

PAYROLL CURRENTLY

Compliance News From PayrollOrg

November 1, 2024

Volume 32

Issue 11

<i>IRS Announces 2025 COLAs for Transportation Fringes, FSA Deferrals</i>	1
<i>Social Security Wage Base Increases to \$176,100 for 2025</i>	2
<i>IRS Issues Guidance on Plans for Long-Term, Part-Time Employees</i>	3
<i>IRS Continues Processing ERC Claims, Sending Refund Checks</i>	3
<i>IRS Updates Specifications for Substitute Forms W-2c, W-3c</i>	4
<i>IRS Revises EFTPS Instruction Booklet</i>	4
<i>Daylight Saving Time Ends November 3</i>	4
<i>IRS to Hold Hearing on Payment Proposal for Debit, Credit Cards</i>	5
<i>ARB Enforces Higher Penalty Against Employer for FLSA Violations</i>	5
<i>5th Circuit Affirms Overtime Exemption for HCEs</i>	6
<i>4th Circuit Rules Firing for Medical Paperwork Did Not Violate FMLA</i>	7
<i>IRS Creates Tax Tip for Disaster Recovery</i>	8
<i>Nacha Requests Comments on ACH Rules</i>	9
<i>TIGTA Publishes ERC Audit Report</i>	9
<i>USCIS Announces E-Verify Records Retention and Disposal Schedule</i>	10

<i>USCIS Promotes E-Verify+ to Employers With Video</i>	10
<i>Payroll Solutions</i>	11
<i>USCIS Updates E-Verify Employer Search Tool</i>	11
<i>3rd Circuit Rules Claims for Wage Violations Excluded From Insurance</i>	11
<i>Court Rules No FMLA Leave Required for Expectant Father</i>	12
<i>IRS Releases 2022 Tax Gap Projections</i>	13
<i>Update on Employment Tax Enforcement Actions</i>	14
<i>State and Local Highlights</i>	15



<i>IRS Explains Federal Tax Relief Due to Natural Disasters</i> ...	17
<i>California to Require EWA Providers to Register With State</i>	17
<i>PayrollOrg Supports Consistent Pay Transparency in D.C. Metro Area</i>	18

IRS Announces 2025 COLAs for Transportation Fringes, FSA Deferrals

The IRS released cost-of-living adjustments (COLAs) for 2025 reflecting any increases in the flexible spending arrangements (FSA) deferral limit, foreign earned income exclusion, and excludable transportation fringes, among other changes [Rev. Proc. 2024-40, 10-22-24].

Qualified transportation fringes

The amounts that may be excluded from gross income for employer-provided qualified transportation fringe benefits (transportation in a commuter highway vehicle and any transit pass) and qualified parking for 2025 increase to \$325 (\$315 in 2024).

Health FSAs

For plan years beginning in 2025, the dollar limitation under IRC §125(i) on voluntary employee salary reductions for contributions to health FSAs increases to \$3,300 (\$3,200 in 2024). For cafeteria plans that permit the carryover of unused amounts, the maximum carryover amount increases to \$660 (\$640 in 2024).

Standard deduction

The standard deduction amounts for 2025 increase to \$30,000 for married couples filing jointly or surviving spouses (\$29,200 in 2024), \$15,000 for single taxpayers and married taxpayers filing separately (\$14,600 in 2024), and \$22,500 for heads of household (\$21,900 in 2024).

Federal tax levies

The Tax Cuts and Jobs Act altered the way the amount

of wages, salary, or other income exempt from a federal tax levy is calculated. For taxable years beginning in 2025, the dollar amount used to calculate the amount determined under IRC §6334(d)(4)(B) increases to \$5,100 (\$5,000 in 2024).

Foreign earned income exclusion

For 2025, the maximum foreign earned income exclusion amount under IRC §911(b)(2)(D)(i) is \$130,000 (up from \$126,500 in 2024). The maximum amount of the foreign housing cost exclusion is \$18,200 (up from \$17,710 in 2024).

