

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™

June 15, 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.

### ■ QUARTERLY RETURN DUE TO IRS FOR EXCISE TAXES

**Item:** Form 720, *Quarterly Federal Excise Tax Return*.

**Background:** Businesses use the form to report tax liability by IRS number and pay the taxes listed on the form.

**Comments due:** 7/22/22.

**Cite:** *Federal Register*, 5/23/22.

### ■ DEFERRED VESTED BENEFITS UNDER ERISA PLANS

**Item:** Form 8955-SSA, *Request for Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits*.

**Background:** This form is used by plan administrators of employee benefit plans subject to the vesting standards under the Employee Retirement Income Security Act (ERISA). The form includes information, which is shared with SSA, about separated participants with deferred vested benefits under the plan.

**Comments due:** 8/1/22.

**Cite:** *Federal Register*, 5/31/22.

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

## Final paychecks: Prepared to meet demands of state laws?

### ■ What to include on a termination checklist

Even now when many companies would like to hire more employees, terminations can't be avoided – and for Payroll practitioners, neither can termination pay.

At the 2022 American Payroll Association Congress in Las Vegas, one session – *Managing Termination Pay* – looked closely at the topic.

Karen Ward and Laurel Serra, who presented the session, began by distinguishing between voluntary and involuntary terminations.

For a situation where an *employee* chooses to end a working relationship (voluntary termination), Payroll pros should consider having a standardized company policy.

Some advantages? You can make

sure you're compliant with all states and can implement a workflow.

There are many reasons an *employer* may choose to end a working relationship (involuntary termination). They include a violation of company policy, reduction in force, complete business closure and so on.

Be prepared to pay the employee at the time of termination, sometimes immediately or the next day, knowing there's extra scrutiny coming from state laws under these circumstances.

### Key info to gather

The presenters encouraged the use of a termination checklist for Payroll,

*(Please see Final paychecks ... on Page 2)*

## DOL guidance on mental health conditions and FMLA

You know employees may be able to take time off under the Family and Medical Leave Act (FMLA) for a serious health condition – and now the Dept. of Labor (DOL) has clarified that can include a mental health condition.

The info is presented in a fact sheet released in May 2022, *Mental Health and the FMLA*. In it, the DOL stated a mental health condition is a serious health condition when it requires inpatient care or continuing treatment by a healthcare provider.

Inpatient care might include an overnight stay in a hospital or other medical care facility, such as

a treatment center for addiction or eating disorders.

Continuing treatment could be for conditions that last three or more days or for chronic conditions, such as anxiety, depression and dissociative disorders.

### Tracking attendance

Remember, FMLA leave can't be counted against employees in points-based attendance policies.

So, ask HR to keep you in the loop when someone takes FMLA leave.

**More info:** [www.dol.gov/agencies/whd/fact-sheets/280-mental-health](http://www.dol.gov/agencies/whd/fact-sheets/280-mental-health)

## 3 strikes you're out – company has multiple problems with timesheets

■ FLSA RECORDKEEPING VIOLATIONS NOT FIXED, DOL LAWSUIT CLAIMS

Failing to maintain proper records – along with other Fair Labor Standards Act (FLSA) violations – landed an Arizona construction company in court.

The Dept. of Labor (DOL) had told Valley Wide Plastering Construction Inc. it needed to make changes to come into compliance with the law and even provided training to employees on timekeeping.

But the company's problems persisted, the DOL said in the lawsuit.

For example, employees' timesheets contained multiple trouble spots:

**#1: Erased entries.** In some cases, full days of work had been removed from timesheets – and considering that employees recorded their time worked using pencil and paper, that wasn't hard to do. Notably, the DOL

discovered that erased time often would have been overtime hours.

**#2: Inexplicable uniformity.** Entries looked like they'd been completed all at once, instead of one day at a time for the sake of accuracy.

**#3: Unmatched names.** The preprinted names on several timesheets didn't match employees' signatures.

### \$10K per employee, per workweek

The DOL asked the court for coercive sanctions – specifically, a \$10K fine to be paid to the court for each employee and each workweek affected by false records. But the court said it wouldn't go that far yet.

However, the court did say yes to the company reimbursing the DOL for timekeeping training, surveillance of the jobsites and other costs.

