

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 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

- **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.
- **Dec. 29, 2023:** Deposit taxes for payroll on Dec. 23, 24, 25, 26.
- **Jan. 4, 2024:** Deposit taxes for payroll on Dec. 27, 28, 29.
- **Jan. 5, 2024:** Deposit taxes for payroll on Dec. 30, 31 for Q4.
- **Jan. 5, 2024:** Deposit taxes for payroll on Jan. 1, 2 for Q1.
- **Jan. 10, 2024:** Deposit taxes for payroll on Jan. 3, 4, 5.
- **Jan. 12, 2024:** Deposit taxes for payroll on Jan. 6, 7, 8, 9.

### ■ MONTHLY DEPOSITORS

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

### ■ ALL EMPLOYERS

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

## 401(k) plan eligibility standards: IRS just released regs for 2024

### ■ Changes apply to long-term part-time employees

The IRS released regs on Nov. 27, 2023, leaving employers with just over a month to get their retirement plans up to speed.

The regs pertain to long-term part-time employees' eligibility to participate in 401(k) plans – starting with 2024 plan years!

Although the regs are only at the proposed stage, the IRS said employers may rely on them. The regs implement provisions of two recent laws.

**Law #1: The Secure Act of 2019.** This law altered the hours-of-service requirements for participation in 401(k) plans. While 1,000 hours per plan year will remain the standard for full-time employees, now part-time employees can make contributions

if they work 500 hours per year for three consecutive years – the clock started ticking in 2021. So, as of Jan. 1, 2024, certain part-time employees will be able to make contributions to your company's 401(k) plan (note: an employer match isn't required).

**Law #2: The Secure 2.0 Act of 2022.** This law modified the earlier one. For 2025 plan years, the service requirements for part-timers will be further reduced to 500 hours per year for two consecutive years.

### What the regs say

Here are some key details. First, once someone has reached the 500-hour mark and thereby met the

*(Please see 401(k) plan ... on Page 2)*

## Complications from opting out of employer health plan

When employees choose not to participate in your health plan, do you offer opt-out payments? One employer did that and then faced a Fair Labor Standards Act lawsuit.

Ultimately, the Ninth Circuit sided with the employer in the overtime case. Here's why:

### What paystubs showed

The employer, County of Ventura, had a cafeteria plan. Under this plan, each employee was given a flexible benefit allowance every pay period. The so-called Flex Credit could be used to purchase health benefits on a pre-tax basis, and it was listed

under "Earnings" on paystubs. Any employees who opted out of the flexible benefits program had to pay an opt-out fee – this appeared on paystubs as a pre-tax deduction.

The balance was paid in cash and included in overtime calculations.

Employees said the entire amount of the Flex Credit should have been included in the regular rate of pay for overtime purposes. The court disagreed. The opt-out fee could be excluded from the regular rate of pay because the amount was given to health plans, not to employees.

More info: [tinyurl.com/flex682](https://tinyurl.com/flex682)

## Hours violations involving minor employees cost company \$28,476

■ THEY WORKED LATER THAN ALLOWED UNDER FEDERAL LAW

An indoor adventure park in Alabama fell short when it came to the Fair Labor Standards Act's (FLSA's) child labor provisions.

Urban Air Tutwiler LLC employed minors, employees under 16 years old, who worked:

- after 7 p.m. on a school night
- after 9 p.m. in the summer
- more than three hours on a school day, and
- more than 18 hours a week during a school week.

The Birmingham, AL, employer also failed to include one worker's nondiscretionary bonus in overtime pay calculations as required under the FLSA.

For these violations, the company had to pay:

- \$28,476 to address child labor violations involving 36 employees who were minors, and
- \$145 to one worker for errors related to a bonus payment.

### On the rise

According to the most recent Dept. of Labor data, child labor violations are on the rise.

The number of minors employed in violation of the FLSA increased from 3,876 in FY 2022 to 5,792 in FY 2023.

Civil money penalties have risen, too. For FLSA violations involving hours and/or hazardous occupations, employers paid \$4,386,20 in FY 2022 and \$8,039,728 in FY 2023.

