

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 TM

November 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.

■ APPLICATION EMPLOYERS USE TO SET UP IRA TRUST

Item: Form 5306, *Application for Approval of Prototype or Employer Sponsored Individual Retirement Arrangement (IRA)*.

Background: Employers use this application to establish an IRA trust their employees can use. Banks and insurance companies also use the form.

Comments due: 11/25/22.

Cite: *Federal Register*, 10/26/22.

■ MAINTAINING A PLAN'S TAX-QUALIFIED STATUS

Item: Revenue Procedure 2021-30.

Background: The IRS uses info in Revenue Procedure 2021-30 to determine if it'll issue various types of closing agreements and compliance statements as part of the Employee Plans Compliance Resolution System (EPCRS). Employers can maintain a plan through EPCRS.

Comments due: 11/25/22.

Cite: *Federal Register*, 10/26/22.

Go to www.gpo.gov for copies of the forms.

New retirement plan numbers, other 2023 changes from IRS

■ Higher 401(k), 403(b), 457 plan contribution limits

Employees will be able to contribute more to their 401(k) plans in 2023. The IRS recently announced that and other cost-of-living increases.

According to IRS Notice 2022-55, the new 401(k) plan salary deferral limit will be \$22,500.

That's up \$2,000 from the current maximum contribution amount of \$20,500.

The salary deferral limit for 403(b) plans and most 457 plans will increase by the same amount to \$22,500.

If employees age 50 or older who participate in those retirement plans want to make catch-up contributions, they can do so up to \$7,500 (currently, \$6,500).

The IRS notice contains additional cost-of-living adjustments for 2023, including a sharp increase in the limit for defined contribution (DC) and defined benefit (DB) plans:

- \$66,000 (up from \$61,000) for DC plans, and
- \$265,000 (currently \$245,000) for DB plans.

For 2023, the annual compensation limit will be set at \$330,000. That's a sizable jump from \$305,000.

More updates

If your company offers SIMPLE retirement accounts, you should know that elective deferrals can be made up

(Please see Changes from IRS ... on Page 2)

Are you ready for these 2023 legal, banking holidays?

Putting a plan in place for how you'll handle next year's holidays can help the Payroll department run smoothly.

Whether it's knowing when tax deposits will be due or figuring out when paydays will fall, now's the time to take a look ahead and adjust to IRS and bank holiday closures.

Calendar entries

These 12 holidays may affect your plans in 2023:

- Mon., Jan. 2: Observation of New Year's Day (LB)
- Mon., Jan. 16: MLK Jr. Day (LB)

- Mon., Feb. 20: Presidents' Day (LB)
- Mon., April 17: Observation of DC Emancipation Day (L)
- Mon., May 29: Memorial Day (LB)
- Mon., June 19: Juneteenth (LB)
- Tues., July 4: Independence Day (LB)
- Mon., Sept. 4: Labor Day (LB)
- Mon., Oct. 9: Columbus Day (LB)
- Fri., Nov. 10: Observation of Veterans' Day (LB)
- Thurs., Nov. 23: Thanksgiving (LB)
- Mon., Dec. 25: Christmas Day (LB)

More info: www.irs.gov/forms-pubs/about-publication-509

Company failed to include different rates of pay in overtime calculations

■ NOT THE FIRST TIME DOL FOUND FLSA VIOLATIONS

Employees at Protection Plus received two or more rates of pay for different jobs they did for their Indianapolis employer.

When the company calculated overtime for hours they worked over 40 in a workweek, though, it didn't factor in all those rates. What's worse, sometimes the security company didn't pay overtime at all to its employees.

Payroll records had accuracy problems, too.

In 2022, when the Dept. of Labor (DOL) did an investigation, those Fair Labor Standards Act (FLSA) violations turned up. The DOL and the employer decided to handle the matter in court through a consent judgment.

The company said it'd pay:

- \$185,459 in wages and an equal amount in liquidated damages –

to be distributed to 215 affected security professionals, and

- \$69,540 in a civil money penalty, given that the company knowingly violated the FLSA.

Using the weighted average

According to the DOL, if your company has an employee working multiple jobs with different rates of pay in a workweek, you can use a weighted average to compute that person's regular rate of pay for overtime purposes.