More info: [bit.ly/timekeeping647](http://bit.ly/timekeeping647)

## Final paychecks ...

(continued from Page 1)

incorporating some key information, such as:

- employee name, identification number, department and manager
- state worked in, exempt or nonexempt status
- termination date, final pay due date and final pay delivery method (e.g., direct deposit, live check, paycard)
- termination reason code, and
- data on hours worked, accrued vacation or paid time off and fringe benefits to impute.

Also, tax considerations come into play with certain types of termination pay. Take severance/dismissal pay as one example. You'd withhold federal income tax, FICA, FUTA and possibly state income tax, SUTA and local tax.

Another example is supplemental unemployment benefit pay. It's subject to federal income tax withholding but excluded from FICA and FUTA.

More info: [americanpayroll.org](http://americanpayroll.org)

## 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.*

### ■ WAS SHORT-TERM DISABILITY PLAN COVERED BY ERISA?

"Employees receive their full pay for four weeks and, after that, they get 75% of their normal compensation for up to 23 weeks," Payroll Manager Pat Gray explained to Ed Morrison, who'd been experiencing health problems.

"But bear in mind that to receive short-term disability benefits under our plan, you have to qualify," Pat added.

"Who makes that decision?" asked Ed. "If you knew how bad my back's been hurting – and there's a long list of other problems – you'd let me use these benefits ASAP."

### Paid the benefit through payroll

"I'm not the decision-maker," explained Pat. "In fact, our company outsources some of the process. We use one company that'll help you file a claim and another company that'll make an eligibility recommendation to us."

"How much will this short-term disability stuff cost me?" asked Ed, slowly getting up from his chair.

"No cost," answered Pat. "It's paid for out of the company's general assets. Also, employees get paid through the normal payroll."

"So I have to fill out timesheets even if I'm not here?" Ed asked.

"No," said Pat. "Don't worry, you'll get all the details if you qualify."

But Ed didn't qualify, so he sued under the Employee Retirement Income Security Act (ERISA) to get the benefits. The company fought back. Did it win?

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

From:  **KEEP UP TO DATE on PAYROLL**

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*Keep Up to Date on Payroll* (ISSN 1076-3309), issue date June 15, 2022, Vol. 29 No. 647, is published semi-monthly except once in December (23 times a year).

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## 5 most-common payroll law violations and how you can guard against them

■ FAIR LABOR STANDARDS ACT  
TRIPS UP MAJORITY OF COMPANIES

According to Dept. of Labor estimates, 70% of companies have fallen short with Fair Labor Standards Act compliance.

That stat may comfort you or scare you.

Either way, that's the reality Payroll practitioners are facing, noted Daniel Messeloff, Esq., speaking at the 2022 American Payroll Association Congress in Las Vegas.

In his session, *How to Avoid Payroll-Related Lawsuits, and What to Do If Your Company Has Been Sued*, he discussed the five most common payroll law violations.

### Nonexempt and exempt issues

They are:

**#1. Not paying nonexempt employees for all hours worked.** This can occur for many reasons, such as employees having access to technology after hours. Make sure nonexempt employees are paid for checking emails and responding to voicemails when they're not at work, said Messeloff.

**#2. Miscalculating overtime.** It's important to include all relevant pay

as part of the regular rate of pay for overtime purposes. Taking the time to carefully examine employees' earnings each pay period can help. Look for shift differentials, bonuses, commissions and other incentive payments, he explained.

**#3. Deducting for meal breaks.** One of the biggest trouble spots with this is automatic deductions. So, instruct employees to actually stop working during breaks, and train managers to not ask employees to do work during breaks. If you do automatically deduct, Messeloff noted, give employees a recourse to edit their time.

**#4. Misclassifying employees as exempt.** Focus on what employees actually do, and, he added, generate accurate job descriptions that you keep updated, to ensure exemptions meet the criteria.

**#5. Failing to keep accurate time records.** If you're using paper timesheets or Excel to track employees' time worked – as 62% of small businesses do – that can lead to costly errors, Messeloff warned. Look into software to track hours, the basis for wages and so on.

**More info:** [www.tuckerellis.com/people/daniel-l-messeloff](http://www.tuckerellis.com/people/daniel-l-messeloff)

## Form 5500: Changes to note for 2022 plan year

Companies that have pension and other employee benefit plans should know the IRS has revised the annual returns – and you'll need the new forms starting with the 2022 plan year.

