

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™

February 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

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

MONTHLY DEPOSITORS

- **Feb. 15, 2024:** Deposit taxes for payments made during January 2024.
- **March 15, 2024:** Deposit taxes for payments made during February 2024.

ALL EMPLOYERS

- **April 30, 2024:** File Q1 Form 941. Note: If you properly deposited taxes on time and in full, you have until May 10, 2024, to file.

After IRS issues final 2024 W-2, it makes additional changes

■ Don't use version released in December of 2023

Now that you can check W-2s off your to-do list for TY 2023, you may be thinking about next year-end and what changes to expect on the form.

The IRS posted the final version of the 2024 Form W-2 on its website in December of 2023. A month later, it reposted the form with revisions.

In a Jan. 9, 2024, announcement, the IRS explained what it revised on the W-2 (and similarly on the W-2AS, W-2GU and W-2VI).

Specifically, it updated a section of *Instructions for Employee*, found on the back of Copy 2.

In those instructions, the IRS removed some info about box 12, code S, related to SIMPLE plans.

While the TY 2023 Form W-2 states employee salary reduction contributions under SIMPLE IRA plans are “not included in box 1,” the 2024 version of the form doesn't include that phrase.

The January announcement makes clear, though, that if the salary reduction contributions are made to a Roth SIMPLE IRA, then they *are* included in box 1.

What else you'll find

There are additional differences between the 2023 and 2024 versions of Form W-2. As we previously reported, another code for box 12 has been added to *Instructions for*

(Please see 2024 W-2 ... on Page 2)

Questions about taxation of PFML premiums & benefits

Governors from nine states joined together to send a letter to the IRS. In the Jan. 18, 2024, letter, the governors asked for guidance on the federal tax treatment of premiums and benefits under states' paid family and medical leave (PFML) programs.

As the letter explains, since 2004, more than a dozen states have enacted PFML laws.

Each state has its own set of rules. For example, in Colorado, employers must pay the PFML premiums – however, based on their size, they can deduct a portion of the premiums from employees' wages. Despite the differences among the states'

programs, they all must address the issue of state and federal taxation. So, the governors would like the IRS to weigh in.

Letter sent to the IRS

Employers face uncertainty about how to properly calculate payroll taxes with respect to premiums withheld. Reporting is a related area of concern for Payroll pros.

As for employees, if federal taxes are withheld from premiums and from benefits paid, that's double taxation, the letter points out.

More info: tinyurl.com/pfml685

Multiple FLSA violations discovered, employer must pay more than \$1M

■ HEALTHCARE AGENCY DIDN'T PAY EMPLOYEES FOR TRAVEL TIME

When the Dept. of Labor (DOL) did an investigation of a Philadelphia home healthcare agency, it found multiple violations of the Fair Labor Standards Act (FLSA).

According to the DOL, Aging with Care Inc.:

- paid home health aides their regular rates of pay for all hours worked, even when they worked overtime hours
- failed to combine hours that employees worked for multiple clients – this meant they didn't pay enough overtime
- didn't pay home health aides for time spent traveling between clients' homes during the course of a workday
- maintained inaccurate records of hours worked – this stemmed from

not paying employees for travel time, and

- failed to keep payroll records for part of the investigation period.

As the result of these infractions, the employer had to pay \$823,265 in back wages and an equal amount in liquidated damages.

Plus, because the violations were willful, the company had to pay a \$56,218 civil money penalty.

Job site to job site

Certain travel time is compensable under the FLSA. For example, employees who travel from job site to job site during the workday should be paid for that time.

During training, remind managers of this FLSA requirement.

More info: www.dol.gov/newsroom/releases/whd/whd20240111

2024 W-2 ...

(continued from Page 1)

Employee. In 2023, the final code on the list was HH, standing for aggregate deferrals under section 83(i) elections as of the close of the calendar year. In 2024, code II now completes the list. It's for Medicaid waiver payments excluded from gross income under Notice 2014-7.

Also, in the *Employers, Please Note* section, information about e-filing has been updated to reflect the lower electronic filing threshold that went into effect starting with the recently filed TY 2023 forms.

This sentence has replaced the previous description: "If you file 10 or more information returns, you must file electronically."

The IRS has just released the W-2 instructions for TY 2024. That occurred at the end of January.

The final version includes several new entries related to the Secure 2.0 Act of 2022.

