Payroll Insights

Employment tax news to guide you now and for the future

August 2024

John's *fresh take:* Navigating payroll in times of merger, acquisition, and restructuring

Summer is supposed to be the time for payroll professionals to sit back, take a few moments to reflect, and actually rest up a bit before jumping back into preparing for year-end in a few months. We have seen an uptick in merger, acquisition, and restructuring activity that makes a supposedly quiet period far from it. If your company is going through any structure altering events, things tend to move along fast and furious. We thought it helpful to provide a couple of reminders to help you through any transaction:

- Try to get involved up front if any due diligence or review of an acquired company is going to take place. This is an excellent time to poke around to get your feel for what you will be inheriting and the knowledge base of the payroll and HR employees prior to a transaction closing. This also helps you identify any skeletons that may be out there.
- Grab whatever records you can while you can. If your transaction involves changing a payroll vendor, discontinuing a service, or moving employees from one format to another, obtaining historical data and saving it in case needed at another date is time consuming yet will potentially save you some pain at a later date.
- Know your transaction. Every movement of employees has a tax consequence or will dictate what happens with your federal identification numbers and consequently your state account numbers. This tends to guide what is required for payroll purposes. A statutory merger, stock acquisition, asset acquisition and a split-off all have different payroll tax treatment and will drive what your requirements are. Become proficient with these transactions and what they mean for payroll filing purposes.
- Make yourself invaluable to your tax department. Help them understand that you need to be brought into these transactions and that payroll may not necessarily wag the dog but is an integral part of the tax team as employee experience is always key to any structure altering event.

KPMG employment tax personnel are available to assist with any transaction you encounter and can address the technical as well as the practical needs of a transaction. Please feel free to reach out should any questions arise.

Federal updates

Employee Retention Credit

On July 2 the Treasury Department and the IRS published proposed regulations that treat overpayment interest on the erroneous refund of employee retention credits as an underpayment of applicable employment taxes. The proposed regulations further provide that the deemed overpayment "may be assessed and collected by the Secretary in the same manner as taxes." The proposed regs follow final regulations published on July 24, 2023 that treat the erroneous ERC refund as an underpayment of applicable employment taxes subject to the IRS's administrative collection procedures. The enforceability of such regulations has been questioned following the U.S. Supreme Court decision in *Loper Bright Enterprises et. al. v. Raimondo, Secretary of Commerce, et. al.,* (June 28, 2024), in which it held that in interpreting ambiguous statutes, courts are not required to defer to agency interpretations. It remains to be seen how Courts will practically handle tax guidance on ambiguous legislative text going forward.

IRS answers FAQs on Educational Assistance Programs

On June 17, the IRS created a fact sheet to address question related to educational assistance programs under IRC Section 127. Employers may exclude certain educational assistance benefits from your gross income if they are provided under a section 127 educational assistance program. As a result, an employer will be able to exclude the amount of benefits up to $5,250 per calendar year. If any benefits are received under a program that does not comply with section 127 or if the benefits are over $5,250, the amounts may be excluded under section 117 or deducted under section 162 or section 212 if the requirements of such section are satisfied.

Amounts paid under a section 127 educational assistance program are generally deductible by the employer as a business expense under section 162.

The FAQs provide guidance relating to what benefits qualify, what amounts can be excluded, and a discussion on when tax-free education assistance includes principal or interest payments on qualified education loans.

Outstanding FUTA loans-Potential credit reductions

As of July 18, 2024, California has $19,461,010,656.47 in outstanding loans from the federal government for unemployment insurance purposes. Connecticut has a balance of $29,531,166.30 while New York has $6,106,479,751.68. The Virgin Islands owes $80,111,492.59. New York is the only state that has seen a decrease in their outstanding balance, albeit only $9,571.09. It is expected that each of the states, and the Virgin Islands, will be still in a balance due position in November when it is determined which states will be participating in FUTA credit reduction.

State updates

State minimum wage increases

On July 1 tends to be the date when many states enact minimum wage increases. Some of these increases may be industry specific, others pertain to particular cities, while others encompass the entire state. The following jurisdictions have experienced increases, effective July 1, 2024. The list is likely not inclusive and other increases may be effective throughout the month:

- California-Health Care Workers-delayed
- California-various cities
- IL (Chicago and Cook County)
- District of Columbia
- Florida
- Maryland (Montgomery County)
- Minnesota (Minneapolis)
- Nevada
- New Mexico (Santa Fe City and County)
- Oregon
- Puerto Rico
- Washington (Bellingham and Renton)

Future effective dates for state law changes

September 2024	• WI New Earned Wage Access Law takes effect
October 2024	• MD SDI contributions, additional pay statement requirements • CT Paid Family and Medical Leave changes
November 2024	• SC New earned wage access law takes effect
January 2025	• DE SDI rates tax effect • ME SDI contributions • NY new prenatal leave • Federal White collar exemption increases • OR Creditor garnishment limit increases • OR PFML for adoption or foster child placement • CT Paid sick leave changes
July 2025	• MD Contributions to PFML begins

Arkansas

On July 15, 2024, The Arkansas Department of Finance and Administration announced an adjustment to their withholding tables. Effective immediately, the tax rates were decreased. The top individual income tax rate went from 4.4% to 3.9%.

California

Starting June 17, Californians receiving unemployment, state disability, or paid family leave benefits now have the option to enroll in direct deposit. Recipients of benefits will need a myEDD account to select the payment option they wish to choose. Currently, the state allows payment by direct deposit, debit card, and mailed check.

Maine

Maine has updated their Rule 806 which addresses the taxation of nonresidents for income tax purposes. The update to Rule 806 was published on July 19 and addresses the determination of Maine-source income and an employer's income tax withholding obligations. Revised Rule 806 now states that a nonresident of Maine is subject to Maine income tax on compensation that is Maine-source income earned through the performance of personal services in Maine as an employee only if the individual was present in Maine performing the personal services as an employee for more than 12 days during that the taxable year and directly earned or derived more than $3,000 in of gross income during the taxable year in Maine from all sources.

Nebraska

Nebraska has announced that on January 1, 2025, compensation paid to a Nebraska nonresident employee will not be considered Nebraska income if:

- the compensation is paid for employment duties performed while present in Nebraska to attend a conference or training
- the employee is present in Nebraska for seven or fewer employment duty days in the tax year
- the employee performed employment duties in more than one state during the tax year and
- the total compensation in Nebraska does not exceed $5,000 in the tax year.

In addition, compensation paid to a nonresident employee who serves on the board of directors or similar governing body of a business and that relates to board activities taking place in Nebraska will not constitute Nebraska-sourced income.

Nevada

Nevada's unemployment insurance taxable wage base will increase to $41,800 in 2025. Current wage base is $40,600 for 2024.

Washington

Washington's unemployment insurance taxable wage base will increase to $72,800 for 2025. Current wage base is $68,500 for 2024. Washington currently has the highest taxable wage base in the United States.

Get to know one of our Employment Tax professionals: Mindy Mayo

Mindy is a Managing Director in KPMG's Silicon Valley office. She has over 30 years of employment tax experience and has assisted clients through a myriad of payroll issues encountered during a company's life cycle.

Mindy has worked with companies of all sizes, assisting with employment tax matters from start of business through branch or company closure. She began her career as a payroll tax auditor with the State of California, Employment Development Department, paving the way for her future as a payroll consultant.

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