

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™

October 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.

■ SEMIWEEKLY DEPOSITORS

- **Oct. 18, 2023:** Deposit taxes for payroll on Oct. 11, 12, 13.
- **Oct. 20, 2023:** Deposit taxes for payroll on Oct. 14, 15, 16, 17.
- **Oct. 25, 2023:** Deposit taxes for payroll on Oct. 18, 19, 20.
- **Oct. 27, 2023:** Deposit taxes for payroll on Oct. 21, 22, 23, 24.
- **Nov. 1, 2023:** Deposit taxes for payroll on Oct. 25, 26, 27.
- **Nov. 3, 2023:** Deposit taxes for payroll on Oct. 28, 29, 30, 31.
- **Nov. 8, 2023:** Deposit taxes for payroll on Nov. 1, 2, 3.
- **Nov. 13, 2023:** Deposit taxes for payroll on Nov. 4, 5, 6, 7.

■ MONTHLY DEPOSITORS

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

Payments after injury: Taxable or nontaxable income on W-2?

■ Federal appeals court weighs in

When an employee sustains an injury and can't work for an extended period of time, filling out Form W-2 can get dicey.

Just ask Turner Broadcasting Systems. An employee sued the media corporation, claiming it'd willfully filed false W-2s with the IRS for tax years 2014, 2015 and 2016.

What happened? The employee injured himself on the job. At various times during the tax years in question, he couldn't work, and the company paid him for his leave.

Those payments, according to employee Martin Doherty, were workers' compensation and should have been included as *nontaxable* income on his W-2s. However, the

company reported the earnings as short-term disability – i.e., *taxable* income on Form W-2. As a result, the company overstated his taxable income on the annual information returns, he claimed in his lawsuit.

He emailed Payroll department

At first, a federal district court ruled in the employer's favor.

But on appeal, the employer didn't fare as well.

For starters, the district court had concluded the W-2s weren't false in that they accurately reflected the total amounts paid to the employee for each tax year. However, the problem

(Please see Income ... on Page 2)

New expiration date for old child support form

The current form used for child support orders will remain in use for another year.

The Income Withholding for Support Order (IWO) had an expiration date of Sept. 30, 2023.

However, that date has been extended to Sept. 30, 2024, the Office of Child Support Services (OCSS) announced.

In Action Transmittal 23-12, the OCSS said the Office of Management and Budget granted the extension so child support agencies would have time to implement changes to the form. After the OCSS published

a notice in the *Federal Register* on July 12, 2023, explaining the revisions to the IWO, commenters asked for additional prep time.

Sample IWO in the works

The IWO is the required, standard form used to inform employers they must withhold child support payments from an employee's income.

Among the changes, the OCSS added a sample form to the instructions to help employers properly complete the IWO.

More info: tinyurl.com/childsupport678

Davis-Bacon violation: Hourly rate should have been \$37, was only \$25

■ EMPLOYER ALSO MISSED THE MARK ON HEALTH AND WELFARE BENEFITS

When the Dept. of Labor (DOL) did an investigation of a Florida subcontractor's payroll records, it found that some electricians had been paid too low an hourly rate.

Quality Electric, of Clewiston, FL, was working on a federally assisted project – therefore, the prevailing wage rates applied.

Instead of paying 11 electricians \$37 per hour to pull wire, run conduit and ground wire for a pump station, the subcontractor gave them \$25 per hour or less.

In addition to not paying the prevailing wage rate, the employer failed to provide the required health and welfare benefits to most of the workers.

So the company came up short on \$171,998 in wages and benefits

in violation of the Davis-Bacon and Related Acts (DBRA) and the Contract Work Hours and Safety Standards Act.

Recent regulatory changes

The DOL recently made changes to the DBRA regs, and they take effect Oct. 23, 2023.

The 30% threshold has been added back into the steps to take to determine the prevailing wage rate.

So, if there's not a wage rate paid to 50% of workers in a particular classification, the next step would be to see if there's a wage rate paid to 30% of those workers. If not, the prevailing wage would be based on the weighted average of all the wage rates paid.

More info: www.dol.gov/newsroom/releases/whd/whd20230612

Income ...

(continued from Page 1)

wasn't the amounts, the higher court explained, but the fact that they were added to box 1 of the W-2s as taxable income.

After all, the company should have known the payments were nontaxable income since the employee filed a workers' comp claim, which was determined to be work-related, and the company was aware of it.

Next, while the lower court ruled that Turner Broadcasting Systems didn't act knowingly and recklessly, the D.C. Circuit Court of Appeals wasn't convinced.

