

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

February 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

- **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.
- **Feb. 15, 2023:** Deposit taxes for payroll on Feb. 8, 9, 10.
- **Feb. 17, 2023:** Deposit taxes for payroll on Feb. 11, 12, 13, 14.
- **Feb. 23, 2023:** Deposit taxes for payroll on Feb. 15, 16, 17.
- **Feb. 24, 2023:** Deposit taxes for payroll on Feb. 18, 19, 20, 21.

■ MONTHLY DEPOSITORS

- **Feb. 15, 2023:** Deposit taxes for payments made during January 2023.
- **March 15, 2023:** Deposit taxes for payments made during February 2023.

■ ALL EMPLOYERS

- **May 1, 2023:** File Form 941 for Q1. Note: If you properly deposited taxes on time and in full, you have until May 10, 2023, to file.

IRS updates fringe benefits tax guide – 2023 changes

■ Publication 15-B released after start of new year

Do you have the latest version of Publication 15-B? The IRS recently updated the fringe benefits tax guide for 2023.

It was the last in the line of similar publications to be revised for the new year – with 15, 15-A and 15-T all released before the end of 2022.

So what's new in 15-B?

Here's a recap:

Higher numbers

1. **Business mileage rate.** That's been increased to 65.5 cents per mile. When we closed 2022, the rate was 62.5 cents per mile.

One reason the business mileage rate may be of interest is if your

company has employees using personal vehicles for business use. The IRS rate is optional, of course. Just be sure the mileage reimbursement is enough that employees earn at least the federal minimum wage.

Stick with the 65.5-cent rate if employees are provided with company vehicles for personal use and you meet the IRS requirements for utilizing the cents-per-mile rule to value the fringe benefit. Remember, you'd multiply the standard mileage rate by the total miles someone drives for personal purposes.

2. **Qualified transportation fringe benefits.** During 2023, you can exclude \$300 from an employee's

(Please see Tax guide ... on Page 2)

Final IRS regs permanently extend 1095-C deadline

The IRS issued final regs granting an automatic extension of time for applicable large employers (ALEs) to give Forms 1095-C to full-time employees each year.

The final regs rolled out Dec. 15, 2022, more than a year after the IRS released proposed regs to modify the reporting requirements under the Affordable Care Act.

While the proposed regs stated the automatic extension of time wouldn't exceed 30 days, the IRS wanted to make the final regs "clear" and "definite" by expressly providing a 30-day, automatic extension of time. With that in mind, the next deadline

for furnishing Forms 1095-C to FT employees is March 2, 2023.

Plus, an alternative method

The final regs also permit entities that must furnish Forms 1095-B to individuals to use an alternative method. For starters, the entity must post a notice on its website.

An ALE that sponsors a self-insured group health plan (and so, instead uses Form 1095-C, Part III) can utilize the alternative method only for non-FT employees and non-employees enrolled in the plan.

More info: bit.ly/reporting661

Prevailing wage and other rates too low for federal contract work

■ VIRGINIA EMPLOYER OWED NEARLY \$300K IN BACK WAGES

Getting the right classification for employees working on federally funded projects is the first step toward making sure they receive the correct pay and fringe benefits.

But that's where a commercial roofing contractor based in Chantilly, VA, went wrong.

CHU Contracting Inc. classified eight of its employees as laborers and roofers.

Problem was, they performed sheet metal work while on site at the Potomac Yard Metro Station in Alexandria, VA.

That meant the company didn't pay high enough prevailing wage, holiday and overtime rates.

As a result of the Davis-Bacon and Related Acts violations, CHU Contracting had to pay the eight

workers \$288,341 in back wages, the Dept. of Labor (DOL) determined.

Regs being revamped

Continue to be on the lookout for final regs on the Davis-Bacon and Related Acts.

On March 11, 2022, the DOL proposed a rule to revamp the regs, and developments may be imminent.

One possible change? Speeding up prevailing wage updates.

Under the proposed regs, the DOL would have the authority to adopt state or local wage determinations as the prevailing wage under the federal law. After all, many states and localities conduct wage surveys more often than the DOL does.

More info: www.dol.gov/newsroom/releases/whd/whd20221207

Tax guide ...

(continued from Page 1)

wages for qualified parking and another \$300 for combined commuter highway vehicle transportation and transit passes.

