

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™

July 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

- **July 6, 2023:** Deposit taxes for payroll on June 28, 29, 30.
- **July 7, 2023:** Deposit taxes for payroll on July 1, 2, 3, 4.
- **July 12, 2023:** Deposit taxes for payroll on July 5, 6, 7.
- **July 14, 2023:** Deposit taxes for payroll on July 8, 9, 10, 11.
- **July 19, 2023:** Deposit taxes for payroll on July 12, 13, 14.
- **July 21, 2023:** Deposit taxes for payroll on July 15, 16, 17, 18.
- **July 26, 2023:** Deposit taxes for payroll on July 19, 20, 21.
- **July 28, 2023:** Deposit taxes for payroll on July 22, 23, 24, 25.

### ■ MONTHLY DEPOSITORS

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

## Any employees with wages exceeding \$145K in 2023?

### ■ Changes to catch-up contributions start next year

**A**t year-end, Payroll will need to know which employees earned more than \$145,000 during 2023, for purposes of retirement plan contributions next year.

If any of those high-wage earners decide to make catch-up contributions in 2024, you'll have to withhold taxes on the amounts. Reason? The catch-up contributions must be made to Roth accounts.

That was one of the provisions of the Secure 2.0 Act of 2022.

Problem was, the law contained so many provisions – 92, to be exact – that the IRS has had its hands full poring over the law and preparing guidance. The Service is “hard at work” on this, a representative

explained to attendees during the June IRS Payroll Industry Call.

### Communication with the IRS

In the meantime, some industry groups are anxiously awaiting guidance and have asked for relief regarding Sec. 603 of the law.

Here are two examples:

1. In a June 7, 2023, letter, the American Benefits Council sought a delay in the effective date of the Roth catch-up requirement and asked the IRS to take action over the summer.

For one thing, employers need time to update their payroll systems so they function in sync with their retirement

*(Please see Wages ... on Page 2)*

## Former employee's SSN stolen during cyberattack

**W**hen taking steps to protect employees' Social Security numbers (SSNs) and other personally identifiable information, consider any records you may have obtained during an acquisition. Here's why:

After one employer acquired a company, it became a victim of a ransomware attack. Cybercriminals hacked into the employer's internal, administrative system and obtained current and former employees' SSNs. That occurred in 2020.

The employer didn't communicate with employees about the breach until 2021. In the meantime, an employee who'd worked for the

original company learned pandemic unemployment assistance claims had been filed in his name, using his SSN.

### Ruling from federal appeals court

He ended up suing the employer for negligence, saying sensitive info should have been encrypted.

The employer argued that under Georgia law, it didn't owe him a duty to safeguard his data. While a federal district court dismissed the case, the Eleventh Circuit overturned that decision on appeal.

**More info:** [media.ca11.uscourts.gov/opinions/pub/files/202212853.pdf](https://media.ca11.uscourts.gov/opinions/pub/files/202212853.pdf)

## Ouch! \$22 million jury verdict for unpaid pre- and post-shift activities

- EMPLOYEES HAD TO WEAR PPE AND TAKE SHOWERS TO AVOID HAZARDS

In one of the largest jury verdicts in the Dept. of Labor's (DOL's) history – and *the* largest it has obtained under the Fair Labor Standards Act (FLSA) – a federal jury awarded the DOL more than \$22 million in back wages.

The money will go to 7,500 employees who worked at East Penn Manufacturing Company Inc.

Each day, the employees had to wear personal protective equipment (PPE), but they weren't paid for time spent putting on and taking off the PPE.

Neither were they paid for time spent showering to avoid the dangers of lead exposure and other hazards.

As a result of not paying employees for all hours worked, the Lyons Station, PA, battery manufacturer failed to pay time-and-a-half the regular rate

of pay for overtime hours, which led the DOL to file a complaint in federal district court in 2018. Now that a jury has awarded back pay, the DOL plans to ask the court to award another \$22 million in liquidated damages for the employees.

### Portal-to-Portal Act requirements

The Portal-to-Portal Act, a 1947 amendment to the FLSA, says that employees must be paid for preliminary and postliminary activities that are “integral” and “indispensable” to their jobs.

In the case of the employees at East Penn Manufacturing, wearing PPE and taking showers were necessary and essential activities for their jobs at the battery plant.

**More info:** [www.dol.gov/newsroom/releases/whd/whd20230510](http://www.dol.gov/newsroom/releases/whd/whd20230510)

### Wages ...

(continued from Page 1)

plans. Plus, some companies may not currently offer a Roth option, and either that would need to be added to their plans or all their catch-up contributions would need to be dropped, the council stated.