More info: www.irs.gov/pub/irs-pdf/fw2.pdf

COMPLIANCE CHECK

■ RETALIATED AGAINST FOR COMPLAINING ABOUT WAGES

D2 Government Solutions LLC, New Bern, NC, violated the Fair Labor Standards Act's retaliation provision. An employee filed a complaint about his wages with his employer and the Connecticut National Guard, the government entity with which it'd contracted. After that, the employer sent him a disciplinary letter prohibiting him from contacting government officials about his employment. Later, following a temporary layoff, five employees were called back to work, but he wasn't.

D2 had to pay a total of \$13,085 in back pay and punitive damages.

More info: www.dol.gov/newsroom/releases/whd/whd20240112

■ 31 SECURITY GUARDS NOT PAID OVERTIME PREMIUM

An Indianapolis security company, Protection Plus Inc., failed to pay 31 security guards time-and-a-half the regular rate of pay for overtime. So the company had to pay:

- \$27,597 in civil money penalties for its repeat and willful violations, and
- \$28,334 in overtime back wages and liquidated damages.

More info: www.dol.gov/newsroom/releases/whd/whd20240117

■ OT, CHILD LABOR VIOLATIONS AT FLORIDA SUPERMARKET

La Primavera Store Inc., a supermarket in Fort Pierce, Bradenton and Sarasota, FL, wrongly classified 75 workers as exempt from overtime. The employer also violated the child labor provisions of the Fair Labor Standards Act. That meant the company owed:

- \$901,625 in back wages and liquidated damages, and
- \$1,582 in civil money penalties.

More info: www.dol.gov/newsroom/releases/whd/whd20240124

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

EDITOR: JENNIFER WEISS
jweiss@HRMorning.com
MANAGING EDITOR: CURT BROWN
PRODUCTION EDITOR: P.J. FRONZEO
EDITORIAL DIRECTOR: CURT BROWN

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Early in 2024, IRS issued guidance on emergency savings accounts

■ SECURE 2.0 ACT CREATED THESE PENSION-LINKED ACCOUNTS

The IRS just released guidance on pension-linked emergency savings accounts (PLESAs), as created under the Secure 2.0 Act of 2022.

Employers can start offering these accounts in plan years that begin after Dec. 31, 2023.

By way of background, PLESAs are designed to help employees deal with financial emergencies.

They're short-term savings accounts that are linked to defined contribution (DC) plans.

Employers can make matching contributions, and such contributions should be made at the same rate as contributions to the connected DC plan.

The portion of a PLESA account balance attributable to participant contributions can't exceed \$2,500.

PLESAs are treated as designated Roth accounts – in other words, you'll withhold taxes from the contributions. However, the employee won't be taxed on withdrawals.

Employees can make withdrawals from PLESAs at least once a month,

and the 10% additional tax on early distributions won't apply.

Highly compensated employees can't participate in PLESAs.

Controls on matching contributions

In Notice 2024-22, the IRS acknowledged that plan sponsors may be concerned about employees manipulating the rules of the plan so that matching contributions exceed intended amounts or frequencies.

Setting an account balance of \$2,500 or lower is a control that's supported by the Secure 2.0 Act. So is establishing an order of matching contributions (i.e., matches must first go to the underlying DC plan).

But the following procedures aren't permissible, according to the Jan. 12, 2024, IRS notice:

- requiring the forfeiture of matching contributions due to a participant's withdrawal from a PLESA
- suspending participant contributions to the PLESA on account of a withdrawal, and
- suspending matching contributions to the underlying DC plan.

More info: www.irs.gov/pub/irs-drop/n-24-22.pdf

Federal student loan garnishments to resume in 2024

The COVID-19 relief provided by the U.S. Dept. of Education has ended, and the DOE began charging interest and requiring payments on federal student loans again on Sept. 1, 2023.

But what about garnishments?

They haven't started back up yet, the DOE said in a recent announcement. That won't happen until at least September 2024.

'Contact your payroll department'

In the announcement regarding COVID-19 emergency relief and

federal student aid, the agency also explained what borrowers should do if their employers mistakenly garnish their paychecks too soon.

Here's a heads-up regarding what employees have been told to do.

The DOE said: "Please contact your payroll department immediately to avoid any further garnishment."

The DOE will refund employees for any money that's been garnished, but they should double-check that their contact info is correct first.

