

23 Payroll and Labor Laws

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Payroll Deposit Penalties

	<i>Penalty Rate</i>
Deposit 1 to 5 days late	2%
Deposit 6 to 15 days late	5%
Deposit 16 or more days late	10%
Deposit made within 10 days of first IRS late notice	10%
Deposits paid directly to the IRS, or paid with the tax return unless otherwise allowed	10%
Amounts still unpaid more than 10 days after first IRS late notice	15%

Additional civil penalties may apply for late filing and late payment. Criminal penalties may apply for willfully failing to collect or remit payroll taxes.

Form 941—Payroll Electronic Deposit Schedule

No deposit required. Total tax liability for the quarter is less than \$2,500.	Include payment when filing Form 941.	
Monthly depositor. Total tax liability during lookback period was \$50,000 or less.	Deposit taxes on payments made during a month by the 15th day of the following month.	
Semiweekly depositor. Total tax liability during lookback period was more than \$50,000.	If payday falls on a Wednesday, Thursday, and/or Friday:	Then deposit taxes by the following Wednesday.
	If payday falls on a Saturday, Sunday, Monday, and/or Tuesday:	Then deposit taxes by the following Friday.
Next-day deposit rule. Total tax liability accumulated is \$100,000 or more on any day during a deposit period.	Deposit total accumulated tax liability by the next business day, whether employer is a monthly or semiweekly schedule depositor.	

■ New for 2024 ■

- **Wages subject to Social Security tax.** The amount of wages subject to the Social Security portion of FICA for 2024 has increased to \$168,600. See *Earnings limits*, page 23-4.
- **Discontinued Forms.** Forms 941-SS and 941-PR have been discontinued. See, *Discontinued Forms 941-SS and 941-PR*, page 23-4.

2025 Employer's Payroll Tax Calendar

January

- 31 Issue 2024 Forms 1099 and W-2 to payees and employees.
- 31 File 2024 Forms 1099-NEC and 1096 with the IRS (paper and electronic).
- 31 File 2024 Forms W-2 and W-3 with the Social Security Administration (SSA) (paper and electronic).
- 31 File 2024 Form 940. Pay tax with form if \$500 or less.
- 31 File 4th Qtr. 2024 Form 941. Pay tax with form if less than \$2,500.
- 31 File 2024 Form 943 if farm employer. Pay tax with form if less than \$2,500.
- 31 File 2024 Form 944 if annual payroll tax filer. Pay tax with form if less than \$2,500.
- 31 File 2024 Form 945 for non-payroll income tax withheld.
- 31 Deposit Form 940 FUTA taxes due if more than \$500.

February

- 10 2024 Form 940, 943, 944, and 945 due date if all taxes were deposited when due.
- 10 4th Qtr. 2024 Form 941 due date if all taxes were deposited when due.
- 18 Begin withholding from employees claiming exempt in the prior year who have not furnished a new Form W-4.
- 28 File 2024 Forms 1099-MISC and 1096 with the IRS (paper).
- 28 File 2024 Form 8027 with the IRS for tip income and allocated tips (paper).

March

- 31 File 2024 Forms 1099-MISC and 1096 with the IRS (electronic).
- 31 File 2024 Form 8027 with the IRS for tip income and allocated tips (electronic).

April

- 30 Deposit FUTA taxes due if more than \$500.
- 30 File 1st Qtr. 2025 Form 941. Pay tax with form if less than \$2,500.

May

- 12 1st Qtr. 2025 Form 941 due date if all taxes were deposited when due.

July

- 31 Deposit FUTA taxes due if more than \$500.
- 31 File 2nd Qtr. 2025 Form 941. Pay tax with form if less than \$2,500.

August

- 11 2nd Qtr. 2025 Form 941 due date if all taxes were deposited when due.

October

- 31 Deposit FUTA taxes due if more than \$500.
- 31 File 3rd Qtr. 2025 Form 941. Pay tax with form if less than \$2,500.

November

- 10 3rd Qtr. 2025 Form 941 due date if all taxes were deposited when due.
- 30 Remind employees to submit a new Form W-4 if their tax withholding situation will change for 2026.

Payroll Tax Deposits

Cross References

- IRS Pub. 15, (*Circular E*), *Employer's Tax Guide*
- IRS Pub. 966, *Electronic Federal Tax Payment System A Guide to Getting Started*
- IRS Pub. 4990, *EFTPS Payment Instruction Booklet for Business & Individual Taxpayers*

Related Topics

- Employer Identification Number (EIN), page 5-1
- Disqualified employment tax levy (DETL), page 15-11

Electronic Federal Tax Payment System (EFTPS)

Employers are generally required to use EFTPS to make all federal tax deposits. For exceptions, see *Payment with return*, next column.

EFTPS allows users to make tax payments 24 hours a day, seven days a week. Deposits can be made online or by telephone. Payments can be scheduled in advance of the payment date. Taxpayers can enroll online at www.eftps.gov, or by phone at 800-555-4477.

Deposits using EFTPS must be initiated by 8 p.m. Eastern Time the day before the due date to be considered timely.

Penalty. An employer who does not deposit taxes using EFTPS when required may be subject to a 10% failure-to-deposit penalty.

New employer. A new employer that indicates a federal tax obligation when requesting an EIN will be pre-enrolled in EFTPS. The employer will receive a mailing containing the EFTPS PIN and activation instructions.

Reporting agents. Reporting agents must use EFTPS to make federal tax deposits on behalf of an employer. The employer has access to EFTPS to confirm federal tax deposits were made on its behalf. (Rev. Proc. 2012-32)

Certified professional employer organization (CPEO). A professional employer organization (PEO) provides payroll, benefits, and human resource services to unrelated employers. Also called "employee leasing services" or "co-employers," PEOs deposit and report payroll obligations under the name and EIN of the PEO. Historically, because the employer is considered the common-law employer, the employer was liable for collection and payment if the PEO did not fulfill their obligations, even if the employer had transferred funds to the PEO.

Under CPEO regulations, third-party payroll providers are deemed to be the employer for employment tax and payroll obligations only, and the CPEO is solely liable for employment and payroll taxes. To become a CPEO, a PEO must apply to the IRS, meet certain GAAP requirements, and post a bond, in addition to other requirements.

Changes to procedures for CPEOs. Revenue Procedure 2023-18 makes the following clarifications and substantive changes to the procedures for CPEOs as previously outlined in Revenue Procedures 2016-33 and 2017-14.

- Expands and defines the role of the application submitter to make the application process and other communications more efficient. In addition, further clarification is provided regarding who can be an application submitter.
- Provides updates to the procedures for a denial of CPEO certification and proposed revocation of a certification.
- Provides information on how CPEOs should submit Form 8973, *Certified Professional Employer Organization/Customer Reporting Agreement*.
- Provides additional details concerning the use of the IRS Online Registration System account by the CPEO or CPEO applicant.

