

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™

January 15, 2024

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

- **Jan. 18, 2024:** Deposit taxes for payroll on Jan. 10, 11, 12.
- **Jan. 19, 2024:** Deposit taxes for payroll on Jan. 13, 14, 15, 16.
- **Jan. 24, 2024:** Deposit taxes for payroll on Jan. 17, 18, 19.
- **Jan. 26, 2024:** Deposit taxes for payroll on Jan. 20, 21, 22, 23.
- **Jan. 31, 2024:** Deposit taxes for payroll on Jan. 24, 25, 26.
- **Feb. 2, 2024:** Deposit taxes for payroll on Jan. 27, 28, 29, 30.
- **Feb. 7, 2024:** Deposit taxes for payroll on Jan. 31; Feb. 1, 2.
- **Feb. 9, 2024:** Deposit taxes for payroll on Feb. 3, 4, 5, 6.
- **Feb. 14, 2024:** Deposit taxes for payroll on Feb. 7, 8, 9.
- **Feb. 16, 2024:** Deposit taxes for payroll on Feb. 10, 11, 12, 13.

MONTHLY DEPOSITORS

- **Jan. 16, 2024:** Deposit taxes for payments made during December 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.

2024 version of Form W-4, other forms released by IRS

■ In Pub. 15-T, references to estimator included again

Check if you're giving employees the 2024 version of Form W-4, *Employee's Withholding Certificate*.

The final version of the form became available on Dec. 15, 2023, the IRS said during its January Payroll Industry Call.

The only changes, when compared with the draft version of the form, are the inflation adjustments.

That includes the tables for employees with multiple jobs. The tables are referenced in the Multiple Jobs Worksheet.

Also during the call, the IRS noted other forms that'd been released in mid-December. They were Form W-4P, *Withholding Certificate for Periodic Pension or Annuity Payments*; and

Form W-4R, *Withholding Certificate for Nonperiodic Payments and Eligible Rollover Distributions*.

Tables for income tax withholding

On Dec. 12, 2023, the IRS released the final tables you'll need for federal income tax withholding – they're found in Publication 15-T.

The "What's New" section of the publication explains that the Tax Withholding Estimator has been updated for 2024 and employees can use it when completing any of these: W-4, W-4P or W-4R. On the 2023 version of Form W-4, references to the estimator had been removed. But now it's included again as in prior tax

(Please see Form W-4 ... on Page 2)

Standard mileage rate is up - but another rate is down

The standard mileage rate has inched up for 2024, per info provided in IRS Notice 2024-08.

On Jan. 1, 2024, the rate for business travel reached 67 cents per mile for vehicles including cars, vans, pickups and panel trucks. Last year, the rate was 65.5 cents per mile, so it's a 1.5-cent increase.

The rate for medical purposes has decreased from 22 cents to 21 cents per mile. Same goes for moving purposes for qualified active-duty members of the U.S. Armed Forces.

As usual, the rate for miles driven in service to charitable organizations

remains 14 cents per mile. This rate is set by statute.

Maximum FMV

Employers that use the fleet-average or the vehicle cents-per-mile valuation rule will find important details in the IRS notice about the maximum fair market value (FMV) of automobiles first made available to employees in 2024.

That maximum FMV is \$62,000 this year.

In 2023, it was \$60,800.

More info: www.irs.gov/pub/irs-drop/n-24-08.pdf

Managers' time-and-attendance problems discovered by the DOL

■ 36 WORKERS DIDN'T GET OVERTIME, MINIMUM WAGE THEY'D EARNED

Managers improperly adjusted time and attendance info, the Dept. of Labor (DOL) said after an investigation.

The Fair Labor Standards Act (FLSA) violations happened at two fast-food locations in Montgomery, AL. The DOL ended up assessing \$26,927 in back wages and liquidated damages.

At the Checkers restaurants, 36 employees didn't receive the correct minimum wage and overtime because their managers:

- clocked them out before they stopped working
- deducted break times from their schedules whether or not they took the breaks
- deleted entire portions of shifts from the pay records, and

- altered timecards to reduce employees' hours.

Similar wage-and-hour infractions had occurred in 2020 at other restaurants owned by the franchisee.

So, due to the repeat violations, the DOL collected \$3,636 in civil money penalties – but the penalties didn't stop there.

The franchisee owed an additional \$5,228 in civil money penalties because the DOL investigation also uncovered child labor violations involving hours worked.

Periodic training

Payroll can work with HR to provide periodic training to managers on your time-and-attendance system and how it connects to the FLSA.

More info: www.dol.gov/newsroom/releases/whd/whd20240104

Form W-4 ...