**More info:** [www.dol.gov/newsroom/releases/whd/whd20231113](http://www.dol.gov/newsroom/releases/whd/whd20231113)

## 401(k) plan ...

(continued from Page 1)

eligibility standards, if that person's hours dip below 500 in a subsequent year, he or she wouldn't cease to be a long-term part-time employee.

Second, you don't necessarily need to count employees' hours to determine someone's eligibility. Instead your plan could use either the:

- elapsed time method (with this, you rely on the period of time that elapses while an employee is employed by your company, but a plan can't require an employee to complete more than one year), or
- equivalency method (here, employees are credited a certain number of hours of service for a set period of time worked – such as 190 hours per month if at least one hour was worked that month).

IRS will accept comments on the proposed regs until Jan. 26, 2024. We'll monitor any changes for you.

**More info:** [www.govinfo.gov/content/pkg/FR-2023-11-27/pdf/2023-25987.pdf](http://www.govinfo.gov/content/pkg/FR-2023-11-27/pdf/2023-25987.pdf)

## COMPLIANCE CHECK

### ■ 72 HOURS OF OT PER WEEK BUT NO TIME-AND-A-HALF

The Rodin Group, a paint and wall covering company in Burbank, CA, failed to pay overtime to 117 workers. Weekly overtime ranged from 30 minutes to 72 hours.

- \$55,042 in civil money penalties
- \$240,678.50 in back wages, and
- \$240,678.50 in liquidated damages.

**More info:** [www.dol.gov/newsroom/releases/whd/whd20231121](http://www.dol.gov/newsroom/releases/whd/whd20231121)

### ■ HOMECARE PROVIDER DIDN'T MEET FLSA REQUIREMENTS

CareCo Shoreline Inc., a homecare provider in Waterford, CT, violated the overtime and recordkeeping provisions of the Fair Labor Standards Act (FLSA).

According to a consent judgment, the company had to pay back wages and liquidated damages to 107 in-home caregivers in addition to penalties. So, Careco owed:

- \$80,000 in civil money penalties
- \$46,075 in back wages, and
- \$46,075 in liquidated damages.

**More info:** [www.dol.gov/newsroom/releases/whd/whd20231101-0](http://www.dol.gov/newsroom/releases/whd/whd20231101-0)

### ■ TERMINATED AFTER TAKING 1 MONTH OF FMLA LEAVE

Green River Health District of Owensboro, KY, violated the Family and Medical Leave Act (FMLA). Three hours after receiving an FMLA certification letter, it sent an email notifying staff of a job posting for the employee's position. A month later the employee returned to work, and two weeks after that, Green River Health District terminated the individual's employment. The employer had to pay \$61,224 in back wages.

**More info:** [www.dol.gov/newsroom/releases/whd/whd20231115](http://www.dol.gov/newsroom/releases/whd/whd20231115)

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## W-2 penalty amounts for TY 2023 - and what to expect for next year

### ■ IRS RELEASES NUMBERS FOR FAILURE TO FILE & FURNISH INFO RETURNS

How much will employers have to pay for any penalties related to tax year 2023 forms, including W-2s and other information returns?

We'll review those numbers and also take a look at the numbers the IRS recently released for tax year 2024 forms.

### Amount depends on situation

Here are the situations that can lead to penalties, along with the per-return penalty amounts and maximums that can be assessed per year – for TY 2023 and 2024, respectively.

*Gross receipts over \$5M – failure to file or furnish correct information return, general:*

- \$310, with a max of \$3,783,000
- \$330, with a max of \$3,987,000

*Gross receipts over \$5M – failure to file or furnish correct information return, corrected on or before 30 days after required filing date:*

- \$60, with a max of \$630,500
- \$60, with a max of \$664,500

*Gross receipts over \$5M – failure to file or furnish correct information*

*return, corrected after 30th day but on or before Aug. 1:*

- \$120, with a max of \$1,891,500
- \$130, with a max of \$1,993,500

*Gross receipts \$5M or less – failure to file or furnish correct information returns, general:*

- \$310, with a max of \$1,261,000
- \$330, with a max of \$1,329,000

*Gross receipts \$5M or less – failure to file or furnish correct information return, corrected on or before 30 days after required filing date:*

- \$60, with a max of \$220,500
- \$60, with a max of \$232,500

*Gross receipts \$5M or less – failure to file or furnish correct information return, corrected after 30th day but on or before Aug. 1:*

- \$120, with a max of \$630,500
- \$130, with a max of \$664,500

### How to handle a notice

If you receive a penalty notice, it'll explain the reason for the charge and what to do next.

