

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™

August 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

- **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.
- **Aug. 16, 2023:** Deposit taxes for payroll on Aug. 9, 10, 11.
- **Aug. 18, 2023:** Deposit taxes for payroll on Aug. 12, 13, 14, 15.
- **Aug. 23, 2023:** Deposit taxes for payroll on Aug. 16, 17, 18.
- **Aug. 25, 2023:** Deposit taxes for payroll on Aug. 19, 20, 21, 22.

MONTHLY DEPOSITORS

- **Aug. 15, 2023:** Deposit taxes for payments made during July 2023.
- **Sept. 15, 2023:** Deposit taxes for payments made during August 2023.

ALL EMPLOYERS

- **Oct. 31, 2023:** File Form 941 for Q3. Note: If you properly deposited taxes on time and in full, you have until Nov. 13, 2023, to file.

Holidays & intermittent FMLA leave: Doing calculations right

■ New DOL opinion letter provides clarity

The Dept. of Labor (DOL) recently clarified how to calculate time off under the Family and Medical Leave Act (FMLA) during a week that includes a holiday.

Specifically, *Opinion Letter FMLA 2023-2-A* looks at what happens when an employee takes leave for less than a full workweek – and that leave is intermittent.

Here's what the DOL said in its second opinion letter this year:

Less than a full workweek

Of course, when an employee takes a *full workweek* of FMLA leave during a week with a holiday, you'd count the entire workweek as FMLA leave. However, if that person takes

less than a full workweek of FMLA leave, you wouldn't count the holiday as FMLA leave. Note: There's an exception if someone was scheduled and expected to work on a holiday and instead took FMLA leave.

The opinion letter zoomed in on intermittent leave. The question was whether, in a week with a holiday, an employer's FMLA-usage calculations should include the employee's:

- usual workweek – i.e., a workweek without a holiday, or
- reduced workweek – i.e., the usual workweek minus one day.

Let's say an employee normally works a five-day workweek – Monday

(Please see FMLA leave ... on Page 2)

Transition relief sought for Sec. 603 of Secure 2.0 Act

It remains to be seen: Will the IRS provide transition relief related to a Secure 2.0 Act provision that's set to take effect Jan. 1, 2024?

The measure pertains to employees who earn more than \$145,000 annually and want to make catch-up contributions to retirement plans.

Industry groups have asked the IRS for more time and guidance to comply with Sec. 603 of the new law.

Letter to the IRS

A July 19, 2023, letter signed by dozens of groups explains the rationale for requesting the transition

relief. Just a few challenges employers face are:

- systems aren't in place to determine which employees have FICA wages over \$145,000 in one year, let alone to withhold taxes on catch-up contributions by the first pay period of the next year
- the \$145,000 limit isn't related to any other limit established for retirement plans, and
- payroll systems don't typically distinguish among employees based on age (i.e., those 50 and over in one year as well as the next year).

More info: bit.ly/contributions673

Employee fired after asking to be paid for job-related travel time

■ COMPANY VIOLATED FLSA'S RETALIATION PROVISION

An employee at one excavating company wasn't paid for job-related travel time.

After asking to be paid in accordance with the Fair Labor Standards Act (FLSA), he was terminated from his job.

When the Dept. of Labor (DOL) conducted an investigation, it found that Bevins & Son Inc. had failed to pay overtime to 17 employees.

That included time the workers spent day-to-day driving company vehicles from their shop in Milton, VT, to jobsites.

For violating the overtime provisions of the FLSA, the DOL said the company owed \$17,356 in unpaid back pay and liquidated damages.

For retaliating against the former employee, Bevins & Son had to pay:

- \$25,000 in punitive damages, and
- \$3,310 in back pay and liquidated damages.

Dealing with internal complaints

The FLSA makes clear that employers can't retaliate or discriminate against employees for actions such as filing a complaint.

It might be that the employee contacts the DOL.

Internal complaints count, too, most courts have ruled.

If the DOL finds a violation of the FLSA's retaliation provision, an employer may be on the hook for lost wages and sometimes liquidated damages and even punitive damages.

More info: www.dol.gov/newsroom/releases/whd/whd20230531-0

FMLA leave ...

(continued from Page 1)

through Friday – and that person takes one day of intermittent FMLA leave (on Tuesday) during a week with a holiday (on Wednesday).

