

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**™

July 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

- **July 17, 2024:** Deposit taxes for payroll on July 10, 11, 12.
- **July 19, 2024:** Deposit taxes for payroll on July 13, 14, 15, 16.
- **July 24, 2024:** Deposit taxes for payroll on July 17, 18, 19.
- **July 26, 2024:** Deposit taxes for payroll on July 20, 21, 22, 23.
- **July 31, 2024:** Deposit taxes for payroll on July 24, 25, 26.
- **Aug. 2, 2024:** Deposit taxes for payroll on July 27, 28, 29, 30.
- **Aug. 7, 2024:** Deposit taxes for payroll on July 31, Aug. 1, 2.
- **Aug. 9, 2024:** Deposit taxes for payroll on Aug. 3, 4, 5, 6.

■ MONTHLY DEPOSITORS

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

New data required if making direct deposit payments

■ Info also needed for e-commerce purchases

If you utilize the ACH network to pay employees via direct deposit, you should know that Nacha has amended its operating rules.

A new format must be used for the Company Entry Description field by March 20, 2026. Nacha says that's a "no later than" effective date, and originators can use the new descriptions as soon as is practical.

Helping banks reduce fraud

Originators of direct deposit of payroll will need to use the description "PAYROLL" for the payment of wages, salaries and similar types of compensation. The term applies regardless of whether you're paying employees or independent contractors.

Reason: "PAYROLL" is used for descriptive purposes and isn't a representation of employment status, Nacha explained.

With this standardized information, receiving banks will have additional data to assist in identification of new or multiple payroll payments to a particular account. As a result, the banks will be better equipped in their efforts to reduce fraud and improve the recovery of funds if fraud does occur. Also, for financial institutions engaged in the practice, the info may factor in to provide or suppress early funds availability.

While the first seven characters of the Company Entry Description field

(Please see Payments ... on Page 2)

DOL's OT rule kicked in July 1 as legal challenges persist

For most employers nationwide, the new salary threshold for who's exempt from the federal overtime and minimum wage requirements took effect July 1, 2024.

This, after three lawsuits were filed in federal district courts, contesting the Dept. of Labor's (DOL's) final rule. The April 26, 2024, rule said that to pass the salary level test, executive, administrative and professional employees must earn at least \$844 per week (i.e., \$43,888 per year), with another increase slated for 2025.

Most recently, on July 1, 2024, a judge in the northern district of Texas denied a request to block the final rule.

The reason? The private company that brought the suit couldn't show the rule would cause it "irreparable harm."

For some, rule has been blocked

Days earlier, on June 28, 2024, a judge in the state's eastern district granted a preliminary injunction, saying the DOL exceeded its authority. Due to *Texas v. DOL*, the state of Texas as an employer currently doesn't have to comply with the DOL's final rule.

Also, the judge consolidated a third lawsuit, brought by Texas business associations, into *Texas v. DOL*.

More info: www.dol.gov

Benefits administration firm misused over \$5M in employee contributions

■ DOL'S OFFICE OF THE SOLICITOR FILES LAWSUIT TO RECOUP MONEY

When a health and welfare benefits administration firm misused ERISA funds, the Dept. of Labor (DOL) stepped in.

The DOL's Office of the Solicitor ended up suing Axim Fringe Solutions Group LLC, saying the company owed over \$5 million in fringe benefits.

Axim, whose clients were government service contractors transferred fringe benefit contributions from the trust accounts of its clients' employees to its own operating account. In so doing, the benefits administration firm violated two laws, the lawsuit contended. The laws were:

- **ERISA** – Axim used fringe benefits due to its clients' employees to pay the clients expenses, and
- **McNamara O'Hara Service Contract Act** – Axim charged

its clients' employees for their fringe benefits instead of charging its clients for employer administrative costs of fringe benefits.

As part of a consent judgment, the company must pay \$4.4 million, in addition to the \$1.5 million it already restored. Plus, it owes \$100,000 for the cost of an independent fiduciary to restore the fringe benefits to the plans' participants and beneficiaries.

The role of fiduciaries

ERISA protects participants and beneficiaries in employee benefit plans, such as health insurance plans.

It's the job of plan fiduciaries to ensure the interests of participants and beneficiaries are being met according to the terms of plan documents.

More info: www.dol.gov/newsroom/releases/ebsa/ebsa20240618

Payments ...

