

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™

November 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

- **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.
- **Nov. 15, 2023:** Deposit taxes for payroll on Nov. 8, 9, 10.
- **Nov. 17, 2023:** Deposit taxes for payroll on Nov. 11, 12, 13, 14.
- **Nov. 22, 2023:** Deposit taxes for payroll on Nov. 15, 16, 17.
- **Nov. 27, 2023:** Deposit taxes for payroll on Nov. 18, 19, 20, 21.

MONTHLY DEPOSITORS

- **Nov. 15, 2023:** Deposit taxes for payments made during October 2023.
- **Dec. 15, 2023:** Deposit taxes for payments made during November 2023.

ALL EMPLOYERS

- **Jan. 31, 2024:** File Form 941 for Q4. Note: If you properly deposited taxes on time and in full, you have until Feb. 12, 2024, to file.

SSA announced Social Security taxable wage base for 2024

■ *Employers, employees to pay more than \$10K in tax*

The SSA has announced the 2024 Social Security taxable wage base. Next year's number will increase to \$168,600 – that's \$8,400 more than the current \$160,200.

The Social Security tax, as set by Congress, will remain 6.2% for employees and employers.

That means if an employee earns \$168,600 or more next year, you'll withhold \$10,453.20.

Of course, your company will also pay a maximum of \$10,453.20 per person in Social Security tax.

The 1.45% Medicare portion of FICA is unchanged.

Same goes for the 0.9% Additional Medicare Tax (AMT). The AMT

should be withheld if someone's earnings exceed \$200,000 (\$250,000 for married couples filing jointly).

Plus, updated earnings limits

For individuals who've begun to receive Social Security retirement benefits but won't reach retirement age during 2024, the SSA has released the updated limit on how much they can earn per year without cuts.

The 2024 limit is \$22,320 (up from \$21,240). For every \$2 earned above the limit, SSA will deduct \$1 from his or her benefit payments.

As for folks who've begun to receive retirement benefits from the

(Please see Wage base ... on Page 2)

Multifactor authentication now required for EFTPS

The IRS recently made changes to the Electronic Federal Tax Payment System (EFTPS).

On Oct. 19, 2023, the IRS began requiring multifactor authentication (MFA) to access EFTPS.

MFA provides an additional layer of security and protects EFTPS users against unauthorized access threats, the IRS said in a notice.

What to expect

Once you log onto the EFTPS site, you'll be redirected to a separate page. There, you'll be prompted to register and/or authenticate with:

- *ID.me*, or
- *login.gov*.

Payroll practitioners who use SSA's Business Services Online will recognize these options for authentication.

After completing that step, you'll be redirected to EFTPS to input your employer identification number or Social Security number; personal identification number; and password.

The changes were put in place by Executive Order (EO) 14028. Issued in 2021, the EO called for improvements to the nation's cybersecurity.

More info: www.eftps.gov/eftps/direct/Home/WhatNew.page

Court: Employer must provide status reports to prove FLSA compliance

■ DEPT. OF LABOR INVESTIGATED ITS PAY PRACTICES FROM 2019 TO 2022

What's the reason one employer has to prepare status reports on its ongoing compliance with the Fair Labor Standards Act (FLSA)?

It misclassified 80 employees as independent contractors.

As a result of that violation, Parishes Supportive Living Inc. also has to retain a third-party auditor that'll review its payroll and pay practices for three years.

Then there's the payment it's required to make to the affected employees: \$630,000 in back wages and liquidated damages.

The home healthcare agency operates in two locations: Metairie and Hammond, LA.

When the Dept. of Labor did an investigation of the employer's pay practices from December 2019 to

December 2022, that's when the FLSA violations surfaced.

Then in the summer of 2023, a federal district court issued a consent judgment.

Overtime on the line

Beware: Some workers may say they prefer to be classified as independent contractors.

But employers still bear the responsibility of making sure they're classified correctly so that, for example, they receive overtime if they put in more than 40 hours in a workweek. Beyond overtime, the DOL will also want to ensure they're being paid the proper benefits.

More info: www.dol.gov/newsroom/releases/whd/whd20230907-0

Wage base ...

(continued from Page 1)

SSA and will reach retirement age in 2024, the limit is \$59,520 (up from \$56,520). For every \$3 someone earns above that limit, SSA will reduce that person's benefits by \$1.

As for any employees who've already reached the full retirement age, SSA's limit regarding how much they can earn on the job is lifted.

Reminder: The Social Security Act defines *wages* as all remuneration for employment. In addition to salaries, that includes, for example, bonuses, commissions and vacation pay.