Alternatively, says the DOL, if your company has an agreement with the employee in advance of the work being done, you can use the rate of pay in effect during the overtime hours as the regular rate of pay for your calculations.

More info: bit.ly/overtime657

Changes from IRS ...

(continued from Page 1)

to \$15,500 in 2023 (increasing from \$14,000).

The limit on catch-up contributions to SIMPLE plans for employees age 50 or over is \$3,000 for 2022 and \$3,500 for 2023.

Also in Notice 2022-55, the:

- limit for a "key employee" in a top-heavy plan under IRC Sec. 416(i)(1)(A)(i) is going up to \$215,000 (from \$200,000)
- limit for a "highly compensated employee" under IRC Sec. 414(q)(1)(B) will reach \$150,000 (currently, \$135,000)
- compensation amount for a "control employee" for fringe benefit valuation under Income Tax Regulations Sec. 1.61-21(f)(5)(i) will be \$130,000 (now, \$120,000), and
- compensation amount under Sec. 1.61-21(f)(5)(iii) will hit \$265,000 (it's \$245,000 in 2022).

More info: www.irs.gov/pub/irs-drop/n-22-55.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.

■ SHOULD COMPANY HAVE ISSUED 1099 OR W-2?

"It's odd that someone who suggested the idea of being an independent contractor would later contest that classification, Ella," Payroll Manager Pat Gray told her friend and fellow payroll pro.

"Exactly," said Ella. "Veronica had told the company that when she did consulting, she generally received a 1099 – and that's what she got from us at year-end. Now she's going back on our verbal agreement and saying that she'd like a W-2 and that she'll reimburse us for the taxes."

Pat shook her head. "It doesn't work that way."

"I believe a 1099 was the right decision," Ella said. "She helped us get our handbook written and offered advice here and there. She worked five to 10 hours a month. We didn't train her because we thought of her as the expert."

She submitted monthly invoices

"Never on the payroll?" Pat asked.

"Never. She sent monthly invoices to A/P," said Ella. "They paid her each month – no taxes withheld."

"Now her work with us is winding down, and she's worried she won't get unemployment compensation benefits from the state because we paid her \$4,452.10 as an independent contractor over about six months," added Ella.

The worker applied for benefits and was denied. She appealed the decision until reaching the Commonwealth Court of Pennsylvania. Did the court decide she was an independent contractor?

■ 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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Dept. of Labor's latest proposed rule lays out 6 economic reality factors

■ STANDARDS FOR EMPLOYEE CLASSIFICATION CHANGING

The regs employers use to determine if workers should be classified as employees or independent contractors under the Fair Labor Standards Act (FLSA) are changing. Yes, again.

On Oct. 13, 2022, the Dept. of Labor (DOL) released a proposed rule – all 184 pages of it.

You've barely had time to settle in with the current regs which took effect March 8, 2021. But now the DOL is reversing course, saying the 2021 regs shouldn't have elevated two factors of the economic reality test.

Really an independent contractor?

The proposed regs would require employers to once again look at the totality of the circumstances when classifying workers. That'd involve considering at least these six economic reality factors:

- opportunity for profit or loss depending on managerial skill
- investments by worker and employer
- degree of permanence of work relationship
- nature and degree of control

- extent to which work performed is an integral part of employer's business, and
- skill and initiative.

In a nutshell, the proposed regs say **employees** are economically dependent on their employers for work, while **independent contractors** are in business for themselves.

Payroll knows that missing the mark on classification can mean your company owes back pay related to overtime and minimum wage.

But the proposed rule goes beyond the FLSA, drawing attention to tax liabilities. After all, as the DOL put it: "Employers are likely to keep the status of most workers the same across all benefits and requirements, including for tax purposes."

Specifically, the regs point out that independent contractors pay the 7.65% FICA taxes that'd otherwise be paid by employers. DOL goes on to mention contributions for unemployment insurance, disability insurance and worker's comp.

According to the DOL, the proposed regs will lead to reduced misclassification. Employers have until Dec. 13, 2022, to submit comments.

More info: bit.ly/classification656

On the clock while computers boot up? Court's ruling

Nonexempt employees who had to wait for their computers to boot up and shut down each workday sued their employer because they hadn't been paid for that time.