Medical Savings Accounts

To be eligible to make contributions to a Medical Savings Account (or to have the employer make the contributions), an employee must be covered by a high deductible health plan. For 2025, a high deductible health plan is a plan with an annual deductible of \$2,850-\$4,300 for individual coverage (up from \$2,800-\$4,150 in 2024) and \$5,700-\$8,550 for family coverage (up from \$5,550-\$8,350 in 2024).

Maximum out-of-pocket expenses can be no more than \$5,700 for individual coverage (up from \$5,550 in 2024) and \$10,500 for family coverage (up from \$10,200 in 2024).

Long-term care insurance benefits

If a long-term care insurance contract makes per diem benefit payments, the amount of the payments that is excluded from income in 2025 is capped at \$420 per day (up

from \$410 in 2024).

Adoption assistance

For 2025, the maximum amount that can be excluded from an employee's gross income for qualified adoption expenses under an employer's adoption assistance program or in connection with the adoption of a child with special needs is \$17,280 (up from \$16,810 in 2024).

The amount excludable from an employee's gross income begins to phase out for taxpayers with adjusted gross income of \$259,190 (up from \$252,150 in 2024) and is completely phased out for taxpayers with adjusted gross income of \$299,190 (up from \$292,150 in 2024).

Qualified small employer HRA

A qualified small employer health reimbursement arrangement (QSEHRA) is an arrangement which, among other requirements, makes payments and reimbursements for qualifying medical care expenses of an eligible employee that do not exceed \$6,350 for 2025 (up from \$6,150 in 2024), or \$12,800 in the case of an arrangement that also provides for payments or reimbursements for family members of the employee (up from \$12,450 in 2024).

Pipeline construction industry per diem option

For 2025, an eligible employer may pay certain welders and heavy equipment mechanics up to \$22 per hour for rig-related expenses that will be deemed substantiated under an

accountable plan (same as 2024) and up to \$14 per hour for fuel (up from \$13 in 2024), when paid in accordance with Rev. Proc. 2002-41 (2002-23 IRB 1098).

Penalties increase

For tax years beginning in 2025 (forms filed in 2026), the penalty amounts under IRC §6721, failure to file correct information returns, and the penalty amounts under IRC §6722, failure to furnish correct payee statements, are \$340 under the general rule (up from \$330), \$60 if corrected on or before 30 days after the required filing date (no change), and \$130 if corrected after the 30th day but on or before August 1 (no change). For businesses with annual gross receipts of \$5 million or less, the maximum penalty increases to \$1,366,000 (up from \$1,329,000) under the general rule, to \$239,000 (up from \$232,500) if corrected on or before 30 days after the required filing date, and to \$683,000 (up from \$664,500) if corrected after the 30th day but on or before August 1. For businesses with annual gross receipts of more than \$5 million, the maximum penalty increases to \$4,098,500 (up from \$3,987,000) under the general rule, to \$683,000 (up from \$664,500) if corrected on or before 30 days after the required filing date, and to \$2,049,000 (up from \$1,993,500) if corrected after the 30th day but on or before August 1.

For intentional disregard of the obligations under either of these provisions, the penalty increases to \$680 per return for 2025 (up from \$660), and there is no calendar year limit. ■

Social Security Wage Base Increases to \$176,100 for 2025

The Social Security Administration (SSA) announced that the 2025 social security wage base will be \$176,100, an increase of \$7,500 from \$168,600 in 2024.

Maximum social security tax. The maximum social security tax employees and employers will each pay in 2025 is \$10,918.20, an increase of \$465 from \$10,453.20 in 2024.

Medicare tax. As in prior years, there is no limit to the wages subject to the Medicare tax; therefore, all covered wages are subject to the 1.45% tax. As in 2024, wages paid in excess of \$200,000 in 2025 will be subject to an extra 0.9% Medicare tax that will only be withheld from employees' wages. Employers will not pay the extra tax. Note that the \$200,000 threshold for the Additional Medicare tax is not subject to adjustments for inflation.

