

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 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

- **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.
- **July 3, 2024:** Deposit taxes for payroll on June 26, 27, 28.
- **July 8, 2024:** Deposit taxes for payroll on June 29, 30 for Q2.
- **July 8, 2024:** Deposit taxes for payroll on July 1, 2 for Q3.
- **July 10, 2024:** Deposit taxes for payroll on July 3, 4, 5.

■ 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.

Must short-term military leave be paid? Latest court ruling

■ Employer offered employees other types of leave

When employees take short-term military leave, your company may need to continue paying them.

To be clear, the Uniformed Services Employment and Reemployment Rights Act (USERRA) doesn't stipulate that short-term military leave be paid. Nonetheless, paid leave may be required if your company compensates other employees for comparable types of leave.

One major airline has been dealing with an ongoing legal battle regarding USERRA leave. Here's the latest:

3 key factors

The Third Circuit recently issued an opinion in *Scanlan v. American Airlines Group Inc.* The federal

appeals court took a look at jury-duty leave and bereavement leave, both of which the airline offered to its pilots.

Pilots received three days of paid bereavement leave. As for jury duty, the company paid them the difference between their regular compensation and the jury-duty payment.

Time off to perform short-term military service, though, was unpaid.

Defending itself in the class-action lawsuit, American Airlines argued that short-term military leave differed from the other types of leave in duration, purpose and control.

In its unanimous decision issued May 21, 2024, however, the court said

(Please see Leave ... on Page 2)

2024 final overtime rule encounters legal pushback

In April 2024, the federal Dept. of Labor (DOL) released its final rule, raising the minimum salary that exempt executive, administrative and professional employees must be paid.

Just a month later, lawsuits began rolling in, attempting to block the rule before the effective date of the first phase: July 1, 2024.

Payroll practitioners will recall a similar scenario in 2016. In that year, the Obama administration released a final rule that implemented a dramatic jump in the salary level threshold. That prompted businesses and states to take legal action. The result: A federal district court in Texas

permanently enjoined the 2016 DOL rule, stating the agency didn't have the authority to regulate the salary level test. Plus, the court halted the DOL's plan to automatically increase the salary threshold every three years.

Salary threshold contested

Now, as employers stare at an impending requirement to pay exempt employees at least \$844 per week – i.e., \$43,888 annually – there are three lawsuits underway, all filed in federal district courts in Texas.

We'll keep you posted.

More info: dol.gov

DOL: NY landscaping company owes more than \$1M after breaking 2 laws

■ PROBLEMS INCLUDED PROVIDING FALSE RECORDS TO INVESTIGATORS

Following an investigation, the Dept. of Labor (DOL) said a Southampton, NY, company had broken two laws.

All told, Dario's Landscaping & Masonry Inc. owed more than \$1 million for the violations. The laws were the:

- Fair Labor Standards Act (FLSA), and
- Immigration and Nationality Act's H-2B program.

As for the FLSA violations, the employer failed to pay overtime for hours worked over 40 in a workweek. Plus, it provided false records during the investigation to try to cover up its wage violations.

Dario's Landscaping fell short with the H-2B program when it failed to pay the correct rate, threatened to

not rehire workers if they cooperated with DOL investigators and coached workers to give false testimony.

Preventing future violations

The cost of noncompliance was:

- \$484,690 in FLSA back wages and an equal amount in liquidated damages to 54 workers
- \$31,710 in back wages to 29 H-2B workers
- \$98,908 in civil money penalties, and
- \$12,021 in post-judgment interest.

Plus, the DOL said the company must engage a compliance consultant, train managers and educate workers about their rights.

Goes to show the importance of preventive compliance measures.

More info: www.dol.gov/newsroom/releases/whd/whd20240221

Leave ...

(continued from Page 1)

a reasonable jury could find short-term military leave was comparable to the other types of leave offered. So, it sent the case back down. In reaching that decision, the appeals court looked closely at these factors:

- **Duration.** On average, short-term military leave lasted 3.3 days, bereavement leave lasted 2.7 days and jury-duty leave lasted 1.8 days. While the federal district court had considered frequency alongside duration, the higher court noted USERRA doesn't require that.
 - **Purpose.** While the leaves sometimes overlapped in purpose – e.g., civic duty and public service – a jury would have to examine any distinctions.
 - **Control.** Of course, bereavement leave and jury-duty leave couldn't be planned, but as to whether pilots could schedule their military leaves, the airline and pilots disagreed, making a jury's analysis necessary.
- More info:** tinyurl.com/leave693

COMPLIANCE CHECK

■ EMPLOYEE TERMINATED AFTER TAKING FMLA LEAVE

Mi Casita Mexican Restaurant Inc., based in Fort Smith, AR, violated the Family and Medical Leave Act (FMLA).