Other changes

SSA's announcement, on Oct. 12, 2023, also included updates affecting employees whose earnings aren't taxable for Social Security purposes until they reach a certain amount.

For domestic employees, that amount is \$2,700 (up from \$2,600). For election officials and election workers it's \$2,300 (up from \$2,200).

More info: tinyurl.com/hwagebase679

COMPLIANCE CHECK

■ REPAIR COMPANY HAD 'BROKEN' PAY PRACTICES

J&K Repair Services, an HVAC and plumbing repair company in Las Vegas, paid straight-time rates to 60 workers even when their hours exceeded 40 in a workweek. So, the Dept. of Labor said the company had to pay:

- \$60,444 in back wages
- \$60,444 in liquidated damages, and
- \$30,000 in civil money penalties.

More info: www.dol.gov/newsroom/releases/whd/whd20230920-0

■ AGRICULTURAL EMPLOYER IN CALIFORNIA OWED \$1M

Rancho Nuevo Harvesting Inc., based in Santa Maria, CA, violated the multiple requirements of the H-2A agricultural worker program. For example, under Sec. H-2A of the Immigration and Nationality Act, employers must offer work to employees for at least 75% of the workdays in the contract period.

Because the recent H-2A violations were similar to those in 2020 and 2023, the penalties are higher. The employer owed:

- \$475,211 in penalties, and
- \$558,298 in back wages to 649 farmworkers.

More info: www.dol.gov/newsroom/releases/whd/whd20230919-0

■ PAYROLL RECORDS DIDN'T CONTAIN COMPLETE INFO

Sunrise Residential Care Services LLC in Pittsburgh misclassified two workers as independent contractors. Plus, its payroll records lacked details on hours worked and pay rates.

It must pay:

- \$49,310 in back wages, and
- \$49,310 in liquidated damages.

More info: www.dol.gov/newsroom/releases/whd/whd20230921

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

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Keep Up to Date on Payroll (ISSN 1076-3309), issue date November 1, 2023, Vol. 30 No. 679, is published semi-monthly except once in December (23 times a year).

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DOL increases minimum wage for federal contractors, subcontractors

■ RECENT COURT RULING IMPACTS CONTRACTS IN SOME STATES

Certain federal contractors and subcontractors will have a new minimum wage, effective Jan. 1, 2024.

That's according to two notices the Dept. of Labor (DOL) released, both on Sept. 28, 2023. Here's a recap:

2 notices from DOL

As the first notice explains, under Executive Order (EO) 14026, people performing work on or in connection with covered federal contracts must be paid at least \$17.20 per hour in 2024.

You may recall, President Biden issued the EO in 2021, setting a \$15-per-hour minimum wage for new federal contracts, effective Jan. 30, 2022. EO 14026 also stated the wage should be adjusted annually based on the Consumer Price Index. Accordingly, it went up to \$16.20 on Jan. 1, 2023.

Plus, the EO included a phase-out of the cash wage for tipped workers – from \$10.50 per hour to \$13.75 per hour and then gone in 2024.

Meanwhile, legal challenges to the EO's validity began shortly after Biden released it, with the states of Texas,

Louisiana and Mississippi suing in a Texas federal court. They argued Biden lacked the authority to issue it. The court just ruled in their favor on Sept. 26, 2023. The ruling is likely to be appealed, but for now, the DOL won't enforce the EO's minimum wage requirements in Texas, Louisiana or Mississippi. It's wait-and-see on some legal challenges pending in other jurisdictions as well.

The second notice DOL released on Sept. 28, 2023, pertains to an earlier EO, issued by President Obama.

EO 13658 covers the same types of contracts as EO 14026. They are:

- procurement contracts for construction covered by the Davis-Bacon and Related Acts
- service contracts covered by the Service Contract Act
- concessions contracts, and
- certain contracts related to federal property or lands.

Notably, EO 13658 deals with contracts entered into, renewed or extended before Jan. 30, 2022. Under this EO, the hourly minimum wage will increase from \$12.15 to \$12.90 in 2024. The rate for tipped employees will go up from \$8.50 to \$9.05 per hour.

More info: *Federal Register*, 9/28/23.

Federal appeals court: ACA penalty counts as a tax

Owing a penalty under the Affordable Care Act (ACA) is the same as owing a tax, a federal appeals court told one company recently.

