

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™

December 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

- **Dec. 1, 2023:** Deposit taxes for payroll on Nov. 25, 26, 27, 28.
- **Dec. 6, 2023:** Deposit taxes for payroll on Nov. 29, 30; Dec. 1.
- **Dec. 8, 2023:** Deposit taxes for payroll on Dec. 2, 3, 4, 5.
- **Dec. 13, 2023:** Deposit taxes for payroll on Dec. 6, 7, 8.
- **Dec. 15, 2023:** Deposit taxes for payroll on Dec. 9, 10, 11, 12.
- **Dec. 20, 2023:** Deposit taxes for payroll on Dec. 13, 14, 15.
- **Dec. 22, 2023:** Deposit taxes for payroll on Dec. 16, 17, 18, 19.
- **Dec. 28, 2023:** Deposit taxes for payroll on Dec. 20, 21, 22.

MONTHLY DEPOSITORS

- **Dec. 15, 2023:** Deposit taxes for payments made during November 2023.
- **Jan. 16, 2024:** Deposit taxes for payments made during December 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.

Fringe benefit dollar amounts increasing for 2024, IRS says

■ *The numbers for one benefit are decreasing*

New numbers from the IRS will let you continue with more payroll system updates for 2024.

In Revenue Procedure 2023-34, the IRS provided the cost-of-living adjustments for fringe benefits.

Here are some highlights:

Making paycheck deductions

Currently, an employee can ask Payroll to deduct up to \$3,050 per year as a contribution to a health flexible spending account (FSA). That amount is going up to \$3,200 next year, the IRS said.

Your cafeteria plan may give employees a grace period or the chance to carry over unused FSA amounts (although not both). In the

case of carryovers, the limit for 2024 will be \$640 (up from \$610 this year).

You may be able to offer a qualified small employer health reimbursement arrangement (QSEHRA). As one prerequisite, you can't be an applicable large employer under the Affordable Care Act – i.e., you can't employ more than 50 full-time employees including full-time equivalent employees.

With a QSEHRA, the total amount of payments and reimbursements can't exceed \$6,150, or \$12,450 for family coverage (that's up from \$5,850 and \$11,800, respectively).

Starting in 2024, the monthly limit for qualified transportation fringe

(Please see Fringe benefit ... on Page 2)

IRS: Changes to forms W-2c and W-3c finalized

You work hard to prevent mistakes on Forms W-2. But if corrections can't be avoided, make sure you're using the recently updated versions of forms W-2c and W-3c.

The IRS stated during its November Payroll Industry Call that it'd finalized revisions to the forms during 2023.

It'd been years since the IRS made revisions – 2014 for Form W-2c and 2015 for Form W-3c. Here are some of the changes:

The 2023 versions of the forms

Form W-2c: You'll find a caution on the final page that's similar to

information on the first page – i.e., you can't print Copy A of the W-2c or W-3c from the IRS website in order to submit the forms to SSA. Reason: SSA won't be able to scan them.

Form W-3c: The form's instructions explain where to file paper forms if you're using the U.S. Postal Service. They go to SSA's Direct Operations Center (previously, it was the Data Operations Center). In a note, the IRS adds where to send the forms if you're using certified mail or an approved private delivery service and that you can see Publication 15 for details.

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

Ignoring 401(k) governing documents on forfeited funds cost company big

■ COMPANY OWED \$575,000 TO PLAN PARTICIPANTS – PLUS, PENALTIES

You know that when you're dealing with forfeited retirement plan funds, there are specific do's and don'ts to follow.

In Louisville, KY, a technology services provider ran into problems regarding the use of forfeited funds.

Sypris Solutions Inc.'s governing documents required that the company use forfeited funds to pay expenses for its 401(k) plans.

But that's not what happened from 2012 to 2015.

Instead, the company used the excess money to reduce employer contributions to the plans.

Of course, that was a benefit to the employer, in the form of financial savings.

