

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™

April 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

- **April 3, 2024:** Deposit taxes for payroll on March 27, 28, 29.
- **April 5, 2024:** Deposit taxes for payroll on March 30, 31 for Q1.
- **April 5, 2024:** Deposit taxes for payroll on April 1, 2 for Q2.
- **April 10, 2024:** Deposit taxes for payroll on April 3, 4, 5.
- **April 12, 2024:** Deposit taxes for payroll on April 6, 7, 8, 9.
- **April 18, 2024:** Deposit taxes for payroll on April 10, 11, 12.
- **April 19, 2024:** Deposit taxes for payroll on April 13, 14, 15, 16.
- **April 24, 2024:** Deposit taxes for payroll on April 17, 18, 19.

■ MONTHLY DEPOSITORS

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

Process for submitting W-2s changing yet again, says SSA

■ Goal is data security and a streamlined approach

Heads up: More changes are on the way regarding how you submit Forms W-2 to SSA.

For TY 2023, SSA rolled out a new authentication and registration process, which involved having either a *Login.gov* or *ID.me* account.

This step helped increase security.

SSA plans to build on that now. That means you'll have another new registration and authorization process for filing wage reports through SSA's Business Services Online (BSO).

Here's what that'll look like:

Pick a responsible entity officer

Each filing entity will pick an individual to be designated as the

responsible entity officer (REO) – i.e., the person who has the responsibility to act on the employer's behalf. This person must be a principal officer.

When it's time to get started, the REO will log in to BSO – whether through an existing or new account – and select the option to register an organization using an employer identification number.

The REO can expect to receive two codes – one will be sent to a work account email and the other will go out in a letter through the mail.

Once the code arrives in the mail, which SSA says make take 15-20 days, the REO will need to log in to BSO

(Please see Submitting W-2s ... on Page 2)

Joint-employer rule runs into last-minute roadblock

Days before the new joint-employer rule from the National Labor Relations Board (NLRB) would have taken effect, it came to a screeching halt. A federal district court judge vacated the rule on March 9, 2024.

That's a relief for employers nationwide who faced heightened responsibility under the rule.

In fact, the rule said an entity that indirectly controlled employees' essential terms and conditions of employment could be considered a joint employer. Plus, control didn't even need to be exercised. Essential terms and conditions include things such as wages, benefits and other

compensation. Hours of work and scheduling are other examples.

NLRB went too far, judge said

The NLRB rule, originally set to take effect on Dec. 26, 2023, had been stayed by Judge J. Campbell Barker until March 11, 2024.

That judge ultimately decided to block the rule, saying it went beyond common law limits.

It's likely the NLRB will appeal.

More info: www.nlr.gov/news-outreach/news-story/nlrbs-joint-employer-rule-vacated-by-us-district-judge

Court holds company responsible for \$40K in unpaid medical claims

■ PREMIUMS DEDUCTED BUT PAYMENTS NOT REMITTED DURING 2019 & 2020

A company made deductions from employees' wages for its health and welfare plan, but then the company didn't remit the required premium payments for coverage.

That occurred from August 2019 to October 2020, the Dept. of Labor (DOL) found during an investigation.

In November 2022, the DOL filed a motion for default judgment against Ken-Co Fabricating Co. Inc., a custom steel, aluminum, automotive and industrial paint shop which is now defunct.

On Feb. 8, 2024, a federal district court ruled that the Westmoreland County, PA, company had violated the Employee Retirement Income Security Act of 1974.

Ken-Co Fabricating had to restore \$40,436 to the health and welfare

plan. That amount represents the unpaid medical claims. An independent fiduciary with plenary authority and control regarding the management and administration of the plan was also appointed by the court. The company must pay the expenses of the fiduciary.

Resources from EBSA

The DOL's Employee Benefits Security Administration (EBSA) oversees more than:

- 765,000 private retirement plans
- 2.8 million health plans, and
- 619,000 other welfare benefit plans.

The EBSA offers resources such as *Understanding Your Fiduciary Responsibilities Under A Group Health Plan*.

More info: www.dol.gov/newsroom/releases/ebsa/ebsa20240226

Submitting W-2s ...

(continued from Page 1)

again. The dashboard will display a link enabling the REO to complete the registration process by entering the code (which is valid for one year).

