

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™

March 1, 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

- **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.
- **March 15, 2024:** Deposit taxes for payroll on March 9, 10, 11, 12.
- **March 20, 2024:** Deposit taxes for payroll on March 13, 14, 15.
- **March 22, 2024:** Deposit taxes for payroll on March 16, 17, 18, 19.
- **March 27, 2024:** Deposit taxes for payroll on March 20, 21, 22.

### ■ MONTHLY DEPOSITORS

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

## Retirement plans: What recent IRS 'grab bag' notice clarified

### ■ 12 sections of Secure 2.0 Act addressed

It's been called a "grab bag" notice on the Secure 2.0 Act of 2022: Notice 2024-2.

This IRS notice covers 12 sections of the retirement plan law.

Here's a recap of a few sections that are most relevant to Payroll:

#### Law already took effect

Sec. 101 of the Secure 2.0 Act expanded automatic enrollment in retirement plans. Specifically, starting in 2025, plans must automatically enroll participants, but there are exceptions such as for cash or deferred arrangements (CODAs) established before Dec. 29, 2022.

In Notice 2024-2, the IRS explained that a plan is "established" on the

date plan terms are adopted initially. It doesn't matter if the plan terms are effective after the adoption date. For example, if you adopted a plan on Oct. 3, 2022, but the effective date was Jan. 1, 2023, the CODA plan would have been established on Oct. 3, 2022.

According to Sec. 113 of the 2022 retirement plan law, plan sponsors can offer a small, immediate financial incentive to employees to begin contributing to the plan. However, the incentives can't be paid for with plan assets, the Secure 2.0 Act specified.

Per the notice, a *de minimis* incentive is one that doesn't exceed \$250 in value. Another point of

*(Please see Retirement plans ... on Page 2)*

## ACA update: ESRPs will be lower when 2025 arrives

Good news: The IRS announced a decrease in the amounts of employer shared responsibility payments (ESRPs) for 2025.

By way of background, there are two types of ESRPs under the Affordable Care Act (ACA). An applicable large employer (ALA) may be subject to one of the two.

Here are the 2025 dollar amounts, according to the two types of ESRPs:

#### The dollar amounts

The *first type* applies if an ALA doesn't offer minimum essential coverage (MEC) to at least 95% of

employees and at least one employee receives the premium tax credit.

The ESRP has decreased from \$2,970 to \$2,900 for each FT employee, minus the first 30 employees.

The *second type* applies if an ALA does offer MEC to at least 95% of employees and at least one employee receives the premium tax credit.

The ESRP has decreased from \$4,460 to \$4,350 for each FT employee who receives the premium tax credit.

More info: [www.irs.gov/pub/irs-drop/rp-24-14.pdf](http://www.irs.gov/pub/irs-drop/rp-24-14.pdf)

## Farm paid U.S. workers less than workers with H-2A visas, DOL found

■ EMPLOYER OWED BACK WAGES AND A CIVIL MONEY PENALTY

An agricultural employer paid U.S. workers a lower hourly rate than it paid workers with H-2A visas, the Dept. of Labor (DOL) recently said.

That was a violation of the Immigration and Nationality Act (INA).

Boatwright Farms LLC had recruited and hired H-2A workers to plant, grow, harvest and prepare crops for shipping.

But the Steele, AL, employer didn't pay U.S. workers in corresponding jobs the same rate. Also under the INA, the employer should have stated the actual terms and conditions of the job and should have given workers their wage and hour statements – but the farm failed to take those steps.

Also during its investigation, the DOL found violations of another law:

the Migrant and Seasonal Workers Protection Act.

For the H-2A violations, the employer had to pay \$8,862 in back wages to 106 workers.

On top of that, the DOL assessed a \$9,970 civil money penalty.

### Proposed rule to watch

Heads up: The DOL issued a notice of proposed rulemaking on Sept. 12, 2023.

The proposed rule is called Improving Protections for Workers in Temporary Agricultural Employment in the United States.