- Clarifies how a CPEO or CPEO applicant may include an explanation as to why the failures in making certain payroll deposits were immaterial and how the failures were addressed.
- Provides information regarding the use of electronic fingerprint procedures for responsible individuals to replace Form FD-258,

Payment with return. Tax liability payments can be included with the filing of Form 941, *Employer's Quarterly Federal Tax Return*, or Form 944, *Employer's Annual Federal Tax Return*, instead of depositing if one of the following applies.

- Form 941 total tax liability for either the current quarter or the preceding quarter is less than \$2,500, and the employer did not incur a \$100,000 next-day deposit obligation during the current quarter,
- Form 944 net tax liability for the year is less than \$2,500, or
- The employer is a monthly schedule depositor and makes a payment in accordance with the accuracy of deposits rule. This payment may be \$2,500 or more. See *Accuracy of deposits rule*, page 23-3.

Employers that have been notified to file Form 944 can pay their fourth quarter tax liability with Form 944, if the fourth quarter tax liability is less than \$2,500.

See *Form 941, Employer's Quarterly Federal Tax Return*, page 23-4.

Credit card payments. Employers can pay the balance due on current, prior-year, and amended payroll tax returns by credit card. These payments can include installment agreement payments for any unpaid taxes for the prior 10 years. However, do not use a credit card to make federal tax deposits.

Deposit schedule. If the employer does not qualify to pay the tax with the filing of Form 941, the employer must deposit the taxes using the monthly depositor schedule or the semi-weekly depositor schedule. See *Form 941—Payroll Electronic Deposit Schedule* chart, page 23-1.

Lookback period. If the employer is a Form 941 filer, the deposit schedule is determined by the total tax liability that was reported on Form 941 during a four-quarter lookback period.

Lookback Period for Calendar Year 2025

July 1, 2023 through Sept. 30, 2023	Oct. 1, 2023 through Dec. 31, 2023	Jan. 1, 2024 through Mar. 31, 2024	Apr. 1, 2024 through June 30, 2024
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The lookback period for a 2025 Form 941 filer who filed Form 944 in either 2023 or 2024 is calendar year 2023.

If the employer is a Form 944 filer for the current year or either of the two preceding years, the deposit schedule is determined by the total tax liability reported during the second preceding calendar year. The lookback period for 2025 for a Form 944 filer is calendar year 2023.

Adjustments made on Form 941-X and Form 944-X do not affect the amount of the tax liability for previous periods for purposes of the lookback rule.

Monthly depositor. If the employer reported \$50,000 or less total tax liability for the lookback period, the employer is a monthly depositor. Deposit employment taxes on payments made during a month by the 15th day of the following month.

New employers. Follow rules for monthly depositors during the first calendar year as a new employer. However, see *\$100,000 next-day deposit rule*, page 23-3.

Semiweekly depositor. If the employer reported more than \$50,000 total tax liability for the lookback period, the employer is a semiweekly depositor. Deposit accumulated tax liability for payroll made on Wednesday, Thursday, and/or Friday by the following Wednesday. Deposit accumulated tax liability for

payroll made on Saturday, Sunday, Monday, and/or Tuesday by the following Friday.

Semiweekly schedule depositors must complete Schedule B (Form 941), *Report of Tax Liability for Semiweekly Schedule Depositors*, and submit with the filing of Form 941. Semiweekly schedule depositors who file Form 944 must complete Form 945-A, *Annual Record of Federal Tax Liability*, and submit with the return instead of Schedule B.

Pay period spanning two quarters. If a semiweekly depositor has more than one pay date during a semiweekly period, and the pay dates fall in different calendar quarters, the employer must make separate deposits for the separate liabilities.

Business days. If a deposit is required to be made on a day that is not a business day, the deposit is considered timely if it is made by the close of the next business day. In addition to legal holidays, Saturdays and Sundays are treated as nonbusiness days.

For a semiweekly schedule depositor, if any of the three weekdays after the end of a semiweekly period is a legal holiday, the employer has one additional business day to deposit.

Legal holiday. The term legal holiday means any legal holiday in the District of Columbia.

Example: Payday for Jon's Tax Service falls on Friday. Monday is Labor Day, a legal holiday. The deposit normally due on the following Wednesday is not due until Thursday.

\$100,000 next-day deposit rule. If an employer accumulates a tax liability of \$100,000 or more on any day during a deposit period, the taxes must be deposited by the next business day, whether the employer is a monthly or semiweekly schedule depositor.

For purposes of this rule, do not continue accumulating tax liability after the end of a deposit period. For example, if a semiweekly schedule depositor has accumulated a liability of \$95,000 on Tuesday of a Saturday through Tuesday deposit period and accumulates a \$10,000 liability on Wednesday, the \$100,000 next-day deposit rule does not apply. The \$95,000 must be deposited by Friday, and the \$10,000 must be deposited by the following Wednesday. However, once the employer accumulates at least \$100,000 in a deposit period, stop accumulating at the end of that day and begin to accumulate a new amount the next day.

If a monthly depositor accumulates a \$100,000 tax liability on any day, the employer becomes a semiweekly schedule depositor on the next day and remains so for at least the rest of the calendar year and for the following calendar year.

Accuracy of deposits rule. Employers must deposit 100% of their tax liability on or before the deposit due date. However, penalties will not be applied for depositing less than 100% if both the following conditions are met.

- Any deposit shortfall does not exceed the greater of \$100 or 2% of the amount of taxes otherwise required to be deposited, and
- The deposit shortfall is paid or deposited by the shortfall make-up date, determined as follows.
 - **Monthly schedule depositors.** Deposit the shortfall or pay it with the return by the due date of the return for the quarter in which the shortfall occurred. The shortfall can be paid with the return even if it is \$2,500 or more.
 - **Semiweekly schedule depositors.** Deposit the shortfall by the earlier of:
 - The first Wednesday or Friday, whichever comes first, that falls on or after the 15th of the month following the month in which the shortfall occurred, or
 - The due date of the return for the period of the tax liability.

Other Payroll Deposit Rules

Same-day wire payment option. Employers may be able to do a same-day wire transfer through their financial institution. Employers should check with their financial institutions ahead of time for information on availability, deadlines, and costs.

When payroll tax liability is incurred. Wages are considered paid when they are credited to the account or set apart for an employee so that they may be drawn upon by the employee at any time without any substantial limitation or restriction. [Reg. §31.3121(a)-2]

Example: Mitch receives his paycheck from ARC, Inc. on January 5, 2024, for the pay period December 16, 2023 through December 31, 2023. His wages will be reported on his 2024 Form W-2, and ARC, Inc. will report the payroll tax liability in the first quarter of 2024. This is true regardless of whether ARC, Inc. is a cash or accrual accounting method taxpayer.

