

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™

June 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

- **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.
- **June 14, 2023:** Deposit taxes for payroll on June 7, 8, 9.
- **June 16, 2023:** Deposit taxes for payroll on June 10, 11, 12, 13.
- **June 22, 2023:** Deposit taxes for payroll on June 14, 15, 16.
- **June 23, 2023:** Deposit taxes for payroll on June 17, 18, 19, 20.
- **June 28, 2023:** Deposit taxes for payroll on June 21, 22, 23.

MONTHLY DEPOSITORS

- **June 15, 2023:** Deposit taxes for payments made during May 2023.
- **July 17, 2023:** Deposit taxes for payments made during June 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.

3 of the 6 federal workplace posters changing, here's how

■ DOL and EEOC update the notices

It's time to double-check the workplace posters you have in the breakroom or other location.

That's because three of the six federal workplace posters are undergoing changes in 2023.

Here's what's going on:

Revisions in 2023

1. Following amendments to the Fair Labor Standards Act (FLSA), the Dept. of Labor (DOL) updated the workplace poster on that law.

The DOL revised the *Employee Rights Under the Fair Labor Standards Act* poster in April 2023, adding a section called "Pump at Work" to replace a similar section called "Nursing Mothers." The FLSA

amendment resulted from a new law: the Providing Urgent Maternal Protections for Nursing Mothers (PUMP) Act. Under the PUMP Act, even nursing mothers who are classified as exempt must be provided with break times to express breast milk.

The previous FLSA poster, dated July 2016, mentioned only employees subject to the overtime provisions, in accordance with the law at that time.

2. The Family and Medical Leave Act (FMLA) poster also went through a revision in April 2023. Note: You can continue to use prior versions of the poster for now, according to the DOL. Although the law itself didn't change, the DOL clarified some

(Please see Workplace posters ... on Page 2)

IRS releases 2024 numbers for HSAs and HDHPs

The IRS has announced that, for 2024, the amount employees can contribute to their health savings accounts (HSAs) will increase.

In addition, the IRS said it's boosting high deductible health plan (HDHP) numbers for next year.

The information contained in Revenue Procedure 2023-23 is as follows:

Increasing from 2023

An individual with self-only coverage under a HDHP can contribute \$4,150 (was \$3,850) to an HSA. For an individual with family coverage,

the contribution limit will be \$8,300 (was \$7,750).

The annual deductible for HDHPs can't be less than:

- \$1,600 for self-only coverage (was \$1,500), and
- \$3,200 for family coverage (was \$3,000).

Annual out-of-pocket expenses for an HDHP can't exceed:

- \$8,050 for self-only coverage (was \$7,500), and
- \$16,100 for family coverage (was \$16,000).

More info: bit.ly/health669

Payroll system error contributed to shortfall with overtime pay

■ EMPLOYEES NOT COMPENSATED FOR TIME WORKED DURING LUNCH

A payroll system error was partly to blame for one employer's Fair Labor Standards Act violations, the Dept. of Labor (DOL) said after an investigation.

The medical center's payroll system made automatic deductions from employees' pay for meal breaks.

Problem was, workers weren't completely relieved of their duties during that 30 minutes.

Another reason the employer – VHS of Michigan Inc., operating as Detroit Medical Center – wasn't tracking the lunch periods accurately? Following the transfer of some staff members, the company's payroll procedures weren't adjusted.

That led to 13 employees not getting paid the correct amount of overtime, the DOL's Wage and Hour

Division determined. As a result, the Detroit employer had to pay \$46,864 in back wages and liquidated damages.

Verify and validate

In light of what happened to the medical center, the Wage and Hour Division's district director in Detroit, Timolin Mitchell, reminded all employers "to verify and validate employee's hours worked and to not rely solely on automated payroll systems."

Action steps: Encourage supervisors to check in with employees weekly, if not daily, to find out whether they performed any work during scheduled meal breaks. Also, work with HR to update your handbook, if needed, so your meal-break policy is clear.

More info: www.dol.gov/newsroom/releases/whd/whd20230411

Workplace posters ...

(continued from Page 1)

aspects of the law. For example, the poster:

- states that FMLA leave is unpaid
- mentions "shift" and "location" in regard to being returned to the same position at the end of leave
- adds qualifying exigency as a reason for an employer to request certification, and
- explains that employers must notify employees in writing about: 1) their FMLA rights and responsibilities and 2) how much of their requested leave will be FMLA-protected.

