the state of Texas filed

a lawsuit on Feb. 10, 2022. Louisiana and Mississippi joined with Texas, asking a federal district court to put a stop to the wage mandate.

That lawsuit, *Texas v. Biden*, cites two Congressional Budget Office reports which indicate that a minimum wage increase would lead to a reduction in employment.

The Dept. of Labor's regs, which implemented the executive order, took effect on Jan. 30, 2022.

So, the \$15 per hour rate stands for now.

More info: [bit.ly/fedcontractors646](https://bit.ly/fedcontractors646)

## NEWS YOU CAN USE

### ■ SEVERAL CHANGES COMING TO MEDICAL SUPPORT NOTICE

You may notice that the National Medical Support Notice soon looks a little different.

The Dept. of Labor's (DOL's) Employee Benefits Security Administration plans to make minor revisions to Part B. For example:

An addendum adds space to list children who are no longer eligible for coverage due to their age.

Instructions state that the Plan Administrator Response should be sent to the child support agency that issued the form. That's to keep the response from going to the DOL.

More info: *Federal Register*, 4/20/22.

### ■ CARES ACT PROVISION FOR RETIREMENT PLANS REMAINS

Employees needing to take loans from their retirement plans – as allowed under the Coronavirus Aid, Relief, and Economic Security (CARES) Act – can continue to use an electronic system when providing their signature.

That's because the IRS has extended its temporary relief from the physical presence requirement through Dec. 31, 2022.

Normally, participant elections like that need to be witnessed in the physical presence of a plan representative or notary public.

More info: [www.irs.gov/pub/irs-drop/n-22-27.pdf](https://www.irs.gov/pub/irs-drop/n-22-27.pdf)

### ■ SURVEY REVEALS UPTICK IN ACH DEBIT PAYMENT FRAUD

Payment fraud via ACH debits is on the rise, according to a 2022 survey from the Association of Finance Professionals.

In 2021, 37% of respondents said they'd experienced this type of fraud, up from 33% the year before.

Check fraud, though, remained unchanged at 66%.

More info: [bit.ly/fraud646](https://bit.ly/fraud646)

## TEST YOUR KNOWLEDGE

### ■ OT: What can be excluded from the regular rate of pay?

The Dept. of Labor's final rule on the regular rate of pay, which took effect in 2020, provides clarity for Payroll pros doing OT calculations.

Test your knowledge by answering *True* or *False* to the following questions:

1. An employee-of-the-month bonus is likely discretionary and therefore can be excluded from the regular rate of pay.
2. While tuition payments may be an excludable perk, that's for employees only and not their family members.
3. "Show-up pay" refers to compensation for when an employee reports to work as scheduled but is sent home early because there isn't sufficient work – you must include this in your overtime calculations.
4. Gifts such as coffee cups can be excluded.

## ANSWERS

1. *True.* That's one example given in the final rule of bonuses that may be discretionary. Some other examples include severance bonuses and bonuses for overcoming challenging or stressful situations.
2. *False.* Payments made for family members' tuition typically don't need to be counted when calculating overtime. The payments may even be made to a student-loan repayment program.
3. *False.* Also called "reporting pay," these types of payments can be excluded as long as they're infrequent and sporadic.
4. *True.* T-shirts and raffle prizes can be excluded, too.
- More info:** Dept. of Labor PowerPoint presentation, "Regular Rate Final Rule," [bit.ly/overltime646](https://www.dol.gov/eis/whd/overltime646)

Answers to the quiz:

## 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.*

Labor, Wage and Hour Division, Atlanta regional office.

### **Texas builder owed employees \$163,648**

**Employer:** Northland Development of Texas Inc., Frisco, TX.

**Business:** Residential builder.

**Law broken:** Overtime and recordkeeping provisions of the Fair Labor Standards Act.

**Type of violation:** Paid straight time instead of overtime and deducted more time than taken for lunch.

**Penalty:** \$163,648 in back wages owed to 47 workers.

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

### **Warehouse workers didn't receive time-and-a-half**

**Employer:** DRE Health Corp., operating as DRE WorldMask USA Ltd., Overland Park, KS.

**Business:** Global medical products manufacturer.

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

**Type of violation:** Wrongfully classified warehouse workers in Orange County, CA, as independent contractors and failed to pay them for overtime hours they worked.

