

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 TM

September 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

- **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.
- **Sept. 13, 2024:** Deposit taxes for payroll on Sept. 7, 8, 9, 10.
- **Sept. 18, 2024:** Deposit taxes for payroll on Sept. 11, 12, 13.
- **Sept. 20, 2024:** Deposit taxes for payroll on Sept. 14, 15, 16, 17.
- **Sept. 25, 2024:** Deposit taxes for payroll on Sept. 18, 19, 20.
- **Sept. 27, 2024:** Deposit taxes for payroll on Sept. 21, 22, 23, 24.

MONTHLY DEPOSITORS

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

IRS explains employer matches on student loan payments

■ Guidance impacts retirement plan sponsors

The IRS issued interim guidance for 401(k) plan sponsors that want to provide matching contributions to employees based on the employees' student loan payments.

This new type of employer matching contribution also applies to 403(b), 457(b) and SIMPLE IRA plans.

In Notice 2024-63, the IRS answered some questions employers have had since 2022. That's when the Secure 2.0 Act amended the definition of matching contributions to include employer contributions made to a defined contribution plan on account of qualified student loan payments.

The interim guidance was released Aug. 19, 2024, and is applicable for plan years beginning after Dec. 31,

2024. The notice can be relied on, the IRS said. Here are some highlights.

4 points summarized

1. General eligibility rules. The IRS laid out many requirements in its overview of employer matching on student loan payments.

One example: An employee's payments in aggregate for a year can't exceed that year's retirement plan contribution limits reduced by the employee's elective deferrals for the year.

2. Employee certification requirements. An employee must certify that a payment satisfies the

(Please see Employer matches ... on Page 2)

Overpayment interest may become tax underpayment

During the pandemic era, some businesses received from the IRS overpayment interest on refunds of employment tax credits offered under certain laws.

The laws were the:

- Families First Coronavirus Response Act (FFCRA)
- Coronavirus Aid, Relief, and Economic Security (CARES) Act, and
- American Rescue Plan Act (ARPA) of 2021.

Recently, the IRS said in a proposed rule that if any refunds were erroneous, it plans to assess

the overpayment interest as an underpayment of employment tax. To accomplish this, the IRS would have to amend the current employment tax regulations.

IRS looking at erroneous refunds

In the proposed rule, published in July 2024, the IRS said the erroneous refunds may have been for the:

- paid sick leave credit and paid family leave credit under FFCRA and ARPA, and
- employee retention credit under the CARES Act.

More info: *Federal Register*, 7/2/24.

Announced bonuses as incentives but left them out of overtime calculations

■ \$208K OWED IN BACK WAGES AND LIQUIDATED DAMAGES

When a Pittsburgh staffing agency wanted to motivate its workers, it announced to them that they'd receive bonuses.

No problem there. But then, the employer didn't include the bonus amounts in employees' regular rate of pay when calculating overtime.

That wasn't the only Fair Labor Standards Act violation the Dept. of Labor's (DOL's) Wage and Hour Division found when it investigated Reliable Home Health Limited.

The DOL said the agency also misclassified 96 home health workers as independent contractors.

Also, during a two-week period, it failed to pay one employee for three separate eight-hour shifts.

The list continued: Reliable Home Health Limited didn't pay overtime

when employees worked more than 40 hours in a workweek, and it didn't maintain adequate payroll and timekeeping records.

The DOL's Office of the Solicitor brought a lawsuit against the employer and ended up recovering:

- \$104,022 in back wages, and
- \$104,022 in liquidated damages.

They know about and expect them

Nondiscretionary bonuses – those that employees know about and expect – must be included when doing overtime calculations.

They might be bonuses to incentivize employees to work more efficiently or to encourage good attendance, among other things.

More info: www.dol.gov/newsroom/releases/whd/whd20231023-1

Employer matches ...

(continued from Page 1)

requirement to be a qualified student loan payment.

A retirement plan can choose if it'll require a separate certification for each payment or an annual certification that applies to all payments for that year.

3. Reasonable matching contribution procedures. Plans can determine their own administrative procedures for implementing the match feature – as long as the procedures are reasonable.

For example, when it comes to match claim deadlines, a plan might choose a single, annual deadline or multiple deadlines, such as quarterly.

4. Special nondiscrimination testing. A plan can apply a separate actual deferral percentage (ADP) test for employees who receive student loan payment matches and a main ADP test for those who don't.

