

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 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

- **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.
- **Aug. 30, 2024:** Deposit taxes for payroll on Aug. 24, 25, 26, 27.
- **Sept. 5, 2024:** Deposit taxes for payroll on Aug. 28, 29, 30.
- **Sept. 6, 2024:** Deposit taxes for payroll on Aug. 31, Sept. 1, 2, 3.
- **Sept. 11, 2024:** Deposit taxes for payroll on Sept. 4, 5, 6.

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.

Need to pay employees while computers boot up, shut down?

■ Federal appeals court weighs in again

Employees sometimes have to wait while their computers boot up and shut down. That can be frustrating for them. But it can also be costly for employers.

So, it's important to consider this question: Should they be getting paid if the waiting time occurs before and/or after their scheduled shifts?

Cadena v. Customer Connexx LLC – a collective action involving call-center workers who claimed their employer owed them overtime – provides insight into the issue of preliminary and postliminary work.

Pre- and post-shift work

The latest developments in the case came from the Ninth Circuit Court of

Appeals in July 2024, when the court issued its second ruling in *Cadena*.

By way of background, in its first ruling issued in October 2022, the Ninth Circuit said the lower court had accurately identified the employees' principal duties – i.e., answering phone calls and scheduling pickups.

Nonetheless, the appeals court reversed the decision for the employer and remanded the case, stating that booting up computers was integral and indispensable to employees' principal duties.

In its reconsideration of the case, the district court ruled that even though time spent booting up – as well

(Please see *Computers ...* on Page 2)

DOL proposes rule to gather more info on Form LM-10

The Dept. of Labor's (DOL's) Office of Labor Management Standards has proposed a rule that'd change what must be entered on Form LM-10, *Employer Report*.

That's the form certain employers file each fiscal year to stay in compliance with Sec. 203(a) of the Labor-Management Reporting and Disclosure Act.

Currently, an employer must report specific financial transactions or arrangements that it makes with one or more of the following:

- a labor organization
- a union official

- an employee, or
- a labor relations consultant.

Form LM-10 must also be filed if an employer has made expenditures for certain objects relating to activities of employees or a union.

Proportional share of wages

The proposed rule would require split-income reporting.

For example, employers would provide supervisors' income on a split basis – i.e., the proportional share of the supervisor's wages spent doing the reportable activity.

More info: tinyurl.com/union697

Contributions and loan repayments not remitted to retirement plan

■ NEARLY \$30K RECOVERED THROUGH FIDUCIARY'S INDIVIDUAL ACCOUNT

Failing to remit employee contributions and participant loan repayments to a retirement plan recently caught up with one company.

Virtual Matrix Corp. violated ERISA with its handling of its 401(k) profit sharing plan, the Dept. of Labor found during an investigation of the Minneapolis company.

Starting in 2021 and for more than a one-year period, Virtual Matrix Corp. mishandled the funds.

In July 2024, a federal district court entered a default judgment.

The court ordered the healthcare management systems company to restore:

- \$24,847 in employees' voluntary salary contributions
- \$759 in participant loan repayments, and

- \$3,955 in lost opportunity costs owed to plan participants.

Furthermore, \$29,562 of the fiduciary's individual account will be set off to restore plan losses.

Maximum amounts

Certain types of retirement plans can offer loans. A participant may borrow up to the lesser of:

- 50% of his or her vested account balance, or
- \$50,000 from his or her plan.

Exception: If 50% of the vested balance is less than \$10,000, the participant may borrow \$10,000.

Employers should provide info about how the loan will be repaid – e.g., through payroll deduction.

More info: www.dol.gov/newsroom/releases/ebsalebsa20240724

Computers ...

(continued from Page 1)

as shutting down – computers was integral and indispensable, that didn't make it compensable under the Fair Labor Standards Act.

After all, the lower court explained, the time employees spent on those tasks was *de minimis*. That decision was good news for the employer – but once again, the employees appealed.

After taking up *Cadena v. Customer Connexx LLC* a second time, the Ninth Circuit said the issue of whether or not the workers' waiting time was *de minimis* wasn't clear-cut.

