Annual Payroll Tax & Fringe Benefits Update

December 2023

Presented by
Amanda Dussold, MSA, CPA

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Table of Contents

2024 Payroll Calendar

2023 Payroll Updates … ....Section A
- **Wage Thresholds 2023 v 2024**
- **Income Tax Tables 2023**
- **Income Tax Tables 2024**
- **Earned Income Tax Credit 2023 v 2024**
- **Saver's Credit Tables 2023 v 2024**

Hot Topics...Section B
- **Secure 2.0 Summary**
- **IL Paid Leave for All Workers Act**

IRS Guidance ....Section C
- **Publication 15 Circular E 2023**

Fringe Benefits .... Section D
- **Fringe Benefits Summary**
- **Public 15b Circular E 2023**

Forms & Instructions... Section E
- **Form I9**
- **Instructions for Form I9**
- **Form W4**
- **Form W9**
- **Form 941_2023**
- **Form 941, Schedule B_2023**

Hire ❖ Develop ❖ Retain

Table of Contents

Forms & Instructions (*cont'd*) .... Section E

- **Instructions for Form 941**
- **Form 941-X_2023**
- **Instructions for Form 941-X**
- **Form 940_2022 (*2023 version not available at this point*)**
- **Instructions for Form 940_DRAFT**
- **Form W2_2023**
- **Form W3_2023**
- **Instructions for Form W-2 and W-3**
- **Form 1099-MISC**
- **Form 1099-NEC**
- **Instructions for Forms 1099-MISC and 1099-NEC**
- **Form 1096_2023**
- **Instructions for Form 1096**
- **Website Resources for Payroll Professionals**

2024 Calendar

Jan 1	*New Year's Day*
Jan 15	*Birthday of Martin Luther King Jr.*
Jan 16	Deposit December employment taxes (if monthly depositor)
Jan 31	**File Form 941 for Q4 or Form 944 for the year (if applicable)**
	File Form 940
	Deposit FUTA tax
	Reconcile Forms 941 to Forms W2/ W3
	Furnish Forms W2 to employees and Forms 1099-NEC or 1099-MISC to payees
	Submit Forms W-2s and Form W-3 to the SSA
	Submit Forms 1099-NEC and Form 1096 to the IRS
Feb 15	Deposit January employment taxes (if monthly depositor)
	Obtain new Form W4 for exempt employees
Feb 19	*Presidents' Day*
Feb 28	**Send paper Forms 1099-MISC and Form 1096 to the IRS**
Mar 15	Deposit February employment taxes (if monthly depositor)
Apr 1	**Submit electronic Forms 1099-MISC and Form 1096 to the IRS**
Apr 15	Deposit March employment taxes (if monthly depositor)
Apr 16	*District of Columbia Emancipation Day (observed)*
Apr 30	**File Form 941 for Q1**
	Deposit FUTA tax (if total is over $500)
May 15	Deposit April employment taxes (if monthly depositor)
May 27	*Memorial Day*
Jun 17	Deposit May employment taxes (if monthly depositor)
Jun 19	*Juneteenth National Independence Day*
Jul 4	*Independence Day*
Jul 15	Deposit June employment taxes (if monthly depositor)
Jul 31	**File Form 941 for Q2**
	Deposit FUTA tax (if total is over $500)
Aug 15	Deposit July employment taxes (if monthly depositor)
Sep 2	*Labor Day*
Sep 16	Deposit August employment taxes (if monthly depositor)
Oct 14	*Columbus Day*
Oct 15	Deposit September employment taxes (if monthly depositor)
Oct 31	**File Form 941 for Q3**
	Deposit FUTA tax (if total is over $500)
Nov 11	*Veterans Day*
Nov 15	Deposit October employment taxes (if monthly depositor)
Nov 28	*Thanksgiving Day*
Dec 16	Deposit December employment taxes (if monthly depositor)
Dec 25	*Christmas Day*

* Semiweekly scheduled depositors have at least 3 business days following the close of the pay period to make a deposit

IF the payday falls on a...	**THEN deposit taxes by the following...**
Wednesday, Thursday, and/or Friday	Wednesday.
Saturday, Sunday, Monday, and/or Tuesday	Friday.