Meanwhile, plan participants saw their plan account balances reduced

as expenses for the 401(k) plans were paid from plan assets.

In 2017, the Dept. of Labor (DOL) filed a complaint in federal court against Sypris Solutions. Earlier this year, a judge issued a consent order and judgment requiring the company to restore \$575,000 to the plan participants. Plus, the company will pay \$57,500 in penalties to the DOL.

Reg changes from IRS

Heads up: On Feb. 27, 2023, the IRS proposed regs pertaining to the use of forfeitures in qualified retirement plans.

If it's finalized, plan administrators would have 12 months from the end of the plan year to use or allocate defined contribution plan forfeitures.

More info: www.dol.gov/newsroom/releases/ebsa/ebsa20230928

Fringe benefit ...

(continued from Page 1)

benefits (QTFBs) will increase. With QTFBs, the aggregate exclusion for transportation in a commuter highway vehicle and any transit pass will be \$315 per month (now \$300). Likewise, for qualified parking, the monthly limit will be \$315 (now \$300).

For periodic payments received under qualified long-term care insurance contracts or under certain life insurance contracts, the amount of per diem benefit payments will be \$410 in 2024. That's a decrease from this year's amount of \$420.

If you have a qualified adoption program, the amount excludable from gross income will be \$16,810 (currently it's \$15,950).

That \$16,810 amount begins to phase out if the taxpayer has a modified adjusted gross income of more than \$252,150 (now, \$239,230). It's completely phased out at \$292,150 (now, \$279,230).

More info: www.irs.gov/pub/irs-drop/rp-23-34.pdf

COMPLIANCE CHECK

■ OVERTIME, RECORDKEEPING AND POSTER VIOLATIONS

FFT Restaurant Group LLC in Williamsburg, VA, paid kitchen staff straight-time rates instead of overtime. Plus, the company failed to keep accurate records of hours worked and to display the federal minimum wage poster.

For violating the Fair Labor Standards Act, the restaurant had to pay:

- \$50,034 in civil money penalties
- \$102,590 in back wages, and
- \$102,590 in liquidated damages

More info: www.dol.gov/newsroom/releases/whd/whd20231019

■ MORE THAN \$1M OWED FOR MEAL BREAK VIOLATIONS

Universal Protection Service LP in Seattle automatically deducted 45 minutes from 778 employees' wages for meal breaks but didn't adjust their hours when they worked during that time. As a result, the security provider owed:

- \$50,000 in civil money penalties
- \$549,947 in back wages, and
- \$549,947 in liquidated damages

More info: www.dol.gov/newsroom/releases/whd/whd20231020

■ TERMINATED EMPLOYEE WHO QUALIFIED FOR FMLA LEAVE

Owens Corning Roofing and Asphalt in Portland, OR, violated the Family and Medical Leave Act (FMLA) when it fired an employee whose absenteeism was related to a FMLA-qualifying serious health condition. The company directed the worker to provide a medical recertification earlier than allowed. For the mistakes, the company had to pay \$38,398 in back wages.

More info: www.dol.gov/newsroom/releases/whd/whd20231031-0

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Questions linger about box 12 even as TY 2023 deadline approaches

■ W-2 UNCERTAINTY IS RELATED TO LOWER E-FILING THRESHOLD

The lower 10-return threshold for who must electronically file Forms W-2 has created some new questions about box 12.

As the end of 2023 draws near, employers are anxiously awaiting the answers.

Here are the details:

Entering code DD

Back in 2012, the IRS released guidance to clarify some of the requirements under the Affordable Care Act (ACA).

Of course, the ACA requires employers to report the cost of coverage under an employer-sponsored group health plan, and that's done using Code DD in box 12.

But there's an exception.

In 2012-9, the IRS stated if an employer had fewer than 250 W-2s for the preceding calendar year (e.g., TY 2011), the employer wouldn't be required to use Code DD on W-2s for the current year (e.g., TY 2012).

