



Payroll Insights

Employment tax news to guide you now and for the future

December 2022



John Montgomery's fresh take: 'Tis' the season for payroll adjustments

This is the time of year when we see adjustments to the state unemployment insurance taxable wage bases, cost of living increases to many IRS benefits, and a slew of minimum wage changes at both the local and state level, not to mention legislation passed that may affect payroll. Staying on top of payroll news is a harrowing task in addition to a payroll professional's day job. Thankfully there are now many resources available to a payroll professional. Newsletters, such as *Payroll Insights*, on-demand webinars and local payroll association meetings go a long way towards providing the updates that every payroll professional needs to perform their jobs successfully. Networking at local meetings, statewide or national conferences, as well as just casual meetings with your peers can enhance your knowledge, as well as keep you connected to best practices. Reach out and utilize the resources and people around you as you head into year-end.

The employment tax team at KPMG would also like to wish you and yours a wonderful holiday season. We look forward to many opportunities to connect with you in the new year.



Senate Proposes New Jersey "Convenience of Employer" Provision

On October 3, 2022, Bill S3128 was introduced in the Senate and proposes that New Jersey adopt a "Convenience of the Employer" provision. N.J.S.54A:5-8e. would be introduced and provide the following:

"If an employee's state of residence uses a "convenience of the employer" test when determining the source of income of a nonresident, income or wages earned by a nonresident are allocated to the employer's location, unless the nonresident works from an out-of-state location due to the necessity of the employer, rather than the convenience of the employee. For an individual who is a nonresident of this State and who has income from employee compensation from a New Jersey employer for the performance of personal services performed outside of New Jersey, but that location for the performance of the personal services is not necessitated by the employer, and whose state of residence imposes an income or wage tax that requires employee compensation be sourced to an employer's location if a nonresident of that state renders the personal services as an employee from an out-of-state location for the convenience of the employee and not due to the necessity of the employer, that same sourcing rule shall apply to that income of a nonresident of this State who is rendering personal services for an employer located in this State."

Pursuant to the above, if an employee lives in such a state with a "convenience of the employer" provision and works for a New Jersey employer, then New Jersey can apply the same sourcing rule to the income of the nonresident, barring the work being conducted out-of-state out of necessity of the employer.



The provision would require New Jersey employers to withhold New Jersey SIT from employee wages who work remotely in another state out of convenience if that employee's resident state has a "convenience of employer rule" (e.g., New York State). This new regulation would not apply to Pennsylvania residents as the reciprocity rules between the two states would remain in effect.

This Bill is available for review on the [New Jersey Legislature website](#).

Employers should prepare themselves accordingly as this could impact employee tax profiles and configurations payroll and human resources information systems.



2023 Limits Released

The IRS released their annual cost-of-living adjustments for 2023, including increases in flexible spending arrangements (FSA) deferral limits, foreign earned income exclusion, excludable transportation fringes, and adoption benefits.

- Qualified Transportation Fringes: \$300 per month, increased from \$280
- Health FSAs: \$3,050 annually, increased from \$2,850
- Federal Tax Levies: \$4,700, increased from \$4,400
- Medical Savings Accounts: To make eligible contributions to an MSA, an employee must be covered by a high deductible health plan. For 2023, a high deductible health plan is a plan with an annual deductible of \$2,650-\$3,950 for individual coverage (\$2,450-\$3,700 in 2022) and \$5,300-\$7,900 for family coverage (\$4,950-\$7,400 in 2022). The maximum out-of-pocket expense cannot exceed \$5,300 for individuals (\$4,950 in 2022) and \$9,650 for family coverage (\$9,050 in 2022).
- Long Term Care Insurance: \$420 per day, increased from \$390
- Adoption Assistance: \$15,950 can be excluded from gross income for qualified adoption expenses, up from \$14,890.

New York

The New York City Department of Consumer and Worker Protection (DCWP) has proposed a minimum hourly pay rate of \$23.82 by 2025 for app-based food restaurant delivery workers.

