

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™

January 1, 2023

UPCOMING DEADLINES

Use this checklist to help ensure your deposits of Social Security, Medicare and withheld income taxes are timely remitted to the IRS.

■ SEMIWEEKLY DEPOSITORS

- **Jan. 5, 2023:** Deposit taxes for payroll on Dec. 28, 29, 30.
- **Jan. 6, 2023:** Deposit taxes for payroll on Dec. 31 (for Q4).
- **Jan. 6, 2023:** Deposit taxes for payroll on Jan. 1, 2, 3 (for Q1).
- **Jan. 11, 2023:** Deposit taxes for payroll on Jan. 4, 5, 6.
- **Jan. 13, 2023:** Deposit taxes for payroll on Jan. 7, 8, 9, 10.
- **Jan. 19, 2023:** Deposit taxes for payroll on Jan. 11, 12, 13.
- **Jan. 20, 2023:** Deposit taxes for payroll on Jan. 14, 15, 16, 17.
- **Jan. 25, 2023:** Deposit taxes for payroll on Jan. 18, 19, 20.
- **Jan. 27, 2023:** Deposit taxes for payroll on Jan. 21, 22, 23, 24.

■ MONTHLY DEPOSITORS

- **Jan. 17, 2023:** Deposit taxes for payments made during December 2022.

■ ALL EMPLOYERS

- **Jan. 31, 2023:** File Form 941 for Q4. Note: If you properly deposited taxes on time and in full, you have until Feb. 10, 2023, to file.

Forms W-4: New IRS guidance on electronic submissions

■ Not given a 'license' to make modifications

If you already allow employees to complete Form W-4 electronically or have considered such a system, you should know the IRS has issued new requirements.

In *Additional Guidance for Substitute Submissions of Form W-4*, the IRS explained that just because an electronic substitute of the W-4 is allowed, that's not a "license" to simplify or modify the form.

In fact, a substitute W-4 must include the same info as the paper form, even using the precise wording for Steps 1c through 4c (inclusive).

Details bring clarity

Here are more details regarding an electronic Form W-4 system:

1. Time allotted for changes. When no deadline – other than "reasonable amount of time" – is given for implementing W-4 changes from IRS, in most cases it's 90 days or less.

For example, if the IRS announced new guidelines in a publication posted at the beginning of December 2022, you'd have roughly until the end of February 2023 to get up to speed.

2. Providing personal information. You may have wondered if employees must re-enter Social Security numbers (SSNs) and other personal information already housed in your W-4 system.

According to the IRS guidance, you don't necessarily have to require this

(Please see Forms W-4 ... on Page 2)

Intermittent leave: Federal appeals court weighs in

An employee who suffered from depression and anxiety was protected by the Family and Medical Leave Act (FMLA), the Sixth Circuit Court of Appeals recently ruled.

In *Render v. FCA US, LLC*, the employee who filed the lawsuit had a history of attendance infractions. In fact, he'd been placed on probation.

During that one-year probationary period, he asked for intermittent FMLA leave. His doctor's note said he needed the leave due to flare-ups of depression and anxiety. Specifically, he could take off three to four days per month. Complicating matters, the company gave him inconsistent

instructions – in one letter requesting medical documentation and another approving the leave – about how to request intermittent FMLA leave.

Didn't mention FMLA each time

The company terminated his employment after he failed to mention the FMLA when he reported that he'd be tardy or absent.

In a reversal of the lower court's decision, the federal appeals court said he'd provided proper notice, and the company shouldn't have denied him FMLA leave or fired him.

More info: bit.ly/intermittent659

Piece rate changed when employees worked overtime hours, DOL found

■ COMPANY OWED MORE THAN \$1 MILLION IN BACK WAGES

Paying employees by the piece is allowed under the Fair Labor Standards Act (FLSA), but changing the piece rate to keep overtime costs low isn't.

The Dept. of Labor (DOL) discovered that a recreational vehicle manufacturer had paid less per piece when employees' workweeks exceeded 40 hours.

