



## Eye on Washington

# Detailed Look at State, Local and Federal Updates



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

### Topics covered in this issue:

#### State/Territory/District:

- Arizona Reduces Amount of Earnings Subject to Garnishment
- California Provides FAQs on New Pay Disclosure Requirements
- Recap: California Laws & Changes Taking Effect January 1, 2023

#### Upcoming Minimum Wage Increases

- Minimum Wage Announcements – 12/15/22 – 1/15/23

#### Federal

- SECURE 2.0 Act of 2022 Makes Sweeping Changes to Retirement Savings Plans
- IRS Announces 2023 Automobile Business Use Mileage Rates
- IRS Announces 2023 Medical Mileage Rate
- USCIS Changes Policy on Expired Green Cards for Form I-9
- Federal Protections for Pregnant and Nursing Employees Expanded
- FLSA and FMLA Willful Violations Penalties Increased for 2023
- IRS Releases 2023 Publication 15
- IRS Releases 2023 Version of Publication 15-A
- IRS Releases 2023 Publication 15-B



## State/Territory/District

### Arizona Reduces Amount of Earnings Subject to Garnishment

This past November, Arizona voters approved a ballot question (Proposition 209) which decreases the portion of a debtor's disposable earnings that are subject to debt collection, **except for child support payments.**

#### The Details:

Effective December 5, 2022, the amount of disposable earnings subject to garnishment is the lesser of 10 percent or 60 times the highest applicable federal, state or local minimum wage.

Previously, the amount of disposable earnings that was subject to garnishment was the lesser of 25 percent or 30 times the federal minimum wage.

For further information, click on the Arizona Judicial Branch website link below:

<https://www.azcourts.gov/selfservicecenter/Garnishment/Forms>

### California Provides FAQs on New Pay Disclosure Requirements

The California Department of Industrial Relations (DIR) has updated its frequently asked questions (FAQs) to address expanded requirements for employers to disclose the pay scale for open positions.

#### The Details:

#### Background:

Effective January 1, 2023, Senate Bill 1162 amends the state's Equal Pay Act as follows:

- Upon request, all employers must:
  - o Provide an employee with the pay scale for their current position; and
  - o Provide an applicant with the pay scale for the position for which they applied.

- All employers must retain records of a job title and wage rate history for each employee. The records must be kept for the duration of employment plus three years after the end of the employment.
- An employer with 15 or more employees must include the pay scale for a position in any job posting. If the employer engages a third party to announce, post or publish a job posting, the employer must provide the pay scale to the third party. The third party is required to include the pay scale in the job posting.

These changes are codified under [Labor Code Section 432.3](#).

#### New Guidance:

The California DIR has updated its answers to [frequently asked questions about equal pay](#) to provide guidance on the new requirements. Here are some key points the updates address:

##### Defining pay scale:

Under the law and guidance, pay scale is defined as a salary or hourly wage range. The guidance further provides that if the position's hourly or salary wage is based on a piece rate or commission, then the piece rate or commission range the employer reasonably expects to pay for the position must be included in the job posting. Employers are not required to include additional compensation, such as bonuses, tips or tangible benefits when posting a salary or hourly wage. The employer may include this information to make its recruitment efforts more competitive, and employers are cautioned other forms of compensation may be considered for equal pay purposes. A legally compliant job posting only requires the "salary or hourly wage range that the employer reasonably expects to pay for the position."

##### Including the pay scale in job postings:

The Labor Commissioner interprets the requirement to include the pay scale in any job posting to mean that the pay scale must be included within the job posting itself if the position may ever be filled in California, either in-person or remotely. Employers wouldn't comply with the requirement if they simply link to the salary range in an electronic posting or include a QR code in a paper posting that will take an applicant to the salary information, according to the guidance.

##### Determining whether an employer has 15 or more employees:

Although the statute doesn't specify how employers should count employees, the Labor Commissioner interprets this requirement consistent with how it counts employees for the purpose of 2022 COVID-19 Supplemental Paid Sick Leave and minimum wage rates, as detailed in [previously issued FAQs on the topic](#). As such, an employer will be deemed to have met the employee threshold if they have 15 or more employees at any point in a pay period, and at least one employee is currently located in California. For example, an employer with 14 employees in Oregon and one employee in California would be covered by the requirement to include the pay scale in any job posting.

