

Payroll Trends

3rd Quarter 2007

Daylight Saving Time

At 2:00 a.m. local time on Sunday November 4, 2007, Daylight Saving Time will end and clocks will need to be turned back one hour. This results in one extra hour, and impacts employee pay calculation for those working overnight during the time change. Since employers must pay for actual hours worked, both regular and overtime pay calculations could be impacted for hourly workers.

2008 Per Diem Rates

Effective October 1, 2007, the standard per diem rate for travel will be \$109, \$70 for lodging and \$39 for meals. Amounts for specific lodging locations can vary from \$70 to \$317, with meals and incidentals ranging from \$39 to \$64 depending on location. For those businesses reimbursing employee expenses by using the per diem rates, the fully updated 2008 fiscal year rate listings are available at www.gsa.gov/perdiem.

Teachers Compensation

The IRS announced on August 7, 2007 that new deferred compensation rules will not impact teacher or other school employee tax calculations for the 2007-2008 school year. At issue is the 2004 law change declared final in April, that people who defer pay from one year to a future year are subject to a 20% penalty tax. Where school employees can elect to annualize their pay, the new rules would consider the election a deferral of part of their pay. If no choice is given and all employees are paid over the same period, the new deferral rule would not apply.

Tip Credits

The IRS has reiterated that the increased minimum wage does not impact the credit for employer social security taxes paid on cash tips, the 45B credit. The law now requires the employer to use the minimum wage as of January 1, 2007 to calculate the credit even if there is a later increase in the minimum wage. This has the effect of locking the credit in based on the \$5.15 minimum wage amount. The new law also allows employers to use the 45B credit to offset alternative minimum taxes, where the old law only allowed credit against regular income tax.

Cafeteria Plans

The IRS has issued proposed rules on cafeteria plans that would replace proposed rules still in existence that have been issued and updated several times since 1984. The new "consolidated" rules retain most of the earlier proposals with updates for various law changes since the last proposed rules were issued. The new rules are effective for

plan years after January 1, 2009, but may be followed immediately. There is a comment period through November 5, after which the "final" rules will be issued with any further updates deemed necessary. If you wish to review the full document, go to www.irs.gov and search for REG-142695-05.

Military Rights

We continue to depend on the National Guard and military reserve members for our military commitments. Employers are reminded that employees called to active duty are protected by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). Eligible employees have specific rights to their seniority, status, pay, and benefits with their employer. Employers and employees can go to www.dol.gov for more information on USERRA, and to their state labor department web site to see if any state laws are also applicable to the employment relationship of guard and reserve employees.

Unemployment Insurance

Unemployment benefits are not a guaranteed right for every employee. Each time an employee receives benefits, the employer experience rating is impacted and there is the potential for the tax rate to go up for all current employees. The burden is on the employer to respond to claims for benefits, maintain documentation to support why an employee terminated, and most importantly to respond to notices of claims timely. In most states claims must be contested within a few days of receipt of the notice. Quick action is required, but can result in big savings through reduced tax rates for the employer. Go to your state web site to find out more about your state unemployment procedures.

Benefit Audits

The IRS, through the Employee Plans Compliance Unit, is expanding its efforts to assure all public schools are providing universal availability of their retirement plans to eligible employees. Questionnaires are being sent to school districts in all 50 states. A pilot audit conducted last year showed widespread non-compliance, although the IRS felt it was a lack of understanding and not intentional failure to comply in most cases. If schools receive a questionnaire and a problem is identified, the IRS will suggest a correction, and if the school district complies timely, the IRS will not impose a penalty.

Drug Free Workplace

The U.S. Department of Labor has announced the second annual National Drug-Free Work Week will take place October 14 through 20. The purpose of designating this week is to educate employers, employees, and the public of the importance being drug-free is to having a safe and healthy workplace.

All employers are encouraged to participate in the various activities to implement effective drug-free programs for detection, deterrence, assistance and support for their workers having problems with drug or alcohol-related issues.

Independent studies commissioned by the DOL indicate most human resource practitioners recognize the serious problems created by abuse and addiction, yet few companies are proactive in addressing these issues with their employees.

Therefore, Drug-Free Work Week gives employers a natural forum to promote drug-free messages in their business during this week, and continuing throughout the year.

Employers can find out more about participating in this initiative by visiting the department's Working Partners for an Alcohol-Drug-Free Workplace Program on their web site at www.dol.gov/workingpartners.

Immigration Rules

On August 10, 2007, Homeland Security Secretary Michael Chertoff announced final immigration enforcement regulations in lieu of the failed legislation being pushed by the President. Employers will have new verification responsibilities, with the new regulations, effective September 14, 2007.

A U.S. District Court in northern California issued a temporary restraining order on August 30 to prevent immediate implementation of the new rules related to the no-match letters. The next court date is scheduled for October 1, but all employers need to be aware of their potential exposure to these rules.

As proposed by the Department of Homeland Security (DHS) last year, Social Security (SSA) no-match letters will now be one of the potential notifications that a person may not be authorized for employment in the United States. Secretary Chertoff emphasized that employment is the "magnet" that brings many immigrants to our country, and that employers must be held accountable for willfully hiring illegal workers.

Background

Every year the SSA sends thousands of letters to employers, the "Employer Correction Request" or no-match letter. This letter indicates that certain social security numbers (SSN) on the employer's W-2 Forms do not match SSA records. By law, the information on Form W-2s has always been considered tax information that cannot be shared with other federal agencies.

When the combination of name and SSN do not match SSA records, the wages cannot be posted to SSA records for benefit purposes. Errors commonly occur due to typographical errors, name changes, incomplete names or misuse of the number.