(continued from Page 1)

years. Unchanged from last year, there are seven withholding methods in Publication 15. They are:

- Percentage Method Tables for Automated Payroll Systems and Withholding on Periodic Payments of Pensions and Annuities
- Wage Bracket Method Tables for Manual Payroll Systems With Forms W-4 From 2020 or Later
- Wage Bracket Method Tables for Manual Payroll Systems With Forms W-4 From 2019 or Earlier
- Percentage Method Tables for Manual Payroll Systems With Forms W-4 From 2020 or Later
- Percentage Method Tables for Manual Payroll Systems With Forms W-4 From 2019 or Earlier
- Alternative Methods for Figuring Withholding, and
- Tables for Withholding on Distributions of Indian Gaming Profits to Tribal Members.

More info: www.irs.gov/pub15t

COMPLIANCE CHECK

■ TIPS DIDN'T END UP IN SERVERS' PAYCHECKS

Bentley's Pancake House in Bloomingdale, IL, kept servers' tips, paid kitchen staff at their regular rates of pay even when they worked overtime and failed to keep accurate pay records.

According to a consent order and judgment, the restaurant must pay:

- \$110,000 for tip violations, overtime back wages and liquidated damages, and
- \$13,000 in civil money penalties for willful violations.

More info: www.dol.gov/newsroom/releases/whd/whd20231120

■ THERAPY ASSISTANTS DIDN'T MEET EXEMPT DUTIES TEST

In South Carolina, Apella Health Management, operating as Spartanburg Regional Healthcare System, wrongly exempted 29 employees from overtime. Some occupational therapy and physical therapy assistants, who were paid on a per-visit basis, didn't meet the duties test for learned professionals.

So, the home healthcare provider had to pay \$139,975 in back wages.

More info: www.dol.gov/newsroom/releases/whd/whd20231120-0

■ ILLEGAL WAGE DEDUCTIONS MADE FOR LAUNDRY COSTS

Heritage Farms in Holtville, CA, violated the H-2A provisions in the Immigration and Nationality Act. Its infractions included not paying three drivers for time spent transporting H-2A workers to and from the fields – that resulted in unpaid overtime. Also, laundry costs were illegally deducted from wages.

- \$14,311 in unpaid wages, and
- \$17,791 in civil money penalties.

More info: www.dol.gov/newsroom/releases/whd/whd20230927-0

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IRS issues final regs on *de minimis* Form W-2 errors: Here are the details

■ THE PATH ACT, A LAW FROM 2015, CALLED FOR THE CHANGES

Certain *de minimis* errors that appear on Forms W-2 won't lead to penalties. That's according to final regulations from the IRS.

The law that prompted the IRS regs? The Protecting Americans from Tax Hikes (PATH) Act of 2015.

Thanks to the PATH Act, errors on Forms W-2 are *de minimis* if the difference between any single amount reported incorrectly and the correct amount required to be reported doesn't exceed \$100.

As for reporting the amount of tax withheld, though, the *de minimis* threshold is lower: not more than \$25.

If you find errors that fall within those ranges, a safe harbor exception to penalties will help you avoid the headache of making corrections.

Safe harbor may not apply

What happens if the person to whom you're furnishing the statement would prefer that you make the fixes? The regs allow an employee to make such an election.

But that must be done according to certain standards. That is, the

employee must make the election in writing – on paper. The employee should: 1) clearly state that the election is being made; 2) include specific contact info; 3) identify which payee statements apply, but if none has been identified, the election will apply to all payee statements; and 4) provide other info required by the IRS.

The employee must make the election before the later of these two dates:

- 30 days after the date on which the payee statement is required to be furnished to the payee, or
- October 15 of the calendar year.

Another reason the safe harbor may not apply is if there's an intentional disregard of the requirement to file timely correct information returns, the IRS explained in the final regs.

The effective date of the final regs was Dec. 19, 2023. Furthermore, the final regs supersede Notice 2017-09 when it comes to information returns that must be filed and payee statements that must be provided on or after Jan. 1, 2024

More info: www.govinfo.gov/content/pkg/FR-2023-12-19/pdf/2023-27283.pdf

IRS posts 2024 version of publication needed for levies

With only weeks left in 2023, the IRS released Publication 1494. Payroll practitioners will need this one-page publication to determine how much of an employee's wages, salary or other income is exempt from levy in 2024.

The IRS posted the publication on its website on Dec. 18, 2023.

How much income is exempt?

If you receive Form 668-W, *Notice of Levy on Wages, Salary and Other Income*, you'll need Publication 1494 to correctly withhold for the levy.

