

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™

September 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

- **Sept. 1, 2023:** Deposit taxes for payroll on Aug. 26, 27, 28, 29.
- **Sept. 7, 2023:** Deposit taxes for payroll on Aug. 30, 31; Sept. 1.
- **Sept. 8, 2023:** Deposit taxes for payroll on Sept. 2, 3, 4, 5.
- **Sept. 13, 2023:** Deposit taxes for payroll on Sept. 6, 7, 8.
- **Sept. 15, 2023:** Deposit taxes for payroll on Sept. 9, 10, 11, 12.
- **Sept. 20, 2023:** Deposit taxes for payroll on Sept. 13, 14, 15.
- **Sept. 22, 2023:** Deposit taxes for payroll on Sept. 16, 17, 18, 19.
- **Sept. 27, 2023:** Deposit taxes for payroll on Sept. 20, 21, 22.

■ MONTHLY DEPOSITORS

- **Sept. 15, 2023:** Deposit taxes for payments made during August 2023.
- **Oct. 16, 2023:** Deposit taxes for payments made during September 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.

Proposed regs shed light on Pregnant Workers Fairness Act

■ Accommodation requests don't need to be in writing

You have more details now about complying with the Pregnant Workers Fairness Act (PWFA).

That's because on Aug. 11, 2023, the Equal Employment Opportunity Commission (EEOC) published proposed regs in the *Federal Register*.

Here's a quick recap:

40-week time frame

The PWFA, which took effect June 27, 2023, requires employers to provide reasonable accommodations to employees experiencing pregnancy, childbirth or related medical conditions. A lengthy-but-non-exhaustive list of what that includes is in the regs.

The proposed regs make clear that while employees have

the responsibility to request an accommodation (or have someone do that on their behalf), the request doesn't need to be in writing.

Another important point: Unlike the Americans with Disabilities Act, which says an employee must be able to perform the essential functions of his or her job, the PWFA provides some leeway if someone will be able to do those tasks in the near future – i.e., within 40 weeks. Note: The EEOC asked for comments on its proposed definition of this time frame.

Taking leave may be a reasonable accommodation, even if the employee has exhausted leave available as a benefit. On the flip side, the regs

(Please see Proposed regs ... on Page 2)

When does an employer need a new EIN? IRS explains

The IRS has clarified when a business needs to obtain a new employer identification number (EIN).

The information appeared in Publication 5845, which was revised in July 2023.

First, the IRS made clear that a business doesn't need a new EIN merely due to a name change. On the other hand, if an employer experiences a change in ownership or structure, a new number may be required.

How is your business structured?

The IRS broke the information down according to structure:

- **Corporations:** If you receive a new charter from the secretary of state, you're a subsidiary of a corporation using the parent's EIN, you change your company structure or you create a new corporation after a statutory merger, you'll need to apply for a new EIN.
- **Partnerships:** If you incorporate, one of the partners takes over the partnership and operates it as a sole proprietorship or you end an old partnership and begin a new one, a new EIN is necessary. Additional structures are discussed. **More info:** bit.ly/ein675

Violated multiple provisions of the Immigration and Nationality Act

■ PROBLEMS INCLUDED PAYING LESS THAN OFFERED RATE

The Dept. of Labor (DOL) discovered a long list of Immigration and Nationality Act (INA) problems at a Massachusetts landscaping company.

Triad Associates Inc. of Haverhill had to pay \$642,467 in back wages and \$117,949 civil money penalties.

Its INA shortcomings included:

- paying less than the offered wage rate to masons and pavers
- placing workers in unapproved job classifications and making impermissible deductions from their wages
- not paying H-2B workers' inbound travel, outbound travel and subsistence costs
- showing preferential treatment to certain workers

- failing to fulfill required recruitment activities, such as contacting former U.S. employees when trying to fill vacancies, and
- not retaining required documents.

FLSA missteps, too

The DOL investigation turned up violations of another law: the Fair Labor Standards Act (FLSA).

For that, the company had to pay \$61,215 in back wages and an equal amount in liquidated damages – plus, \$5,694 in civil money penalties.

Specifically, Triad didn't pay the proper overtime rate and didn't keep accurate records for salaried, nonexempt employees.

More info: www.dol.gov/newsroom/releases/WHDL/WHDL20230627

Proposed regs ...

