



Special Report

# 2022 Payroll Year-End



Bloomberg  
Tax

# Contributing Editors

**John Montgomery**

*Partner*  
KPMG LLP

**William Dunn**

*Practice Lead*  
Bloomberg Tax

**Mindy Mayo**

*Managing Director*  
KPMG LLP

**Jamie Rathjen**

*Payroll Analyst*  
Bloomberg Tax

**Roberto Delgado**

*Principal-in-Charge*  
KPMG LLP

**Emmanuel Elone**

*Payroll Analyst*  
Bloomberg Tax

**Andres Alejo**

*Payroll Analyst*  
Bloomberg Tax

# Table of Contents

<b>1</b>	<b>Introduction</b>
<b>2</b>	<b>Covid-19 Relief Provisions: At a Glance</b>
<b>4</b>	<b>Reporting Payroll Tax Deferrals, Credits</b>
<b>6</b>	<b>Work Anywhere: A New Workplace Paradigm</b>
<b>7</b>	<b>Multistate Reporting</b>
<b>8</b>	<b>Items of Note</b>
<b>9</b>	<b>Form W-2 Year-End Basics</b>
<b>11</b>	<b>Awards, Prizes, Gifts</b>
<b>13</b>	<b>Qualified Plans</b>
<b>14</b>	<b>Nonqualified Plans</b>
<b>15</b>	<b>Supplemental Wages</b>
<b>16</b>	<b>Wage &amp; Hour: Joint Employer Rule</b>
<b>17</b>	<b>Wage &amp; Hour: Worker Classification Rulemaking</b>
<b>18</b>	<b>EEO-1 Reporting</b>
<b>19</b>	<b>Health Savings Accounts</b>
<b>20</b>	<b>Group-Term Life Insurance</b>
<b>21</b>	<b>State, Local Paid Leave</b>
<b>22</b>	<b>By the Numbers</b>

## Introduction

Year-end for payroll professionals generally starts after the next year's inflation or indexed numbers are released in mid-October and ends after most reports and forms for the prior year are completed and filed in February. This time frame of fewer than five months encompasses two broad activities: successfully closing out the old year and establishing a strong start to the payroll process in the new year. 2022 has created a special level of complexity to the normal year-end as it relates to 2020 and 2021 tax legislation as well as the continued use of remote and hybrid work employees.

The steps and considerations involved in accomplishing myriad tasks in those activities are the focus of this special report, 2022 Payroll Year-End, which has been prepared jointly by employment tax and benefit professionals at KPMG LLP and payroll editors at Bloomberg Tax & Accounting.

This report covers a wide array of topics, including sections covering policy issues, remote workers, tax requirements related to 2022 and prior-year legislation, and common concerns at year-end that have been identified as historically problematic for employers. The writers have also highlighted frequent problems in correctly reporting items on Form W-2, *Wage and Tax Statement*, inclusive of the reporting treatment of such items as deferred compensation, health savings account contributions, multistate wage allocation, and accounting for fringe benefits, gifts, prizes, and awards.

A list of key 2022 federal and state wage base limits, state unemployment taxable wage bases, and health savings account limits are included in a special By the Numbers section. The report also accompanies an interactive, two-page 2022 Year-End Checklist that payroll teams can share to track issues within their organization.

Payroll professionals know that starting the year-end process in October can bring unneeded pressure to the collecting of information that is needed to reconcile the current year's payroll and prepare for the new year. Instead, starting the next year-end planning process in February allows a payroll team to close out the year-end process on a high note.

### Year-End Policy Issues

Payroll professionals do not need surprises at year-end. The 2022 year-end and the outlook for 2023 could be interesting, given recent changes and proposals for next year. Consider and investigate the items in this report to identify potential issues and hopefully mitigate, or at least minimize, any year-end surprises.

2022			
<b>JANUARY</b> s m t w t f s 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	<b>FEBRUARY</b> s m t w t f s 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<b>MARCH</b> s m t w t f s 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	<b>APRIL</b> s m t w t f s 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30
<b>MAY</b> s m t w t f s 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	<b>JUNE</b> s m t w t f s 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30	<b>JULY</b> s m t w t f s 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	<b>AUGUST</b> s m t w t f s 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31
<b>SEPTEMBER</b> s m t w t f s 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30	<b>OCTOBER</b> s m t w t f s 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	<b>NOVEMBER</b> s m t w t f s 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30	<b>DECEMBER</b> s m t w t f s 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

2023			
<b>JANUARY</b> s m t w t f s 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	<b>FEBRUARY</b> s m t w t f s 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<b>MARCH</b> s m t w t f s 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	<b>APRIL</b> s m t w t f s 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30
<b>MAY</b> s m t w t f s 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	<b>JUNE</b> s m t w t f s 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30	<b>JULY</b> s m t w t f s 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	<b>AUGUST</b> s m t w t f s 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31
<b>SEPTEMBER</b> s m t w t f s 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30	<b>OCTOBER</b> s m t w t f s 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	<b>NOVEMBER</b> s m t w t f s 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30	<b>DECEMBER</b> s m t w t f s 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

## Covid-19 Relief Provisions: At a Glance

Years 2020 and 2021 brought new temporary relief provisions for employers and employees as well as changes to how compensation and benefits programs operate, enacted in response to the coronavirus (Covid-19) pandemic. Many of these changes significantly affected the payroll process, including updates to reporting, withholding, and deposit guidelines that have flowed into 2022. Although many of these provisions were enacted or became effective in 2020 and early in 2021,<sup>1</sup> the payroll implications of these changes continue to affect payroll for 2022 year-end. As we close out 2022 and move into 2023, it is important to ensure that all amended returns related to this legislation have been filed and that year-end balancing has occurred.

### Payroll Tax Deferrals

#### The Coronavirus Aid, Relief, and Economic Security Act.

Under the CARES Act, employers and self-employed individuals could defer the deposit of the employer's share of Social Security taxes (or equivalent amount for self-employed individuals) incurred from March 27, 2020, through Dec. 31, 2020. The extended deadline for the deposit or payment of the deferred taxes is:

- **Dec. 31, 2021**, with respect to 50% of the deferred amount (that should already have been paid back).
- **Dec. 31, 2022**, with respect to the remaining deferred amount. Dec. 31 is a Saturday, so the payments are due on the next regular business day, which is **Jan. 3, 2023**.

### Employee Retention Credit

As originally enacted by the CARES Act, the employee retention credit provided a refundable payroll credit for eligible employers whose business has been affected by the COVID-19 pandemic for qualified wages paid after March 12, 2020, and before January 1, 2021.

Subsequent legislation extended and expanded the employee retention credit ultimately through December 31, 2021.

However, the Infrastructure Investment and Jobs Act (enacted November 15, 2021) amended the law so that the employee retention credit applies only to wages paid before October 1,

2021, unless the employer is a "recovery startup business."

Employers should seek advice regarding the applicability of the ERC to each company's particular situation during the 2020 and 2021 years.

Employers could access the ERC for the first through fourth quarters of 2021<sup>2</sup> prior to filing their employment tax returns by reducing employment tax deposits. Small employers (i.e., employers with an average of 500 or fewer full-time employees in 2019) may request advance payment of the credit (subject to certain limits) on Form 7200, Advance of Employer Credits Due to Covid-19, after reducing deposits. In 2021, advances were not available for large employers.

### Required Emergency Paid Sick Leave and Expanded FMLA

The Families First Coronavirus Response Act required covered employers to provide eligible employees with paid sick and expanded family and medical leave for certain COVID-19 related reasons. The requirement that employers provide paid sick or expanded family and medical leave under the FFCRA employer mandate provisions applies to leave taken or requested during the effective period of April 1, 2020, through Dec. 31, 2020. Please see Families First Coronavirus Response Act: Questions and Answers for questions specific to the application of the FFCRA mandate. Employers who choose to provide such leave between Jan. 1, 2021, and Sept. 30, 2021, may be eligible for employer tax credits. Information about claiming the tax credits for paid sick leave or paid family leave wages can be found on the IRS website at:

(<https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-paid-leave-provided-by-small-and-midsize-businesses-faqs>).

