

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 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.

■ SEMI-WEEKLY DEPOSITORS

- **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.
- **Aug. 2, 2023:** Deposit taxes for payroll on July 26, 27, 28.
- **Aug. 4, 2023:** Deposit taxes for payroll on July 29, 30, 31; Aug. 1.
- **Aug. 9, 2023:** Deposit taxes for payroll on Aug. 2, 3, 4.
- **Aug. 11, 2023:** Deposit taxes for payroll on Aug. 5, 6, 7, 8.

■ 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.

What Supreme Court decision on undue hardship means

■ Tougher to deny religious accommodation requests

The Supreme Court has raised the standard on whether an employer can claim undue hardship in response to a religious accommodation request, such as a scheduling adjustment.

The highly anticipated ruling in *Groff v. DeJoy* was announced on June 29, 2023.

The previous standard for denying a request – i.e., considering whether you’d incur more than a *de minimis* cost – no longer applies.

The new, tougher standard takes effect immediately.

Now, employers must show that approving a religious accommodation under Title VII of the Civil Rights Act of 1964 would result in “substantial increased costs in relation to the

conduct of its particular business,” the Supreme Court stated in its unanimous decision.

The Court explained that when an employer makes a decision about undue hardship, all relevant factors must be taken into account. Those factors include:

- the particular accommodations in question, and
- their practical impact when considering the nature, size and operating cost of the employer.

Details of case

Here’s what happened in *Groff*: Gerald Groff began working for the

(Please see Undue hardship ... on Page 2)

EEOC poster just updated to account for new law

Do you have the latest version of the *Know Your Rights: Workplace Discrimination is Illegal* poster?

The Equal Employment Opportunity Commission (EEOC) updated it on June 27, 2023.

The poster incorporates the requirements of a new law called the Pregnant Workers Fairness Act (PWFA), which pertains to private and public employers with 15 or more employees.

The PWFA – like the Americans with Disabilities Act – says that covered employers must provide reasonable accommodations to certain

employees unless doing so would cause an undue hardship.

Flexible hours and more

Be prepared for workers affected by pregnancy, childbirth or related medical conditions to ask for accommodations under the PWFA.

They may include flexible hours; closer parking; appropriately sized uniforms and safety apparel; extra break time to use the bathroom, eat or rest; and leave or time off to recover from childbirth.

More info: bit.ly/pwfa672, www.resourcefulcompliance.com

FLSA violations: Cleaning company needs to make 'sweeping changes'

■ TIME SPENT TRAVELING BETWEEN WORKSITES UNPAID, DOL FOUND

When employees travel between job sites during the workday, they should be paid for that time, the Dept. of Labor (DOL) reminded one employer recently.

The DOL said the Hawaii company, All Kauai Cleaning Inc., failed to track employees' travel time and pay them for the time worked.

That resulted in violations of the overtime and recordkeeping provisions of the Fair Labor Standards Act (FLSA).

So, the cleaning company owed \$96,936 in unpaid wages and damages for 10 workers, the DOL announced.

But that wasn't all.

The company also had to pay \$1,540 in civil money penalties due to repeat violations.

During a 2014 investigation, the DOL had found that All Kauai

Cleaning violated the FLSA's overtime provisions. At that time, the employer owed \$33,612 in unpaid wages and damages for affected workers.

All in a day's work

While commuting time isn't typically compensable, don't overlook any travel time employees may be doing during the day.

If travel is a principal activity of someone's job – perhaps an employee drives from one job to another in the middle of the workday – that'd be work time

Payroll should be sure employees are paid for travel that's all in a day's work. DOL's *Fact Sheet #22* provides key info on this.

More info: www.dol.gov/newsroom/releases/whd/whd20230511

Undue hardship ...

(continued from Page 1)

United States Postal Service (USPS) in 2012. He was an evangelical Christian who believed that he should devote Sundays to worship and rest, not work. As a postal employee, he had Sundays off until USPS began facilitating Sunday deliveries for Amazon. He explained to his employer he couldn't work on Sundays due to his religious beliefs.

USPS assigned the Sunday work to his co-workers, which created morale problems, and at times, even the postmaster had to deliver mail. Meanwhile, Groff received progressive discipline for his failure to work on Sundays, and in 2019, he resigned.

