

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 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

- **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.
- **June 1, 2023:** Deposit taxes for payroll on May 24, 25, 26.
- **June 2, 2023:** Deposit taxes for payroll on May 27, 28, 29, 30.
- **June 7, 2023:** Deposit taxes for payroll on May 31; June 1, 2.
- **June 9, 2023:** Deposit taxes for payroll on June 3, 4, 5, 6.

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.

New law: Accommodations required for these employees

■ Details on the Pregnant Workers Fairness Act

Get ready to comply with a new law: the federal Pregnant Workers Fairness Act (PWFA). It'll take effect June 27, 2023.

The PWFA requires employers to provide reasonable accommodations – e.g., additional break time to use the bathroom, eat and rest – to employees affected by pregnancy, childbirth, or related medical conditions.

An existing law, the Pregnancy Discrimination Act of 1978, doesn't require accommodations. Rather, it focuses on discrimination against pregnant employees.

The PWFA applies to employers with at least 15 employees. Covered employers must provide reasonable accommodations to pregnant

employees, but not if doing so will create an undue hardship.

What's on the list

Here are a few of the accommodations, in addition to additional break time, listed in the new law:

- taking leave or time off to recover from childbirth
- having flexible hours, and
- being excused from strenuous activities and/or activities that involve exposure to compounds not safe for pregnancy.

Many states have laws regarding pregnancy accommodations, and if

(Please see Accommodations ... on Page 2)

No codes being added to W-2 due to Secure 2.0 Act

The IRS doesn't anticipate that it'll add any new codes to the 2024 Form W-2, a draft of which was released on April 28, 2023.

During its May Payroll Industry Call, the IRS said that the provisions of the Secure 2.0 Act, although many, don't appear to warrant any code changes on the form.

Info about e-filing

Additional information related to Form W-2 was discussed.

For example, the reduction of the electronic filing threshold for W-2s and other forms won't be included in

2023 General Instructions for Forms W-2 and W-3. The final version of the instructions preceded the e-filing regs.

The 2024 W-2 instructions will include e-filing threshold guidance, and that version should be out later this year.

Also during the Call, SSA noted it'll update the publication that provides the electronic format for submitting Form W-2 Copy A.

In Publication 42-007, the e-filing threshold will be changed from 250 returns of one type to 10 returns in aggregate, to reflect the reg changes.

More info: www.irs.gov/formW2

2 laws broken, more than \$1M owed: Here's what went wrong

■ DOL INVESTIGATION REVEALED FLSA AND INA VIOLATIONS

The Dept. of Labor (DOL) recently found an employer had violated two employment laws.

Following an investigation, the DOL said Northern Stone Supply Inc. had violated the Fair Labor Standards Act (FLSA) and the Immigration and Nationality Act (INA).

The FLSA problems stemmed from paying employees by the piece rate – they didn't receive the proper minimum wage and overtime pay. Plus, the Oakley, ID, company failed to keep accurate records of time worked.

As for the INA, the company employed workers who held H-2B visas – i.e., they were nonimmigrants performing nonagricultural labor. But the quarry didn't follow the provisions of the H-2B program. That included these and other missteps:

- discriminating against U.S. workers by offering them fewer hours
- paying less than the wage stated in the job orders
- failing to keep proper earnings records, and
- not providing copies of job orders.

Impact on the bottom line

The cost for violating the FLSA was \$373,608 in back wages and \$373,608 in liquidated damages.

The company also had to pay \$236,509 in back wages and \$50,000 in civil money penalties for breaking the H-2B provisions of the INA.

This situation shows that out-of-the-ordinary employment situations require extra caution to ensure compliance.

More info: bit.ly/idaho668

Accommodations ...

(continued from Page 1)

a state or local law – or other federal law – imposes requirements that are more protective of employees, employers should follow those.

The Equal Employment Opportunity Commission (EEOC) hasn't yet issued regulations. We'll let you know when that happens.

Related requirements

Employees who have recently given birth may be covered by another law that kicked in several months ago, the Providing Urgent Maternal Protections for Nursing Mothers (PUMP) Act.

The PUMP Act gives nursing mothers the right to reasonable break times as needed to express breast milk. They can use break times for this purpose for up to one year after the child's birth.

Note: The PUMP Act is an amendment to the Fair Labor Standards Act.