	2023	2024
WAGE BASE THRESHOLDS & TAX RATES		
Social Security Wage Base	$ 160,200	$ 168,600
SS Tax Rate	6.20% (EE & ER)	6.20% (EE & ER)
Medicare Wage Base	No Limit	No Limit
Medicare Tax Rate	1.45% (EE & ER)	1.45% (EE & ER)
Additional Medicare Tax Base	$ 200,000	$ 200,000
Additional Medicare Tax Rate	0.9% (EE only)	0.9% (EE only)
Federal Unemployment Wage Base	$ 7,000	$ 7,000
FUTA Rate	0.6%	0.6%
RETIREMENT PLANS		
401(k)	$ 22,500	$ 23,000
401(k) catch-up (> age 50)	$ 7,500	$ 7,500
Simple IRA	$ 15,500	$ 16,000
Simple IRA catch-up (> age 50)	$ 3,500	$ 3,500
Traditional IRA	$ 6,500	$ 7,000
IRA catch-up (> age 50)	$ 1,000	$ 1,000
STATE RATES		
IL State Unemployment Wage Base	$ 13,271	$ 13,271
IL SUTA Rate (Max)	8.650%	8.650%
IL SUTA Rate (Min)	0.850%	0.850%
MO State Unemployment Wage Base	$ 10,500	$ 10,000
MO SUTA Rate (Max)	6.98%	6.75%
MO SUTA Rate (Min)	0.0%	0.0%
IN State Unemployment Wage Base	$ 9,500	$ 9,500
IL SUTA Rate (Max)	7.4%	7.4%
IL SUTA Rate (Min)	0.5%	0.5%
Minimum Wage (IL)	$13.00	$14.00
… Under 18	$10.50	$12.00
… Tipped	$7.80	$8.40
Minimum Wage (MO)	$12.00	$12.30
… Tipped	$6.00	$6.15
Minimum Wage (IN)	$7.25	$7.25
… Tipped	$2.13	$2.13

2023 Federal Income Tax Brackets and Rates for Single Filers, Married Couples Filing Jointly, and Heads of Households

Tax Rate	For Single Filers
10%	$0 to $11,000
12%	$11,000 to $44,725
22%	$44,725 to $95,375
24%	$95,375 to $182,100
32%	$182,100 to $231,250
35%	$231,250 to $578,125
37%	$578,125 or more

Tax Rate	For Married Individuals Filing Joint Returns
10%	$0 to $22,000
12%	$22,000 to $89,450
22%	$89,450 to $190,750
24%	$190,750 to $364,200
32%	$364,200 to $462,500
35%	$462,500 to $693,750
37%	$693,750 or more

Tax Rate	For Heads of Households
10%	$0 to $15,700
12%	$15,700 to $59,850
22%	$59,850 to $95,350
24%	$95,350 to $182,100
32%	$182,100 to $231,250
35%	$231,250 to $578,100
37%	$578,100 or more

2023 Standard Deduction

Filing Status	Deduction Amount
Single	$13,850
Married Filing Jointly	$27,700
Head of Household	$20,800

Tables from https://taxfoundation.org/2023-tax-brackets/

2024 Federal Income Tax Brackets and Rates for Single Filers, Married Couples Filing Jointly, and Heads of Households

Tax Rate	For Single Filers
10%	$0 to $11,600
12%	$11,600 to $47,150
22%	$47,150 to $100,525
24%	$100,525 to $191,950
32%	$191,950 to $243,725
35%	$243,725 to $609,350
37%	$609,350 or more

Tax Rate	For Married Individuals Filing Joint Returns
10%	$0 to $23,200
12%	$23,200 to $94,300
22%	$94,300 to $201,050
24%	$201,050 to $383,900
32%	$383,900 to $487,450
35%	$487,450 to $731,200
37%	$731,200 or more

Tax Rate	For Heads of Households
10%	$0 to $16,550
12%	$16,550 to $63,100
22%	$63,100 to $100,500
24%	$100,500 to $191,950
32%	$191,950 to $243,700
35%	$243,700 to $609,350
37%	$609,350 or more

2023 Standard Deduction

Filing Status	Deduction Amount
Single	$14,600
Married Filing Jointly	$29,200
Head of Household	$21,900

Tables from https://taxfoundation.org/data/all/federal/2024-tax-brackets/

2023 Earned Income Tax Credit (EITC) Parameters

Filing Status		No Children	One Child	Two Children	Three or More Children
Single or Head of Household	Income at Max Credit	$7,840	$11,750	$16,510	$16,510
	Maximum Credit	$600	$3,995	$6,604	$7,430
	Phaseout Begins	$9,800	$21,560	$21,560	$21,560
	Phaseout Ends (Credit Equals Zero)	$17,640	$46,560	$52,918	$56,838
Married Filing Jointly	Income at Max Credit	$7,840	$11,750	$16,510	$16,510
	Maximum Credit	$600	$3,995	$6,604	$7,430
	Phaseout Begins	$16,370	$28,120	$28,120	$28,120
	Phaseout Ends (Credit Equals Zero)	$24,210	$53,120	$59,478	$63,398

Source: Internal Revenue Service. Tables from https://taxfoundation.org/2023-tax-brackets/