Note: You have at least one full pay period after receiving the form before you must send the funds to the IRS.

Once you confirm the employee's pay period, filing status and number of dependents claimed on his or her statement, refer to Publication 1494.

Take the example of someone with a single filing status who claimed zero dependents. For a biweekly payroll, \$561.54 is exempt from levy. For a weekly payroll, the exempt amount would be \$280.77.

More info: www.irs.gov/pub/irs-pdf/p1494.pdf

■ DOL ANNOUNCES TY 2023 FUTA CREDIT REDUCTIONS

Employers in two states and one territory will have to deal with a credit reduction when they prepare Form 940 for TY 2023.

That's because these locations have outstanding loans with the federal government for their unemployment insurance programs.

According to the Dept. of Labor's Employment & Training Administration, the TY 2023 FUTA credit reductions are:

- 0.6% in California
- 0.6% in New York, and
- 3.9% in the Virgin Islands.

Connecticut and Illinois avoided being on the list because they met the November 10, 2023, deadline to repay their loans.

More info: oui.doleta.gov/unemploy/futa_credit.asp

■ FINAL OVERTIME RULE EXPECTED IN APRIL 2024

When could we see the Dept. of Labor's (DOL's) final rule on increasing the salary threshold for who's exempt from overtime?

The DOL is aiming for April 2024, according to the agency's latest regulatory agenda.

Under the proposed rule, the standard salary level would be \$55,068 per year and the highly compensated employee total annual compensation threshold would be \$143,988.

More info: www.reginfo.gov

■ WHERE ARE AEWR RATES THE HIGHEST FOR 2024?

The Dept. of Labor has released the 2024 Adverse Effect Wage Rates (AEWRs) for H-2A workers.

AEWRs are highest in these states: California (\$19.75), Oregon (\$19.25) and Washington (\$19.25).

More info: *Federal Register*, 12/14/23.

Secure 2.0 Act: Congress takes steps toward making technical corrections

■ DISCUSSION DRAFT EXPLAINS PROPOSED CHANGES TO THE LAW

The Secure 2.0 Act of 2022 is in need of some technical corrections, according to Congress.

After first sending a letter to the Secretary of the Treasury and the Commissioner of the IRS to explain the law's errors, legislators drafted a bill to provide the necessary fixes.

A so-called discussion draft – i.e., the Secure 2.0 Technical Corrections Act of 2023 – was released by Congress on Dec. 6, 2023.

Here's a section-by-section recap of what's been proposed:

4 sections to note

Sec. 102: This section deals with the credit for small employer pension plans. In the Secure Act 2.0, it's unclear that the credit for employer contributions is in addition to the start-up credit. The bill makes that plain.

Sec. 107: The 2022 law raised the age at which required minimum distributions (RMDs) from retirement

plans must begin. At the time of the law's passage, the age for RMDs was 72. As instituted by the law, the age increased to 73 for individuals who reached age 72 after the cutoff date of Dec. 31, 2022. That much was clear in the Secure 2.0 Act of 2022. Now, details about the subsequent age increase have been reworded to avoid potential confusion. The corrections bill specifies that the age for RMDs will increase to 75 for individuals who reach age 73 after the cutoff date of Dec. 31, 2023.

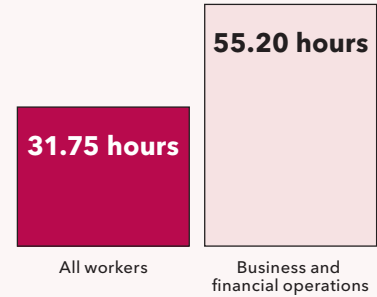
Sec. 601: A technical correction was made regarding contributions to SIMPLE IRA and Simplified Employee Pension plans, as provided for in the Secure 2.0 Act. That is, contributions to those retirement plans shouldn't be taken into account for purposes of the otherwise applicable Roth IRA contribution limit.

Sec. 603: Catch-up contributions to retirement plans *can* be made by employees who've reached the established age. But the Secure 2.0 Act of 2022 omitted that obvious statement when explaining that catch-up contributions for high-wage

WHAT PAYROLL PROS TOLD US

On-the-job training

How many hours of on-the-job training did you receive?



Source: Bureau of Labor Statistics, The Economics Daily, 11/13/23

On average, workers get 31.75 hours of on-the-job training. That may increase based on occupational group but still isn't much. Meanwhile, many Payroll pros are self-taught.

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

earners (i.e., those who earn more than \$145,000 per year) would need to be made on a Roth basis starting in 2024. The corrections bill sets the record straight about catch-up contributions in general. Note: The provision involving high-wage earners will now take effect in 2026.