### Paycheck Protection Program

Eligible employers may have received loans under the Paycheck Protection Program (PPP) added to the Small Business Act as part of the Covid-19 relief legislation. Certain PPP loans may be forgivable when used for qualified costs with a minimum amount of loan proceeds used to fund "payroll costs."

Under section 206(c) of the Taxpayer Certainty and Disaster

declared a disaster by the federal government triggering other existing relief provisions.

<sup>2</sup> At the time of this publication, Congress is considering amendments to the 4<sup>th</sup> quarter application of the ERC.

<sup>1</sup> Many of these provisions were enacted in March 2020 as part of the Families First Coronavirus Response Act (FFCRA) (Pub. L. 116-127) and the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116-136). In addition, on March 13, 2020, the Covid-19 pandemic was

Tax Relief Act of 2020, an employer that is eligible for the employee retention credit (ERC) can claim the ERC even if the employer has received a Small Business Interruption Loan under the PPP. The eligible employer can claim the ERC on any qualified wages that are not counted as payroll costs in obtaining PPP loan forgiveness.

## Section 139 Qualified Disaster Relief Payments

Under I.R.C. Section 139, employers may provide payments or reimbursements to an employee for reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster. These payments may generally be excluded from employee income and remain deductible by the employer, provided they do not represent payment of lost wages and are not otherwise reimbursed by insurance.

Although there are no specific substantiation requirements, it is generally advisable to consider a written plan documenting terms and conditions intended to qualify as Section 139

payments to support that treatment and clarifying that the amounts do not represent wage replacement. During 2022, several federally declared disasters occurred that might qualify for Section 139 Qualified Disaster Relief payments.

## Other Relief

Additional sources of relief affecting benefits provided to employees may be available under recent legislation or as a result of the federally declared disaster, such as:

- Leave donation and leave-sharing programs.
- Student loan repayment assistance.
- Unemployment insurance extensions and benefit increases.

*For more on the reporting process of these new legislative changes and updates to Forms 941 and 941-X, see page 4.*

## Reporting Payroll Tax Deferrals, Credits

The payroll tax deferrals for 2020, which must be repaid, and credits implemented this year give rise to practical and operational questions, such as how to report those items. Form 941, *Employer's Quarterly Federal Tax Return*, was revised multiple times in 2020 and throughout 2022 to provide additional line items to reflect amounts related to these employer deferrals and credits.

How and when to complete these forms and how the various payroll tax deferrals and credits interact with one another can be difficult to navigate. The payroll tax deferrals generally are taken before claiming either of the refundable tax credits. Additionally, rules prevent employers from taking more than one type of tax credit on the same wages.

### Deferral of Employer Portion of Social Security

Per the IRS, repayment of the first 50% was due Jan. 3, 2021. The remaining 50% of the deferral is due Jan. 3, 2023, and can be made as follows:<sup>1</sup>

"An employer may pay the amount it owes electronically using EFTPS, by credit or debit card, or by a check or money order. The preferred method of payment is EFTPS. If an employer is using EFTPS to pay the deferred amount, an employer that files Form 941 should select Form 941, the calendar quarter in 2020 to which its payment relates and payment due on an IRS notice in EFTPS. An employer that files annual returns, like the Form 943, 944, or CT-1, should select the return and 2020 tax year to make a payment. For more information, visit [EFTPS.gov](https://www.irs.gov/eftps), or call 800-555-4477 or 800-733-4829 (TDD).

"For example, if an employer that files Form 941 wants to pay \$300 of its deferred employer's share of Social Security tax, \$100 of which is attributable to the second calendar quarter of 2020, and the other \$200 of which is attributable to the third calendar quarter of 2020, the employer must make two payments through EFTPS. Each payment should be made for the calendar quarter to which the deferral is attributable, and the entry in EFTPS must reflect it as a payment due on an IRS notice. Thus, the employer would pay \$100 for the second calendar quarter of 2020 using EFTPS and select payment due on an IRS notice in EFTPS while doing so and would also separately pay \$200 for the third calendar quarter of 2020 using EFTPS and make the same selection."

### Employee Retention and Paid-Leave Tax Credits

As a high-level summary of the employee retention credit (ERC) and paid-leave tax credits under the FFCRA:

- Employers who are eligible for the ERC and paid-leave tax credits under the FFCRA claim those credits on a quarterly basis by reporting the credits on their Form 941-X, *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund*.
- The claims for refund must be submitted via the Form 941-X to the quarter where the employee performed the services and wages were paid. The credits can be obtained by requesting a refund on the Form 941-X or by submitting a request for the credit carry-forward to apply against any other outstanding liability that may exist.
- If a third-party payroll vendor is used for tax filing purposes, they may dictate whether they will process a credit or claim a refund check based upon the requirements of their software and filing systems.

An employer that claimed the credit for qualified sick and family leave wages for leave taken after March 31, 2020, and before April 1, 2021, and that makes any corrections on Form 941-X to amounts used to figure this credit, will need to refigure the amount of this credit using Worksheet 1. The employer will also use this worksheet to figure this credit if claiming it for the first time on Form 941-X.

An employer that claimed the credit for qualified sick and family leave wages for leave taken after March 31, 2021, and before October 1, 2021, that makes any corrections on Form 941-X to amounts used to figure this credit, will need to refigure the amount of this credit using Worksheet 3. The employer will also use this worksheet to figure this credit if claiming it for the first time on Form 941-X.

An employer that claimed the employee retention credit for wages paid after March 12, 2020, and before July 1, 2021, that makes any corrections on Form 941-X to amounts used to figure this credit, will need to refigure the amount of this credit using Worksheet 2. The employer will also use this worksheet to figure this credit if claiming it for the first time on Form 941-X.

An employer that claimed the employee retention credit for wages paid after June 30, 2021, and before January 1, 2022,

<sup>1</sup> Deferral of Employment Tax Deposits and Payments Through  
Copyright © 2022 Bloomberg Industry Group, Inc.



and makes any corrections on Form 941-X to amounts used to figure this credit, will need to refigure the amount of this credit using Worksheet 4. The employer will also use this worksheet to figure this credit if claiming it for the first time on Form 941-X.

An employer that claimed the COBRA premium assistance credit and makes any corrections on Form 941-X to amounts used to figure this credit, will need to refigure the amount of this credit using Worksheet 5. The employer will also use this worksheet to figure this credit if claiming it for the first time on Form 941-X.



## Work Anywhere: A New Workplace Paradigm

The coronavirus pandemic created a seismic shift in the structure of the workplace. Many workplaces continue to have a hybrid or fully remote workforce in response to state required orders as well as a shift in the workforce requirements and requests. Employers spent the past couple years trying to determine where employees are working in this new remote environment and how to move forward in this new normal. Hybrid and remote work situations have led to a myriad of payroll reporting and taxation issues as well as other tax implications.

An employee may now be subject to state income tax withholding in their new work location, and that worksite may be one where the company previously had no presence. In 2020, some states issued guidance acknowledging the employees that had entered their jurisdictions, stating that income tax withholding is not required while the employee is sheltering temporarily at the location. This guidance expired in 2021, and states are returning to pre-pandemic wage sourcing and withholding tax rules.

The general rule of thumb, established before the pandemic, is that state income tax withholding should be performed based upon the employee's work location. Many states have set thresholds for withholding purposes, dictating that once an employee has passed that threshold, withholding should be performed. For example, New York has a 14-day rule while California expects state withholding on the first day. Some states have also enacted formal telecommuting rules, addressing when you begin state income tax withholding as well as unemployment insurance taxation for the employees that are permanently working from home instead of an employer's physical office location.

An employer should look to the state's rules for state income tax withholding as well as unemployment insurance based upon whether their employee is performing services as a temporary employee in the state, as a traveling employee into the state, as a telecommuter, or as a permanent employee in that jurisdiction.

As employees adjusted to their new remote work locations, they also started incurring expenses for new office setups. They may not have left their original state, but they now were working from home and needed computer monitors, printers, office supplies, internet connections, and other items necessary to function from a remote office. Some employers have offered employees an allowance or reimbursement to cover certain work-from-home expenses or provided additional equipment that can be used at the remote site.

Whether these allowances, reimbursements, or the value of provided equipment should be included in employee income—and in what amount—generally depends on the facts and circumstances. In many situations, these costs may be provided on a tax-free basis as a working condition fringe benefit or as a qualified disaster-relief payment.