According to the DOL guidance, the employee would've used one-fifth of a workweek of FMLA leave. That's one day of leave out of five days (i.e., the usual workweek).

Otherwise, if an employer's calculation was one day of leave out of four days (i.e., the reduced workweek), the employee would've used one-fourth of a workweek of FMLA leave. That'd be a larger amount of FMLA leave than the employee needed, meaning the employee's leave entitlements would be impermissibly reduced.

Of course, in addition to intermittent leave, the same principle would apply to reduced-schedule leave.

Action step: Check whether your payroll and HR systems are calculating FMLA leave usage correctly.

More info: bit.ly/fmla673

COMPLIANCE CHECK

■ MORE THAN \$600K OWED FOR MISCLASSIFICATION

EM Protective Services LLC, a security and traffic control services provider, in Nashville, TN, classified workers as independent contractors instead of employees.

For this Fair Labor Standards Act violation, the company owed:

- \$516,190 in back wages and liquidated damages to employees who worked in Puerto Rico, and
- \$116,273 in back wages and liquidated damages to employees who worked in Nashville, TN.

More info: bit.ly/protective673

■ H-2B WORKERS IMPROPERLY PAID BY POOL COMPANY

Lucero Pool Plaster Inc., a Schaumburg, IL, residential and commercial swimming pool company, failed to follow the provisions of the Immigration and Nationality Act.

Specifically, it didn't pay its H-2B workers for all hours they worked plastering pools in Illinois, Indiana, Iowa and Wisconsin during 2016 and 2017. That cost:

- \$312,561 in back wages, and
- \$123,814 in penalties.

More info: bit.ly/pool673

■ 15-YEAR-OLD EMPLOYEE WORKED LATER THAN 9 P.M.

Joe Vicari Restaurant Group, which operates 20 Detroit-area restaurants, violated several Fair Labor Standards Act provisions.

For example, the employer allowed a 15-year-old employee to work past 9 p.m. and more than eight hours in a day.

The Dept. of Labor said the employer owed:

- \$791 in penalties for the child labor violations, and
- \$88,020 in back wages and liquidated damages to 127 employees.

More info: bit.ly/restaurant673

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2023 advisory committee report includes push for e-filing 941s

■ THIS AS THRESHOLD FOR OTHER FORMS SET TO CHANGE SOON

Electronically filing Forms W-2 may be par for the course, but what about e-filing 941s?

In its *Annual Report to Congress*, the Electronic Tax Administration Advisory Committee (ETAAC) pushed for the electronic filing of Form 941 and other forms in the 94X series.

Here are some of ETAAC's recommendation in the report released in June 2023.

Portal for uploading returns

IRS should provide a portal for filers to upload original and amended forms in the 94X series, ETAAC said in its report.

Furthermore, the portal should be up and running quickly – by Jan. 1, 2024.

Of course, that's the same time frame the lower threshold will kick in for many other information returns.

The ETAAC report commended IRS for its regulations which set the new e-filing threshold at 10 returns in aggregate.

The regs cover a wide range of

forms – from W-2s to 1095s to 1099s. But not 941s.

IRS has taken some steps toward change, as ETAAC pointed out in its report.

Specifically, IRS *Tax Tip 2023-72* mentions that a mobile-friendly way to file forms 940, 941 and 944 is coming.

Other ideas

In addition to the portal, ETAAC's 2023 report presented other ideas related to the electronic filing of Form 941.

One was that IRS could create an option for line-by-line input.

The report compares this to a method available for filing Forms W-2 through the SSA's Business Services Online (BSO) – Payroll practitioners are well-acquainted with BSO.

To ensure security, authenticating filers using a Transmitter Control Code would be important.

The final idea was that IRS could come up with a way to download and automatically upload a PDF or other image of a 941 to the IRS system.

More info: www.irs.gov/pub/irs-pdf/p3415.pdf

Backup withholding needed? Check these IRS notices

You may need to work alongside Accounts Payable if the IRS sends your company a CP2100 or CP2100A notice.

These notices inform a business that it submitted an information return with a missing or incorrect taxpayer identification number (TIN), name or both. That's what the IRS explained in *Tax Tip 2023-75*.