More info: studentaid.gov/announcements-events/covid-19

NEWS YOU CAN USE

■ CAPABILITY TO E-FILE 941-X, OTHER RETURNS SOON HERE

When will the IRS allow employers to use Modernized e-File (MeF) to file amended employment tax return for these forms: 940, 941-X, 943-X and 945-X?

The e-filing of those forms is scheduled for deployment in June, an IRS representative said during the Service's February Payroll Industry Call.

In May, the schemas for those amended returns should be available, allowing employers to get ready to use the MeF system.

More info: irs.gov/form8453

■ HOUSE PASSES LEGISLATION THAT'D BRING TAX RELIEF

The Tax Relief for American Families and Workers Act of 2024 is in the hands of the Senate, after the House passed the legislation on Jan. 31, 2024.

One change HR 7024 calls for is the increase in the reporting threshold for Form 1099-MISC and Form 1099-NEC. Of course, this would affect employers that utilize independent contractors.

Currently, the reporting threshold is \$600 per year - if the bill moves forward as is, it'd go up to \$1,000 per year.

More info: www.congress.gov/bill/118th-congress/house-bill/7024/text

■ \$150,000 TAX CREDIT FOR PROVIDING CHILDCARE

The IRS has a new webpage. It's focused on the tax credit for employer-provided childcare. For example, you'll find info on eligibility.

The tax credit limit is \$150,000 per year to offset 25% of qualified childcare facility expenditures and 10% of qualified childcare resource and referral expenditures.

More info: tinyurl.com/childcare685

In FY '23, which FLSA provision cost employers the most in back wages?

■ DOL'S LATEST ENFORCEMENT STATS REVEAL BIGGEST PROBLEM AREAS

The Dept. of Labor's (DOL's) Wage and Hour Division collected a total of \$156,152,548 in back wages for Fair Labor Standards Act (FLSA) violations in FY 2023, as recently announced.

Here's how that breaks down by FLSA provision, ranked from highest to lowest dollar amount of back wages:

- \$130,686,461 in back wages for overtime violations
- \$20,866,247 in back wages for minimum wage violations
- \$4,429,962 in back wages for tip-related violations, and
- \$169,878 in back wages for retaliation violations.

Child labor was another FLSA problem that surfaced among employers, with 5,792 minors employed in violation of the law in FY 2023, up from 3,876 in FY 2022.

The DOL collected \$8,039,728 in civil money penalties related to child labor. That's almost double

the prior year, when the agency brought in \$4,386,205.

FMLA facts

The DOL's Wage and Hour Division also provided data on enforcement of the Family and Medical Leave Act (FMLA).

In FY 2023, \$987,782 was collected in back wages. That number in the prior fiscal year was \$870,077.

Last year, the top four most common FMLA violations were:

- denial of leave – 148
- discrimination (disciplinary action, etc.) – 142
- failure to reinstate to same or equivalent position, benefits, etc. – 79, and
- termination – 71.

Much less problematic was failure to maintain health benefits.

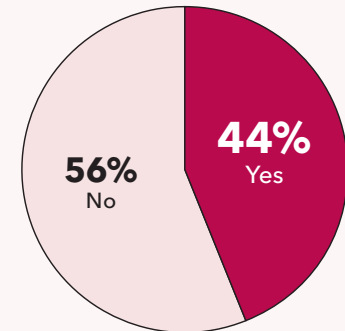
Industry insights

Looking at all the laws enforced by the Wage and Hour Division, the industry that topped the list for back wages was construction

WHAT PAYROLL PROS TOLD US

Emergency savings

Could you pay for \$1,000 in emergency expenses from your savings account?



Source: Bankrate 2024 survey

Most U.S. adults couldn't cover \$1,000 in emergency expenses. Employers can offer pension-linked emergency savings accounts now, thanks to the Secure 2.0 Act.

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

(\$35,558,598). That was followed closely by healthcare (\$31,799,787) and food services (\$29,648,592).

Finally, the law tripping up government contractors the most? The Davis-Bacon and Related Acts, with 755 concluded compliance actions.

More info: www.dol.gov/agencies/wbd/data/charts/all-acts

REAL-LIFE SCENARIO: DID THEY GET IT RIGHT?

After being promoted to manager, employee questioned her exempt status

A hospitality management company based in Wisconsin faced this real-life scenario:

The hospitality management company hired a room inspector and soon after promoted her to executive housekeeper.