2024 Earned Income Tax Credit (EITC) Parameters

Filing Status		No Children	One Child	Two Children	Three or More Children
Single or Head of Household	Income at Max Credit	$8,260	$12,390	$17,400	$17,400
	Maximum Credit	$632	$4,213	$6,960	$7,830
	Phaseout Begins	$10,330	$22,720	$22,720	$22,720
	Phaseout Ends (Credit Equals Zero)	$18,591	$49,084	$55,768	$59,899
Married Filing Jointly	Income at Max Credit	$8,260	$12,390	$17,400	$17,400
	Maximum Credit	$632	$4,213	$6,960	$7,830
	Phaseout Begins	$17,250	$29,640	$6,960	$7,830
	Phaseout Ends (Credit Equals Zero)	$25,511	$56,004	$62,688	$66,819

2023 Saver's Credit

Credit Rate	For Single Filers	For Head of Household	For Married Filing Jointly
50% of your contribution	AGI not more than $21,750	AGI not more than $32,625	AGI not more than $43,500
20% of your contribution	$21,751 - $23,750	$32,626 - $35,625	$43,501 - $47,500
10% of your contribution	$23,751 - $36,500	$35,626 - $54,750	$47,501 - $73,000
0% of your contribtuion	more than $36,500	more than $54,750	more than $73,000

2024 Saver's Credit

Credit Rate	For Single Filers	For Head of Household	For Married Filing Jointly
50% of your contribution	AGI not more than $23,000	AGI not more than $34,500	AGI not more than $46,000
20% of your contribution	$23,000 - $25,000	$34,500 - $37,500	$46,000 - $50,000
10% of your contribution	$25,001 - $38,250	$37,501 - $57,375	$50,001 - $76,500
0% of your contribtuion	more than $38,250	more than $57,375	more than $76,500

SECURE 2.0 Act of 2022

Title I – Expanding Coverage and Increasing Retirement Savings

Section 101, Expanding automatic enrollment in retirement plans. One of the main reasons many Americans reach retirement age with little or no savings is that too few workers are offered an opportunity to save for retirement through their employers. However, even for those employees who are offered a retirement plan at work, many do not participate. But automatic enrollment in 401(k) plans – providing for people to participate in the plan unless they take the initiative to opt out – significantly increases participation. Since first defined and approved by the Treasury Department in 1998, automatic enrollment has boosted participation by eligible employees generally, and particularly for Black, Latinx, and lower-wage employees. An early study found that adoption of automatic enrollment increased participation in a 401(k) plan by short-tenure Latinx employees from 19 percent to 75 percent. An Ariel/Aon-Hewitt study found that, in plans using automatic enrollment, "[t]he most dramatic increases in enrollment rates are among younger, lower-paid employees, and the racial gap in participation rates is nearly eliminated among employees subject to auto-enrollment."

Section 101 requires 401(k) and 403(b) plans to automatically enroll participants in the respective plans upon becoming eligible (and the employees may opt out of coverage). The initial automatic enrollment amount is at least 3 percent but not more than 10 percent. Each year thereafter that amount is increased by 1 percent until it reaches at least 10 percent, but not more than 15 percent. All current 401(k) and 403(b) plans are grandfathered. There is an exception for small businesses with 10 or fewer employees, new businesses (i.e., those that have been in business for less than 3 years), church plans, and governmental plans. Section 101 is effective for plan years beginning after December 31, 2024.

Section 102, Modification of credit for small employer pension plan startup costs. The 3-year small business startup credit is currently 50 percent of administrative costs, up to an annual cap of $5,000. Section 102 makes changes to the credit by increasing the startup credit from 50 percent to 100 percent for employers with up to 50 employees. Except in the case of defined benefit plans, an additional credit is provided. The amount of the additional credit generally will be a percentage of the amount contributed by the employer on behalf of employees, up to a per-employee cap of $1,000. This full additional credit is limited to employers with 50 or fewer employees and phased out for employers with between 51 and 100 employees. The applicable percentage is 100 percent in the first and second years, 75 percent in the third year, 50 percent in the fourth year, 25 percent in the fifth year – and no credit for tax years thereafter. Section 102 is effective for taxable years beginning after December 31, 2022.

Section 103, Saver's Match. Current law provides for a nonrefundable credit for certain individuals who make contributions to individual retirement accounts ("IRAs"), employer retirement plans (such as 401(k) plans), and ABLE accounts. Section 103 repeals and replaces the credit with respect to IRA and retirement plan contributions, changing it from a credit paid in cash as part of a tax refund into a federal matching contribution that must be deposited into a taxpayer's IRA or retirement plan. The match is 50 percent of IRA or retirement plan contributions up to $2,000 per individual. The match phases out between $41,000 and $71,000 in the case of taxpayers filing a joint return ($20,500 to $35,500 for single taxpayers and married filing separate; $30,750 to $53,250 for head of household filers). Section 103 is effective for taxable years beginning after December 31, 2026.