For example, the appeals court pointed out that in 2016, the employee sent an email to the Payroll department, requesting a corrected W-2. He put in that request, noting that workers' comp is nontaxable.

Given the appeals court's findings, it sent the case back down to the district court for further proceedings.

More info: tinyurl.com/injury678

COMPLIANCE CHECK

■ CHILD LABOR VIOLATIONS AT FAMILY AMUSEMENT CENTER

The Syracuse Family Fun Center LLC, an indoor family amusement center based in Salt Lake City, violated several provisions of the Fair Labor Standards Act (FLSA), including the child labor provisions.

The company allowed 14- and 15-year-old children to work longer and later than permitted during the school year. For all its FLSA violations, the company owed:

- \$6,009 in back wages, and
- \$166,908 in penalties.

More info: www.dol.gov/newsroom/releases/whd/whd20230824

■ NO PAYSTUBS PROVIDED FOR WORKERS WITH H-2A VISAS

Becerra Enterprises Inc., a farm labor contractor based in Arcadia, FL, didn't follow the requirements of hiring workers with H-2A visas.

For example, the company didn't provide paystubs to H-2A employees working as cooks – instead, they were paid in cash, which violated recordkeeping requirements. For that and other violations, the company had to pay:

- \$540,221 in back wages to H-2A workers, and
- \$33,783 in civil money penalties.

More info: www.dol.gov/newsroom/releases/whd/whd20230828-0

■ PHILADELPHIA WHOLESALER OWED MORE THAN \$400K

Byun Brothers Sales Inc., a grocery wholesaler in Philadelphia, withheld overtime wages from 21 employees. So, it had to pay:

- \$8,379 in civil money penalties
- \$209,807 in back wages, and
- \$209,807 in liquidated damages.

More info: www.dol.gov/newsroom/releases/whd/whd20230906

From:  **KEEP UP TO DATE ON PAYROLL**

EDITOR: JENNIFER WEISS
jweiss@HRMorning.com

MANAGING EDITOR: CURT BROWN
PRODUCTION EDITOR: P.J. FRONZEO
EDITORIAL DIRECTOR: CURT BROWN

Keep Up to Date on Payroll (ISSN 1076-3309), issue date October 15, 2023, Vol. 30 No. 678, is published semi-monthly except once in December (23 times a year).

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional services. If legal or other expert assistance is required, the services of a competent professional should be sought. — From a declaration of principles jointly adopted by a committee of the American Bar Association and a committee of publishers.

Copyright © 2023 HRMorning. Please respect our copyright: Reproduction of this material is prohibited without prior permission. All rights reserved in all countries.

High-low substantiation method rates, other info updated by IRS

■ CHANGES IN EFFECT FOR EXPENSES PAID ON OR AFTER OCT. 1, 2023

The IRS has released new rates for the high-low substantiation method. The updated rates took effect Oct. 1, 2023.

Employers may opt to use these rates, instead of the ones released by the General Services Administration, to reimburse employees for expenses incurred during business travel.

Here's the information included in IRS Notice 2023-68:

Increased per diem rates

The high rate – i.e., for travel to any high-cost locality – has increased from \$297 to \$309 per day. The meals and incidental expenses (M&IE) portion of that remains \$74.

The low rate – i.e., for travel to any other locality within the continental United States (CONUS) – has increased from \$204 to \$214 per day. The M&IE portion remains \$64.

These areas have been added to the high-cost localities:

- Yosemite National Park, CA
- Tampa/St. Petersburg, FL
- Atlanta

- Missoula, MT
- Saratoga Springs/Schenectady, NY
- Eugene/Florence, OR, and
- Montpelier, VT.

These localities have been removed:

- Los Angeles
- Durango, CO
- Portland, OR, and
- Vancouver, WA.

For 14 areas, the times of year they're deemed high-cost localities have changed.

Additional information

The IRS notice provided additional info related to per diem reimbursement as of Oct. 1, 2023.

First, for employers that want to reimburse employees for incidental expense only, that per-diem rate remains \$5, regardless of location.

Next, the special M&IE rates applicable to the transportation industry are:

- \$69 per day for travel within the CONUS, and
- \$74 per day outside the CONUS.

More info: www.irs.gov/pub/irs-drop/n-23-68.pdf

2 bills would expand health savings account features

Heads up: Two pieces of federal legislation aim to bring changes to health savings accounts (HSAs).