Employer notices are sent when there are more than 10 no-matches, and the employer is asked to work with the employee to correct the error, sending them to SSA if necessary. Employers are specifically cautioned to not take any adverse action or discuss immigration status to avoid anti-discrimination or labor law statutes.

The Immigration and Customs Enforcement (ICE) division of Homeland Security also sends letters to employers when documentation or immigration status for I-9 processing does not match Homeland Security records for that employee. These letters are referred to as "Notice of Suspect Documents" and are generally issued following an investigation audit. Under the new procedures, a letter from Homeland Security will be included with the SSA no-match letter. The new letter will outline procedures DHS will require employers to follow to assure they meet immigration laws and avoid actual or constructive knowledge of illegal employment that would subject the employer to fines or criminal action.

Final Rule

The DHS final rule is titled "Safe-Harbor Procedure for Employers Who Receive No-Match Letter" (Safe Harbor). To comply with DHS requirements, mismatches must be handled in the same manner for all employees on the mismatch letter. The safe harbor, as outlined in the DHS letter, requires employers to:

- Promptly, within 30 days, check employers records to assure the mismatch is not a result of an employer error.
- If not employer error, ask the employee to confirm the information in your records.
- If still not resolved, ask the employee to resolve the mismatch with the SSA.
- If the issue is resolved, follow all instructions in the SSA letter.

You must also verify the information has been corrected by using the Social Security Number Verification System (SSNVS) of the SSA and retain a record of the date and time of the verification. SSNVS is available at ssa.gov/employer/ssnv.htm or by telephone at 1-800-772-6270.

- If none of these actions resolve the issue within 90 days of the receipt of the letter, a new I-9 should be completed within three days as if the employee is a new hire. However, no document can be used to verify employment authorization that uses the SSN in dispute or that does not have a valid photograph of the employee.

If, after all these procedures, you cannot confirm qualification for employment, DHS would consider continued employment as knowingly employing an unauthorized employee.

Once again, employers are reminded that employees cannot be terminated merely due to being on a no-match list or due to national origin or other discriminatory characteristics. However, if all the above procedures have been followed for all employees and an employee is terminated

due to not being able to resolve mismatch issues, then termination will not violate immigration anti-discrimination laws.

To see the full text of the safe harbor document and Secretary Chertoff's announcement, go to dol.gov and search for "no-match letter." For a complete overview of the SSA procedures regarding no-match letters, go to ssa.gov.

Also, due to the District Court restraining order, look for updates on implementation dates or further changes from the courts or DOL.

Employers should also remember that you can check at the time of employment to make sure your records match those of SSA by using the SSNVS. So to avoid all of the after-the-fact hassles, you should consider making SSA verification part of your employment procedures to assure full name and number correctness prior to filing Forms W-2.

It is also pertinent to note that DHS is planning to release proposed rules requiring all federal contractors to use the DHS E-Verify system, formerly know as the Basic Pilot. Not only will this be a before-the-fact verification, it will also allow employers to verify photographs of applicants. Employers may also wish to sign up for this DHS verification system and incorporate it into their hiring process.

W-4 Regulations

The IRS has issued final W-4 regulations that generally follow the temporary regulations issued April 14, 2005.

Prior to the 2005 temporary regulations, employers were required to submit copies of W-4s to the IRS when an employee claimed ten or more exemptions or claimed complete exemption if wages were expected to exceed \$200 per week. The IRS could notify the employer that the employee was not qualified for the exemptions claimed and advise the employer of the number of exemptions to use for withholding for that employee.

The temporary regulations modified the rules relating to providing W-4 copies and IRS notification of the number of exemptions to use for any employee when their W-4 was deemed to not be accurate. Under the temporary and final regulations, employers are no longer required to submit W-4 copies on a routine basis for excessive or complete exemption. Under the new regulations, W-4 copies are only submitted when specifically requested in writing by the IRS.

The regulations now allow the IRS to provide notice to the employer to withhold, as of a specified date, using the number of exemptions the IRS specifies. The effective date must be at least 45 days after the notice date to allow the employee to work with the IRS if they feel the information is not correct.

A notice copy will also be provided for the employer to give to the employee. Special rules for determining if a person is employed are also contained in the new regulations.

After receiving IRS notification of the number of exemptions to use, if the employee provides a W-4 that would result in an increase in withholding, the employer is to use the new W-4 information. A W-4 resulting in less or no withholding is to be disregarded.

Another change from the temporary regulations is that employees can no longer use a substitute Form W-4, but must use the official government form

Additional information can be found at www.irs.gov.

Year-End Planning

Using sports metaphors, payroll processing is heading for the World Series or Super Bowl season. Year-end payroll processing, like sports winners, requires a lot of advance planning, teamwork with all involved, review of the prior year to correct or improve the current year, and making sure you know the rule changes to avoid needless penalties.

Assemble the Team

Identify those within and outside your organization who will provide data, services, etc., and reach agreement now on deadlines and schedules. Monitor continuously.

Self-Evaluate

Have employees and affected parties review social security numbers, names, addresses and year-to-date totals to allow early correction and cut down on after-the-fact corrections and re-runs. Balance bank accounts, reissue outstanding checks and enter adjustments early. Utilize Social Security Administration tools to verify names and numbers where problems are suspected and find other answers at ssa.gov.

Utilize Professional Help

As a professional resource in this area, we would be glad to consult with you on ways we can provide services, or additional services, to help you with year-end and/or your ongoing compliance related activities. In any event, do not wait until the last minute and expect a winning performance with this year-end processing.