

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 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

- **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.
- **April 26, 2024:** Deposit taxes for payroll on April 20, 21, 22, 23.
- **May 1, 2024:** Deposit taxes for payroll on April 24, 25, 26.
- **May 3, 2024:** Deposit taxes for payroll on April 27, 28, 29, 30.
- **May 8, 2024:** Deposit taxes for payroll on May 1, 2, 3.
- **May 10, 2024:** Deposit taxes for payroll on May 4, 5, 6, 7.

### ■ 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.

## Form I-9: USCIS makes it a bit easier to examine List C docs

■ Updates made online and to employer's handbook

If you've ever been unsure whether a Form I-9 document a new hire has handed you is legit, you're not alone.

With remote inspection being an option now, that uncertainty may be even more likely.

After receiving questions about its list of acceptable documents, U.S. Citizenship and Immigration Services (USCIS) has updated its guidance.

Sample images are now easier to find on I-9 Central and in M-274, *Handbook for Employers*.

Here's the latest from the agency.

### What's on the list

One item that's caused particular headaches for employers, according

to USCIS, is found on List C. By way of reminder, List C documents for Form I-9 are those that establish employment authorization, such as a Social Security card.

Item #7 on List C contains a number of employment authorization documents issued by the Dept. of Homeland Security (DHS).

To improve the process, USCIS says you can compare documents you receive from employees to images for the following DHS-issued documents:

- Form I-94, *Arrival/Departure Record*
- Form I-571, *Refugee Travel Document*

(Please see Form I-9 ... on Page 2)

## IRS receives \$5.4B for enforcement in federal budget

The Further Consolidated Appropriations Act (FCAA), 2024, which was signed into law on March 23, 2024, provides funding for federal government agencies through Sept. 30, 2024.

Here's how the fiscal year 2024 federal budget will impact the IRS and, as a result, employers.

### Sec. 105 and address changes

The FCAA rescinds \$20.2 billion of the \$80 billion allocated to the IRS as part of the Inflation Reduction Act of 2022. Separate from that, the agency's budget will remain unchanged from last fiscal year. So, the IRS will receive

\$12.3 billion, with \$5.4 billion of that earmarked for enforcement.

Sec. 105 of the law says the IRS must continue to issue confirmation notices to employers making address changes related to employment tax returns. As before, a notice must be sent to an employer's new and former address. That's done with:

- Notice 148A (mailed to the new address), and
- Notice 148B (mailed to the former address).

**More info:** [www.congress.gov/bill/118th-congress/house-bill/2882/text](http://www.congress.gov/bill/118th-congress/house-bill/2882/text)

## Workers didn't receive their monthly attendance bonuses & lost their jobs

■ CAR MANUFACTURER SHOULD HAVE GRANTED THEM FMLA LEAVE

In Alabama, two production workers requested time off under the Family and Medical Leave Act (FMLA), and the employer ended up paying over \$400K as a result of its response.

For one employee at the car manufacturer, the leave was connected to a personal serious health condition, and for the other employee, the leave was to care for a family member with a serious health condition.

Instead of granting FMLA leave, the employer, Mercedes-Benz U.S. International Inc., marked them absent. Due to what the company considered to be unauthorized absences, the employees didn't receive their monthly attendance bonuses and eventually lost their jobs.

The Dept. of Labor (DOL) identified other FMLA violations. For example, the company didn't:

- inform workers within five business days about FMLA leave eligibility
- accurately record, maintain and calculate the amount of FMLA leave taken, and
- provide notice of FMLA rights and responsibilities.

The DOL said the company must pay \$219,312 in missed earnings, front pay for three months and unpaid bonuses. An equal amount was owed in liquidated damages.

### Making the right determination

Carefully considering whether or not an employee's time off is FMLA leave is crucial for compliance.

Incorrectly marking someone's time off as an unauthorized absence can have legal repercussions.