**Penalty:** \$79,048 in back wages and an equal amount in liquidated damages for 91 workers, plus \$4,936 in penalties.

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

### **During the summer, teens' hours went past 9 p.m.**

**Employer:** JJ Pizza Service LLC and S&S Pizza LLC, both operating as Little Caesars in Antioch, Columbia, Franklin and Nashville, TN.

**Business:** Restaurants.

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

**Type of violation:** Didn't account for all hours worked, which resulted in minimum wage and overtime violations. Also, during a school week, 15-year-old employees worked after 7 p.m. and more than 18 hours per week. When school wasn't in session, they worked past 9 p.m. and more than 40 hours per week.

**Penalty:** \$1,625 in back wages for 21 workers, plus a \$161,050 civil penalty.

**Government office:** Dept. of

### **Failed to display H-2A employee rights poster**

**Employer:** Reyes Nature Greens, Independence, VA.

**Business:** Farm.

**Law broken:** Immigration and Nationality Act's H-2A temporary agricultural workers visa program.

**Type of violation:** Workers received less than \$11.46 per hour, the adverse effect wage rate. Reyes Nature Greens missed payrolls and didn't provide copies of pay statements. The company failed to display the *Employee Rights Under the H-2A Program* poster.

**Penalty:** \$19,988 in back wages for 20 temporary agricultural workers and \$36,000 in civil penalties.

**Government office:** Dept. of Labor, Wage and Hour Division, Pittsburgh, PA, district office.

## Tracking local laws and regs

### ■ Pre-tax paycheck deduction for commuting to this city

Legislation has been introduced in Philadelphia that'd require employers to offer commuter benefits on a pre-tax basis.

That'd include mass transit – and bicycle expenses, too, if authorized on the federal level.

Employers with 50 or more full-time employees in Philadelphia would need to comply.

More info: [bit.ly/philadelphia646](http://bit.ly/philadelphia646)

### ■ In New Mexico, 5 counties have extra time to make tax deposits

Several counties in New Mexico will receive tax relief after experiencing wildfires and straight-line winds on April 5, 2022.

After the Federal Emergency Management Agency issued a disaster declaration, the IRS granted deadline extensions to these counties: Colfax, Lincoln, Mora, San Miguel and Valencia.

Among the tax relief measures, businesses in affected locations won't have to pay penalties as long as payroll and excise tax deposits are

made by Aug. 31, 2022.

More info: [bit.ly/newmexico646](http://bit.ly/newmexico646)

### ■ As July 1 approaches, more CA cities increase minimum wage

In Berkeley, CA, employers will see the minimum wage rate increase from \$16.32 to \$16.99 on July 1, 2022.

The minimum wage will go up in Malibu, CA, on July 1, 2022. The rate will be \$15.96, reflecting a 6.4% cost of living adjustment.

On July 1, 2022, the Milpitas, CA, minimum wage rate will jump up to \$16.40 per hour. Currently, it's set at \$15.65.

More info: [bit.ly/berkeley646](http://bit.ly/berkeley646)

### ■ Training offered to explain Seattle's Payroll Expense Tax

The Seattle Dept. of Finance and Administrative Services is offering online training which covers the payroll expense tax.

The next training for the so-called JumpStart Seattle tax is scheduled for June 15, 2022.

For example, it'll cover how the tax is assessed and help you determine your tax liability.

## PRODUCTIVITY BOOSTERS

### ■ How to send a fax when you don't have a fax machine

Need to send or receive a fax, but don't have access to a fax machine – perhaps because you're working remotely? Here are two options.

#1. Check into Voice over Internet Protocol (VoIP). Your organization may be utilizing a hosted VoIP that offers eFax as an available service.

#2. The web-based fax platform, [efax.com](http://efax.com), lets you send digital documents. You can also receive faxes sent to your email.

Cite: Virginia Society of CPAs, [www.vscpa.com/article/simple-technology-tools-cpa-firms](http://www.vscpa.com/article/simple-technology-tools-cpa-firms)

More info: [www.seattle.gov/license-and-tax-administration/payroll-expense-tax](http://www.seattle.gov/license-and-tax-administration/payroll-expense-tax)

### ■ New York City legislation would bring scheduling restrictions

Legislation has been introduced in New York City that'd limit the hours home care aids can work.

Int. No. 0175-2022 says they could work 12 hours for any one shift or within any 24-hour period and 50 hours in a week.

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

## REAL PROBLEMS, REAL SOLUTIONS

### Designated someone who understood both Accounting and tech

In the past, when executives or project managers at our company needed an internal report, I handled that responsibility.

