# Payroll Insights

Employment tax news to guide you now and for the future

June 2024

## John's *fresh take*: Learning, giving, and growth at PayrollOrg's Congress

Tis the season for some teamwork, giving back, and education! KPMG's Employment Tax team gathers annually at PayrollOrg's Congress to attend a variety of classes covering fringe benefits, multistate taxation, and a host of other payroll topics. In addition to attending, several well-attended sessions were taught by KPMG professionals, highlighting their expertise in Preparing for a Payroll Tax Audit (Manager Dylan McLaughlin), Payroll in New York (Managing Director Jon Stone), and California Payroll (Managing Director Mindy Mayo) to name a few. The Employment Tax team is located throughout the country and use this opportunity to learn, bond with their coworkers, and meet with their friends and colleagues at this annual event. They also use this event to give back to the host city and enjoy an opportunity to volunteer. This year the team volunteered at a farm in Nashville that provides fresh produce to local food banks. The Employment Tax team harvested beets, onions, and lettuce, weeded beds of greens and planted seedlings before visiting with a baby goat named Peabody. KPMG harvested over 117pounds of produce that was delivered to food banks for distribution that day!

### Internal revenue service sued for details surrounding ERC claims review process

On May 8, 2024, Michelle Levin, of Dentons Sirote PC, filed a lawsuit in the Northern District of Alabama (Levin v. U.S. Internal Revenue Service, Case Number: 5:2024cv00582) against the IRS, seeking to compel it to disclose internal guidance provided to agents who are examining returns that claim an Employee Retention Credit (ERC), pursuant to the CARES Act and subsequent legislation. Levin alleges that the IRS failed to respond in a timely manner to her records request in October 2023 under the Freedom of Information Act ("FOIA").

The IRS halted the processing of new ERC claims in September 2023 in order to more closely examine the claims already submitted and execute procedures to identify and prevent fraudulent ones. The government identified approximately $1 billion in potentially incorrect ERC claims through voluntary disclosure programs. Regardless, Levin argues that the IRS's claims of widespread abuse have not been substantiated. She suggests that the IRS is taking a more conservative approach in auditing ERC claims and altering its guidance on the required documentation. Levin criticizes the IRS for its "ad hoc enforcement" and accuses it of bypassing the Administrative Procedure Act's rulemaking requirements in applying the ERC. She also claims that the IRS's grounds for disallowance are not based on a reasonable interpretation of the statute, but on a revenue-maximizing approach.

These arguments are intended to support the validity of Levin's request for documents under the FOIA to meet the "reasonably describes such records" requirement under the FOIA. The IRS has not yet provided a response to Levin's lawsuit.

### IRS releases contribution limits for health savings plans in 2025

The Internal Revenue Service (IRS) published Revenue Procedure 2024-25, which provides the inflation-adjusted contribution limits for health savings accounts in calendar year 2025.

For individuals with self-only coverage under a high-deductible health plan, the limit will be raised to $4,300, up from $4,150 in 2024. For family coverage under a high-deductible health plan, the contribution limit will be $8,550, an increase from $8,300 in 2024.

To qualify as a high-deductible health plan in 2025, an individual coverage plan must have an annual deductible of at least $1,650 and out-of-pocket expenses not exceeding $8,300. For family coverage, the annual deductible must be at least $3,300, with out-of-pocket expenses not exceeding $16,600.

### SSA releases estimated wage base for 2025

The Social Security Board of Trustees has projected a 3.6% increase in the Old-Age, Survivors, and Disability Insurance wage base to $174,900 in 2025, according to its 2024 annual report. This projection was based on intermediate assumptions set in December 2023. The wage base, which is $168,600 in 2024, is indexed annually based on the nationwide average wage index and the Consumer Price Index for urban wage earners and clerical workers.

The Board utilizes three models, which analyze these parameters when determining the annual wage base: low-cost, intermediate, and high cost. A wage base of $174,900 was projected under the intermediate and high models, and a wage base of $175,500 was projected under the low-cost model.

