

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™

May 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

- **May 3, 2023:** Deposit taxes for payroll on April 26, 27, 28.
- **May 5, 2023:** Deposit taxes for payroll on April 29, 30; May 1, 2.
- **May 10, 2023:** Deposit taxes for payroll on May 3, 4, 5.
- **May 12, 2023:** Deposit taxes for payroll on May 6, 7, 8, 9.
- **May 17, 2023:** Deposit taxes for payroll on May 10, 11, 12.
- **May 19, 2023:** Deposit taxes for payroll on May 13, 14, 15, 16.
- **May 24, 2023:** Deposit taxes for payroll on May 17, 18, 19.
- **May 26, 2023:** Deposit taxes for payroll on May 20, 21, 22, 23.

### MONTHLY DEPOSITORS

- **May 15, 2023:** Deposit taxes for payments made during April 2023.
- **June 15, 2023:** Deposit taxes for payments made during May 2023.

### ALL EMPLOYERS

- **July 31, 2023:** File Form 941 for Q2. Note: If you properly deposited taxes on time and in full, you have until Aug. 10, 2023, to file.

## COBRA: New DOL guidance contains deadlines to watch

### ■ What end of COVID-19 National Emergency means

The COVID-19 National Emergency which took effect March 1, 2020, recently ended. That means the clock is ticking on certain COBRA-related deadline extensions.

A 2021 notice issued by several federal agencies established that relief – such as deadline extensions – would continue until 60 days after the end of the National Emergency.

Originally, the National Emergency was set to expire May 11, 2023, meaning relief would run until July 10, 2023. Although President Biden has signed H.J. Res. 7, bumping the final date of the National Emergency to April 10, 2023, it's anticipated the relief will continue until July 10, 2023.

Recent FAQs released by the

Dept. of Labor help explain what all these changes mean for employers.

### Elections and premiums

Here are some key points from the FAQs that Payroll should know:

**Electing COBRA.** As a result of the National Emergency, the 60-day election period for COBRA continuation coverage was placed on pause.

That election period will resume after July 10, 2023, and 60 days from then will take us to Sept. 8, 2023.

Example: Let's say an employee who participated in your group health plan experienced a qualifying event and lost coverage on April 1, 2023,

(Please see COBRA ... on Page 2)

## SSA explains new credentialing, authentication process

Even if you've used SSA's Business Services Online (BSO) in the past, you'll be required to take an extra step before logging in again.

It's an added security measure, SSA's Matt Newton explained during the April IRS Payroll Industry Call.

Before accessing BSO – for the first time or as a return user – you'll need to log in to:

- a Social Security online account such as my Social Security
- a *Login.gov* account, or
- an *ID.me* account.

You may have already obtained credentials for one of those accounts.

If not, you can go to [www.ssa.gov/RIL/bsotake](http://www.ssa.gov/RIL/bsotake) to get started.

### Linking to BSO

Once the credentialing and authentication process is done, you'll be able to link to BSO.

Available BSO services include:

- Wage File Upload
- W-2 Online
- W-2C Online
- AccuWage Online, and
- Social Security Number Verification Service.

More info: [www.ssa.gov/employer](http://www.ssa.gov/employer)

## Employee wasn't allowed to take FMLA leave on intermittent basis

■ THAT RESULTED IN MORE TIME OFF TAKEN THAN NEEDED

After employees have been approved for time off under the Family and Medical Leave Act (FMLA), they may opt to return to work earlier than expected or may request intermittent or reduced schedule leave.

Telling them they have to take FMLA leave when they don't need it can end up costing your company money.

For example, a Spring Hill, TN, employer recently had to pay \$12,652 for not allowing an employee to take intermittent FMLA leave.

The nutritional manufacturer decided it couldn't accommodate that type of leave.

In fact, the company said the employee had to wait to return to work until the doctor cleared

all medical restrictions and leave was no longer necessary.

But forcing the employee to take more time off than needed was a violation of the FMLA.

### A temporary job change

When intermittent leave will be needed for foreseeable medical treatments, employers and employees can work together to come up with a schedule that's not disruptive to business operations.

Your company may even decide to transfer the employee temporarily to another position that's better suited to the intermittent leave schedule. But it's essential that there's no cut in pay and benefits.

More info: [www.dol.gov/newsroom/releases/whd/whd20221110](http://www.dol.gov/newsroom/releases/whd/whd20221110)

## COBRA ...

(continued from Page 1)

and your company provides a COBRA election notice on May 1, 2023. The deadline for that employee to elect COBRA would be Sept. 8, 2023.