The REO may bear the primary responsibility in SSA's eyes, but that's not to say that individual is expected to do all the work. The REO can designate other people within the organization to have access to various BSO services – from reporting wages to verifying Social Security numbers. Third-party users can also be granted authorization by the REO.

Users will need to consent to the role that's been delegated to them before they get started.

What to do now: A pilot program got underway in July of 2023, and SSA is still working through details, such as what employers should do if an REO is no longer with the company.

Now's the time to consider who you'll pick as your REO, SSA says.

More info: www.ssa.gov/employer/reporter/meetingDetailsFall2023.pdf

COMPLIANCE CHECK

■ CALIFORNIA COMPANY OWES OVER \$200K FOR OT TROUBLE

Universal Welding and Construction Inc. of Bakersfield, CA, failed to pay 74 workers the overtime premium for hours they worked beyond 40 in a workweek. Therefore, the company owed:

- \$34,954 in civil money penalties
- \$85,004 in unpaid overtime wages, and
- \$85,004 in liquidated damages.

More info: www.dol.gov/newsroom/releases/whd/whd20240213

■ WORKERS NOT 'ENGAGED IN THEIR OWN BUSINESSES'

Prior Vision LLC, in Kapolei, HI, misclassified 110 security guards and patrol officers as independent contractors – they weren't "engaged in their own businesses," the Dept. of Labor said. The misclassification also led to overtime violations. The company had to pay:

- \$36,000 in civil money penalties
- \$65,642 in back wages, and
- \$65,642 in liquidated damages.

More info: www.dol.gov/newsroom/releases/whd/whd20240220-1

■ ALLOWED MINORS TO WORK DURING SCHOOL HOURS

In Idaho, Granite Mountain Restaurants LLC and MRP Idaho Falls LLC organized and oversaw an illegal tip pool; failed to pay overtime; and allowed 14- and 15-year-old employees to work during school hours and later and longer than allowed under the Fair Labor Standards Act. So, it owed:

- \$139,981 in back wages
- \$139,981 in damages
- \$5,000 in punitive damages, and
- \$34,077 in penalties.

More info: www.dol.gov/newsroom/releases/whd/whd20240228-0

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Keep Up to Date on Payroll (ISSN 1076-3309), issue date April 1, 2024, Vol. 30 No. 688, is published semi-monthly except once in December (23 times a year).

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Fore! Golf club attendants bring FLSA lawsuit over volunteer status

■ HERE'S WHY APPEALS COURT RULED IN FAVOR OF PUBLIC EMPLOYER

After several years of volunteering at a golf course – and in return receiving benefits such as discounted golf – three individuals filed a lawsuit under the Fair Labor Standards Act (FLSA).

They claimed the public agency that owned the golf course violated the FLSA's minimum wage and anti-retaliation provisions.

A federal district court disagreed, ruling in favor of Palm Beach County's classification of them as volunteer golf attendants, not employees. The Eleventh Circuit affirmed that decision on March 12, 2024.

Here's what happened:

Ad said: 'Volunteers Needed'

The case, *Adams v. Palm Beach County*, was brought by three golf attendants at Osprey Point Golf Club, owned by the county.

The county's parks and recreation department put out an advertisement that stated: "Volunteers Needed." The ad said that the volunteers would perform services in exchange for discounted golf and other benefits.

Three individuals who signed up to be volunteers spent their time as course rangers, driving-range attendants and bag-drop attendants. Their various duties – which they weren't allowed to choose – included greeting customers; carrying and loading their golf clubs; raking sand traps and filling divots; and many other tasks.

Under the FLSA, public-agency volunteers aren't included in the definition of "employee" as long as certain conditions are met.

The court determined the golf attendants in question met those conditions. For example:

- attendants could accept tips but weren't paid wages, and
- if they worked at least one seven-hour shift in a week, they could play unlimited rounds of golf during certain days, times and locations for a low rate. Considering that a round of golf at Osprey Point Golf Club cost \$96, volunteers received a significant discount when they paid only \$5 per round. That was a reasonable benefit and couldn't be considered compensation, the court said.

More info: media.ca11.uscourts.gov/opinions/pub/files/202311065.pdf

E-Verify+ coming to workplaces as pilot program

Look for a pilot program this spring called E-Verify+, the U.S. Dept. of Homeland Security recently said.

Additional services, beyond what's already offered through E-Verify, will be available with this program.