3. The third poster being revised is *Know Your Rights: Workplace Discrimination is Illegal*. That's expected to happen in June 2023.

Reason? The Equal Employment Opportunity Commission (EEOC) is planning to incorporate changes from a new law – the Pregnant Workers Fairness Act – into the mandatory federal poster.

Go to: resourcefulcompliance.com

COMPLIANCE CHECK

■ STEAKHOUSE NOT CUTTING IT WITH OT, RECORDKEEPING

Dyersburg Grecian Steakhouse Inc., in Dyersburg, TN, failed to pay the proper overtime rate and keep accurate records. As a result of these Fair Labor Standards Act violations, the steakhouse had to pay 19 employees:

- \$55,395 in back wages, and
- \$55,395 in liquidated damages.

More info: bit.ly/tennessee669

■ COMPANY HID OVERTIME HOURS IN 2ND PAYCHECK

Professional Building Maintenance Corp., a Long Island, NY, maintenance company, issued two separate checks for employees on paydays – the first included 40 hours, paid at straight time rates, and the second included up to another 40 hours, also paid at straight time rates.

For this violation of the Fair Labor Standards Act, the company owed the 51 affected employees:

- \$15,432 in civil money penalties
- \$166,702 in back wages, and
- \$166,702 in liquidated damages.

More info: bit.ly/paydays669

■ CAREGIVERS, TECHNICIANS PAID ONLY \$5.42 PER HOUR

At four Maryland group homes owned by Health Care Consultants Inc., the Dept. of Labor found multiple Fair Labor Standards Act violations. They included paying caregivers and technicians less than the federal minimum wage of \$7.25 per hour. For example, employees who earned a day rate of \$65 sometimes worked 12-hour shifts, taking their hourly rate down to \$5.42.

So, the employer had to pay:

- \$16,716 in civil money penalties
- \$466,642 in back wages, and
- \$466,642 in liquidated damages.

More info: bit.ly/minimumwage669



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Deadline missed by 5 minutes! Time zone difference overlooked

■ TAXPAYERS ELECTRONICALLY FILED DOCUMENT WITH TAX COURT

The Tax Court said a document it'd received electronically at 12:05 a.m. EST was five minutes late.

The senders thought they'd made the midnight deadline. After all, based on the central time zone where they resided, they'd e-filed the document at 11:05 p.m.

Problem was, they'd overlooked the minor-but-crucial detail of the time zone difference.

What happened?

The IRS had sent the taxpayers a notice of deficiency – the couple hadn't paid the full amount of income taxes due and they also received an accuracy-related penalty.

They had three months, until July 18, 2022, to submit a petition to seek redetermination of the deficiency. They were instructed to send the document to the Tax Court and how to do that.

Because the taxpayers electronically filed the petition and the Tax Court's principal office is in Washington D.C., the eastern time zone was referenced as the time received.

Therefore, the court didn't get the

petition to seek redetermination until the day after the deadline. The petition wasn't timely filed, so the court dismissed the case for lack of jurisdiction.

Timely mailing rule

As the Tax Court also noted, when a document is electronically filed, the timely mailing rule under Internal Revenue Code Sec. 7502(a) can't be relied upon.

According to Sec. 7502(a), when a document is mailed prior to a due date, it's considered received on the mail date, although it may actually be received days after that.

Reminder: For the timely mailing rule to apply, the paperwork must be sent through the U.S. Postal Service or a designated delivery service.

While normally, someone would have until the end of business to submit paperwork, an electronic filer has until 11:59 p.m. – be that for personal income taxes, payroll taxes or what have you.

A government agency uses its own local time zone. Otherwise, in effect, it'd be granting an extra day, not just a few extra hours, to file.

More info: www.ustaxcourt.gov

I-9 flexibility ends: Upcoming deadlines to watch

Form I-9 flexibility, available to employers due to COVID-19, will sunset July 31, 2023. Employers will have 30 days from then – i.e., until Aug. 30, 2023 – to get their paperwork ducks in a row.

During COVID, certain employers could inspect Form I-9 documents remotely – e.g., by video, fax or email. Employers were to write “COVID-19” in Section 2 of the form where it asks for additional information.

Virtual or remote review won't be allowed after the July deadline, and one month after that, outstanding

physical inspection of identity and employment eligibility docs must be completed, U.S. Immigration and Customs Enforcement said recently.

What to enter on the form

After your company has looked at employees' documents in person, make sure that in Section 2, or in Section 3 if appropriate, you:

- write “documents physically examined,” and
- add the date of the in-person review of the Form I-9 documents.