The proposal will be the subject of a public hearing scheduled for December 16 on raising the minimum pay rate for delivery workers to \$17.87 in 2023 and increasing it to \$23.82 by April 1, 2025.

It is estimated that there are more than 60,000 app-based food delivery workers in the city and they are currently paid \$7.09 per hour, excluding tips. The DCWP has estimated that they average \$14.18 per hour with tips but before expenses.

[Food Delivery Workers Would Be Paid \\$23.82 Minimum Under Proposed New City Rules – THE CITY](#)

Wages for Tipped Workers

D.C.'s [Initiative 82](#) passed on Election Day with 74% of the vote. The new law will gradually phase out the tip credit and require businesses to pay tipped workers the full minimum wage plus tips starting in 2027.

In Michigan the tip credit is tentatively set to end next year alongside a court-ordered increase in the minimum wage, pending the outcome of litigation.

Advocates for ending the two-tier minimum wage system for tipped workers have set their sights on 25 states, including Colorado, Connecticut, Illinois, Maryland, Massachusetts, and New York-to enact legislation by 2026.

It is estimated that 5,000 restaurants across the country have already embraced a base wage that matches or exceeds the standard minimum wage plus tips as they struggle to attract workers post-pandemic. Federal law allows businesses to pay their tipped works as little as \$2.13 in base wages under the assumption that tips will add up to the standard federal minimum was of \$7.25 or higher. Seven states already require that businesses pay the full minimum wage in their state plus tips.

State Automatic Enrollment Retirement Programs on the Rise

Several states have active state-sponsored automatic individual retirement account programs currently in place: [California](#), [Connecticut](#), [Illinois](#), [Maryland](#), [Oregon](#), and Washington. Similar programs are being initiated in Colorado (early 2023), Delaware (2025), Maine (April 1, 2023), New Mexico (July 1, 2024), and Virginia (July 1, 2023). Next up with auto-enrollment program legislation passed but implementation not yet scheduled are Hawaii, New Jersey, New York city and state, Massachusetts, and Vermont.

While the use of these programs is spreading to new states, California has expanded its CalSavers Program definition of an eligible employer to include employers with at least one eligible employee. Previously, an eligible employer had to have five employees or more.

Colorado's [SecureSavings](#) is a mandatory, automatic enrollment retirement program that will require all Colorado businesses to facilitate SecureSavings if they have been in business for two or more years, have five or more employees, and do not currently offer a retirement savings plan for their employees. If a company has a qualified employer-sponsored plan, they must certify their exemption once the program is underway.

Delaware's program is similar in that employers who have been in business for at least six months with at least five employees that do not currently offer a qualified employer provided retirement savings program must participate in the Expanding Access for Retirement and Necessary Savings (EARNs) program.

It is expected that more states will enact similar programs in the coming years, all designed to allow employees in small companies the ability to participate in retirement plans when their employers do not offer this option.

FUTA Credit Reduction Announced

On November 10, the Labor Department stated that employers in California, Connecticut, Illinois, New York, and the US Virgin Island will all be subject to [FUTA credit reduction](#). These states will be assessed a general FUTA credit reduction of 0.3% for all wages paid to employees in these states. This will result in employers paying an effective tax rate of 0.9% or \$63 on the FUTA taxable wage base of \$7,000.

Employers in the US Virgin Islands will face a credit reduction of 3.6% for work attributed to the territory. This will result in paying an effective FUTA tax rate of 4.2% or up to \$294 per employee.

State Measure

Massachusetts voters approved a measure to raise taxes on millionaires while California rejected a measure that attempted to increase taxes on the state's highest earners.

The [Fair Share Amendment](#) in Massachusetts will allow for a 9% tax on annual incomes over \$1 million in 2023, lifting the rate from the current amount of 5%. It is expected that this increase will result in approximately \$2 billion in revenue for the state.

Voters rejected Proposition 30 in California, which called for a 1.75% tax on income above \$2 million and was set to fund electric vehicles, build charging stations, and hire firefighters to combat the wildfires that plague the state.

