



# Payroll Insights

Employment tax news to guide you now and for the future

September 2022



## John Montgomery's fresh take: Gearing up for year-end

We are two-thirds of the way through the year and moving quickly towards year end. Now is the time to begin thinking about items that may have occurred in the first 8 months of the year that may cause you concern when it comes to year-end processing. Do you have imputed income items such as the personal use of a company car, group term life insurance, or tax equalization benefits that result in year end reporting obligations? It may be a good time now, before the chaos of year end is underway, to prepare your year-end checklist to ensure you have everything

covered. To assist you, KPMG and Bloomberg BNA will again be teaming up to provide you with a year-end checklist as well as a webinar to address those items in 2022 that may affect your annual reporting obligations. We will include more information on how you can attend and obtain a copy of our joint year-end report as the date approaches.



### Federal updates

#### Increased interest rates for 2022 fourth quarter underpayments and overpayments

The IRS announced on August 15th that IRS Rev. Rul. 2022-15 increased the Underpayment/Overpayment interest rates effective the fourth quarter of 2022 under IRC §6621:

- The interest rate will be 6% for overpayments (3.5% for corporations);
- 6% for underpayments up from 5%; and
- 8% for large corporate underpayments, up from 7%
- For the portion of a corporate overpayment exceeding \$10,000, the rate will be 3.5%, up from 1%.
- The interest rate on IRC. §6603 deposits is 3%, up from 2%

#### Business standard mileage rate increases to 62.5 cents for second half of 2022

The business standard mileage rate for transportation expenses paid or incurred beginning July 1, 2022, is 62.5 cents per mile, up 4 cents from the first half of 2022. Recognizing the increase in gas prices, the IRS made the mid-year change in [Announcement 2022-13](#).

The mileage rate may be used to compute the amount to reimburse employees who are using their own cars for business purposes. Employers may also elect to use the "cents per mile" valuation method for purposes of determining the amount of income to be imputed for personal use of company-owned or leased non-luxury vehicles.



Employers should make sure the change is only made effective July 1, 2022. The previous rate of 58.5 cents per mile should be used on all travel through June 30, 2022.

The standard rate for miles driven for medical or moving purposes will increase to 22 cents per mile, up from the 18 cents per mile rate in effect during the first half of 2022. The moving expenses only apply to members of the Armed Forces on active duty who move under a military order and due to a permanent change of station.

The standard mileage rate for operating a passenger car for charitable purposes, which is set by law, will remain at 14 cents per mile for the remainder of 2022.

### **Employer-paid medical travel benefits (including travel for reproductive health) may have tax consequences**

Employers covering an employee's out-of-state travel costs for medical travel benefits (including travel for reproductive health services) should also consider the employment tax treatment of these payments. Many states require certain health coverage. Seven states ([California](#), [Illinois](#), [Maryland](#), [Maine](#), [Oregon](#), [New York](#) and [Washington](#)) require reproductive health coverage in private health insurance plans. Eleven states restrict insurance coverage of abortion in all private insurance plans in the state.

If an employee has to travel out of state for medical care, travel expenses may be reimbursed tax-free up to certain limits if the medical care is the primary purpose of the trip. Expenses in excess of the limits may be reimbursed on a taxable basis.



## **State updates**

### **California**

On June 6, the [California Employment Development Department](#) announced the interest rate on delinquent payroll and withholding taxes will remain at 3 percent from July 1 through December 31 for corporate income and individual income tax purposes.

Governor Gavin Newsom has a bill pending before him that would allow Californians to take time off to care for a designated "chosen" family member as well as biological kin.

[Assemblywoman Buffy Wicks' \(D\) measure \(A.B. 1041\)](#) won final passage on an Assembly vote of 48-11. The state Senate passed it 31-7.

Starting 2023, the measure would let employees take up to 12 weeks of job-protected leave to care for a designated person who is not biologically or legally related. The employee could choose one designated person per year for that purpose. The bill's author has stated that it was written to reflect how current society reflects changes to the traditional family structure. Newsom has until Sept. 30 to sign the bill or veto it. He has not said how he will act.

California would join at least six other states that let employees tend to non-family members on their leave time. Colorado, Connecticut, New Jersey, and Oregon's leave laws cover individuals with whom a worker has a family-like relationship. Massachusetts and New York have flexible domestic partner definitions that do not require legal registration.

### **Illinois**

The [Illinois Family Bereavement Leave Act](#), recently signed into law, requires unpaid leave for a miscarriage, an unsuccessful round of intrauterine insemination or other assisted reproductive procedures, a failed or non-finalized adoption, a failed surrogacy agreement, a diagnosis affecting fertility, or a stillbirth. This new law amends the state's Child Bereavement Leave Act, which allowed parents and guardians to take leave solely for the loss of a biological or adopted child, a foster placement, or a stepchild.

