

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 15, 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. 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.
- **Feb. 1, 2023:** Deposit taxes for payroll on Jan. 25, 26, 27.
- **Feb. 3, 2023:** Deposit taxes for payroll on Jan. 28, 29, 30, 31.
- **Feb. 8, 2023:** Deposit taxes for payroll on Feb. 1, 2, 3.
- **Feb. 10, 2023:** Deposit taxes for payroll on Feb. 4, 5, 6, 7.

### ■ MONTHLY DEPOSITORS

- **Jan. 17, 2023:** Deposit taxes for payments made during December 2022.
- **Feb. 15, 2023:** Deposit taxes for payments made during January 2023.

### ■ 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.

## Secure 2.0 Act: Here's how new law impacts Payroll

### ■ Automatic retirement plan enrollment and more

When the Secure 2.0 Act became law in the final days of 2022, it brought plenty of changes for Payroll.

For starters, Title I of the legislation aims to expand coverage and increase savings in retirement plans. Here are four provisions to prep for:

#### The details of 4 provisions

**1. Automatic enrollment.** The law says 401(k) and 403(b) plans must automatically enroll participants once they become eligible, putting the onus on employees to opt out if they don't want to make the contributions. A participant's initial deferral amount must be at least 3% but no more than 10%. Each year, the rate will automatically escalate by 1% until

reaching 10%, but 15% is the max. Note that:

- existing 401(k) and 403(b) plans are grandfathered, and
- the provision isn't required of businesses with fewer than 10 employees or those operational for less than three years, church plans or governmental plans.

Automatic enrollment will be mandatory with plan years beginning after Dec. 31, 2024.

**2. Increased catch-up contributions.** Starting in 2025, participants who reach ages 60, 61, 62 or 63 can make higher catch-up contributions than what's allowed

*(Please see Secure 2.0 ... on Page 2)*

## IRS releases business mileage rate for 2023 – it's up

With only a few days left until 2023 arrived, the IRS released the new year's standard mileage rates.

The rates for vehicle travel have gone up – and that's on top of the rare mid-year increase that the IRS issued in 2022.

As of Jan. 1, 2023, the rate for business travel is 65.5 cents per mile, the IRS announced on Dec. 29, 2022.

That's up from 62.5 cents per mile six months ago and from 58.5 cents per mile one year ago.

The rate for medical or moving purposes is still 22 cents per mile. The IRS had increased that rate for

the second half of last year (at the start of 2022, it was 18 cents per mile).

The rate for miles driven in service to charitable organizations remains 14 cents per mile.

#### Fair market value also higher

The IRS also released the maximum fair market value of automobiles first made available to employees in 2023. That's \$60,800, up from \$56,100.

You'll need that amount if you use either the fleet-average or the vehicle cents-per-mile valuation rule.

**More info:** [www.irs.gov/pub/irs-drop/n-23-03.pdf](http://www.irs.gov/pub/irs-drop/n-23-03.pdf)

## Florida business didn't keep proper payroll records, owes back wages

■ DOL INVESTIGATION TURNS UP  
FLSA PROBLEMS AT RESTAURANT

The payroll report at a restaurant in St. Petersburg, FL, lacked the required Fair Labor Standards Act (FLSA) information.

That's one of the problems the Dept. of Labor (DOL) found when it did an investigation of Mi Carreta Restaurant & Bakery Inc.

Specifically, the company didn't have records of number of hours worked. Plus, the issue date on a series of checks was inaccurate.

So, the company got hit with FLSA recordkeeping violations.

The DOL found other violations at Mi Carreta Restaurant & Bakery Inc., too. They were that the restaurant:

- misclassified cooks, bakers, dishwashers, servers, helpers and a kitchen supervisor, as independent contractors, and

- paid straight time to tipped workers and kitchen employees when they worked over 40 hours in a workweek.

The restaurant had "run up the bill" on back wages, owing \$28,162 to 36 employees.

### Doing wage computations

The FLSA requires that certain records be kept, including those used to do wage computations.

