

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™

March 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

- **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.
- **March 17, 2023:** Deposit taxes for payroll on March 11, 12, 13, 14.
- **March 22, 2023:** Deposit taxes for payroll on March 15, 16, 17.
- **March 24, 2023:** Deposit taxes for payroll on March 18, 19, 20, 21.
- **March 29, 2023:** Deposit taxes for payroll on March 22, 23, 24.
- **March 31, 2023:** Deposit taxes for payroll on March 25, 26, 27, 28.

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.

New DOL guidance addresses questions about remote work

■ Clarity on what the FLSA and FMLA regs say

When so many employees suddenly started working remotely in 2020, Payroll practitioners had to field questions about complying with even well-known laws, not to mention new ones.

For example:

- Under the Fair Labor Standards Act (FLSA), how should Payroll handle break times for teleworking, nonexempt employees whose schedules stop and start?
- How should Family and Medical Leave Act (FMLA) eligibility rules be applied if employees aren't working at a traditional worksite?

The Dept. of Labor (DOL) recently issued Field Assistance Bulletin (FAB) 2023-1, prompted by questions about

remote work. Here's what the DOL said in the Feb. 9, 2023, guidance:

Taking breaks for various reasons

As in the past, nonexempt employees must be paid for breaks of 20 minutes or less. Such breaks allow people to stretch their legs and so on.

What about someone working from home whose breaks are used to, say, walk the dog or water the plants? The guidance doesn't speak to that. Nonetheless, it clearly states short breaks are compensable under the FLSA, no matter what the location.

As for lengthier breaks, FAB 2023-1 includes an example of a nonexempt

(Please see Remote work ... on Page 2)

If W-2 errors slip through, how much will penalties be?

If you find errors with any of the TY 2022 W-2s you just filed, acting accurately and quickly can keep penalties from building up.

Here's a review of the TY 2022 penalty amounts from the IRS – as well as a look ahead to TY 2023.

Amount depends on situation

Situation 1: Correctly filing within 30 days of the due date. That'll cost \$50 per TY 2022 Form W-2, with a maximum annual penalty of \$588,500 (or \$206,000 for small businesses). For TY 2023 W-2s, the penalty will be going up to \$60 per form.

Situation 2: Correctly filing more than 30 days after the due date but by August 1. The penalty is \$110 per W-2 for TY 2022. That'll be capped at \$1,766,000 per year, or \$588,500 for small businesses. For TY 2023, the penalty amount for each wage statement will increase to \$120.

Situation 3: Filing after August 1, not filing corrections or not filing the forms at all. The bill from IRS will be \$290 per Form W-2, up to \$3,532,500 per year. For small businesses, the cap is \$1,177,500. The TY 2023 amount will be raised to \$310 per W-2.

More info: www.irs.gov/payments/information-return-penalties

Company's 208 construction workers should have been on the payroll

■ EMPLOYMENT AGENCY OWED \$278,073, DOL SAID

Construction workers who worked for a Virginia staffing agency should have been classified as independent contractors.

In fact, the misclassification was intentional, according to the Dept. of Labor (DOL).

Resto Contracting LLC, Suffolk, VA, underwent a DOL investigation, followed by litigation.

Construction companies used the employment agency to find finishers, loaders, operators, carpenters and other workers.

Due to their misclassification as independent contractors, these workers didn't receive time-and-a-half their regular rate of pay when their workweek exceeded 40 hours.

What's more, the employer failed to maintain accurate records of

wages and hours for the 208 affected construction workers.

According to the consent judgment, the Fair Labor Standards Act (FLSA) violations cost Resto Contracting:

- \$139,036, in back wages, and
- \$139,036, in liquidated damages.

Also, the company was ordered not to further violate the FLSA or retaliate against employees.

Making the determination

We're waiting for the DOL to finalize regs which would likely require employers to consider six or more economic reality factors when classifying workers as employees or independent contractors.

In the meantime, the DOL continues to do investigations.

More info: bit.ly/construction663

Remote work ...

(continued from Page 1)

employee who works from 9 a.m. to 4 p.m., completely stops working for three hours to cook dinner and do laundry and then resumes working from 7 p.m. to 8 p.m. That three-hour period wouldn't be time worked.

50 employees within 75 miles

FMLA eligibility includes working at a location where the employer has 50 or more employees within 75 miles.

