

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™

August 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

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

MONTHLY DEPOSITORS

- **Aug. 15, 2024:** Deposit taxes for payments made during July 2024.
- **Sept. 16, 2024:** Deposit taxes for payments made during August 2024.

ALL EMPLOYERS

- **Oct. 31, 2024:** File Form 941 for Q3. Note: If you properly deposited taxes on time and in full, you have until Nov. 12, 2024, to file.

Earned-wage access products deemed loans per proposed rule

CFPB changes course from earlier advisory opinion

Many paycheck-advance products, such as earned-wage access, are consumer loans – that’s according to a proposed interpretive rule issued by the Consumer Financial Protection Bureau (CFPB).

Furthermore, the Truth in Lending Act and Regulation Z apply to these consumer loans, the CFPB said in the July 18, 2024, rule.

If finalized, the rule would replace a 2020 CFPB advisory opinion.

That advisory opinion addressed one specific earned-wage product, saying it wasn’t credit if it met a list of conditions. However, the 2020 opinion was silent regarding whether earned-wage products that didn’t meet all the conditions were credit. Plus,

it didn’t address what counts as a finance charge. The advisory opinion resulted in “significant regulatory uncertainty,” the CFPB stated.

Money before payday

Under the proposed interpretive rule, paycheck-advance products would be considered credit. That’d be the case for both:

- employer-partnered products (where providers partner with employers, and funds are recovered through payroll deductions, among other options), and
- direct-to-consumer products (where funds are provided directly to

(Please see Earned-wage access ... on Page 2)

Davis-Bacon Act: Court blocks provisions of new rule

In August 2023, the Dept. of Labor (DOL) updated the Davis-Bacon Act (DBA), impacting new contracts that took effect on or after Oct. 23, 2023.

But recently, some provisions of the DOL’s final rule were temporarily blocked by a federal district court.

Here’s what happened.

General contractors brought lawsuit

The Associated General Contractors of America filed a lawsuit against the DOL in November 2023.

At issue, the DOL’s final rule expanded coverage of the DBA to truck drivers and material suppliers

owned and operated by general contractors or subcontractors. What’s more, the individuals didn’t need to be employed at the worksite. Yet, the DBA itself includes only laborers and mechanics – and only those “employed directly on the site of the work.”

The association also argued the rule’s operation-of-law provision didn’t give contractors sufficient notice about whether the requirements of the DBA applied to a contract.

Siding with the association, the court issued a preliminary injunction on June 24, 2024.

More info: tinyurl.com/dbra696

Payroll records showed 27 workers hadn't been accurately paid

■ PLUS, MISHANDLED COMPLAINTS REGARDING PAY PRACTICES

An investigation of a residential group home's payroll records identified minimum wage, overtime and recordkeeping violations, the Dept. of Labor (DOL) said.

The Brookfield, WI, employer – Community Living of Brookfield LLC – hadn't accurately paid 27 employees who worked as caregivers.

So, according to the terms of a consent judgment, the company will pay:

- \$13,592 in back wages, and
- \$13,592 in liquidated damages.

But that's not all.

The company also owes \$2,815 in compensatory damages to two workers.

Community Living of Brookfield LLC allegedly retaliated against the

workers after they questioned the employer's pay practices.

Materials in English and Spanish

As the consent judgment further stipulates, the employer will provide employees with three DOL fact sheets. They should be in English – or in Spanish, if that's an employee's primary language. The fact sheets are:

- #23: *Overtime Pay Requirements of the FLSA*
- #22: *Hours Worked*, and
- #77A: *Prohibiting Retaliation Under the Fair Labor Standards Act*.

In addition, the employer must display the *Employee Rights Under the Fair Labor Standards Act* poster in English and Spanish at its locations.

More info: www.dol.gov/newsroom/releases/sol/sol20240716

Earned-wage access ...

(continued from Page 1)

individuals, and funds are recovered via automated withdrawal from the consumer's bank account).

The proposed interpretive rule also covers finance charges, stating that the following items are considered finance charges:

- certain tips, and
- expedited delivery fees.

The proposed rule includes several factors that indicate when a tip has been imposed as part of the finance charge – e.g., when the creditor has set up a default tip amount.

As for expedited-delivery fees, some providers of earned-wage products offer slower and faster loans, the rule pointed out. Individuals who choose the faster option – which they often do – must pay expedited-delivery fees, sometimes called instant-funds fees. They'll be seen as finance charges if the rule is finalized.

