

Payroll Trends

4th Quarter 2009

Daylight Saving Time

Employers are reminded that Daylight Saving Time ends at 2:00 a.m. local time on Sunday, November 1, 2009. Since local time will revert back one hour, employees working overnight will work one extra hour on this date. Federal and state overtime laws require employees be paid for actual hours worked, therefore both regular and overtime pay calculations may be impacted.

Responsible Party

There continues to be confusion on the issue of a responsible party personally liable for payment of payroll taxes. Since payroll taxes are considered to belong to each individual for whom they are collected, they are classified as trust fund taxes and the IRS and courts look at the failure to remit as a more serious offense than other type tax deficiencies. The courts have consistently ruled that anyone connected to the employer that has the power to see that the taxes are timely paid can be held liable for the taxes, whether an owner, officer or employee.

Flexible Spending Accounts

Part of the discussion regarding the new health care proposals has been to eliminate the pre-tax aspect of contributions to Flexible Spending Accounts. An additional proposed change would eliminate over-the-counter drugs as eligible expenses under these type plans. Some additions also being considered would be to add a rollover feature rather than the current use it or lose it rules. These proposals will obviously become part of the larger health care debate and may or may not be acted on.

Work Opportunity Credit

The 2009 stimulus package added unemployed veterans and disconnected youth to the list of those covered by the Work Opportunity Tax Credit (WOTC) for employer eligibility for tax credits. The IRS has further clarified these new additions in Notice 2009-69. If you are taking advantage of these tax credits or are considering doing so, go to irs.gov and secure the new information.

Unemployment Insurance

With unemployment at generational highs, many states have increased wage bases, raised tax rates on employers, and borrowed from the federal unemployment system. Without the ability to repay the loans to the federal system, some states may well see the credit available to their state employers reduced, meaning an increase in Federal Unemployment Insurance payments when Form 940s are filed in future years. Look for information on your particular state as year-end approaches.

Social Security Online

The Social Security Website continues to be an excellent resource for employers of all sizes to refer their employees. An employee can estimate their retirement benefit, file for retirement and disability benefits, and apply for replacement Social Security cards.

Employers can also verify up to 10 Social Security numbers for new hires and avoid errors in W-2 processing and other government reporting.

If any of these services may appeal to you or your employees, or if you would like to see what else is available, go to ssa.com.

Per Diem

The General Services Administration (GSA) has issued the maximum federal per diem rates for the fiscal year beginning October 1, 2009. These rates may be used by employers in lieu of reimbursement for actual expenses by their employees for each day of business travel within the continental United States. The employee must still substantiate the time, place and business purpose for each day of per diem payment.

Per diem rates that exceed the federal rates for the locality of travel must be included as wages for payroll tax purposes.

The lowest lodging rate remains \$70, while the highest locality rate has decreased to \$340. The six meal and incidental expense (M&IE) rates for the new fiscal year range from \$46 to \$71. The standard rate for specific locations not shown on the list will consist of a lodging rate of \$70 and M&IE rate of \$46, for a combined maximum standard rate per day of travel of \$116. Specific location combined rates range up to \$411 in New York City during peak seasons.

The GSA also has available a simplified, high-low method for employers to use due to varying rates based on the time of year in certain areas of the country. Also available are special meal rates for workers in the transportation industry.

More information and the complete new rates effective October 1, 2009, can be found at www.gsa.gov/perdiem. The rates are periodically adjusted during the year, so you may wish to check for changes at least quarterly if you use any of the rates for travel reimbursement.

No Match

The Department of Homeland Security (DHS) has proposed to rescind its use of Social Security no-match letters as a tool in identifying workers not eligible for employment. No-match letters were originally intended to only be used to secure correct data to allow posting of W-2 information to Social Security records when names and Social Security numbers did not match.

The DHS rule was blocked by a court order soon after it was issued in 2007 and has never been implemented. The latest DHS announcement reinstates regulations in effect prior to the No-Match Rule, for employers to follow to avoid knowingly hiring unauthorized workers.

In rescinding the No-Match rule, DHS indicated it will rely on increasing use of E-Verify and other verification tools to increase compliance with employment laws. It was also noted that no-

match letters are not sent until a year or more after the wages are reported, and verification at the time of employment is more desirable.

In this regard and as previously indicated, employers with contracts to do business with the federal government were required to start using E-Verify beginning September 8th for all employees working on federal contracts.

E-verify is an on-line system to match an employee's name and social security number to over 400 million Social Security records and over 50 million DHS records.

Minimum Wage

The final phased minimum wage increase from the 2007 Minimum Wage Standards Act went into effect July 24th, raising the minimum wage to \$7.25 an hour, or \$15,080 annually based on a 40 hour work week.

New proposals relating to the federal minimum wage have been introduced into Congress in this session. One proposal would index the minimum wage to 15% above the poverty level for a full-time worker, or approximately \$8.20 in 2008.

As proposed, the effective date would be October 1, 2010, based on the poverty rate on June 1, 2010. The minimum wage would then increase every four years to an amount 15% above the threshold amount.