Later, he sued under Title VII, saying his employer failed to accommodate his Sunday Sabbath practice. The Supreme Court vacated the lower courts' rulings, sending the case back down, so the lower courts could apply the new standard.

More info: www.supremecourt.gov/opinions/22pdf/22-174_k536.pdf

COMPLIANCE CHECK

■ WAIVE YOUR RIGHT TO OVERTIME PAY? SIGN HERE

Progressive Services of Virginia LLC, a home healthcare agency in Virginia Beach, VA, failed to pay overtime pay after asking workers to waive their right to receive it.

For this breach of Fair Labor Standards Act requirements, the employer had to pay:

- \$18,703 in civil money penalties
- \$302,144 in back wages, and
- \$302,144 in liquidated damages.

More info: www.dol.gov/newsroom/releases/whd/whd20230614

■ EMPLOYEES HAD TO SHARE THEIR TIPS WITH MANAGERS

Rincon Brewery Inc., operator of three California restaurants in Carpinteria, Santa Barbara and Ventura violated the Fair Labor Standards Act when it allowed managers and supervisors to keep a portion of customers' tips. Worse, non-tipped managers kept the highest percentage of tips. So, the employer owed 105 employees:

- \$30,439 in back wages, and
- \$30,439 in liquidated damages.

More info: www.dol.gov/newsroom/releases/whd/whd20230614-1

■ \$89K OWED TO WORKERS AT ONION PROCESSING FACILITY

Weston Mountain Onions LLC, an onion processing facility in Richland, WA, denied overtime to employees who worked more than 40 hours in a workweek. Their job involved unloading, sorting, cleaning, cutting and packing onions.

The Dept. of Labor said the company owed 49 employees:

- \$44,736 in back wages, and
- \$44,736 in liquidated damages.

More info: www.dol.gov/newsroom/releases/whd/whd20230621

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Staff wants pay for wait time while computers boot up: What court said

■ SHOULD EMPLOYEES HAVE BEEN PAID FOR TIME SPENT WAITING?

After the Ninth Circuit Court of Appeals ruled that taking time to boot up work computers and log into a timekeeping system was integral and indispensable to employees' jobs, the appeals court sent the case back down to the lower court.

That was in the fall of 2022.

Now, the federal district court has issued its decision. In *Cadena v. Customer Connexx LLC*, the Nevada district court considered three points. They were:

- whether the *de minimis* doctrine applied to the time spent booting up and shutting down computers
- if time wasn't *de minimis*, whether the employer knew employees were working overtime hours, and
- whether time spent shutting down computers was a principal activity and therefore compensable.

Adjustments using punch form

At the beginning of the day, employees were supposed to log in to the timekeeping system before starting other computer programs. At the end of the day, they were told to close out

all other programs before clocking out on their computers.

If they needed to adjust their time worked, they could fill out a punch form. Employees said they utilized the procedure but didn't know if supervisors made the changes. Some employees also claimed supervisors changed their start times from when they logged in to their scheduled start times.

The court factored in how often employees had to wait for their computers to boot up and shut down as well as how long the wait times lasted. The *de minimis* doctrine applied, the court said.

When the wait times weren't *de minimis*, employees could request adjustments to their time.

Given the answers to those two questions, the judge said he didn't need to address whether turning off computers at the end of the day was a principal activity.

Bottom line: The court granted summary judgment to the employer, saying it hadn't violated the overtime provisions of the Fair Labor Standards Act.

More info: casetext.com/case/cadena-v-customer-connexx-llc-3

IRS: Watch out for scams involving this tax credit

The IRS is once again warning businesses about scams involving the employee retention credit (ERC).

While the pandemic-related tax credit is real, some promoters have been "wildly misrepresenting and exaggerating" who can qualify for it, the IRS said in IR-2023-105.

The Service issued similar warnings over the past several months and even included ERC promotions as part of its 2023 Dirty Dozen.

The IRS has stepped up criminal investigations to tackle the problem. Still, a business considering applying

for the ERC should carefully review the official requirements, the IRS said.

4 warning signs

Some warning signs of aggressive ERC marketing include:

- unsolicited ads regarding an "easy application process"
- large upfront fees to claim the ERC
- fees based on a percentage of the refund amount, and
- claims about having nothing to lose (in fact, penalties are on the line).

More info: bit.ly/erc672

NEWS YOU CAN USE

■ CHANGE OF ADDRESS FOR REPORTING BACK PAY

If a court or government agency awards back pay to enforce a worker protection law such as the Fair Labor Standards Act, employers will need to report the payment to the SSA.