The IRS and other government agencies announced on May 20, 2022, in the *Federal Register* that changes have been made to:

- Form 5500, *Annual Return/Report of Employee Benefit Plan*, and
- Form 5500-SF, *Short Form Annual Return/Report of Employee Benefit Plan*.

Returns are generally due seven months after the end of the plan year – so, for 2022, that'll be July 31, 2023.

### New codes to use

Among other changes, you'll notice several additions to the plan characteristics codes reported on line 8 of Form 5500 and line 9 of Form 5500-SF.

The new codes are in place to improve the data reported on defined contribution multiple employer plans, including pooled employer plans.

**More info:** [bit.ly/pension647](http://bit.ly/pension647)

## NEWS YOU CAN USE

### ■ IRS RAISES INTEREST RATES AGAIN FOR THIRD QUARTER

As expected, IRS has announced another increase in interest rates.

In Revenue Ruling 2022-11, the IRS listed third quarter rates. As of July 1, 2022, they'll be:

- 5% for overpayments (4% for corporations) – up from 4% and 3%, respectively
- 2.5% for the portion of an overpayment exceeding \$10,000 – up from 1.5%
- 5% for underpayments – up from 4%, and
- 7% for large corporate underpayments – up from 6%.

**More info:** [www.irs.gov/pub/irs-drop/rr-22-11.pdf](http://www.irs.gov/pub/irs-drop/rr-22-11.pdf)

### ■ NO CHANGES TO OVERTIME PAY REGS SO FAR IN 2022

The Dept. of Labor (DOL) hasn't yet issued proposed regs revising the overtime exemption, as the agency said it planned to do this year, and some businesses hope to keep it that way.

In a May 11, 2022, letter to Secretary of Labor Marty Walsh, the Partnership to Protect Workplace Opportunity and 93 organizations urged the DOL to abandon or at least postpone the reg changes.

The letter cited supply chain disruptions, inflationary pressures and other costly problems currently affecting workforces.

**More info:** [bit.ly/overtime647](http://bit.ly/overtime647)

### ■ TEMPORARY RULE ON HIRING WORKERS WITH H-2B VISAS

The Dept. of Homeland Security is issuing up to 35,000 additional H-2B visas during the second half of 2022, according to a temporary rule. They're for positions starting April 1, 2022, through Sept. 1, 2022.

That's in addition to 20,000 H-2B visas issued earlier this year.

**More info:** *Federal Register*, 5/18/22.

## TEST YOUR KNOWLEDGE

### ■ What's allowed for remitting withheld child support?

Once you calculate how much to withhold from an employee's wages for child support, you have limited time to send the payment to the State Disbursement Unit (SDU) or other party mentioned on the notice.

Test your knowledge of child support payments by answering *True* or *False* to the following:

1. Employers have seven calendar days from the date wages are paid to the employee to remit withheld child support.
2. In addition to making electronic payments, you can still remit withheld child support through the mail.
3. You must send a separate check for each employee for whom you have a child support order on file.
4. If you remit the wrong amount, you can request a refund from an SDU.

## ANSWERS

- Answers to the quiz:**
1. *False.* You have seven business days to send in payments, according to federal law.
  2. *True.* If you're mailing the payment, the postmark determines if you're on time. Or if you're remitting the payment electronically, the timing is based on the date the employer initiates the transmission.
  3. *False.* Under federal law, you can combine amounts as long as you meet certain requirements, such as itemizing the amount withheld from each employee.
  4. *True.* Contact the SDU about requirements and timeframes.
- Cite:** 2022 American Payroll Association Congress, "The Nuts and Bolts of Child Support," presented by Larry White, Pat McQuiller and Robin Large

## 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.*

#### **After missed payroll, employee called hotline**

**Employer:** City Pinestraw & Harvesting LLC, Baxley, GA.

**Business:** Farm labor contractor.

**Law broken:** Immigration and Nationality Act's provision on H-2A visas.

**Type of violation:** A worker called the Dept. of Labor's (DOL's) Employment, Education and Outreach (EMPLEO) hotline, alleging that a scheduled payroll had been missed by City Pinestraw & Harvesting. Investigators later verified the claim. Note: The EMPLEO hotline is a contact center for Spanish-speaking workers.