The appeals court looked at the:

- regularity of the additional work
- aggregate amount of compensable time, and
- practical administrative difficulty of recording the additional time.

The case has again been reversed and remanded – we'll keep you posted.

More info: cdn.ca9.uscourts.gov/datastore/opinions/2024/07/10/23-15820.pdf

COMPLIANCE CHECK

■ OVERTIME DENIED TO 19 NONEXEMPT EMPLOYEES

A Lake Charles, LA, employer – PAR Construction LLC – paid 19 nonexempt employees a straight-time rate instead of time-and-a-half.

Due to this violation of the Fair Labor Standards Act, the construction company had to pay:

- \$37,273 in unpaid overtime wages, and
- \$37,273 in liquidated damages.

More info: www.dol.gov/newsroom/releases/whd/whd20240717

■ TEENS WORKED TOO MANY HOURS AND TOO LATE

Bryz Guyz Inc., a Blaze Fast Fire'd Pizza franchisee located at multiple locations in Las Vegas and Henderson, NV, employed minors in violation of the Fair Labor Standards Act.

Dozens of minors performed dangerous tasks.

Also, five 15-year-olds worked at times not permitted by law – i.e., more than three hours on school days and later than 7 p.m.

The Dept. of Labor said the employer had to pay \$277,414 in civil penalties.

More info: www.dol.gov/newsroom/releases/whd/whd20240722-0

■ 430 WORKERS OWED OT AFTER MISCLASSIFICATION

C&G HVAC LLC, a heating, ventilation and air conditioning company in Dallas, misclassified 430 workers as independent contractors.

For that Fair Labor Standards Act violation, the Dept. of Labor said the company owed:

- \$756,158 in unpaid overtime wages, and
- \$756,158 in liquidated damages.

More info: www.dol.gov/newsroom/releases/whd/whd20240725-0

From: **HR MORNING** **KEEP UP TO DATE ON PAYROLL**

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IRS updated form used for payroll deduction agreements: What's new

■ EMPLOYEES WHO DON'T WANT THEIR WAGES LEVIED MAY USE IT

In an effort to prevent a tax levy, an employee may enter into a voluntary agreement with the IRS to repay what's owed. If that happens, Payroll will find itself in the middle of the process.

The form that an employee would fill out – Form 2159, *Payroll Deduction Agreement* – has recently been revised.

Here's a look at what's changed since the last IRS revision in May 2020.

Fees & assistance numbers

The most recent revision of Form 2159, dated July 2024, incorporates a lower user fee.

The new fee is \$178. That's down from \$225.

Employees must agree that the amount can be deducted from their first payment.

As in the past, certain taxpayers may be eligible to pay a reduced user fee of \$43.

There's more explanation regarding this on the form now – i.e., the \$43

fee applies to low-income taxpayers (those at or below 250% of federal poverty guidelines).

The \$43 fee may be waived or reimbursed if certain conditions are met – that's unchanged.

Another update you'll notice on the latest version of Form 2159 is that there are new phone numbers to call for assistance. In addition, there are only two phone numbers now, down from three. They are:

- 800-829-3903 – for businesses as well as for individuals who are self-employed/business owners, and
- 800-829-7650 – for individuals who are wage earners.

Withholding the specified amount

Upon receiving a form from an employee, you can choose whether or not to participate in the payroll deduction agreement.

If you agree to withhold the specified amount, you'd indicate how often you'll send the money to the IRS. The options are every week, two weeks, month or other. Your signature and other information is also required.

More info: www.irs.gov/pub/irs-pdf/f2159.pdf

IRS releases specifications for TY '24 substitute W-2s

The IRS has updated its specs for substitute W-2s and W-3s.

Publication 1141, *General Rules and Specifications for Substitute Forms W-2 and W-3*, provides details you'll need to print substitute versions of the tax year 2024 forms.

The specs contain a reminder about the new e-filing requirements for 10 or more information returns.

Areas of caution

Also, in the section of Publication 1141 covering general rules, the IRS said substitute forms must conform to

the specs, whether they're the official forms filed with the SSA or the copies distributed to employees. Otherwise, penalties may be assessed and/or the forms may be returned.

Another word of warning from the IRS: Don't overstock supplies of privately printed substitutes. That's because the forms are subject to annual review and may change.

