

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™

November 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.

### ■ E-FILING EMPLOYMENT TAX RETURNS? FORMS NEEDED

**Item:** Form 8453-EMP, *Employment Tax Declaration for an IRS e-file Return*; Form 8879-EMP, *IRS e-file Signature Authorization for Forms 940, 940-PR, 941, 941-PR, 941-SS, 943, 943-PR, 944, and 945.*

**Background:** The 8453-EMP is used for e-file declarations, and the 8879-EMP is used for e-file authorizations.

**Comments due:** 12/12/22.

**Cite:** *Federal Register*, 10/11/22.

### ■ COMPLIANCE ASSURANCE PROCESS APPLICATION

**Item:** Form 14234, *Compliance Assurance Process CAP Application.*

**Background:** The Compliance Assurance Process is a voluntary program available to certain large and international businesses. This program involves a review team going over completed business transactions in real time.

**Comments due:** 12/12/22.

**Cite:** *Federal Register*, 10/13/22.

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

## 2023 changes to fringe benefits due to inflation adjustments

### ■ Dollar amounts increasing, the IRS announced

The amounts you can exclude from an employee's gross income for certain benefits is increasing for 2023, the IRS announced.

Revenue Procedure 2022-38 contains cost-of-living adjustments Payroll needs to know.

Here's the latest update:

#### Making paycheck deductions

Get ready for higher pretax deductions for *health flexible spending accounts (FSAs)*.

Employees can contribute up to \$3,050 through salary reductions next year, the IRS said. Currently, the limit is \$2,850.

Does your cafeteria plan allow

employees to carry over unused FSA amounts? If so, the maximum amount you can allow for 2023 is \$610 (up from \$570 this year).

Companies with fewer than 50 full-time employees may consider offering *qualified small employer health reimbursement arrangements (QSEHRAs)*. But certain conditions must be met.

With a QSEHRA, the total amount of payments and reimbursements can't exceed \$5,850, or \$11,800 for family coverage (that's up from \$5,450 and \$11,050, respectively).

Starting in 2023, the monthly limit for *qualified transportation fringe*

(Please see *Fringe benefits ...* on Page 2)

### SSA: Here's how high 2023 taxable wage base will go

Time to prep your payroll system for 2023: The SSA has announced the Social Security taxable wage base, and it'll increase dramatically.

Next year's number will be \$160,200 – that's \$13,200 more than the current \$147,000.

No surprises with the Security tax rate: The rate, which is set by Congress, will remain 6.2% for employees and employers.

So, if an employee earns \$160,200 or more next year, you'll withhold \$9,932.40 – and your company will pay that same maximum.

The 1.45% Medicare portion of

FICA is unchanged. You'll need to also withhold the 0.9% Additional Medicare Tax if an someone's earnings exceed \$200,000 (\$250,000 for married couples filing jointly).

#### Looking again at Sec. 3121

Sec. 3121 of the Internal Revenue Code provides a list of wages not subject to FICA taxes at all.

That includes payments made to, or on behalf of, an employee under a Sec. 125 plan. So, now may be a good time to work with Benefits to consider expanding your cafeteria plan.

More info: [bit.ly/wagebase656](http://bit.ly/wagebase656)

## Answering emails after clocking out and other costly FLSA mistakes

### ■ EMPLOYEES AT DELIVERY COMPANY NOT PAID FOR ALL HOURS WORKED

The pandemic blurred the lines between home and workplace. Even so, employers are obligated to pay employees for all their hours of work. That's what the Dept. of Labor (DOL) warned recently.

The comment came after the agency cited a Mississippi employer, Douglas Inc. – operating as Douglas Express Delivery – for Fair Labor Standards Act (FLSA) violations.

Employees who worked for the ground delivery contractor would work their regular shifts and then clock out. Problem was, upon arriving at home, they'd continue to perform work-related tasks, such as:

- responding to customers' phone calls, texts and emails
- providing directions to drivers for deliveries

- finding alternate drivers when vehicles broke down.

