

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™

October 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.

### ■ REPORTING CORPORATE INCOME TAXES TO THE IRS

**Item:** Form 1120, U.S. Corporation Income Tax Return.

**Background:** This is one of many forms used by businesses to report their income tax liability to the IRS.

**Comments due:** 11/28/22.

**Cite:** Federal Register, 9/28/22.

### ■ FORMS COMPLETED BY EXEMPT ORGANIZATIONS

**Item:** Form 990, Return of Organization Exempt From Income Tax; Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.

**Background:** These forms are among many used by tax-exempt organizations. The IRS uses the information to determine if the organization is fulfilling the appropriate operating conditions. The data is also used for general statistical purposes.

**Comments due:** 11/28/22.

**Cite:** Federal Register, 9/28/22.

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

## When should you stop certain deductions? Can be tough call

### ■ NLRB case on union dues adds to the pressure

Sometimes setting up deductions for employees is easier than knowing when it's legally OK to stop them.

You may have encountered this uncertainty when making deductions for garnishments or benefits like flexible spending accounts.

And how about union dues? Heads up: Even if your company isn't currently subject to a collective bargaining agreement (CBA), union activity is on the rise, and according to a 2022 Gallup poll, 71% of Americans now approve of labor unions.

#### Contract had expired

One company, a medical center in Nevada, has been in a legal battle over whether it made the right call when

it stopped deducting union dues from employees' wages.

After all, the CBA that contained the dues checkoff provision had expired 13 months earlier.

In addition, historically speaking, the National Labor Relations Board (NLRB) has allowed employers to change certain terms and conditions of employment without first giving the union the chance to bargain. While that rule has been tossed around in the political winds since 2015, now it's been discarded.

In a Sept. 30, 2022, decision, the NLRB said the medical center should have treated union dues as part of the

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

## SSA explains new BSO registration process

If you plan to register to use SSA's Business Services Online (BSO) for the first time, or have considered using a new service, you should know the registration process has changed.

Now, SSA will mail an activation code to you to complete the process. It's an added security measure, the agency explained in a recent alert.

The updated process took effect Sept. 19, 2022. Here's what you can expect:

#### Look for the code in 2 weeks

SSA says the activation code will be mailed to the employer whose

employer identification number is being used for the registration.

Specifically, the code will be sent to the employer's business address registered with the IRS – it should arrive within two weeks.

**Important:** You won't be able to file Forms W-2 or Forms W-2C until you have entered the code to complete the registration process.

For TY 2022, W-2s will be due to the SSA by Jan. 31, 2023, (a Tuesday). The agency recommends not waiting until January for BSO registration.

**More info:** [www.ssa.gov/bsol/bsowelcome.htm](http://www.ssa.gov/bsol/bsowelcome.htm)

## 2 workers questioned their earnings via email – and then lost their jobs

■ DOL SAID COMPANY RETALIATED AGAINST THEM FOR COMPLAINTS

The Fair Labor Standards Act (FLSA) protects workers from retaliation, such as termination for filing wage complaints.

After the Dept. of Labor's (DOL's) Wage and Hour Division found out retaliation had occurred at a company in Georgia, the agency recovered \$8,149 in back wages and liquidated damages.

Two workers at Tucker Brewing Co. LLC, which employs about 40 individuals, had emailed the owner asking about:

- their earnings, and
- the tip sharing agreement the company had in place.

Then, the two workers got fired.

The DOL determined their terminations were retaliation under the FLSA, especially since neither

of the employees had a history of disciplinary action.

### In writing or in person

Complaints made with the DOL are protected under the FLSA, and most courts have ruled that when a worker complains internally to an employer, that's also protected.

Someone might voice concerns in writing or in person – either way, that person is protected from retaliatory action.

While discharging an employee is one form of retaliation, there are other forms to be on the lookout for, such as reducing someone's hours or sending someone home before the end of a shift.

More info: [www.dol.gov/newsroom/releases/whd/whd20220927-4](http://www.dol.gov/newsroom/releases/whd/whd20220927-4)

## Deductions ...

(continued from Page 1)

status quo – meaning the company should have continued to deduct dues from employees' wages and remit the funds to the union.

What's more, the NLRB said its decision will be retroactive in all pending cases on this topic, including the case involving Valley Hospital Medical Center Inc., d/b/a Valley Hospital Medical Center.