Now say the qualifying event and loss of coverage take place on July 12, 2023, and your company provides notice on July 15, 2023. The last day of the employee's COBRA election period would be 60 days after the date of notice – i.e., Sept. 13, 2023.

### Paying COBRA premiums.

The date for an employee to make COBRA premium payments was also put on hold during the COVID-19 National Emergency.

Example: An employee who had a qualifying event and got a COBRA election notice on Oct. 1, 2022, elected coverage on Oct. 15, 2022, retroactive to Oct. 1, 2022. That person would have until 45 days after July 10, 2023, to make the initial payment (covering 10 months of coverage). So, that due date would be Aug. 24, 2023.

More info: [bit.ly/COBRA667](http://bit.ly/COBRA667)

## COMPLIANCE CHECK

### ■ 20% SERVICE FEE MISSING FROM OT CALCULATIONS

The Greenbrier Sporting Club Inc., a country club in White Sulphur Springs, WV, didn't calculate overtime properly.

Two on-site restaurants charged members a mandatory 20% fee for food and beverage services. This should have been included in the regular rate of pay for 34 staffers, including servers and bartenders. Also, payroll records didn't include accurate rates of pay. The Fair Labor Standards Act violations cost:

- \$11,871 in back wages, and
- \$11,871 in liquidated damages.

More info: [bit.ly/westvirginia667](http://bit.ly/westvirginia667)

### ■ WAGE DEDUCTIONS NOT SENT TO RETIREMENT PLAN

Nissan of St. Charles in Illinois failed to send employees' voluntary salary contributions to the company's Simple IRA Plan. As a result, the company owed:

- \$13,071 in contributions not forwarded to the plan
- \$651 in lost opportunity cost
- \$2,060 to a court-appointment benefit plan administrator, and
- \$2,754 in penalties for the Employee Retirement Income Security Act violations.

More info: [bit.ly/illinois667](http://bit.ly/illinois667)

### ■ SECURITY GUARDS OWED \$117,880 FOR FLSA PROBLEMS

Freeman Security Services Inc., a security company in Winter Haven, FL, misclassified employees as independent contractors.

That resulted in overtime problems impacting 76 security guards. Another Fair Labor Standards Act (FLSA) violation? The company failed to pay several former employees final pay.

- \$58,940 in back wages, and
- \$58,940 in liquidated damages.

More info: [bit.ly/florida667](http://bit.ly/florida667)

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

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## E-filing: IRS explains which forms you must count under aggregation rule

■ USE THIS CHECKLIST TO DETERMINE IF YOU'VE MET THE NEW THRESHOLD

Which forms must employers include to comply with the new aggregation rule for electronic filing? The IRS answered that question during its April Payroll Industry Call.

On Feb. 23, 2023, the Service lowered the e-filing threshold from 250 to 10 returns.

In addition, now employers will need to aggregate forms to determine if they've met that threshold. The reg changes will affect people in a variety of roles within each company – those responsible for:

- withholding returns
- certain information returns
- partnership returns
- corporate income tax returns
- unrelated business income tax returns
- registration statements
- disclosure statements
- notifications
- actuarial reports, and
- excise tax returns.

There's little time to prepare: The changes are in effect for TY 2023 forms – i.e., those due in 2024. That

means now's the time to put internal coordination efforts in place.

### Do you file any of these?

The aggregation rule applies to the following forms:

- 1042-S
- 1094-B, 1094-C
- 1095-B, 1095-C
- 1097-BTC
- 1098
- 1098-C
- 1098-E
- 1098-Q
- 1098-T
- 1099 series
- 3921
- 3922
- 5498 series
- 8027
- W-2G
- W-2
- W-2AS
- W-2GU
- W-2VI, and
- 499R-2/W-2PR.

More info: [bit.ly/electronic667](https://bit.ly/electronic667)

## IRS gives update: No changes to 2024 W-2 after all

Although the IRS had aimed to make changes to Form W-2 for 2024, that's not going to happen after all.

The Service announced the latest plans during its April Payroll Industry Call.

The proposed revisions would have condensed Copies B, C and 2 of Form W-2 to one page.

The names of the boxes would have stayed the same – however, layout adjustments would have been needed due to the reduced space.

Stakeholders voiced concerns

regarding incompatibility between the proposed layout changes and existing envelopes.

### Similar to 2023 version

The 2024 version of the W-2 will look essentially like the version that's in use for the current tax year, the Service explained during the Call. The IRS posted the final 2023 form, along with accompanying instructions, to its website on Dec. 22, 2022.