More info: bit.ly/congress683

REAL-LIFE SCENARIO: DID THEY GET IT RIGHT?

Employment contract addendum led to discrepancy over vacation time

A medical clinic in Kentucky faced this real-life scenario:

When a pediatric nurse practitioner accepted a new job at the clinic, she entered into a standard, five-year employment contract. It included information about her salary, her allotted vacation time (i.e., 10 days per year) and other details.

A year later, the nurse practitioner informed the employer she'd begun to look for other job opportunities. That led to her and the employer negotiating an addendum to her earlier employment contract. Among other things, the addendum stated her salary would go up 5% each year and

her vacation time would "increase a total of 160 hours per year."

Shortly thereafter, the employee asked the clinic's office administrator when the changes would show up in her paychecks. That's when a discrepancy came to light.

The administrator explained her vacation time had already been increased to 160 hours. The employee's interpretation was that her vacation time would be doubled each year – i.e., to 160 hours in year one, 320 hours in year two and so on.

Due to this discrepancy and others, the employee resigned and sued for

breach of contract. She asked the court to grant summary judgment, but it didn't. When the case went before a jury, it decided in the employer's favor. She appealed the court's earlier decision regarding summary judgment – but again, she lost.

Checklist for compliance

- While an employment contract may be standard, an addendum may be less familiar territory. Review the details carefully.
- Maintain consistency – talking in terms of hours, days or weeks – when discussing vacation time with employees.

Tracking local laws and regs

■ Cook County, IL, passes new ordinance requiring paid leave

In Illinois, the Cook County Board of Commissioners passed an ordinance requiring employers to provide at least one hour of paid leave for every 40 hours worked. Under the ordinance, the accrual is capped at 40 hours of paid leave per year.

Employers were given little time to prepare for the change – the ordinance passed Dec. 14, 2023, and took effect Dec. 31, 2023.

This new type of paid leave can be taken for any reason, unlike earned sick leave. In fact, the Paid Leave Ordinance has replaced the Earned Sick Leave Ordinance.

More info: bit.ly/psl683

■ Chicago leave ordinance won't take effect until July 1, 2024

The effective date of the Chicago Paid Leave and Paid Sick and Safe Leave Ordinance has been pushed back to July 1, 2024 – it had been

Dec. 31, 2023. Additional changes to the ordinance were also made in mid-December. For example, the definition of “covered employee” is now an employee who works at least 80 hours for an employer within any 120-day period (previously, it was an employee who in a two-week period performs at least two hours of work).

More info: bit.ly/chicago683

■ San Diego explains how its paid sick leave law differs from state's

The city of San Diego recently released *Important Notice Regarding Senate Bill 616*, clarifying how its paid sick leave law differs from the state's new law.

For example, under the state's law, employers must reinstate paid sick leave hours if an employee is rehired within one year. The city's law is less generous – six months. So, employers should follow the state's law on this provision, according to the San Diego Compliance Dept.

More info: tinyurl.com/sandiego683

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:

Tax implications? Overpayment last year, repayment this year

Q: We overpaid someone during 2023, and the employee is returning the wages in 2024. What are the tax implications for us and the employee?

A: Although you can make an adjustment for Social Security and Medicare taxes by filing Form 941-X, the adjustment isn't possible for other types of withholding. That includes federal income tax, given that the wages were income to the

employee during 2023. Instead of filing Form 1040-X for TY 2023 to recover the tax, the individual may be able to take a deduction or credit on Form 1040 for TY 2024. Another type of withholding you can't make an adjustment for is the Additional Medicare Tax. Reason? The employee will determine liability for that tax on his or her income tax return for the prior year. With this tax, though, the employee can file Form 1040-X for TY 2023. If employees have questions about repayments, refer them to Publication 525.

More info: www.irs.gov/pub15

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.

- Instructions for Form 8889, *Health Savings Accounts*. Revision year: 2023. Posted date: 11/8/23.
- Form 944, *Employer's Annual Federal Tax Return*. Revision year: 2023. Posted date: 11/17/23.
- Instructions for Form 944, *Employer's Annual Federal Tax Return*. Revision year: 2023. Posted date: 11/17/23.
- Publication 5223, *General Rules and Specifications for Affordable Care Act Substitute Forms 1095-A, 1094-B, 1095-B, 1094-C, and 1095-C*. Revision date: November 2023. Posted date: 11/17/23.
- Form 2106, *Employee Business Expenses*. Revision year: 2023. Posted date: 11/21/23.
- Form 4506-B, *Request for a Copy of Exempt Organization IRS Application or Letter*. Revision date: August 2023. Posted date: 11/21/23.
- Publication 5719, *Information Returns Intake System Test Package for Information Returns*. Revision date: November 2023. Posted date: 11/21/23.
- Form 8508, *Application for a Waiver from Electronic Filing of Information Returns*. Revision date: November 2023. Posted date: 11/21/23.