The DOL said the violations at Alliance RV LLC spanned more than two years.

As a result, the company had to pay over \$1 million in back wages – \$1,158,536, to be exact.

At the manufacturing site, located in Elkhart, IN, 710 employees worked on an assembly line. They produced recreational travel haulers, towable trailers and fifth wheel campers, being

paid on a piecework basis. But when they worked more than 40 hours in a workweek, their overtime pay came up short.

Doing the calculations

According to FLSA regs, to calculate overtime for someone paid on a piecework basis, you find the regular rate of pay by:

- adding up the employee's total weekly earnings, and
- dividing that amount by the total number of hours the employee worked during the week.

Or, if an agreement is in place ahead of time, for each piece produced during overtime hours, you can pay one-and-a-half the piece rate.

More info: www.dol.gov/newsroom/releases/whd/whd20221121-0

Forms W-4 ...

(continued from Page 1)

step if certain conditions are met. They are:

- The SSN and other info is stored in your electronic system and the employee's action is linked to that electronically stored info.
- As for the source of the info that's stored in your electronic system, it must be a prior submission of a complete Form W-4 or Form I-9.

Let's say you use SSNs in the system to verify the identity of employees. They'd need to re-enter the info for that purpose.

3. Page numbers references. IRS says you don't have to refer to page numbers that aren't applicable, given the electronic format.

For example, in steps 2 and 4, rather than telling employees to see "page 3," you can provide a direct link to the worksheet found on that page.

More info: www.irs.gov/forms-pubs/additional-guidance-for-substitute-submissions-of-form-w-4

COMPLIANCE CHECK

■ SALARY DEFERRALS NOT SENT TO RETIREMENT PLAN

Home Bound Healthcare Inc., a home healthcare company in Flossmoor, IL, violated the Employee Retirement Income Security Act when it failed to remit employee voluntary salary deferral contributions and loan repayments to its 401(k) plan. The company owed:

- \$59,921 for amounts not remitted to the 401(k) plan, and
 - \$25,481 in lost opportunity costs.
- More info:** bit.ly/healthcare659

■ NO COMPENSATION FOR TRAINING, MEETING TIME

Taqueria Moroleon Inc., a restaurant in Avondale, PA, failed to properly pay some tipped workers; didn't compensate some employees for training and meeting time; and paid employees straight time even when they worked overtime. Plus, the company didn't keep accurate time and payroll records. Due to the Fair Labor Standards Act violations, the company had to pay:

- \$47,235 in civil money penalties
 - \$96,908 in back wages, and
 - \$96,908 in liquidated damages
- More info:** bit.ly/restaurant659

■ INVESTIGATED 4 TIMES, PROBLEMS NOT FIXED

Crystal Services LLC and Golden Services LLC, hotels located in Roseburg, OR, failed to pay overtime and minimum wage as required by the Fair Labor Standards Act. During its fourth investigation, the Dept. of Labor found that one employee's salary didn't meet minimum wage and he wasn't paid time-and-a-half for overtime. Another employee wasn't paid for all hours worked. The cost to the employer was:

- \$1,542 in civil money penalties
 - \$37,423 in back wages, and
 - \$37,423 in liquidated damages.
- More info:** bit.ly/hotels659

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

EDITOR: JENNIFER WEISS
jweiss@HRMorning.com

MANAGING EDITOR: CURT BROWN
PRODUCTION EDITOR: P.J. FRONZEO
EDITORIAL DIRECTOR: CURT BROWN

Keep Up to Date on Payroll (ISSN 1076-3309), issue date January 1, 2023, Vol. 29 No. 659, is published semi-monthly except once in December (23 times a year).

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional services. If legal or other expert assistance is required, the services of a competent professional should be sought. — From a declaration of principles jointly adopted by a committee of the American Bar Association and a committee of publishers.

Copyright © 2023 HRMorning. Please respect our copyright: Reproduction of this material is prohibited without prior permission. All rights reserved in all countries.

