

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™

February 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

- **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.
- **March 1, 2023:** Deposit taxes for payroll on Feb. 22, 23, 24.
- **March 3, 2023:** Deposit taxes for payroll on Feb. 25, 26, 27, 28.
- **March 8, 2023:** Deposit taxes for payroll on March 1, 2, 3.
- **March 10, 2023:** Deposit taxes for payroll on March 4, 5, 6, 7.
- **March 15, 2023:** Deposit taxes for payroll on March 8, 9, 10.

■ MONTHLY DEPOSITORS

- **March 15, 2023:** Deposit taxes for payments made during February 2023.
- **April 18, 2023:** Deposit taxes for payments made during March 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.

Looking ahead: What changes is IRS making to Form W-2?

■ Plus, electronic filing threshold still 250 returns

Now that W-2s are out the door for TY 2022 and you've breathed a sigh of relief, you may be wondering what changes the IRS is making to the form for TY 2023 and beyond.

The final version of the 2023 form has been released, and although you won't see any drastic changes for this tax year, the IRS said a minor redesign is planned for TY 2024.

Here's what's in the works:

In planning mode

Tax Year 2023: Form W-2 still contains Copy D, but the employer copy is gone from the W-2AS, W-2GU and W-2VI. Also, the instructions on the back side of that copy have been removed from those forms. The

change is an effort to reduce number of pages to be printed.

For the W-2, W-2AS, W-2GU and W-2VI, employers will have a new way to complete and print most copies – i.e., keying in data at www.irs.gov. But that's not an option for Copy A, which is filed with SSA.

Tax Year 2024: As part of the redesign, Copy D of Form W-2 will be removed, the IRS said during a recent Payroll Industry Call.

Plus, Copies B, C and 2 will look different – they'll all be on one page. Of course, these are the copies you provide to employees.

The box titles on the employee

(Please see Form W-2 ... on Page 2)

When does time off request create 'undue hardship'?

The U.S. Supreme Court has agreed to hear a case involving an employee who requested time off for religious reasons.

The lower courts sided with the employer in *Groff v. DeJoy*, saying accommodating the employee would be an "undue hardship" for the employer (the U.S. Postal Service).

In their decisions, the courts did what other courts have done for decades: relied on a Supreme Court decision from 1977: *Trans World Airlines Inc. v. Hardison*.

In *Hardison*, the court looked at whether a religious accommodation

under Title VII of the Civil Rights Act of 1964 would require an employer to bear more than a *de minimis* cost. Now, the High Court will consider if that standard should remain in place.

Switching shifts didn't pan out

In *Groff*, the employee asked for Sundays off to observe his religion. The Postal Service offered to find co-workers who'd switch shifts with him, but that accommodation didn't pan out. After being disciplined, he resigned and then sued.

We'll keep you updated on the case.

More info: bit.ly/groff662

Home care agency owes \$3.8M for overtime and other FLSA violations

■ REGULAR RATE OF PAY CHANGED WHEN DOING CALCULATIONS

Paying overtime can be expensive. But in the long run, *not* paying overtime can be more expensive.

That's what a home care agency, TriMED HealthCare LLC, recently learned firsthand.

A Dept. of Labor investigation turned into legal proceedings for the Willow Grove, PA, employer.

The company ended up agreeing to pay \$3.8M in back wages and liquidated damages to 433 direct care workers and administrative employees. Plus, TriMed HealthCare owed \$180,141 for the willful nature of the violations.

Here's what went wrong: Employees' regular rates of pay ranged from \$7.25 to \$14 per hour, which wasn't a problem. But to get around the expense of paying overtime, the

company would lower an employee's regular rate of pay in weeks that person worked more than 40 hours.

There were other Fair Labor Standards Act (FLSA) violation, too. For example, the employer didn't pay employees for time spent traveling:

- to and from the administrative office and patients' homes, and
- between patients' homes.

Working more than 40 hours

When employees work more than 40 hours in a workweek, the overtime calculation is one-and-a-half times that person's regular rate of pay.

While someone's regular rate of pay might be higher than his or her straight time rate – e.g., due to a nondiscretionary bonus – a lower rate is a red flag for Payroll.

More info: bit.ly/overtime662

Form W-2 ...

(continued from Page 1)

copies will be the same. However, some boxes will be moved, so that all three copies will fit on one page.

The IRS further explained during its October 2022 Call that "Notice to Employee" and "Instructions for Employee" will be provided on the back on that single page.

A draft version of the TY 2024 Form W-2 hasn't yet been released.

What about electronic filing?