Additionally, other expenses that employers and employees often incur while operating in a business-as-usual mode may look different in the new post-pandemic work environment. For employees working from home, there likely are fewer group lunch meetings or recreational team activities. If an employer still would like to cover the cost of some meals for virtual meetings or happy hours, would that still be excludable from income?

Employees who are traveling to the office may have additional expenses if they are relying more heavily on car-ride services or driving personal vehicles and parking to avoid public transportation. If an employer assists with the added expenses, can any portion be provided tax-free?

With the changes to the facts and circumstances around many expenses and benefits, employers have had to reconsider whether and to what extent they may continue to treat them in the same way. Certain expenses that are excludable from income when provided at the office or in a group setting may need to be run through payroll as wages if provided to employees working remotely or in a new environment.

Making matters even more challenging for payroll departments is that more employees are working from home and are now considering themselves either full time remote or hybrid workers, working from one location several days during the week and then from the office for the remaining days of the week.

## Multistate Reporting

Handling the wage and tax allocation/reporting at year-end for the cross-border business traveler may be onerous and technically challenging. Employers of multistate workers and their third-party providers need to effectively manage the overall compliance issues associated with state-to-state, short-term travel, and work.

When working through the complexities of multistate withholding, compounded by the Covid-19 pandemic, also consider the different tax treatment of various types of income, such as base compensation, bonus payments, and equity compensation. Employers need to apply, by state, any de minimis treatment, reciprocity, telecommuting regulations, and specific compensation reporting methodologies.

Employers need to capture all the employee-level data detailing how many days each employee performed services in the states where work was performed. If the travel data was tracked throughout the year and the employee's pay allocated accordingly, time in December may be used to make adjustments.

December also is a good time to communicate the issue of nonresident taxation to the affected employees.

Specific attention should be paid to local jurisdiction taxation. Localities have also faced changes with remote workforces, and some have instituted new guidelines on how they expect their tax to be implemented.

**Reminder:** Form W-2 has space to include wage and tax amounts for up to two states. If three or more states are involved, multiple Forms W-2 would be necessary. See the IRS Form W-2/W-3 instructions for details.

Amounts in Box 16, State Wages, should take into account unusual reporting requirements. For example, New York requires the amount in Box 16 to be the same as the wages in Box 1. When reporting two states including New York, the total of both Box 16s will not match Box 1. This may confuse employees, and so employers should consider providing an explanation to employees when delivering Forms W-2.

The explanation also could be used to alert the employee that they may want to seek help from a tax adviser because they may need to file more than one state individual income tax return.

15 State	Employer's state ID number	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name
NY	XXXXXXXX	87000.00	9000.00			
ME	XXXXXXXX	12000.00	1000.00			

Form **W-2** Wage and Tax Statement **2022**  
 Copy A—For Social Security Administration. Send this entire page with Form W-3 to the Social Security Administration; photocopies are **not** acceptable.

Department of the Treasury—Internal Revenue Service  
 For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.  
 Cat. No. 10134D

## Items of Note

**Section 125 crossing years:** Sometimes, after employees' returns from leaves of absence, money is owed to the employer for pre-tax medical benefits. If the deduction continues into 2023 for amounts owed on insurance coverage from 2022, it must be a post-tax deduction. The employee cannot pay for benefits on a pre-tax basis in a different year than the coverage.

**State and local requirements:** The focus at year-end for payroll involves the true-up not only for federal tax requirements but also applicable state taxes. While most states that have income taxes generally conform to federal definitions, there are some significant differences. California and New Jersey, for example, do not follow the federal exclusion for contributions to health savings accounts.

Several states continue to exclude from income some employer-paid moving expenses. These differences, if identified early enough, can translate to a smoother state year-end process and mitigate post-close issue identification and filings of Form W-2c, Corrected Wage and Tax Statement.

States continue to react to changes in the federal tax requirements that affect payroll. Oklahoma, for example, no longer accepts the federal Form W-4, Employee's Withholding Certificate, for state purposes. New York instituted an elective pass-through entity tax – a volunteer corporate payroll tax – in reaction to the new federally imposed \$10,000 state tax deduction limit for individuals.

Some states have started to enact legislation requiring that certain payments by third parties, such as pharmaceutical companies, be counted toward cost-sharing requirements under applicable health plans, including annual deductible requirements. Employers should consider whether these rules apply and the potential effect on the employer's ability to offer a high-deductible health plan for federal tax purposes and, therefore, insureds' eligibility to participate in a tax-favored health savings account.

### Keep in Mind

**Moving expenses** are still 100% taxable through 2025, except for active military members. However, state regulations on the taxability of these expenses may differ, so the relevant state income tax rules should be monitored and reviewed. Several states do not follow federal treatment on such expenses and may exclude taxes on the benefit.

**Qualified transportation fringe benefits** may still be provided tax-free to employees, except for bicycle commuting, up to stated monthly limits. Employers, however, may only take a deduction for most expenses related to providing this type of benefit in limited circumstances. As a result, some employers are amending their transportation benefits programs and policies, which may affect their taxability to employees.

**Family- and medical-leave credits** may still be available for some employers, based on wages paid to qualifying employees while on leave that is not Covid-19 related. Specific conditions and requirements must be met. **The credit has been extended through Dec. 31, 2025.**

For other taxes related to payroll, several jurisdictions are using withholding on employee wages to fund paid-leave programs or, in the case of Oregon, a new payroll tax to fund the state's transportation infrastructure program.

Also, at year-end, payroll professionals must monitor and properly account for such items as minimum wage, paid-leave requirements, unemployment insurance, temporary disability, and workers' compensation, all of which are administered on a state and local basis.

The CARES Act permitted employers to defer paying their share of Social Security taxes in 2020. Half of the deferred amount was to be repaid in 2021, and the remainder is due by Dec. 31, 2022. However, Dec. 31 is a nonbusiness day, so payments received by Jan. 3, 2023, will be considered timely. Failure to repay the remaining portion of the deferral in a timely manner will likely result in penalties and interest on the unpaid balance.

## Form W-2 Year-End Basics

The timely processing of accurate Forms W-2 is a key function of any payroll department. However, there are several potential pitfalls that can easily derail this most basic of requirements.

**Form W-2 formatting:** A common mistake is filing Forms W-2 labeled with the incorrect year. A 2022 form must be used and filed by Jan. 31, 2023. Entries for approved print copies are to be in 12-point Courier font and black ink. Dollar amounts are to have a decimal point and two decimal places. Do not use a dollar sign or commas. Test the form to ensure that no negative dollar amounts are reported. The IRS cautions not to use a copy of Form W-2 downloaded from the IRS website, because it is not a scannable form.

**Social Security numbers:** Ensure that Social Security numbers have nine digits. For tax year 2022, the IRS allows employers the option of truncating the Social Security numbers on employee copies (i.e., copies B, C, and 2). SSNs may not be truncated on Copy A, which is filed with the Social Security Administration. State rules vary on whether the SSN may be truncated on Copy 1, which is filed with the state, city, or local tax department.

Truncated SSNs may be displayed in either of two formats, which must display the last four digits. The truncated digits are to be filled either with asterisks or the capital letter X (e.g., XXX-XX-1234 or \*\*\*-\*\*-1234).

Employer Identification Numbers are not to be truncated on any copy of the Form W-2.

**Employee name:** The Social Security Administration will not process Forms W-2 with misspelled names, incorrect formatting, and Social Security numbers that do not match those in the Social Security Administration (SSA) system. Consider using the SSA's Social Security Number Verification Service, which is fast, easy, and accurate.

**Balance checks:** Dollar limits exist for some boxes. Examples for 2022 include:

- Box 3, Social Security wages, should not exceed \$147,000.
- Box 4, Social Security tax withheld, should not exceed \$9,114.
- Box 12, Codes D and E should not exceed \$20,500 for employees younger than 50 and \$27,000 for employees 50 and older.

**Codes:** Codes for Box 12 may be a challenge. Report as Code DD the combined cost of the employer-provided health coverage, which is the employee and employer portions. Similarly, Code W is to include all employer contributions, including an employee's contributions through a cafeteria plan, to a health savings account. Ensure that earnings and deductions requiring Box 12 reporting include the correct code, especially after a system upgrade.