The case reached the Fourth Circuit Court of Appeals, which reversed the lower court's decision in *Cadena v. Customer Connexx LLC*.

The call center agents worked on-site using a "soft phone" through their computers to answer customer phone calls and schedule customer service appointments.

To complicate matters, agents relied

on a computer-based timekeeping program to record their hours.

'Integral and indispensable' tasks

Turning their computers on each day was "integral and indispensable" to their principal job duties under the Fair Labor Standards Act, the federal appeals court ruled.

Furthermore, it said the federal district court would have to decide whether the agent's waiting several minutes at the start and end of their shifts was *de minimis*.

More info: bit.ly/computers657

NEWS YOU CAN USE

■ IRS FINALIZES FORMS NEEDED FOR ACA REPORTING IN 2023

The final versions of Form 1095-B, *Health Coverage*, and Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage*, have been released for 2022.

The forms look almost identical to the 2021 versions except for minor changes. For example, in the recipient instructions, references to the individual shared responsibility payment under the Affordable Care Act (ACA) have been removed.

More info: www.irs.gov/pub/irs-pdf/f1095b.pdf; www.irs.gov/pub/irs-pdf/f1095c.pdf

■ I-9 FLEXIBILITY EXTENDED TO 2023 – AND MAYBE BEYOND

Yet again, the flexibility employers have with Form I-9 documents has been extended – this time to July 31, 2023.

The Dept. of Homeland Security (DHS) first announced in 2020 that workplaces operating remotely could defer the physical inspection requirements for I-9 documents.

That flexibility would have ended Oct. 31, 2022, if the feds hadn't issued another extension.

Meanwhile, the DHS recently proposed a rule which would make the relaxed requirements for the employment eligibility verification form permanent. We'll keep you posted on the rule.

More info: bit.ly/documents657

■ JOINT GUIDANCE FROM 2 STATES ON PAID LEAVE

States don't often issue joint guidance, but Oregon and Washington have done that on their paid leave programs.

It's guidance on "place of performance" and "localization," which gets into what to do if an employee regularly works in multiple states.

More info: bit.ly/paidleave657

TEST YOUR KNOWLEDGE

■ Tax levy against employee: What's your responsibility?

The IRS may send an employer a levy against one of its employees if that person has a tax debt.

Knowing how to comply with the levy is crucial. Test your knowledge by answering *True* or *False* to the following:

1. The IRS will send an employer Form 668-W, *Notice of Levy on Wages, Salary and Other Income*, if you're supposed to send funds from the employee's wages.
2. You have one full pay period after receiving the form to send the funds to the IRS.
3. If the employee would like to pay off the debt, the employer should contact the IRS to find out the exact amount due.
4. You should pay the employee any amount of wages exempt from the levy. To compute that amount, use Publication 1494, which the IRS mails with Form 668-W.

ANSWERS

More info: bit.ly/levy57

1. *True*. That form may be used for various types of income, wages, salaries, bonuses, commissions, etc. Form 668-W may even be used for retirement income.
2. *True*. Encourage employees to contact the IRS to discuss a release of levy.
3. *False*. The employee will need to contact the IRS to get a payoff amount. That information can't be released to the employer.
4. *True*. The amount exempt from the levy is based on the standard deduction and an employee statement on number of dependents and filing status. If the employee doesn't return the statement to you within three days, use "married filing separate return" and "0" dependents.

Answers to the quiz:

COMPLIANCE CHECK

See where other companies went wrong – and avoid their mistakes

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

Didn't use regular rate of pay to calculate OT

Employer: Luchador Tacos LLC, North Conway, NH.

Business: Restaurant.

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

Type of violation: The restaurant kept employees' credit card tips, paid straight time instead of overtime, incorrectly calculated the tipped employees' overtime by using their cash wage instead of their regular rate of pay. Under a consent order and judgment, the employer must provide overtime information, in English and Spanish, to employees.

Penalty: \$148,128, which included \$74,064 in tips and back wages and the same amount in liquidated damages.

Government office: Dept. of Labor, Wage and Hour Division, Manchester, NH, district office.