It would strengthen protections for agricultural workers and enhance DOL's ability to enforce the law.

**More info:** [www.dol.gov/newsroom/releases/whd/whd20240205-3](http://www.dol.gov/newsroom/releases/whd/whd20240205-3)

### Retirement plans ...

(continued from Page 1)

clarification: Matching contributions can't be considered *de minimis* financial contributions under this section of the law.

The IRS notice also shed light on Sec. 604 of the Secure 2.0 Act, which allows employees to choose to have employer contributions or nonelective contributions treated as Roth contributions.

Notice 2024-02 states that employees must have an opportunity to make or change their designation at least once per plan year. Also, they must be 100% vested in the above contributions when they're allocated to their account.

The notice also addresses the issue of when to include Roth matching contributions or designated Roth nonelective contributions in an employee's gross income. It's the taxable year in which the contribution is allocated to the individual's account.

**More info:** [www.irs.gov/irb/2024-02\\_IRB#NOT-2024-2](http://www.irs.gov/irb/2024-02_IRB#NOT-2024-2)

## COMPLIANCE CHECK

### ■ 63 HVAC WORKERS DIDN'T RECEIVE TIME-AND-A-HALF

Comfort Air of Grand Junction LLC, Grand Junction, CO, failed to pay 63 HVAC employees the proper rate for overtime hours worked. As a result, the company owed:

- \$90,086 in back wages, and
- \$90,086 in liquidated damages.

**More info:** [www.dol.gov/newsroom/releases/whd/whd20240124-0](http://www.dol.gov/newsroom/releases/whd/whd20240124-0)

### ■ FLSA MISTAKES FOUND AT PARKS & REC COMMISSION

Kanawha County Parks and Recreation Commission, located in Charleston and Tornado, WV, incorrectly classified seven seasonal employees as exempt from overtime. Plus, the commission improperly computed comp time for 17 of its year-round employees. For these Fair Labor Standards Act (FLSA) violations, the employer had to pay:

- \$5,234 to nine workers at one site
- \$8,405 to 15 workers at the other site, and
- \$13,639 in liquidated damages.

**More info:** [www.dol.gov/newsroom/releases/whd/whd20240124-1](http://www.dol.gov/newsroom/releases/whd/whd20240124-1)

### ■ IN PA, MINORS WORKED BEYOND PERMITTED HOURS

Arbor E&T LLC – an employment service agency in St. Marys, PA – violated the child labor provision of the Fair Labor Standards Act when it employed nine minors aged 14 and 15 outside of permitted hours. Under federal law, minors of that age may work no more than three hours on a school day (eight hours on a non-school day) and 18 hours in a school week (40 hours in a non-school week). The Dept. of Labor assessed Arbor E&T LLC a \$16,795 civil money penalty.

**More info:** [www.dol.gov/newsroom/releases/whd/whd20240201](http://www.dol.gov/newsroom/releases/whd/whd20240201)

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*Keep Up to Date on Payroll* (ISSN 1076-3309), issue date March 1, 2024, Vol. 30 No. 686, is published semi-monthly except once in December (23 times a year).

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## Workers at nonprofit signed form saying they agreed not to be paid

■ BUT THEN THE WORKERS SUED, CLAIMING FLSA VIOLATIONS

Individuals who did work at a nonprofit but didn't get paid for that work sued for violations of the Fair Labor Standards Act (FLSA).

Recently, the Fifth Circuit Court of Appeals heard the case: *Klick v. Cenikor Foundation*.

The foundation was a 501(c)(3) nonprofit that helped individuals with alcohol and drug addiction. The nonprofit ran an adult long-term inpatient treatment program.

The patients received room and board, food, clothing and other provisions as part of their stays.

During the primary treatment phase of the rehabilitation process, patients were assigned jobs. They worked either at the nonprofit's location or at businesses in the community that had partnered with the nonprofit. The patients didn't receive any money for their work during this phase.

That's because Cenikor didn't consider them to be employees.