Recently, the mailing address for doing that has changed. The info on page 2 of Publication 957 will soon be updated. In the meantime, here's the new address: Social Security Administration / ATTN: DEBS Back Pay Staff / OEIO DEBS EAB 3-A-8 / 6100 Wabash Avenue / Baltimore, MD 21215-3757.

More info: www.irs.gov/forms-pubs/about-publication-957

■ OFFICE OF CHILD SUPPORT ENFORCEMENT'S NEW NAME

The Office of Child Support Enforcement has changed its name. The federal agency is now called the Office of Child Support Services.

That's according to a June 5, 2023, *Federal Register* notice, and the change is effective as of that date.

More info: www.govinfo.gov/content/pkg/FR-2023-06-05/pdf/2023-11815.pdf

■ EEO-1 REPORT COLLECTION PUSHED BACK TO FALL

The Equal Employment Opportunity Commission (EEOC) expects to start collecting the 2022 EEO-1 report in the fall of 2023, according to an announcement on June 29, 2023.

Previously, the EEOC anticipated opening the annual data collection in mid-July.

To get started with the EEO-1, you'll need a count of all your full- and part-time employees during the workforce snapshot pay period your company selects.

More info: www.eeocdata.org/eo1

Contacting the IRS to discuss an employment tax notice: 4 tips

■ TIME IS VALUABLE – FOR YOU AND THE FEDERAL AGENT ON THE CALL

These days, everyone's busy, including the IRS. So, if you need to contact the Service – for example, because you receive an employment tax notice – it's essential to think out your game plan ahead of time.

A session at PayrollOrg's 2023 Virtual Congress & Expo covered useful ideas on this topic.

Got an Employment Tax Notice? Who to Talk to and How included many practical tips regarding federal, state and local notices.

The session was presented by Rebecca Harshberger, CPP, VP & Practice Leader, Payroll Tax, Entertainment Partners and Mindy Mayo, CPP, Managing Director, KPMG, LLP. Here's a recap of the IRS-related information:

Information from the session

1. Understand why you may receive a federal notice. Some possible reasons: Your W-2s don't reconcile with your 941s for the year, or your

quarterly Schedule B liability doesn't match your tax deposits.

2. Before you pick up the phone, have all possible paperwork ready. That includes:

- a copy of the original return and the original source information (e.g., ACH, proof of mailing, canceled checks)
- your power of attorney form – if you don't already have one, complete it ahead of time so you can FAX it to the IRS while you're on the phone, and
- a FAX cover sheet that's filled out, so you can immediately FAX any supporting documents.

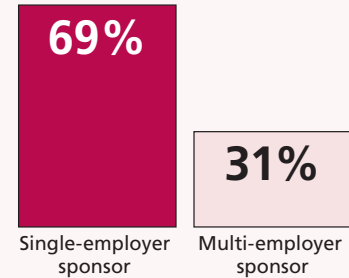
It's best to resolve the tax matter in one phone call, if possible.

3. On the tax notice, find the name and number to call. After introducing yourself, ask for and record the agent's name, IRS badge number and direct phone number – and the FAX number. Keep a record of this information in case you want to talk to the same person again. Hint: Tone counts, so approach the call by being as pleasant as possible.

WHAT PAYROLL PROS TOLD US

Defined benefit plans

If you're a private-industry employer with fewer than 100 employees, how many employees participate in your defined benefit plan?



Source: Bureau of Labor Statistics, The Economics Daily, June 9, 2023

Smaller companies that offer defined benefit plans to employees see a difference in participation rates based on whether they're single- or multi-employer plans.

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

4. Explain exactly what you want the agent to do. For instance, you might ask for a 30-day hold on the account. If you request a transcript, remember it shows limited details – you have the option to ask the IRS for details not included there.

More info: www.payrollcongress.com/virtual-congress

REAL-LIFE SCENARIO: DID THEY GET IT RIGHT?

COO didn't require medical documentation from employee, but CEO did

A labor and marine personnel company in Louisiana faced this real-life scenario:

A branch manager began experiencing frequent and severe headaches. She was diagnosed with a neurological disorder.