Deducted cost of uniforms, paid below \$7.25 per hour

Employer: Modern Oil Co. – operating as Sparky's Kwick Stop Stores, Shawnee, OK.

Business: Gas station and convenience store.

Law broken: Fair Labor Standards Act's minimum wage provision.

Type of violation: Required workers to pay for smocks, uniforms and cash register shortages, which meant workers earned less than \$7.25 per hour. Note: Certain deductions can be made from wages, as long as minimum wage is paid.

Penalty: \$166,073 for 732 workers. As part of an enhanced compliance

agreement, the employer will provide training, maintain accurate records and ensure that it makes only permissible deductions.

Government office: Dept. of Labor, Wage and Hour Division, Oklahoma City, OK, district office.

More hours, better wages provided for H-2A workers

Employer: Vino Farms, Lodi, CA.

Business: Grape grower.

Law broken: Immigration and Nationality Act.

Type of violation: Workers employed under the H-2A agricultural worker program received more hours and better wages than U.S. workers received. The company utilized two employment contractors.

Penalty: \$54,935 in back wages for 14 farmworkers; plus, \$21,257 in civil money penalties.

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

Owed nearly \$800K in wages and fringe benefits

Employer: Deen Electrical Contractors Inc., Jersey City, NJ.

Business: Electrical subcontractor.

Law broken: Davis-Bacon and Related Acts.

Type of violation: Underpaid wages and fringe benefits due to electricians by using a lower rate intended for laborers. The subcontractor had been working on a federally funded residential townhouse and apartment project in Paterson, NJ, when the violations occurred.

Penalty: \$799,479 to 11 workers.

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

Tracking local laws and regs

■ Minimum wage in Cupertino, CA: Get ready for an increase

On Jan. 1, 2023, the Cupertino, CA, minimum wage will increase to \$17.20 per hour (from \$16.40).

This is an annual adjustment for inflation.

The rate applies to anyone who performs two or more hours of work per week in the city.

More info: bit.ly/cupertino657

■ Half Moon Bay employers to pay more per hour in 2023

The current minimum wage rate of \$15.56 in Half Moon Bay, CA, is heading up to \$16.45. The change will take effect Jan. 1, 2023.

The rate applies to all employees working at least two hours per week at any business within the geographic boundaries of the city.

More info: www.half-moon-bay.ca.us/659/Minimum-Wage

■ More than \$1 per hour increase in minimum wage in CA city

San Diego employers will need to ensure employees earn at least \$16.30 per hour starting Jan. 1, 2023. That's

a sizable jump from the 2022 rate of \$15.

To determine if you're in the geographic boundaries of San Diego, you can go to the city's interactive map.

More info: www.sandiego.gov/compliance/minimum-wage

■ City used Consumer Price Index to adjust minimum wage rate

A new minimum wage rate has been set for 2023 in Sunnyvale, CA.

The current rate of \$17.10 has been adjusted based on the regional Consumer Price Index. As of Jan. 1, 2023, it'll be \$17.95.

More info: bit.ly/sunnyvale657

■ San Jose, CA: Employees will need to earn at least \$17

Time for updates: San Jose, CA, is raising its minimum wage to \$17 per hour for 2023. Currently, the rate is \$16.20.

In addition to English, the city provides posters in Spanish, Vietnamese and Chinese.

More info: bit.ly/sanjose657

PRODUCTIVITY BOOSTERS

■ Fair Labor Standards Act webinar for care industry

The Dept. of Labor's Wage and Hour Division is offering a free, online webinar.

It'll cover minimum wage, overtime and recordkeeping requirements under the Fair Labor Standards Act (FLSA), focusing on home care and nursing care work. The webinar is called "Caring For Those Who Care: FLSA Requirements in the Care Industry."

The event is scheduled for Nov. 17, 2022, from 11 a.m. to 12:30 p.m. EST.

More info: bit.ly/careindustry657

■ Minimum wage in this Arizona city going up to \$16.80

Employers in Flagstaff, AZ, will need to pay a new minimum wage rate in 2023. It's going up to \$16.80 per hour. Currently, it's \$15.50.

Starting in 2024, the rate will be determined by the Consumer Price Index or it'll be \$2 above the state's minimum wage – whichever is higher.