**More info:** [www.dol.gov/newsroom/releases/whd/whd20240229](http://www.dol.gov/newsroom/releases/whd/whd20240229)

### Form I-9 ...

(continued from Page 1)

- Form I-327, *Reentry Permit* (unexpired), and
- Form N-560, *Certificate of U.S. Citizenship*, or Form N-561, *Replacement Certificate of Citizenship*.

As in the past, images for the other lists are also online and in the employer's handbook.

That includes List A, which contains documents that establish both identity and employment authorization such as a passport.

That also includes List B, which contains documents that establish identity such as a driver's license.

One important note from USCIS: The images you're viewing may differ in size from the actual documents that you receive.

Also remember that in addition to documents, the lists provide receipts that new hires can also submit.

**More info:** [tinyurl.com/documents689](http://tinyurl.com/documents689)

## COMPLIANCE CHECK

### ■ DIDN'T REMIT FUNDS TO RETIREMENT, HEALTH PLANS

In Illinois, Elmhurst Academy of Early Learning Inc. violated the Employee Retirement Income Security Act. The now defunct preschool withheld contributions from employees' earnings but didn't remit the amounts to its Simple IRA plan or health plan. Following legal action by the Dept. of Labor, the company had to pay:

- \$32,495 to the SIMPLE IRA plan, and
- \$11,810 to the health plan.

**More info:** [www.dol.gov/newsroom/releases/ebsa/ebsa20240228](http://www.dol.gov/newsroom/releases/ebsa/ebsa20240228)

### ■ BONUSES LEFT OUT OF OVERTIME CALCULATIONS

Boom-a-Rang Diner, a restaurant with 51 locations in Oklahoma, failed to include monthly performance bonuses in nonexempt employees' regular rate of pay when calculating overtime. The employer owed 107 nonexempt management personnel:

- \$54,423 in back wages, and
- \$54,423 in liquidated damages.

**More info:** [www.dol.gov/newsroom/releases/whd/whd20240305-0](http://www.dol.gov/newsroom/releases/whd/whd20240305-0)

### ■ WORKERS CLOCKED IN/OUT, BUT TIME RECORD NOT KEPT

Family Hands Adult Care Facility LLC, which operates residential care facilities for special needs patients in Los Angeles, didn't pay overtime to its employees. The company didn't maintain time records even though workers used identification numbers and fingerprints to clock in and out of work each day. It owes:

- \$9,684 in civil money penalties
- \$64,800 in unpaid overtime, and
- \$64,800 in liquidated damages.

**More info:** [www.dol.gov/newsroom/releases/whd/whd20240307](http://www.dol.gov/newsroom/releases/whd/whd20240307)

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## 2024 is here: Long-term part-time employees eligible for 401(k) plans

■ IRS LAYS OUT 3 STEPS TO ENSURE COMPLIANCE WITH SECURE ACT

In a recent article, the IRS provided action steps for employers in light of the Setting Every Community Up for Retirement Enhancement (SECURE) Act.

The article, *Long-Term Part-Time Employees in 401(k) Plans*, explains how employees' eligibility for participating in retirement plans has changed due to the SECURE Act.

As of 2024, a plan can't require an eligible employee to complete a period of service that's longer than:

- one year of full-time service, or
- three consecutive years during each of which the employee is credited with at least 500 hours of service.

### What the IRS said

Based on the law changes, the IRS said employers should take three steps.

First, run a report to identify all employees who aren't eligible to participate in your 401(k) plan based on the fact that they haven't completed one year of service.

Second, identify if any of those employees are at least 21 years old

and have completed more than 500 hours of service in three consecutive 12-month periods since 2021.

The IRS notes that someone may be in a class of employees that's excluded from the plan – that person wouldn't need to be enrolled merely because he or she is a long-term part-time employee under the SECURE Act.

A related point: Employees can't be excluded from the 401(k) plan because they've been classified as "part-time" or "seasonal."

The third and final step the IRS recommended employers take to ensure compliance with the SECURE Act is to ensure that each long-term part-time employee has been given the opportunity to make salary deferrals to the plan.