FICA (combined) tax. The FICA tax rate, which is the combined social security tax rate of 6.2% and the Medicare tax rate of 1.45%, will be 7.65% for 2025 up to the social security wage base.

Self-employed. The social security wage base for self-employed individuals in 2025 will also be \$176,100. There is no limit on covered self-employment income subject to the Medicare tax. The self-employment tax rate will be 15.3% (combined social security tax rate of 12.4% and Medicare tax rate of 2.9%) up to the social security wage base. In 2025, the maximum social security tax for a self-employed individual will be \$21,836.40.

TRUSTEES' ESTIMATE WAS LOW – In its annual report for 2024, the Board of Trustees of the Social Security Trust

Fund projected that the 2025 social security wage base would be \$174,900, which is \$1,200 less than the actual amount (see [PAYROLL CURRENTLY, Issue 6, Vol. 32](#)). Those employers that budgeted for their 2025 FICA tax expense based on the trustees' projection will need to go back and recalculate that number.

Quarters of coverage; retirement earnings test

The SSA also announced that the amount of earnings needed to qualify for a quarter of coverage to receive full social security benefits will be \$1,810 in 2025, up from \$1,730 in 2024.

Retirees who will not reach full retirement age in 2025 can earn up to \$23,400 a year (\$1,950 a month) without losing any benefits (up from \$22,320 a year/\$1,860 a month in 2024); for these retirees, \$1 in benefits will be withheld for every \$2 in earnings above the applicable limit.

Retirees who reach full retirement age in 2025 will lose \$1 in benefits for every \$3 earned above \$62,160 (up from \$59,520 in 2024), but only counting earnings before the month they reach full retirement age. Starting with the month retirees reach full retirement age, they will receive full benefits with no limit on earnings.

FICA coverage threshold for domestic, election workers

The threshold for coverage under social security and Medicare for domestic employees (i.e., the "nanny tax") will increase to \$2,800 in 2025 (up from \$2,700); the coverage threshold for election workers will increase to \$2,400 (up from \$2,300). ■

IRS Issues Guidance on Plans for Long-Term, Part-Time Employees

The IRS issued guidance addressing long-term, part-time (LTPT) employees for both §403(b) and §401(k) retirement plans [Notice 2024-73, 2024-43 IRB 1007].

The IRS plans to issue additional guidance to implement the requirements of §125 of the SECURE 2.0 Act. The IRS expects that the guidance will include proposed regulations.

§401(k) changes delayed until 2026

On November 27, 2023, the IRS issued a proposed regulation that would amend the rules applicable to §401(k) plans that include a cash or deferred arrangement (CODA) to provide guidance for LTPT employees (88 F.R. 82796, 11-27-23; see *PAYROLL CURRENTLY, Issue 12, Vol. 31*). The proposed regulation would amend IRC §1.401(k)-5 to include rules and definitions applicable to LTPT employees under §112 of the SECURE Act of 2019 and §§125 and 401 of the SECURE 2.0 Act.

The proposed regulation was supposed to apply to plan years that began on or after January 1, 2024. Notice 2024-73 states the final regulation the IRS plans to issue for §401(k) plans on LTPT employees now will apply no earlier than to plan years beginning on or after January 1, 2026.

Proposed regulations for §401(k)

The proposed regulation generally would define a long-term, part-time employee as an employee who is eligible to participate in a qualified CODA solely by reason of having: (1) completed two consecutive 12-month periods during each of which the employee is credited with at least 500 hours of service and (2) attained age 21 by the close of the last of the 12-month periods.

An employee who becomes eligible to participate in a qualified CODA by reason of having completed any other service requirement (or who is immediately eligible to participate in the CODA) would not be a LTPT employee. The nondiscrimination and top-heavy rules would not apply to the employee, even if the employer maintaining the plan classifies the employee as part time.