(continued from Page 1)

prohibit an employer from insisting that a worker covered by the PWFA take leave, whether paid or unpaid, if there's another effective reasonable accommodation. Furthermore, if a company engages in the interactive process with an employee, it can't later force that individual to accept a non-agreed-upon accommodation, the proposed regs say.

Examples found in the regs

Also in the regs, the EEOC provided examples of requests that covered employees may make for reasonable accommodations. Here are two:

- A worker tells her supervisor she's having trouble getting to work at her scheduled start time because of morning sickness – she asks for a scheduling change.
- An employee informs her supervisor she needs more frequent bathroom breaks because of her pregnancy.

More info: bit.ly/pwfa675

COMPLIANCE CHECK

■ PUT IN LONG HOURS, EARNED ONLY STRAIGHT TIME RATES

Creative Living Solutions Inc., a staffing agency in Union City, CA, paid straight time rates when workers put in overtime hours. The violations affected 23 workers who served older individuals and people with disabilities and sometimes were on the clock 12 to 16 hours per day. The cost to the company was:

- \$17,227 in civil money penalties
- \$186,735 in back wages, and
- \$186,735 in liquidated damages.

More info: www.dol.gov/newsroom/releases/whd/whd20230724-0

■ CT RESTAURANTS OWED \$858K TO 105 WORKERS

In Connecticut, six restaurants broke several provisions of the Fair Labor Standards Act. For one thing, the restaurants – located in Darien, Fairfield, Greenwich, New Canaan, New Haven and Westport – didn't handle tip pools correctly. After an investigation and litigation over payments to 105 employees, the restaurants had to pay:

- \$429,095.55 in unpaid tips and wages, and
- \$429,095.55 in liquidated damages.

More info: www.dol.gov/newsroom/releases/whd/whd20230725-1

■ BONUSES NOT INCLUDED IN REGULAR RATE OF PAY

At 242 locations nationwide, Krispy Kreme Doughnut Corp. failed to include monthly bonuses in the regular rate of pay when calculating overtime. As the result of this Fair Labor Standards Act violation, the company owed 516 workers:

- \$593,878.50 in back wages, and
- \$593,878.50 in liquidated damages.

More info: www.dol.gov/newsroom/releases/whd/whd20221117

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DOL's final rule on Davis Bacon Act brings changes to prevailing wages

■ BACK TO 3 STEPS FOR DETERMINING THE PREVAILING WAGE RATE

Employers doing construction work on federally funded projects haven't had to consider the 30% threshold since the early 1980s.

But the threshold's coming back.

For the last 40 years, employers have had only two steps to follow to determine the prevailing wage.

Soon, three steps will be required again, according to the Dept. of Labor (DOL). On Aug. 23, 2023, the DOL issued a final rule, updating its regulations on the Davis-Bacon and Related Acts (DBRA).

Within 60 days from that date, employers subject to the DBRA will need to:

1. Identify if there's a wage rate paid to more than 50% of workers in a particular classification.
2. If No. 1 doesn't apply, identify if there's a rate paid to 30% of those workers.
3. If neither No. 1 nor No. 2 applies, rely on a weighted average of all the wage rates paid.

The reason employers once again have to consider the 30% threshold?

After DOL removed that step in a 1982 final rule, employers began overusing the average rates, the DOL explained.

Other changes

The new rule makes additional changes related to the DBRA.

One is that the DOL's Wage and Hour Division (WHD) can consider non-identical wage rates to be the same rate if those rates are functionally equivalent.

For example, escalator-clause rates, zone rates, night-shift differential and combined hourly-fringe rates could be counted as the same for purposes of determining the prevailing wage.

Another change is that the WHD administrator can determine DBRA wage rates by adopting rates that state and local governments have set. The rule specifies under what circumstances that can be done.

Finally, the prevailing wage won't necessarily need to be based on a county's data anymore.

The rule authorizes the WHD to issue multi-county project wage determinations or even use highway districts.

More info: bit.ly/dbra675

E-filing requirements: IRS notice deals with exceptions

Changes to the electronic filing requirements are set to kick in on Jan. 1, 2024.

But the IRS knows that meeting the requirements won't be feasible for everyone. So, in a follow up to its Feb. 23, 2023, regs, the IRS recently released Notice 2023-60.

What Notice 2023-60 said

The notice, released Aug. 11, 2023, explains how to file an administrative exemption from the new electronic filing requirements that lower the threshold to 10 returns in aggregate.