But what should you do if you missed the deadline for allowing these newly eligible employees to enroll? The error can be corrected by using the Employee Plans Compliance Resolution System, the IRS points out.

Heads up: The current standard of three consecutive years will be reduced to two consecutive years in 2025 due to the Secure 2.0 Act.

**More info:** [www.irs.gov/retirement-plans/employee-plans-news](http://www.irs.gov/retirement-plans/employee-plans-news)

## IRS still digging out from pile of unprocessed returns

The IRS continues to dig out from the pile of unprocessed returns that rapidly accumulated during the COVID-19 pandemic.

The stack of unprocessed returns is significantly lower now, according to the Treasury Inspector General for Tax Administration (TIGTA). Meanwhile, the inventory of suspended returns and unprocessed amended tax returns remains above pre-pandemic levels.

### Report provides details

In a March 18, 2024, report called *The IRS Continues to Reduce Backlog*

*Inventories in the Tax Processing Centers*, TIGTA went into detail. In October 2022, 6.5 million individual and business returns remained unprocessed. A year later, the number dropped to 1.1 million. Suspended returns (e.g., due to errors) went from 395K to 75K in that same time period.

Most (59%) of the business amended returns in inventory as of October 2023 were related to the employee retention credit.

**More info:** [www.tigta.gov/sites/default/files/reports/2024-03/2024406020fr.pdf](http://www.tigta.gov/sites/default/files/reports/2024-03/2024406020fr.pdf)

## NEWS YOU CAN USE

### ■ REVISED EIN APPLICATION LETS YOU CHOOSE FORM 944

The IRS has made some changes to Form SS-4, the form businesses use when applying for an employer identification number (EIN).

Line 14 is back in use after having been reserved for future use.

Now on line 14, businesses can elect to file Form 944 instead of Form 941, assuming their tax liability makes them eligible to switch from quarterly to annual reporting.

**More info:** [www.irs.gov/forms-pubs/reinstatement-of-form-ss-4s-line-14-election-to-file-form-944-annually](http://www.irs.gov/forms-pubs/reinstatement-of-form-ss-4s-line-14-election-to-file-form-944-annually)

### ■ IRS: INCLUDE THIS FORM FOR ELECTRONIC FILING PURPOSES

As the IRS recently clarified, Form 499R-2/W-2PR should be included when determining whether the new electronic filing threshold has been met – i.e., 10 returns in aggregate.

By way of background, employers in Puerto Rico submit Form 499R-2/W-2PR instead of Form W-2 to report wage and tax information. The form is owned by Hacidenda of Puerto Rico, which is the territory's tax authority.

**More info:** [www.irs.gov/forms-pubs/new-electronic-filing-requirements-for-forms-499r-2-w-2pr](http://www.irs.gov/forms-pubs/new-electronic-filing-requirements-for-forms-499r-2-w-2pr)

### ■ FOREIGN EARNED INCOME: 2024 EXCLUSION AMOUNT

For employees who are U.S. citizens or residents living abroad, the housing expense amount that can be excluded from income has increased for 2024. It's \$37,950, up from \$36,000. That's according to Notice 2024-31.

The housing expense maximum is higher in certain high-cost localities, and that amount can be entered on Form 2555, *Foreign Earned Income*.

**More info:** [www.irs.gov/pub/irs-drop/n-24-31.pdf](http://www.irs.gov/pub/irs-drop/n-24-31.pdf)

## What regs and guidance can you expect from the IRS this year?

### ■ SECOND QUARTER UPDATE GIVES EMPLOYERS THE LATEST PLAN

The IRS gave an update on several initiatives that have been in the works longer than expected.

The Service's latest goals are contained in the second quarter update to the *2023-2024 Priority Guidance Plan*, released March 18, 2024.

Here are a few highlights:

#### Regs still in proposed stage

On Feb. 27, 2023, the IRS released proposed regs on how plan administrators should handle retirement plan forfeitures.