Section 104, Promotion of Saver's Match. Section 104 directs the Treasury Department to increase public awareness of the Saver's Match to increase use of the match by low and moderate income taxpayers. The promotion will make clear that the Saver's Match cannot be withdrawn without incurring penalties, including repayment to the Treasury Department in some cases where the Saver's Match is withdrawn from an individual retirement account before retirement. Taxpayers will have an election to designate a retirement account to receive the repaid Saver's Match. The Treasury Secretary must report to Congress on the Treasury Department's anticipated promotion efforts no later than July 1, 2026.

Section 105, Pooled employer plan modification. Section 105 clarifies that a pooled employer plan ("PEP") may designate a named fiduciary (other than an employer in the plan) to collect contributions to the plan. Such fiduciary would be required to implement written contribution collection procedures that are reasonable, diligent, and systematic. Section 105 is effective for plan years beginning after December 31, 2022.

Section 106, Multiple employer 403(b) plans. Multiple employer plans ("MEPs") provide an opportunity for small employers to band together to obtain more favorable retirement plan investment results and more efficient and less expensive management services. The Setting Every Community Up for Retirement Enhancement Act of 2019 ("SECURE Act") made MEPs more attractive by eliminating outdated barriers to the use of MEPs and improving the quality of MEP service providers. Section 106 allows 403(b) plans, which are generally sponsored by charities, educational institutions, and non-profits, to participate in MEPs and PEPs, including relief from the one bad apple rule so that the violations of one employer do not affect the tax treatment of employees of compliant employers. Section 106 is effective for plan years beginning after December 31, 2022.

Section 107, Increase in age for required beginning date for mandatory distributions. Under current law, participants are generally required to begin taking distributions from their retirement plans at age 72. The policy behind this rule is to ensure that individuals spend their retirement savings during their lifetime and not use their retirement plans for estate planning purposes to transfer wealth to beneficiaries. The SECURE Act of 2019 increased the required minimum distribution age to 72. Section 107 further increases the required minimum distribution age further to 73 starting on January 1, 2023 – and increases the age further to 75 starting on January 1, 2033.

Section 108, Indexing IRA catch-up limit. Under current law, the limit on IRA contributions is increased by $1,000 (not indexed) for individuals who have attained age 50. Section 108 indexes such limit and is effective for taxable years beginning after December 31, 2023.

Section 109, Higher catch-up limit to apply at age 60, 61, 62, and 63. Under current law, employees who have attained age 50 are permitted to make catch-up contributions under a retirement plan in excess of the otherwise applicable limits. The limit on catch-up contributions for 2021 is $6,500, except in the case of SIMPLE plans for which the limit is $3,000. Section 109 increases these limits to the greater of $10,000 or 50 percent more than the regular catch-up amount in 2025 for individuals who have attained ages 60, 61, 62 and 63. The increased amounts are indexed for inflation after 2025. Section 109 is effective for taxable years beginning after December 31, 2024.

Section 110, Treatment of student loan payments as elective deferrals for purposes of matching contributions. Section 110 is intended to assist employees who may not be able to save for retirement because they are overwhelmed with student debt, and thus are missing out on available matching contributions for retirement plans. Section 110 allows such employees to receive those matching contributions by reason of repaying their student loans. Section 110 permits an employer to make matching contributions under a 401(k) plan, 403(b) plan, or SIMPLE IRA with respect to "qualified student loan payments." A qualified student loan payment is broadly defined as any indebtedness incurred by the employee solely to pay qualified higher education expenses of the employee. Governmental employers are also permitted to make matching contributions in a section 457(b) plan or another plan with respect to such repayments. For purposes of the nondiscrimination test applicable to elective contributions, Section 110 permits a plan to test separately the employees who receive matching contributions on student loan repayments. Section 110 is effective for contributions made for plan years beginning after December 31, 2023.

Section 111, Application of credit for small employer pension plan startup costs to employers which join an existing plan. Section 111 ensures the startup tax credit is available for 3 years for employers joining a MEP, regardless of how long the MEP has been in existence. Under both pre- and post-SECURE Act law, the startup tax credit only applies for the first 3 years that a plan is in existence. For example, if a small business joins a MEP that has already been in existence for 3 years, the startup credit is not available. If, for example, the MEP has been existence for 1 or 2 years when a small business joins, the small business may be able to claim the credit for 1 or 2 years, respectively. Section 111 fixes this issue so that employers joining a MEP (which includes PEPs) are eligible for the credit for all 3 years. Section 111 is effective retroactively for taxable years beginning after December 31, 2019.