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!

info: labor.delaware.gov/divisions/industrial-affairs/wage-hour

MARYLAND

- **MINIMUM WAGE:** As of Jan. 1, 2024, the state's minimum wage rate is \$15 per hour. The increase, which applies to employers of all sizes, was prescribed in the Fair Wage Act of 2023. Last year, the minimum wage rate was \$13.25 for employers with 15 or more employees and \$12.80 for employers with fewer than 15 employees. **More info:** www.dllr.state.md.us/labor/wages/wagehrfacts.shtml

NEW YORK

- **MINIMUM WAGE:** The state has increased its minimum wage for 2024. It's \$15 per hour, up from \$14.20. Tipped service employees must be paid a rate of at least \$12.50 per hour (cash wage) plus \$2.50 per hour (tip credit). As for tipped food service workers, the cash wage is \$10 per hour and the tip credit is \$5 per hour. Also, now that the minimum wage has been finalized, so has the salary threshold for determining who's exempt from minimum wage and overtime as executive or administrative employees. In 2024, such employees will need to earn at least \$1,124.20 per week to be classified as exempt. That equates to \$58,458.40 on an annual basis. **More info:** dol.ny.gov/minimum-wage-0

OREGON

- **PAID LEAVE:** Employers don't need to include Paid Leave Oregon contributions when preparing W-2s, the Oregon Dept. of Revenue clarified in its frequently asked questions. The program started on Jan. 1, 2023, with large employers (those with 25 or more employees) paying contributions. Of the 1% contribution rate, employers pay 60% and employees pay 40%. While small employers aren't

required to make contributions, they still need to collect and submit employees' contributions to the program. Employees who take leave are paid a percentage of their wages. **More info:** www.oregon.gov/DOR/programs/businesses/Pages/iwire.aspx

VIRGINIA

- **INCOME TAX:** The personal income tax rate would decrease under the governor's budget proposal. All income tax rates would be cut by 12%. In addition, low-income individuals could claim an enhanced Virginia Earned Income Tax Credit (EITC) – it'd equal 25% of the federal EITC. Meanwhile, the sales tax rate would increase, according to the proposal. **More info:** www.governor.virginia.gov/newsroom/news-releases/2023/december/name-1019260-en.html

CALIFORNIA

- **DISABILITY INSURANCE:** The taxable wage ceiling for state disability insurance (SDI) has been eliminated, effective for 2024. So, this year's rate of 1.1% will apply to each employee's wages without a cap. In 2023, the SDI taxable wage ceiling was \$153,164 and the rate was 0.9%. This change is the result of legislation passed in 2022 (SB 951). **More info:** edd.ca.gov/en/disability/Contribution_Rates_and_Benefit_Amounts

COLORADO

- **TAX CREDITS:** Now employers have an easier way to inform employees that tax credits may be available to them, as has been required since 2023. The Dept. of Revenue has created a sample form that employers have the option to use. It's called the *Notice of Federal and State Refundable Tax Credits*. Reminder: An annual notice, whether distributed electronically or in print, must be given to each employee who receives a Colorado wage and tax statement – i.e., Form W-2. The purpose of the notice is to inform employees of the earned income tax credit and child tax credit – on the federal and state level. **More info:** tax.colorado.gov/sites/tax/files/documents/DR0995_2023.pdf

DELAWARE

- **MINIMUM WAGE:** Employers will need to pay at least \$13.25 per hour in 2024. That's up from the \$11.75 minimum wage last year. For employees who receive tips, the cash wage will remain \$2.23 per hour for 2024. **More**

THE LIGHTER SIDE

You never know where – or when – a lost object may show up. Take the case of wallet that appeared in an Atlanta movie theater. A contractor found it behind a wall at the Plaza Theater and handed it over to the establishment's owner.

The contents of the wallet, including family photos, a library card and raffle tickets, revealed that Floy Culbreth lost it in 1958.

Upon doing some research, the cinema's owner discovered that Ms. Culbreth died in 2005 at age 87. However, her daughter, Thea Culbreth Chamberlain, claimed it on her mother's behalf. She was only six years old when her mother misplaced the wallet. Who would've thought it'd turn up 65 years later?!

Cite: UPI, "Wallet Lost at Atlanta Movie Theater Found 65 Years Later," 12/28/23.