

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™

June 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

- **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.
- **June 12, 2024:** Deposit taxes for payroll on June 5, 6, 7.
- **June 14, 2024:** Deposit taxes for payroll on June 8, 9, 10, 11.
- **June 20, 2024:** Deposit taxes for payroll on June 12, 13, 14.
- **June 24, 2024:** Deposit taxes for payroll on June 15, 16, 17, 18.
- **June 26, 2024:** Deposit taxes for payroll on June 19, 20, 21.
- **June 28, 2024:** Deposit taxes for payroll on June 22, 23, 24, 25.

■ MONTHLY DEPOSITORS

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

IRS provides guidance on taxation of this fringe benefit

■ Fact sheet looks at work-life referral services

Employers sometimes offer work-life referral services, so that employees can get help obtaining the resources they need in the role of caregiver.

If your company offers or is considering offering such a perk, you may wonder: *Is the fringe benefit subject to employment taxes?*

The IRS recently provided guidance in Fact Sheet 2024-13.

FICA, FUTA, federal income tax

Work-life referral services – sometimes called caregiver or caretaker navigation services – are considered *de minimis* fringe benefits, the IRS stated in the fact sheet.

As such, the services shouldn't be included in employees' gross income

and aren't subject to employment taxes – i.e., FICA, FUTA and federal income tax withholding.

Work-life referral programs are often incorporated into employee assistance programs (EAPs). Of note, the fact sheet covers the tax treatment of work-life referral services, not the services themselves offered through EAPs.

Caregiver navigation services provide employees with guidance, support, information and referrals, covering a range of needs.

Here are some examples of the types of needs, as listed in Fact Sheet 2024-13:

(Please see Fringe benefit ... on Page 2)

Rule impacts expiration date of Form I-9 documents

In a temporary final rule – published April 8, 2024, in the *Federal Register* – U.S. Citizenship and Immigration Services (USCIS) increased the automatic extension period for certain employment authorization documents (EADs) that employees may submit with Form I-9.

USCIS had previously increased the automatic extension period from 180 days to 540 days for individuals who'd filed Form 765, *Application for Employment Authorization*. Due to this latest rule, the 540-day automatic extension period will continue.

A noncitizen who already possesses an EAD card needs to file Form 765

if he or she wants to renew the EAD card before its expiration date, to have proof of work authorization.

Filing renewal applications

The temporary final rule, which took effect immediately, applies to individuals who filed a renewal application:

- on or after Oct. 27, 2023, with a pending status on or after April 8, 2024, or
- during the 540-day period beginning on or after April 8, 2024, and ending Sept. 30, 2025.

More info: *Federal Register*, 4/8/24.

158 employees paid on a piece-rate basis didn't receive overtime pay

■ \$25K ASSESSED IN PENALTIES – PLUS MORE IN BACK WAGES, DAMAGES

Employees who are paid a piece rate are also due the overtime premium when they work more than 40 hours in a workweek.

That reminder hit one employer in the construction industry hard when the federal Dept. of Labor (DOL) conducted an investigation.

4-E Painting LLC paid employees wages based on a piece rate, an hourly rate or both.

That wasn't a problem under the Fair Labor Standards Act (FLSA). However, when employees at the Mesa, AZ, company exceeded 40 hours of work in a workweek, they should have received overtime compensation as the FLSA requires.

Because that didn't happen, the DOL said 4-E Painting LLC owed 158 workers:

- \$432,633 in back wages, and
- \$432,633 in liquidated damages.

In addition, the DOL assessed \$24,732 in penalties.

Calculating overtime rate

Employers that decide to pay a piece rate should have a plan for how they'll calculate overtime. The DOL provides two options:

- **Option 1.** Divide the total weekly piece-rate earnings by the total weekly hours worked – that'll give you the regular rate of pay, which you'd multiply by one-and-a-half.
- **Option 2.** If agreed on before the work is performed, you can pay one-and-a-half times the piece rate for each piece produced during the overtime hours.

More info: www.dol.gov/newsroom/releases/whd/whd20240422

Fringe benefit ...

(continued from Page 1)

- identifying appropriate education, care and medical service providers
- choosing a childcare or dependent care program
- navigating eligibility for government benefits, including Veterans Administration benefits
- evaluating and using paid leave programs offered through an employer, a state or a locality
- locating home services professionals who specialize in adapting a home for a family member with special care needs
- navigating the medical system, including private insurance and public programs, and utilizing available medical travel benefits, and
- connecting the employee with local retirement and financial planning professionals.