LTPT employees would not include certain employees

covered by a collective bargaining agreement or employees who are nonresident aliens and who receive no earned income from the employer that constitutes income from sources within the United States.

§403(b) plans

Notice 2024-73 will apply the SECURE 2.0 Act changes to §403(b) retirement plans beginning in 2025. The §403(b) plans are similar to §401(k) plans but are generally for employees of charities and public schools.

Notice 2024-73 includes a question-and-answer section on applying the nondiscrimination rules for §403(b) plans to LTPT employees, including application of the rules to permitted exclusions from participation for part-time employees and student employees.

The question-and-answer section clarifies that the eligibility rules for ERISA LTPT employees will not apply to §403(b) plans that are not subject to Title I of ERISA. However, §403(b) plans subject to ERISA are required to provide the right to make elective deferrals to a part-time employee who qualifies as an ERISA LTPT employee unless a statutory exclusion applies. One exclusion is for student employees, who can be prevented from making elective deferrals under the §403(b) plan regardless of whether the student would qualify as an ERISA LTPT employee.

Employers with a §403(b) plan subject to ERISA also may exclude ERISA LTPT employees from certain nondiscrimination requirements, including §401(m)(2).

The IRS said it anticipates updating the §403(b) consistency requirement under §1.403(b)-5(b)(4)(i).

Comments requested

The IRS is accepting comments until December 20. Comments can be submitted online through the Federal eRulemaking Portal by following the online instructions (indicate IRS and Notice 2024-73). Written comments can be mailed to Internal Revenue Service, Attn: CC:PA:LPD:PR (Notice 2024-73), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. ■

IRS Continues Processing ERC Claims, Sending Refund Checks

The IRS announced it is continuing progress on employee retention credit (ERC) claims with processing underway on about 400,000 claims, which represent about \$10 billion [IRS, IR-2024-263, 10-10-24].

The claims being processed include eligible and ineligible claims with the majority being processed for approval. Checks are being mailed for eligible claims with refunds, and the IRS plans to mail more in the coming months.

Ineligible claims

In addition to processing valid claims, the IRS is continuing to work denials of improper ERC claims by intensifying audits and pursuing civil and criminal investigations of potential fraud and abuse. A recent IRS review confirmed concerns that there was an extremely

high rate of improper ERC claims in the IRS's inventory of claims (see *PAYROLL CURRENTLY, Issue 7, Vol. 32*).

The IRS reminds businesses that have received ERC payments to recheck eligibility requirements and consider the second **voluntary disclosure program** to resolve ineligible claims without penalties or interest. The **withdrawal program** remains open for businesses with ERC claims that have not been paid yet.

Voluntary disclosure program. The ERC voluntary disclosure program is open until November 22 (see *PAYROLL CURRENTLY, Issue 10, Vol. 32*). The second round of the program is open for tax periods in 2021 only. Businesses accepted into the program will need to repay 85% of credits received but will not need to repay any interest that the IRS paid on ERC refund claims. The IRS will not charge interest or

penalties on any credits timely repaid.

Withdrawal program. The withdrawal option allows certain businesses that filed an ERC claim (but have not yet received a refund) to withdraw their submission and avoid future repayment, interest, and penalties (see [PAYROLL CURRENTLY, Issue 11, Vol. 31](#)). Claims that are withdrawn will be treated as if they were never filed.

