

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™

May 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

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

MONTHLY DEPOSITORS

- **May 15, 2024:** Deposit taxes for payments made during April 2024.
- **June 17, 2024:** Deposit taxes for payments made during May 2024.

ALL EMPLOYERS

- **July 31, 2024:** File Form 941 for Q2. Note: If you properly deposited taxes on time and in full, you have until Aug. 12, 2024, to file.

Pregnant Workers Fairness Act: Final rule explains requirements

■ *Deadline for compliance is June 18, 2024*

In a final rule published April 19, 2024, in the *Federal Register*, the EEOC explained how the Pregnant Workers Fairness Act (PWFA) – a law that took effect in 2023 – will impact employers and employees.

Under the PWFA, employers with 15 or more employees must provide reasonable accommodations to an employee experiencing pregnancy, childbirth or related medical conditions. The law provides an exception if an accommodation will cause the employer an undue hardship.

The EEOC covered a lot of ground in the 408 pages of its final rule and interpretive guidance. For one thing, the rule makes clear who's covered by the PWFA – i.e., the law applies to

employees, not their spouses or family members. Here are more highlights.

Terms defined

Under the PWFA (unlike under the Americans with Disabilities Act), an employee can be qualified even if they can't perform one or more essential functions of the job. However:

- the inability must be “temporary”
- the employee must be able to perform the essential functions “in the near future,” and
- reasonable accommodations must be feasible.

Problem was, the law didn't define some key terms, but the final rule does

(Please see Final rule ... on Page 2)

SSA: Estimate of 2025 taxable wage base released

What will the Social Security taxable wage base be next year? The projected number was released on May 6, 2024.

SSA says the Social Security taxable wage base is expected to go up to \$174,900 in 2025.

That'd be a \$6,300 increase from the current number of \$168,600.

The information was contained in *The 2024 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds*.

At the 6.2% rate, the maximum employees and employers would each

need to pay in Social Security tax would reach \$10,843.80.

Looking ahead

The report also provides projections for the second half of the decade:

- \$181,800 in 2026
- \$188,100 in 2027
- \$195,900 in 2028, and
- \$204,000 in 2029.

When SSA releases the final 2025 number, likely in October, we'll let you know.

More info: www.ssa.gov/OACT/TR/2024/tr2024.pdf

Child labor: On day after Labor Day, FLSA hours requirements change

■ DOL ENFORCEMENT IS ONGOING, AS FRANCHISEE RECENTLY LEARNED

Summertime means employers have more flexibility when it comes to child labor laws.

But close attention to the laws remains essential year-round.

At seven Freddy's Frozen Custard & Steakburgers franchise locations in Alabama, the Dept. of Labor (DOL) recently found child labor violations.

As a result, the employer had to pay \$119,029 in civil money penalties to resolve the violations.

The operator employed 149 minors under age 16 who worked longer and later than permitted by the Fair Labor Standards Act (FLSA).

Specifically, 14- and 15-year-old employees worked:

- more than three hours on a school day

- later than 7 p.m. from the day after Labor Day to May 31, and
- later than 9 p.m. from June 1 to Labor Day.

In addition, at the Freddy's locations, a 15-year-old child operated a manual deep fryer, a prohibited hazardous occupation for minors.

5-year comparison

In FY 2023, the DOL identified child labor violations that involved 5,792 children nationwide. Compared to FY 2018, that's a 150% increase.

The DOL's Youth Rules! initiative includes resources for employers. For example, self-assessment tools are available to help employers evaluate their level of compliance.

More info: www.dol.gov/newsroom/releases/whd/whd20240415

Final rule ...

(continued from Page 1)

that. "Temporary" is defined as *lasting for a limited time, not permanent, and may extend beyond in the near future*. For pregnant employees, "in the near future" is defined as *generally 40 weeks from the start of the temporary suspension of the essential functions*. For employees experiencing childbirth and related medical conditions, employers should make a case-by-case determination regarding the meaning "in the near future."

Another highlight from the final rule: An employee's representative can include a union rep.

As for interpretive guidance, the EEOC provided several examples of reasonable accommodations. They include frequent breaks; schedule changes, part-time work and paid and unpaid leave; telework; and more.

The final rule is slated to take effect on June 18, 2024, leaving you just a couple months to prepare.