Problems with someone's TIN

In the June 1, 2023, tax tip, the IRS listed several forms that can trigger the notices, including:

- Form 1099-MISC, and
- Form 1099-NEC.

You should compare the accounts on the notice with your records and make any necessary fixes.

The notices may also inform you you're required to do backup withholding tax payments.

Perhaps independent contractors didn't give your company their TINs in the required manner. Or maybe the IRS will tell you someone gave you an incorrect TIN and you didn't certify that number as required.

More info: bit.ly/backup673

NEWS YOU CAN USE

■ STUDENT LOAN PAYMENTS TO RESUME IN OCTOBER

Now that the Dept. of Education's COVID-19 relief for student loans is ending, you may start seeing more garnishments.

Payments will be due again starting in October 2023, according to a recent announcement from Federal Student Aid.

Federal student loan payments have been on hold since 2020.

More info: studentaid.gov/announcements-events/covid-19

■ WILL THESE LOCATIONS PAY MORE FUTA TAX IN 2023?

The list of states with outstanding federal loans for their unemployment insurance programs is shrinking.

As of July 13, 2023, here's the list – which includes two states and a territory – and the remaining amount owed:

- California – \$17,878,908,492.80
- New York – \$6,805,229,063.76, and
- Virgin Islands – \$89,214,761.78

If they don't pay off the loans, employers in those locations will see a credit reduction when FUTA tax is due for 2023.

More info: oui.doleta.gov/unemploy/budget.asp

■ EMPLOYEES MAY NEED TAX WITHHOLDING ESTIMATOR

If any employees have had a life-changing event – e.g., marriage or the birth of a child – they may need to adjust their withholding.

That reminder came from the IRS in issue 2023-05 of *e-News for Payroll Professionals*.

The IRS noted that Payroll pros can let employees know the Tax Withholding Estimator is available whether there's a major event or they simply want to check on their withholding for the year.

More info: bit.ly/withholding673

Creating dashboards for Payroll's key performance indicators

■ INFO GIVEN IN ANALYTICS SESSION AT 2023 VIRTUAL CONGRESS & EXPO

Measuring the Payroll Dept.'s work has value for your team, the C-suite and beyond.

But when it comes to key performance indicators (KPIs), how can Payroll practitioners best communicate data with others?

Visually, explained Mark Thornton, payroll tax supervisor at Southern Company. He and James Medlock, CPP, a payroll compliance educator with Medlock & Associates, spoke at PayrollOrg's 2023 Virtual Congress & Expo.

In their session – *Analytics: Improving Your Payroll Operation and Processes* – they discussed how to create a KPI dashboard.

Here are the steps involved:

4 steps to take

Step 1: Define by asking questions. For example:

- What is your purpose? Perhaps you're trying to gain insights or call others to action.

- What version of Excel will you use? Getting everyone on the same page can help avoid tech headaches.
- How will the data be displayed? Computer, TV, another medium?
- How frequently will the data be updated?

Step 2: Identify expectations for data collection. After all, this can be a time-consuming activity. Consider how you'll gather data and who will gather it. Having a consistent process should pay off down the road.

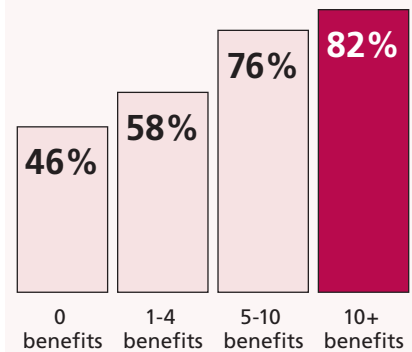
Step 3: Audit and organize data. When you're working in Excel, use separate tabs for:

- raw data
- calculations, and
- your dashboard (this is the only part your audience will see).

Step 4: Create graphs for each KPI. Some common KPI graphs are column (useful for illustrating the comparison between items), pie (you can't have any negative values), line (to show how data changes over a short period of time), bar (for comparing values, such as *budget* and *actual*) and area

WHAT PAYROLL PROS TOLD US

Benefits offered
Are you thriving in your current role?



Source: Mercer Marsh Benefits, Health on Demand 2023 survey

There's a correlation between number of benefits offered and whether staffers believe they're thriving, with 10 or more benefits offered yielding positive answers.

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

(to show how data changes over a long period of time).