Employers also continue to wait for more information on the threshold for electronically filing Forms W-2 and other returns.

The IRS had proposed a rule in July 2021 that would've lowered the threshold to 100 returns and required forms to be aggregated. But in the 2023 *General Instructions for Forms W-2 and W-3*, IRS notes – unless and until the regs are finalized – the current threshold is 250 returns of one type.

More info: www.irs.gov/forms-pubs/about-form-w-2

COMPLIANCE CHECK

■ NOT PAID FOR TIME SPENT DONNING AND DOFFING

B&R Tires Inc., a vehicle maintenance business in Fontana, CA, failed to pay employees for time they spent putting on and taking off work clothes. Plus, the company didn't pay overtime and failed to keep proper records. These Fair Labor Standards Act violations cost the company:

- \$6,787 in civil money penalties
- \$72,167 in back wages for 11 employees, and
- \$72,167 in liquidated damages for the employees.

More info: bit.ly/workclothes662

■ 60 HOURS WORKED – ONLY 8 HOURS OF OT ALLOWED

IES Residential, an electrical contractor in Phoenix, denied overtime pay to 255 workers. The company capped their overtime at eight hours per week even though employees sometimes worked 60 hours per week. The company also falsified records in violation of the Fair Labor Standards Act. So, IES Residential had to pay:

- \$20,000 in civil monetary penalties
- \$362,041 in back wages, and
- \$362,041 in liquidated damages.

More info: bit.ly/arizona662

■ CONSTRUCTION COMPANY BROKE 2 LAWS, OWES \$94K

Design Works Custom Painting Inc., a construction company in Las Vegas, violated the Fair Labor Standards Act when it misclassified workers as independent contractors. Also, by denying sick leave to an employee, the company failed to follow the requirements of the Family First Coronavirus Response Act. The bottom line impact of breaking these laws was:

- \$47,056 in back wages, and
- \$47,056 in liquidated damages.

More info: bit.ly/misclassified662

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I-9: Another reason a new hire might give you a receipt notice from USCIS

■ YOU'D LOOK FOR THE GREEN CARD'S EXPIRATION DATE & ADD 24 MONTHS

Heads up: A new hire may give you a receipt notice when you're checking documents for Form I-9, and now that's more likely to happen.

That's because U.S. Citizenship and Immigration Services (USCIS) recently announced another reason it'll issue someone a receipt notice.

Here are the details:

As USCIS explained on Dec. 9, 2022, a lawful permanent resident who wants to apply for naturalization would use Form N-400, *Application for Naturalization*.

After that, the individual would receive Form I-797, *Notice of Action*, from USCIS.

The new hire completing Form I-9 could then give you that I-797 along with his or her Permanent Resident Card – aka, Green Card. In some cases, the card may be expired.

The I-797 receipt notice extends the Green Card's validity for 24 months from the card's expiration date.

So, when filling out Section 2 of the I-9, you'd enter the information from the Permanent Resident Card as usual.

Then, for the Expiration Date field, you'd check the Card Expires date, add 24 months and enter that new date.

USCIS warns that employers shouldn't reverify current employees who are lawful permanent residents just because they possess Form I-797.

A lawful permanent resident may also receive Form I-797 from USCIS if that person files Form I-90, *Application to Replace Permanent Resident Card*.

Back on Sept. 26, 2022, USCIS decided that, in such a situation, a Green Card's expiration date would be automatically extended 24 months. That was up from 12 months.

Here again, an employer would add 24 months to the card's expiration date and enter that on Form I-9.

Accepting List A documents

A Permanent Resident Card can be presented as a List A document, given that it establishes both identity and employment authorization.

A new hire who presents this card – in combination with Form I-797 if applicable – wouldn't need to show any other documentation.

More info: bit.ly/extension662

2022 Economic Census deadline? March 15, 2023

Check your mail: Your business may soon receive a letter about the 2022 Economic Census.

The Census Bureau started doing mailings in January 2023 – don't look for a form, just a letter with info about responding to the survey online.

Not all businesses are required to fill out the Economic Census, but if the Census Bureau contacts you, it's mandatory and the deadline for completion is March 15, 2023.

While the Census Bureau counts the general population every 10 years, it counts businesses every five years,

noted Kari Klinedinst, a statistician with the Census Bureau featured in a video called *Overview of the 2022 Economic Census*.

Over 4M businesses impacted

The agency is asking over 4M businesses to fill out the survey, she explained. It'll obtain data about another 4M businesses through administrative records.

Wondering if the mailing is legit? You can go to www.census.gov/verify for info, shared Klinedinst.