In the case of a separate ADP test, the notice describes two methods.

More info: tinyurl.com/matching698

COMPLIANCE CHECK

■ OVER \$1M OWED FOR NOT PAYING PREVAILING WAGE

KBRwyle Technology Solutions LLC, a Goose Creek, SC, federal contractor, paid 43 employees rates lower than required by federal law. That happened after the employer changed the title of quality control inspectors from supply technicians to technical instructors. The original federal contract holder had it right.

KBRwyle Technology Solutions violated the McNamara-O'Hara Service Contract Act and Contract Work Hours and Safety Standards Act. It owed \$1,091,515 in back wages for the prevailing wage violations.

More info: www.dol.gov/newsroom/releases/whd/whd20240725-1

■ ELECTRONIC TIMEKEEPING SYSTEM MUST BE USED NOW

Axis Home PCA Agency Inc., a Minnesota homecare provider, paid its employees straight-time pay for all hours worked, even if their hours exceeded 40 in a workweek.

In addition to being required to maintain an electronic timekeeping system, the employer had to pay:

- \$67,500 in back wages, and
- \$67,500 in liquidated damages.

More info: www.dol.gov/newsroom/releases/sol/sol20240725

■ REALTY GROUP DIDN'T PAY OVERTIME TO 37 WORKERS

Pace Enterprise LLC, operating as Pace Realty Group, in Amarillo, TX, wrongly classified 37 maintenance workers and parts runners as independent contractors. This led to overtime violations. In addition, the employer didn't keep records required under the Fair Labor Standards Act. So, it had to pay:

- \$75,061 in overtime wages, and
- \$75,061 in liquidated damages.

More info: www.dol.gov/newsroom/releases/whd/whd20240731

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Supreme Court to hear case involving the FLSA's outside sales exemption

■ EMPLOYER IS AIMING TO PROVE IT CORRECTLY CLASSIFIED SALES REPS

The U.S. Supreme Court plans to hear a pivotal Fair Labor Standards Act (FLSA) case on Nov. 5, 2024.

E.M.D. Sales, Inc. v. Carrera focuses on the FLSA's overtime exemption and how much proof employers must provide to courts when defending their decisions to classify employees as exempt.

The circuit courts are split on whether the proof must be:

- “a mere preponderance of the evidence” – i.e., showing that it's more likely than not that someone is exempt, or
- “clear and convincing evidence” – i.e., showing that it's highly and substantially more likely than not that someone is exempt.

The Fourth Circuit, from which *E.M.D. Sales* is being appealed, has a precedent of requiring the latter.

Here are the details of the case.

Worked about 60 hours per week

E.M.D. Sales is a food-products distributor that delivers its products

directly to stores. The sales reps who filed the FLSA lawsuit worked about 60 hours per week and received commission instead of hourly pay.

They serviced grocery stores on their assigned routes. No one debated whether they regularly worked outside of the office, as expected for someone classified as outside sales exempt.

But another aspect the exemption – outside sales being their primary duty – was the center of the dispute. The employees insisted that while they could make sales at independent grocery stores, they didn't have the authority to do so at chain stores where they spent most of their time. The employer disagreed.

District court: After a nine-day bench trial in 2021, the court decided the employer owed overtime pay because it failed to prove, by clear and convincing evidence, that the reps qualified for the outside sales exemption. The employer also had to pay liquidated damages.

Appeals court: In 2023, the court affirmed the trial's court decision.

We'll keep you posted on how the Supreme Court rules.

More info: casetext.com/case/carrera-v-emd-sales-inc-9

Publication 1179 provides specs for substitute 1099s

Before printing substitute versions of Form 1099-MISC, 1099-NEC and similar information returns, it's essential to understand the IRS requirements for tax year 2024.

That information can be found in the July 2024 revision of Publication 1179, *General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns*.

Dozens of forms are covered by the specs found in Publication 1179.

In the “What's New” section of the publication, the IRS stated

it'd removed the filer copy and the instructions for the filer on the forms. It's part of an effort to reduce filer burden. Also, the form exhibits in the publication include 2024 versions of the forms.

Don't mix e-filing and paper filing

Electronic filing is required again for tax year 2024 if you file 10 or more returns with the IRS.

Caution: If you e-file, don't file the same returns on paper, the IRS said.