22222		VOID <input type="checkbox"/>	a Employee's social security number XXX-XX-0000		For Official Use Only ▶ OMB No. 1545-0008	
b Employer identification number (EIN)			1 Wages, tips, other compensation 160000.00		2 Federal income tax withheld 22000.00	
c Employer's name, address, and ZIP code  NON-ENTRY ANYWHERE, USA			3 Social security wages 147000.00		4 Social security tax withheld 9114.00	
			5 Medicare wages and tips		6 Medicare tax withheld	
d Control number			7 Social security tips		8 Allocated tips	
			9		10 Dependent care benefits	
e Employee's first name and initial		Last name	Suff.	11 Nonqualified plans		12a See instructions for box 12 7500.00
f Employee's address and ZIP code			13 Statutory employee <input type="checkbox"/> Retirement plan <input checked="" type="checkbox"/> Third-party sick pay <input type="checkbox"/>		12b 8300.00	
			14 Other		12c	
15 State Employer's state ID number XX XXXXXXXX			16 State wages, tips, etc. 160000.00		17 State income tax 2900.00	
			18 Local wages, tips, etc.		19 Local income tax	
					20 Locality name	

Form **W-2 Wage and Tax Statement** 2022  
 Copy A—For Social Security Administration. Send this entire page with Form W-3 to the Social Security Administration; photocopies are not acceptable.

Department of the Treasury—Internal Revenue Service  
 For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.  
 Cat. No. 10134D

# 2022 Payroll Year-End

Bloomberg  
Tax



**State and local reporting:** Include state account numbers in Box 15 and follow special state reporting rules.

**AccuWage Online:** SSA can check Form W-2 files before submission for common problems and provide a report on issues that may prevent the submission from being accepted.

## Awards, Prizes, Gifts

The general nature of the federal tax code is to include the value of all items provided to employees as taxable compensation reported on Forms W-2, unless the items may be excluded by law, regulation, or agency position. Many employers get this wrong, especially at year-end.

Below is a synopsis of some of the items that may be excluded from taxable compensation and reporting.

### Length-of-Service, Safety Awards, Gifts

The value of tangible employee achievement awards, such as length-of-service awards and safety awards, may be excluded from wages and reporting, provided requirements are satisfied and subject to limitations.<sup>1</sup> For example, the award must be presented in a meaningful ceremony and the circumstances must not indicate a likelihood that the award is disguised pay.

Awards are made under a qualified plan or nonqualified plan, which have different requirements and carry different limitations. Awards to a single employee in a year are limited to \$400 if not made under a qualified plan; the cumulative amount of awards given to an employee under a qualified plan are limited to \$1,600 in one year, with the average cost of all awards made by the employer not exceeding \$400.

The Tax Reform and Jobs Act clarifies that cash and cash equivalents; gift cards, coupons, and certificates; vacations; meals; lodging; tickets to sporting events; stocks, bonds, and securities; or similar items are not excluded tangible property and their value must be included as income.<sup>2</sup>

A **length-of-service award** must be in recognition of at least five years of service, provided the employee did not receive an award in the previous four years. Length-of-service awards given to retiring employees may be excluded from income if they meet the rules and limitations discussed above.

For **safety awards** to be considered tax-free to employees, no more than 10% of employees may qualify for the award. Awards to professional, administrative, and clerical employees are not eligible for tax-free treatment.

**Awards for employee suggestions** generally are taxable and subject to withholding and employment taxes.

**Gifts** to employees are included in income and reporting is required, with limited exceptions as described by the Internal Revenue Code, IRS, and Treasury Department regulations. Gift cards or gift coupons that may be redeemed for cash amounts are considered taxable compensation by the IRS.<sup>3</sup>

Exceptions lie in terms familiar to payroll professionals – *de minimis* benefits or working-condition fringe benefits. Many tangible items provided by employers to employees may be excluded from taxability to the employee under these criteria:

- The item is of low value (IRS does not define the term).
- The benefit is occasional and not consistently awarded, and the item's value is difficult to determine or administratively impracticable to track and apply.

Many other items might remain *de minimis* despite not meeting all the criteria above, including traditional birthday or holiday gifts of property, excluding cash, with a low fair-market value. Additionally, flowers, fruit, books, or similar property may be provided to employees under special circumstances (e.g., illness, outstanding performance, or family crisis), according to Treasury regulations.<sup>4</sup>

### Gift Coupons

Employers must pay attention to gift-coupon arrangements. The IRS concluded that an employer-provided gift coupon with a defined face value of \$35 could not be excluded from income as a *de minimis* fringe benefit.<sup>5</sup>

<sup>1</sup> I.R.C. Section 274(j).

<sup>2</sup> I.R.C. Section 274(i)(3)(A)(ii).

<sup>3</sup> IRS Publication 15-B, *Employer's Tax Guide to Fringe Benefits*.

<sup>4</sup> Treasury Regulation Section 1.132-6(e)(1); IRS Publication 15-B, *Employer's Tax Guide to Fringe Benefits*.

<sup>5</sup> Technical Advice Memorandum 200437030.



As detailed by the IRS, an employer that previously provided employees with tax-free hams, turkeys, or gift baskets as annual holiday gifts instead distributed \$35 gift coupons redeemable for grocery products at select nearby stores.

The IRS ruled that the gift coupons were to be included as compensation and reported on Forms W-2 because such cash-equivalent fringe benefits have a readily determined value, regardless of whether they may be converted to cash. In short, it was not administratively impracticable to account for the coupons; they had a face value of \$35.<sup>6</sup>

---

<sup>6</sup> *Id.*

## Qualified Plans

Qualified deferred compensation plans generally refer traditional retirement plans, such as 401(k) and pension plans.

The Internal Revenue Code details the limits of a defined contribution plan, including 401(k) plans, for all annual plan additions, such as employer contributions, employee contributions other than rollovers, and allocation of forfeitures. This limit is the lesser of \$66,000 in 2023 (\$61,000 in 2022) and 100% of the participant's compensation.<sup>1</sup>

The participant's compensation must be determined under the Internal Revenue Code even if a different definition is used for the plan, such as when calculating the rate of employer contributions. Catch-up contributions for participants who have reached age 50 during the year are not included in the limit.

**Note:** The limitation year under the plan might not be the calendar year.

The elective deferral limit is \$22,500 in 2023 (\$20,500 in 2022).<sup>2</sup> Corrections are needed when there are excess deferrals, such as when an individual defers compensation exceeding the limit that may be applied as a catch-up contribution. Corrections generally take the form of distribution of the excess as well as any allocable earnings. Participants who are 50 and older at the end of the year can make an additional "catch-up" contribution up to \$7,500 in 2023 (\$6,500 in 2022). If excess deferrals are not corrected in a timely manner, the participant may have additional

taxable income and the plan's tax qualification status may be at risk.

Under the I.R.C., there is another limit for defined benefit plans which, when expressed as an annual benefit, is the lesser of \$265,000 in 2023 (\$245,000 in 2022), and 100% of the participant's average compensation for three consecutive highest-paid years.<sup>3</sup> A defined benefit plan's formula to determine annual benefits typically does not allow for a situation when the compensation limit would be exceeded, though the plan actuary still would likely monitor benefit payments for compliance.

For Form W-2 reporting, employers are to exclude from Box 1 wages, tips, other compensation, and the amounts deferred from pay by employees pre-tax into a qualified plan during the year, up to the annual limit. These amounts are not excluded for reporting wages in Box 3, Social Security wages, up to the wage base limit of \$160,200 in 2023 (\$147,000 in 2022), and must be included in Box 5, Medicare wages and tips. There is no wage base for Medicare contributions.

Box 12 includes codes to identify payments and deferrals. In Box 13, "Retirement plan" should be checked if the employee is an active participant in a qualified retirement plan for any part of the year. In other words, this box should be checked if the employee is covered for the tax year by a defined benefit plan, eligible to participate or covered by a defined contribution plan, and employer or employee contributions are added to the employee's account.

e Employee's first name and initial		Last name		Suff.	11 Nonqualified plans		12a See instructions for box 12 D 7000.00	
NON-PERSON ANYWHERE, USA				13 Statutory employee <input type="checkbox"/> Retirement plan <input checked="" type="checkbox"/> Third-party sick pay <input type="checkbox"/>		12b		
f Employee's address and ZIP code				14 Other		12c		
						12d		
15 State	Employer's state ID number	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name		

Form **W-2** Wage and Tax Statement **2022**  
 Copy A – For Social Security Administration. Send this entire page with Form W-3 to the Social Security Administration; photocopies are not acceptable.