Comments are due by Aug. 30, 2024.

More info: tinyurl.com/loans696

COMPLIANCE CHECK

■ RESTAURANT DIDN'T GIVE WORKERS CREDIT CARD TIPS

Pipe Dream Brewing, a Londonderry, NH, brewery and restaurant, failed to comply with the Fair Labor Standards Act, impacting 44 workers. The employer kept workers' credit card tips. Also, it incorrectly classified several of its salaried employees, such as brewers and bartenders, as exempt. Pipe Dream Brewing had to pay:

- \$5,148 in civil money penalties for the tip-related violations
- \$456,297 in back wages, and
- \$456,297 in liquidated damages.

More info: www.dol.gov/newsroom/releases/whd/whd20240709

■ MORE THAN \$100K OWED TO 46 MISCLASSIFIED WORKERS

Southern Care Connection LLC, operating as #1 in Homecare, in New Orleans, failed to pay overtime to 46 nonexempt employees. The Dept. of Labor said the company owed the workers:

- \$55,038 in back wages, and
- \$55,038 in liquidated damages.

More info: www.dol.gov/newsroom/releases/whd/whd20240709-0

■ NO RECORDS OF WAGES OR WORK HOURS FOUND

Brookhaven Irrigation Corp., in Farmingville, NY, didn't pay employees the overtime premium for hours worked over 40 in a workweek. Plus, the landscaping company failed to keep records of employees' wages and work hours. Under the terms of a consent judgment, it'll pay:

- \$120,000 in back wages and liquidated damages to 29 current and former employees, and
- \$10,000 in civil money penalties to the Dept. of Labor.

More info: www.dol.gov/newsroom/releases/whd/whd20240610

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Student-athletes may be employees? Significant ruling from appeals court

■ HISTORICALLY, AMATEUR STATUS MEANT NO MINIMUM WAGE, OT

Due to a Third Circuit Court of Appeals decision issued July 11, 2024, college athletes may soon be able to bring Fair Labor Standards Act (FLSA) claims.

The case was brought by former athletes who attended several National Collegiate Athletic Association (NCAA) Division I schools.

In *Johnson v. NCAA*, the former student-athletes said they were owed minimum wage under the FLSA and state wage laws.

The NCAA, together with the colleges and universities where the individuals played sports, argued that based on the athletes' amateur status, they weren't employees.

Accordingly, they hadn't been owed minimum wage, the NCAA insisted, asking the appeals court to throw out the case.

Wrong test used

In agreement with an earlier decision from the district court, the appeals court decided not to dismiss the case. However, the appeals court noted that the district court had used

the wrong test to determine if the athletes were employees under the FLSA.

The lower court had used a test based on a 2016 case – *Glatt v. Fox Searchlight Pictures Inc.* – which involved interns.

Now, the case has been returned to the district court, with instructions to use the “economic realities analysis grounded in common-law agency principles.” If the lower court finds the student-athletes were employees under that test, they'd be entitled to minimum wage under the FLSA – despite their amateur status.

What other courts said

Two other federal appeals courts have considered the issue in recent years.

The Seventh Circuit (in 2016) and the Ninth Circuit (in 2019) said that college athletes weren't employees under the FLSA – and therefore weren't owed minimum wage or overtime.

We'll keep you posted if additional federal appeals courts issue rulings regarding student-athletes.

More info: www2.ca3.uscourts.gov/opinarch/221223p.pdf

Ready to e-file adjusted returns? IRS says now you can

Employers now have the option to file certain amended employment tax returns electronically, the IRS said on July 17, 2024.

The new forms accepted through the Modernized e-File (MeF) system are:

- Form 940, *Employer's Annual Federal Unemployment Tax Return*
- Form 941-X, *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund*
- Form 943-X, *Adjusted Employer's Annual Federal Tax Return for Agricultural Employees or Claim for Refund*, and

- Form 945-X, *Adjusted Annual Return of Withheld Income Tax or Claim for Refund*.

But not these forms

The following amended returns can't yet be filed electronically through the MeF system, though:

- Form 944-X, *Adjusted Employer's Annual Federal Tax Return or Claim for Refund*, and
- Form CT-1 X, *Adjusted Employer's Annual Railroad Retirement Tax Return or Claim for Refund*.