More info: www.irs.gov/pub/irs-pdf/p1179.pdf

NEWS YOU CAN USE

■ ROUND 2 OF VOLUNTARY DISCLOSURE PROGRAM

The IRS reopened the voluntary disclosure program for businesses that still want to fix incorrect employee retention credit claims.

The first round of the program ended earlier in 2024. This new round is running from Aug. 5, 2024, to Nov. 22, 2024. Businesses that participate in the voluntary disclosure program will receive a 15% discount and will avoid future audits, penalties and interest, according to the IRS.

The Service also said that in the fall it'll mail up to 30,000 new letters regarding improper employee retention credit claims.

More info: tinyurl.com/erc697

■ I-9 EXPIRATION DATE EXTENDED TO 2027

U.S. Citizenship and Immigration Services (USCIS) announced it has extended the expiration date of Form I-9, *Employment Eligibility Verification*, to May 31, 2027.

Employers should use the I-9 with an edition date of 8/1/24. You may see an expiration date of 7/31/2026 or 5/31/2027. Either is acceptable to use until its respective expiration date, USCIS explained.

More info: www.uscis.gov/i-9-central/form-i-9-related-news/uscis-extends-form-i-9-expiration-date

■ NATIONAL PAYROLL WEEK CELEBRATED IN SEPTEMBER

Happy National Payroll Week!

This year, the event runs from Sept. 2-6, 2024.

PayrollOrg, which founded the annual event in 1996, invites payroll professionals to celebrate with their payroll chapter, workplace payroll team and/or co-workers.

You may also want to take the 2024 “Getting Paid in America” survey to share your thoughts on important payroll topics.

More info: payroll.org

What upcoming rules does the IRS have planned? Here's a sneak peek

■ SPRING AGENDA INCLUDES MEASURES AFFECTING PAYROLL

Over 60 federal departments, agencies and commissions listed their upcoming plans in the *Spring 2024 Unified Agenda of Regulatory and Deregulatory Actions*.

The IRS is among them.

Here's a recap of several IRS initiatives found in the July 5, 2024, document.

3 changes to look for

First, the IRS has a goal of issuing a final rule regarding long-term, part-time employees.

The Setting Every Community Up for Retirement Enhancement (SECURE) Act and Secure 2.0 Act made these employees eligible to participate in retirement plans.

The IRS issued a proposed rule in November 2023, giving details about the 500 hours of service individuals must work to be considered long-term, part-time employees.

Another initiative found in the spring unified agenda deals with the

Secure 2.0 Act – i.e., a provision in the law that required high-wage earners to make catch-up contributions to their retirement plans on a Roth basis. Note: A high-wage earner was defined as an employee whose FICA wages exceeded \$145,000.

In 2023, the IRS issued guidance but then announced an administrative transition period that pushed the Roth-basis requirement to 2026. Now, the IRS says proposed regs should be released soon.

Finally, the IRS plans to propose a rule that'd change how you determine whether certain fringe benefits can be excluded from employees' income. The fringe benefits are:

- no-additional-cost service, and
- qualified employee discount.

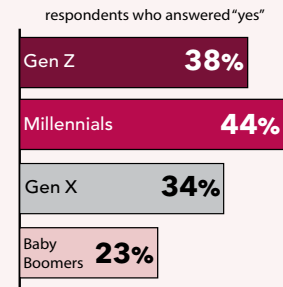
To be excluded from gross income, these fringe benefits must be related to services or property that the employer offers for sale in the ordinary course of the line of business in which the employee is performing services.

According to Sec. 1.132-4(a)(2) of the regulations, an employer's line of business is currently determined by

WHAT PAYROLL PROS TOLD US

Working Multiple Jobs

To increase your monthly savings, have you taken a second job?



Source: Forbes Advisor 2024 survey

Millennials were the generation most likely (44%) to work more than one job to increase their monthly savings. Baby Boomers were at the other end of the spectrum (23%).

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

referencing the Enterprise Standard Industrial Classification Manual.

Under the proposed rule, that'd be replaced with the North American Industry Classification System (NAICS). So, you'd use the NAICS when deciding whether or not the fringe benefits would be taxed.

More info: reginfo.gov

REAL-LIFE SCENARIO: DID THEY GET IT RIGHT?