Here's what happened:

More than \$1M owed

The company received letters from the IRS in 2019. The letters explained that one or more employees had been enrolled in a qualified health plan and a premium tax credit was allowed. That was a violation of Sec. 4980H of the ACA. Therefore, Optimal Wireless LLC owed penalties – \$395,640 for

2016 and \$736,383 for 2017. Optimal tried to go the legal route, arguing that because the IRS and Dept. of Human and Human Services skipped certain procedural requirements, it didn't owe a penalty for either year.

The District of Columbia Circuit Court of Appeals ruled against the company, as the lower court had, saying a penalty is a tax for purposes of Anti-Injunction Act. Under that federal law, courts don't have jurisdiction over lawsuits that seek to restrain the collection of a tax.

More info: *bit.ly/penalty679*

■ PROPOSED OT RULE: MORE TIME NEEDED TO COMMENT

In a letter to the Dept. of Labor, 107 organizations asked for additional time to comment on the agency's recently proposed changes to the overtime regs. Comments are due by Nov. 7, 2023.

However, the letter explained, a 60-day comment period isn't long enough, given the magnitude of the rule that includes a nearly 55% increase in the minimum salary threshold in 2024 and automatic updates after that.

We'll keep you posted.

More info: *protectingopportunity.org/latest-news*

■ CLAIMS FOR THIS TAX CREDIT CAN BE WITHDRAWN NOW

Certain companies that filed an Employee Retention Credit (ERC) claim have the option to withdraw that claim, the IRS said Oct. 20, 2023.

Withdrawn claims will be treated as if they were never filed, but all of the following must apply:

- You used 941-X or other adjusted employment return.
- The only adjustment on the return was claiming the ERC.
- You want to withdraw the entire amount of the ERC.
- The IRS hasn't paid the claim (or you haven't cashed the check).

Go to *IRS.gov/withdrawmyerc* and follow the instructions to proceed.

More info: *bit.ly/erc679*

■ FORMS 1094-C, 1095-C: USE THE AIR SYSTEM TO E-FILE

More employers will be required to electronically file the 1094-C and 1095-C for tax year 2023 due to the lower e-filing threshold.

For these forms, you'll use the Affordable Care Act Information Returns (AIR) system. It's one of three IRS systems for e-filing.

More info: *IRS.gov/AIR*

Do employers offer the benefits and perks workers want? Yes, sometimes

■ NEW SURVEY REVEALS WIDEST AND NARROWEST GAPS IN THINKING

As open enrollment time approaches for many companies, here's a question to consider: How well do your employer-provided benefits and perks match what employees want?

You'll find information about what employees are thinking in the *Robert Half Benefits and Perks 2024 Salary Guide*.

Looking at the numbers

Health insurance is both employees' most desired benefit and the one employers are most likely to provide. In fact, it had the lowest differential in percentage points – 82% and 88%, respectively.

Another benefit with a low percentage-point differential was paid time off (PTO), with 73% of employees surveyed saying they wanted PTO as a benefit and 84% of employers offering it.

A retirement savings plan interested 55% of workers. Meanwhile, 85%

of companies allowed employees to participate in a plan.

On the other hand, only 12% of respondents to the Robert Half survey said they wanted vision insurance and 82% of companies made that available – that was the biggest gap (70 percentage points) between employees and employers.

Not too far behind was an employee assistance program (EAP). A mere 7% of workers were wishing they had an EAP, compared to 72% of employers offering it. Leave time fared about the same, with 13% of employees wanting it and 74% of companies providing it.

Finally, dental insurance was less popular among workers (26%) than among companies (78%).

The 2024 Salary Guide also looked at perks.

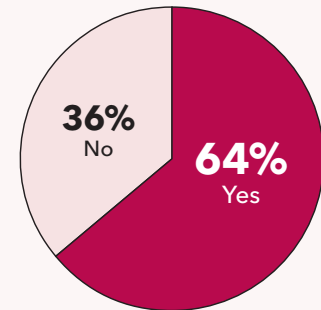
Here's how answers from employees and employers compared:

- flexible work schedules – 77% vs. 78%
- paid parental leave – 20% vs. 72%
- remote work options – 64% vs. 70%

WHAT PAYROLL PROS TOLD US

4-day workweeks

Are you interested in your employer offering four-day workweeks?



Source: MetLife's Annual Employee Benefit Trends Study 2023

While 64% of workers overall said they'd like to try a four-day workweek, that number was even higher – 67% – among workers with office and desk-based jobs.