An employee who took FMLA leave wasn't reinstated to the same or an equivalent position and was later terminated for refusing to report to work at a new location many miles away from the previous one. So, the employer had to pay:

- \$11,706 in back wages, and
- \$204 in penalties.

More info: www.dol.gov/newsroom/releases/whd/whd20240507

■ 32 HOME HEALTHCARE AIDES OWED MORE THAN \$150K

Renee's Helping Hands, an Indianapolis home healthcare organization, paid aides who traveled to clients' homes straight time instead of overtime when they worked more than 40 in a workweek. The Dept. of Labor said the employer owed the following amounts to 32 aides:

- \$75,722 in back wages, and
- \$75,722 in liquidated damages.

More info: www.dol.gov/newsroom/releases/whd/whd20240510

■ VIOLATIONS OF EMERGENCY PAID SICK LEAVE ACT

Jesse's Cleaning Service, in Greenville, MS, terminated two workers after they asserted their rights to be paid under the Families First Coronavirus Response Act – specifically, the Emergency Paid Sick Leave Act provision – and the Fair Labor Standards Act.

The company had to pay:

- \$55,476 in back wages
- \$55,476 in liquidated damages, and
- \$16,749 in compensatory damages.

More info: www.dol.gov/newsroom/releases/whd/whd20240520

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If penalties change annually, what year is basis for I-9 assessments?

■ COMPANY ENDED UP PAYING \$56,580 IN FINES FOR PROBLEMS WITH FORMS

A recent case decided by the Dept. of Justice’s Office of the Chief Administrative Hearing Officer shed light on how Form I-9 penalties are assessed.

As explained in the case, *United States v. Edgemont Group, LLC*, the Dept. of Homeland Security (DHS) filed a complaint against the employer saying it violated the Immigration and Nationality Act (INA). Specifically, DHS said the company failed to timely:

- prepare Forms I-9, and/or
- present the forms for 46 individuals.

For the INA violations, DHS proposed that the company pay \$90,387.20 in penalties.

The Chief Administrative Law Judge (ALJ) issued a subsequent order. The ALJ also held the employer liable for 46 violations but calculated a lower penalty amount: \$55,024.

Ranges from 2019

The battle wasn’t over yet, though. The Chief Administrative Hearing Officer vacated the ALJ’s order

and sent the case back to the ALJ to reexamine what the date of assessment should be.

The ALJ then decided the employer should pay \$56,580 in penalties – i.e., \$1,230 per violation. That penalty amount was based on the following range: \$224 to \$2,236. Of note, that was the range in effect during 2019, the year DHS issued a Notice of Intent to Fine.

Ranges from 2023

Once again, the Chief Administrative Hearing Officer stepped in. Although the ALJ used 2019 as the assessment date, the Chief Administrative Hearing Officer said it should be 2023.

The reason: The assessment date shouldn’t be the year that DHS served a Notice of Intent to Fine but, rather, the year the Office of the Chief Administrative Hearing Officer issued a final order.

Even though by 2023 the penalty ranges had increased to a minimum of \$272 and a maximum of \$2,701, it still worked to use \$1,230 per violation as the penalty.

More info: www.justice.gov/d9/2023-12/1470e.pdf

IRS: No recouping this fringe benefit, despite pandemic

In Chief Counsel Advice 20240004, the IRS considered the topic of qualified transportation fringe benefits (QTFB).

The employee seeking the IRS guidance explained that the pandemic first prevented her from commuting.

Then, as the pandemic continued, it changed her commuting routine so much that she no longer had reimbursable commuting expenses.

So, she wanted to retrieve the funds she’d received for QTFB through a compensation reduction agreement with her employer. With such

compensation reduction agreements, employees may designate a portion of the money they’d otherwise receive as compensation to fund QTFBs provided by their employer.

Used for transportation

In the chief counsel advice, the IRS said the money designated as QTFB had to be used on qualifying commuting activity. That meant the funds couldn’t be refunded for any reason – not even a pandemic.