More info: bit.ly/pwfa668

COMPLIANCE CHECK

■ RECORDED OVERTIME AS OTHER TYPES OF PAYMENTS

Brappa Security Systems Inc., a West Covina, CA, security services company, violated the Fair Labor Standards Act when it failed to pay overtime to employees who worked more than 40 hours in a workweek.

The company falsely recorded overtime hours as training, bonuses, commissions and reimbursements. In addition to overtime problems, that led to recordkeeping errors.

- \$15,790 in penalties
- \$39,236 in back wages, and
- \$39,236 in liquidated damages.

More info: bit.ly/california668

■ \$148,852 IN MISHANDLED RETIREMENT PLAN FUNDS

Bicallis LLC, a Baltimore logistics, engineering and management support company, violated the Employee Retirement Income Security Act when it failed to forward employee's withheld contributions and didn't pay matching and safe harbor contributions.

As a result, the company owed:

- \$148,852 in missing contributions and interest, and
- \$3,090 for the cost of an independent fiduciary.

More info: bit.ly/maryland668

■ HOME CARE AGENCY OWED OVERTIME TO 55 EMPLOYEES

Alma Conway Home Care LLC, a Philadelphia home care agency, owed back wages to 55 employees due to its Fair Labor Standards Act violations. The business paid straight time rates even when employees worked more than 40 hours per week.

So it had to pay:

- \$25,740 in civil money penalties
- \$205,434 in back wages, and
- \$205,434 in liquidated damages.

More info: bit.ly/pennsylvania668

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

EDITOR: JENNIFER WEISS
jweiss@HRMorning.com
MANAGING EDITOR: CURT BROWN
PRODUCTION EDITOR: P.J. FRONZEO
EDITORIAL DIRECTOR: CURT BROWN

Keep Up to Date on Payroll (ISSN 1076-3309), issue date May 15, 2023, Vol. 30 No. 668, is published semi-monthly except once in December (23 times a year).

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional services. If legal or other expert assistance is required, the services of a competent professional should be sought. — From a declaration of principles jointly adopted by a committee of the American Bar Association and a committee of publishers.

Copyright © 2023 HRMorning. Please respect our copyright: Reproduction of this material is prohibited without prior permission. All rights reserved in all countries.

Uncertainty persists about future of salary threshold for OT exemption

■ DOL'S TIMETABLE FOR RELEASING PROPOSED RULE: MAY 2023

Are we about to see an increase in the salary level requirements for who's exempt from overtime under the Fair Labor Standards Act (FLSA)?

It's not just the Dept. of Labor (DOL) to keep an eye on now – the agency has been saying for months that it's going to propose a rule covering the exemptions for executive, administrative and -professional employees.

May of 2023 was the latest deadline it set for itself – the clock's ticking on that.

In the meantime, Congress has jumped into the scene, too.

The Restoring Overtime Pay Act of 2023 (SB 1041) was introduced March 29, 2023.

According to GovTrack, the legislation has only a 39% chance of being enacted.

That said, the bill provides a point of reference for how high the salary threshold might climb.

To pass the salary level test – and qualify as exempt from the overtime provisions of the FLSA – executive, administrative and professional

employees would need to be paid at least:

- \$45,000 in 2023, starting on the effective date of the legislation
- \$55,000 in 2024
- \$65,000 in 2025, and
- \$75,000 in 2026.

Been down this road before

Businesses walked down the rulemaking road with the DOL just a few years ago. The rule – which raised the salary threshold from \$23,660 to \$47,476 – was finalized then halted.

A subsequent rule landed us on the current amount: \$35,568.

In its fall regulatory agenda, which set May 2023 as the timetable for a proposed rule on overtime eligibility, the DOL stated it has a commitment to updating the salary level more frequently than in the past.

The total compensation levels for highly compensated employees (HCEs) would also be reviewed more often if DOL gets its way. Currently, to qualify as exempt, HCEs must be paid a salary of at least \$107,432.

More info: bit.ly/dolagenda668, bit.ly/overtimebill668

IRS issues proposed regs on 401(k) plan forfeitures

The IRS has released proposed regs on how to handle forfeitures under defined contribution plans, such as 401(k) plans.

A plan document should contain details about *how* and *when* forfeitures will be used.

The proposed regs reinforce earlier, less-formal information from the IRS. Here are the details:

Applicable in 2024

How: The forfeited amounts could be used for three purposes, as specified in your plan. They are to:

- pay plan administrative expenses
- reduce employer contributions under the plan, and
- increase benefits in other participants' accounts according to plan terms.