More info: *Federal Register*, 4/19/24.

COMPLIANCE CHECK

■ ARRIVING LATE TO WORK COST 25 CENTS PER MINUTE

Williams Plumbing & Associates Inc., Cowpens, SC, paid employees the overtime rate but only if their hours fell within the 40- to 45-hour range. Then, the company assigned them a straight time rate again.

Other violations included deducting 25 cents for every minute employees arrived late for work and not keeping accurate records of hours worked and driving time.

For these Fair Labor Standards Act violations, the company owed \$25,364 in back wages and liquidated damages for 17 workers.

More info: www.dol.gov/newsroom/releases/whd/whd20240329

■ MISCLASSIFICATION LED TO CONTRACTOR'S OT TROUBLE

Future Inc., a dirt work contractor in Newalla, OK, misclassified 31 construction workers employed in a multi-state area as independent contractors. That led to overtime pay trouble for the company. It owed:

- \$49,940 in owed wages, and
- \$49,940 in liquidated damages.

More info: www.dol.gov/newsroom/releases/whd/whd20240327

■ CARNIVAL OPERATORS' PAY VIOLATIONS NOT AMUSING

GoldStar Amusements Inc. and Lee's Concessions Inc., carnival operators in Fairbault, MN, didn't pay prevailing wages, or inbound and outbound transportation costs. Plus, they didn't keep accurate earning statements as required under the H-2B visa program.

A Dept. of Labor administrative law judge said the employers owed:

- \$146,243 to 55 employees, and
- \$63,584 in civil money penalties.

More info: www.dol.gov/newsroom/releases/sol/sol20240327

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DOL proposal seeks retirement plan data to be attached to Form 5500

■ FOR CONFIDENTIALLY REASONS, IRS CAN'T SHARE FORM 8955-SSA INFO

The Secure 2.0 Act of 2022 amended ERISA and called for the creation of the Retirement Savings Lost and Found by the end of 2024.

The Dept. of Labor (DOL) has been tasked with establishing this online searchable database to connect missing participants and beneficiaries with retirement benefits. For example, individuals could search the database to find contact information for their plan administrator and then make claims for benefits they're owed.

To create the database, the DOL had hoped to extract info from a form plan administrators already submit to the IRS. It's Form 8955-SSA, *Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits*.

However, the IRS decided it wouldn't be able to release the data to the DOL for confidentiality reasons.

So, in a notice published in the *Federal Register* on April 16, 2024, the DOL proposed another method of obtaining the info – i.e., directly from plan administrators. Under the proposal, the DOL would ask them

to voluntarily submit the info as an attachment to Form 5500.

Details on report

Retirement plans with separated vested participants would report:

- plan name and other details reported on Form 5500
- name, employer identification number, mailing address and telephone number of both the plan administrator and plan sponsor
- name, date of birth (DOB), mailing address, email address, telephone number and Social Security number (SSN) of each separated vested participant (also, an indication if that person has been unresponsive to plan communication or if the contact info may be inaccurate)
- nature, form and amount of benefit of each separated vested participant
- name, DOB, mailing address, email address, telephone number and SSN of beneficiaries, and
- other information.

Similar data would be collected from plans that distributed benefits under Sec. 401(a)(31)(B) of the Internal Revenue Code.

More info: *Federal Register*, 4/16/24.

Pay rate updates to apply instantly for H-2A workers

Changes to the H-2A program will impact agricultural employers starting June 28, 2024.

Here's what to expect, according to final regs the Dept. of Labor (DOL) released in the *Federal Register* on April 29, 2024.

In the middle of a pay period

When the Adverse Effect Wage Rate (AEWR) is updated, you'll need to pay the rate immediately upon its publication in the *Federal Register*.

If the AEWR rate update falls in the middle of a pay period, you may pay

the updated AEWR at the end of the following pay period. However, at that time, you must provide retroactive pay for all hours worked starting from the date of the rate's publication in the *Federal Register*.

Among several other changes, DOL's final rule included measures designed for enhanced transparency and protection. For example, the following info must be disclosed:

- minimum productivity standards
- applicable wage rates, and
- overtime opportunities.

More info: *Federal Register*, 4/29/24.

NEWS YOU CAN USE

■ WHICH STATES SHOULD PREP FOR HIGHER FUTA TAX RATE?