Another proposal would index the minimum wage to the annual inflation rate, much the same as Social Security benefits.

Although probably not a high priority this year, the key is there may be a future push to indexing rather than periodic new law increases.

Congress

As Congress comes back from their summer recess, there are many items that potentially impact employers and their payroll-related responsibilities. As has been the norm for the last couple of decades, if they become law, employers will be expected to implement, pay for, and report on many of the proposals now being considered.

Health Care

As we all know, the proposed changes to reform health care did not take a vacation, with much discussion, pro and con, taking place during the recess trying to influence the legislation in various ways.

Prior to Congress taking their summer recess, House committees amended the House reform bill and a consolidated bill is expected to be passed by the full House. The Senate version of the reform legislation had not cleared all committees prior to the recess, but a vote is expected on a Senate bill soon after sessions resume.

Provisions contained in the existing House bills are intended to reduce the number of uninsureds, set minimum standards for benefits, provide financial assistance to small businesses to provide benefits, and to restructure the private insurance market to increase competition and reduce costs. Employers would provide essential benefits with hospital, outpatient, drug, maternity and preventive care coverage.

Senate provisions revolve around the existing employer-provided system by prohibiting pre-existing condition denials of coverage, eliminating annual and life-time coverage limits, encouraging more preventive measures, and penalizing employers that do not provide benefit plans.

Of course, especially with all the summer pressure that was applied, if there is a final bill that passes into law, it may or may not look anything like the initial provisions above.

Unemployment Benefits

Due to the economy, extended benefits for several million unemployed workers will expire by year-end. Therefore, legislation has been introduced to further extend benefits in all states until December 31, 2010.

Independent Contractors

The House is considering legislation to limit existing "safe harbor" provisions employers can rely on for classifying workers as independent contractors. As proposed, tax penalties for misclassification would increase dramatically and without a safe harbor, penalties would be harder to avoid. With the continued widening of the tax gap, in part due to not voluntarily reporting and payment of employment taxes, additional legislation will probably be introduced in this area.

Paid Leave

Legislation in the House and Senate would require employers to provide paid sick days to employees for their or their family health needs each year.

Cell Phones

At the request of the IRS, legislation is expected to pass to remove cell phones as listed property under the tax code. This would eliminate the requirement that personal use time be tracked and reported for taxes for employer provided cell phones.

As always, employers need to be alert to changes in these and other areas as the year progresses.

Classification

Whether or not new legislation and penalties are instituted by Congress (page 1), look for more audits by the IRS in the area of employee versus contractor classification.

This is an area the current administration has indicated they intend to address, and the President even introduced legislation to tighten compliance while serving as a Senator.

Therefore, due to this past interest, increased compliance will probably be a priority. You may go to irs.gov for more information on employee classification requirements.

Dual Plan

The fourth quarter of 2009 requires not only planning for the normal year-end payroll related compliance, but will have the added need to plan for how your business will handle a projected two-pronged flu season. Planning for these in advance will allow deadlines to be met for payroll items with less effort, plus allow your business to continue to function if a severe flu season materializes.

For payroll related activities, it is never too early to identify the parties, inside and outside your organization, who will provide data, services, etc. Agreements should be reached early on who is responsible for what, and when items will be provided. Follow up to reinforce the agreements and be flexible where necessary.

Ask employees early to verify that the information on their paychecks is accurate. This includes confirming the names match those shown on their social security cards, addresses are correct, and that YTD items on pay stubs appear correct. Also solicit questions from employees that may cut down on retroactive adjustments.

The social security web site provides updated information on how names should be entered on W-2s for filing purposes (hyphenated names, prefixes and suffixes, etc.). Information is also available on matching payroll records to social security information.

During the fourth quarter, keep bank accounts reconciled to timely identify potential checks for reissue or cancellation. Also keep payroll and accounting records reconciled to assure everything is ready to balance to W-2s and other payroll filings.

Everything that can be verified, reconciled or entered in advance will pay dividends in reducing log jams and reruns during the short deadline window between closing the old year and starting the new one for payroll related activities.

With the normal seasonal flu, plus the H1N1 (swine flu), both projected over the next six months, how will your business, large or small cope?

Employees will be impacted by the flu through directly contracting it, or through children or other dependents being sick. In either event, they may have to miss work, and you will want them to in order to prevent the spread to their co-workers.

To reduce flu related absences, you may wish to encourage all eligible employees to take flu shots. At a minimum, advise them where shots are available, whether you or their benefits will pay for the shots, and provide time off to get shots, etc.

Since the loss of key employees at inopportune times can have an adverse impact on any business, consider advance cross training, job manuals, or contingency contracts with temporary

services. Discuss in advance with all employees the need for flexible scheduling during co-worker absences and create a team atmosphere to work together if an outbreak should occur.

With both plans, involving those impacted in the planning process and setting expectations in advance is key. Communication and follow-up, as the plan progresses, will let everyone know their role and the importance of their contribution. Items will probably still occur that were not planned, but a coherent approach will allow those items to be solved more easily.