The IRS charges monthly interest until the penalty is paid off.

**More info:** [www.irs.gov/pub/irs-drop/rp-23-34.pdf](http://www.irs.gov/pub/irs-drop/rp-23-34.pdf)

## SSA explains why personal identifiable info is needed

Have you created a *Login.gov* account? You'll need this or another SSA-approved account if you're planning to submit TY 2023 Forms W-2 electronically.

With your *Login.gov* username and password, you'll be able to access SSA's Business Services Online (BSO). The first time you do this, you'll have more security steps to take.

### Personal and business accounts

Some Payroll practitioners are nervous about using personal info on behalf of an employer. For

example, you'll need to provide personal identifiable information (PII), such as your Social Security number and home address. The PII is needed to prove you are who you say you are, SSA explained during the December IRS Payroll Industry Call.

What's more:

- your personal and business accounts will remain separate, and
- if you leave your company, you'd keep your BSO User ID but would be able to remove information about that employer.

**More info:** [www.ssa.gov/bsa](http://www.ssa.gov/bsa)

## NEWS YOU CAN USE

### ■ SEMIWEEKLY DEPOSITORS, TAKE NOTE OF THIS DATE

If you deposit your federal taxes on a semiweekly basis, you may need to mark Jan. 5, 2024, on your calendar. Some Payroll practitioners may need to send the IRS two separate deposits on that date. Deposits will be due for the:

- fourth quarter (for payments made on Saturday, Dec. 30, and Sunday, Dec. 31), and
- first quarter (for payments made on Monday, Jan. 1, and Tuesday, Jan. 2).

**More info:** [www.irs.gov/pub/irs-pdf/p509.pdf](http://www.irs.gov/pub/irs-pdf/p509.pdf)

### ■ INTEREST RATES WON'T CHANGE FOR FIRST QUARTER

In Revenue Ruling 2023-22, the IRS said interest rates will remain unchanged for the first quarter of 2024. Those rates are:

- 8% for overpayments and 7% for corporations
- 5.5% for the portion of an overpayment exceeding \$10,000
- 8% for underpayments, and
- 10% for large corporate underpayments.

**More info:** [www.irs.gov/pub/irs-drop/rr-23-22.pdf](http://www.irs.gov/pub/irs-drop/rr-23-22.pdf)

### ■ DELAYED EFFECTIVE DATE FOR RULE ON JOINT EMPLOYERS

You have a little extra time to comply with the new rule on joint-employer status.

The National Labor Relations Board's rule would have taken effect on Dec. 26, 2023, but the effective date has been pushed back to Feb. 26, 2024.

The reason for the delay? To facilitate resolution of legal challenges with respect to the rule, the NLRB explained. The rule makes joint-employer status more likely.

**More info:** *Federal Register*, 11/22/23.

## In latest report, advisory council suggests changes to CF/SF program

■ INFORMATION RETURNS SUBMITTED TO THE IRS, FORWARDED TO STATES

If you submit information returns to the IRS, the Combined Federal/State Filing (CF/SF) program can save you steps at year-end.

That's because the IRS will forward the returns, such as 1099-MISC and 1099-NEC, to the appropriate states for you.

More than 30 states participate in the CF/SF program, according to the most recent count provided in Publication 1220.

Plus, 11 information returns are currently accepted.

How it works: Under to the CF/SF program, you can file original returns, such as forms 1099-MISC and 1099-NEC.

You can even make corrections. But there's a little exception which causes big headaches.