More info: www.irs.gov/newsroom/frequently-asked-questions-about-work-life-referral-services

COMPLIANCE CHECK

■ \$1.2M OWED FOR MULTIPLE INFRACTIONS OF FLSA

Misclassifying workers as independent contractors was just one of the problems the Dept. of Labor found at Village Concrete Inc., a Manassas, VA, employer. Other Fair Labor Standards Act (FLSA) errors included not paying employees for work-related travel and failing to keep accurate records of hours worked. The concrete contractor owed:

- \$67,473 in civil money penalties
- \$563,938 in back wages, and
- \$563,938 in liquidated damages.

More info: tinyurl.com/692virginia

■ FIRED AFTER REFUSING TO SHARE TIPS WITH MANAGER

Trareeba Ltd., doing business as Colatina Exit in Bradford, VT, included managers in its tip pool. When one server refused to participate, the restaurant retaliated against him by terminating him. Also in violation of the Fair Labor Standards Act, the employer failed to pay overtime and hired two 17-year-old drivers to make time-sensitive deliveries. It had to pay:

- \$50,000 in punitive damages and \$829 in back pay for the retaliation
- \$119,605 in back wages, \$119,605 in liquidated damages and \$3,393 in penalties for the tip and/or overtime violations, and
- \$28,132 in civil money penalties for the child labor violations.

More info: tinyurl.com/692vermont

■ WRONG SUBMINIMUM WAGE PAID TO DISABLED WORKERS

Advo Companies Inc., Amarillo, TX, paid employees with disabilities an incorrect subminimum wage. It used rates based on flawed time studies and prevailing wages. The nonprofit had to pay \$52,497 in back wages to 134 workers with disabilities.

More info: www.dol.gov/newsroom/releases/whd/whd20240430-0

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IRS releases HSA contribution limits, other health plan numbers for 2025

■ PLUS, PUBLICATION 15-B HAD TO BE CORRECTED FOR 2024

In 2025, employees will be able to contribute more to their health savings accounts (HSAs) without worrying about federal income tax.

The IRS recently revealed the inflation-adjusted dollar amounts in Revenue Procedure 2024-25.

Numbers for next year

An individual with self-only coverage under a high deductible health plan (HDHP) will be able to contribute \$4,300 (up from \$4,150) to an HSA.

For an individual with family coverage, the contribution limit will be \$8,550 (up from \$8,300).

The revenue procedure also provided key HDHP numbers, adjusted for inflation for 2025.

The annual deductible for HDHPs can't be less than:

- \$1,650 for self-only coverage (now \$1,600), and
- \$3,300 for family coverage (now \$3,200).

Annual out-of-pocket expenses for an HDHP can't exceed:

- \$8,300 for self-only coverage (now \$8,050), and
- \$16,600 for family coverage (now \$16,100).

Excepted benefit health reimbursement arrangements (HRAs) also will see higher limits in the new calendar year. This is provided under the Pension Excise Tax Regulations.

The maximum amount that may be made newly available for the plan year will be \$2,150.

Currently, the HRA limit is \$2,100.

2024 Publication 15-B revised

In related news, the IRS announced that it made post-release changes to Publication 15-B, *Employer's Tax Guide to Fringe Benefits*.

The guide had been released at the beginning of 2024 with updates for the year. However, the publication contained five incorrect figures for HSA eligibility and contribution limits, the IRS stated in a May 15, 2024, announcement. The IRS has since made corrections to page 16.

It noted some employers may need to redownload the publication.

More info: www.irs.gov/pub/irs-drop/rp-24-25.pdf

New guidance on lump sum payments & child support

The Office of Child Support Services (OCSS) has released a fact sheet providing information for employers on lump sum payments.

The guidance, *Employer Lump Sum Reporting*, is dated of March 2024.

It defines a lump sum payment as "a one-time payment to an employee." That includes bonuses, cash service awards, commissions, retroactive pay increases, severance pay and vacation pay.

Most lump sum payments are earnings and may be subject to the withholding limits for child support

set by the Consumer Credit Protection Act, the fact sheet explains.

Reporting timeline

As for the timeline for reporting to the child support agency, the OCSS sets that at 30 to 45 days prior to issuing the payment.

A child support agency may communicate with you about withholding via mail, fax, secure email or the OCSS portal.

More info: www.acf.hhs.gov/css/employers/child-support-portal/bonus-lump-sum-reporting

NEWS YOU CAN USE

■ FORM W-2, W-2C E-FILING SPECS OUT FOR TY 2024

SSA has released the specs needed to file Forms W-2 electronically for TY 2024, in Publication 42-007. You can also now access Publication 42-014 with the formatting details you'll need to file corrected forms electronically.