2. The ERISA Industry Committee (ERIC) sent a letter to the IRS on June 8, 2023. ERIC raised questions such as how midyear new hires should be handled and whether plan sponsors could require that all contributions be made to Roth accounts.

Given the significant operational challenges brought about by Sec. 603, IRS should prioritize transition relief as well as guidance, ERIC relayed.

### How much can they contribute?

Reminder: For 2023, employees age 50 or older can make \$7,500 in catch-up contributions.

We'll let you know when the IRS releases the updated number for 2024.

**More info:** [bit.ly/law671](http://bit.ly/law671), [americanbenefitscouncil.org](http://americanbenefitscouncil.org), [eric.org](http://eric.org)

## COMPLIANCE CHECK

### ■ MUST PROVIDE FLSA TRAINING TO MANAGERS

Whataburger Restaurant LLC, in Lubbock, TX, didn't provide reasonable break times for an employee to express breast milk. She left the premises for that purpose and then was fired.

The franchisor has signed an Enhanced Compliance Agreement to provide managers with Fair Labor Standards Act (FLSA) training and will pay:

- \$900 in back wages, and
- \$900 in liquidated damages.

**More info:** [bit.ly/texas671](http://bit.ly/texas671)

### ■ COURT ORDERS HOME CARE PROVIDER TO PAY \$7M

Nursing Home Care Management Inc., operating in Philadelphia as Prestige Home Care Agency, violated the Fair Labor Standards Act when it failed to pay home health aides for time spent traveling between clients' homes in the same workday and didn't combine all hours worked when computing overtime. After two years of litigation, a federal court said the company owed 1,230 current and former employees:

- \$3,538,360 in back wages, and
- \$3,538,360 in liquidated damages.

**More info:** [bit.ly/philadelphia671](http://bit.ly/philadelphia671)

### ■ COMPANY OWED OVERTIME TO 61 SECURITY GUARDS

Hinton Investigations Inc., a security company in East Orange, NJ, misclassified security guards as independent contractors. As a result, they weren't paid overtime. Plus, when employees worked more than 40 hours in a workweek, Hinton paid them straight-time rates instead of time-and-a-half.

So, the company had to pay 61 security guards

- \$132,344 in back wages, and
- \$132,344 in liquidated damages.

**More info:** [bit.ly/security671](http://bit.ly/security671)

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## \$1,000 monthly wellness payments includable in gross income, IRS said

■ EMPLOYER ASKED FOR GUIDANCE ON HEALTH INSURANCE POLICY

In Chief Counsel Advice 202323006, the IRS addressed the tax treatment of payments made to employees at one company through a fixed-indemnity health insurance policy.

The supplemental health insurance benefit, which qualified as an accident and health plan under Sec. 106, was one option offered in the company's Sec. 125 cafeteria plan.

Payroll withheld \$1,200 per month in premiums from the wages of employees who elected coverage, and, not surprisingly, those salary reductions were made on a pre-tax basis.

As to whether the wellness indemnity payments should be included in income and wages, that wasn't clear. So, the employer asked the IRS for guidance.

### Employees sought preventive care

The insured plan paid \$1,000 per month to enrolled employees who participated in certain health or wellness activities.

Such activities included using preventive care under a comprehensive

health plan in which an employee was also enrolled. Note: The company provided comprehensive health coverage through its group health insurance policy.

The IRS said the \$1,000 wellness indemnity payments would need to be included in an employee's gross income if that person had no unreimbursed medical expenses related to the payment.

That could occur if the:

- activity that triggered the payment didn't cost the employee anything, or
- cost of the activity was reimbursed by other coverage.

In addition, the payments were wages for employment tax purposes. That's because the payments didn't qualify as medical expenses (for which there's an exclusion).

Therefore, Payroll would need to withhold federal income and FICA taxes from the wellness payments.

What's more, the employer would have to pay its portion of FICA tax and also pay FUTA tax on the monthly amounts.

**More info:** [www.irs.gov/pub/irs-wd/202323006.pdf](http://www.irs.gov/pub/irs-wd/202323006.pdf)

## USCIS specifies docs these new hires do/don't need

As previously announced by U.S. Citizenship and Immigration Services (USCIS), certain Ukrainian and Afghan parolees don't need to wait for their Form I-795, *Applications for Employment Authorization*, to be approved in order to begin working in the U.S.

On June 8, 2023, the list of parolees was expanded to include Afghan parolees whose Form I-94, *Arrival/Departure Record*, contains "PAR" as the class of admission and indicates Afghanistan as the country of citizenship on the document. This doesn't pertain to someone whose

parole has been terminated, USCIS further explained.