Not paying employees for all hours worked snowballed – the employees ended up working more than 40 hours in a workweek, so they should have received overtime pay.

Plus, the situation resulted in recordkeeping violations.

### 'Just want to check'

It can be tempting for employees to pick up their smartphones at home because they "just want to check if anyone at work needs anything." Next thing they know, they're emailing, texting or calling their co-workers.

Payroll may want to remind employees and supervisors what the FLSA says about off-the-clock work.

**More info:** [www.dol.gov/newsroom/releases/whd/whd20221012](http://www.dol.gov/newsroom/releases/whd/whd20221012)

## Fringe benefits ...

(continued from Page 1)

**benefits (QTFBs)** will increase. Note: Bicycle commuting reimbursements must be included in income again next year.

The IRS said that for QTFBs, the aggregate exclusion for transportation in a commuter highway vehicle and any transit pass will be \$300 per month (up from \$280). Likewise, for qualified parking, the monthly limit will be \$300 (up from \$280).

If you have a qualified adoption program, the amount excludable from gross income will be \$15,950 (currently it's \$14,890). Note: The same amount applies if the child has special needs.

That \$15,950 amount begins to phase out if the taxpayer has a modified adjusted gross income of more than \$239,230 (now, \$223,410). It's completely phased out at \$279,230 (now, \$263,410).

**More info:** [www.irs.gov/pub/irs-drop/rp-22-38.pdf](http://www.irs.gov/pub/irs-drop/rp-22-38.pdf)

## 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.*

### ■ COMPENSABLE? COMMUTE TIME IN COMPANY VEHICLE

"Do you have a long commute now that you've taken your new job with the traffic control company?" Payroll Manager Pat Gray asked her nephew Max.

"It's not too bad," said Max.

"It'd be a lot shorter," he went on, "if I didn't have to stop and pick up a couple flagger-passengers on the way in – and of course, I have to drop them off on the way home."

"Did you say 'flagger-passengers,' Max?" Pat asked.

"Yeah, that's what we call them, and I'm a flagger-driver," Max explained to his aunt.

### Driving to and from worksites

"Are you driving in your vehicle for this, or did the company provide a vehicle for you?" Pat asked.

"They gave me a company vehicle," Max said, nodding.

"Well, that's a nice benefit," noted Pat.

"Yeah, it is," said Max. "We're all heading to the same worksites every day, and it's a company vehicle, so I guess it makes sense that'd I'd be picking people up."

"It's just that I wish they paid me for the time I had to spend going out of my way," he added.

Eventually, Max and the other flagger-drivers sued their employer, claiming they hadn't been paid for all hours worked, including for overtime.

The employer tried to get the case thrown out. Did it succeed?

■ *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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## IRS announces formatting changes for 2023 Form W-2: What's coming

■ PLUS, YOU'LL HAVE THE OPTION TO COMPLETE CERTAIN COPIES ONLINE

During its October Payroll Industry Call, the IRS announced the 2023 Form W-2 will look a bit different.

Ultimately, what's driving the changes is supply chain issues related to the type of paper the Service uses to print the forms.

As the IRS noted during the Call, it posted an early release draft of the 2023 form on Sept. 29, 2022.

Here's a closer look at the proposed new format:

### Adjusting the boxes

**Copy A**, which Payroll files with the SSA: The IRS doesn't plan to make changes and noted that it'll continue to use red drop-out ink.

**Copy 1**, which you may need to transmit to your state, city or local tax department. No changes are planned for this copy, either.

**Copies B, C and 2** – the three copies you distribute to employees: This is where you'll notice that the formatting is different.

All three copies will be on one page, the IRS explained.

The box titles will be the same as the 2022 version, but some boxes have been moved on the 2023 version so that the three copies will fit onto a single page.

On the back of that page, you'll find some familiar information:

- "Notice to Employee," and
- "Instructions for Employee."

**Copy D**, the employer's copy: It'll no longer be provided, the IRS said. The same goes for the information typically found on the back, labeled "Employers, Please Note." So which copy of Form W-2 should employers keep? Any copy, the IRS said during its Call.

