EYE ON WASHINGTON

Timely, topical insights on a variety of payroll and reporting issues.

Detailed Look at State, Local and Federal Updates

Topics covered in this issue:

State/Territory/District

California Requires Workplace Violence Prevention Plan

California has enacted legislation that will require many employers to implement an effective workplace violence prevention plan that contains certain elements, including training. The legislation (Senate Bill 553) takes effect **July 1, 2024**.

The Details:

Exceptions:

The following employers/places of employment are exempt from the requirements of Senate Bill 553:

- Healthcare facilities, service categories, and operations covered by Section 3342 of Title 8 of the California Code of Regulations.
- Employers that comply with Section 3342 of Title 8 of the California Code of Regulations.
- Facilities operated by the Department of Corrections and Rehabilitation, if the facilities are in compliance with Section 3203 of Title 8 of the California Code of Regulations.
- Certain law enforcement agencies (see the text of the law for details).
- Employees teleworking from a location of the employee's choice, which isn't under the control of the employer.
- Places of employment where there are fewer than 10 employees working at the workplace at any given time and that aren't accessible to the public, if the workplaces are in compliance with Section 3203 of Title 8 of the California Code of Regulations.

Written Plan Required:

Unless exempt, employers must adopt a workplace violence prevention plan that is in writing and made available and easily accessible to employees, authorized employee representatives, and representatives of the state at all times. The plan must be in effect at all times and in all work areas and be specific to the hazards and corrective measures for each work area and operation. The written plan may be incorporated as a stand-alone section in the written injury and illness prevention program or maintained as a separate document.

Required Plan Elements:

The written plan must include the following elements:

- Names or job titles of the individuals responsible for implementing the plan. If there are multiple individuals responsible for the plan, their roles must be clearly described.
- Effective procedures to obtain the active involvement of employees and authorized employee representatives in developing and implementing the plan, including, but not limited to: through their participation in identifying, evaluating, and correcting workplace violence hazards, in designing and implementing training, and in reporting and investigating workplace violence incidents.
- Methods the employer will use to coordinate implementation of the plan with other employers, when applicable, to ensure that those employers and employees understand their respective roles, as provided in the plan. These methods must ensure that all employees are provided the training required, and that workplace violence incidents involving any employee are reported, investigated and recorded.
- Effective procedures for the employer to accept and respond to reports of workplace violence, and to prohibit retaliation against an employee who makes such a report.
- Effective procedures to ensure that supervisory and non-supervisory employees comply with the plan.
- Effective procedures to communicate with employees regarding workplace violence matters, including, but not limited to, both of the following:
    - How an employee can report a violent incident, threat, or other workplace violence concern to the employer or law enforcement without fear of reprisal.
    - How employee concerns will be investigated, and how employees will be informed of the results of the investigation and any corrective actions to be taken.
- Effective procedures to respond to actual or potential workplace violence emergencies, including, but not limited to, all of the following:
    - Effective means to alert employees of the presence, location and nature of workplace violence emergencies.
    - Evacuation or sheltering plans that are appropriate and feasible for the worksite.
    - How to obtain help from staff assigned to respond to workplace violence emergencies, if any, security personnel, if any, and law enforcement.
- Procedures to develop and provide the training required.
- Procedures to identify and evaluate workplace violence hazards, including, but not limited to: scheduled periodic inspections to identify unsafe conditions and work practices, and employee reports and concerns. Inspections must be conducted when the plan is first established, after each workplace violence incident, and whenever the employer is made aware of a new or previously unrecognized hazard.
- Procedures to correct workplace violence hazards identified and evaluated in a timely manner.
- Procedures for post-incident response and investigation.
- Procedures to review the effectiveness of the plan and revise the plan as needed, including, but not limited to: procedures to obtain the active involvement of employees and authorized employee representatives in reviewing the plan. The plan must be reviewed at least annually, when a deficiency is observed or becomes apparent, and after a workplace violence incident.
- Procedures or other information required by the state as being necessary and appropriate to protect the health and safety of employees.

Recording Incidents:

Employers must record information in a violent incident log for every workplace violence incident. Information that is recorded in the log for each incident must be based on information solicited from the employees who experienced the workplace violence, on witness statements, and on investigation findings.

The employer must omit any element of personal identifying information sufficient to allow identification of any person involved in a violent incident, such as the person's name, address, email address, telephone number, Social Security number, or other information that, alone or in combination with other publicly available information, reveals the person's identity.

The log must be reviewed during the periodic reviews of the plan.

The information recorded in the log must include all of the following:

- The date, time and location of the incident.
- The workplace violence type(s), as described in the law, involved in the incident.
- A detailed description of the incident.
- A classification of who committed the violence, including whether the perpetrator was a client or customer, family or friend of a client or customer, stranger with criminal intent, co-worker, supervisor or manager, partner or spouse, parent or relative, or other perpetrator.
- A classification of circumstances at the time of the incident, including, but not limited to, whether the employee was completing usual job duties, working in poorly lit areas, rushed, working during a low staffing level, isolated or alone, unable to get help or assistance, working in a community setting, or working in an unfamiliar or new location.
- A classification of where the incident occurred, such as in the workplace, parking lot or other area outside the workplace, or other area.
- The type of incident.
- Consequences of the incident, including, but not limited to:
    - Whether security or law enforcement was contacted and their response.
    - Actions taken to protect employees from a continuing threat or from any other hazards identified as a result of the incident.
- Information about the person completing the log, including their name, job title, and the date completed.

Required Training:

Employers must provide effective training to employees. Training material appropriate in content and vocabulary to the educational level, literacy and language of employees must be used.