**Penalty:** \$42,338 in wages owed to 171 affected workers.

**Government office:** DOL, Wage and Hour Division, Atlanta district office.

#### **Bakery paid employees less than \$7.25 per hour**

**Employer:** Patisserie La Palme D'or, Honolulu.

**Business:** Bakery and cafe.

**Law broken:** Minimum wage, overtime and child labor provisions of the Fair Labor Standards Act.

**Type of violation:** Failed to pay overtime to six pastry chefs who'd been classified as managers. Didn't pay several employees at least the minimum wage. Also, Patisserie La Palme D'or allowed minors to load and operate a trash compactor, a dangerous task.

**Penalty:** \$153,070 in back wages and liquidated damages for 17 workers, plus \$34,960 in civil

money penalties for the willful nature of the violations.

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

#### **Homecare service provider in PA owed \$383,183**

**Employer:** From the Heart Companion Service LLC, Trafford, PA.

**Business:** Homecare service provider.

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

**Type of violation:** Didn't pay time-and-a-half the regular rate of pay when employees worked more than 40 hours in a workweek.

**Penalty:** \$383,183 in back wages and liquidated damages for 46 workers at four From the Heart Companion Service locations.

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

#### **Administrative exemption didn't apply to 57 workers**

**Employer:** Pictometry International Corp., d.b.a. EagleView Technologies Inc., Rochester, NY.

**Business:** Technological services.

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

**Type of violation:** Employees didn't qualify for the administrative exemption from overtime. Also, the company didn't include nondiscretionary bonuses in the regular rate of pay. Plus, Pictometry International Corp. didn't keep time records.

**Penalty:** \$319,141 in back wages owed to 57 employees.

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

## Tracking local laws and regs

### ■ Philadelphia's wage tax rates could see significant reductions

Under a proposal from the mayor, Philadelphia's wage taxes would be reduced over the next two years.

According to the proposal:

- The resident rate would be lowered to 3.7% (currently that rate is 3.8398%).
- The non-resident rate would go down to a flat 3.44% (from the current 3.4481%).

If the reductions are approved and finalized, the city's wage tax rates would be the lowest they've been since 1976.

More info: [bit.ly/philadelphia647](http://bit.ly/philadelphia647)

### ■ In West Hollywood, CA, regs released on minimum wage

West Hollywood, CA, has passed regs to implement the Minimum Wage Ordinance, which takes effect July 1, 2022. Note: For hotel employers, the effective date already passed – it was Jan. 1, 2022.

The new regs include sections on:

- calculation of the number of employees

- qualification of employers outside the city, and
- distribution of compensated and uncompensated leave.

More info: [www.webo.org/home/showpublisheddocument/53124](http://www.webo.org/home/showpublisheddocument/53124)

### ■ Higher minimum wage affects large and small employers here

All employers in Fremont, CA, will see an increase in the minimum wage starting July 1, 2022.

Currently, small employers (those with 25 or fewer employees) need to pay \$15 and large employers (those with 26 or more employees) need to pay \$15.25.

More info: [bit.ly/fremont647](http://bit.ly/fremont647)

### ■ What salary does and doesn't include under new NYC law

The New York City Human Rights Law, which was enacted Jan. 15, 2022, contained a provision on salary transparency.

On May 12, 2022, the law was amended and the New York City Commission on Human Rights updated its fact sheet. The fact sheet explains an employee's salary includes

## PRODUCTIVITY BOOSTERS

### ■ June webinar will focus on employee involvement in pay

Providing paycheck transparency to employees can help you ensure their pay is accurate.

So, consider attending a webinar called *Innovating Payroll: Enhancing Human Resources and the Employee Experience*. It's set for June 9, 2022, with three times available.

The webinar will explain how employees can be prompted to complete payroll tasks and receive visual insight into their withholding, giving them the chance to identify discrepancies prior to submission.

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

base annual or hourly wage or rate of pay. Also, salary doesn't include:

- employer-provided insurance
- paid or unpaid time off work
- availability of or contributions to retirement or savings funds
- severance pay
- overtime pay, or
- other forms of compensation, such as commissions, tips, bonuses, stock or the value of employer-provided meals or lodging.

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

## REAL PROBLEMS, REAL SOLUTIONS

### Our plans to switch to a paperless office moved forward quickly

Moving toward a paperless workplace had been on our to-do list for a while.

A constant flow of paperwork came in from various sources outside the company and was generated by our employees as well.

We spent more time than we wanted to organizing, filing, archiving and retrieving documents.

Printing costs added up, too.

Meanwhile, our filing cabinets were full of forms and documents, some of which we had to retain for up to seven years to meet federal and state recordkeeping requirements.