Your company may decide to set up a compensation reduction agreement. Before getting started, though, employees who elect to receive the fringe benefit via pre-tax payroll deductions will need to do so in writing or electronically.

3. Health flexible spending accounts (FSAs). This year, employees can contribute up to \$3,050 from their wages for health FSAs, assuming your company has a cafeteria plan.

In recent years, employers could allow higher-than-normal carryover amounts due to the pandemic. But that's not an option anymore.

Be sure employees know how much, if any, they can carry over. The carryover limit at the end of 2022 was \$570 – and looking ahead to the end of 2023, it'll be \$610.

More info: bit.ly/fringebenefits661

COMPLIANCE CHECK

■ FAILED TO PROVIDE FMLA NOTIFICATIONS TO EMPLOYEE

Publix Super Markets Inc., a regional grocery store chain based in Lakeland, FL, illegally terminated the employment of an employee in violation of the Family and Medical Leave Act (FMLA).

When the employee, who worked at a warehouse in Boynton Beach, FL, took time off, Publix should have provided an FMLA-leave eligibility notification letter; a notice of rights and responsibilities; and a designation notice. The FMLA missteps cost the company:

- \$12,727 in back wages, and
- \$5,127 in medical expenses.

More info: bit.ly/grocery661

■ NO OVERTIME FOR ON-CALL HOURS DURING WORKWEEK

The home healthcare agency 5 Caring Hearts LLC, located in Aliquippa, PA, failed to pay overtime when employees worked for more than one client or were on call during the week. Also, the company didn't keep proper records. As a result of these Fair Labor Standards Act violations, the employer owed:

- \$23,688.43 in back wages, and
- \$23,688.43 in liquidated damages.

More info: bit.ly/healthcare661

■ FEDERAL POSTERS REQUIRED UNDER FLSA NOT DISPLAYED

Hibachi Grill & Supreme Buffet, Sioux Falls, SD, paid kitchen workers a flat monthly salary and failed to pay them overtime. Recordkeeping violations included not recording all hours worked and not maintaining employees' full names and addresses. Plus, the company didn't display posters as required under the Fair Labor Standards Act (FLSA). These violations added up to:

- \$139,535 in back wages, and
- \$139,535 in liquidated damages.

More info: bit.ly/kitchen661

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1.5M employment tax returns still unprocessed, according to report

■ PLUS, CALLS TO TOLL-FREE NUMBER NOT LIKELY TO YIELD ANSWERS

First the bad news: The IRS is still dealing with a backlog of unprocessed returns.

The good news is the piles aren't as high as they were during the height of the pandemic.

This latest update comes from the National Taxpayer Advocate. Here are some details:

At the beginning of 2022, unprocessed returns totaled:

- 4.7M individual
- 3.2M business, and
- 3.6M amended (individual and business combined).

By the end of 2022, the backlog had been reduced to:

- 1M individual
- 1.5M business, and
- 1.5M amended (individual and business combined).

The 2022 Annual Report to Congress, released Jan. 11, 2023, revealed the reason many business returns hit delays.

The employee retention credit (ERC) slowed down return processing.

In fact, hundreds of thousands of Forms 941 and other returns were in slo-mo in connection with the ERC, the tax credit that – during the COVID-19 pandemic – encouraged businesses to keep employees on the payroll.

Employers that tried to contact the IRS via its toll-free line to get additional information on an employment tax return or to ask a question didn't have much success, the report showed.

Of the 173M calls received during 2022, only 22M got through to an IRS employee – that's roughly one out of eight calls.

A need for tech improvements

The National Taxpayer Advocate recommended the IRS take several steps for improvement.

Technology was an area of focus. For example, the IRS should increase the functionality of online accounts, allowing taxpayers to:

- receive, view and respond to tax adjustments or other notices
- upload/download documents, and
- submit questions.

More info: bit.ly/ntareport661

2023 tables for determining amount exempt from levy

If the IRS sends you a form explaining that it's levying an employee's wages, you'll need Publication 1494 to proceed – and, finally, that publication has been revised for 2023.

The IRS posted the publication on its website on Jan. 3, 2023.

Refer to Publication 1494

The one-page publication provides info you need to determine how much of an employee's wages, salary or other income is exempt from levy.

You also need to know the

employee's filing status and number of dependents. If you don't receive that, figure the exempt amount as if the employee is married filing separately with no dependents.