E-Verify+ aims to streamline the Form I-9 and employment eligibility verification process into one seamless experience, a Feb. 21, 2024, announcement explained.

Past upgrades made

Upgrades have been incorporated into the E-Verify program for years.

The most recent upgrade occurred in June 2022. Here are a few of the changes E-Verify made at that time:

- extended the duplicate case lookback period from 30 to 365 days
- restricted users from creating a duplicate case if a case for the same employee was already open, and
- provided the capability for a user to view and manage all duplicate cases.

More info: www.e-verify.gov/about-e-verify/whats-new/e-verify-is-happy-to-share-exciting-news

NEWS YOU CAN USE

■ PROPOSED RULE ON USE OF ELECTRONIC PAYROLL DATA

Payroll providers may soon need to share wage and employment information with the SSA, so the agency can more efficiently administer its benefits programs.

Currently, individuals report the information to SSA. But under a proposed rule, *Use of Electronic Payroll Data To Improve Program Administration*, changes would be made as allowed under the Bipartisan Budget Act of 2015.

More info: *Federal Register*, 2/15/24.

■ 2 SYSTEMS FOR E-FILING FORM 1099 STILL AVAILABLE

The IRS will continue to operate two systems for the electronic filing of Form 1099, an IRS representative said during the March Payroll Industry Call.

Although the Information Returns Intake System (IRIS) has been up and running for a couple tax years, IRIS is being offered along with the previous system: Filing Information Returns Electronically (FIRE). The IRS said it's commonly asked when the FIRE system will be discontinued. But no date has been set at this point, the rep stated.

More info: www.irs.gov/filing/e-file-forms-1099-with-iris

■ PREMIUM TAX CREDIT FACT SHEET GETS UPDATED

In February 2024, the IRS updated its fact sheet on the Premium Tax Credit. If employees are confused on the tax credit, you may want to steer them to FS-2024-04.

A section on the affordability of employer coverage for employees and their family members has been added. For example, one question covers affordability when employees receive offers of coverage from multiple employers.

More info: www.irs.gov/pub/taxpros/fs-2024-04.pdf

Modernization efforts underway for state UI tax reporting systems

■ DOL'S EXPECTATIONS FOR STATES SPELLED OUT IN CHECKLIST

Be on the lookout for changes from your state with regard to quarterly unemployment insurance (UI) reporting.

The U.S. Dept. of Labor (DOL) has called for modernization efforts.

DOL's Employment and Training Administration (ETA) has issued a comprehensive checklist that state workforce agencies must complete prior to implementing major changes to UI IT systems.

The checklist is contained in the enhanced *ETA 9177 Report*, which went into use in 2020 and will continue to be required until at least July 31, 2026.

The employer connection

So, what does this checklist have to do with employers?

Sections of the checklist involve state workforce agencies interacting with employers.

We'll look at some of the details so you know what's coming.

Section 1.2 says states must fully test all tax functions – 10 functions are given, but there may be others:

- employer registration – both initial registration and updates
- employer liability determinations, including reimbursable employers and employer status change
- employer audit
- tax rate computation
- employer delinquency enforcement
- employer tax and wage report, and input processing
- tax collections
- tax refunds/overpayments
- new business registration, and
- quarterly tax filing/data entry.

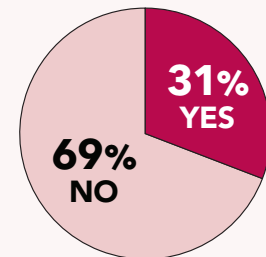
Section 1.5 explains that states must fully test all interfaces, and that includes the State Information Data Exchange System (aka SIDES) interface with employers.

Section 10.2 of the checklist covers claimant and employer communication. This should include outreach regarding rollout of the new system, and a “go-live” date should

WHAT PAYROLL PROS TOLD US

Unlimited Paid Time Off

Does your company offer directors and executives unlimited paid time off?



Source: 2023 Leave, Disability and Time-off Trends Survey by WTW, 517 respondents

Almost one-third (31%) of companies surveyed said they offer unlimited paid time off to directors and executives, while only 12% offer the perk to employees in general.

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

be shared. Also, if a system blackout period is needed, that should be communicated along with the methods of conducting business during this phase of the rollout process. Information about how to contact the state workforce agency should also be widely disseminated.

More info: oui.doleta.gov/unemploy

REAL-LIFE SCENARIO: DID THEY GET IT RIGHT?