According to the *State Unemployment Insurance Trust Fund Solvency Report 2024*, three states and one territory had outstanding balances as of Jan. 1, 2024.

Here are the locations and the resulting credit reduction they potentially face when it's time to file Form 940 and pay FUTA tax:

- California – 0.9%
- Connecticut – 0.9%
- New York – 0.9%, and
- Virgin Islands – 4.2%.

More info: oui.doleta.gov/unemploy/docs/trustFundSolvReport2024.pdf

■ FORM W-9 ASKS FOR MORE FEDERAL TAX INFORMATION

Form W-9, *Request for Taxpayer Identification Number and Certification*, has a new revision date: March 2024. Same goes for the form's instructions. The IRS last revised the form and instructions in 2018.

For example, if an employee dies, you may need that person's beneficiary or estate to complete Form W-9.

The revised form asks for more specification regarding the federal tax classification of the entity/individual whose name is entered on line 1.

More info: www.irs.gov/pub/irs-prior/fw9--2024.pdf

■ IRS: AVOID THIRD-PARTY ONLINE ACCOUNT SCAMS

The IRS recently released its annual Dirty Dozen, listing a variety of common scams.

Here's one to watch out for: scammers attempting to sell or help set up an Online Account on *IRS.gov*. Their real end goal is gaining personal tax and financial info to commit identity theft, warns the IRS.

More info: www.irs.gov/newsroom/dirty-dozen

Employment taxes: IRS releases latest data, including amounts withheld

■ COMPLIANCE TROUBLE SPOT: FEDERAL TAX DEPOSITS

The IRS recently released the *2023 Data Book*, which covers the period from Oct. 1, 2022, to Sept. 30, 2023.

Last year, the IRS received 5.42 billion third-party information returns. Of that, most (5.03 billion) were filed electronically. Meanwhile, the IRS received more than 42 million information returns on paper and more than 350 million by another method (such as via the SSA).

According to the *2023 Data Book*, 36.29 million employment tax returns were filed, up from 31.18 million and a difference of 16.4%.

California led the way with the most employment tax returns filed (4.52 million), followed by Florida (2.84 million), Texas (2.72 million) and New York (2.56 million).

The amounts collected in taxes included the following:

- \$1.73 trillion (down from \$1.76 trillion) in withheld individual income tax

- \$1.47 trillion (up from \$1.33 trillion) in employer and employee FICA tax
- \$7.95 billion (up from \$7.05 billion) in unemployment insurance tax, and
- \$7.22 billion (up from \$6.15 billion) in Railroad Retirement Tax Act tax.

\$8.6B in penalties

The number of civil penalties assessed for employment taxes hit 4.67 million for 2023.

That cost employers \$8.6 billion. Here's where the compliance problems showed up:

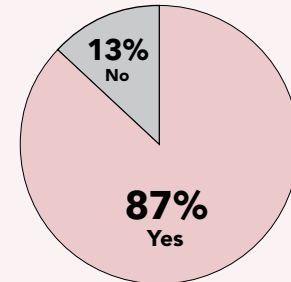
- accuracy – \$4.07 million
- bad check – \$49.79 million
- delinquency – \$1.78 billion
- estimated tax – \$44.63 million
- failure to pay – \$1.51 billion
- federal tax deposits – \$5.19 billion
- fraud – \$812,000, and
- other – \$13.48 million.

Across all these areas, the IRS abated a total of \$3.85 billion. Of

WHAT PAYROLL PROS TOLD US

Social Security

Should the Social Security program remain a priority no matter the state of federal budget deficits?



Source: "Retirement Insecurity 2024: Americans' View of Retirement," National Institute on Retirement Security

According to projections, the Social Security program will run into solvency issues soon. Most Americans surveyed said preserving the program should be a priority.

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

note, \$2.62 billion was abated in federal tax deposits.

Finally, over 36 million people called the Service's toll-free telephone number, with a 50/50 split between those that received automated and live customer service.

More info: www.irs.gov/pub/irs-pdf/p55b.pdf

REAL-LIFE SCENARIO: DID THEY GET IT RIGHT?

