

SYNERGY2018

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Payroll Compliance: 2018 & 2019 Legislation Update

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Speaker Bio

Jim is Compliance Director, Corporate Secretary, myPay Solutions. Jim has been an executive manager in the payroll service industry for over 30 years, specializing in managing multi-location offices.

- Jim is a Past President of the American Payroll Association and a member of the APA's Board of Directors, Executive Committee, Finance Committee and National Speakers Bureau, and chairs the CPP Certification Review Panel. Jim is also an appointed member of IRPAC.
- Updated handout is available at jimpaille.com
 1. Click on BLOG
 2. Click on 2018 & 2019 Legislation update
 3. Click again on 2018 & 2019 Legislation update

Year End & Legislative Update

Payroll News

Trump budget proposal / Path Act

1st Time Abatement

TCJA

2019 Draft !! W-4 **now 2020 W-4**

Accelerated W-2's / Verification Project

New EFTPS Program

New Transcript Service

New 8655

W-2 Changes

Tips & Tricks for Year End

Charts & Tables

2019 Rates & Limits

Minimum wage changes

FUTA Surcharges

2019 SUI Wage Bases

1099 NEC

Paycards

Jury Duty Pay? – Mandatory?

Federal & State changes and proposals

NACHA – Same Day ACH

Real Time Payments

Federal & State Mandated Sick Pay

DOL – Exempt non Exempt
March 2019

ACA AHA Update

Paying Terminated Employees

Fringe Benefit Taxation

Employee vs. Independent
Contractor



Handout material is as of December 26,, 2018

TRUMP Budget Proposal Payroll 2018

Paid family leave. The budget calls for six weeks of paid family leave to new mothers and fathers, including adoptive parents, to recover from childbirth and bond with a new child. States would be required to establish a paid parental leave program using the Unemployment Insurance (UI) system as a base. The paid leave program would be supported by unemployment reforms that reduce improper payments, help unemployed workers find jobs more quickly, and encourage states to maintain reserves in their unemployment trust fund accounts.

Child Support Enforcement Program. The budget calls for the establishment of a Child Support Technology Fund to aid state agencies in replacing aging computer systems to improve security and efficiency. The budget also calls for a number of unspecified enforcement proposals.

American Health Care Act. The budget affirms President Trump's support of the American Health Care Act to replace the Affordable Care Act. Employer mandates would be eliminated, as well as the higher Medicare tax rate for high wage earners beginning in 2023. Health savings account (HSA) options would be expanded.

Minimum wages — President Trump would like to see the minimum wage increased slightly — but not to anywhere near the \$15 level some of the public wants to see. Many states will continue to increase their respective minimum wages in 2019 and beyond (recently, 21 states increased their minimum wages for 2018).

TRUMP Budget Proposal Payroll 2018

Truncated SSN on W-2 forms. See Path Act! Also there is a proposal in the budget that would allow employers to use an “identifying number,” rather than an employee's SSN, on W-2s. This revision would allow the IRS to permit the use of a truncated SSN on Form W-2. The interesting item here is with identity theft laws in most states the employee social security number is masked on most all documents including pay stubs. The one place employees had a reference to what social security number the employer was using is the annual W-2. There would have to be some way for employers to confirm with employees that the social security numbers they are using are correct outside of W-2's. This appears to be a done deal – just waiting for time line from IRS – if you are wondering if all states must agree – the answer is no. The W-2 is a federal form and can mask regardless of state rules.

Restore FUTA surtax. Again! For many years the federal unemployment tax (FUTA) surtax (.2%) was formerly part of the 6.2% gross unemployment tax rate that employers paid on the first \$7,000 of wages paid annually to each employee (6% permanent tax rate, 0.2% temporary surtax). The surtax was repealed on June 30, 2011. A proposal in the budget would permanently reinstate the 0.2% FUTA surtax.

Mandatory E-Verify The budget proposes to make E-Verify participation mandatory nationwide. Currently only employers in certain states and federal contractors are required to utilize the program. The budget would expand to all employers and be fully implemented within three years. This requirement would require congressional approval. As a start E-Verify has been split into 2 systems one for employers and another for citizens.

1st Time Abatement

The IRS may provide administrative relief from a penalty that would otherwise be applicable under its [First Time Penalty Abatement](#) policy.

You may qualify for administrative relief from penalties for failing to file a tax return, pay on time, and/or to deposit taxes when due under the Service's First Time Penalty Abatement policy if the following are true:

You didn't previously have to file a return or you have no penalties for the 3 tax years prior to the tax year in which you received a penalty.

You filed all currently required returns or filed an extension of time to file.

You have paid, or arranged to pay, any tax due.

<https://www.irs.gov/businesses/small-businesses-self-employed/penalty-relief-due-to-first-time-penalty-abatement-or-other-administrative-waiver>

Now the Other Shoe Drops

SECTION 5. SCOPE OF REPORTING AGENT AUTHORIZATION

.01 The scope of an Authorization for filing the returns listed on Form 8655 is as follows:

(5) An Authorization, however, does not permit the Reporting Agent to request the abatement of any penalties that may arise from the returns filed by the Reporting Agent or to perform in any other way any acts that constitute representation of the taxpayer within the meaning of § 601.501(b)(13) of the Statement of Procedural Rules.

.02 The scope of an Authorization for making FTDs and FTPs and submitting FTD information and FTP information is as follows:

5) An Authorization does not permit the Reporting Agent to request the abatement of any penalties that may arise from the FTDs or FTPs made by the Reporting Agent or to perform in any other way any acts that constitute representation of the taxpayer within the meaning of § 601.501(b)(13) of the Statement of Procedural Rules.

Truncated Soc Sec # W-2 Finally – well NOPE!

Proposed Regulations Would Allow Truncated Taxpayer Identification Numbers on Employee Copy of W-2 Form

The IRS has issued proposed regulations that would allow employee Social Security Numbers (SSNs) to be truncated on the copy of the W-2 form furnished *to the employee*, beginning with 2018 W-2 forms issued in 2019, in order to help protect employees from identity theft [[Preamble to Prop Reg 09/18/2017](#)]. – **No Progress!**

A truncated taxpayer identification number (TTIN) displays only the last four digits of a taxpayer identifying number and uses asterisks or Xs for the first five digits.

No truncation of SSN on W-2 form filed with the Social Security Administration. Consistent with the rule in [Reg. § 301.6109-4\(b\)\(2\)\(iii\)](#) prohibiting the use of TTINs on any return, statement, or other document that is required to be filed with or furnished to the IRS, the proposed regulations would amend [Reg. § 31.6051-2](#) to clarify that employers may not truncate an employee's SSN to appear in the form of a TTIN on a copy of a Form W-2 that is filed with the Social Security Administration (SSA). Both the IRS and the SSA need the full SSN on W-2 forms to properly identify individuals.

Let's take a look at what we can anticipate in the remainder of 2018 & 2019 with potential new legislation.

Federal health reform — President Trump wants to replace the Affordable Care Act ... what he'll replace it with is anyone's guess. What we know for now is that the ACA is here to stay for 2018 and possibly until 2020.

Forms 1094 and 1095 - will again survive for this year, so make sure to keep tracking. The employee mandate is gone but the employer mandate remains (for now).

Fraud prevention — We've already accelerated W-2s (with January 31 employer deadlines for submission), and look for more fraud enhancements in filings and verifications. The IRS goal is to match identification and income to returns before processing refunds.

SSN Mismatch Statements – Social Security is presently sending name mismatch statements to employers.

1099 NEC – This will be a new form estimated for tax year 2020. It will replace the Non Employee compensation reported on 1099 MISC box 7.

Path Act Payroll Items

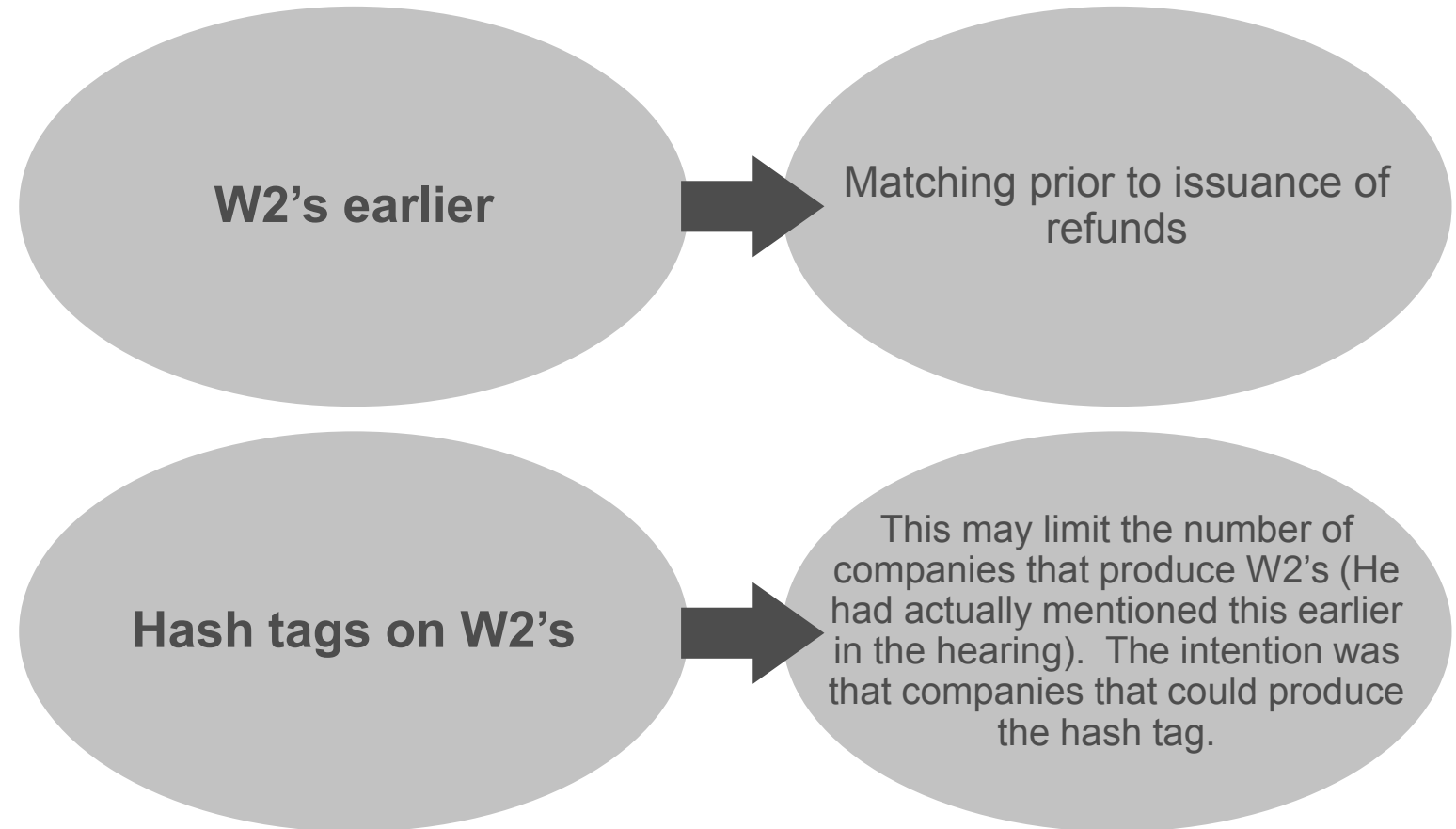
The provision requires forms W-2, W-3, and returns or statements to report non-employee compensation (e.g., Form 1099-MISC box 7), to be filed on or before January 31 of the year following the calendar year to which such returns relate. The provision also provides additional time for the IRS to review refund claims based on the earned income tax credit and the refundable portion of the child tax credit in order to reduce fraud and improper payments.

Truncation of Soc Sec Number on W-2's. - Congress allowed truncated Social Security numbers to be used on Forms W-2 in Section 409 of Division Q of the Consolidated Appropriations Act of 2016 (Pub. L. 114-113), signed Dec. 18, 2016 by President Barack Obama. - So what happened to this? The IRS remains silent therefore employers CANNOT truncate Social security numbers on W-2's (at least thru tax year 2018).

Safe harbor for de minimis errors on information returns and payee statements. The provision establishes a safe harbor from penalties for the failure to file correct information returns and for failure to furnish correct payee statements by providing that if the error is \$100 or less (\$25 or less in the case of errors involving tax withholding), the issuer of the information return is not required to file a corrected return and no penalty is imposed. A recipient of such a return (e.g., an employee who receives a Form W-2) can elect to have a corrected return issued to them and filed with the IRS. The provision is effective for returns and statements required to be filed after December 31, 2016. On January 4, 2017, the Internal Revenue Service (IRS) issued [Notice 2017-09](#) to provide guidance concerning handling of Forms W-2 and 1099 corrections when amounts reported are incorrect by no more than \$100 (or \$25 in the case of tax withheld). The new guidance applies to information returns filed and/or furnished after December 31, 2016 (i.e., including 2016 Forms W-2). Time period for employee to respond to a request for consent. Rev Proc 2017-28, 2017-14 IRB, still requires employers to give an employee at least 45 days to respond to a request for consent, but it shortens the time period to respond to a second request for consent from 45 to 21 days.

W-2 Acceleration:

The commissioner was asked what he would need legislatively to combat fraud/identity theft for the record. Among a couple of other items, he responded with:



8809 Application for Extension of time to file Information Returns

Form **8809**
(Rev. September 2017)
Department of the Treasury
Internal Revenue Service

**Application for Extension of Time
To File Information Returns**
(For Forms W-2, W-2G, 1042-S, 1094-C, 1095, 1097, 1098, 1099, 3921, 3922, 5498, and 8027)

OMB No. 1545-1081

▶ This form may be filled out online. See How to file below.

Do not use this form to request an extension of time to (1) file Form 1040 (use Form 4868), (2) file Form 1042 (use Form 7004), or (3) furnish statements to recipients (see Extensions under part M in the General Instructions for Certain Information Returns).

1 Payer's/filer's information. Type or print clearly in black ink.

Payer's/filer's name _____

Address _____

City _____ State _____ ZIP Code _____

Contact name _____ Telephone number _____

Email address _____

2 Taxpayer identification number (TIN)
(Enter the payer/filer nine-digit number.
Do not enter hyphens.)

<p>3 Check your method of filing information returns (check only one box). Use a separate Form 8809 for each method.</p> <p><input type="checkbox"/> electronic <input type="checkbox"/> paper</p>	<p>4 If you are requesting an extension for more than one payer/filer, enter the total number of payers/filers and attach a list of names and TINs. See How to file below for details. ▶</p>
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5 Check this box **only** if you already requested the automatic extension and you now need an **additional** extension. See instructions. ▶

6 Check **only** the box(es) that apply. **Do not** enter the number of returns.

Form(s)	✓ here	Form(s)	✓ here	Form(s)	✓ here
W-2	<input type="checkbox"/>	5498	<input type="checkbox"/>	8027	<input type="checkbox"/>
1097, 1098, 1099, 3921, 3922, W-2G	<input type="checkbox"/>	5498-ESA	<input type="checkbox"/>	1094-C, 1095-C	<input type="checkbox"/>
1099-MISC NEC reporting only	<input type="checkbox"/>	5498-QA	<input type="checkbox"/>	1095-B	<input type="checkbox"/>
1042-S	<input type="checkbox"/>	5498-SA	<input type="checkbox"/>	1099-QA	<input type="checkbox"/>

7 If you are requesting an extension for Form W-2, or if you checked the box on line 5, you must meet one of the following criteria. Check the applicable box(es) that describes your need for an extension.

The business suffered a catastrophic event in a Presidentially Declared Disaster Area that made the business unable to resume operations or made necessary records unavailable

Death, serious illness, or unavoidable absence of the individual responsible for filing the information returns affected the operation of the business

Fire, casualty, or natural disaster affected the operation of the business

The business was in its first year of establishment

Under penalties of perjury, I declare that I have examined this form, including any accompanying statements, and, to the best of my knowledge and belief, it is true, correct, and complete.

Signature ▶ _____ Title ▶ _____ Date ▶ _____

General Instructions There are no automatic extension requests for Form

Filing Season 2018: W-2 Verification Project Continues

Verification Code:

- 16 alphanumeric characters - 16 characters (0-9, A-F) (lower case)
- A unique code on each W-2, calculated using data on that form
- In a separate box, box 9, labeled "Verification Code," on copies
 - B ("To be filed with employee's federal tax return")
 - C ("For employee's records")
- W-2 Instructions: If this field is populated, enter this code when it is requested by your tax return preparation software. It is possible your software or preparer will not request the code. The code is not entered on paper-filed returns.

W-2 Verification Project –

For the 2019 filing season, the IRS expects 10 to 12 partners in the payroll service provider industry to participate in the program, placing a code on some 66 million W-2 forms. This equates to a code appearing on one in four W-2 forms. Seven payroll service providers (PSPs) who previously participated in the program will continue to participate, along with the National Finance Center, and a few more PSPs.

Also, to better distinguish letters and numbers in the VC code, 56 million of the W-2 forms will have the letters in the VC code in lower case (e.g., to better distinguish “B” vs. “8”). The IRS had received feedback that certain capital letters have been confused with certain numbers. It was noted during the call that individuals can still enter the letters in the code in either upper or lower case on their software for their personal income tax return.

The verification code is now entered on Box 9 on Form W-2.

2017 Verification Code Recap – returns filed in 2018

- **Verification Codes were present on 62M Forms W-2 for 885K EINs**
- ~ 1 in 4 Forms W-2
- 55M of 62M used lower-case letters (better legibility)

ADP	Paychex
Ceridian	Paycom
Interlogic Outsourcing	Payroll People
Intuit	PrimePay
National Finance Center	Ultimate Software

2017 Verification Code Recap

- **Unique 16-character code**
- **Calculated by payroll service provider, using data from the W-2 and formula from IRS**
- **Valid characters: A-F, 0-9** (format: xxxx-xxxx-xxxx-xxxx)
- **In box 9, “Verification Code,” on copies B & C**
 - B: "To be filed with employee's federal tax return"
 - C: "For employee's records"
- **W-2 Instructions: If you are e-filing and if there is a code in this box, enter it when prompted by your software. This code assists the IRS in validating the W-2 data submitted with your return. The code is not entered on paper-filed returns.**

2017 Verification Code Recap

- **Missing or incorrect VCs do not prevent or delay the processing of a return or refund.**
- **IRS calculates the VC and compares it with the VC the taxpayer entered.**
 - Allows validation before any data is received from SSA.
- **If VC validates, we treat the W-2 data submitted with a 1040 to be valid, thereby reducing false fraud-selections.**

2017 Verification Code Recap

W2VC Result				W2VC Result Total
Exact	Inexact	Expected, But Not Received	Received, But Not Expected	
11.5 M	0.9 M	21.4 M	0.6 M	34.4 M
33.4%	2.6%	62.2%	1.7%	100.0%

- If taxpayer/preparer had a W-2 with a VC, the VC was entered 36.7% of the time
 - $(\text{Exact} + \text{Inexact}) / (\text{Exact} + \text{Inexact} + \text{Expected Not Received})$
- If VC was entered, it validated 92.7% of the time
 - $\text{Exact} / (\text{Exact} + \text{Inexact})$

Data from only e-filed Forms 1040 claiming refund.

EFPTS - Confirmation Email

Implementation began July 2017

Taxpayer (Company) must opt in (reporting agents cannot opt in for taxpayer)

Emails – To enroll - activate Inquiry PIN – when starting with a third party service for payroll

To enroll separately - <https://www.efpts.gov/efpts/direct/HelpAboutMain.page>

For more information – www.irs.gov/outsourcingpayroll

At schedule of payment – no identifying info other than confirmation # first 3 digits 274 identify a batch filer – other several 3 digits identify bulk filer

1. Reminder 3 days in advance of payment (if applicable) – batch filers only
 2. At cancellation of payment
 3. For returned payment
 4. For any change of email address on the account
- There will not be an email when the payment settles
 - New YouTube Video - <https://www.youtube.com/watch?v=0w2VMnNiTgg> July 2018

New Transcript Service

On Sept. 23, 2018, a new transcript format will become the default transcript and will display the following data:

- Last four digits of any SSN listed on the transcript: XXX-XX-1234
- Last four digits of any EIN listed on the transcript: XX-XXX1234
- Last four digits of any account or telephone number
- First four characters of the last name for any individual (first three characters if the last name has only four letters)
- First four characters of a business name
- First six characters of the street address, including spaces
- All money amounts, including wage and income, balance due, interest and penalties

Summary –

- Transcript redaction: does not apply to business taxpayer transcripts.
- January 2019: no more faxing of transcripts: applies to business as well as individual taxpayer transcripts. "... when taxpayers or third parties call the IRS with an individual or business transcript request, the transcript will be mailed to the taxpayer's address of record."
- May 2019: "... the IRS will stop mailing transcripts to third parties listed on Line 5a of the Form 4506-T and T-EZ." Applies to business as well as individual taxpayer transcripts.

Reporting Agent Authorization

► Information about Form 8655 and its instructions is at www.irs.gov/Form8655.

Taxpayer

1a Name of taxpayer (as distinguished from trade name)		2 Employer identification number (EIN)
1b Trade name, if any		4 If you are a seasonal employer, check here <input type="checkbox"/>
3 Address (number, street, and room or suite no.)		5 Other identification number (optional)
City or town, state, and ZIP code		
6 Contact person	7 Daytime telephone number	8 Fax number

Reporting Agent

9 Name (enter company name or name of business)		10 Employer identification number (EIN)
11 Address (number, street, and room or suite no.)		
City or town, state, and ZIP code		
12 Contact person	13 Daytime telephone number	14 Fax number

Authorization of Reporting Agent to Sign and File Returns (Caution: See Authorization Agreement)

15 Indicate the tax return(s) to be signed and filed. For quarterly returns, use "YYYY/MM" format. "MM" is the last month of the quarter for which the authorization begins (for example, "2018/09" for third quarter of 2018). For annual returns, use "YYYY" format to indicate the year for which the authorization begins.

940 _____	941 _____	940-PR _____	941-PR _____	941-SS _____	943 _____
943-PR _____	944 _____	945 _____	1042 _____	CT-1 _____	

Authorization of Reporting Agent to Make Deposits and Payments (Caution: See Authorization Agreement)

16 Indicate the tax return(s) for which the reporting agent is authorized to make deposits or payments. Use the "YYYY/MM" format to enter the month in which the authorization begins (for example, "2018/08" for August 2018).

940 _____	941 _____	943 _____	944 _____	945 _____	720 _____
1041 _____	1042 _____	1120 _____	CT-1 _____	990-PF _____	990-T _____

Duplicate Notices to Reporting Agents

17 Check here to request the IRS to issue to the reporting agent duplicate copies of notices and correspondence regarding returns filed and deposits or payments made by the reporting agent.

Disclosure Authorization for Forms Series W-2, 1099, and/or 3921/3922

18a The reporting agent is authorized to receive otherwise confidential taxpayer information from the IRS to assist in responding to certain IRS notices relating to the Form W-2 series information returns. This authority is effective for calendar year forms beginning _____.

b The reporting agent is authorized to receive otherwise confidential taxpayer information from the IRS to assist in responding to certain IRS notices relating to the Form 1099 series information returns. This authority is effective for calendar year forms beginning _____.

c The reporting agent is authorized to receive otherwise confidential taxpayer information from the IRS to assist in responding to certain IRS notices relating to the Forms 3921 and 3922. This authority is effective for calendar year forms beginning _____.

State or Local Authorization (Caution: See Authorization Agreement)

19 Check here to authorize the reporting agent to sign and file state or local returns related to the authorization granted on line 15 and/or line 16.

Authorization Agreement

I understand that this agreement does not relieve me, as the taxpayer, of the responsibility to ensure that all tax returns are filed and that all deposits and payments are made and that I may enroll in the Electronic Federal Tax Payment System (EFTPS) to view deposits and payments made on my behalf. If line 15 is completed, the reporting agent named above is authorized to sign and file the return indicated, beginning with the quarter or year indicated. If any starting dates on line 16 are completed, the reporting agent named above is authorized to make deposits and payments beginning with the period indicated. Any authorization granted remains in effect until it is terminated or revoked by the taxpayer or reporting agent. I am authorizing the IRS to disclose otherwise confidential tax information to the reporting agent relating to the authority granted on line 15 and/or line 16, including disclosures required to process Form 8655. Disclosure authority is effective upon signature of taxpayer and IRS receipt of Form 8655. The authority granted on Form 8655 will not revoke any Power of Attorney (Form 2848) or Tax Information Authorization (Form 8821) in effect.

Sign Here

I certify I have the authority to execute this form and authorize disclosure of otherwise confidential information on behalf of the taxpayer.

_____	_____	_____
Signature of taxpayer	Title	Date

W-2 Changes for Tax Year 2018

Note – Canada started allowing Employers to mandate electronic T-4's starting tax year 2017!

New box 12 W-2 Code GG money field (Income from Qualified Equity Grants Under Section 83(i)) has been added to the RO Employee Optional Record in positions 122-132, and to the RU Total Optional Record in positions 160-74. Report the amount includible in gross income from qualified equity grants under section 83(i)(1)(A) for the calendar year.

New box 12 W-2 Code HH money field (Aggregate Deferrals Under Section 83(i) Elections as of the Close of the Calendar Year) has been added to the RO Employee Optional Record in positions 133-143, and to the RU Total Optional Record in positions 175-189. New Code Sec. 83(i) was added by the Tax Cuts and Jobs Act (see Payroll Guide Newsletter ¶1.4, 01/03/2018). Report the aggregate amount of income deferred under section 83(i) elections as of the close of the calendar year.

Federal Withholding Changes 2018-2025

Normal Pay Period Withholding Rates – 10%, 12%, 22%, 24%, 32%, 35%, and a top rate of 37%.

Supplemental Withholding Rate – 22% < 1,000,000
 37% > 1,000,000

Backup Withholding – 24%

House GOP budget opens door for further tax cuts

On June 19, House Republicans unveiled a budget plan that would allow lawmakers to use the reconciliation process to implement a second tax cut, or “Phase II” of the Tax Cuts and Jobs Act (TCJA, P.L. 115-97, 12/22/2017). Under reconciliation, the bill would require only a simple majority in the Senate for passage instead of the usual 60-vote threshold.

The measure also calls for the House Ways and Means Committee to cut \$150 billion from the federal deficit, especially health care costs, over the next ten years. In addition to tax cuts, the Committee would have the authority to create legislation that would repeal the Affordable Care Act (ACA or Obamacare).

House Ways and Means Chairman Kevin Brady (R-TX) has indicated a second tax bill would mostly be directed at making permanent the individual tax rates in the TCJA and possibly other provisions which are set to expire in 2025. He recently told reporters that he expects tax writers to produce an outline of the legislation before August. It is unclear if the budget proposal will make it to the House floor for an up and down vote.

2019 W-4 - same as 2018!

2020 W-4

The Fun Begins

this draft will be taken down

<https://www.irs.gov/pub/irs-dft/iw4--dft.pdf>

Form W-4		Employee's Withholding Allowance Certificate		OMB No. 1545-0074
Department of the Treasury Internal Revenue Service		<p>► Give Form W-4 to your employer.</p> <p>► Go to www.irs.gov/FormW4 for instructions and the latest information.</p> <p>► The amount of, or exemption from, withholding is subject to review by the IRS.</p>		2019
1 Your first name and middle initial		Last name		2 Your social security number
Home address (number and street or rural route)		<input type="checkbox"/> Single or married filing separately <input type="checkbox"/> Head of household		<input type="checkbox"/> Married filing jointly
City or town, state, and ZIP code		4 If your last name differs from that shown on your social security card, check here. You must call 800-772-1213 for a replacement card. ► <input type="checkbox"/>		
Before you begin:				
<ul style="list-style-type: none"> See the instructions at www.irs.gov/FormW4 before completing this form. If you have a simple tax situation, you may be able to use the brief instructions on the back of this form. You also can use the calculator at www.irs.gov/W4App to complete your Form W-4. If you hold more than one job at a time (or are married filing jointly and both you and your spouse have jobs), complete lines 5, 6, and 7 only for the highest paying job in the household. 				
5 Enter the amount, if any, of nonwage income not subject to withholding, such as interest and dividends				5 \$
6 Enter the amount, if any, of itemized and other deductions				6 \$
7 Enter the amount, if any, of tax credits, such as the child tax credit				7 \$
8 Complete this line only if you have multiple jobs at the same time or file as married filing jointly and both you and your spouse work; otherwise, leave it blank. Enter the total pay of all lower paying jobs				8 \$
9 Additional amount, if any, you want withheld from each paycheck				9 \$
10 I claim exemption from withholding for 2019, and I certify that I meet both of the following conditions for exemption.				
<ul style="list-style-type: none"> Last year I had a right to a refund of all federal income tax withheld because I had no tax liability, and This year I expect a refund of all federal income tax withheld because I expect to have no tax liability. If you meet both conditions, write "Exempt" here				10
Under penalties of perjury, I declare that I have examined this certificate and, to the best of my knowledge and belief, it is true, correct, and complete.				
Employee's signature (This form is not valid unless you sign it.) ►			Date ►	
11 Employer's name and address (Employer: Complete boxes 11 and 13 if sending to IRS and complete boxes 11, 12, and 13 if sending to State Directory of New Hires.)		12 First date of employment	13 Employer identification number (EIN)	



Use this form so that your employer can withhold the correct amount of income tax from your pay. **See the instructions and worksheets before completing this form.** You can find the latest instructions and information at www.irs.gov/FormW4. You also can use the calculator at www.irs.gov/W4App to complete your Form W-4.

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Confidential

Form W-4 (2019)

Page 2

Summary of the Instructions. You can use this summary of the instructions for completing Form W-4. If you need more information, go to the separate instructions at www.irs.gov/FormW4.

Exemption. If you meet both requirements on line 10 for exemption from withholding, skip lines 5 through 9. You will need to file a new Form W-4 for 2020. See the separate instructions for additional details.



CAUTION If you have more than one job at a time (or are married filing jointly and you and your spouse both work), enter the amounts you figure for lines 5 through 7 **only** on the Form W-4 for the highest paying job in your household. To get the most accurate withholding for these situations, complete a 2019 Form W-4 for every job in the household.

Note. You don't have to fill out lines 5 through 8 of your Form W-4 but filling them out will provide your employer with information to withhold a more accurate amount for your tax situation. If you don't want to give your employer this information, you can use the calculator at www.irs.gov/W4App to figure an amount of additional withholding to enter on line 9 or reduction to withholding to enter on line 7 and leave the other lines blank. You may also use Pub. 505, Tax Withholding and Estimated Tax, to figure amounts for line 7 or 9.