The employer must provide employees with initial training when the plan is first established, and annually thereafter, on all of the following:

- The employer's plan, how to obtain a copy of the employer's plan at no cost, and how to participate in development and implementation of the employer's plan.
- The definitions and requirements of the law.
- How to report workplace violence incidents or concerns to the employer or law enforcement without fear of reprisal.
- Workplace violence hazards specific to the employees' jobs, the corrective measures the employer has implemented, how to seek assistance to prevent or respond to violence, and strategies to avoid physical harm.
- The violent incident log required and how to obtain copies of records.
- An opportunity for interactive questions and answers with a person knowledgeable about the employer's plan.

Additional training must be provided when a new or previously unrecognized workplace violence hazard has been identified and when changes are made to the plan. The additional training may be limited to addressing the new workplace violence hazard or changes to the plan.

Recordkeeping:

Records of workplace violence hazard identification, evaluation and correction must be created and maintained for a minimum of five years.

Training records must be created and maintained for a minimum of one year and include training dates, contents or a summary of the training sessions, names and qualifications of persons conducting the training, and names and job titles of all persons attending the training sessions.

Violent incident logs must be maintained for a minimum of five years.

The above records must be made available to employees and their representatives, upon request and without cost, for examination and copying within 15 calendar days of a request.

Records of workplace violence incident investigations conducted must be maintained for a minimum of five years. These records must not contain "medical information."

Next Steps:

- Read the **text of the law** (the plan requirements are contained in Section 4).
- Ensure compliance with the law by July 1, 2024.

California Prohibits Questions About Applicants' Prior Cannabis Use

California has enacted legislation that expressly prohibits an employer from requesting information from an applicant relating to the applicant's prior use of cannabis. The legislation (Senate Bill 700) takes effect January 1, 2024.

The Details:

Existing Law	Amended Law
Effective January 1, 2024, **California employers are prohibited** from discriminating against individuals based on: • Their use of cannabis while off the job and away from the workplace. • An employer-required drug test that has found non-psychoactive cannabis metabolites in hair, blood, urine or other bodily fluids.	California employers are also prohibited from requesting information from an applicant relating to the applicant's prior use of cannabis. Information about a person's prior cannabis use obtained from their criminal history would be exempt from the prohibitions if the employer is permitted to consider or inquire about that information under a specified provision of the California Fair Employment and Housing Act or other state or federal law.

Next Steps:

- Consult legal counsel to determine the impact of Senate Bill 700 on current policies and practices, including whether an exemption applies.
- Unless an exemption applies, ensure hiring policies and practices comply with Senate Bill 700 by January 1, 2024

California Raises Minimum Pay for Overtime Exemptions for 2024

The California Department of Industrial Relations (DIR) has announced an increase to the pay rates that computer software employees and physicians must receive in order to be exempt from overtime. Additionally, the minimum salary required for the administrative, professional, and executive overtime exemptions will also increase. **These new rates take effect on January 1, 2024**.

Background:

Computer Software Employees and Physicians:

Under the California Labor Code Sections 515.5 and 515.6, computer software employees and physicians are exempt from the state's overtime requirements if they meet specific duties requirements and earn a minimum pay rate. These pay thresholds are adjusted annually for inflation.

Administrative, Executive, and Professional Employees:

California also has exemptions for bona fide administrative, professional, and executive employees. To be exempt from overtime, these employees must meet certain state salary and duties tests. They must be paid a salary of at least twice the state minimum hourly wage based on full-time employment of 40 hours per week. Since the state's minimum hourly wage will increase to $16.00 per hour on January 1, 2024, regardless of how many employees the employer has, the minimum salary threshold for these exemptions will also increase.

The Details:

Computer Software Employees: https://www.dir.ca.gov/OPRL/ComputerSoftware.htm.

Computer software employees may be paid on an hourly or a salary basis in order to qualify for exemption from California's overtime requirements. Beginning January 1, 2024, these employees must earn at least:

- **$55.58** per hour (for all hours worked); or
- A monthly salary of **$9,646.96**; and
- An annual salary of **$115,763.35**.

Physicians: https://www.dir.ca.gov/OPRL/Physicians.htm.

To qualify for exemption from the state's overtime requirements in 2024, licensed physicians and surgeons are required to earn an hourly wage of at least **$101.22**.

Administrative, Professional, and Executive Employees:

For the administrative, professional, and executive exemptions, employers must pay a salary of at least **$1,280** per week or **$66,560** annually beginning January 1, 2024.

Next Steps:

California employers with exempt employees should ensure that they meet the applicable salary and duties tests. Otherwise, these employees must be classified as non-exempt and are entitled to overtime.

California to Raise Minimum Wages for Healthcare Workers

California has enacted **Senate Bill 525** (SB 525) which establishes a tiered minimum wage rate system for healthcare workers.

The Details:

The scope of SB 525 is extensive and includes nearly all healthcare facilities operating in California, including hospitals, licensed skilled nursing facilities, licensed home health agencies, and all types of clinics (e.g.; medical, psychology, urgent care).

However, SB 525 does not cover hospitals owned, controlled, or operated by the Department of State or tribal clinics exempt from licensure, or an outpatient setting conducted, maintained or operated by a federally recognized Indian tribe, tribal organization or urban Indian organization.

The workers covered under SB 525 include employees performing work in the occupation of a nurse, physician, caregiver, medical resident, intern or fellow, patient care technician, janitor, housekeeping staff person, groundskeeper, guard, clerical worker, nonmanagerial administrative worker, food service worker, gift shop worker, technical and ancillary services worker, medical coding and medical billing personnel, scheduler, call center and warehouse worker, and laundry worker, regardless of formal job title.

Note: SB 525 includes certain carve-outs and does not apply to:

- Employment as an outside salesperson;
- Any work performed in the public sector where the primary duties performed are not healthcare services;

- Delivery or waste collection work on the premises of a covered healthcare facility, provided that the delivery or waste collection worker is not an employee of any person that owns, controls or operates a covered healthcare facility; or
- Medical transportation services in or out of a covered healthcare facility, provided that the medical transportation services worker is not an employee of any person that owns, controls or operates a covered healthcare facility.