Executive was told he'd receive \$105K annual bonus, but it never happened

An energy-service company in New York faced this real-life scenario:

The company hired a new CFO. As the offer letter stated, he'd be eligible for the company's annual bonus program. This was a discretionary bonus with a target of 50% of his base salary. Of particular note, the CFO had to be “an active employee at the time of any payout” to receive the bonus payment.

He worked for the company for a couple years. On April 1, following his second year of employment, the company's president/CEO sent an email to the VP of HR, asking him to begin processing a bonus check in the

amount of \$105,000 and to arrange for payment as soon as possible.

Within a few days of that email, the president informed the CFO that he would receive the bonus. But on April 9, the president sent a follow-up email to the VP of HR, seeking a pause on the bonus. The pause lasted one day and then the president requested a live check for the employee by April 12. The CFO never received the bonus check, and on April 16, the company terminated his employment.

In an ensuing lawsuit, the CFO accused the company of breach of contract for not paying his bonus. The court considered the phrase from

his offer letter regarding his needing to be an active employee *at the time of payout*. That could have meant at the time of approval, disbursement, receipt of funds, etc. The company and employee had differing ideas. Due to the term's vagueness, the court didn't grant the company's request for summary judgment.

Checklist for compliance

- Work with HR to identify any potentially vague terms in employment contracts.
- For terms related to finance and compensation, consider if new definitions are in order.

Tracking local laws and regs

■ NYC makes changes involving Earned Safe and Sick Time Act

New York City's administrative code has been amended to create a private right of action for employees who allege a violation of their rights under the Earned Safe and Sick Time Act.

The New York City Council passed Int. 0563-2022 on Jan. 20, 2024. This ordinance explains that an employee doesn't need to file a complaint with the Dept. of Consumer and Worker Protection (DCWP) as a prerequisite to legal action. Employees have two years from the date they knew or should have known about an alleged violation to begin the legal process or file a complaint with the DCWP. The ordinance kicked in March 20, 2024.

More info: tinyurl.com/esst688

■ Businesses in Connecticut county receive tax relief after storms

The IRS has granted extra time to file business returns and make tax

payments following severe storms, flooding and a potential dam breach that began Jan. 10, 2024, in parts of Connecticut.

Businesses in New London County, including the Mohegan Tribal Nation and Mashantucket Pequot Tribal Nation, have until June 17, 2024, to file quarterly payroll tax returns that would have been due at the end of the first and second quarters of 2024. Also, if payroll deposits were made by Jan. 25, 2024, penalties will be abated.

More info: www.irs.gov/newsroom/tax-relief-in-disaster-situations

■ Pittsburgh's extended deadline for discount on real estate tax

The Pittsburgh Dept. of Finance extended the discount date for Real Estate Tax from Feb. 10 to Feb. 20, 2024. But the installment dates remained unchanged: first is due Feb. 29, 2024; second is due April 30, 2024; third is due July 31, 2024.

More info: pittsburghpa.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.

When must spouses working for same employer share leave?

Q: Under the Family and Medical Leave Act (FMLA), if spouses work for the same employer, when must they share their 12 weeks of leave?

A: Depending on the reason for the FMLA leave, spouses may need to share the allotted time. That's the case when the reason is the birth of a child; a child's adoption or placement in foster care; or a parent's serious health condition. In those situations,

they'd split the 12 weeks. The 26 weeks provided for military caregiver leave must also be shared. However, they could both take time off for the full 12 weeks of FMLA leave if the reason is their own serious health condition; the spouse's or a child's serious health condition; or a qualifying exigency. The prerequisite – 1,250 hours of service with the employer during the 12 months prior to the FMLA leave – applies to each of the employees separately.

More info: www.dol.gov/agencies/whd/fact-sheets/281-fmla-spouse

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.

- Form 5558, *Application for Extension of Time To File Certain Employee Plan Returns*. Revision date: January 2024. Posted date: 1/31/24.
- Publication 1239, *Specifications for Electronic Filing of Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips*. Revision date: December 2023. Posted date: 2/1/24.
- Publication 957, *Reporting Back Pay and Special Wage Payments to the Social Security Administration*. Revision date: January 2024. Posted date: 2/3/24.
- Form 1099-NEC, *Nonemployee Compensation*. Revision date: January 2024. Posted date: 2/6/24.
- Publication 969, *Health Savings Accounts and Other Tax-Favored Health Plans*. Revision year: 2023. Posted date: 2/7/24.
- Publication 5717, *Information Returns Intake System Taxpayer Portal User Guide*. Revision date: February 2024. Posted date: 2/7/24.
- Form 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.* Revision year: 2024. Posted date: 2/9/24.