Worse, the medical center will need to pay the union the dues it would have otherwise deducted from employees' wages – and not by playing catch-up with deductions. Indeed, it'll need to pay the union out of its own pocket, with interest.

Bottom line: A company that's subject to a CBA that's expiring soon, or even has ended months ago, should proceed with caution.

For Payroll, make sure you have a solid go-ahead from your company's decision-makers before stopping deductions for union dues.

More info: NLRB, [bit.ly/nlrb655](http://bit.ly/nlrb655)

## 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.

### ■ HE DID OUTSIDE SALES, BUT WAS HE EXEMPT FROM OT?

"Tom says he should have earned overtime," HR Manager Cheryl Jones said to Payroll Manager Pat Gray.

"What's making him question his exemption?" asked Pat.

"I guess he just misses the money he could have made," said Cheryl.

"But I think we had him correctly classified as an outside salesperson," Cheryl added. "Sales was at the core of Tom's job, although his customers didn't always place their orders through him because sometimes they'd call into the office."

"That sounds fine," nodded Pat.

"Also, he spent more than 50% of his time on exempt tasks and had minimal supervision," said Cheryl.

### Monthly payment

"Let's talk about his pay," said Pat. "He was paid commission based on his sales, never by the hour.

"I can give you more detail," Pat offered, checking the payroll system. "We paid him \$1,100 per week. At the end of each month, he got 11% of the gross profit from his sales."

"So, he made more than \$4,400 every month?" asked Cheryl.

"Not necessarily," explained Pat. "If that 11% commission didn't add up to \$4,400, we'd deduct the difference from his pay. But if the commission took him over \$4,400, we'd pay him the extra amount."

"Alright, we're hoping we can get the court to dismiss this case," Cheryl told Pat.

Did that happen?

■ 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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## IRS releases high-low rates effective Oct. 1, 2022 – quick look for Payroll

### ■ MAKE SURE REIMBURSEMENT FOR BUSINESS TRAVEL ISN'T TAXABLE

Soon after the General Services Administration released new rates for the regular federal per diem rate method of substantiating business travel expense reimbursement, the IRS issued rates for the high-low method.

The IRS information is crucial to Payroll because if A/P reimburses employees for expenses beyond the maximum per diem rate, the excess amount should be considered wages for tax purposes.

Note: Employees still must report certain details about business travel with the high-low method.

According to IRS Notice 2022-44, here are the high-low rates, which cover expenses that are paid or incurred on or after Oct. 1, 2022:

- \$297 for travel to any high-cost locality (\$74 for meals), and
- \$204 for travel to any other locality within continental U.S. (\$64 for meals).

### States with changes

Here's a breakdown by state of changes, whether a high-cost locality has been added, it's been removed or

the portion of the calendar year the locality is on the list has been revised:

- **Alabama:** added (1)
- **Arizona:** added (1), year revision (1)
- **California:** added (1), year revision (2)
- **Colorado:** added (2), removed (1), year revision (1)
- **Florida:** added (9), year revision (3)
- **Idaho:** added (1)
- **Maine:** added (1), year revision (1)
- **Massachusetts:** year revision (3)
- **Michigan:** added (1)
- **Minnesota:** added (1)
- **Montana:** added (1)
- **New Jersey:** added (1)
- **New York:** added (1)
- **North Carolina:** added (1)
- **Oregon:** added (1)
- **Rhode Island:** year revision (1)
- **South Carolina:** added (1), year revision (1)
- **Utah:** added (1), year revision (1)
- **Vermont:** added (1)
- **Washington:** added (1), and
- **Wyoming:** year revision (1).

More info: [bit.ly/perdiem655](https://bit.ly/perdiem655)

## Updated guide contains new hire reporting info

The guide that contains official new hire reporting details was updated on Aug. 11, 2022, the Office of Child Support Enforcement said.

As in the past, the *National Directory of New Hires Guide for Data Submission* contains four parts.

### Going through each part

Here's what you'll find in the guide's 99 pages:

- Part 1 is an intro to the National Directory of New Hires (NDNH), including topics like Social Security number (SSN) verification.

- New hire reporting is the focus of Part 2. Multistate employers are discussed here, with a note that the NDNH contains a list of employers that report new hires to one state and the state they've chosen. The latest version contains two changes to this part.
- Part 3 gets into quarterly wage reporting. This time around, three changes have been made.
- In Part 4, unemployment insurance reporting is discussed, and you'll find two changes here.