For example, in 2023, if you pay such an employee biweekly, the exempt amount would be \$532.69.

By comparison, if an employee says he or she is married filing jointly with no dependents, the exempt amount per biweekly pay period would be \$1,065.38.

More info: www.irs.gov/pub/irs-pdf/p1494.pdf

NEWS YOU CAN USE

■ REVISIONS IN THE WORKS FOR MEDICAL SUPPORT FORM

Changes to the National Medical Support Notice (NMSN) have been pushed back. In the meantime, the form's expiration date has been extended one year for Part A and Part B. The new expiration date is Oct. 31, 2023.

The Office of Child Support Enforcement (OCSE) proposed revisions to the NMSN last year. But state child support agencies needed more time to implement the revisions, OCSE said Dec. 27, 2022.

More info: www.acf.hhs.gov/css/policy-guidance/nmsn-parts-and-b-extended-oct-31-2023

■ REPORT: NO REMAINING SOCIAL SECURITY BY 2033

The Congressional Budget Office (CBO) recently released its long-term projections for Social Security. The program's trust funds are on a course to hit zero in 2033, the December 2022 report showed.

The payroll tax rates would have to increase by about 4.9 percentage points or benefits would have to decrease by an equivalent amount to maintain the necessary trust fund balances through 2096, according to CBO estimates.

More info: www.cbo.gov/publication/58870

■ WAGE LIMIT FOR THESE 'CONTROL EMPLOYEES'

Here's a 2023 update for government entities that let employees use employer-provided vehicles to commute.

You may opt to use the commuting rule to value this fringe benefit – i.e., \$1.50 one way. However, you can't use this method for "control employees." This year, such an employee is someone who earns \$172,100 per year (up from \$165,300 in 2022).

More info: bit.ly/government661

What benefits and perks are popular now? The implications for Payroll

■ BE PREPARED FOR WHAT YOUR COMPANY MAY OFFER EMPLOYEES

New research from Robert Half reveals what benefits and perks employees would most like to have.

Your company may be considering offering these or may already do so.

Either way, as with so many decisions in the workplace, there are implications for Payroll. All the better if you can stay ahead of the game.

Research provides insights

First, the research provides insights into benefits that meet some of employees' basic needs.

Take **health insurance**, for example. Medical coverage for employees and their families is common.

Payroll planning: Remind employees about the age cutoff for dependents – e.g., when they turn 26 – and be ready to adjust their premiums.

Paid time off (PTO) allows employees to hit the reset button. So, how much time do employers provide? Two weeks, or sometimes more, for new employees.

Payroll planning: If you have a use-it-or-lose-it policy for PTO, keep employees informed of their balances.

Offering a **retirement plan**, especially one that provides matching contributions, gives employees a financial boost.

Payroll planning: Automatic enrollment in retirement plans will be required in some workplaces due to the Secure 2.0 Act of 2022.

The list of benefits continues, but the Robert Half research also looks at perks – i.e., benefits that are less about needs and more about wants.

Topping the list of perks? Having a **flexible work schedule**. Be aware there's a new spin on flextime: "windowed work." With this, an employee works non-consecutive hours, say from 8 a.m. to noon and then from 4 p.m. to 8 p.m.

Payroll planning: Encourage accurate time tracking, no matter the hours worked.

Employee discounts, whether on big or small items, are appreciated.

Payroll planning: An employee discount may be excludable from

WHAT PAYROLL PROS TOLD US

Health insurance

Do you trust your employer to provide affordable, high-quality health insurance coverage?

45%

Yes - 2022

39%

Yes - 2020

Source: 2022 American Benefits Council survey, 800 respondents

Confidence in employer-provided health insurance plans is on the rise. Those surveyed also said their trust in employer plans was higher than in federal- or state-run plans.

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

income, assuming the rules of Sec. 132 of the Internal Revenue Code are met.

Paid parental leave is one way some employees can find the right work-family balance.

Payroll planning: The list of states requiring this perk continues to grow, so keep tabs on state law.

More info: bit.ly/benefits661

REAL-LIFE SCENARIO: DID THEY GET IT RIGHT?

Employer deducted from employee's final paycheck to recoup incentive pay

A South Carolina digital printing company faced this real-life scenario:

The company had decided to put a management incentive plan in place for fiscal year 2020.