The exemption applies to filers for whom filing electronically conflicts with their religious beliefs. Such filers should submit Form 8508, *Application for a Waiver from Electronic Filing of Information Returns*.

The notice also briefly mentions waivers from the e-file requirements for certain returns – that includes Form 1120, *U.S. Corporation Income Tax Return*. The procedures for filing a hardship waiver can now be found in various IRS publications.

More info: www.irs.gov/pub/irs-drop/n-23-60.pdf

NEWS YOU CAN USE

■ REVISIONS TO CHILD SUPPORT WITHHOLDING FORM

The Income Withholding for Support Order is set to expire Sept. 30, 2023.

With that in mind, the Office of Child Support Services – formerly the Office of Child Support Enforcement – made some minor changes to the form, including updating the name.

That's according to a request for public comments posted July 12, 2023, in the *Federal Register*.

More info: www.govinfo.gov/content/pkg/FR-2023-07-12/pdf/2023-14662.pdf

■ IRS: LETTERS WILL REPLACE UNANNOUNCED VISITS

The IRS says it's eliminating most unannounced visits from agency revenue officers.

For one thing, these visits have caused confusion. Here's why: Sometimes scam artists have shown up at people's doors pretending to be IRS agents.

Plus, at times, the safety of IRS employees has been at risk.

The purpose of the visits was to help taxpayers resolve account balances by collecting:

- unpaid taxes, and
- unfiled tax returns.

Going forward, the IRS says it'll mail appointment letters, requesting meetings with taxpayers.

More info: bit.ly/visits675

■ THESE RETIREMENT PLANS UNDER IRS SCRUTINY

Be careful if your company offers any employee stock ownership plans (ESOPs). Over the next year, the IRS plans to address compliance issues associated with ESOPs. The Service gave the warning on Aug. 9, 2023.

ESOPs are retirement plans that allow employees to own stock in their employer's company.

More info: bit.ly/esop675

Floating holidays: How specific is your policy on this type of time off?

■ THIS BENEFIT VARIES FROM COMPANY TO COMPANY

Employers have long been offering paid holidays to employees as a benefit. Floating holidays, however, are a newer addition.

Depending on your company's policy, floating holidays can be a bit of a misnomer – they may have more in common with paid time off than with standard paid holidays, such as Thanksgiving Day.

For example, one company may give employees total freedom about how to use their floating holidays, even allowing them to be taken as mental health days.

On the other hand, a different employer may require that they coincide with official federal or state holidays.

Another variation is whether:

- each employee picks his or her own floating holidays (as described above), or
- a decision is made, for or even by a group of employees, toward the end of one year about which holidays to

add to the company's core holidays the next year – e.g., Tuesday, July 4 is a core holiday and then Monday, July 3 is added.

5 steps Payroll can take

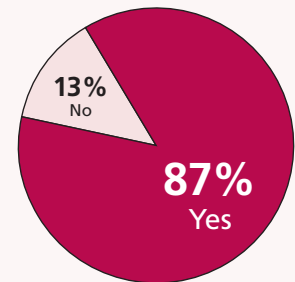
Here are five steps Payroll can take to help create or implement a policy on floating holidays:

1. Consider how clear the policy is. Make sure employees understand whether usage of floating holidays is flexible or finite. Examples may help them. Also, explain whether the time off is paid or unpaid.
2. If you have restrictions such as blackout dates – e.g., certain months of the year or days of the week – you could include that info in a shared calendar or other centralized spot.
3. If the floating holidays can't be carried over from one year to the next or cashed out upon termination, you may want to provide periodic reminders to employees regarding their remaining time off.
4. Offer training to managers and supervisors regarding consistent application of the policy. The last

WHAT PAYROLL PROS TOLD US

Flexible and hybrid workplace models

Is developing the right workplace model important/very important to your organization's success?



Source: Deloitte's 2023 Global Human Capital Trends survey

Developing the right flexible and hybrid workplace model is important or very important, most organizations said in a survey. But they also admitted they're unprepared.

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

thing your company wants is a discrimination claim, especially given that floating holidays can be a way to acknowledge employees' varied beliefs and backgrounds.

5. Check that your payroll system is utilizing the correct codes for this type of time off.

More info: www.bls.gov/lebs

REAL-LIFE SCENARIO: DID THEY GET IT RIGHT?

