Payroll Insights

Employment tax news to guide you now and for the future

August 2022

John Montgomery's *fresh take*: New Hampshire's new legislation regarding telecommuting rules

The complexity of the remote and hybrid worker is a common issue that employers are facing in today's post-pandemic employment environment. There are many employment tax issues to consider with employers offering more flexibility in work arrangements, including fully remote and hybrid options. Many state and local jurisdictions have their own guidelines on telecommuting and withholding requirements for remote employees.

In a response to the ongoing disputes regarding telecommuting rules applied to residents of other states, New Hampshire recently passed **NH HB1097** which was signed into law by Chris Sununu. This law is intended to shield New Hampshire residents from other states imposing personal income tax on the wages of employees for services that are being performed in New Hampshire. We are awaiting further clarification and guidance from New Hampshire on this legislation.

Paid leave expanding to new states

While employers subject to the Family and Medical Leave Act (FMLA) are required to provide unpaid sick leave to employees, there are currently no federal requirements for the provision of paid sick leave. Some states, including California, Massachusetts, New Jersey, and Washington, have implemented Paid Family and Medical Leave (PFML) programs that require eligible employers to provide paid sick and/or family leave to employees. Each state has its own unique rules, requirements, and contribution rates for their respective programs. Contributions to the programs are typically made by either (or, in some cases, both) employers and employees (through payroll deductions) in a similar way to State Unemployment Insurance (SUI) programs.

As existing PFML programs develop, an increasing number of states and local jurisdictions are looking to implement similar programs. Highlighted below are states and one local jurisdiction that will begin paid leave program implementation within the next few years.

Colorado:

Colorado Family and Medical Leave Insurance Program (FAMLI) benefits will be available to an employee who has earned at least $2,500 in wages within the state, over a period of one year. Beginning on January 1, 2023, contributions to fund the program are scheduled to begin. The premiums are set to 0.9% of the employee's wages, with .45% paid by the employer and .45% paid by the employee. Employers may also elect to pay the full amount if they choose to offer this as an added perk for their employees. Businesses with nine or fewer employees do not have to contribute to the program but do need to remit their employees' share (.45%) of premium payments each quarter. The employee contributions should be collected through a simple payroll deduction. The paid benefits are set to begin on January 1, 2024.

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Delaware:

PFML benefits will be available to any Delaware employee who has worked at least 1,250 hours during a 12-month period before requesting leave. Eligible employees can receive up to 12 weeks of paid parental leave, 6 weeks of paid family caregiver leave, or 6 months of paid medical leave. Employer and employee contributions to the program are required and will begin on January 1, 2025, and employees will be able to receive benefits beginning January 1, 2026. For 2023 and 2024, contribution rates are expected to be 0.4%, 0.08%, and 0.32% for medical, family, and parental leave, respectively, and may be split by the employer and employee up to 50%. For more information, visit: Healthy Delaware Families Act

Maryland:

PFML benefits will be available to full and part-time Maryland employees who have worked at least 680 hours over a 12-month period before requesting leave. The benefit will include up to 12 weeks of paid time off to care for their child, medical issues, or a family member's medical issues. Contributions to the PFML program will be required for both employees and employers and are set to begin October 1, 2023. The benefits will be available beginning on January 1, 2023. While no contribution rates have been announced for 2023, the state has announced that costs may be split between the employer and employee based on the following ranges: (1) 75% paid by employers and 25% paid by employees, and (2) 25% paid by employers and 75% paid by employees.

For more information:
2022 Regular Session - Senate Bill 275

Oregon:

PFML benefits will be available to full and part-time Oregon employees who made at least $1,000 the year before applying for paid leave. Employees can take up to 12 weeks off from work in a year. In some pregnancy-related situations, employees may be able to take up to two more weeks for a total of 14 weeks. Beginning on January 1, 2023, employees and employers will begin their contributions to the program. Employers are expected to pay 40% and employees are expected to pay 60% of the contribution rate, which is 1% for 2023. On September 3, 2023, employees can start applying for benefits.

San Francisco:

San Francisco has enacted a public health emergency leave requirement that will go into effect on October 1, 2022. Employers with at least 100 employees will be required to provide paid leave to employees for public health emergencies. The enacted bill determines that a public health emergency is an infectious disease or health emergency defined by government officials. Employees may use this benefit if the employee or a family member is experiencing symptoms of or receives a positive test result for the defined disease or health emergency.

Federal

The IRS is planning to release a new Form 1099 portal on January 1, 2023, which would allow filers to create and file forms for the 2023 tax year. The new portal, Information Return Intake System (IRIS), will not replace the current FIRE system but will be a second option for the filing season. IRIS will allow payors to manually enter data and upload CSV or XML files to create the Forms 1099. While an eventual transition away from FIRE is planned, there is no set date and both portals will be available for the foreseeable future.