Then, the pandemic hit, and the company didn't meet its goals for that year. That was bad news for everyone, including employees banking on the incentive pay.

In September of 2020, the employer switched some people from the management incentive plan to a leadership retention award – and did so retroactively.

While the leadership retention

award – paid in December 2020 – boosted employees' annual earnings, the incentive plan came with certain stipulations, according to the company. For example, terminating employment prior to Dec. 31, 2021, meant the incentive amount would have to be repaid – and that might be done through paycheck deductions.

One employee claimed he found out about the pay-back requirement *after* he left the digital printing company.

He had submitted his resignation letter in July of 2021 and, upon receiving his final paycheck, noticed \$1,500 had been deducted as a partial repayment of the leadership retention

award. That was one of several issues that prompted him to bring a lawsuit under the state's wage payment law.

The company argued the employee had signed an acknowledgment of the incentive plan.

But too many details were unsettled, so the federal district court said a jury should hear the case.

Checklist for compliance

- Your state may require that you notify employees before changing their pay or making deductions.
- Ensuring notification is clear can head off problems down the road.

Tracking local laws and regs

■ 6 counties in Maryland have lower income tax rates now

According to the Comptroller of Maryland, six counties have decreased their income tax rates for 2023.

They are:

- Allegany – 3.03% (was 3.05%)
- Anne Arundel – 2.7% for taxable income up to \$50,000; otherwise, 2.81% (was 2.81%)
- Cecil – 2.80% (was 3%)
- Frederick – 2.75% for taxable income up to \$50,000 or \$100,000, depending on filing status; otherwise, 2.96% (was 2.96%)
- St. Mary's – 3% (was 3.10%), and
- Washington – 2.95% (was 3%).

More info: bit.ly/maryland661

■ Businesses in this CA city must submit Wage Theft Affidavit

Mountain View, CA, began enforcing its new Wage Theft Ordinance on Jan. 1, 2023. This law, which was adopted Sept. 13, 2022,

requires that at the same as a business license or business license renewal application is submitted to the city's tax administrator, a completed affidavit must also be submitted.

The Wage Theft Affidavit asks a business to affirm that it:

- hasn't been found in violation of any federal, state or local wage and hour laws, and
- is in compliance with – or has fully satisfied – any final judgment, order or administrative decision issued for violations of the above laws.

More info: bit.ly/mountainview661

■ More time to file returns, make payments due to severe weather

The IRS has granted tax relief to 41 counties in California affected by the severe winter storms, flooding and mudslides that began Jan. 8, 2023.

The deadline for business tax returns and payments has been moved back to May 15, 2023.

More info: bit.ly/california661

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:

Keeping employees' remote access to our network secure?

Q: We have employees connecting to our network remotely from various devices. What security tips can we pass along to them to protect ourselves?

A: The Federal Trade Commission recommends that employees – and vendors, if applicable – take several precautions. First, with routers, change any pre-set passwords and the default name. Updating the router's software is important, too. Second,

for laptops and other mobile devices, full-disk encryption can be enabled through the operating system. Taking this step will protect data stored on the device in the event it's lost or stolen.

Third, make sure smartphones aren't set to automatically connect to public Wi-Fi. Finally, remember to utilize up-to-date anti-virus software, including for mobile devices. Try to cover these points in regular trainings and during new hire orientation. Work on developing your cybersecurity policies and distribute copies to employees.

More info: bit.ly/security661

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 forms, instructions and other publications contains Payroll-related updates.

- Form 5498, *IRA Contribution Information (Info Copy Only)*. Revised 2023. Posted 11/25/22.
- Form 8959, *Additional Medicare Tax*. Revised 2022. Posted 11/29/22.
- Publication 1239, *Specifications for Electronic Filing of Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips*. Revised November 2022. Posted 11/30/22.
- Form 8959, *Additional Medicare Tax*. Revised 2022. Posted 12/1/22.
- Form 720, *Quarterly Federal Excise Tax Return*. Revised December 2022. Posted 12/1/22.
- Form 8941, *Credit for Small Employer Health Insurance Premiums*. Revised 2022. Posted 12/6/22.
- Form 2106, *Employee Business Expenses*. Revised 2022. Posted 12/7/22.
- Form W-4S, *Request for Federal Income Tax Withholding From Sick Pay*. Revised 2023. Posted 12/9/22.
- Publication 531, *Reporting Tip Income*. Revised 2022. Posted 12/14/22.
- *Instructions for Form 8941*. Revised 2022. Posted 12/14/22.