More info: bit.ly/flexibility669

■ TY 2023 DOCUMENTS FOR E-FILING FORMS W-2, W-2C

SSA has released the TY 2023 versions of two documents you need to prepare for electronic filing in advance of year-end. They are:

- *Specifications for Filing Forms W-2 Electronically (EFW2)*, and
- *Specifications for Filing Forms W-2c Electronically (EFW2C)*.

You may notice that the filing threshold hasn't yet been updated to reflect final regs the IRS issued on Feb. 23, 2023 – but that change is expected. The IRS regs lowered the threshold from 250 individual returns to 10 returns in aggregate.

More info: www.ssa.gov/employer

■ IRS ISSUES DRAFT VERSIONS OF 941-X AND INSTRUCTIONS

The IRS hasn't yet issued final versions of Form 941-X and its accompanying instructions for 2023. However, here are the details about the draft versions:

- Form 941-X, *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund*, was posted April 19, 2023, with no major changes, and
- *Instructions for Form 941-X* was posted on May 4, 2023, and includes info about the recent changes to the qualified small business payroll tax credit for increasing research activities.

More info: www.irs.gov/draft-tax-forms

■ RECEIVING ELECTRONIC CHILD SUPPORT ORDERS

Payroll practitioners should be on the lookout for electronic income withholding orders (IWOs).

Now, all states use the electronic child support form, according to *States Using e-IWO*, released by the Office of Child Support Enforcement on March 29, 2023.

More info: www.acf.hhs.gov/css/outreach-material/states-using-e-iwo

What 2023 state UI report means for your company's FUTA tax rate

■ DOL: EMPLOYERS IN 4 STATES HAD UNPAID LOANS WHEN YEAR BEGAN

Heads up: The amount of unemployment insurance (UI) tax your company pays may be increasing based on your location.

The Dept. of Labor has released its 2023 *State Unemployment Insurance Trust Fund Solvency Report*.

The March 2023 report goes into detail on the solvency of state UI systems.

Key dates to watch

Overall, as of Jan. 1, 2023, the number of states – 16 – meeting the recommended solvency standard remained unchanged from the prior year. Compare that to the start of 2020 when only 31 states met the standard.

Also, five states had an outstanding federal loan on Jan. 1, 2023 – those loans totaled \$28.1 billion.

As the report spells out, a loan balance means a reduced tax credit for employers in that state if:

- January 1 has passed twice, and

- the state doesn't repay the loan to the federal government by November 10 of the second year.

In that situation, on the following January 1, employers in that state will lose a 0.3% FUTA tax credit. Meanwhile, that rate reduction pattern continues year after year.

So, in which states are employers at risk of paying higher UI tax rates at year-end on 2023 wages paid to employees?

Here's the list of states with federal loan balances as of Jan. 1, 2023, and the amount they owed:

- California – \$18,585,509,354
- Connecticut – \$98,610,241
- Illinois – \$1,362,645,003, and
- New York – \$7,968,945,105.

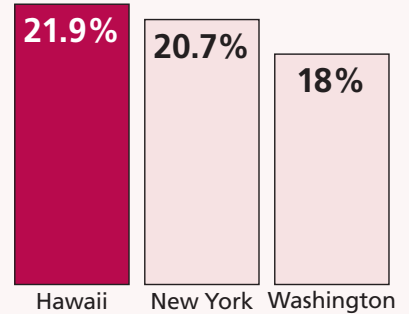
Good news for employers in Connecticut and Illinois. These states paid off their loans during the first part of 2023. So, barring any additional federal loans for their UI programs in 2023, employers there can breathe a sigh of relief.

However, if you're located in California or New York, you have

WHAT PAYROLL PROS TOLD US

Union membership

What was your state's rate of union membership last year?



Source: Bureau of Labor Statistics, The Economics Daily, Feb. 13, 2023

Among states, Hawaii had the highest rate of union membership in 2022, at about one-fifth of employment. Overall in the U.S. last year, the rate was 10.1%.

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

a tougher road ahead. If these states have federal UI loan balances on Nov. 10, 2023, employers will see a second round of credit reductions, meaning their FUTA tax credit will be reduced by 0.6%.

More info: oui.doleta.gov/unemploy/docs/trustFundSolvReport2023.pdf

REAL-LIFE SCENARIO: DID THEY GET IT RIGHT?