When to use the calculator. Consider using the calculator for more complex situations, for example, if you have a seasonal job or expect to work only part of the year, if you have dividends or capital gains or self-employment income, or if you are subject to additional taxes like the net investment income tax.

Line 5. Enter on line 5 the total of your nonwage income, if any. If you prefer to pay estimated tax on your nonwage income, rather than having tax withheld from your paycheck, see Pub. 505, Tax Withholding and Estimated Tax.

Line 6. Use this line if you expect to claim deductions from income other than the basic standard deduction.

Itemized deductions. If you plan to itemize your deductions or are not certain whether you will or should claim itemized deductions or the standard deduction, estimate your 2019 itemized deductions (note state and local taxes count only up to \$10,000) and then subtract the standard deduction (\$24,XXX if you're married filing jointly or qualifying widow(er), \$18,XXX if head of household, and \$12,XXX if single or married filing separately). Use this result for *Itemized deductions* under *Total* below. If the result is negative, use zero.

Other deductions. Estimate and then add together any other deductions from income you may claim, for example, educator expenses, student loan interest deductions, health savings account deductions, or additional standard deductions for age 65 or older or blindness.

Total. Enter on line 6 the total of any amounts from *Itemized deductions* and *Other deductions*.

Line 7. Enter on line 7 the sum of the tax credits, if any, you expect to claim in 2019. Some of the more widely used credits are listed below.

Child tax and other dependents credits. If your income will be \$200,000 or less (\$400,000 or less if married filing jointly), multiply the number of your qualifying children under age 17 by \$2,000, and the number of your other dependents by \$500.

Other tax credits. Estimate other tax credits you expect to take, including education tax credits, and the child and dependent care credit.

Line 8. Use this line **only** if you have more than one job at the same time or are married filing jointly and you and your spouse both work. For each job in the household, enter the amount of total wages for all other jobs that are lower paying than this job on line 8 of Form W-4. Do this on Form W-4 for each job in the household. Leave line 8 blank on the form for the lowest paying job.

Example with three jobs. John and Mary Jones file as married filing jointly. They have a 5-year old child. They have three jobs between them with annual wages of \$75,000, \$50,000, and \$42,000. They plan to take the standard deduction. They have interest income (\$425), educator expenses (\$250), and a child tax credit (\$2,000).

They submit a Form W-4 for each job and complete lines 5 through 8 as follows.

1. \$75,000 job: Enter \$425 on line 5, \$250 on line 6, \$2,000 on line 7, and \$92,000 on line 8 (\$50,000 + \$42,000).

2. \$50,000 job: Leave lines 5, 6, and 7 blank and enter \$42,000 on line 8.

3. \$42,000 job: Leave lines 5 through 8 blank.

Line 9. Enter on this line any additional income tax you want withheld from your pay each pay period. In addition, if you don't want to fill out line 5, 6, 7, or 8 on Form W-4, you can instead enter a dollar amount from the withholding calculator.

New W-4 Instruction booklet

11 Page Instruction Booklet to assist taxpayers in filling out **2020 W-4's**

<https://www.irs.gov/pub/irs-dft/iw4--dft.pdf> - look for new link from IRS soon!

IRS 2020 Form W-4 Represents Major Changes to Payroll

On June 6, 2018, the Internal Revenue Service (IRS) released a draft Form W-4, Employee's Withholding Allowance Certificate, for 2019. Several changes are fundamental in nature, potentially requiring significant reprogramming of payroll systems. State and local tax authorities are also expected to respond with similar changes.

Highlights of the Draft Form W-4 for 2020

Number of Allowances Eliminated

Perhaps the most prominent change on the 2020 Form W-4 is that Line 5, "Total number of allowances you're claiming," is eliminated.

Employees will be "strongly encouraged, but not required" to complete a new W-4 for 2020. Employers will still be able to use 2018 and prior Forms W-4 for employees that don't complete a 2019 W-4. As a result, payroll systems will need to maintain both 2019 and 2020 withholding systems and calculations simultaneously.

New Marital Status Box - Head of Household

A third IRS withholding calculation/table will be added to correspond with this new marital status, in addition to the existing tables for Single and Married Filing Jointly.

Tax Cuts and Jobs Act

Repeals personal exemption

Increases child tax credit and creates new other dependent credit

Increases standard deduction

Modifies itemized deductions and repeals some adjustments

Changes tax rates

Modifies withholding - eliminates personal exemption and number of withholding allowances

Preliminary 2020 draft W-4 - coming soon

Goal: Address shortcomings of current W-4 with limited disruption to existing systems

Employees will be strongly encouraged, but not required, to file a new W-4

Employers will continue to use old W-4s on file for employees who do not re-file

Withholding allowance amount is unchanged (save for inflation adjustments)

Components of draft W-4

Marital Status line

- Employees have the option to check single (or married filing separately), married filing joint, or head of household
- There will be 3 separate withholding tables that correspond to each marital status
- New W-4s will automatically be assigned number of allowances on basis of marital status
 - Set to 2 if single box checked and 3 if married filing joint or HOH box checked
 - Makes new W-4 compatible with pre-2020 W-4s
 - “Total number of allowances you’re claiming” line is removed from form

2020 W-4

New Line 5. **Additions to Income**

This line asks employees to enter estimated nonwage income not subject to withholding (such as interest and dividends). Previously, employees with significant nonwage income had to convert such amounts to equivalent per-payroll additional amounts to withhold. Line 5 amounts will be full-year estimates, so employer payroll systems will need to be modified to include these full-year amounts in withholding calculations.

New Line 6. **Itemized and Other Deductions**

Line 6 prompts employees to enter estimated subtractions to income based on expected deductions (such as state and local taxes, mortgage interest, and charitable contributions). Previously, employees needed to convert deductions into equivalent withholding allowances. Again, amounts entered will be full-year estimated deduction totals, so payroll systems will need to include full-year amounts in withholding calculations.

New Line 7. **Tax Credits**

This line asks employees to enter the full-year amount of any tax credits for which they expect to qualify, such as the child tax credit. As a reminder, the 2017 Tax Cuts and Jobs Act significantly expanded child and dependent tax credits. Previously all tax credits were translated by employees into additional withholding allowances. With the 2019 Form W-4, full-year tax credit amounts will be directly entered into payroll systems.

Critically, any tax credits should only be entered for the highest paying job in households with multiple incomes. Taxes may be significantly under-withheld for a household if both spouses enter the full-year credit expected, resulting in a large tax amount due at year-end. Conversely, taxes may be significantly over-withheld if neither spouse enters the total tax credit amount, resulting in reduced net paychecks during the year, and a large tax refund at year-end.

2020 W-4

New Line 8. **Additional Household Income Due to Multiple Jobs**

If applicable, employees will enter the (full-year) income associated with any second job (e.g., a second job that the employee holds, or the annual wage income of any spouse, if they are employed). Additional wage income should only be entered for the highest paying job in households with multiple incomes. There are special instructions for households with more than two incomes. Previously, employees used a Form W-4 worksheet to calculate a specific additional amount to withhold per pay period.

Employers will include these full-year amounts in withholding calculations in order to determine the appropriate tax bracket and rates for the employee.

Alternatively, the instructions will offer a calculation to estimate an additional tax amount to withhold per pay period, which was the solution prior to 20120. Employees will also be able to go to the online calculator (discussed below) or IRS Publication 505, Tax Withholding and Estimated Tax, to bypass Lines 5 and/or 8.

Line 9. **Additional Amount, If Any, You Want Withheld From Each Paycheck**

This line is unchanged. Employees will continue to be able to enter an additional per-pay period amount to withhold. Line 9 is the only entry with a per-pay period result.

Latest rumor – a new line 10 - The redesign will likely include a new W-4 line 10, asking whether a taxpayer wishes to reduce withholding, rather than increase it as asked on line 9.

Components of draft W-4

- Employers will divide each value by the total number of pay periods in the year and add to (or subtract from) wages subject to withholding for the pay period
- Employees who prefer not to provide this information to their employers (e.g., due to privacy concerns) will be able to bypass these lines by using the online calculator <https://www.irs.gov/individuals/irs-withholding-calculator> or Pub 505.

Employer - Actions for 2020

The Draft 2020 Form W-4 should not be provided to employees at this time, since it may change. It should not be used for payrolls dated before 2020.

Employers should consider reminding employees of the withholding calculator, which will help employees check their tax withholding at any point in the year compared to their total expected full-year tax liability. It is important to do this as early as possible in the year to allow a smaller adjustment (if needed) during the balance of the year. A sample letter follows.

A “Paycheck Checkup” Remains Important for 2018

For most people, the TCJA will result in a tax reduction, and many have noticed reduced federal income tax deductions and a corresponding increase in net pay. However, even though the 2018 withholding tables were designed to be as accurate as possible, changes to withholding may not correspond closely to changes in actual full-year income tax liability. In some circumstances, even employees that ordinarily receive an IRS tax refund may find that they owe additional tax to the IRS for tax year 2018.

Unless an employee has already filed a new Form W-4 in 2018, tax withholding calculated for 2018 payrolls could be based on outdated withholding allowances. Most significantly, the law eliminated personal exemptions. In 2017, each personal exemption (e.g., for the employee, any spouse and any dependents) reduced federal taxable income by \$4,050 per person. In 2018, the value of personal exemptions is zero. The value of each withholding allowance is \$4,150 for 2018, and to the extent that withholding allowances on file in 2018 represent personal exemptions, an employee’s withholding allowances may be overstated for 2018, which could result in tax under-withholding.

The new IRS tax tables adjusted for this and other factors to some extent, but because Forms W-4 permit withholding allowances based on factors such as expected tax credits and itemized deductions (such as mortgage interest, and state/local taxes), employers are not able to automatically adjust withholding allowances to eliminate personal exemptions.

The IRS published a new online W-4 Calculator in February, and strongly recommended that employees access the calculator at <https://www.irs.gov/individuals/irs-withholding-calculator>, to determine the correct number of withholding allowances (either adjusting for the TCJA, and/or changes in personal circumstances).

The online IRS calculator will ask a number of questions about income, marital status, anticipated deductions and eligibility for tax credits, to estimate annual taxable income and suggest the most appropriate number of withholding allowances.

New calculator will be required for 2019 W-4’s

What to do with non compliant / missing W4’s for 2019 – there is no S0 anymore!

Comments on 2019 W-4 under TCJA

Subject: In case it's of interest, below are some initial comments related to the proposed 2019 Form W-4.

- Employers will still be able to use existing Forms W-4 for employees that don't complete a 2019 W-4, and that taxpayers will be "strongly encouraged, but not required" to complete a new W-4 for 2019.
- This approach would likely require that employers maintain both 2018 and 2019 withholding systems and calculations simultaneously.
- In any event, payroll systems will likely need to support withholding-allowance-based tax calculations for some time for state tax purposes.

Using the New 2019 W-4 will cause Single status = 2 allowances by default

Married status = 3 allowances by default

New Marital Status box - Head of Household

- Three separate withholding tables will correspond to each marital status

W-4 comments continued

New line 5. “Enter the amount, if any, from the Additions and Subtractions Worksheet in the separate instructions” – generally additions and subtractions to Income

- Add expected full-year nonwage income i.e. 1099, Interest Income, Capital Gains/Losses
- Employers will include these amounts in withholding calculations
- Given that results could be negative, Treasury asked whether a separate line is necessary for clarity. Yes - - a separate line or box may be the best way to clearly distinguish negative values.

New line 6. Tax Credits

- Total full-year tax credits expected
- The Tax Cuts and Jobs Act effectively de-emphasized adjustments to income (i.e., exemptions) and instead emphasized tax credits, notably with the expanded child tax credit. Consequently it seems very appropriate to add a separate line for tax credits, which directly modify tax, rather than taxable income.
- “Only entered for the highest paying job in households with multiple incomes.” This will be an unavoidable source of errors (e.g., both spouses may enter the full-year credit expected, or neither may enter it).

W-4 comments continued

New line 7. “Complete this line only if you have multiple jobs at the same time or file as married filing jointly and both you and your spouse work; otherwise leave it blank. Enter the total pay of all lower-paying jobs:

- Conceptually, employers will include the wages of an employee’s other family members in withholding calculations in order to determine the appropriate tax bracket and rates.
- May need clarification: Gross wages or taxable wages? Will the instructions have guidance to calculate taxable wages? The distinction can be significant for those participating in Section 401(k) and 125 plans.

Comment: Lines 5 & 7 could raise privacy concerns. Several commenters independently suggested that many people may not want to tell their employer their total other income, particularly how much their spouse makes, or perhaps that they have a second job. Several comments have requested lines 5 & 7 be combined. Opinion - The IRS cannot combine lines 5 & 7 – due to line 5 is income not subject to withholding and line 7 is income that is subject to withholding.

W-4 comments continued

Due to privacy concerns or simply to avoid dealing with the more complex elements, people may want a simpler way to comply. The instructions could offer an alternative to disclosing additional income to the employer; most likely by offering an alternative calculation to estimate additional tax to withhold per pay period (which has been the solution prior to 2019). We understand that employees will be able to go to the online calculator or Pub. 505 to bypass lines 5 and/or 7, which is helpful. **Additional comment suggested that the IRS withholding calculator should be enhanced to print a completed Form W-4.**

Additional comment – It has been discussed having a W-4EZ. But that was ultimately removed from suggestions due to the complexity and addition of yet another form.

W-4 comments continued

Some employers that use less-sophisticated payroll systems may have a difficult time handling the actual tax calculations; i.e., calculating withholding based on wages for the pay period, plus adjustments to income, plus estimated earnings from lower-paying jobs; then calculating withholding for the lower-paying jobs and subtracting the result. Taxpayers don't expect income tax withholding to be much more than a rough approximation of annual liability.

Line 9 . Additional amount, if any, you want withheld from each paycheck

- This is a repeat from the 2018 W-4 – there is however a rumor of a possible line 10. - **The redesign will likely include a new W-4 line 10, asking whether a taxpayer wishes to reduce withholding, rather than increase it as asked on line 9.**

AICPA Comment

The American Institute of CPAs on July 12 submitted to IRS recommendations pertaining to the 2019 draft Form W-4, Employee's Withholding Allowance Certificate. "Our recommendations emphasize the need for a simple Form W-4 that reduces administrative burden, protects employees from invasion of privacy, and avoids the shifting of additional onus onto employers", wrote Annette Nellen, chair of the AICPA Tax Executive Committee. According to Nellen, Form W-4 should not include nonwage income, itemized and other deductions, tax credits, and total pay for all lower paying jobs. The draft is "unduly complicated", she wrote, adding that "taxpayers need a Form W-4 that is easy to understand and simple to complete, thereby reducing compliance burdens and minimizing the risk of tax underpayment and penalties", Taxpayers also must be protected from invasion of privacy, and a simplified Form W-4 should not request personal information, Nellen wrote. The form and instructions should make clear that personal information is optional, she added. "Many employees are likely apprehensive that providing employers with spousal and family income information on the Form W-4 can lead to unfair and discriminatory employment practices", the letter said. "For example, employees may have concerns that an employer will forego a wage increase if the employer has knowledge of other family income", it stated.

2019 W-4 – State Issues - now 2020

Personal Exemption

Rhode Island is not following the provision in the federal Tax Cuts and Jobs Act (TCJA) that reduced to zero the personal exemption amount for tax years that begin after Dec. 31, 2017 and before Jan. 1, 2026 [L. 2018, H7200 (c. 47)].

Georgia—New Withholding Allowances Certificate

The Georgia Department of Revenue (DOR) has issued a May 22, 2018 version of Form G-4 (State of Georgia Employee's Withholding Allowance Certificate) to reflect recent legislation (L. 2018, H918) that updated the state's conformity with the Internal Revenue Code to Feb. 9, 2018 (i.e., after the enactment of the Tax Cuts and Jobs Act (TCJA)). The legislation doubled the standard deduction for all taxpayers. The standard deduction has increased from \$2,300 to \$4,600 for single taxpayers and taxpayers with head of household filing status, and from \$1,500 to \$3,000 for each spouse [Georgia Form G-4, State of Georgia Employee's Withholding Allowance Certificate, 5/22/18].

----- Separate here and give Form W-4 to your employer. Keep the worksheet(s) for your records. -----

Form W-4 Department of the Treasury Internal Revenue Service	Employee's Withholding Allowance Certificate ▶ Whether you're entitled to claim a certain number of allowances or exemption from withholding is subject to review by the IRS. Your employer may be required to send a copy of this form to the IRS.	OMB No. 1545-0074 <div style="font-size: 2em; font-weight: bold; text-align: center;">2019</div>
1 Your first name and middle initial _____ Last name _____		2 Your social security number _____
Home address (number and street or rural route) _____ _____		3 <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Married, but withhold at higher Single rate. Note: If married filing separately, check "Married, but withhold at higher Single rate."
City or town, state, and ZIP code _____		4 If your last name differs from that shown on your social security card, check here. You must call 800-772-1213 for a replacement card. ▶ <input type="checkbox"/>
5 Total number of allowances you're claiming (from the applicable worksheet on the following pages)		5 _____
6 Additional amount, if any, you want withheld from each paycheck		6 \$ _____
7 I claim exemption from withholding for 2019, and I certify that I meet both of the following conditions for exemption. <ul style="list-style-type: none"> • Last year I had a right to a refund of all federal income tax withheld because I had no tax liability, and • This year I expect a refund of all federal income tax withheld because I expect to have no tax liability. If you meet both conditions, write "Exempt" here ▶ 7 _____		
Under penalties of perjury, I declare that I have examined this certificate and, to the best of my knowledge and belief, it is true, correct, and complete.		
Employee's signature (This form is not valid unless you sign it.) ▶ _____		
8 Employer's name and address (Employer: Complete boxes 8 and 10 if sending to IRS and complete boxes 8, 9, and 10 if sending to State Directory of New Hires.) _____		9 First date of employment _____
		10 Employer identification number (EIN) _____

For Privacy Act and Paperwork Reduction Act Notice, see page 4. Cat. No. 10220Q Form **W-4** (2019)

Oregon—State Specific W-4 Form in 2019

The Oregon Department of Revenue (DOR) has issued an August 2018 version of 2018 Worksheet OR-WW (Oregon Withholding Worksheet). The worksheet is used by employees to help determine proper withholding. The DOR notes that due to the many changes to personal income tax laws in the federal Tax Cuts and Jobs Act (TCJA), employees who use federal Form W-4 for Oregon withholding calculations may no longer be computing Oregon withholding correctly. Oregon withholding may be too high if the employee has large deductions or claimed Oregon credits that aren't accounted for on the federal tax form, such as Oregon's working family household and dependent care credit. Withholding may be too low if: (1) employees updated their withholding allowances based on the 2018 federal Form W-4; (2) they are in a dual-earner household and filing a joint return; (3) they have more than one job; (4) they claimed federal credits that aren't carried over to their Oregon taxable income, such as the federal child tax credit; (5) they have non-wage income, such as interest, dividends, business income, or capital gains; or (6) they claimed "exempt" from federal withholding because they had no federal tax liability, but will have an Oregon tax liability. If any of these situations apply, they should provide their employer with an Oregon-only version of the federal Form W-4. The DOR has also announced that there will be a state specific W-4 form in 2019. With this form, employees will no longer need to complete a separate federal W-4 form and write "For Oregon only" at the top to designate their amount of state withholding. It will also give Oregon more flexibility in adapting to future federal tax law changes without unnecessarily burdening employees or employers [2018 Worksheet OR-WW, rev. 8-18; DOR News Release, Oregonians urged to check paycheck withholding before year's end, 8/15/18].

Oregon employer

Federal tax law changes, including how withholding allowances are calculated, mean that some Oregonians haven't been withholding enough from their paychecks to cover their state personal income tax liabilities.

Oregon now has its own W-4 for state income tax withholding. Form OR-W-4 will allow employees to determine their correct Oregon withholding. We are asking employers to provide Form OR-W-4 to their employees anytime federal Form W-4 is provided. This replaces the federal Form W-4 with "For Oregon Only" written on top as the preferred method for documenting state income tax withholding designations.

An electronic version of Form OR-W-4 is attached. You can also download and print the form at www.oregon.gov/dor/forms, or order online and we'll mail it to you.

New York tax changes respond to new federal tax law

New York State approved a fiscal year 2019 budget that contains provisions to lessen the impact of the new limitations on state and local tax deductions under the Tax Cuts and Jobs Act that Republicans in Congress passed last December.

The new tax law limits itemized deductions for state and local income, property and sales taxes for individuals to \$10,000 a year, while doubling the size of the standard deduction. The federal tax law change signed by President Trump last December is expected to have a massive impact on taxpayers in so-called “blue” states led by Democrats like New York, New Jersey and California where taxes are often high and many taxpayers who itemize claim the state and local tax, or SALT, deduction.

Under the changes, employers in New York State would be able to opt-in to a new voluntary payroll tax system, known as the Employer Compensation Expense Program, or ECEP. Businesses that opt in would be subject to a 5 percent tax on all annual payroll expenses in excess of \$40,000 per employee, phased in over three years beginning on Jan. 1, 2019. The current personal income tax system would remain in place, and a new tax credit corresponding in value to the ECEP would cut the personal income tax on wages and ensure that state filers subject to the ECEP would not experience a decline in take-home pay.

The budget also sets up two new state-run charitable contribution funds to replace property taxes where taxpayers can pay money to support health care and education. Donations to these funds would provide a reduction in local property taxes via a local credit equal to a percentage of the donation.

New York

In April, New York State passed a fiscal 2019 budget containing provisions that allow taxpayers to pay taxes to either of two state-run charitable contribution funds or to opt in to a new voluntary payroll tax system known as the Employer Compensation Expense Program (see New York tax changes respond to federal tax law). However, last month the IRS and the Treasury Department announced that they plan to issue proposed regulations to prevent states from circumventing limits on the state and local tax deduction (see IRS and Treasury plan crackdown on SALT deduction workarounds).

Schumer said New York State's new tax law would provide a charitable tax credit of 85 percent for donations to state funds that will go towards vital healthcare and public education programs. The donations could be treated as a charitable deduction under the federal tax code. New York State also authorized municipalities within New York to set up similar tax credit programs in an effort to ease the limits on state and local tax deductions to \$10,000. Schumer pointed out that Westchester homeowners have the highest property taxes in the U.S.

He pointed out that similar state charitable tax credits exist in 32 states and have long been found by the IRS to be admissible. He wants the IRS to issue unbiased guidance to make it clear that donations to New York State's charitable funds will be treated like charitable contributions to other state-operated charitable funds. Schumer said the IRS should reverse its plan and stop targeting states like New York directly or indirectly. He promised to hold the IRS accountable, and urged them to implement the new tax law as written.

New York – website is now open!

Recently, New York State Gov. Andrew Cuomo signed budget bills into law. They will have a major impact on payroll professionals for years to come. Major highlights include a new employer payroll tax and changes regarding conformity to the Internal Revenue Code (IRC) that impacts the state tax treatment of moving expenses [S.B. 7509, L. 2018].

Employer Compensation Expense Tax

A new employer opt-in tax is called the Employer Compensation Expense Tax (ECET). Employers that choose to opt in to the ECET will be subject to a tax on all annual payroll expenses over \$40,000 per employee, phased in over three years beginning January 1, 2019. The rates for 2019-2021 are:

1.5% for 2019

3% for 2020

5% for 2021

The state income tax system remains in place. A new tax credit corresponding in value to the ECET will decrease the personal income tax on wages and will ensure that state income tax filers subject to the ECET will not experience a decline in their take-home pay. The deadline for the first annual employer election is December 1, 2018, for the 2019 tax year. <https://www.tax.ny.gov/bus/ecep/ecepdx.htm>

New Jersey Adopts SALT Workaround for Property Tax Payments

Governor Phil Murphy has signed legislation that permits localities to establish charitable funds to accept donations from taxpayers. The taxpayers will be eligible for a credit on their property tax bill of 90% of their contributions. (L. 2018, S1893, effective 07/03/2018.)

SALT cap workaround. For taxpayers who will still benefit from itemizing their deductions under the new law, the law provides for a workaround of the SALT cap by permitting localities to establish charitable funds and permitting those localities to provide a property tax credit that is equal to 90% of the contributions to the charitable funds.

Jersey City New Payroll Tax, Claim It's Unconstitutional

Several Businesses Sue Jersey City Over Payroll Tax, Claim It's Unconstitutional

December 2018 - A new tax to be paid by employers that would fund Jersey City's schools is the subject of a new legal dispute, as several local businesses are looking to have the law thrown out as unconstitutional.

N.J. warns IRS against banning property taxes as charitable gift

New Jersey Attorney General Gurbir Grewal warned the Internal Revenue Service that he will fight any challenge to a law that preserves state and local property-tax deductions.

Grewal's letter to acting Commissioner David Kautter was in response to an IRS notice issued Wednesday that said taxpayers must adhere to federal law when filing. New Jersey Governor Phil Murphy on May 4 signed legislation to allow local governments to establish non-profit funds that will accept property-tax payments as a workaround to President Donald Trump's \$10,000 cap on deductions. New York Governor Andrew Cuomo signed a similar law last month.

Though the IRS hasn't expressly banned the practice, Grewal said the notice signaled an intent to do so. New Jersey has the nation's highest property-tax bills, averaging \$8,690 last year.

May 1

"I ask you to think twice before going down that misguided road," Grewal wrote. In all, he said, 33 states have 100 programs allowing people to receive tax credits for donations to governments and non-profits. "The IRS should not play politics. Should the IRS and Treasury Department continue down this path, New Jersey will have no choice but to challenge the new rule in court."

Sarah Allen, an IRS spokeswoman, said by telephone that the agency had no immediate comment.

IRS Response

IRS to Propose Regulations on State and Local Tax Deduction: For tax years 2018–2025, a taxpayer's itemized deduction for state and local taxes is limited to \$10,000 (\$5,000 if married filing separately) per year. In response to this, some states are considering or have adopted legislation that allows taxpayers to make transfers to state-established charitable funds in exchange for credits against their state and local taxes. In a recent Notice, the IRS has announced it will propose regulations on the federal income tax treatment of these payments. The proposed regulations will specify that federal tax law, which includes substance-over-form principles, governs the proper characterization of these payments for federal income tax purposes. In other words, a state's classification of the payment is irrelevant. Also, the proposed regulations will assist taxpayers in understanding the relationship between the federal charitable contribution deduction and the new state and local tax deduction limit. Notice 2018-54, 2018-24 IRB .

IRS - PROPOSED REGS ADDRESS CONTRIBUTIONS MADE IN EXCHANGE FOR SALT CREDITS

Proposed Reg, REG-112176-18, Contributions in Exchange for State or Local Tax Credits

IR-2018-172, Treasury, IRS issued proposed regs on charitable contributions and state and local tax credits

RS has issued proposed regs, and an accompanying News Release, providing rules on the availability of charitable contribution deductions when a taxpayer receives or expects to receive a corresponding state or local tax credit.

Under the proposed regs, a taxpayer who makes payments or transfers property to an entity eligible to receive tax deductible contributions must reduce their charitable deduction by the amount of any state or local tax credit the taxpayer receives or expects to receive.

For example, if a state grants a 70% state tax credit and the taxpayer pays \$1,000 to an eligible entity, the taxpayer receives a \$700 state tax credit. The taxpayer must reduce the \$1,000 contribution by the \$700 state tax credit, leaving an allowable contribution deduction of \$300 on the taxpayer's federal income tax return. The proposed regs also apply to payments made by trusts or decedents' estates in determining the amount of their contribution deduction.

The proposed regs provide exceptions for dollar-for-dollar state tax deductions and for tax credits of no more than 15% of the payment amount or of the fair market value of the property transferred. A taxpayer who makes a \$1,000 contribution to an eligible entity is not required to reduce the \$1,000 deduction on the taxpayer's federal income tax return if the state or local tax credit received or expected to be received is no more than \$150.

References: For the deduction for state and local taxes, see FTC 2d/FIN ¶ K-4500; United States Tax Reporter ¶ 1644.03. For the deduction for charitable contributions, see FTC 2d/FIN ¶ K-2800; United States Tax Reporter ¶ 1704.

FOUR STATES SUE U.S. TO VOID CAP ON STATE AND LOCAL TAX DEDUCTION

Four U.S. states sued the federal government on July 17, 2018 to void the new \$10,000 cap on the federal deduction for state and local taxes, included as part of the President Donald Trump's 2017 tax overhaul.

The lawsuit by New York, Connecticut, Maryland and New Jersey came seven months after Trump signed into law the \$1.5 trillion overhaul, which also lowered taxes for many wealthy Americans and slashed the corporate tax rate.

Andrew Cuomo, New York's Democratic governor, said in a statement: "The federal government is hellbent on using New York as a piggy bank to pay for corporate tax cuts and I will not stand for it".

The U.S. Department of the Treasury, which along with Treasury Secretary Steven Mnuchin is among the defendants, was not immediately available for comment.

Taxpayers had before this year enjoyed an unlimited federal deduction for state and local taxes, or the SALT deduction.

But under the cap, individuals and married taxpayers filing jointly who itemize deductions may deduct only up to \$10,000 annually for state and local income, property and sales taxes.

According to the lawsuit, capping the SALT deduction will force New York taxpayers alone to pay an additional \$14.3 billion in federal taxes this year, and another \$121 billion through 2025, when the cap is scheduled to expire.

They also said it "effectively eviscerates" a deduction that has been on the books since 1861, and unconstitutionally intrudes on state sovereignty.

The lawsuit was filed in the U.S. District Court in Manhattan.

In May, the Treasury Department said it would propose regulations aimed at states trying to circumvent the cap.

Preparing For A Successful Year End

Order W-2's early – 125% to 150% of what you need

Reconcile taxable earnings including pre tax (PA & NJ)

Verify Soc Sec Cutoffs – pretax items

Verify Names and Soc Sec Numbers – Hyphens no longer required, W-2 name must match SSA

\$50 penalty for name mismatches – no fine if employer showed responsible attempt

Complete Bank recons – look for escheat issues

Have a process for W-2 reprints – charge?

Renew passwords on SSA BSO Online /PTIN? (see PTIN slide)

Make a chart for state recons and deadlines

Preparing For A Successful Year End

Review AP for Payroll related items – Fringe Benefit entries Company Vehicle etc.