Generous employer paid worker during lunch breaks but still faced FLSA problems

A Maryland employer that provides tree services faced this real-life scenario:

An employee arrived at work each day at 7 a.m. While he was waiting to head out to jobs sites, usually at 8 a.m. or 8:30 a.m., he kept busy preparing trucks, cleaning equipment and doing other tasks. His employer paid him starting from his arrival time.

Each day, he took a lunch break during which he didn't do any work. Nonetheless, his employer paid him for this hour-long lunch period.

After nine months, his employment ended, and after that he filed a lawsuit

claiming the employer owed him for unpaid overtime. After all, when his workweek exceeded 40 hours, the employer paid him his straight time rate of \$14 or \$15 per hour instead of the overtime rate.

Although his employer hadn't retained his weekly time cards, there wasn't a dispute about the amount of overtime – i.e., 13 hours during his nine months of employment.

The employer argued about what to include in the overtime calculations. For example, because lunch breaks didn't need to be paid but were, the employer wanted to subtract the lunch-period payments from regular

rate of pay. The court wouldn't allow that, though, under the Fair Labor Standards Act (FLSA).

Bottom line: He'd already been paid the straight time rate, so the employer owed only "half time." All told, that was \$93.75, plus an equal amount in liquidated damages.

Checklist for compliance

- Paying the required overtime beats the cost of going to court.
- Being more generous than necessary in certain aspects of employment doesn't take employers off the hook for other aspects.

Tracking local laws and regs

■ In NYC, deadline approaching to give employees poster

By July 1, 2024, New York City employers must give all employees a copy of the Know Your Rights at Work poster.

After that, all new hires must receive a copy of the poster on or before their first day of work.

More info: www.nyc.gov/site/dcal/workers/worker-rights.page

■ Minimum wage has increased in Novato, CA, for all business sizes

The city of Novato, CA, raised its minimum wage at the beginning of 2024.

The hourly rate varies based on the size of the business as follows:

- \$16.86 (was \$16.32) for businesses that have 100 or more employees
- \$16.60 (was \$16.07) for businesses that have 22 to 99 employees, and
- \$16.04 (was \$15.53) for businesses that have one to 25 employees).

More info: www.novato.org/business/novato-minimum-wage

■ San Francisco makes midyear change to its minimum wage

In San Francisco city and county, the minimum wage rate will increase on July 1, 2024. Currently, the rate is \$18.07 per hour. That hourly rate is increasing to \$18.67. Even part-time and temporary employees must be paid the minimum wage rate if they perform work in these localities.

More info: tinyurl.com/sf691

■ Get ready to pay at least \$17.70 per hour in this California city

The current minimum wage rate of \$17.20 in Milpitas, CA, will go up to \$17.70 starting on July 1, 2024.

If you're an employer subject to the city's business license requirement or if you maintain a business facility in the city, then the minimum wage requirements apply to you.

More info: tinyurl.com/milpitas691

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.

FMLA: When can we request recertification from someone?

Q: An employee submitted his certification for time off under the Family and Medical Leave Act (FMLA), and two weeks later, he requested an extension. Can we ask him to provide recertification even though 30 days hasn't passed?

A: Normally, you can only ask for recertification of a serious health condition if 30 days has passed and the request is in connection with an absence. Note that if

the certification specifies that the serious health condition will last more than 30 days, you must generally wait until the end of that time frame. There are some scenarios in which an employer may request recertification in less than 30 days. They are if the employee requests an extension of leave; circumstances discussed in the previous certification have changed significantly; or you have reason to doubt the stated reason for the absence or the certification's validity.

More info: www.dol.gov/agencies/whd/fact-sheets/28g-fmla-serious-health-condition

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 1096, *Annual Summary and Transmittal of U.S. Information Returns (Info Copy Only)*. Revision year: 2024. Posted date: 3/11/24.
- Form 720, *Quarterly Federal Excise Tax Return*. Revision date: March 2024. Posted date: 3/13/24.
- Form 5427, *Tax Scam Alert: Signs of Tax Scams and Actions You Can Take to Protect Yourself*. Revision date: February 2024. Posted date: 3/18/24.
- Publication 5904, *IRS Business Tax Account*. Revision date: March 2024. Posted date: 3/18/24.
- Form 15397, *Application for Extension of Time to Furnish Recipient Statements*. Revision date: February 2024. Posted date: 3/20/24.
- Publication 5718, *Information Returns Intake System Electronic Filing Application to Application Specifications*. Revision date: March 2024. Posted date: 3/20/24.
- Publication 5247, *Fingerprint Card Instructions for Voluntary Certification of Professional Employer Organizations*. Revision date: January 2024. Posted date: 3/20/24.
- *Instructions for Form 720*. Revision date: March 2024. Posted date: 3/20/24.