More info: [bit.ly/newhire655](https://bit.ly/newhire655)

## NEWS YOU CAN USE

### ■ SOCIAL SECURITY NUMBERS REQUIRED ON THESE FORMS?

If you're creating electronic substitute versions of Form W-4P and Form W-4R, you may not need to ask individuals for certain personal information you already have electronically stored. The personal info includes:

- name
- address, and
- Social Security number.

That's what the IRS stated in *Additional Guidance for Substitute and Telephonic Submissions of Forms W-4P and W-4R*, released in September 2022.

More info: [bit.ly/electronic655](https://bit.ly/electronic655)

### ■ LOOK FOR FORM I-797 WITH THIS LIST A DOCUMENT

Employees completing Form I-9 may be able to present an expired "green card" as a List A document. U.S. Citizenship and Immigration has once again extended the validity of expired permanent resident cards – from 12 to 24 months – the agency said Sept. 26, 2022.

Lawful permanent residents who have filed Form I-90, *Application to Replace Permanent Resident Card*, will receive a Form I-797 receipt notice that grants a 24-month extension. Individuals who've already received a receipt notice will receive an amended one, indicating the extension.

More info: [bit.ly/greencard655](https://bit.ly/greencard655)

### ■ IRS DOESN'T TEXT REQUESTS FOR FINANCIAL INFORMATION

IRS-themed text scams increased exponentially in September 2022, the agency warned.

The texts, which appear to come from the IRS, offer help setting up an online account, for example. Be on alert: The IRS doesn't send texts or emails asking for personal or financial information.

More info: [bit.ly/warning655](https://bit.ly/warning655)

## TEST YOUR KNOWLEDGE

### ■ Withholding the right amount under the CCPA?

The federal law on wage garnishment, the Consumer Credit Protection Act (CCPA), sets limits on the amount employers may withhold from earnings.

Are you withholding the right amount? Test your knowledge by answering *True* or *False* to the following:

1. Most garnishments are made by court order.
2. A wage garnishment and a voluntary wage assignment are the same.
3. Lump sum payments can be earnings, and subject to the limits of the CCPA, if the employer pays the amount in question for the employee's services.
4. If state law and federal law differ on how much should be withheld from an employee's earnings, you should always go with the state law.

## ANSWERS

### Answers to the quiz:

1. *True*. You may also receive levies from the IRS or state tax collection agencies or administrative garnishments from federal agencies.
2. *False*. With a voluntary wage assignment, an employee says yes to an employer turning over a set amount of his or her earnings to a creditor.
3. *True*. Some lump sum payments include commissions, referral and sign-on bonuses, or payment for working during a holiday.
4. *False*. When there's a difference between federal and state law, observe the law which results in the lower amount of earnings being garnished.

More info: [www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdft30.pdf](http://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdft30.pdf)

## 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.*

### Employees not paid for pre-shift activities

**Employer:** Raymond's Painting Co., Honolulu.

**Business:** Painting company.

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

**Type of violation:** The company didn't pay workers for pre-shift activities and didn't properly document and maintain its employment records.

**Penalty:** \$42,060 in back wages for 44 workers; \$42,060 in liquidated damages for 44 workers; and \$10,000 in civil money penalties for willful and reckless disregard of the law.

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

### Misappropriated funds in employee benefit plans

**Employer:** Area Wide Realty Corp., Cicero, IL.

**Business:** Real estate company.

**Law broken:** Employee Retirement Income Security Act.

**Type of violation:** The trustee and fiduciary of Area Wide Realty Corp.'s cash balance pension plan and profit sharing plan misappropriated funds.

**Penalty:** A federal district court ordered the responsible individual to restore amounts due to both of the plans with interest. That includes depositing \$12,500 into the profit sharing plan and reallocating his account balance in the plans to restore funds to participants' accounts. The

individual is permanently barred from serving as a fiduciary in the future and must pay \$15,845 for breaking the law.

**Government office:** Dept. of Labor, Employee Benefits Security Administration.

### Overtime errors involved bonuses, differential pay

**Employer:** Advantage Communications Systems Inc., Albuquerque, NM.

**Business:** Home healthcare.

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

**Type of violation:** Some employees' wages fell below \$7.25 per hour. Also, overtime errors resulted from not including bonuses and differential pay when calculating the regular rate of pay for 64 of its employees.