(continued from Page 1)

are prescribed, originators can use the remaining three characters for further description. Some examples include:

- PAYROLL 02
- PAYROLL424, and
- PAYROLLEMP.

A second type of transaction must be noted in the Company Entry Description field by the 2026 deadline – i.e., e-commerce purchases must be marked as "PURCHASE."

An e-commerce purchase is "a debit entry authorized by a consumer receiver for the online purchase of goods, including recurring purchases first authorized online." This descriptor is intended to help manage risk and improve ACH quality.

Your company may be entering these field descriptions itself, using a third-party service provider or even relying on a financial institution to assist with formatting. In any case, now's the time to begin system updates.

More info: www.nacha.org

COMPLIANCE CHECK

■ RACING STABLES WILL PAY \$486K FOR FLSA VIOLATIONS

KDE Equine LLC, operating as Asmussen Racing Stables in five states including Kentucky, violated the Fair Labor Standards Act – it's the fifth time in recent years the Dept. of Labor has found problems.

The horse trainer failed to pay overtime wages to hotwalkers and grooms. Instead, KDE Equine paid them a salary regardless of the number of hours worked and occasionally paid them extra money for additional work.

So, it owed:

- \$243,260 in back wages, and
- \$243,260 in liquidated damages.

More info: www.dol.gov/newsroom/releases/whd/whd20240611

■ EMPLOYEES NOT PAID FOR TIME SPENT IN TRAINING

Intuit, a Mountain View, CA, software provider, didn't correctly pay overtime to 2,607 employees. The problem stemmed from not keeping accurate pay records and failing to pay for all hours worked, including for training time.

The company owed \$555,000, the Dept. of Labor said.

More info: www.dol.gov/newsroom/releases/whd/whd20240702

■ 9 WORKERS MISCLASSIFIED AS EXEMPT FROM OVERTIME

Bronx Urgent Care P.C. wrongly classified nine workers as exempt from the overtime provisions of the Fair Labor Standards Act.

Due to a consent judgment, the medical care provider had to pay:

- \$8,000 in civil money penalties
- \$76,000 in back wages, and
- \$76,000 in liquidated damages.

More info: www.dol.gov/newsroom/releases/whd/whd20240513

From:  **KEEP UP TO DATE on PAYROLL**

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Fact sheet: What 3 provisions of the Secure 2.0 Act mean for Forms W-2

- IRS SAYS SOME EMPLOYERS MAY NEED TO CORRECT TY 2023 FORMS

Fact Sheet 2014-18, released by the IRS in May 2024, deals with some of the provisions included in the Secure 2.0 Act.

As the IRS explains, these provisions allow employers to include additional features in retirement plans to encourage use of the plans.

If your company decides to incorporate some of these features, certain amounts may need to be reported on Forms W-2.

Here's a look at what the IRS addressed in the fact sheet.

Retirement plan options

First, employers can now opt to offer small financial incentives to employees who choose to participate in their 401(k) or 403(b) plans.

Although an amount paid to an employee may qualify as a *de minimis* financial incentive, that's not the same as meeting the standard of a *de minimis* fringe benefit.

Fact is, financial incentives will be subject to withholding and reporting requirements for employment tax purposes – unless an exception applies

under the Internal Revenue Code. For example, a \$200 gift card would be considered a small financial incentive for participating in a 401(k) plan, but – given that it's a cash equivalent – would need to be included in an employee's income and wages on Form W-2.

Next, due to the Secure 2.0 Act, employees can elect to make contributions to a Roth SIMPLE IRA or a Roth SEP IRA – instead of the traditional types of IRAs.

The fact sheet states that employee contributions are subject to taxes and must be included in boxes 1, 3 and 5 of the W-2. However, any employer contributions aren't subject to taxes.

Finally, the fact sheet discussed another section of the Secure 2.0 Act that allows employees to designate certain matching and nonelective contributions as Roth contributions.

They wouldn't be subject to federal income tax, Social Security or Medicare tax.

Important: Some employers may need to file Forms W-2C to correct any errors from TY 2023, the IRS said.

More info: www.irs.gov/newsroom/secure-2-point-0-act-changes-affect-how-businesses-complete-forms-w-2

SCOTUS: Courts can't defer to regulations anymore

In a major ruling issued at the end of June, the Supreme Court of the U.S. (SCOTUS) changed the way courts must interpret ambiguous laws.