We'd begun the process of going paperless a few years ago, moving slowly at first.

And then COVID hit.

We couldn't just walk over to the filing cabinet and search through our folders as we had in the past.

The sudden shift to remote work sped up our plans for switching to a digital approach.

#### Managing electronic filing

We quickly made changes.

For example, we posted all our employee forms on our intranet. They're fillable online, and if

employees needed to send them to us, they used email. Or let's say a vendor sent us a document – we scanned it and then shredded it.

Our filing system is the same as before, only electronic. We've marked folders with the year and month, in addition to the subject. Folders containing sensitive info have been secured by IT, so only authorized individuals can access them.

Now that we're fully paperless, we're saving money on paper and ink – plus, we have more space and time.

(Bill Christopher, CFO, Magnusson Klemencic Associates, Seattle)

## Avoid headache of overpayments and repayments with these 6 steps

### ■ SIGNING BONUSES AND OTHER ADVANCES CAUSE COMPLICATIONS

If your company hires employees by putting signing bonuses in their hands right away – as many employers are doing in this tight labor market – what happens if someone decides not to stay?

For Payroll, the process of handling a repayment is complex, especially if the pay advance and the repayment cover two different tax years.

That’s assuming the departed employee even pays back the bonus to your company!

### Looking for solutions

A session at the 2022 American Payroll Association Congress in Las Vegas took a deep dive into the topic of pay advances including signing bonuses.

In *Overpayments: What Can We Do?* Gretchen Inouye, CPP, and Karen Ward, CPP, offered proactive ideas for avoiding overpayments in the first place.

After all, if you don’t have to

issue Form 941-X and Form W-2c, consider the tax implications, keep the records or follow the many procedures involved in receiving a repayment, you’ll save yourself headaches.

One solution is to have employees meet the criteria for signing bonuses before they’re issued – sometimes called pay-as-they-work payments.

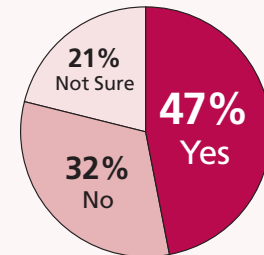
Also, consider taking these steps:

1. Do a payroll-to-payroll comparison before processing. Look for inconsistencies in employees’ gross or net total payments.
2. Pursue a company practice of transparency, especially between HR and Payroll, when it comes to timely sharing info about employee status – terminated, leave of absence and so on.
3. Work with Accounts Payable to identify disbursements of items like signing bonuses or relocation allowances. That way, amounts can be tracked appropriately.
4. Communicate with employees and managers regarding company policies related to how you’ll treat

## WHAT PAYROLL PROS TOLD US

### Fraud and remote work

If you’ve seen an increase in payment fraud, did remote work contribute to that?



Source: 2022 Association for Financial Professionals Payments Fraud and Control Survey, 550 respondents

Remote work creates new vulnerabilities to fraud. Utilizing your organization’s virtual private network is one way to make your connection more private.

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

and handle overpayments.

5. Do payroll edits/reports to identify items – gross, net, hours, wage rates, etc. – in excess of established parameters.
6. Run payroll edits/reports to catch payments being made to inactive employees.

More info: [americanpayroll.org](http://americanpayroll.org)

## SHARPEN YOUR JUDGMENT – THE DECISION

(see case on Page 2)

Yes, the company won.

In his ERISA lawsuit, the employee tried to recover benefits from short-term disability benefits plan his employer offered.

The employer offered employees the plan at no cost. It was administered by three companies: One helped employees file claims, another reviewed claims and made eligibility recommendations, and then the employer decided whether to pay on each disability claim.

For the first four weeks, an employee would receive short-term disability benefits at his or her full rate of pay and then at 75%, with money being paid out of the employer’s general assets and through the normal payroll.

First, the court considered whether the plan was covered under ERISA. Using a three-prong test, the court arrived at its decision based on the first prong: the Dept. of Labor’s “safe harbor” exception related to payroll practices.

The employee argued that because two other companies also exercised administrative control, the short-term disability payments wouldn’t be normal compensation as required under the safe harbor exception. The normal compensation process was to have a supervisor approve an employee’s timesheet, he pointed out.

But the payroll practice exception didn’t hinge on the process by which the compensation was approved, but rather on the compensation itself, the court explained.