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!

ILLINOIS

- **TEMP WORKERS:** One of the recent amendments to the Illinois Day and Temporary Labor Services Act (IDTLSA) won't take effect on April 1, 2024, as planned. That's due to a federal district court case: *Staffing Services Association of Illinois v. Flanagan*. The lawsuit was brought by temporary staffing agencies and trade associations. The judge who heard the case blocked the enforcement of Section 42 of the IDTLSA. That provision says that temporary employees who work at a site for more than 90 days in a year must be paid at least the same wages and equivalent benefits as the third-party client's lowest-paid, comparable, directly-hired employee. Or instead of paying equivalent benefits, staffing agencies can choose to pay the hourly cash equivalent of the actual cost of benefits. The reason for the injunction? Section 42 of the IDTLSA is preempted by the Employee Retirement Income Security Act of 1974. **More info:** casetext.com/case/staffing-servs-assn-of-ill-v-flanagan

MARYLAND

- **FAMILY, MEDICAL LEAVE:** The Maryland Dept. of Labor has released proposed regs for the state's Family and Medical Leave Insurance Program. Of note, the definition of "serious health condition" differs from that in the federal Family and Medical Leave Act. As proposed, the state regs provide coverage for conditions that require continuing treatment by a licensed health care provider, including home care administered by a licensed health care provider.

The definition in the draft regs also includes the donation of a body part, organ or tissue. **More info:** bit.ly/maryland688

MICHIGAN

- **UNEMPLOYMENT INSURANCE:** A new computer system should be fully up and running by 2025, the Michigan Unemployment Insurance Agency recently said. Employers and third-party administrators will have more flexibility to submit wages than they do with the current system. For example, you'll be able to enter wages manually or copy information from previous quarters. To prepare for the changes, an employer can log in to its current account and verify contact information accuracy. **More info:** content.govdelivery.com/accounts/MILEO/bulletins/3872d25

NEW YORK

- **FREELANCE WORKERS:** SB 5026 created the Freelance Isn't Free Act, which was slated to take effect May 20, 2024, but will now take effect Aug. 28, 2024. Under this new law, which is similar to an existing New York City law, a contract is required if the freelance worker will be paid \$800 or more for a single project or if projects in aggregate during a 120-day period will equal or exceed that amount. The law specifies that information such as rate of pay must be included in the contract. Businesses should retain the contract for at least six years. Also, freelance workers must be paid no later than 30 days after the completion of a project. **More info:** www.nysenate.gov/legislation/bills/2023/S5026

VIRGINIA

- **MINIMUM WAGE:** The governor has until April 8, 2024, to take action on HB 1 and SB 1. These identical bills would increase the state's current minimum wage rate

of \$12 per hour to \$13.50 per hour on Jan. 1, 2025. It'd increase again to \$15 per hour on Jan. 1, 2026. **More info:** bit.ly/4apV0wh

WISCONSIN

- **EARNED WAGE ACCESS:** Wisconsin has become the third state to pass a law on earned wage access (EWA). AB 574 says that EWA providers must obtain a license from the state to offer the service. In addition, the law requires EWA providers to develop policies and procedures to respond to consumer questions and complaints in an expedient manner; disclose all fees; allow consumers to cancel the EWA service at any time, without incurring cancellation fees or penalties; and meet many other stipulations. The law is scheduled to take effect in the fall of 2024. **More info:** legiscan.com/WI/text/AB574/id/2949687

THE LIGHTER SIDE

There are many things you wouldn't want an 18-wheeler that overturns on a highway to be carrying – and bees would be one of them. But that's what a truck traveling down a Mississippi highway in March was transporting when it flipped.

It was dark at the time the truck overturned and the hives were under a tarp, so that helped the bees stay calm. Beekeepers were called in to assist emergency workers in gathering up the swarming bees, most of which stayed close to the wreckage site on Highway 61.

According to reports, thousands of bees were on the loose. Makes you wonder: How does anyone go about counting bees?

Cite: UPI, "Overturned Truck Releases Thousands of Bees Onto Highway," 3/19/24.