As FAB 2023-1 explains, employees' personal residences or other telework locations aren't worksites for FMLA eligibility purposes. Rather, their worksites are the offices to which they report or from which their assignments come.

Let's say 10 employees work on site, 40 telecommute from within 75 miles of the worksite and 50 telecommute from over 75 miles away. Those 100 employees would be eligible for FMLA leave, assuming all the other requirements of the law are met.

More info: bit.ly/FAB663

COMPLIANCE CHECK

■ A PENNY EARNED IS A PENNY ... DONATED TO CHARITY

Heine Brothers Inc., a coffee shop in Louisville, KY, violated the Fair Labor Standards Act, impacting 492 workers. The company redistributed tips improperly and diverted workers' tips to managers. Plus, the employer didn't keep a record of tips – in fact, it mandated that pennies be donated to a charity. These violations cost the shop:

- \$150,000 in back wages, and
- \$150,000 in liquidated damages.

More info: bit.ly/tips663

■ \$5.6M OWED TO 1,398 MISCLASSIFIED WORKERS

Parts Authority Arizona LLC, a national auto parts distributor, and joint employer Arizona Logistics Inc., a logistics firm, misclassified drivers as independent contractors. As a result, the 1,398 drivers weren't paid minimum wage and overtime. The Fair Labor Standards Act violations meant the companies had to pay:

- \$150,000 in civil money penalties
- \$2.8M in back wages, and
- \$2.8M in liquidated damages.

More info: bit.ly/drivers663

■ UNPAID MEAL BREAKS INTERRUPTED BY CUSTOMERS

MG Petroleum Inc., a gas station, mini market and car wash in Rancho Cucamonga, CA, issued one paycheck for the first 40 hours of work in a week – and another for overtime hours, paid at straight time rates. The company also made workers take lunch breaks as customer demand allowed, which interrupted meal breaks. Nonetheless, the employer deducted an average of four hours per week for meal breaks. For breaking the Fair Labor Standards Act, the company owed:

- \$101,096 in back wages, and
- \$101,096 in liquidated damages.

More info: bit.ly/paychecks663

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

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Changes to 2 forms child support agencies send you – what’s coming

■ OCSE WORKING WITH STATES, EMPLOYERS ON REVISIONS

The latest revisions to the medical child support form should reach Payroll practitioners’ desks by Nov. 1, 2023. States have until then to implement revisions from last year.

As for the child support form and instructions, minor changes have been proposed on those. Stakeholders, including Payroll pros, have until March 24, 2023, to share their thoughts on the changes.

Here’s a closer look:

Changes rolling out

1. Medical child support form. The Office of Child Support Enforcement (OCSE) had previously announced the expiration date of the current National Medical Support Notice was being extended to Oct. 31, 2023. Now, OCSE has specified the revised form’s expiration date will be Nov. 30, 2025. On the revised form:

- a sample Part A has been added
- there are eight fields for children, up from six
- an addendum has been included with Part B, and

- the instructions have been converted into a stand-alone attachment to the form.

What’s more, if you access OCSE’s matrix with state medical support contacts and program info, you’ll find additional questions and answers.

2. Child support form. At the start of 2023, the OCSE itemized possible changes to the *Income Withholding for Support Order*, known as the IWO, and its instructions.

On the form, the email you’d use if you have questions would change (from employerservices@acf.hhs.gov to OCSEFedSystem@acf.hhs.gov). The OCSE has proposed additional changes to the IWO.

Among the proposed revisions on the instructions, the “note to employer/income withholder” has been expanded. That note instructs employers to reject an IWO that doesn’t contain all the necessary information – and now these examples are included:

- a missing remittance identifier
- an invalid case identifier, or
- missing sender contact information.

More info: bit.ly/nmsn663; bit.ly/iwo663

Need to pay employees for short-term military leave?

Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), employees on military leave must be provided with the same rights and benefits as employees on comparable nonmilitary leave. But you may wonder: *What leave is considered comparable?*

The Ninth Circuit Court of Appeals addressed that question in *Clarkson v. Alaska Airlines Inc.*

The employer in that case provided jury duty, bereavement and sick leave – all paid. Therefore, short-term military leave should have been paid,

the employees who brought the suit claimed. The district court sided with the employer, but the appeals court sent the case back to the lower court.