### Analysis: Consider your payroll practices

If your company offers employees a short-term disability benefits plan, it’s important to know whether the plan is subject to ERISA so you can stay in compliance.

A company that pays the benefit through normal payroll might qualify for the safe harbor exception – even if some administrative functions of the plan are outsourced.

Cite: *Melvin v. Worthington Industries Inc.*, Case No. 2:20-cv-3760, U.S. D.C., S.D. Ohio, Eastern Div., 5/27/22.

Note: Dramatized for effect.

## Industry news you can use

### ■ In Minnesota, bonus available for certain frontline workers

Frontline Worker Payments became law April 29, 2022, making certain workers eligible for bonus pay from Minnesota. The list includes a variety of workers, such as those involved in:

- [long-term care and home care](#)
- [courts and corrections](#)
- [child care](#), and
- [manufacturing](#).

When the system is ready to accept applications, employers should notify workers, and they'll have 45 days to apply.

More info: [frontlinepay.mn.gov](http://frontlinepay.mn.gov)

### ■ New York State Fashion Workers Act would provide protections

S8638A calls for the creation of the New York State Fashion Workers Act. This bill, which has been introduced, would provide protections for fashion's creative workforce, such as models, influencers, stylists,

makeup artists, hair stylists, and other creative artists. For example, they'd need to be provided with clear information on rate of pay and more.

To achieve that, [model management and creative companies](#) would need to register with the state. Currently, unlike talent agencies, these agencies consider themselves to be exempt from certain aspects of New York State General Business Law.

More info: [www.nysenate.gov/legislation/bills/2021/s8638](http://www.nysenate.gov/legislation/bills/2021/s8638)

### ■ First Circuit rules on brand reps who provided in-store demos

The First Circuit Court of Appeals recently ruled [brand representatives](#) who worked for a marketing company fell within the outside sales exemption of the Fair Labor Standards Act.

In *Modeski v. Summit Retail Solutions Inc.*, the court said reps who provided in-store demos designed to increase sales are making sales as defined under federal regs.

More info: [bit.ly/sales647](http://bit.ly/sales647)

## 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 dependent care FSA balance exceed \$5K in 2022?

**Q:** In 2021, we let employees contribute up to \$10,500 to their dependent care flexible spending accounts (FSAs) and carry over unused amounts from 2021 to 2022. Therefore, this year, some employees have access to more than \$5,000 in their accounts. Does the IRS permit that, since the tax-free limit has reverted to \$5,000 for 2022?

**A:** Thanks to the American Rescue Plan Act (ARPA), employees

could contribute more to a dependent care FSA for 2021 only. The amount increased from \$5,000 to \$10,500 (if married, filing jointly). Extra money could be rolled over at year-end, too. If an employer amended its plan to allow either or both changes, then yes – although the limit has returned to \$5,000, an employee's dependent care FSA balance can exceed that amount in 2022.

*Cite: 2022 American Payroll Association Congress, "Taxable and Nontaxable Fringe Benefits, Part 2," presented by Andrew Garboden and Linda Werts*

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 5470, *Overview of Form 1024-A E-Filing Course: Text Version*. Revised April 2022. Posted 5/17/22.
- Form 720, *Quarterly Federal Excise Tax Return*. Revised June 2022. Posted 5/18/22.
- Publication 5084, *Congressional Update News for members of Congress and their staffs – May 2022*. Revised May 2022. Posted 5/19/22.
- Publication 5279, *Your Pathway to Becoming an Enrolled Agent Starts Here*. Revised May 2022. Posted 5/23/22.
- Publication 5296, *Comprehensive Taxpayer Attitude Survey (CTAS) 2021 Executive Report*. Revised April 2022. Posted 5/23/22.
- Publication 5643, *Virtual Currency*. Revised May 2022. Posted 5/23/22.
- Publication 1915, *Understanding Your IRS Individual Taxpayer Identification Number ITIN*. Revised December 2021. Posted 5/24/22.
- Publication 1136, *A Quarterly Statistics of Income Report*. Revised May 2022. Posted 5/25/22.
- Publication 55-B, *Internal Revenue Service Data Book*. Revised May 2022. Posted 5/26/22.