During this time, she reported to the chief operating officer (COO) who informally approved her time-off requests and didn't ask for documentation. That changed after he suddenly left the company and the chief executive officer (CEO) assumed his responsibilities. She started doing audits of the branch's performance and had identified eight people for

layoffs. In the process, she commented on the branch manager's headaches.

After a one-day absence, the branch manager was asked to turn in a work release. She did so, providing a note from her neurologist. That afternoon, the HR manager emailed her, saying she should return her company belongings and would receive her next paycheck by direct deposit. She heard from the safety manager she'd been terminated due to her headaches.

Following her termination, the branch manager emailed the CEO, stating that her absences had been medically excused and approved by corporate. Several months later, she

filed a lawsuit under the Americans with Disabilities Act, claiming the company terminated her due to her disability and retaliated against her accommodation request.

The court didn't dismiss the case, saying a jury would need to decide whether her medical condition was ongoing and whether the layoff was connected to a disability.

Checklist for compliance

- Remind managers to request medical documentation if necessary.
- Explain its importance if someone else later holds their position.

Tracking local laws and regs

■ Maryland county made mid-year minimum wage increase

Montgomery County, MD, has announced higher minimum wage rates, adjusted for inflation.

The hourly rates which took effect July 1, 2023, are:

- \$16.70 – large employers (up from \$15.65)
- \$15 – medium employers (up from \$14.50), and
- \$14.50 – small employers (up from \$14).

More info: bit.ly/maryland672

■ District of Columbia employers must pay higher minimum wage

The District of Columbia increased its minimum wage and living wage, effective July 1, 2023. The new rate is \$17 per hour.

During 2022, the minimum wage rate was \$16.10 per hour. As for the living wage rate, it'd been \$16.50, from Jan. 1, 2023, to June 30, 2023.

More info: does.dc.gov/service/office-wage-hour-compliance-0

■ Minimum wage in Emeryville, CA, increases by nearly \$1

In Emeryville, CA, employers have a higher minimum wage rate to comply with as of July 1, 2023.

The new rate is \$18.67, an increase from \$17.68.

More info: www.ci.emeryville.ca.us/1024/Minimum-Wage-Ordinance

■ 2 Illinois localities raised their minimum wage rates

As of July 1, 2023, the Chicago minimum wage increased to \$15.80 per hour for large employers and \$15 for small employers – up from \$15.40 and \$14.50, respectively.

The Cook County rate is \$13.70. That minimum wage rate previously had been \$13.35.

More info: bit.ly/chicago672, bit.ly/cookcounty672

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:

Need to file W-2c due to an employee's name change?

Q: The SSA sent one of our employees a replacement Social Security card after she changed her name. Is Form W-2c needed?

A: Here, you'd need to file a W-2c to correct the name reported on the Form W-2 that you filed most recently. You wouldn't need to make corrections for prior years. The same applies if the SSA issues an employee a new card with a different Social Security number (SSN) due to

a change in alien work status – the W-2c is needed for the most current year only. On the W-2c, you should complete boxes d through i, but you don't need to fill out boxes 1 through 20. Even if you're filing a W-2c only to correct an employee's name or SSN, you still need to attach Form W-3c. Important: If the original W-2 contained blanks or zeros for the SSN and blanks for the employee's name, those corrections can't be reported on Form W-2c. Instead, contact the SSA at 800-772-627.

More info: www.irs.gov/pub/irs-pdf/iw2w3.pdf

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

RECENT CHANGES TO FEDERAL FORMS AND PUBLICATIONS

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

- Form 5817, *Elective Pay Overview*. Revision date: June 2023. Posted date: 6/14/23.
- Form 2290, *Heavy Highway Vehicle Use Tax Return*. Revision date: July 2023. Posted date: 6/15/23.
- *Instructions for Form 2290, Heavy Highway Vehicle Use Tax Return*. Revision date: July 2023. Posted date: 6/15/23.
- Form 720, *Quarterly Federal Excise Tax Return*. Revision date: June 2023. Posted date: 6/15/23.
- Publication 5417, *Basic Security Plan Considerations for Tax Professionals*. Revision date: April 2023. Posted date: 6/21/23.
- Publication 5227, *Annual Filing Season Program*. Revision date: April 2023. Posted date: 6/21/23.
- Publication 5227 (sp), *Annual Filing Season Program (Spanish Version)*. Revision date: April 2023. Posted date: 6/21/23.
- Publication 3415, *Electronic Tax Administration Advisory Committee Annual Report to Congress*. Revision date: June 2023. Posted date: 6/27/23.
- *Instructions for Form 720, Quarterly Federal Excise Tax Return*. Revision date: June 2023. Posted date: 6/30/23.