**Penalty:** \$65,286 in back wages and \$65,286 in liquidated damages.

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

### Michigan staffing agency owes \$352K in back wages

**Employer:** Leo Staffing & Management LLC – operating as LTL Staffing and Business Solutions, Dearborn, MI.

**Business:** Staffing agency.

**Law broken:** Overtime requirements of the Fair Labor Standards Act.

**Type of violation:** Misclassified machine operators, welders, forklift drivers and others as independent contractors.

**Penalty:** \$352,347 in back wages to 653 workers.

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

## Tracking local laws and regs

### ■ Ordinance requires disclosure of pay to independent contractors

Seattle Ordinance 126373, which passed in 2021, took effect Sept. 1, 2022.

A written pre-contract disclosure is now required of companies that hire independent contractors. The disclosure should include:

- rate of pay, including any incentive pay applicable to the work offer
- pay basis – e.g., hour, day, week
- deductions, fees or other charges, and
- payment schedule.

More info: [bit.ly/seattle655](http://bit.ly/seattle655)

### ■ In many KY counties, businesses have extra time to file returns

Following severe storms, flooding, landslides and mudslides in July 2022, the IRS issued tax relief in Kentucky.

The following counties are included: Breathitt, Casey, Clay, Cumberland, Floyd, Harlan, Johnson, Knott, Lee, Leslie, Letcher, Lincoln, Magoffin, Martin, Owsley, Perry, Pike, Powell, Whitley and Wolfe.

For example, businesses in those locations have until Nov. 15, 2022, to

file quarterly tax returns that would've otherwise been due Sept. 15, 2022.

More info: [bit.ly/storms655](http://bit.ly/storms655)

### ■ Quarterly payroll returns not due until Feb. 15, 2023, here

The IRS is offering tax relief to businesses in Alaska affected by storms and flooding on Sept. 15, 2022. That includes the Regional Education Attendance Areas of Bering Strait, Kashunamiut, Lower Kuskokwim and Lower Yukon.

Quarterly payroll tax returns normally due on Oct. 31, 2022, and Jan. 31, 2023, won't be due until Feb. 15, 2023.

More info: [bit.ly/alaska655](http://bit.ly/alaska655)

### ■ 5 counties in Indiana have changed their income tax rates

These Indiana counties have higher income tax rates as of Oct. 1, 2022:

- Boone 0.017 (was 0.015)
- Johnson 0.014 (was 0.012)
- Knox 0.017 (was 0.012)
- LaPorte 0.0145 (was 0.0095), and
- Monroe 0.02035 (was 0.01345).

More info: [bit.ly/indiana655](http://bit.ly/indiana655)

## PRODUCTIVITY BOOSTERS

### ■ IRS videos cover topics of interest to Payroll pros

The IRS has a YouTube channel with videos on a variety of topics that may be of interest to you. Or consider directing others to the channel. Videos include:

- Here's How to Avoid IRS Text Message Scams
- 5 Things to Know About the Employer Identification Number
- Small Business Tax Workshop, and
- Here's What to Do If You Must Close Your Business.

More info: [www.youtube.com/user/lirsvideos](http://www.youtube.com/user/lirsvideos)

### ■ Pay transparency rules on minimum/maximum salary

Ordinance 22-026 in Jersey City, NJ, puts pay transparency rules in place for businesses with at least five employees.

A company that uses print or digital media to post employment opportunities must include in the posting or advertisement, the:

- minimum and maximum salary and/or hourly wage, and
- benefits.

More info: [bit.ly/newjersey655](http://bit.ly/newjersey655)

## REAL PROBLEMS, REAL SOLUTIONS

### Virtual check-ins helped us ensure team members' well-being

When the pandemic began, the way we engaged with the employees in our department shifted.

With some people working from home at least part of the time, we all needed to adapt to the new environment. We had more than 50 people in our payroll department, and we were used to seeing each other in person on a regular basis.

Of course, not everyone had the same reaction to working remotely and being isolated from co-workers. We knew for some folks, that type of situation could lead to anxiety, stress and depression.

We as leaders recognized the importance of social interaction among team members and saw the value in building trust and camaraderie.

#### Didn't forget National Payroll Week

So, for example, we put a focus on videoconferencing – as opposed to, say, email. By seeing people's faces on camera, we could ascertain how they were doing.