As the Internal Revenue Service Advisory Council (IRSAC) pointed out in its November 2023 *Public Report*, only certain types of corrections can be made. They are those found in:

- federal fields only (yes)
- federal and state fields (yes), and
- state fields only (no).

### Errors in state-only fields

So, if you find an error that appears only in a state field, such as amount of state income tax withheld, you'll have to quickly register with the state so you can directly submit the corrected information returns.

That means you're spending time and energy on a task that you thought you'd crossed off your list.

For example, you'd need to:

- exchange test files
- obtain a registration number
- manage state site logon credentials, and
- keep track of the distinct filing deadlines and data formatting requirements.

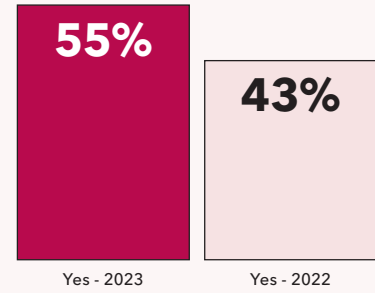
In its report, IRSAC recommended that IRS lift that restriction and instead begin accepting information return corrections of state-only fields.

IRSAC made additional recommendation related to the

## WHAT PAYROLL PROS TOLD US

### The importance of paychecks

Are you living paycheck to paycheck?



Source: Metlife's Annual Employee Benefit Trends Study 2023

Money is tight for more than half of the workers surveyed - 55% said they were living paycheck to paycheck. That's up from 43% in 2022.

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

CF/SF program. The advisory council suggested that the IRS speed up the process by which states receive information about corrections. That would encourage more states to participate in the program, IRSAC shared with the IRS.

More info: [www.irs.gov/pub/irs-pdf/p5316.pdf](http://www.irs.gov/pub/irs-pdf/p5316.pdf)

## REAL-LIFE SCENARIO: DID THEY GET IT RIGHT?

### 2 workers doubt independent contractor status, take issue with how they're paid

A residential heating, ventilation and air conditioning company in Louisiana faced this real-life scenario:

After less than a year of employment, two men resigned and then sued. They said the company had violated the Fair Labor Standards Act.

The first worker, a service professional, earned \$20 per hour and claimed the company owed him:

- \$3,500 in unpaid regular wages
- \$2,500 in unpaid commissions, and
- \$4,950 in unpaid overtime wages.

The second worker, an installer, earned \$25 per hour. He said the company owed him:

- \$2,000 in unpaid regular wages, and
- \$3,750 in unpaid overtime wages.

To determine whether the workers were independent contractors - as the company had classified them - or employees, the federal district court considered the five factors of the economic realities test.

For example, the court examined the degree to which their opportunity for profit and loss was determined by the company. This, like every other factor of the test, pointed to a classification of employee.

Of note, the company assigned jobs to both of them, so they had

no control over when and how often they could work, and they couldn't expand their hours.

As far as pay went, they earned an hourly rate instead of being paid on a per-project basis. Plus, they didn't receive bonuses based on the number of jobs completed.

### Checklist for compliance

- Paying someone on a per-project basis can help reinforce that he or she had an opportunity for profit or loss on the job.
- Freedom with what schedule to keep can be another indicator.

## Tracking local laws and regs

### ■ Iowa Division of Banking closed bank in Sac City, IA

On Nov. 3, 2023, the Iowa Division of Banking closed Citizens Bank in Sac City, IA, appointing the Federal Deposit Insurance Corporation (FDIC) as the receiver. The FDIC then entered into an agreement with Iowa Trust & Savings Bank, Emmetsburg, IA, to assume all of the bank's deposits.

**More info:** [www.fdic.gov/news/press-releases/2023/pr23091.html](http://www.fdic.gov/news/press-releases/2023/pr23091.html)

### ■ City's fair workweek ordinance will take effect Jan. 1, 2024

The Fair Workweek Ordinance in Evanston, IL – passed earlier in 2023 – was supposed to take effect Sept. 1, 2023. However, the Evanston City Council has changed the effective date to Jan. 1, 2024.

