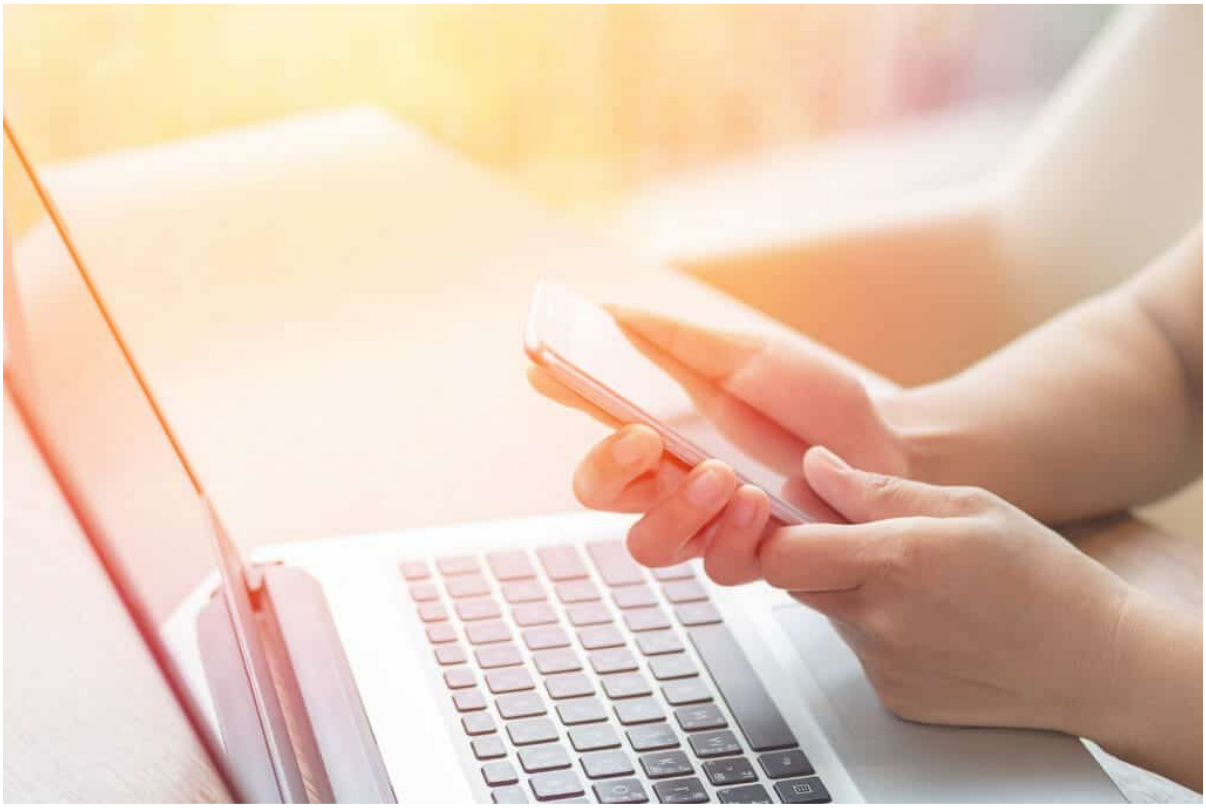
Pay Matters: Fall 2023

Welcome to our Fall 2023 edition of Pay Matters – our roundup of all the payroll and compliance news that you must know.

Published September 25, 2023



Welcome to our Fall 2023 edition of Pay Matters – our roundup of all the payroll and compliance news that you must know.

Read on to stay informed and in compliance with relevant alerts and insights that matter most for your payroll.

U.S. Department of Labor Proposes Increase to Salary Exemption Threshold

On Wednesday, August 30, the US Department of Labor (DOL) issued a proposed rule that would increase the minimum salary amount that must be paid to executive, administrative, and professional employees in order to exempt them from overtime pay requirements under the federal Fair Labor

Standards Act (FLSA). The proposal also mandates automatic updates every 3 years to the threshold to keep current with earnings data.

The current salary threshold for employees to be exempt from overtime is $35,568. Under the proposed rule, the threshold would increase significantly to $55,068. The rule would also increase the annual compensation threshold for highly compensated employees to be exempt from overtime from $107,432 to $143,988.

If this rule becomes final, employees who earn between $35,568 and $55,068 and meet the executive, administrative, or professional duties test will become eligible for overtime, and employers will have to track their hours worked. The DOL estimates that this will affect 600,000 employees in health care and social services and 3.6 million workers throughout the country.

There will be a comment period before the final rule is issued. The change is expected to take effect sometime in 2024.

For more information on this proposed rule and how it may affect your business, check out our webinar FLSA Overtime Proposed Changes: How to Prepare.

USCIS Releases New Form I-9 and Alternative Procedure for Remote Inspection

The U.S. Citizenship and Immigration Services (USCIS) released a new version of Form I-9 and announced an alternative procedure for remote inspection of employment authorization documentation.

The newly revised Form I-9 is available for use beginning August 1, 2023, and must be used starting November 1, 2023.

Changes to the form include:

- Sections 1 and 2 are reduced to a single-sided sheet;
- The form can be completed using tablets and mobile devices;
- The Preparer/Translator Certification (Section 1) is moved to a standalone supplement page;
- The Reverification and Rehire (Section 3) is moved to standalone supplement page;
- The Lists of Acceptable Documents has been expanded to include some acceptable receipts;
- The Lists of Acceptable Documents includes guidance and links for automatic extensions of authorization documentation;
- A new check box is added to be used for the remote verification alternative procedure; and
- The instructions to the form are reduced from 15 to 8 pages.