Section 112, Military spouse retirement plan eligibility credit for small employers. Military spouses often do not remain employed long enough to become eligible for their employer's retirement plan or to vest in employer contributions. Section 112 provides small employers a tax credit with respect to their defined contribution plans if they (1) make military spouses immediately eligible for plan participation within two months of hire, (2) upon plan eligibility, make the military spouse eligible for any matching or nonelective contribution that they would have been eligible for otherwise at 2 years of service, and (3) make the military spouse 100 percent immediately vested in all employer contributions. The tax credit equals the sum of (1) $200 per military spouse, and (2) 100 percent of all employer contributions (up to $300) made on behalf of the military spouse, for a maximum tax credit of $500. This credit applies for 3 years with respect to each military spouse – and does not apply to highly compensated employees. An employer may rely on an employee's certification that such employee's spouse is a member of the uniformed services. Section 112 is effective for taxable years beginning after the date of enactment of this Act.

Section 113, Small immediate financial incentives for contributing to a plan. Under current law, employers may provide matching contributions as a long-term incentive for employees to contribute to a 401(k) plan. However, immediate financial incentives (like gift cards in small amounts) are prohibited even though individuals may be especially motivated by them to join their employers' retirement plans. Section 113 enables employers to offer de minimis financial incentives, not paid for with plan assets, such as low-dollar gift cards, to boost employee participation in workplace retirement plans by exempting de minimis financial incentives from section 401(k)(4)(A) and from the corresponding rule under section 403(b). Section 113 is effective for plan years beginning after the date of enactment of this Act.

Section 114, Deferral of tax for certain sales of employer stock to employee stock ownership plan sponsored by S corporation. Under section 1042 of the Internal Revenue Code ("Code"), an individual owner of stock in a non-publicly traded C corporation that sponsors an employee stock ownership plan ("ESOP") may elect to defer the recognition of gain from the sale of such stock to the ESOP if the seller reinvests the sales proceeds into qualified replacement property, such as stock or other securities issued by a U.S. operating corporation. After the sale, the ESOP must own at least 30 percent of the employer corporation's stock. Section 114 expands the gain deferral provisions of Code section 1042 with a 10 percent limit on the deferral to sales of employer stock to S corporation ESOPs. Section 114 is effective for sales made after December 31, 2027.

Section 115, Withdrawals for certain emergency expenses. Generally, an additional 10 percent tax applies to early distributions from tax-preferred retirement accounts, such as 401(k) plans and IRAs, unless an exception applies. Section 115 provides an exception for certain distributions used for emergency expenses, which are unforeseeable or immediate financial needs relating to personal or family emergency expenses. Only one distribution is permissible per year of up to $1,000, and a taxpayer has the option to repay the distribution within 3 years. No further emergency distributions are permissible during the 3 year repayment period unless repayment occurs. Section 115 is effective for distributions made after December 31, 2023.

Section 116, Allow additional nonelective contributions to SIMPLE plans. Current law requires employers with SIMPLE plans to make employer contributions to employees of either 2 percent of compensation or 3 percent of employee elective deferral contributions. Section 116 permits an employer to make additional contributions to each employee of the plan in a uniform manner, provided that the contribution may not exceed the lesser of up to 10 percent of compensation or $5,000 (indexed). Section 116 is effective for taxable years beginning after December 31, 2023.

Section 117, Contribution limit for SIMPLE plans. Under current law, the annual contribution limit for employee elective deferral contributions to a SIMPLE IRA plan is $14,000 (2022) and the catch-up contribution limit beginning at age 50 is $3,000. A SIMPLE IRA plan may only be sponsored by a small employer (100 or fewer employees), and the employer is required to either make matching contributions on the first 3 percent of compensation deferred or an employer contribution of 2 percent of compensation (regardless of whether the employee elects to make contributions). Section 117 increases the annual deferral limit and the catch-up contribution at age 50 by 10 percent, as compared to the limit that would otherwise apply in the first year this change is effective, in the case of an employer with no more than 25 employees. An employer with 26 to 100 employees would be permitted to provide higher deferral limits, but only if the employer either provides a 4 percent matching contribution or a 3 percent employer contribution. Section 117 makes similar changes to the contribution limits for SIMPLE 401(k) plans. Section 117 is effective for taxable years beginning after December 31, 2023. The Secretary of Treasury shall report to Congress on data related to SIMPLE IRAs by December 31, 2024, and annually thereafter.