### Printing copies to distribute

In addition to the formatting changes to the 2023 Form W-2, the IRS says Payroll will be able to complete certain copies of the form online and then print them for distribution.

Specifically, that includes copies 1, B, C and 2. And here's a timesaver: Entries into one of those copies will automatically populate the rest.

**More info:** [www.irs.gov/pub/irs-dft/fw2--dft.pdf](http://www.irs.gov/pub/irs-dft/fw2--dft.pdf)

## Taxes deferred under CARES Act? Look for IRS notices

Watch the mail: The IRS is sending out CP256V notices to certain employers from September through mid- to late-November 2022. These are reminder notices that deferred Social Security taxes are soon due.

The IRS gave an update during its October Payroll Industry Call. The notices are identical to the ones mailed last year, the IRS explained, except for the balance-due details.

### Make next payment by Jan. 3, 2023

The Coronavirus Aid, Relief, and Economic Security (CARES) Act

allowed employers to defer the deposit and payment of Social Security taxes. As the IRS previously explained:

- The first due date was Dec. 31, 2021. That date fell on a holiday, so employers had until Jan. 3, 2022, to make the payment.
- The second due date is Dec. 31, 2022, which once again lands on a holiday, so employers have until Jan. 3, 2023.

Keep the deferred payments separate from other tax payments to ensure they're properly applied.

**More info:** [bit.ly/deferredtax656](https://bit.ly/deferredtax656)

## NEWS YOU CAN USE

### ■ READY TO FILE FORMS W-2? HERE'S 2022 START DATE

Using the SSA's Wage File Upload option for filing Forms W-2 is a popular option. According to SSA's Matt Newton, who spoke during IRS' October Payroll Industry Call, you can start uploading 2022 Forms W-2 as early as Dec. 3, 2022.

Remember, the final deadline for sending the TY 2022 forms to SSA – and for furnishing the forms to employees – is Jan. 31, 2023.

**More info:** [www.irs.gov/pub/irs-pdf/fw2.pdf](http://www.irs.gov/pub/irs-pdf/fw2.pdf)

### ■ 5 STATES LIKELY TO PAY HIGHER FUTA TAX RATE

In most states, the FUTA tax rate ends up being 0.6% on the first \$7,000 of wages paid (that's 6.0% minus a 5.4% credit). But in five states, employers will likely pay more for 2022 (forms due in 2023).

That's because those states have outstanding loans from the Federal Unemployment Account.

The states have until Nov. 10, 2022, to pay back the loans or face a credit reduction of 0.3%. That'd put their final rate at 0.9%.

As of Oct. 14, 2022, here's how much the five states owe:

- California: \$18,079,536,731.97
- Colorado: \$33,089,860.58
- Connecticut \$106,785,386.95
- Illinois \$1,362,645,002.82
- New York \$8,008,618,511.17

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

### ■ CURRENT VERSION OF I-9 EXPIRES ON OCT. 31, 2022

You should continue to use the current Form I-9, even though the expiration date is Oct. 31, 2022, until a new version is available.

That's according to a U.S. Citizenship and Immigration Services announcement on Oct. 11, 2022.

**More info:** [bit.ly/expiration656](https://bit.ly/expiration656)

## TEST YOUR KNOWLEDGE

### ■ NEW APPLICATION NEEDED TO E-FILE THESE RETURNS?

The IRS has been making changes to its Filing Information Returns Electronically (FIRE) system.

Certain forms, such as the 1099, can be filed through this system, but deadlines are approaching to ensure users are up to speed with the changes. Test your knowledge by answering *True* or *False* to the following:

1. The FIRE system is used to file Form 1095-C.
2. If your company received its Transmitter Control Code (TCC) from the IRS prior to Sept. 26, 2021, the code will remain active indefinitely.
3. After Aug. 1, 2023, a FIRE TCC that doesn't have a corresponding IR-TCC application won't be usable for e-filing.
4. To transmit forms via the FIRE system, you must use specific software.