She wanted to work from home, employer offered alternate accommodations

A psychiatric hospital in Pennsylvania faced this real-life scenario:

The hospital's social services director had periodically worked from home. One example: Due to injuries caused by a car accident, she worked remotely for three months.

She could do her job duties remotely by using her work-issued laptop, a software program which enabled her to access medical records and a teleconferencing platform. As for her performance, she consistently met or exceeded expectations.

During 2021, the hospital experienced a lot of staffing changes,

and it was decided the leadership team – including the social services director who was out on family and medical leave – must work on site.

When she returned from leave, she asked to telecommute for several months due to medical reasons. The request was denied, but the employer offered the employee an alternate accommodation.

The back-and-forth continued for months. Despite the repeated tries, they couldn't reach an agreement.

Ultimately, the hospital offered to reduce her work schedule, give her flexibility for appointments and

reimburse public-transportation costs. She said that wouldn't work given her postpartum depression and carpal tunnel syndrome. Then she quit and sued under the Americans with Disabilities Act (ADA).

Did the employer provide a reasonable accommodation? A jury will have to decide that, a federal district court ruled.

Checklist for compliance

- Consider the ADA when reversing course on work-from-home policies.
- Keep the lines of communication open with employees.

Tracking local laws and regs

■ Rates for this New York City tax now broken into 2 zones

New York City's metropolitan commuter transportation mobility tax has been broken into two zones, effective July 1, 2023.

In Zone 1, which includes the counties of New York (Manhattan), Bronx, Kings (Brooklyn), Queens and Richmond (Staten Island), the rate tiers are .11%, .23% and .60%.

In Zone 2, which includes the counties of Rockland, Nassau, Suffolk, Orange, Putnam, Dutchess, and Westchester, the rate tiers are .11%, .23% and .34%.

More info: www.tax.ny.gov/bus/mctmt/emp.htm

■ Have any freelance workers earning \$600 or more?

The Freelance Worker Protections Ordinance took effect July 1, 2023, in Los Angeles. If your company enters into a written or oral contract with a freelance worker for payment valued

at \$600 or more, the contract must be in writing and contain this info:

- name, address, phone number and – if available – email address for your company and the freelancer
- an itemization of services to be provided; the value of those services; and the rate and method of compensation, and
- the date the compensation will be paid or the manner in which the date will be determined.

More info: tinyurl.com/freelance675

■ FDIC: In Kansas, Elkhart bank acquired by Syracuse bank

The Federal Deposit Insurance Corporation (FDIC) announced on July 28, 2023, that Heartland Tri-State Bank in Elkhart, KS, has failed.

Its four branches opened shortly thereafter as Dream First Bank, N.A. which acquired the bank, according to the FDIC.

More info: www.fdic.gov/news/press-releases/2023/pr23058.html

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:

Form W-2: For what tax year should back pay be reported?

Q: Should we report back pay on Form W-2 for the year in which it was actually paid?

A: Even if the back pay corresponds to a prior tax year, you should include it on the employee's Form W-2 for the year you issued the payment. You may have an additional step to take if the back pay was awarded under a statute. The SSA credits such payments as wages in the year paid, but it needs certain

information to be able to do that accurately. This special report can be sent with the W-2 or after the fact. Here's what it should include: 1) the employer's name, address and employer identification number; 2) a signed statement indicating the statute; 3) the name and telephone number of a contact person; and 4) a list of employees receiving the payment. The SSA needs identifying information for each employee and details – such as the amount to allocate to the relevant reporting periods.

More info: www.irs.gov/pub/irs-pdf/p957.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.

- Form 14568-A, *Model VCP Compliance Statement - Schedule 1: Plan Document Failures for 403(b) Plans*. Revision date: July 2023. Posted date: 8/1/23.
- Form 14568-B, *Model VCP Compliance Statement - Schedule 2: Nonamender Failures for IRC 401(a) Plans*. Revision date: July 2023. Posted date: 8/1/23.
- Form 14568-C, *Model VCP Compliance Statement - Schedule 3: SEPs and SARSEPs*. Revision date: July 2023. Posted date: 8/1/23.
- Form 14568-D, *Model VCP Compliance Statement - Schedule 4: SIMPLE IRAs*. Revision date: July 2023. Posted date: 8/1/23.
- Publication 5084, *Congressional Update*. Revision date: August 2023. Posted date: 8/2/23.
- Form W-2C, *Corrected Wage and Tax Statement*. Revision date: August 2023. Posted date: 8/3/23.
- Form W-3C, *Transmittal of Corrected Wage and Tax Statements*. Revision date: August 2023. Posted date: 8/3/23.
- Publication 5308, *Guide for Automated Enrollment For Affordable Care Act Providers*. Revision date: August 2023. Posted date: 8/9/23.