In fact, it'd required the patients to sign a form acknowledging some facts about their treatment. The form stated that during the primary treatment

phase, they'd receive no monetary compensation for the responsibilities assigned to them within the facility or at any outside location.

On that form, they also attested that they weren't employees and that they understood that funds paid to the nonprofit would be used to help offset the treatment center's costs.

### Wrong test used

A federal district court relied on the economic realities test – used to determine whether or not someone's an independent contractor – to conclude that the patients were employees. But the appeals court said the lower court used the wrong standard.

Instead of using the economic realities test, it should have used the primary beneficiary test. That's typically used to evaluate whether volunteers, trainees and interns are employees under the FLSA.

The Fifth Circuit sent the case back to the lower court to apply the primary beneficiary test to the situation at the nonprofit.

**More info:** [law.justia.com/cases/federal/appellate-courts/ca5/22-20434/22-20434-2024-02-09.html](http://law.justia.com/cases/federal/appellate-courts/ca5/22-20434/22-20434-2024-02-09.html)

## Turbulence ahead: IRS says it'll audit this fringe benefit

A fringe benefit with a big price tag has become the focus of a new IRS audit campaign.

The Service announced that it'll begin examining personal use of business aircraft.

### Business or personal use?

At issue is whether large corporations, large partnerships and high-income taxpayers have properly allocated the use of jets between business and personal use.

As with other modes of transportation such as automobiles,

personal use of corporate jets is a taxable fringe benefit and should be included in income.

Plus, businesses can't deduct the costs related to personal travel.

According to a Feb. 21, 2024, announcement, the IRS Large Business and International Division will head up the audit campaign, which it plans to begin "in the near future."

Companies may want to act quickly to examine this fringe benefit as it's utilized by officers, executives, shareholders and others.

**More info:** [bit.ly/corporatejet686](http://bit.ly/corporatejet686)

### ■ SEMIWEEKLY DEPOSITORS, WATCH THIS DATE IN APRIL

On April 5, 2024, semiweekly tax depositors may be required to send the IRS two separate deposits to account for the first and second quarters of 2024.

**First quarter:** Deposits remitted on that date will cover payments made March 30-31, 2024.

**Second quarter:** Deposits remitted on that date will cover payments made April 1-2, 2024.

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

### ■ BEWARE OF COUNTERFEIT PAY STATEMENTS, SAYS ADP

A major third-party payroll provider has issued a fraud alert.

ADP has warned clients not to purchase pay statements being sold on e-commerce websites – they're counterfeit. ADP advised that paper stock and payroll products will only be sold on its website, not through third-party websites.

**More info:** [www.adp.com/about-adp/data-security/alerts.aspx](http://www.adp.com/about-adp/data-security/alerts.aspx)

### ■ IRS RENAMES 2 FORMS RELATED TO E-FILEING

The IRS has made minor changes to two forms related to e-filing employment tax returns. For one thing, they both have new names:

- Form 8879-EMP is now *E-file Authorization for Employment Tax Returns*. Previously this was called *IRS e-file Signature Authorization for Forms 940, 940 (PR), 941, 941 (PR), 941-SS, 943, 943 (PR), 944, and 945*.
- Form 8453-EMP is now *E-file Declaration for Employment Tax Returns*. Previously this was called *Employment Tax Declaration for an IRS e-file Return*.

**More info:** [www.irs.gov/e-file-providers/modernized-e-file-program-information](http://www.irs.gov/e-file-providers/modernized-e-file-program-information)

## Looking forward: What changes to paid leave are in the works?

■ SURVEY ASKS EMPLOYERS ABOUT PLANS IN NEXT TWO YEARS

The percentage of employers expecting to change their leave programs over the next two years is high – 84%.

That’s according to a new survey from WTW, a global company providing insurance services.

WTW’s 2023 *Leave, Disability and Time-off Trends Survey* revealed employers’ top reasons for the anticipated changes:

- supporting their attraction and retention strategies (73%), and
- enhancing the employee experience (72%).