## ANSWERS

### Answers to the quiz:

1. *False.* To electronically file the 1095-C and related forms, employers should use a different system called the AIR – i.e., the Affordable Care Act Information Returns system.
2. *False.* You'll need to complete and submit a new application to file information returns (IRs) using the FIRE system. You have from Sept. 25, 2022, to Aug. 1, 2023, to submit the IR-TCC application.
3. *True.* A FIRE TCC that falls into this category will be dropped by the IRS.
4. *False.* To file electronically through FIRE you'll need software, a service provider or an in-house programmer. More info: [www.irs.gov/pub/irs-pdf/ftp1220.pdf](http://www.irs.gov/pub/irs-pdf/ftp1220.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.*

#### **Incomplete recordkeeping for nonexempt employees**

**Employer:** First Choice Interiors LLC, Houston.

**Business:** Drywall contractor.

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

**Type of violation:** First Choice Interiors paid straight time for overtime hours worked and failed to maintain complete time records for nonexempt employees.

**Penalty:** \$22,492 in back wages to 39 workers.

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

#### **Company owed \$41,998 in civil money penalties**

**Employer:** BBR Investments LLC, Newton, KS.

**Business:** Fast-food restaurant.

**Law broken:** Fair Labor Standards Act's child labor provisions.

**Type of violation:** At three Sonic drive-in locations near Wichita, KS, minors were allowed to work more hours and later than allowed by federal law. The 14- and 15-year-olds worked more than three hours on a school day, more than 18 hours in a school week and more than eight hours on a non-school day. They also worked past 7 p.m. during the school year and past 9 p.m. during the summer.

**Penalty:** \$41,998 in civil money penalties for violations involving 50 minors.

**Government office:** Dept. of Labor,

Wage and Hour Division, Kansas City, MO, district office.

#### **Employee denied FMLA leave, then terminated**

**Employer:** Georgia Department of Public Health, Atlanta.

**Business:** Government.

**Law broken:** Family and Medical Leave Act (FMLA).

**Type of violation:** Wrongly denied an employee's request FMLA leave. The employee was disciplined and terminated as a result.

**Penalty:** \$77,314 in back wages. Also, the employee was also reinstated to an equivalent position and provided with the salary, benefits, retirement plan and accrued leave that would have been provided if not for the termination.

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

#### **Minors worked more hours than allowed**

**Employer:** Aikane Nursery & Landscaping, Hawi, HI.

**Business:** Landscaping.

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

**Type of violation:** Allowed minors under age 16 to work more hours than allowed. The company also failed to pay time-and-a-half for overtime and keep accurate records.

**Penalty:** \$28,455 in unpaid overtime wages and an equal amount in liquidated damages – plus, a \$10,000 civil monetary penalty for child labor violations and reckless disregard of overtime requirements.

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

## Tracking local laws and regs

### ■ Get ready: Minimum wage will hit \$17.06 in Santa Rosa, CA

The current minimum wage rate of \$15.85 per hour will reach \$17.06 in Santa Rosa, CA, next year. The rate is the same for all employers, regardless of size.

Annual adjustments based on the Consumer Price Index have been in place since 2021.

More info: [bit.ly/santarosa656](https://bit.ly/santarosa656)

### ■ Sonoma, CA, will see increase in minimum wage rate next year

For employees in Sonoma, CA, a higher minimum wage rate will soon be here.

Starting Jan. 1, 2023, the rate will be:

- \$17 per hour (up from \$16) if your company has 26 or more employees, and
- \$16 per hour (up from \$15) if your company has 25 or fewer employees.

Looking ahead to 2024, the minimum wage will be tied to the Consumer Price Index, with a maximum increase of 3.5% for both large and small employers.

More info: [www.sonomacity.org/wages](http://www.sonomacity.org/wages)

### ■ Higher minimum wage rate for businesses in Petaluma, CA

In Petaluma, CA, all employers, regardless of size, will be required to pay a higher minimum wage rate in 2023.

