PAYSTATE UPDATE | State and Local Payroll Compliance News
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On May 2, the American Payroll Association (APA) and the Global Payroll Management Institute (GPMI) combined to form PayrollOrg – The Leader in Payroll Education. PayrollOrg (PAYO) will continue to provide the same quality education, training, publications, and resources that APA has provided for the past 40-plus years.

New York Budget Bills Increase Minimum Wage, Metropolitan Commuter Transportation Mobility Tax

The governor of *New York* recently signed budget bills that will impact payroll professionals. One bill includes provisions that will gradually increase the state minimum wage to $17 per hour in parts of the state [S.B. 4006C/A.B. 3006C, L. 2023]. Another bill raises the Metropolitan Commuter Transportation Mobility Tax (MCTMT) rate on certain employers [S.B. 4008C/A.B. 3008C, L. 2023].

Minimum wage increases

Currently, the minimum wage is $15 per hour for employees in New York City, Long Island, and Westchester County. The minimum wage will increase to $16 per hour, effective January 1, 2024; $16.50 per hour, effective January 1, 2025; and $17 per hour, effective January 1, 2026. The minimum wage will be indexed for inflation, effective January 1, 2027 (this updates *The Payroll Source*®, §2.11-1).

Currently, the minimum wage for employees in the rest of New York State is $14.20 per hour. The minimum wage will increase to $15 per hour, effective January 1, 2024; $15.20 per hour, effective January 1, 2025; and $16 per hour, effective January 1, 2026. The minimum wage will be indexed for inflation, effective January 1, 2027 (this updates *The Payroll Source*®, §2.11-1).

Tip credit. The minimum cash wage rates and tip credit amounts for tipped employees are set forth in regulations that have not yet been updated to reflect the changes to the minimum wage, but likely will be before January 1 (see https://dol.ny.gov/system/files/documents/2023/03/cr146.pdf).

MCTMT changes

The MCTMT is an employer-paid payroll tax. It was enacted in 2009 as part of a bailout plan for the Metropolitan Transportation Authority (MTA), an agency that manages buses, trains, bridges, and tunnels in New York City and surrounding areas. The tax is administered by the New York State Department of Taxation and Finance. The tax is imposed on employers and self-employed individuals engaging in business within the Metropolitan Commuter Transportation District (MCTD). The MCTD is comprised of 12 counties served by the MTA, which include the five counties that make up New York City (Bronx, Kings (Brooklyn), New York (Manhattan), Queens, and Richmond (Staten Island)) and the surrounding counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester.

Tax rate. Currently, the tax is imposed at the following rates, depending on the size of the employer's payroll expense: 0.11% for payroll expense over $312,500 but not over $375,000 per quarter; 0.23% for payroll expense over $375,000 but not over $437,500 per quarter; and 0.34% for payroll expense over $437,500 per quarter.

Increase for certain employers in NYC. Effective July 1, 2023, the tax rate will increase to 0.60% for employers that engage in business in the counties located within New York City (Bronx, Kings (Brooklyn), New York (Manhattan), Queens, and Richmond (Staten Island)) and have a payroll expense over $437,500.

PEOs. Also effective July 1, 2023, if the employer is a professional employer organization (PEO), the employer's tax will be calculated by determining the payroll expense attributable to each client that has entered into an agreement with a PEO and the payroll expense attributable to the organization itself, multiplying each of those payroll expense amounts by the applicable rate and adding those amounts together.

Individuals. The legislation also increases the MCTMT rates for self-employed individuals, with some increases taking effect January 1, 2024. ■

Maryland Delays Paid Family and Medical Leave Program

On July 1, 2023, amendments to *Maryland's* Family and Medical Leave Insurance (FAMLI) program will take effect, delaying the rollout by one year. Employers must begin withholding for the program on October 1, 2024 (previously scheduled to be October 1, 2023). Employees may begin accessing benefits beginning January 1, 2026 (previously scheduled to be January 1, 2025). Additional amendments were also made to the FAMLI program (see PAYSTATE UPDATE, Issue 8, Vol. 24) [S.B. 828, L. 2023; H.B. 988, L. 2023].