For 40 years, courts have adopted federal agencies' interpretations even if they differed from their own. That's due to the high court's ruling in 1984: *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*

But on June 28, 2024, *Chevron* was overruled by *Loper Bright Enterprises v. Raimondo*. The Supreme Court said courts are required by the Administrative Procedure Act to

exercise their independent judgment to determine if an agency has acted within its statutory authority. Plus, courts can't defer to an agency's interpretation of an ambiguous law.

For example, ruling applies to FLSA

This ruling will apply to all federal agencies and the laws they regulate.

One example is the Dept. of Labor regulations of the Fair Labor Standards Act (FLSA).

More info: www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf

NEWS YOU CAN USE

■ LATEST REVISION DATE FOR 941-X IS APRIL 2024

The IRS has revised Form 941-X, *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund*. The instructions have also been updated.

The new revision date for both is April 2024.

Lines 24, 33a, 33b, and 34 are now reserved for future use, according to the instructions.

The reason? The period of limitations for correcting these lines has expired for most employers.

More info: www.irs.gov/pub/irs-pdf/f941x.pdf

■ NATURAL DISASTER PREP INCLUDES FIDUCIARY BOND

You should protect your company in the event that a natural disaster occurs, according to IR-2024-129, recently released by the IRS.

For example, if you use a payroll service provider, the IRS suggests checking whether the provider has a fiduciary bond in place. That can protect your company if the payroll service provider would have to default due to a natural disaster.

More info: www.irs.gov/newsroom

■ REPORT SAYS EMPLOYEES CONFUSED ON RETIREMENT

In a new report, *401(k) Retirement Plan Tax Notices*, the Government Accountability Office said that participants don't adequately understand their retirement plan options – and that should change.

When employees leave their jobs, the four options are:

- leave their savings in their former employer's plan
- roll their savings over into a plan sponsored by their new employer
- roll their savings over into an individual retirement account, or
- take a lump-sum distribution of their plan savings.

More info: www.gao.gov

Healthcare, other expenses can hit hard, but employers plan to help

■ 2024 REPORT SHEDS LIGHT ON APPROACHES BEING TAKEN

The *Health & Benefit Strategies for 2024 Survey Report* revealed some of the steps employers are planning to take to help employees facing increased expenses. It's an effective way to attract and retain employees.

Despite the rising cost of healthcare, 64% of employers say they intend to make enhancements to their health and well-being offerings.

In fact, more than a quarter had already made such enhancements.

The Mercer report also revealed what employers thought about shifting plan costs to employees in the form of higher deductibles, copays or out-of-pocket limits.

A mere 3% will raise the amounts employees pay in order to completely cover the projected cost increase, while 45% will take the opposite approach and not increase cost-sharing at all. About half of participants fall in the middle, aiming for small increases.

To boost healthcare affordability, 15% of employers will be offering free

employee-only coverage in at least one medical plan. That's up from 11% in the previous year's report.

Another idea employers have is to tie the amount of employees' paycheck deductions to their income levels. It's happening now with 18% of employers.

A less popular approach to making healthcare more affordable is raising the amount of health savings account contributions for low earners – only 6% of those surveyed do this.

On-site and remote employees

The 2024 Mercer report also looked at methods for providing employees with financial support for work and living expenses.

Some encourage employees to work on-site, while others support employees who want to work remotely.

Here are some examples:

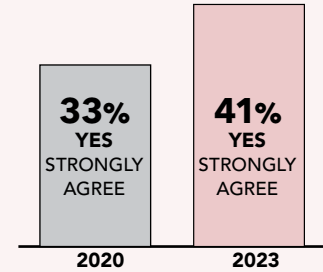
The top answers – both at 21% – were free or subsidized meals at work and subsidized phone/Internet for remote working.

Next, 19% of employers offer a stipend for home office set-up/supplies.

WHAT PAYROLL PROS TOLD US

Pension Plans

Should all workers have access to pension plans so they can be independent and self-reliant in retirement?



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

Workers see pension plans as a way to achieve retirement security, a study showed. That viewpoint has rapidly gained in popularity over the past several years.

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

Not too far behind, 18% utilize employer-provided or subsidized transportation (this might include a commuter card).

Helping with student loans included refinancing assistance (14%) and contributing to loan repayment (12%).

More info: [mercer.com](https://www.mercer.com)

REAL-LIFE SCENARIO: DID THEY GET IT RIGHT?