Review next year holiday schedule – bank vs. operations

Review Deposit Calendars
Determine 1099 Needs

Determine need for Third Party Sick Pay or 2 % Health entries

Update 2018 SUI rates and base changes & Minimum Wage Changes

Have separate notice of CA, IL, LA, MD, NJ, TX, VA – for EITC notices

Retention of undeliverable W-2's - 4 years i.e. – 2016 w-2 must be kept until 4/15/2021

On Going Reconciliation

Payroll Reconciliation

- By check date , QTD, YTD
- Federal wages/125/401k 75,000
 /5,000/3,000
- Federal income tax withheld 15,000
- Soc Sec Wages 78,000
 - Soc Sec Tax withheld 4,836
 - Medicare Wages 78,000
 - Medicare Tax withheld 1,131

Remember – NJ does not
recognize 125

PA does not recognize 401k

HSA

Eligible HSA contributions are taxed by these states

Alabama California New Jersey

Eligible HSA contributions are not taxed by these states

Arizona	• Indiana	• Missouri	• South Carolina
Arkansas	• Iowa	• Montana	• Utah
Colorado	• Kansas	• Nebraska	• Virginia
Connecticut	• Kentucky	• New Mexico	• Vermont
Delaware	• Louisiana	• New York	• West Virginia
Georgia	• Maine	• North Carolina	• Wisconsin
Hawaii	• Maryland	• North Dakota	
Idaho	• Massachusetts	• Ohio	
Illinois	• Michigan	• Oklahoma	
	• Minnesota	• Oregon	• Pennsylvania
	• Mississippi	• Rhode Island	

States without state income taxes – eligible HSA contributions are not taxed

- South Dakota
- Tennessee
- Texas
- Washington
- Wyoming

Alaska
Florida
New Hampshire
Nevada

HSA earnings (but not eligible contributions) are taxed by these states

New Hampshire
Tennessee

Quarterly Reconciliation



Complete Worksheet

Prepare W-2 Audit Quarterly

- Review for Negative wages due to voided checks
- Review Box 12 codes in use

Bank / Federal Holiday Schedule

Holiday	2018	2019
New Years	January 1	January 1
Martin L King	January 15	January 21
President's Day	February 19	February 18
Memorial Day	May 28	May 27
Independence	July 4	July 4
Labor Day	September 3	September 2
Columbus Day	October 8	October 14
Veterans	November 12 (Observed)	November 11
Thanksgiving	November 22	November 28
Christmas	December 25	December 25

Tax Day (1040) 2019 – Monday April 15 ?

Electronic State W-2 Due Dates

AL	Jan 31	IL	Jan 31
AK	None	IN	Jan 31
AZ	Jan 31	IA	Jan 31
AR	Jan 31	KS	Last day of Feb
CA	n/a	KY	Jan 31
CO	Jan 31	LA	January 31
CT	Jan 31	ME	Jan 31
<i>DE</i>	<i>Jan 31</i>	MD	Jan 31
<i>DC</i>	<i>Jan 31</i>	MA	Jan 31
FL	None	MI	Jan 31
GA	Jan 31	MN	Jan 31
HI	Last day of Feb	MS	Jan 31
ID	Jan 31	MO	January 31

Electronic State W-2 Due Dates

MT	Jan 31	PR	Jan 31
NE	Jan 31	RI	Jan 31
NV	None	SC	Last day of Jan
NH	None	SD	None
NJ	Last day of Feb	TN	None
NM	Last day of Feb Jan 31 (2020)	TX	None
NY	n/a	UT	Jan 31
NC	Jan 31	VT	Jan 31
ND	Jan 31	VA	Jan 31
OH	Jan 31	WA	None
OK	Jan 31 - new	WV	Jan 31 – new
OR	Jan 31	WI	Jan 31
PA	Jan 31	WY	None

Electronic State 1099 MISC Due Dates

AL	Jan 31	IL	None
AK	None	IN	Jan 31
AZ	Feb 28	IA	Jan 31
AR	Feb 28	KS	Last day of Feb
CA	Mar 31	KY	Jan 31
CO	Jan 31	LA	January 31
CT	March 31	ME	Jan 31
DE	<i>Jan 31</i>	MD	Jan 31
DC	<i>Jan 31</i>	MA	Jan 31
FL	None	MI	Jan 31 - new
GA	Jan 31	MN	Jan 31
HI	None	MS	March 31
ID	Feb 28	MO	Feb 28

Combined federal state (CFS) filing option

Created by IRS to simplify reporting across federal and state jurisdictions. IRS will forward original information return data to states for correctly formatted records

Must apply for the program and submit test files

Forms included

Form 1099-B Form 1099-DIV Form 1099-G Form 1099-INT Form 1099-K Form 1099-MISC Form 1099-OID Form 1099-PATR Form 1099-R Form 5498

Participating states

Tax year 2017

Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Idaho, Indiana, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, Wisconsin

Electronic State 1099 MISC Due Dates

MT	Feb 28	PR	Jan 31
NE	Jan 31	RI	Jan 31
NV	None	SC	Last day of Jan
NH	None	SD	None
NJ	Last day of Feb	TN	None
NM	Last day of Feb	TX	None
NY	n/a	UT	Jan 31
NC	Jan 31	VT	Jan 31
ND	Jan 31	VA	Jan 31
OH	Jan 31	WA	None
OK	Feb 28	WV	Feb 28
OR	Jan 31	WI	Jan 31
PA	Jan 31	WY	None

W-4 State North Carolina

Late Filing Annual Withholding Reconciliation Penalty Increased

The recently enacted state budget bill includes a provision that increases the penalty for late filing of annual withholding reconciliation reports. The penalty is now \$50 per day, up to a maximum of \$1,000. Previously, the penalty was \$500. The filing deadline is January 31. The reconciliation must be filed electronically [L. 2018, S99, Section 38.10].

Paycheck Checkup Urged by IRS

: In a recent news release, the IRS urged taxpayers to perform a "paycheck checkup," an initiative to help taxpayers check if they are having the correct amount of tax withheld after changes enacted by the Tax Cuts and Jobs Act (TCJA). To assist taxpayers with TCJA's implications, the IRS has introduced several new features, including the updated "Withholding Calculator" available at www.irs.gov. Taxpayers can estimate their 2018 income tax by using the Withholding Calculator and will need their completed 2017 tax return and most recent paystubs to use this calculator. Results from the calculator can be used to complete and submit a new Form W-4. The IRS has identified several key groups likely to be affected by the TCJA and urged taxpayers particularly in those groups to review their tax withholding and tax situation. News Release IR 2018-80.

New Developments – Federal - Oh Boy

- H.R. 5437, "A bill to require the Secretary of the Treasury to establish a program for the issuance of identity protection personal identification numbers", as amended (sponsored by Rep. Erik Paulse) – Passed House 4/18/2018

Prop regs: all info returns count towards 250-return e-file threshold

IRS has issued proposed regs that would require all information returns, regardless of type, to be taken into account in determining whether a person meets the 250-return threshold and thus must file the returns electronically. The proposed regs would also require any person required to file information returns electronically to file corrected information returns electronically, regardless of the number of corrected information returns being filed.

Reg. § 301.6011-2 requires persons filing 250 or more information returns (e.g., Forms W-2, 1099-MISC and 1095 series) in a year to file the returns on magnetic media.

Code Sec. 6721 imposes penalties for failing to file correct or timely information returns.

New proposed regs. The proposed regs would (i) remove the non-aggregation rule in Reg. § 301.6011-2(c)(1)(iii), and (ii) add a new paragraph to Reg. § 301.6011-2(b) providing that if a person is required to file a total of 250 or more information returns of any type covered by Reg. § 301.6011-2(b) during the calendar year, the person is required to file those information returns electronically. Corrected information returns would not be taken into account in determining whether the 250-return threshold is met. (Prop Reg § 301.6011-2(b)(4))

Effective date. The proposed regs are proposed to be effective on the date they are published as final regs. However, to give information-return filers sufficient time to comply, they will not apply to information returns required to be filed before Jan. 1, 2019.

Accordingly, Prop Reg § 301.6011-2(b)(4) and Prop Reg § 301.6721-1(a)(2)(ii) are proposed to be effective for information returns required to be filed after Dec. 31, 2018, and Prop Reg § 301.6011-2(b)(5) is proposed to be effective for corrected information returns filed after Dec. 31, 2018. (Prop Reg § 301.6011(g)(2))


The corresponding change to the regs governing failure to file correct or timely information returns is also proposed to be effective for information returns required to be filed after Dec. 31, 2018. (Prop Reg § 301.6721-1(h))

IRS Releases Strategic Plan to Improve Taxpayer Service

: In a recent News Release, the IRS announced the release of a new five-year strategic plan to improve taxpayer service and tax administration. Developed with input from external partners and IRS employees, the plan will help guide the agency's programs and operations to meet the changing needs of taxpayers. The plan focuses on the following six goals: (1) empowering and enabling all taxpayers to meet their tax obligations; (2) encouraging tax compliance through administering and enforcing the Code; (3) collaborating with external partners to proactively improve tax administration; (4) cultivating a well-equipped, diverse, flexible, and engaged workforce; (5) advancing data access, usability, and analytics to inform decision-making and improve operational outcomes; and (6) driving increased agility, efficiency, effectiveness, and security in IRS operations. A copy of the new strategic plan can be accessed at www.irs.gov/about-irs/irs-strategic-plan . News Release IR 2018-123 .

New I-9 <https://www.uscis.gov/i-9>

Instructions Start Over Print



Employment Eligibility Verification
 Department of Homeland Security
 U.S. Citizenship and Immigration Services

USCIS
Form I-9
OMB No. 1515-0047
Expires 08/31/2019

▶ **START HERE:** Read instructions carefully; before completing this form. The instructions must be available, either in paper or electronically, during completion of this form. Employers are liable for errors in the completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers CANNOT specify which document(s) an employee may present to establish employment authorization and identity. The refusal to hire or continue to employ an individual because the documentation presented has a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Attestation *(Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.)*

Last Name (Family Name) <input type="text"/>		First Name (Given Name) <input type="text"/>	Middle Initial <input type="text"/>	Other Last Names Used (if any) <input type="text"/>
Address (Street Number and Name) <input type="text"/>		Apt. Number <input type="text"/>	City or Town <input type="text"/>	State <input type="text"/> ZIP Code <input type="text"/>
Date of Birth (mm/dd/yyyy) <input type="text"/>	U.S. Social Security Number <input type="text"/>	Employee's E-mail Address <input type="text"/>	Employee's Telephone Number <input type="text"/>	

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following boxes):

<input type="checkbox"/> 1. A citizen of the United States <input type="text"/>
<input type="checkbox"/> 2. A non-citizen national of the United States (See instructions) <input type="text"/>
<input type="checkbox"/> 3. An alien lawfully permanent resident (Alien Registration Number/USCIS Number) <input type="text"/>
<input type="checkbox"/> 4. An alien authorized to work <input type="text"/> (expiration date, if applicable, mm/dd/yyyy): <input type="text"/> Some aliens may write "N/A" in the expiration date field. (See instructions)

Aliens authorized to work must provide only one of the following document numbers to complete Form I-9:
 An Alien Registration Number/USCIS Number OR Form I-94 Admission Number OR Foreign Passport Number.

1. Alien Registration Number/USCIS Number <input type="text"/>	<small>OR Code - Section 1</small> <small>Do Not Write in This Space</small>
OR 2. Form I-94 Admission Number <input type="text"/>	
OR 3. Foreign Passport Number <input type="text"/>	
Country of Issuance: <input type="text"/>	

Signature of Employee <input type="text"/>	Today's Date (mm/dd/yyyy) <input type="text"/>
--	--

Preparer and/or Translator Certification (check one): I did not use a preparer or translator. A preparer and/or translator assisted the employee in completing Section 1. *(Fields below must be completed and signed when preparers and/or translators assist an employee in completing Section 1.)*

I attest, under penalty of perjury, that I have assisted in the completion of Section 1 of this form and that to the best of my knowledge the information is true and correct.

Signature of Preparer or Translator <input type="text"/>	Today's Date (mm/dd/yyyy) <input type="text"/>
Last Name (Family Name) <input type="text"/>	First Name (Given Name) <input type="text"/>
Address (Street Number and Name) <input type="text"/>	City or Town <input type="text"/> State <input type="text"/> ZIP Code <input type="text"/>

Click to Finish

STOP *Employer Completes Next Page* STOP



Instructions

Start Over

Print

Employment Eligibility Verification
Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-9
OMB No. 1413-0047
Expires 08/31/2019

Section 2. Employer or Authorized Representative Review and Verification

(Employer or their authorized representative must complete and sign Section 2 within 3 business days of the employee's first day of employment. You must physically examine one document from List A OR a combination of one document from List B and one document from List C as listed on the "List of Acceptable Documents.")

Employee Info from Section 1: Last Name (Family Name), First Name (Given Name), M.I., Citizenship/Immigration Status

List A Identity and Employment Authorization OR List B Identity AND List C Employment Authorization

Document Title, Issuing Authority, Document Number, Expiration Date (mm/dd/yyyy) for List A, B, and C documents. Includes an 'Additional Information' box and a note: 'OR Code - Section 2.2.9 Do Not Write In This Space'.

Certification: I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.

The employee's first day of employment (mm/dd/yyyy): (See instructions for exemptions)

Signature of Employer or Authorized Representative, Today's Date, Title of Employer or Authorized Representative, Last Name of Employer or Authorized Representative, First Name of Employer or Authorized Representative, Employer's Business or Organization Name, Employer's Business or Organization Address (Street Number and Name), City or Town, State, ZIP Code

Click to Finish



Instructions

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Employment Eligibility Verification
Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-9
OMB No. 1413-0047
Expires 08/31/2019

Employee Name from Section 1: Last Name (Family Name), First Name (Given Name), Middle Initial

Section 3. Reverification and Rehires (To be completed and signed by employer or authorized representative.)

A. New Name (if applicable), B. Date of Rehire (if applicable), Last Name (Family Name), First Name (Given Name), Middle Initial, Date (mm/dd/yyyy)

C. If the employee's previous grant of employment authorization has expired, provide the information for the document or receipt that establishes continuing employment authorization in the space provided below.

Document Title, Document Number, Expiration Date (mm/dd/yyyy)

I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative, Today's Date (mm/dd/yyyy), Name of Employer or Authorized Representative

Click to Finish

LISTS OF ACCEPTABLE DOCUMENTS

All documents must be UNEXPIRED

Employees may present one selection from List A
or a combination of one selection from List B and one selection from List C.

LIST A Documents that Establish Both Identity and Employment Authorization	OR	LIST B Documents that Establish Identity	AND	LIST C Documents that Establish Employment Authorization
<ol style="list-style-type: none"> 1. U.S. Passport or U.S. Passport Card 2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551) 3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa 4. Employment Authorization Document that contains a photograph (Form I-766) 5. For a nonimmigrant alien authorized to work for a specific employer because of his or her status: <ol style="list-style-type: none"> a. Foreign passport; and b. Form I-94 or Form I-94A that has the following: <ol style="list-style-type: none"> (1) The same name as the passport; and (2) An endorsement of the alien's nonimmigrant status as long as that period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form. 6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI 	OR	<ol style="list-style-type: none"> 1. Driver's license or ID card issued by a State or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address 2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address 3. School ID card with a photograph 4. Voter's registration card 5. U.S. Military card or draft record 6. Military dependent's ID card 7. U.S. Coast Guard Merchant Mariner Card 8. Native American tribal document 9. Driver's license issued by a Canadian government authority <li style="text-align: center;">For persons under age 18 who are unable to present a document listed above: 10. School record or report card 11. Clinic, doctor, or hospital record 12. Day-care or nursery school record 	AND	<ol style="list-style-type: none"> 1. A Social Security Account Number card, unless the card includes one of the following restrictions: <ol style="list-style-type: none"> (1) NOT VALID FOR EMPLOYMENT (2) VALID FOR WORK ONLY WITH INS AUTHORIZATION (3) VALID FOR WORK ONLY WITH DHS AUTHORIZATION 2. Certification of Birth Abroad issued by the Department of State (Form FS-546) 3. Certification of Report of Birth issued by the Department of State (Form DS-1350) 4. Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal 5. Native American tribal document 6. U.S. Citizen ID Card (Form I-197) 7. Identification Card for Use of Resident Citizen in the United States (Form I-179) 8. Employment authorization document issued by the Department of Homeland Security

Examples of many of these documents appear in Part 8 of the Handbook for Employers (M-274).

Refer to the instructions for more information about acceptable receipts.

New Hire Reporting Requirements

AL	7 Day	IL	20 Days	MT	20 Days	PR	20 Days
AK	20 Days	IN	20 Days	NE	20 Days	RI	14 Days
AZ	20 Days	IA	15 Days	NV	20 Days	SC	20 Days
AR	20 Days	KS	20 Days	NH	20 Days	SD	20 Days
CA	20 Days	KY	20 Days	NJ	20 Days	TN	20 Days
CO	20 Days	LA	20 Days	NM	20 Days	TX	20 Days
CT	20 Days	ME	7 Days	NY	20 Days	UT	20 Days
DE	20 Days	MD	20 Days	NC	20 Days	VT	10 Days
DC	20 Days	MA	14 Days	ND	20 Days	VA	20 Days
FL	20 Days	MI	20 Days	OH	20 Days	WA	20 Days
GA	10 Days	MN	20 Days	OK	20 Days	WV	14 Days
HI	20 Days	MS	15 Days	OR	20 Days	WI	20 Days
ID	20 Days	MO	20 Days	PA	20 Days	WY	20 Days

Multi State New Hire Reporting

Multi-State New Hire Reporting Registry Now Part of Employer Information Updates Application on Child Support Portal

Multi-state employers that hire and employ people in two or more states, and who will transmit the required reports magnetically or electronically, can select one of the following new hire reporting options: (1) report newly hired and rehired employees to the states where they work, following the New Hire Reporting program regulations, requirements, and timeframes for each state; or (2) **select one state where employees are working and report all new hires to that state's designated New Hire reporting office.**

Option (2) is not available to multi-state payroll service companies reporting on behalf of their customers unless those customers are multi-state employers and have registered for this option.

States That Require 1099 New Hire Reporting

State	When to Report
Alabama	7 Days
California	20 Days
Connecticut	20 Days
Guam	20 Days
Iowa	15 Days
Maine	7 Days
Massachusetts	14 Days
Michigan	20 Days
Minnesota	20 Days
Nebraska	20 Days
New Hampshire	20 Days
New Jersey	20 Days
Ohio	20 Days

States That Require E Verify for Private Employers

Alabama

Arizona

Colorado

Florida- subcontractors

Georgia - ≥ 10 employees

Louisiana

Minnesota – any er that has state contracts

Mississippi – all er's ≥ 30 ee's

Missouri

Nebraska – public & private that qualify for state tax incentives

North Carolina - ≥ 25

PA –public work emprs 1st violation – warning: 2nd – barred 30 days – 3+ 180 day barred

Rhode Island – public employers - repealed

South Carolina -if fed required within 3 days

Tennessee ≥ 6

States That Have Withholding Forms

AL	A-4	IL	IL-W4	MT	MW-4 (new 2019) (cannot be signed electronically)	PR	-499r-4.1
AK	NO WH	IN	WH-4	NE	FED W-4	RI	RI – W4
AZ	A-4	IA	IA-W-4	NV	N/A	SC	FED W-4
AR	AR4EC	KS	K-4 (FED <2008)	NJ	NJ W-4	TN	N/A
CA	DE-4*	KY	K-4	NM	FED W-4	TX	N/A
CO	FED W-4	LA	L-4	NY	IT-2104	UT	FED W-4
CT	CT-W4	ME	W-4ME	NC	NC-4	VT	W-4VT
DE	FED W-4	MD	MW=507	ND	FED W-4	VA	VA-4
DC	D-4	MA	M-4	OH	IT-4	WA	N/A
FL	NO. W/H	MI	MI W-4	OK	FED W-4	WV	WV/IT-104
GA	G-4 (new 5/18)	MN	W-4MN	OR	OR-WW new 2019	WI	WT-4
HI	HW-4	MS	89-350	PA	NONE	WY	N/A
ID	FED W-4	MO	MO W-4	<p>Red accepts Fed W-4 Green accepts Fed W-4 or State *CA 10 or more exemptions must be faxed or mailed to state</p>			

Montana—State W-4 Form - 2019

Montana has its own W-4 form beginning in 2019 (Form MW-4, Montana Employee's Withholding and Exemption Certificate). The Montana Department of Revenue (DOR) is advising new employees not to use federal Form W-4, due to changes in federal tax laws. If current employees are satisfied with their Montana withholding, they do not need to complete Form MW-4 unless they are claiming an exemption from withholding [DOR E-Mail to Montana Employers, 12/12/18].

Employees That Do Not Complete W-4 for State Withholding

The following states follow the federal rule to withhold as if the employee was single with zero withholding allowances: Alabama, California, Colorado, Delaware, Hawaii, Idaho, Kansas, Maine, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, and Utah.

The following states, and the District of Columbia and Puerto Rico, say to withhold as if zero allowances were claimed: Illinois, Indiana, Iowa, Kentucky, Michigan, Mississippi, Ohio, South Carolina, and Virginia.

Arizona requires withholding at 2.7% of gross taxable wages.

Arkansas advises employers to either withhold as if zero exemptions or dependents were claimed, or to use federal Form W-4.

Connecticut says to withhold at the highest marginal tax rate (6.99%) without allowance for exemption.

Georgia says to withhold using a single filing status with zero allowances claimed, or to use federal Form W-4.

Louisiana advises employers to withhold as if zero exemptions or credits for dependents were claimed.

Maryland says to withhold as if one exemption was claimed.

Massachusetts, New Jersey, New York, West Virginia, and Wisconsin advise employers to withhold based on federal Form W-4.

Vermont advises employers to withhold based on federal Form W-4, and if the federal Form W-4 indicates an additional amount of federal withholding for each pay period, the Vermont withholding should be increased by 24% of the extra federal withholding.

States With Special Withholding Rates For Supplemental Pay

Alabama	5.0%	Nebraska	5.0%
Arkansas	6.9%	New Mexico	4.9%
CA Regular	6.6%	New York NYC (4.25%)	9.62%
CA Stock Options & Bonus	10.23%	North Carolina North Dakota	5.85% 1.84%
Colorado	4.63%	Ohio	3.5%
GA annual wage <8000	2.0%	Oklahoma Oregon	5.00% 9.0%
GA \$8,000 to \$10,000	3.0%	Pennsylvania	3.07%
GA \$10,000 to \$12,000	4.0%	Rhode Island	5.99%
GA \$12,000 to \$15,000	5.0%	South Carolina	7.0%
GA Over \$15,000	6.0% 5.75% 2019	Vermont new 2018	5.28% (8.88% over \$1M)
Idaho	7.4%	Virginia	5.75%
Illinois	3.75%	WV annual wage <\$10,000	3.0%
Indiana	3.3%	WV \$10,000-\$25,000	4.0%
Iowa	6.0%	WV \$25,000 - \$40,000	4.5%
Kansas	4.5%	WV \$40,000 - \$60,000	6.0%
Maine	5.0%	WV over \$60,000	6.5%
Michigan	4.25%	WI annual wage < \$10,910	4.0%
Minnesota was to go to 4.85% repealed	6.25%	WI \$10,910 - \$21,820	5.84%
Missouri –	5.9% 5.4% 2019	WI \$21,820 - \$240,190	6.27%
Montana	6.0%	WI \$240,190+	7.65%

Exempt W-4's

Form W-4

Exempt W-4's expire on February 15 of the following year.

If no new W-4 is provided by Employee

- S-0 or
- Last W-4 with exemptions

Electronic State W-4 Exempt Renewal

AL	Perpetual	IL	February 15	MT		PR	
AK		IN	N/A	NE	February 15	RI	Perpetual
AZ	January 1	IA		NV		SC	
AR	Perpetual	KS	January 1	NH		SD	
CA	February 15	KY	April 30	NJ	Feb 15 (fed W-4)	TN	
CO		LA	January 1	NM	Feb 15 (fed W-4)	TX	
CT	February 15	ME	February 15	NY	April 30	UT	
DE		MD	February 15	NC		VT	January 1
DC	Perpetual	MA	No Date Listed	ND		VA	January 1
FL		MI	January 1	OH	N/A	WA	
GA	February 15	MN	February 15	OK		WV	N/A
HI	Perpetual	MS	April 30	OR		WI	April 30
ID		MO	December 31	PA	N/A	WY	

What Goes On A Pay Stub

Federal - The Fair Labor Standards Act (FLSA) has no **current** provisions on pay stubs, but it does require employers to keep accurate records of hours worked and wages paid to employees.

AK - "An employer must provide employees on each pay day with a pay stub that includes certain items including rate of pay, gross and net wages, the dates of the pay period, federal tax deductions, employee state unemployment compensation contributions, board and lodging costs, advances, and other authorized deductions [Alaska Admin. Code 8 § 15.160]. "

AL - Alabama does not have any laws concerning pay stub requirements.

AR - Arkansas does not have any laws requiring employers to provide employees with pay stubs.

AZ - "An employer must provide employees whose wages are directly deposited with a statement of earnings and withholding for each deposit [Ariz. Rev. Stat. Ann. § 23-351]. "

What Goes On A Pay Stub

CA - "An employer must provide employees with a pay stub that includes nine specified items, including gross wages earned, net wages earned, total hours worked by the employee, all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate by the employee [Cal. Lab. Cd. § 226]. "California — Wage Payment.

Effective Jan. 1, 2017, an employee's pay stub (written itemized statement) does not have to include total hours worked if the employee is exempt from overtime, and the employee's compensation is based solely on salary (i.e., not determined by the number of hours worked) [L. 2015, AB2535].

CO - "An employer must provide a pay stub at least monthly that includes gross wages earned, withholdings and deductions, net wages, and the dates in the pay period [Colo. Rev. Stat. § 8-4-103]. "

CT - "Employers must furnish each employee at the time of payment with a record of hours worked, gross earnings with separate entries for straight time and overtime, itemized deductions, and net earnings. However, employees who are exempt under state and federal minimum wage laws do not need to be given a record of hours worked and separate straight-time and overtime earnings [Conn. Gen. Stat. § 31-13a]. "

What Goes On A Pay Stub

DC - "Employers must give each employee at the time of payment an itemized statement showing the date of the wage payment, gross wages, deductions and additions, net wages, and hours worked [D.C. Mun. Regs. 7 § 911.2] “

DE - "Employers with more than three employees must provide a pay stub to employees that includes certain items, including the wages due, the pay period for which the wages are due, each deduction, and the total number of hours worked by hourly employees [Del. Code Ann. 19 § 1108]. “

FL - "Florida does not have any laws on pay stubs, except farm labor contractors employing 10 or more workers must furnish each employee, semimonthly or at the time of the payment of the wages, an itemized statement showing each deduction [Fla. Stat. § 450.33]. “

GA - "Georgia does not have any laws on pay stubs, except labor pools or work-site employers must provide employees with a pay stub or register indicating the number of hours worked, the pay rate, and deductions from pay [Ga. Code Ann. § 34-10-2]. “

HI - "Each payday, employers must furnish each employee with a pay stub, in writing (or electronically if authorized by the employee), showing certain information, including total hours worked, overtime hours, total gross and net compensation, and deductions [Haw. Rev. Stat. § 388-7]. “

What Goes On A Pay Stub

IA - "An employer must provide a statement with each paycheck showing hours worked, wages earned, and deductions made [Iowa Code § 91A.6]. "

ID - "An employer must provide employees with a statement of the deductions made from their paycheck for each pay period in which deductions were made [Idaho Code § 45-609]. "

IL - "Each pay period, an employer must furnish employees with an itemized statement of deductions made from their wages [ILCS Chapter 820 § 115/10] "

IN - "Each pay period, an employer subject to Indiana's Minimum Wage Law must provide employees with a statement of the hours worked, wages paid, and a listing of deductions [Ind. Code § 22-2-2-8]. "

KS - "Upon request by an employee, employers must furnish an itemized statement of deductions for each pay period such deductions are made [Kan. Stat. Ann. § 44-320]. "

KY - "Employers who employ ten or more employees must provide a statement showing the amount and general purpose of each deduction [Ky. Rev. Stat. Ann. § 337.070]. "

What Goes On A Pay Stub

LA - Louisiana does not have any laws concerning pay stub requirements.

MA - "An employer must provide employees with a statement that shows all deductions that were taken from wages [Mass. Gen. L. Chapter 149§ 150A]. "

MD - "An employer must provide a statement of the gross earnings and deductions [Md. Code Ann. Labor & Employ. § 3-504]. "

ME - "Employers must provide employees each payday with a statement showing the date of the pay period, the hours, total earnings and deductions [Me. Rev. Stat. Ann. 26 § 665]. "

MI - "An employer must provide a statement of the hours worked, the gross wages paid, the pay period for which the payment is being made, and an itemization of deductions [Mich. Comp. Laws Ann. § 408.479]. "

MN - Minnesota does not have any laws concerning pay stub requirements.

What Goes On A Pay Stub

MO - "Corporations and railroads must provide employees with a statement showing the total amount of deductions for the period at least once a month [Mo. Rev. Stat. § 290.080]. "

MS - Mississippi does not have any laws concerning pay stub requirements.

MT - "An employer must provide employees with an itemized statement listing deductions [Mont. Code Ann. § 39-3-101]. "

NC - "Each pay period, an employer must provide an itemized statement of deductions made [N.C. Gen. Stat. § 95-25.13]. "

ND - Each time an employee is paid, an employer must provide a check stub or pay voucher listing the rate of pay, hours worked, and all deductions from earnings [N.D. Dept. of Labor Wage and Hour FAQs, Check Stubs].

NE - Nebraska does not have any laws concerning pay stub requirements.

What Goes On A Pay Stub

NH - "An employer must provide an itemized accounting of deductions on a monthly basis [N.H. Rev. Stat. Ann. § 275:48]. "

NJ - New Jersey does not have any laws on pay stubs.

NM - "An employer must provide a written receipt that shows gross pay, the number of hours worked, the total wages and benefits earned, and an itemized listing of all deductions [NMSA 1978 § 50-4-2]. "

NV - "Employers must furnish employees with an itemized list showing the deductions made from wages [Nev. Admin. Code § 608.110; Nev. Rev. Stat. § 608.110; Nev. Rev. Stat. § 608.115]. "

NY - "An employer must furnish each employee with a statement with every payment of wages, listing gross wages, deductions, and net wages, and upon the request of an employee must furnish an explanation of how the wages were computed [N.Y. Lab. Law § 195]. "

What Goes On A Pay Stub

OH - Ohio does not have any laws concerning pay stub requirements.

