



Payroll Insights

Employment tax news to guide you now and for the future

October 2021



John's Fresh Take: Year-end payroll

With year-end fast approaching, we have highlighted some complications and leading practices for companies to consider as they move into 2022 and reporting for the 2021 calendar year. We have seen some year-end complications arise around underreporting taxable income and Form W-2 issues. Other common taxing authority issues have arisen from responding incorrectly to inquiries, failing to implement required changes, and not keeping up with accruals. These issues can result from collaboration failures between companies and third parties.

Leading year-end practices that may result in a smoother reconciliation and filing process include:

- Establishing centralized controls,
- Reconciling payroll results with payroll instructions,
- Outlining key dates, activities, and responsible parties in year-end project plans.

The project plans will help companies to collaborate with stakeholders, confirm global schedules, review payroll dates and establish internal reporting deadlines to address the issues mentioned above. Finally, companies will want to maintain their policies and procedures in an easily accessible place for their employees to give them a reference point to identify any future issues.

Federal

Social Security Trustees Project \$146,700 wage base for 2022

Social Security's total cost is projected to be higher than its total income in 2021 and all later years. Social Security's cost has exceeded its non-interest income since 2010. Current estimates reveal that trust fund assets will diminish until they become exhausted in 2034. Non-interest income is projected to be sufficient to cover 78% of scheduled benefit payments for 2034, declining to 74% for 2095.

<https://www.ssa.gov/OACT/TR/2021/tr2021.pdf>



ICE extends new employee guidance for I-9 compliance flexibility for remote workers

On March 20, 2020, due to precautions implemented by employers and employees associated with COVID-19, Department of Homeland Security announced that it would exercise prosecutorial discretion to defer the physical presence requirements associated with the Employment Eligibility Verification (Form I-9) under section 274A of the Immigration and Nationality Act.

Due to the continued precautions related to COVID-19, DHS will extend this policy until December 31, 2021.

This extension will continue to apply the guidance for employees hired on or after April 1, 2021, who work exclusively in a remote setting due to COVID-19-related precautions. These employees are temporarily exempt from the physical inspection requirements associated with Form I-9 until they undertake non-remote employment on a regular, consistent, or predictable basis; or the extension of the flexibilities related to such requirements is terminated, whichever is earlier.

This policy applies only to employers and workplaces that are operating remotely. If there are employees physically present at a work location, *no exceptions* are currently available for in-person verification of identity and employment eligibility documentation for Form I-9. <https://www.uscis.gov/i-9-central/covid-19-form-i-9-related-news/temporary-policies-related-to-covid-19>

H.R. 4728: Thirty-Two Hour Workweek Act

On July 27, Rep. Mark Takano (D-CA41) introduced a bill in the House: the [Thirty-Two Hour Workweek Act](#) would reduce the federal definition of the standard workweek from 40 to 32 hours per week, resulting in overtime pay under federal law starting at the 33rd hour rather than the 41st. This Act would not “mandate” a 32-hour workweek.

Supporters say that the legislation would help Americans increase their take-home pay while improving worker conditions. Opponents argue that such a proposal could inadvertently harm workers by cutting their hours, rather than raising their pay as intended. Opponents also say the bill would only benefit a subset of Americans – likely the upper-class and upper-middle-class – despite the bill’s progressive sponsors’ claims that it would help the working class.

Home testing for COVID is an eligible medical expense

The IRS on September 10, 2021, issued a release reminding taxpayers that the cost of home testing for coronavirus (COVID-19) is an eligible medical expense that can be paid or reimbursed under health flexible spending arrangements (health FSAs), health savings accounts (HSAs), health reimbursement arrangements (HRAs), or Archer medical savings accounts (Archer MSAs) because the cost to diagnose COVID-19 is an eligible medical expense for tax purposes.

[IR-2021-181](#) also states the costs of personal protective equipment (such as masks, hand sanitizer and sanitizing wipes) for the primary purpose of preventing the spread of COVID-19 are eligible medical expenses that can be paid or reimbursed under health FSAs, HSAs, HRAs, or Archer MSAs.

Guidance issued on qualified sick leave reporting for 2021

New IRS guidance provides additional information and specific instructions for employers to report qualified sick and family leave wages paid to employees for leave taken in the first quarter of 2021.