IRS launches new system for e-filing Forms 1099 – what it'll look like

■ WEB PORTAL USER INTERFACE AVAILABLE IN JANUARY 2023

Payroll can help make sure A/P gets Forms 1099 out the door for TY 2022 in accordance with the most recent IRS requirements.

During its December Payroll Industry Call, the IRS explained that it's on track with implementing the electronic filing provisions of the Taxpayer First Act of 2019.

That law called on the IRS to develop an Internet platform allowing taxpayers to e-file 1099s.

Here are the details the IRS shared as part of its Call:

Filing the forms

First, the name: The new system for the electronic filing of Forms 1099 will be called the Information Return Intake System (IRIS).

The IRIS web portal user interface will open for use Jan. 9, 2023. The interface will allow you to create 1099s by:

- keying in information, or
- uploading a comma-separated values (CSV) file – the CVS template can hold 100 forms,

but you can use it as many times as needed, the IRS explained.

Next, with IRIS you can:

- download and print the forms for distribution and recordkeeping, and
- submit 1099s to IRS and any states that participate in the Combined Federal/State Filing Program.

In addition to the web portal user interface, IRIS will contain an application-to-application intake channel to be used by bulk filers. But it won't be up and running until around the middle of 2023.

So for TY 2022, bulk filers with high volume should use the existing system: Filing Information Returns Electronically (FIRE).

Be prepared: You'll need a separate transmitter control code (TCC) for each channel of IRIS.

What's more, any existing TCC you may have for the FIRE or the Affordable Care Air Information Returns (AIR) system won't work with IRIS.

The IRS further explained that the goal is for forms currently filed through FIRE and AIR to instead be processed through IRIS.

More info: www.irs.gov/iris

New reason for mid-year changes to Sec. 125 plans

Heads up: The IRS is expanding its change-in-status rules, allowing employees to make mid-year adjustments to health coverage that's provided under a Sec. 125 plan.

Notice 2022-41 says an employee who's elected family coverage may choose to revoke that election so a family member can enroll in a qualified health plan through a health insurance exchange in the individual market.

The provisions in the notice take effect Jan. 1, 2023. An employer that decides to adopt a plan amendment to allow this new reason for a mid-year

change during 2023 will have until the last day of 2024 to do so.

Affordable offer of coverage

The IRS released the notice in conjunction with regs related to the affordability of an offer of group health plan coverage.

According to the regs, the offer's affordability for a related individual is based on the employee's cost to cover the employee and the employee's related individuals.

More info: www.irs.gov/pub/irs-drop/n-22-41.pdf

NEWS YOU CAN USE

■ FORM W-4, PUBLICATION 15-T NOW UPDATED FOR 2023

The 2023 Form W-4 has been released. Publication 15-T, which contains the federal income tax withholding tables, has also been issued for 2023. The IRS posted them both on its website on Dec. 15, 2022.

So, you can ensure you're set up for accurate withholding next year.

More info: www.irs.gov/formw4, www.irs.gov/pub/irs-pdf/p15t.pdf

■ LIST OF CREDIT REDUCTION STATES IN FINAL SCHEDULE

On Dec. 1, 2022, the IRS released Form 940 and Schedule A for TY 2022. You should know Schedule A contains the list of locations that the IRS considers credit reduction states for 2022.

Here they are, along with their credit reduction rate:

- California – 0.3%
- Connecticut – 0.3%
- Illinois – 0.3%
- New York – 0.3%, and
- Virgin Islands – 3.6%.

More info: www.irs.gov/pub/irs-pdf/f940sa.pdf

■ CONTINUE TO USE EXPIRED MEDICAL SUPPORT NOTICE

You should continue using the National Medical Support Notice (NMSN), Part A, with the expiration date of Oct. 31, 2022, until the Office of Child Support Enforcement (OCSE) releases an updated form.

The OCSE requested comments twice – on May 5, 2022, and on Sept. 21, 2022 – but continued to work on changes after the form's expiration date. Proposed changes include:

- some rewording for clarity
- helpful links, and
- access to a sample of Part A.

