



# Payroll Insights

Employment tax news to guide you  
now and for the future

July 2023



## John's *fresh take*: The power of voluntary disclosure agreements (VDAs) programs for regulatory compliance

Voluntary Disclosure Agreements (VDAs) programs have emerged as powerful tools in fostering corporate transparency and regulatory compliance. These agreements are voluntary programs established between companies and federal and/or state governmental authorities, enabling businesses to proactively disclose any potential violations, errors, and/or omissions they may have committed. By doing so, companies can mitigate penalties, avoid litigation, and establish a cooperative relationship with regulatory bodies.

Recently there has been a notable uptick in the number of companies choosing to file VDAs. This trend can be attributed to several factors, including the rising emphasis on compliance with employment tax regulations, benefits, and compensation practices. As part of the Inflation Reduction Act's increase in funding, additional auditors have been hired and trained, resulting in amplified scrutiny on employers from the Internal Revenue Service (IRS). To brace themselves for potential audits, employers are advised to conduct thorough reviews of their payroll and employment tax practices. By identifying and addressing compliance issues through these internal audits, businesses can proactively rectify any shortcomings before being subject to official scrutiny and the associated penalties. The IRS and state tax authorities tend to focus on a range of critical areas during their official audits including fringe benefits, travel reimbursements, deferred compensation, worker classification, and remote work arrangements. The proactive measure of conducting an internal review not only mitigates financial risks but also strengthens corporate governance, fostering a culture of accountability and integrity within organizations.

Furthermore, VDAs provide an opportunity for companies to engage in a constructive dialogue with regulatory authorities. By coming forward with potential violations, businesses can demonstrate their willingness to rectify any shortcomings and cooperate with investigations. This collaborative approach enhances transparency, streamlines regulatory processes, and helps establish a more harmonious relationship between companies and regulatory bodies.

Overall, the growing number of companies choosing to file VDAs reflects a broader shift towards a culture of compliance and transparency. By proactively disclosing potential violations, businesses can mitigate risks, preserve their reputation, and foster a mutually beneficial relationship with regulatory authorities.

KPMG professionals continue to work with employers of all industries to identify, quantify, and then address potential employment tax risks. We strongly encourage employers to take this time to identify outstanding employment tax liabilities and use VDAs to their advantage where applicable.



### **The IRS' renewed emphasis on employee retention credit fraudulent claims**

The IRS has issued a renewed alert cautioning businesses about deceptive claims surrounding the [Employee Retention Credit \(ERC\)](#). The IRS has observed an increase of aggressive advertising, direct mail solicitations, and online promotions that exaggerate the eligibility criteria for the credit. As a result, the IRS has intensified its audit and criminal investigation efforts concerning these misleading claims. Businesses and tax-exempt organizations considering applying for the ERC are strongly advised to meticulously review the official requirements of the program before applying. The credit is solely intended for eligible businesses that made continued wage payments to employees during the COVID-19 shutdowns or that experienced a substantial decline in gross receipts. It is recommended that employers perform their due diligence in confirming and documenting that ERC eligibility is satisfied prior to making any claim for credits. In addition, employers that have filed for the credit may want to ensure that there are adequate materials maintained in the event such a claim is selected for audit.

### **Health Savings accounts inflation adjustments**

The IRS recently announced the inflation-adjusted contribution limits for [health savings accounts \(HSAs\)](#) in 2024, allowing individuals to deposit higher amounts compared to the previous year. In 2024, individuals with self-only coverage under a high-deductible health plan can contribute up to \$4,150, while those with a family plan can contribute up to \$8,300. Additionally, the minimum annual deductibles for qualifying high deductible health plans will increase for 2024 to \$1,600 for self-only coverage and \$3,200 for family coverage, and the maximum annual out-of-pocket expenses will also rise to \$8,050 for self-only coverage and \$16,100 for family coverage.

### **2023 Draft Form 940 released highlighting credit reduction schedule**

On June 6, 2023 the IRS released a draft version of the [Form 940, Employer's Annual Federal Unemployment \(FUTA\) Tax Return](#), and Schedule A, *Multi-State Employer and Credit Reduction Information*. The draft Form 940 Schedule A highlights the potential for a 0.6% credit reduction rate in 2023 for California, Connecticut, Illinois, and New York, as these states had previously received a 0.3% credit reduction in 2022 and failed to pay their outstanding balance by January 1, 2023. Although Connecticut and Illinois have cleared their outstanding federal unemployment loan balances, there is the potential for the states to claim a separate loan which, if not repaid timely, will result in the states being subject to a credit reduction. The U.S. Virgin Islands could also be subject to a credit reduction, however, the specific amount is not reported in the draft Schedule A.