If you're not sure what to pick, try the Recommended Charts feature in Excel. Before sending anything into production, take a little time for a review session.

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

REAL-LIFE SCENARIO: DID THEY GET IT RIGHT?

Employer automatically deducted one hour for meal breaks

An addiction-treatment organization in New York faced this real-life scenario:

Employees who worked in positions such as counselors and patient care coordinators at two facilities brought a lawsuit claiming the employer didn't pay them for all hours worked and didn't pay them overtime.

One employee said she had to stay at work beyond the end of her shift due to understaffing and doing that added up to two to three hours of off-the-clock work each week.

Another employee had issues with the opposite end of the day, being

expected to arrive 30 minutes before her shift began.

Meanwhile, the middle of the day was problematic across the board.

Employees stated they often worked through their scheduled lunch breaks. The employer automatically deducted one hour at lunchtime, regardless of whether employees were actually relieved of work.

At one point, the employer sent an email informing employees they should stop clocking out for breaks – it took about a month, but eventually employees did stop. The automatic meal-break deductions continued,

though, even when employees remained on the clock.

Employees provided the court with enough details – e.g., specific dates they worked through lunch. So, the case moved forward.

Checklist for compliance

- When auditing whether employees are being paid for all hours worked, remember to consider various times of day – before their shifts, at their lunch breaks and after their shifts.
- Relocating or purchasing additional time clocks can add transparency to hours worked.

Tracking local laws and regs

■ IRS moves deadline to Nov. 15, 2023, for these flooding victims

The IRS has offered tax relief to 14 counties in Vermont following the flooding that occurred July 9, 2023.

Businesses have until Nov. 15, 2023, to meet various tax filing and payment deadlines.

For example, the extension applies to quarterly payroll and excise tax returns, normally due July 31, 2023, and Oct. 31, 2023.

In addition, as long as payroll and excise tax deposits were made by July 25, 2023, the IRS will abate the penalties.

More info: bit.ly/flooding673

■ New location for this Indiana Dept. of Revenue office

The Indiana Dept. of Revenue's South Bend District Office has moved to a new location, as of the beginning of July 2023.

If you want to utilize the in-person, walk-in service, it's recommended that

you make an appointment online, although that's not required.

The new address is:

1001 Hickory Road, Suite 5
South Bend, IN 46615

More info: tinyurl.com/indiana673

■ 1 hour of paid personal time for every 30 hours worked

In New York City, a bill introduced June 22, 2023, would update the Earned Safe and Sick Time Law by adding personal time.

As with paid safe and sick time, employers would provide employees with one hour of personal time for every 30 hours worked. The per-year required maximum would be 80 hours of personal time.

For employers with five or more employees, the personal time would need to be paid. However, employers with fewer employees would have the option of providing unpaid personal time, under Int. No. 1106.

More info: council.nyc.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:

What if we get a penalty notice after a deadline is extended?

Q: After a natural disaster in our area, the federal government declared our location to be a major disaster area, and the IRS postponed some deposit and reporting deadlines. However, we received a penalty notice. What should we do?

A: If your address of record is located where the Federal Emergency Management Agency has declared a disaster area, filing and penalty relief from

the IRS is automatic – you don't have to submit any special paperwork to be given additional time to file returns and pay taxes. However, it's possible that your business will receive an IRS late filing or late payment penalty notice that includes the original or extended filing, payment or deposit due date. If that due date falls within the postponement period, you can call the number on the notice and ask the IRS to abate the penalty. Also, check whether IRS has the correct address of record for each of your business sites.

More info: bit.ly/disaster673

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 5718, *Information Returns Intake System Electronic Filing Application to Application Specifications*. Revision date: June 2023. Posted date: 6/29/23.
- Publication 5084, *Congressional Update*. Revision date: July 2023. Posted date: 7/3/23.
- Form 4506-T, *Request for Transcript of Tax Return*. Revision date: June 2023. Posted date: 7/5/23.
- Publication 5839, *Digital Assets Initiative*. Revision date: July 2023. Posted date: 7/6/23.
- Publication 4054, *National Taxpayer Advocate Objectives Report to Congress, Fiscal Year 2024*. Revision date: June 2023. Posted date: 7/7/23.
- Publication 1586, *Regulations & Requirements for Missing and Incorrect Name/TINs on Information Return*. Revision date: July 2023. Posted date: 7/7/23.
- Publication 5845, *Do You Need a New Employer Identification Number?* Revision date: July 2023. Posted date: 7/11/23.
- Publication 5075, *Are You Maximizing Your Tax Refund? Maximize Your Tax Refund by Claiming Refundable Tax Credits*. Revision date: June 2023. Posted date: 7/14/23.