When: Plan administrators would have to use the funds within 12 months after the close of the plan year in which the forfeitures were incurred.

The proposed rule would apply to plan years beginning on or after Jan. 1, 2024.

More info: bit.ly/forfeitures668

NEWS YOU CAN USE

■ SSA OFFERS TIP REGARDING NEW WAY TO LOG IN TO BSO

You now have another step to take, for security's sake, before logging into Business Services Online – and SSA shared a tip on that during the May IRS Payroll Industry Call (BSO).

If you're accessing BSO by first logging into a *my Social Security* account (which is one of three options), clicking the top right corner will take you to other SSA services.

Instead, scroll down until you see information about BSO.

More info: www.ssa.gov/myaccount

■ NO INCREASE IN FEES FOR SAME DAY ACH

There will be no change to the Same Day ACH fee, Nacha said recently. The Same Day ACH rules state that the fees should be reviewed once the program reaches the five-year mark – that happened in March 2023.

The next fee review is scheduled to be done in three years.

More info: bit.ly/samedayach668

■ ANY EMPLOYEES WHO REACHED AGE 72 IN 2022?

On March 22, 2023, the IRS explained some changes that the Secure 2.0 Act put in place. Specifically, the age for taking required minimum distributions (RMD) from retirement plans has increased. For someone who reached age 72 in 2022, the:

- first RMD for 2022 was due by April 1, 2023, and
- RMD for 2023 is due by Dec. 31, 2023.

Your company's plan may allow certain employees to delay taking RMDs until they retire.

More info: www.irs.gov/retirement-plans/employee-plans-news

Secure 2.0 Act: Survey reveals employees' reaction to changes

■ INCREASED RETIREMENT PLAN PARTICIPATION COMING SOON?

While the Secure 2.0 Act brought about many retirement plan changes, it remains to be seen whether employees' participation will increase.

In the meantime, a new survey sheds light on how employees view four of the law's features.

4 aspects of the law

Here's what the 2023 Natixis Defined Contribution Plan Participant Survey revealed:

Automatic enrollment: The Secure 2.0 Act says retirement plans started after Dec. 29, 2022, must automatically enroll employees – at a rate ranging from 3% to 10% – beginning in 2025. Employees are allowed to opt out. But will they?

Among survey respondents, 27% had been automatically enrolled in their employer's retirement plan.

Here's the break down by generation – 31% of millennials were automatically enrolled, compared to 26% of Generation X and 21%

of boomers. So, for many employees, once they're in, they stay in.

Student loans: The new law says, starting in 2024, if employees have student loan payments, you can offer an employer match, as if their payments were retirement plan contributions.

Millennials like the sound of that, with 63% of those not currently making contributions saying they'll start to do so. The number overall is 42%, the survey showed.

Emergency savings: For workers who've had to tap into their retirement savings early – 25% of those surveyed – the emergency savings provision of the Secure 2.0 Act is good news.

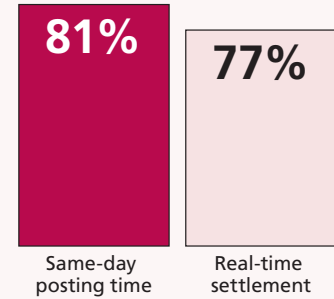
Non-highly-compensated employees can make after-tax contributions – up to \$2,500. According to the Natixis survey, 54% of nonparticipants will join their retirement plans once they can utilize the emergency savings option, which is in 2024.

Catch-up contributions: Under the new law, starting in 2025, employees who are 60 to 63 can make special catch-up contributions of \$10,000 per year. Currently, the catch-up

WHAT PAYROLL PROS TOLD US

Real-time payments

What are the most important attributes of real-time payments?



Source: 2023 Citizens Bank survey of 205 treasury executives at middle-market businesses

When you're pressed for time, certain payment options rise to the top. Real-time payments offer you same-day posting, real-time settlements and other benefits.

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

contribution limit is \$7,500 for workers who are 50 or older.

Of survey respondents over age 50, half said they plan to take advantage of the higher contribution limits the Secure 2.0 Act allows.

More info: www.im.natixis.com/us/research/2023-defined-contribution-plan-participant-survey

REAL-LIFE SCENARIO: DID THEY GET IT RIGHT?

Implemented new policy to stop employees from punching in early

A quarry in Illinois faced this real-life scenario:

For months, employees had been clocking in early for work, and the company had no policy against the practice.