Adjunct professor who taught banking law course gave university a failing grade

A higher education institution in Maine faced this real-life scenario:

The university hired an individual to teach a one-credit banking law course as an adjunct faculty member.

He signed a contract, agreeing to receive a single payment at a rate of \$1,000 to be paid at the end of the specified month. That fee covered 13 classroom hours. The professor also ended up working 80 hours outside of the classroom prepping and grading assignments.

A year later, the professor signed a second contract to teach a three-credit course, which equated to 39 hours

in the classroom. His rate was set at three monthly payments of \$1,333.33 each. Once again, he put in additional time – 260 hours.

He questioned the university about whether, in accordance with state law, it was required to pay him at least every 16 days. The university issued the first of the three monthly payments. Then, it moved him to its biweekly payroll.

A year later, he sued the employer for untimely payment of wages under state law.

A trial court sided with the university, saying he was exempt

from the requirement on the timely payment of wages because he was a teacher. Later, an appeals court also sided with the university, although it used a different rationale. It said he was exempt because he was paid on a fee basis, and that fee converted to an hourly rate that was higher than the minimum wage. Notably, the court factored in classroom hours, not hours worked outside the classroom.

Checklist for compliance

- Review state laws regarding timely payment of wages.
- Check your calculations to ensure minimum wage is paid.

Tracking local laws and regs

■ In South Carolina, 46 counties hit by storms get tax relief

Employers in 46 South Carolina counties have extra time to pay taxes and file returns following the severe storms and flooding that began on Aug. 4, 2024.

The IRS has given the affected locations until Feb. 3, 2025 to meet deadlines, such as for quarterly payroll tax returns due Oct. 31, 2024, and Jan. 31, 2025.

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

■ Fair Chance Ordinance covers unincorporated areas of LA

On Sept. 3, 2024, the Fair Chance Ordinance will take effect in the unincorporated areas of Los Angeles County. It imposes strict rules for job postings, offer letters and more.

The law applies to employers located in the unincorporated areas of the county as well as a range of individuals, including those

participating in educational or vocational training – whether or not they're paid.

More info: opportunity.lacounty.gov

■ Payroll assessment set at 1.6% for New York waterfront workers

New York Waterfront Commission announced that for the 2024-2025 fiscal year, the assessment rate is 1.6%. The assessment is calculated on gross payroll payments made to:

- longshore workers
- hiring agents
- pier superintendents, and
- security officers.

An employer that hires one of these workers who's licensed or registered by the commission to work on the waterfront is required to pay the payroll assessment. The payment and Form WC-30 are due on the 15th of the month following the end of a quarter.

More info: waterfront.ny.gov/frequently-asked-questions

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 handle examinations done by mail?

Q: What can we expect if the IRS decides to conduct an examination by mail?

A: The IRS sometimes decides to do examinations by mail without any in-person interaction. These may be called correspondence or remote examinations. The IRS may ask you, via a letter, to send documents to provide more information about entries on your return. If so, attach copies of the documents to the

letter. Note: Don't send originals as they won't be sent back to you. Add your business name, employer identification number and applicable tax periods to each page you submit. You have two choices for representation: You can act on your own behalf, or you can opt to have someone represent you in your correspondence. If it's the latter, that person must be an attorney, accountant or enrolled agent – or it can be the person who prepared the return and signed it as the paid preparer.

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.

IRS FORMS ALERT

RECENT CHANGES TO FEDERAL FORMS AND PUBLICATIONS

This list of documents contains Payroll-related updates.

- Publication 5582, *Exempt Organizations Technical Guide TG 60: Taxes on Excess Business Holdings – IRC Section 4943*. Revision date: August 2024. Posted date: 8/7/24.
- Publication 5590, *Exempt Organizations Technical Guide TG 62: Excise Taxes on Taxable Expenditures – IRC Section 4945*. Revision date: August 2024. Posted date: 8/7/24.
- Publication 5708, *Creating a Written Information Security Plan for your Tax & Accounting Practice*. Revision date: August 2024. Posted date: 8/7/24.
- Publication 5998, *Do You Qualify for the Earned Income Tax Credit?* Revision date: July 2024. Posted date: 8/9/24.
- Publication 4054, *National Taxpayer Advocate Objectives Report to Congress*. Revision date: June 2024. Posted date: 8/12/24.
- Form 990-PF, *Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation*. Revision year: 2023. Posted date: 8/14/24.
- Publication 5887, *Employee Retention Credit Eligibility Checklist: Help with Avoiding or Resolving an Incorrect Claim*. Revision date: August 2024. Posted date: 8/15/24.