That might be time cards and piece work tickets, wage rate tables, work and time schedules, and information about additions to or deductions from wages.

Such records should be retained for two years.

**More info:** [www.dol.gov/newsroom/releases/whd/whd20221206-1](http://www.dol.gov/newsroom/releases/whd/whd20221206-1)

### Secure 2.0 ...

(continued from Page 1)

when attaining age 50. The limit will be the greater of:

- \$10,000, or
- 50% more than the regular catch-up amount.

**3. Student loan payments eligible for matching contributions.** Employers can offer matching contributions under a 401(k), 403(b) or 457(b) plan or a SIMPLE IRA to employees making payments on qualified student loans. The change takes effect for plan years beginning after Dec. 31, 2023.

**4. Retirement plan participation for part-timers.** For plan years beginning after Dec. 31, 2024, part-time workers who complete at least 500 hours of service per year must be allowed to participate in a 401(k) plan after two consecutive years – that's down from three consecutive years.

Plus, the long-term, part-time coverage rules are now extended to 403(b) plans – those subject to ERISA.

**More info:** [bit.ly/retirement660](http://bit.ly/retirement660)

## COMPLIANCE CHECK

### ■ AVOIDED PAYING OVERTIME TO 54 WORKERS, DOL SAID

Millie's Cafe, a restaurant with locations in Los Angeles and Pasadena, CA, failed to pay overtime and keep proper records in violation of the Fair Labor Standards Act. To avoid paying time-and-a-half for hours worked over 40 in a workweek, the company issued checks and also made cash payments to 54 workers. The Dept. of Labor (DOL) said the company must pay:

- \$40,446 in civil money penalties
- \$185,097 in back wages, and
- \$185,097 in liquidated damages.

**More info:** [bit.ly/restaurant660](http://bit.ly/restaurant660)

### ■ HEALTHCARE WORKERS OWED \$20K IN BACK WAGES

Universal HomeCare Service LLC, a home healthcare organization in Mansfield, LA, failed to pay overtime to 34 workers. For noncompliance with the Fair Labor Standards Act, the employer owed:

- \$20,318 in back wages, and
- \$20,318 in liquidated damages.

**More info:** [bit.ly/healthcare660](http://bit.ly/healthcare660)

### ■ GOLF COURSE DISQUALIFIED FROM USING TIP CREDIT

New Era Golf Ohio NAL Inc., a golf course and country club in New Albany, OH, required 32 tipped employees to share tips with salaried managers. In weeks that happened, the business was disqualified from claiming the tip credit. In addition, the employer didn't keep accurate pay records. Plus, New Era Golf Ohio NAL made automatic deductions for lunch breaks even when employees didn't stop working, resulting in minimum wage and overtime violations. The cost of these Fair Labor Standards Act errors added up to:

- \$44,411 in back wages, and
- \$44,411 in liquidated damages.

**More info:** [bit.ly/golf660](http://bit.ly/golf660)

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## Publication 15 contains critical info from IRS: What's new for 2023

### ■ PAYROLL TAX CREDIT AVAILABLE TO QUALIFYING SMALL BUSINESSES

One of Payroll's most critical IRS publications – often referred to simply as Circular E – has been updated for 2023.

Publication 15 (Circular E), *Employer's Tax Guide*, has a revision date of Dec. 13, 2022, and the IRS posted the document on its website on Dec. 15, 2022.

In the "What's New" section, you'll find info about the qualified small business payroll tax credit for increasing research activities. Here are the details:

#### Which forms to use

In 2022 and earlier, a small business may have been able to claim \$250,000 of its credit for increasing research activities as a payroll tax credit.

Starting in 2023, that's been doubled to \$500,000.

Being able to claim the credit requires plenty of paperwork, as you'd expect. You'd use:

- Form 6765, *Credit for Increasing Research Activities*, to determine the amount of credit to be used against your payroll taxes, and

- Form 8974, *Qualified Small Business Payroll Tax Credit for Increasing Research Activities*, to calculate the amount of credit you can use in the current quarter.