Of note, those answers were consistent across all employer sizes, from 100 employees to more than 25,000 employees.

### A mix of leave types

The survey looked at a variety of leave types:

**#1 Parental Leave:** Many companies already offer maternity leave (86%), paternity leave (82%)

and adoption leave (82%), and one-fifth of these companies plan to increase the value of their current programs.

**#2 Bereavement Leave:** Almost all (95%) employers said they have a bereavement leave policy beyond what’s already required at the state level. Of those, 25% intend to increase the value of the bereavement leave.

**#3 Caregiver Leave:** Keep an eye on this one. Currently, 25% of employers offer paid caregiver leave, and 22% are planning to implement this type of policy – or are at least considering it.

Another survey question involved **paid time off (PTO)**. When it comes to unlimited PTO, 12% of employers have a policy on this now and 16% are planning to offer this perk to exempt employees.

Even in companies where PTO isn’t unlimited, changes are anticipated – 22% of respondents said they’re going to change the number of days offered.

To keep up with the administration of leave programs, more employers will decide to outsource, the survey showed. That said, of the 64%

additional payment due to him for commissions and bonuses once any wage deductions had been made.

Eventually, the employee started questioning the pay arrangement and filed a lawsuit against his employer.

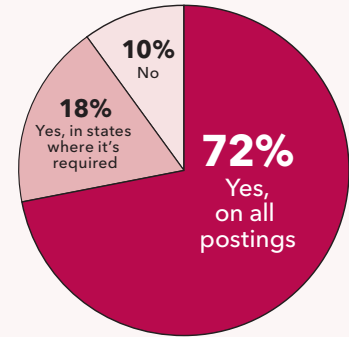
He claimed the reductions that resulted from negative customer service surveys and the mystery shopper assessments were technically fines. The employer maintained that the deductions were made according to an agreed-upon method for calculating wages.

The dispute reached a state appeals court. The court’s conclusion: While

## WHAT PAYROLL PROS TOLD US

### Pay transparency

Do you post salary information on job postings?



Source: ZipRecruiter 2023 survey

Including salary data with job postings has become commonplace, with 72% of those surveyed saying they add that info even when there’s no law requiring it.

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

of companies that outsource state family medical leave administration, many are dissatisfied, and 54% are thinking about switching to a new administrator in the next two years.

**More info:** [www.wtwco.com/en-us/news/2024/01/majority-of-employers-will-change-their-leave-programs-in-the-next-two-years-wtw-survey-finds](http://www.wtwco.com/en-us/news/2024/01/majority-of-employers-will-change-their-leave-programs-in-the-next-two-years-wtw-survey-finds)

it’s correct that under Kentucky law fines can’t be deducted from employees’ wages, the wage reductions in question didn’t meet the definition of fines. Therefore, the employer hadn’t violated the state’s wage and hour law.

### Checklist for compliance

- Even if an employee agrees to a pay plan, that person may later question whether it’s legal. Be ready to show that pay plans are compliant with state and federal laws.
- The federal Dept. of Labor offers fact sheets – #17U and #20 – on commission pay.

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

### Employee signs off on plan for commissions and bonuses - later he sues

*A car dealership in Kentucky faced this real-life scenario:*

The car dealership paid one of its salesmen twice per month – this was a “draw” against the commissions it was anticipated he’d earn.

He also had the chance to earn additional commissions and bonuses, but those amounts could be reduced as explained in a written plan. For example, a wage reduction might be made due to an imperfect customer service survey or an unsatisfactory mystery shopper assessment.

Each month, he and his manager signed a sheet that stated the total



## Tracking local laws and regs

### ■ Higher minimum wage rate in Tukwila, WA, kicks in midyear

The minimum wage rate in Tukwila, WA, will increase on July 1, 2024. It'll be:

- \$20.29, up from \$18.99, for large employers (those with more than 500 employees worldwide and certain franchisees), and
- \$18.29, up from \$16.99, for midsize employers (those with at least 15 but no more than 500 employees worldwide – or those with over \$2 million of annual gross revenue in the city).