The rate is going up to \$17.06 per hour (from \$15.85), effective Jan. 1, 2023.

More info: [cityofpetaluma.org/minimum-wage](http://cityofpetaluma.org/minimum-wage)

### ■ Saint Paul, MN, minimum wage will go up to \$15.19 next year

In Saint Paul, MN, employers will pay a higher minimum wage rate in 2023.

The rate will increase to \$15.19 per hour (it's currently \$15).

More info: [bit.ly/saintpaul656](https://bit.ly/saintpaul656)

### ■ Minneapolis minimum wage hike based on employer size

Minneapolis has announced an increase to its minimum wage rates, with separate effective dates for large and small employers.

## PRODUCTIVITY BOOSTERS

### ■ AccuWage lets you screen for problems with Forms W-2

Before submitting Forms W-2, you can check them for accuracy using a service SSA offers.

It's called AccuWage Online.

It's available through SSA's Business Services Online, where you can upload your wage files. Issues are identified as:

- critical
- error
- alert, and
- informational.

More info: [www.ssa.gov/employer/accuwage/faqAccuWageOnline.pdf](http://www.ssa.gov/employer/accuwage/faqAccuWageOnline.pdf)

For large employers (those with more than 100 employees) the current rate of \$15 per hour will go up to \$15.19 on Jan. 1, 2023.

As for small employers (those with 100 or fewer employees), they'll see a rate increase from \$13.50 per hour to \$14.50 on July 1, 2023.

Here's a heads-up for small employers: Starting July 1, 2024, the minimum wage rate will be the same, regardless of size.

More info: [minimumwage.minneapolismn.gov](http://minimumwage.minneapolismn.gov)

## REAL-LIFE SCENARIO: DID THEY GET IT RIGHT?

### Deducted overtime pay from employee's commissions

*A bank in Vermont faced this real-life scenario:*

A nonexempt employee worked as a mortgage-loan originator for the bank, signing a new compensation agreement every year.

As stated in her employment agreement, she was paid only by commissions, which the bank calculated and paid out every four weeks. To bridge the gap, she was paid a bi-weekly draw against future commissions (\$10 per hour).

At the end of the four weeks, the bank calculated her regular rate of pay for the weeks she reported overtime

– that was done by dividing a week's worth of commissions by her total hours worked that week.

The difference between the regular rate and the draw rate was then multiplied by one-half to get her additional overtime premium. Finally, the bank deducted her draw wages and her additional overtime premium from her commissions – she was paid the balance.

She sued, saying she should have been paid overtime *in addition to* her commissions. She claimed the company hadn't followed the Fair Labor Standards Act (FLSA), but the Supreme Court of Vermont said

deducting overtime pay from her commissions hadn't violated the FLSA.

### Checklist for compliance

- Given that the FLSA doesn't have a requirement on the payment of commissions, the law doesn't stop an employer from deducting overtime pay from commissions.
- The FLSA doesn't specify that commissions should be considered base pay for overtime purposes, but an employment contract might.
- Under the FLSA, all remuneration must be included when calculating the regular rate of pay.

## Survey on career development shows how on-site, remote workers differ

■ 57% OF RESPONDENTS WOULD LIKE EMPLOYER-FUNDED CERTIFICATIONS

Offering better learning opportunities for employees might do more than simply increase their knowledge. For 63% of employees it'd also make them more likely to continue working for you.

That's according to a new survey from Paychex.

While full-time, on-site employees reported satisfaction with their employers' learning and development, there was room for improvement with remote, hybrid and part-time workers, the research revealed.

Here's a closer look at the survey, conducted in August 2022 with 606 respondents.

### What employees said

Employees' answer to whether more educational and skill-building opportunities would cause them to stay with their current employer differed based on their industry. Here's who said "agree":

- construction – 76%

- education and health services – 60%
- retail, trade, transportation and utilities – 59%, and
- leisure and hospitality – 42%.