According to the publications, the start date for filing Forms W-2 or Forms W-2C electronically is Dec. 9, 2024. That's if you're uploading files through Business Services Online or transmitting the files via Electronic Data Transfer.

Also noted: The IRS deadline for TY 2024 W-2s is Fri., Jan. 31, 2025.

More info: www.ssa.gov/employer/EFW2&EFW2C.htm

■ NO SURPRISES FOR Q3 INTEREST RATES, SAYS IRS

Interest rates will remain unchanged for the third quarter, the IRS said in Revenue Ruling 2024-11. They are as follows:

- 8% for **overpayments** (7% for corporate **overpayments**)
- 5.5% for the portion of **overpayments** exceeding \$10,000, and
- 8% for **underpayments** (10% for large corporate **underpayments**).

More info: www.irs.gov/pub/irs-drop/rr-24-11.pdf

■ SEMIWEEKLY DEPOSITORS, WATCH THIS DEADLINE

If you're a semiweekly tax depositor, make a note about this date: July 8, 2024. You may need to send the IRS two separate tax deposits, attributed to two different quarters.

- The second quarter deposit will cover payments made on June 29-30, 2024.
- The third quarter deposit will cover payments made on July 1-2, 2024.

More info: www.irs.gov/pub/irs-pdf/p509.pdf

DOL releases guidance on how the FLSA applies to artificial intelligence

■ WATCH OUT FOR THESE PITFALLS TO ENSURE YOU STAY IN COMPLIANCE

In response to employers increasingly using artificial intelligence (AI) in the workplace, the Dept. of Labor's (DOL's) Wage and Hour Division has released *Field Assistance Bulletin No. 2024-1*.

The bulletin provides guidance to Wage and Hour field staff on how the Fair Labor Standards Act (FLSA) applies to AI. The DOL stressed the need for employers to use "responsible human oversight" of AI and other automated systems to avoid compliance errors. Reason: Regardless of the tools and systems used, employees are still entitled to the protections that laws provide.

Here's a closer look at the bulletin, dated April 29, 2024:

Hours worked

On the topic of hours worked under the FLSA, the guidance delves into four areas.

First, some AI programs have been designed to monitor employees'

productivity or activity, whether it's their computer keystrokes and mouse clicks; website browsing; presence and activity in front of a web camera; or other data. If an AI program were to incorrectly categorize time as noncompensable hours based on its analysis of the worker, that could result in a failure to pay wages for all hours worked. So, human analysis is still needed when tracking work time.

Second, some timekeeping systems use AI to make predictions and to auto-populate time entries based on a combination of prior time entries; regularly scheduled shift times and break times; business rules; and other data. But employers still need to check the time records, including monitoring break times, to ensure accurate pay.

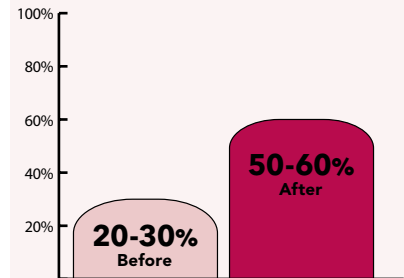
Third, while AI and other technologies may have the ability to assign tasks and set work schedules, employers should be alert to the potential need to pay employees if they're waiting for their next task to be assigned or their schedule of assignments to be updated.

Fourth, using location monitoring to determine work hours may create

WHAT PAYROLL PROS TOLD US

Pay Transparency Laws

If your company discloses pay info in job postings, did it start doing that before or after a law took effect?



Source: ZipRecruiter, Annual Employer Survey, 2023

Pay transparency laws continue to gain steam nationwide. Meanwhile, about one-quarter of employers include pay data in job postings even if they aren't required to do so.

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

compliance problems because a system may deem an employee to be working while at a worksite without accounting for work performed at multiple geographic locations. Here again, there's a need to add in human analysis, the bulletin stressed.

More info: www.dol.gov/sites/dolgov/files/WHD/fab/fab2024_1.pdf

REAL-LIFE SCENARIO: DID THEY GET IT RIGHT?

Employee's pay structure led to doubts about salary basis test and OT exemption

An employer in the oil and gas industry faced this real-life scenario:

An industry expert worked on a project basis, providing services to his employer's clients as assigned. He earned an hourly rate or day rate for the hours he worked.

Following an audit, during which the Dept. of Labor said the company had misclassified some employees as exempt from overtime, the company adjusted its pay structure for exempt employees.