### Afghan and Ukrainian workers

Since Nov. 21, 2022, Afghan parolees with "OAR" class of admission haven't needed the I-795.

Also added to the list on that date were Ukrainian parolees with:

- "UHP" class of admission, and
- "DT" class of admission on an I-94 issued between Feb. 24, 2022, and Sept. 30, 2023, with Ukraine as the country of citizenship.

**More info:** [bit.ly/parolees671](https://bit.ly/parolees671)

### ■ HRA CONTRIBUTION LIMIT WILL INCREASE IN 2024

For plan years beginning in 2024, the maximum amount that can be made newly available for an excepted-benefit health reimbursement arrangement (HRA) will be \$2,100.

The IRS recently announced the inflation-adjusted number for HRAs in Revenue Procedure 2023-23.

The contribution limit for these account-based health plans remains \$1,950 for plan years beginning in 2023.

**More info:** [www.irs.gov/pub/irs-drop/rp-23-23.pdf](http://www.irs.gov/pub/irs-drop/rp-23-23.pdf)

### ■ MAKING CHANGES TO ACCOUNTING METHODS

This year's updated list of automatic accounting method changes is contained in IRS Revenue Procedure 2023-24.

This revenue procedure is effective for a Form 3115, Application for Change in Accounting Method, filed on or after June 15, 2023, for a year of change ending on or after Oct. 31, 2022.

**More info:** [www.irs.gov/pub/irs-drop/rp-23-24.pdf](http://www.irs.gov/pub/irs-drop/rp-23-24.pdf)

### ■ IRS TO EXPAND SCANNING TECHNOLOGY FOR FORMS

In June, the National Taxpayer Advocate released a midyear report to Congress, stating that the 2023 tax filing season was an improvement over last year, generally running smoothly.

The IRS used scanning technology for 500,000 paper returns and forms, including the 940, 941 and 1040 – with a 95% accuracy rate.

That reduced the need for manual transcriptions and sped up processing times.

The IRS plans to expand its use of the technology next year, the report notes.

**More info:** [bit.ly/Intareport671](https://bit.ly/Intareport671)

## Using the Child Support Portal now that enhancements have been made

### ■ SHARING EMPLOYER INFORMATION FOR A MORE EFFICIENT PROCESS

Although the federal Child Support Portal has been around for years, it's recently been enhanced, so now's a good time to check it out.

Even if you use a payroll service provider for, say, wage garnishments, you can still utilize the portal for other features, such as lump sum reporting.

That's what Robyn Large, a contractor with the Office of Child Support Enforcement's (OCSE's) Employer Services Team, told participants during a recent PayrollOrg webinar.

The webinar – Using OCSE's Child Support Portal to Simplify Processes and Maximize Efficiency – included important information on how to get started. For example:

#### Getting started

Tight security measures are in place, given the sensitive data contained in the portal. When you register, you'll be asked to provide your personal information: work

address, phone number, email, last four digits of Social Security number (SSN) and date of birth.

About 10% of the time, OCSE won't be able to confirm, based on the last four digits of an SSN, that you work for the employer that you do, explained Large. That may be because you are newly hired or are using your maiden name. In such a situation, your full SSN may be requested.

Once registration is completed, you should be able to access the portal within 10 days. Then, you'll find key information on the Employer Landing Page. That includes a section called Employer Information Status.

Check that the names and addresses are correct for:

- Payroll/Income Withholding Order, and
- National Medical Support Notice.

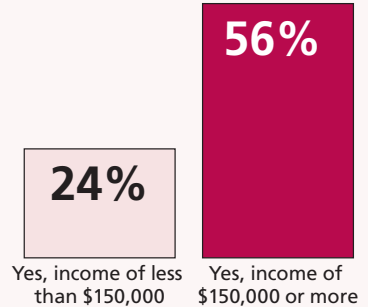
After all, Large explained, she and other OCSE reps often hear comments that child support agencies send orders to wrong addresses. Ensuring accurate data is on file can correct that.

Also from the Employer Landing Page, you can link to many services,

## WHAT PAYROLL PROS TOLD US

### Catch-up contributions

Do employees make catch-up contributions, if allowed under your retirement plan?



Source: Vanguard's How America Saves 2023

Employees who earn at least \$150,000 annually are more than twice as likely to make catch-up contributions to retirement plans than those who earn less than that.

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

such as Update Employer Information. That's where you'd manage multiple organizations' federal employer identification numbers (FEINs).

In the spreadsheet, under the parent FEIN, you can enter as many associated FEINs as you'd like.