We'll let you know when a draft of the 2024 Form W-2 is released.

More info: [www.irs.gov/w2](https://www.irs.gov/w2)

## NEWS YOU CAN USE

### ■ FOREIGN EARNED INCOME EXCLUSION FOR 2023

Employees who are U.S. citizens or residents living abroad will want to know the IRS has increased the housing expense amount excludable from income for 2023. It's \$36,000. That's tied to the maximum foreign earned income exclusion – \$120,000.

The housing expense maximum is higher in certain high-cost localities, and that info can be found in IRS Notice 2023-26.

More info: [bit.ly/foreign667](https://bit.ly/foreign667)

### ■ HOW MUCH DID PAYROLL WITHHOLD IN 2022?

As the latest data from the IRS shows, Payroll bears a lot of responsibility when it comes to withholding federal taxes.

The 2022 IRS Data Book reveals that withheld amounts increased again last year. The numbers are:

- \$1.76 trillion in withheld individual income tax
- \$1.33 trillion in employer and employee FICA tax
- \$7.05 billion in unemployment insurance tax, and
- \$6.15 billion in Railroad Retirement Tax Act tax.

More info: [bit.ly/data667](https://bit.ly/data667)

### ■ FORM 1099 INSTRUCTIONS UPDATED FOR TY 2023

The IRS has released the 2023 *General Instructions for Certain Information Returns*.

As noted in the instructions, a new online portal for the electronic filing of Forms 1099 and other information returns was up and running for TY 2022. The Information Reporting Intake System (IRIS) will be required again for electronic filing in TY 2023.

Specs for using IRIS can be found in Publication 5717, *IRIS Taxpayer Portal User Guide*.

More info: [www.irs.gov/form1099](https://www.irs.gov/form1099)

## Layoffs or pay cuts? Survey reveals choices made when times get tough

■ 66% OF EXECS WOULD TAKE SALARY REDUCTION TO SAVE WORKERS' JOBS

According to a survey conducted at the start of the year, 78% of execs said their company had gone through layoffs in the prior six months.

What's more, 70% anticipated they'd face layoffs in the upcoming six months.

The survey, conducted by Resume Builder, included responses from 1,000 U.S. executives at companies with more than 100 employees.

As for future layoffs, the likelihood they'd occur varied depending upon the industry:

- finance and insurance – 72%
- information – 73%
- software – 70%
- construction – 57%
- health care and social assistance – 57%, and
- education – 30%.

To prevent or reduce layoffs, executives sometimes opt to reduce their own salaries, as did 66% of execs in the six months preceding the

survey. One-quarter of them took a 20% pay cut, and 5% experienced a 30% salary reduction.

Execs in some industries were more likely than others to agree to a pay cut:

- health care and social assistance – 74%
- software – 66%
- finance and insurance – 58%
- information – 57%
- construction – 44%, and
- education – 39%.

How important is it to avoid layoffs? Of the execs surveyed, most (68%) felt it was extremely important, while less than one-quarter (23%) said it was moderately important.

Meanwhile, 6% answered that steering clear of layoffs was somewhat important – it was slightly important to 2% and not at all important to 1% of those surveyed.

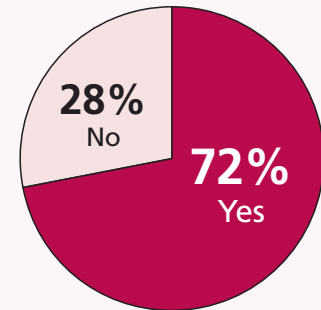
### Complying with the WARN Act

At times, layoffs are unavoidable, and Payroll can help to ensure compliance with laws like the Worker Adjustment and Retraining

## WHAT PAYROLL PROS TOLD US

### Total rewards

Do you agree that, by 2026, most employers will use a total rewards approach to employee compensation?



Source: Transamerica Prescience Report, 2023

Survey respondents believe that, by 2026, most employers will offer flexibility in how compensation is allocated – net pay, healthcare, work hours and other options.

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

Notification (WARN) Act. Under the WARN Act, employers must give employees written notice at least 60 calendar days in advance of certain mass layoffs.

**More info:** [www.resumebuilder.com/6-in-10-executives-have-taken-pay-cut-to-minimize-layoffs-in-past-6-months](http://www.resumebuilder.com/6-in-10-executives-have-taken-pay-cut-to-minimize-layoffs-in-past-6-months)

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

### Forms completed & premiums deducted, but worker had no LTD insurance coverage

A North Dakota petroleum company faced this real-life scenario:

A tanker truck driver at the company filled out a form electing coverage for long-term disability (LTD) insurance. Shortly thereafter, due to elbow and shoulder pain that he began experiencing, he moved to office work to avoid further injury.