At the November IRS Payroll Industry Call, the IRS took a question

about whether that exception would be in effect for the upcoming filing season. In other words, if an employer filed fewer than 250 TY 2022 W-2s, will that employer be required to use Code DD on TY 2023 forms?

The IRS didn't have an answer at the time of the meeting. We'll monitor any developments for you.

Exceeding 4 codes

For employers aiming to stay below the 10-return threshold, another box 12 question has arisen.

This one deals with the fact that on the paper W-2, box 12 can hold only four codes. If there's a need for more codes than that, employers use an additional paper W-2 and include the overflow entries for box 12 there. What's not clear in the above scenario is whether that'd count as one W-2 or two.

More to the point, would that subsequent W-2 count toward the 10-return e-filing threshold?

At SSA's Fall 2023 Semi-Annual Meeting, the agency noted that IRS counsel is considering that question. We'll keep tabs on this issue, too.

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

'Don't wait!' Ensure you're able to e-file TY '23 W-2s

If you haven't yet gone through the new authentication and registration process for Business Services Online (BSO), the SSA has some advice for you: "Don't wait."

During its Fall 2023 Semi-Annual Meeting, the SSA went over what's new for tax year 2023.

The user ID and password you used for past tax years will no longer work to log in to BSO. Rest assured: Your BSO account still exists and will be available after you verify your identity.

If you have a Social Security account (such as *my Social Security*)

created before Sept. 18, 2021, you can use that username and password to login to BSO. Otherwise, you'll need either a *Login.gov* or *ID.me* account. You may already have one of those accounts, given that they're also now needed to log in to the Electronic Filing Tax Payment System.

Log in through BSO page

A word of caution: The sign in screen for SSA's business and personal accounts look the same.

So, go to the BSO page to log in.

More info: www.ssa.gov/employer

NEWS YOU CAN USE

■ LAST CHANCE TO SUBMIT FORMS W-2 FOR TY 2022

If you have any outstanding Forms W-2 to submit for tax year 2022, get them in by Friday, Dec. 1, 2023, SSA told employers during the November IRS Payroll Industry Call.

After that, the system will be down to prep for TY 2023. Employers will be able to start submitting W-2s for TY 2023 on Monday, Dec. 4, 2023.

More info: www.ssa.gov/employer

■ NO MAJOR CHANGES TO FORM 1094-C, FORM 1095-C

The forms you'll need for reporting under the Affordable Care Act (ACA) have been released with no major changes. That includes Form 1094-C and Form 1095-C.

In the instructions for those forms, the IRS reminds employers that the electronic-filing threshold for information returns has been lowered to 10 returns - and that includes ACA forms.

Also, note these deadlines for filing forms 1094-C and 1095-C:

- Feb. 28, 2024, if you're filing on paper, and
- April 1, 2024, if you're filing electronically. (Note: March 31, 2024, is a Sunday.)

More info: www.irs.gov/pub/irs-pdf/i109495c.pdf

■ DHHS ANNOUNCED HIGHER PENALTIES STARTING IN 2023

The Dept. of Health and Human Services (DHHS) released a final rule which took effect Oct. 6, 2023.

It contained the annual inflation adjustments for civil monetary penalties. For example, the maximum penalty for misuse of information in the national directory of new hires has increased from \$1,687 to \$1,818.

More info: www.govinfo.gov/content/pkg/FR-2023-10-06/pdf/2023-22264.pdf

Is your state's UI taxable wage base going up, down or holding steady?

■ AMOUNT OF EMPLOYEES' WAGES THAT'LL BE SUBJECT TO THE TAX

As we get ready to head into 2024, here are the taxable wage bases that Payroll needs to make sure unemployment insurance taxes are correctly paid.