**More info:** PayrollOrg, [payroll.org](http://payroll.org), formerly American Payroll Association

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

## A document, signed by employee, explained FWW method of pay

A software company in New York faced this real-life scenario:

The company decided to reclassify an exempt employee as nonexempt.

She received a document called *Notice and Acknowledgment of Pay Rate and Pay Day*, which she signed. It stated her annual salary would be \$86,000 (i.e., \$1,653.85 per week).

The document explained her weekly compensation would have two components. **The first component** was a fixed base weekly salary. Her hours would fluctuate, but she'd receive the fixed base salary each week regardless of whether she worked more or less

than 40 hours. **The second component** was an additional amount for hours over 40 in a workweek, with a 50% overtime premium.

In other words, she was paid using the fluctuating workweek (FWW) method.

As for her schedule, she worked 8 a.m. to 5 p.m., Monday to Friday. According to her, she also put in time:

- before and after her shift
- during meal breaks
- on weekends or days off, and
- when at home.

On occasion, she was paid for

overtime hours – and that rate was one-half her regular rate of pay.

She filed a lawsuit against the company for unpaid overtime under federal and state law. The court said the company had properly used the FWW method and dismissed the employee's claims.

#### Checklist for compliance

- You can review the Dept. of Labor's *Fact Sheet #82* for general info on the FWW method.
- If your company provides info to employees regarding pay rates, including examples can help.



## Tracking local laws and regs

### ■ Ordinance says employers can't ask about salary history

A new ordinance in Columbus, OH, is scheduled to take effect on March 1, 2024. At that time, employers will not be able to:

- ask the salary history of someone who's applying for a job
- screen job applicants based on their current or prior wages or salary histories
- rely solely on an applicant's salary history when deciding whether to make a job offer or when making salary determinations, or
- refuse to hire employees for not disclosing their salary story.

More info: [bit.ly/columbus671](https://bit.ly/columbus671)

### ■ New per-minute minimum pay rate for these app-based drivers

In New York City, a new rule establishes a minimum pay rate for app-based restaurant delivery workers. The rule from the Dept. of Consumer and Worker Protection will take effect

with the first pay period on or after July 12, 2023.

The initial minimum rate will be \$17.96 per hour for apps that pay for all the time a worker is connected to the app. That's approximately \$0.30 per minute, not including tips.

Apps that pay for only trip time must pay more – approximately \$0.50 per minute, not including tips.

The minimum pay rate will increase gradually until reaching \$19.96 per hour on April 1, 2025.

More info: [www.nyc.gov/site/dcal/about/Third-Party-Food-Delivery-Services.page](https://www.nyc.gov/site/dcal/about/Third-Party-Food-Delivery-Services.page)

### ■ Berkeley, CA, announces higher minimum wage rate

Employers in Berkeley, CA, will need to pay at least \$18.07 per hour as of July 1, 2023.

That's up from the previous minimum wage rate of \$16.99 per hour.

More info: [bit.ly/berkeley671](https://bit.ly/berkeley671)

## 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:*

### Who can use new A2A channel for e-filing Forms 1099 to IRS?

**Q:** What's the threshold, in terms of number of 1099s and other information returns electronically filed to the IRS, to be able to use the new application-to-application (A2A) channel at year-end?

**A:** Now that the Information Returns Intake System (IRIS) platform is up and running, the IRS is doing a controlled launch of its new A2A channel, intended for large-volume filers. There's

no threshold for who's considered a bulk filer, the IRS explained during its June Payroll Industry Call. However, the A2A channel is the most tech-heavy option for e-filing 1099s and other information returns via IRIS – for example, special software is required to communicate with the IRS. A different, simpler option involves uploading CSV files – this is growing in popularity, the IRS commented. The limit is 100 records per upload, but you can do as many uploads as you want.

More info: [www.irs.gov/pub/irs-pdf/p5718.pdf](https://www.irs.gov/pub/irs-pdf/p5718.pdf)

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.

- Publication 1136, *Statistics of Income Bulletin*. Revision date: May 2023. Posted date: 5/25/23.
- Publication 1500, *IRS Research Bulletin*. Revision date: May 2023. Posted date: 5/25/23.
- Form 941-X, *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund*. Revision date: April 2023. Posted date: 5/25/23.
- *Instructions for Form 941-X*. Revision date: April 2023. Posted date: 5/25/23.
- Form 941-X (PR), *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund (Puerto Rico Version)*. Revision date: April 2023. Posted date: 6/1/23.
- *Instruction 941-X (PR)*. Revision date: April 2023. Posted date: 6/1/23.
- Publication 5084, *Congressional Update*. Revision date: June 2023. Posted date: 6/6/23.
- Publication 5812, *Tax Stats One Sheet Tax-Exempt Organizations Unrelated Business Income Tax*. Revision date: June 2023. Posted date: 6/7/23.
- Publication 5811, *Child Tax Credit*. Revision date: April 2023. Posted date: 6/7/23.