The anticipated effective date came and went without final regs – that date was Jan. 1, 2024. But final regs are on the way later this year, the IRS said.

According to the proposed regs, plan administrators would have 12 months after the close of the plan year in which the forfeitures were incurred to use the funds.

Also explained in the proposed regs, forfeited amounts could only be used to:

- pay plan administrative expenses
- reduce employer contributions under the plan, or
- increase benefits in other participants' accounts according to plan terms.

Several other regs that the IRS aims to finalize before the end of 2024 relate to retirement plans.

For example, one reg would allow employees to use an electronic medium to make elections and spousal consents for retirement plans.

Proposed regs for this came out on Dec. 30, 2022. The proposed regs spell out requirements such as that the electronic system must be reasonably designed to prevent other people from making participant elections.

#### Employees with student loans

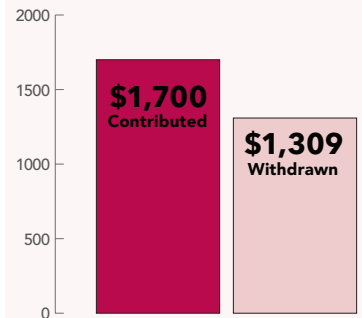
Also in its *2023-2024 Priority Guidance Plan*, the IRS itemized its soon-to-be-released guidance.

That included guidance involving student loan payments and retirement plans. The guidance was prompted by the Secure 2.0 Act, which said employers could make matching

## WHAT PAYROLL PROS TOLD US

### HSA Contributions and Withdrawals

On average, how much was added to and deducted from HSA accounts in 2023?



Source: Devenir Research

Health savings account balances continue to grow year after year. In 2023, the average total contribution (\$1,700) outpaced the average total withdrawal (\$1,309).

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

contributions to the following types of plans:

- 401(k)
- 403(b), or
- SIMPLE IRA.

More info: [www.irs.gov/pub/irs-utl/2023-2024-pgp-2nd-quarter-update.pdf](http://www.irs.gov/pub/irs-utl/2023-2024-pgp-2nd-quarter-update.pdf)

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

## Newly hired salesperson received a salary and then commission

A retail establishment in Missouri faced this real-life scenario:

A pool retailer hired a salesperson in January of 2022. According to his written employment agreement, he would be paid a salary for the first eight weeks of his employment. That salary was \$55,000 per year, or \$1,057.69 per week. The company ended up paying him a salary for 13 weeks – a total of \$13,749.97.

He received his first sales commission payment in February in the amount of \$2,702.22 for the weekly pay period. By the end of 2022, he'd earned \$53,224.13 in commission. In December, he was fired

for his year-to-date, below-average closing rate in sales.

He later filed a lawsuit, claiming his employer had failed to pay him overtime as required under the Fair Labor Standards Act (FLSA).

The FLSA provides an exemption from the overtime provision for workers in retail establishments. But two conditions must be met.

First, the workers must be paid more than one-and-a-half times the federal minimum wage. Second, more than half of their compensation must be in the form of commission. The former employee and employer

disagreed about whether he'd met the commission condition. He wanted the court to separate his two phases of payments: salary and commission. But even if the court did that, more than half of his compensation would have come from commission. So, the federal court threw out the case.

#### Checklist for compliance

- While payment plans that err on the side of being more generous than planned may seem safe, companies should ensure they avoid unintended legal consequences.
- Double-check that pay statements adequately explain payment types.



## Tracking local laws and regs

### ■ After disasters, IRS grants tax relief to Alaska employers

The IRS has further postponed certain tax deadlines for businesses in Hawaii's Maui and Hawaii counties. After the Aug. 8, 2023, wildfires, they had until Feb. 15, 2024. The extended deadline is Aug. 7, 2024.

Also, the Wrangell Cooperative Association of Alaska Tribal Nation has until July 15, 2024, to file certain tax returns and make payments due to the severe storms, landslides and mudslides that began Nov. 20, 2023.