Her weekly salary of \$1,009.62 was reduced to \$605.77 for multiple pay periods

A landscaping and yard-services company in Oklahoma faced this real-life scenario:

The company had classified one of its employees – who worked as a landscape foreman and later a landscape design manager – as exempt from the overtime provisions of the Fair Labor Standards Act.

To qualify as exempt, she needed to be paid at least \$684 per week on a salary basis.

According to her, though, that didn't happen because the company made improper deductions.

She sued under the FLSA, trying

to recoup overtime she said the company owed her.

Her weekly paycheck was supposed to be \$1,009.62. However, on three pay periods in 2019, she earned only \$605.77 – so about \$404 had been deducted. She claimed the company had deducted two-and-a-half days from those paychecks. The company disagreed, insisting it deducted for full- not partial-day absences.

The employee assumed that the company applied a \$156-per-day deduction that it'd used for her 2018. By multiplying that rate by 2.59 days, she arrived at a deduction of \$404.04.

But if the company used her hourly rate of \$25.24, a one-day deduction would've equaled \$201.92 (\$25.24 X 8 hours). So, a two-day deduction would've equaled \$403.84.

The federal district court didn't dismiss the case because of the discrepancy on the math.

Checklist for compliance

- Breaking exempt employees' salaries down to hourly rates can help prevent confusion for them.
- Avoid partial-day deductions when an exempt employee takes time off for personal reasons.

Tracking local laws and regs

■ In Florida, storm damage led to IRS deadline extension

Severe storms, tornadoes and flooding hit Broward County, Florida, from April 12 to April 14, 2023.

Certain business returns, such as quarterly payroll forms, won't be due until Aug. 15, 2023, IRS said. Also, penalties will be abated for deposits made by April 27, 2023.

More info: bit.ly/florida669

■ 12 Indiana counties hit by storms have received IRS tax relief

Following tornadoes, severe storms and straight-line winds that occurred in Indiana on March 31 and April 1, 2023, the IRS has granted tax relief.

Businesses in 12 counties have until July 31, 2023, to file returns and pay taxes. That includes quarterly payroll tax returns normally due on April 30, 2023. Plus, if tax deposits were made by April 18, 2023, penalties will be abated.

The counties are:

- Allen
- Benton
- Clinton
- Grant
- Howard
- Johnson
- Lake
- Monroe
- Morgan
- Owen
- Sullivan, and
- White.

More info: bit.ly/indiana669

■ Minimum wage exceeds state's rate in these NY locations

In 2024, these locations will need to pay employees at least \$16 per hour, as provided in the state's budget: New York City and the counties of Nassau, Suffolk and Westchester.

Future increases will be: \$16.50 in 2025 and \$17 in 2026.

More info: www.governor.ny.gov

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:

Can employers still claim the employee retention credit?

Q: Can a company that shut down but continued to pay employees during the pandemic claim the employee retention credit (ERC) now that the national emergency has ended?

A: Qualifying employers can still claim the ERC even though the national emergency ended April 10, 2023. That can be done by filing an amended return. The *SSA/IRS Reporter* for the second quarter of 2023 reviewed

the eligibility requirements for claiming the tax credit. They are: 1) full or partial suspension of operations as required by a government entity during 2020 or the first three quarters of 2021, 2) significant decline in gross receipts during 2020 or decline in gross receipts during the first three quarters of 2021, or 3) recovery startup business for third or fourth quarters of 2021. Key: Employers can't claim the ERC on wages reported as payroll costs related to the Paycheck Protection Program.

More info: www.irs.gov/pub/irs-pdf/p1693.pdf

Send questions to jweiss@HRMorning.com. Because of the volume of mail we receive, we regret we can't answer all submissions.

IRS FORMS ALERT

RECENT CHANGES TO FEDERAL FORMS AND PUBLICATIONS

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

- Publication 5731-A, *More Taxpayers Will Be Receiving Form 1099-K, Payment Card and Third Party Network Transactions*. Revision date: April 2023. Posted date: 4/24/23.
- Publication 5792 (sp), *Small Businesses & Tax-Exempt Organizations: Beware of Tax Credit Scams! (Spanish Version)*. Revision date: April 2023. Posted date: 4/26/23.
- Publication 1335, *Underreporter Backup Withholding Questions and Answers*. Revision date: April 2023. Posted date: 4/26/23.
- Publication 5274, *IRS Free File Fillable Forms User's Guide*. Revision date: March 2023. Posted date: 4/26/23.
- Publication 1693, *SSA/IRS Reporter*. Revision date: April 2023. Posted date: 4/27/23.
- Publication 5417, *Basic Security Plan Considerations for Tax Professionals*. Revision date: April 2023. Posted date: 5/4/23.
- Publication 5801, *Tools & Resources for Small Businesses*. Revision date: April 2023. Posted date: 5/4/23.
- Publication 5084, *Congressional Update*. Revision date: May 2023. Posted date: 5/8/23.