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!

ALABAMA

- **OVERTIME:** Thanks to HB 217, overtime pay will be excluded from gross income for income tax purposes. Due to an executive amendment after the legislation's passage, the law will sunset after 18 months. **More info:** legiscan.com/AL/bill/HB217/2023

ARKANSAS

- **WITHHOLDING:** The Dept. of Finance and Administration has issued three new documents to reflect income tax changes the legislature made earlier this year. The state's highest tax rate was reduced from 4.9% to 4.7% by SB 549, which became law April 10, 2023. The revised publications – *Withholding Tax Formula Method*, *Withholding Tax Regular Income Tax Tables* and *Withholding Tax Low Income Tax Tables* – have a June 1, 2023, effective date. **More info:** www.dfa.arkansas.gov/income-tax

CONNECTICUT

- **PAY DATA REPORTING:** Although employers had a long list of info to report starting in 2024, that's changed, thanks to SB 1091. You'll no longer need to inform the state of employees' gender identity, age, race, ethnicity, veteran status, disability status and highest education completed; home address and primary work-site address; occupational code under the standard occupational classification system of the Bureau of Labor Statistics; hours worked, days worked and salary or hourly wage; and employment start date in the current job title and,

if applicable, employment end date. However, starting in 2026, employers will have the option to report employees' occupation, hours worked and the business mailing address's ZIP code. **More info:** tinyurl.com/connecticut673

HAWAII

- **PAY TRANSPARENCY:** New legislation, SB 1057, will take effect Jan. 1, 2024. The law says that when employers – that have 50 or more employees – post job listings, they must disclose the hourly rate or salary range that reasonably reflects the actual expected compensation. The requirement doesn't apply when current employees are internally transferred or promoted. Another exclusion is public employee positions for which compensation is determined under a collective bargaining agreement. **More info:** tinyurl.com/hawaii673

MINNESOTA

- **PAID SICK LEAVE:** SB 3035 changes the state's current sick and safe leave law. Starting Jan. 1, 2024, employees will earn one hour of leave for every 30 hours worked – the maximum that must be provided per year is 48 hours. Employers can allow employees to carry over up to 80 hours of accrued and unused sick and safe leave. **More info:** www.dli.mn.gov/sick-leave

MISSOURI

- **EARNED WAGE ACCESS:** Starting Aug. 28, 2023, a business offering earned wage access (EWA) services must register with the Division of Finance. That involves filling out a form and paying a \$1,000 fee. EWA providers will also need to develop procedures for dealing with consumer questions and complaints; specify notices that must be given to consumers; and regulate the types of fees that may

be charged and the way in which any repayments may be pursued. **More info:** tinyurl.com/missouri673

OREGON

- **CHILD SUPPORT:** Beginning Jan. 1, 2024, new hire reporting will cover not only employees but also independent contractors – i.e., individuals who must file Form W-9 and expect to be performing services for your company for more than 20 days. The changes are due to SB 184, which was recently enacted. Therefore, if your company has employees or independent contractors working only in Oregon or you're a multistate employer that has designated Oregon as your reporting state, you'll need to submit new hire reports when you hire or rehire employees or engage or reengage independent contractors. **More info:** tinyurl.com/oregon673

THE LIGHTER SIDE

Does moving toward a paperless society mean pencils will also go by the wayside?

Not if you're Emilio Arenas or Aaron Bartholmey.

Arenas holds the current Guinness World Record, awarded in 2020, for the largest collection of pencils. Although Arenas possesses a whopping 24,000 or so pencils, Bartholmey is in the process of taking over the title.

Bartholmey's collection of the writing implements has reached about 70,000, as reported by KCCI in Iowa. In July, the American Pencil Collectors Society spent two days counting the pencils, and now the Iowa man is awaiting a decision from Guinness.

If he's nervous, maybe some doodling would help him relax.

Cite: tinyurl.com/pencils673