Check this list – you'll find changes indicated in bold:

AL – \$8,000 (\$8,000)

AK – TBA (\$47,100)

AZ – TBA (\$8,000)

AR – \$7,000 (\$7,000)

CA – \$7,000 (\$7,000)

CO – **\$23,800** (\$20,400)

CT – **\$25,000** (\$15,000)

DE – TBA (\$10,500)

FL – \$7,000 (\$7,000)

GA – TBA (\$9,500)

HI – TBA (\$56,700)

ID – TBA (\$49,900)

IL – TBA (\$13,271)

IN – \$9,500 (\$9,500)

IA – **\$38,200** (\$36,100)

KS – \$14,000 (\$14,000)

KY – TBA (\$11,100)

LA – TBA (\$7,700)

ME – \$12,000 (\$12,000)

MD – TBA (\$8,500)

MA – \$15,000 (\$15,000)

MI – \$9,500 (\$9,500)

MN – TBA (\$40,000)

MS – \$14,000 (\$14,000)

MO – **\$10,000** (\$10,500)

MT – **\$43,000** (\$40,500)

NE – \$9,000 (\$9,000)

NV – **\$40,600** (\$40,100)

NH – \$14,000 (\$14,000)

NJ – **\$42,300** (\$41,100)

NM – TBA (\$30,100)

NY – **\$12,500** (\$12,300)

NC – TBA (\$29,600)

ND – TBA (\$40,800)

OH – \$9,000 (\$9,000)

OK – TBA (\$25,700)

OR – TBA (\$50,900)

PA – \$10,000 (\$10,000)

RI – TBA (\$28,200)

SC – \$14,000 (\$14,000)

SD – \$15,000 (\$15,000)

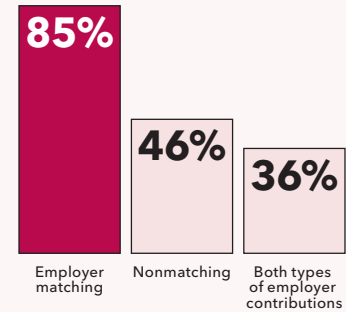
TN – TBA (\$7,000)

TX – \$9,000 (\$9,000)

WHAT PAYROLL PROS TOLD US

Retirement plan contributions

What type of retirement plan contributions do you offer?



Source: Vanguard, The Changing Workforce Environment, 2023

Offering an employer match for retirement plan contributions is very common. It's an effective way to encourage employees to make elective salary deferrals.

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

UT – TBA (\$44,800)

VT – **\$14,300** (\$13,500)

VA – \$8,000 (\$8,000)

WA – TBA (\$67,600)

WV – TBA (\$9,000)

WI – \$14,000 (\$14,000)

WY – **\$30,900** (\$29,100)

More info: payroll.org

REAL-LIFE SCENARIO: DID THEY GET IT RIGHT?

Employees said they weren't correctly paid for legal holidays

A municipality in West Virginia faced this real-life scenario:

The state's code required the city to provide extra compensation to firefighters for days the state had deemed legal holidays. However, 54 current and former firefighters said the city didn't pay them correctly for holidays – and they sued.

For the sake of public safety, at least some firefighters had to work on legal holidays. To make up for this, the West Virginia Code said employers had to provide them with either extra pay or time off for each legal holiday – the municipality chose the latter. The code further stated the amount of time

should be equal to the hours worked during the holiday or, if the holiday fell on a firefighter's regular scheduled day off, for the hours that person would have worked.

Problem was, the city didn't calculate the amount of time off to be granted them based on their:

- actual hours worked that may have been eight hours or 16 hours depending on their start and end times within the 24-hour legal holiday period, or
- scheduled time off in that period.

Rather, it compensated them as it did other city employees based

on a 12-hour day – i.e., the firefighters received 156 hours at the beginning of each calendar year for legal holidays (13 holidays multiplied by 12 hours). Ultimately, the state supreme court ruled in the firefighters' favor, saying the city's calculations were wrong and they deserved back wages.

Checklist for compliance

- Each year-end, double-check whether any legal holidays have been added on the federal, state or local level.
- Even if you've used the same calculations for holiday pay for a while, it's worth confirming you're in compliance with state laws.