#### **Next Steps:**

- Review the guidance, which can be found [here](#).
- Ensure policies and procedures comply with the applicable provisions of [Labor Code Section 432.3](#).
- Train supervisors on how to respond to employee requests for their pay scales.

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## **Recap: California Laws & Changes Taking Effect January 1, 2023**

Throughout 2022, California enacted several pieces of legislation and made other changes that will impact employers beginning **January 1, 2023**. Here's a recap of some of the changes:

## The Details:

Leave:	
<b>Bereavement</b>	Assembly Bill 1949 will require employers with five or more employees to offer bereavement leave. Eligible employees are entitled to use up to five days of bereavement leave upon the death of a family member.
<b>California Family Rights Act &amp; Paid Sick Leave</b>	Assembly Bill 1041 will allow employees to use paid sick leave and California Family Rights Act (CFRA) leave to care for a "designated person."
<b>Emergency Conditions</b>	Senate Bill 1044 will prohibit, with limited exceptions, an employer from taking adverse action against an employee for refusing to report to or leaving work during emergency conditions.
Minimum Wage and Overtime:	
<b>Minimum Wages</b>	The state's minimum wage will increase to \$15.50 per hour for all employees. Several local jurisdictions in California will also increase their minimum wages on January 1, 2023. Check your local jurisdiction for details.
<b>Minimum Salary Requirements</b>	The change in the state's minimum wage also impacts the minimum salary requirements for certain state exemptions from overtime. For the state's administrative, professional and executive exemptions from overtime, employers must pay a salary of at least \$1,240 per week in 2023.
Discrimination:	
<b>Hate Crimes</b>	Assembly Bill 2282 will clarify the state's hate crime law as it pertains to the workplace.
<b>Reproductive Health Decision Making</b>	Senate Bill 523 will prohibit employers with five or more employees from discriminating against applicants and employees because of their reproductive health decision making.
Pay Transparency and Pay Data Reporting:	
<b>Pay Transparency and Pay Data Reporting</b>	Senate Bill 1162 will amend the requirements for employers regarding pay transparency and pay data reporting. <ul style="list-style-type: none"> <li>• Upon request, all employers must: <ul style="list-style-type: none"> <li>o Provide an employee with the pay scale for their current position; and</li> <li>o Provide an applicant with the pay scale for the position for which they applied (previously provided upon request after an initial interview).</li> </ul> </li> <li>• All employers must retain records of a job title and wage rate history for each employee. The records must be kept for the duration of employment plus three years after the end of the employment.</li> <li>• An employer with 15 or more employees must include the pay scale for a position in any job posting. If the employer engages a third party to announce, post or publish a job posting, the employer must provide the pay scale to the third party. The third party is required to include the pay scale in the job posting.</li> </ul>
<b>Pay Transparency</b>	Senate Bill 1162 will also amend the requirements for employers regarding pay data reporting. For example, a private employer that has 100 or more employees will be required to submit a pay data report covering the prior calendar year to the state on or before the second Wednesday of May each year, beginning May 10, 2023. The required elements of the report will also expand to include the median and mean hourly rate for each combination of race, ethnicity and sex within each job category.
Other Changes:	
<b>California Privacy Rights Act</b>	The California Privacy Rights Act (CPRA) will, among other things, give applicants and employees the right to request that the company disclose to them the personal information collected on them and to direct the company to refrain from selling or sharing their personal information.
<b>COVID-19 Prevention Rules</b>	Cal/OSHA's COVID-19 Prevention Non-Emergency Regulations will replace the Emergency Temporary Standards (ETS). The Non-Emergency Regulations include some of the same requirements found in the ETS, as well as new provisions. For example, employers will no longer be required to make testing available at no cost/during paid time to employees who have COVID-19 symptoms, but didn't have close contact in the workplace.
<b>Wage Garnishment</b>	Senate Bill 1477 will modify the maximum amount of an individual's disposable earnings subject to garnishment.