More info: tinyurl.com/amended696

NEWS YOU CAN USE

■ EMPLOYERS HERE MAY HAVE TO PAY HIGHER FUTA TAX

On July 10, 2024, the Dept. of Labor gave an update on the federal unemployment insurance trust fund balances. The balances indicate whether locations will pay higher FUTA tax rates for TY 2024. Here are the locations with trust fund balances:

- California – \$19,322,480,216.56
- Connecticut – \$17,771,811.00
- New York – \$6,067,503,077.32, and
- Virgin Islands – \$80,193,938.21.

More info: oui.doleta.gov/unemploy/budget.asp

■ CHILD SUPPORT STATS FOR FY 2023 RELEASED

The Office of Child Support Services shared that, as of April 29, 2024, the child support program had collected \$29.6 billion in FY 2023, and 73% of that amount was collected through income withholding.

In addition, 71.2 million new and rehired employees were reported by employers in FY 2023.

More info: www.acf.hhs.gov

■ SSA: STEPS FOR HANDLING NAME/SSN DISCREPANCIES

The time to confirm that employees' names and Social Security numbers (SSNs) match SSA's records is before year-end, the agency said during its Spring Wage Reporting Community Meeting. These are the steps:

- If an SSN doesn't verify, compare your submission with your employment records.
- If they match, ask the employee to check his or her card and inform you of discrepancies.
- If there are no discrepancies, ask the employee to contact any local Social Security office.
- Document your efforts if the employee can't give you a valid SSN or you can't contact him or her.
- Submit a W-2C to correct an error.

More info: www.ssa.gov/employer

Advisory committee wants to see earlier IRS filing deadline – and more

■ THIS YEAR'S OPPORTUNITIES AND RECOMMENDATIONS

The Electronic Tax Administration Advisory Committee (ETAAC) recently released its 2024 *Annual Report to Congress*.

The committee, which advises Congress and the IRS, issued this year's report in June, presenting sections on opportunities and recommendations.

Here's a recap.

Reducing fraud

One opportunity included this year was accelerating the filing deadline for certain information returns.

Of course, W-2 and W-3 forms must be filed by January 31 each year. The same deadline applies to returns such as Form 1099.

But other forms aren't due to the IRS until March 31 of each year, months after the filing season has begun. Those forms include:

- Forms W-2G, *Certain Gambling Winnings*
- 1099-K, *Payment Card and Third Party Network Transactions*, and

- 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*

Moving up the deadline for these information returns to January 31 is a tool to reduce fraud and increase efficiency, ETAAC said. This would require amending Internal Revenue Code Sec. 6071.

Streamlining efforts

As for the recommendations included in the report, ETAAC thinks that third-party authorization forms should be enabled for online submission and verification. That would impact some forms currently submitted through mail or fax, including:

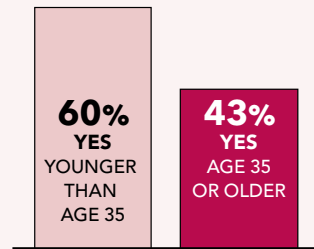
- Form 8655, *Reporting Agent Authorization*
- Form 8821, *Tax Information Authorization*, and
- Form 2848, *Power of Attorney and Declaration of Representative*.

Another recommendation: Now that the Information Returns Intake System (IRIS) is functional, some

WHAT PAYROLL PROS TOLD US

Seeking a New Job

Are you watching for/actively seeking a new job?



Source: Gallup's State of the Global Workplace 2024 Report

A Gallup poll asked readers in the U.S. and Canada if they intended to leave their current jobs. Employees younger than age 35 were more likely to say yes than those 35 or older were.

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

older systems should be terminated. They are Filing Information Returns Electronically (FIRE) and Affordable Care Act Information Returns (AIR).

As ETAAC explained, integrating FIRE and AIR into IRIS would reduce taxpayer burden.

More info: www.irs.gov/pub/irs-pdf/p3415.pdf

REAL-LIFE SCENARIO: DID THEY GET IT RIGHT?

Supervisor told employees to punch out but continue working

A nonprofit healthcare organization headquartered in Washington faced this real-life scenario:

A former employee brought a lawsuit against the healthcare organization, saying it owed her and other employees like her for unpaid overtime.