More info: bit.ly/overviewEC662

NEWS YOU CAN USE

■ BREAK TIMES PROVIDED FOR THESE EXEMPT EMPLOYEES

Due to a law included in the 2023 federal spending bill, employers may need to update their break time policies. The law is the Providing Urgent Maternal Protections for Nursing Mothers Act. Building on a 2010 law – Break Time for Nursing Mothers – which covered *nonexempt* employees, the so-called PUMP Act also covers employees who are *exempt* under the Fair Labor Standards Act.

As with the 2010 law, the new PUMP Act says a nursing mother must be given break times and a private place to pump.

The PUMP Act is in effect now, and yet another law – the Pregnant Workers Fairness Act – will take effect in June 2023.

More info: www.dol.gov/agencies/whd/nursing-mothers

■ BEWARE: HIGHER PENALTIES FOR FMLA MISTAKES IN 2023

It'll cost employers more in 2023 if the Dept. of Labor does an investigation and finds problems.

For example, the maximum penalty amount for violating the recordkeeping provision of the Family and Medical Leave Act (FMLA) has increased to \$204.

In 2022, it was \$189.

More info: bit.ly/penalties662

■ EEO-1 COMPONENT 1 REPORT WILL HAVE LATER DEADLINE

Heads up: The EEOC announced it plans to start accepting the 2022 EEO-1 Component 1 report in mid-July 2023.

That's later than last year: Collection began in April, and the deadline for submitting the report fell about a month after that.

More info about 2023 reporting is on the way, said the EEOC.

More info: www.eeocdata.org/eeo1

Required to offer paid leave for any reason? Another state passes law

■ YOUR COMPANY MAY NEED TO PROVIDE 40 HOURS PER YEAR

With the passage of a recent Illinois law, three states now require employers to offer paid leave for any reason.

Given this developing trend, will a similar law come to your state? We'll continue to track this issue.

Here are some details about what's happening in Illinois:

The Paid Leave for All Workers (PLFAW) Act, which the governor will soon sign, takes effect Jan. 1, 2024.

Employers in the state will need to provide at least 40 hours of paid leave during a 12-month period.

The accrual rate under the new law is one hour of paid leave for every 40 hours worked with a cap of 40 hours per year.

Employees will be able to use this leave for any reason. Furthermore:

- Employers can require them to provide the reason they're taking the leave.
- Employers can't require them

to provide documentation or certification regarding the leave.

- It's up to employees whether to use leave under the PLFAW Act prior to other types of leave.

Employees can choose the increments in which they use their leave. That said, employers can set minimum increments – as long as they're two hours or less.

A use-it-or-lose-it policy is allowed, assuming that an employer makes the minimum number of paid leave hours available on an employee's first day of employment or on the first day of the 12-month period.

Laws in other states

The other states with laws saying that employees can take leave for any reason are Maine and Nevada.

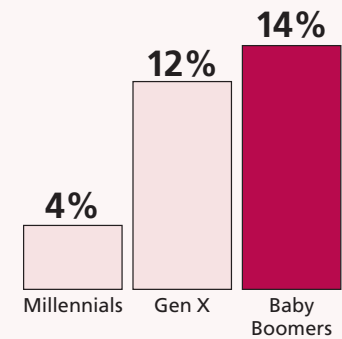
Maine's earned paid leave law set the wheels in motion with its enactment in May 2019.

Nevada passed its law the following month, and it took effect Jan. 1, 2020. The Nevada law requires employers to pay 0.01923 hours of paid leave for each hour of work. For example,

WHAT PAYROLL PROS TOLD US

Retirement plan contributions

What percentage of employees contribute at the allowable limit?



Source: Bank of America, 2022 Financial Life Benefits® Impact Report

For 2023, the IRS limit for contributions to 401(k) plans and certain other retirement plans is \$22,500. But most employees aren't likely to get near that amount.

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

employees who work 40 hours per week would accrue about 40 hours of leave per year.

The law in Maine took effect on Jan. 1, 2021. Employees must earn one hour of leave for every 40 hours worked, up to 40 hours per year.

More info: bit.ly/paidleave662; bit.ly/maine662; bit.ly/nevada662

REAL-LIFE SCENARIO: DID THEY GET IT RIGHT?

New hire approved paycheck deduction, then changed her mind

An Illinois teacher's union and school district faced this real-life scenario:

A school district hired a teacher. As part of her new-hire orientation, she attended a presentation put on by a teacher's union.

A union representative discussed the amount of union dues and gave attendees membership applications. The rep didn't mention anything about membership being mandatory. The employee thought it was, though.