## Next Steps:

- Review policies and practices to ensure compliance with the changes that apply to you.
- Train supervisors on the changes.



## Upcoming Minimum Wage Increases

### Minimum Wage Announcements – 12/15/22 – 1/15/23

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	Date Added
Malibu, CA	\$16.90	N/A*	7/1/23	Yes	The poster is available <a href="#">here</a> .	1/12/23

\*CA does not allow the use of a tip credit.



## Federal

### SECURE 2.0 Act of 2022 Makes Sweeping Changes to Retirement Savings Plans

Click [here](#) for the article.

### IRS Announces 2023 Automobile Business Use Mileage Rates

On December 29, 2022, the Internal Revenue Service (IRS) issued via Notice 2023-03 the 2023 optional standard mileage rates used to calculate the deductible costs of operating an automobile for business, moving and charitable purposes.

#### Exceptions for Moving Expenses:

The Tax and Jobs Act of 2017 suspended the deduction for moving expenses for taxable years beginning after December 31, 2017, and before January 1, 2026, except for members of the Armed Forces on active duty who move pursuant to a military order and incident to a permanent change of station. Thus, except for taxpayers that are members of the Armed Forces, the standard mileage rate provided in Notice 2023-03 is not applicable for the use of an automobile as part of a move occurring during the suspension.

#### The Details:

As of January 1, 2023, the standard mileage rates for the use of a car (including vans, pickups or panel trucks) will be:

- 65.5 cents per mile for business miles driven;
- 22 cents per mile driven for moving purposes;\* and
- 14 cents per mile driven in service to a charitable organization.

*\*Applicable to members of the Armed Forces Only.*

For a copy of Notice 2023-03, click on the link provided below:

<https://www.irs.gov/pub/irs-drop/n-23-03.pdf>

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## IRS Announces 2023 Medical Mileage Rate

Transportation expenses, such as automobile mileage, that qualify as tax deductible medical expenses under Internal Revenue Code Section 213 generally can be paid or reimbursed on a tax-free basis by a health flexible spending arrangement, health reimbursement arrangement, or health savings account if the expense is "primarily for, and essential to, medical care."

### The Details:

On December 29, 2022, the Internal Revenue Service (IRS) issued Notice 2023-03 announcing that the standard mileage rate, **effective January 1, 2023, for use of an automobile to obtain medical care is 22 cents per mile.** This is the same rate that was put into effect on July 1, 2022.

For a copy of Notice 2023-03, click on the link provided below:

<https://www.irs.gov/pub/irs-drop/n-23-03.pdf>

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## USCIS Changes Policy on Expired Green Cards for Form I-9

Effective December 12, 2022, the U.S. Citizenship and Immigration Services (USCIS) has extended the validity of Permanent Resident Cards (Green Cards) for lawful permanent residents who have properly filed a Form N-400, Application for Naturalization.

### The Details:

Under the new policy, individuals who properly file [Form N-400, Application for Naturalization](#), may receive an automatic Green Card extension of up to 24 months without regard to whether they filed Form I-90, Application to Replace Permanent Resident Card. USCIS is updating its Form N-400 receipt notice to reflect the extension. The receipt notice can be presented with the expired Green Card as acceptable documentation of identity and employment authorization under List A of Form I-9 (Employment Eligibility Verification), if presented before the expiration of the 24-month extension period provided in the notice.

Prior to this policy change, naturalization applicants who didn't apply for naturalization at least six months before their Green Card expiration date needed to file Form I-90 to maintain proper documentation of their lawful status.

The extension applies to all applicants who file Form N-400 on or after December 12, 2022. Lawful permanent residents who filed for naturalization prior to December 12 won't receive a Form N-400 receipt notice with the extension. If their Green Card expires, they generally must still file Form I-90, or receive an ADIT stamp in their passport, to maintain valid evidence of their lawful permanent resident status.