### Iowa updates employer withholding guidance

The Iowa Department of Revenue has provided additional guidance on withholding procedures for employers, following changes to its 2024 withholding certificate. For 2024, employers have two methods for calculating income tax withholding for employees who have not completed the 2024 Form IA W-4, Employee Withholding Allowance Certificate: 1. If the employer expects to receive a completed Form IA W-4, they may temporarily calculate withholding using a $40 allowance with no additional withholding, or 2. If the employee has provided a Form IA W-4 in a prior year, the employer should modify its calculations by multiplying the number of allowances claimed on the prior year form by $40.

If an employer expects to receive a 2024 Form IA W-4 from an employee but does not receive it by June 30, 2024, then the employer should use a prior-year form. If no form is on file for that employee, the employer must withhold using an allowance of zero. The guidance also provides instructions for calculating additional withholding for employees who are nonresident aliens or those in multiple-income households to avoid employees being potentially under withheld.

The newly released guidance also indicates that the flat rate tax for supplemental payments should be the highest income tax rate currently assessed, or 5.7%. However, this contradicts the currently written Iowa Admin. Code r. 701-307.2, which specifies a supplemental tax rate of 6% be used. To ensure compliance and mitigate the risk of under withholding, an employer may choose to use the higher rate of 6% until Iowa provides clarification for which rate to use.

### Maine income tax bracket change veto upheld

The Maine House of Representatives failed to overturn the Governor's veto of Legislative Document 1231, first introduced in March 2023. If enacted, the bill would have created new tax brackets and raised the maximum tax from 7.15% to 8.45%. The new rates would have taken effect in 2025.

### Connecticut DOL provides guidance regarding earned wage access

Earned wage access ("EWA") refers to advances of future wages or salaries that have been earned but not yet paid out. The CT Department of Labor issued guidance on May 10, 2024, regarding the implication of EWA on CT wage and labor laws. The guidance identifies two types of EWA products: third-party advances and employer advances.

Third-party advances are agreements solely between employees and third-party providers. Employers are required to deduct any advances and related fees through payroll deductions and forward them to the third-party provider on the next scheduled payday. The guidance provides that these arrangements are outside of CT DOL's jurisdiction.

In an employer advance, the employer may engage an external party (third-party vendor) to provide EWA at the employee's election. The third-party provider bills the employer, not the employee, and the employer has the option to pass the fee onto employees via payroll deduction. The DOL has jurisdiction over employer advances because it pertains to the relationship between employers and employees.

Should the employer opt to pass on the fee to the employee, it must first obtain both written permission from the employee and authorization from the DOL to deduct the cost from the employee's wages. The DOL has set up an online form to allow employers to obtain the required authorization.

The DOL reiterates in the guidance that employers should avoid the practice of wage scaling, which is prohibited by CT legislation. Wage scaling refers to the practice of discounting wages that are paid to employees earlier than their regular payday. The DOL has taken the position in its Wage and Workplace Standards that the EWA processing fees are fees for services and not wage scaling but warns that the courts may not agree with that position. If the courts deem wage scaling has occurred, fines or penalties may be assessed.

### Kansas earned wage access law takes effect

Kansas passed House Bill 2560, a law regulating earned wage access (EWA), which was signed into law on April 19, 2024. The law creates the Kansas Earned Wage Access Services Act and requires that any new EWA vendors in Kansas must register with the Office of the State Bank Commissioner and be bonded in the state prior to conducting business. Those already operating in the state as of January 1, 2024, can continue to do so but must register with the state within three months once the form is made available.

The registration must be renewed annually. EWA providers must make any payments on a non-recourse basis, meaning they cannot compel repayment be made using certain methods. Providers are further required to inform any employee using their services of their rights, disclose all fees, and clearly describe how the employee can obtain the payments at no cost (i.e., it is not mandatory to participate) before entering into an agreement with the service provider.