As my role in Accounting expanded, I saw the value of having another person within our department designated to do reporting, especially since there was such a technical side to it.

So, we made the change, and having this point person allowed our department to increase efficiency.

But we didn't stop there.

Day to day, we worked closely with IT as, of course, many people within

our company did. We relied on IT for a lot – administering hardware upgrades, troubleshooting firewall problems and so on.

And while IT did a great job, they didn't understand the ins and outs of Accounting's processes, and no one expected that of them.

Our department's appointed tech person *did* understand those finer details, though.

### Quick and knowledgeable

We realized that by growing her position – we called her our software specialist – we could take

our efficiency to yet another level. For example, whenever our enterprise resource planning software issues a fix that affects our department, she takes care of that.

She's able to respond quickly and knowledgeably. That means she can continue to configure and run reports for us.

Having a person who can grasp both Accounting and IT take on key tasks has been beneficial to our department and our entire company.

(Julia DiRusso, controller, Patterson & Dewar Engineers, Norcross, GA)

## Note these ACA responsibilities as retired workers rejoin workforce

■ SOME – NOT ALL – ARE NEW HIRES UNDER FEDERAL HEALTH CARE LAW

You just issued a retiring employee his or her final paycheck – or so you thought! In increasing numbers, employees who leave the workforce are deciding to return.

As of March 2022, 3.2% of workers who'd been in retirement the year prior were back on the job, according to analysis from the Indeed Hiring Lab.

This “unretirement” trend may be caused by a combination of waning pandemic concerns, high inflation and a hot labor market, as noted in an April 14, 2022, article.

### 3 scenarios to watch out for

Whatever the motivation of retired employees, if they walk back through the doors of your organization, there are some Payroll-related laws to consider.

One such law? The Affordable Care Act (ACA).

You'll need to determine whether the employee is a “new hire” or

a “continuing employee.” That’s important because to maintain compliance with the ACA, you may need to offer certain re-hires health benefits immediately.

So, you should be prepared for three different scenarios, as recently laid out by Ascensus:

**1. An employee returns after 13 or more weeks.** This person would be a new hire.

If the employee is a variable hourly worker or a part-timer, you have until the end of the designated measurement period to start offering coverage. With a full-time employee, the same rules apply as with any other new hire.

**2. An employee returns after less than 13 weeks.** As a continuing employee, the worker would need to be offered coverage on the first day of reemployment.

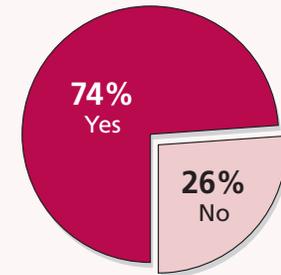
There are some exceptions, though, explains Ascensus.

For example, the ACA’s Rule of Parity states that if the returning individual’s employment gap was longer than the period they worked before leaving your organization,

## WHAT PAYROLL PROS TOLD US

### Mileage reimbursement

Does your company offer vehicle-related benefits?



Source: WorldatWork 2022 Vehicle-Related Benefits Pulse Poll, 189 surveyed

Rising gas prices may be the reason some employers said they’re being more generous to employees when it comes to mileage reimbursement.

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

they’re considered a new hire.

**3. An employee was in a stability period on their last day.** The worker would be placed back into the ongoing eligible stability period.

Your company should be prepared to offer that person health benefits under the ACA.

More info: [bit.ly/laca646](https://bit.ly/laca646)

## SHARPEN YOUR JUDGMENT – THE DECISION

(see case on Page 2)

No, the employer lost.

The employer had asked the employee to sign an employment agreement. It said if his employment ended before the one-year mark, up to \$500 could be deducted from his final paycheck for training costs.

The company fired the employee before he’d worked there for one year. His final paycheck included deductions of \$389.19 to recoup the training costs plus taxes and a 401(k) contribution. So, his final paycheck equaled \$0.

He claimed the employer had failed to follow the Fair Labor Standards Act (FLSA) by not paying at least the minimum wage for all hours worked. Even though his employment agreement clearly stated that the cost of training would need to be repaid under certain circumstances, the employer wasn’t off the hook from paying at least \$7.25 per hour.

The employer also owed wages under the Louisiana

Wage Payment Act (LWPA), which prohibits employers from asking employees to sign contracts forfeiting their wages if their employment ends before the contract is completed.

