

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

October 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

- **Oct. 17, 2024:** Deposit taxes for payroll on Oct. 9, 10, 11.
- **Oct. 18, 2024:** Deposit taxes for payroll on Oct. 12, 13, 14, 15.
- **Oct. 23, 2024:** Deposit taxes for payroll on Oct. 16, 17, 18.
- **Oct. 25, 2024:** Deposit taxes for payroll on Oct. 19, 20, 21, 22.
- **Oct. 30, 2024:** Deposit taxes for payroll on Oct. 23, 24, 25.
- **Nov. 1, 2024:** Deposit taxes for payroll on Oct. 26, 27, 28, 29.
- **Nov. 6, 2024:** Deposit taxes for payroll on Oct. 30, 31, Nov. 1.
- **Nov. 8, 2024:** Deposit taxes for payroll on Nov. 2, 3, 4, 5.

■ MONTHLY DEPOSITORS

- **Oct. 15, 2024:** Deposit taxes for payments made during September 2024.
- **Nov. 15, 2024:** Deposit taxes for payments made during October 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.

Extra time to file and pay taxes, but uncertainty about due date

■ TIGTA recommends that IRS clarify notice info

In a new report, the Treasury Inspector General for Tax Administration (TIGTA) asked the IRS to provide clearer communication about tax filing and payment deadlines following natural disasters.

The report turned out to be timely. It was released Sept. 24, 2024, just two days before Hurricane Helene made landfall in the U.S.

After any federally declared disaster, the IRS can grant automatic tax relief under IRC Sec. 7508A. Its website conveys how much extra time taxpayers have to file returns and make payments – that’s clear. But subsequent mailings can cause confusion.

Say a company files Form 941 and has a balance due. The IRS is required

by IRC Sec. 6303(a) to send a notice of the amount due. It’s called CP161, *Statutory Notice of Underpayment*. The notice also includes the payment due date. Problem is, the CP161 lists the typical due date, not the postponed due date.

The accompanying “stuffer” – Notice 1462, *Important! You Have More Time to File and Pay Your Taxes Due to a Disaster* – doesn’t contain the new deadline details, either.

Changes to the CP161

So, in its report, TIGTA said the IRS should plainly inform businesses that they: 1) are located in a federally declared disaster area, 2) have been

(Please see Due date ... on Page 2)

Form W-2: Box 12 codes needed for these contributions

Before you process tax year 2024 W-2s, you should know the IRS has released a fact sheet with information about two types of retirement plan contributions.

Fact Sheet 2024-29 addresses two types of Roth Individual Retirement Arrangements (IRAs). They are:

- Savings Incentive Match Plan for Employees (SIMPLE), and
- Simplified Employee Pension (SEP).

In the Aug. 29, 2024, fact sheet, the IRS explained the Secure 2.0 Act brought changes to employers that offer SIMPLE or SEP plans – i.e., the law gave participating employees the

option of designating a Roth IRA as the IRA to which contributions under SIMPLE or SEP plans are made.

Fact sheet provides details

For Roth designations, use code F (for SEP IRA) and code S (for SIMPLE IRA) in box 12. Also, include the amounts in boxes 1, 3 and 5 because their salary reduction contributions are taxable, the fact sheet says.

Meanwhile, employer matching and nonelective contributions to these Roth IRAs *aren't* taxable and should be included on Forms 1099-R.

More info: tinyurl.com/secure701

Fired for 10 attendance infractions or for raising driver safety concerns?

■ EMPLOYEE HAD COMPLAINED ABOUT BREAK TIMES AND ON-DUTY HOURS

An employee who worked as a driver at an asphalt plant lost his job after he'd racked up 10 attendance infractions. In some cases, he was absent for a full day, and in other cases, he arrived late or left early.

However, the Dept. of Labor's Occupational Safety and Health Administration (OSHA) said three of his absences were protected actions under the Surface Transportation Assistance Act (STAA).

The driver had raised concerns to his employer – W-L Construction & Paving Inc., a subsidiary of CRH – that the assigned work would exceed federal safety requirements for:

- adequate rest breaks, and
- on-duty hours.

So, he refused to drive some of the routes assigned to him. The

company first suspended him and then terminated his employment.

He filed a complaint with OSHA, which found the employer had retaliated against the driver in violation of the STAA.

Nearly \$200K owed

OSHA ordered the company to reinstate the driver to his former position at the same rate of pay. Plus, it said the company owed:

- \$58,318.25 in back wages and interest
- \$115,694 in compensatory damages, and
- \$10,000 in punitive damages plus attorney's fees.

More info: www.dol.gov/newsroom/releases/osha/osha20240916

Due date ...

(continued from Page 1)

granted tax relief and 3) don't need to pay the balance due until the end of the postponement period. Specifically, TIGTA recommended that the IRS:

- create a cover sheet to be included with the CP161, and/or
- revise the CP161 notice.

In response to the TIGTA report, the IRS agreed to work on improvements to the notice.

In fact, it has already turned its attention to the comparable notice it sends to individual taxpayers facing the same situation – i.e., CP14, *Statutory Notice of Underpayment*.