A few months after that, he completed another form, this time electing both LDT and short-term disability insurance (STD).

At the end of that year, his employer sent him a notice stating that he had LTD coverage and providing the cost

of the premiums to be deducted from his paycheck.

Next, the worker went on paid STD leave twice. Anticipating that he'd soon run out of STD leave, he asked for info about LTD benefits. The insurance company's response? He'd never applied for LTD insurance because he hadn't submitted an evidence-of-insurability form. He filled out another election form and submitted an evidence-of-insurability form, but the insurance company declined his coverage, citing his medical history.

After his employer sent him another notice like the first one regarding his

LTD coverage and premiums, he took legal action, saying his claim had been wrongfully denied. The employer and insurance company tried to fight the claim by arguing he hadn't exhausted his administrative remedies. But because the benefits plan didn't clearly require him to do that, the court wouldn't throw out the case.

### Checklist for compliance

- Confirm insurance coverage before deducting premiums from employees' pay.
- Double-check the accuracy of benefits notices sent to employees.

## Tracking local laws and regs

### ■ NYC rolls out rule restricting use of automated tools for hiring

In New York City, a final rule on automated employment decision tools (AEDTs) will take effect July 5, 2023.

An employer can't use an AEDT unless it's been subject to a bias audit within one year of its use, info about the bias audit is publicly available, and employees and job candidates have been given certain notices.

More info: [bit.ly/newyorkcity667](https://bit.ly/newyorkcity667)

### ■ Tennessee employers granted more time to file tax returns

Severe storms, straight-line winds and tornadoes hit Tennessee from March 31, 2023, to April 1, 2023.

So, employers in 10 counties have extra time to file quarterly payroll and excise tax returns. The deadline has been moved from April 30, 2023, to July 31, 2023, for these counties:

- Cannon
- Hardeman

- Hardin
- Haywood
- Lewis
- Macon
- McNairy
- Rutherford
- Tipton, and
- Wayne.

More info: [bit.ly/tennessee667](https://bit.ly/tennessee667)

### ■ Following storms and tornadoes, AR counties receive tax relief

Three counties in Arkansas – Cross, Lonoke and Pulaski – qualify for tax relief following the recent tornadoes and severe storms, the IRS said.

As a result of the damaging weather that occurred March 31, 2023, many deadlines have been extended to July 31, 2023.

That includes the deadlines for quarterly payroll and excise tax returns that'd otherwise have been due April 30, 2023.

More info: [bit.ly/AR667](https://bit.ly/AR667)

## 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:*

### Fewer retirement plan notices thanks to Secure 2.0 Act

**Q:** Under the Secure 2.0 Act, what notices must be sent to employees who didn't elect to participate in our retirement plan?

**A:** Thanks to Sec. 230 of the new law, some paperwork requirements have been lifted because they're "unnecessary." For example, what's the point of sending notices about investment options to individuals who haven't elected to participate in your retirement plan? For

plan years beginning after Dec. 31, 2023, only minimal notification needs to be provided to unenrolled participants. That includes annual reminder notices about eligibility and election deadlines. This info should be sent during your open enrollment period. You must also provide unenrolled participants with documents that they request that they would have otherwise received. Also, initial paperwork should have gone out – e.g., the summary plan description.

More info: [www.congress.gov/bill/117th-congress/house-bill/2617/text](https://www.congress.gov/bill/117th-congress/house-bill/2617/text)

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

- *Instructions for Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*. Revision date: March 2023. Posted date: 3/21/23.
- Publication 1779, *Independent Contractor or Employee Brochure*. Revision date: March 2023. Posted date: 3/22/23.
- *Instructions for Form 720, Quarterly Federal Excise Tax Return*. Revision date: March 2023. Posted date: 3/23/23.
- Publication 557, *Tax-Exempt Status for Your Organization*. Revision date: January 2023. Posted date: 3/27/23.
- Publication 5530, *IRS Budget in Brief*. Revision date: February 2023. Posted date: 3/29/23.
- Publication 4436, *General Rules and Specifications for Substitute Form 941, Schedule B (Form 941), Schedule D (Form 941), Schedule R (Form 941), and Form 8974*. Revision date: March 2023. Posted date: 3/29/23.
- *Instructions for Form 8915-F, Qualified Disaster Retirement Plan Distributions and Repayments*. Revision date: January 2023. Posted date: 3/31/23.