More info: www.flagstaff.az.gov/3520/Minimum-Wage

REAL-LIFE SCENARIO: DID THEY GET IT RIGHT?

Calculating OT if someone earns shift differentials and holiday premium pay

A large national retailer faced this real-life scenario:

Employees who worked in California received shift differentials and/or holiday premium pay from their national retail employer.

They had a problem with the way the company calculated the regular rate of pay for overtime purposes.

They thought the company should have used only non-overtime hours in its calculations, but instead it used total hours worked.

The employees' class-action lawsuit reached the Ninth Circuit Court of Appeals. In the lawsuit, employees

referred to a 2018 case, *Alvarado v. Dart Container Corp. of California*.

In that earlier case, the California Supreme Court ruled on how the regular rate of pay should have been handled when employees earned flat-sum attendance bonuses.

The upshot of *Alvarado*? Only non-overtime hours should be used when employees receive non-hourly compensation.

The federal appeals court didn't agree that *Alvarado* applied to the shift differentials and/or holiday premium pay the retailer paid. That's because the flat-sum bonuses didn't

increase if someone worked more hours, so the regular rate of pay would decrease as an employee worked more hours. The shift differentials and holiday premiums, though, correlated to the number of hours worked.

Checklist for compliance

- Laws differ regarding what wages should be included in the regular rate of pay.
- The overtime rate is generally one-and-a-half times the regular rate of pay.
- Base pay and regular rate of pay aren't synonymous.

New type of fraud uses credit-push payments to go after paychecks

■ CROOKS TRY TO GET PAID USING ACH CREDITS, WIRES AND CARDS

Payroll should be on the lookout for certain types of fraud that use credit-push payments.

According to a Nacha report on risk management released in September 2022, the most significant fraud threat is no longer unauthorized debits that pull money from accounts.

The new focus among scammers is sending money out of accounts using ACH credits, wires, cards, etc.

Here's how Payroll enters the picture: A fraudster, pretending to be an employee, will contact HR or log on to the payroll portal with stolen credentials.

Their request? To change the account an employee has set up for direct deposit.

Then on payday, the devious scammers are getting paid instead of the employee who's worked hard throughout the pay period.

The Nacha report, *A New Risk Management Framework for the Era of Credit-Push Fraud*, explains that

payroll impersonation fraud, as it's called, can be classified as:

- **Impersonated Authorized Party** if someone's acting as if he or she is the employee, or
- **Compromised Credentials** if someone's logging into an HR or payroll portal.

There are other scenarios in which fraudsters use credit-push payments, Nacha warns. Your company will also want to have its guard up for:

- **business email compromise** (when an email looks like it's coming from someone legit within your company, but it's not)
- **vendor impersonation fraud** (when you receive a request, allegedly from a valid contractor, to update payment information for that contractor), and
- **account takeover fraud** (when crooks obtain the credentials of business bank accounts and push credits to their own accounts).

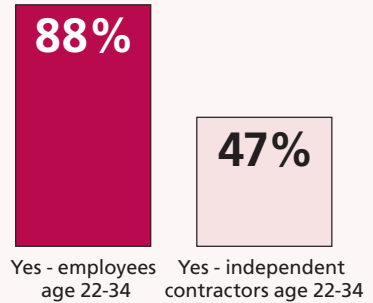
Steps you can take

Although scammers are trying the new method of credit-push payments,

WHAT PAYROLL PROS TOLD US

Direct deposit

Do you receive your pay via direct deposit?



Source: 2022 Quadrant Strategies survey conducted on behalf of Nacha

It's likely 22- to 34-year-old employees have already signed up for direct deposit. In the same age group, independent contractors may need some encouragement.

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

you can still use some proven steps for protecting your company – and your employees. For example, if something doesn't sound right, double-check by picking up the phone or walking down the hall. Also, you may want to ask employees to verify any changes to direct deposit, just to be safe.

More info: bit.ly/fraudreport657

SHARPEN YOUR JUDGMENT – THE DECISION

(see case on Page 2)

Yes, the court concluded that the worker was an independent contractor.

As such, the compensation she earned as a consultant for the company didn't constitute wages under the Pennsylvania Unemployment Compensation Law. That led to her being ineligible for unemployment compensation benefits from the state.