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!

CONNECTICUT

- **PAID SICK LEAVE:** The state's paid sick and safe leave law has been in effect since 2012. Now, with the passage of SB 2 on June 26, 2023, the law is expanding. The changes affect *service workers*, a term that includes a wide variety of professions. These workers can use sick leave for a "mental health day" – i.e., a day for them to attend to their emotional and psychological well-being instead of showing up for their regularly scheduled shift. Also, they can take safe leave if they're the parent or guardian of a child who is a victim of family violence or sexual assault in order to help the individual get care. That's assuming the service worker isn't the perpetrator or alleged perpetrator of the violence or assault. **More info:** bit.ly/connecticut672

ILLINOIS

- **ELECTRONIC POSTINGS:** If passed, HB 3733 would require employers to provide electronic information to certain employees, such as those who work remotely or travel for work. Information on labor rights would need to be sent through email or posted on an employer's website or intranet site. We'll keep you updated on developments **More info:** bit.ly/illinois672

INDIANA

- **INCOME TAX:** Starting in 2024, the income tax rate will decrease to 3.05%, from the current rate of 3.15%. The rate will continue to decrease as follows: 3% in 2025, 2.95% in 2026 and 2.9%

in 2027. That's due to HB 1001. The legislation also includes some retroactive changes – for example, in the first year that an individual can claim the exemption for a dependent child, the amount will be doubled from \$1,500 to \$3,000. **More info:** iga.in.gov/legislative/2023/bills/house/1001/details

- **LOCAL TAX:** SB 417, which is effective July 1, 2023, authorizes a county to impose a local income tax to cover county staff expenses related to the state judicial system in that county. The legislation specifies that the tax rate must be in increments of 0.01% and may not exceed 0.2%. **More info:** iga.in.gov/legislative/2023/bills/senate/417/details

MINNESOTA

- **INTERNAL REVENUE CODE:** Due to HF 1938, when state law mentions the Internal Revenue Code (IRC), that's referring to the IRC of 1986 as amended through May 1, 2023. Previously, the date was Dec. 15, 2022. **More info:** www.revisor.mn.gov
- **TAX DEDUCTIONS:** For a taxpayer with an adjusted gross income (AGI) of over \$220,650, the standard and itemized tax deductions have changed for tax year 2023. A tax deduction will be reduced by the lesser of: 1) 3% of AGI from over \$220,650 to \$304,970 – with 10% added to AGI over \$304,970, or 2) 80% of the amount of the tax deduction. For a taxpayer whose AGI is over \$1 million, the tax deduction will be reduced by 80% of the tax deduction. The changes were included in HF 1938. **More info:** www.revisor.mn.gov

NEVADA

- **EARNED WAGE ACCESS:** Soon, if a company wants to provide earned wage access services, it'll need to obtain a license from

the Commissioner of Financial Institutions. That's due to SB 290. Although the new requirement kicks in July 1, 2024, a company that's been providing these services as of Jan. 1, 2023, will have until Dec. 31, 2024, to obtain a license. **More info:** www.leg.state.nv.us/App/NELIS/REL/82nd2023/Bill/10146/Text

NEW YORK

- **WARN ACT:** Under the state's Worker Adjustment and Retraining Notification (WARN) Act, employers with 50 or more employees must provide early warning of closures and layoffs. Amendments to the Dept. of Labor's WARN Act regs, which took effect June 21, 2023, say that individuals who work remotely but are based at the employment site must be included in that count. **More info:** dol.ny.gov

THE LIGHTER SIDE

Would you be willing to wait 17 hours and 52 minutes for a delayed flight?

Phil Stringer, a man traveling from Oklahoma City, OK to Charlotte, NC recently did it.

In fact, he was the only one who did it.

All the other would-be passengers made other plans to get to their destinations, or they just gave up.

When Mr. Stringer boarded the plane, he saw he had the place to himself. No worries about whether the person sitting next to him would try to strike up a conversation.

If he was traveling on business, almost sounds like it'd be a taxable fringe benefit.

Cite: UPI, "Man Ends up as Sole Passenger on Flight after 18-hour Delay," bit.ly/flight672