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!

FLORIDA

- **UNIONS:** Now that SB 256 has become law, unions can no longer require employers to deduct and collect union dues and uniform fees from employees' salaries. The change will kick in July 1, 2023. **More info:** www.flsenate.gov/Session/Bill/2023/00256

GEORGIA

- **PAID LEAVE:** The requirement that certain employers offer employees sick leave – to care for immediate family members – was supposed to sunset July 1, 2023. But SB 61, which was enacted May 1, 2023, repealed the sunset provision of a 2017 law. Under that 2017 law, the Family Care Act, employers that opt to offer sick leave must allow employees to use five days of that sick leave to care for immediate family members – i.e., the employee's child, spouse, grandchild, grandparent, parent or any dependents included in the employee's most recent tax return. However, the Family Care Act doesn't require employees to offer sick leave. **More info:** www.legis.ga.gov/legislation/63803
- **VOTING LEAVE:** While employers currently must provide employees time off to vote in primary and general elections, a new law expands the state's voting leave requirements as of July 1, 2023. SB 129, which recently became law, says employers must allow employees two hours of leave to vote either on: 1) one of the days that's been designated for advance in-person voting, or 2) the day of the primary or general election. The legislation also states that the two hours of voting leave are available

regardless of whether the polls are open two hours before and/or after an employee's workday. **More info:** www.legis.ga.gov/legislation/64202

MARYLAND

- **PAID LEAVE:** SB 828, which recently became law, modifies the new Family and Medical Leave Insurance Program. For example, it sets up the contribution shares for employers and employees, and says an employee's contributions rate can't exceed 1.2% of an employee's wages. Originally, those contributions were to begin Oct. 1, 2023, but that's been pushed back to Oct. 1, 2024. **More info:** bit.ly/maryland669

MICHIGAN

- **INCOME TAX:** The Dept. of Treasury announced, on March 30, 2023, that the income tax rate would be decreasing retroactively, to Jan. 1, 2023. For tax year 2023, the income tax rate is 4.05%. That's down from 4.25%. Withholding rate tables won't be updated. However, forms, instructions and guidance will be updated. **More info:** bit.ly/michigan669

NEW YORK

- **MINIMUM WAGE:** The FY 2024 New York State Budget includes a minimum wage increase spanning several years. Starting in 2024, the state rates will go up from \$14.20 per hour to \$15 per hour. The hourly rate will continue to rise, reaching \$15.50 in 2025 and \$16 in 2026. **More info:** www.budget.ny.gov/pubs/archivel/fy24/ex/index.html

VIRGINIA

- **SUBMINIMUM WAGE:** Currently, employees with disabilities are excluded from the Virginia Minimum Wage Act if they're excluded from the Fair Labor Standards Act. HB 1924 says

employers will no longer be able to pay subminimum wage to employees with disabilities unless the employer was authorized to do so prior to July 1, 2023. Heads up: As of July 1, 2030, the exclusion will disappear entirely. **More info:** bit.ly/subminimum669

- **UNPAID LEAVE:** SB 1086 says employers must provide up to 60 business days of unpaid leave in any 12-month period to employees who are organ donors. What's more, they must provide 30 business days of unpaid leave to employees who donate bone marrow. Employees must give written, physician verification that they're an organ or bone marrow donor and that there's a medical necessity for the donation. The law, which takes effect July 1, 2023, applies to employers with 50 or more employees. **More info:** bit.ly/virginia669

THE LIGHTER SIDE

School's out! No more homework assignments for now. Some students, though, aimed to sidestep their homework during the school year by coming up with some creative excuses, says Bored Teachers. Here are a few examples from "35 Most Ridiculous Excuses Teachers Have Heard from Students This Year":

- "I got distracted looking at pictures of dogs."
- "My hamster chewed through my power cord."
- "My dog ate my hamster."
- "My grandma says I have come down with a serious case of sass mouth. I think I'm too sick to work today."
- "My dad said we need to cut our budget, so I'm going to cut down on school."

Cite: www.boredteachers.com/post/best-excuses-students