Deferred compensation. For an accrual taxpayer, if the all-events test and the recurring-item exception are met, a deduction for payroll taxes is allowed in the year the deferred compensation is earned, even though it is paid in the following year. See IRC section 461 for details regarding the all-events test and the recurring-item test. (Rev. Rul. 2007-12)

Bonuses and vacation pay. For an accrual taxpayer that uses the recurring-item exception for payroll liabilities, a safe harbor method of accounting is available for bonuses and vacation pay. (Rev. Proc. 2008-25)

A deduction for employer payroll taxes is allowed in the year all events have occurred to establish the liability even though it is paid in the following year. [IRC §461(h)(3)]

A taxpayer's change to use the safe harbor method under the revenue procedure is considered a change in accounting method. See *Change in Accounting Method*, page 8-25.

Single-member LLCs. A single-member LLC filing Schedule C as a sole proprietor must report wages and employment taxes paid in the name and EIN of the LLC. The regulations state that the LLC, and not its single-member owner, is responsible for filing and paying all employment taxes on wages paid to its employees.

Form W-4, Employee's Withholding Certificate

Employers are required to withhold federal income tax from each wage payment according to the employee's Form W-4 and correct withholding rate. For an online W-4 calculator, see www.irs.gov/individuals/tax-withholding-estimator.

Employers are not required to notify the IRS if an employee claims exempt from withholding or claims a large number of dependents or deductions. The IRS may notify the employer to increase withholding if withholding reported on Form W-2 is not enough to cover the tax liability reported on the tax return. This notice is commonly referred to as a lock-in letter.

Form W-4P, Form W-4R, Form W-4S, and Form W-4V. The following forms are used to direct a payer that is not an employer to withhold federal income tax.

- **Form W-4P, Withholding Certificate for Periodic Pension or Annuity Payments.** Form W-4P is used only to withhold the correct amount of tax on periodic pension, annuity, profit-sharing and stock bonus plans, or IRA payments.
- **Form W-4R, Withholding Certificate for Nonperiodic Payments and Eligible Rollover Distributions.** Form W-4R is used to withhold the correct amount of tax on nonperiodic and eligible rollover distributions from an employer retirement plan, annuity, or IRA.
- **Form W-4S, Request for Federal Income Tax Withholding From Sick Pay.** Form W-4S is given to third-party payers of sick

pay to make a voluntary request to withhold tax from the payments. For more information, see the instructions for Form W-4S.

- **Form W-4V, Voluntary Withholding Request.** Form W-4V is used to make a voluntary request that the payer of certain government payments withhold federal income tax. For more information, see the instructions for Form W-4V.

Form 941, Employer's Quarterly Federal Tax Return

Cross References

- Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*
- Form 943, *Employer's Annual Federal Tax Return for Agricultural Employees*
- Form 944, *Employer's Annual Federal Tax Return*
- Form 945, *Annual Return of Withheld Federal Income Tax*

Related Topics

- Taxes and licenses, Tab 5
- Household Employees, page 14-2

Federal Insurance Contributions Act (FICA)

FICA tax requires employee withholding and employer matching for Social Security tax and Medicare tax. The total employee and employer shares of FICA tax is 15.3% of employee wages.

	Employee Share	Employer Share	Total
Social Security	6.20%	6.20%	12.40%
Medicare	1.45%	1.45%	2.90%

Earnings limits. Wages subject to the Social Security portion of FICA are limited to the first \$168,600 for 2024. There is no earnings limit for the Medicare portion of FICA.

Additional Medicare Tax. A 0.9% additional Medicare tax must be withheld by employers on wages paid to an employee in excess of \$200,000 in a calendar year without regard to the individual's filing status or wages paid by another employer. The additional Medicare tax is only withheld from the employee. There is no employer share. See *Additional Medicare Tax*, Tab 3.

Wages exempt from FICA. See *Special Rules for Various Types of Employment*, page 23-6.

Employer's Quarterly Federal Tax Return (Form 941)

Filing requirements. Each quarter, all employers who pay wages subject to income tax withholding or Social Security and Medicare taxes must file Form 941, *Employer's Quarterly Federal Tax Return*, by the last day of the month that follows the end of the quarter. The following exceptions apply.

- Seasonal employers are not required to file for quarters in which they have no tax liability because they have paid no wages. Check the seasonal employer box on every Form 941 filed to alert the IRS that the employer is a seasonal employer.
- Household employers report Social Security taxes, Medicare taxes, and withheld income tax on Schedule H (Form 1040), *Household Employment Taxes*, rather than Form 941. See *Household Employees*, page 14-2.
- Agricultural employers reporting Social Security, Medicare, and withheld income taxes use Form 943 rather than Form 941.
- Small employers receiving written notification from the IRS must file Form 944 instead of Form 941. Employers can request to have the filing requirement changed. See *Choosing to file Form 941 instead of Form 944*, page 23-5.

- Backup withholding or income tax withholding on non-payroll payments, such as pensions, annuities, and gambling winnings are reported on Form 945 rather than Form 941.

New for 2024 **Discontinued Forms 941-SS and 941-PR.** Beginning with the first quarter of 2024, Forms 941-SS and 941-PR have been discontinued. Employers in the U.S. territories should file Form 941.

Paying employment taxes. Generally, employment taxes must be paid using the Electronic Federal Tax Payment System (EFTPS). See *Payroll Tax Deposits*, page 23-2.

Pay with Form 941. If total taxes on line 12, Form 941, for the current or previous quarter are less than \$2,500, and the taxpayer is not subject to the \$100,000 next-day deposit schedule, the balance due may be paid with Form 941 if timely filed.

Sick pay and supplemental unemployment benefits. Form 941 (or Form 944) must be filed if sick pay or supplemental unemployment benefits subject to income tax withholding or Social Security and Medicare taxes were paid. See *Special Rules for Various Types of Employment* chart, page 23-6.

Penalties. For each whole or part month that a return is not filed when required, there is a penalty of 5% of the unpaid tax due with that return. The maximum penalty is 25% of the tax due.

For each whole or part month that the tax is paid late, the penalty is 0.5% of the unpaid tax due. The maximum penalty is 25% of the tax due.

For each month both penalties apply, the failure-to-file penalty is reduced by the amount of the failure-to-pay penalty. In addition to the penalties, interest accrues from the due date of the tax on any unpaid balance.

Current period adjustments. In certain cases, amounts reported as Social Security and Medicare taxes must be adjusted to arrive at the correct tax liability.

Fractions-of-cents adjustment. Enter adjustments for fractions-of-cents relating to the employee share of Social Security and Medicare taxes withheld. The employee share may differ slightly from the amounts actually withheld from the employees' paychecks due to rounding of Social Security and Medicare taxes.

