



Payroll Insights

Employment tax news to guide you now and for the future

January 2021

Federal Updates

Fair Labor Standards Act (FLSA) – Independent Contractor Update

The U.S. Department of Labor (“DOL”) published clarifying [rules](#) to the classification of workers as employees or independent contractors in the January 7, 2021 [Federal Register](#) (Independent Contractor Status Under the Fair Labor Standards Act, 86 Fed. Reg. 1168 (to be codified at 29 C.F.R. pts. 780, 788, and 795)). These rules will go into effect 60 days after publication, which falls on March 8, 2021.

This DOL ruling reaffirms the “economic reality” test to determine if an individual is in business for themselves or if the individual is economically dependent on the potential employer for work. The ruling provided five factors to assist with the determination. These factors are not exhaustive, and no single factor is dispositive.

The rule identifies the two factors that are considered “core factors” in evaluating whether a worker is economically dependent on an employer or in business for themselves. If both proposed core factors lead to the same determination, it is likely that the determination is appropriate. These factors include:

- The nature and degree of the worker’s control over the work performed; and
- The worker’s opportunity for profit and loss.

The rule provides three additional factors that may serve as guideposts if a classification cannot be determined using the core factors. These include:

- The level of skill required to complete the work;
- The degree of permanence of the working relationship between the worker and potential employer; and
- Whether the work is part of an integrated unit of production of the potential employer.

The DOL further states that the actual practice of the worker and the potential employer is more relevant than what may be contractually possible. It is important to review the work/project in its entirety to ensure proper worker classification.

These DOL agency rules do not go into effect until March 8, 2021 and it’s possible the incoming Biden Administration reconsiders the rules prior to the effective date. KPMG will continue to monitor developments in this area.

Notice 2021-7: Temporary relief to value personal use of employer-provided automobile (COVID-19)

On January 4, 2021, Internal Revenue Service (“IRS”) released an advance version of Notice 2021-7 to provide temporary relief for employers using the automobile lease valuation rule to value an employee’s personal use of an employer-provided automobile for purposes of income inclusion, employment tax, and reporting.

The temporary relief is in response to the coronavirus (COVID-19) pandemic.

Notice 2021-7 provides that if certain requirements are satisfied, employers and employees that are using the automobile lease valuation rule to determine the value of an employee’s personal use of an employer-provided automobile can instead use the vehicle cents-per-mile valuation rule to determine the value of an employee’s personal use of an employer-provided automobile beginning as of March 13, 2020.

The notice provides that for 2021, employers and employees may revert to the automobile lease valuation rule or continue using the vehicle cents-per-mile valuation rule, provided certain requirements are met.

See the [TaxNewsFlash](#) for more details.

IRS Standard Mileage Rates

The IRS issued new 2021 standard mileage rates:

- 56 cents per mile driven for business use
- 16 cents per mile driven for medical or moving purposes for qualified active duty members of the Armed Forces
- 14 cents per mile driven in service of charitable organizations

Details can be found at IRS Notice [2021-02](#) or on the IRS news [release](#).

State Updates

Missouri Department of Revenue – Emergency Rule/Determination of Withholding for Work Performed at a Temporary Work Location

Missouri Department of Revenue has issued an [emergency tax rule](#) affecting those employers with employees working from a temporary work location. This ruling will become effective January 21, 2021 and will expire July 19, 2021.

The state provided final guidance on employer withholding requirements resulting from the COVID-19 emergency rulings. It covers the withholding periods beginning March 13, 2020 (the date federal government declared a federal disaster due to COVID-19) through December 31, 2020. Under the rule, those qualifying employers may elect to withhold tax based on the employee's temporary work location during the covered period, or the location the employee was assigned prior to the disaster declaration, despite currently working from a temporary work location.

This rule shall only apply to:

- Employers that did not maintain a time and attendance system for all employees on or before the declaration date (March 13, 2020), and only where such employer is:
 - An employer having a primary work location in Missouri with employees working from temporary work locations in states other than Missouri; or
 - An employer having a primary work location in a state other than Missouri with employees working from temporary work locations in Missouri.

Pursuant to the rule, each employer that elects to withhold and remit tax based on the primary work location of its employees shall submit an affidavit notifying the Department of Revenue on or before January 31, 2021.

The affidavit should include the following:

- The employer did not have a time and attendance system in place for all employees as of the declaration date;
- The employer did not have a time and attendance system in place to identify the locations at which employees performed services during the COVID-19 relief period prior to the implementation of a time and attendance system, if an employer implemented a time and attendance system during the COVID-19 relief period;
- The employer will issue Forms W-2, Wage and Tax Statement to employees consistent with the primary work location of each employee for all or part of the COVID-19 relief period during which an employee was not covered by a time and attendance system; and
- The employer will issue a communication notifying impacted employees of the employer's election no later than five (5) business days after submission of the affidavit contemplated by this section.

Note, the rule also provides examples for several employer scenarios as guidance as to how the rule should be applied.

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