All told, the amount the employer owed included:

- \$158.89 in unpaid wages and an equal amount in liquidated damages under the FLSA
- \$239.30 in unpaid wages and \$10,562.00 in penalty damages under the LWPA, and
- \$12,950.00 in attorney’s fees.

### Analysis: Changes to employment agreements

Review any employment agreements your company has.

While the wording may be crystal clear and you may have employees’ signatures on file, if there’s a risk employees won’t be paid the wages due them under federal and state law, work with HR to make changes.

**Cite:** *Carver v. Capital Area Transit System*, Civil Action No. 21-281-RLB, U.S. D.C., M.D. Louisiana, 4/14/22. Note: Dramatized for effect.

## Industry news you can use

### ■ Incorrect entries appearing on form for H-2B workers

Before submitting Form ETA-9142B, *H-2B Application for Temporary Employment Certification*, check it carefully.

Reason: Some employers are either omitting the essential job duty or entering a fictitious job duty to obtain a lower prevailing wage rate when they fill out the form to hire **workers with H-2B visas**.

That's detrimental for the U.S. and H-2B workforce, the Dept. of Labor (DOL) said in Field Assistance Bulletin 2022-3. The workers' wages are lower than they otherwise would be.

**More info:** [www.dol.gov/sites/dolgov/files/WHD/fab/2022-3.pdf](http://www.dol.gov/sites/dolgov/files/WHD/fab/2022-3.pdf)

### ■ Poor color contrast among barriers to website accessibility

Is your website accessible to people with disabilities?

The Dept. of Justice recently released guidance on the application

of the Americans with Disabilities Act (ADA) to **state and local governments** and businesses open to the public.

An individual with disabilities may visit a government website to file tax documents – that's one example the ADA guidance provides.

Check your website for these and other barriers: poor color contrast, no caption on videos and mouse-only navigation.

**More info:** [beta.ada.gov/web-guidance](http://beta.ada.gov/web-guidance)

### ■ It's breaktime! Short-haul drivers included, says CA appeals court

The Federal Motor Carrier Safety Administration's hours of service regs preempt California rules, such as on meal and rest breaks.

That includes any rules pertaining to **short-haul drivers**, a California appeals court said in *Espinoza v. Hepta Run Inc., et al.*

**More info:** [www.courts.ca.gov/opinions/documents/B306292.PDF](http://www.courts.ca.gov/opinions/documents/B306292.PDF)

## 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 investigate unreported hours worked?

**Q:** Can we rely primarily on our payroll records when determining whether someone worked unscheduled hours? Employees carry work-related electronic devices which would allow us to investigate to uncover unscheduled hours they may not have reported.

**A:** If you have a procedure for employees to report unscheduled hours and they fail to utilize that, you don't have to take

impractical steps to figure out when they may have worked, the Dept. of Labor's Wage and Hour Division said in Field Assistance Bulletin 2020-5. For example, your company may have access to non-payroll records, such as phone logs. The records may even show that employees spent time on cell phones or other work-issued electronic devices. But you don't have to sort through the information to determine if they worked beyond the hours they reported to you.

**More info:** [www.dol.gov/sites/dolgov/files/WHD/legacy/files/fab\\_2020\\_5.pdf](http://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fab_2020_5.pdf)

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.

- Form 4461-C, *Application for Approval of Standardized or Nonstandardized 403(b) Pre-Approved Plans*. Revised April 2022. Posted 4/21/22.
- Publication 5249, *Fingerprint Card Instructions*. Revised April 2022. Posted 4/26/22.
- Publication 5640, *Tax Withholding Estimator*. Revised April 2022. Posted 5/2/22.
- Publication 1187, *Specifications for Electronic Filing of Forms 1042-S, Foreign Person's U.S. Source Income Subject to Withholding*. Revised May 2022. Posted 5/4/22.
- Publication 5642, *Which Employers Are Eligible for the Work Opportunity Tax Credit?* Revised April 2022. Posted 5/7/22.
- Publication 5643, *Virtual Currency*. Revised May 2022. Posted 5/10/22.
- Publication 560, *Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)*. Revised 2021. Posted 5/11/22.
- Publication 5644, *E-File is Available for Federal Payroll Tax Forms*. Revised April 2022. Posted 5/11/22.
- *Instructions for Form 720, Quarterly Federal Excise Tax Return*. Revised June 2022. Posted 5/12/22.