Section 118, Tax treatment of certain nontrade or business SEP contributions. Section 118 permits employers of domestic employees (e.g., nannies) to provide retirement benefits for such employees under a Simplified Employee Pension ("SEP"). Section 118 is effective for taxable years beginning after date of enactment of this Act.

Section 119, Application of section 415 limit for certain employees of rural electric cooperatives. Under current law, section 415 generally limits the amount that may be paid by a pension plan in annual benefits to a participant to the lesser of $245,000 (2022) or 100 percent of the participant's average compensation. Section 119 eliminates the compensation-based limit for participants who are non-highly compensated employees and participate in a rural electric cooperative retirement plan. Section 119 is effective for limitation years ending after the date of enactment of this Act.

Section 120, Exemption for certain automatic portability transactions. Under current law, an employer is permitted to distribute a participant's account balance without participant consent if the balance is under $5,000 and the balance is immediately distributable (e.g., after a termination of employment). Current law also requires an employer to roll over this distribution into a default IRA if the account balance is at least $1,000 and the participant does not affirmatively elect otherwise. Section 120 permits a retirement plan service provider to provide employer plans with automatic portability services. Such services involve the automatic transfer of a participant's default IRA (established in connection with a distribution from a former employer's plan) into the participant's new employer's retirement plan, unless the participant affirmatively elects otherwise. Section 120 is effective for transactions occurring on or after the date which is 12 months after the date of enactment of this Act.

Section 121, Starter 401(k) plans for employers with no retirement plan. Section 121 permits an employer that does not sponsor a retirement plan to offer a starter 401(k) plan (or safe harbor 403(b) plan). A starter 401(k) plan (or safe harbor 403(b) plan) would generally require that all employees be default enrolled in the plan at a 3 to 15 percent of compensation deferral rate. The limit on annual deferrals would be the same as the IRA contribution limit, which for 2022 is $6,000 with an additional $1,000 in catch-up contributions beginning at age 50. Section 121 is effective for plan years beginning after December 31, 2023.

Section 122, Assist States in locating owners of applicable savings bonds. To facilitate efforts to locate the owners of matured and unredeemed savings bonds, Section 122 requires the Treasury Secretary to share certain relevant information with a state that relates to an applicable savings bond registered to an owner with a last known or registered address in that state. The state is permitted to use that information to locate the registered owner in accordance with the state's standards for recovery of abandoned property. Section 122 further requires the Treasury Secretary to develop guidance as may be necessary to carry out the proper disclosure and protection of such information. The Treasury Secretary also is required to submit to the Senate Appropriations and Finance Committees and House Appropriations and Ways and Means Committees an annual report assessing its efforts to provide states with information on unclaimed savings bonds. Section 122 is effective on the date of enactment of this Act.

Section 123, Certain securities treated as publicly traded in case of employee stock ownership plans. Section 123 updates certain ESOP rules related to whether a security is a "publicly traded employer security" and "readily tradeable on an established securities market." Section 123 allows certain non-exchange traded securities to qualify as "publicly traded employer securities" so long as the security is subject to priced quotations by at least four dealers on a Securities and Exchange Commission-regulated interdealer quotation system, is not a penny stock and is not issued by a shell company, and has a public float of at least 10 percent of outstanding shares. For securities issued by domestic corporations, the issuer must publish annual audited financial statements. Securities issued by foreign corporations are subject to additional depository and reporting requirements. The updated definitions in Section 123 will allow highly regulated companies with liquid securities that are quoted on non-exchange markets to treat their stock as "public" for ESOP purposes, thus making it easier for these companies to offer ESOPs to their U.S. employees. Section 123 is effective for plan years beginning after December 31, 2027.

Section 124, Modification of age requirement for qualified ABLE programs. Current law allows states to create qualified ABLE programs, which are tax-advantaged savings programs for certain people with disabilities. Distributions from an ABLE account are tax-free if used for qualified disability expenses of the account's designated beneficiary. Section 124 increases the age by which blindness or disability must occur for an individual to be an eligible individual by reason of such blindness or disability for an ABLE program. Section 124 is effective for taxable years beginning after December 31, 2025.

Section 125, Improving coverage for part-time workers. The SECURE Act requires employers to allow long-term, part-time workers to participate in the employers' 401(k) plans. The SECURE Act provision provides that – except in the case of collectively bargained plans – employers maintaining a 401(k) plan must have a dual eligibility requirement under which an employee must complete either 1 year of service (with the 1,000-hour rule) or 3 consecutive years of service (where the employee completes at least 500 hours of service). Section 125 reduces the 3 year rule to 2 years, effective for plan years beginning after December 31, 2024. Section 125 also provides that pre-2021 service is disregarded for vesting purposes, just as such service is disregarded for eligibility purposes under current law, effective as if included in the SECURE Act to which the amendment relates. This provision also extends the long-term part-time coverage rules to 403(b) plans that are subject to ERISA.