OK - "An employer must include a brief itemized statement of deductions with each paycheck [Okla. Stat. 40 § 165.2]. "

OR - New legislation, effective Jan. 1, 2017, revises what must be included on pay statements. In addition to the information noted in Payroll Guide ¶ 17,118 , pay statements will also have to include the following additional information: (1) the employer's business registry number or business identification number; (2) whether the employee is paid by the hour, shift, day, or week, or on a salary, piece, or commission basis; (3) the allowances if any that are claimed as part of the minimum wage; and (4) overtime rates (if applicable), number of regular hours and overtime hours worked, and overtime pay. Employers may furnish pay statements electronically if the electronic statement contains the information required by law, the employee agrees to receive it electronically, and the employee is able to print or store the statement at the time of receipt [L. 2016, S1587]."

PA - "An employer must provide a statement listing wages, hours worked, rates paid, gross wages, allowances claimed as part of the minimum wage, deductions and net wages [Pa. Code 34§ 231.36]. "

What Goes On A Pay Stub

RI - "Employers must provide a paystub that shows the hours worked, a record of all deductions, and for employers engaged in commercial construction, a record of the employee's hourly regular rate of pay [R.I. Gen. Laws § 28-14-2.1]. "

SC - "An employer must provide an itemized statement showing gross pay and deductions for each pay period [S.C. Code Ann. § 41-10-30]. "

SD - South Dakota does not have any laws concerning pay stub requirements.

TN - Tennessee does not have any laws concerning pay stub requirements.

TX - "An employer must give each employee a written earnings statement at the end of each pay period that includes certain information such as the rate of pay, the total pay earned, deductions, net pay, and total hours worked by the employee. The statement must be signed by the employer [Tex. Lab. Code Ann. § 62.003]. "

What Goes On A Pay Stub

UT - "Each payday, an employer must provide a statement showing the total amount of each deduction [Utah Code Ann. § 34-28-3]. "

VA - "An employer, upon request, must provide the employee with a written statement of gross wages earned during the pay period and the amount and purpose of any deductions [Va. Code Ann. § 40.1-29]. "

VT - "Each pay period employees must receive a written statement that includes gross pay, hours worked, hourly rate of pay, and all itemized deductions [Code of Vt. Rules § 24 090 003]. "

WA - "An employer must provide an itemized statement showing the pay basis (i.e., hours or days worked), rate or rates of pay, gross wages and all deductions for the pay period [Wash.Admin. Code § 296-126-040]. "

What Goes On A Pay Stub

WI - "An employer must state clearly on an employee's paycheck, pay envelope, or paper accompanying the wage payment, the number of hours worked, the rate of pay, and the amount of and reason for each deduction [Wis. Stat. § 103.457]. "

WV - "Effective May 1, 2016, an employer must give employees a written pay stub for each pay period that they work, which includes: The employee's regular rate of pay; Overtime rate of pay, if any; The units of time or rate used to calculate their wages; A statement showing deductions made from their gross pay. The pay stub may be provided electronically, by e-mail, or by giving employees access to a database containing their pay stub information, if an employee consents to direct deposit of his or her wages [Code of State Rules §42-8-9.5].

WY - "An employer must, at the time of each payment of wages, furnish each employee with a written itemized statement showing all deductions made from wages [Wyo. Stat. § 27-4-101]. "

Electronic Pay Stub Requirements

Nine states (9) Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Ohio, South Dakota, and Tennessee have no pay stub requirements, so companies may provide wage statements in either written or electronic form **without** employee consent in those states.

Twenty-three states (24) or jurisdictions - Alaska, Arizona, Colorado, District of Columbia, Indiana, Idaho, Iowa, Kansas, Kentucky, Massachusetts, Maine, Michigan, New Jersey, Nebraska, New Hampshire, New York, North Carolina, North Dakota, Oklahoma, Rhode Island (new 6/28/18), Washington, Wisconsin, West Virginia, and Wyoming either expressly permit electronic wage statements or the respective state departments of labor have stated that electronic wage statements are permissible as long as employees have the ability to print a copy of their wage statements.

Electronic Pay Stub Requirements

In eleven states (11), Illinois, Maryland, Virginia, Missouri, Montana, Nevada, New Mexico, Pennsylvania, Rhode Island, South Carolina, and Utah, employers are required to give employees a statement of their wages, but the laws and administrative guidance do not specify the form, written or electronic, of the pay stub.

In Delaware, California, and Minnesota, employers may use electronic wage statements, but employees can opt out and companies must honor their requests for paper paystubs. In Vermont, Connecticut, Oregon, and Hawaii, companies cannot mandate electronic wage statements, but employees may opt in to receive electronic statements.

Can Employers Mandate Direct Deposit?

States that allow employers to mandate direct deposit

AR^{***}, AZ ^{*}, IN, KS, KY, LA, ME, MA, MI^{*}, MN, MO, NC, ND, OH, OK, OR^{***}, SC, TN, TX, UT, WA, WI, UT^{**} ^{*} ee must specify a bank or paycard UT^{**} if employer pays \$250k or more in state payroll tax. ^{***} – employee can opt out in writing

State without a specific provision AL, MS, UNCLEAR – ,NE

States require EE agreement

AK, CA, CT, CO, DC, DE, FL, GA, HI, ID, IL, IA, MD, MT, NH, NM, NJ, NV, NY, ND, PA, RI, VA, VT, WV, WY

State Regulation on Pay

States without Provision - FL

MINIMUM PAY FREQUENCY REQUIREMENTS

Weekly - CT, VT (allows biweekly/monthly with prior written notice)

Bi Weekly – AL 50+, MS 50+, NH (7/11/17)**, WV, RI

Semi Monthly - AZ, AR, CA *, DC *, GA*, HI*, IL, KY*, LA***, ME, MI*, MO*, NV*, NJ*, NM*(16 DAYS), OH, OK*, PR(EVERY 15 DAYS), TX*, UT*, WV (no more than 19 days) WY**

* EXEMPT LESS FREQUENTLY

** employee & employer may agree to a different cycle but not as a condition of employment

*** LA new 8/1/2014

MONTHLY - CO, DE, ID, KS, MN(EVERY 31 DAYS), ND*, OR (EVERY 35 DAYS), SD, TN, WA, WI*

*certain classes of ee's different cycles

** - written request to less frequent but at least monthly

MULTIPLE FREQUENCIES - AL, AK, IN, MD, MA (weekly or bi weekly), MS, MT, NY (WEEKLY MANUAL WORKERS), NC, PA, SC

Hold Back Pay

How many days wages must be paid after the end of the pay period is also a state requirement

States Range from no provision

AK, AR, FL, GA, MD, NE, NC,
ND, OR, PR, SC, SD, VA

SHORTEST – AZ, 5 days
MA, TN (mn ee) VT, 6 days
NH – changed to 14 days July
11, 2017

Paying Terminated Employees

3 considerations

- Voluntary (I quit)
- Involuntary (terminated, fired)
- Vacation Pay

States that Require 0 – 1 Day Termination Pay

State	Involuntary	Voluntary
California	Immediate	72 hours w notice
Colorado	Immediate	Next payday
Connecticut	Next Bus Day	Next payday
DC	Next Bus Day	Earlier next payday or 7 days
Hawaii	Immediate*	Next payday
Illinois	Immediate	Immediate if possible or next payday
Massachusetts	Immediate	Next payday
Minnesota	Immediate	Next payday*
Missouri	Immediate	No provision
Montana	Immediate	Next payday or 15 days
Nevada	Immediate	Next payday or 7 days
Oregon	Next Bus day	Immediate with 48 hour notice 5 days without notice
Utah	Within 24 hours	Next payday

Taxing Authority	Payment Date for Involuntary Termination	Vacation	Payment Date for Voluntary Termination
Federal	No provision but employment taxes must be deducted if wages are paid after the termination of an employee.	No provision but employment taxes must be deducted if vacation pay is paid after the termination of an employee.	No provision but employment taxes must be deducted if wages are paid after the termination of an employee.
AK	Within 3 working days; striking or temporarily laid off employees must be paid by the next regular payday	According to the Alaska Department of Labor and Workforce Development, a terminated employee is only entitled to unused vacation pay if the employer has a policy to pay such benefits, or has made a promise or has a contract with the employee to pay vacation pay.	By next regular payday that is at least 3 days after employee gave notice.
AL	No provision.	No provision.	No provision.
AR	Within 7 days	Employers are not required to provide employees with vacation benefits. If an employer chooses to provide such benefits, it must comply with the terms of its established policy or employment contract.	No provision.
AZ	Earlier of the next regular payday or within 7 working days; public school employees must be paid within 10 calendar days of termination.	Final wages include vacation pay when the employer has a policy or a practice of making such payments.	Next regular payday
CA	Immediately (with exceptions in certain industries).	The employer must pay the employee at his or her final rate of pay for all of his or her earned and accrued and unused vacation days unless a collective bargaining agreement provides for another form of compensation.	Within 72 hours of notice or resignation

Confidential and Proprietary

CO	Immediately, unless at the time the employee is fired the employer's payroll department is not operational	An employer is required to pay accrued vacation to an employee upon separation from employment if its policy or contract requires it.	Next regular payday
CT	Next business day (employees laid off must be paid by next regular payday)	An employer is required to pay accrued vacation to an employee upon separation from employment if its policy or contract requires it.	Next regular payday
DC	Next working day	No provision.	Earlier of next regular payday or within 7 days
DE	Next regular payday.	An employer is required to pay accrued vacation pay to an employee upon separation from employment if its policy or contract requires it.	Next regular payday.
FL	No provision.	No provision.	No provision.
GA	No provision.	No provision.	No provision.
HI	Immediately, or if unable to do so, next working day	Employers must pay employee for accrued vacation pay based on the employer's policy.	Next regular payday
IA	Next regular payday	An Iowa employer can establish any vacation policy it wants. Vacation pay must only be paid upon termination if the employer has a contract, policy, or procedure to pay vacation to departing employees.	Next regular payday
ID	Earlier of next regular payday, or 10 working days not including weekends and holidays	An employer is required to pay accrued vacation to an employee upon separation from employment if its policy or contract requires it.	Earlier of next regular payday, or 10 working days not including weekends and holidays; different rules apply if employee gives employer written request for earlier payment

Confidential and Proprietary

IL	At separation if possible, and never later than the next regular payday	Yes	At separation if possible, and never later than the next regular payday
IN	Next regular payday except for railroad employees	No provision.	Next regular payday
KS	Next regular payday	Vacation pay must only be paid on termination if the employer has a policy or practice that employees will be paid for unused vacation time.	Next regular payday
KY	Later of the next regular payday or within 14 days after termination	Any unused vested vacation pay must be paid to an employee upon termination, if payment of vested vacation pay is agreed to by the employer and the employee, or provided to employees as part of an established policy.	Later of the next regular payday or within 14 days after termination
LA	Earlier of next regular payday or within 15 days after termination	Employers must pay terminated employees for vacation time if in accordance with the stated policy of the company they are deemed eligible for vacation pay, have accrued the right to take vacation time with pay, and have not taken or been compensated for the vacation time as of the date of the discharge or resignation.	Earlier of next regular payday or within 15 days after resignation
MA	Immediately, except in Boston	Upon separation from employment, employees must be compensated by their employers for vacation time earned under an oral or written agreement.	Next regular payday
MD	Next regular payday (the date the employee would have been paid if employment had not been terminated)	An employer is not required to pay accrued leave to a terminated employee if: (1) the employer has a written policy that limits the compensation of accrued	Next regular payday (the date the employee would have been paid if employment had not been terminated)

ME	Earlier of next regular payday or 2 weeks after demand (certain exceptions for employers in manufacturing or mechanical businesses)	An employer does not have to pay any vacation pay owed on termination of employment unless it is required to provide employees with paid vacation under company policy.	Earlier of next regular payday or 2 weeks after demand
MI	As soon as the amount can with due diligence be determined	Vacation pay must be paid upon separation according to the terms of a written contract or policy.	As soon as the amount can with due diligence be determined
MN	Workers who are fired are entitled to receive "earned and unpaid" wages and commissions on demand	An employer is required to pay accrued vacation to an employee on separation from employment if its policy or contract requires it. However, an employer is not obligated to grant accrued but unused vacation time to workers upon separation from employment if they fail to comply with certain terms in the employment contract.	Next regular payday unless next payday is less than five days from employee's last day, then the second regular payday, but not more than 20 days
MO	Immediately	No provision.	No provision
MS	No provision	No provision	No provision
MT	Immediately, unless the employer has a written policy that extends the time for payment of final wages to the earlier of the employee's next regular payday or within 15 days of separation	If vacation pay is provided by an employer, it is considered wages after being earned in accordance with the employer's policy and is due and payable in the same manner as regular wages. So called "use it or lose it" policies are not permitted in Montana. However, caps, or maximum accumulation amounts can be instituted which effectively prevent additional vacation from accruing until existing time is utilized.	Earlier of next regular payday or 15 days from the date of separation
NC	Next regular payday; wages based on bonuses, commissions, or other forms	Company policy or practice determines whether an employer must provide	Next regular payday

ND	Next regular payday; railroad workers at time of discharge or on demand	Paid time off includes vacation pay. No employment contract or policy may provide for forfeiture of earned paid time off upon separation. An employment contract or policy may require an employee to take vacation by a certain date or lose the vacation (use it or lose it), provided that the employee is given a reasonable opportunity to take the vacation. The employer must demonstrate that the employee had notice of such contract or policy provision.	Next regular payday
NE	Earlier of next regular payday or within 2 weeks of termination (different rules apply to employees of a political subdivision)	Accrued vacation time, which is part of an employment agreement, is due and payable as wages upon termination of employment.	Earlier of next regular payday or within 2 weeks of termination
NH	Within 72 hours	Unused vacation pay is included in final wages if such benefits are included in the employer's employment policy or contract.	Next regular payday; 72 hours if notice given
NJ	Next regular payday (with certain exceptions)	Vacation pay must be paid if there is an employment agreement, company policy, or union contract requiring such payment.	Next regular payday
NM	Within 5 days; 10 days if wages are paid by piece-work or commission	No provision, but the New Mexico Department of Workforce Solutions will enforce an employer's policy manual on vacation pay.	Next regular payday
NV	Immediately	No provision.	Earlier of next regular payday or 7 days
NY	Next regular payday	Whether an employer must pay for unused time after employees resign or are discharged depends upon the	Next regular payday

OH	Wages earned in the first half of the month must be paid by the first day of the following month. Wages earned in the last half of the month must be paid by the 15th of the following month	In the absence of a contest, court order, or dispute, an employer who is party to an agreement to pay or provide vacation time to an employee becomes a trustee of any funds required to be paid by such agreement.	Wages earned in the first half of the month must be paid by the first day of the following month. Wages earned in the last half of the month must be paid by the 15th of the following month
OK	Next regular payday	An employer is required to pay accrued vacation pay to an employee upon separation from employment if agreed to by the employer and employee or if provided by the employer as part of its established policy.	Next regular payday
OR	Next business day (with certain exceptions); seasonal farm workers are to be paid immediately, eff. 1-1-14, with some exceptions.	An employer is required to pay accrued vacation to an employee upon separation from employment if its policy or contract requires it.	Immediately if given 48 hours' notice, otherwise, the earlier of the next regular payday or 5 days, excluding weekends or holidays
PA	Next regular payday	No provision.	Next regular payday
RI	Next regular payday; within 24 hours if employer merges, liquidates, disposes of, or relocates the business to another state	If an employee separates from employment after completing at least one year of service, any vacation pay accrued or awarded by a collective bargaining agreement, written or verbal company policy, or any other written or verbal agreement between employer and employee will become wages and is payable in full or on a prorated basis with all other wages that are due on the next regular payday for the employee.	Next regular payday
SC	Within 48 hours or by next regular payday, not to exceed 30 business days	An employer is required to pay accrued vacation to an employee upon separation from employment if its policy or contract requires it.	Within 48 hours or by next regular payday, not to exceed 30 business days

SD	Next regular payday	No provision	Next regular payday
TN	Later of next regular payday or 21 days after discharge	Final wages do not have to include any vacation or other compensatory time unless the employer's policy or its labor agreement specifically requires compensation of unused vacation pay or other compensatory time to an employee upon his or her termination of employment.	Later of next regular payday or 21 days after resignation
TX	Within 6 days	Vacation pay is earned wages and must be paid in final wages if such pay is owed to the employee under a written agreement or policy of the employer.	Next regular payday
UT	Within 24 hours	An employer must pay an employee for accrued vacation upon separation from employment if its policy or contract provides for such payment.	Next regular payday
VA	Next regular payday	No provision	Next regular payday
VT	Within 72 hours	Final wages must include unused vacation pay if the employer provided the employee with a written statement agreeing to pay for earned, but unused vacation time.	Next regular payday
WA	At end of pay period (with certain exceptions)	No provision.	At end of pay period (with certain exceptions)
WI	Next regular payday; within 24 hours if employer merges, liquidates, ceases business, or relocates	An employer is required to pay accrued vacation to an employee upon separation from employment if its policy or contract requires it.	Next regular payday; within 24 hours if employer merges, liquidates, ceases business, or relocates

WV	Eff. 6-11-15, by the next regular payday.	Vacation pay is a fringe benefit which is included in the definition of wages under West Virginia law. An employer is required to pay accrued vacation pay to an employee upon separation from employment if its policy or contract requires it.	Eff. 6-11-15, by the next regular payday.
WY	Next regularly scheduled payroll date	The value of unpaid vacation time accrued as of the date of termination does not have to be paid to the employee if the employer's written policies specify that accrued vacation is forfeited upon termination of employment, and the written policies are acknowledged in writing by the employee	Next regularly schedule payroll date

California

Waiting Time Penalties for Unpaid Wages

“Don’t make a mistake!!”

Under California law, workers who quit must be paid within 72 hours, or at the time of quitting if the employee gave 72-hour notice (see Payroll Guide ¶17,112). The California Court of Appeal has ruled that an employer should not be subject to a "waiting time" penalty for making an inadvertent error on a check given to a worker who resigned. However, it should be subject to the penalty for not immediately correcting the error. The check that was mailed within the required time frame contained an \$80 discrepancy between the amount on the check and the amount that was spelled out on the check. The check could not be deposited by the former employee. The court said that there was nothing in the record to indicate that this error was intentional. However, the employer could have stopped payment on the check and issued a new one, but instead waited for the return of the original check before issuing a new one. As a result, the employee was entitled to waiting time penalties from the time that she notified the employer about the error to the time when the corrected check was mailed [Nishiki v. Danko Meredith, PC, Cal. Ct. App., Dkt. No. A147733, 8/1/18].

Paying Deceased Employees

When paid?	Paid to?	Withhold / deduct	Report?
Death before cashing check	Reissue to beneficiary/ estate	Withhold all taxes and deductions	Employee's Form W-2
After Death, same tax year	Beneficiary/ estate	Withhold Soc Sec & Medicare ONLY	Employee's Form W-2 & Beneficiary's Form 1099
After Death, subsequent tax year	Beneficiary/ estate	None	Beneficiary's Form 1099-MISC

Escheatment

Stale dated checks become the property of the state.

The rules are that the monies are to be sent to the last known state of the employee depending on the state mandates. Never are these to be voided and never are W-2's to be re done for un-cashed checks.

Note – If using a Service Bureau and the Service Bureau is issuing the checks on their account – Service Bureau should be refunding un-cashed checks to the client after 90 days.

State Escheatment Timelines

AL	1 YR	IL	1 YR	MT	1 YR	PR	90 DAYS
AK	1 YR	IN	1 YR	NE	1 YR	RI	1 YR
AZ	1 YR	IA	1 YR	NV	1 YR	SC	1 YR
AR	1 YR	KS	1 YR	NJ	1 YR	TN	1 YR
CA	1 YR	KY	3YRS	NM	1 YR	TX	1 YR (July1)
CO	1 YR	LA	1 YR	NY	1 YR	UT	1 YR
CT	1 YR	ME	1 YR	NC	1 YR	VT	1 yr >250
DE	5 YRS	MD	3 YRS	ND	2YRS	VA	1 YR
DC	1 YR	MA	3 YRS	OH	1 YR	WA	1 YR
FL	1 YR	MI	1 YR	OK	1 YR	WV	1 YR
GA	1 YR	MN	1 YR	OR	3 YRS	WI	1 YR
HI	1 YR	MS	5 YRS	PA	2 YRS	WY	1 YR
ID	1 YR	MO	5 YRS				

How to handle an uncashed paycheck

Odd as it may seem, employees do sometimes forget to cash their paychecks. That leaves you with outstanding checks on your books. Your options: You can either void the checks or hold them open on your books. Hiccup: Banks generally won't honor checks that are older than six months, so your employees won't be happy either.

VOIDS vs. HOLDS. Employees remain taxable on the money, because once you hand them their checks, they're in constructive receipt of their pay, regardless of whether the checks are cashed. By the same token, amounts on uncashed checks must be reported on employees' W-2s.

Since employees are in constructive receipt of their pay, you can't void the checks. Most payroll systems allow you to clear outstanding checks without voiding them from the payroll records.

ESCHEAT. At some point—usually one year—uncashed paychecks must be escheated to the state. From an accounting perspective, you need to move the checks from your books onto the escheatment check you send to the state. Stopping payment on the checks accomplishes that. The wage expense, tax expense, etc., must still be recorded in the company's financials, because employees were in constructive receipt of their pay. Wrinkle: Since the checks are older than one year, the accounting books for the period involved will be closed.

WHAT TO TELL EMPLOYEES. No bank will cash a check on which a stop payment has been placed. If employees call to complain, you must explain to them that their paychecks have been escheated to the state as unclaimed wages. Employees must now get their money back from the state treasurer. They won't be happy about it, but that's not your problem.

PAYROLL PRACTICE TIP: Once you get your monthly bank statement, reach out to employees who haven't cashed their checks. Gently remind them that the time for cashing checks is limited. For terminated employees, send certified letters to their last known address.

States That Allow Voluntary UI Contributions

Arizona	January 31	Missouri	Postmarked January 15
Arkansas	Postmarked March 31	Nebraska	January 10
California	March 31	New Jersey	30 days after notice
Colorado	March 15	New York	March 31
Georgia	30 days after notice	North Carolina	30 days after notice
Indiana	30 days after notice	North Dakota	April 30
Kansas	30 days after notice	Ohio	December 31
Kentucky	20 days after notice	Pennsylvania	30 days after notice
Louisiana	30 days after notice	South Dakota	December 31
Maine	30 days after notice	Texas	60 days after notice
Massachusetts	30 days after notice	Washington	Received by Feb15
Michigan	30 days after notice	West Virginia	30 days after notice
Minnesota	120 calendar days after Jan1	Wisconsin	November 30

Want to Know When States Compute Next Year's Wage Base?

Most states use June 30 as benchmark for determining the next year SUI wage bases. This is known as “computation date”. Many states can take up to 4 – 9 months after the computation date to make their announcements. Several states use different dates for “computation date” calculations they are:

Delaware	Oct 1	North Carolina	Aug 1
Hawaii	Dec 31	North Dakota	Sept 30
Kentucky	July 31	Oklahoma	Sept 30
Massachusetts	Sept 30	Rhode Island	Sept 30
Montana	Sept 30	Tennessee	Dec 31*
Nebraska	Dec 31	Texas	Oct 1
New Hampshire	Jan 31	Vermont	Dec 31*
New Jersey	Dec 31	Virgin Islands	Sept 30
New York	Dec 31 * - July 1 wage base resets		

FICA Wage Base (Mid forecast)

2018 — \$128,400

2019 — \$132,900

2020 — \$137,100

2021 — \$142,800

2022 — \$149,400

2023 — \$156,000

2024 — \$162,900

2025 — \$170,100

2026 — \$177,600

2027 — \$185,100

<https://www.ssa.gov/OACT/TR/2018/tr2018.pdf>



Save our Social Security Act of 2016

The S.O.S. (Save Our Social Security) Act of 2016 (H.R. 5747, introduced on July 13, 2016) would increase the social security wage base:

2017 to \$156,550

2018 to \$194,600

2020 to \$270,700

2019 to \$232,650

2021 to \$308,750

The wage base would be indexed at 90% of total earnings after 2021.

The bill would also increase the retirement age in 2022 from 67 to 69, then phase in an increase to age 71 by increasing the retirement age by two months every year through 2034. Thereafter, the retirement age would increase by one month every year, to keep up with life expectancy rates, and it would be subject to review every 10 years.

How Much Of A Payroll Tax Increase Would It Take To Fix Social Security?

75-Year Solvency Effect of Different Payroll Tax Options	% Shortfall Eliminated
Increase payroll tax rate to 15.94%	100%
Increase the taxable maximum to 90% of earnings	30%
Increase the taxable maximum to 90% and raise payroll tax rate to 14.69%	100%
Eliminate the taxable maximum	45%
Eliminate the taxable maximum and raise payroll tax rate to 14.01%	100%
Eliminate the taxable maximum and lower benefit replacement rate for earnings above tax-max	65%
Increase payroll tax rate to 14.4%	60%
Increase payroll tax rate to 14.4% and increase tax-max to 90%	90%
Increase payroll tax rate to 14.4% and eliminate tax-max	115%
Increase payroll tax rate to 16.4%	115%
Increase payroll tax rate to 16.4% and increase tax-max to 90%	155%
Increase payroll tax rate to 16.4% and eliminate tax-max	180%

2019 Rates

	2018	2019 Green is Estimated
Social Security	\$128,400	\$132,900
	6.2% \$7960.80 Med 1.45% 200,000 2.35% >\$200,000	6.2% \$8239.80 Med 1.45% 200,000 2.35% >\$200,000
Domestic Worker Threshold	\$2,100	\$2,100
Elections Workers	\$1,800	\$1,800
Transit Passes&Van Pool&Bike	\$260/\$260/gone	\$265/\$265
Parking Mileage Reimbursement	\$260 .545	\$265 .58
415(b)(1)(A) defined benefit max	\$220,000	\$225,000
Max Contribution	\$55,000	\$56,000
Education Assistance	\$5,250	
Roth Limits (married) (single)	\$189k-\$199k / \$120k-\$135k	\$193k- \$203k / 122k-\$137k
-401 K Roth	\$18,500 Box 12 AA	\$19,000
-403(b) – 457 Roth 403 Roth 457	\$18,500 Box 12 BB EE	\$19,000
-408(p) Simple Roth	\$12,500	\$13,000
401k catch-up	\$6,000	\$6,000
414(v) catch-up Simple	\$3,000	\$3,000
IRA	\$5,500-\$6,500 >50 phase out m/fj \$101k- \$121k	\$6,000-\$7000 >50 phase out m/fj \$103k - \$123k single \$64k- \$74k

	2018	2019
Foreign Income Exclusion	\$103,900 change due to TCIA	\$105,900
Minimum annual comp 408	\$600	\$600
Adoption Exclusion limits	\$13,810	\$14,080
-Phase out AGI	\$207,140	\$211,170
-Total exclusion AGI	\$247,140	\$251,170
Definition of Control Employee /commuting/gvmt	\$220,000 / \$110,000/\$153,800	\$225,000 \$110,000/\$153,800
-Corp officer	\$110,000	\$110,000
-Earnings test	\$220,000	\$225,000
Definition of Highly Comp. Key Employee Top Heavy Plan FSA	\$120,000 \$175,000 \$2,650	\$125,000 \$180,000 \$2,700
Small Employer HRA (QSEHRA)	\$5,050 / \$10,250 family	\$5,150 / \$10,450 family
Long Term Premiums - <40	\$420	\$420
-40-50	\$780	\$790
--50-60	\$1560	\$1580
- 60-70	\$4,160	\$4,220
->70	\$5,200	\$5,270

	2018	2019
Limitations		
- Highly Compensated 414	\$120,000	\$125,000
- Annual Compensation Limits		
- 414,404,408 SEP	\$275,000	\$280,000
-Annual Compensation Limits		
- 401 GVT plans in effect 7/1/93	\$405,000	\$415,000
- FSA	\$2,650	\$2,700
HSA		
- Annual deduction limit Single/Family	\$1,350/\$2,700	\$1,350/\$2,700
-Maximum out of pocket Single/Family	\$6,650/\$13,300	\$6,750/\$13,500
-Maximum annual contribution Single/Family	\$3,450/\$6,900	\$3,500/\$7,000
-Maximum annual catch-up (55)	\$1,000	\$1,000

Foreign Income Exclusions

Maximum Foreign Earned	Income Exclusion	Housing Limit	Base Housing	Max Foreign Cost Exclusion
2016	\$101,300	\$30,390	\$16,208	\$14,182
2017	\$102,100	\$30,630	\$16,336	\$14,294
2018 <u>Notice 2018-33, 2018-17 IRB</u>	\$103,900	\$31,230* country exceptions	\$16,656	\$14,546
2019	\$105,900			\$14,826

Per Diems – CONUS Fiscal 2019

Standard CONUS rates apply to all counties not specifically listed in the GSA's per diem rate table. The maximum standard per diem rate for travel locations not listed in the per diem rate table will increase from \$144 to \$149 on October 1 (\$94 from \$93 for lodging, \$55 from \$51 for M&IE). The standard rates cover most of the 2,600 continental U.S. (CONUS) counties.

Per diem rates for localities that do not have standard rates (i.e., non-standard areas or NSAs) are listed in the per diem rate table. Total per diem rates by locality in FY 2019 range from \$149 to \$470.

<https://www.gsa.gov/travel/plan-book/per-diem-rates>

There are six possible M&IE rates (i.e., \$55, \$56, \$61, \$66, \$71 and \$76). Lodging rates for locations listed in the per diem rate table will range from \$149 to \$394 in FY 2019.

These rates can be used starting Oct 1, 2018.

Per Diem High Low 2018

An employer may pay a per diem amount to an employee for business travel, instead of reimbursing actual substantiated expenses for away-from-home lodging, and meal and incidental expenses (M&IE). The amount is treated as if it were made under an accountable plan (i.e., it is not subject to income tax, or payroll tax withholding, and is not reported on the employee's Form W-2) if the per diem rate paid does not exceed IRS-approved maximums, and the employee provides simplified substantiation (time, place, and business purpose). Receipts for expenses aren't required. In general, the IRS-approved per diem maximum is the U.S. General Services Administration (GSA) per diem rate paid by the federal government to its workers on travel status. This rate varies from locality to locality.