### **National Labor Relation Board tightens requirement for independent contractor classification**

On June 13, 2023, the [National Labor Relations Board \("NLRB"\)](#) overturned its 2019 ruling in *SuperShuttle DFW, Inc.* that deemed shuttle-van-driver franchisees of SuperShuttle at Dallas-Fort Worth Airport as independent contractors and therefore not protected by federal labor law. This decision relied heavily on an individual's "entrepreneurial opportunity" as a key factor in determining a worker's employment status. In this latest ruling in *Atlanta Opera, Inc. and Make-Up Artists and Hair Stylists Union*, the NLRB reverted to its previous standard for determining worker classification under *FedEx II*, that considers a broader range of factors such as, the amount of control a company exercises over the detail of the work completed by individuals, whether an individual is employed in a distinct occupation within the business, whether the work performed is a part of the regular business of the employer, and whether an individual only performs services for one company or is available to perform similar work for other companies.

Employers should continue to review their workforce when determining if worker classifications are being considered correctly. Incorrectly classifying an employee as an independent contractor could result in the employer being held liable for under-withheld taxes, penalties, and interest. It is also important to note that states have begun adapting to the increased use of independent contractor labor and establishing their own worker classification standards and tests. Therefore, it is advised that employers consider any applicable state worker classification laws in the jurisdictions in which their company operate.

## State IRC conformity updates

**Florida:** Enacted on May 25, 2023, H.B 7063 updates [Florida's conformity](#) date to federal law enacted on January 1, 2023, and requires Florida to retroactively apply such updates to tax years beginning on or after January 1, 2023.

**Georgia:** On May 2, 2023, S.B 56 was signed into law, updating [Georgia's](#) corporate and individual income tax conformity to the Internal Revenue Code (IRC). The new law updates Georgia's conformity date to federal law as prescribed in the IRC and enacted on or before January 1, 2023, unless specifically and otherwise noted in S.B. 56.

**Hawaii:** Enacted on June 5, 2023, H.B 1100 updates [Hawaii's conformity](#) date to federal law enacted as of December 31, 2022, and requires Hawaii employers to retroactively apply such updates to tax years beginning on or after December 31, 2022.

**Minnesota:** Signed into law on May 24, 2023, H.F 1938 updates [Minnesota's conformity](#) date to federal law prescribed under the IRC as enacted as of May 1, 2023, and requires Minnesota employers to retroactively apply such updates to tax years beginning on or after December 31, 2022.

**Oregon:** Signed into law on June 7, 2023, S.B. 141 updates [Oregon's conformity](#) date to federal law prescribed under the IRC as enacted on December 31, 2022, and requires Oregon employers to retroactively apply such updates to tax years beginning on or after December 31, 2022.

**South Carolina:** On May 16, 2023, the Governor of [South Carolina](#) signed H.B. 4017 to amend South Carolina Code of Laws to apply the IRC to state tax laws, to update the reference to the IRC to 2022. In addition, if the IRC sections adopted by South Carolina are extended, then these sections should also be extended for South Carolina income tax purposes.

## State updates

### **Alabama:** [Alabama Passes Bill to Exempt Overtime Pay from State Income Tax](#)

On June 8, 2023, Alabama passed bill HB 217 to implement a groundbreaking measure that exempts overtime pay for hourly workers from state income tax to address the workforce shortage. The legislation gained unanimous approval from state lawmakers, who made changes requested by Governor Kay Ivey, including the removal of a \$25 million cap on the tax break and a shorter lifespan for the exemption. The exemption covers overtime pay beyond 40 hours per week, in accordance with federal law, and will take effect from January 1, 2024, until it expires after 18 months, unless renewed by state lawmakers. The bill also includes a provision that requires employers to report the total amount of overtime wages paid to employees.

### **Arkansas:** [Arkansas Updates Withholding Formula](#) and [Publishes Low-Income Withholding Tax Tables](#)

Effective June 1, 2023, Arkansas implemented an updated withholding formula because of an income tax reduction passed during the state's legislative session. Governor Sarah Huckabee Sanders signed the income tax cut bill (SB 549) on April 10, 2023, lowering the highest tax rate from 4.9% to 4.7%. The standard deduction and allowance value as used in Arkansas state income tax withholding calculations remains unchanged, however, the annual compensation within the brackets is now capped at \$91,301.

The Arkansas Department of Finance and Administration also published their low-income withholding tax tables, which are effective as of June 1, 2023.

### **California:** [California Law Increases Paid Family and Medical Leave Benefits by Repealing Wage Ceiling](#)

California Governor Gavin Newsome has signed into law SB 951, aimed at increasing the affordability of the California's paid family and medical leave benefits for low-income workers. In doing so, the legislation will repeal the wage ceiling for SDI contributions and make all wages subject to the SDI contribution rate of 0.9%, effective January 1, 2024. Employers should prepare appropriately to have this update in place within payroll systems at the start of 2024. For 2023, the maximum wage base subject to withholding is \$153,164 at a 0.9% contribution rate, providing a maximum withholding amount of \$1,378.48. This cap is now removed.