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

- **UNEMPLOYMENT INSURANCE:** The taxable wage base for unemployment insurance purposes has increased from \$45,200 to \$47,100 for 2023. **More info:** labor.alaska.gov/estax/faq/w1.htm

COLORADO

- **LEAVE:** The Healthy Families and Workplaces Act requires employers to provide 80 hours of public health emergency leave. Starting Nov. 11, 2022, the conditions covered by the latest public health emergency declaration were expanded beyond COVID to include flu, respiratory syncytial virus (aka RSV) and similar respiratory illnesses. But as of Jan. 8, 2023, this leave was again limited to COVID-related conditions. **More info:** cdle.colorado.gov/hfwa
- **UNPAID WAGES:** Many provisions of legislation from 2022, SB 161, just kicked in Jan. 1, 2023. For one thing, the penalty for unpaid wages has increased. Employers have 14 days from when a written demand is sent, for example, to pay what's owed. Otherwise, the penalty is now the greater of: two (up from 1.25) times the amount of unpaid wages or \$1,000. If the employee can show the refusal to pay wages was willful, the penalty will now be calculated as the greater of: three times the unpaid amount or \$3,000. **More info:** legiscan.com/CO/text/SB161/id/2586926

NEW JERSEY

- **LAYOFFS:** In addition to the federal Worker Adjustment and Retraining Notification (WARN) Act, employers in New Jersey and

elsewhere have to comply with state versions of the law. Get ready: On April 10, 2023, due to revisions to the so-called NJ WARN, businesses will need to meet stricter demands. For example, currently employers with 100 or more employees must provide 60 days' notice of mass layoffs – soon to be 100 days. This and other changes set for 2020 had been put on hold due to the state of emergency the governor declared. **More info:** bit.ly/newjersey661

NEW MEXICO

- **UNEMPLOYMENT INSURANCE:** The unemployment insurance taxable wage base for 2023 has increased to \$30,100. That's up from \$28,700. **More info:** www.dws.state.nm.us/UI-Tax-Information

NEW YORK

- **ABSENCES:** Existing law forbids employers from taking negative action against employees – e.g., discharging, threatening or penalizing them – for various reasons. Due to A8092B, the list of reasons has been expanded to include that an employee has used any legally protected absence in accordance with federal, state or local law. The legislation, which takes effect Feb. 19, 2023, also says employers can't assess demerits, points, etc., which could lead to disciplinary action. **More info:** bit.ly/newyork661

NORTH CAROLINA

- **UNEMPLOYMENT INSURANCE:** The taxable wage base for unemployment insurance purposes has increased from \$28,000 to \$29,600 for 2023. **More info:** des.nc.gov/employers/tax-rate-information

OREGON

- **LEAVE:** A public health emergency is in place as of Nov. 14, 2022,

until March 6, 2023, due to an increase in pediatric cases of respiratory syncytial virus (aka RSV). Under the Oregon Family Leave Act, when there's a public health emergency, employees are eligible for leave after just 30 days of employment, instead of 180 days. **More info:** bit.ly/oregon661

RHODE ISLAND

- **UNEMPLOYMENT INSURANCE:** The unemployment insurance taxable wage base for 2023 has increased to \$28,200. That's up from \$24,600. **More info:** bit.ly/rhodeisland661

WASHINGTON

- **UNEMPLOYMENT INSURANCE:** The taxable wage base for unemployment insurance purposes has increased from \$62,500 to \$67,600 for 2023. **More info:** bit.ly/washington661

THE LIGHTER SIDE

Ever thought about furthering your education? Maybe to get your certification in payroll or perhaps to work toward a college degree?

Joan Donovan may inspire you.

She just received a Master of Arts in English and Creative Writing – at age 89. She attended classes online through Southern New Hampshire University, achieving a 3.8 GPA.

The road to the advanced degree was long. After she graduated from high school – ironically, at the young age of 16 – her family couldn't afford to send her to college. Then came marriage and six children.

Eventually, despite her fears, she enrolled in a community college and earned the first of several degrees.

So, what's next for Donovan as she nears 90? She's working on her autobiography.

Cite: bit.ly/degree661