



# Payroll Insights

Employment tax news to guide you  
now and for the future

October 2023



## John's *fresh take*: IRS increases scrutiny of employee retention credit ("ERC") claims

On July 25, 2023, IRS Commissioner, Danny Werfel, met with a group of tax professionals in Atlanta, GA and noted that the IRS has increased audit and criminal investigation work on ERC claims, and is putting in place additional procedures in response to the growing concern of illegitimate claims. The Commissioner pointed to an increase in questionable claims being filed following the onslaught of misleading marketing from promoters pushing businesses to apply for the ERC. IRS Commissioner Werfel stated that "[t]he further we get from the pandemic, we believe the percentage of legitimate claims coming in is declining" and that "the IRS continues to intensify our compliance work in this area."

On September 14, 2023, the IRS announced an immediate moratorium on processing new ERC claims through at least the end of the year. The moratorium will give the IRS additional time to add more safeguards around the ERC program and prevent further abuse. The IRS will continue to work on ERC claims that were received prior to the moratorium, however, increased scrutiny of claims by the IRS will likely result in longer wait times for employers to receive an ERC payment.

The IRS is developing a special withdrawal option for businesses who no longer want to pursue an ERC claim that has not been processed. Additionally, the IRS is developing a voluntary repayments settlement program for those who received an ERC payment who now wish to repay the prior claim for any reason.

Employers are still encouraged to file *legitimate* ERC claims. The ERC can only be claimed by filing Form 941-X, *Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund*, amending Form 941 for the applicable quarter. The statute of limitations for filing an ERC claim on Form 941-X for tax year 2020 is generally April 15, 2024, and April 15, 2025, for 2021 ERC claims. Prior to filing, employers should review the official requirements for the ERC, as well as other guidance issued by the IRS like [FAQ's](#), and the recently issued Generic Legal Advice Memorandum [AM 2023-005](#).



### The Internal Revenue Service electronic records challenges

According to [report number 2023-10-050](#) released by the Treasury Inspector General for Tax Administration (TIGTA), the IRS has experienced challenges in transitioning to electronic records. Initially, all Federal agencies were required to adopt electronic recordkeeping requirements by June 30, 2024. However, due to delayed efforts to digitalize records, the IRS was not on track to meet the deadline. As such, the IRS requested and was granted an extension until December 31, 2030.

As outlined in the report, the IRS still processes and stores many returns in paper format. The IRS annually processes more than 240 million tax returns and other forms and currently stores over 5.7 million cubic feet of paper records (the bulk of which are tax returns) at Federal Records Centers distributed across 17 locations throughout the United States. Not only are these paper files not easily accessible, but the annual cost to store the files was approximately \$35 million, in FY2022.

TIGTA outlined their recommendation to the IRS in their report as follows:

- Create a single Service-wide comprehensive digitalization strategy that identifies priorities, objectives, interim target dates, milestones, etc., and identifies the IRS business units responsible for the applicable actions.
- Develop processes to require management to track digitalization efforts and compare results against the plans, goals, objectives, milestone dates, etc., and analyze any significant deviations to identify needed strategic changes.

As a result of these recommendations, the IRS plans to create a single Service-wide strategy that will identify the IRS business units responsible for the applicable actions and a process to track digitalization efforts against stated goals.

### The Internal Revenue Service releases 2024 draft Forms W-4, W-4P, and W-4R

The IRS recently released the 2024 new [draft](#) of Form W-4, *Employee's Withholding Certificate*, and Form W-4P, *Withholding Certificate of Periodic Pension or Annuity Payments*, on September 29th. On September 25th, 2023, the draft for the Form W-4R, *Withholding Certificate for Nonperiodic Payments and Eligible Rollover Distributions*, was released.

The released drafts of the Form W-4 and Form W-4P include the reestablished references to the IRS's tax withholding estimator that were on the forms prior to the updates of 2023. Lastly, all three 2024 drafts have references to place holder values to be filled in later.

### The Internal Revenue Service updates Form SS-8

The IRS recently released a new [draft](#) of Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*. Form SS-8 is used by firms and workers to request a determination of the status of a worker for purposes of federal employment taxes and income tax withholding. Filing a Form SS-8 requesting a "worker status" determination means you or the firm is asking the Service to establish if the services you provide to the firm are those of an employee or an independent contractor.