Employee claimed company owed him \$2M for on-call time

A Texas company that sells and maintains medication control devices faced this real-life scenario:

An employee who worked remotely in Colorado as a technical service engineer worked eight hours a day, five days a week.

While not working, he was on call.

During the on-call time, he could spend his time as he wished; however, he had to respond to service requests within one hour. If a call was urgent, he had to make an on-site visit within six hours.

He had to monitor emails and texts as well, but only those accompanied

by a service ticket. On at least half of the days he was on call, he didn't receive any service tickets.

According to the engineer, he was on duty 24 hours per day, seven days per week. Plus, he said he wasn't paid for all hours worked which violated federal and Colorado overtime law.

Therefore, he claimed the company owed him more than \$2 million – and he took the matter to court.

The question was: Was the employee "engaged to wait" or "waiting to be engaged?"

A federal district court and then an appeals court considered many

factors, including that he could engage in personal activities. The employee didn't need to be paid for the on-call time when he wasn't working, the courts said.

Checklist for compliance

- Consider whether waiting is an integral part of workers' job. If so, they may be engaged to wait, making the time compensable.
- On the other hand, if employees can effectively use the on-call time for their own purposes, they may be waiting to be engaged, meaning the time likely isn't compensable.

Tracking local laws and regs

■ Single minimum wage rate for large and small employers

The Chicago minimum wage increased to \$16.20 per hour on July 1, 2024. That new rate applies to employers with four or more workers.

The previous rate was \$15.80 for employers with 21 or more employees and \$15 for those with between four and 20 workers.

More info: www.chicago.gov/city/en/depts/bacp/supp_info/minimumwageinformation.html

■ County raises minimum wage rate by 35 cents per hour

In Cook County, IL, employers must now pay at least \$14.05 per hour, the Commission on Human Rights announced.

Prior to July 1, 2024, the county's hourly rate was \$13.70.

More info: www.cookcountyil.gov/news/cook-county-issues-notice-minimum-wage-ordinance-3

■ Minimum wage has gone up based on size of business

The city of St. Paul, MN, raised its hourly minimum wage rate on July 1, 2024, to the following:

- \$15.57 for large businesses (101-10,000 employees) – was \$15
- \$14 for small businesses (six-100 employees) – was \$13, and
- \$12.25 for micro businesses (five employees or less) – was \$11.50.

More info: www.stpaul.gov/news/updates-minimum-wage-increases-take-effect-july-1-2024-0

■ \$15.17 hourly rate in effect for small and large employers here

For large employers in Minneapolis, the minimum wage hit \$15.17 per hour on Jan. 1, 2024.

Then, on July 1, 2024, the rate applied to employers of all sizes.

More info: www.minneapolismn.gov/news/2023/november/minimum-wage

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.

Long-term, part-time employees participating in retirement plan?

Q: What's the definition of a long-term, part-time employee under the SECURE (Setting Every Community Up for Retirement Enhancement) Act? We want to ensure we're giving qualified individuals the chance to participate in our 401(k) plan.

A: For plan years that begin before 2025, the term refers to an employee who has worked three consecutive 12-month periods during each of which

the individual is credited with at least 500 hours of service. Also, an employee must reach age 21 by the close of the last of those 12-month periods. The SECURE Act excludes certain employees from the definition of long-term, part-time employee. One example is employees who are covered by a collective bargaining agreement if there's evidence that retirement benefits were part of good-faith bargaining. Another example is nonresident aliens who receive no earned income.

More info: *Federal Register*, 11/27/23.

Send questions to jweiss@HRMorning.com. Because of the volume of mail we receive, we regret we can't answer all submissions.

IRS FORMS ALERT

RECENT CHANGES TO FEDERAL FORMS AND PUBLICATIONS

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

- Publication 5993, *Sample Education Assistance Program*. Revision date: June 2024. Posted date: 6/20/24.
- Form W-2C, *Corrected Wage and Tax Statement*. Revision date: June 2024. Posted date: 6/21/24.
- Publication 4757, *Individual Taxpayer Identification Number*. Revision date: June 2024. Posted date: 6/24/24.
- Publication 3415, *Electronic Tax Administration Advisory Committee Annual Report to Congress*. Revision date: June 2024. Posted date: 6/26/24.
- Form W-3C, *Transmittal of Corrected Wage and Tax Statements*. Revision date: June 2024. Posted date: 6/26/24.
- Publication 5992, *Equity (Stock)-Based Compensation Audit Technique Guide*. Revision date: June 2024. Posted date: 6/28/24.
- Publication 5241, *IRS Whistleblower Office Fiscal Year 2023 Annual Report*. Revision date: June 2024. Posted date: 6/25/24.
- *Instructions for Form 4461, Application for Approval of Standardized or Nonstandardized Pre-Approved Defined Contribution Plan*. Revision date: June 2024. Posted date: 7/1/24.

