Payroll Insights

Employment tax news to guide you now and for the future

April 2022

John Montgomery's *fresh take*: States delay repayment of unemployment loans - How does this impact employers?

Due the COVID-19 pandemic, many states requested loans from the Federal Unemployment Account to fund the drastic increase in unemployment insurance claims. As of February 18, 2022, outstanding loans from the Federal Unemployment Account totaled $39,740,622,194.44, which include loans to California, Colorado, Connecticut, Illinois, Massachusetts, Minnesota, New Jersey, New York, Pennsylvania and the Virgin Islands. Several of these states, including New Jersey and New York, have recently argued postponing the repayment of the outstanding loans because of the continued impact of COVID-19.

How does this impact employers? Increases in Federal Unemployment Tax Act (FUTA) contributions because of credit reductions that result from the outstanding loans not being repaid to the Federal Unemployment Account. Employers within a credit reduction state would then be faced with paying higher FUTA contributions until the states repay the outstanding loans. In addition, employers could experience increases in state unemployment insurance tax rates if depleted state unemployment insurance funds are not replenished. Among other factors, employer state unemployment insurance contribution rates are generally based upon an employer's reserve ratio and the unemployment trust fund reserve ratio of the given state. If employer reserve balances and the balance of state unemployment trust funds are not replenished, then employers could be faced with higher state unemployment insurance contribution rates.

Employers should continue to diligently monitor all correspondence they receive from state tax authorities regarding changes in taxable wage bases or adjustments to tax rates. In addition to the increase in payroll tax costs, employers can be held liable for penalties and interest from underpayments if state unemployment insurance taxable wage bases and tax rates are not updated timely within their payroll systems.

IRS to suspend mailing of certain notices

On February 9, 2022, the IRS announced the suspension of certain letters and automated collection notices that are generally mailed to taxpayers regarding additional taxes owed or missing tax returns. While many of the suspended correspondences relate to individual taxpayers, among the suspended notices includes Notice CP259 which is generally issued when the IRS does not have record of a prior year return filed by a business. In addition, Notice CP518 is to be suspended, which is generally issued as a final reminder that the IRS has not received a business's prior year tax return(s).

Automated collection notices are being suspended until the IRS backlog is worked through and it will continue to assess the inventory of prior year returns to determine an appropriate time in which to resume issuing notices.

Employers should keep records of all filings as well as diligently review and respond appropriately to any notices received from the IRS.

Federal Form 941 updates

On February 28, 2022, the Internal Revenue Service (IRS) released the updated Form 941, *Employer's Quarterly Federal Tax Return;* Instructions for the Form 941; Instructions for Schedule B, *Report of Tax Liability for Semiweekly Schedule Depositors;* Schedule R, *Allocation Schedule for Aggregate Form 941 Filers*; and Instructions for Schedule R (Form 941).

As anticipated, the Form 941 has been updated to remove any claims for employee retention credits or to defer social security taxes as those relief provisions have ended.

California supplemental paid sick leave reinstated

Effective February 19, 2022, from January 1, 2022 through September 30, 2022, covered employees that work for employers with more than 25 employees are entitled to 80 hours of COVID-19-related paid sick leave, with up to 40 of those hours available only when an employee or family member tests positive for COVID-19. A full-time covered employee is eligible to receive 40 hours of paid leave if the employee is unable to perform services physically in person or via telecommuting because of any of the following reasons:

— Vaccine-Related: The employee is attending an appointment to receive a vaccine or booster themselves or for a family member or cannot perform services because of vaccine-related symptoms experienced by themselves or a family member.

— Self-Care: The employee is required to quarantine for a defined period by order or guidance of the California Department of Public Health, the federal Centers for Disease Control and Prevention, or a local public health officer with jurisdiction over the workplace. This should also include quarantine time as advised by a healthcare provider, or during the period in which the employee is experiencing COVID-19 symptoms and seeking a professional medical diagnosis.

— Caring for a Family Member: The covered employee is caring for a family member that is required to quarantine due to COVID-19, or is caring for a child whose school or place of care is closed because of COVID-19 on the premises.

A full-time covered employee may also take an additional 40 hours of paid leave if the employee is unable to perform services because of testing positive for COVID-19 or caring for a family member that has tested positive for COVID-19.

Employers should consider the requirements of the supplemental paid sick leave and continue to prepare accordingly in the absence of employees due to COVID-19-related issues. The 2022 Supplemental Paid Sick Leave Frequently Asked Questions (FAQs) have been released by the California Department of Industrial Relations and should be reviewed to determine all of the corresponding employer obligations.

California localities raise minimum wage

Effective January 1, 2022, Santa Rosa and Petaluma raised the minimum wage to $15.85 per hour for all employees performing services within the cities. In addition, the City of Sonoma raised its minimum wage to $15.00 per hour for employers with 25 or fewer employees, and to $16.00 per hour for employers with 26 or more employees.

Currently, the California state minimum wage for 2022 is $14.00 per hour for employers with 25 or fewer employees, and $15.00 per hour for employers with 26 or more employees. While many employers generally review state minimum wage requirements, it is imperative to also consider localities that may have minimum wages requirements above the state obligation.

California ABC test exception

Released in February 2022, California Publication DE 231, *ABC Exception Info Sheet,* provides the occupations and occupational requirements that must be met for applying the *Borello* test for determining an individual's worker classification status, as opposed to the ABC test established in 2020. Occupations included in the ABC test exception include:

— Department of Insurance licensees, underwriting inspections, premium audits, risk management, claims adjusting, third-party administration or loss control work for the insurance and financial service industries.

— Licensed physician and surgeon, dentist, podiatrist, psychologist, or veterinarian.