Some employees punched in 10 or 20 minutes before the 6 a.m. shift began. Several workers even stretched that to 25 minutes prior to the shift.

The company paid them overtime when they put in more than 40 hours in a workweek.

One day, an employee who hadn't been punching in early had a conversation with some co-workers

about what they were doing – and he decided he wanted to make his workday longer, too. Three days in a row, he clocked in 30 minutes before his shift started.

The next week, the employer posted a notice saying that workers couldn't punch in more than five minutes prior to 6 a.m.

Being a union employer, that caused a stir. After all, the company knew about the practice – e.g., managers approved timecards.

Changing the practice without giving the union a heads-up or the opportunity to bargain violated the

National Labor Relations Act, the union claimed.

An administrative law judge and the National Labor Relations Board agreed with the union that the company shouldn't have implemented the punch-in policy the way that it did.

Checklist for compliance

- Having a policy about how early, if at all, employees can punch in can save headaches down the road.
- Union involvement in the punch-in policy may be necessary depending on your situation.

Tracking local laws and regs

■ Higher minimum wage rates for employers in 2 MD locations

Two Maryland localities have released their minimum wage rates for 2023.

On July 1, 2023, the hourly rates in Montgomery County will be:

- \$15.65 – large employers (no change)
- \$15.00 – medium employers (up from \$14.50), and
- \$14.50 – small employers (up from \$14).

As of Jan. 1, 2023, Howard County employers had to pay at least \$15 per hour. The previous rate increase – to \$14 – occurred in April 2022.

The 2023 rate for small employers is \$13.25 per hour (up from \$12.50).

More info: bit.ly/howard668, bit.ly/montgomery668

■ California localities raising the minimum wage on July 1

Nine locations in California have announced minimum wage increases

starting July 1, 2023. Additional cities in the state that make mid-year minimum wage rate changes haven't yet released their information for 2023. Here's the latest:

- Alameda – \$16.54 (up from \$15.75)
- Fremont – \$16.80 (up from \$16)
- Los Angeles – \$16.78 (up from \$16.04)
- Los Angeles County – \$16.90 (up from \$15.96)
- Milpitas – \$17.20 (up from \$16.40)
- Novato – \$16.32 for very large employers, \$16.07 for large employers and \$15.53 for small employers (up from \$15.77, \$15.53 and \$15, respectively)
- Pasadena – \$16.93 (up from \$16.11)
- Santa Monica – \$16.90 (up from \$15.96), and
- West Hollywood – \$19.08 (up from \$17.50, which took effect Jan. 1, 2023).

More info: www.dir.ca.gov/dlse/faq_minimumwage.htm

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:

How can we reduce last-minute requests that roll into Payroll?

Q: Sure enough, we get last-minute requests and updates coming into Payroll, even though everyone in our organization knows when our deadlines are. How can we prevent others from waiting until the eleventh hour?

A: Speaking at a recent American Payroll Association chapter meeting, Payroll Manager Andrew Berding shared an idea for reducing last-minute requests. *Our company gathers*

data on the number of manual checks and late correction requests as well as percentage of timecard sign-offs that happened on time or late – and we make the data visual, Berding explained to the Canton, OH, Hall of Fame Chapter. We started by using Formsite – then, we tied a Power BI dashboard to our forms. We don't use this data to call out anyone. Our goal is to help identify where sites struggle, to see if more training is needed or if deadlines should be adjusted. Everyone can see which sites are on time – best practices can then be shared with other sites.

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 contains updates to Payroll-related forms and publications.

- Publication 5724-F, *Credit for Commercial Clean Vehicles*. Revision date: March 2023. Posted date: 4/4/23.
- Publication 575, *Pension and Annuity Income*. Revision year: 2022. Posted date: 4/13/23.
- Publication 55-B, *Internal Revenue Service Data Book*. Revision date: March 2023. Posted date: 4/14/23.
- Form W-4 (ru), *Employee's Withholding Certificate (Russian Version)*. Revision year: 2023. Posted date: 4/14/23.
- Form 1096, *Annual Summary and Transmittal of U.S. Information Returns (Info Copy Only)*. Revision year: 2023. Posted date: 4/14/23.
- *General Instructions for Certain Information Returns*. Revision year: 2023. Posted date: 4/18/23.
- Form 12339, *Internal Revenue Service Advisory Council Membership Application*. Revision year: 2023. Posted date: 4/21/23.
- Publication 5801, *Tools & Resources for Small Businesses*. Revision date: April 2023. Posted date: 4/24/23.
- Publication 5792, *Small Businesses & Tax-Exempt Organizations: Beware of Tax Credit Scams!* Revision date: April 2023. Posted date: 4/24/23.