## **Colorado:** [Colorado To Expand Accrued Paid Sick Leave Uses](#)

Effective August 7, 2023, Colorado is set to expand the utilization of earned paid sick leave with the implementation of SB 23-017. The bill mandates that employers permit employees to use accrued paid sick leave in situations when an employee needs to care for a family member whose school or place of care has been closed due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected occurrence or event that results in the closure of the family member's school or place of care. Employees may also use accrued paid sick leave when they need to evacuate their place of residence due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected occurrence or event that results in the need to evacuate their residence. Employees will also be able to use accrued paid sick leave when they need to grieve, attend funeral services or a memorial, or deal with financial and legal matters that arise after the death of a family member. Governor Jared Polis signed SB 23-017 into law on June 2, 2023.

## **Connecticut:** [Connecticut Amends Reporting Requirements to Lighten Burden on Employers](#)

On June 7, 2023, the Connecticut Governor Ned Lamont enacted SB 1091, which amends employer reporting obligations on specific employee information that were slated to take effect in the third quarter of 2024. Required reporting of various employee personal details such as gender identity, age, race, ethnicity, veteran status, disability stats, highest education completed, home address, address of primary work site, occupational code under the standard occupational classification system of the Bureau of Labor Statistics of the U.S. Department of Labor, hours worked, days worked, salary or hourly wage, employment start date in the current job title, and, if applicable, employment end date should now be optional when it goes into effect in 2026.

Employers should only be required to report general employee information, including employee wages and social security numbers. All employment information required to be reported should continue through the prescribed Connecticut state unemployment insurance (SUI) returns and reports.

## **Louisiana:** [Louisiana Amends Voluntary Disclosure Agreement \(VDA\) Rule to Include Misclassified Workers](#)

The Louisiana Department of Revenue Policy Services Division recently amended LAC 61:III.2103 relating VDAs. The amendment establishes a VDA program in which employers can utilize with respect to misclassified individuals that should have been considered employees and outlines the procedures surrounding such VDA program.

## **Montana:** [Montana Laws Exempts Digital Assets From Additional Withholding](#)

Senate Bill 178, as effective May 2, 2023, establishes a new law in Montana, clarifying that digital assets used for payment, including cryptocurrencies, stable coins, nonfungible tokens, and other digital-only assets with economic or proprietary value, are exempt from any additional taxes, withholdings, assessments, or charges imposed solely based on their use as the method of payment. Furthermore, the legislation recognizes digital assets as personal property.

## [Montana Form W-2 Filing Penalties Increased](#)

Montana Governor Greg Gianforte signed bill SB 303 on May 22, 2023, increasing penalties for failing to file Forms W-2, *Wage and Tax Statement*, with the state. The bill raises the penalty to \$50 per form, with a minimum penalty assessed of \$250. However, employers may be eligible for penalty abatement for first time offenses if the Forms W-2 are filed within 30 days of receiving a notice of noncompliance. Additional penalty abatement may be available if reasonable cause for the non-filing of the Forms W-2 can be demonstrated.

## **Missouri:** [Missouri DOR Proposes to Rescind Pandemic Wage Sourcing Rule](#)

From March 13, 2020, through November 1, 2020, the Missouri Department of Revenue provided employers with a form of relief regarding determining where an employee should be subject to state income tax withholding when performing services from a temporary work location due to the COVID-19 pandemic. It has been proposed that this administrative ruling be rescinded given that it applied only to Missouri income tax from wages paid to employees working from temporary work locations during a period that has ended.

## Oregon: Oregon's New Hire Reporting Requirement for Independent Contractors

Oregon SB 184 provides that beginning January 1, 2024, Oregon employers will have a new requirement to report specific independent contractor information to the state child support division. Such reporting requirement should arise when an individual performs services as an independent contractor for more than 20 days. An additional reporting requirement may arise when an independent contractor is reengaged and has not performed services for such employer within the previous 60 days. Employers engaging with independent contractors can satisfy the reporting requirements by submitting the completed federal Form W-9, *Request for Taxpayer Identification Number and Certification*, to the Oregon Division of Child Support. Additional reporting requirements may be presented to employers when the law becomes effective.

## Oregon Passes Bill to Implement Employer Penalties for Family and Medical Leave Insurance

Oregon SB 912 creates new provisions and establishes penalties surrounding its family and medical leave insurance program. The established penalties target employers with private plans that do not satisfy the mandatory benefit requirements. A \$1,000 penalty is to be imposed on first-time offenders with subsequent penalties in the amount of \$2,000. Penalty relief may be granted on a case-by-case basis depending upon all facts surrounding the offense.



### Meet one of our Employment Tax professionals: Arifa Nagim

Arifa Nagim is an associate with our team in Short Hills, New Jersey, and started with the firm in August 2022. Arifa assists clients with state payroll tax issues, compliance services related to the corporate reorganizations, and annual reporting compliance at the federal, state, and local levels. Arifa enjoys trying all the new local brunch places every weekend and hopes to one day visit every diner in New Jersey.

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