Certainly, the nuts and bolts of meetings was giving directions and understanding all the deliverables that payroll practitioners had to do. But at the same time, we paid close attention to workers' well-being and considered

how we could remove barriers that came with being off-site.

Bonus: We even made a priority of celebrating National Payroll Week in the middle of the pandemic. We reached out to everyone to connect the team, albeit in a virtual format, with trivia questions, a payroll escape room and dessert contests.

(Based on the American Payroll Association's PayTalk, Episode 19: The Best of the Best Practices, with Martin Armstrong, CPP, VP of payroll shared services, Charter Communications, [www.americanpayroll.org/news-resources/paytalk](http://www.americanpayroll.org/news-resources/paytalk))

## Self-service portals for accessing pay info: They're common, survey shows

■ AMERICAN PAYROLL ASSOCIATION RELEASES ANNUAL FINDINGS

The latest *Getting Paid in America* survey reveals just how popular employee self-service portals have become and gives you insight into other payroll-related issues.

The 2022 survey, coming to you from the American Payroll Association, asked respondents whether their employer offered a portal where they could access their pay and benefits information online.

The answer was overwhelmingly yes – 83% – with 10% saying no and the remaining 7% not knowing.

Whether it's onboarding, enrolling in benefits, entering time and attendance data, or reviewing a policy in the company handbook, most employees now take care of certain tasks themselves.

### More about paychecks

The survey also showed that 93% of employees now receive their pay via direct deposit.

Given that almost all paychecks

reach employees through that method, what comes in the very distant second? Paper checks, at 4%. Payroll cards are the method of choice 1% of the time, with a few other options available to employees.

Workers rely heavily on their checks being on time. Here's how they responded when asked how difficult it'd be to meet their current financial obligations if their paychecks were delayed for a week:

- very difficult – 40%
- somewhat difficult – 32%
- not very difficult – 15%
- not at all difficult – 11%, and
- don't know – 2%.

But Payroll comes through! In the survey, 91% of workers said their check was always on time. A handful (6%) of workers reported paychecks being occasionally late.

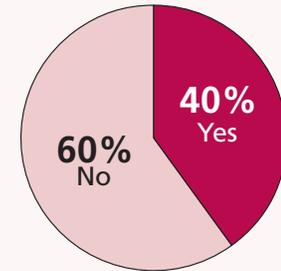
Employees' confidence is also high in Payroll's ability to handle withholding correctly – 59% are very certain that happens each payday, and 27% are somewhat certain.

It was essentially a toss-up as

## WHAT PAYROLL PROS TOLD US

### Retirement age

Have you pushed your retirement to a later age than planned?



Source: Nationwide in Plan Sponsor Survey Report, August 2022

If employees work past retirement age, Payroll should quickly be in the loop on the employer-provided benefits they sign up for – such as health insurance and 401(k) plans.

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

to whether employees had filled out a new Form W-4, *Employee's Withholding Certificate*, with 46% saying they had and 44% saying they hadn't. As for the remaining 10%? They didn't know.

**More info:** American Payroll Association, [www.nationalpayrollweek.com](http://www.nationalpayrollweek.com)

## SHARPEN YOUR JUDGMENT – THE DECISION

(see case on Page 2)

Yes, the court dismissed the case.

The employee questioned whether he should have been classified as an outside salesperson, exempt from overtime under the Fair Labor Standards Act.

The company needed to show sales was the employee's primary duty, in order to justify his exempt status.

As far as pay goes, that was based exclusively on commissions from sales made to clients, and the company never paid him by the hour.

The company paid him \$1,100 per week.

Then, at the end of each month, it'd calculate 11% of the gross profit from sales on his accounts. If that added up to less than \$4,400 (\$1,100 per week times four weeks), the company would deduct the difference from his pay. If the commissions added up to more than \$4,400, he'd receive the excess in a monthly check.

The company pointed to three other aspects of his position to prove that sales was his primary duty. They were: sales work was at the core of his job; he spent more than 50% of his time performing exempt tasks; and he had minimal supervision.

The court didn't have any hesitation in deciding that the employee qualified as exempt from overtime.

### Analysis: A different pay structure

Outside salespeople will likely have a different pay structure than most other employees who are on the payroll. In fact, if they're paid commission for their sales, that helps support their status as exempt from overtime.

Remember that the salary requirements such as the salary threshold of \$684 per week don't apply to the outside sales exemption.