IRS Backlog

The IRS had 2.5 million unprocessed Forms 941 and 257,000 unprocessed Forms 941-X as of October 26. They have stated that they are still opening mail within normal timeframes and the [backlog](#) is being worked at two sites while trained staff has been set to work on returns that involve the Employee Retention Credit.

Penalty Increases

The [penalty](#) for failure to file correct information returns and failure to furnish correct payee statements is now \$310, up from \$290 in 2022. If corrected on or before 30 days after the required filing date, the penalty is now \$60 instead of \$50. If corrected after the 30th day but on or before August 1, the penalty increased to \$120 from \$110. For businesses with annual gross receipts of \$5 million or less, the maximum penalty was increased to \$1,261,000.



State Updates

California:

- The [California Employment Development Department](#) provided that the employment training tax for 2023 will remain at 0.1%, with a taxable wage base of \$7,000. In addition, the California 2023 state disability insurance (SDI) contribution rate has decreased to 0.9%, with a taxable wage base of \$153,164 per employee. The California state unemployment insurance taxable wage base will be \$153,164 in 2023.
- The California Employment Development Department announced that the January 1, 2023 – June 30, 2023 [interest rate](#) assessed on late payroll taxes will be 5%.

Connecticut

State unemployment insurance taxes in Connecticut will be reduced in 2023 by .2% in an effort to offset the higher cost associated with the [Federal Unemployment Tax Act credit reduction](#).

Massachusetts:

- While formal state income tax withholding guidance has not been released, employers should be on the lookout for [potential changes](#) to the 5% flat state income tax withholding rate as a result of the 4% surcharge on annual income above \$1 million set to begin in 2023.

Missouri:

- The [Missouri Department of Revenue](#) has provided that the annual interest rate on (1) deficiency balances for all tax types, and (2) refunds of individual income tax and property tax, will be 6% in 2023. The 2023 refund annual interest rate will be 0.8% for the first quarter of 2023.

Montana:

- Beginning January 2023, the [Montana state allowance](#) used to calculate state income tax withholding will increase to \$2,070 for the annual withholding table. This is an increase from \$1,900 in 2022.

New Hampshire:

- The [New Hampshire Trust Fund](#) has satisfied the minimum threshold and therefore state unemployment insurance contributions beginning in Q4 of 2022 will be reduced by 0.5% for employers in good standing.

New York:

- The first quarter 2023 interest rate on late payments of [New York state income tax](#) withholding amounts will be 11% as provided by the New York Tax and Finance Department. The 11% interest rate is per annum compounded daily.

Ohio:

- Please note that some local Ohio jurisdictions may change withholding rates in 2023 and it is recommended that employers review guidance provided by each jurisdiction.

South Carolina:

- The [South Carolina Department of Workforce](#) has provided that the 2023 state unemployment insurance tax rates for 2023 will decrease or remain unchanged from 2022. There will be no solvency surcharge assessed in 2023. In addition, the 2023 taxable wage base will remain unchanged at \$14,000 per employee.
- The South Carolina Department of Revenue has reduced the number of state [income tax withholding brackets](#) from 6 in 2022 to 3 in 2023. State income tax withholding rates in 2023 will range from 0% - 6.5%. In addition, the [personal allowance](#) claimed by an employee has increased from \$2,750 in 2022 to \$4,310 in 2023. The standard deduction has also increased from \$4,580 in 2022 to \$6,475 in 2023.

Vermont:

- The 2023 [Vermont annual interest rate](#) on overpayments and underpayments of tax will be 4%.

Washington:

- According to the [Washington Employment Security Department](#), starting January 1, 2023, the total paid family and medical leave premium will increase from 0.6% in 2022 to 0.8%. Employers with at least 50 employees will contribute 27.24% of the total premium and employees will contribute the remaining 72.76% due. As previously established, employers with less than 50 employees are not required to pay the employer portion of the premium.

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