Changes to Minimum Wage:

The changes to the minimum wage per hour under SB 525 begin on June 1, 2024, and are dependent on the different categories of healthcare facilities:

Healthcare Facility Category	June 1, 2024, to May 31, 2025	June 1, 2025, to May 31, 2026	June 1, 2026	Further Adjustments
Covered healthcare facility employer: (i) with 10,000+ full-time equivalent employees; (ii) that is a part of an integrated healthcare delivery system or healthcare system with 10,000 or more full-time equivalent employees; (iii) that is a dialysis clinic or that is a person that owns, controls or operates a dialysis clinic; or (iv) that is owned, affiliated or operated by a county with a population of more than 5,000,000 as of January 1, 2023.	$23.00	$24.00	$25.00, until adjusted	To be determined
Hospital with a high governmental payor mix, independent hospital with an elevated governmental payor mix, a rural independent covered healthcare facility, or a covered healthcare facility that is owned, affiliated, or operated by a county with a population of less than 250,000 as of January 1, 2023.	$18.00	$18.63	$19.28 (plus 3.5 percent increases annually)	$25.00 beginning June 1, 2033
Clinics as defined in Section 1206(h) not operated or affiliated with a clinic described in Section 1206(b), community clinics licensed under Section 1204(a) and any associated intermittent clinic exempt from licensure under Section 1206(h), a rural health clinic that is not license-exempt, or an urgent care clinic owned and affiliated with such community or rural health clinic.	$21.00	$21.00	$22.00	$25.00 beginning June 1, 2027
Other covered healthcare facilities (including licensed skilled nursing facilities).	$21.00	$21.00	$23.00	$25.00 beginning June 1, 2028

Next Steps:

Healthcare facility employers in California should review Senate Bill 525 with legal counsel to determine what category their organization falls under and pay employees as required.

Delaware Issues Regulations, Guidance on Paid Family Leave Program

The Delaware Department of Labor (DOL) has issued guidance and regulations to help implement the state's Paid Leave (Family and Medical Leave Insurance Program). The program will be funded through payroll contributions paid by covered employers and employees.

Employers should keep in mind the following key dates:

October 1, 2023 to January 1, 2024 – Portal opens to allow employers to "Grandfather" (in the words of the statute and guidance) existing paid time off benefits and/or reduce their employees' Parental Leave duration.

September 1, 2024 to December 1, 2024 – Opt-In/Opt-Out opened for employers who wish to use a private plan to opt-out and for small groups to opt-in to Delaware Paid Leave.

January 1, 2025 – Contributions for Delaware Paid Leave begin.

January 1, 2026 – Employees can begin to submit claim applications for payment.

The Details:

Background:

Beginning January 1, 2026, eligible employees are entitled to use paid leave for the following durations and reasons:

- **Parental Leave:** Up to 12 weeks in a year for the birth, adoption, or placement of a child through foster care, as well as caring for the child during the first year after birth or placement.
- **Family Caregiver Leave:** Up to six weeks in any 24-month period to care for a family member (spouse, child, or parent) with a serious health condition.
- **Medical Leave:** Up to six weeks in any 24-month period for the employee's own serious health condition.
- **Military Family Leave:** Up to six weeks in any 24-month period, if the employee has a qualifying exigency arising out of a family member's deployment as a service member.

A covered individual is eligible for a maximum of 12 weeks of paid leave in a year.

To comply with the law, an employer can provide paid leave benefits by:

- Enrolling in the Delaware Paid Leave plan;
- Using an approved private benefit plan purchased from an insurance company or administered through a self-insured plan; or
- "Grandfathering" an existing private paid leave benefit approved by the Division of Paid Leave as "comparable" to the Delaware Paid Leave plan (but only for the first five years of the plan).

Regulations and Guidance:

Here's a summary of some of the topics addressed in the law, and subsequent regulations and guidance enacted to clarify the law:

The Law as Enacted	Clarifications in Regulations and Guidance
Employee Count	
Employers with 10 to 24 employees are covered by the law's parental leave requirements only. Employers with 25 or more employees are covered by all the leave requirements. Employers with fewer than 10 employees and employers that close for 30 consecutive days or more per year aren't covered by the law. As contributions begin on January 1, 2025, the initial 12-month period to determine the employer's employee threshold number will be the 12-month period prior to the start of contributions. To be considered a covered individual who is eligible to use leave, the employee must: • Have been employed with the employer for at least 12 months; and • Have at least 1,250 hours of service with the employer during the previous 12-month period.	Any individual who works for an employer and works primarily in Delaware is considered an "employee" for purposes of the law. An individual works "primarily" in Delaware if they spend at least 60 percent of their working hours in Delaware. To determine whether the 10-employee and 25-employee thresholds are met, the employer should start by counting every single Delaware employee, regardless of how long they've worked or how many hours a week they work. Then, subtract the employees on waivers (see below). From there, add in any employees the employer has reclassified (see below). The Delaware Paid Leave administrative system will help employers keep track of their employee count. Once a new level of coverage has been achieved, employees will retain those benefits for at least the next 12 months, even if the employer's employee count falls below the threshold number. Only after continuously staying below the employee threshold number for over 12 months will the employer be allowed to drop the now-no-longer required coverages.