Under the ordinance, employers in certain industries, such as hospitality and retail, must provide predictability with scheduling.

For example, employers will need

to give employees 14 days' notice of their work schedules, and if changes to their scheduled shifts occur with fewer than 14 days' notice, they must compensate employees. The so-called predictability pay rate must be equal to the employee's regular hourly rate.

**More info:** [www.cityofevanston.org/business/fair-workweek](http://www.cityofevanston.org/business/fair-workweek)

### ■ Will your business owe Seattle Payroll Expense Tax next year?

In 2024, the Seattle Payroll Expense Tax will apply to businesses that:

- had a total Seattle payroll expense of \$8,511,281 or more in 2023, and
- have at least one employee with an annual compensation of \$182,385 or more in 2024.

The Payroll Expense tax is an excise tax levied on businesses, not on individuals.

**More info:** [www.seattle.gov/city-finance/business-taxes-and-licenses/seattle-taxes/payroll-expense-tax](http://www.seattle.gov/city-finance/business-taxes-and-licenses/seattle-taxes/payroll-expense-tax)

## 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:*

### How can we notify the IRS about a change of address?

**Q:** We're planning to relocate our business. What are the methods for letting the IRS know about a change of address?

**A:** You have several options. First, you could use an official IRS form to relay the information. Form 8822-B, *Change of Address or Responsible Party – Business*, is used to let the Service know you have a new mailing address or location or have updated the identity of your

responsible party. The second method you can use is to input your new address when you file a tax return. Third, a written statement could be sent to the IRS. It should include your full name, old and new addresses and employer identification number. Also, mail your signed statement to the address where you filed your last return, says the IRS. Your final option is to communicate with the Service in person or by phone. You'll need to verify your identity and the address the IRS has on file for your business.

**More info:** [www.irs.gov/faqs](http://www.irs.gov/faqs)

Send questions to [jweiss@HRMorning.com](mailto:jweiss@HRMorning.com). Because of the volume of mail we receive, we regret we can't answer all submissions.

## RECENT CHANGES TO FEDERAL FORMS AND PUBLICATIONS

This list of Payroll-related publications contains updates:

- Schedule E (Form 990), *Schools*. Revision year: 2023. Posted date: 10/24/23.
- Form 8889, *Health Savings Accounts*. Revision year: 2023. Posted date: 10/24/23.
- Form 8922, *Third-Party Sick Pay Recap*. Revision year: 2023. Posted date: 10/25/23.
- Form 8839, *Qualified Adoption Expenses*. Revision year: 2023. Posted date: 10/25/23.
- Pub 1179, *General Rules and Specs for Sub Forms 1096, 1098, 1099, 5498, and Certain Other Info Returns*. Revision date: October 2023. Posted date: 10/31/23.
- Form 1094-B, *Transmittal of Health Coverage Info Returns*. Revision year: 2023. Posted date: 10/31/23.
- Form 1094-C, *Transmittal of Employer-Provided Health Insurance Offer and Coverage Info Returns*. Revision year: 2023. Posted date: 10/31/23.
- Notice 931 (sp), *Deposit Requirements for Employment Taxes (Spanish Version)*. Revision date: September 2023. Posted date: 10/31/23.
- Pub 4164, *Modernized e-File Guide for Software Developers and Transmitters*. Revision date: October 2023. Posted date: 11/2/23.

### 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**

- **MINIMUM WAGE:** In 2024, employers will need to pay at least \$14.35 per hour to employees. The minimum wage is increasing from the current \$13.85 per hour. For employees who customarily and regularly receive tips, the rate can be reduced by \$3 per hour – as long as with tips and wages they earn at least \$14.35 per hour. **More info:** [www.azica.gov/labor-minimum-wage-main-page](http://www.azica.gov/labor-minimum-wage-main-page)