She filled out the union membership form, giving authorization for paycheck deductions to occur during the course of a year. After that, she

learned that joining the union had been optional.

She sent letters to the school district and union, saying she'd changed her mind. But she'd signed a contract, they said. In accordance with the agreement, the school district began deducting union dues from her wages. So, she contacted her union rep to reiterate that she didn't want to be a member of the union or pay dues.

Next, she filed a lawsuit, claiming her First Amendment rights had been violated and seeking a refund for the dues. Days later, the union refunded her \$329.30 and even included \$500

for her efforts. Plus, the school district stopped making the deductions.

Instead of cashing the check, she proceeded with the lawsuit – but she lost. She had a right to free speech, but she didn't have a right to void obligations if she didn't like what she had said, the Seventh Circuit Court of Appeals ruled.

Checklist for compliance

- Make sure new hires understand whether each paycheck deduction is mandatory or voluntary.
- Long-time employees may need a refresher course, too.

Tracking local laws and regs

■ CA city requires differential pay for employees on military leave

The Military Leave Pay Protection Act is the first of its kind on the local level. The San Francisco ordinance will take effect Feb. 19, 2023.

Private employers with 100 or more employees must provide members of the National Guard, reservists and others on military leave with differential pay. Specifically, they should receive the difference between their salary and their military salary.

Covered individuals will need to take leave in daily increments of one or more days at a time. They're entitled to up to 30 calendar days of military leave pay in a calendar year.

More info: bit.ly/militaryleave662

■ Scheduling ordinance applies to retail employers in Los Angeles

The Los Angeles Fair Work Week Ordinance, which takes effect April 1, 2023, applies to retail employers with 300 or more employees – and that

includes workers obtained through temp services or staffing agencies.

These employers must provide written notice of schedules at least 14 days prior to the start of a work period. The ordinance also includes a provision on predictability pay. Example: For each change in scheduled date, time or location that doesn't result in lost time for the employee, that person must be paid for an extra hour.

More info: bit.ly/workweek662

■ After storms in Alabama and Georgia, IRS grants tax relief

Several counties in Alabama and Georgia have been granted tax relief by the IRS following recent storms.

In Alabama, the counties are Autauga and Dallas. In Georgia, the counties are Butts, Henry, Jasper, Meriwether, Newton, Spalding and Troup. Businesses in those locations have until May 15, 2023, to file returns and pay taxes.

More info: bit.ly/storms662

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:

When can bulk filers use new IRS filing system for 1099s?

Q: When will bulk filers be able to file Forms 1099 using the new IRS filing system?

A: The IRS launched Information Returns Intake System (IRIS) and began accepting Forms 1099 for TY 2022 in January 2023. That gave low-volume filers the ability to either fill out and file or upload records. Bulk filers can plan to use IRIS for TY 2023. The IRS says testing of the application-to-application

(A2A) channel is scheduled to begin in May 2023. You can do some prep work now by applying for a Transmitter Control Code (TCC). Even if you've already received a TCC for the IRIS web portal user interface, you'll need another TCC for the A2A channel. Prompted by the Taxpayer First Act, the IRS developed IRIS to replace the Filing Information Returns Electronically (FIRE) system. As with the FIRE system, you can use IRIS to file various information returns including the 1099-MISC and the 1099-NEC.

More info: www.irs.gov/iris

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

- Publication 4163, *Modernized e-File Information for Authorized IRS e-File Providers for Business Returns*. Revision date: December 2022. Posted date: 12/30/22.
- Notice 746, *Information About Your Notice, Penalty and Interest*. Revision date: January 2023. Posted date: 1/4/23.
- Publication 5084, *Congressional Update*. Revision date: January 2023. Posted date: 1/4/23.
- Publication 503, *Child and Dependent Care Expenses*. Revision date: 2022. Posted date: 1/5/23.
- Publication 5223, *General Rules and Specifications for Affordable Care Act Substitute Forms 1095-A, 1094-B, 1095-B, 1094-C, and 1095-C*. Revision date: November 2022. Posted date: 1/6/23.
- Form W-4P, *Withholding Certificate for Periodic Pension or Annuity Payments*. Revision date: 2023. Posted date: 1/9/23.
- Form W-4R, *Withholding Certificate for Nonperiodic Payments and Eligible Rollover Distributions*. Revision date: 2023. Posted date: 1/9/23.
- Publication 15-B, *Employer's Tax Guide to Fringe Benefits*. Revision date: 2023. Posted date: 1/10/23.

The Purpose of *Keep Up to Date on Payroll*

Keep Up to Date on Payroll helps Payroll practitioners stay current with all the changing laws and regs.