In addition to the Form I-9 changes, the USCIS has created a procedure for eligible employers to inspect employment authorization documents remotely, as the COVID-19 temporary remote inspection flexibility ended on July 31, 2023.

Under the new alternative procedure, employers who participate in good standing in E-Verify can inspect documentation remotely rather than in person. Employees must transmit a copy of the front and back of their documentation, and the employer must examine both sides. The employer must then conduct a live video interaction with the employee to ensure the documentation is genuine and related to the individual. The employer must also indicate on Form I-9, using the designated checkbox, that the alternative procedure was used and retain copies of all documentation.

Employers who do not use E-Verify in good standing must meet the requirement of in-person physical inspection. Employers not yet participating in E-Verify may want to consider registering so that they can use the alternative procedure going forward.

To learn more about the new form and alternative procedure, including requirements to retroactively verify documentation of certain employees hired during COVID, check out our webinar The New Form I-9 and You: It's Not Too Late to Get Back in Compliance.

2022 EEO-1 Reporting Date Announced

The Equal Employment Opportunity Commission (EEOC) has finally announced that the delayed 2022 EEO-1 reporting period will open October 1, 2023. The deadline for filing will be December 5, 2023. The payroll snapshot must be between October 1 and December 21 of 2022.

EEO-1 reports provide the EEOC with data about the race, ethnicity, and gender demographics of an employer. All U.S. employers with 100 or more employees as well as federal contractors with at least 50 employees must submit the EEO-1 report annually. For more information, click here.

New York Releases 2024 Paid Family Leave Rate

On September 12, New York released its family-leave contribution rates for 2024.

In 2024, the employee contribution will decrease from 0.455% to 0.373%. The maximum annual contribution will decrease from $399.43 to $333.25.

The rate applies to an employee's gross wages up to the statewide average weekly wage, which will be $1,718.15 for 2024.

New York updated its payroll deduction notice to reflect new 2024 rates. They have also updated their payroll deduction calculator with the new rates.

Maine Creates Paid Family and Medical Leave Program

Maine has become the 13th state to create a statewide paid family and medical leave program.

Under the law, covered employees may claim up to 12 weeks of paid leave for eligible reasons, which include:

- To bond with a newborn child;
- To address a serious health condition;
- To care for a family member with a serious health condition;
- To manage the affairs of a family member who is a service member; and
- To take safe leave.

The PFML program will be funded by employee and employer contributions as a percentage of employee wages. Employers with state-approved private plans will not have to remit contributions.

Contributions will begin January 1, 2025, and benefit claims can start being processed May 1, 2026.

Employers are required to post a workplace notice that will be provided by Maine in a conspicuous place in the workplace as well as provide a written notice of rights under the program to new hires within 30 days of the start of employment.

Colorado Expands Paid Sick Leave Use

Effective August 7, 2023, under Senate Bill 23-017, Colorado employees can use paid sick leave for three additional reasons:

- To grieve, attend the funeral, or deal with financial and legal matters after the death of a family member;
- To care for a family member whose school or place of care is closed due to inclement weather, loss of power/heating/water, or other unexpected occurrence; and
- To evacuate the employee's residence due to inclement weather, loss of power/heating/water, or other unexpected occurrence.

For a list of other qualifying reasons for use of Colorado paid sick leave, click here.

Vermont Passes Child Care Payroll Tax

Vermont has created a payroll tax to fund childcare services.

Under HB 217, all employers who are required to withhold Vermont income tax will be required to withhold and remit the new tax, which will fund Vermont's Child Care Financial Assistance Program.

The payroll tax is set to go into effect on July 1, 2024, at a rate of 0.44% of an employee's covered wages. Employers may share the cost with employees and withhold up to 0.11% from employees' wages. Employers must remit the tax using the same requirements as state income tax.

Minimum Wage Updates

New York City Delays Implementation of Minimum Wage for Delivery Workers

Originally scheduled to take effect on July 12, 2023, NYC has announced that it has postponed the effective date of the new minimum wage requirements for delivery workers of online third-party app-based food delivery workers.

Minimum wage was set to be $17.96 per hour effective July 12, 2023, and to continue to increase to $18.96 on April 1, 2024, and to $19.96 on April 1, 2025. Due to pending lawsuits, the new minimum wage is now on hold. Employers can visit this NYC page to monitor future updates.

Pending California Law to Raise Fast Food Minimum Wage

Under pending California Bill , minimum wage for fast food workers in California would rise to $20 per hour, effective April 1, 2024. This new minimum wage would apply to a "National fast food chain" with more than 60 establishments nationally. In addition, the prior "Fast Food Council" would be replaced with a new council with more limited authority.

Employers in the CA fast food industry should continue to monitor this pending law for developments.

Edgewater, Colorado, became the second Colorado locality, after Denver, to enact a minimum wage law. Effective January 1, 2024, minimum wage will be $15.02. Minimum wage will continue to increase to $16.52 for 2025, $18.17 for 2026, $19.99 for 2027, and $21.99 for 2028. Employers must post a notice of the currently effective minimum wage in both English and Spanish in a conspicuous place in the workplace.

Santa Rosa, California, minimum wage will increase from $17.06 to $17.45, effective January 1, 2024.

Minneapolis, Minnesota, minimum wage will increase from $15.19 to $15.57, effective January 1, 2024.

This information is for educational purposes only, and not to provide specific legal advice. This may not reflect the most recent developments in the law and may not be applicable to a particular situation or jurisdiction.