After completing Form 6765, you'd enter the amount from line 44 on Form 8974. Then, after filling out Form 8974, you'd enter the amount from line 12 (or if applicable, line 17) on Form 941 or Form 944.

Bear in mind, you must elect to use the payroll tax credit on or before the due date of the originally filed income tax return.

What's the first calendar quarter beginning after the date the income tax return is filed? That's the quarter in which the portion of the credit used against payroll taxes is allowed.

As of the first quarter of 2023, the credit reduces taxes in this order:

- Social Security tax, employer portion, (up to \$250,000), and
- Medicare tax, employer portion, if there's any remaining credit.

Then, any remaining payroll tax credit would be carried forward to the next quarter.

**More info:** [www.irs.gov/pub/irs-pdf/p15.pdf](http://www.irs.gov/pub/irs-pdf/p15.pdf)

## High Court won't hear overtime gap time case

Bad news for Payroll pros hoping for additional insights into the questions about gap time raised in *Conner v. Cleveland County*.

Reason: The U.S. Supreme Court said Dec. 12, 2022, that it won't hear the case.

### FLSA is silent on issue

The Fourth Circuit ruled early in 2022 that a former employee could bring her overtime gap time claim under the Fair Labor Standards Act (FLSA). She was owed straight-time wages under her employment contract,

the federal appeals court noted. It also explained the two types of gap time claims employers may face:

- *pure gap time* – employees seek unpaid straight-time wages for weeks they didn't work overtime (courts reject these claims), and
- *overtime gap time* – employees seek unpaid straight-time wages for weeks they did work overtime (courts are divided on these claims).

The FLSA doesn't address gap time. So, the Fourth Circuit used Dept. of Labor regs in its decision-making.

**More info:** [bit.ly/gaptime660](https://bit.ly/gaptime660)

## NEWS YOU CAN USE

### ■ CRACKING DOWN ON MISCLASSIFIED EMPLOYEES

The IRS and the Dept. of Labor (DOL) recently renewed their joint effort to stop employers from misclassifying employees as independent contractors.

At the end of 2022, the two government entities signed an updated memorandum of understanding (MOU) saying they'll work together and use their resources to promote compliance in this area. They signed their first MOU in 2011.

For example, if the IRS finds during an investigation that employees have been misclassified, it'll notify the DOL – and vice versa.

**More info:** [www.dol.gov/newsroom/releases/whd/whd20221215-0](http://www.dol.gov/newsroom/releases/whd/whd20221215-0)

### ■ REMINDER FROM E-VERIFY ON DELETING USER ACCOUNTS

If one of your co-workers who's an authorized E-Verify user leaves your organization or takes a position that no longer requires E-Verify access, that person's user account will need to be promptly deleted.

That's according to a recent reminder from E-Verify.

**More info:** [bit.ly/reminder659](https://bit.ly/reminder659)

### ■ REST TIME BETWEEN SHIFTS INCREASES TO 10 HOURS

New Federal Aviation Administration rules requiring airlines to provide flight attendants with 10 (was nine) consecutive hours of rest time between shifts kicked in Nov. 14, 2022. This break is needed when the flight attendant is scheduled to be on duty 14 hours or less.

The final rule prohibits the reduction of rest hours under certain circumstances allowed in the past.

**More info:** *Federal Register*, 10/12/22.

## 2023 rates for state short-term disability insurance programs

■ PLUS, HOW PAID FAMILY AND MEDICAL LEAVE FACTORS IN

Offering disability insurance, whether short-term or long-term, can be worthwhile to your company and employees alike.

For Payroll, in addition to being up to speed on third-party sick pay reporting requirements, it's important to stay current with mandatory state disability insurance (SDI) programs.

For 2023, employers in a handful of states will need to offer SDI, sometimes called Total Disability Insurance (TDI). Here's info for the new year including how much to deduct from employees' wages.