3 factors to consider

To determine if leave is comparable, three factors are relevant: duration of leave, purpose of leave and employee’s ability to control when it’s taken.

The appeals court said the lower court erred when it compared all – not just short-term – military leave with the paid leave the employer offered.

More info: bit.ly/leave663

■ FUTA TAX: 4 STATES RISK FURTHER CREDIT REDUCTION

Employers in four states saw a 0.3% credit reduction when they filed Form 940 for TY 2022, and they may see that number go up to 0.6% for TY 2023. That’s according to the Dept. of Labor’s Employment & Training Administration.

The states – California, Connecticut, Illinois and New York – have outstanding loans with the federal government.

In addition, for TY 2023, employers in the Virgin Islands are looking at a potential 3.9% credit reduction, given the number of years the territory has had its outstanding loan.

More info: oui.doleta.gov/unemploy/futa_credit.asp

■ IRS UPDATING FIRST QUARTER FORM 941, INSTRUCTIONS

When it’s time to file Form 941 for the first quarter, employers shouldn’t use the version that has a June 2022 revision date – same goes for the instructions. Updates are in the works.

The new revision date would be March 2023, the IRS explained in *Instructions for Form 941*.

While no big changes are expected to the form, there may be a few differences with the instructions. For example, on the Jan. 12, 2023, draft, info has been expanded on the payroll tax credit for increasing research activities.

More info: www.irs.gov/pub/irs-dft/i941--dft.pdf

■ TIMESHEET APP AVAILABLE IN SPANISH, SAYS DOL

The Dept. of Labor’s (DOL’s) Timesheet App is now available in Spanish as well as English.

The app, which can be downloaded for free, tracks hours worked, break times, overtime, etc.

More info: bit.ly/timesheet663

2023 study shows the workplace challenges others deal with now

■ PLUS, FEELING STRESSED? HERE'S HOW IT'S AFFECTING YOUR PEERS

Ever wonder whether your peers are facing the same problems as you? A new survey, *2023 Priorities for Business Leaders*, sheds light on some workplace trends.

This fifth annual survey of its kind comes from Paychex.

See how you compare:

As far as operational challenges go, the top five among companies of all sizes were:

- hiring and retaining good employees (46%)
- supply chain issues (38%)
- keeping technology current (33%)
- cybersecurity threats (31%), and
- managing cash flow (29%).

While operational complications can keep you jumping from task to task, the challenges of managing people don't make things easier.

The top obstacle related to people has remained the same over the five years the study has been conducted. It's that employees sometimes have

personal issues that conflict with work (42%). Next, respondents said balancing their to-do list with the team's responsibilities (34%), followed by retaining top performers (33%).

The survey asked what retention strategies business had put in place, revealing that 45% of respondents had tried increasing pay.

The next two most popular answers – encouraging a healthy work/life balance and improving benefits – were almost tied at 36% and 35%, respectively.

Only 7% aren't stressed at all

The Paychex study also asked the 450 respondents about a topic most everyone can relate to – stress. That said, a handful of folks (7%) said they're not stressed at all.

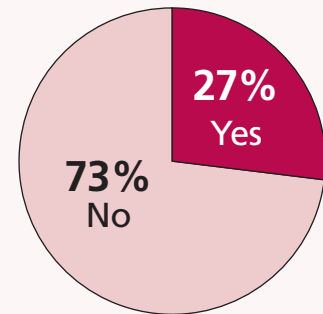
Consider this question: *How does stress affect you?*

Here's what other people are going through according to the study:

- 40% experience worse sleep
- 36% say it plays out in a decreased work/life balance

WHAT PAYROLL PROS TOLD US

Bank fees
Are you paying checking account fees each month?



Source: December 2022 Bankrate.com survey of 3,657 adults

More than one in four checking account holders pay fees. Meanwhile, most noninterest checking accounts are free to employees who have their paychecks directly deposited.

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

- 35% report having less time to spend with family
 - 23% share that their mental health has diminished, and
 - 24% struggle to find time to exercise.
- For better or worse, Payroll pros can know they're not alone.

More info: bit.ly/paychexsurvey663

REAL-LIFE SCENARIO: DID THEY GET IT RIGHT?