On Sept. 28, 2023 the House Ways and Means Committee approved both bills. Here's what changes have been proposed in each:

Changes in the works

The Bipartisan HSA Improvement Act of 2023 (H.R. 5688) would allow employees whose spouses have health flexible savings accounts (FSAs) to make HSA contributions. Also, it'd let employees convert their own

health FSA or health reimbursement arrangement funds into an HSA.

Under the HSA Modernization Act of 2023 (H.R. 5687), eligibility would be expanded for certain individuals, such as working seniors on Medicare; contribution limits would be increased to align with what someone might owe in total out-of-pocket expenses and deductibles; and spouses could contribute catch-up funds into the same HSA instead of having to establish separate accounts for catch-up contributions.

More info: tinyurl.com/hsa678

NEWS YOU CAN USE

■ NEW WAY TO ACCESS EFAST2 SYSTEM FOR 5500 FILING

Employers have more time to obtain *Login.gov* credentials for the EFAST2 filing system. The Dept. of Labor's Employee Benefits Security Administration moved the deadline to Dec. 31, 2023.

Signing in to EFAST2 by using the *Login.gov* credentials – which can also be used to sign in to other government sites – will streamline the process for users.

Note: If you used approved private software to file Form 5500, you generally won't need to access the EFAST2 filing system.

More info: www.dol.gov/newsroom/releases/ebsa/ebsa20230828

■ IRS: NO NEW ERC CLAIMS TO BE PROCESSED IN 2023

The IRS announced on Sept. 14, 2023, it stopped processing new claims for the employee retention credit (ERC) – effective immediately. The moratorium is in place at least through the end of 2023.

A substantial share of the claims being received were ineligible, the IRS explained in IR-2023-169. In addition, companies that have already filed ERC claims should know the standard processing goal has increased from 90 to 180 days.

More info: www.irs.gov/newsroom

■ EEO-1 REPORTING WINDOW OPENS AT END OF OCTOBER

Employers can start submitting the 2022 EEO-1 Component 1 report on Oct. 31, 2023, and the deadline is Dec. 5, 2023.

Certain private sector employers with 100 or more employees – and federal contractors with 50 or more – must submit the annual workforce demographics report.

More info: www.eeoc.gov/data/eo-1-data-collection

What do most employees want to be able to control? Survey explains

■ OTHER FINDINGS: 55% OF WORKERS LIVING PAYCHECK TO PAYCHECK

In Payroll, the workdays are packed and there's always another deadline approaching – whether it's the next payday or a report due date.

So, while being able to maintain control on the job is key for most employees, it's vital for Payroll practitioners.

What areas are most important for employees to have control over? A new study from MetLife reveals the answers:

- how I get work completed – 83%
- the type of work I do – 79%
- my daily work schedule – 79%
- where I work – 77%
- when I work – 75%, and
- with whom I work – 65%.

Employee care counts

The *Annual Employee Benefit Trends Study 2023* addressed other areas of interest to Payroll pros.

For example, you already know that employees depend on you

to produce accurate and timely paychecks. But the study shows how critical that is, with 55% of workers saying they're living paycheck to paycheck, up from 43% in 2022.

The MetLife report noted that pay/compensation is considered an *extrinsic* need, and you're apt to find that element in any job contract. But for employers to stand out in the talent marketplace, *intrinsic* needs must be met, too. That can include elements like professional growth and training.

In the survey, 58% of employees reported being satisfied with the professional growth and training opportunities their employer made available. That answer varied depending on the sector, with workers in the following sectors stating they were content with what was offered:

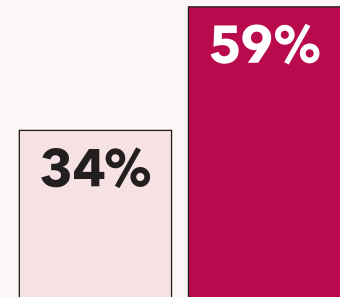
- information technology (74%)
- finance and insurance (71%)
- healthcare and social assistance (53%), and
- educational services (51%).

As the survey showed, employee care counts. After all, employees who

WHAT PAYROLL PROS TOLD US

Volunteering

Does your company offer paid time off for volunteering?



Yes - 2019

Yes - 2023

Source: Robert Half's 2024 Salary Guide

In the last five years, offering paid time off for volunteering has gained popularity. In fact, the percent of employers offering this perk has almost doubled.

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

feel cared for are more likely to feel engaged at work (92%), more likely to be loyal (65%) and more likely to be productive at work (56%). Employers get it: The top reason they're investing in benefits in 2023? Employee care.