Plus, contact info differs for clarification on red-ink and black-and-white forms.

More info: www.irs.gov/pub/irs-pdf/p1141.pdf

■ 2 TAX DEPOSITS MAY BE NEEDED ON OCT. 5, 2024

Here's a heads-up for semiweekly tax depositors: On Oct. 5, 2024, you may be required to send the IRS two separate deposits to account for the third and fourth quarters of 2024.

Third quarter: Deposits remitted on that date will cover payments made on Sept. 28-30, 2024.

Fourth quarter: Deposits remitted on that date will cover payments made Oct. 1, 2024.

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

■ THESE GARNISHMENTS HAVEN'T RESUMED YET

The Dept. of Education says it won't start collecting on most defaulted loans until Sept. 30, 2024.

That's due to an initiative called Fresh Start, which allows eligible borrowers to get their loans out of default.

Important note: Although most student loan payments have restarted, all related wage garnishments have remained canceled.

Therefore, employers shouldn't yet be garnishing employees' wages for this type of defaulted loan.

More info: studentaid.gov/announcements-events/covid-19#defaulted-loans

■ PROPOSED REG EXPANDS TAX PAYMENT OPTIONS

The IRS may soon directly accept tax payments by credit or debit card.

Under proposed reg changes, instead of requiring taxpayers to go through third-party payment processors, the agency would be allowed to:

- pay a fee under a contract with a third-party payment processor, and
- recoup the processing fee from the taxpayer using a credit or debit card.

More info: *Federal Register*, 7/1/24.

CFPB report shows how employees utilize earned-wage products

■ \$3,000 IN ANNUAL TRANSACTIONS FOR THE AVERAGE EMPLOYEE

As we previously reported, the Consumer Financial Protection Bureau (CFPB) recently released a proposed interpretive rule on paycheck-advance products, such as earned-wage access.

Just how do employees utilize these products? The CFPB itself shed light on that question by sharing data it'd obtained from eight providers of earned-wage products.

Key findings as of July 2024

In *Data Spotlight: Developments in the Paycheck Advance Market*, the CFPB revealed some key findings.

First, the July 2024 report showed the market for employer-partnered earned-wage products has been quickly growing.

From 2021 to 2022, for example, the number of transactions processed by these providers increased by over 90%.

Second, when workers access their money through earned-wage products,

the transactions are relatively small, on average ranging from \$35 to \$200. The average transaction size? \$106.

Over the course of a year, the average employee accessed \$3,000, according to the CFPB's data.

Third, a high number of employees use earned-wage products on a repeat basis. Workers accessing funds at least monthly rose from 21% in 2021 to almost 50% in 2022.

Furthermore, the average worker had 27 transactions per year.

Fourth, employers don't cover much of the cost of using earned-wage products for workers.

In fact, employers paid less than 5% of total fees.

Fifth, most workers incurred fees. During 2021 and 2022, about 90% of them paid at least one fee for using earned-wage access products.

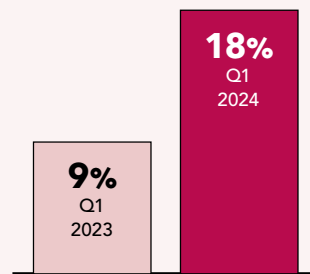
The average fee was \$3.18 – the range went from \$0.61 to \$4.70. Fees for the year added up to \$68.88 on average.

Finally, the CFPB calculated an illustrative annual percentage rate

WHAT PAYROLL PROS TOLD US

Hybrid Employment

Are you hiring for hybrid roles?



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

The percentage of employers hiring hybrid workers doubled from the first quarter of 2023 to the first quarter of 2024, showing that it's a popular work arrangement.

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

(APR) for a typical transaction in regards to employer-partnered earned-wage products.

That APR was 109.5%.

More info: www.consumerfinance.gov/data-research/research-reports/data-spotlight-developments-in-the-paycheck-advance-market

REAL-LIFE SCENARIO: DID THEY GET IT RIGHT?

Payout for unused vacation time didn't occur prior to merger

A labor organization in New York faced this real-life scenario:

The labor organization offered vacation and severance benefit plans to its non-unionized employees.