The new drafted form was updated to include more yes or no checkboxes to make answers clearer and more consistent. The Form also requests that the filer include copies of the Forms W-2, 1099-MISC, and/or 1099-NEC for each year they are contesting. Form SS-8 has not been updated since May 2014.

## State updates

### Alaska expected to increase minimum wage to \$11.73

According to [AS 23.10.065](#), the Alaska Labor and Workforce Development Department must calculate the annual minimum wage by September 30th. The law requires the Alaska minimum wage to be adjusted using the Consumer Price Index for urban consumers in the Anchorage metropolitan area (Anchorage CPI-U) for the preceding calendar year. Based on these calculations, the minimum wage in Alaska is expected to increase from \$10.85 to \$11.73.

### Santa Rosa, California increases minimum wage to \$17.45

According to an [Official Notice](#) from the City of Santa Rosa, California, starting January 1, 2024, the new minimum wage rate is \$17.45 for all businesses regardless of size. The new rate is up from \$17.06 in 2023.

### California removes State Disability Insurance (SDI) wage base

Effective, January 1, 2024, under [Senate Bill No. 951](#), the California wage base for state disability insurance will be eliminated. As such, the SDI tax will be applicable on all taxable wages. In 2023, the California wage base was \$153,164 with a contribution rate of 0.9%.

### Colorado increases minimum wage to \$14.42

According to the [Colorado](#) Department of Labor and Employment, effective January 1, 2024, Colorado will raise their minimum wage to \$14.42 (\$11.40 with tip credit), up from \$13.65 (\$10.63 with tip credit). The Colorado minimum wage is adjusted annually to account for inflation.

Additionally, the city of [Edgewater](#), Colorado has their own minimum wage standards. Their minimum wages will also be increasing beginning in 2024. For Edgewater, minimum wage will be \$15.02 (\$12.00 with tip credit), up from \$13.65 (\$10.63 with tip credit) in 2023.

### Iowa Unemployment Insurance wage base will increase to \$38,200

Effective, January 1, 2024, the Iowa unemployment insurance tax [wage base](#) will increase from \$36,100 to \$38,200 for calendar year 2024. State unemployment insurance tax rates will remain unchanged for calendar year 2024.

### Minnesota and Minneapolis to increase minimum wage

According to a Minnesota Department of Labor and Industry press release from August 23, 2023, the states [minimum wage](#) rates will be adjusted for inflation as of January 1, 2024. Large employers with annual gross revenues of at least \$500,000 must pay at least \$10.85 an hour. Small employers with annual gross revenues less than \$500,000 must pay at least \$8.85 an hour. The training wage rate, \$8.85 an hour, may be paid to employees younger than 20 years of age for the first 90 consecutive days of employment. The youth wage rate, \$8.85 an hour, may be paid to employees younger than 18 years of age. Please note, the state minimum-wage rates will not apply to work performed in the cities of Minneapolis and St. Paul, which have higher minimum-wage rates. The City of Minneapolis increased their [minimum wage](#) to \$15.57 beginning January 1, 2024.

### Missouri department of revenue proposed updates

According to Volume 48, Number 18 of the [Missouri Register](#) released by the Secretary of State on September 15, 2023, the Missouri Department of Revenue proposed an amendment to an income tax regulation and a rescindment of an income tax regulation.

Reg. Section 10-2.226 proposes an amendment that adds clarifying language regarding who is required to pay nonresident professional entertainer's tax. The amendment would update sections (1), (3), and (4), and add a new section (5). The amendment clarifies that any individual or entity who pays annual compensation in excess of \$300 to a nonresident professional entertainer(s) is required to withhold Missouri income taxes, as a prepayment of tax, an amount equal to two percent (2%) of the total compensation paid to the nonresident entertainer for entertainment performed in Missouri.

Reg. 12 CSR 10-2.019, Determination of Withholding for Work Performed at Temporary Work Location has been rescinded. This regulation was rescinded because it was created for and during the COVID-19 relief period.

## **New Jersey update to the Convenience of the Employer Sourcing rule enacted for gross income tax**

On September 26th, 2023, New Jersey released an [update](#) to its telecommuting rule to include that the state will be echoing New York's Convenience of the Employer rules by stating the following regarding where to determine the state in which withholding is required for nonresidents of New Jersey:

"In determining whether compensation earned by a nonresident telecommuting for a New Jersey employer will be deemed New Jersey sourced income, New Jersey will apply a similar rule which would be the same as the triggering state's rule. For example, compensation earned by a New York resident telecommuting for a New Jersey employer will be deemed New Jersey sourced income by applying the New York "convenience of the employer" test."