— Licensed lawyer, architect, landscape architect, engineer, private investigator, or accountant.

— Securities broker-dealers or investment advisers or their agents and representatives.

— Direct sales salesperson.

— Commercial fisher.

— Newspaper distributors or carriers.

— International exchange visitor program.

— Competition judge including, but not limited to, an amateur umpire or referee.

If the individual's occupation is not listed, then the exception does not apply.

Employers should also review all the occupation requirements provided in California Publication DE 231 to determine if the requirements are satisfied to except them from the ABC test.

In addition, California has also released Publication DE 231PF, *Contracts for Professional Services – ABC Test Exception*, that should be reviewed to determine if and ABC test exception exists. The professional services to be considered include:

— Marketing

— Administrator of human resources

— Travel agent

— Graphic designer

— Grant writer

— Fine artist

— Enrolled agent

— Payment processing agent

— Still photographer, photojournalist, videographer, photo editor

— Freelance writer, translator, editor, copy editor, illustrator, or newspaper cartoonist

— Content contributor, advisor, producer, narrator, cartographer

— Licensed: esthetician, electrologist, manicurist, barber, or cosmetologist

— Specialized performer

— Appraiser

— Registered professional foresters

Employers should also review the industry-specific requirements provided in California Publication DE 231PF to determine if the requirements are satisfied to except them from the ABC test when determining if an individual should be classified as an employee or independent contractor.

Iowa – Transitioning to a flat income tax rate

With the signing of House File 2317 by Governor Kim Reynolds, Iowa will adopt a flat personal income tax rate of 3.90% beginning in 2026. This should have an impact on the rate used by employers to withhold Iowa state income tax from wages.

Washington Cares Fund delay

The Washington Cares Fund was established to provide long-term affordable care to all workers within the state, with the fund to be paid for through employee contributions starting in 2022. However, the Washington Cares Fund implementation has been delayed by 18 months through House Bill 1732. Employee contributions to the Cares Fund should not begin until July 2023, and any contributions previously withheld by an employer should be refunded to the employees.

Wilmington, Delaware local earned income tax

On February 1, 2022, the City of Wilmington, Delaware released Guidance and Frequently Asked Questions with respect to earned income tax refunds for nonresident employees. The city restricts refunds to the nonresident employee wage taxpayer:

a. who is able to prove days of work they performed or rendered work outside of the City limits of Wilmington, and

b. when and to the degree an employer certifies and, upon demand, supplies evidence to the satisfaction of the Director of Finance, that the employer has required that the work be performed or rendered by the nonresident employee at a location outside of the City as condition of employment and/or because of an absolute prohibition established by an applicable emergency order.

Employers may be faced with questions from employees on (1) why the Wilmington, Delaware earned income tax continues to be withheld from their wages when services are performed outside of the city limits, and (2) why they are not eligible for a refund.

It should be noted that the City of Wilmington interprets "performed" as work done within the physical limits of the city while services "rendered" is work performed on behalf of the city-based employer, regardless of the employee's location inside or outside of the city. Therefore, employees whose official work locations are within the city limits are considered for all intents and purposes subject to earned income tax unless the employer certifies that the employee did not provide or render services to the employer's location within the city limits during the emergency order in the 2020 tax year.

Once the Declaration of Emergency is lifted, employees who continue to work from home will do so at the employer's convenience and still be subject to the wage tax unless the employer certifies that the employee has permanently ceased providing services or rendering services to the employer's location within the city limits. This rule interpretation should apply to income beginning in the 2020 tax year, retroactive to January 1, 2020 and subsequent tax years until changed through the regulatory process.

State unemployment insurance updates

California

The California Employment Development Department has increased the state disability insurance taxable wage base from $128,298 in 2021 to $145,600 in 2022.

Colorado

The Colorado Department of Labor and Employment has increased the unemployment insurance taxable wage base from $13,600 in 2021 to $17,000 in 2022.

Kentucky

The Kentucky Office of Unemployment Insurance has increased the unemployment insurance taxable wage base from $10,800 in 2021 to $11,100 in 2022.

Montana

The Montana Department of Labor and Industry has increased the unemployment insurance taxable wage base from $35,300 in 2021 to $38,100 in 2022.

New Jersey

The New Jersey Department of Workforce Development has increased the unemployment insurance taxable wage base from $36,200 in 2021 to $39,800 in 2022.

New York

The New York Department of Labor has increased the unemployment insurance taxable wage base from $11,800 in 2021 to $12,000 in 2022.

Vermont

The Vermont Department of Labor has increased the unemployment insurance taxable wage base from $14,100 in 2021 to $15,500 in 2022.

U.S. Virgin Islands

The U.S. Virgin Islands Department of Labor has decreased the unemployment insurance taxable wage base from $32,500 in 2021 to $30,800 in 2022.

Washington

The Washington Employment Security Department has increased the unemployment insurance taxable wage base from $56,500 in 2021 to $62,500 in 2022.

Wyoming

The Wyoming Department of Workforce Services has increased the unemployment insurance taxable wage base from $27,300 in 2021 to $27,700 in 2022.

Meet one of our Employment Tax professionals: Dylan McLaughlin

Dylan is a Manager in KPMG's Short Hills, New Jersey office with 6 years of employment tax experience. As a Certified Payroll Professional, Dylan specializes in assisting clients with the complexities of payroll compliance at the federal, state and local levels. Excited about the sudden change in the labor force demands, Dylan helps clients with implementing policies that adapt to the new flexible work model and locations in which employees perform services, while remaining compliant with existing and ever-changing tax laws.

Dylan enjoys spending time with his fiancé and their dog "Archie," traveling to new places, and being outside as often as possible.

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