### Next Steps:

- Review and update I-9 policies and procedures to reflect the change.
  - Train individuals who are responsible for I-9 compliance on the change.
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## Federal Protections for Pregnant and Nursing Employees Expanded

President Joe Biden has signed legislation that expands the protections for employees who are pregnant or nursing a child. Some of the changes took effect immediately, whereas others are effective in June 2023.

## The Details:

### Providing Urgent Maternal Protections for Nursing Mothers Act:

Effective December 29, 2022, the Providing Urgent Maternal Protections for Nursing Mothers Act amended existing law to entitle more employees to reasonable break time to express breast milk for their nursing child.

Before December 29, 2022	Beginning December 29, 2022
Employers must provide reasonable break time for an employee to express breast milk for their nursing child for one year after the child's birth, each time such employee has a need to express the milk. Employers are also required to provide a place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public, which may be used by an employee to express breast milk. Under federal law, these two requirements apply to only employees classified as non-exempt under the Fair Labor Standards Act.	The requirements apply to both non-exempt and exempt employees.

The break time may be unpaid unless otherwise required to be paid by federal, state or municipal law, provided the employee is completely relieved from duty during the entirety of the break.

**Note:** With limited exceptions, federal law requires employers to pay exempt employees their full salary in any workweek in which they perform any work, regardless of the quantity or quality of the work. As such, deductions from any exempt employee's salary for such breaks are prohibited.

As was the case prior to the amendment, employers with fewer than 50 employees are exempt from the requirements if they would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature or structure of the employer's business. Crew members of air carriers are also exempt from the law. There are also special rules for rail carriers. See the [text of the law](#) for details.

### Pregnant Workers Fairness Act:

Effective on June 27, 2023, the Pregnant Workers Fairness Act prohibits employers with 15 or more employees from:

- Failing to make reasonable accommodations to the known limitations related to the pregnancy, childbirth or related medical conditions of a qualified employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity;
- Requiring a qualified employee affected by pregnancy, childbirth or related medical conditions to accept an accommodation other than any reasonable accommodation arrived at through the interactive process referred to in the Americans with Disabilities Act;
- Denying employment opportunities to a qualified employee if such denial is based on the need of the employer to make reasonable accommodations to the known limitations related to the pregnancy, childbirth or related medical conditions of the qualified employee;
- Requiring a qualified employee to take leave, whether paid or unpaid, if another reasonable accommodation can be provided to the known limitations related to the pregnancy, childbirth or related medical conditions of the qualified employee; or
- Taking adverse action in terms, conditions or privileges of employment against a qualified employee on account of the employee requesting or using a reasonable accommodation to the known limitations related to the pregnancy, childbirth or related medical conditions of the employee.

**Note:** Several states and local jurisdictions already require employers to provide such accommodations. Some apply to smaller employers and/or have additional requirements. Check your state and local laws for details.

## Next Steps:

- Ensure reasonable break time is provided in accordance with the Providing Urgent Maternal Protections for Nursing Mothers Act.
- If you have 15 or more employees, review policies and practices to ensure compliance with the Pregnant Workers Fairness Act by June 27, 2023.
- Train supervisors on the changes.

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## FLSA and FMLA Willful Violations Penalties Increased for 2023

On January 13, 2023, the U.S. Department of Labor (DOL) issued a final rule via the Federal Register that revises civil penalties for many violations of federal labor laws, including certain violations of the Fair Labor Standards Act (FLSA) and the Family Medical Leave Act (FMLA). The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 directs federal agencies to adjust civil penalties for inflation each year.

### The Details:

The DOL has made inflation adjustments to the following penalties assessed as of January 15, 2023:

**Minimum Wage and Overtime.** The civil penalty for repeated or willful violation of the minimum wage and overtime provisions in the FLSA has increased from \$2,203 to \$2,374 per violation.

**Child Labor.** The civil penalty for violations of the child labor provisions of United States Code as outlined in Title 29 Sections 212 or 213(c) has increased from \$14,050 to \$15,138.

**FMLA.** The civil penalty for willful violations of the requirement that employers post and keep on their premises a notice about the FMLA and the procedures that employees may use to file complaints has increased from \$189 to \$204.