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!

ALASKA

- **DEDUCTIONS:** The Alaska Dept. of Labor and Workforce Development updated its regs on board and lodging, effective July 28, 2023. Their cost may be deducted from minimum wage and overtime rates if board or lodging is customarily furnished; their cost is reasonable and the employer doesn't make a profit; the employer has provided notice including a description, the amount to be deducted and a statement that acceptance is voluntary; and the employee has signed an acceptance of the deduction. **More info:** tinyurl.com/alaska675

COLORADO

- **SICK LEAVE:** According to new legislation, SB 23-017, employees can use accrued paid sick leave for three new reasons. First, employees can use it to care for a family member whose school or place of care has been closed due to inclement weather or similar events. The second reason is to grieve; attend funeral services or a memorial; or deal with financial or legal matters following a family member's death. The third reason employees can take paid sick leave under SB 23-017 is to evacuate their place of residence due to inclement weather or similar events. The bill took effect Aug. 7, 2023. **More info:** leg.colorado.gov/bills/sb23-017

INDIANA

- **INTERNAL REVENUE CODE:** Due to SB 419, when the state's adjusted gross income tax law mentions the Internal Revenue

Code (IRC), that's referring to the IRC of 1986 as amended and in effect on Jan. 1, 2023. **More info:** iga.in.gov/legislative/2023/bills/senate/419/details

LOUISIANA

- **LEAVE:** SB 200 says that employers must allow employees to take a day of leave to obtain genetic testing or a preventive cancer screening, assuming they're medically necessary. Employees must give employers at least 15 days' notice and try to schedule the leave so it doesn't unduly disrupt operations. An employer may request documentation of the testing or screening from an employee. Although the leave doesn't need to be paid, employees can substitute accrued vacation time or other appropriate paid leave. The bill takes effect Aug. 1, 2023. **More info:** legiscan.com/LA/text/SB200/id/2826653

MINNESOTA

- **RETIREMENT PLANS:** A new bill, HF 782, has established a state-sponsored retirement program called Minnesota Secure Choice. Participation will be required of businesses that have five or more covered employees and that don't sponsor or contribute to a retirement plan. **More info:** tinyurl.com/minnesota675

OREGON

- **PAID LEAVE:** Businesses with 25 or more employees must participate in Paid Leave Oregon. That means paying into the program as well as collecting and submitting employees' contributions. The program's FAQs explain that the size of a business is based on an average headcount of employees – that includes people working in and outside of Oregon and also includes part-time and full-time employees. The number

doesn't include any employees hired to temporarily replace employees who've taken paid leave. **More info:** paidleave.oregon.gov/resources/common-questions.html

SOUTH CAROLINA

- **INTERNAL REVENUE CODE:** H 4017 says that when the state's tax laws mention the Internal Revenue Code (IRC), that's referring to the IRC of 1986 as amended through Dec. 31, 2022. The legislation also addresses IRC sections adopted by the state that may have expired on Dec. 31, 2022. If those sections are extended – but not amended – by Congress in 2023, the sections will be extended for South Carolina income tax purposes in the same way they are for federal income tax purposes. **More info:** www.scstatehouse.gov/sess125_2023-2024/bills/4017.htm

THE LIGHTER SIDE

What was inside a large safe at a Baltimore bookstore?

The new bookstore owner wanted to know but didn't have the key. So, he got the word out that he wanted to hire a safe-cracker and would share half the contents.

Turned out, a bus driver from Canada who'd been cracking safes since age 12 answered the call. He had to spend two days, instead of the usual one-and-a-half hours, manipulating the safe's dial. With brass-stained fingers, he finally accomplished the task.

So, did they find gold and diamonds inside? Nope. However, along with some office items, the safe did contain one important treasure: an old paystub.

Cite: UPI, "Manitoba Bus Driver Cracks Baltimore Book Store's Mystery Safe," 8/14/23.