As an alternative to reimbursing actual substantiated expenses, or paying IRS-approved per diem amounts to employees for business travel (actual per diem method), employers may use a simplified method, under which there is one per diem rate for “high-cost” areas and another rate for all other areas. The IRS has released the 2018–2019 per diem rates for substantiating employee business expenses under IRC Sec. 274(d) for lodging, meals, and incidental expenses incurred while traveling away from home. The Meal and Incidental Expense (M&IE) rates for the transportation industry have increased from \$63 to \$66 for travel in the continental U.S. and from \$68 to \$71 for travel outside the continental U.S. The per diem for travel to high-cost localities has increased from \$284 to \$287 (\$71 for M&IE), while the rate for travel to other localities has increased from \$191 to \$195 (\$60 for M&IE). The incidental-expenses-only rate remains at \$5 per day. The updated rates and list of high-cost locations apply to per diem allowances paid to employees after 9/30/18. Notice 2018-77 .Taxpayers using the rates and list of high-cost localities provided in [Notice 2018-77, 2018-42 IRB](#), must comply with [Rev Proc 2011-47, 2011-42 IRB 520](#).

These rates can be used starting Oct 1, 2018.

Mandatory SDI

State	Employer Contributions	Employee Contributions	2018/2019 Wage Base
California	None required: may pay all or part of employees amount	1.0% of annual earnings up to the wage base (\$1193.71) (includes PFL surcharge)	\$118,371 annually (2019)
Hawaii	Half of plan costs plus additional needed to provide benefits	Maximum of 0.5% of weekly earnings up to the wage base (\$5.44/wk)	\$1088.08 weekly (2019)
New Jersey	0.1% to 0.75% of annual earnings up to the wage base: 0.5% for new employers	The contributions are deducted from their pay. The withholding tax rate on employee wages will decrease from 0.705% to 0.675% in the 2019 calendar year.	\$34,400 annually (2019)
New York	Additional costs over employee amounts to provide benefits	0.5% of weekly wages up to a maximum if \$.60 - insurance policy needed	\$120 weekly
Puerto Rico	0.3% of annual earnings up to the wage base, may pay employees share	0.3% of annual earnings up to the wage base	\$9,000 annually (2018)
Rhode Island	None required: may pay all or part of the employee's share	1.1% of annual earnings up to the wage base (\$781.00) includes TCI surcharge	\$71,000 annually (2019)

**Washington
Paid Family
& Medical**

New for 2019

**.4% up to soc sec wage base
(\$132,900) Er can pay 37.667%**

States With Mandated DBL

State	2018 2019 (red) Base	Rate
CA	\$118,371	1.0% incl PFL
HI	1068.62 (wkly)	.5% max \$5.34 wk
NJ	34,400 Fli – 34,400	.24%DBL .09%
NY NY Family Medical Leave	120 (wkly)	.5%max \$.60 wk .153% max \$107.97
PR	9,000	.3%
RI	\$69,300	1.1% benefits \$762.30
VT	Employer Health Care Contribution	\$163.20/empl qtr for uncovered ee's
WA	•Postponed until -- Indefinitely!!	

Minimum Wage Increase

18 states, plus the District of Columbia, index their minimum wages to rise automatically with the cost of living. 10 states currently index minimum wage increases each year: Arizona, Colorado, Florida, Missouri, Montana, Nevada, New Jersey, Ohio, Oregon and Washington. Three more states, will index minimum wage increases annually beginning in future years: Michigan (2019), Minnesota (2018) and Vermont (2019).

State Minimum Wage 2018-2019

AL	FED	IL Chicago	\$8.25 \$12.00	MT	\$8.30 \$8.50 1/1/19	PR	\$7.25
AK	\$9.84 \$9.89 1/1/19	IN	\$7.25	NE	\$9.00	RI	\$10.10 \$10.50 1/1/19
AZ	\$10.50 \$11.00 1/1/19 \$12.00 (2020)	IA	\$7.25	NV	\$8.25/\$7.25 w/health	SC	FED
AR - voter approved	\$8.50 \$9.25 1/1/19 \$10 1/1/20 \$11 1/1/21	KS	\$7.25	NH	\$7.25	SD	\$8.85 \$9.10 1/1/19
CA 1/1/18* many city mins \$12-\$15.69 7/1/18	\$10.50 <26ee's \$11.00 >26 ee's	KY	\$7.25	NJ	\$8.60 \$8.85 1/1/19	TN	FED
	\$11.00 <25 2019 \$12.00 >26 2019	LA	FED	NM Albuquerque	\$7.50 1.00 LESS HI \$8.75 \$7.75 with healthcare	TX	\$7.25
CA COMPUTER	OT <u>\$43.58 2018</u> <u>\$45.41 1/1/19</u>	ME	\$10.00 \$11.00 1/1/19 \$12.00 (2020)	NM SANTA FEE	10.84	UT	\$7.25
CO	\$10.20 \$11.10 1/1/19 \$12.00 (2020)	MD	\$10.10	NY	\$10.40 \$11.10 12/31/18 \$11.80 12/31/19 \$12.50 12/31/20	VT	10.50 \$10.78 1/1/19
CT	\$10.10	MA	\$11.00 \$12.00 2019 \$13.00 2020 \$14.00 2021 \$15.00 2022	NC	\$7.25	VA	\$7.25
		Purple proposed Red new 2018 & 2019 Fed Minimum wage \$7.25 proposed \$9.50 / \$10.10					

State Minimum Wage 2018-2019 CONT

DE	\$8.25 \$8.75 1/1/19 \$9.25 10/1/19 \$9.75 10/1/20 \$10.25 10/1/21	MA SUNDAY	\$12.00	ND	\$7.25	WA	<u>\$11.50 \$12.00 1/1/19</u> <u>\$13.50 1/1/20</u>
DC	\$13.25 7/1/18	MI	\$9.25 \$9.45 1/1/19 \$9.65 1/1/20 \$9.87 1/1/21 \$10.10 1/1/22	OH	\$8.30 \$7.25 <\$305k \$8.55 1/1/19 \$7.25 <\$314k	WV	\$8.75 6+ ee's \$7.25 5 or less ee's
FL	\$8.25 \$8.46 1/1/19	MN	\$9.65 \$9.86 1/1/19 \$7.87 <500,000 gross sales \$8.04 1/1/19	OK	\$7.25	WI	\$7.25
GA	\$5.15*	MS	FED	OR	\$10.75	WY	\$5.15*
HI	\$10.10	MO voter approved	\$7.85 \$8.60 1/1/19 \$9.45 1/1/20 \$10.30 1/1/21 \$11.15 1/1/22 \$12.00 1/1/23	PA	\$7.25	VI	\$10.50
ID	\$7.25	Purple proposed Red new 2018 & 2019 Fed Minimum wage \$7.25 proposed \$9.50 / \$10.10					

Missouri Minimum Wage

Wage and Hour. The Supreme Court of Missouri has upheld the City of St. Louis minimum wage ordinance. A Missouri circuit court judge had struck down the ordinance on Oct. 14, 2015. The ordinance would have increased the city's minimum wage rate from \$7.65 per hour to \$8.25 per hour on Oct. 15, 2015, with additional increases after that until the minimum wage rate reached \$11 per hour on Jan. 1, 2018. The circuit court judge said that the ordinance conflicted with Sept. 16, 2015 state law that capped the minimum wage rate in 2015 at \$7.65 per hour. In reaching its decision, the Supreme Court noted that the St. Louis ordinance had been adopted before the state legislation had become law. St. Louis Mayor Francis Slay said that his administration will work with local business representatives as to the timing of the increases [*Cooperative Home Care Inc. v. City of St. Louis, Missouri, MO*. Sup. Ct., Dkt No. SC5401, 2/28/17].

California – Day of Rest & Exempt from OT

Wage and Hour. The California Supreme Court has answered questions about the state's day of rest statutes (Cal. Labor Code §§550-558.1). These statutes prohibit an employer from requiring employees to work more than six days in seven but do not apply “when the total hours of employment do not exceed 30 hours in any week or six hours in any one day.” The California Supreme Court has determined that: (1) a day of rest is guaranteed for each workweek, but not for any consecutive seven-day period (so it is possible for an employee to work 12 consecutive days before being eligible to receive another day of rest; i.e., from day 2 of the first workweek through day 6 of the second workweek); (2) the day of rest exemption for employees working shifts of six hours or less applies only to employees who never exceed six hours of work on any day of the workweek; (3) an employer may not require an employee to forgo rest to which he or she is entitled, but the employer may permit or allow the employee to do so [Mendoza v. Nordstrom, Inc., Cal. Sup. Ct., Question of Law - Civil No. S224611, 5/8/17].

Licensed physicians and surgeons are exempt from overtime, effective Jan. 1, 2019, if they are paid at least \$82.72 per hour (currently, \$79.39 per hour) [Cal. Dept. of Industrial Relations Memorandums, Overtime Exemption for Computer Software Employees, 10/19/18; Overtime Exemption for Licensed Physicians and Surgeons,

Utah – Workers Compensation Rate Decreasing

Effective Jan. 1, 2019, the workers' compensation insurance premium tax rate will decrease from 4% to 3%. The tax rate applies to all taxable workers' compensation premiums for the 2019 calendar year. Estimated quarterly prepayments should reflect this rate. The tax for the 2019 period should be reported on insurance returns TC-49 and TC-420, due on *March 31, 2020* [Utah Tax Commission Bulletin No. 12-18, 11/12/18].

PA – Wage and Hour Exempt / Non Exempt

Pennsylvania — Wage and Hour.

Governor Wolf has issued a press release announcing a proposed overhaul of the State's overtime rules, specifically looking to modernize the law regarding overtime for “white collar” (administrative, professional and executive) workers. Wolf's proposal includes phasing in increases to the salary level at which white collar workers are exempt from overtime. With the overtime exemption currently set at \$24,000 per year, the proposal would increase the salary level for overtime to: (1) \$31,720 annually (\$610 per week) on Jan. 1, 2020; (2) \$39,832 on Jan. 1, 2021; and (3) \$47,892 on January 1, 2022. After that, the exemption threshold would automatically update every 3 years. The proposal would also clarify the duties for executive, administrative, and professional workers. Wolf notes that Pennsylvania's overtime rules haven't been updated in more than 40 years. The Department of Labor & Industry expects to issue proposed regulations on this topic for public comment in March [Governor Wolf website, Newsroom, Governor Wolf to Modernize Outdated Overtime Rules to Strengthen Middle Class and Provide Fairness for Workers, 1/17/18].

Massachusetts

Combined Transit Pass and Commuter Highway Vehicle Exclusion Amount Differs from Federal

Massachusetts has not adopted the increase in the federal monthly exclusion amount for the combined value of transit pass and commuter highway vehicle transportation benefits that was included in the "Protecting Americans from Tax Hikes Act of 2015" (PATH Act, see Payroll Guide ¶ 3560). For tax years beginning **in 2019**, the Massachusetts monthly exclusion amounts are **\$265** (\$260 in 2018) **for employer-provided parking**, and **\$140** (\$135 in 2018) **for the combined value of the transit for the combined value of the transit pass and commuter highway vehicle transportation benefits**. The federal amounts for 2019 are \$265 (\$260 in 2018) for employer-provided parking, and \$265 (\$260 in 2019) for the combined value of transit pass and commuter highway vehicle benefits [Massachusetts Technical Information Release No. 18-12, 11/30/18].

Puerto Rico – OT Calculation

New legislation makes major revisions to Puerto Rico's labor laws. The changes are effective Jan. 26, 2017, and generally apply to employees hired after that date. Employees hired before that date retain the same benefits as they had prior to enactment of the legislation. Some of the major provisions in the legislation include: (1) overtime pay for new employees is calculated at a rate of 1 1/2 times the regular rate of pay for employees employed after the effective day of the legislation (for employees employed prior to the effective date, the overtime rate remains 2 times the regular rate of pay); (2) overtime pay is now calculated based on a calendar day rather than any consecutive 24 hour period; (3) work performed on Sundays is not overtime unless it is in excess of 8 hours; (4) employees may consent in writing to work up to 10 hours a day, four days a week, without being paid overtime; (5) a meal period is not required if the workday is 6 hours or less; (6) the rate of compensation for working through a meal break has been reduced from 2 times the regular rate of pay to 1 1/2 times the regular rate for employees hired after January 26; (7) most eligible employees hired after the enactment of the Act must now work 130 hours per month rather than 115 hours to accrue vacation and sick pay; (8) tips are not included in the regular rate of pay calculation unless needed to reach the statutory minimum salary; (9) the accrual rate for vacation pay will now generally range from half a day to 1.25 days per month based on years of service; (10) sick pay will accrue at the rate of one day per month; and (11) new employees must work more hours to receive the Christmas bonus, and the minimum amount of the bonus has been reduced [P. de la C. 453, Ley de Transformacion y Flexibilidad Laboral, 1/26/17].

Indiana—Electronic Filing of Unemployment Tax Reports Coming in Spring 2019

The Indiana Department of Workforce Development (DWD) has announced that unemployment quarterly contribution (Form UC-1) and wage (Form UC-5) reports must be filed electronically by all employers, *beginning with the first quarter 2019 reports*. The DWD is also implementing a new design for its UPLINK Employer Self-Service (ESS) portal in the spring of 2019, a system that allows employers to electronically file Forms UC-1 and UC-5, and pay quarterly contributions, among other things. The upcoming enhancements include combining Forms UC-1 and UC-5 into a single, consolidated quarterly wage report, fully integrating online payments, and providing an easy-to-use file format to upload wages. Employers will no longer have to calculate or report excess or taxable wages and there will be an indicator for full-time, part-time, or seasonal employment, instead of just a seasonal code. Tutorials and other instructional materials will be provided to help with the transition [DWD UPLINK ESS website, *Uplink Redesign for ESS*, 10/30/18].

States that Require Time off to Vote

AK, AZ, CA*, CO*, HA**, IL, IA, KS, MD*&** , MN, MO, NE***, NV, NM, NY*, OH****, OK**, SD, TN, TX, UT, WV*****, WY

* - after 2 hours

** - proof of voting

*** if notice given

**** unless piecework, commission or hourly basis

***** unless employee fails to vote

Time off to Vote

The following states require employees to provide some form of notice to request time off to vote

- AL, AZ, CA, CO, GA, IL, KY, MA, MS, NE, NV, NY, OK, TN, UT, WV, WI

The following states **HAVE NO REQUIREMENTS** for time off to vote:

- CT, DE, DC, FL, ID, IN, LA, ME, MI, MT, NH, NJ, NC, OR, PA, RI, SC, VT, VI, WA

Net 2018 FUTA Rates (includes .6%)

FUTA RATES

State	The Net 2018 FUTA Rate	Max \$ per EE (FUTA \$7000 max)
California	UI debt paid	0
Virgin Islands	3.0% BCR waive approved	\$210

Trust Fund Loans

<http://workforcesecurity.doleta.gov/unemploy/budget.asp#>

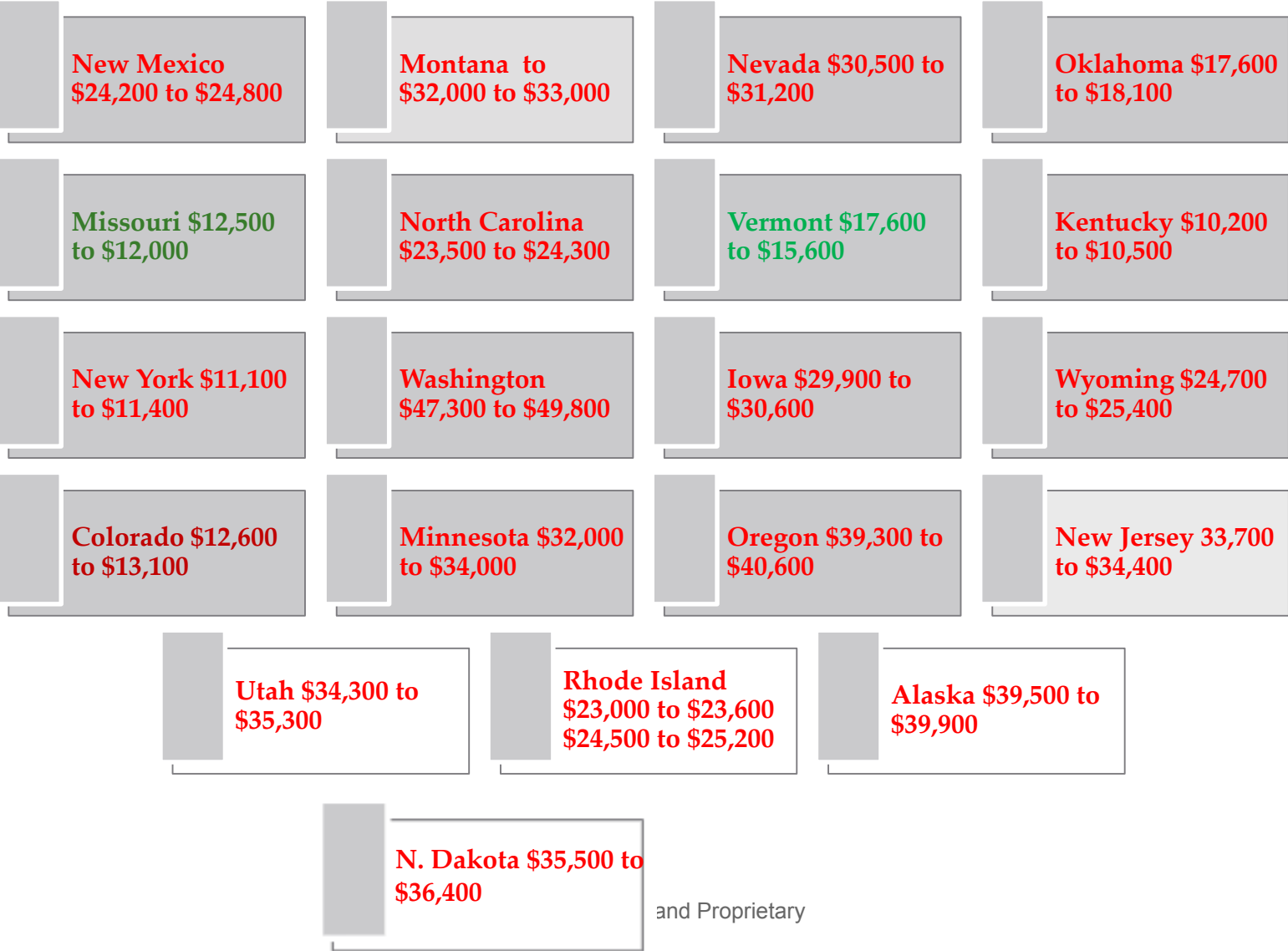
Outstanding Loans from the Federal Unemployment Account.
Balances as of June 08, 2018 are:

Virgin Islands	\$90,093,755.71
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2019 SUI Wage Base

AL	8,000	IL	12,960	MT	33,000	PR	7,000
AK	39,900	IN	9,500	NE	9,000	RI	23,600 / 25,100
AZ	7,000	IA	30,600	NV	31,200	SC	14,000
AR	10,000	KS	14,000	NH	14,000	SD	15,000
CA	7,000	KY	10,500	NJ	34,400	TN	7,000
CO	13,100	LA	7,700	NM	24,800	TX	9,000
CT	15,000	ME	12,000	NY	11,400	UT	35,300
DE	16,500	MD	8,500	NC	24,300	VT	15,600
DC	9,000	MA	15,000	ND	36,400	VA	8,000
FL	7,000	MI	9,500 / 9,000 (non delinquent)	OH	9,500	VI	24,200
GA	9,500	MN	34,000	OK	18,100	WA	49,800
HI	46,800	MS	14,000	OR	40,600	WV	12,000
ID	40,000	MO	12,000	PA	10,000	WI	14,000
						WY	25,400
						<p>Red Increase Green Decrease</p>	

SUI Wage Base Increases for 2019



Cafeteria Plan Contributions Included in Taxable Wages?

Taxing Authority	Cafeteria Plan Contributions Included in Taxable Wages?	Taxing Authority	Cafeteria Plan Contributions Included in Taxable Wages?
Federal	No	IN	No (follows federal rules).
AK	No, to the extent the payments are for group-term life insurance, accident or health insurance, participation in an IRC §401(k) plan, flexible spending arrangement, or health savings account. See .	KS	No.
AL	Yes, if the employee has the choice of receiving cash or benefits.	KY	Yes
AR	No	LA	Yes. .
AZ	No.	MA	Yes. .
CA	No.	MD	No, if the payments made under the cafeteria plan would not be treated as wages outside a cafeteria plan. See .
CO	No.	ME	No (follows federal rules)
CT	Yes	MI	Yes, if the employee has an option under the plan to receive cash (see Mich. Employer Guide to Wage Reporting)
DC	Yes, to the extent that the employee has the option to receive cash	MN	Yes, to the extent that the employee has the option to receive the payment in cash. See (29)(b).
DE	Yes (see ; Delaware Employer Handbook)	MO	No (follows federal rules).
FL	No .	MS	No
GA	No	MT	Yes
HI	Yes, even if used to pay for health or life insurance.	NC	No
IA	Yes, if the employee can elect to receive cash in lieu of the benefits. If the option to receive cash is not available, benefits are still taxable wages unless specifically excluded under state law. See (3)(d).	ND	Yes, to the extent the employee could have received cash.
ID	No	NE	No
IL	"No, to the extent that the benefit chosen is excludable under state and federal law. See ILCS Chapter 820 § 405/235(C); Ill. Admin. Code 56 § 2730.150(b). Caution: Payments made under a cafeteria plan for dependent care assistance are considered taxable wages. "	NH	Yes, if employees have the option to receive a cash payment instead (even if they don't exercise the option).
		NJ	Yes
		NM	No

Cafeteria Plan Contributions Included in Taxable Wages?

Taxing Authority	Cafeteria Plan Contributions Included in Taxable Wages?
NV	Yes
NY	Yes.
OH	No.
OK	No. .
OR	No, if the benefit is excluded from taxation under state law. See through .
PA	Yes
RI	No. .
SC	No
SD	Yes
TN	Yes. .
TX	Yes
UT	No. .
VA	No
VT	Yes
WA	Yes
WI	No. .
WV	Yes
WY	No. .

Paycards

Federal – Reg E

AK No provision

AL No provision

AR No provision

AZ Yes

CA No

CO Yes

CT No provision

DC No provision

DE Yes

FL Yes

GA Yes (eff. 5/15/15)

HI Yes.

IA Yes

ID No provision

IL Yes

IN No provision

KS Yes

KY No provision

LA No provision

MA No provision

MD Yes

ME Yes

MI Yes

MN Yes

MO Direct deposit or use of a paycard is mandatory for all permanent State of Missouri executive agency employees

MS No provision

MT Yes

Paycards

NC Yes

ND Yes

NE Yes

NH Yes

NJ Yes

NM No provision.

NV Yes

NY No provision (New legislation overturned) *

OH No provision.

OK Yes

OR Yes

PA No provision.

RI No provision.

SC No provision.

SD No provision.

TN Yes

TX Yes

UT Yes

VA Yes

VT Yes

WA No provision for private employers. (Institutions for higher education may mandate payment by paycard for employees who do not designate a financial institution for direct deposit.)

WI No provision.

WV Yes

WY No provision.

New York PayCard – Late Breaking News!

Payroll Debit Card Ruling

The New York Supreme Court has voided a 2017 decision by the New York State Industrial Board of Appeals (IBA) that payroll debit card regulations issued by the New York State (NYS) Department of Labor (DOL) were invalid and therefore revoked. The regulations prohibited payroll debit card providers from charging fees to employees for banking services. The IBA said that the DOL did not have the authority to impose this requirement because it is the New York State Department of Financial Services that regulates the fees that banks and financial institutions may charge. Global Cash Cards, Inc. (GCC), a payroll debit card provider of several New York employers, had only challenged the part of the regulations that pertained to payroll debit cards (12 NYCRR 192-1). It didn't challenge any part of the regulations that pertained to payment by cash, check, or direct deposit (12 NYCRR 192-2). The Supreme Court said that the IBA only had the power to revoke, amend, or modify the portion of the regulations at issue (12 NYCRR 192-1) It should not have revoked 12 NYCRR 192-2 [*In the Matter of the Application of Roberta Reardon v. Global Cash Card, Inc. and New York State Industrial Board of Appeals*, Index No. 2643-17, 5/23/18]. This is being appealed - more to come!

Jury Duty Pay - Requirements

A: It depends on the state in which your organization is located. Some states, and specifically some local jurisdictions, mandate payment for a portion of or all of the time that the employee spends in jury duty. The following states require jury duty pay:

Federal – no

AL , CO, CT, DC, LA, MA. NY, TN

Federal Facts, Changes & Proposals

GIG Act of 2017

The Senate has introduced bill S. 1549

The bill would create a safe harbor for treatment of employee/independent contractors with an objective test

1. relationship (not a single recipient i.e. employer)
2. location of services (does not work exclusively at recipient)
3. written contract (contractor is responsible for own taxes in writing)

More importantly – the 1099 MISC reporting threshold will change from \$600 to \$1000.

Potentially Billions of Dollars in Unreported Employment Taxes

IRS – SSA Reconciles W-2 wages to 941 box 1 940 box 1

In 2013 there were 137,272 cases of discrepancies

In 2013 the IRS investigated 23,184 cases

The Plan –

- The IRS is enhancing software to better investigation
- The IRS will dedicate more resources
- The IRS will focus on high dollar discrepancies
- The IRS will look for employer patterns

The Result –

- expect more scrutiny in reconciling these returns
- expect more notices

CPEO Update

Requirements for certification. To receive and maintain certification, a CPEO applicant or CPEO must meet the requirements described in this section, as well as any additional requirements the Commissioner may prescribe in further guidance. In addition, any precursor entities, related entities, and responsible individuals (as defined in §§ 301.7705-1T(b)(10), (12), and (13), respectively) of the CPEO applicant or CPEO must meet any requirements applicable to them described in this section and in further guidance. The IRS may deny an application for certification or revoke or suspend a CPEO's certification if a CPEO applicant or CPEO, or one or more of its precursor entities, related entities, or responsible individuals, fails to meet any applicable requirement described in this section or other applicable guidance, and the IRS will do so if the IRS determines, in its sole discretion, that such failure presents a material risk to the IRS's collection of federal employment taxes. In determining whether one or more failures to meet the requirements described in this section presents a material risk to the IRS's collection of federal employment taxes, the IRS generally will consider all relevant facts and circumstances, including the size, scope, nature, significance, recurrence, and timing of and reason for the failure and, in the case of a CPEO, any prior failures of the CPEO to meet the requirements of this section.

The certified PEO program is *voluntary*. A PEO is not required to become certified.

84 companies have received CPEO status (as of April 7, 2018) – 56 unique CPEO's

Bonding is required \$50,000 to \$1,000,000

CPEO Requirements

Reporting requirements are substantial

Must pay all taxes on time

Cannot have any responsible individuals charged or convicted of any criminal offense

Must be in good standing in all states

Cannot be on the OFAC sanction list

Responsible individuals must have a good history of financial responsibility

Audited financials within 6 months of end of fiscal year

Working capital requirements

Quarterly attestations of timely payment of all taxes

Many more

§ 301.7705-2T CPEO certification requirements

CPEO Listings

Public Listing of Certified Professional Employer Organizations

The IRS has published a list of all organizations that are certified as CPEOs, and the effective date of their certification on the Voluntary Certification Program for Professional Employer Organizations (CPEOs) page on a quarterly basis, by the 15th day of the first month of every calendar quarter.

An organization will not appear on this list until the IRS has received from it the proof of bond on Form 14751.

The names of many CPEOs are similar. A single brand name can represent more than one business entity in a group. Please note: a CPEO contract must contain the exact name and Employer Identification Number (EIN) of the CPEO fulfilling the federal employment tax obligations covered by the contract.

<https://www.irs.gov/for-tax-pros/basic-tools/cpeo-public-listings>

Federal – W-2 Advertising

Reminder – no advertising is allowed on W-2's

Employers that Include Advertising on W-2 Forms May Be Subject to Penalties

A spokesperson for the IRS reminded employers during the April 2 payroll industry telephone conference call that advertising is prohibited on employee copies of W-2 forms. Employers who violate this rule may be subject to penalties. The IRS has received e-mails from employees who have received substitute W-2 forms with advertising and coupons.

The specifications for substitute W-2 forms are contained in [IRS Publication 1141](#), General Rules and Specifications for Substitute Forms W-2 and W-3. [IRS Publication 1141](#) states that the IRS has determined that logos, slogans, and advertising are not allowed on Forms W-3, Copy A of Forms W-2, or any employee copies reporting wages paid during the 2014 calendar year, and thereafter, with certain limited exceptions. The IRS notes that W-2 forms that include logos, slogans, and advertisements (including advertisements for tax preparation software) may be confused with questionable W-2 forms. An employee may not recognize the importance of the employee copy for tax reporting purposes due to the use of logos, slogans, and advertisements.

An employer that includes advertising on the employee copy of a W-2 form may be subject to penalties. Under [Reg. § 301.6722-1](#), a penalty of \$50 is imposed for each payee statement with respect to which there is a “failure to furnish a correct payee statement.” The total penalty may not exceed \$100,000. A “failure to furnish a correct payee statement” includes a failure to furnish the statement on a form acceptable to the IRS. An employee copy of a W-2 form that includes advertising is not acceptable to the IRS.

Federal Facts -W-2 1099 Penalty Increases 2019

Days Late	Expected Penalty
Up to 30 days	\$50/return \$552,000 max \$193,000 small business
31 days- July 31	\$110/return \$1,656,500 max \$552,000 small business
Aug 1 – later	\$270/return \$3,313,000 max \$1,104,000 small business

Intentional disregard penalty under IRC 6721.

- a. Under Code Sec. 6721(e)(2)(A), for a return other than a return required to be filed under Code Sec. 6045(a), Code Sec. 6041A(b), Code Sec. 6050H, Code Sec. 6050I, Code Sec. 6050J, Code Sec. 6050K or Code Sec. 6050L, per-return penalty equal to the greater of \$550 (up from \$540 for 2018) or 10% of the aggregate amount of items required to be reported correctly with no limit;
- b. Under Code Sec. 6721(e)(2)(B), for a return to be filed under Code Sec. 6045(a), Code Sec. 6050K or Code Sec. 6050L, per-return penalty equal to the greater of \$550 (up from \$540 for 2018) or 5% of the aggregate amount of items required to be reported correctly with no limit;
- c. Under Code Sec. 6721(e)(2)(C), for a return required to be filed under Code Sec. 6050I(a), per-return penalty equal to the greater of \$27,600 or the amount of cash received up to \$110,000 (up from \$27,350 and \$109,000 for 2018); and
- d. Under Code Sec. 6721(e)(2)(D), for a return required to be filed under Code Sec. 6050V, per-return penalty equal to the greater of \$550 (up from \$540 for 2018) or 10% of the value of the benefit of any contract with respect to which information is required to be included on the return with no limit.