Third-party sick pay adjustment. Enter the adjustment for the employee share of Social Security and Medicare taxes that were withheld and deposited by the employer's third-party sick pay payer with regard to sick pay paid by the third-party.

Tips and group-term life insurance adjustment. Enter adjustments for the uncollected employee share of Social Security and Medicare taxes on tips and on group-term life insurance premiums paid for former employees.

Qualified small business payroll tax credit for increasing research activities. For tax years beginning after December 31, 2022, a qualified small business may elect to claim up to \$500,000 of its Credit for Increasing Research Activities as a payroll tax credit against the employer share of Social Security tax. See *Credit for Increasing Research Activities (Form 6765)*, page 31-8.

Form 944, Employer's Annual Federal Tax Return Form 944 is designed so small employers can file and pay employment taxes only once a year instead of every quarter. Qualified employers are those with an annual liability for Social Security, Medicare, and withheld federal income taxes of \$1,000 or less. Household employers and agricultural employers do not qualify. Form 944 is due by January 31, after the end of the calendar year. In general, if the IRS has informed an employer to file Form 944 instead of Form 941, they must do so. Employers cannot file Form 944 unless they are notified by the IRS that they qualify. Currently,

the IRS only sends notification of eligibility to file Form 944 upon request by the qualified employer. See *Choosing to file Form 941 instead of Form 944*, below.

Employers notified to file Form 944, whose employment tax liability exceeds the \$1,000 threshold during the year, still file Form 944 until notified by the IRS to file Form 941.

New employers. New employers are eligible to file Form 944 if they meet the requirements. New employers are advised of their employment tax filing requirement when issued their EIN, based on information from Form SS-4, *Application for Employer Identification Number*.

Choosing to file Form 941 instead of Form 944. To request to file quarterly Form 941, call the IRS at 1-800-829-4933 by April 1, or send a written request by March 15, of the current calendar year. Continue filing Form 944 until the employer receives a written notice from the IRS that the filing requirement has been changed.

Form 943, Employer's Annual Federal Tax Return for Agricultural Employees

Agricultural employers use Form 943 to file their annual payroll tax return. Cash wages paid to farm workers are subject to Social Security, Medicare, and federal income tax withholding for any calendar year the employer meets either of the following.

- The employer pays an employee cash wages of \$150 or more in a year for farm work, or
- The total cash and noncash wages paid to all farm workers is \$2,500 or more.

If the \$2,500 or more test for the group is not met, the \$150 or more test for an individual still applies.

Exception: Special rules apply for certain hand-harvest laborers who receive less than \$150 in annual cash wages. For more information, see IRS Pub. 15, (*Circular E*), *Employer's Tax Guide*.

Form 945, Annual Return of Withheld Federal Income Tax

For non-payroll federal income tax withholding, use Form 945. The types of federal withholding that should be reported on Form 945 include withholding from:

- Pensions, qualified plans, annuities, and IRAs.
- Military retirement.
- Gambling winnings.
- Indian gaming profits.
- Backup withholding.
- Voluntary withholding on certain government payments.

Backup withholding. The payer must withhold federal income tax at a rate of 24% if the payee fails to furnish the payer his or her correct TIN using Form W-9, *Request for Taxpayer Identification Number and Certification*. Payments subject to backup withholding include interest, dividends, patronage dividends, rents, royalties, commissions, nonemployee compensation, broker and barter exchange transactions, certain payments made by fishing boat operators, and certain other payments that are made in the course of a trade or business. Backup withholding is also required if interest or dividends were underreported on a taxpayer's return or the taxpayer had failed to certify that they are not subject to backup withholding on this underreported income.

Backup withholding does not apply to wages, pensions, annuities, IRAs, medical savings accounts, health savings accounts, long-term care benefits, or real estate transactions.

Form W-9, Request for Taxpayer Identification Number and Certification. Use Form W-9 to request that payees furnish a correct TIN. The form can also be used to get certification from payees that they are not subject to backup withholding. For more information, see IRS Pub. 1281, *Backup Withholding for Missing and Incorrect Name/TIN(s)*.

Author's Comment: A payer must withhold backup withholding on amounts paid more than 30 days after receiving an IRS notice of an incorrect TIN. Stop withholding within 30 days after receiving a certified Form W-9 or other form that requires the payee to certify under penalty of perjury. (Rev. Proc. 2014-43)

Employment Tax Form Corrections

Errors on previously filed employment tax forms can be corrected by using the following forms.

- Form 941-X, *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund*,
- Form 943-X, *Adjusted Employer's Annual Federal Tax Return for Agricultural Employees or Claim for Refund*,
- Form 944-X, *Adjusted Employer's Annual Federal Tax Return or Claim for Refund*,
- Form 945-X, *Adjusted Annual Return of Withheld Federal Income Tax or Claim for Refund*, and
- Form CT-1X, *Adjusted Employer's Annual Railroad Retirement Tax Return or Claim for Refund*.

Prepare a separate X series form for each form (period) that is being corrected and file each X series form separately from the return it is correcting.

Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*, is used to file amended Form 940 returns.

Collecting underwithheld taxes from employees. If too little tax was withheld from an employee's wages, an employer can make it up from later pay to that employee. However, the employer is the one who owes the correct tax liability to the government. Reimbursement is a matter for settlement between the employer and the employee. Employers generally cannot recover underwithheld income tax from employees after the end of the calendar year. **Exception:** Special rules apply for tax on tips. See *Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips (Form 8846)*, page 31-8.

Refunding too much withholding from employees. Employers that withhold more than the correct amount of income, Social Security, or Medicare taxes from wages must reimburse the employee for the excess. Overwithheld income tax, or additional Medicare tax, must be reimbursed before the end of the calendar year.

Form W-2 and Form W-3

Employers must file Form W-2, *Wage and Tax Statement*, and Form W-3, *Transmittal of Wage and Tax Statements*, with the Social Security Administration (SSA) and issue copies of Form W-2 to employees for wages if:

- Income, Social Security, or Medicare tax was withheld,
- Income tax would have been withheld if the employee had claimed no more than one withholding allowance (for 2019 or earlier Forms W-4) or had not claimed exemption from withholding on Form W-4, *Employee's Withholding Certificate*, or
- Employee was paid \$600 or more in wages.

Who may sign Form W-3. A transmitter or sender (including a service bureau, paying agent, or disbursing agent) may sign Form W-3 for the employer or payer only if the sender is authorized to sign and writes "For (name of payer)" next to the signature.

SSA rejected wage reports. The SSA will reject the following Form W-2 electronic and paper wage reports.

- Medicare wages and tips are less than the sum of Social Security wages and Social Security tips,
- Social Security tax is greater than zero and Social Security wages and Social Security tips are equal to zero, and
- Medicare tax is greater than zero and Medicare wages and tips are equal to zero.