**Cite:** *Mizrahi v. S.A.N.D. Automotive Warehouse LLC*, 18-CV-3023(EK)(RML), U.S. D.C., E.D. New York, 9/23/22. Note: Dramatized for effect.

## Industry news you can use

### ■ H-2B visa program investigations conducted in Southeast: DOL

The Dept. of Labor (DOL) has thrown the spotlight on employers that hire workers with [H-2B visas](#).

From October 2019 through March 2022, the DOL conducted 73 H-2B investigations, recovering more than \$1 million in back wages due to almost 1,000 workers and more than \$650,000 in civil money penalties.

Among the violations found? Failing to pay the intended wages due to impermissible deductions or not including all hours worked.

The H-2B visa program allows U.S. employers to temporarily hire foreign workers to perform non-agricultural labor or services.

**More info:** [www.dol.gov/newsroom/releases/whd/whd20220824](http://www.dol.gov/newsroom/releases/whd/whd20220824)

### ■ When healthcare entities change control, this info is required

In New Jersey, SB 315 sets new requirements for [healthcare entities](#).

## 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 Medicare-eligible employee make HSA contributions?

**Q:** We have some employees who are nearing age 65. Considering they'll be eligible for Medicare coverage at that time, can we continue to allow them to make pre-tax contributions to their health savings accounts (HSAs) via payroll deductions?

**A:** While it's true that someone who's covered by Medicare isn't eligible to make contributions to an HSA, an employee who's turning 65 may not be planning

to enroll in Medicare right away. With that in mind, they may be able to continue to make HSA contributions via payroll deductions without any negative tax repercussions. However, you may want to communicate to employees that once they're ready to sign up, Medicare Part A coverage will take effect retroactively – up to six months from when they apply. They can't make HSA contributions during that lookback period. If excess contributions are made, the employee may owe a 6% excise tax.

**More info:** [pub.njleg.state.nj.us/Bills/2022/S0500/315\\_R2.PDF](http://pub.njleg.state.nj.us/Bills/2022/S0500/315_R2.PDF)

### ■ DOL to base prevailing wage rates on upcoming survey

The Dept. of Labor has begun collecting wage data on [highway construction](#) projects that occurred in Florida between June 1, 2021, and May 31, 2022.

Employers are invited to participate in the survey, which will help the DOL set prevailing wage rates under the Davis-Bacon and Related Acts.

**More info:** [www.dol.gov/newsroom/releases/whd/whd20220930-1](http://www.dol.gov/newsroom/releases/whd/whd20220930-1)

to enroll in Medicare right away. With that in mind, they may be able to continue to make HSA contributions via payroll deductions without any negative tax repercussions. However, you may want to communicate to employees that once they're ready to sign up, Medicare Part A coverage will take effect retroactively – up to six months from when they apply. They can't make HSA contributions during that lookback period. If excess contributions are made, the employee may owe a 6% excise tax.

**More info:** [go.cms.gov/3C7RIyi](http://go.cms.gov/3C7RIyi)

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 publications contains Payroll-related updates.

- Form 746, *Information About Your Notice, Penalty and Interest*. Revised October 2022. Posted 9/15/22.
- Publication 5710, *Exempt Organizations Technical Guide TG 6 IRC 501(c)(6) Business Leagues*. Revised September 2022. Posted 9/16/22.
- Publication 5165, *Guide for Electronically Filing Affordable Care Act*. Revised October 2022. Posted 9/19/22.
- Form 720, *Quarterly Federal Excise Tax Return*. Revised September 2022. Posted 9/19/22.
- Instructions for Form 720. Revised September 2022. Posted 9/19/22.
- Publication 5697, *IRS Provides Automatic Penalty Relief to Most People and Businesses Who File Certain 2019 and 2020 Returns Late*. Revised September 2022. Posted 9/20/22.
- Notice 931, *Deposit Requirements for Employment Taxes*. Revised September 2022. Posted 9/21/22.
- Publication 5308, *Automated Enrollment For ACA Providers, The Externals Guide*. Revised 2022. Posted 9/23/22.
- Publication 4054, *National Taxpayer Advocate Objectives Report to Congress*. Revised July 2022. Posted 9/28/22.