Under the new pay structure, the industry expert would be paid a guaranteed weekly retainer based on

an hourly rate of \$105 and a period of 10 hours (i.e., \$1,050 a week). For every hour beyond 10, he'd be paid \$105 per hour – however, he wouldn't receive an overtime premium if his hours exceeded 40, given his classification as a highly compensated exempt employee.

The employee claimed that on some weeks when he worked fewer than 10 hours, he didn't receive at least \$1,050. Furthermore, by using an hourly rate to compute the retainer compensation amount, the company wasn't paying him on a salary basis.

Therefore, he shouldn't have been classified as exempt. Instead, he should

have received the overtime premium when he worked more than 40 hours, he claimed. He – and other employees with similar compensation structures – brought a Fair Labor Standards Act lawsuit against the company.

The federal district court sided with the employees.

Checklist for compliance

- A word of caution: An employee may pass the salary level test but not pass the salary basis test.
- An exempt employees' pay can't vary due to fluctuations in hours, days or shifts worked.

Tracking local laws and regs

■ Per-minute and per-mile rates set for Minneapolis rideshare drivers

An agreement has been reached regarding how much rideshare drivers in Minneapolis must be paid.

By way of background, the rates had been slated to increase to \$1.40 per mile and \$0.51 per minute starting July 1, 2024. Consequently, Lyft and Uber threatened to leave the city, saying the rates were too high.

In mid-May, the state legislature passed legislation, setting the rate at \$1.28 per mile and \$0.31 per minute, starting on Dec. 1, 2024.

More info: www.revisor.mn.gov/bills

■ Philadelphia bank closed, FDIC named as receiver in April 2024

On April 26, 2024, the Pennsylvania Dept. of Banking and Securities closed Philadelphia-based Republic First Bank, naming the Federal Deposit Insurance Corporation (FDIC) as receiver. The FDIC entered into an agreement with Fulton Bank, National

Association, Lancaster, PA, to assume substantially all deposit accounts and assets. Customers of Republic First Bank don't need to take any action.

More info: www.fdic.gov/resources/resolutions/bank-failures

■ 3 cities in California announce higher minimum wage rates

In Emeryville, CA, employers will need to pay at least \$19.36 per hour starting July 1, 2024. That's up from \$18.67 per hour. **More info:** www.ci.emeryville.ca.us/1024/Minimum-Wage-Ordinance

The minimum wage rate will soon increase to \$17.30 per hour in Fremont, CA. The current rate of \$16.80 per hour will remain in effect until July 1, 2024. **More info:** www.fremont.gov/business/minimum-wage

For employers in Pasadena, CA, the minimum wage rate of \$16.93 per hour is heading up to \$17.50 per hour. The change will take effect starting July 1, 2024. **More info:** tinyurl.com/pasadena692

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.

How do we count intermittent FMLA leave if holidays occur?

Q: An employee whose normal schedule is a five-day workweek – Monday through Friday – was given Monday off for the Memorial Day holiday. Later in that week, on Thursday, she took the day off as intermittent Family and Medical Leave Act (FMLA) leave. Should the day of FMLA leave count as one-fifth or one-fourth of the workweek?

A: In such a situation, the Dept. of Labor says to count the

intermittent FMLA leave as one-fifth of a workweek. The employee took one day of leave out of her usual five days of work. Be careful: Using the reduced workweek as the basis for your calculations – i.e., one day of leave out of four days – would lead to a larger reduction of leave than needed, which the law forbids. Meanwhile, if an employee takes a full workweek of FMLA leave during a week with a holiday, you'd count the entire workweek as FMLA leave.

More info: Opinion Letter FMLA 2023-2-A, www.dol.gov/agencies/whd/opinion-letters

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 CT-1X, *Adjusted Employer's Annual Railroad Retirement Tax Return or Claim for Refund*. Revision date: March 2024. Posted date: 3/21/24.
- *Instructions for Form CT-1 X*. Revision date: March 2024. Posted date: 3/21/24.
- Publication 5528, *Nonqualified Deferred Compensation Audit Technique Guide*. Revision date: March 2024. Posted date: 3/21/24.
- Form 5498-SA, *HSA, Archer MSA, or Medicare Advantage MSA Information*. Revision year: 2024. Posted date: 3/25/24.
- Publication 4436, *General Rules and Specs for Substitute Form 941, Schedule B (Form 941), Schedule D (Form 941), Schedule R (Form 941), and Form 8974*. Revision date: March 2024. Posted date: 3/28/24.
- Publication 4450, *Fiscal Year 2025 Congressional Budget Justification & Annual Performance Report and Plan*. Revision date: February 2024. Posted date: 4/3/24.
- Form 5146, *Employment Tax Returns: Examinations and Appeal Rights*. Revision date: March 2024. Posted date: 4/3/24.
- Publication 5951, *IRS Form 1099-K Myths vs Facts*. Revision date: March 2024. Posted date: 4/10/24.