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

- paid time off for volunteering – 19% vs. 59%
 - company-paid meals and snacks – 21% vs. 57%
 - remote work business allowances – 43% vs. 54%, and
 - employee discounts – 29% vs. 53%.
- More info: www.roberthalf.com

REAL-LIFE SCENARIO: DID THEY GET IT RIGHT?

Direct deposit reversal of final paycheck led to retaliation claim

A software company based in Arlington, VA, faced this real-life scenario:

In a complaint to HR, a female employee said her supervisor had discriminated against her based on her gender, a violation of Title VII of the Civil Rights Act of 1964.

Furthermore, she claimed that after she filed the complaint, her employer retaliated against her twice – once by firing her and again by reversing the direct deposit of her final paycheck.

After looking at the facts of her termination, the court said a jury would have to decide whether

discrimination and retaliation were the reasons behind the decision to fire her. After all, the company's facts kept shifting, the court pointed out.

As for the employee's claim the direct deposit reversal was retaliatory, here the court granted the company's motion for summary judgment.

According to the employee, the reversal occurred to take the money from her for work she'd performed.

Not so, the company said. Rather, the check had mistakenly included pay for days she didn't work – i.e., dates that occurred after her termination. As soon as the check reflected the

right amount, it quickly got into the employee's hands.

Also, as a plus for the company, a third party handled the distribution of paychecks, including her final check, and it had no knowledge of the gender discrimination complaint she'd made to the HR department.

Checklist for compliance

- Find out whether your state requires final paychecks to be paid using a specific method.
- Encourage communication among key personnel regarding employment termination.

Tracking local laws and regs

■ Voters in Oregon city weigh in on creation of new payroll tax

On Nov. 7, 2023, voters will weigh in on the City of Salem Payroll Tax Referendum.

This would be an employee-paid tax on wages earned within the city. However, minimum wage workers would be exempt from the tax. The funds would go toward funding city services such as streets; public infrastructure; parks; and police, fire and emergency medical response.

More info: www.cityofsalem.net/Home/Components/News/News/857/15

■ Saint Paul, MN, minimum wage going up based on business size

Next year in Saint Paul, MN, minimum wage rates will increase.

The rates are based on business size as follows:

- 10,001 or more employees – \$15.57 per hour effective Jan. 1, 2024 (up from \$15.19)

- 101 to 10,000 employees – \$15.57 per hour effective July 1, 2024 (up from \$15)
- six to 100 employees – \$14 per hour effective July 1, 2024 (up from \$13)
- five or fewer employees – \$12.25 per hour effective July 1, 2024 (up from \$11.50).

More info: tinyurl.com/saintpaul679

■ Ready for higher minimum wage rates in Minneapolis for 2024?

Minneapolis has announced an increase to its minimum wage rates. For large employers (those with more than 100 employees) the current rate is \$15.19. For small employers (those with 100 or fewer employees), the current rate is \$14.50 per hour.

Regardless of size, the rate is going up to \$15.57 per hour – for large employers, that'll occur on Jan. 1, 2024, and for smaller employers, it'll happen on July 1, 2024.

More info: minimumwage.minneapolismn.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:

Keeping info safe: What are the various methods of phishing?

Q: What are the different types of phishing that scammers might use in an attempt to obtain payroll data and other sensitive info?

A: During its Security Summit, held in the summer of 2023 the IRS warned tax pros to be aware of evolving phishing scams – they're designed to steal sensitive information, such as passwords, bank account numbers, credit card numbers or Social Security

numbers. First, watch out for **phishing/smishing**. Phishing emails or smishing SMS/texts try to get you to click a link, fill out information or download a malware file. This type of scam often goes out to multiple people at a business. Second, beware of **spear phishing**. This scam singles out individuals with emails that are specialized and seem realistic. Third, don't fall for **whaling**. This is similar to spear phishing except the targets are individuals like Payroll pros with secure access to a lot of info.

More info: www.irs.gov/newsroom/security-summit

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 payroll-related forms and publications contains updates:

- Publication 1239, *Specifications for Electronic Filing of Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips*. Revision date: September 2023. Posted date: 9/28/23.
- Publication 5165, *Electronically Filing Affordable Care Act (ACA) Information Returns*. Revision date: September 2023. Posted date: 9/28/23.
- Publication 1436, *Assurance Testing System Guidelines for Modernized e-File Individual Tax Returns for Tax Year 2023*. Revision date: October 2023. Posted date: 9/28/23.
- Form 720, *Quarterly Federal Excise Tax Return*. Revision date: June 2023. Posted date: 10/2/23.
- Form 2290, *Heavy Highway Vehicle Use Tax Return*. Revision date: July 2023. Posted date: 10/2/23.
- Publication 5313, *Tax Exempt & Government Entities Program Letter*. Revision date: September 2023. Posted date: 10/2/23.
- Form 941-X, *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund*. Revision date: April 2023. Posted date: 10/2/23.
- Publication 5084, *Congressional Update*. Revision date: October 2023. Posted date: 10/3/23.

