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Starting with this issue of PAYROLL CURRENTLY, references to *The Payroll Source*® refer to the 2025 edition of the book, which is printed and available online on the [PayrollOrg Bookshelf](#). The online version is updated throughout the year.

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DOL to Reconsider Worker Classification Rule

The U.S. Department of Labor (DOL) recently told two appeals courts that it wants time to reconsider the rule on how to determine worker classification under the Fair Labor Standards Act (FLSA) before the courts reach decisions. The DOL asked the 5th Circuit (*Frisard's Transportation, LLC v. U.S. Department of Labor*, No. 24-30223) and the 11th Circuit (*Warren v. U.S. Department of Labor*, No. 24-13505) to temporarily suspend the cases by submitting motions to hold the appeal in abeyance. The DOL requested the courts give "additional time for new agency officials to determine how they wish to proceed."

According to the motions, the DOL said it "intends to reconsider the 2024 rule at issue in this litigation, including whether to issue a notice of proposed rulemaking rescinding the regulation." The motion in *Warren* states that the suspension "will serve the interests of judicial efficiency because the agency's reconsideration and potential rescission of the rule may obviate the need for further litigation." The motion in *Frisard's* echoes the same sentiment.

The rule at issue

In January 2024, the DOL issued a final rule that modifies how to determine whether a worker is an employee or an

independent contractor under the FLSA (89 F.R. 1638, 1-10-24, see [PAYROLL CURRENTLY, Issue 2, Vol. 32](#)). The 2024 final rule went into effect on March 11, 2024, and formally rescinded the 2021 rule (86 F.R. 1168, 1-7-21).

The 2024 final rule sets forth an analysis for determining employee or independent contractor status under the FLSA that relies on a totality-of-the-circumstances analysis of the economic reality test rather than using the "core factors" from the 2021 rule. The analysis focuses on whether each factor shows the worker is economically dependent upon the employer for work versus being in business for themselves. The final rule states the factors should guide the assessment of the economic realities of the working relationship, and no one factor or subset of factors should be conclusive.

The 2024 final rule lists six factors to guide the assessment of the economic realities of the working relationship and to help answer the question of economic dependence under the FLSA:

- (1) The opportunity for profit or loss depending on managerial skill.
- (2) Investments by the worker and the potential employer.
- (3) Degree of permanence of the work relationship.

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- (4) Nature and degree of control.
- (5) Extent to which the work performed is an integral part of the potential employer's business.
- (6) Skill and initiative.

Further action is coming

The DOL has not issued any changes to the 2024 rule or rescinded it yet. ■

IRS Revises Forms 941-X, 944-X, and Instructions

The IRS released **Form 941-X, Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund**, and its **instructions**, which have been updated to remove lines used for the employee retention credit (ERC).

The Form 941-X instructions have a revision date of April 2025 and can be used for all years for which the statute of limitations on corrections has not expired. The IRS recommends using the Form 941 instructions for the quarter being corrected because the Form 941-X instructions do not repeat all information included in the Form 941 instructions. Prior revisions of the instructions are available at <https://www.irs.gov/forms-pubs/about-form-941> (select the link for All Form 941 Revisions under Other Items You May Find Useful).

What's new

- **Electronic filing of Form 941-X.** Form 941-X can now be electronically filed through the Modernized e-File (MeF) system (see **PAYROLL CURRENTLY, Issue 10, Vol. 32**).
- **Lines reserved for future use.** Form 941-X lines 18a, 26a, 30, 31a, 31b, and 32 are now reserved for future use because the period of limitations for correcting these lines has generally expired for most employers.

Lines 18a, 26a, 30, and 31a were previously used only when correcting qualified wages paid for the ERC and qualified health plan expenses allocable to those wages on a Form 941 filed for the second, third, and fourth quarters of 2020 and all four quarters of 2021. The period of limitations for making corrections to qualified wages paid in the second, third, and fourth quarters of 2020 for the ERC and qualified health plan expenses allocable to those wages generally expired for most employers on April 15, 2024. For 2021, the period of limitations for making these corrections generally expired for most employers on April 15, 2025. Employers that believe the period of limitations is still open for correcting a second, third, or fourth quarter 2020 Form 941 (or a 2021 Form 941) can file the April 2024 revision of Form 941-X to use lines 18a, 26a, 30, 31a, and 31b.

Line 31b was previously used only when correcting the third and fourth quarters of a 2021 Form 941 if a business was a recovery startup business.

Line 32 was previously used only when correcting qualified wages paid in the second, third, or fourth quarter of 2020, or the first quarter of 2021, for the work opportunity tax credit for qualified tax-exempt organizations that hired eligible unemployed veterans, which has generally expired for most employers.

Form 944-X

The IRS released **Form 944-X, Adjusted Employer's Annual Federal Tax Return or Claim for Refund**, and the **instructions**, which have been updated to remove ERC lines and lines previously used to correct the deferred amount of the employer and employee share of social security tax for 2020.

Employers can use Form 944-X to make corrections to a previously filed Form 944, *Employer's Annual Federal Tax Return*. Form 944 is designed so the smallest employers (those whose annual liability for social security, Medicare, and withheld federal income taxes is \$1,000 or less) can file returns and pay these taxes only once a year instead of every quarter (see *The Payroll Source*®, §8.5-3).