The quick-read, easy-to-understand format gets right to the point, so you don't have to waste any time.

Keep Up to Date on Payroll provides timely information about new laws and regs, and gives you a heads-up about coming changes – so you have plenty of time to prepare.

State law and reg changes Payroll needs to know

Don't see your state here? You can find additional state and local items online – it's included with your subscription. Check out our interactive map, too. Log on today!

ARIZONA

- **GARNISHMENTS:** Due to Proposition 209, which voters passed in November 2022, several statutes regarding debt collection have changed. As of Dec. 5, 2022, the portion of a debtor's disposable earnings subject to collections has decreased. It was 25% or 30 times the federal minimum wage. Now it's 10% or 60 times the highest applicable federal, state or local minimum wage. **More info:** www.azcourts.gov/selfservicecenter/Garnishment/Forms

ARKANSAS

- **UNEMPLOYMENT INSURANCE:** The taxable wage base for unemployment insurance purposes has decreased from \$10,000 to \$7,000 for 2023. **More info:** bit.ly/arkansas662

CALIFORNIA

- **DATA PRIVACY:** Additional privacy protections under the California Consumer Privacy Act of 2018 began Jan. 1, 2023. Employees now have the right to correct inaccurate personal info a business has about them and a right to limit how sensitive personal info about them is used. For example, sensitive personal info includes Social Security numbers, financial account info, precise geolocation data and genetic data. **More info:** oag.ca.gov/privacy/ccpa
- **TIMELY PAYMENTS:** Under the state labor code, employers must pay wages within seven days of the end of the pay period. A California appeals court recently looked at what's required when a pay period ends on a Saturday, Sunday or

holiday – after all, the state's code of civil procedure pushes back deadlines when acts required by law occur on those days. In *Parsons v. Estenson Logistics*, the court said although the employer's pay period ended on Saturdays, wages didn't have to be paid until Mondays (or Tuesdays when holidays fell on Mondays). **More info:** www.courts.ca.gov/opinions/documents/C093489.PDF

ILLINOIS

- **UNEMPLOYMENT INSURANCE:** For unemployment insurance purposes, the taxable wage base has increased to \$13,271 for 2023. Last year, it was \$12,960. **More info:** bit.ly/illinois662

MICHIGAN

- **PAID MEDICAL LEAVE:** Legislation from 2018 has been up in the air as state courts considered whether the legislature had the authority to adopt as law two ballot initiatives – one raising the minimum wage and the other increasing paid medical leave – only to quickly amend that law. The recent answer from the Michigan Court of Appeals? The legislature acted within its bounds. That means the minimum wage for 2023 will be \$10.10 per hour – i.e., no increase to \$13.13 per hour. Also, employers with 50 or more employees must continue to provide at least 40 hours of paid leave – i.e., employers with 10 or more employees aren't on the hook to provide 72 hours of paid leave. **More info:** bit.ly/michigan662

NEW YORK

- **WORKPLACE POSTERS:** As of Dec. 16, 2022, Labor Law Sec. 201 has been amended. The requirement to display posters in a conspicuous place on each floor of the premises is still intact. But now, digital copies of workplace posters must also

be made available through an employer's website or by email. What's more, employers will need to notify employees that posters that are displayed physically are also available digitally. **More info:** www.nysenate.gov/legislation/laws/LAB/201

OREGON

- **PAID LEAVE:** As of Jan. 1, 2023, employers need to display a poster about the new paid leave program at each worksite. In addition, if you have any employees who work remotely, you must provide the poster to them electronically or by mail. **More info:** bit.ly/oregon662
- **UNEMPLOYMENT INSURANCE:** The taxable wage base for unemployment insurance purposes has increased from \$47,700 to \$50,900 for 2023. **More info:** www.oregon.gov/employ/businesses/tax/pages/current-tax-rate.aspx

THE LIGHTER SIDE

Some employers offer pet insurance as a benefit, but how about for old – very old – animals?

Guinness World Records thought it'd located the oldest dog living when it bestowed the honor on Spike, a 23-year-old Chihuahua from Ohio.

But just two weeks later, an even older dog had been found.

His name is Bobi, he's a purebred Rafeiro do Alentejo from a rural village in Portugal and he's 30.

In fact, he's not just the oldest dog living – he's the oldest dog ever. What's the reason for his longevity? His owners say in his younger days, he spent a lot of time roaming freely through the nearby forests and farmland. Now though, walking is hard, so he's fine with hanging out in the backyard with the cats.

Cite: bit.ly/dogyears662