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!

DELAWARE

- **RETIREMENT:** Registration opened on July 1, 2024, for the state-sponsored retirement savings program called Expanding Access for Retirement and Necessary Savings (EARNS). Delaware employers that have five or more employees and don't offer a retirement plan for their employees have until Oct. 15, 2024, to register for EARNS. **More info:** earnsdelaware.com

MAINE

- **REPORTING:** Maine Revenue Services will no longer require employers to file the annual reconciliation form: Form W-3ME. The agency amended Rule 803, removing the requirement, effective May 22, 2024. That means you won't have to file the TY 2024 form that would have been due Jan. 31, 2025. **More info:** www.maine.gov/revenue

MARYLAND

- **PAID LEAVE:** The implementation of the Maryland Family and Medical Leave Insurance (FAMLI) system has been delayed due to HB 571. So, employers and employees will start making contributions on July 1, 2025, and benefits for workers will begin July 1, 2026. The rate of contribution will be set by Feb. 1, 2025. Under FAMLI, employees can take up to 12 weeks of leave to care for themselves or a family member. During this time, they'll receive income of up to \$1,000 per week. All employers will be required to provide paid family and medical leave insurance. The insurance can be provided through

the state plan, a commercial plan or a self-insured option. **More info:** paidleave.maryland.gov/employers/Pages/home.aspx

OHIO

- **WITHHOLDING:** The Dept. of Taxation has released new withholding tables for both the percentage method and the optional computer method. The revised tables are effective July 1, 2024. **More info:** tax.ohio.gov

UTAH

- **DISCRIMINATION:** HB 396 expands religious protections for employees. The legislation, which took effect May 1, 2024, prohibits an employer from compelling an employee to communicate in a way that the employee believes would burden or offend his or her sincerely held religious beliefs. The legislation says that can include dress and grooming requirements; speech; scheduling; prayer; and abstentions. Employers don't need to provide an accommodation that would cause an undue burden to the employer when it comes to its ability to conduct business in an effective or financially reasonable manner or to provide training and safety instruction for employees on the job. **More info:** le.utah.gov/~2024/bills/static/HB0396.html

WASHINGTON

- **RETIREMENT:** SB 6090 created a new retirement program called Washington Saves. The program is supposed to launch by July 1, 2027. Washington Saves won't replace or compete with employer-provided plans. Rather, it'll be a vehicle through which covered employees may provide for additional retirement security through a state-facilitated retirement savings program – this will be done through the automatic enrollment of employees in individual retirement

savings accounts. The legislation defines a covered employer as one who has been in business in the state for at least two years; maintains a physical presence in the state; doesn't offer a qualified retirement plan to employees who have been employed for one year or more; and employs employees who work a combined minimum of 10,400 hours per year. **More info:** app.leg.wa.gov

WEST VIRGINIA

- **MEDICAL SAVINGS ACCOUNTS:** Employer contributions to medical savings accounts are no longer considered wages for the purposes of withholding. The change, is retroactive to Jan. 1, 2024, and was included in SB 462. **More info:** www.wvlegislature.gov/Bill_Text_HTML/2024_SESSIONS/RS/bills/sb462%20enr.pdf

THE LIGHTER SIDE

Have you ever been to "cenrtal" Philadelphia? Drivers on Cottman Ave. in the city recently came across a highway sign, stating that if they got on southbound I-95, they'd be headed toward "Cenrtal Phila."

The Pennsylvania Dept. of Transportation (PennDOT) has since taken the sign down and apologized.

As PennDOT explained, it got caught up in the reopening of I-95, which had been shut down almost a year due to a tanker crash.

PennDOT admitted that it forgot to proofread before hoisting the sign up for drivers to see.

Just goes to show something Payroll already knows – i.e., the importance of taking a moment to check for accuracy.

Cite: UPI, "Misspelled Pennsylvania Highway Sign Directed Drivers to 'Cenrtal Phila,'" 6/25/24.