Some of them had signed up to participate in the plans.

Down the road, they learned from the parent union that their original labor organization was going to be merged into another labor organization.

They also found out their employment with the first organization would end and they could decide to work for the second organization –

but under revised terms. Only one employee didn't accept the new offer.

They were told that they shouldn't use their unused vacation time prior to the merger and that they'd be paid out for the time upon termination of the first labor organization.

However, they didn't receive the full amount HR stated they'd be paid under the vacation and severance benefit plans – unpaid amounts ranged from about \$2,000 to \$20,000.

So, the employees brought an ERISA lawsuit against the original labor organization. The employer asked the court to dismiss the case,

arguing the plans weren't covered by ERISA. However, the court wouldn't throw out the case because the labor organization hadn't provided enough proof related to ERISA.

For example, if it'd shown it paid benefits from its general assets as opposed to a separate fund, the case may have ended differently.

Checklist for compliance

- Double-check amounts owed to employees for unused vacation time before communicating with them.
- As always, confirm what's required under state law.

Tracking local laws and regs

■ City raises minimum wage for hotel, concessionaire workers

In Long Beach, CA, certain employees must be paid higher minimum wage rates than other employees.

The city raised those rates on July 1, 2024. They are:

- hotel workers – \$23 per hour (was \$17.55 per hour), and
- concessionaire workers – \$17.97 per hour (was \$17.36 per hour).

More info: www.longbeach.gov/finance/business-info/compliance/minimum-wage

■ 67 Texas counties have extra time for filing and making payments

Due to Hurricane Beryl that began on July 5, 2024, dozens of counties in Texas have extra time to file various business tax returns and make tax payments, the IRS announced.

The postponement period is July 5, 2024, through Feb. 3, 2025.

Employers in the 67 affected counties have until Feb. 3, 2025, to file quarterly payroll tax returns normally due on July 31, 2024, Oct. 31, 2024, and Jan. 31, 2025. Also, penalties for failure to deposit will be abated as long as the deposits were made by July 22, 2024.

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

■ IRS tax relief for employers in these 15 Missouri counties

The IRS has granted tax relief to employers in 15 counties impacted by the severe storms, straight-line winds, tornadoes and flooding that began May 19, 2024. The deadline for filing returns and making payments has been moved to Feb. 3, 2025.

The counties are Barry, Bollinger, Butler, Carter, Howell, Madison, McDonald, New Madrid, Oregon, Reynolds, Ripley, Scott, Shannon, Stoddard and Texas.

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.

What steps should we take if hit by a W-2 theft scheme?

Q: If our company becomes the victim of a Form W-2 theft scheme, what steps should we take?

A: The IRS recently reminded employers to remain vigilant against “phishing” email scams, one example of which is the Form W-2 theft scheme. Typically, this involves a thief posing as a high-ranking executive, asking Payroll for a list of employees and their

W-2s. If this sensitive tax and financial data is leaked, the IRS has special reporting procedures. The IRS says to send an email to dataloss@irs.gov, using “W2 Data Loss” as the subject line. Include the following information in the email, so the IRS can call you: business name, employer identification number associated with the data loss, contact name, contact phone number, summary of how the data loss occurred and volume of employees impacted.

More info: www.irs.gov/newsroom/identity-theft-information-for-businesses

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.

- Publication 560, *Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)*. Revision year: 2023. Posted date: 7/8/24.
- Form W-3C (PR), *Transmittal of Corrected Wage and Tax Statements (Puerto Rico Version)*. Revision date: June 2024. Posted date: 7/8/24.
- Publication 5533-B (sp), *Tax Professionals: How to Manage Authorizations Using Tax Pro Account (Spanish Version)*. Revision date: June 2024. Posted date: 7/16/24.
- Publication 1179, *General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns*. Revision date: July 2024. Posted date: 7/22/24.
- Publication 1141, *General Rules and Specifications for Substitute Forms W-2 and W-3*. Revision date: July 2024. Posted date: 7/29/24.
- Publication 5084, *IRS Congressional Update Newsletter*. Revision date: August 2024. Posted date: 8/5/24.
- Publication 5584, *Exempt Organizations Technical Guide TG 61: Excise Taxes on Investments Which Jeopardize Charitable Purposes – IRC Section 4944*. Revision date: August 2024. Posted date: 8/7/24.