In May 2024, it began mailing a cover sheet, the CP14C, along with that notice, indicating the postponed deadline. Plus, the IRS is exploring the development of a new notice, the CP14D. But that wouldn't be ready to send out until 2025 at the earliest.

More info: www.tigta.gov/sites/default/files/reports/2024-09/2024ier019fr.pdf

COMPLIANCE CHECK

■ COMPANY DIDN'T ISSUE PAYCHECKS FOR 2 WORKERS

Teracom Inc. – a Saline, MI, construction company – misclassified 63 workers as independent contractors.

They received a day rate for all hours worked, even overtime hours. Plus, the construction company didn't give two workers their paychecks during their final workweeks and didn't keep accurate timekeeping records.

So, Teracom had to pay:

- \$297,137 in back wages
- \$297,137 in liquidated damages, and
- \$44,496 in civil money penalties for repeated and willful violations of the Fair Labor Standards Act.

More info: www.dol.gov/newsroom/releases/whd/whd20240916

■ COSTLY PAY-RATE ERRORS FOUND BY INVESTIGATORS

Humberto Castaneda Produce, Fulton, CA, violated the Immigration and Nationality Act's H-2A provisions, Dept. of Labor investigators said.

Among several problems, the agricultural employer paid higher rates to workers with H-2A visas than to local workers. As a result, it owed:

- \$31,102 in back wages to 23 workers, and
- \$18,154 in civil money penalties.

More info: www.dol.gov/newsroom/releases/whd/whd20240918-0

■ 23 WORKERS DIDN'T GET PAID TIME-AND-A-HALF

John Mirza Landscaping Inc., Montvale, NJ, failed to pay the overtime premium to 23 workers after they put in more than 40 hours in a workweek. That mistake cost the landscaping company:

- \$127,496 in back wages, and
- \$127,496 in liquidated damages.

More info: www.dol.gov/newsroom/releases/whd/whd20240416

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IRS raised its per diem rates as of October 2024: Here's the latest

■ \$319 PER DAY FOR M&IE IN HIGH-COST LOCALITIES

The IRS has released its per diem rates – the new rates took effect Oct. 1, 2024.

Employers may choose to use the IRS per diem method to simplify the process of substantiating employees' business travel expenses.

The rates have increased for the 2024-2025 period. Here's what IRS said in Notice 2024-68.

Traveling next year

First, the special meal and incidental expenses (M&IE) rates for the transportation industry have increased. They are:

- \$80 per day for travel to any locality in the continental United States (CONUS) – that's up from \$69, and
- \$86 per day for travel to any locality outside the CONUS – that's up from \$74.

Next, the deduction amount for incidental expenses only has remained the same. It's \$5 per day.

Finally, the notice contains the rates employers will need if they use the

high-low substantiation method for M&IE. Those rates are:

- \$319 (was \$309) for travel to any high-cost locality, and
- \$225 (was \$214) for travel to any other locality within CONUS.

Breaking those two rates down further, the amount that's treated as paid for meals is:

- \$86 (was \$74) for the high rate, and
- \$74 (was \$64) for the low rate.

The list of high-cost localities has changed, with eight new localities being added. Of those, there are four in California, two in Idaho, one in Oregon and one in Vermont.

More than two dozen spots have changed the portion of the year in which they are high-cost localities, including four in Florida.

Eleven areas have been removed from the list of high-cost localities. That includes three spots in California, which are:

- Mill Valley/San Rafael/Novato, CA
- Oakland, CA, and
- San Mateo/Foster City/Belmont, CA.

More info: www.irs.gov/pub/irs-drop/n-24-68.pdf

Info on 403(b) plans & long-term, part-time employees

By now, employers that sponsor 403(b) plans will likely have identified any employees on the payroll whom the Secure 2.0 Act considers to be "long-term, part-time."

After all, the law requires employers that sponsor 403(b) plans to follow new rules regarding these employees – and the changes kick in with plan years beginning in 2025.

While in the past, charities, public schools and others could ask employees to work 1,000 hours over

a one-year period as a prerequisite to participating in a salary reduction agreement, that's been decreased to 500 hours over a two-year period.

New IRS notice

In Notice 2024-73, the IRS discussed the application of nondiscrimination rules related to long-term, part-time employees.

Also, the Oct. 3, 2024, notice stated that proposed rules can be expected, related to 403(b) plans.

More info: www.irs.gov/pub/irs-drop/n-24-73.pdf

■ NEW HIRE DIRECTORY: HIGHER PENALTY IN EFFECT

The Dept. of Health and Human Services (DHHS) recently updated its regs to reflect increases in the civil money penalty amounts.

The DHHS final rule, posted in the *Federal Register* on Aug. 8, 2024, applies:

- to penalties assessed on or after Aug. 8, 2024, and
- for violations that occurred on or after Nov. 2, 2015.

The maximum penalty for misuse of information in the National Directory of New Hires is \$1,877. That's up from \$1,818 last year.