She initiated the idea of working as a 1099 consultant for the company, and the company entered into a verbal agreement with her to do that.

She put in five to 10 hours per month, helping the company develop its employment handbook and offering advice. The company didn't train her – after all, as a consultant, she'd be an expert in her field.

Each month, she submitted an invoice – the company paid her monthly and never withheld any taxes.

The court agreed with the company's classification of her as an independent contractor in part because she was free from control and direction when she carried out her tasks for the company.

Furthermore, she had established herself as having a consulting business.

Analysis: Don't rely on verbal agreements

Even if a worker suggests that he or she should be an independent contractor, proceed with caution.

While it may be clear that a worker should receive a Form 1099 instead of a Form W-2, your company should have more than a verbal agreement with the worker to fall back on. Getting expectations down in writing can give your company something to refer to if the worker ever changes his or her mind.

Cite: *Kelly v. Unemployment Compensation Board of Review*, No. 1525 C.D. 2019, Commonwealth Court of Pennsylvania, 5/27/22. Note: Dramatized for effect.

Industry news you can use

■ DOL survey to gather wage data from West Virginia employers

The Dept. of Labor is asking the West Virginia highway construction industry to participate in a prevailing wage survey.

The survey, which isn't limited to federally funded projects, covers highway construction that occurred in the state between Jan. 1, 2021, and Nov. 18, 2022.

More info: www.dol.gov/newsroom/releases/whd/whd20221021

■ Airline's policy meant employees didn't qualify for FMLA leave

An airline that used hours paid, rather than hours worked, to determine if employees qualified for time off under the Family and Medical Leave Act (FMLA) had to correct its policy, a federal court said.

Pilots and flight attendants who worked for Mesa Air Group rarely qualified to take FMLA leave due to the policy. In the airline industry, flight

attendants typically receive an hourly wage only while an aircraft is moving even though they may be on duty for a longer period of time.

As part of a consent judgment with the federal Dept. of Labor, the airline agreed to pay one flight attendant \$10K in damages for denying her FMLA leave.

More info: www.dol.gov/newsroom/releases/whd/whd20221027-0

■ Legislation requires overtime pay and provides tax credit

The Oregon Dept. of Revenue has released details about the employer tax credit for agricultural worker overtime pay.

Due to HB 4002, which passed earlier in 2022, agricultural employers must pay overtime to certain workers starting in 2023. The law established an income or corporate tax credit for a percentage of that overtime pay – the tax credit available from 2023 to 2028.

More info: bit.ly/agriculture657

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:

Pay new hires who complete training online at home?

Q: New hires do online training as part of their onboarding. They typically complete this at home during non-work hours. Are we required to pay them for that time?

A: Generally, employees need to be paid for time spent taking part in trainings. The Dept. of Labor provides four criteria that must be met if you're not going to consider that working time. The first of those is the

training needs to be done outside working hours. While online training completed at home might seem to fit the bill, don't forget about the other criteria.

The second is that the training must be voluntary. Third, it can't be job related. Fourth, no other work can be performed at the same time. Those criteria also apply for lectures and meetings that employees may attend. Also, don't forget that state laws and regs may vary from what's required on the federal level.

More info: www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs22.pdf

Send questions to 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 13930, *Application for Central Withholding Agreement*. Revised September 2022. Posted 10/4/22.
- Publication 5477, *All Taxpayers Now Eligible for Identity Protection PINs*. Revised July 2022. Posted 10/5/22.
- Form 720, *Quarterly Federal Excise Tax Return*. Revised September 2022. Posted 10/6/22.
- Publication 4485, *Guide for the Certification of State FUTA Credits*. Revised October 2022. Posted 10/6/22.
- Publication 4465-A, *Protecting Federal Tax Information for Contractors*. Revised June 2022. Posted 10/6/22.
- Publication 1220, *Specifications for Electronic Filing of Forms 1097, 1098, 1099, 3921, 3922, 5498, and W-2G*. Revised October 2022. Posted 10/12/22.
- Publication 5319, *LB&I Focus Guide*. Revised October 2022. Posted 10/14/22.
- Publication 5078, *Assurance Testing System Guidelines for Modernized e-File Business Submissions*. Revised August 2022. Posted 10/14/22.
- Publication 5137, *Fringe Benefit Guide*. Revised October 2022. Posted 10/14/22.