Correcting filed Forms W-2 and W-3. When adjustments correct items reportable on Form W-2, the employer may also need to file Form W-2c, *Corrected Wage and Tax Statement*, and Form W-3c, *Transmittal of Corrected Wage and Tax Statements*, with the SSA.

Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return

Cross References

- Form 941, *Employer's Quarterly Federal Tax Return*
- Form 943, *Employer's Annual Federal Tax Return for Agricultural Employees*
- Form 944, *Employer's Annual Federal Tax Return*

Related Topics

- Taxes and licenses, Tab 5
- Household Employees, page 14-2

FUTA Tax

Under the Federal Unemployment Tax Act (FUTA), wages are subject to a tax rate of 6.0% for the first \$7,000 of each employee's earnings for the year. The tax is imposed on the employer only, and is not withheld from the employee's wages.

State credit against tax. Employers are allowed a state credit against the FUTA tax for amounts that are paid into state unemployment funds. The credit may be as much as 5.4% of FUTA taxable wages. If the employer is entitled to the maximum 5.4% credit, the FUTA tax rate after the credit is 0.6%. The employer is entitled to the maximum credit if state unemployment taxes were paid in full, on time, on all the same wages as are subject to FUTA tax, and if the state is not a credit reduction state.

If any part of wages subject to FUTA is exempt from state unemployment tax, the state credit is reduced. For example, wages in some states paid to corporate officers are exempt from state unemployment tax but are taxable for FUTA purposes. In such a case, the employer may be required to deposit more than 0.6% FUTA tax on those wages.

Credit reduction state. A state that has not repaid money it borrowed from the federal government to pay unemployment benefits is a credit reduction state. The Department of Labor determines these states. An employer that pays wages in a credit reduction state must pay additional FUTA tax. For 2024, the following states and territories had a balance owing as of January 1, 2024, and are potentially credit reduction states if the outstanding advance is not repaid by November 10, 2024. California, Connecticut, New York, and the U.S. Virgin Islands.

Employers subject to FUTA. An employer is subject to FUTA for 2024 on the wages paid to employees who are not farm workers or household workers if:

- The employer pays wages of \$1,500 or more in any calendar quarter in 2023 or 2024, or
- The employer has one or more employees for at least some part of a day in any 20 or more different weeks in 2023 or 20 or more different weeks in 2024.

Employers of household employees are subject to FUTA tax in 2024 if the total cash wages paid for all household employees are \$1,000 or more in any calendar quarter.

Employers are subject to FUTA in 2024 on the wages paid to farm workers if:

- The employer pays cash wages of \$20,000 or more to farm workers during any calendar quarter in 2023 or 2024, or
- The employer employs 10 or more farm workers during at least some part of a day during any 20 or more different weeks in 2023 or 20 or more different weeks in 2024.

Depositing FUTA taxes. If FUTA tax liability for a quarter is \$500 or less, the employer may carry the liability forward to the next quarter. When FUTA tax liability, including any amounts carried forward, is more than \$500 for a quarter, the employer must deposit the tax using EFTPS by the last day of the month following the end of the quarter. See *Electronic Federal Tax Payment System (EFTPS)*, page 23-2.

If FUTA tax liability for the fourth quarter is \$500 or less, including any amounts carried forward, the tax can be paid with Form 940 instead of using EFTPS to deposit the tax.

Special Rules for Various Types of Employment

Cross References

- IRS Pub. 15, (*Circular E*), *Employer's Tax Guide*
- IRS Pub. 15-A, *Employer's Supplemental Tax Guide*

Related Topics

- Children in Business, Tab 5
- Family Businesses—Employing Family Members, Tab 5
- Independent Contractor vs. Employee, Tab 5
- Household Employees, page 14-2

Employer Exempt From Withholding

Exempt for purposes of federal withholding means the employer is not required to withhold federal income taxes on those wages. However, the employee is still subject to federal income tax on those wages.

Type of Employment/Payment	Federal Withholding	FICA	FUTA
Deceased worker, year of death	Exempt	Taxable	Taxable
Deceased worker, after year of death	Exempt	Exempt	Exempt
Disabled worker, no services performed	Withhold	Exempt	Taxable
Child under age 18 employed by parent ¹	Withhold	Exempt	Exempt
Child age 18–20 employed by parent ¹	Withhold	Taxable	Taxable
Child under age 21, domestic work (parent ¹)	Withhold	Exempt	Exempt
Parent employed by child	Withhold	Taxable	Exempt
Spouse employed by spouse	Withhold	Taxable	Exempt
Spouse employed by spouse, domestic work	Withhold	Exempt	Exempt
Statutory employees, home worker	Exempt	Taxable	Exempt
Statutory employees, salespersons	Exempt	Exempt	Taxable
Statutory employees, life insurance	Exempt	Taxable	Exempt
Statutory non-employees	Exempt	Exempt	Exempt
Household employee	Exempt	Taxable ²	Taxable ³
Household employee under 18	Exempt	Exempt ⁴	Taxable ³
Newspaper carriers under 18	Exempt	Exempt	Exempt
Sick pay after six months of no work	Withhold	Exempt	Exempt
Student working for school	Withhold	Exempt ⁵	Exempt
Supplemental unemployment benefits	Withhold	Exempt ⁶	Exempt ⁶
Tips less than \$20 per month	Exempt	Exempt	Exempt
Differential pay, employees in military	Withhold	Exempt	Exempt

¹ Parent-employer as a sole proprietor or partnership if each partner is a parent.

² If paid \$2,700 or more during 2024. Exempt if paid less.

³ If employer paid total wages of \$1,000 or more for all household employees. Exempt if paid less.

⁴ If it is not the principal occupation of the employee.

A student can be the principal occupation.

⁵ Exceptions for work covered by a Social Security Act agreement, work performed for academic credit, and student employed by organized camps.

⁶ Exempt under certain conditions. See IRS Pub. 15-A, *Employer's Supplemental Tax Guide*. Also see *Quality Stores, Inc.*, 6th Cir., September 7, 2012.

Trust Fund Recovery Penalty

Cross References

- IRS Pub. 5, *Your Appeal Rights and How to Prepare a Protest if You Disagree*
- IRS Pub. 594, *The IRS Collection Process*
- IRS Notice 784, *Could You be Personally Liable for Certain Unpaid Federal Taxes?*

Related Topics

- IRS Collection Process, page 15-11

The Trust Fund Recovery Penalty (TFRP) is used to encourage prompt payment of withheld income and employment taxes. Employment taxes are called trust fund taxes because the employer is holding the employee's money in trust until the federal deposit is made. If unpaid trust fund taxes cannot be immediately collected from the employer, the IRS may assess the TFRP against any person who:

- Is responsible for collecting or paying withheld income and employment taxes, and
- Willfully fails to collect or pay them.