Federal Facts -W-2 1099 Penalty Increases 2019

Failure to Furnish Correct payee Statements under IRC 6722

1. For persons with average annual gross receipts for the most recent three tax years of more than \$5 million:
 - a. Under Code Sec. 6722(a)(1)'s general rule, \$270 penalty per return (same as for 2018) subject to a \$3,313,000 calendar year maximum (up from \$3,275,500 for 2018);
 - b. If corrected on or before 30 days after the required filing date under Code Sec. 6722(b)(1), \$50 per return (same as for 2018) subject to a \$552,000 calendar year maximum (up from \$545,500 for 2018); and
 - c. If corrected after the 30th day but on or before August 1 under Code Sec. 6722(b)(2), \$110 per return (up from \$100 for 2018) subject to a \$1,656,500 calendar year maximum (up from \$1,637,500 for 2018).
2. For persons with average annual gross receipts for the most recent three tax years of \$5 million or less:
 - a. Under Code Sec. 6722(d)(1)(A)'s general rule, \$270 per return (same as for 2018) subject to a \$1,104,000 calendar year maximum (up from \$1,091,500 for 2018);
 - b. If corrected on or before 30 days after the required filing date under Code Sec. 6722(d)(1)(B), \$50 per return (same as for 2018) subject to a \$193,000 calendar year maximum (up from \$191,000 for 2018); and
 - c. If corrected after 30th day but on or before August 1 under Code Sec. 6722(d)(1)(C), \$110 per return (up from \$100 for 2018) subject to a \$552,000 calendar year maximum (up from \$545,500 for 2018).
3. Where failure is due to intentional disregard of the requirement to furnish a payee statement (or the correct reporting requirement):
 - a. Under Code Sec. 6722(e)(2)(A), for a statement other than one required under Code Sec. 6045(b), Code Sec. 6041A (in respect of a return required under Code Sec. 6041A(b)), Code Sec. 6050H(d), Code Sec. 6050J(e), Code Sec. 6050K(b), or Code Sec. 6050L(c), per-return penalty equal to the greater of \$550 (up from \$540 for 2018) or 10% of the aggregate amount of items required to be reported correctly with no limit; and
 - b. Under Code Sec. 6722(e)(2)(B), for a payee statement required under Code Sec. 6045(b), Code Sec. 6050K(b), or Code Sec. 6050L(c), per-return penalty equal to the greater of \$550 (up from \$540 for 2018) or 5% of the aggregate amount of items required to be reported correctly with no limit.

SSA Mailing W-2 Mismatch Letters to Employers

The Social Security Administration (SSA) has announced that it is sending Educational Correspondence (EDCOR) notices to businesses and employers who submit Forms W-2 (Wage and Tax Statement) that contain name and Social Security number (SSN) combinations that do not match SSA records [SSA website, Employer Correction Request Notices (EDCOR)].

The SSA explains that the reasons why reported names and SSNs may not agree with SSA records may include typographical errors, unreported name changes, and inaccurate or incomplete employer records. If the SSA cannot match the name and SSN reported on a Form W-2 with their records, it cannot reconcile employer wage reports and credit earnings to the record of a worker.

When earnings are missing, the worker may not qualify for the Social Security benefits they are due or the benefit amount may be incorrect. The EDCOR notice requests employers to review their records and correct errors.

The SSA webpage for Employer Correction Request Notices contains samples for the EDCOR Announcement, the Employer Correction Request letter and the Third Party Provider Notification.

Currently, informational notifications are being mailed to businesses and third party providers (i.e., payroll service providers), who submitted Forms W-2 that contain name and SSN combinations that do not match SSA records. According to the sample Third Party Provider Notification, employers with one or more name and SSN combinations submitted within the last several months that the SSA could not process will receive an announcement letter regarding the discrepancies.

The Third Party Provider Notification sample also says that the announcement letter to employers will inform them that they will receive an EDCOR notice in 2019, and requests employers review and correct their records. The SSA webpage for Employer Correction Request Notices adds that, beginning in the spring of 2019, the SSA will notify each employer with at least one W-2 form where the name and SSN do not match SSA records and that corrections are needed.

The EDCOR Announcement asks recipients to help the SSA ensure the accuracy of wage reporting for their employees by registering for Business Services Online (BSO), which includes such services like the Social Security Number Verification Service (SSNVS) or AccuWage (see Payroll Guide ¶4261).

House Passes Bill that Would Allow Employers in Private Sector to Offer Comp Time as Alternative to Overtime Pay

The U.S. House of Representatives has passed a bill that the Trump Administration supports which would give private sector employees the right to choose between receiving overtime pay for work in excess of 40 hours per week, or taking time off at a rate of not less than 1 1/2 hours for each hour of work eligible for overtime pay [H.R. 1180, Working Families Flexibility Act of 2017].

The bill would only allow employers to offer compensatory time off (comp time) in lieu of overtime pay if:

- (1) The provision is part of a collective bargaining agreement, or
- (2) In the case of an employee who is not represented by a labor organization, the employer and employee voluntarily agreed to this arrangement (either in writing or other verifiable record) and the agreement is not a condition of employment.
- (3) No employee may receive or agree to receive comp time unless the employee has worked at least 1,000 hours for the employer during a period of continuous employment in the 12-month period before the date of agreement or receipt of compensatory time off.
- (4) Comp time may only be used if the time off does not unduly disrupt the operations of the employer.

An employee would not be allowed to accrue more than 160 hours of comp time. Employers would be required by January 31 of each calendar year to provide monetary compensation for unused comp time from the preceding calendar year.

A similar bill (S. 801) is in the Senate Health, Education, Labor, and Pensions Committee.

Progress Made on Uniform State Rule for Nonresident Taxation

The House has passed the “Mobile Workforce State Income Tax Simplification Act of 2017 (H.R. 1393).” The bill would establish a uniform rule for the taxation of nonresidents in all 50 states.

Nonresident taxation rules are not currently uniform across states (see Payroll Guide ¶ 5003). Some states will tax nonresidents if they perform one day of service in the state (e.g., New York State). Hawaii, on the other hand, doesn't require withholding if services aren't performed in Hawaii for more than 60 days during the year.

Proposed uniform rule. Under the Act, a state would not be able to tax the wages and remuneration earned by a nonresident employee in that state unless the nonresident has worked in the state for more than 30 days during the calendar year. Nonresident employees who work more than 30 days in the state would be subject to tax in that state from day one. The employee's earnings would also be subject to taxation in his resident state.

Professional athletes, professional entertainers, and certain public figures would be exempt from the definition of “employee” for purposes of the Act.

Negative impact on certain states. The Congressional Budget Office (CBO) has issued a report which says that states that generally have large employment centers close to a state border would lose the most revenue if the bill is signed into law (e.g., Illinois, Massachusetts, California, and New York). New York would probably lose the largest amount of revenue (between \$55 million and \$120 million per year, according to state and industry estimates) if the bill is signed into law [CBO Cost Estimate, H.R. 1393 Mobile Workforce State Income Tax Simplification Act of 2017, 4/10/17].

There is similar legislation in the Senate that has been referred to the Senate Finance Committee.

IRS Provides Interim Guidance on Qualified Parking Expenses:

In a recent Notice, the IRS has provided interim guidance on determining the amount of qualified parking expenses that is nondeductible under IRC Sec. 274(a)(4). In addition, the Notice addresses how tax-exempt organizations increase their Unrelated Business Taxable Income (UBTI) under IRC Sec. 512(a)(7) attributable to nondeductible parking expenses. If a taxpayer pays a third party for employee parking spots, the total annual cost is generally nondeductible. However, the total monthly amount in excess of the Section 132(f)(2) exclusion (\$260 for 2018) that is treated as compensation is deductible. If a taxpayer owns or leases a parking facility, the disallowed amount may be calculated using any reasonable method (including the method described in the Notice). Employers have until 3/31/19 to change their parking arrangements to reduce or eliminate the number of parking spots they reserve for employees. Notice 2018-99 and News Release IR 2018-247.

2019 Standard Mileage Rates:

Beginning 1/1/19, the standard mileage rates for cars, vans, pickups, and panel trucks will be 58 cents per mile for business miles, 20 cents per mile for medical or moving purposes, and 14 cents per mile for charitable purposes. However, the rates cannot be used to claim an itemized deduction for unreimbursed employee travel expense or for moving expenses (except for certain members of the U.S. Armed Forces) because these deductions were suspended for 2018-2025 by the Tax Cuts and Jobs Act. The portion of the business standard mileage rate treated as depreciation is 24 cents per mile for 2015 and 2016, 25 cents per mile for 2017 and 2018, and 26 cents per mile for 2019. When computing the allowance under a Fixed and Variable Rate (FAVR) plan, the standard vehicle cost cannot exceed \$50,400 for autos, trucks, or vans. Notice 2019-2; News Release IR-2018-251 .

Federal Proposals

Alternative Programs – HR 2241, The Commuter Access Reform Act – would allow alternative commuter programs (such as Uber and Lyft) to be included in qualified transportation benefits. – No Action

Student Loans – HR 2551, The Student Loan Debt Relief Act, would raise the amount that can be excluded from an employee's gross income in an employer's educational assistance program from \$5,250 to \$10,000 – No Action

Employment Verification – HR 2461, The Accountability Through Electronic Verification Act, would make the E-Verify program mandatory and permanent and eliminate the form I-9 process. This bill is identical to S 179 which was proposed on January 20, 2017. If an employer failed to E-Verify it would be treated as a violation of the Immigration and Naturalization Act. - No Action

Pay Stubs HR 2275 –Proposed Federal Legislation Would Make Employers More Accountable

Legislation was introduced in the House of Representatives (House) in May (H.R. 2275, *Giving Workers a Fair Shot Act*) that would require employers subject to the Fair Labor Standards Act (FLSA) to provide employees with each payment of compensation a document that itemizes: (1) the total hours worked during the pay period; (2) the total pay during the pay period; (3) the hourly rate of pay (or hourly equivalent rate of pay if the employee is paid a salary, piece rate, or total amount paid in commissions); (4) the total amount and rate of any overtime pay; (5) the total amounts of earned, used, and available paid leave, and any expiration dates associated with such leave; (6) the source and amount of each deduction from total pay, including whether such deduction is taxable or non-taxable; and (7) whether an employee is exempt from receiving minimum wages and overtime, and if the employer considers the employee to be an executive, administrative, professional, or outside sales employee. The legislation would also increase penalties for violating the FLSA. Currently, there are no federal provisions regarding pay stubs though most states have pay statement laws. – No Action

Federal Proposals

Work schedules. Legislation was introduced in both the House and the Senate (HR 2942 S1386) on June 20, 2017 called the “Schedules That Work Act.” The bill would permit employees to request changes to their work schedules without fear of retaliation and would try and make sure that employers consider these requests. It would also require employers to provide more predictable and stable schedules for employees in certain occupations with evidence of unpredictable and unstable scheduling practices that negatively affect employees (e.g., food service, retail sales, cleaning). An employer would be covered under this provision if it engages in commerce, or in any industry or activity affecting commerce, and it employs 15 or more employees. The bill also contains written notice and posting requirements. Employers would be subject to penalties if they fail to comply with this provision.

– No Action

Minimum Wage S1242 / HR 15, The **Raise the Wage Act** would increase federal minimum wage to \$9.25 with annual increases to \$15 in seven years then indexed for inflation. Tipped employees minimum would be \$4.15 with a \$1.15 annual increase until tipped minimums equaled regular minimum wage. Newly hired people under 20 years of age could be paid a minimum of \$5.00/hr for 1 year with \$1.05 increase per year until the regular federal min wage is reached. – May 2017 – No Action

Federal Proposal - Family and Medical Leave Insurance Act

The Family and Medical Leave Insurance Act has been proposed but not passed in either the House or Senate. This would offer workers about two-thirds of their normal pay when they take up to 12 weeks off to care for newborns, elderly parents, a sick spouse or themselves if they're having a medical issue.

UPDATE - Senate held hearings during the week of July 9th, 2018. Update coming

The FMLI Act would be funded both by workers and employers through a payroll tax. Each would pay 0.2% of the worker's wages — which means the typical employee would pay about \$2 a week.

Four states have active paid leave policies in place, New York's is the most generous. It goes into effect in 2018, and once it's fully phased in by 2021, it will offer at least twice the number of paid weeks as California, New Jersey or Rhode Island.

Most workers in New York will be able to take 12 weeks in a 52-week period to care for a new child or ailing family member. The time can also be used to address military family needs, such as caring for children when a spouse gets deployed. In all cases, they will receive 67% of their average weekly wage up to a maximum equal to 67% of the state's average weekly wage.

Like the programs in California, Rhode Island and New Jersey, New York's will be funded by a payroll deduction from workers' wages.

Some cities have their own laws as well. In San Francisco, for instance, new parents can take six weeks at 100% of pay. That is more generous than the California state plan, which offers only partial pay for those six weeks. And unlike with the other paid family leave laws, the city requires employers to top off what the state plan provides to get the worker to 100% of pay.

W-4 Lock In Letter Report - TIGTA

Letter 2801-C (WHC Lock-in Letter to Employee) is sent to the employee. It advises the employee that the employer has been instructed to disregard the Form W-4 that was submitted and to withhold at the rate specified in the lock-in letter unless the Form W-4 results in more tax withheld than the lock-in letter.

What the TIGTA audit revealed. The report found that the number of lock-in letters issued in Tax Year 2016 was less than the number issued in Tax Year 2014.

What the TIGTA report recommended. The report recommend that the IRS:

- 1 determine the feasibility of providing revenue officers, and potentially other IRS functions, with the ability to issue lock-in letters when an under withholding issue is identified;
- 2 identify noncompliant employers and hold employers liable for failing to comply with the lock-in letter;
- 3 work with federal government agencies that are not complying with the lock-in letters;
- 4 assess the most effective use of resources for issuing lock-in letters and analyze the current selection criteria; and
- 5 update the Internal Revenue Manual to include that IRS employees will now be part of the review process.

The IRS agreed with the recommendations and plans to take corrective actions. It did note, however, that changes to the lock-in letter selection criteria would require extensive programming changes that budget restrictions will not allow at this time. As a result, this recommendation was put on hold.

House committee advances legislation providing tax break for gym membership

The House Ways and Means Committee has passed a bill allowing taxpayers to treat the amounts paid for membership at a fitness facility and gym classes as medical expenses.

The bill, known as the **Personal Health Investment Today (PHIT) Act**. It adds qualified sports and fitness expenses to the definition of qualified medical expenses. The bill includes membership in a fitness facility, participation or instruction in a program of physical exercise or activity, and safety equipment for use in a program (including a self-directed program) of physical exercise or activity. The amount treated as qualified sports and fitness expenses couldn't exceed \$500 for an individual taxpayer, or \$1,000 for a joint return or head of household. The amount for safety equipment couldn't exceed \$250. The committee approved the bill by a 28 to 7 margin, according to The Wall Street Journal.

Because of limits on tax deductions for medical expenses from the Tax Cuts and Jobs Act, the bill would mostly benefit people who have health savings accounts and flexible spending accounts, which could now be used to pay for gym memberships and fitness classes.

There are some limitations on qualified expenses under the bill. Golf, hunting, sailing and riding wouldn't be treated as a physical exercise or physical activity. Qualified sports and fitness expenses also wouldn't include videos, books or similar materials.

The bill was one of several that the House Ways and Means Committee marked up this week related to health savings accounts and flexible spending accounts.

HEALTH SAVINGS ACCOUNT BILL PASSES COMMITTEE HR 6199

July 2019 - Introduced with Representatives Ron Kind (D-WI), Eric Paulsen (R-MN), and Grace Meng (D-NY), the legislation gives Americans the ability to choose how they spend their Flexible Spending Arrangements (FSAs), Health Savings Accounts (HSAs), and other similar tax preferred health accounts by restoring access to over-the-counter medications. Current law under the Affordable Care Act requires consumers to obtain a doctor's prescription for over-the-counter medications in order to be eligible for reimbursement under their consumer health savings accounts.

House E Verify Health Premium Assistance Bill

H.R. 2581, the “Verify First Act,” which would amend the present-law and the proposed AHCA premium assistance credit to specify that no advance payments are to be made with respect to an individual unless the Treasury Secretary has received confirmation from the Secretary of Health and Human Services (HHS) that the Commissioner of Social Security or the Secretary of Homeland Security has verified the individual's status as a citizen or national of the U.S. or an alien lawfully present in the U.S. using a process that includes the appropriate use of information related to citizenship or immigration status, such as Social Security Numbers. – Passed House June 13, 2017

NACHA Same Day ACH Rules

Major provisions. Currently, ACH payments are settled on the next business day. NACHA's amended rule adds two new same day settlement windows to the ACH Network,

- A morning submission deadline at 10:30 a.m. ET), with settlement occurring at 1:00 p.m. ET
- An afternoon submission deadline at 3:00 p.m. ET, with settlement occurring at 5:00 p.m. ET.

Phase 3, effective March 16, 2018, faster ACH credit funds availability requirements for RDFIs; funds from Same Day ACH credit transactions will need to be available to customers by 5:00 p.m. RDFI local time.

<https://www.nacha.org/rules/same-day-ach-moving-payments-faster>.

Proposed Changes to Same Day ACH

At the beginning of this year NACHA issued a Request for Comment to gather industry feedback on proposed edits/updates to the Same Day Rule. They are specifically looking to:

1. Add a third Same Day ACH processing window that expands access to later in the day;
 - ODFIs would be able to submit files of SDA transactions until 5:15 p.m. ET / 2:15 p.m. PT
2. Provide faster funds availability to receivers of both Same Day and non-Same Day ACH credits;
 - For credits received prior to 5:00 p.m. RDFI local time on the previous banking day, funds would be required to be made available by 9:00 a.m. local time on Settlement Day (This is similar to the existing rule on availability for PPD credits; however, the current “opening of business” language is changed to “9:00 a.m. local time”)
 - For credits received after 5:00 p.m. RDFI local time on the previous banking day, funds would be required to be made available by 1:00 p.m. local time on Settlement Day
3. Raise the per-transaction dollar limit on Same Day ACH transactions to \$100,000; The limit per same-day ACH transaction increases to \$100,000, effective on March 20, 2020
4. Explore the industry’s interest in ACH processing on weekends and holidays.

NACHA to Make Improvements to Same Day ACH

The voting membership for NACHA, the Electronic Payments Association, has approved the following three new rules: (1) increase the speed of funds availability for certain Same Day ACH and next-day ACH credits; (2) increase the Same Day ACH per-transaction dollar limit to \$100,000; and (3) allow Same Day ACH transactions to be submitted to the ACH Network for an additional two hours every business day [NACHA website, *Same Day ACH Will Be Enhanced to Meet ACH End-User Needs*, 9/14/18].

Increase the speed of funds availability. This rule will go into effect on *Sept. 20, 2019*. Funds from Same Day ACH credits processed in the existing first window will be made available by 1:30 p.m. local time. Funds from certain other ACH credits will be available by 9 a.m. local time by the receiving financial institution.

Increase the Same Day ACH per-transaction dollar limit. This rule will go into effect on *March 20, 2020*. It will increase the Same Day ACH per-transaction dollar limit to \$100,000. With a higher dollar limit, ACH end users will have greater opportunity to make Same Day ACH payments for payroll, claim payments, business-to-business (B2B) payments, and a variety of other use cases.

Allow Same Day ACH transactions to be submitted to the ACH Network for an additional two hours. This rule will go into effect on *Sept. 18, 2020*. It will be achieved through the creation of a new Same Day ACH processing window by the two ACH Network operators. ACH end users will have more time during the business day to initiate a variety of Same Day ACH payments, including payroll and other disbursements, bill payments, and B2B transactions.

NACHA Same Day ACH Rules

The rule also requires that all Receiving Depository Financial Institutions (RDFIs) receive same-day transactions and provide faster funds availability to customers. For example, RDFIs will have to make funds available from same-day ACH credits (such as payroll direct deposits) to their depositors by 5:00 p.m. at the RDFI's local time.

- The estimated fee is 5.2 cents for each same day transaction.*
- Only international transactions (IATs) and high-value transactions above \$25,000 (increases to \$100,000 on March 20, 2020) will not be eligible for same-day processing.
- Existing one-day and two-day ACH processing and settlement capabilities are not impacted
- Prenotes will not return same day – but will accelerate NOC's by 1 day

* Not the fee to the originator (payroll processor) – that will be negotiated by the payroll processors financial institution

Real Time Payments

- The Clearing House (TCH) is developing a Real Time Payment (RTP) system that will provide domestic banks with a 24/7/365 payment network
- The RTP network will allow customers to transmit credits of up to \$25,000 per transaction (initially) that will settle on a near-real-time basis
- The network is a credit-push-only network (debit transactions are prohibited)
- All credit transactions are final (good funds model), automated reversals are not allowed
- The network will provide for transfer of funds, as well as informational messages. For example;
 - Remittance advice associated with a payment
 - Request for payment message
 - Request for information about a previously sent payment

NACHA Real Time Payments vs Same Day What is the Best Option?

Real Time

1. Individual payments
2. Messaging request for payments
3. Request for information
4. Finality of payment in the hands of the originator

ACH/Same Day

1. Scheduled and emergency payroll
2. Scheduled and last minute B2B payments
3. Batches of lower dollar payments
4. Finality of payment in the hands of the receiver

Mandated Sick Pay

STATES

- Arizona
- California
- Connecticut
- Maryland -2/11/18
- Massachusetts
- Michigan 4/19
- New Jersey 10/29/18
- Oregon
- Rhode Island 7/18
- Vermont
- Washington 2018
- Washington DC

LOCALITIES

- San Francisco, CA
- San Diego, CA
- Emeryville, CA
- Santa Monica, CA
- Los Angeles, CA
- Seattle, WA
- Chicago, IL
- Portland, OR
- New York, NY
- Minneapolis, MN
- Oakland, CA
- Philadelphia, PA
- Pittsburgh, PA
- Spokane, WA
- Montgomery County, MD
- New York City
- Westchester 3/30/19

NJ cities: Jersey City, Newark, Passaic, East Orange, Paterson Irvington, Trenton, Montclair, Bloomfield, Plainfield Elizabeth, Morristown



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New Jersey—Paid Sick Leave Bill Signed

Gov. Phil Murphy has signed legislation, effective Oct. 29, 2018, that will provide paid sick leave to employees working for an employer in New Jersey. An "employer" does not include a public employer that is required to provide its employees with sick leave with full pay pursuant to any other law, rule, or state regulation. The legislation allows workers to accrue one hour of earned sick leave for every 30 hours worked, up to 40 hours each year. Accrued sick leave may be carried over, but employers are not required to provide more than 40 paid hours of paid sick leave per year. The paid leave may be used by employees for: (1) diagnosis, treatment, or recovery from a mental or physical illness or injury, or preventive care, for the employee or a family member; (2) care required if the employee or a family member is a victim of domestic or sexual violence; (3) circumstances arising from a public health emergency; or (4) a school-related meeting or event with regard to the employee's child. State law will preempt all paid sick leave local ordinances adopted over the last couple of years so businesses have to abide by only one uniform set of rules [NJ L. 2018, A1827].

States Considering Mandatory Sick Pay Benefits

North Carolina - 1 hr / 30 worked

Maine - 1 hr / 30 worked max 40 annually

Maryland – several versions

Michigan – 1 hr / 30 worked sm bus /40 wk– full/part cap 72 hr new proposal
1 hr /40 max 72/40 – cap 36

Minnesota – no specifics

Pennsylvania – 5 days annually small bus 3 days

Eighteen states have pending sick leave bills

Michigan Mandatory Sick

Bill (L. 2018, S1175) revises paid sick leave legislation that was previously passed. Previous legislation would have allowed employees to accrue paid sick time at a rate of one hour for every 30 hours work (72 hours per year). The new bill only allows employees to accrue one hour of paid sick leave for every 35 hours worked (may be limited to 40 hours per year). Businesses with 50 or fewer employees are exempt from the paid sick time law. The above measures are effective *April 1, 2019*, or 90 days after the legislature's December 31 adjournment.

New Hampshire

Wage Payment and Day of Rest Bills Signed

Governor Sununu has signed two bills, both effective on July 29, 2018, that affect wage payment and day-of-rest provisions for workers. One bill, L. 2018, H428, provides, that unless otherwise authorized by the State, employees who are paid weekly must be paid within 8 days after the end of the workweek, and employees who are paid biweekly must be paid within 15 days after the end of the workweek. Currently, wages must be paid at regular intervals not to exceed 14 days. The second bill, L. 2018, S417, adds employees at recreation camps and youth skill camps to the list of workers who are exempt from the day-of-rest rules that require a 24-hour period of rest in every 7-day period.

Georgia Mandatory Sick Leave

Wage and Hour. New legislation, effective from July 1, 2017 to July 1, 2020, requires public or private employers with 25 or more employees that provide sick leave to allow employees who work at least 30 hours per week to use sick leave to care for an immediate family member (child, spouse, grandchild, grandparent, parent or other dependents). Employers are not required to offer sick leave or to allow employees to use more than 5 days of earned sick leave per calendar year to care for an immediate family member. Employees may not use sick leave until leave has been earned. Employers that offer employees an employee stock ownership plan are exempt from this provision [L. 2017, S201].

Minnesota—Duluth Sick/Safe Leave Time

The Duluth City Council has passed a paid sick and safe leave ordinance that will take effect on Jan. 1, 2020. For purposes of the ordinance, an employer is defined as an individual, corporation, partnership, association, nonprofit organization or a group of persons who has 5 or more employees whether or not the employees work in the city. An employee is defined as any person employed by an employer who performs work within the geographic boundaries of Duluth for more than 50 percent of the employee's working time in a 12 month period, or a person based in Duluth who spends a substantial part of his or her time working in the city and does not spend more than 50 percent of his or her work time in a 12 month period in any other particular place. Employees become eligible to begin accruing leave after 90 days of employment. Employees will accrue one hour of sick/safe time for every 50 hours worked, up to a maximum of 64 hours per year. Employees may carry over up to 40 hours of unused leave to the following year. The leave can be used for the employee's (or family member's) physical or mental illness, injury, or preventative care needs. Accrued sick/safe time can also be used for a work absence due to domestic abuse, sexual assault, or stalking [Duluth City Ordinance 10571; City of Duluth website, City Clerk, Earned Sick and Safe Time].

Rhode Island – Sick Pay

Governor Raimondo has signed legislation (the Health and Safe Families and Workplace Act) that, effective July 1, 2018, will require employers in Rhode Island that employ 18 or more employees to provide their employees with three days of paid sick or safe leave (increases to four days in 2019, and five days thereafter). Paid sick and safe leave time may be used for an employee's or family member's mental or physical illness, injury, or health condition; medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; and preventive medical care. Employees must accrue a minimum of one hour of paid sick and safe leave time for every 35 hours worked, up to a maximum of 24 hours (increases to 32 hours in 2019, and 40 hours thereafter). Employees who are exempt from the overtime requirements under the federal Fair Labor Standards Act (FLSA) are presumed to work 40 hours per week for purposes of the Act, unless their normal work week is less than 40 hours. Employers must either permit employees to carry over their earned but unused paid sick and safe leave time to the following calendar year, or pay their employees for the unused time at the end of the year [2017 HB 5413; 2017 SB 290].

Texas—San Antonio Passes Paid Sick Time Ordinance

The San Antonio City Council has adopted an earned paid sick time ordinance. Employers who employ anyone performing at least 80 hours of work within the city will be required to provide up to 64 hours of paid sick leave per year beginning Aug. 1, 2019 (Aug. 1, 2021 for employers with 5 or fewer employees at any time in the preceding 12 months). The ordinance provides for 1 hour of earned sick time leave for every 30 hours worked by an employee within the City of San Antonio. Employers with up to 15 employees working in the city (small employers) will be required to provide 48 hours of paid sick leave per year. Larger employers will be required to provide 64 hours of paid sick leave per year. Paid sick leave may be used for the health care of the employee or family member, and for care or services related to domestic abuse, sexual assault, or stalking of the employee or family member. Employers who fail to provide paid sick leave will be subject to a civil penalty of \$500 per violation. The ordinance is similar to the recently-passed Austin paid sick leave ordinance that has been temporarily blocked by the Texas Court of Appeals from going into effect. The Austin paid sick leave ordinance was scheduled to go into effect on Oct. 1, 2018.

Washington — FMLA

New legislation establishes the Washington Family and Medical Leave Insurance program. Effective Jan. 1, 2020, all eligible employees who work in the state will be provided up to 12 weeks of paid leave to care for a new child or ailing family member. Multiple sick leaves cannot total more than 16 weeks in a year. An extra two weeks may be allowed for pregnancy complications. Employees are eligible for paid leave benefits after working 820 hours. Generally, the weekly benefit will be 90% of the employee's average weekly wage up to a maximum benefit amount of \$1,000. The program will be funded through a payroll tax assessed on both employers and employees [L. 2017, S5975].

Massachusetts Paid Family and Medical Leave Program

The bill establishes a job protected and paid family and medical leave program, which goes into effect on January 1, 2021. Importantly, unlike the federal Family and Medical Leave Act of 1993 (the “FMLA”), the bill does not require that an employer employ a threshold minimum number of employees to trigger coverage. The only carve-out for smaller employers is that employers with fewer than 25 employees would not be required to pay the employer portion of the payroll tax, contributed to by employers and employees, which would fund the program

State Child Support Fact Sheet

Only 15 states require child support to be paid

electronically. These include: CA, FL, IL, IN, IA,

MA, NE, NV, ND, OH, OR, PA, TX, VA, and WV

All state child support agencies except for South

Carolina accept payments by EFT/EDI (electronic funds transfer/electronic data interchange)

EDI includes the identifying information such as

case number to properly apply the payment

Child Support Reminders

Important points to remember. The Office of Child Support Enforcement (OCSE) notes that the following points are the most important ones to remember:

An employer must honor an income withholding order for child support if the sender uses the Office of Management and Budget Form OMB-0970-0154, Income Withholding for Support (IWO).