What specifically did employees think was holding them back in their career advancement? The survey asked them about soft and hard skills.

These soft skills topped the list: time management (43%), digital literacy (39%) and leadership skills (37%).

As for digital literacy, more fully on-site workers, 46%, than fully remote workers, 34%, expressed that as a concern.

The hard skills of data analysis and computer skills tied for the top spot at 39%, while software skills was close behind at 37%.

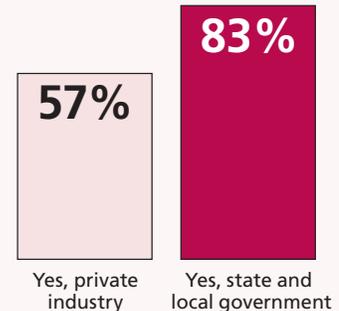
More fully on-site employees (42%) than fully remote employees (35%) stated that they wanted to beef up their analytical skills.

For 58% of respondents, their desired career development involved preparation for a new job or promotion. For example, your Payroll team may

## WHAT PAYROLL PROS TOLD US

### Life insurance

Does your employer offer life insurance benefits?



Source: Bureau of Labor Statistics, 2022

With employer-provided group-term life insurance, the first \$50,000 is excluded from income. If coverage exceeds that amount, refer to the IRS Premium Table.

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

be looking to learn how to do new tasks – perhaps reporting.

A close second, at 57%, was employer-funded certifications. The American Payroll Association's Certified Payroll Professional and Fundamental Payroll Certification are two options.

More info: [bit.ly/advancement656](http://bit.ly/advancement656)

## SHARPEN YOUR JUDGMENT – THE DECISION

(see case on Page 2)

Yes, the court dismissed the case. The employees sued under the Fair Labor Standards Act (FLSA), claiming they hadn't been paid for all hours worked, including overtime hours.

First, the Portal-to-Portal Act of 1947 (PPA) – which amended the FLSA – discussed principal activities and stated that travel time to and from work wasn't compensable.

Then, the Employee Commuting Flexibility Act of 1996 (ECFA) – which amended the PPA – addressed commuting in a company vehicle specifically.

The ECFA said such commute time isn't part of an employee's principal activities – so therefore doesn't need to be paid – if the use of the company vehicle is:

- within the normal commuting area for the employer's business or establishment, and
- subject to an employer-employee agreement.

In the case, if the flagger-drivers had used the company vehicles merely to drive from their homes to the worksites and home again, they wouldn't have had much of a chance in court. However, they had to stop at flagger-passengers' homes on their way to and from the worksites – and that was out of the **employees'** normal commuting area.

Nonetheless, the ECFA is concerned with whether travel occurs in the **employer's** normal commuting area. So, the employees met a proverbial dead end with their claim.

### Analysis: Time spent on incidental tasks

Tasks incidental to using a company vehicle for commuting – e.g., taking care of routine vehicle safety inspections or getting fuel – are included in the ECFA.

As with commute time, incidental tasks like these aren't part of employees' principal activities.

**Cite:** *Kasiotis v. AWP Inc.*, Case No.5:19CV648, U.S. D.C., N.D. Ohio, Eastern Div., 9/16/22.

Note: Dramatized for effect.

## Industry news you can use

### ■ 2023 pay requirements released for certain exempt employees

The California Dept. of Industrial Relations has released updates for 2023 affecting the pay of certain exempt employees.

For **computer software employees**, minimum pay will be \$53.80 per hour; \$9,338.78 on a monthly basis; and \$112,065.20 on an annual basis.

**Licensed physicians and surgeons** should be paid a minimum hourly rate of \$97.99.

More info: [bit.ly/computer656](https://bit.ly/computer656), [bit.ly/physician656](https://bit.ly/physician656)

### ■ Federal contractors to pay higher minimum wage rates in 2023

Minimum wage rates are going up for **federal contractors** as of Jan. 1, 2023. Here are the details:

Under Executive Order 14026, which pertains to contracts made on or after Jan. 30, 2022, the rate will be \$16.20 per hour (currently \$15). Tipped employees must receive

a minimum cash wage of \$13.75 per hour (up from \$10.50).