The Law as Enacted	Clarifications in Regulations and Guidance
Temporary Reduction Option	
With notice to the Delaware Department of Labor's Division of Paid Leave (DPL), an employer with 10-24 employees may elect to limit the exercise of parental leave during the first five years that benefits are payable (2026 to 2031). During that five-year period, the employer may provide no less than half of the employee's parental leave.	This reduced amount can be anywhere between six and 11 weeks. To qualify for this option to temporarily reduce the maximum benefit duration, employers must notify the DPL of their intention to do so by **January 1, 2024**. If prior to January 1, 2031, employers who have availed themselves of this reduced parental leave option decide to offer the full 12-week benefit for parental leave claims, the employer may do so by notifying DPL. • If an employer decides to increase the length of Parental Leave after January 1, 2024, but before January 1, 2025, they should contact the DPL by email at PFML@delaware.gov to make this change. • If the increase occurs after January 1, 2025, the employer will be able to make this change by accessing the employer's account on the Division of Paid Leave's administrative system. The DPL has created an online Grandfathering/Parental Leave Duration Application Portal to help employers through the application. The portal opened on October 1, 2023. Employers that chose to reduce maximum parental leave benefits must inform their employees, in writing, of this decision no later than **December 1, 2024**.
Grandfathered Plans	
Comparable employer-provided paid leave benefits in existence on May 10, 2022 may qualify under the law for a period of five years until December 31, 2029. At that time, the employer will be required to either enroll in the Delaware Paid Leave plan or have an approved private benefit plan that meets all requirements of the Delaware Paid Leave plan in place.	Any written existing paid leave benefit that is either (1) a private insurance contract plan, including captives; (2) a self-insured plan; or (3) an "Employee Handbook" policy, can be grandfathered if the benefit design meets the requirements set forth in the law. To be considered "comparable," the existing paid leave benefit must offer benefits that are within 10 percent of the Delaware Paid Leave plan's benefit percentage, maximum benefit, and benefit duration. In addition, the employee's share of the cost of the existing paid leave benefits cannot be more than the employee's share of the cost of the Delaware Paid Leave plan, the existing paid leave benefits must provide for coordination of benefits, and the existing paid leave benefit must have similar eligibility rules to that of the Delaware Paid Leave plan. An employer that wants to have their existing paid leave benefits grandfathered must apply by **January 1, 2024**. The DPL has created an online Grandfathering/Parental Leave Duration Application Portal to help employers through the application. The portal opened on October 1, 2023. Review the "Grandfathered Paid leave Benefits" FAQs for more information. **Note**: Employers with 10 or more employees who do not currently have a private benefit plan may opt out of the Delaware Paid Leave plan if they purchase a private plan that provides the same or better benefits as the state plan. As opposed to "grandfathered" private plans (those in existence prior to May 10, 2022), private benefit plans must meet all requirements of the Delaware Paid Leave program, rather than just being "comparable" to the Delaware Paid Leave program. The private plan can be either an admitted carrier's approved insurance plan or a self-assured program (backed by a surety bond). Employers who wish to use a private benefit plan to offer paid leave benefits to their employees must obtain the Division's approval and opt out of the Delaware Paid Leave program on a yearly basis.

The Law as Enacted	Clarifications in Regulations and Guidance
Waivers	
An employee and employer may opt to file a waiver of the payroll contributions required when an employee's work schedule or length of employment with the employer isn't expected to meet the requirements for eligibility for benefits.	Part-time employees (working less than 25 hours per week) and/or those who are not expected to work for 12 months can co-sign, with their employer, a waiver form to withdraw from the program. Employees on waivers will be exempt from contributions and will not be eligible for paid leave. The employer may submit a waiver of coverage form through DPL's online portal. The form will presumably be available on the portal. If the conditions of their employment change, employees can be taken off waivers and join the program. Under the Delaware Paid Leave plan, the employer, utilizing the recommendation of the Division of Paid Leave's administrative system, will make the initial decision as to whether an employee's application qualifies for leave, the dollar amount of the benefit payment and how long the employee will be allowed to remain on paid leave.
Reclassification	
With certain limitations, employers may reclassify an employee primarily reporting for work at a worksite in another state as eligible for the plan.	Normally, any employee who works more than 40 percent of their time outside the state of Delaware wouldn't be eligible for benefits. However, there are two possible exceptions: (1) employees who are assigned to Delaware teams but telecommute; (2) Delaware employees who are on temporary assignment out of state. If a telecommuting or temporarily assigned employee and their employer both sign a reclassification form (a template form will, presumably be available on DPL's portal), these employees can join the plan. If, at some later date, the employer and employee agree that the employee shouldn't be part of the plan, they can sign a declassification form to leave the plan.

Next Steps:

- Employers seeking grandfathered plan status should do so by January 1, 2024 via **the portal**.

Massachusetts Employees May Supplement Paid Family Leave with PTO

Employees receiving Paid Family and Medical Leave (PFML) benefits in Massachusetts are entitled to supplement their PFML benefits with available accrued paid leave. The change is effective for PFML applications filed on or after **November 1, 2023**. The state also announced that the contribution rate for 2024 will increase.

The Details:

Option to Supplement PFML with PTO:

Employers must provide employees on PFML with the option of supplementing their weekly PFML benefit with their accrued paid time off (PTO), up to the employee's Individual Average Weekly Wage (IAWW). The requirement to offer the option also applies to private PFML plans.

An employee's IAWW is calculated by the Massachusetts Department of Family and Medical Leave (DFML) from the amount an employee earned in the last four completed calendar quarters before the start of the employee's benefit year. The IAWW is the average amount the employee earned per week in the two quarters when the employee earned the most money (or the one quarter with the most money, if the employee only worked in two or fewer quarters).

Employers should subtract the amount of the PFML benefits from the employee's IAWW. The difference is the maximum amount that can be paid out using the employee's accrued paid time off.

Example: An employee's IAWW = $2,000 and they have an approved PFML application that pays $1,100 per week. The employee may top off that amount with paid time off up to $900, if available.

Employers with a registered Leave Administrator can determine an employee's weekly PFML benefit rate and their IAWW by accessing the employee's PFML Approval Notice.