Tracking local laws and regs

■ Minnesota city amends earned sick and safe time ordinance

The earned sick and safe time ordinance in Bloomington, MN, has been amended.

For one thing, the definition of *family member* has changed. The city's definition now matches what's written in the state's earned sick and safe time law. Another change? Employees no longer have to wait 90 days before they can use leave.

The amendments will take effect Jan. 1, 2024.

More info: www.bloomingtonmn.gov

■ 5 days of PTO plus 5 days of sick time required here

The Chicago Paid Leave and Paid Sick and Safe Leave Ordinance, passed by the Chicago City Council Nov. 9, 2023, says employers must provide up to five days of paid time off (PTO) and five days of sick time.

Starting Jan. 1, 2024, both types of leave will begin to accrue, the rate for

each being one hour for every 35 hours worked. Leave should accrue in increments of at least an hour.

The annual cap for both the PTO and sick leave will be 40 hours – i.e., five days.

A notice informing employees of their rights under the ordinance must be included with the first paycheck issued to an employee and then each year with a paycheck issued within 30 days of July 1.

More info: www.chicago.gov/city/en/depts/mayor/press_room/press_releases.html

■ Minimum wage increasing in these 2 Arizona cities

On Jan. 1, 2024, these two Arizona cities will require higher minimum wage rates:

- Flagstaff – \$17.40 (from \$16.80), and
- Tucson – \$14.25 (from \$13.85).

More info: www.flagstaff.az.gov/3520/Minimum-Wage; www.tucsonaz.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:

IRS hasn't processed our 941 yet, how should we proceed?

Q: We filed a Form 941 that the IRS hasn't processed yet. Should we file a duplicate return?

A: On Nov. 9, 2023, the IRS reported that it had 1.4 million unprocessed Forms 941. The backlog that began during the pandemic continues, but it's decreased significantly – as little over a year ago, 4.6 million hadn't yet been processed. The IRS explained that if you filed your Form 941 electronically and

received an acknowledgment, you don't need to take any other steps. You *shouldn't* file a second return, the IRS further clarified. Of course, if the IRS requests info on the return, be sure to promptly respond. Otherwise, it's just a matter of waiting – the forms are processed in the order received. On a related note, at the start of November, the IRS had a backlog of 961,000 Forms 941-X, some of which can't be dealt with until the related 941s are processed.

More info: www.irs.gov/newsroom/irs-operations-status-of-mission-critical-functions

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

This list of Payroll-related publications contains updates.

- Form 1042-T, *Annual Summary and Transmittal of Forms 1042-S*. Revision year: 2023. Posted date: 10/10/23.
- Instructions for Form 8027, *Employer's Annual Information Return of Tip Income and Allocated Tips*. Revision year: 2023. Posted date: 10/12/23.
- Publication 5078, *Assurance Testing System Guidelines for Modernized e-File Business Submissions*. Revision date: October 2023. Posted date: 10/13/23.
- Notice 931, *Deposit Requirements for Employment Taxes*. Revision date: September 2023. Posted date: 10/31/23.
- Form 4137, *Social Security and Medicare Tax on Unreported Tip Income*. Revision year: 2023. Posted date: 10/18/23.
- Instructions for Form 1095-A, *Health Insurance Marketplace Statement*. Revision year: 2023. Posted date: 10/18/23.
- Form 945, *Annual Return of Withheld Federal Income Tax*. Revision year: 2023. Posted date: 10/19/23.
- Instructions for Form 945, *Annual Return of Withheld Federal Income Tax*. Revision year: 2023. Posted date: 10/20/23.