### 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!*

**ARKANSAS**

- **INCOME TAX:** HB 1062, which became Act 96 in 2023, prohibits any county, municipality or other local government in the state from levying an income tax. Although no local governments have an individual income tax, they could have imposed such a tax at a rate of 1% of income tax payable to the state. **More info:** [bit.ly/arkansas667](http://bit.ly/arkansas667)

**COLORADO**

- **INCOME TAX:** At least once per year, employers must notify employees of the availability of the federal and state earned income tax credits, as well as the federal and state child tax credits, according to HB23-1006, which was signed into law March 31, 2023. The law also says written notices may be sent electronically, including through email or text message. **More info:** [leg.colorado.gov/bills/HB23-1006](http://leg.colorado.gov/bills/HB23-1006)
- **PAID LEAVE:** Wage reports and premium payments for the Family and Medical Leave Insurance (FAMLI) Program are due for the first time April 30, 2023. However, the Colorado Dept. of Labor and Employment is offering a 30-day grace period to make the payment, so you have until May 31, 2023. The state reminds employers that payroll deductions can't be made retroactively – starting Jan. 1, 2023, if an employer doesn't deduct the employee's share of the premium, the employer will be responsible for that amount. **More info:** [bit.ly/colorado667](http://bit.ly/colorado667)

**CONNECTICUT**

- **RETIREMENT PLANS:** The deadline for enrolling in

MyCTsavings, the state-facilitated, private sector retirement program, has been extended. That's according to an April 5, 2023, press release from the Office of the State Comptroller. The initial deadline March 30, 2023, deadline has been moved to Aug. 31, 2023. Businesses that have five or more employees and don't offer a retirement plan must enroll in the program. Then, employees can make contributions to a Roth IRA through automatic payroll deductions. **More info:** [bit.ly/connecticut667](http://bit.ly/connecticut667)

**ILLINOIS**

- **PAID LEAVE:** The governor signed SB 208 on March 13, 2023, mandating paid time off for any reason. Under the Paid Leave for All Workers Act, employers must provide their employees with up to 40 hours of paid leave per year. The new requirement kicks in March 31, 2024, or 90 days after a new hire begins working. Employers located in the city of Chicago and Cook County will be subject to the existing paid leave ordinances in those localities. **More info:** [www.illinois.gov/news/press-release.26164.html](http://www.illinois.gov/news/press-release.26164.html)

**MARYLAND**

- **MINIMUM WAGE:** Due to new legislation, the minimum wage will reach \$15 per hour more quickly than laid out in previous legislation. SB 555 establishes a \$15 rate as of Jan. 1, 2024. That's for both large and small employers. Currently, large employers must pay at least \$13.20 per hour, while small employers must pay at least \$12.80 per hour. **More info:** [mgaleg.maryland.gov/mgawebsite/Legislation/Details/SB0555](http://mgaleg.maryland.gov/mgawebsite/Legislation/Details/SB0555)

**OREGON**

- **WORKERS' COMP:** The Oregon Dept. of Consumer and Business Services announced that the 2023

workers' compensation premium assessment will remain the same for self-insured employer groups in the private sector. The rate is 10.3%. **More info:** [www.oregon.gov/DCBS/cost/Pages/index.aspx](http://www.oregon.gov/DCBS/cost/Pages/index.aspx)

**WASHINGTON**

- **PAYROLL DEDUCTIONS:** Employers will need to begin collecting premiums from employees' wages for the Washington Cares Fund, starting July 1, 2023. There's no employer share for this long-term care insurance. The state has updated its premium calculator to include Washington Cares Fund in addition to Paid Leave. Also, it'll be revising its reporting system so employers can report for both programs simultaneously. **More info:** [paidleave.wa.gov/estimate-your-paid-leave-payments](http://paidleave.wa.gov/estimate-your-paid-leave-payments)

**THE LIGHTER SIDE**

Having employees on the payroll with the same or similar names makes the need for accuracy even more pressing.

For instance, perhaps you're extra careful when it comes to entries in your payroll system.

If sorting through name duplication gives you the slightest headache, you might not want to be in Kyle, TX, on May 21, 2023.

That's when the city is hosting its Gathering of the Kyles.

The city of Kyle is taking its fourth try at breaking the Guinness World Record for the largest same-name gathering. The record is currently held by Kupreski Kosci in Bosnia and Herzegovina, where, in 2017, people named Ivan gathered.

The number for the Kyles to beat? 2,325.

**Cite:** [bit.ly/samename667](http://bit.ly/samename667)