Department of the Treasury—Internal Revenue Service  
 For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.  
 Cat. No. 10134D

<sup>1</sup> I.R.C. Section 415(c).

<sup>2</sup> I.R.C. Section 402(g).

<sup>3</sup> I.R.C. Section 415(b).



## Nonqualified Plans

Nonqualified deferred-compensation plans may require administering income tax and Federal Insurance Contributions Act taxes in different years.<sup>1</sup> This may apply to arrangements that provide a right to payment in a future year, such as excess benefit plans, supplemental executive retirement plans, salary and bonus deferral arrangements, restricted stock units, or phantom equity awards.

Nonqualified deferred compensation amounts generally are subject to FICA taxes in the year they become vested under the special-timing rule, but federal income taxation is generally delayed until amounts are paid or distributed.

Separate tracking may be needed for plans that provide for accelerated vesting upon a certain event, such as retirement, because participants may become vested and subject to FICA prior to the plan's general vesting schedule. As a result, FICA may be due before federal income tax.

Vesting provisions may require that deferrals become vested over a period of years. Such deferrals may be subject to FICA over multiple years, even if amounts under the plan are later paid out as a lump sum. Employers should consider whether plan amounts may vest and be paid in different years, and whether any amounts became vested but were not paid out in 2021.

For plan amounts that vested earlier this year and are to be paid or distributed in future years, it may not be too late to take action for 2021. Under the special timing rule, employers may choose to take a deferred amount into account for FICA tax purposes on any date later than, but within the same year

as, the date the amount was subject to FICA taxes. Once an amount is taken into account under the rule, later payments and earnings generally are not subject to FICA tax. In certain cases, the amount taken into account for FICA may be estimated within three months if interest is included. Box 11 of Form W-2 is used to explain discrepancies between Box 1 and Boxes 3 and 5 by reporting one of the following:

- The amount of a distribution that is included in Box 1 but was taken into account for FICA purposes in a prior year.
- The amount included in Boxes 3 and 5, although not yet subject to income tax.

Do not report amounts in Box 11 if there is a deferral and a distribution in the same year.

If nonqualified compensation amounts were vested in a prior year and not previously taken into account for FICA taxes, the approach for when and how to handle this may depend on when the amount became vested.

Additionally, employers may report current-year deferrals and earnings under nonqualified deferred-compensation plans subject to I.R.C. Section 409A in Box 12 using Code Y. However, Code Y reporting remains optional for 2021. If any amount of nonqualified deferred compensation must be included in income because of a Section 409A failure, it should be reported in Box 12 using Code Z, in addition to Box 1.

e Employee's first name and initial		Last name		Suff.	11 Nonqualified plans 11000.00	12a See instructions for box 12	
NON-PERSON ANYWHERE, USA				13 Statutory employee <input type="checkbox"/>	Retirement plan <input checked="" type="checkbox"/>	Third-party sick pay <input type="checkbox"/>	12b
				14 Other		12c	
						12d	
f Employee's address and ZIP code							
15 State	Employer's state ID number	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name	

Form **W-2** Wage and Tax Statement **2022** Department of the Treasury—Internal Revenue Service  
 Copy A—For Social Security Administration. Send this entire page with Form W-3 to the Social Security Administration; photocopies are **not** acceptable. For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions. Cat. No. 10134D

<sup>1</sup> I.R.C. Section 3121(v).

## Supplemental Wages

Payroll professionals often handle special bonuses or other supplemental pay at year-end or early in the following year. Here are tips on how to be ready when the word comes down that bonuses are to be paid out.

For total supplemental pay up to \$1 million in a year for any employee, employers must determine use of either the aggregate method of withholding or the optional flat rate withholding method. Employers should consistently apply that methodology for each individual. There is no penalty for changing methods but allowing employees to decide can be administratively impracticable.

The aggregate method combines supplemental wages with regular pay and tax is withheld using the applicable withholding tables for the payroll period in which the aggregated wages are paid. Such additions to pay may mean the total amount is taxed at a higher-than-normal rate for that pay cycle.

Those applying the optional flat rate withholding method are to use a 22% withholding rate. To use the flat-rate method, income tax must have been withheld from the employee's regular wages during the calendar year the supplemental pay

was paid or in the preceding year. The supplemental wage payment must either not be paid concurrently with regular wages or separately stated on payroll records.

For accumulated supplemental wages exceeding \$1 million, the employer is mandated to withhold at 37%. Employers have no option to use the aggregate method for amounts exceeding \$1 million. If the employees' accumulated supplemental amounts were less than \$1 million before a supplemental payment, and this payment would cause them to exceed the \$1 million threshold, the employer has two choices:

- a) Tax the amount that is less than \$1 million at 22% and the amount that exceeds \$1 million at 37%.
- b) Tax entire amount at 37%.

The flat-tax rates were reduced starting in 2018 by the tax code overhaul. Employers should ensure their systems have been correctly applying the 22% and 37% rates.

Many states also allow flat rate withholding for supplemental pay. For state income taxation, see the state supplemental wage chart.

### States With Flat Supplemental Wage Rates (2022)

State	Withholding Rate
Alabama	5%
Arkansas	4.9%
California	6.6 or 10.23%
Colorado	4.55%
Georgia	2 - 5.75%*
Idaho	6%
Illinois	4.95%
Indiana	3.23%
Iowa	6%
Kansas	5%
Kentucky	5%
Maine	5%
Maryland	3.2 - 8.95%*
Michigan	4.25%
Minnesota	6.25%
Missouri	5.3%

State	Withholding Rate
Montana	6%
Nebraska	5%
New Mexico	5.9%
New York	11.7%
North Carolina	5.09%
North Dakota	1.84%
Ohio	3.5%
Oklahoma	4.75%
Oregon	8%
Pennsylvania	3.07%
Rhode Island	5.99%
South Carolina	7%
Vermont	6.6 - 11.1%*
Virginia	5.75%
West Virginia	3.0 - 6.5%*
Wisconsin	3.54 - 7.65%*

2022 Rates Listed are Subject to Change

\* Rates Vary by Amount or Type of Payment

## Wage & Hour: Joint Employer Rule

### Joint-Employer Rule

On Sept. 7, 2022, the National Labor Relations Board issued a proposed rule that would reestablish the board's long-held standard for establishing joint employment, which has been supplanted by a 2020 rule that has been in effect since April 27, 2020.<sup>1</sup>

The National Labor Relations Act does not define joint employment, but joint employment is said to exist when two or more employers codetermine the terms and conditions of employment for employees under their shared control. Some examples of terms and conditions of employment include establishing wage rates, approving overtime, and setting work hours and schedules.

The specific factors and methods for determining joint employment have been established through common law over many decades. Historically, the board has taken an inclusive approach when defining the essential terms and conditions of employment by considering multiple ways that an employer could directly or indirectly control someone's employment. Even if an employer did not control someone's employment, joint employment may have existed if that employer had the right and ability to control the employment, regardless of whether that power was exercised.

The current rule in effect determines joint employment if the employer possesses and exercises direct and immediate control over essential terms and conditions of employment.<sup>2</sup> Indirect and reserved control may be a factor, but only to the extent that such control supplements and reinforces evidence that the employer directly and immediately controlled the terms and conditions of employment.

The current rule also provides definitions for key terms and phrases relating to joint employment, such as "substantial

direct and immediate control" and "indirect control." To better understand what constitutes "essential terms and conditions of employment," the rule provide an exhaustive list that includes wages, benefits, hours of work, hiring, discharge, discipline, supervision, and direction."

If finalized, the proposed rule would rescind the current one, which the board believes places restrictions that unnecessarily narrow the common law precedent for determining joint employment. This would restore the previous methodology the board historically has used for determining joint employment status.