**CALIFORNIA**

- **PAID LEAVE:** Starting Jan. 1, 2024, employees can take leave for reproductive loss. This leave doesn't need to be paid. As stated in SB 848, an employee can take up to five days of reproductive loss leave for a failed adoption, a failed surrogacy, a miscarriage, a stillbirth or an unsuccessful assisted reproduction. The days don't need to be taken consecutively; however, all five days need to be used within three months of the reproductive loss event. If an employee experiences more than one reproductive loss event within a 12-month period, leave is limited to 20 days within a 12-month period. **More info:** [tinyurl.com/california682](http://tinyurl.com/california682)

**MASSACHUSETTS**

- **INCOME TAX:** The 4% surtax on taxable income over \$1 million went into effect on Jan. 1, 2023. The Massachusetts Dept. of Revenue says that for withholding tax returns and payments due Jan. 31, 2024, the surtax won't be considered when determining whether an employer withheld

sufficient tax – that's good news as far as penalties are concerned. Starting with tax year 2024, you'll find new computational tables in Circular M. **More info:** [www.mass.gov/info-details/4-surtax-on-taxable-income-over-1000000](http://www.mass.gov/info-details/4-surtax-on-taxable-income-over-1000000)

**MICHIGAN**

- **MINIMUM WAGE:** According to the Dept. of Labor and Economic Opportunity, the minimum wage will increase from \$10.10 to \$10.33 per hour next year. Employers can pay 16- and 17-year-old employees a lower rate – i.e., 85% of the minimum wage rate, which is \$8.78 per hour. The tipped employee rate will also increase for 2024 – it'll be \$3.93 per hour. The rates are set by the Michigan's Improved Workforce Opportunity Wage Act of 2018. **More info:** [tinyurl.com/michigan682](http://tinyurl.com/michigan682)
- **UNIONS:** The repeal of Michigan's right-to-work law will occur sooner than expected. The anticipated date was March 24, 2024. However, the effective date has been moved to six weeks earlier than that – on Feb. 13, 2024. The reason for the change? The state legislature adjourned six weeks earlier than usual, thereby pushing up the effective date for legislation such as SB 34. Once that law kicks in, employees in unionized workplaces will no longer be able to opt out of paying union dues and fees as required under collective bargaining agreements. **More info:** [bit.ly/michigan670](http://bit.ly/michigan670)

**NEW JERSEY**

- **MINIMUM WAGE:** Starting Jan. 1, 2024, employers will need to pay employees at least \$15.13 per hour. That's up from \$14.13. **More info:** [www.nj.gov](http://www.nj.gov)

**NEW YORK**

- **SALARY THRESHOLD:** The salary threshold for purposes of

the state's minimum wage and overtime provisions would increase for 2024 under proposed regs. To qualify for the executive or administrative exemption, an employee would need to earn at least \$1,124.20 per week. That's up from \$1,064.25 per week. The state doesn't set a salary threshold for professional employees, but the Fair Labor Standards Act requirements apply. **More info:** [dol.ny.gov/system/files/documents/2023/09/mw-orders-update-9.20.23.pdf](http://dol.ny.gov/system/files/documents/2023/09/mw-orders-update-9.20.23.pdf)

**OHIO**

- **MINIMUM WAGE:** When 2024 begins, the state's minimum wage rate will increase to \$10.45 per hour. Currently, the rate is \$10.10. In addition, for tipped employees, the minimum wage will be \$5.25 per hour – when combined with tips, employees must earn at least \$10.45 per hour. **More info:** [com.ohio.gov](http://com.ohio.gov)

## THE LIGHTER SIDE

Happy Festivus! The fictional holiday was featured in an episode of the sitcom Seinfeld in 1997, and now it's commemorated each year on December 23.

A key part of Festivus is – of course – the Airing of Grievances, where you let other people know the gripes you have.

For eight years, the Tampa Bay Times has invited readers to air their grievances. Here are two examples:

- Carybeth Hobbs said: *When my 12-year-old son calls me "bro." Last I checked, I was still "mom."*
- Jeffrey Dean said: *Co-workers, what's the deal with leaving unused time on the microwave? Are you somehow gifting me those 13 seconds left on there? What am I going to do with 13 seconds?*

**Cite:** Tampa Bay Times, 11/29/23.