More info: www.metlife.com/workforce-insights/2023-employee-benefit-trends

REAL-LIFE SCENARIO: DID THEY GET IT RIGHT?

Employer issued vacation payouts - were the payments on time or late?

A hotel chain with employees in California faced this real-life scenario:

In March of 2020, at the start of the COVID-19 pandemic, the hotel laid off some employees without giving them a specific return date.

A few months later, in June, the hotel terminated their employment and immediately paid them for their accrued, unused vacation time.

The question was: Should the employer have issued their vacation pay at the time they were laid off?

The employees said that's what should have happened. So, they sued, claiming the employer had violated the

California Labor Code – specifically, its provisions on prompt payments.

The hotel argued it wasn't required to pay the employees until the time of their termination. After all, that's when there was a complete severance of the employer-employee relationship.

A federal district court sided with the employer, but that decision was reversed on appeal. Here's why: California law requires that if an employer discharges an employee, any unpaid wages are due and payable immediately. But the law doesn't define "discharge." So, the appeals court turned to an opinion letter from a state regulatory agency. According

to that guidance, if a layoff lasts longer than the normal pay period and doesn't include a specific return date, it's a discharge that triggers the prompt payment provisions.

More bad news for the employer: The lower court was told to consider whether the violations were willful. If so, that'll mean penalties.

Checklist for compliance

- If state laws are silent, check for guidance from regulatory agencies.
- To be ready to issue final checks fast, research payment methods such as the FedNow Service.

Tracking local laws and regs

■ After Idalia, deadlines extended for businesses in many counties

Businesses in multiple states have extra time to file returns and pay taxes due to Hurricane Idalia.

- In Florida, the hurricane began Aug. 27, 2023, affecting more than 50 counties.
- All counties in South Carolina were impacted by Idalia when it hit on Aug. 29, 2023.
- Nearly 30 counties in Georgia felt the effects of the hurricane after it fell on Aug. 30, 2023.

The Federal Emergency Management Agency issued disaster declarations, allowing the IRS to grant tax relief. As a result, the affected counties have from the date of their disaster declarations to Feb. 15, 2024, for filing returns. Penalties on payroll and excise tax deposits due on or after the disaster dates, will be abated if the deposits were made by Sept. 11, 2023 (in Florida); Sept. 13, 2023 (in South Carolina); and Sept. 14, 2023 (in Georgia).

More info: www.irs.gov/newsroom/tax-relief-in-disaster-situations

■ New York City clarified its rules on providing sick and safe time

On Sept. 15, 2023, the New York City Dept. of Consumer and Worker Protection amended its rules related to its Earned Safe and Sick Time Act (ESSTA).

The amount of safe and sick time due to an employee depends on an employer's size. The final rule clarifies how employer size should be determined – the calculation is based on the employer's total number of employees nationwide.

The final rule also states that if an employee works, including by telecommuting, only while physically located outside New York City, the provisions under the ESSTA don't apply to him or her. That's the case even if the employer is located in the city.

More info: tinyurl.com/telecommute678

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:

When is remote inspection of Form I-9 documents allowed?

Q: Can we use different methods for inspecting new hires' Form I-9 documents: remote inspection for employees who will work off-site; and physical inspection for those who will work on-site, even as hybrid employees?

A: Yes, according to U.S. Citizenship and Immigration Services, as long as certain qualifications are met. First, your company will need to be enrolled in E-Verify and be in

good standing. Next, if you decide to offer the alternative procedure to employees at an E-Verify hiring site, you must do so consistently. In other words, you can't discriminate against anyone based on citizenship, immigration status or national origin. However, using different procedures for remote and on-site/hybrid employees isn't discriminatory. Bear in mind, if there's an I-9 audit, inspectors can ask for copies of documents employees presented remotely.

More info: www.uscis.gov/i-9-central/remote-examination-of-documents

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 6961, *Calendar Year Projections of Information and Withholding Documents for the United States and IRS Campuses*. Revision date: August 2023. Posted date: 9/21/23.
- Publication 6962, *Fiscal Year Return Projections for the United States: 2023-2030*. Revision date: June 2023. Posted date: 9/21/23.
- Publication 5802, *Divorce & Taxes Checklist*. Revision date: August 2023. Posted date: 9/25/23.
- Publication 1187, *Specifications for Electronic Filing of Forms 1042-S, Foreign Person's U.S. Source Income Subject to Withholding*. Revision date: August 2023. Posted date: 9/25/23.
- Notice 746, *Information About Your Notice, Penalty and Interest*. Revision date: October 2023. Posted date: 9/26/23.
- Publication 5164, *Test Package for Electronic Filers of Affordable Care Act Information Returns*. Revision date: October 2023. Posted date: 9/26/23.
- Publication 5258, *Affordable Care Act Information Returns Submission - Composition and Reference Guide*. Revision date: September 2023. Posted date: 9/28/23.