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!

ARIZONA

- **PREVAILING WAGE:** Employers in the state's heavy and highway construction industries are asked to participate in a survey on prevailing wage rates – it's going on from Sept. 15, 2023, through Jan. 15, 2024. The Davis-Bacon and Related Acts directs the Dept. of Labor to set prevailing wage rates. Specifically, data is sought on wages paid to construction workers on all heavy and highway construction projects occurring in Arizona between Oct. 1, 2022, and Dec. 29, 2023. **More info:** www.dol.gov/newsroom/releases/whd/whd20230918-0

COLORADO

- **UNEMPLOYMENT INSURANCE:** SB 232 is bringing changes to the state's unemployment compensation program. In 2024, the employer premium rate will be reduced – at the same time, a support surcharge rate will be added to employer tax rates. That surcharge amount will go toward the employment support fund, employment and training technology fund and benefit recovery fund. The surcharge amount won't be included in the calculation of an employer's annual experience rate and credit under FUTA (for Form 940 purposes). **More info:** leg.colorado.gov/bills/sb23-232

IOWA

- **UNEMPLOYMENT INSURANCE:** Iowa Workforce Development has a new website – in terms of both design and URL. So, for example, you'll notice the changes if you need to access the form

used to notify employees about unemployment insurance benefits – i.e., *Employer Notification to Employees of the Availability of Unemployment Compensation*. **More info:** workforce.iowa.gov

MASSACHUSETTS

- **TAX CREDITS:** New legislation, Chapter 50 of the Acts of 2023, brings changes that may prompt employees to adjust their state withholding. The first change is regarding the child and dependent tax credit. The two-dependent cap has been eliminated, and the credit has been raised from \$180 per dependent child, disabled adult or senior. For 2023, it's \$310, and starting in 2024, it'll be \$440. The second change is the earned income tax credit has been increased from 30% to 40% of the federal credit. **More info:** malegislature.gov/Laws/SessionLaws/Acts/2023/Chapter50

NEW HAMPSHIRE

- **BREAK TIME:** The state has enacted legislation, HB 358, which requires employers to offer breaks to nursing mothers so they can express breast milk. A 30-minute break should be provided for every three hours of work performed. The breaks don't need to be paid. This requirement pertains to employers will six or more employees, and it kicks in July 1, 2025. **More info:** legiscan.com/NH/text/HB358/id/2825719

NEW YORK

- **WAGE PAYMENTS:** You may need to change the method and frequency of certain employees' wage payments. That's because S5572 became law Sept. 15, 2023 – it'll take effect 180 days from that date. The legislation increases the earnings threshold for executive, administrative and professional employees to \$1,300 per week. Currently, the weekly threshold

is \$900. **More info:** www.nysenate.gov/legislation/bills/2023/S5572

WASHINGTON

- **PAID SICK LEAVE:** Under existing state law, an employee is entitled to use accrued paid sick leave starting on the 90th calendar day after his or her employment begins. Plus, SB 5111, which takes effect Jan. 1, 2024, modifies the requirements for covered workers who haven't yet reached the 90-day mark. Employers must pay these workers the balance of their accrued and unused paid sick leave at the time of their employment separation, and the payment must be made at the end of the established pay period. Who's covered? North American Industry Classification System (NAICS) Sector 23 workers, excluding NAICS code 236100 (residential building construction) workers. **More info:** app.leg.wa.gov/bi

THE LIGHTER SIDE

Purchasing an item for \$4 and reselling it for \$191,000? Not bad.

That's what happened to a woman from New Hampshire who bought a painting from a local thrift store. She displayed the work of art on her wall for a while and then placed it in her closet.

Only after she posted a photo of her \$4 thrift-store find did she realize its worth. Facebook friends told her to contact the Brandywine Museum in Chadds Ford, PA. As suspected, the painting was a long-lost work of N.C. Wyeth, one of four that he created in the early 1900s for a book called *Ramona*. With that news, she sold the artwork at auction, walking away with nearly 50,000 times what she paid – quite the ROI!

Cite: UPI, "Painting Bought for \$4 from New Hampshire Thrift Store Sells for \$191,000," 9/20/23.