Responsible person. Any person or group of people who have the duty to perform and the power to direct the collecting, accounting, and paying of trust fund taxes is considered a responsible person. A responsible person can be:

- An officer or employee of a corporation,
- A partner or employee of a partnership,
- A corporate director or shareholder,
- An accountant,
- A volunteer director/trustee,
- An employee of a sole proprietorship, or
- Another corporation or third-party payer.

A responsible person also may include one who signs checks for the business or otherwise has authority to cause the spending of business funds.

Willfulness. For willfulness to exist, the responsible person:

- Must have been, or should have been, aware of the outstanding taxes, and
- Either intentionally disregarded the law or was plainly indifferent to its requirements. No bad motive is required.

Using available funds to pay other creditors when the business is unable to pay the employment taxes is an indication of willfulness.

A responsible person who willfully fails to collect or remit withheld income or payroll taxes may be subject to criminal prosecution in addition to civil penalties.

Third-party payers. The TFRP may be recommended against a third-party payer, such as a payroll service provider or professional employer organization, that willfully fails to collect, account for, and pay over taxes held in trust on behalf of its client (employer).

The use of a third-party payer does not relieve the employer or its employees who are responsible for collecting, accounting for, and paying the employer's payroll taxes from the responsibility of ensuring all the employer's payroll tax obligations are met. The responsible persons of the employer may still be assessed the TFRP when a third-party payer does not pay over taxes held in trust. **Exception:** For an exception to this rule, see *Certified professional employer organization (CPEO)*, page 23-2.

Amount of penalty. The penalty is an alternative means of collecting unpaid trust fund taxes not fully collected from the business. The penalty is equal to the unpaid trust fund tax, computed as:

- The unpaid income taxes withheld, plus
- The employee's portion of the withheld FICA taxes.

Author's Comment: The IRS will try to include as many people as possible in a trust fund investigation. They will likely consider anyone with bank signature authorization to be a responsible person. Obtain Form 4180, *Report of Interview with Individual Relative to Trust Fund Recovery Penalty or Personal Liability for Excise Taxes*, and complete it ahead of the IRS' interview. Have written statements of explanation for all 'yes' answers. Form 4180 can be found using an online search engine, though it is not an official form on the IRS' website.

Form 1099-NEC, Nonemployee Compensation

Cross References

- Form 1096, *Annual Summary and Transmittal of U.S. Information Returns*
- Form 1099-NEC, *Nonemployee Compensation*

Related Topics

- Schedule C—Profit or Loss From Business, Tab 5
- Independent Contractor vs. Employee, Tab 5

Nonemployee Compensation

File Form 1099-NEC for each person to whom the taxpayer has paid at least \$600 during the course of a business for the following.

- Services performed by someone who is not an employee, including parts and materials (box 1).
- Payments to an attorney for legal services (box 1).

Form 1099-NEC must also be filed for each person from whom the taxpayer has withheld any federal income tax (box 4) under the backup withholding rules, regardless of the amount of the payment.

Exceptions: Exceptions for Form 1099-NEC are the same as the exceptions for Form 1099-MISC. See *Exceptions*, page 23-8.

Payments to corporations for legal services. The exemption from reporting payments made to corporations does not apply to payments for legal services. Therefore, a taxpayer must report attorneys' fees to corporations that provide legal services.

Payments by a federal executive agency. Payments made by a federal executive agency to a vendor for services must also be reported, even if the vendor is a corporation.

Box 1. Nonemployee compensation. Enter nonemployee compensation of \$600 or more for fees, commissions, prizes, awards, and other forms of compensation for services performed by a nonemployee and expenses incurred for the use of an entertainment facility treated as compensation to a nonemployee. Also include:

- Professional service fees, such as fees to attorneys (including corporations), accountants, architects, contractors, or engineers.
- Fee-splitting or referral fees paid by one professional to another.
- Payments by attorneys to witnesses or experts in legal adjudication.
- Payment for services, including payment for parts or materials used to perform the services if supplying the parts or materials was incidental to providing the service.
- Commissions paid to nonemployee salespersons that are subject to repayment but not repaid during the calendar year.
- Fees paid to a nonemployee or travel reimbursement for which the nonemployee did not account to the payer.
- Payments to nonemployee entertainers for services.
- Exchanges of services between individuals in the course of their trades or businesses. For example, an attorney represents a painter for nonpayment of business debts in exchange for the painting of the attorney's law offices. The amount reportable by

each on Form 1099-NEC is the FMV of his or her own services performed. However, if the attorney represents the painter in a divorce proceeding, this is an activity that is unrelated to the painter's trade or business. The attorney must report on Form 1099-NEC the value of his or her services. But the painter need not report on Form 1099-NEC the value of painting the law offices because the work is in exchange for legal services.

- Taxable fringe benefits for nonemployees.
- Gross oil and gas payments for a working interest.
- Payments to an insurance salesperson who is not a common law or statutory employee.
- Directors' fees.
- Commissions paid to licensed lottery ticket sales agents.
- Payments to IRC section 530 workers.
- Golden parachute payments to independent contractors. These payments are compensation contingent on a change in ownership of a corporation with an aggregate present value of at least three times the individual's base amount or average compensation of the most recent five tax years. Excess golden parachute payments (amounts over the base amount) are also reported in box 14 of Form 1099-MISC.

Nonemployee compensation. A payment is reported as nonemployee compensation if it totaled \$600 or more during the year and is made:

- To someone who is not the payer's employee,
- For services in the course of the payer's trade or business, and
- To an individual, partnership, estate, or, in some cases, a corporation.

Self-employment tax. Generally, nonemployee compensation reported in box 1, Form 1099-NEC is subject to self-employment (SE) tax. If payments are not subject to SE tax, report in box 3, Form 1099-MISC.

Form 1099-MISC, Miscellaneous Information

Cross References

- Form 1096, *Annual Summary and Transmittal of U.S. Information Returns*
- Form 1099-MISC, *Miscellaneous Information*

Related Topics

- Other income, Tab 3
- Schedule E (Form 1040), *Supplemental Income and Loss*, page 7-2

Miscellaneous Information

File Form 1099-MISC for each person to whom the taxpayer has paid the following during the course of a trade or business.

- At least \$10 in royalties or broker payments in lieu of dividends or tax-exempt interest,
- At least \$600 in rents (box 1), prizes and awards (box 3), other income payments (box 3), the cash paid from a notional principal contract to an individual, partnership, or estate (box 3), any fishing boat proceeds (box 5), medical and health care payments (box 6), crop insurance proceeds (box 9), gross proceeds paid to an attorney (box 10), IRC section 409A deferrals (box 12), or nonqualified deferred compensation (box 15).
- Any payment from which federal income tax has been withheld (box 4) under the backup withholding rules.

Note: Form 1099-MISC reporting is not required for a taxpayer engaged in a rental real estate activity unless the taxpayer is otherwise considered to be engaged in a trade or business.