Contribution Rates Increasing for 2024:

In 2024, employers with 25 or more covered individuals must send to the DFML a contribution of 0.88 percent of eligible wages, up from 0.63 percent in 2023. This contribution can be split between covered individuals' payroll or wage withholdings and an employer contribution.

In 2024, employers with fewer than 25 covered individuals must send an effective contribution rate of 0.46 percent of eligible wages, up from 0.318 percent in 2023. This contribution rate is less because small employers aren't required to pay the employer share of the medical leave contribution.

Next Steps:

- Ensure employees are given the option to supplement PFML benefits with accrued paid time off for PFML applications filed on or after **November 1, 2023**.
- Comply with new contribution rates for 2024.

Oregon Adds Public Service Protections

Oregon has enacted legislation (House Bill 3028), which adds protections for an employee that is appointed to a board, commission, council or committee. House Bill 3028 is **effective immediately**.

The Details:

Under the law, employers are prohibited from taking the following actions against an employee who is an appointed member of a board, commission, council or committee:

- Discharging (or threatening to discharge), intimidating, or coercing an employee on the basis of the employee's service or scheduled service; or
- Requiring an employee to use vacation leave, sick leave or annual leave for time spent in service as a member of a board, commission, council or committee.

Employers must allow the employee to take leave without pay for time spent in service, but the law does not change any existing employer policies or agreements concerning employees' wages when the employee serves or is scheduled to serve in office.

Next Steps:

Review pay and leave policies and procedures for employees who are appointed to a board, commission, council or committee.

Oregon Bolsters Worker Protections from Hazardous Conditions

Oregon has enacted legislation (Senate Bill 907), which further protects employees from hazardous work conditions. Senate Bill 907 takes effect on **January 1, 2024**.

The Details:

Senate Bill 907 prohibits employers from firing, discriminating against or not hiring an employee or candidate who refuses to be exposed to a hazardous condition at work, provided that:

- The exposure may result in serious injury or death;
- The decision is in good faith; and
- There is no reasonable alternative.

Next Steps:

- Review and update worker safety policies.
- Train supervisors to help ensure compliance with Senate Bill 907 by January 1, 2024.

State of Washington 2024 Overtime Salary Threshold Announced

The Washington State Department of Labor & Industries (L&I) has **announced** an increase to the state's white collar overtime exemption salary threshold.

The Details:

Effective January 1, 2024, the Washington white collar overtime exemption salary threshold will be $1,302.40 per week or $67,724.80 per year. This equates to two times the 2024 state minimum wage of $16.28 per hour.

The L&I also announced that in order to qualify for the overtime exemption, computer professionals employed by businesses (regardless of size) must earn a salary of at least 3.5 times the minimum wage (at least $56.98 per hour in 2024).

Next Steps:

As of January 1, 2024, Washington State employers must pay white collar workers and computer professionals paid hourly at least the amounts noted above or pay the employees overtime pay for any hours worked over 40 in a week.

Local

Chicago to Phase Out Tipped Minimum Wage

The Chicago City Council has voted to phase out the tip credit that employers are currently allowed to use when paying tipped employees. Historically, Chicago allowed employers to pay tipped employees at a rate below the city's minimum wage, provided the tips received bring the worker's earnings to at least the full minimum wage.

The Details:

Under the rules now in effect, Chicago employers may pay tipped employees a cash minimum wage of 60 percent of the city minimum wage. Currently, the Chicago minimum wage for employers with 21 or more employees is $15.80 per hour and the minimum cash wage is $9.48 per hour. ($15.80 X .60 = $9.48). Consequently, an employer is now allowed a tip credit of 40 percent or $6.32 per hour.

Under Chicago Ordinance No. SO2023-0002995, the percentage of tipped credit that employers may utilize to pay tipped employees (assuming tips received bring the employee to at least the hourly minimum wage) will be decreased as follows:

Date	Tipped Credit Percentage of Full Minimum Wage	Minimum Cash Wage Percentage of Full Minimum Wage
July 1, 2024	32	68
July 1, 2025	24	76
July 1, 2026	16	84
July 1, 2027	8	92

Effective July 1, 2028, the tip credit will be eliminated, and employers will have to pay tipped employees at least the applicable minimum wage rate in effect. The Chicago minimum wage is adjusted annually on July 1st of each year.

Next Steps:

Chicago employers paying tipped employees must pay at least the cash minimum wage as outlined in the matrix above.

Minimum Wage

Minimum Wage Announcements : 10/16/23 – 11/15/23

The following states or localities have announced new minimum wage increases.

State or Locality	Minimum Wage Rate	Minimum Tipped Cash Wage	Effective Date(s)	New or Updated Poster Requirement?	Notes
Arizona	$14.35	$11.35	1/1/24	Yes	Once posted may be located here.
Burlingame, CA	$17.03	$17.03*	1/1/24	Yes	
Cupertino, CA	$17.75	$17.75*	1/1/24	Yes	
Daly City, CA	$16.62	$16.62*	1/1/24	Yes	
Foster City, CA	$17.00	$17.00*	1/1/24	Yes	
Half Moon Bay, CA	$17.01	$17.01*	1/1/24	Yes	
Los Altos, CA	$17.75	$17.75*	1/1/24	Yes	
Menlo Park, CA	$16.70	$16.70*	1/1/24	Yes	
Mountain View, CA	$18.75	$18.75*	1/1/24	Yes	Once posted may be located here.
Novato, CA (100 or more EEs)	$16.86	$16.86*	1/1/24	Yes	
Novato, CA (26-99 EEs)	$16.60	$16.60*	1/1/24		
Novato, CA (25 or less EEs)	$16.04	$16.04*	1/1/24		
Sonoma, CA (26 or more EEs)	$17.60	$17.60*	1/1/24	Yes	
Sonoma, CA (25 or less EEs)	$16.56	$16.56*	1/1/24		
South San Francisco, CA	$17.25	$17.25*	1/1/24	Yes	
Sunnyvale, CA	$18.55	$18.55*	1/1/24	Yes	Once posted may be located here.
Boulder County, CO	$15.69	$12.67	1/1/24	Yes	Ordinance to implement minimum wage passed on 11/2/23. Poster is required, but none has yet been provided.
Michigan	$10.33	$3.93	1/1/24	Yes	Once posted may be located here.
Missouri	$12.30	$6.15	1/1/24	Yes	Once posted may be located here.
Las Cruces, NM	$12.36	$4.95	1/1/24	Yes	
South Dakota	$11.20	$5.60	1/1/24	No	
Vermont	$13.67	$6.84	1/1/24	Yes	Once posted may be located here.
Seattle, WA (Employs 501 or more EEs)	$19.97	$19.97*	1/1/24	Yes	Once posted may be located here.