### 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!*

**COLORADO**

- **PAY TRANSPARENCY:** The state's Equal Pay for Equal Work Act has been amended by SB 23-105, which takes effect Jan. 1, 2024. Additional terms have been defined, such as career development and job opportunity. The legislation also states employers should make a reasonable effort to announce, post or otherwise make known each job opportunity to all employees on the same calendar day. There's an exception for employers located outside of Colorado with fewer than 15 employees. The notification should include: 1) the hourly or salary compensation or the range of the hourly or salary compensation, 2) a description of the benefits and other compensation, and 3) the date the application window is expected to close. **More info:** [leg.colorado.gov/sites/default/files/2023a\\_105\\_signed.pdf](http://leg.colorado.gov/sites/default/files/2023a_105_signed.pdf)

**ILLINOIS**

- **E-VERIFY:** If signed by the governor, SB 1515 would amend the Right to Privacy in the Workplace Act. The legislation prohibits employers from voluntarily enrolling in E-Verify. Also, it says if an employer uses E-Verify, receives a notification from the SSA regarding a discrepancy between an employee's name and Social Security number and takes any adverse action, certain steps would need to be taken, such as providing 30 days of unpaid leave. **More info:** [bit.ly/illinois671](http://bit.ly/illinois671)

**IOWA**

- **CHILD LABOR:** With the passage of SF 542, employers should note

key differences between federal and state child labor laws. For example, the Fair Labor Standards Act says 14- and 15-year-old employees can work until 7 p.m. during the school year and 9 p.m. during the summer. However, under state provisions that take effect July 1, 2023, the hours are extended until 9 p.m. and 11 p.m., respectively. What's more, during the school year, these minors can work up to four hours per day under the federal law versus up to six hours per day under the new Iowa law. **More info:** [www.legis.iowa.gov/docs/publications/FN/1374067.pdf](http://www.legis.iowa.gov/docs/publications/FN/1374067.pdf)

**NORTH DAKOTA**

- **DISCRIMINATION:** HB 1450, which passed March 17, 2023, defines "pregnant" for purposes of its pregnancy discrimination laws. The term refers to pregnancy, childbirth and related medical conditions. Employers must make reasonable accommodations for pregnant employees – failure to do so is a discriminatory practice according to the law. **More info:** [legiscan.com/ND/bill/HB1450/2023](http://legiscan.com/ND/bill/HB1450/2023)

**OREGON**

- **PAID LEAVE:** SB 999 revises the Oregon Family Leave Act (OFLA) so the law coordinates with a new program called Paid Leave Oregon. Starting Sept. 3, 2023, under that program, eligible employees will be able to take up to 12 weeks of paid leave per year. Among other things, SB 999 expands the definition of "family member" under the OFLA to include – for example – the employee's siblings and stepsiblings as well as individuals related by blood or affinity where the equivalent of a family relationship exists. **More info:** [bit.ly/oregon671](http://bit.ly/oregon671)

**UTAH**

- **MILITARY LEAVE:** As of May 3, 2023, the state's military leave law

has been repealed. Up to five years of leave from employment had been available to reserve service members who entered active duty. **More info:** [bit.ly/utah671](http://bit.ly/utah671)

**WASHINGTON**

- **PAID LEAVE:** Due to new legislation, SB 5586, a current employer, a current employer's third-party administrator or an employee may have access to certain records and information related to an employee's paid family or medical leave claim. That includes: type of leave being taken; requested duration of leave; including the approved dates of leave, remaining hours of leave available in the employee's entitlement; weekly benefit amount and actual benefits paid; and hours claimed. **More info:** [bit.ly/washington671](http://bit.ly/washington671)

**THE LIGHTER SIDE**

Direct deposit, paycards, paper checks – all viable methods to pay an employee. Dumping pennies on someone's driveway – not.

But that's what one company owner did back in 2021. The employee had asked for his final paycheck of \$915, and his boss dropped off 91,500 oil-covered pennies along with a paystub containing an expletive.

That was retaliation under the Fair Labor Standards Act, the Dept. of Labor (DOL) said. Plus, the DOL found overtime violations at AOK Walker Luxury Autoworks. The DOL filed a lawsuit against the company, and now a federal judge has decided the company must pay \$39,934 in back wages and liquidated damages to nine employees.

And no more payments in pennies!

**Cite:** [bit.ly/pennies671](http://bit.ly/pennies671)