Exceptions: Some payments are not required to be reported on Form 1099-MISC, but may be taxable to the recipient. Examples include:

- Payments to corporations (including an LLC treated as a corporation). See *Reportable payments to corporations*, below.
- Payments for merchandise, telegrams, telephone, freight, storage, and similar items.
- Payments of rent to real estate agents or property managers. However, use Form 1099-MISC to report rents paid over to property owners.
- Wages, business travel allowances, military differential wage payments, cost of life insurance protection, and taxable scholarships or fellowship grants, which are generally reported on Form W-2.
- Payments to a tax-exempt organization including tax-exempt trusts (IRAs, HSAs, Archer MSAs, Coverdell ESAs, and ABL accounts), the United States, a state, the District of Columbia, a U.S. possession, or a foreign government.
- Payments made to or for homeowners from the HFA Hardest Hit Fund or similar state program, reported on Form 1098-MA.
- Federal or state compensation to public safety officers for injuries, sickness, or death (survivor's benefits) in the line of duty.
- Compensation for wrongful incarceration for any criminal offense for which there was a conviction under federal or state law.

Reportable payments to corporations. Generally, report the following payments made to corporations on Form 1099-MISC.

- Medical and health care payments (box 6).
- Substitute payments in lieu of dividends or tax-exempt interest (box 8).
- Gross proceeds paid to an attorney (box 10).
- Cash payments for the purchase of fish for resale (box 11).

Payments to attorneys. The term attorney includes a law firm or other provider of legal services. It also includes a corporation providing legal services. Payments to attorneys are reported in either box 10, Form 1099-MISC (gross proceeds of a settlement agreement), or box 1, Form 1099-NEC (fees for legal services).

Box 1. Rents. Enter amounts of \$600 or more for all types of rents, such as real estate rentals paid for office space, machine rentals, and pasture rentals. If the machine rental is part of a contract that includes both the use of the machine and the operator, prorate the amount between the rent of the machine, reported in box 1, Form 1099-MISC, and the operator's charge reported as nonemployee compensation in box 1, Form 1099-NEC.

Box 2. Royalties. Enter gross royalty payments of \$10 or more before reduction for severance, other taxes, fees, commissions, or expenses that may have been withheld and paid.

Box 3. Other income. Enter other income of \$600 or more required to be reported that is not reportable in one of the other boxes on Form 1099-MISC.

Prizes and awards. Enter prizes and awards that are not for services performed. Include amounts paid to a winner of a sweepstakes not involving a wager. Do not include prizes and awards paid to employees. Prizes and awards paid for services performed by nonemployees, such as an award for the top commission salesperson, are reported in box 1, Form 1099-NEC.

Foreign agricultural workers. Report compensation of \$600 or more paid to an H-2A visa agricultural worker who did not provide a valid TIN. Federal income tax must also be withheld at the backup withholding rate. See *Backup withholding*, page 23-5.

Other items. Other items reported in box 3 include:

- Deceased employee's wages paid after the year of death.
- Payments to Indian tribal members of net gaming profits.
- Payments for participating in a medical research study.
- Termination payments to former self-employed insurance salespeople if certain requirements are met.
- All punitive damages, any damages for nonphysical injuries or sickness, and any other taxable damages.
- All compensatory damages for nonphysical injuries or sickness.

Exceptions: Do not include compensatory damages that are:

- Received on account of personal physical injuries or physical sickness,
- Less than the amount paid for medical care, or
- Received on account of nonphysical injuries (e.g., emotional distress) under a written binding agreement, court decree, or mediation award.
- For a replacement of capital.

Box 5. Fishing boat proceeds. Enter proceeds from the sale of a catch or FMV of a distribution in kind to each crew member of fishing boats with normally fewer than 10 crew members. Also report cash payments of up to \$100 per trip that are contingent on a minimum catch and paid solely for additional duties (such as mate, engineer, or cook) for which additional cash payments are traditional in the industry.

Box 6. Medical and health care payments. Enter payments of \$600 or more made in the course of a trade or business to each physician or other supplier or provider of medical or health care services.

Box 7. Payer made direct sales of \$5,000 or more. Enter an “X” in the check box for sales by the payer of \$5,000 or more of consumer products to a person on a buy-sell, deposit-commission, or other commission basis for resale by the buyer or any other person anywhere other than in a permanent retail establishment. See *Form 1099 reporting*, page 36-3.

Other Payroll Issues

Cross References

- IRS Pub. 15, (*Circular E*) *Employer’s Tax Guide*
- IRS Pub. 15-A, *Employer’s Supplemental Tax Guide*
- IRS Pub. 15-B, *Employer’s Tax Guide to Fringe Benefits*

Related Topics

- Employee Benefits, Tab 22

Payroll Recordkeeping

Payroll records must be kept for at least four years. Records include:


- Employer identification number (EIN).
- Amounts and dates of all wage, annuity, and pension payments.
- Amounts of tips reported to the employer by the employees.
- Records of allocated tips.
- The FMV of in-kind wages paid.
- Names, addresses, Social Security Numbers, and occupations of employees and recipients.
- Employee copies of Forms W-2 and W-2c that were returned to the employer undeliverable.
- Dates of employment for each employee.
- Periods for which employees and recipients were paid while absent due to sickness or injury, and the amount and weekly rate of payments the employer or a third-party payer made to them.
- Copies of employees’ and recipients’ income tax withholding certificates (Forms W-4, W-4P, W-4R, W-4S, W-4(SP), and W-4V).
- Dates and amounts of tax deposits made and acknowledgment numbers for deposits made by EFTPS.
- Copies of returns filed and confirmation numbers.
- Records of fringe benefits and expense reimbursements provided to employees, including substantiation.
- Documentation to substantiate any credits or deferrals claimed. Records related to qualified sick leave wages and qualified family leave wages for leave taken after March 31, 2021, and before October 1, 2021, and records related to qualified wages for the employee retention credit paid after June 30, 2021, should be kept for at least six years.

- Documentation to substantiate the amount of any employer or employee share of Social Security tax that was deferred and paid for 2020.

Gross-Up Computation

If the employer grosses up wages to pay the tax on a benefit, the gross-up is also taxable to the employee. To calculate the tax on the gross-up, use the following worksheet.

1) Enter the net wage or value of fringe benefit the employee actually received	1) _____
2) Enter 100%.....	2) _____
3) Enter the total percentage for FICA, federal, and state income tax withholding	3) _____
4) Subtract line 3 from line 2.....	4) _____
5) Gross-up wage, divide line 1 by line 4.....	5) _____
6) Total FICA, federal, and state withholding, multiply line 5 by line 3.....	6) _____

 **Note:** Employers can use this computation only if the percent-age method of withholding is used.

Fringe Benefits


Fringe benefits are subject to income and employment taxes unless a specific benefit is excluded under the IRC. For types of excludable fringe benefits, see *Employee Benefits*, Tab 22.