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!

CALIFORNIA

- **TAX PAYMENTS:** Payroll taxes that are overdue from July 1, 2023, to Dec. 31, 2023, will be subject to an interest rate of 7%, according to the California Employment Development Dept. That's up from 5% in the previous six-month period. Taxes include unemployment insurance, the employment training tax, state disability insurance and personal income tax. **More info:** edd.ca.gov/en/payroll_taxes/interest_rate

ILLINOIS

- **EXPENSE REIMBURSEMENT:** The Illinois Dept. of Labor has issued amended regs under the Wage Payment and Collection Act. Among the changes, Sec. 300.540, which deals with reimbursement of expenses, now includes five factors for determining if an expense is to the primary benefit of the employer. They are: 1) if the employees expect reimbursement, 2) if the expense is required or necessary based on job duties, 3) if the employer is receiving a value it'd otherwise need to pay for, 4) how long the employer is receiving the benefit and 5) whether it's an expense that's required of the job. **More info:** bit.ly/illinois668

LOUISIANA

- **INDEPENDENT CONTRACTORS:** The Fresh Start Proper Worker Classification Initiative allows employers to reclassify groups of workers as employees instead of independent contractors. Under the program, you can voluntarily disclose the reclassification to the Louisiana Dept. of Revenue (DOR) without liability. You can

submit an application for the program to the Louisiana DOR during 2023. **More info:** bit.ly/louisiana668

NEVADA

- **MINIMUM WAGE:** Get ready for a minimum wage increase on July 1, 2023. The current rate of \$9.50 per hour for employers offering qualifying health benefits will go up to \$10.25. For employers that don't offer the benefits, the rate will increase from \$10.50 per hour to \$11.25. **More info:** labor.nv.gov/Wages/Minimum_Wage_Bulletins

OREGON

- **MINIMUM WAGE:** The Oregon Bureau of Labor and Industries has announced minimum wage changes, effective July 1, 2023. The standard rate will be \$14.20 per hour (up from \$13.50). The Portland Metro minimum wage will be \$15.45 (up from \$14.75), and in non-urban counties, the rate will be \$13.20 (up from \$12.50). **More info:** www.oregon.gov/boli/workers/Pages/minimum-wage-schedule.aspx

UTAH

- **WITHHOLDING:** The Utah State Tax Commission has updated Publication 14, *Withholding Tax Guide*, which contains withholding tables effective for pay periods beginning on or after June 1, 2023. The mid-year changes are due to HB 54. This legislation reduced the state's individual income tax rate from 4.85% to 4.65%, retroactively to Jan. 1, 2023. You may recall that in 2022, the state also passed legislation retroactively lowering the income tax rate from 4.95% to 4.85%. **More info:** tax.utah.gov/forms/pubs/pub-14-june2023.pdf

VIRGINIA

- **SOCIAL SECURITY NUMBERS:** SB 1040, which became law on

March 21, 2023, prohibits an employer from using an employee's Social Security number (SSN) or any derivative of that number as an employee identification number. Furthermore, employers can't use an SSN or a number derived from it on cards or badges issued to employees for identification, access, etc. Knowingly violating this prohibition can lead to a penalty of up to \$100. **More info:** bit.ly/virginia668

WISCONSIN

- **UNEMPLOYMENT INSURANCE:** The Wisconsin Dept. of Workforce Development has partnered with U.S. Bank, so employers can make unemployment insurance (UI) payments online. You can do that by logging into the UI Payment Portal. **More info:** dwd.wisconsin.gov/ui/pay

THE LIGHTER SIDE

Perhaps you'd like to trade in your mouse for your remote control for a few hours – and earn some extra money?

FinanceBuzz says it's hiring a Fast & Furious Claims Adjuster. It's looking for someone to watch all 10 movies in the Fast & Furious saga and gather data on total auto damage.

This person will track the number of accidents, extent of the damages and information about the vehicles. The goal is to find out: What would that many crashes do to someone's auto insurance costs?

As you may have heard, *Fast X* is being released May 19, 2023, and applications are due by then.

The pay? \$1,000 for watching the movies, plus \$100 for streaming expenses, movies tickets and snacks.

Cite: financebuzz.com/fast-furious-binge-watch