The proposed rule would also require the board to focus on forms of reserved and indirect control only relating to essential terms and conditions of employment. This clarification is in response to a 2018 decision from the US Court of Appeals for the District of Columbia Circuit that distinguished between control over the essential terms and conditions of employment and the routine components of a company-to-company contract.<sup>3</sup> The court determined that a joint employer's control must bear on the former and not on the latter.

The board's joint employment standard has changed several times in the past few years due to the 2018 decision and the 2020 final rule. The proposed rule would establish a joint employment standard based on common law precedent that codifies what the board believes to be the essential elements of a joint employment relationship. The intention is to reduce uncertainty for employers as they determine whether they are joint employers.

The deadline to submit comments on the proposed rule was originally Nov. 7, 2022, but the board extended the deadline to Dec. 7, 2022, to provide more time for interested parties to file their initial comments.<sup>4</sup>

<sup>1</sup> 87 Fed. Reg. 54641 (Sept. 7, 2022).

<sup>2</sup> 85 Fed. Reg. 11184 (Feb. 26, 2020).

<sup>3</sup> *Browning-Ferris Industries of California v. NLRB (BFI)*, DC Cir., No. 16-

1028, Dec. 28, 2018.

<sup>4</sup> 87 Fed. Reg. 63465 (Oct. 19, 2022).

## Wage and Hour: Worker Classification Rulemaking

On Oct. 13, 2022, the US Department of Labor's Wage and Hour Division issued a proposed rule that would rescind the current rule used for determining whether workers should be classified as employees or independent contractors for minimum wage and overtime-pay purposes.<sup>1</sup>

The Fair Labor Standards Act defines the terms employer, employee, and employ, but does not have a definition for independent contractors. However, the term independent contractor is said to refer to workers who are not economically dependent on an employer for work and who are in business for themselves.

The department has historically relied on an economic reality test for determining whether a worker is an employee or independent contractor. The test is based on a totality-of-the-circumstances analysis that considers numerous factors to determine the worker classification status of individuals. Common factors considered include the opportunity for profit or loss, the degree of control an employer has over a worker, whether the work is an integral part of an employer's business, and a worker's skill and initiative. Most courts have been uniform in their application of the economic reality test, although the number of factors considered may vary.

The current rule continues the use of the economic reality test but identifies five factors for determining whether a worker is an employee or independent contractor.<sup>2</sup> Two factors, the nature and degree of a worker's control over their work and a worker's opportunity for profit or loss, are "core factors" that are most likely to determine whether workers are economically dependent on someone else's business or whether workers are in business for themselves. A worker's initiative and investment are considered only to the extent that they affect the worker's opportunity for profit or loss.

The three other factors are:

- The skill required for the work.
- The degree of permanence of the working relationship between a worker and the potential employer.

- Whether the work is part of an integrated unit of production.

These three factors may be considered but are not as important as the core factors in determining someone's worker classification status. If the two core factors indicate a certain worker classification for an individual, it is highly unlikely that the other three factors can outweigh that determination.

The current rule also focuses on the actual practice of the parties involved instead of any contractual or theoretical possibility for determining someone's worker classification status.

The current rule went into effect on March 8, 2021, but the department attempted to delay<sup>3</sup> and withdraw<sup>4</sup> the rule before it could go into effect. A lawsuit arose to challenge the delay and withdrawal, and the US District Court for the Eastern District of Texas decided on March 14, 2022, to vacate the delay and withdrawal, concluding that the current rule became effective on its original effective date of March 8, 2021.<sup>5</sup>

If finalized, the proposed rule would reinstate the use of the totality-of-the-circumstances analysis used to determine an individual's worker classification status. A worker's investment would become a standalone factor, and additional analysis would be used for the control factor. All factors would be given full consideration in the economic realities test and would not have a predetermined level of importance.

The deadline to submit comments on the proposed rule is Dec. 13, 2022

<sup>1</sup> 87 Fed. Reg. 62218 (Oct. 13, 2022).

<sup>2</sup> 86 Fed. Reg. 1168 (Jan. 7, 2021).

<sup>3</sup> 86 Fed. Reg. 8326 (Feb. 5, 2021).

<sup>4</sup> 86 Fed. Reg. 14027 (March 12, 2021).

<sup>5</sup> Coalition for Workforce Innovation v. Walsh, E.D. Tex., No. 1:21-cv-00130, March 14, 2022.

## EEO-1 Reporting

The EEO-1 Report is an annual compliance survey about workforce demographics that must be completed by employers with a threshold number of employees. Data reported includes sex, race, ethnicity, and job categories. Payroll data about employee wages and hours worked is not currently included in the report.

### Component 2 Reporting - hours worked and pay data

Form EEO-1 Component 2 data collection, which addresses hours worked and pay data, has been reinstated for 2022 and is reportable in 2023. The Equal Employment Opportunity Commission wants to collect this information to analyze and address issues of racial justice and systemic discrimination, pay equity, and the civil rights impact of the Covid-19 pandemic.<sup>1</sup>

In 2016, EEO-1 Component 2 data reporting was added and was in effect for the 2017 and 2018 years. Due to a pause by previous administration, no data was collected for 2020 or 2021.

### Component 1 Reporting - ethnicity, race, gender

The mandatory EEO-1 Component 1 Report addresses employee job categories, ethnicity, race, and gender. The EEOC uses the data for enforcement and research, and employers may use the data for self-assessment.

The 2021 EEO-1 Component data collection is closed, and no additional reports will be accepted. Data collection for the 2022 EEO-1 Component 1 is scheduled to open in April 2023.

Filers can enter information into the EEO-1 Component 1 online filing system either directly through a secure web portal or through a data file upload.

The online filing system allows companies to directly report acquisitions, spinoffs, or mergers in the online filing system, rather than having to go through the filer support team help desk.

The EEO-1 Component 1 Report must be annually electronically filed by private employers with at least 100 employees; private employers with fewer than 100 employees but legally part of a larger group that constitutes a single enterprise having at least 100 employees; federal contractors with at least 50 employees and that are prime or first-tier subcontractors with a contract, subcontract, or purchase order of at least \$50,000; or federal contractors that are depositories of government funds or financial institutions using and paying for U.S. savings bonds and savings notes.

Separately, California private employers that have at least 100 employees and that must file annual EEO-1 Reports must annually submit annual pay data to the California Department of Fair Employment and Housing by March 10.<sup>2</sup> Several other states (e.g., Illinois, New York, and Washington) currently require pay data reporting. Along with federal EEO-1 requirements, employers should closely note state and local reporting requirements.

---

<sup>1</sup> EEOC Fiscal Year 2023 Congressional Budget Justification.

<sup>2</sup> Cal. Gov't Code § 12999.

## Health Savings Accounts

Health savings accounts, available only when qualified high-deductible health insurance plans are offered, provide a tax-favored savings mechanism to offset the costs of health care.<sup>1</sup> Although the basic rules on HSA contributions and reporting are fairly straightforward, these rules may create some confusion at year-end in a few areas:

### Form W-2 Reporting

Employers generally are required to report HSA contributions made in the year on the employee's Form W-2, in Box 12 with Code W.

Box 12 should report all employer contributions to the HSA in the applicable year, including employee contributions through an I.R.C. Section 125 cafeteria plan and those designated as made for the prior year. Employee contributions made to an HSA outside of a Section 125 cafeteria plan are generally included in gross income and should be reported as wages on Form W-2 in Box 1. If the wrong amount is reported in Box 12, such as not counting employee contributions made through a cafeteria plan, the Form W-2 should generally be amended to provide the correct amount.

Note that some states, including California and New Jersey, do not exempt contributions to HSAs from state income tax.

### Maximum Annual Contribution

The tax-free limits on combined employer and employee HSA contributions are indexed for inflation.

The annual inflation-adjusted limit on HSA contributions for self-only coverage will be \$3,850 in 2023, up from \$3,650 in 2022. The HSA contribution limit for family coverage will be \$7,750, up from \$7,300. The adjustments represent approximately a 5.5% increase over 2022 contribution limits, whereas these limits rose by about 1.4% between 2021 and 2022.

### Recovering HSA Contributions Made in Error

In general, employers may not recoup funds deposited into an employee's HSA. In some cases, employers may recover contributions made in error, but action generally must be taken before the end of the year.