**More info:** [www.tukwilawa.gov/departments/finance/minimum-wage-and-fair-access-to-additional-hours-of-work](http://www.tukwilawa.gov/departments/finance/minimum-wage-and-fair-access-to-additional-hours-of-work)

### ■ A new Washington city sets its own minimum wage rate

It's not final yet, but voters in Renton, WA, a suburb of Seattle, appear to have said yes to an ordinance that establishes a city

minimum wage. This happened in a February 2024 special election when residents voted on Initiative Measure No. 23-02.

If confirmed, starting July 1, 2024, large employers will need to pay at least \$20.29 per hour and midsize employers will need to pay at least \$18.29.

**More info:** [kingcounty.gov/en/legacy/depts/elections](http://kingcounty.gov/en/legacy/depts/elections)

### ■ Tucson, AZ, minimum wage matches the state's rate

The Tucson Minimum Wage Act, passed in 2021, called for the city's minimum wage to increase incrementally over the course of four years. Although the established rate for 2024 was \$14.25 per hour, because the state's rate is higher – \$14.35 per hour – that's the rate employers should use during 2024.

**More info:** [www.tucsonaz.gov/Departments/Business-Services-Department/Tucson-Minimum-Wage-Act](http://www.tucsonaz.gov/Departments/Business-Services-Department/Tucson-Minimum-Wage-Act)

## 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:*

### Automatic enrollment in emergency savings accounts?

**Q:** If we set up pension-linked emergency savings accounts (PLESAs) under the Secure 2.0 Act, can we automatically enroll employees?

**A:** The Secure 2.0 Act allows for automatic enrollment in PLESAs starting in 2024, but written notification must be given first. PLESAs are short-term savings accounts that provide a way for employees to prepare for financial emergencies – they're

set up and maintained within a defined contribution plan. Plan sponsors that opt for an automatic enrollment/automatic contribution feature should note that the contribution percentage rate can't exceed 3% of the compensation of the eligible participant. However, the participant can affirmatively elect a percentage that's higher or lower than 3%. Contributions to a PLESA count toward the annual limit on elective deferrals – in 2024, that limit is \$23,000.

**More info:** [www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs](http://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/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.

## IRS FORMS ALERT

### RECENT CHANGES TO FEDERAL FORMS AND PUBLICATIONS

This list of publications contains Payroll-related updates.

- *(Circular E), Employer's Tax Guide*. Revision year: 2024. Posted date: 12/20/23.
- *Instructions for Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*. Revision date: January 2024. Posted date: 12/20/23.
- Publication 15-A, *Employer's Supplemental Tax Guide*. Revision year: 2024. Posted date: 12/20/23.
- Publication 5718, *Information Returns Intake System Electronic Filing Application to Application Specs*. Revision date: December 2023. Posted date: 12/20/23.
- Form W-4S, *Request for Federal Income Tax Withholding From Sick Pay*. Revision year: 2024. Posted date: 12/22/23.
- Publication 15-B, *Employer's Tax Guide to Fringe Benefits*. Revision year: 2024. Posted date: 12/29/23.
- Publication 1223, *General Rules and Specs for Substitute Forms W-2c and W-3c*. Revision date: December 2023. Posted date: 12/29/23.
- Form CT-1, *Employer's Annual Railroad Retirement Tax Return*. Revision year: 2023. Posted date: 1/8/24.