**More info:** [www.irs.gov/newsroom/tax-relief-in-disaster-situations](http://www.irs.gov/newsroom/tax-relief-in-disaster-situations)

### ■ Deadline for filing annual report in San Francisco: May 3, 2024

The deadline for submitting the 2023 Employer Annual Reporting Form to San Francisco's Office of Labor Standards Enforcement is almost here. It's May 3, 2024.

Employers covered under the Health Care Security Ordinance and/

or the Fair Chance Ordinance must submit the report each year.

**More info:** [www.sf.gov/information/health-care-security-ordinance](http://www.sf.gov/information/health-care-security-ordinance)

### ■ CA localities making midyear minimum wage changes

Many municipalities in California have set minimum wage rates higher than the \$16-per-hour state rate. On July 1, 2024, some of those localities will raise their rates even higher.

The city of Los Angeles will require employers to pay at least \$17.28 per hour. The current rate is \$16.78 per hour. In the unincorporated areas of Los Angeles County, the current rate of \$16.90 per hour will increase to \$17.27 per hour. In Malibu, CA, the minimum wage rate will go up from \$16.90 per hour to \$17.27 per hour. Employers in Santa Monica, CA, will see the rate rise to \$17.27 per hour. Currently, the hourly rate is \$16.90.

**More info:** [www.dir.ca.gov/dlse/minimum\\_wage.htm](http://www.dir.ca.gov/dlse/minimum_wage.htm)

## 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.*

### Part-year withholding method OK for seasonal employees?

**Q:** How do we determine if we can use the part-year withholding method for seasonal employees?

**A:** If an employee asks you to use the part-year withholding method, that person must meet two requirements. First, the employee's tax year must be a calendar year – i.e., January 1 through December 31. A fiscal year isn't an option. The second requirement is that the employee can't expect to be employed for

more than 245 days in the year. To calculate the days, you'd count all calendar days that he or she is employed. Be sure to include weekends and sick days. Also, if your company lays off the employee for 30 days or less, count those days, too. Longer layoffs shouldn't be counted.

Here's a helpful tip to save you some time: An employee whose first day occurs before May 1 and who plans to work the entire year won't pass the test for part-year withholding.

**More info:** [www.irs.gov/forms-pubs/about-publication-505](http://www.irs.gov/forms-pubs/about-publication-505)

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

- *Instructions for Form 8881.* Revision date: January 2024. Posted date: 2/12/24.
- *Instructions for Form 944-X.* Revision date: February 2024. Posted date: 2/21/24.
- *Form 944-X, Adjusted Employer's Annual Federal Tax Return or Claim for Refund.* Revision date: February 2024. Posted date: 2/21/24.
- *Schedule B (Form 941): Report of Tax Liability for Semiweekly Schedule Depositors.* Revision date: March 2024. Posted date: 2/26/24.
- *Schedule R (Form 941): Allocation Schedule for Aggregate Form 941 Filers.* Revision date: March 2024. Posted date: 2/26/24.
- *Instructions for Form 941.* Revision date: March 2024. Posted date: 2/26/24.
- *Instructions for Schedule R (Form 941).* Revision date: March 2024. Posted date: 2/26/24.
- *Instructions for Schedule B (Form 941).* Revision date: March 2024. Posted date: 2/26/24.
- *Form 943-X, Adjusted Employer's Annual Federal Tax Return for Agricultural Employees or Claim for Refund.* Revision date: February 2024. Posted date: 2/26/24.