### Requirements in 5 states

In *California*, the SDI contribution rate has decreased for 2023. The rate went from 1.1% to 0.9%. Meanwhile, the SDI taxable wage has gone up – that increased from \$145,600 to \$153,164. So, the amount you'll withhold from each employee's wages this year is \$1,378.48. No employer contribution is required.

The state's Paid Family Leave program is funded by employees through their SDI contributions.

For TDI, *Hawaii* has set the 2023 maximum weekly wage base at \$1,318.48 (was \$1,200.30), and the rate remains 0.5%. That means the maximum weekly deduction you can make is \$6.59.

In *New Jersey*, the employee contribution rate for TDI has dropped to 0%, from 0.14%. As for employers, they have a TDI taxable wage base of \$41,100 for 2023 (up from \$39,800).

Note: The Family Leave Insurance (FLI) rate has also decreased – it's 0.06% for 2023 (was 0.14%).

For workers covered by TDI and FLI, the taxable wage base is \$156,800, up from \$151,900.

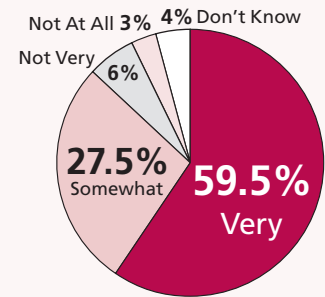
Under the Disability Benefits Law in *New York*, an employee contribution made through payroll deduction is computed at a rate of 0.5% of wages. The deduction shouldn't exceed 60 cents per week.

As for paid family leave, the 2023 employee contribution rate is 0.455% of gross wages per pay period (was

## WHAT PAYROLL PROS TOLD US

### Paycheck accuracy

How certain are you that your payroll withholding and the net amount of your paycheck are correct each payday?



Source: American Payroll Association's 2022 "Getting Paid In America" Survey

While employees may not understand all the work that goes into ensuring accurate withholding from their wages, they rely on Payroll each pay period.

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

0.511%). So, the maximum annual contribution this year will be \$399.43.

The contribution rate for the TDI program in *Rhode Island* will remain 1.1%. As for the taxable wage base, that's increased from \$81,500 in 2022. It's now \$84,000. Also, as in the past, temporary caregiver insurance is part of the TDI program.

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

### Paychecks deposited into cybercriminals' bank account after credentials stolen

*A healthcare facility in Maine faced this real-life scenario:*

The hospital hired a doctor, and she completed the usual paperwork given to new hires.

For example, she reviewed an employment agreement. She signed an employee code of conduct, agreeing to protect her username and password. She also signed a direct deposit authorization form, giving permission for her employer to deposit her wages into the bank account she designated.

The employer's human resources information system housed an employee self-service portal, and that's

where the doctor designated her bank account information.

At a later date, cybercriminals stole the username and password that she used to access the online portal which contained her payroll information.

They used her credentials to change the bank account where her paychecks were deposited so they could pocket the money.

Unwittingly, the employer deposited \$8,432.98 into the cybercriminals' bank account. In all, 11 employees at the healthcare facility ended up as victims of the scheme.

The hospital reported the incident

to the FBI and its own bank, but only \$79.65 of the doctor's stolen wages was recovered.

She filed a lawsuit saying the employer didn't pay her according to state wage payment laws. After all, she didn't receive the funds on payday.

The state supreme court agreed.

### Checklist for compliance

- Remind employees to be on guard against phishing schemes.
- Consider developing a system to verify with employees that they indeed have made any changes to their bank accounts.

## Tracking local laws and regs

### ■ Check out these minimum wage changes in Seattle for 2023

In 2022, large Seattle employers paid different rates depending on whether they offered medical benefits to employees. If they did, the rate was \$15.75 per hour, but if they didn't, it was \$17.27 per hour.

For 2023, employers with 501 employees will pay \$18.69 per hour, regardless of whether there's an offer of medical benefits.