DOL claimed company's per diem payments should have been wages

An Alabama welding and pipefitting company faced this real-life scenario:

The federal Dept. of Labor (DOL) conducted an investigation of the company, spanning a two-year period.

After concluding that the employer had violated the Fair Labor Standards Act (FLSA), the DOL sued to recover back wages and liquidated damages and to seek a court order prohibiting further violations and retaliation against employees.

The employer failed to pay employees proper overtime when it misclassified part of their regular rate of pay as per diem, the DOL said. The company

explained it'd reimbursed employees for their travel expenses from their homes to their job sites. Furthermore, the reimbursement was paid at rates that didn't exceed those set by either the IRS or the General Services Administration (GSA).

The company admitted it didn't have an internal policy regarding how many miles employees had to travel to receive reimbursement – it was typically 40 miles to 50 miles.

The court set the record straight: The FLSA doesn't require employers to have a reimbursement policy or make per diem payments only to employees who travel a certain

number of miles. What's more, the court ruled in the employer's favor by dismissing the case.

One key reason for that? The company's controller submitted for each employee details that included regular hours, regular pay, overtime hours, overtime pay, per diem for pay period, per diem rate, mileage, job site address and total GSA rate.

Checklist for compliance

- Including per diem payments in the regular rate of pay isn't required.
- Be ready to provide a breakdown of payments made to employees.

Tracking local laws and regs

■ Income tax rate in this Ohio city inches higher

In Lancaster, OH, the income tax rate increased on Jan. 1, 2023, according to the city's Income Tax Dept.

The rate, which had been 2.2% last year, is now 2.3%.

More info: bit.ly/lancaster663

■ Minimum wage, tied to CPI, will increase mid-year in Malibu, CA

In Malibu, CA, as of July 1, 2023, the minimum wage will be \$16.90 per hour. The current rate is \$15.96.

Starting in 2022, the rate began to increase every year based on the Consumer Price Index. The city is seeing a 5.9% increase for 2023.

More info: bit.ly/malibu663

■ San Francisco increases 2023 health care expenditure rates

The 2023 Health Care Expenditure hourly rates for San Francisco are:

- \$3.40 (up from \$3.30) for all large employers
- \$2.27 (up from \$2.20) for medium employers – businesses with 20-99 workers and nonprofits with 50-99 workers, and
- small businesses are exempt under the city's Health Care Security Ordinance.

More info: bit.ly/SanFrancisco663

■ New Denver ordinance imposes 12% interest on unpaid wages

A new wage theft ordinance in Denver allows employees claiming they haven't been paid their full wages to pursue civil action against their employers. The ordinance gives them three years to file a complaint with the city's auditor.

If the auditor determines an employer owes wages, in addition to being on the hook for the unpaid wages, the employer could owe 12% interest, treble damages and more.

More info: bit.ly/denver663

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 do W-2 errors not lead to penalties, according to the IRS?

Q: Although we're careful when we're preparing Forms W-2 each year-end, sometimes mistakes are unavoidable. When does the IRS make exceptions to its failure-to-file penalties?

A: Failure-to-file penalties include not filing at all, not entering all the information, not entering correct information and more. The good news is, the IRS makes exceptions to the penalties under certain circumstances:

- If you can show the failure was due to an event beyond your control, you may be able to avoid penalties.
- An error that doesn't stop the SSA from processing the wage statement or putting the form to its intended use shouldn't result in penalties.
- The *de minimis* rule may come into play. Penalties don't apply to the greater of the first 10 W-2s or 0.5% of the total number of W-2s.
- Another exception is when there's no single W-2 where the difference between the reported amount and the correct amount exceeds \$100.

More info: www.irs.gov/instructions/iw2w3

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 5731, *Start E-Filing Forms 1099 for Free with the Information Returns Intake System*. Revision date: December 2022. Posted date: 1/11/23.
- Form W-4 (sp), *Employee's Withholding Certificate (Spanish version)*. Revision date: 2023. Posted date: 1/12/23.
- Form W-4 (vie), *Employee's Withholding Certificate (Vietnamese Version)*. Revision date: 2023. Posted date: 1/12/23.
- *Instructions for Form 2220*. Revision date: 2022. Posted date: 1/12/23.
- Form 2220, *Underpayment of Estimated Tax by Corporations*. Revision date: 2022. Posted date: 1/12/23.
- Publication 571, *Tax-Sheltered Annuity Plans (403(b) Plans)*. Revision date: January 2023. Posted date: 1/13/23.
- Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*. Revision date: 2023. Posted date: 1/31/23.
- Publication 1693, *SSA/IRS Reporter*. Revision date: January 2023. Posted date: 2/1/23.
- Publication 505, *Tax Withholding and Estimated Tax*. Revision date: 2023. Posted date: 2/1/23.