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!

www.kslegislature.org/li/b2023_24/measures/hb2560

2024. All employers in the state are encouraged to participate, not just those involved in federally funded construction projects. The online survey is due by Aug. 20, 2024. **More info:** www.dol.gov/newsroom/releases/whd/whd20240430

FLORIDA

- **SCHEDULING:** New legislation, HB 433, preempts local employee scheduling regulations. Effective July 1, 2024, a local government may not adopt or enforce any ordinance, resolution, order, rule, policy or contract requirement that regulates scheduling. That includes predictive scheduling. The law allows for exceptions such as if scheduling is expressly authorized or required by a state or federal law, rule or regulation. **More info:** www.flsenate.gov/Session/Bill/2024/433

GEORGIA

- **WITHHOLDING:** The Dept. of Revenue has revised Form G-4, *State of Georgia Employees Withholding Allowance Certificate*. The new revision date is April 19, 2024. **More info:** dor.georgia.gov/form-g-4-employee-withholding

KANSAS

- **EARNED WAGE ACCESS:** HB 2560 established requirements for earned wage access (EWA). Starting April 19, 2024, providers must register with the Office of the State Bank Commissioner. The registration will expire on December 31 of each year but can be renewed by filing an application at least 30 calendar days prior to the expiration date. Before an employer enters into an agreement, the provider must inform the employer of its rights under the agreement; fully and clearly disclose all fees associated with the EWA services; and clearly and conspicuously describe how the employer may obtain proceeds at no cost to the employer. **More info:**

MARYLAND

- **TAX RELIEF:** Following the collapse of the Francis Scott Key Bridge in March 2024, the Office of the Comptroller waived late payment penalties and interest for Maryland businesses through May 31, 2024. That's because the governor issued an executive order declaring a state of emergency. The waiver applies to business filings from Jan. 1, 2024, to May 31, 2024, such as employer withholding tax; sales and use tax; and others. **More info:** www.marylandtaxes.gov

MINNESOTA

- **PAY TRANSPARENCY:** Due to SF 3852, salary ranges will be required in job postings effective Jan. 1, 2025. The change applies to entities that employ 30 or more employees. In addition to the starting salary range, a general description of all the benefits and other compensation – e.g., health or retirement benefits – must be disclosed in each job posting. If an employer expects to offer a fixed rate, it must be listed, rather than leaving a salary range open-ended. Note: The requirements pertain to both employers that do their own recruitment and those that utilize third parties. **More info:** legiscan.com/MN/bill/SF3852/2023

NORTH CAROLINA

- **PREVAILING WAGE:** Pursuant to the Davis-Bacon and Related Acts, the Dept. of Labor (DOL) sets prevailing wage rates that reflect what construction workers nationwide actually earn. Currently, the DOL is gathering info on wages and fringe benefits for highway construction in North Carolina. The survey will cover work done from May 20, 2023, to Aug. 20,

OREGON

- **CHILD LABOR:** The Oregon Bureau of Labor & Industries may charge \$10,000 for each child labor violation, effective June 6, 2024. That's up from \$1,000 per violation. Also, even if an employer has paid a civil penalty to the federal Dept. of Labor for violations of the Fair Labor Standards Act, that doesn't let the employer off the hook for state civil penalties. These changes were contained in HB 4004, legislation signed by the governor March 7, 2024. **More info:** olis.oregonlegislature.gov/liz/2024R1/Measures/Overview/HB4004

THE LIGHTER SIDE

Perhaps you've lost something and asked yourself, "Now, where did I leave that?!" If you happened to have recently been in an Uber, you might want to check there.

The rideshare company has released The 2024 Uber Lost & Found Index. Here are a few of the No. 1s from its various categories.

- Most commonly forgotten item: clothing.
- Most lost color: red.
- Most forgetful city: Miami.
- Most common hours items were reported lost: 9 p.m. and 10 p.m.
- Most forgetful day of the year: January 21. (Clearly, that's because people are distracted, thinking about imminently receiving their W-2s from Payroll!)

Cite: www.uber.com/newsroom/the-2024-uber-lost-found-index