An employer must withhold child support before all other garnishments, except an IRS tax levy entered before the date that the underlying child support order was established.

An employer must withhold a higher percentage of the employee's or obligor's disposable income for child support than for other garnishments.

An employer must withhold payments for each pay period, and, in most cases, send them to the state disbursement unit (SDU).

Anyone may send an IWO, including state, tribal, and territorial child support agencies; courts; tribunals; attorneys; and individuals.

An IWO is valid throughout the country, including U.S. territories.

An employer should notify the sender if the person is not an employee.

The OCSE notes that an employer should follow the laws of the work state when dealing with the priority of current support, arrears, medical support and other types of child support.

Child Support Terminations

The Office of Child Support Enforcement (OCSE) now has a document on its website that explains how employers and federal agencies may report a termination of an employee with a child support order [OCSE website, *Reporting Employee Terminations for Private Employers and Federal Agencies*, 7/19/17].

Online reporting. Employers are required to report the termination of an employee with a child support income withholding order (IWO) as soon as possible to the child support agency, court, or attorney who issued the IWO. Terminations may be reported to state agencies using electronic termination (eTerm) on the OCSE Child Support Portal..

Alternatives to online reporting. Employee terminations may also be reported by fax or mail to the state child support agency. Some states also accept information by telephone or on the state child support website.

The OCSE notes that employers must report a termination even if the employee left employment during the first pay period, if all of the following apply: (1) an employer-employee relationship existed; (2) the employee completed a W-4 form; (3) the employee was reported on a new hire report; and (4) the employer received an IWO for the employee.

Rehires. The OCSE also notes that if an employee is rehired, the employer must submit a new hire report if the employee was separated for at least 60 consecutive days. Some states may provide for a shorter time frame.

California Retirement Program

CalSavers provides employers a way to offer their employees a retirement savings benefit without the administrative complexity, fees, or fiduciary liability of existing options for employers. Any employer with at least five employees that doesn't already offer a workplace retirement savings vehicle will be required to either begin offering one via the private market or provide their employees access to CalSavers. The deadlines for employer compliance depends on the number of their employees. After CalSavers opens for enrollment, covered employers can register for CalSavers at any time and will be required to comply by the following deadlines:

Size of business Deadline

100+ employees 12 months after implementation (~January 2020)

50+ employees 24 months after implementation (~January 2021)

5+ employees 36 months after implementation (~January 2022)

Program start date – pilot program late 2018 statewide in 2019 – Employer requirement late 2019

Vermont—Third Party Access to myVTax Account

The Vermont Department of Taxes has revised its guidance on how to grant access to third parties to a myVTax account. Access must be granted to tax professionals to see and access their clients' accounts. Levels of access include "View" only or allowing the third party to "View, File & Pay" taxes. The third party must create an account in myVTax to obtain access. Once registered, this person is recognized as an "Existing Third Party" with a username in myVTax. The taxpayer must obtain the username to add the third party to his or her account. Once a taxpayer has granted the third party permission to access an account, the taxpayer then must specify the tax year(s) for that account. The third party will not be able to access tax years outside of the range designated [Granting Third-Party Access to a MyVTax Account, GB-1090, 9/1/18].

California

Copies of Paystub Information

Every employer, semimonthly or at the time of each payment of wages, must furnish to all employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing specified items.

New legislation, effective Jan. 1, 2019, makes clear that if a current or former employee requests to receive a copy of the records, the employer must provide them with a copy rather than requiring the employee to make the copy [L. 2018, S1252].

California

New Electronic Payment Options for Payroll Taxes and Garnishments

There is a new quick and convenient payroll tax deposit payment option on the Employment Development Department's (EDD) website called Express Pay. Employers can now simply enter their Account or Letter ID and payment information to make a payroll tax deposit or account payment without creating or logging into an account. This new payment method satisfies the electronic requirement for payroll tax deposits. Employers can also now make garnishment payments through their e-Services for Business account. Employers may view the Earnings Withholding Order issued, view a list of active employees with Earnings Withholding Orders for taxes, and make a payment through the e-Services for Business account [EDD California Employer Newsletter, Second Quarter 2018, 6/21/18].

Penalties for Noncompliance with Electronic Filing Requirement Beginning in 2019

All employers must electronically submit employment tax returns, wage reports, and payroll tax deposits using the California Employment Development Department's (EDD) e-Services for Business. Effective Jan. 1, 2019, the EDD will assess penalties for non-compliance beginning with first quarter payments and return and/or report filings as follows: (1) \$50 per return for Forms DE-9 (Quarterly Contribution Return and Report of Wages), DE 3HW (Employer of Household Worker(s) Annual Payroll Tax Return), and DE 3D (Quarterly Contribution Return); (2) \$20 per wage item for Forms DE 9C (Quarterly Contribution Return and Report of Wages (Continuation)) and DE 3BHW (Employer of Household Worker(s) Quarterly Reports of Wages and Withholding); and (3) 15% of the payment amount due on Form DE 88 (Payroll Tax Deposit). To prevent these penalties and to comply with the e-file/e-pay mandate, employers can use e-Services for Business, a no cost online service on the EDD's website that is available 24 hours a day, seven days a week. Employers also can use Express Pay, a new online payment option on the EDD's website, to meet the e-pay mandate for payroll tax deposits [EDD California Employer Newsletter, 2nd Quarter 2018, 6/21/18].

Virginia – PSP – Disclosure Rule

Withholding. New legislation, *effective April 28, 2017*, requires any employer or payroll service provider that owns or licenses computerized data related to withholding tax to notify the Office of the Attorney General without unreasonable delay after discovering a data breach affecting its own employees with respect to a taxpayer identification number and income tax withheld that the employer or payroll service provider reasonably believes will cause identity theft or other fraud. For employers, this legislation only applies to information regarding its own employees and does not apply to information about its customers or other non-employees [L. 2017, H1500 (c. 836, Item 275(X))].

North Carolina

Additional Withholding Allowances

Amended regulations, effective May 1, 2018, allow taxpayers to claim additional withholding allowances if they expect to have allowable itemized deductions exceeding the standard deduction, or allowable adjustments to income. For most taxpayers, one additional allowance may be claimed for each \$2,500 that the itemized deductions allowed are expected to exceed the standard deduction, and for each \$2,500 of net adjustments reducing income. In addition, a taxpayer expecting to have allowable tax credits may claim additional withholding allowances. The number of additional allowances is determined by dividing the amount of the tax credit by the product determined by multiplying the withholding tax rate by \$2,500 and then rounding that number down to the nearest whole number [NC Admin Code §6C.0124, as amended on 5/1/18].

Connecticut

Convenience of the Employer Withholding Tax Test

Effective Jan. 1, 2019, residents of states with a "convenience of the employer" test (Delaware, Nebraska, New York, and Pennsylvania) will be subject to similar rules for work done for a Connecticut employer. Under this rule, nonresident income tax is imposed on wages earned by employees who work outside of the state for their own convenience, rather than for the convenience of the employer [Connecticut 2018 legislative summary, 6/4/18].

Pennsylvania

Mandatory – withholding for 1099 Independent Contractors – non residents of Pennsylvania or pay rent to nonresident landlords.

Effective January 1, 2018, businesses and non-profits that expect to make non-employee Pennsylvania-source payments of at least \$5,000 to non-resident individuals and single-member LLC's that have a non-resident individual member will be required to withhold Pennsylvania personal income tax on these payments. Withholding is optional if the payments do not exceed \$5,000 per payee in a year.

So what type of payments fall under this requirement?

Any payments made to an individual living outside of Pennsylvania who is not an employee but performs services in the course of your trade or business is subject to this withholding requirement. Additionally, lease payments made by a business or non-profit to a landlord that is a nonresident individual, trust, or estate will also be subject to this withholding requirement, even if payments are made to a Pennsylvania intermediary.

Pennsylvania

New Version of Unemployment Tax Electronic Reporting Specifications

The Pennsylvania Department of Labor and Industry (DL&I) has posted a June 2018 version of publication UC-2010 (File Layouts and Formats for Electronic Reporting of PA Quarterly Unemployment Compensation Wage and Tax Data) on its website. All employers, unless granted a waiver, must use the Unemployment Compensation Management System (UCMS) to electronically file and pay unemployment compensation (UC) (see Payroll Guide ¶15,007). The following changes are effective on Jan. 1, 2020: CSV files will require an FEIN in each E record and contact information in the A record (can be input beginning July 1, 2018; mandatory Jan. 1, 2020); ICESA files will be accepted as both tax and wage reporting for original files (it will no longer be required to submit an additional TAB file to complete the tax report filing when an ICESA file is submitted for an original filing); and TAB and SSA file formats will no longer be accepted.

Massachusetts

Minimum Wage and Paid Leave Bill Approved by Legislature

A bill approved by both houses of the Massachusetts legislature would raise the minimum wage incrementally to \$15 per hour by 2023 (currently, \$11 per hour). In addition, the bill provides for 12 weeks of paid leave to care for a new baby or sick family member, and up to 20 weeks of paid leave for the employee's own medical needs. [L. 2018, H4640].

Effective 1-1-21, employers must provide “covered individuals” with paid family and medical leave. Eligible employees will be able to take up to 12 weeks of paid family leave: (1) to bond with a child during the first 12 months after birth or after a placement for adoption or foster care (2) because of an issue arising out of the fact that a family member is on active duty or has been notified of an impending call to active military duty or (3) to care for a family member with a serious health condition (effective on 7-1-21). Eligible employees will be entitled to up to 20 weeks of paid medical leave for their own serious illnesses. Eligible employees will be entitled to up to 26 weeks of paid family leave to care for a family member who is a covered military service member. Effective 1-1-19, employers must begin collecting a payroll tax to fund the program. Employers will be responsible for the entire tax however, they can offset the tax by deducting a certain percentage from the employee’s wages [H.B. 4640, L. 2018]

Calculating wages owed to tipped employees changed. Effective 1-1-19, employers will be required to calculate the minimum wage owed to tipped employees at the end of each shift worked (currently, it is calculated for each pay period).

Oregon—New Statewide Transit Tax Beginning July 1, 2018

There is a new 0.1% statewide transit tax, effective July 1, 2018, that is withheld from the wages of employees who are residents of Oregon, and on nonresident employees performing services in Oregon. Oregon employees will see the withholding on paystubs they receive after July 1. Employers are responsible for withholding the tax from employee wages, just like other personal income taxes. The statewide transit tax is not the same as transit payroll taxes (TriMet and Lane Transit). Oregon residents who work outside of the state can ask their employer to withhold the statewide transit tax from their wages as a courtesy, but employers are not required to do so. Nonresident employers who are currently performing courtesy income tax withholding for Oregon resident employees should have received a letter from the Oregon Department of Revenue (DOR) with information on how to comply with the new tax. They must notify the DOR in writing using the Business Change in Status form if they don't want to perform courtesy withholding for the statewide transit tax. If an out-of-state employer does not withhold the tax, employees are responsible for reporting and paying the tax due when they file their annual Oregon personal income tax return. Most employers, other than agricultural and domestic employers, will file returns and pay the new tax on a quarterly basis. The Oregon Department has posted an employee information stuffer on the new statewide transit tax on its website that employers can download, print, and include with employee paychecks or paystubs, or in any digital form of paycheck or paystub [New Transportation Tax Withholding Starts July 1, 6/26/18].

Rhode Island

Amended Withholding Tax Regulation

PIT 97-15 (Employers' withholding), which is now known as 280-RICR-20-55-10, has been amended, effective June 11, 2018. The regulation includes information on: (1) how taxpayers may rely on federal Form W-4 and use Rhode Island Form RI W-4 if they want to withhold additional income for tax purposes; (2) how to withhold based on a percentage of federal taxable income rather than a percentage of federal income tax; (3) a recent law change that requires certain employers to pay electronically; and (4) a revision in the upper threshold amount (from \$23,999 to \$24,000) to be classified as a quarter-monthly filer. The amended regulation: (i) eliminates information on annual withholding or exceptions for withholding; (ii) corrects the due date for annual reconciliation returns (Form RI W-3) from February 28 to January 31; and (iii) removes references to magnetic media.

Maine—Ballot Initiative Would Authorize Payroll Tax for Universal Home Care

A ballot initiative, to be voted on at the Nov. 6, 2018 election, would establish a Universal Home Care Program. The program would be funded by a 3.8% tax on employees earning income above the Social Security tax limit (\$128,400 in 2018). Employers maintaining an office or transacting business in Maine would pay half of the tax (i.e., 1.9%), and covered employees would pay half of the tax. The program would provide for long-term home health care and social services to seniors over the age of 65, or younger individuals who have physical or mental disabilities.

REJECTED !!

Massachusetts—New Payroll Tax in July 2019

Governor Baker has signed legislation that creates a new payroll tax, beginning on July 1, 2019, to fund the new state family and medical leave program (see 6-29 Payroll Update). The payroll tax applies to most Massachusetts employers, other than employers with less than 25 employees in Massachusetts. An employer or a covered business entity with a workforce that has more than 50% self-employed individuals, for whom the employer must report the payment for services to such individual on IRS Form 1099-MISC, must include those self-employed individuals as employees for purposes of determining whether the employer is subject to this tax. The initial tax rate is 0.63% of an employee's wages. An employer may deduct 100% of the contribution from an employee's wages or self-employed individual's income for family leave. An employer may not deduct more than 40% of the contribution from an employee's wages for medical leave, and from a self-employed individual's income, unless the contribution for the self-employed individual is for family leave. Contributions are not required for employee wages above the Social Security taxable wage base limit [L. 2018, H4640].

Wyoming – Bond Regulation

Nonresident employers that expect to pay wages in the state of Wyoming in excess of \$10,000 monthly, or \$120,000 annually, as a result of conducting business in Wyoming, must post a surety bond or other security with the Department of Workforce Services. Effective July 1, 2017, the amount of the surety bond is increased from \$10,000 to \$20,000, plus an additional \$2,000 for each \$120,000 or fraction thereof that the expected wages exceed \$120,000 annually (previously \$1,000 for each \$120,000 or fraction of expected wages that exceed \$120,000). The penalty will also increase from \$750 to \$1,000 for failure to comply with nonresident bonding and security requirements [L. 2017, H221].

New York

Proposed Legislation Prohibiting Employers from Asking About Salary History

On Equal Pay Day, Governor Cuomo introduced legislation that would prohibit both public and private employers doing business in New York State from asking job applicants about their salary history. The goal of the legislation is to close the gender wage gap. Cuomo stated that "By banning salary history, we can break the weight of this unfair, unequal cycle and work to achieve fair pay for all women in this state" [Gov. Cuomo Press Release, Governor Cuomo Announces Legislation to Institute a Salary History Ban to Close the Gender Wage Gap, 4/10/18].

New York – Uber/Lyft Drivers

New York City Minimum Wage Rate for "For-Hire" Vehicle Drivers

The New York City Council has approved a measure that calls for a minimum wage rate to be established for "for hire" vehicle drivers, which includes taxis and limousines as well as ride sharing programs like Uber and Lyft. Mayor de Blasio said he intends to sign the bill on August 14. The bill mandates that the City introduce and adopt new legislation within 75 days establishing a minimum wage rate for for-hire drivers. The report supporting the bill recommended a minimum wage of \$17.22 per hour. The Mayor's statement regarding the passage of the bill notes that this would increase driver take-home pay by an average of 20% [Mayor de Blasio's website, News Release, Mayor de Blasio, City Council, Advocates Celebrate Passage of For-Hire Vehicles Legislation, 8/9/18].

Mandatory Multiple Worksite Reporting

States/Territories With Mandatory Multiple Worksite Reporting Efile employers with more than one worksite must not only unemployment insurance contribution and wage reports with each state, they must also file quarterly employment and wage reports with the state agencies that break down the information by industry and locality. All states are responsible for collecting employment data and providing it to the federal Bureau of Labor Statistics (BLS), but not all of them require employers to file a report containing the information.

States that require MWR:

AL, CA, CO, CT, FL, GA, HI, IA, KS, LA, ME, MD, MN, NE, NV, NH, NJ, NY, NC, ND, OH, PR, RI, SC, UT, VT, VI, VA, WV

New York—Quarterly Withholding Reconciliations Beginning in 2019

The New York State budget bill includes a provision that will require employers to reconcile wage and withholding information on a quarterly basis, rather than annual, effective with quarters beginning after Dec. 31, 2018. Currently, employers report the total unemployment insurance (UI) remuneration paid to each employee on a quarterly basis on Form NYS-45 (Quarterly Combined Withholding, Wage Reporting, And Unemployment Insurance Return) but report the amount of gross federal wages, and total NYS, NYC, and Yonkers tax withheld for each employee on an annual basis. The new provision will make employee wage reporting between the Department of Taxation and Finance (gross federal wages and withholding) and the Department of Labor (UI remuneration) consistent by requiring all reporting on a quarterly basis [L. 2018, S7509/A9509, Part I].

New Jersey—Higher Withholding Rate on Remuneration in Excess of \$5 Million

New legislation increases the highest state gross income tax rate to 10.75%, for taxable years beginning on or after Jan. 1, 2018. Employers must deduct withholding from salaries, wages, and other remuneration paid in excess of \$5 million during 2018 at the rate of 15.6%, as soon as practicable but no later than Sept. 1, 2018. An employer maintaining an office or transacting business within New Jersey, and making payment of any salaries, wages and remuneration subject to state gross income tax, or making payment of any remuneration for employment, will not be assessed interest, penalties or other costs that may otherwise be imposed for insufficient withholding from salaries, wages and remuneration before Sept. 1, 2018, if the insufficient withholding is directly attributable to this legislation [L. 2018, A3088].

Ohio - Professional Employer Organizations

The Ohio Department of Taxation (ODT) is notifying all professional employer organizations (PEOs) by e-mail and letter, about a change in the method for filing reports on the businesses they represent (client-employers) with the ODT. This reporting requirement, which was enacted in 2013 (see Ohio Rev. Code Ann. § 5747.07(J)(2)), requires that the PEO provide the following information for each of their client-employers:

1. The name, address, charter number (if applicable) and federal employer identification number (EIN) for each client-employer,
2. The start date that each client-employer became a client of the PEO, and if applicable, the date such client relationship was terminated and/or ceased doing business, and
3. The names and mailing addresses of the CEO and CFO of each client-employer.

To facilitate this reporting, the ODT has created a new macro-enabled Excel spreadsheet template for PEOs to use. The template, instructions on how to complete it, and how to export the TXT file to ODT are available on the DOT website.

The ODT has designed the spreadsheet to capture all client-employer information for the above mentioned reporting period including all items listed in #1-3, above.

By April 30, 2018, each PEO must complete this spreadsheet for all client-employer information from Jan. 1, 2013 (or the date after Jan. 1, 2013 when the PEO began business in Ohio) through March 31, 2018.

Once the spreadsheet has been completed, the PEO must transmit the TXT file to the ODT via secure FTP server using the following URL: <https://sftp01.tax.state.oh.us:8443/webclient/Login.isf>.

Subsequent quarterly reports must be filed by the PEO on or before the last day of the month following the end of each calendar quarter (due by April 30; July 31; October 31; and January 31) using the same spreadsheet template [DOT e-mail, Employer Withholding Tax Alert--Notice to Professional Employer Organizations, 4/3/18].

Third Party Sick Pay

Mandatory States

New York * (Insurance Company provided – 3yr calculation for employee paid portion)

New Jersey

Rhode Island

Hawaii

California ** ((Employee paid (generally))

Puerto Rico

Never Make a DBL deduction a Pre tax event

Potential Increase in Exempt \$\$

Public Had an Opportunity to Comment on Proposed Changes to Overtime Rule – decisions coming

The DOL is asking employers to weigh in on eleven (11) questions (summarized below):

Should the DOL simply update the 2004 salary level (\$455/wk) for inflation?

Should multiple salary levels be created, and if so, how (size of employer, region, etc.)?

Should there be different salary levels for executive, administrative and professional (as it was prior to 2004)?

Should the DOL return to using the long and short test salary levels (and would the duties test need to change if so)?

Does the 2016 salary threshold (\$913/wk) in effect negate the duties test? And if so, at what threshold does it not negate the duties test?

What actions did employers take to prepare for the December 1, 2016 regulation (i.e., increase salaries, change hours, reduce pay, etc.)?

Would it be preferable to base exemptions on duties only (no salary threshold)?

Does the \$913/wk threshold exclude occupations traditionally covered as exempt?

Is the 10% non-discretionary bonus and incentive payment credit towards satisfying the salary threshold appropriate?

Should the highly compensated thresholds have multiple levels, and if yes, how (i.e. size of employer, region, etc.)?

Should the salary levels be automatically updated periodically, and if so, how/when?

<https://www.regulations.gov/docket?D=WHD-2017-0002>

DOL Will Hold Public Listening Session on Overtime Rule 10/17/18

The Department of Labor's (DOL) Wage and Hour Division (WHD) conducted a public listening session to discuss proposed changes to the overtime regulations in Washington D.C. on October 17 from 10 a.m. to 12 p.m. EDT.

Background. 29 USC 213(a)(1) exempts from both minimum wage and overtime protection "any employee employed in a bona fide executive, administrative, or professional capacity," and expressly delegates to the Secretary of Labor the power to define and delimit these terms through regulation. Under the Obama administration, the DOL had issued a final rule under which the standard salary level used to determine whether executive, administrative, and professional (EAP) employees are eligible to receive overtime would have increased from \$455 per week to \$913 per week for a full-time worker on Dec. 1, 2016. The rule was blocked from going into effect by a federal district court judge, who found that the DOL had exceeded its authority by looking only at the salary level in revising the overtime rule without taking into account the duties that the employees performed.

The DOL decided not to advocate for the specific salary level (i.e., \$913 per week) in the 2016 final rule and to instead undertake further rulemaking to determine what the salary level should be.

The WHD is seeking feedback on:

What is an appropriate salary level (or range of salary levels) for the overtime exemption?

What benefits and costs to employees and employers might accompany an increased salary level?

What is the best method for determining an updated salary level?

Should the standard salary level and annual compensation level for highly compensated employees (currently \$100,000 per year) be updated regularly?

Look for an update on Exempt \$\$ March 2019

Review of “Exempt” Categories

Executive Exemption

To qualify for the executive employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee’s primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent;
- The employee must have the authority to hire or fire other employees, or the employee’s suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

Exempt Categories

Administrative Exemptions

To qualify for the administrative employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers;
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Exempt Categories

Professional Exemption

To qualify for the learned professional employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- The advanced knowledge must be in a field of science or learning;
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

To qualify for the creative professional employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

Exempt Categories

Teachers

Teachers are exempt if their primary duty is teaching, tutoring, instructing or lecturing in the activity of imparting knowledge, and if they are employed and engaged in this activity as a teacher in an educational establishment. Exempt teachers include, but are not limited to, regular academic teachers; kindergarten or nursery school teachers; teachers of gifted or disabled children; teachers of skilled and semi-skilled trades and occupations; teachers engaged in automobile driving instruction; aircraft flight instructors; home economics teachers; and vocal or instrument music teachers. The salary and salary basis requirements do not apply to bona fide teachers. Having a primary duty of teaching, tutoring, instructing or lecturing in the activity of imparting knowledge includes, by its very nature, exercising discretion and judgment.

Practice of Law or Medicine

An employee holding a valid license or certificate permitting the practice of law or medicine is exempt if the employee is actually engaged in such a practice. An employee who holds the requisite academic degree for the general practice of medicine is also exempt if he or she is engaged in an internship or resident program for the profession. The salary and salary basis requirements do not apply to bona fide practitioners of law or medicine.

Exempt Categories

Highly Compensated Employees

Highly compensated employees performing office or non-manual work and paid total annual compensation of \$100,000 or more (which must include at least \$455 per week paid on a salary or fee basis) are exempt from the FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.

California

—New Standard for Classifying Workers for Minimum Wage and Overtime Purposes

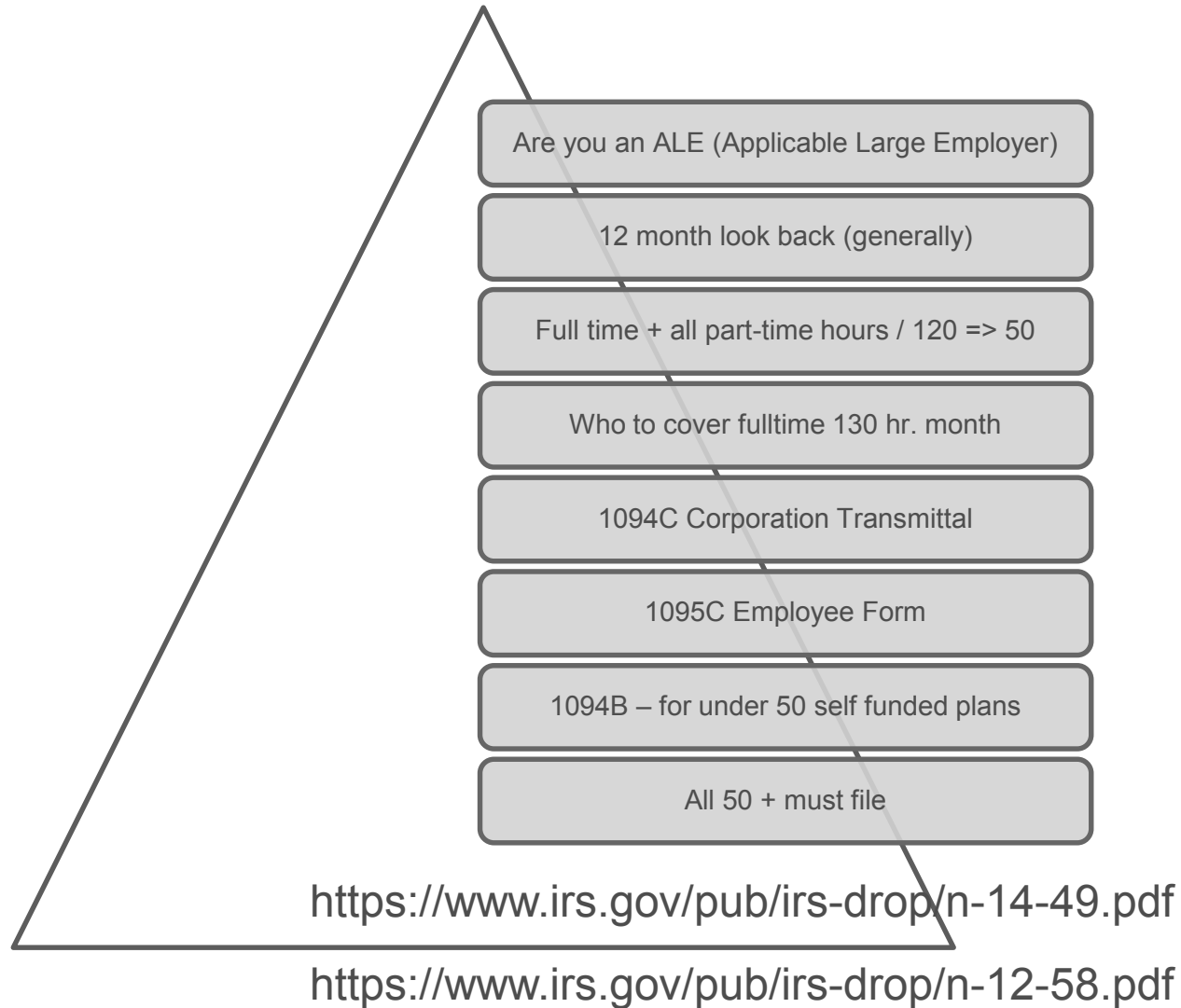
The California Supreme Court has ruled that the "ABC Test" is to be used when determining whether a worker is an employee or independent contractor for purposes of California wage orders (see Payroll Guide ¶ 19,047), which impose obligations related to minimum wages, maximum hours, and a limited number of very basic working conditions (such as minimally required meal and rest breaks) of California employees. The ABC Test presumes that all workers should be classified as employees, unless the worker: (a) is free from control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of such work and in fact; (b) performs work outside the usual course of the hiring entity's business; and (c) is customarily engaged in an independent trade, occupation, or business of the same nature as that involved in the work performed. A different worker classification standard (S.G. Borello & Sons, Inc. v. Department of Industrial Relations, Cal. Sup. Ct., 769 P.2d 399, 3/23/89) was used before the Supreme Court's ruling where the principal test of an employment relationship was whether the person to whom services were rendered has the right to control the manner and means of accomplishing the result desired.

In the underlying lawsuit in this matter, two individual delivery drivers, suing on their own behalf and on behalf of a class of allegedly similarly situated drivers, filed a complaint against Dynamex Operations West, Inc. (Dynamex), a nationwide package and document delivery company, alleging that Dynamex had misclassified its delivery drivers as independent contractors rather than employees. The drivers claimed that Dynamex's alleged misclassification of its drivers as independent contractors led to Dynamex's violation of the provisions of Industrial Welfare Commission Wage Order No. 9 (the state wage order governing the transportation industry), as well as various sections of the California Labor Code [Dynamex Operations West v. Superior Ct., Cal. Sup. Ct., Dkt. No. S222732, 4/30/18].

Washington—Minimum Salary Level to Receive Overtime May Be Increased

The Washington Department of Labor and Industries (LNI) is considering issuing a rule that would raise the minimum salary level to be exempt from receiving overtime to \$74,880. The current regulations were issued in 1976, at which time the minimum salary for most overtime-eligible employees in Washington was set between \$155 per week (or \$8,060 per year) and \$250 per week (or \$13,000 per year), depending on the type of employee and the duties he or she performed. Options for the new weekly minimum salary level include: (1) a multiple of the state minimum wage rate; (2) a fixed level based on the statewide median weekly wage, statewide average weekly wage, or the weekly wage for the median salaried worker in the Western Census region; (3) multiple salary levels that vary by business size or geography; or (4) a salary level equal to the federal salary threshold (\$455). The LNI is accepting public comments through September 5. Comments may be submitted to the EAP Draft Rule Concepts webpage either by using the "Submit Comments" tab of the EAP Draft Rule Concepts webpage, or attaching a document using the "Upload Documents" option. They can also be e-mailed to EAPRules@Lni.wa.gov [DLI website, EAP Draft Rule Concepts].