Employer contributions inadvertently made to employees who were never considered eligible may be recovered through a request made to a financial institution.

Employer contributions exceeding the maximum annual contributions allowed because of errors, including administrative mistakes and employee elections not processed on time, may be corrected by requesting that the funds be returned. To the extent not recovered by the end of the tax year, excess employer contributions must generally be reported as wages on the employee's Form W-2.

e Employee's first name and initial		Last name		Suff.	11 Nonqualified plans		12a See instructions for box 12 W 6900.00			
NON-PERSON ANYWHERE, USA					13 Statutory employee <input type="checkbox"/> Retirement plan <input checked="" type="checkbox"/> Third-party sick pay <input type="checkbox"/>		12b			
					14 Other		12c			
							12d			
f Employee's address and ZIP code					15 State	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name

Form **W-2** Wage and Tax Statement **2022**  
 Copy A—For Social Security Administration. Send this entire page with Form W-3 to the Social Security Administration; photocopies are not acceptable.

Department of the Treasury—Internal Revenue Service  
 For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.  
 Cat. No. 10134D

<sup>1</sup> I.R.C. Sections 106(d), 223.

## Group-Term Life Insurance

Employers generally are required to impute amounts as taxable income for employer-provided group-term life (GTL) plans that exceed \$50,000 in benefit value.<sup>1</sup> Although federal income taxes need not be withheld for this income, FICA taxes generally must be withheld when the income is assigned, and these amounts are reportable on Form W-2. The cost of the additional benefit value, in addition to being added to taxable compensation on Form W-2 in Boxes 1, 3, and 5, must be reported in Box 12, using Code C. The amount included as wages is reduced by any amount paid by the employee with after-tax dollars for the insurance. These rules may be different for key employees if they are favored under the GTL plan.

While the basic calculation for employers providing GTL is not difficult, one area that often is forgotten is when employers offer employees the ability to purchase additional GTL coverage, often referred to as “optional life” or “supplemental life.” When employees pay for the entire additional coverage, sometimes the employee purchased coverage amount should be added to the calculation for the overall valuation of GTL.

Under the I.R.C., amounts carried directly or indirectly by the employer through arranged payments, negotiated rates, and other arrangements for the coverage to be available should be included when calculating the attributed income. These amounts may be figured using IRS Uniform Table I, which is included in Publication 15-B, *Employer’s Tax Guide to Fringe Benefits*.

More complexity occurs when supplemental term life insurance rates qualify under the “straddle test,” in which case that coverage should be included in the overall GTL calculation. The definition of the straddle test is when at least one employee is charged a rate lower than the IRS Uniform Table I rates and at least one employee is charged a rate higher than those in the IRS Uniform Table I.

If all age bracket rates charged to the employees are higher or are all lower than the IRS Uniform Table I rates, the amounts generally are not considered carried by the employer. Thus, the coverage should not be included in the overall group-term life calculation.

e Employee's first name and initial		Last name		Suff.	11 Nonqualified plans		12a See instructions for box 12 <b>C</b> 1020.00			
NON-PERSON ANYWHERE, USA					13 Statutory employee <input type="checkbox"/> Retirement plan <input type="checkbox"/> Third-party sick pay <input type="checkbox"/>		12b			
					14 Other		12c			
							12d			
f Employee's address and ZIP code										
15 State Employer's state ID number		16 State wages, tips, etc.		17 State income tax		18 Local wages, tips, etc.		19 Local income tax		20 Locality name

Form **W-2** Wage and Tax Statement **2022** Department of the Treasury—Internal Revenue Service  
 Copy A—For Social Security Administration. Send this entire page with Form W-3 to the Social Security Administration; photocopies are **not** acceptable. For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions. Cat. No. 10134D

<sup>1</sup> I.R.C. Section 79(a).

## State, Local Paid Leave

In 2021, employers experienced changes to existing family-leave insurance programs in some states. **California, Connecticut, Massachusetts, New Jersey, New York, Rhode Island, Washington**, and the **District of Columbia** all have active family-leave insurance programs.

**New York** is expanding its paid family leave to include sibling care effective Jan. 1, 2023, under a bill (S.B. 2928A) Gov. Kathy Hochul (D) signed Nov. 1, 2021. The term family member is expanded to include biological siblings, adopted siblings, step-siblings, and half siblings.

**Washington's** long-term services and support program, which is administered in conjunction with the state family-leave insurance program, was supposed to begin collecting contributions on Jan. 1, 2022. However, a measure (H.B. 1732) signed Jan. 27, 2022, delayed the effective date of contribution collection to July 1, 2023. Employers that withheld long-term care tax from employees before the program was delayed had to reimburse employees within 120 days of withholding. The state refunded employers that remitted long-term care tax with family-leave insurance contributions if no balance was due for the family-leave insurance program. If a balance was due, the department applied the long-term care tax to the balance.

Employers also may look forward to new family-leave insurance programs, which steadily are releasing guidance to help employers prepare to comply with program requirements.

**Colorado's** family-leave insurance program, which was established by ballot measure in November 2020, will start in Jan. 1, 2023. The program will be funded by a contribution split between employers and employees and is set to provide 12 weeks (up to 16 weeks in certain cases) of paid leave (with a maximum benefit of \$1,100 per week). Employees may start receiving benefits starting Jan. 1, 2024.

**Delaware** created its family-leave insurance program under a measure (Senate Substitute No. 2 for S.B. 1) Gov. John Carney (D) signed into law May 10, 2022. Employers and employees will be required to contribute to the family-leave insurance fund beginning Jan. 1, 2025. For 2025 and 2026, the contributions will be 0.32% of wages for parental leave, 0.4% of wages for medical leave, and 0.08% of wages for family caregiver leave. Employers may deduct up to half of the contribution from

employees' wages or elect to pay all or a portion of the employee's share of the contribution. The law applies to employers with at least 10 employees; employers with 10 to 24 employees are only subject to the parental leave requirements.

**Maryland** created its family-leave insurance program under a measure (S.B. 275) that was enacted by the legislature on April 9, 2022, after overriding Gov. Larry Hogan's (R) veto. Employers and employees will be required to contribute to the family-leave insurance fund starting Oct. 1, 2023. The contribution rate in effect from Oct. 1, 2023, to Dec. 31, 2025, will be determined by June 2023, and the tax will be assessed on wages up to the Social Security taxable wage base, which will be \$160,200 in 2023. Employers with fewer than 15 employees are not required to contribute but still must withhold and remit the employee portion of the contribution. Employers with private family-leave insurance policies may apply for exemption.

**New Hampshire** will launch a voluntary family-leave insurance program in 2023, under a measure (H.B. 2) signed June 25, 2021. Participating employers will be able to receive a tax credit equal to 50% of the insurance premium paid. Employers with more than 50 employees will be able to purchase coverage by contracting directly with Metropolitan Life, the insurance provider selected by the state in 2022; employers with fewer than 50 employees may purchase coverage by remitting premiums into a family-leave insurance premium fund.

**Oregon's** family-leave insurance program initially was scheduled to start Jan. 1, 2022, with benefits available Jan. 1, 2023. However, a measure (H.B. 3398) signed July 27, 2021, delayed the start of required employer and employee contributions to Jan. 1, 2023. Employees will be able to apply for family-leave insurance benefits starting Sept. 3, 2023.

For localities, **California** has several jurisdictions requiring employers to provide paid leave in 2023. Other states with these local requirements are **Illinois** (Chicago and Cook County), **Maryland** (Montgomery County), **Minnesota** (Duluth, Minneapolis, and St. Paul), **New Mexico** (Bernalillo County), **New York** (New York City and Westchester County), **Oregon** (Portland), **Pennsylvania** (Philadelphia and Pittsburgh), **Texas** (Austin, Dallas, and San Antonio), and **Washington** (Seattle and Tacoma).