Section 126, Special rules for certain distributions from long-term qualified tuition programs to Roth IRAs. Section 126 amends the Internal Revenue Code to allow for tax and penalty free rollovers from 529 accounts to Roth IRAs, under certain conditions. Beneficiaries of 529 college savings accounts would be permitted to rollover up to $35,000 over the course of their lifetime from any 529 account in their name to their Roth IRA. These rollovers are also subject to Roth IRA annual contribution limits, and the 529 account must have been open for more than 15 years.

Families and students have concerns about leftover funds being trapped in 529 accounts unless they take a non-qualified withdrawal and assume a penalty. This has led to hesitating, delaying, or declining to fund 529s to levels needed to pay for the rising costs of education. Section 126 eliminates this concern by providing families and students with the option to avoid the penalty, resulting in families putting more into their 529 account. Families who sacrifice and save in 529 accounts should not be punished with tax and penalty years later if the beneficiary has found an alternative way to pay for their education. They should be able to retain their savings and begin their retirement account on a positive note. Section 126 is effective with respect to distributions after December 31, 2023.

Section 127, Emergency savings accounts linked to individual account plans. Though individuals can save on their own, far too many fail to do so. According to a report by the Federal Reserve, almost half of Americans would struggle to cover an unexpected $400 expense. Many are forced to tap into their retirement savings. A recent study found that, in the past year, almost 60 percent of retirement account participants who lack emergency savings tapped into their long-term retirement savings, compared to only 9 percent of those who had at least a month of emergency savings on hand. Separating emergency savings from one's retirement savings account will provide participants a better understanding that one account is for short-term emergency needs and the other is for long-term retirement savings, thus empowering employees to handle unexpected financial shocks without jeopardizing their long-term financial security in retirement through emergency hardship withdrawals.

Section 127 provides employers the option to offer to their non-highly compensated employees pension-linked emergency savings accounts. Employers may automatically opt employees into these accounts at no more than 3 percent of their salary, and the portion of an account attributable to the employee's contribution is capped at $2,500 (or lower as set by the employer). Once the cap is reached, the additional contributions can be directed to the employee's Roth defined contribution plan (if they have one) or stopped until the balance attributable to contributions falls below the cap. Contributions are made on a Roth-like basis and are treated as elective deferrals for purposes of retirement matching contributions with an annual matching cap set at the maximum account balance – i.e., $2,500 or lower as set by the plan sponsor. The first four withdrawals from the account each plan year may not be subject to any fees or charges solely on the basis of such withdrawals. At separation from service, employees may take their emergency savings accounts as cash or roll it into their Roth defined contribution plan (if they have one) or IRA.

Section 128, Enhancement of 403(b) plans. Under current law, 403(b) plan investments are generally limited to annuity contracts and publicly traded mutual funds. This limitation cuts off 403(b) plan participants – generally, employees of charities and public schools, colleges, and universities– from access to collective investment trusts, which are often used by 401(a) plans to expand investment options for plan participants at a lower overall cost. Section 128 would permit 403(b) custodial accounts to participate in group trusts with other tax-preferred savings plans and IRAs, and would be effective after date of enactment.

Title II – Preservation of Income

Section 201, Remove required minimum distribution barriers of life annuities. Section 201 eliminates certain barriers to the availability of life annuities in qualified plans and IRAs that arise under current law due to an actuarial test in the required minimum distribution regulations. The test is intended to limit tax deferral by precluding commercial annuities from providing payments that start out small and increase excessively over time. In operation, however, the test commonly prohibits many important guarantees that provide only modest benefit increases under life annuities. For example, guaranteed annual increases of only 1 or 2 percent, return of premium death benefits, and period certain guarantees for participating annuities are commonly prohibited by this test. Without these types of guarantees, many individuals are unwilling to elect a life annuity under a defined contribution plan or IRA. Section 201 is effective for calendar years ending after the date of enactment of this Act.

Section 202, Qualifying longevity annuity contracts. In 2014, the Treasury Department published final regulations on qualifying longevity annuity contracts ("QLACs"). QLACs are generally deferred annuities that begin payment at the end of an individual's life expectancy. Because payments start so late, QLACs are an inexpensive way for retirees to hedge the risk of outliving their savings in defined contribution plans and IRAs. The minimum distribution rules were an impediment to the growth of QLACs in defined contribution plans and IRAs because those rules generally require payments to commence at age 72, before QLACs begin payments. The 2014 regulations generally exempted QLACs from the minimum distribution rules until payments commence. However, due to a lack of statutory authority to provide a full exemption, the regulations imposed certain limits on the exemption that have prevented QLACs from achieving their intended purpose in providing longevity protection. Section 202 addresses these limitations by repealing the 25 percent limit w and allowing up to $200,000 (indexed) to be used from an account balance to purchase a QLAC. Section 202 also facilitates the sales of QLACs with spousal survival rights – and clarifies that free-look periods are permitted up to 90 days with respect to contracts purchased or received in an exchange on or after July 2, 2014. Section 202 is effective for contracts purchased or received in an exchange on the date of enactment of this Act, and the Treasury Secretary must update the relevant regulations within 18 months of the date of enactment of this Act.