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!

LOUISIANA

- **FINAL PAY:** As indicated in HB 352, compensation in the form of commissions, incentive pay or bonuses must be paid at the time of separation only if the compensation has been earned and not modified or extinguished in accordance with a written policy addressing those types of compensation. **More info:** legis.la.gov/legis/ViewDocument.aspx?d=1349915

MASSACHUSETTS

- **PAY TRANSPARENCY:** New legislation, H 4890, says employers with 25 or more employees must provide salary ranges when posting open positions. The law also protects an employee's right to request the salary range for a position when applying for a job or seeking a promotion. Those requirements will take effect on July 1, 2025. Another aspect of the law impacts employers with more than 100 employees – they'll be required to share their federal wage and workforce data reports with the state's Executive Office of Labor and Workforce Development. That agency would compile and publish aggregated wage and workforce data. **More info:** malegislature.gov/Bills/193/H4890

MINNESOTA

- **JURY DUTY:** HF 5216, which took effect July 1, 2024, says that an employer must release an employee from his or her regular work schedule so the employee can attend court for prospective jury duty. Furthermore, an employer can't require an employee to work an alternate shift on any day an

employee is required to report to the courthouse for jury service. The employee can volunteer to work an alternate schedule – however, the employer can't encourage, prompt or ask for the employee to do so. **More info:** tinyurl.com/minnesota697

NEBRASKA

- **INCOME TAX:** Starting on Jan. 1, 2025, compensation paid to a nonresident individual won't be considered income, if four conditions laid out in LB 1023 are all met. First, the compensation must be paid for work done while attending a conference or training in the state. Second, the individual must be in the state for seven or fewer employment duty days during the tax year. Third, the individual must perform employment duties in more than one state during the tax year. Fourth, total compensation while in the state can't exceed \$5,000 for the tax year. **More info:** nebraskalegislature.gov/bills/view_bill.php?DocumentID=55302
- **WITHHOLDING:** Per LB 1023, employers won't have to pay penalties or interest for failing to deduct and withhold income taxes if they meet one of two conditions. First, they can maintain a time and attendance system that allocates employee wages for income tax purposes among all taxing jurisdictions in which the workers perform their jobs. Second, if they don't use a time and attendance system, employers can rely on other proofs such as their own records that they've maintained in the regular course of business for the individual's location. **More info:** nebraskalegislature.gov/bills/view_bill.php?DocumentID=55302

SOUTH CAROLINA

- **FILING:** The South Carolina Dept. of Revenue has a new, online tax portal for batch withholding filers. The new portal is MyDORWAY

(was GoAnywhere). Existing batch withholding preparers don't need to submit a new batch withholding program application. **More info:** dor.sc.gov/tax-index/withholding/Pages/batch-withholding-program.aspx

VERMONT

- **PAY TRANSPARENCY:** Starting on July 1, 2025, most written job advertisements will need to include information about the type and range of monetary compensation – i.e., the minimum and maximum annual salary or hourly wage that the employer expects to pay. That's due to recently passed legislation, H 704. The bill also requires that the state's attorney general's office publish guidance on the law's requirements for both employers and employees. **More info:** legislature.vermont.gov/bill/status/2024/H.704

THE LIGHTER SIDE

It's not uncommon to be near the ocean and see a seagull swoop down to steal some snacks.

But sometimes, seagulls set their sights on something other than food. Just ask Noah Karberg of Nantucket, MA. He was in a grocery store parking lot, wearing a fishing shirt and board shorts. Not having any pockets, he set his cell phone and wallet in the top part of his shopping cart.

That was a nearby seagull's opportunity. The bird perched on the cart while the shopper had his back turned. Then he grabbed the wallet and flew off.

After a moment, the gull dropped some cash and stole away. Karberg says if anyone finds and returns his license and cards, he'll pay a reward.

Cite: UPI, "Thieving Seagull Snatches Man's Wallet in Grocery Store Parking Lot," 8/7/24