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!

CALIFORNIA

- **MINIMUM WAGE:** On April 1, 2024, employers in the fast food industry will need to pay employees at least \$20 per hour. That's due to AB 1228. In 2022, the average wage for these workers was \$16.21 per hour. As previously reported, the state's minimum wage for most employees will be \$16 per hour in 2024. **More info:** www.gov.ca.gov/2023/09/28/california-increases-minimum-wage-protections-for-fast-food-workers

ILLINOIS

- **FREELANCERS:** HB 1122, the Freelance Worker Protection Act, will take effect July 1, 2024. The law says that freelancers must be compensated in a timely manner. In addition, contracts between a hiring party and a freelance worker must be in writing. The written contract must include: contact info for both parties; an itemization of all products and services to be provided, including rate and method of compensation; the date on which payments will be made (no later than 30 days after the products or services are provided); and the date by which the freelance worker must submit a list of products or services rendered. Individuals covered by the law are those paid \$500 or more, either in a single contract or when aggregated with all contracts during the immediately preceding 120 days. **More info:** ilga.gov/legislation/default.asp

MAINE

- **E-FILING:** As in the past, employers that must file

their federal W-2s and 1099s electronically must file those forms with the state that way, too. In a recent *Maine Tax Alert*, Maine Revenue Services stated that the new, lower e-filing threshold set by the IRS for tax year 2023 filings will apply on the state level as well. That new federal threshold is 10 returns in aggregate for almost all federal returns, including W-2s and 1099s. **More info:** www.maine.gov/revenue/sites/maine.gov/revenue/files/inline-files/ta_aug2023_vol33_iss9.pdf

MARYLAND

- **EARNED WAGE ACCESS:** On Aug. 1, 2023, the Maryland Office of Financial Regulation issued a Consumer Advisory. It covered earned wage access (EWA) products and their potential risks. The risks include: 1) an increased reliance on EWA to meet financial obligations and 2) an incomplete understanding of the cost of EWA. As explained in the Consumer Advisory, EWA allows employees to be able to access their wages before their scheduled pay date. Employers that offer EWA may use a third party to deduct the amount the employee receive early along with any associated fees or costs from the employee's next paycheck. **More info:** www.labor.maryland.gov/finance/advisories/advisory-earnedwageaccess.pdf

RHODE ISLAND

- **WAGES:** When the Rhode Island Payment of Wages Act takes effect on Jan. 1, 2024, it'll be a felony if an employer knowingly and willfully fails to pay wages owed and the amount exceeds \$1,500. Also, employers in the construction industry that knowingly and willfully misclassify workers as independent contractors can be charged with a felony if certain conditions are met, such as if the amount owed

to the individual exceeds \$1,500. **More info:** webserver.rilin.state.ri.us/BillText23/HouseText23/H5902Aaa.htm

TEXAS

- **PREEMPTION:** HB 1217 precludes municipalities or counties from adopting an ordinance, order, rule or policy in a field that's already covered by the state's labor code unless a state law explicitly allows such an ordinance. **More info:** capitol.texas.gov/tlodocs/88R/billtext/pdf/HB021271.pdf

VIRGINIA

- **INTERNAL REVENUE CODE:** Due to HB 2193 and SB 1405, the state is conforming to the Internal Revenue Code (IRC) on a rolling basis – i.e., the state will immediately adopt most federal changes to the IRC. **More info:** tinyurl.com/virginia678

THE LIGHTER SIDE

Is there an aspect of the payroll field you'd like to learn, but you've been hesitating? If now's the time to take the leap, let Dorothy Hoffner be your inspiration.

At 104, she decided to go skydiving, parachuting 13,500 feet to the ground. As a matter of fact, it wasn't her first jump. The Chicago woman took her first leap at 100.

This time, Hoffner broke a world record as the oldest person ever to skydive, pending verification from Guinness World Records. Currently, the record is held by a 103-year-old Swedish woman.

Hoffner is already looking to the future. Next adventure? A hot air balloon ride, she says.

Cite: AP, "Chicago Woman, 104, Skydives from Plane, Aiming for Record as the World's Oldest Skydiver," 10/3/23.