More info: www.irs.gov/pub/irs-wd/24-0004.pdf

■ WANT TO E-FILE AMENDED EMPLOYMENT TAX RETURNS?

Employers should be able to use the Modernized e-File (MeF) system to file amended employment tax returns by mid-June, the IRS said during its June Payroll Industry Call.

That’ll include the following forms:

- 941X
- 943X
- 945X, and
- 940 (using “amended” checkbox).

The amended forms are in addition to the original payroll tax returns already accepted through MeF.

More info: www.irs.gov/pub/irs-pdf/i941x.pdf

■ EEOC LOOKING FOR EEO-1 COMPONENT 1 REPORTS

The EEOC has filed lawsuits against 15 employers the agency says repeatedly didn’t submit EEO-1 Component 1 data reports in prior years. The employers are based in 10 states and represent a variety of industries.

Private sector employers with 100 or more employees must file the annual reports – the most recent deadline was June 4, 2024.

More info: content.govdelivery.com/accounts/USEEOC/bulletins/39f6290

■ E-VERIFY HAS CHANGED ITS ACCOUNT LOGIN PAGE

The E-Verify account login page has changed, and the old URL will no longer work starting June 25, 2024.

The Dept. of Homeland Security encourages E-Verify users to bookmark the new URL (which has no dash). The old and new URLs are:

- e-verify.uscis.gov (old), and
- everify.uscis.gov (new).

More info: www.e-verify.gov/about-e-verify/whats-new/e-verify-users-check-bookmarks-for-login-access-before-june-25

Treasury Dept. releases document explaining FY 2025 revenue proposals

■ AMONG CHANGES, IRS COULD MAIL NOTICES ELECTRONICALLY

On March 11, 2024, the Treasury Dept. released *General Explanations of the Administration's Fiscal Year 2025 Revenue Proposals*.

Commonly referred to as the Green Book, the document was released in conjunction with the \$7.3 trillion dollar federal budget proposal for FY 2025.

The Green Book contains many provisions relevant to Payroll. Here's a recap:

What to watch for

Electronic notices: The Treasury has proposed allowing the IRS to electronically send notices to taxpayers. Currently, they're sent by mail for a variety of reasons, such as to request information or a payment. The Internal Revenue Code (IRC) requires that notices be sent by certified or registered mail to the taxpayer's last-known address.

According to the proposal, the IRC would be amended to say that when

a taxpayer elects to receive notices electronically (whether exclusively or in addition to mailed notices), the electronic notices would have the same legal effect as mailed notices.

Penalties related to employment tax returns: Currently when a taxpayer submits an erroneous refund or credit claim for income tax, a civil penalty is imposed as per the IRC. That's not the case for employment tax, though.

The Green Book calls for expanding the authority of the IRS so that the penalty for erroneous refund claims under Sec. 6676 of the IRC would apply if taxpayers improperly filed for employment tax refunds.

Additional Medicare Tax: The document includes a proposal to increase the additional Medicare tax rate from 0.9% to 2.1% for taxpayers whose earnings exceed \$400,000.

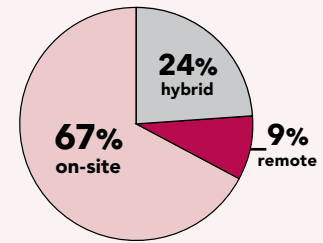
Reason? The Hospital Insurance Trust Fund is on course to be exhausted in 2031.

On-demand pay: Employers that offer on-demand pay arrangements need clarity regarding the withholding

WHAT PAYROLL PROS TOLD US

Remote, hybrid and on-site work

Where are finance and accounting employees spending their workdays?



Source: Robert Half's Remote Work Statistics and Trends for 2024

During the first quarter of 2024, most individuals in finance and accounting were on-site employees, while 24% performed hybrid work and 9% worked remotely.

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

and depositing of employment taxes, the Treasury said in the Green Book. On-demand pay arrangements should be treated as a weekly payroll period. Plus, it should be made clear they're not loans for federal tax purposes.

More info: home.treasury.gov/system/files/131/General-Explanations-FY2025.pdf

REAL-LIFE SCENARIO: DID THEY GET IT RIGHT?

Caregivers said they didn't get 5 hours of uninterrupted sleep time

A senior home care company in Connecticut faced this real-life scenario:

Caregivers at the company assisted clients with daily living activities in their homes.