Under Executive Order 13658, which covers contracts entered into, extended or renewed prior to Jan. 30, 2022, the rate will be \$12.15 per hour (currently \$11.25). Tipped employees must receive a minimum cash wage of \$13.75 per hour (up from \$10.50).

More info: [www.dol.gov/agencies/whd/government-contracts/eo14026](https://www.dol.gov/agencies/whd/government-contracts/eo14026)

### ■ Federal appeals court rules employer didn't owe overtime

**Business development managers** qualified for the administrative exemption under the Fair Labor Standards Act, the Eleventh Circuit Court of Appeals said in *Brown v. Nexus Business Solutions, LLC*. Therefore, the employer didn't owe them overtime.

Although the employees had scripts they could follow when dealing with corporate customers, they exercised discretion and had flexibility.

More info: [bit.ly/administrative656](https://bit.ly/administrative656)

## 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:*

### Vacation payout at year-end: What tax rate should we use?

**Q:** If employees cash out unused vacation time at the end of the year, what tax rate applies?

**A:** An annual lump-sum payment for unused vacation leave should be treated as a supplemental wage payment, according to the IRS. Note: Other types of supplemental pay include bonuses, commissions and retroactive pay increases. The flat federal income tax rate for supplemental pay is currently

22% – that's if the payment is \$1 million or less. Say you identify supplemental wages and regular wages separately (and that you withheld income tax from an employee's regular wages in the current or prior year). You'd have two options: 1) withhold income tax from the supplemental pay at 22%, or 2) combine regular wages for the pay period with the supplemental pay and withhold income tax using ordinary rates.

More info: Intuit TurboTax; "What is the Federal Supplemental Tax Rate?"; [turbotax.intuit.com/tax-tips/jobs-and-career](https://turbotax.intuit.com/tax-tips/jobs-and-career)

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 contains updates to Payroll-related publications:

- Form 3903, *Moving Expenses*. Revised 2022. Posted 9/29/22.
- Form 1095-A, *Health Insurance Marketplace Statement*. Revised 2022. Posted 9/29/22.
- Form 8274, *Certification by Churches and Qualified Church Controlled Organizations Electing Exemption From Employer Social Security and Medicare Taxes*. Revised September 2022. Posted 9/30/22.
- Pub. 1187, *Specifications for Electronic Filing of Forms 1042-S, Foreign Person's U.S. Source Income Subject to Withholding*. Revised September 2022. Posted 9/30/22.
- Pub. 4757, *Individual Taxpayer Identification Number*. Revised October 2022. Posted 9/30/22.
- Instructions for Form 1095-A, *Health Insurance Marketplace Statement*. Revised 2022. Posted 9/30/22.
- Instructions for Form 3903, *Moving Expenses*. Revised 2022. Posted 10/3/22.
- Form 5084, *Congressional Update*. Revised October 2022. Posted 10/3/22.
- Pub. 4485, *Guide for the Certification of State FUTA Credit*. Revised October 2022. Posted 10/3/22.

### 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!*

### ARIZONA

- **MINIMUM WAGE:** As of Jan. 1, 2023, the state's minimum wage rate will be \$13.85 per hour. Currently, it's \$12.80. **More info:** [bit.ly/arizona656](http://bit.ly/arizona656)

### CALIFORNIA

- **BEREAVEMENT LEAVE:** Under a new law, AB 1949, employers must provide up to five days of bereavement leave if an employee's family member dies. The leave must be completed within three months of the date of the death. Although the bereavement leave doesn't need to be paid, employees can choose to use available leave balances, such as paid sick leave, employers may offer. Employers with five or more employees will be subject to AB 1949, which takes effect Jan. 1, 2023. The legislation amends the California Family Rights Act. **More info:** [bit.ly/bereavement656](http://bit.ly/bereavement656)
- **DESIGNATED PERSON:** Under the California Family Rights Act, employees can take 12 weeks of leave for family care and medical leave. AB 1041 expands that to allow an employee to care for a designated person who's related by blood or whose association with the employee is the equivalent of a family relationship. The law also expands the definition of a family member under the Healthy Workplaces, Healthy Families Act of 2014 – that law entitled employees to paid sick days to care for themselves or their family members. Now a family member can include a designated person. That means any person identified by the employee at the time the employee requests paid sick days.