### 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**

- **H-2A VISAS:** AB 636, which takes effect March 15, 2024, says employers must provide certain information to H-2A workers when they're hired. The notice must be written in Spanish, but an employee can request a copy in English as well. The notice should describe an agricultural employee's additional rights and protection under California law. Also, the law says that the state's labor commissioner should create a template for the notice and post that online by March 1, 2024. **More info:** [legiscan.com/CA/text/AB636/id/2844778](https://legiscan.com/CA/text/AB636/id/2844778)
- **PAY DATA REPORTING:** Pay data reports are due by May 8, 2024. The reports – containing pay, demographic and other workforce data – are required of private employers that have 100 or more employees and/or 100 or more workers hired through labor contractors. You'll find new data fields, such as regarding whether employees worked remotely during the snapshot period. On the Civil Rights Dept.'s website, employers can access the pay data reporting portal, FAQs and other resources. **More info:** [calcivilrights.ca.gov/paydatareporting](https://calcivilrights.ca.gov/paydatareporting)

**COLORADO**

- **EQUAL PAY:** Amendments to the Equal Pay for Equal Work Act took effect Jan. 1, 2024. To address the changes, the state has updated Interpretive Notice & Formal Opinion (INFO) #9A. This guidance states that an employer must disclose a job opportunity whenever it's at least considering filling any current or anticipated

vacancy. Many details are provided about this, including whether, when an existing position is changed, it's been changed enough to make it a different position. **More info:** [tinyurl.com/colorado686](https://tinyurl.com/colorado686)

**OREGON**

- **WITHHOLDING:** The state revised its tax tables on Jan. 5, 2024, so make sure you're using the most up-to-date information. Also on the Oregon Dept. of Revenue's website you can doublecheck the 2024 withholding tax formulas, transit rates and standard deductions. **More info:** [www.oregon.gov/dor/programs/businesses/pages/payroll-updates.aspx](https://www.oregon.gov/dor/programs/businesses/pages/payroll-updates.aspx)

**TENNESSEE**

- **MINIMUM WAGE:** Tennessee is one of 20 states in the county with a minimum wage rate of \$7.25 per hour. But HB 2602 would change that – dramatically. The bill calls for an increase to \$20 per hour. We'll monitor this legislation for you. **More info:** [tinyurl.com/tennessee686](https://tinyurl.com/tennessee686)

**VERMONT**

- **TAXES:** As employers are continuing to prepare for the new Child Care Contribution (CCC) tax that takes effect July 1, 2024, the Dept. of Taxes has issued FAQs. The definition of wages for CCC purposes will be the same as the definition of wages subject to federal and Vermont income tax. To remit CCC payments, employers will use the same method as they do for Vermont Income Tax Withholding. Reporting will be done on the quarterly withholding reconciliation form, with new lines added. As for out-of-state employers, they must remit and report the CCC for employee wages that require Vermont Income Tax Withholding. Additional issues are

addressed in the FAQs. **More info:** [tax.vermont.gov/business/child-care-contribution](https://tax.vermont.gov/business/child-care-contribution)

**WASHINGTON**

- **WORKERS' COMP:** Washington State Dept. of Labor & Industries announced a 4.9% increase in the average workers' compensation premium rates. So, in 2024, the increase will cost employers and workers an average of \$65 per year per employee for the premiums. The premiums are broken down into four rates: the accident rate, the medical aid rate, the supplemental pension rate and the Stay at Work rate. While employers and employees contribute to three of those funds, only employers contribute to the accident fund. **More info:** [lni.wa.gov/insurance/rates-risk-classes/rates-for-workers-compensation/rates-notice](https://lni.wa.gov/insurance/rates-risk-classes/rates-for-workers-compensation/rates-notice)

**THE LIGHTER SIDE**

As if running a half marathon isn't an impressive enough achievement, Ben Duong decided to try it while dribbling a basketball.

The 24-year-old grad student at the University of Texas at San Antonio was able to do his run-dribble in one hour, 21 minutes and 39 seconds. With that time, he broke a Guinness World Record – the previous record for a male was two hours and three minutes.

Perhaps even more impressive is that he managed to finish 12th overall in the half marathon, running an average of six minutes and 14 seconds per mile.

To think, Duong could run and dribble, whereas some people can't even walk and chew gum.

**Cite:** UPI, "Texas Man Breaks Record for Half Marathon While Dribbling a Basketball," 2/20/24.