Supplemental Wages

Supplemental wages are compensation paid in addition to an employee’s regular wages. They include, but are not limited to, bonuses, commissions, overtime pay, payments for accumulated sick leave, severance pay, awards, prizes, back pay, retroactive pay increases, payments for nondeductible moving expenses, taxable fringe benefits, and expense allowances paid under a nonaccountable plan.

If supplemental wages are combined with regular wages, and the amount of each is not specified, withhold federal income tax as if the total were a single payment for a regular payroll period. If the amount for each is separately paid, or each amount is specified, the employer can use one of the following methods for the supplemental wages.

- Withhold at a flat rate of 22%, or
- Add the supplemental and regular wages for the most recent payroll period. Then calculate withholding as if the total was a single payment. Subtract the tax already withheld from the regular wages and withhold the remaining tax from the supplemental wages.

 **Note:** Special rules apply to supplemental wages exceeding \$1 million in one year. See IRS Pub. 15, (*Circular E*) *Employer’s Tax Guide*.

Tip vs. Wage

Service charges are not tips. A payment is a tip if:

- It is made free from compulsion,
- The customer has the unrestricted right to determine the amount,
- The payment is not subject to negotiation or dictated by employer policy, and
- The customer has the right to determine who receives the payment.

Service charges are typically included on the tip line of the bill. The restaurant then distributes this amount to the wait staff. Affected customers do not have the right to determine the amount of the payment or who receives the payment. Service charges are treated as wages to the employee, not as tips (Rev. Rul. 2012-18). See *Tip Reporting*, Tab 3.

Example: Joe's Sushi Shack has a policy to add an 18% service charge to bills for parties of six or more customers. This service charge distributed to the wait staff is treated as a wage for withholding purposes.

Reporting Employer-Sponsored Health Insurance

For employers who file fewer than 250 Forms W-2, the requirement to report the cost of health insurance coverage under an employer-sponsored group health plan on the employee's Form W-2 is optional until further notice. (Notice 2012-9)

Labor Laws

Cross References

- IRS Pub. 15-A, *Employer's Supplemental Tax Guide*
- IRS Pub. 957, *Reporting Back Pay and Special Wage Payments to the Social Security Administration*

Related Topics

- Hiring Practices, page 27-13

Fair Labor Standards Act (FLSA)

The FLSA prescribes standards for minimum wage and overtime pay affecting most private and public employers. The standards are administered by the Wage and Hour Division (WHD) of the U.S. Department of Labor.

Minimum wage. The federal minimum wage for most workers is \$7.25 per hour. Exceptions are noted below.

Note: Many states and localities have enacted a minimum wage rate that exceeds the federal minimum wage. For a listing of state minimum wage rates, go to www.dol.gov/agencies/whd/minimum-wage/state.

Youth workers. Youths under age 20 may be paid a minimum wage of not less than \$4.25 per hour during the first 90 consecutive calendar days of employment as long as they do not displace other workers.

Tipped employees. Tipped employees are considered to have their tips counted toward the employer meeting the minimum wage standard, but employers must pay a direct wage in addition to tips of at least \$2.13 per hour if they claim a tip credit. See *Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips (Form 8846)*, Tab 31.

Overtime pay. Employers are required to pay covered nonexempt employees overtime pay for all hours worked in excess of 40 in a work week at one-and-one-half times the regular rate of pay.

Child labor laws. Under FLSA, children under age 18 are restricted from certain types of work, including most hazardous jobs. The minimum age for most nonagricultural work is age 14, with exceptions for delivering newspapers, child actors, babysitting, and working in a parent's business. Children under age 16 are also limited by the number of hours or times of day they can work. However, children employed by parents in the family farm can work any time of day and for any number of hours.

Poster rules. Every employer subject to FLSA must post, and keep posted, a notice explaining the Act in a conspicuous place in all of the employer's establishments to permit employees to readily read it. An approved copy of the minimum wage poster is available at the U.S. Department of Labor website: www.dol.gov.

Family and Medical Leave Act (FMLA)

Employers with 50 or more employees must grant eligible employees unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance

under the same terms and conditions as if the employee had not taken leave. The benefits eligible employees are entitled to include the following:

- 12 work weeks of leave in a 12-month period for:
 - The birth and care of a newborn child within one year of birth,
 - The placement and care of an adopted child or child in foster care within one year of placement,
 - The care of the employee's spouse, child, or parent with a serious health condition,
 - A serious health condition that makes the employee unable to work,
 - Any qualifying exigency arising from the employee's spouse, son, daughter, or parent who is a covered military member on "covered active duty," or
- 26 work weeks of leave during a single 12-month period to care for a covered servicemember with serious injury or illness if the eligible employee is the servicemember's spouse, son, daughter, parent, or next of kin (military caregiver leave).

Qualifying exigency. Eligible employees may take leave to address the most common issues that arise when a military member is deployed in a foreign country including, attending military sponsored functions, making appropriate financial and legal arrangements, and arranging for alternative childcare.

Equal Employment Opportunity (EEO)

EEO laws prohibit all employers from discriminating against employees on the basis of race, color, religion, sex (including wages paid), national origin, disability, age, and genetic information. In addition, employers are prohibited from retaliating against a person who files a charge of discrimination, participates in a discrimination proceeding, or otherwise opposes an unlawful employment practice. See www.eeoc.gov.

Occupational Safety and Health Act (OSHA)

OSHA laws require employers to provide workplaces free from serious recognized hazards and to comply with occupational safety and health standards. See www.osha.gov.

New Hire Reporting Requirements

Form I-9, Employment Eligibility Verification. Form I-9 can be obtained by visiting the U.S. Citizenship and Immigration services website at www.uscis.gov or calling 1-800-375-5283.

All U.S. employers must complete and retain Form I-9 for each individual they hire for employment in the United States. This includes citizens and noncitizens. The employer must examine the employment eligibility and identity documents presented by the employee to determine whether the documents reasonably appear to be genuine and relate to the individual. The document information is then recorded on Form I-9. The list of acceptable documents can be found on the last page of the form.

Form I-9 must be completed and signed within three business days of the employee's first day of employment. If the employee is hired for less than three days, the form must be completed no later than the first day of employment.

Social Security Number. Employers should verify employee names and Social Security Numbers by comparing with the employee's Social Security card or verifying with the Social Security Administration (SSA) online at www.ssa.gov/employer/verifySSN.htm or calling the SSA at 800-772-6270.

State new hire reporting. An employer must report any new employees to a designated state new hire registry. See www.acf.hhs.gov/css/contact-information/state-new-hire-reporting-websites for detailed state information.

W-4. See *Form W-4, Employee's Withholding Certificate*, page 23-3.

~ End ~