More info: www.govinfo.gov/content/pkg/FR-2024-08-08/pdf/2024-17466.pdf

■ REPORT: SLOW START TO PAPERLESS PROCESSING

The IRS scanned about 10% of the forms and returns filed by paper during the 2024 filing season. It's a slow start to the IRS Paperless Processing Initiative, which aims to scan and digitalize all tax and information returns by the 2025 filing season. Form 940 and Form 941 were two of the top forms to be scanned during the latest processing year.

The National Taxpayer Advocate provided the update in its FY 2025 *Objectives Report to Congress*.

More info: www.irs.gov/advocate/reports-to-congress

■ PAID TIME OFF TO VOTE? DOUBLE-CHECK STATE LAW

Election Day is coming up on Nov. 5, 2024, and while the Fair Labor Standards Act doesn't require employers to provide employees with time off to vote, many states' laws do. Furthermore, employees may need to be paid for that time.

For verification, contact your state labor department.

More info: www.dol.gov/agencies/whd/state/contacts

State law and reg changes Payroll needs to know

CALIFORNIA

- **MINIMUM WAGE:** On Election Day, voters will decide whether to pass Proposition 32. This initiative would raise the minimum wage rate, currently set at \$16 per hour, to \$18 per hour starting Jan. 1, 2025. Otherwise, the rate is slated to increase to \$16.50 per hour in 2025. **More info:** vig.cdn.sos.ca.gov/2024/general/pdf/prop32.pdf

ILLINOIS

- **DATA PRIVACY:** The Biometric Information Privacy Act (BIPA) was amended on Aug. 2, 2024, following a 2023 state supreme court ruling: *Cothron v. White Castle System Inc.* The court had ruled that a separate claim under BIPA Sec. 15(b) and Sec. 15(d) accrues each time a private entity scans or transmits an individual’s biometric identifier or information. In response, the state legislature introduced SB 2979 to say that if there’s more than one instance of scanning related to the same biometric identifier or information, that’ll be a single violation. The same goes for multiple instances of transmitting. **More info:** www.ilga.gov/legislation

INDIANA

- **INCOME TAX:** The Dept. of Revenue announced that the income tax rates for four counties changed effective Oct. 1, 2024. The counties and their rates are Decatur 0.0245 (was 0.025); Fayette 0.0282 (was 0.0257); Fulton 0.0288 (was 0.0268); and Henry 0.0202 (was 0.018). **More info:** www.in.gov/dor/files/dn01.pdf

MAINE

- **MINIMUM WAGE:** Get ready for a new minimum wage rate in 2025. It’s going up to \$14.65 per hour. Currently, employers must pay at least \$14.15 per hour. For service employees, the minimum wage will

be \$7.33 per hour (in 2024, the hourly rate is \$7.08). **More info:** www.maine.gov/labor/docs/2025/posters/English_minimum_wage_2025.pdf

MICHIGAN

- **PAYROLL:** Since 2018, the requirements for paid sick leave and minimum wage have been changing as they’ve been tossed around by voter initiatives, legislation and court rulings. Now that the state supreme court has weighed in, employers have more certainty. On July 31, 2024, the court ruled in *Mothering Justice v. Attorney General* to reinstate the Earned Sick Time Act (ESTA) and the Improved Workforce Opportunity Wage Act (IWOWA), both as approved by voters in the 2018 election. These laws will go into effect on Feb. 25, 2025. At that time, employees will accrue one hour of sick time for every 30 hours worked – there’s no accrual cap, but employees can use a maximum of 72 hours of sick time per year. The ESTA applies to employers with at least one employee. As for the IWOWA, the minimum wage rate is expected to be \$12.48 (the original initiative had set it at \$10, to be adjusted for inflation after that). **More info:** tinyurl.com/michigan701

MINNESOTA

- **MINIMUM WAGE:** Employers will see an inflation adjustment to the minimum wage rate next year. As of Jan. 1, 2025, the rate will be \$11.13 per hour. Also, the rate will be applicable to more employers and employees than in the past. That’s because the minimum wage law was revised during 2024 to eliminate the reduced rate for small employers, youth workers and J-1 visa workers. The 90-day training wage for workers under age 20 will remain in place in 2025. That hourly rate will be \$9.08 (currently, \$8.85). **More info:** dli.mn.gov/

news/minimum-wage-rate-adjusted-inflation-jan-1-2025

NEW YORK

- **REPORTING:** Changes are coming to how you file withholding tax and wage reports, the New York Dept. of Taxation and Finance announced. Starting in March 2025, you can no longer separately file Part A, Part B and Part C on Form NYS-45, *Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return*. Also on the form, you must separately report New York State, New York City and Yonkers tax withheld for each employee. You’ll see improvements to the Web File application, too. For example, files can be uploaded for Part C wage reporting info without a limit to the number of employees. **More info:** www.tax.ny.gov/bus/wt/changes-2025

WASHINGTON

- **PAY TRANSPARENCY:** The Washington State Dept. of Labor and Industries released a preliminary draft rule on the Equal Pay and Opportunities Act on Aug. 6, 2024. The draft rule includes definitions, including one for *employee*. As plainly stated, an employee doesn’t include an independent contractor or business partner but does include an exempt individual. **More info:** www.lni.wa.gov/rulemaking-activity

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