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

- **EITC:** Now employers have another option for delivering the earned income tax credit (EITC) notice to employees, which they must still do at the same time – or one week before or after – they distribute Forms W-2 or Forms 1099. Thanks to new legislation, AB 1355, employers can send the EITC notice through email to an email account of the employee's choosing. The format can be PDF, JPEG or other digital image file type. The employee must opt in to the receipt of electronic statements or materials and must do so in writing or by electronic acknowledgment. **More info:** bit.ly/california681

MARYLAND

- **FAMILY, MEDICAL LEAVE:** Under the state's new Family and Medical Leave Insurance State Plan, the contribution rate will be 0.90% of covered wages up to the Social Security wage base. That rate will be equally divided between employees and employers – i.e., 0.45% for each. For employers participating in the state plan, contributions will be made on wages paid to employees starting Oct. 1, 2024. **More info:** labor.maryland.gov

MINNESOTA

- **MINIMUM WAGE:** On Jan. 1, 2024, the minimum wage rate will increase based on business size. For large employers (those with annual gross revenues of at least \$500,000), it'll be \$10.85, up from \$10.59. For smaller employers (those with annual gross revenues

less than \$500,000), the rate will be \$8.85, up from \$8.63. In addition, both the training and youth minimum wage rates will be \$8.85. **More info:** dli.mn.gov/news/minimum-wage-rates-adjusted-inflation-jan-1-2024

- **SICK TIME:** To comply with the new sick and safe time law, employers will need to distribute an employee notice. The Minnesota Dept. of Labor and Industry has provided a sample notice employers can use to inform employees of the paid leave. As the notice explains, employees must accrue a minimum of one hour of earned sick and safe time for every 30 hours they work, up to at least 48 hours per year. The sample notice includes guidance for employers as they're tailoring the notice to their specific situation. For example, an employer that offers a more generous accrual system or a front-loading system, could edit the notice to indicate that. **More info:** www.dli.mn.gov/sites/default/files/pdf/ESST_sample_notice.pdf

MONTANA

- **MINIMUM WAGE:** The Dept. of Labor and Industry announced that the minimum wage will increase from \$9.95 per hour to \$10.30 per hour. The change will take effect Jan. 1, 2024. **More info:** erd.dli.mt.gov/labor-standards
- **WAGES:** As a reminder, a law from 2021 (SB 399) will take effect on Jan. 1, 2024. At that time, the definition of *wages* for state income tax purposes will no longer exclude tips and gratuities. **More info:** leg.mt.gov/bills/2021/billpdf/SB0399.pdf

NEW YORK

- **PAID FAMILY LEAVE:** Under the state's paid family leave program, employees will contribute 0.373% of their gross wages per pay period for 2024. That's lower than the current rate of 0.455%. Also, the

maximum annual contribution will be \$333.25 – employees earning less than the current New York State Average Weekly Wage of \$1,718.15 will contribute less than the annual maximum, consistent with their actual wages. **More info:** paidfamilyleave.ny.gov/2024

WASHINGTON

- **FAMILY, MEDICAL LEAVE:** The total premium rate for Paid Family and Medical Leave will decrease next year from 0.8% to 0.74%. You should begin collecting the new rate on Jan. 1, 2024. Of the total premium, employers will continue to pay 28.57% and employees will pay 71.43%. A business with fewer than 50 employees for 2024 won't have to pay the employer premium. The state offers resources such as an employer toolkit and a paycheck insert that you can provide to employees. **More info:** paidleave.wa.gov/updates

THE LIGHTER SIDE

A 2023 Rover survey revealed the lengths people would go to in order to keep their pets. Rather than give them up, they said they'd:

- cut morning lattes forever (42%)
- skip social outings for a year (33%)
- never buy new clothes again (29%)
- sacrifice traveling for the next 10 years (22%)
- pass on cable or streaming for the rest of their life (20%), and
- not see their partner in person for six months (14%).

That's impressive considering that annual expenses for cat owners are between \$325 and \$1,600. Dog owners spend more – between \$610 and \$3,555 per year. But it's worth it, even if they do take a "bite" out of your paycheck!

Cite: www.rover.com/blog/cost-of-dog-parenthood