### 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!*

**ALABAMA**

- **WITHHOLDING:** A new law, Act 2022-292, increased the standard deduction for taxpayers and made other tax changes. As a result, the Alabama Dept. of Revenue has updated its *Withholding Tax Tables and Instructions for Employers and Withholding Agents*, with a revision date of April 2022. The tax changes are retroactive to Jan. 1, 2022, but you don't need to amend previous amounts withheld in 2022. **More info:** [bit.ly/alabama647](http://bit.ly/alabama647)

**CALIFORNIA**

- **MEAL AND REST BREAKS:** The California Supreme Court ruled on whether the additional hour of pay that employers owe employees who miss all of their meal or rest breaks should be considered wages. Yes, the court said in *Naranjo v. Spectrum Security Services, Inc.* That means under state law, those wages must be reported on wage statements and must be included in final pay. The premium pay was designed to compensate employees for work performed during breaks, the court explained. **More info:** [www.courts.ca.gov/opinions/documents/S258966.PDF](http://www.courts.ca.gov/opinions/documents/S258966.PDF)
- **MINIMUM WAGE:** Although the minimum wage originally had been set for \$15 per hour for 2023, it'll likely go up to \$15.50 on Jan. 1, 2023. That's because the state's minimum wage law says when inflation exceeds 7%, an accelerated increase is required. **More info:** [bit.ly/california647](http://bit.ly/california647)

**DELAWARE**

- **PAID LEAVE:** The Healthy Delaware Families Act, which

became law on May 10, 2022, created the Family and Medical Leave Insurance Fund. Under this program, employers will begin making contributions to the fund starting Jan. 1, 2025. For 2025 and 2026, the rate has been set according to the following percentage of wages: 0.32%, parental leave; 0.4%, medical leave; and 0.08%, family caregiving leave. Employers can choose to pay the full contribution or deduct up to 50% of the amount from employees' wages. Eligibility for benefits will begin Jan. 1, 2026. **More info:** [bit.ly/delaware647](http://bit.ly/delaware647)

**GEORGIA**

- **UNEMPLOYMENT BENEFITS:** As of July 1, 2022, the definition of employment will be changed to include services performed by an individual for wages. That's due to HB 389, which became Act 809. **More info:** [legiscan.com/GA/text/HB389/2021](http://legiscan.com/GA/text/HB389/2021)
- **WAGE AND HOUR:** SB 331, which became Act 823, restricts local governments from passing laws on work hours or scheduling or otherwise regulating employee output. The legislation took effect May 5, 2022. **More info:** [legiscan.com/GA/text/SB331/2021](http://legiscan.com/GA/text/SB331/2021)

**HAWAII**

- **INTERNAL REVENUE CODE:** Hawaii's date of conformity to the terms of the Internal Revenue Code has been retroactively changed to Dec. 31, 2021, due to SB 3143. **More info:** [bit.ly/hawaii647](http://bit.ly/hawaii647)

**ILLINOIS**

- **EQUAL PAY:** In 2021, the state amended its Equal Pay Act, requiring private businesses with 100 or more employees in Illinois to report certain payroll info. On May 20, 2022, the Illinois Dept. of Labor issued a proposed rule even as some employers faced

deadlines for complying with the law. The proposed rule establishes what data must be reported and in what format, clarifies what it means to be in compliance with wage laws, sets procedures for notices regarding violations and more. We'll track any developments for you. **More info:** [bit.ly/illinois647](http://bit.ly/illinois647)

**MASSACHUSETTS**

- **WAGE AND HOUR:** Employees who sued their employer, claiming overtime violations under federal law and untimely payment of those overtime wages under state law, could recover damages under federal law only, the Massachusetts Supreme Judicial Court ruled in *Devaney v. Zucchini Gold Inc.* That's because the Fair Labor Standards Act's remedies preempt those of the Massachusetts Wage Act. **More info:** [bit.ly/massachusetts647](http://bit.ly/massachusetts647)

THE LIGHTER SIDE

What happens when identical twin sisters are pregnant at the same time?

They give birth on the same day.

At least that's what happened to Jill Justiniani and Erin Cheplak.

On May 5, 2022, Justiniani had a C-section scheduled – and Cheplak, who was still 10 days away from her due date, went to labor.

Both moms had boys.

Not only that, but the newborns shared exactly the same height: 20 inches.

And weight: 7 pounds, 3 ounces.

With such precision in common, maybe the cousins should plan to go into Payroll. They could work on account reconciliation together!

**Cite:** UPI, "Identical twins give birth on the same day at same hospital," [bit.ly/identical647](http://bit.ly/identical647)