### Maryland to provide disaster relief for key bridge collapse

Maryland will offer employers affected by the collapse of the Key Bridge in Baltimore relief in the form of waiving certain penalties and interest associated with late payments for Employer Withholding Tax.

Employers are allowed until May 31, 2024, to submit withholding tax payments that were due between 1/1/24 and 5/31/24. Any payments due and received during this period should have associated penalties and interest due to late filings waived automatically.

### Employers required to register and report family-leave insurance in Connecticut

Effective October 1, 2024, the CT statute will be amended to include requirements for an employer operating in CT and subject to the state family-leave insurance law to register with the CT Paid Family and Medical Leave Insurance Authority. Employers are currently required to register with the state authority and file reports; however SB 222 now formally adds the requirement to the Paid Family and Medical Leave statutes.

Employers should register through the Connecticut Paid Leave website. Any employers not registered or filing timely reports may be subject to penalties assessed by the state authority.

### New York expands sick leave requirements

Under New York Assembly Bill 8805-C, L. 202, beginning January 1, 2025, employers will be mandated to offer employees 20 hours of paid prenatal personal leave (PPPL) to receive prenatal care during pregnancy within any 52-week calendar period. This PPPL is to be provided in addition to the standard paid sick leave required by law. PPPL can be taken and must be paid in hourly increments. Employees should be compensated at their regular pay rate, or the applicable minimum wage, whichever is higher. Upon an employee's termination, resignation, retirement, or separation from employment, employers are not obligated to pay for any unused PPPL.

### Georgia: Issued updated form G-4

On April 19th, the Georgia Department of Revenue (DOR) issued an updated version of Form G-4, State of Georgia Employee's Withholding Allowance Certificate. The updated form reflects changes resulting from the enactment of H.B. 1021, which increased the 2024 dependent personal exemption deduction to $4,000 from $3,000 in 2023.

The updated version of version of Form G-4 can be found here, and H.B. 1021 can be found here.

### Wisconsin: Issued updated publication for reciprocal agreements

The Wisconsin Department of Revenue issued the updated version of Publication 121, Reciprocity, for the 2024 calendar year. The publication was rolled over without any substantive changes.

The updated version of version of Publication 121 can be found here.

### Utah: Business and tax registrations moving online June 1

The Utah State Tax Commission has announced that from June 1, 2024, all state business and tax registrations, including those for employers registering to withhold and pay state income taxes, must be submitted electronically through Utah's Taxpayer Access Point.

### Maryland new employee notice and pay statement requirements

House Bill 385, effective October 1, 2024, mandates employers to provide written notice to new hires detailing their pay rate, regular paydays, and leave benefits. Every pay statement should include the employer's registered name, contact details, hours worked (unless overtime exempt), payment date, pay period, rate of pay, gross and net pay, any deductions, additional pay bases (such as bonuses or commissions), and piece rates with the number of pieces completed, if applicable. The Maryland Department of Labor & Industry will provide a pay statement template for employers to reference. Employers violating these provisions could face an administrative penalty of up to $500 per employee.

### Adair County, Kentucky provides Q&A for temporary occupational tax

A temporary occupational tax was implemented in Kentucky's Adair County, effective from January 1, 2024, to December 31, 2025, as per a previously approved county ordinance.

Employers in Adair County, KY, are required to withhold 0.5% of wages paid to employees working within the county. This tax applies to any business operating within the county that issues Forms W-2 to its employees and should be filed quarterly. The tax rate will decrease from 0.50% to 0.25% in 2025 and is set to expire in the last quarter of 2025.

The Adair County local newspaper, **Community Voice**, published a Q&A provided by the Adair County Tax Director that answers frequently asked questions. The Q&A clarifies that there is no limit on wages, the tax does not apply to compensation paid to independent contractors, only wages for services physically performed in the county are subject, and the tax is due quarterly.

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