Despite her new exempt role, on a daily basis her job involved nonexempt tasks such as doing room inspections, checking in on the work other employees had done and telling room attendants to make corrections – or making them herself. She sometimes filled in for room attendants or housekeepers. Some of her managerial tasks, like preparing schedules and

ordering supplies, often got pushed beyond regular work hours.

Eventually, she sued, saying she wasn't an exempt employee under the federal Fair Labor Standards Act or state law.

Her lawsuit focused not only on the duties test, but also on whether she was paid on a salary basis. Her salary met the minimum standard each week, but her concern was the company's policy on pay deductions. She said it was problematic because exempt employees' pay could be reduced due to attendance or disciplinary issues. Although she was disciplined on one occasion,

the company didn't make a deduction from her pay as a result of that.

The court ruled in the employer's favor. First, although she stepped in and did nonexempt tasks for other people, she maintained her managerial duties at the same time. Second, the types of pay deductions noted in the company handbook were allowable.

Compliance check

- When workers' job titles change, see if their responsibilities do, too.
- Review your handbook to ensure the reasons given for pay deductions are permitted under the law.

Tracking local laws and regs

■ In Pittsburgh, strict enforcement of paid sick leave law begins

The pressure's on employers in Pittsburgh to follow the city's new paid sick leave ordinance.

The Office of Equal Protection plans to begin strict enforcement, and that includes doing compliance checks. The initial focus will be on food service businesses.

Under the ordinance, in effect since 2020, employers must establish a paid sick leave policy and must notify workers of their rights.

More info: pittsburghpa.gov/press-releases/press-releases/6318

■ It's the end of Philly's COVID-19 paid sick leave requirements

Philadelphia's COVID-19 Paid Sick Leave law, which went into effect on March 9, 2022, has now expired. The expiration date was Dec. 31, 2023.

Under the law, certain employers with 25 or more employees had to provide up to 40 hours of additional

paid sick leave to employees who couldn't work for reasons related to COVID-19. The city says employers should keep all compliance records for two years, so that'd be Dec. 31, 2025.

More info: www.phila.gov/documents/covid-19-pandemic-paid-sick-leave-resources/

■ Brookfield, IL, has opted out of new paid leave ordinance

Municipalities can opt out of the Cook County, IL, Paid Leave Ordinance that took effect Jan. 1, 2024.

For example, employers in Brookfield won't need to follow the county's ordinance. That's because on Dec. 11, 2023, the city adopted its own ordinance, as reported in the Riverside-Brookfield Landmark.

Important: Just because a municipality has opted out of the Earned Sick Leave Ordinance, it's not automatically opted out of the Paid Leave Ordinance.

More info: brookfieldil.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:

Does safe harbor for *de minimis* errors apply to reporting?

Q: Does the IRS safe harbor for *de minimis* errors on Form W-2 also apply to Form 941?

A: At the end of 2023, the IRS recently passed final regs on *de minimis* errors. The final regs explain you can avoid penalties for mistakes of \$100 or less on Form W-2 and certain other information returns and payee statements. The final regs also contain a section in which the IRS clarifies items

in the proposed regs and other guidance. After receiving comments in response to the proposed regs, the IRS says it's considering adding information to the Form W-2 instructions so it's clear that the safe harbor doesn't apply to the requirement to pay and report employment taxes on Form 941. In light of that, fixing *de minimis* errors on W-2s may be worthwhile in some situations. After all, incorrect W-2s may cause problems when it's time to file 941s.

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

Send questions to 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 forms, instructions and other publications contains Payroll-related updates.

- Form 8974, *Qualified Small Business Payroll Tax Credit for Increasing Research Activities*. Revision date: December 2023. Posted date: 12/13/23.
- Notice 797, *Possible Federal Tax Refund Due to the Earned Income Credit*. Revision date: November 2023. Posted date: 12/15/23.
- *Instructions for Form 1042*. Revision year: 2023. Posted date: 12/15/23.
- *Instructions for Form 720*. Revision date: December 2023. Posted date: 12/15/23.
- *Instructions for Form 8941*. Revision date: December 2023. Posted date: 12/15/23.
- Form W-4, *Employee's Withholding Certificate*. Revision year: 2024. Posted date: 12/15/23.
- Form 8846, *Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips*. Revision year: 2023. Posted date: 12/19/23.
- Publication 4164, *Modernized e-File Guide for Software Developers and Transmitters*. Revision date: December 2023. Posted date: 12/19/23.
- Publication 15-T, *Federal Income Tax Withholding Methods*. Revision year: 2024. Posted date: 12/19/23.