The caregivers' shifts sometimes lasted 24 hours. When that occurred, up to eight hours of the shift could be counted as sleep time as per the Fair Labor Standards Act (FLSA) – but certain conditions had to be met.

For example, the employees had to get at least five hours of sleep without interruptions. If there were interruptions, what would otherwise

have been excluded as sleep time had to be counted as time worked.

One employee began working for the company on a temporary basis after his wife, who was already employed by the company, recruited him for a caregiver position similar to hers. Eventually, the employee, his wife and several other employees brought an FLSA lawsuit against the company, saying they should have been paid overtime. The issue: The hours designated as sleep time weren't uninterrupted and should have been counted as hours worked.

The court doubted whether the temporary employee understood

that his job included the sleep time arrangement. Plus, his wife may have understood that eight hours of sleep time would be excluded from compensation, but she viewed that more as a one-sided company policy than as an equal agreement between employer and employee. Therefore, the court didn't dismiss the case as the employer had requested.

Checklist for compliance

- Putting agreements in writing can help prevent misunderstandings.
- Consider whether employees perceive sleep time arrangements as company policies or agreements.

Tracking local laws and regs

■ Here's what the minimum wage rate will be in Tukwila, WA

The minimum wage rate is going up on July 1, 2024, for midsized employers in Tukwila, WA, with the previous increase occurring at the start of 2024. The hourly rate will be \$19.29 (currently, it's \$18.29).

Large employers in the city won't see a midyear increase. The rate will remain \$20.29 per hour.

The determination of employer size is based on factors such as number of employees worldwide and annual gross revenue in the city.

More info: www.tukwilawa.gov

■ Hourly rates rising here based on employer size

In Montgomery County, MD, large employers (those with 51 or more employees) currently must pay at least \$16.70 per hour. That's going up to \$17.15 per hour on July 1, 2024.

Also on that date, the current \$15-per-hour minimum wage rate for

midsized employers (those with 11-50 employees) will hit \$15.50 per hour.

As for small employers (those with 10 or fewer employees), the rate increased to \$15 per hour on Jan. 1, 2024 – there will be no midyear rate change.

■ Minimum wage rate will hit \$18.67 per hour in this California city

The minimum wage rate in Berkeley, CA, will be \$18.67 per hour starting July 1, 2024.

That's up from the current rate of \$18.07 per hour.

More info: berkeleyca.gov

■ Employers in Alameda, CA, will see higher minimum wage rate

The minimum wage rate in Alameda, CA, will be \$17 per hour starting July 1, 2024.

That's up from the current rate of \$16.52 per hour.

More info: www.alamedaca.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.

How does the IRS pick which tax returns to audit?

Q: What's the process the IRS uses when selecting which employment tax returns it'll audit?

A: While the IRS accepts most employment tax returns as filed, it'll examine some to ensure the amounts are reported accurately. Two things can trigger an examination. First, the IRS uses computer programs to identify returns that may have incorrect amounts. Entries on a return

itself may be flagged, or there may be other reasons, such as studies of past examinations. The second thing that can cause an IRS audit is information from IRS compliance projects. That may involve, for example, public records. Being selected for an audit doesn't mean you've made an error, according to the IRS. When the examination is complete, the IRS may say that you owe additional tax or you're entitled to a refund – or it's possible there will be no change to your liability as reported.

More info: www.irs.gov/pub/irs-pdf/p5146.pdf

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 6112, *Order for Prior Year Tax Products*. Revision date: March 2024. Posted date: 4/24/24.
- Publication 5911, *Information Returns Application for Transmitter Control Code Tutorial*. Revision date: March 2024. Posted date: 4/29/24.
- Publication 3744-B, *IRA Strategic Operating Plan Annual Update*. Revision date: April 2024. Posted date: 5/2/24.
- Publication 5961, *Protect Your Business From Tax Scams*. Revision date: April 2024. Posted date: 5/3/24.
- Publication 5887, *Employee Retention Credit Eligibility Checklist: Help With Avoiding or Resolving an Incorrect Claim*. Revision date: February 2024. Posted date: 5/6/24.
- Publication 5964, *The Employer-Provided Childcare Tax Credit*. Revision date: May 2024. Posted date: 5/20/24.
- Publication 5709, *How to Create a Written Information Security Plan for Data Safety*. Revision date: May 2024. Posted date: 5/20/24.
- Form 941-X, *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund*. Revision date: April 2024. Posted date: 5/23/24.