The requirement applies to companies with 50 or more employees and goes into effect January 1, 2023. Federal law currently doesn't require employers to provide bereavement leave to employees. The Support Through Loss Act (H.R. 4576/S. 2390), was introduced in both the U.S. House and Senate last year, but there has been no movement.

## New Jersey

New Jersey has updated its [family leave and employment discrimination](#) posters. Employers must display new workplace posters covering family leave and employment discrimination and harassment effective August 1, under an [adopted rule](#) issued by the state's civil rights division.

## New York

New York workers have filed more than 150 lawsuits alleging violations of New York's timely payment requirement since an [intermediate state appellate court held in 2019](#) that individuals have the right to sue under the provision of state labor law.

The [pay frequency requirement](#) that manual workers be paid weekly has been the law for more than a century. Fines to companies max out at \$3,000 and the New York Department of Labor has been enforcing. An individual filing a lawsuit can obtain damages of up to half a year's wages if they were paid bi-weekly.

Large companies such as WalMart, Costco Wholesale, Walgreen Co. and Banana Republic, to name a few, have been hit with class action lawsuits for paying manual workers bi-weekly.

### *New York Assesses Surcharge on Unemployment Taxable Wages to Repay Unemployment Loan*

New York has assessed a [.23% interest assessment surcharge](#), or approximately \$27.60 per employee to repay interest on the state's loan from the federal unemployment account.

The surcharge is applied to unemployment taxable wages paid from October 1, 2020 to September 30, 2021. Notice have been mailed and employers are advised to review the calculations performed by the state. If any amended returns have been filed or corrections made, changes to the surcharge may be warranted.

## New York Case on Failure to Issue a W2

A recent court decision revealed that even if a Taxpayer did not receive a W2 from his employer, he does not have a private right of action against his former employer for failing to provide one, Alternatively, the IRS could assess penalties against the employer, according to the district court. The court found no authority to support Taxpayer's argument that an age discrimination settlement he received from the employer qualifies as remuneration for services he performed as an employee (such that a W-2 should be issued) and that there is no right of action for an employee who did not receive the W2 from his employer.

[*Barker v. Manhattan Parking Grp.*, 22-CV-6245 (LTS) (S.D.N.Y. Aug. 24, 2022)]

## Ohio

Voters in several Ohio municipalities and school districts passed income tax rate changes during the May primaries. The municipal income tax rate changes are:

- [Archbold](#), in Fulton County, from 1.5% to 1.8% effective Jan. 1, 2023.
- [Mantua](#), in Portage County, from 1.5% to 2% effective July 1, 2022. Mantua, in Portage County, from 1.5% to 2% effective July 1, 2022.
- Mt. Gilead, in Morrow County, from 1% to 1.25% effective Jan. 1, 2023.
- Wauseon Exempted Village School District in Fulton County approved a 5-year 1.75% income tax that will go into effect on Jan. 1, 2023.

May 3, 2022 Primary Election Results:

[20220503results.pdf \(ohio.gov\)](#)

[Live Results \(ohio.gov\)](#)

[official\\_results.pdf \(portagecounty-oh.gov\)](#)

[OFFICIAL RESULTS May 3 2022 Primary.pdf \(revize.com\)](#)

## Washington

When Washington Governor Jay Inslee [signed into law](#) a guaranteed set of benefits for rideshare drivers, including minimum pay per trip, paid sick leave, and workers' compensation coverage, it resulted in solidifying the drivers' status as independent contractors. Rideshare drivers have alleged that this law has denied them the full legal protections that an employee classification has, including federal protections provided for forming or joining a union.

Many states such as [New Jersey](#), [Pennsylvania](#), [Vermont](#) and [Wisconsin](#) have proposed similar bills but are still pending.

The U.S. Department of Labor has a federal proposal that is expected to make it harder for companies to treat workers as independent contractors. States such as California, [Massachusetts](#), and New Jersey want to enforce strict classification laws that state officials argue should require employee status for rideshare drivers.

### Unemployment Taxable Wage Base

Effective January 1, 2023, the [unemployment taxable wage base](#) for Washington will be \$67,600, up from 62,500 in 2022.



## Meet one of our Employment Tax professionals: Cynthia Vance

Cynthia is a Sr. Manager in our KPMG San Francisco office with over 20 years of employment tax experience. She is an enrolled agent with past auditor experience working with the IRS and the State of California. Cynthia assists clients with employment tax and payroll compliance reporting at the federal, state, and local levels, independent contractor reporting, due diligence assistance during a company's mergers/acquisitions, and work from anywhere matters.

In her free time, she enjoys working on home renovation projects, spending time with her children, and loves playing any type of game.

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