### 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

- **PAY DATA & TRANSPARENCY:** SB 1162, recently signed into law, places increased pay data reporting requirements on employers with 100 or more employees. Reports will be due to the state each year in May, starting in 2023. Furthermore, the bill says employers with 15 or more employees will need to include the pay scale for any position that's being posted. In addition, employers will need to provide current employees with pay scales for their positions upon request. The pay transparency requirements kick in Jan. 1, 2023. **More info:** [bit.ly/california655](http://bit.ly/california655)
- **SICK LEAVE:** Due to AB 152, employers will need to provide supplemental paid sick leave through the end of 2022. The requirement to provide this leave for COVID-19 reasons would have expired Sept. 30, 2022. Total hours of supplemental paid sick leave available to employees per year is still 80 hours. **More info:** [bit.ly/sickleave655](http://bit.ly/sickleave655)

### MASSACHUSETTS

- **PAID LEAVE:** The 2023 contribution rate under the Paid Family and Medical Leave law has been released. The rate will decrease from 0.68% to 0.63% of eligible wages. That breaks down to 0.11% for the family leave contribution, which is withheld from employees' wages regardless of employer size. The 0.52% medical leave contribution can be split as follows: An employer with 25 or more covered individuals has a 0.312% employer share and a 0.208% employee share. Smaller employers don't

have to pay the 0.312% employer share but still must withhold the 0.208% employee share. **More info:** [bit.ly/massachusetts655](http://bit.ly/massachusetts655)

### NEVADA

- **TAXABLE WAGE BASE:** Numbers have started rolling in for 2023. The taxable wage base will increase to \$40,100. Currently, it's \$36,600. **More info:** [ui.nv.gov/ESSHTML/whats\\_new.htm](http://ui.nv.gov/ESSHTML/whats_new.htm)

### NEW JERSEY

- **FAMILY LEAVE:** New and amended regulations say employers must display certain posters, such as one that explains the provisions of the New Jersey Family Leave Act. The Division on Civil Rights noted that although federal and state laws are similar, differences make the postings necessary. **More info:** [bit.ly/famleave655](http://bit.ly/famleave655)

### NEW YORK

- **FAMILY LEAVE:** Under the state's Paid Family Leave program, employees who take leave receive 67% of their average weekly wage. That amount is capped at 67% of the New York State Average Weekly Wage, which for 2023 is increasing to \$1,688.19 (currently, \$1,594.57). That means the maximum weekly benefit next year will be \$1,131.08 (currently, \$1,068.36). Employees will contribute 0.455% (down from 0.511%) of their gross wages per pay period, with a maximum annual contribution of \$399.43 (down from \$423.71). **More info:** [paidfamilyleave.ny.gov/2023](http://paidfamilyleave.ny.gov/2023)

### OREGON

- **WORKERS' COMP:** For 2023, you won't see an increase in the premium assessment – i.e., the percentage of the workers' compensation insurance premium employers pay. The Oregon Dept. of Consumer and Business Services announced that the rate will be 9.8%. It's

the first time since 2016 that the premium assessment isn't going up. **More info:** [bit.ly/oregon655](http://bit.ly/oregon655)

### UTAH

- **WITHHOLDING:** Publication 14, *Withholding Tax Guide*, has been updated and will take effect Jan. 1, 2023. Nonresidents can work in the state for 20 days (was 60 days) before you need to withhold income tax. **More info:** [tax.utah.gov/forms/pubs/pub-14-jan2023.pdf](http://tax.utah.gov/forms/pubs/pub-14-jan2023.pdf)

### VIRGINIA

- **WITHHOLDING:** The Virginia Dept. of Taxation has issued withholding tables for wages paid on or after Oct. 1, 2022. When annual revenue growth reaches 5%, the standard deduction is increased, leading to revised income tax withholding tables. **More info:** [bit.ly/virginia655](http://bit.ly/virginia655)

## THE LIGHTER SIDE

You can't always avoid technical glitches, try as you might.

Just ask Northeastern University School of Law. At the beginning of October, the law school sent emails to 200 applicants, plus about 4,000 former applicants, informing them they'd been admitted.

Only problem was, the emails went out in error. And in fact, some of the former applicants receiving the emails are already students.

A follow-up email went out to all recipients, explaining the technical error.

The Boston law school isn't ready to make final decisions about admissions for the next academic year yet. In the meantime, it's working to prevent future glitches.

**Cite:** AP, "Guilty! Law school sends out erroneous admissions emails," [bit.ly/glitch655](http://bit.ly/glitch655)