State or Locality	Minimum Wage Rate	Minimum Tipped Cash Wage	Effective Date(s)	New or Updated Poster Requirement?	Notes
Seattle, WA Small Employers (500 or fewer employees) who do not pay at least $2.72/hour toward the employee's medical benefits and/or where the employee does not earn at least $2.72/ hour in tips.	$19.97	$19.97*	1/1/24		
Seattle, WA Small Employers who do pay at least $2.72/hour toward the employee's medical benefits and/or where the employee does earn at least $2.72/hour in tips.	$17.25	$17.25*	1/1/24		
Tukwila, WA (more than 500 employees worldwide)	$20.29	$20.29*	1/1/24	Yes	
Tukwila, WA (15 to 500 employees worldwide)	$18.29 $19.29	$18.29* $19.29*	1/1/24 7/1/24		
Tukwila, WA (less than 15 employees worldwide and earn $2 million or less in annual gross revenue in Tukwila subject to Washington State minimum wage)	$16.28	$16.28*	1/1/24		

**CA and WA do not allow the use of a tip credit.

Download a PDF of a comprehensive listing of state and local minimum wage rates.

Federal

IRS Announces 2024 Benefit Plan Contribution Limits

On November 9, 2023, the Internal Revenue Service (IRS) announced via **Revenue Procedure 2023-34** the dollar limitation for 2024 on employee salary reductions for contributions to health flexible spending accounts; the monthly limitation regarding the aggregate fringe benefit exclusion amount for transportation in a commuter highway vehicle and any transit pass; and the maximum amount that can be excluded from an employee's gross income for the amounts paid for qualified adoption expenses furnished pursuant to an adoption assistance program.

The Details:

Flexible Spending Accounts:

The 2024 maximum employee salary reduction contribution to a **health flexible spending account** will be $3,200. The limit was $3,050 in 2023. The Affordable Care Act (ACA) had limited employee salary reductions for contributions to health flexible spending accounts to $2,500 per employee, but allowed that limit to be adjusted annually for inflation in increments of $50.

The $3,200 limit applies to both full-purpose and limited-purpose health flexible spending accounts. However, an employer is not required to adopt the maximum amount allowed in its plan design and may choose to allow an amount less than $3,200. The $3,200 limit applies only to employee salary reduction contributions during the benefit plan year and does not impact employer-paid contributions or, if offered, contributions made as a result of the balance carryover option. If an employer provides flex credits that employees may elect to receive either as cash or as a taxable benefit, those flex credits are treated as employee salary reduction contributions and count toward the $3,200 limit.

If a cafeteria plan permits the carryover of unused amounts, the maximum carryover amount is $640 for 2024, as compared to $610 in 2023.

The **dependent care spending account** maximum is set by statute and is not subject to inflation-related adjustments. Consequently, the 2024 dependent care spending account maximum continues to be limited to the smallest of the following amounts:

- $5,000 if the employee is married and filing a joint return or if the employee is a single parent ($2,500 if the employee is married but filing separately);
- The employee's "earned income" for the year; or
- The spouse's "earned income," if the employee is married at the end of the taxable year.

Qualified Transportation/Parking Benefits:

Transportation

The monthly limitation regarding the aggregate fringe benefit exclusion amount for transportation in a commuter highway vehicle and any transit pass will increase to $315 in 2024 from $300 in 2023.

Parking

The monthly limitation regarding the fringe benefit exclusion amount for qualified parking will increase to $315 in 2024 from $300 in 2023.

Adoption Assistance Programs:

The maximum amount that can be excluded from an employee's gross income for the amounts paid or expenses incurred by an employer for qualified adoption expenses furnished pursuant to an adoption assistance program for adoptions by the employee in 2024 is $16,810. This is an increase of $860 over the 2023 maximum of $15,950.

Summary of Changes to Contribution Limits:

	2023	2024
Health Flexible Spending Accounts	$3,050/plan year	$3,200/plan year
Qualified Transportation Parking Benefits	$300/month $315/month	$300/month $315/month
Adoption Assistance Programs	$15,950/year	$16,810/year

IRS Information Reporting Penalty Amounts Indexed for Tax Year 2024

The Internal Revenue Service (IRS) has announced via **Revenue Procedure 2023-34** the penalties under the Internal Revenue Code (IRC) for failure to file correct Information Returns, such as Forms W-2, 1099 and 1095-C, by the due date, and failure to furnish correct Information Returns to employees and other recipients by the required due date for **tax year 2024**.

Background:

Every employer engaged in a trade or business that makes payments for the year for services performed by an employee must file a Form W-2 for each employee from whom income, Social Security or Medicare tax was withheld, and furnish the Form W-2 to their employees.

Applicable Large Employers (ALEs), generally those that employed at least 50 full-time employees (including full-time-equivalent employees) during the preceding calendar year, must file and furnish Forms 1095-C to employees to report whether they offer full-time employees and any dependents the opportunity to enroll in minimum essential coverage (MEC) under an eligible employer-sponsored plan. ALEs must offer coverage to all full-time employees or be subject to a penalty (Play or Pay).