ACA Update



Affordable Care Act – 2018 Reporting

March 4, 2019 – Deadline to Furnish Employee Statements

• **February 28th, 2019** – Deadline to Mail File with IRS

• **April 1st, 2019** – Deadline to Electronically File (E-File)

Employer's required to offer coverage to **at least 95%** of their Full-Time Employees

Employee Mandate – Gone

Employer Mandate – Stays in Effect!

Affordable Care Act

Penalties Increasing in 2017

The IRS has announced that the “affordability” percentage for employers to avoid an Affordable Care Act (ACA) shared responsibility payment (penalty) is increasing in 2017 [Rev Proc 2016-24, 2016-16 IRB].

Background. Applicable large employers (generally, employers with at least 50 full-time employees in the previous year, including full-time equivalent employees) may be liable for a shared responsibility payment if either:

- (1) they offered health insurance coverage to fewer than 95% of their full-time employees and their dependents, and at least one full-time employee enrolled in coverage through the Health Insurance Marketplace and received a premium tax credit, or
- (2) they offered coverage to at least 95% of their full-time employees and their dependents, but at least one full-time employee receives a premium tax credit (because coverage offered was not affordable, did not provide minimum value, or the full-time employee was not offered coverage).

Health insurance coverage is considered “affordable” to an employee if the lowest cost self-only health plan. The Revenue Procedure also provides that the Section 36B required contribution percentage, which is used to determine whether an employee's share of the cost of employer-sponsored coverage is affordable, is 9.86% for plan years beginning in 2019 (up from 9.56%) for 2018

- \$300 per full-time employee each month that receives subsidized coverage through an exchange for an employer offering unaffordable or non-minimum value coverage
- Penalty triggered by FULL-TIME Employee receiving subsidized coverage through an exchange (marketplace)

Rev Proc 2016-24, 2016-16 IRB, also updates the tables used to determine whether an individual is eligible for a premium tax credit in 2017.

ACA Premium Tax Credit Indexed Adjustments for 2019

In a Revenue Procedure, the IRS has released the indexed applicable percentage table to be used in calculating an individual's premium tax credit under IRC Sec. 36B for tax years beginning in 2019. The Revenue Procedure also provides that the Section 36B required contribution percentage, which is used to determine whether an employee's share of the cost of employer-sponsored coverage is affordable, is 9.86% for plan years beginning in 2019 (up from 9.56% for 2018). The IRS has determined that an additional adjustment isn't required to reflect the rates of premium growth relative to the growth in the consumer price index.

Federal Ruling Strikes Down ACA

A federal judge has ruled that the Affordable Care Act (ACA or Obamacare) is unconstitutional because Congress, in the Tax Cut and Jobs Act, eliminated the tax penalty under the individual mandate for those who do not maintain health care insurance. The case is likely to go to the Supreme Court.

The ruling was handed down by U.S. District Judge Reed O'Connor in Fort Worth who sided with an alliance comprised of 20 states that a change in tax law in 2017 eliminating a penalty for not having health insurance invalidated the entire ACA law.

O'Connor's decision follows a 2012 Supreme Court ruling which held the mandate amounted to a constitutional tax penalty. Once the tax penalty was eliminated, however, he concluded that law was no longer constitutional. He argued that the individual mandate was an integral part of the ACA and therefore the entire health care law was unconstitutional.

House Passes Health Tax Credit Verification Bill

The House passed 238-184 a bill requiring individuals to have a Social Security number in order to receive a health care tax credit. The bill ([H.R. 2581](#)), the Verify First Act, is part of Republicans' plan to offer piecemeal improvements to the House health bill, which dismantles the Affordable Care Act.

House Passes Affordable Care Act Replacement Bill

On May 4, 2017 the House approved H.R. 1628 (the American Health Care Act) by a vote of 217-213. The Act would repeal and replace the Affordable Care Act (ACA). It previously did not have enough support in the House but passed after some changes were made to the bill which included the addition of \$8 billion earmarked to subsidize health insurance premiums for individuals with pre-existing medical conditions.

Some provisions in the American Health Care Act (AHCA) that are of interest to payroll professionals are noted below.

Employer mandate. Code Sec. 4980H currently requires applicable large employers to provide minimum essential health insurance coverage or pay a penalty (see Payroll Guide ¶ 3403). A provision in the original version of the AHCA would reduce the penalty to zero, effective for months beginning after Dec. 31, 2015 (i.e., retroactive for 2016).

Higher Medicare tax rate for high wage earners. The latest version of the AHCA would repeal an ACA provision that imposes an additional 0.9% Medicare tax on taxpayers (other than corporations, estates, or trusts) receiving wages with respect to employment in excess of \$200,000 (\$250,000 for married couples filing jointly and \$125,000 for married couples filing separately), beginning in 2022. The tax is in addition to the regular Medicare rate of 1.45% on wages received by employees with respect to employment (see Payroll Guide ¶ 4055). – **Senate Version keeps the tax!**

Flexible savings accounts. Current law limits the amount an employer or individual may contribute to a health flexible spending account (FSA) to \$2,500, which is adjusted each year for inflation (see Payroll Guide ¶ 3510). The original version of the AHCA would repeal the limitation on health FSA contributions for taxable years beginning after Dec. 31, 2017.

Health savings accounts (HSAs). The original version of the AHCA included a number of changes regarding HSAs, beginning in 2018, including: (1) increasing the maximum HSA contribution limit to equal the sum of the amount of the HSA deductible and out-of-pocket limitation; and (2) allowing both spouses to make catch-up contributions to the same HSA (see Payroll Guide ¶ 3408 for further information on HSAs).

Excise tax on Cadillac health plans. The original version of the AHCA would delay the implementation of the 40% excise tax on high cost employer-sponsored health coverage (Cadillac plans) that is currently scheduled to go into effect in 2020 until 2025.

Small business tax credit. The original version of the AHCA would repeal the small business health care tax credit beginning in 2020. Additionally, the tax credit would not be available to qualified health plans that provide coverage for elective abortions from 2018 through 2019.

The bill is now in the Senate. – No Action

Ways and Means to markup health care related tax bills

The House Ways and Means Committee on July 13 approved eleven bills which focus on delaying the implementation of some provisions in the Affordable Care Act (ACA) and other tax-related measures.

Included among the changes are provisions that address Health Savings Accounts (HSAs) and rollbacks of some tax provisions in the Affordable Care Act (ACA or Obamacare).

A majority of the legislative fixes are aimed at HSAs, including an increase in the contribution limitation for health savings accounts (H.R. 6306) and a provision that would include certain over-the-counter medical products as qualified medical expenses (H.R. 6199).

H.R. 6306, the "Improve the Rules with Respect to Health Savings", would increase HSA contribution limits and allow both spouses to make catch-up contributions to the same account;

H.R. 6313, the "Responsible Additions and Increases to Sustain Employee Health Benefits Act of 2018", would allow patients to carry over any remaining balance in their FSAs to the next year;

H.R. 4616, would provide for a delay in the implementation of the excise tax on high cost employer-sponsored health coverage and to put in place a temporary moratorium on the employer mandate. Other proposals would count fitness expenses as a qualified medical expense (H.R. 6312) and allow the carryforward of health flexible spending arrangement account balances (H.R. 6313).

HOUSE PASSES BILL REPEALING MEDICAL DEVICE TAX

House lawmakers on July 24, 2018 passed legislation permanently repealing the excise tax on importers and manufacturers of medical devices that was included in the Affordable Care Act (ACA or Obamacare). The House also passed other tax/health reform measures including one that would prohibit IRS from rehiring any individual who was previously employed by IRS but was removed for misconduct or whose employment was terminated for cause.

The Protect Medical Innovation Act of 2018 (H.R. 184), which eliminates the 2.3% medical device tax starting in 2020, was approved by a vote of 238-132. The, IRS workforce bill, Ensuring Integrity in the IRS Workforce Act of 2018 (H.R. 3500), which has bipartisan support in the Senate, passed by unanimous consent.

Other health care reform and tax related measures approved by unanimous consent included:

- The Water and Agriculture Tax Reform Act (H.R. 519) which permits tax-exempt mutual ditch or irrigation companies to earn income from dispositions of certain real property and stock interests without affecting their tax-exempt status, but requires that such income be used to pay the costs of operations, maintenance, and capital improvements of such a company; and
- The Equitable Access to Care and Health Act (H.R. 1201), which would expand the religious conscience exemption under the ACA to exempt individuals who rely solely on a religious method of healing and for whom the acceptance of medical health services would be inconsistent with their religious beliefs from the requirement to purchase and maintain minimum essential health care coverage.

IRS Information Letter Confirms That Health FSAs Cannot Reimburse Insurance Premiums

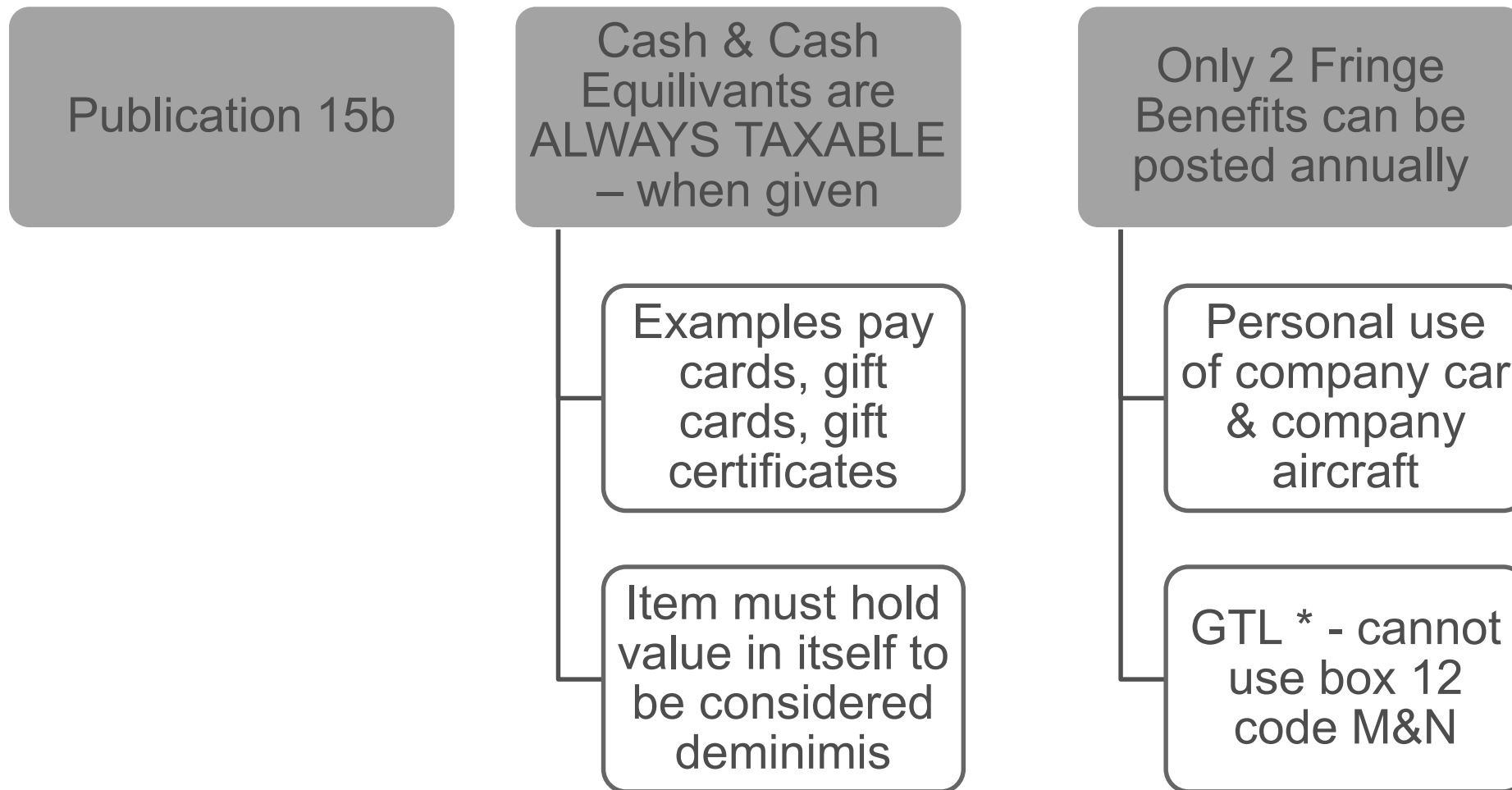
IRS Information Letter 2017-0004 (Dec. 19, 2016)

Available at <https://www.irs.gov/pub/irs-wd/17-0004.pdf>

The IRS has issued an information letter confirming that health flexible spending arrangements (health FSAs) cannot reimburse premiums for Medicare or other health insurance.

The letter responds to a health FSA participant's request for information about the rules on submitting Medicare premium expenses for reimbursement. The health FSA administrator had denied the participant's claims, citing a provision of the 2007 proposed IRS cafeteria plan regulations (see our article) that prohibits health FSAs from reimbursing health insurance premiums. The letter explains that, as stated in the regulations and in IRS Publication 969 (see our article), health FSAs cannot reimburse health insurance premium payments. Because Medicare premiums are health insurance premiums, they cannot be reimbursed by a health FSA. The letter notes that different rules—described in IRS Publication 502 (see our article)—apply for purposes of the itemized deduction for medical expenses; those rules treat health insurance premiums, including Medicare premiums, as medical expenses.

Fringe Benefit Taxation



Employee awards

Vacations, meals, lodging, tickets, and gift certificates are excluded from employee achievement and length-of-service awards, essentially limiting this tax-free benefit to tangible personal property or a limited array of tangible choices.

Examples of Fringes Commonly Treated Incorrectly and Taxed wrong period

Moving
Expenses

Car
Allowances

Parking
(excess)

Commuting
(excess)

Gifts (cash
and cash
equilivants)

Examples of Non-Taxable Fringe Benefits

Accident and health benefits.

Achievement awards.

Adoption assistance.

Athletic facilities.

De minimis (minimal) benefits.

Dependent care assistance.

Educational assistance.

Employee discounts.

Employee stock options. (until exercise)

Group-term life insurance coverage.(limits)

Health savings accounts (HSAs).

Lodging on your business premises.

Meals.

Moving expense reimbursements – **no longer 1/1/18. – See notice 2018-75**

No-additional-cost services.

Retirement planning services.

Transportation (commuting) benefits. Parking – smart cards ok

<http://www.irs.gov/pub/irs-wd/10-0146.pdf>

Tuition reduction.

Volunteer firefighter and emergency medical responder benefits.

Working condition benefits.

Fringe Benefit Changes

Moving Expenses

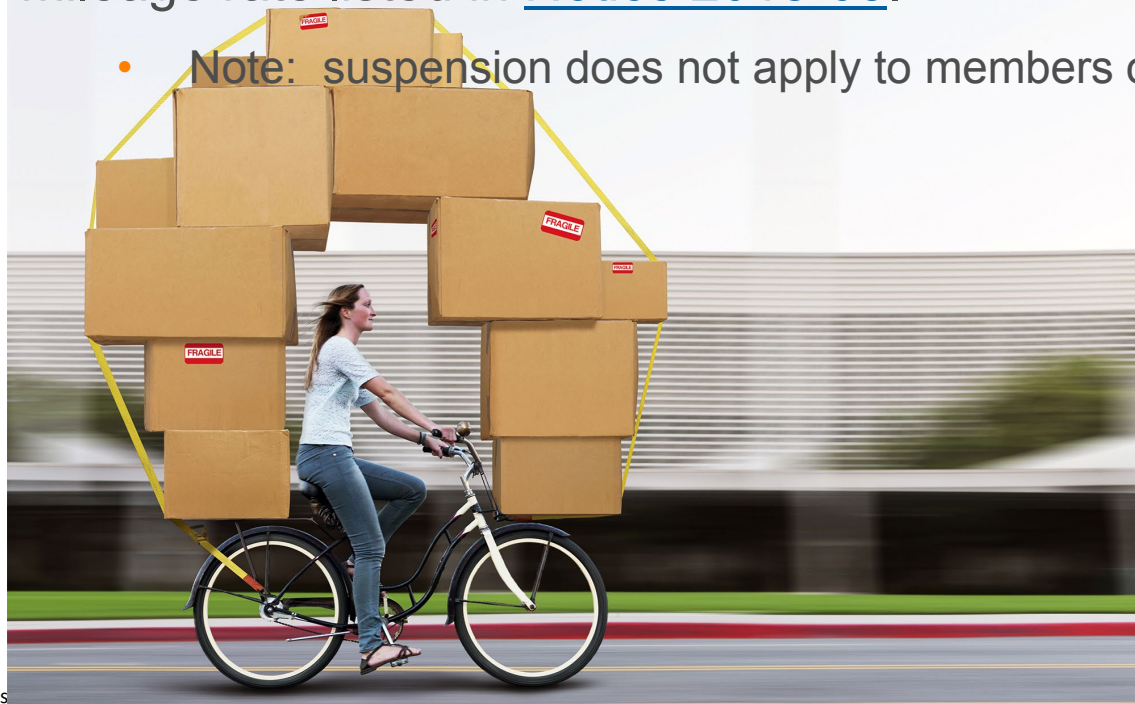
All now taxable: TCJA suspends the deduction for moving expenses for tax years beginning after Dec. 31, 2017, and goes through Jan. 1, 2026. Notice 2018-75 - reimbursements an employer pays to an employee in 2018 for qualified moving expenses incurred in a prior year are not subject to federal income or employment taxes. The same is true if the employer pays a moving company in 2018 for qualified moving services provided to an employee prior to 2018.

During the suspension no deduction is allowed for use of an automobile as part of a move using the mileage rate listed in [Notice 2018-03](#).

- Note: suspension does not apply to members of the Armed Forces of the United States on active duty

Bicycle Reimbursement

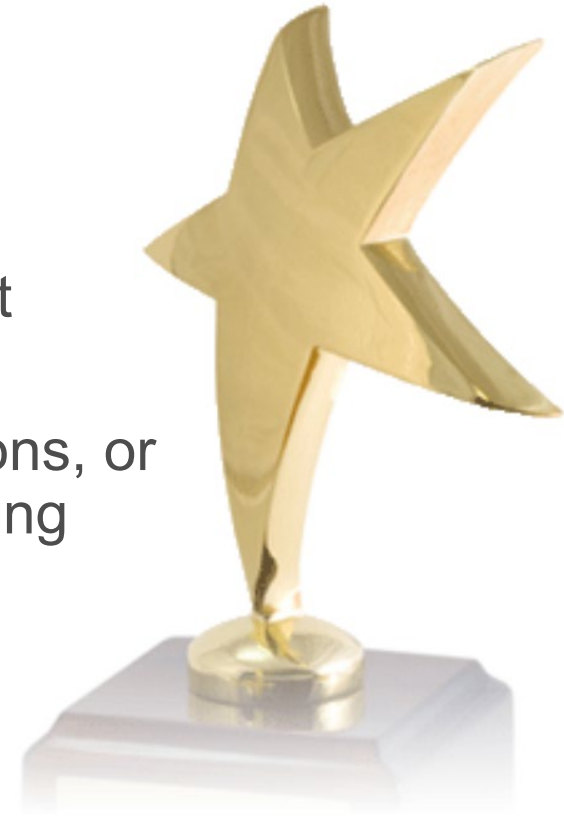
- Tax free suspended (previously, up to \$20 per month)
- Employees can no longer exclude qualified bicycle commuting reimbursements from income for tax years 2018 through 2025



Fringe Benefit Changes (continued...)

Employee Achievement Awards

- The TCJA clarifies definition of “tangible personal property” to the requirements for an employee length-of-service or safety achievement award to qualify for income exclusion
- Under the new definition, cash, cash equivalents, gift cards, gift coupons, or gift certificates or vacations, meals, lodging, tickets to theater or sporting events, stocks, bonds, other securities, and other similar items do not qualify as tangible personal property



Miscellaneous Expenses

- All Now Taxable: Including unreimbursed business expenses (work use of personal car)
- TCJA suspends all miscellaneous itemized deductions that are subject to the 2 percent of adjusted gross income floor
- This change affects un-reimbursed employee expenses such as uniforms, union dues and the deduction for business-related meals, entertainment and travel

Fringe Benefit Proposed (continued...)

Breaking News July 2019 - Introduced with Representatives Ron Kind (D-WI), Eric Paulsen (R-MN), and Grace Meng (D-NY)

- Legislation gives Americans the ability to choose how they spend their Flexible Spending Arrangements (FSAs), Health Savings Accounts (HSAs), and other similar tax preferred health accounts by restoring access to over-the-counter medications.
- Current law under the Affordable Care Act requires consumers to obtain a doctor's prescription for over-the-counter medications in order to be eligible for reimbursement under their consumer health savings accounts.

Fringe Benefit Proposed (continued...)

The House Ways and Means Committee passed a bill allowing taxpayers to treat the amounts paid for membership at a fitness facility and gym classes as medical expenses

- Personal Health Investment Today (PHIT) Act adds qualified sports and fitness expenses to the definition of qualified medical expenses. The bill includes membership in a fitness facility, participation or instruction in a program of physical exercise or activity, and safety equipment for use in a program (including a self-directed program) of physical exercise or activity. The amount treated as qualified sports and fitness expenses couldn't exceed \$500 for an individual taxpayer, or \$1,000 for a joint return or head of household. The amount for safety equipment couldn't exceed \$250. The committee approved the bill by a 28 to 7 margin, according to The Wall Street Journal
- Limits on tax deductions for medical expenses from the Tax Cuts and Jobs Act, make the mostly benefit for people with health savings accounts and flexible spending accounts, which could now be used to pay for gym memberships and fitness classes
- Limitations on qualified expenses under the bill: Golf, hunting, sailing and riding wouldn't be treated as a physical exercise or physical activity. Qualified sports and fitness expenses don't include videos, books or similar materials

IRS Releases Updated Version of Publication 15-B

The IRS has released an updated version of Publication 15-B (Employer's Tax Guide to Fringe Benefits) for use in 2018. Among other things, the updated guide reflects provisions of the Tax Cuts and Jobs Act (TCJA) that suspended or eliminated the income exclusion or tax deduction for certain fringe benefits. For example, the section on moving expense reimbursements has been removed due to the TCJA's suspension of the exclusion for tax years beginning after 2017 and before 2026 (except for active duty military). In addition, the guide clarifies that the deduction for qualified transportation is unavailable regardless of whether the benefit is provided by the employer, through a bona fide reimbursement arrangement, or through a compensation reduction agreement. The updated publication is available at www.irs.gov/pub/irs-prior/p15b--2018.pdf .

Taxation of Gifts

IRS Reviews Rules on Taxation of Gifts

The IRS notes that more and more employers are giving their employees restricted and unrestricted gift certificates, debit cards, and similar cash equivalents, instead of traditional holiday gifts. This has caused some confusion as to whether these types of benefits are subject to income and employment taxes. In particular, some employers have misunderstood what constitutes a cash equivalent and have incorrectly applied the “de minimis fringe” benefit rules.

The IRS says that cash equivalents include gift certificates, gift cards, store cards, prepaid cards, debit cards, or any other similar card, code, or other device serving the same purpose (including those provided electronically). It defines a “de minimis fringe” benefit as any property or service that, considering its value and the frequency with which it is provided, is so small as to make accounting for it unreasonable or impractical.

The IRS is providing the following reminders on the de minimis fringe benefit rules:

The statutory requirements to qualify as a de minimis fringe benefit with respect to value, frequency, and administrative impracticability must be satisfied even with respect to holiday gifts of tangible personal property having a low fair market value (for example, the exclusion is not available if “traditional holiday gifts” are provided to employees each month).

From a tax perspective, there is a presumption that whenever an employer transfers an item of value to an employee, the value of the item is includible in the employee's income as additional compensation, unless otherwise excluded by law (for example, as a de minimis fringe).

Taxation of Gifts

When an employer provides property or services that do not qualify as de minimis, they must be treated as wages subject to income and employment taxes, unless the benefit can be excluded on some other basis.

Cash or cash equivalents are rarely de minimis fringes, regardless of amount; exceptions include certain transit passes and occasional meal money or cab fare.

Not every coupon or certificate is a cash equivalent (for example, a nontransferable coupon that can be exchanged only for a turkey or ham at a particular establishment is not a cash equivalent).

There is no requirement that the cash equivalent be “redeemable” or “exchangeable” for cash; it is sufficient that a cash value can be determined and that the cash equivalent can be used to obtain property or services.

There is no threshold amount under which property or services are always de minimis (for example, it is incorrect to view anything worth \$25 or less as excludable regardless of the frequency with which the benefit is provided or the administrative impracticability of accounting for it).

For non-cash benefits, the general valuation rule is that the amount of taxable wages is the fair market value of the property or services at the time it is provided. “Fair market value” is the amount an individual would pay an unrelated third party to obtain comparable benefits.

The same rules apply to any property or services the employer provides to another for the employee's benefit (for example, property provided to an employee's spouse or child).

Employee / Independent Contractor

Employee W-4 = W-2 W-9 = 1099

IC – cannot have any Company Paid Benefits

Making the Determination

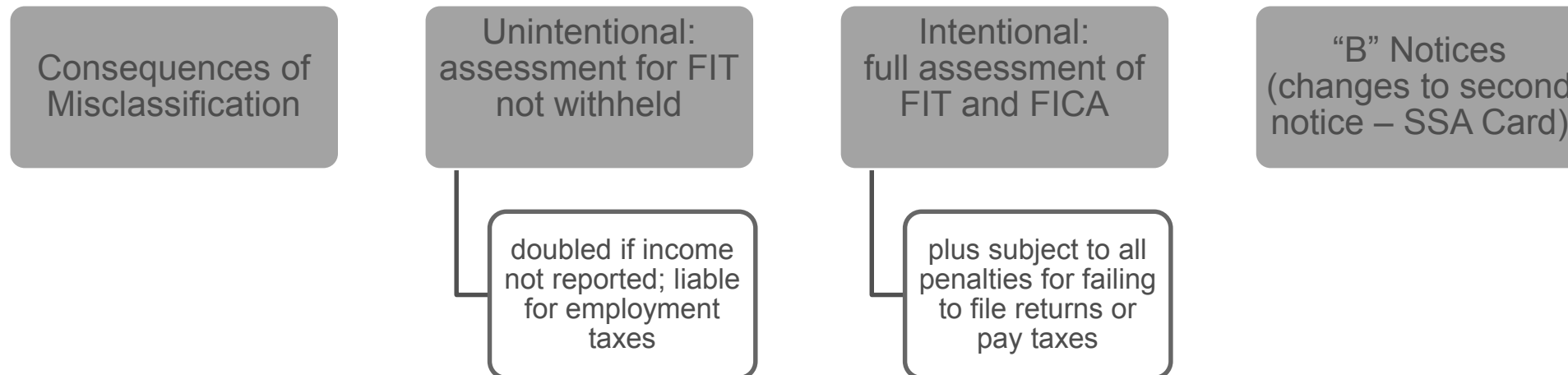
- Common Law Test
 - Degree of control vs. degree of independence exercised
 - Extent of worker's unreimbursed expenses or fixed ongoing costs
 - Extent of worker's investment
 - Extent the worker's services are available to others
 - How the worker is paid
 - Extent the worker can realize a profit or loss
 - Intent of the parties – is there a written contract?
 - Permanency of the relationship
 - Are the services a key aspect of the company's regular business?
 - Often follow an independent trade, business, or profession
 - Generally offer their services to the public/ Provide their own equipment
 - Payer is concerned with the results; not the means and methods
 - Common law rules are based on the relationship and degree of control, and not on labels
 - Worker status is determined by all of the facts and circumstances
- Reasonable Basis Test
 - What is the reference to §530?
 - A “safe harbor” for employer treatment of worker as an independent contractor
 - Consistent treatment required
 - Payer must file all appropriate tax and information returns

Employee / Independent Contractor

Six factors generally go into determining if a worker is an employee or independent contractor, including:

- (1) the permanency of the relationship between the parties;
- 2) the degree of skill required;
- (3) the worker's investment in equipment or materials;
- (4) the worker's opportunity for profit or loss;
- (5) the degree of the employer's right to control the manner in which the work is performed; and
- (6) whether the service is an integral part of the employer's business. Independent contractors are not protected by the FLSA.

Employee / Independent Contractor



B Notices

Fall B Notice season starts soon!

Beginning this week through the end of October, the IRS mails out B-Notices. B-notices identify certain accounts that were included in your most recent year end filing for which the name/TIN information is incorrect or missing.

Here are the steps to follow:

You'll receive your first "B" Notice during the fall of 2018 with only 30 days to respond.

To respond, your organization will have 15 days to determine if a "B" Notice needs to be sent. If a "B" Notice solicitation is needed, you must then decide if this is the first or second "B" Notice for your form recipient. If it is the first "B" Notice, a blank W-9 and cover letter is needed. If it is the second "B" Notice within three years you must meet a much more complex set of requirements.

Your form recipient with incorrect information must reply within 15 days by sending back the W-9 completed, or a U.S. Social Security Administration printout of their TIN information. If they don't, you must begin back withholding at 28 percent until they return their updated information.

Next, you need to transfer any collected withholding to the IRS, or states that require backup withholding, based on their deposit schedules. Federal withholding reporting (Form 945) will be required along with state withholding forms. A best practice is to reconcile your withholding deposits with forms, ensuring your numbers balance to minimize penalties and customer service calls.

The following fall of 2019 you will receive your first penalty notice.

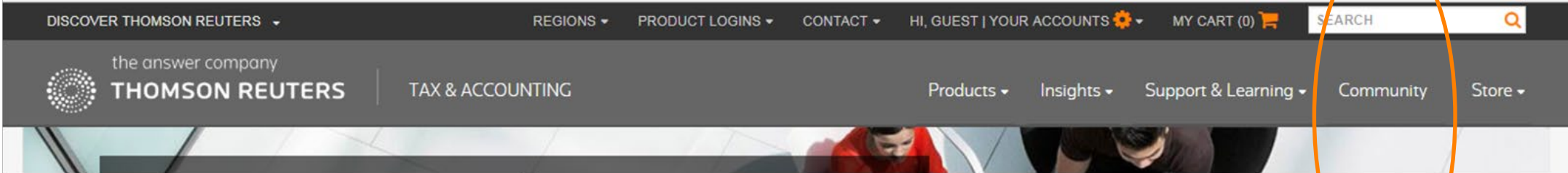
The receipt of the penalty notice should trigger your abatement process to begin. This is where you will show the IRS that you have done your due diligence to acquire accurate information and are continuing to improve your processes year over year.

See <http://www.irs.gov/pub/irs-pdf/p1281.pdf> for complete information including a Q & A

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