In Notice 2021-53, 2021-39 IRB 1, issued September 7, the IRS expands previous guidance provided in Notice 2020-54, 2020-31 IRB 226, that employers must report qualified leave wages on a 2021 Form W-2 or on a separate statement.

In addition to specific W-2 reporting instructions, Notice 2021-53:

Provides information on how self-employed individuals can properly claim qualified leave equivalent credits for the 2021 tax year under the Families First Coronavirus Response Act or the American Rescue Plan Act of 2021 (P.L. 117-2).

Outlines specific reporting requirements for paid leave provided under the Families First Act for leave beginning January 1 through March 31, 2021.

Clarifies that family leave wage caps aren't increased for the first quarter of 2021, so an employer can't claim more than the aggregate amount for leave provided to an employee from the beginning of April 2020 through the end of March 2021.

Provides information about reductions to the qualified leave equivalent amounts for qualified wages paid in the first quarter of 2021.

Under the Families First Act, reductions in qualified leave equivalent amounts aren't applied separately for 2020 and 2021. Rather, the notice clarifies that the reduction to the qualified leave amounts is based on the sum of the qualified leave equivalent amounts and qualified leave wages from April 1, 2020, through March 31.

Provides guidance on qualified leave wages paid for leave from April 1 through September 30 — clarifying that for eligible employers to receive the credit, the applicable aggregate for that period would be \$12,000.

<https://www.irs.gov/pub/irs-drop/n-21-53.pdf>

States

Nonresident taxation of remote workers

South Carolina recently announced it will continue to excuse income taxes on nonresident workers who came into the state to work remotely during the pandemic. Recent state announced that the previous September deadline to end of year. [IL21-22.pdf \(sc.gov\)](#) Similar extensions have been granted by Kansas and Rhode Island. Other states are reverting to pre-pandemic rules. This is the approximately the fourth time South Carolina has extended its relief.

Rhode Island extended its withholding treatment of remote workers from July to September, the state revenue department announced in July.

Kansas is allowing employers to choose whether they want to withhold employee income taxes based on the "state of the employee's primary work location" rather than where they have been teleworking, through the end of 2022, according to July guidance that codifies a bill (S.B. 47) passed and signed into law earlier this year.

New York, among other states, has offered no relief during the pandemic. Instead they have doubled down and are increasing enforcement of the "convenience of the employer" rule. New Jersey has announced in August it will let temporary relief expire in October.

In Philadelphia, the city's revenue department is working through tens of thousands of wage tax refund requests, most of which come from employees required by their employers to work remotely because of the pandemic. The city's revenue department announced employees forced to work from home due to pandemic are not entitled to any refund if they are Philadelphia residents, and their employers must collect and remit the city's wage tax regardless of location. The city's policy aligns with Pennsylvania's, which earlier this summer ended its temporary relief.

The Pennsylvania Department of Revenue has taken the position that out-of-state companies with just one employee working in Pennsylvania will be subject to withholding employee income taxes as well as corporate income tax.

New Hampshire, which had its telecommuting tax fight dismissed by the U.S. Supreme Court, just passed its own law waiving income tax requirements for out-of-state businesses temporarily performing work during its declared state of emergency, which ended earlier this summer.

Contractor fight in California continues on

A California judge said Prop. 22 violates the state constitution. The California ballot measure classifying app-based drivers as independent contractors has the potential to impact pending misclassification cases and efforts to replicate the law elsewhere, even as a ruling that struck it down is tied up in appeals for the foreseeable future.

Judge Frank Roesch in the Alameda Superior Court on August 20 stated that Section 7451 of the law violated California's Constitution by limiting the state legislature's future ability to extend workers' compensation law to app-based drivers.

The judge also determined that another provision was unconstitutional because it limits the legislature's ability to pass laws that might provide these drivers with certain employment rights, like collective bargaining, but aren't related to the statute's overall purpose.

Other states are watching the ruling and how it may impact their treatment of ride share drivers and delivery people historically treated as independent contractors

In Massachusetts, Uber, Lyft, Doordash, and others are heavily lobbying to place a Prop. 22-like measure on the ballot for November 2022. The state's attorney general—who has already sued Uber and Lyft over worker misclassification—is expected to either certify or reject the ballot initiative in September. Like Prop. 22, that measure would exempt ride-hail and delivery drivers from any state effort to require gig workers to be considered employees.

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