## By the Numbers

### Federal Limits

	2022	2023
<b>Social Security (OASDI) Wage Base</b>	\$147,700	\$160,200
<b>Basic Deferral Limits</b>		
Section 401(k), 403(b)	\$20,500	\$22,500
Catch-Up	\$6,500	\$7,500
SIMPLE	\$14,000	\$15,500
Section 457	\$20,500	\$22,500
Defined Contribution Maximum Annual Addition	\$61,000	\$66,000
Defined-Benefit Plan Limits	\$245,000	\$265,000
<b>Compensation Limits, Credits, and Triggers</b>		
Qualified Plans	\$305,000	\$330,000
Highly Compensated Employee	\$135,000	\$150,000
Compensation Limit	\$450,000	\$490,000
Dollar Limit for Key Employee (Top-Heavy Plan)	\$200,000	\$215,000
Compensation Amount for Control Employee	\$120,000	\$130,000
Foreign-Earned Income Exclusion Limit	\$112,000	\$120,000
Adoption Assistance	\$14,440	\$15,950
<b>Per Diem Rates</b>		
Standard	\$155	\$157
High-Low Method	\$296, \$202	\$297, \$204
<b>Health Plan Limits</b>		
Health Flexible Spending Arrangements	\$2,850	\$3,050
Health Savings Account Contributions-Single	\$3,650	\$3,850
Health Savings Account Contributions-Family	\$7,300	\$7,750
<b>Federal Vehicle Valuations</b>		
<i>Mileage Rates (Per Mile)</i>		
Business	62.5 cents	TBD
Charitable	14 cents	TBD
Medical	22 cents	TBD
<b>Luxury Car Definition</b>		
<i>(Ineligible for Cents-Per-Mile Use Valuation)</i>		
Fair-Market Value Greater Than Listed for Employer-Provided	\$56,100 (car)	TBD
Vehicles First Made Available in 2021 and 2022	\$56,100 (truck)	TBD
Tax-Free Transportation Benefits (Monthly)	\$280	\$300
<b>Fleet Average Maximum Value</b>		
Fair-Market Value (Before Averaging) Cars	\$56,100	TBD
Fair-Market Value (Before Averaging) Trucks	\$56,100	TBD

## By the Numbers

### 2023 Hourly Minimum Wage Rates

Jurisdiction	Base Hourly Minimum Wage
Federal	\$7.25
Federal Contractor	\$12.25
Alabama	\$7.25
Alaska	\$10.85
Arizona	\$13.85
Arkansas	\$11
California	\$15.50
Colorado	\$13.65 (Proposed)
Connecticut	\$14 until 6/1, then \$15
Delaware	\$11.75
District of Columbia	\$16.10 *
Florida	\$11 *
Georgia	\$5.15
Hawaii	\$12
Idaho	\$7.25
Illinois	\$13
Indiana	\$7.25
Iowa	\$7.25
Kansas	\$7.25
Kentucky	\$7.25
Louisiana	\$7.25
Maine	\$13.80
Maryland	\$12.80, 13.25 ‡
Massachusetts	\$15
Michigan	\$12 *
Minnesota	\$10.59, \$8.63 ‡
Mississippi	\$7.25

Jurisdiction	Base Hourly Minimum Wage
Missouri	\$12
Montana	\$9.95
Nebraska	\$10.50
Nevada	\$11.25, 10.25 ‡
New Hampshire	\$7.25
New Jersey	\$14.13, \$12.93, 12.01 ‡
New Mexico	\$12
New York	\$15, \$14.20 ‡
North Carolina	\$7.25
North Dakota	\$7.25
Ohio	\$10.10
Oklahoma	\$7.25 **
Oregon	\$14.75 - \$12.50 ‡ *
Pennsylvania	\$7.25
Puerto Rico	\$9.50 **
Rhode Island	\$13
South Carolina	\$7.25
South Dakota	\$10.80
Tennessee	\$7.25
Texas	\$7.25
Utah	\$7.25
Vermont	\$12.55 *
Virginia	\$12 *
Washington	\$15.74
West Virginia	\$8.75
Wisconsin	\$7.25
Wyoming	\$5.15

‡ Varies by Employer Size, Location, Benefits Provided

\* Subject to Change

\*\* Exceptions Apply

## By the Numbers

### Unemployment Insurance Wage Bases

State	2022	2023
Alabama	\$8,000	\$8,000
Alaska	\$45,200	*
Arizona	\$7,000	<b>\$8,000</b>
Arkansas	\$10,000	*
California	\$7,000	\$7,000
Colorado	\$17,000	<b>\$20,400</b>
Connecticut	\$15,000	\$15,000
Delaware	\$14,500	*
District of Columbia	\$9,000	\$9,000
Florida	\$7,000	\$7,000
Georgia	\$9,500	\$9,500
Hawaii	\$51,600	*
Idaho	\$46,500	*
Illinois	\$12,960	*
Indiana	\$9,500	\$9,500
Iowa	\$34,800	<b>\$36,100</b>
Kansas	\$14,000	\$14,000
Kentucky	\$11,100	*
Louisiana	\$7,700	\$7,700
Maine	\$12,000	\$12,000
Maryland	\$8,500	\$8,500
Massachusetts	\$15,000	\$15,000
Michigan	\$9,000; \$9,500 <sup>1</sup>	*
Minnesota	\$35,000	*
Mississippi	\$14,000	\$14,000
Missouri	\$11,000	<b>\$10,500</b>
Montana	\$38,100	<b>\$40,500</b>

State	2022	2023
Nebraska	\$9,000; \$24,000 <sup>2</sup>	\$9,000; \$24,000 <sup>2</sup>
Nevada	\$36,600	<b>\$40,100</b>
New Hampshire	\$14,000	\$14,000
New Jersey	\$39,800	<b>\$41,100</b>
New Mexico	\$28,700	<b>\$30,100</b>
New York	\$12,000	<b>\$12,300</b>
North Carolina	\$28,000	*
North Dakota	\$38,400	*
Ohio	\$9,000	\$9,000
Oklahoma	\$24,800	<b>\$25,700</b>
Oregon	\$47,700	*
Pennsylvania	\$10,000	\$10,000
Puerto Rico	\$7,000	\$7,000
Rhode Island	\$24,600 \$26,100 <sup>2</sup>	*
South Carolina	\$14,000	\$14,000
South Dakota	\$15,000	\$15,000
Tennessee	\$7,000	*
Texas	\$9,000	\$9,000
Utah	\$41,600	*
Vermont	\$15,500	<b>\$13,500</b>
Virginia	\$8,000	\$8,000
Washington	\$62,500	<b>\$67,600</b>
West Virginia	\$9,000	*
Wisconsin	\$14,000	\$14,000
Wyoming	\$27,700	<b>\$29,100</b>

Changes for 2023 are in **bold**. Wage bases that decreased are in **bold italic**.

\* Wage bases to be announced

<sup>1</sup> For each year when Michigan's unemployment trust fund balance was sufficiently high during the previous year, Michigan employers not delinquent in paying unemployment-related amounts are assigned a reduced taxable wage base.

<sup>2</sup> Experienced Nebraska and Rhode Island employers that are assessed the maximum unemployment tax rate are assigned a higher wage base.

### **About Bloomberg Tax**

Bloomberg Tax provides comprehensive global research, news, and technology services enabling tax professionals to get the timely, accurate, and in-depth information they need to plan and comply with confidence. Our flagship Bloomberg Tax platform combines the proven expertise and perspectives of leading tax practitioners in our renowned Tax Management Portfolios with integrated news from the industry-leading Daily Tax Report®, authoritative analysis and insights, primary sources, and timesaving practice tools.

For more information, visit [pro.bloombergtax.com](https://pro.bloombergtax.com)

### **About KPMG**

KPMG LLP is the U.S. firm of the KPMG global organization of independent professional services firms providing Audit, Tax and Advisory services. The KPMG global organization operates in 144 countries and territories and has more than 236,000 people working in member firms around the world.

Our high-performing people mobilize around our clients, using our experience and insight to cut through complexity and deliver informed perspectives and clear guidance that our clients and stakeholders value. Our client focus, commitment to excellence, global mind-set, and consistent delivery build trusted relationships that are at the core of our business and reputation.

The KPMG Employment Tax team of professionals focus on both tax and nontax areas for our clients. With services as varied as compliance requirements, taxability issues, refund recovery, one-off payroll tax issues response, analysis of payroll department operations and the implementation of full transactional integration services, our multidimensional payroll team can assist with the various issues that might arise.

For more information, visit <https://tax.kpmg.us/services/global-mobility/employment-tax.html>

# **Bloomberg Tax**