The IRS administers statutory penalties associated with these reporting requirements under Sections 6721 and 6722 of the IRC. Penalty amounts are indexed and may change annually.

Employers must mail or electronically file 2024 Form(s) W-2 and Form W-3 with the Social Security Administration (SSA) by January 31, 2025. Employers must electronically file if required to file 10 or more Forms W-2 or W-2c. Employees must be furnished with their Forms W-2 by January 31, 2025.

The Details:

Filing with SSA Penalties:

If an employer fails to file a correct Information Return by the due date and cannot show reasonable cause, the employer may be subject to a penalty as provided under IRC Section 6721. The penalty applies where an employer:

- Fails to file timely.
- Fails to include all information required to be shown.
- Includes incorrect information.
- Files on paper forms when required to electronically file.
- Reports an incorrect tax identification number; i.e., Social Security Number or Employer Identification Number.
- Fails to report a tax identification number.
- Fails to file paper forms that are machine readable.

The amount of the penalty is based on when a correct form has been filed.

Furnish Form(s) to Employees:

Generally, employers must furnish Copies B, C, and 2 of Form W-2 to employees by January 31 following the tax year of January 1 through December 31 (in December 2022 the IRS provided a permanent, automatic 30-day extension of this deadline). Employers will meet the "furnish" requirement if the form is properly addressed and mailed on or before the due date. If employment ends before December 31, employers may furnish copies to the employee at any time after employment ends, but no later than January 31. Generally, Forms 1095-C must be furnished to employees by March 1 for coverage offered the previous calendar year.

Furnishing Penalties:

If an employer fails to provide correct Information Returns (Forms W-2 or 1095-C) to its employees and cannot show reasonable cause, the employer may be subject to a penalty as provided under IRC Section 6722. The penalty applies when an employer:

- Fails to provide the statement by January 31, as required.
- Fails to include all information required to be shown on the form.
- Includes incorrect information on the form.

The amount of the penalty is based on when the employer furnishes the correct form.

Note: The penalty under IRC Section 6722 is an additional penalty to that applied under IRC Section 6721 and is applied in the same manner, and with the same amounts. In other words, both penalties may apply, e.g., if an employer neither furnished a form as required nor filed a form as required. Consequently, the amounts below could be doubled.

Revenue Procedure 2023-34 modifies the penalties under IRC Sections 6721 and 6722 for tax year 2024 as follows:

PENALTY PER RETURN	2023 Tax Year – Forms W-2 must be filed and furnished by January 31, 2024	2024 Tax Year – Forms W-2 must be filed and furnished by January 31, 2025
Failure to file/furnish generally, annual cap on penalties.	$310/return; $3,783,000	$330/return; $3,987,000
Failure to file/furnish generally; lesser cap for persons with gross receipts of not more than $5,000,000.	$310/return; $1,261,000	$330/return; $1,329,000
Failure to file/furnish when corrected within 30 days of the required filing date; annual cap on penalties when corrected within 30 days of required filing date.	$60/return; $630,500	$60/return; $664,500
Failure to file/furnish when corrected within 30 days of the required filing date; lesser cap for persons with gross receipts of not more than $5,000,000 when corrected within 30 days of required filing date.	$60/return; $220,500	$60/return; $232,500
Failure to file/furnish when corrected by August 1 of the year in which the required filing date occurs; cap on penalties when corrected by August 1 of the year in which the required filing date occurs.	$120/return; $1,891,500	$130/return; $1,993,500
Failure to file/furnish when corrected by August 1 of the year in which the required filing date occurs; lesser cap for persons with gross receipts of not more than $5,000,000 when corrected by August 1 of the year in which the required filing date occurs.	$120/return; $630,500	$130/return; $664,500

PENALTY PER RETURN	2023 Tax Year – Forms W-2 must be filed and furnished by January 31, 2024	2024 Tax Year – Forms W-2 must be filed and furnished by January 31, 2025
Penalty (per filing) in case of intentional disregard (Note: no cap applies in this case)		
Return other than a return required to be filed under §§ 6045(a), 6041A(b), 6050H, 6050I, 6050J, 6050K, or 6050L (§ 6721(e)(2)(A)) (Examples: Form W-2, 1099-Misc, 1099-R).	Greater of (i) $630, or (ii) 10 percent of aggregate amount of items required to be reported corrected. No cap.	Greater of (i) $660, or (ii) 10 percent of aggregate amount of items required to be reported corrected. No cap.
Return required to be filed under §§ 6045(a), 6050K, or 6050L (§ 6721(e)(2)(B)).	Greater of (i) $630, or (ii) five percent of aggregate amount of items required to be reported correctly. No cap.	Greater of (i) $660, or (ii) five percent of aggregate amount of items required to be reported correctly. No cap.
Return required to be filed under § 6050I(a) (§ 6721(e)(2)(C)).	Greater of (i) $31,520 or (ii) amount of cash received up to $126,000. No cap.	Greater of (i) $33,220 or (ii) amount of cash received up to $132,500. No cap.
Return required to be filed under § 6050V (§ 6721(e)(2)(D))	Greater of (i) $630, or (ii) 10 percent of the value of the benefit of any contract with respect to which information is required to be included on the return. No cap.	Greater of (i) $660, or (ii) 10 percent of the value of the benefit of any contract with respect to which information is required to be included on the return. No cap.

Note: Reduced penalties may be applicable for small employers, as defined (generally those with average annual gross receipts for the most recent three years of under $5,000,000). See the Revenue Procedure for details. To view the IRS Revenue Procedure 2023-34, visit https://www.irs.gov/pub/irs-drop/rp-23-34.pdf. See Sections .58 and .59.