Lines reserved for future use. Form 944-X lines 17a, 23, 24, 26a, 30, 31, 32, 39, and 40 are now reserved for future use because the period of limitations for correcting these lines has generally expired for most employers. Generally, employers may correct overreported taxes on a previously filed Form 944 if Form 944-X is filed within 3 years of the date Form 944 was filed or 2 years from the date the tax reported was paid, whichever is later.

Lines 17a, 26a, 30, 31, 39, and 40 were previously used only when correcting qualified wages paid for the ERC and qualified health plan expenses allocable to those wages on a Form 944 filed for 2020 and 2021.

Lines 23 and 24 were previously used to correct the deferred amount of the employer and employee share of social security tax for 2020.

Line 32 was previously used only when correcting qualified wages paid in 2020 for the work opportunity tax credit against payroll tax liability for qualified tax-exempt organizations that hired eligible unemployed veterans. ■

IRS CI Tax Case of the Month Focuses on Payroll

Each month, IRS Criminal Investigation (CI) highlights one criminal case as its tax case of the month. For **March**, CI provided details about a case involving a multimillion-dollar payroll and tax fraud scheme that operated through a series of roofing businesses.

March tax case of the month

Brothers Travis Slaughter and Tripp Charles Slaughter operated roofing businesses in Jacksonville, Fla., under

various names such as Great White Construction, Florida Roofing Experts, and Five-Star Roofing Services. The brothers used the names to carry out a "split paycheck scam" to avoid paying millions in payroll taxes and workers' compensation premiums.

The Slaughters partnered with professional employer organizations (PEOs) to handle payroll for their employees. The PEOs issued about \$4.9 million in wages from 2017 to

2020, and properly deducted and paid payroll taxes to the IRS. However, the Slaughters issued a second set of checks to employees (for approximately \$18.5 million) directly from company accounts with no payroll tax deductions, which caused a tax loss to the IRS of more than \$2.7 million.

By underreporting payroll to their insurance providers, the Slaughters also avoided nearly \$2.8 million in workers' compensation premiums. CI also discovered the Slaughters had been underreporting their personal income for years.

Travis was sentenced to 41 months in prison and ordered to forfeit almost \$2.8 million and to pay over \$6.7 million in restitution to the IRS for payroll tax losses. In addition, Travis must pay almost \$2.8 million to two insurance companies

for unpaid workers' compensation premiums and \$271,217 for two paid claims.

Tripp was sentenced to 21 months in prison and ordered to forfeit \$416,799 and to pay \$623,269 to the IRS. Tripp must also pay \$416,799 in unpaid premiums and \$137,778 for a paid workers' compensation claim.

Additional enforcement actions

Earlier this year, CI released its *IRS: Criminal Investigation 2024 Annual Report*, which details enforcement actions taken in fiscal year 2024 (see [PAYROLL CURRENTLY](#), Issue 3, Vol. 33). ■

2024 EEO-1 Data Collection Scheduled to Open on May 20

The Equal Employment Opportunity Commission (EEOC) is scheduled to open the 2024 Employer Information Report (EEO-1) Component 1 data collection on May 20, according to [documents](#) sent to the Office of Management and Budget (OMB) on April 15. The proposed Instruction Booklet (downloadable [here](#)) lists the 2024 EEO-1 Component 1 data collection as closing on June 24.

The official final opening and deadline dates will be posted on the EEOC's dedicated [website](#) for its EEO-1 Component 1 data collection and on the EEOC's public [website](#). As of now, the websites only have information for the 2023 EEO-1.

Requested changes

The EEOC asked OMB for several changes to current reporting.

The EEOC wants approval to remove the option to report non-binary employees separately, pursuant to executive order 14168. The Reporting by Sex section, which was updated in 2023, would be one sentence stating the EEO-1 Component 1 data collection provides only binary options for reporting employee counts by sex, job category, and race or ethnicity.

The proposed Instruction Booklet shortens the reporting period to 5 weeks.

There are three other proposed non-substantive

changes. First, the EEOC proposes edits to streamline the EEO-1 collection process for 2024 information by removing language about "Notice of Failure to File" and removing references to postal mail for notifications to filers. Second, the EEOC proposes to update the instructions' discussion of requests for undue hardship, due to revisions to the EEOC's EEO-1 regulations concerning how and by whom undue hardship requests are processed, but not the requester's right to make such requests. Lastly, the EEOC seeks to remove a footnote in Appendix B that contains an inoperable link.

Instructions for employers

Employers are strongly advised to visit www.eeocdata.org/eo1 for the latest updates regarding the 2024 EEO-1 Component 1 data collection, including any updates regarding the deadline to submit and certify reports.

Once data collection closes for a reporting cycle, employers are not able to correct or update any workforce demographic data reported during that cycle.

Employers with 100 or more employees and federal contractors with 50 or more employees are required to file an EEO-1 with the EEOC, which includes information on race, ethnicity, and gender by job category. Employers count employees for purposes of this EEO-1 report during a "workforce snapshot period" between October 1 and December 31. ■