Other penalties have also increased in relation to the Employee Retirement Income Security Act (ERISA), the Occupational Safety and Health Act (OSHA), the Migrant and Seasonal Agricultural Worker Protection Act, the Immigration and Nationality Act, the Contract Work Hours and Safety Standards Act, and the Walsh-Healey Public Contracts Act, and are outlined in the Federal Register.

For a copy of the January 13, 2023 Federal Register, click on the link provided below.

<https://public-inspection.federalregister.gov/2023-00271.pdf>

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## IRS Releases 2023 Publication 15

The Internal Revenue Service (IRS) has released Publication 15 (Circular E) Employer's Tax Guide for use in 2023. Publication 15 explains an employer's tax responsibilities, important updates for 2023 and employer instructions for payroll and non-payroll tax withholding.

Some of the highlights of "What's New" in the 2023 Publication 15 are as follows:

**Social Security and Medicare Tax for 2023.** The rate of Social Security tax on taxable wages, including qualified sick leave wages and qualified family leave wages paid in 2023 for leave taken after March 31, 2021, and before October 1, 2021, is 6.2 percent each for the employer and employee or 12.4 percent for both. Qualified sick leave wages and qualified family leave wages paid in 2023 for leave taken after March 31, 2020, and before April 1, 2021, aren't subject to the employer share of Social Security tax; therefore, the tax rate on these wages is 6.2 percent. The Social Security wage base limit is \$160,200.

The Medicare tax rate is 1.45 percent each for the employee and employer, unchanged from 2022. There is no wage base limit for Medicare tax.



Social Security and Medicare taxes apply to the wages of household workers you pay \$2,600 or more in cash wages in 2023. Social Security and Medicare taxes apply to election workers who are paid \$2,200 or more in cash, or an equivalent form of compensation in 2023.

**Forms 941-SS and 941-PR discontinued after 2023.** Form 941-SS, Employer's QUARTERLY Federal Tax Return — American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands, and Form 941-PR, Planilla para la Declaración Federal TRIMESTRAL del Patrono, will no longer be available after the fourth quarter of 2023. Instead, employers in the U.S. territories will file Form 941, Employer's QUARTERLY Federal Tax Return, or, if you prefer your form and instructions in Spanish, you can file a new Form 941 (sp), Declaración del Impuesto Federal TRIMESTRAL del Empleador.

For a copy of the 2023 Publication 15, click on the link provided below:

<https://www.irs.gov/pub/irs-pdf/p15.pdf>

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## IRS Releases 2023 Version of Publication 15-A

The Internal Revenue Service (IRS) has posted the 2023 version of Publication 15-A, the Employer's Supplemental Tax Guide located at <https://www.irs.gov/pub/irs-pdf/p15a.pdf>.

### The Details:

IRS Publication 15-A supplements IRS Publication 15 (Circular E), by providing more specialized and detailed employment tax information on certain topics covered in IRS Publication 15.

There are sections in IRS Publication 15-A on: (1) Who Are Employees; (2) Employee or Independent Contractor; (3) Employees of Exempt Organizations; (4) Religious Exemptions and Special Rules for Ministers; (5) Wages and Other Compensation; (6) Sick Pay Reporting; (7) Special Rules for Paying Taxes; and (8) Pensions and Annuities.

A few of the highlights under "What's New" are as follows:

**Form W-4P and Form W-4R.** Form W-4P, Withholding Certificate for Periodic Pension or Annuity Payments (previously titled Withholding Certificate for Pension or Annuity Payments) was redesigned for 2022. The new Form W-4P is now used only to make withholding elections for periodic pension or annuity payments. Previously, Form W-4P was also used to make withholding elections for nonperiodic payments and eligible rollover distributions. Withholding elections for nonperiodic payments and eligible rollover distributions are now made on Form W-4R, Withholding Certificate for Nonperiodic Payments and Eligible Rollover Distributions. Although the redesigned Form W-4P and new Form W-4R were available for use in 2022, the IRS postponed the requirement to begin using the new forms until January 1, 2023. Payers should have updated their system programming for these forms in 2022.