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:** If AB 2751 becomes law, employees would have the right to disconnect from communications from their employers during nonworking hours. Exceptions would be provided for emergencies and scheduling. Employers with a pattern of violating this change to the Labor Code would be fined \$100. We'll keep an eye on this legislation. **More info:** legiscan.com/CA/text/AB2751/id/2965645

NEW YORK

- **PAID LEAVE:** Starting Jan. 1, 2025, employers in the state will need to provide 20 hours of paid prenatal personal leave (PPPL) during any 52-week calendar period. Employees may take the leave in hourly increments. PPPL may be taken for healthcare services that an employee receives during pregnancy or related to such pregnancy. This includes physical examinations; medical procedures; monitoring and testing; and discussions with a healthcare provider related to the pregnancy. This new type of leave, the first in the nation, is part of the state's budget for FY 2024-2025. **More info:** www.nysenate.gov/node/12035805

PENNSYLVANIA

- **WAGE AND HOUR:** The state signed a memorandum of understanding (MOU) with the federal Dept. of Labor's Wage and Hour on Oct. 7, 2022. It's set to expire five years from that date. The MOU allows the federal and state agencies to share training materials, provide employers

and employees with compliance assistance information, conduct coordinated investigations and share information. For example, the MOU says the agencies can make referrals of potential violations of each other's statutes. **More info:** www.dol.gov/sites/dolgov/files/WHD/MOU/PA-1-Unsigned.pdf

VERMONT

- **ACH PAYMENTS:** The Vermont Department of Taxes ACH Credit Payment Guide was revised in February of 2024. Employers should bring the guide with them when they set up their ACH credit account with a financial institution or payroll company. The guide contains common mistakes to avoid such as taxpayer identification formatted incorrectly, invalid tax type code and filing period formatted incorrectly. **More info:** tax.vermont.gov/sites/tax/files/documents/GB-1104.pdf

VIRGINIA

- **WITHHOLDING:** *Income Tax Withholding Guide for Employers* has been updated by Virginia Tax. It includes the withholding tables for wages paid after April 1, 2024. The also contains other useful information, such as types of payments that are subject to or exempt from income tax withholding. A list of employer and employee forms can also be found in the guide. **More info:** www.tax.virginia.gov

WASHINGTON

- **UNEMPLOYMENT INSURANCE:** The unemployment insurance voluntary contribution program was set to sunset on May 31, 2026, but thanks to HB 1901 that won't happen, the Employment Security Dept. said in a recent announcement. The following provisions have been made permanent by the legislation: The

surcharge of 10% of a voluntary contribution amount won't need to be paid, and employers that are moving eight rate classes or more (instead of 12 or more) can use the voluntary contribution program. **More info:** www.esd.wa.gov/newsroom/legislature-governor-sign-off-on-Employment-Security-Department-bills

WISCONSIN

- **INCOME TAX:** If a nonresident employee performs services in the state and the employer reasonably estimates that during the calendar year the employee will earn less than \$2,000, state income tax shouldn't be withheld from that person's wages. The threshold had been \$1,500 but was increased by SB 616. The bill was enacted on March 21, 2024. **More info:** legiscan.com/WI/text/SB616/2023

THE LIGHTER SIDE

Even on the frozen continent, you can find some impressive sources of heat – in Antarctica, there are 138 volcanoes, nine of them active.

One of the active volcanoes, Mount Erebus, is the southernmost active volcano on the entire planet.

But if that's not intriguing enough to make you pack up your snowsuit and go explore, maybe this fact will persuade you: When Mount Erebus erupts, it sends little pieces of crystallized gold into the air.

Each day, about 80 grams of gold explode out of the volcano and float into the air, according to AccuWeather.

That equates to about \$6,000 per day.

They say that money doesn't grow on trees. But apparently, it does spew forth from volcanoes.

Cite: tinyurl.com/volcano691