Employer withholding, notice

Employers must begin withholding contributions to the program on October 1, 2024, a year later than the previous withholding start date. The amendment clarifies that employers may adopt plans that provide greater benefits to employees than required by FAMLI. Other employer changes include withholding amounts and various notices.

The total withholding amount is now capped at 1.2% of an employee's income, up to the social security wage base, which is $160,200 for 2023 (see *The Payroll Source®*, §6.7-2). Employers with 15 or more employees will be required to pay 50% of contributions; the other 50% must be withheld from employee wages. On October 1, 2023, the Maryland Secretary of Labor will set the rate of contributions effective from October 1, 2024, through June 30, 2026. After that, rates will be set annually on or before February 1 of each year to take effect on July 1. Certain community healthcare providers will be eligible for program refunds.

Employers may pay a portion or all of an employee's contributions. Employers must provide notice to employees of the rate of contributions and any portion paid by the employer. Employers will receive notice when: (1) an employee files an electronic application for benefits, (2) a paper application is being processed, (3) a claim determination or a change to a determination is made, or (4) a determination appeal is filed.

Employee payments, covered leave

Employees may access benefits beginning January 1, 2026, a year later than under the previous version of the program. The program now defines wages to include: hourly wages, salary, commission, compensatory pay, severance, standby pay, tips or gratuities, holiday or vacation pay, or any other paid leave, including sick leave, paid entirely by the employer. The amendments also change the amount of benefits, covered purposes, and requirements for requesting benefits.

Benefit payments will be capped at 100% of an employee's average weekly wage. The amount of benefits will be determined based on whether the employee's average weekly wage exceeds the state average. Payments will increase annually beginning January 1, 2027. Increases will apply to continuous leave that begins after the increase's effective date. For intermittent leave, increased benefits will apply to leave on or after the effective date, regardless of the start date.

The program will cover bonding time with a newborn child or a new child placement through foster care, kinship care, or adoption. Previously, only care was covered, not bonding. Both care and bonding are now covered up to one year from birth or placement. Domestic partners are also now included in the definition of a family member.

To claim benefits, employees must provide a statement with the first intended day of leave or the first day actually taken, whether continuous or intermittent is needed, and what the expected frequency of intermittent leave is. Claims must be submitted between 60 days before to 60 days after the first day of leave. Employees are no longer required to state a limiting serious health condition as a requirement to take leave, just that they cannot perform the functions of their position.

Effect on other leaves of absence

The amendments have changed the way that the FAMLI program will interact with other leaves of absence that an employee is entitled to, and vice versa. If an employee takes leave under the federal Family and Medical Leave Act (FMLA), the Maryland Department of Labor (DOL) may count that time toward the amount allowed under FAMLI. The DOL will make this determination if (1) the employer designates leave for the employee under the FMLA, and it also qualifies for leave under FAMLI, (2) the employer informs the employee of his or her right to benefits under FAMLI, and (3) the employee declines to claim FAMLI benefits.

The amendments change how FAMLI interacts with other leaves the employer may provide as well. The employer cannot require an employee to use or exhaust "paid vacation, paid sick leave, or other paid time off under an employer policy" before or at the same time as allowing the employee to use FAMLI leave. However, an employer and an employee may agree to alter this restriction. If the employee does access other leave benefits, payments for FAMLI leave may be coordinated with or at the same time as the other paid leave. ■

U.S. Supreme Court Rules New Jersey Can Withdraw From Waterfront Commission With New York

The U.S. Supreme Court unanimously held that *New Jersey* may unilaterally withdraw from the Waterfront Commission Compact, notwithstanding *New York's* opposition [*New York v. New Jersey*, 143 S. Ct. 918 (2023)]. This case affects payroll professionals in certain industries because the New York-New Jersey Waterfront Commission administers an employer-paid assessment.