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!

DELAWARE

- **UNEMPLOYMENT INSURANCE:** The unemployment insurance taxable wage base for 2023 has decreased to \$10,500. That's down from \$14,500 last year. **More info:** bit.ly/delaware663

NEW JERSEY

- **TEMPORARY WORKERS:** The Temporary Workers' Bill of Rights (A1474/S511) was signed by the governor Feb. 6, 2023. It brings tough changes for temporary agencies and the employers that utilize them. Under the new law, temporary workers must be paid at least the same average rate of pay and equivalent benefits as permanent employees performing comparable work. Temporary workers can request that they receive biweekly paychecks instead of daily payments. Among the other changes, pay deductions for meals and equipment that'd bring temporary workers' pay below minimum wage are prohibited by the law. **More info:** bit.ly/newjersey663

NEW YORK

- **OVERTIME:** As of Feb. 28, 2023, healthcare employers are no longer allowed to require nurses to work overtime. There are four exceptions, including: a healthcare disaster that increases the need for healthcare personnel; a federal, state or county declaration of emergency; an emergency such as an unanticipated staffing emergency that couldn't be planned for and doesn't regularly occur; and an ongoing medical or surgical procedure in which the nurse is actively engaged, requiring his

or her continued presence for the patient's safety. A 286-A says that in addition to civil penalties, an employee can receive an additional 15% of the overtime payment from the employer for each violation. **More info:** www.nysenate.gov/legislation/bills/2021/A286

OHIO

- **SCHOOL DISTRICT TAX:** Payroll practitioners can access the 2023 list of school districts that impose the school district income tax and their rates. As of January 2023, the list contains 210 school districts. **More info:** tax.ohio.gov/individual/school-district-income-tax

OKLAHOMA

- **UNEMPLOYMENT INSURANCE:** The unemployment insurance taxable wage base has increased from \$24,800 to \$25,700 for 2023. **More info:** oklahoma.gov/oesc/employers/tax.html

PENNSYLVANIA

- **FORM 1099:** If you checked Publication 1220 in October 2022, you may have noticed Pennsylvania listed as one of the states participating in the combined federal/state filing (CF/SF) program. But the IRS has since revised the publication and the list. The state will reappear soon. Starting with TY 2023 returns, employers in the state will be able to participate in the CF/SF program – that's for forms such as 1099-MISC and 1099-NEC. **More info:** www.irs.gov/pub/lirs-pdf/p1220.pdf

RHODE ISLAND

- **HEALTH INSURANCE:** According to S 2548, which kicked in Jan. 1, 2023, a pregnant employee must be given a special enrollment period for health insurance coverage. The law specifies when the health insurance coverage should be effective: as of the first of the month in which the

employee applies for coverage. **More info:** bit.ly/healthcoverage663

TENNESSEE

- **UNEMPLOYMENT INSURANCE:** The unemployment insurance taxable wage base will remain \$7,000 for 2023. That number hasn't changed since 2018. **More info:** bit.ly/tennessee663

UTAH

- **INCOME TAX:** New legislation, SB 39, creates an exemption from income tax if an individual who's not a resident of Utah works in the state for 20 or fewer days per year. The law, which took effect Jan. 1, 2023, also modifies an employers' withholding obligations for these nonresident employees. **More info:** le.utah.gov/~2022/bills/sbillenr/SB0039.pdf

THE LIGHTER SIDE

National Employee Appreciation Day falls in March each year. To help celebrate, check out Indeed's list of the 12 most fun jobs in various field:

1. fashion consultant
2. radio announcer
3. brewmaster
4. pet groomer
5. novelist
6. race car driving instructor
7. food critic
8. event planner
9. sommelier
10. race car mechanic
11. video game designer, and
12. voice-over artist.

But wait, how could Payroll pro not be on the list?!

Cite: www.indeed.com/career-advice/finding-a-job/most-fun-jobs