More info: www.acf.hhs.gov/css/form/national-medical-support-notice-forms-instructions

IRS provides 5 steps for protecting your business from a cyberattack

■ IF YOU SUSPECT FRAUDULENT ACTIVITY, USE FORM 14039-B

The IRS and other participants in the recent Security Summit wrapped up National Tax Security Awareness Week by releasing steps businesses can take to prevent data loss and fraud.

From Nov. 28 through Dec. 2, 2022, the IRS focused on ways taxpayers can protect sensitive financial information.

Attempts at identity theft persist, the IRS noted. Phishing email scams are one example. With these schemes, cybercrooks try to trick employees into opening embedded links or attachments.

The goal may be obtaining business credit card information, employee identity data or something else.

Be on the lookout

Businesses of all sizes can be targeted by cybercriminals, so it's important to be proactive and remain alert.

Here are five ways businesses can

protect themselves. The IRS passed along these steps from the Federal Trade Commission:

1. Use multi-factor authentication.
2. Set security software to update automatically.
3. Back up important files.
4. Require strong passwords for all devices.
5. Encrypt devices.

Unusual notices from the IRS

In the event that you need to report possible identity theft to the IRS, use Form 14039-B, *Business Identity Theft Affidavit*.

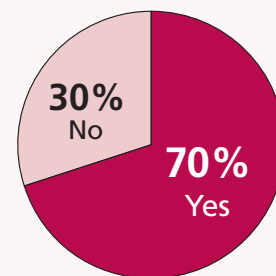
You should submit that form if you receive a:

- rejection notice telling you an electronically filed return has been sent back because another return has already been received for that period
- notice about a tax return that you didn't file
- notice about Forms W-2 filed with SSA – but you didn't file the wage reports, and

WHAT PAYROLL PROS TOLD US

Pay adjustments

Did your company spend more than originally planned on pay adjustments for the past 12 months?



Source: 2022 Salary Budget Planning Report by WTW

Due to widespread hiring and retention challenges, many businesses decided to rethink the salary budget plans they had for 2022.

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

- notice of a balance due that's not owed.
- Submitting Form 14039-B allows you to take a proactive measure.
- Once the IRS receives the form, it'll work with you to resolve any fraudulent activity impacting your business.

More info: bit.ly/security659

REAL-LIFE SCENARIO: DID THEY GET IT RIGHT?

FLSA claim hit 'roadblock' due to Motor Carrier Act exemption

A New York landscaping company faced this real-life scenario:

An employee who worked as a tree cutter and driver also did some mechanic work during the course of his employment with the company.

He maintained equipment and trucks – doing oil changes, replacing parts and so on.

According to the company, he helped with mechanical tasks at least every two to three months.

The employee claimed the company didn't pay him for all hours worked, and he filed a Fair Labor Standards Act (FLSA) lawsuit.

Employees can qualify for the motor carrier exemption from the FLSA requirements, but according to the worker, he didn't spend enough of his time on mechanic duties for the exemption to apply.

The court considered the Dept. of Transportation's interpretative guidance regarding the "four month rule." That rule states that if, at least every four months, an employee does work impacting the safety of motor vehicles being operated, the employee could qualify for the FLSA's motor vehicle exemption.

That said, the court wasn't as concerned with the amount of time

he spent doing mechanic's work as with the impact those tasks had on vehicle safety.

His work substantially impacted safety, the court determined, so he qualified as exempt from overtime.

Which workers qualify

As part of the motor carrier exemption, an individual must:

- work for a company whose transportation of passengers or property is subject to the Motor Carrier Act, and
- have a qualifying job, such as driver, mechanic or loader.