As for small employers – those with 500 or fewer employees – if they offer medical benefits, the minimum wage rate is \$16.50 per hour, but if they don't, it'll be \$18.69 per hour.

**More info:** [www.seattle.gov/laborstandards/ordinances/minimum-wage](http://www.seattle.gov/laborstandards/ordinances/minimum-wage)

### ■ High minimum wage rate for certain workers in SeaTac

The minimum wage for hospitality and transportation workers in SeaTac, WA, has increased to \$19.06 per hour

for 2023. Reminder: Each hospitality and transportation employer must provide workers with written notice of rate adjustments.

**More info:** [www.seatacwa.gov/home/showpublisheddocument/33762](http://www.seatacwa.gov/home/showpublisheddocument/33762)

### ■ 2 Indiana counties raise their tax rates, 1 lowers its rate

These counties in Indiana have changed their income tax rates, effective Jan. 1, 2023:

- Greene 0.0215 (an increase from 0.0195)
- Montgomery 0.0265 (an increase from 0.023), and
- Perry 0.014 (this county's rate is decreasing from 0.0181).

Withhold based on the employee's Indiana county of residence as of January 1 of each tax year.

For employees residing out of state on January 1, use the county of their principal place of work or business.

**More info:** [www.in.gov/dor/files/reference/dn01.pdf](http://www.in.gov/dor/files/reference/dn01.pdf)

## 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:*

### Winter storms wreak havoc: Is IRS tax relief available?

**Q:** If our business gets hit with severe weather, what are the steps for obtaining tax relief from the IRS?

**A:** Whether your business is impacted by a snowstorm in the winter months or another severe weather event throughout the year, you may be able to obtain tax relief from the IRS. First, find out if the Federal Emergency Management Agency has made a disaster declaration. If so,

the IRS tries to automatically identify taxpayers located in a covered disaster area and apply the relief that's available for filing tax returns and making tax deposits. However, you can also call the IRS disaster hotline at 866-562-5227 to request relief. If your principal place of business isn't located in the covered disaster area but certain records you need are, you may also be entitled to relief. Look to see how much extra time the IRS is allowing to file returns and make payments – it's often several months.

**More info:** [bit.ly/storms660](http://bit.ly/storms660)

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.

## RECENT CHANGES TO FEDERAL FORMS AND PUBLICATIONS

This list of Payroll-related documents contains updates.

- *Instructions for Form 945*. Revised 2022. Posted 11/9/22.
- Pub. 4164, *Modernized E-File Guide for Software Developers and Transmitters*. Revised November 2022. Posted 11/10/22.
- Notice 1015, *Have You Told Your Employees About the Earned Income Credit?* Revised December 2022. Posted 11/15/22.
- *Instructions for Form 944*. Revised 2022. Posted 11/16/22.
- Form 944, *Employer's Annual Federal Tax Return*. Revised 2022. Posted 11/16/22.
- Form W-3, *Transmittal of Wage and Tax Statements*. Revised 2023. Posted 11/17/22.
- Pub. 5316, *Internal Revenue Service Advisory Council Public Report*. Revised November 2022. Posted 11/18/22.
- Form 8846, *Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips*. Revised 2022. Posted 11/21/22.
- Form 8839, *Qualified Adoption Expenses*. Revised 2022. Posted 11/22/22.
- Pub. 5461-C, *Businesses Should Watch Out for Tax-Related Scams and Implement Safeguards*. Revised November 2022. Posted 11/22/22.