## **New York decreases 2024 paid family leave rates to 0.373%**

According to the New York State Paid Family Leave [website](#), the 2024 employee contribution will be 0.373% of an employee's gross wages each pay period. The maximum annual contribution is \$333.25. The new 2024 rates are a decrease from 2023 where the employee contribution was 0.455% of an employee's gross wages each pay period and a maximum annual contribution of \$399.43. Employee contributions are not mandatory as an employer may choose to pay for the Paid Family Leave benefit on behalf of their employees.

## **Vermont enacts new child care payroll tax of 0.44%**

Vermont [SB 217](#) provides that beginning July 1, 2024, Vermont employers will have a new payroll tax requirement to fund the Child Care Financial Assistance Program. The new payroll tax is required for all employers that withhold Vermont income tax from employees. Payment and filing requirements for the Child Care Payroll Tax should be similar to the employer's requirements for state income tax. The contribution rate will be 0.44 percent of each employee's covered wages and 0.11 percent on each self-employed individual's self-employment income. Employers may elect to withhold up to 0.11 percent from employees' taxable wages.

## **On the horizon: Highlights from 118th US Congress payroll related bills**

HR 3797 Paperwork Burden Reduction Act- Employers would no longer be required to provide Form 1095-C to all employees, only to those who request one.

S 1724 and HR 3473 Bicycle Commuter Act of 2024 would repeal the suspension of the income exclusion for employer reimbursement of qualified bicycle commuting expenses.

HR 4803 Personalized Care Act of 2023 would allow more employees to be eligible for HSAs and increase the contribution limits to \$10,800 for individuals and \$29,500 for families with annual COLA adjustments.

HR 4009-Public Health Emergency Response Act would amend the FMLA to establish emergency paid sick and family leave for individuals affected by a public health emergency.

S 1714/HR 3481 Family and Medical Insurance Leave Act would provide up to 12 weeks of paid family and medical leave benefits each year to qualifying workers for the birth or adoption of a new child, the serious illness of an immediate family member, or a worker's own medical condition.

S 1664/HR 3409 Health Families Act would require employers with 15 or more employees to permit each employee to earn at least one hour of paid sick time for every 30 hours worked.

S 1174/HR 4535 Medicare and Social Security Fair Share Act would raise the wage base to \$400,000 and for joint returns, the additional tax would be on wages more than \$500,000.

S 1338-Electronic Communication Uniformity Act would consider payments made when it is submitted to EFTPS.

HR 3937-Small Business Jobs Act would raise the threshold for Form 1099-NEC reporting from \$600 to \$5,000.



## Get to know one of our Employment Tax professionals: Paula Torres

Meet Paula, a Senior Manager at KPMG's Atlanta office with over 14 years of experience in tax. As a Certified Public Accountant, Paula specializes in employment tax and helps clients navigate their federal, state, and local payroll tax needs. What excites Paula most is the rapidly changing way we work. She enjoys working with clients to develop new policies and procedures that accommodate a mobile workforce while ensuring compliance with state and local laws. When she's not working, Paula loves spending time with her husband and two boys, reading, and traveling.

**T:** 404-795-0878

**E:** [pdtaylor@kpmg.com](mailto:pdtaylor@kpmg.com)

## Contact us

### John Montgomery

**National Employment Tax Lead Partner**

**T:** 212-872-2156

**E:** [jmontgomery@kpmg.com](mailto:jmontgomery@kpmg.com)

### Reagan Aikins

**Managing Director, Employment Tax**

**T:** 703-286-6596

**E:** [raikins@kpmg.com](mailto:raikins@kpmg.com)

### Mindy Mayo

**Managing Director, Employment Tax**

**T:** 408-367-5764

**E:** [mindymayo@kpmg.com](mailto:mindymayo@kpmg.com)

### Manan Shah

**Managing Director, Employment Tax**

**T:** 404-739-5247

**E:** [mananshah@kpmg.com](mailto:mananshah@kpmg.com)

### Jon Stone

**Managing Director, Employment Tax**

**T:** 408-367-1983

**E:** [jwstone@kpmg.com](mailto:jwstone@kpmg.com)

Some or all of the services described herein may not be permissible for KPMG audit clients and their affiliates or related entities.

[kpmg.com/socialmedia](https://kpmg.com/socialmedia)



The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.

© 2023 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization. USCS000614-2E