Tracking local laws and regs

■ CA cities have announced minimum wage increases

Make sure you catch these hourly pay rates required by various California cities:

Employers in **Redwood City, CA**, will need to pay a minimum wage of \$17 per hour in 2023. The 2022 rate was \$16.20. **More info:** bit.ly/redwoodcity659

In **Richmond, CA**, the new minimum wage rate is \$16.17 per hour, up from \$15.54 in 2022. **More info:** www.ci.richmond.ca.us/2615/Minimum-Wage-Ordinance

San Carlos, CA, released its minimum wage rate for 2023. The rate is \$16.32 per hour (was \$15.77). **More info:** www.cityofsancarlos.org/business/minimum-wage

The hourly minimum wage for employers in **San Mateo, CA**, has increased from \$16.20 to \$16.75. **More info:** www.cityofsanmateo.org/3278/Minimum-Wage

A minimum wage rate of \$17.20 per hour is in effect in **Santa Clara**,

CA. That's up from \$17.20 in 2022. **More info:** bit.ly/santaclara659

South San Francisco, CA, requires a higher minimum wage of employers for 2023. The rate is \$16.70 per hour, up from \$15.80. **More info:** www.ssf.net/departments/city-manager/local-minimum-wage

In **West Hollywood, CA**, large employers will need to pay at least \$17.50 per hour, up from \$16.50. The minimum wage for small employers is \$17 per hour, up from \$16. **More info:** bit.ly/weho659

■ In Maine, 2 localities released higher minimum wage rates

For employers in **Portland, ME**, the minimum wage rate has increased. The rate hike to \$14 per hour, from \$13 per hour, takes effect Jan. 1, 2023. **More info:** www.portlandmaine.gov/759/Minimum-Wage

As of Jan. 1, 2023, **Rockland, ME**, has a \$14 per hour minimum wage rate. That's up from \$13. **More info:** bit.ly/rockland659

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:

Before filing W-2s, how do we use AccuWage Online?

Q: To double-check the accuracy of Forms W-2, we'd like to use SSA's AccuWage Online. How do we do that?

A: AccuWage Online is one of the services available at SSA's Business Services Online (BSO) if you're filing wage reports electronically. Heads up: The BSO registration process changed as of Sept. 19, 2022. Now, if you register to use BSO or any new service, SSA will

mail you an activation code – once you receive the code, you'll need to enter it to complete the activation process. After you log on to BSO, click the *Report Wages to Social Security* link and follow the instructions. SSA encourages users to zip their files for the sake of time – the maximum file size before being zipped is 350MB. Remember, after using AccuWage Online, you'll still need to upload and submit your formatted wage file to SSA using the *Upload Formatted Wage File* tab.

More info: www.ssa.gov/bso/bsowelcome.htm

Send questions to jweiss@HRMorning.com. Because of the volume of mail we receive, we regret we can't answer all submissions.

IRS FORMS ALERT

RECENT CHANGES TO FEDERAL FORMS AND PUBLICATIONS

This list of publications contains Payroll-related updates.

- Form 5498-SA, *HSA, Archer MSA, or Medicare Advantage MSA Information*. Revised 2023. Posted 11/2/22.
- Instructions for Forms 1099-SA and 5498-SA. Revised 2023. Posted 11/2/22.
- Form 15288, *Request to Revoke Partnership Election under IRC Section 6221(b) or Request to Revoke Election under 1101(g)(4)*. Revised October 2022. Posted 11/2/22.
- Form 8880, *Credit for Qualified Retirement Savings Contributions*. Revised 2022. Posted 11/2/22.
- Publication 5313, *Tax Exempt & Government Entities (TE/GE) Program Letter*. Revised September 2022. Posted 11/3/22.
- Publication 5708, *Creating a Written Information Security Plan for your Tax & Accounting Practice*. Revised October 2022. Posted 11/3/22.
- Form 8919, *Uncollected Social Security and Medicare Tax on Wages*. Revised 2022. Posted 11/9/22.
- Publication 1187, *Specifications for Electronic Filing of Forms 1042-S, Foreign Person's U.S. Source Income Subject to Withholding*. Revised September 2022. Posted 11/9/22.