**Social Security and Medicare Tax for 2023.** The rate of Social Security tax on taxable wages, including qualified sick leave wages and qualified family leave wages paid in 2023 for leave taken after March 31, 2021, and before October 1, 2021, is 6.2 percent each for the employer and employee, or 12.4 percent for both. Qualified sick leave wages and qualified family leave wages paid in 2023 for leave taken after March 31, 2020, and before April 1, 2021, aren't subject to the employer share of Social Security tax; therefore, the tax rate on these wages is 6.2 percent. The Social Security wage base limit is \$160,200. The Medicare tax rate is 1.45 percent each for the employee and employer, unchanged from 2022. There is no wage base limit for Medicare tax. Social Security and Medicare taxes apply to the wages of household workers you pay \$2,600 or more in cash wages in 2023. Social Security and Medicare taxes apply to election workers who are paid \$2,200 or more in cash, or an equivalent form of compensation in 2023.

**Federal tax deposits must be made by electronic funds transfer (EFT).** You must use EFT to make all federal tax deposits. Generally, an EFT is made using the Electronic Federal Tax Payment System (EFTPS). If you don't want to use EFTPS, you can arrange for your tax professional, financial institution, payroll service, or other trusted third party to make electronic deposits on your behalf. Also, you may arrange for your financial institution to initiate a same-day wire payment on your behalf. EFTPS is a free service provided by the U.S. Department of the Treasury. Services provided by your tax professional, financial institution, payroll service, or other third party may have a fee.



## Next Steps:

Employers should review Publication 15-A to learn the requirements in 2023 regarding employment taxation.

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## IRS Releases 2023 Publication 15-B

The Internal Revenue Service (IRS) has released the 2023 version of Publication 15-B (Employer's Tax Guide to Fringe Benefits), which contains information for employers on the employment tax treatment of various fringe benefits, including accident and health coverage, adoption assistance, company cars and other employer-provided vehicles, dependent care assistance, educational assistance, employee discount programs, group term life insurance, moving expense reimbursements, health savings accounts (HSAs), and transportation (commuting) benefits. (Publication 15-B uses the term "employment taxes" to refer to federal income tax withholding, as well as Social Security and Medicare (FICA) and federal unemployment (FUTA) taxes.) Publication 15-B is a supplement to Publication 15 (Circular E) and IRS Publication 15-A (Employer's Supplemental Tax Guide).

### The Details:

A few of the highlights under "What's New" in 2023 version of Publication 15-B are as follows:

**Cents-per-mile rule.** The business mileage rate for 2023 is 65.5 cents per mile. You may use this rate to reimburse an employee for business use of a personal vehicle, and under certain conditions, you may use the rate under the cents-per-mile rule to value the personal use of a vehicle you provide to an employee.

**Qualified parking exclusion and commuter transportation benefit.** For 2023, the monthly exclusion for qualified parking is \$300 and the monthly exclusion for commuter highway vehicle transportation and transit passes is \$300.

**Contribution limit on a health flexible spending arrangement (FSA).** For plan years beginning in 2023, a cafeteria plan may not allow an employee to request salary reduction contributions for a health FSA in excess of \$3,050.

For a copy of IRS Publication 15-B "Employer's Tax Guide to Fringe Benefits" (for benefits provided in 2023), click on the link provided below.

<https://www.irs.gov/pub/irs-pdf/p15b.pdf>

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## 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](http://www.adp.com/regulatorynews).

ADP is committed to assisting businesses with increased compliance requirements resulting from rapidly evolving legislation. Our goal is to help minimize your administrative burden across the entire spectrum of employment-related payroll, tax, HR and benefits, so that you can focus on running your business. This information is provided as a courtesy to assist in your understanding of the impact of certain regulatory requirements and should not be construed as tax or legal advice. Such information is by nature subject to revision and may not be the most current information available. ADP encourages readers to consult with appropriate legal and/or tax advisors. Please be advised that calls to and from ADP may be monitored or recorded.

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