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!

ALASKA

- **SUBMINIMUM WAGE:** When SB 185 takes effect Dec. 12, 2022, employers will no longer be able to pay the subminimum wage to employees with disabilities. Employers will have to pay the full minimum wage. **More info:** bit.ly/alaska657

CALIFORNIA

- **GARNISHMENTS:** SB 1477 changes the amount you can garnish from an employee's wages. Effective Sept. 1, 2023, the amount you should withhold for a wage garnishment is limited to the lesser of: 20% of the individual's disposable earnings for the workweek or 40% of the amount by which the individual's disposable earnings for the workweek exceed 48 times the state minimum wage. **More info:** legiscan.com/CA/bill/SB1477/2021

COLORADO

- **PAID LEAVE:** The state has clarified, through employer FAQs, some requirements of its Family and Medical Leave Insurance (FAMLI) Program. Employers and employees will begin paying into the fund on Jan. 1, 2023, via payroll deductions. You'll submit payments using an online system at the end of each quarter. Starting in 2024, employees will be able to begin filing claims to receive FAMLI benefits. **More info:** famli.colorado.gov/employers/employer-faqs

MONTANA

- **MINIMUM WAGE:** The current minimum wage rate of \$9.20 per

hour will increase to \$9.95 on Jan. 1, 2023. **More info:** bit.ly/montana657

- **WITHHOLDING:** The *Montana Employer and Information Agent Guide*, revised October 2022, includes withholding tables that take effect Jan. 1, 2023. The guide also notes the Dept. of Revenue will no longer mail Form MW-1 – that's the form used to make withholding tax payments. Instead, employers can download the form and make payments online. **More info:** bit.ly/mt657

NEBRASKA

- **WITHHOLDING:** The Dept. of Revenue has released *2023 Nebraska Circular EN*, which contains the percentage method tables and the tax table brackets. Employers need these to correctly calculate Nebraska tax and the tax from wages paid on or after Jan. 1, 2023. **More info:** bit.ly/nebraska657

NEW YORK

- **TAXES:** If your company is planning to participate in the optional Employer Compensation Expense Program, you have until Dec. 1, 2022, to make your annual affirmative election. The 5% tax is paid on New York employees' wages that exceed \$40,000. You can let them know they may be eligible for a tax credit when filing their income tax return. They may need to adjust their withholding using Form IT-2104. **More info:** www.tax.ny.gov/bus/ecepe/ecepe.htm

OHIO

- **MINIMUM WAGE:** Starting 2023, the state's minimum wage will be \$10.10. That's up from \$9.30. The 2023 rate will apply to employees of businesses with annual gross receipts of \$371,000 or more per year. Employees at smaller companies must be paid at least

\$7.25 per hour. **More info:** bit.ly/ohio657

SOUTH DAKOTA

- **MINIMUM WAGE:** Payroll pros can continue to prepare for 2023 now that the South Dakota Dept. of Labor and Regulation has announced the minimum wage rate. It'll be \$10.80 per hour, up from \$9.95. **More info:** bit.ly/southdakota657

TENNESSEE

- **HOLIDAYS:** Due to HB 2733, employers must allow employees who are veterans to take off Veterans Day as a non-paid holiday if certain conditions met. The legislation makes it clear that employers aren't prohibited from treating Veterans Day as a paid holiday. **More info:** legiscan.com/TN/bill/HB2733/2021

THE LIGHTER SIDE

If you purchased a lottery ticket and won \$100,000, that'd be a fun and lucrative experience.

But that was just the beginning of the excitement and enrichment for a 70-year-old Newark, DE, woman recently. She waited about a week after learning she'd won \$100,000 before going to claim her lottery prize on Oct. 20, 2022.

On her way home from Lottery Headquarters, she celebrated by buying three more tickets, and – you guessed it – one was a winner. The prize amount this time? \$300,000.

So, it was back to Lottery Headquarters later that same day to claim her prize.

As for how she plans to spend the money, she says most of it'll go into her retirement fund.

Cite: www.delottery.com/Media-Center/Press-Releases/2022/10/26