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

- **MINIMUM WAGE:** In 2023, employers must pay employees at least \$10.85 per hour – the rate has been adjusted for inflation from last year's rate of \$10.34 per hour. **More info:** labor.alaska.gov/news/2022/news22-17.htm

CALIFORNIA

- **ABSENCES:** If an employee has a reasonable belief that a workplace or worksite is unsafe due to an emergency condition and therefore leaves or refuses to report to work, an employer can't take adverse action against that person. That's according to SB 1044, a bill which takes effect Jan. 1, 2023. The legislation also says that employers can't prevent employees from accessing their mobile devices in response to an emergency situation. **More info:** bit.ly/california659
- **OVERTIME:** Given the higher 2023 minimum wage rate – \$15.50 per hour for all employers – the amount employers must pay exempt employees has also increased as of Jan. 1, 2023. Reason: The salary must be at least two times the state minimum wage for full-time employment. The salary requirement for executive, administrative and professional employees is \$1,240 per week. **More info:** www.dir.ca.gov/dlse/faq_overtimeexemptions.htm

COLORADO

- **MINIMUM WAGE:** As of Jan. 1, 2023, the state's minimum wage is \$13.65 per hour. That's an increase from \$12.56 per hour. **More info:** bit.ly/colorado659
- **RETIREMENT:** The state-run

retirement plan program, Colorado SecureSavings, is ramping up in the new year. Your company will need to facilitate this program if it meets certain criteria, including not already offering a qualified retirement savings plan to employees. Look for notification from Colorado SecureSavings at the start of 2023. **More info:** coloradosecuresavings.com/employers/program-details

FLORIDA

- **MINIMUM WAGE:** On Sept. 30, 2022, the minimum wage increased to \$11 per hour, from \$10 per hour. **More info:** bit.ly/florida659

NEW YORK

- **MINIMUM WAGE:** The state has increased its minimum wage, with an effective date of Dec. 31, 2022. The new rate is \$14.20 per hour, up from \$13.20. **More info:** dol.ny.gov/minimum-wage-0

OREGON

- **PAID FAMILY MEDICAL LEAVE:** Additional rules implementing the Paid Family and Medical Leave Insurance (PFMLI) program took effect Oct. 6, 2022. For example, you'll find information on overpayment refunds. **More info:** bit.ly/oregon659
- **WORKERS COMP:** The 2023 premium assessment will be 9.8%. For self-insured employers and public-sector self-insured employer groups, it'll be 9.9%, and for private-sector self-insured employer groups, it'll be 10.3%. The assessment for the Workers' Benefit Fund will remain 2.2 cents per hour worked. **More info:** www.oregon.gov/DCBS/cost/Pages/index.aspx

RHODE ISLAND

- **ELECTRONIC FILING:** Large businesses will be required to file returns and remit taxes

electronically, starting Jan. 1, 2023. That applies to businesses that have either: 1) combined annual liability for state taxes of \$5,000 or more, or 2) annual gross income of over \$100,000. **More info:** bit.ly/electronic659

- **HEALTHCARE COVERAGE:** The Rhode Island Dept. of Revenue recently announced the due date for submitting health coverage reports to the Division of Taxation has been permanently moved from January 31 to March 31 each year. Likewise, the annual deadline for getting forms into employees' hands has been permanently moved from January 31 to March 2. Both deadline changes kick in for 2023. Remember, Rhode Island requires its residents to maintain minimal essential healthcare coverage, similar to what's required under the federal Affordable Care Act. **More info:** bit.ly/rhodeisland659

THE LIGHTER SIDE

Snowy days can lead to business closures and questions about whether employees need to be paid. Here's something less stressful to think about as you wait for the snowplows to clear the roads.

Several state transportation departments have snowplow-naming contests, and, in fact, the Minnesota Dept. of Transportation kicked off the idea in the U.S. three years ago. Some of Minnesota's past contest winners include:

- Betty Whiteout
- Blizzard of Oz
- No More Mr. Ice Guy
- F. Salt Fitzgerald
- Snowbi Wan Kenobi
- The Truck Formerly Known As Plow, and
- Ctrl Salt Delete.

Cite: UPI, 12/8/22, bit.ly/snow659