PCORI Fee Announced

The Internal Revenue Service (IRS) released Notice 2023-70, which establishes the applicable dollar amount for policy and plan years ending on or after October 1, 2023, and before October 1, 2024, in relation to the Patient-Centered Outcomes Research Institute (PCORI) fee established under the Affordable Care Act (ACA).

The Details:

The ACA created a nonprofit corporation, PCORI, to support clinical effectiveness research. This entity is to be funded in part by fees paid by certain health insurers and applicable sponsors of self-insured health plans. The goal of PCORI is to assist patients, clinicians, purchasers, and policymakers in making informed health decisions by "advancing the quality and relevance of evidence-based medicine through the synthesis and dissemination of comparative clinical effectiveness research findings." The fee imposed on an insurer is based on the average number of lives covered under the policy and the fee imposed on a plan sponsor of a self-insured health plan is based on the average number of lives covered under the plan.

For policy years and plan years ending on or after October 1, 2023, and before October 1, 2024, the adjusted applicable dollar amount is $3.22 per person. This is a 22-cent increase from the $3.00 amount in effect for plan and policy years ending on or after October 1, 2022, and before October 1, 2023.

Fully insured plans are to be assessed the applicable PCORI fee amount through their monthly premium payments made to their health insurance carrier. Self-insured plans pay this fee as part of the annual IRS Form 720 filing due by July 31 of each year.

The PCORI fee will increase for each year based on the percentage increase in the projected per capita amount of National Health Expenditures.

For a copy of Notice 2023-70, click on the link provided below.

https://www.irs.gov/pub/irs-drop/n-23-70.pdf

Next Steps:

Employers of self-insured plans and carriers of insured plans must submit the required fee along with IRS Form 720 by July 31st for the plan year ending prior to October 1st of the previous year.

Social Security Wage Base for 2024 Announced

On October 12, 2023, the Social Security Administration (SSA) announced the 2024 wage base. The annual wage base limit is the maximum amount of employee wages that are subject to the Social Security tax for the calendar year.

The Details:

The 2024 Social Security wage base will be $168,600, which is an increase of $8,400 from $160,200 in 2023.

There is no limit to the wages subject to the Medicare tax and therefore all covered wages are subject to the 1.45 percent tax. As in 2023, wages paid in excess of $200,000 in 2024 will be subject to an extra 0.9 percent Medicare tax withholding that will only be withheld from employees' wages as employers do not pay the extra tax. Married couples filing jointly with earned income of more than $250,000 will also be subject to the additional 0.9 percent tax.

The Federal Insurance Contributions Act (FICA) tax rate, which is the combined Social Security tax rate of 6.2 percent of covered wages (up to the Social Security wage base) and the Medicare tax rate of 1.45 percent (on all covered wages), will be 7.65 percent for 2024. The maximum Social Security tax employees and employers will each pay in 2024 is $10,453.20. This is an increase of $520.80 from $9,932.40 in 2023.

Next Steps:

Effective for wages paid on or after January 1, 2024, employers must withhold FICA taxes as outlined above.

For a copy of the SSA Fact Sheet, click on the link provided below:

https://www.ssa.gov/news/press/factsheets/colafacts2024.pdf

Pension Plan Limitations for 2024 Provided by IRS

On November 1, 2023, the Internal Revenue Service (IRS) announced via Notice 2023-75, the cost-of-living adjustments applicable to dollar limitations for pension plans and other items for tax year 2024.

The Details:

A summary of the 2024 pension limitations as compared to 2023 is below:

Plan Maximum Contribution Limits	2023	2024
Section 401(k) Plan or SAR SEP	$22,500	$23,000
Section 403(b) Plan	$22,500	$23,000
Section 408(p)(2)(E) SIMPLE Plan Contributions	$15,500	$16,000
Section 457(e)(15) Limit	$22,500	$23,000
Section 415 Limit for: Defined Contribution Plans Defined Benefit Plans	 $66,000 $265,000	 $69,000 $275,000

Plan Maximum Contribution Limits	2023	2024
Highly Compensated Employees Section 414(q)(1)(B)	$150,000	$155,000
Key Employee Section 416(i)(1)(A)(i)	$215,000	$220,000
Includible Compensation – Section 401(a)(17) - SEP Compensation SEP Earnings Threshold	$330,000 $330,000 $750	$345,000 $345,000 $750
Limited Governmental Plans (pre 7/1/93)	$490,000	$505,000
Section 409 Employee Stock Ownership Plan Subject to Five-Year Distribution Period Maximum Balance Amount Used to Determine the Lengthening of the Five-Year Period	 $1,330,000 $265,000	 $1,380,000 $275,000

The 2024-dollar limitation under Section 414(v)(2)(B)(i) for catch-up contributions to an applicable employer plan other than a plan described in Section 401(k)(11) or Section 408(p) for individuals aged 50 or over remains at $7,500.

The limit on annual contributions to an IRA increased to $7,000, up from $6,500. The IRA catch up contribution limit for individuals aged 50 and over was amended under the SECURE 2.0 Act of 2022 (SECURE 2.0) to include an annual cost of living adjustment, but remains $1,000 for 2024.

The 2024-dollar limitation under Section 414(v)(2)(B)(ii) for catch-up contributions to an applicable employer plan described in Section 401(k)(11) or Section 408(p) for individuals aged 50 or over remains at $3,500.

For a copy of Notice 2023-75, click on the link provided below.

https://www.irs.gov/pub/irs-drop/n-23-75.pdf

ADP Compliance Resources

ADP maintains a staff of dedicated professionals who carefully monitor federal and state legislative and regulatory measures affecting employment-related human resource, payroll, tax and benefits administration, and help ensure that ADP systems are updated as relevant laws evolve. For the latest on how federal and state tax law changes may impact your business, visit the ADP ***Eye on Washington*** Web page located at www.adp.com/regulatorynews.

If you have any questions regarding our services, please call 855-466-0790.

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