### 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

- **HOURS WORKED:** A recent ruling from the California Supreme Court answers three questions about Wage Order #16 – it's a wage order that deals with the construction, drilling, logging and mining industries. In *Huerta v. CSI Electrical Contractors, Inc.*, the court considered the scope of the term "hours worked." First, time employees spend on an employer's premises undergoing exit procedures is compensable. Second, travel time on the employer's premises isn't compensable if the employer imposes ordinary workplace rules that don't amount to employer control. Third, when an employee is covered by a collective bargaining agreement that includes an "unpaid meal period," the time is nonetheless compensable if the employee isn't allowed to leave the premises or a designated area. **More info:** [www.courts.ca.gov/opinions/documents/S275431.pdf](http://www.courts.ca.gov/opinions/documents/S275431.pdf)

### FLORIDA

- **CHILD LABOR:** Although Florida's child labor laws are stricter than on the federal level, they've recently been relaxed due to HB 49. This legislation will take effect July 1, 2024. At that time, 16- and 17-year-old minors will be able to work more than 30 hours in a week when school is in session if a parent, custodian, school superintendent, or his or her designee waives the limitation. These minors will be able to work more than eight hours in a day when school is scheduled the next day provided that the work day is a holiday or a Sunday. The bill

contains other changes impacting child labor. **More info:** [www.flsenate.gov/Session/Bill/2024/49](http://www.flsenate.gov/Session/Bill/2024/49)

### MASSACHUSETTS

- **WITHHOLDING:** The Massachusetts Dept. of Revenue has revised Circular M. Specifically, the percentage method tables have been updated to include the 4% surtax. Beginning in 2023, employees who had taxable income over \$1 million had to pay an additional 4% surtax – the surtax applied only to the portion of taxable income that exceeded \$1 million. In 2024, that amount increased to \$1,053,750. As explained in Circular M, for supplemental wages that are \$1,053,750 or less, you'd use a 5% rate, but for supplemental wages that exceed \$1,053,750, you'd use a 9% rate. **More info:** [www.mass.gov/orgs/massachusetts-department-of-revenue](http://www.mass.gov/orgs/massachusetts-department-of-revenue)

### MICHIGAN

- **WITHHOLDING:** The Dept. of Treasury decided the 4.05% reduced income tax rate in effect during 2023 was temporary, and the agency announced the rate would return to 4.25% for 2024. The state's attorney general upheld that decision in an opinion released in 2023. Next, at the end of 2023, in *Associated Builders and Contractors of Michigan v. Eubanks*, the Michigan Court of Appeals affirmed the attorney general's opinion. Based on the court's March 7, 2024, ruling, employers should be withholding income tax at a rate of 4.25%. **More info:** [www.michigan.gov/treasury](http://www.michigan.gov/treasury)

### OREGON

- **LEAVE:** SB 1515 will help ease the headaches of complying with both the Oregon Family Leave Act (OFLA) and Paid Leave Oregon.

For example, the legislation will keep employees from stacking the two types of leave. That's because SB 1515 eliminated some of the qualifying conditions for taking OFLA. The new law takes effect on July 1, 2024. **More info:** [legiscan.com/OR/bill/SB1515/2024](http://legiscan.com/OR/bill/SB1515/2024)

### SOUTH DAKOTA

- **PREVAILING WAGE:** Employers in the building and heavy construction industry may want to participate in a survey the Dept. of Labor is conducting. The information will be used to set prevailing wage rates, but the survey isn't limited to employers working on federally funded construction projects. Data collection will run from March 25, 2024, to June 25, 2024, regarding wages paid one year prior to that time period. **More info:** [www.dol.gov/newsroom/releases/whd/whd20240229-0](http://www.dol.gov/newsroom/releases/whd/whd20240229-0)

## THE LIGHTER SIDE

If you hit a wrong key on your computer keyboard or adding machine, it's annoying. But you're likely to notice that error right away and make an immediate correction.

Here's a story, though, about a woman who was thrilled she made a data entry error. The mistake earned her \$1 million.

Miriam Long went to buy a lottery ticket in Virginia and hit the wrong button on the vending machine. She intended to purchase a Mega Millions ticket but bought a Powerball ticket by accident.

Upon learning she'd matched the first five numbers, she said pushing the wrong button on the lottery vending machine was the best mistake of her life.

**Cite:** UPI, "Virginia Woman Pushes Wrong Button, Wins \$1 Million Lottery Prize," 4/4/24.