For four months, she worked as a medical assistant, classified as an hourly nonexempt employee.

She said the company required employees to clock out when they took meal breaks or when their shifts ended. However, employees sometimes continued working and didn't get paid

for that time. The company didn't have a written policy instructing employees to do off-the-clock work, but it did have a practice.

She claimed her supervisor sometimes punched employees out and back in for break times – according to the employee, though, they didn't take those breaks. In addition, on several occasions her supervisor told the medical assistant she should continue working after she had clocked out.

The medical assistant gave examples of the work she did while off the clock. The examples included discharging patients; making calls or faxing medical information for new

patients; and trying to locate patients' medical charts.

A federal district court refused to throw out the case. The employer argued the manual editing of the time and attendance system hadn't caused an injury. Regardless, the employee sometimes worked after she punched herself out – and that *was* an injury.

Checklist for compliance

- Remind supervisors during trainings that federal and state laws forbid off-the-clock work.
- Let employees review manual edits of the time and attendance system.

Tracking local laws and regs

■ New ordinance in PA county prohibits salary history inquiries

Under the Lehigh County Human Relations Ordinance, employers can't ask job applicants what their current salary is or past salary was from other employment.

In addition to prohibiting inquiries into salary history, the ordinance restricts employers from asking candidates about criminal history.

The Lehigh County Human Relations Ordinance took effect June 1, 2024.

More info: www.lehighcounty.org

■ Nonresident employees didn't have to pay city's earnings tax

On May 28, 2024, a Missouri appeals court ruled on whether the city of St. Louis could assess the earnings tax on nonresidents who worked remotely outside the city for employers located within city limits.

The answer was "no." The Earnings Tax Ordinance is "clear and

unambiguous" the court said. The city had imposed the tax on nonresident employees during the pandemic – now they're entitled to a refund, the court said in *Boles v. City of St. Louis*.

The city will also issue refunds to employers that paid the Payroll Expense Tax for nonresidents during the pandemic.

More info: caselaw.findlaw.com/court/mis-crt-app-eas-dis-spe-div/116205558.html

■ IRS grants multiple counties in Florida tax relief after storms

The IRS has provided tax relief in Florida, following the severe storms, straight-line winds and tornadoes that began on May 10, 2024.

Businesses in Baker, Columbia, Gadsden, Hamilton, Jefferson, Lafayette, Leon, Liberty, Madison, Santa Rosa, Suwannee, Taylor and Wakulla counties have until Nov. 1, 2024, to file returns and pay taxes.

More info: www.irs.gov/newsroom/tax-relief-in-disaster-situations

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.

Secure 2.0 Act: Are installments of financial incentives allowed?

Q: According to the Secure 2.0 Act, if we offer \$100 gift cards in one year as a financial incentive for employees to sign up for our 401(k) plan and explain they'll receive another \$100 gift card the following year under the condition that they continue to make salary deferrals, does the IRS consider that a *de minimis* financial incentive?

A: Assuming that the employee doesn't already have an election

in place, the IRS says that employers can provide *de minimis* financial incentives to encourage participation in retirement plans. Employers can offer up to \$250, and the IRS will consider the amount *de minimis*. What's more, the financial incentives can be made in installments, even over more than one tax year, according to Notice 2024-2. Be careful: A matching contribution can't be a *de minimis* financial incentive. Also, the financial incentive is includible in employees' income.

More info: www.irs.gov/irb/2024-02_IRB#NOT-2024-2

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 publications contains Payroll-related updates.

- *Instructions for Form 4461-B, Application for Approval of Standardized or Nonstandardized Pre-Approved Plan*. Revision date: June 2024. Posted date: 7/1/24.
- Form 433-D, *Installment Agreement*. Revision date: July 2024. Posted date: 7/1/24.
- Publication 5855, *Inflation Reduction Act: Prevailing Wage and Registered Apprenticeship Overview*. Revision date: June 2024. Posted date: 7/1/24.
- Publication 4557, *Safeguarding Taxpayer Data: A Guide for Your Business*. Revision date: May 2024. Posted date: 7/1/24.
- Form 2159, *Payroll Deduction Agreement*. Revision date: July 2024. Posted date: 7/1/24.
- Publication 5983, *Inflation Reduction Act Prevailing Wage and Apprenticeship Requirements*. Revision date: June 2024. Posted date: 7/1/24.
- Form 7208, *Excise Tax on Repurchase of Corporate Stock*. Revision date: June 2024. Posted date: 7/3/24.
- *Instructions for Form 7208*. Revision date: June 2024. Posted date: 7/3/24.
- Publication 4248, *Paying Federal Taxes Using EFTPS*. Revision date: June 2024. Posted date: 7/5/24.