The IRS has released drafts of the 2022 Form 940 and its credit reduction schedule. While the Form 940 was not substantially changed from 2021, Schedule A was updated to include potential credit reductions for those states with current loan balances from the federal unemployment account. If balances are paid by November 10, 2022 (and remain at zero), then those reductions may be reversed. Currently the states with adjustments include California, Colorado, Connecticut, Illinois, Massachusetts, Minnesota, New Jersey, New York, Pennsylvania, and the U.S. Virgin Islands. Credit reductions would increase federal unemployment tax costs from $42 to $63 per employee.

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The IRS has issued revised Forms 941 and 941-X to be used for the second, third, and fourth quarters of 2022. The forms were updated to remove expired COVID-19 relief provisions and remove worksheets that are no longer applicable (such as Worksheet 3, *COBRA Premium Assistance Credit*).

California:

California has announced that voters in the state will have the opportunity to vote on increasing the state's minimum wage to $18/hour in the November 2024 general election. Under the proposition, employers with more than 25 employees would be required to pay the new rate by 2025 and those with 25 or fewer would have until 2026.

The California Supreme Court has been asked to review questions related to *Huerta v. CSI Elec. Contractors Inc.* and employer wage requirements related to employee time spent going through security and requirements around meal breaks. The complainant believes that time spent waiting to go through security gates and parking facilities at their job site should be considered paid time as well as time spent for meal breaks, as the employer does not allow them to leave the premises. The wage order in question currently requires that employers pay employees for all time that an employee is under the employer's control. The courts eventual decision may create serious changes in California wage law and guidance depending on the outcome.

Idaho:

Idaho has released the 2022 withholding tables, including adjusting the supplemental withholding rate. These changes are retroactive to wages paid on or after January 1, 2022. Rates now range from 1% to 6%, and the new rate on supplemental wages is 6% (down from 6.5%).

Nevada:

On July 14, a spokesperson for the Nevada Department of Employment, Training and Rehabilitation, announced that the taxable wage based for unemployment contributions is expected to increase to $40,100 in 2023. This is a $3,500 increase from the 2022 base of $36,600.

Pennsylvania:

The Supreme Court of Pennsylvania has agreed to review the case of *Zilka v. Tax Review Board City of Philadelphia.* The taxpayer lived in Philadelphia, PA but worked in Wilmington, DE from 2013 through 2016. During that time, she had both Wilmington and Philadelphia local taxes withheld from her wages earned in Delaware. The taxpayer requested a credit for the local DE taxes paid against her local PA liability, in addition to the remaining balance of DE tax paid (after the PA state credit was applied). The court originally ruled that there is no double taxation because the taxpayer is only paying one local tax and one state tax and therefore, Philadelphia "not taxing Taxpayer's income 'more heavily when it crosses state lines.'"

Puerto Rico:

On June 29, the finalized Form 941(PR), *Employer's Quarterly Federal Tax Return (Puerto Rico Version)* and its accompanying instructions were released by the IRS. The updated form addresses the end of COBRA premium assistance credit that became unavailable to most employers in the second quarter of 2022. For employers to now be able to claim the credit, they must use the updated Form 9410X (PR), *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund (Puerto Rico Version)* that was also released with instructions.

Rhode Island:

Rhode Island H.B. 7510 was signed into law on June 28 by Governor Dan Mckee. The bill allows all employees to retain earned tips unless they were charged to a credit card, or the employer has a valid tip pool arrangement in place. Employers will only be allowed to take a tip credit for tips actually received by employees and all employees subject to tip pooling must be notified of their contribution amounts. Employers are allowed to deduct credit card fees from tips charged in the same transaction, however, employees must be notified, and the deduction may not reduce wages below minimum wage. These fees may not be considered tips for the employer's purposes, but may be used to meet minimum wage and overtime requirements.

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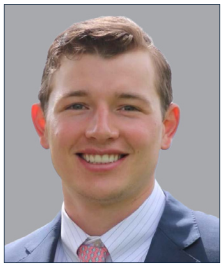
Vermont:

On June 1, the Vermont Department of Taxes released new guidance on electronic filing requirements for annual withholding and informational returns to be submitted by January 31, 2023. Electronic filing will be required for taxpayers with over 25 combined Forms W-2 and 1099. Additionally, third-party filing services filing on behalf of multiple employers must file all Forms W-2 electronically. All electronic forms must follow the specifications provided in the publication.



Meet one of our Employment Tax professionals: Charles Siegrist

Charles is an associate in KPMG's New York City office, with 1.5 years of employment tax experience. Charles assists many clients with work from anywhere matters, independent contractor reporting and payroll reporting compliance at the federal, state, and local levels.

In his free time, Charles enjoys hiking, fishing, playing video games. He is also a die-hard Boston sports fan.

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