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

- **NEW HIRE NOTICE:** A new item is required on the written notice that employers must provide to employees at the time they're hired, effective Jan. 1, 2024. As a frame of reference, this is the same notice that includes information about pay rates, workers' compensation and paid sick leave. According to SB 636, the notice must also now inform employees about recent state or federal emergency or disaster declarations – specifically, declarations that occurred within 30 days of the employee's first day in the county or counties where that person will be employed. Furthermore, the notice should explain how the declaration may affect employees' health or safety. **More info:** leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB636
- **PAID TRAINING:** Due to SB 476, food handlers must be paid for the training that's required to obtain a food handler card. The time involved in taking the examination is also considered hours worked now. During the time that employees are taking the training course and examination, they must be relieved of all other work duties. The new requirements kicked in Jan. 1, 2024. **More info:** legiscan.com/CA/text/SB476/2023

MONTANA

- **EARNED WAGE ACCESS:** Do earned wage access (EWA) products meet the definition of a consumer loan under the Montana Consumer Loan Act? The short answer is no, the state's attorney general said in Opinion No. 2, released Dec. 22, 2023. There are some

qualifiers, though, according to the opinion. For example, the EWA product must be fully non-recourse. **More info:** rules.mt.gov/gateway/ShowNoticeFile.asp?TID=12009

- **FORM W-2:** The late-filing penalty for Form W-2 as well as Form 1099 has increased dramatically. Previously, it was \$5 per form with a minimum penalty of \$50. Starting with TY 2023 forms, which were due Jan. 31, 2024, the penalty is \$50 per form with a minimum penalty of \$250. **More info:** bit.ly/montana685

NEW YORK

- **PAID LEAVE:** The governor's budget proposal for FY 2025 includes a provision which would amend the state's paid family leave law. Employees would be able to take up to 40 hours of leave to attend prenatal appointments. This wouldn't impact the twelve weeks of paid family leave currently available to employees. **More info:** www.governor.ny.gov
- **PAY FREQUENCY:** Sec. 191 of the New York Labor Law (NYLL) says a manual worker must be paid weekly. A state appeals court recently considered whether manual workers who'd been paid biweekly had a private right of action to recover damages for the pay frequency violation. In *Grant v. Global Aircraft Dispatch Inc.*, the appeals court said the employees weren't entitled to damages because of another relevant section of the NYLL: Sec. 198. This section addresses nonpayment and underpayment of wages, and that's distinct from frequency of payment. This court's decision differs from another appellate court's 2019 decision in *Vega v. CM & Assoc. Constr. Mgt., LLC*. Of note, a provision in the governor's FY 2025 budget, if finalized, would clarify that employees aren't entitled to liquidated damages for pay frequency violations under

certain circumstances. **More info:** www.nycourts.gov/courts/AD2/Handdowns/2024/Decisions/D73657.pdf

OREGON

- **PAID LEAVE:** In its *January 2024 Bulletin*, the Oregon Employment Dept. (OED) explained some changes it's made to the state's paid leave program called Paid Leave Oregon. The changes took effect Jan. 1, 2024. For example, due to recent legislation, bias crimes are now included in the definition of safe leave. The bulletin also addresses equivalent plans for Paid Leave Oregon. Before an employer can withdraw an equivalent plan, it needs to be in effect for at least one year. Also, employers must provide 30 days' notice to the OED. Failing to meet these criteria may result in interest and penalties. **More info:** paidleave.oregon.gov/bulletins/2024-01-16/january-2024-bulletin

THE LIGHTER SIDE

Even seen a funny overhead electronic sign while driving down the highway? Those may be disappearing due to the latest edition of a Federal Highway Administration manual. The agency strongly recommends states avoid using signs with humor, obscure meanings or pop culture references. Its rationale? Risk of distraction. For now, the signs are still allowed, and here are a few that have been spotted by motorists:

- *Use Yah Blinkah.* (Massachusetts)
- *Visiting in-laws? Slow down, get there late.* (Ohio)
- *Don't drive Star Spangled Hammered.* (Pennsylvania)
- *Hands on the wheel, not your meal.* (Arizona)

Cite: AP, "No Joke: Feds Discourage Humorous Electronic Messages on Highways," 1/19/24.