U.S. Supreme Court case

Last year, the U.S. Supreme Court granted New York's request to allow the lawsuit contesting New Jersey's desire to withdraw from the Waterfront Commission Compact it entered into with New York in 1953 to go forward. New York filed the lawsuit to block New Jersey from leaving the commission. The Court had blocked New Jersey from withdrawing from the agreement while the case was pending. The case went to the U.S. Supreme Court because it is a dispute between two states. The compact between the two states did not address withdrawal. According to the Court, "background principles of contract law, reinforced here by principles of state sovereignty and the fact that the States did not intend for the Compact to operate forever, indicate that New Jersey may unilaterally withdraw from the Waterfront Commission Compact."

The governor of New Jersey responded favorably to the ruling, stating that "over 90% of commerce at our ports happens on the New Jersey side" and that "New Jersey's sovereign right to govern our ports has been vindicated" [Office of the Governor of New Jersey, Press Release, 4-18-23].

State and Local Payroll Solutions

Q. I work for an employer located in *Montclair, New Jersey*. We have had employees use temporary disability insurance (TDI) leave during the year and collect benefits. How do we report this?

A. Year-end statements for TDI are available for employers to download in January for the prior calendar year. It is important for employers to be aware that only a portion of TDI benefits paid are subject to federal income tax. New Jersey does not tax TDI benefits. TDI benefits are considered third-party sick pay or other wages. The New Jersey Department of Treasury, Division of Taxation, does not issue Forms W-2 to employees who receive TDI benefits during the calendar year. The employer is required to report the taxable information on the employee's Form W-2. The New Jersey Department of Labor and Workforce Development (DLWD) advises employers to explain to employees where the information is listed on the Form W-2.

Note that employers are not responsible for reporting paid family leave (PFL) insurance on an employee's Form W-2. In January, Form 1099-G, *Certain Government Payments*, for PFL insurance is available online for all employees who received PFL insurance benefits during the prior year. PFL insurance benefits are subject to federal income tax, but not state income tax.

The governor and Attorney General of New York expressed disappointment over the ruling, focusing on the Waterfront Commission as a law enforcement agency [Office of the Governor of New York, Press Release, 4-18-23].

Payroll tax

The New York-New Jersey Waterfront Commission Assessment applies to employers with employees registered or licensed under the New York-New Jersey Waterfront Commission Compact for work within the Port of New York district. Covered employees include longshoremen, stevedores (individuals employed in loading and unloading vessels), port watchmen, pier superintendents, and hiring agents. Only the employer pays the assessment. There is no withholding from employees' wages for purposes of the assessment.

The assessment rate is based on the Commission's annual estimate of the employer's gross payroll payments made to covered employees. The rate was 1.60% for the period July 1, 2021 – June 30, 2022. By law, the rate may not exceed 2%. The rate may be adjusted annually. For the period from July 1, 2022 – June 30, 2023, the rate was scheduled to decrease to 1.5%. However, the rate has not been finalized because it has not yet been approved by the necessary parties. PayrollOrg has reached out to the Commission for information on how the ruling may impact the assessment. ■

DOL Publishes Report on State UI Trust Fund Solvency

The U.S. Department of Labor (DOL) published its 2023 *State Unemployment Insurance (UI) Trust Fund Solvency Report*, which includes an analysis of which states may face a Federal Unemployment Tax Act (FUTA) credit reduction.

The report contains highlights:

- As of January 1, 2023, the solvency levels of UI trust funds in 16 states met the recommended minimum solvency standard, which is unchanged from 2022. At the beginning of 2020, 31 states met the minimum solvency standard.
- On January 1, 2023, five states had outstanding balances that totaled $28.1 billion. This represents a decrease of five states and $11.8 billion from the start of 2022. Many states were able to supplement their UI trust funds with funding provided by the Coronavirus Aid, Relief, and Economic Security Act and American Rescue Plan Act.
- For 2023, 17 states meet the eligibility criteria for interest-free borrowing. This is down from 20 states in 2022.

State trust funds

The report explains that UI taxes, paid primarily by employers on the wages paid to employees, flow into state UI trust fund accounts maintained at the U.S. Treasury. These same accounts are the source of benefit payments to eligible claimants in the regular state UI program. There are no federal requirements for the amount of funds that should be kept in a state's trust fund, however each state operates on a forward funding basis by building up reserves in anticipation of paying a higher amount of benefits during recessionary periods. ■