Third-party payers. The IRS opened a [supplemental claim](#)

[process](#) to help third-party payers (TPPs) and their clients resolve incorrect ERC claims (see [PAYROLL CURRENTLY, Issue 10, Vol. 32](#)). If a TPP's client determines it is ineligible for the ERC and wants to resolve a claim, the TPP that filed the claim needs to correct it. The supplemental claim process lets a TPP that filed a prior claim with multiple clients withdraw only some claims while maintaining the claims of the qualifying clients. ■

IRS Updates Specifications for Substitute Forms W-2c, W-3c

The IRS issued updated requirements for the private printing of paper substitutes for Form W-2c, *Corrected Wage and Tax Statement*, and Form W-3c, *Transmittal of Corrected Wage and Tax Statements* [Rev. Proc. 2024-36, 2024-41 IRB 737]. Rev. Proc. 2024-36 has been reproduced in the latest revision of [Publication 1223, General Rules and Specifications for Substitute Forms W-2c and W-3c](#).

A substitute Form W-2c or W-3c must conform to the specifications set out in Publication 1223 to be acceptable to the IRS.

Questions

Questions about the red-ink Form W-2c (Copy A) and Form W-3c should be emailed to Substituteforms@irs.gov (enter "Substitute Forms" on the subject line) or sent to: Internal Revenue Service, Attn: Substitute Forms Program, C:DC:TS:CAR:MP:P:TP:TP, ATSC, 4800 Buford Highway, Mail Stop 061-N, Chamblee, GA 30341. This is a new address. For purposes of this revenue procedure, the official, IRS-printed red dropout ink Forms W-2c (Copy A) and W-3c and their exact substitutes are referred to as "red-ink."

Questions about black-and-white Forms W-2c (Copy A) and W-3c should be emailed to copy.a.forms@ssa.gov or sent to: Social Security Administration, Direct Operations Center, Attn: Substitute Black-and-White Copy A Forms, Room 341, 1150 E. Mountain Drive, Wilkes-Barre, PA 18702-7997.

Submissions for approval. Samples of substitute black-

and-white Forms W-2c (Copy A) and W-3c must be submitted to the Social Security Administration (SSA) for approval. Only black-and-white substitute Forms W-2c (Copy A) and W-3c will be accepted. To receive approval, email the SSA at copy.a.forms@ssa.gov to obtain a template and further instructions. Substitute samples may also be submitted by mail to the SSA at the address above.

Red-ink substitute forms that completely conform to the specifications contained in this revenue procedure may be privately printed without prior approval from the IRS or the SSA. Only the substitute black-and-white Forms W-2c (Copy A) and W-3c need to be submitted to the SSA for approval, prior to their use.

Responses from either the IRS or SSA should be received within 30 days.

What's new

- *Changes to IRS customer service information.* The IRS/Information Returns Branch (IRS/IRB) is now the IRS/Technical Service Operation (IRS/TSO). The phone numbers (866-455-7438 and 304-263-8700) did not change. However, the email address changed to fire@irs.gov.

- *Address change for red-ink inquiries.* The mailing address to submit questions for red-ink substitute forms has been updated.

- *Editorial changes and exhibits.* The IRS made editorial changes to eliminate redundancies as much as possible. ■

IRS Revises EFTPS Instruction Booklet

The IRS revised [Publication 4990, Payment Instruction Booklet for Business and Individual Taxpayers](#), which is a quick reference guide for using the Electronic Federal Tax Payment System (EFTPS).

All federal taxes for businesses can be paid using EFTPS through the [website](#) or by calling the EFTPS tax payment number (800-555-3453), which is available 24 hours a day, 7 days a week. Payments must be scheduled by 8 p.m. ET the day before the due date to be timely.

EFTPS instruction booklet

Publication 4990 contains instructions on how to make a payment using EFTPS, cancel a payment, and update

financial information. Publication 4990 also contains a chart with common tax forms that includes information about payment due dates and tax form numbers.

An EFTPS Business Worksheet is also included, which can be filled out and referenced when making a phone tax payment. The worksheet includes blank spaces to record information, such as the employer identification number and date of the payment.

Employers making their first phone payment can call the EFTPS tutorial system at 800-572-8683. Customer service can be reached at 800-555-4477 from 8 a.m. – 8 p.m. ET, Monday through Friday. ■