### 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!*

unemployment insurance purposes has gone up – it's now \$40,000. In 2022, it was \$38,000. **More info:** [bit.ly/minnesota660](http://bit.ly/minnesota660)

unemployment insurance purposes is now \$44,800. That's an increase from \$41,600 last year. **More info:** [bit.ly/utah660](http://bit.ly/utah660)

### CALIFORNIA

- **COVID-19:** The Occupational Safety and Health Standards Board adopted non-emergency COVID-19 prevention regs on Dec. 15, 2022. The regs will take effect after they're approved in January 2023, remaining in effect for two years from their effective date (three years for the recordkeeping subsections). The requirement to provide exclusion pay isn't included in the new regs. **More info:** [bit.ly/california660](http://bit.ly/california660)

### COLORADO

- **WITHHOLDING:** The Dept. of Revenue is considering whether a draft rule should move forward. As part of the process, it's evaluating comments it recently requested. Rule 39-22-604 would provide guidance on several matters, such as the current method for calculating withholding. **More info:** [bit.ly/colorado660](http://bit.ly/colorado660)

### HAWAII

- **UNEMPLOYMENT INSURANCE:** The taxable wage base for unemployment insurance purposes is \$56,700 for 2023. That's up from \$51,600 last year. **More info:** [bit.ly/hawaii660](http://bit.ly/hawaii660)

### KENTUCKY

- **UNEMPLOYMENT INSURANCE:** The unemployment insurance taxable wage base has risen to \$11,100. The number was \$10,800 in 2022. **More info:** [kewes.ky.gov](http://kewes.ky.gov)

### MINNESOTA

- **UNEMPLOYMENT INSURANCE:** The taxable wage base for

### NEW HAMPSHIRE

- **FAMILY, MEDICAL LEAVE:** Now that it's 2023, the Paid Family and Medical Leave (PFML) Insurance Plan is up and running. The voluntary plan is available to employers and employees. Employers that purchase six weeks of coverage through the PFML Insurance Plan can receive a Business Enterprise Tax (BET) credit of 50% of the premium paid. However, to receive the BET credit, employers must purchase PFML insurance issued by MetLife, the state's insurance partner. Premiums vary. **More info:** [www.paidfamilymedicalleave.nh.gov/frequently-asked-questions](http://www.paidfamilymedicalleave.nh.gov/frequently-asked-questions)

### NEW YORK

- **OVERTIME:** The Farm Laborers Wage Board has recommended that the threshold for who's subject to overtime be lowered from 60 to 40 hours per week. Accordingly, the New York State Dept. of Labor has released proposed regs. Under the proposal, the new threshold would be phased in over 10 years, decreasing to 56 hours per week in 2024 and continuing to drop every two years by four hours per week until hitting 40 hours in 2032. **More info:** [dol.ny.gov/farm-laborers-wage-board](http://dol.ny.gov/farm-laborers-wage-board)

### NORTH DAKOTA

- **UNEMPLOYMENT INSURANCE:** The unemployment insurance taxable wage base has risen to \$40,800 for 2023. Last year, the number was \$38,400. **More info:** [www.jobsnd.com](http://www.jobsnd.com)

### UTAH

- **UNEMPLOYMENT INSURANCE:** The taxable wage base for

### VERMONT

- **FAMILY, MEDICAL LEAVE:** The state announced that it's hired The Hartford to handle the newly created Vermont Family and Medical Leave Insurance Plan. Other details are rolling out. First, state employees will be covered by the program starting in July 2023. They'll receive 60% wage replacement for six weeks for qualifying events, such as the birth of a child or a serious health condition. For non-state employees, the program is voluntary. It'll be available to employers with two or more employees in July 2024 and to smaller employers and individuals in July 2025. **More info:** [bit.ly/vermont660](http://bit.ly/vermont660)

## THE LIGHTER SIDE

In 1968, a West Virginia teenager named Sharon Day lost her wallet at a high school dance.

Decades later, after Fayetteville High School closed its doors, a contracting company planned to turn the school into an apartment complex and began renovations. New River Contracting opened a sealed duct, and out fell the wallet.

After reaching out through Facebook, the contracting company's owner found Day. Her Social Security card was still tucked inside the wallet – it'd been almost 55 years since Day placed it there.

To put that into perspective, in 1968, the employee portion of the Social Security tax was 3.8%. And the wage base? A mere \$7,800.

**Cite:** UPI, "Lost Wallet Returned to West Virginia Woman 54 Years Later," 12/30/22.