### 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

*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

- **DATA PRIVACY:** The Workplace Technology Accountability Act, which has been introduced, would restrict how employers use data about employees. For example, the law would restrict the use of biometric data. **More info:** [bit.ly/california646](http://bit.ly/california646)

### KENTUCKY

- **INCOME TAX:** Now that a substitute to HB 8 has become law, the individual income tax rate will be reduced by 0.5% if two conditions are met – they're related to the Budget Reserve Trust Fund and the General Fund. If the conditions are met for FY 2021, the current 5% tax rate would drop to 4.5% on Jan. 1, 2023. Another 0.5% reduction is also likely for 2024, according to the Tax Foundation. **More info:** [taxfoundation.org/kentucky-income-tax-reform](http://taxfoundation.org/kentucky-income-tax-reform)

### MAINE

- **FORM W-2:** Maine Revenue Services has amended Rule 803, *Income Tax Withholding Reports and Payments*, according to an April 2022 update. As of Jan. 31, 2022, an employer that fails to furnish Form W-2 or willfully provides a return that's false or fraudulent is subject to a penalty of \$50 per return. **More info:** [bit.ly/maine646](http://bit.ly/maine646)

### OHIO

- **PRE- AND POST-SHIFT WORK:** Thanks to SB 47, starting July 6, 2022, state law will be in line with the federal Portal-to-Portal

Act. That means employers won't need to pay overtime for certain activities – such as walking, riding or traveling to and from the place where employees will perform their principal tasks. **More info:** [bit.ly/ohio646](http://bit.ly/ohio646)

### OREGON

- **MINIMUM WAGE:** As of July 1, 2022, the state's minimum wage rates will be increasing. The Standard rate will be \$13.50 (up from \$12.75). The Nonurban Counties rate will be going up to \$12.50 (from \$12). The Portland Metro rate will also be higher – it'll be \$14.75 (increasing from \$14). **More info:** [www.oregon.gov/boli/workers/Pages/minimum-wage-schedule.aspx](http://www.oregon.gov/boli/workers/Pages/minimum-wage-schedule.aspx)

### RHODE ISLAND

- **INDEPENDENT CONTRACTORS:** The stakes will get much higher for Rhode Island employers that misclassify employees as independent contractors if H 7677 becomes law. Knowing or willful instances of worker misclassification would go from a misdemeanor to a felony. Likewise, wage theft over \$1,500 would be a more serious crime. **More info:** [bit.ly/penalties646](http://bit.ly/penalties646)

### VIRGINIA

- **CHILD SUPPORT:** HB 808 clarifies what's allowed when you receive a child support order for an employee. The law says that as of July 1, 2022, an employer can charge an administrative fee of up to \$5 for each reply or remittance for an employee. The fee can be charged and withheld from the employee's income in addition to the child support order amount. The current wording is "\$5 fee." **More info:** [bit.ly/childsupport646](http://bit.ly/childsupport646)
- **INTERNAL REVENUE CODE:** HB 971 advances – from Dec. 31, 2020 to Dec. 31, 2021 – Virginia's

date of conformity to the terms of the Internal Revenue Code. For one thing, this allows the state to generally conform to the American Rescue Plan Act of 2021. **More info:** [bit.ly/Virginia646](http://bit.ly/Virginia646)

### WASHINGTON

- **PAYCHECKS:** Due to HB 1794, if a payment of wages is returned for nonsufficient funds, the employer must reimburse the employee for any fees charged by the financial institution, but the employee has only 30 days to submit proof to the employer. Note: If the employer obtains written confirmation from the employee's financial institution that the payment was returned for nonsufficient funds due to an error, then the employer is off the hook for any fees. The effective date of the legislation is June 9, 2022. **More info:** [bit.ly/washington646](http://bit.ly/washington646)

## THE LIGHTER SIDE

Bad news from the New York Lottery: A Mega Millions host recently called a wrong number.

That resulted in the publication of an incorrect Mega Ball number – plus, some disappointed players who thought they were winners.

The number drawn? 9.

But the host said 6.

Prize payouts have been temporarily suspended, and while the issue's being resolved, players should hold on to their May 10, 2022, tickets.

In our opinion, the New York Lottery should have a Payroll pro announce lottery numbers from now on.

Less likelihood of human error!

**Cite:** [abc7NY.com/megamillions-results-numbers-mega-millions/11837974](http://abc7NY.com/megamillions-results-numbers-mega-millions/11837974)