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

- **MINIMUM WAGE:** Healthcare facilities that are subject to the new minimum wage requirements for healthcare employees have an extra month to prepare. A bill from 2023, SB 525, increased the rates for various types of facilities and was scheduled to take effect starting on June 1, 2024. However, more recent legislation – SB 828 – has delayed the effective date until July 1, 2024. At that time, based on the type of facility, the rates will be set at \$23, \$21 or \$18 per hour, with increases scheduled to occur throughout the next several years. **More info:** legiscan.com/CA/rollcall/SB828/id/1445179

COLORADO

- **INCOME TAX:** New legislation, SB 24-228, temporarily reduces the income tax rate for tax year 2024 from 4.4% to 4.25%. That's due to the excess state revenues from fiscal year 2023-2024. The governor signed the bill May 14, 2024, and the rate change takes effect retroactively to Jan. 1, 2024. **More info:** leg.colorado.gov/bills/sb24-228

CONNECTICUT

- **PAID LEAVE:** The state's paid sick leave law currently applies to service employees only, but soon it'll apply to all employees due to HB 5005. Plus, even small employers will be required to offer paid sick leave – this change will take place incrementally, affecting employers with 25 or more employees starting in 2025, those with 11 or more in 2026 and those with at least one in 2027.

For 2024, the cutoff will remain 50 or more employees. In addition, the current accrual rate of one hour of paid sick leave for every 40 hours worked will be lowered to one hour of paid sick leave for every 30 hours worked. Employers must continue to display posters but also will need to provide written notices to employees by Jan. 1, 2025, or at the time of their hire – whichever is later. **More info:** www.cga.ct.gov/2024/ACT/PA/PDF/2024PA-00008-R00HB-05005-PA.PDF

IDAHO

- **INCOME TAX:** A law lowered the tax rate retroactively to the start of 2024, and now the Idaho State Tax Commission has updated the income tax withholding tables for 2024. Employers don't need to adjust withholding back to the start of 2024. However, you should use the revised tables for the remainder of the year. That includes Table for Percentage Computation Method of Withholding; Table for Wage Bracket Method of Withholding; and Idaho Child Tax Credit Allowance Table. **More info:** tax.idaho.gov/pressrelease/withholding-tables-updated-for-2024/

OREGON

- **INTERNAL REVENUE CODE:** Due to HB 4034, references in state law to the Internal Revenue Code (IRC) mean the IRC as amended and in effect on Dec. 31, 2023. That's effect retroactively to Jan. 1, 2024. **More info:** olis.oregonlegislature.gov/liz/2024R1/Measures/Overview/HB4034
- **SAFE LEAVE:** HB 4156 will take effect July 1, 2024. This legislation expanded the definition of stalking. As a result, the law has implications for Paid Leave Oregon, the program that requires employers to offer up to 12 weeks of paid time off for various reasons, including for safe leave. **Reminder:** Under Paid Leave

Oregon, safe leave is for survivors of sexual assault, domestic violence, harassment, bias crimes and stalking. **More info:** legiscan.com/OR/bill/HB4156/2024

INDIANA

- **NEW HIRE REPORTING:** Starting July 1, 2024, employers will need to report new hire information to the state electronically (that'll apply to rehired employees, too). The changes are due to SB 148, which became law in March 2024. Also, while in the past, employers had to report the date of hire, they'll be required to report the date services for remuneration were first performed by the employee. Two new pieces of information must also be reported – they are the employee's current primary standardized occupational classification code and starting compensation. **More info:** legiscan.com/IN/text/SB0148/2024

THE LIGHTER SIDE

How many words per minute can you type? No matter how quick you are, presumably you're typing with your fingers. But how would you do if you were typing with your nose?

Vinod Kumar Chaudhary of India recently broke the Guinness World Record for the fastest time to type the alphabet with the nose.

He used a standard QWERTY keyboard and added a space between each letter, as required, to break the world record.

Even more remarkable, this 44-year-old typist was breaking his own record. In his previous attempts, he accomplished the feat in 27.80 seconds and then 26.73 seconds. Most recently, he got his time down to 25.66 seconds. Who "nose" what he'll accomplish if he tries again.

Cite: Guinness World Records, 5/30/24.