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!

ILLINOIS

- **CHILD LABOR:** The Child Labor Law of 2024 repeals and replaces the state's previous child labor law – most of the new law will take effect Jan. 1, 2025. One provision says that a minor who's age 13 or younger can't work in any occupation or at any worksite not explicitly authorized by or exempted from the Child Labor Law of 2024. Another provision spells out allowable work hours for minors age 16 and younger – for example, no more than 18 hours during a school week, no more than 40 hours during a non-school week and no more than eight hours in a 24-hour period. **More info:** www.ilga.gov/legislation/publicacts/103/PDF/103-0721.pdf

INDIANA

- **NEW HIRE REPORTING:** In the most recent revision of the *Unemployment Insurance Employer Handbook*, dated June 26, 2024, the Indiana Dept. of Workforce Development explained the recent changes to new hire reporting. The following data elements must be included now for each newly hired or rehired employee: current job title; primary standardized occupational classification code; starting compensation; and rate of pay (annually, hourly, other). **More info:** www.in.gov/dwd/files/Employer_Handbook.pdf

KANSAS

- **FORM K-4:** The Kansas Dept. of Revenue (DOR) updated KW-100, *Withholding Tax Guide*, in July 2024. As explained in the guide, the state legislature passed

SB 1 in a special session, and the bill has been signed into law. As a result, the individual income tax rates have been changed; the standard deduction for individuals has increased; and the amount of the allowable personal exemption for individuals has increased. Given that the tax year 2024 changes took effect mid-year, the DOR recommends that employees review their withholding. Form K-4, *Kansas Employee's Withholding Allowance Certificate*, was also revised in July 2024 to account for the tax-related changes. **More info:** www.ksrevenue.gov/pdf/kw100.pdf

LOUISIANA

- **CHILD LABOR:** HB 156 lifts the break time requirements for minors of certain ages, effective Aug. 1, 2024. While in the past, employers had to provide all minors with 30-minute breaks for every five hours worked, now that requirement applies only to minors under age 16. **More info:** legis.la.gov/legis/ViewDocument.aspx?d=1382332

MINNESOTA

- **PAID LEAVE:** The state's family and medical leave program is scheduled to begin Jan. 1, 2026. Recent legislation, HF 5247, made changes to the program in advance of that start date. For one thing, the premium rate had been set at 0.7% of an employee's wages, but now, the rate can be adjusted – both prior to 2026 and annually after that. Also, small employers – those that have 30 or fewer employees and meet other requirements – may be eligible for a reduced premium rate. It's 75% of the annual premium rate. **More info:** www.revisor.mn.gov
- **PERSONNEL FILE:** HF 5247 changed the definition of "employer" under Sec. 181.960 of the state statutes. The term previously meant a person who

has 20 or more employees. Now it means a person who has one or more employees. So, as of July 1, 2024, all Minnesota employees may review their personnel record once every six months by making a written request to their employer. Also, they may dispute the contents of the personnel files. **More info:** www.revisor.mn.gov

NEW HAMPSHIRE

- **DECEASED EMPLOYEES:** HB 1201 makes changes to the payment of wages for deceased employees. Effective Sept. 10, 2024, if an employee dies, then the wages due – not exceeding \$3,000 (was \$300) – may be paid if a proper demand is made. Payments should be made in the order of distribution provided in Revised Statutes Annotated Sec. 156:1. **More info:** legiscan.com/NH/text/HB1201/id/3001802

THE LIGHTER SIDE

Better late than never? Maybe, but when something is so late that people can refer to it as historical, you know you've crossed a line.

Swansea Building Society, a bank in Wales, recently received its mail, and in the pile was a postcard. But no one recognized the addressee's name: Lydia Davis.

A bank representative confirmed that the address – 11 Cradock Street, Swansea – was correct. A closer look revealed that the stamp featured Edward VII, whose reign dates back to the early 20th century. Indeed, as best as the bank rep could decipher, the postmark read "1903."

The Royal Mail later explained the postcard somehow had been put back in the system – albeit 121 years behind schedule.

Cite: UPI, "Postcard Arrives at Wales Address 121 Years Late," 8/20/24