AB 1041 takes effect Jan. 1, 2023. **More info:** [bit.ly/designated656](http://bit.ly/designated656)

### FLORIDA

- **TAX RELIEF:** Following Hurricane Ian, which hit Florida on Sept. 23, 2022, the IRS granted extra time for businesses to file certain forms, such as quarterly payroll returns. Those returns with due dates of Oct. 31, 2022, and Jan. 31, 2023, are now due Feb. 15, 2023. **More info:** [bit.ly/florida656](http://bit.ly/florida656)

### MINNESOTA

- **MINIMUM WAGE:** Get ready for an increase to the minimum wage as of Jan. 1, 2023. The current rate for large employers, \$10.33 per hour, will be going up to \$10.59. Plus, the current rate for small employers, \$8.42, will increase to \$8.63 – this is also the training wage rate and youth wage rate. **More info:** [bit.ly/minnesota656](http://bit.ly/minnesota656)

### NEW JERSEY

- **CHILD LABOR:** Thanks to AB 4222, minors under age 18 can't work more than six hours (previously, five) without taking a 30-minute lunch break – and other changes involving child labor were made. The law took effect July 5, 2022. **More info:** [legiscan.com/NJ/text/A4222/2022](http://legiscan.com/NJ/text/A4222/2022)
- **MINIMUM WAGE:** In 2023, you'll see a higher minimum wage rate. It's going up to \$14.13 per hour (currently \$13). The rate is lower for small and seasonal employers – it's increasing to \$12.93 (the 2022 rate is \$11.90). **More info:** [bit.ly/newjersey656](http://bit.ly/newjersey656)

### NORTH CAROLINA

- **TAX RELIEF:** Sept. 28, 2022, North Carolina felt the effects of Hurricane Ian. Due to the federal disaster declaration, the IRS says quarterly payroll returns normally due Oct. 31, 2022, and Jan. 31,

2023, are now due Feb. 15, 2023. **More info:** [bit.ly/northcarolina656](http://bit.ly/northcarolina656)

### SOUTH CAROLINA

- **TAX RELIEF:** The IRS has granted businesses in South Carolina tax relief following Hurricane Ian, which began Sept. 25, 2022. Quarterly payroll returns normally due Oct. 31, 2022, and Jan. 31, 2023, are now due Feb. 15, 2023. **More info:** [bit.ly/southcarolina656](http://bit.ly/southcarolina656)

### WYOMING

- **UNCLAIMED PROPERTY:** The state isn't accepting ACH payments during the 2022 reporting period for unclaimed property, says the Wyoming State Treasurer's Office. Unclaimed property reports must be submitted by November 1 each year. **More info:** [statetreasurer.wyo.gov/unclaimed-property](http://statetreasurer.wyo.gov/unclaimed-property)

## THE LIGHTER SIDE

If you love what you do for a living, you might as well continue doing it. That's the approach Dr. Howard Tucker has taken – at 100 years old, he's still working as a neurologist. He began his career long before MRIs and CT scans.

Currently, Dr. Tucker sees patients and teaches medical residents at St. Vincent Charity Medical Center in Cleveland. Plus, as you might have imagined, he was entered into the Guinness Book of Records as the world's oldest practicing doctor.

His workday? Typically that's from 9 a.m. to 6 p.m.

As for his home life, he's been married to Sue for 65 years – and her career is nothing to sneeze at, either. At 88, she's still working as a psychiatrist.

**Cite:** News 5 Cleveland, 7/8/22, [bit.ly/neurologist656](http://bit.ly/neurologist656)