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!

ALABAMA

- **OVERTIME:** Currently, when full-time employees who are paid an hourly wage earn overtime compensation, the amounts are exempt from gross income for state income tax purposes. Also, employers must report the amounts to the Dept. of Revenue. New legislation, HB 407, expands the exemption to employees who earn overtime compensation in accordance with the Fair Labor Standards Act (FLSA). The current reporting requirement will end Sept. 30, 2024, and a new requirement – to report the FLSA amounts instead of only the hourly wage amounts – will run through June 30, 2025. **More info:** alison.legislature.state.al.us/files/pdf/SearchableInstruments/2024RS/HB407-enr.pdf

ARKANSAS

- **WITHHOLDING:** The Dept. of Finance and Administration has updated four documents payroll needs for withholding, such as tax tables and instructions. The documents were effective starting Jan. 1, 2024, but – due to the retroactive, lower tax rates created by SB 1 – were updated on July 1, 2024. The new rate is 3.9% (was 4.4%). The same withholding rate applies to supplemental wages, such as bonuses. **More info:** www.dfa.arkansas.gov

CALIFORNIA

- **MINIMUM WAGE:** Due to SB 159, the minimum wage for healthcare workers has been delayed again, this time until at least Oct. 15, 2024. The bill

says the minimum wage changes won't take effect until one of the following occurs: 1) the finance director determines that agency cash receipts for the period from July 1, 2024, through Sept. 30, 2024, are at least 3% higher than what was projected at the time the 2024 Budget Act was enacted, or 2) the Dept. of Health Care Services initiates a data retrieval as specified. The hourly minimum wage rates will be \$23, \$21 or \$18. **More info:** tinycloud.com/california696

FLORIDA

- **MILITARY LEAVE:** SB 818 says public officials and employees of the state, a county, a municipality or a political subdivision must receive their full pay for the first 30 days of federal military service, provided that such service lasts 90 consecutive days or longer. The legislation took effect July 1, 2024. **More info:** www.flsenate.gov/Session/Bill/2024/818/ByCategory

HAWAII

- **EXEMPT:** To be exempt from the state's minimum wage and overtime requirements, an individual must earn at least \$4,000 per month regardless of pay frequency. That's an increase from \$2,000 per month, due to HB 2463. **More info:** legiscan.com/HI/bill/HB2463/2024

IOWA

- **TAXES:** Now when you need information online from the Dept. of Revenue (DOR), the process will be more streamlined. As the DOR explained in a July 9, 2024, press release, two sites have been merged into one: revenue.iowa.gov. **More info:** revenue.iowa.gov/press-release/2024-07-09/department-revenue-announces-new-website

MINNESOTA

- **GRATUITIES:** SB 3852 requires that if an employee receives

gratuities through a debit, charge, credit card or electronic payment, the amount must be credited to the pay period in which they're received. Plus, when an employee receives gratuities through those methods, the full amount must be distributed to the employee no later than the next scheduled pay period. These provisions are effective starting Aug. 1, 2024. **More info:** legiscan.com/MN/bill/SF3852/2023

WISCONSIN

- **UNCLAIMED PROPERTY:** You can once again file an application for the voluntary disclosure of unclaimed property. That's thanks to new legislation, HB 742. Previously, the window for filing the application opened Feb. 1, 2022, and closed Feb. 28, 2023. **More info:** legiscan.com/WI/text/AB742/id/2966101

THE LIGHTER SIDE

As Payroll pros know, you have to be very careful about what you throw away.

The information may be confidential – or, as a recent story illustrates, valuable.

A married couple played the lottery in July, purchasing a \$5 ticket from a convenience store.

After scratching the South Carolina Education Lottery card, the wife thought it was a loser and tossed it in the trash.

Later, her husband found the ticket and pulled it out of the trash to give it a closer look.

Good thing he did.

His wife hadn't finished scratching the ticket, yet.

Turns out, they'd won \$200,000.

Cite: www.sceducationlottery.com/news