Section 203, Insurance-dedicated exchange-traded funds. Exchange-traded funds ("ETFs") are pooled investment vehicles that are traded on stock exchanges. They are similar to mutual funds, except the shares can be traded throughout the day on the stock market, rather than having to be held until after the market closes. ETFs are widely available through retirement plans, IRAs, and taxable investment accounts. However, outdated Treasury Department regulations have prevented ETFs from being widely available through individual variable annuities. Simply because the regulations were written before ETFs existed, ETFs cannot satisfy the regulatory requirements to be "insurance-dedicated." Section 203 directs the Treasury Department to update the regulations to reflect the ETF structure to provide that ownership of an ETF's shares by certain types of institutions that are necessary to the ETF's structure would not preclude look-through treatment for the ETF, as long as it otherwise satisfies the current-law requirements for look-through treatment. This essentially would facilitate the creation of a new type of ETF that is "insurance-dedicated." Section 203 is effective for segregated asset account investments made on or after 7 years after the date of enactment of this Act, and directs the Treasury Secretary to update the relevant regulations by that time.

Section 204, Eliminating a penalty on partial annuitization. If a tax-preferred retirement account also holds an annuity, current law requires that the account be bifurcated between the portion of the account holding the annuity and the rest of the account for purposes of applying the required minimum distribution rules. This treatment may result in higher minimum distributions than would have been required if the account did not hold an annuity. Section 204 permits the account owner to elect to aggregate distributions from both portions of the account for purposes of determining minimum distributions and is effective on the date of enactment of this Act. The Treasury Secretary is to update the relevant regulations accordingly.

Title III – Simplification and Clarification of Retirement Plan Rules

Section 301, Recovery of retirement plan overpayments. Sometimes retirees mistakenly receive more money than they are owed under their retirement plans. These mistakes cause problems when they occur over time, and plan fiduciaries later seek to recover the overpayments from unsuspecting retirees. When an overpayment has lasted for years, plans often compel retirees to repay the amount of the overpayment, plus interest, which can be substantial. Even small overpayment amounts can create a hardship for a retiree living on a fixed income. Section 301 allows retirement plan fiduciaries the latitude to decide not to recoup overpayments that were mistakenly made to retirees. If plan fiduciaries choose to recoup overpayments, limitations and protections apply to safeguard innocent retirees. This protects both the benefits of future retirees and the benefits of current retirees. Rollovers of the overpayments also remain valid. Section 301 is effective on the date of enactment of this Act, and further outlines how plan fiduciaries may proceed with respect to determinations made prior to the date of enactment of this Act to seek or not to seek recovery of overpayments.

Section 302, Reduction in excise tax on certain accumulations in qualified retirement plans. Section 302 reduces the penalty for failure to take required minimum distributions from 50 to 25 percent. Further, if a failure to take a required minimum distribution from an IRA is corrected in a timely manner, as defined under this Act, the excise tax on the failure is further reduced from 25 percent to 10 percent. Section 302 is effective for taxable years beginning after the date of enactment of this Act.

Section 303, Retirement savings lost and found. Every year, thousands of people approach retirement but are unable to find and receive the benefits that they earned often because the company they worked for moved, changed its name, or merged with a different company. Similarly, every year there are employers around the country ready to pay benefits to retirees, but they are unable to find the retirees because the former employees changed their names or addresses. Section 303 creates a national online searchable lost and found database for Americans' retirement plans at the Department of Labor ("DOL"). The database will enable retirement savers, who might have lost track of their pension or 401(k) plan, to search for the contact information of their plan administrator. Section 303 directs the creation of the database no later than 2 years after the date of enactment of this Act.

Section 304, Updating dollar limit for mandatory distributions. Under current law, employers may transfer former employees' retirement accounts from a workplace retirement plan into an IRA if their balances are between $1,000 and $5,000. Section 307 increases the limit from $5,000 to $7,000, effective for distributions made after December 31, 2023.

Section 305, Expansion of Employee Plans Compliance Resolution System. Because of the ever growing complexity of retirement plan administration, Section 305 expands the Employee Plans Compliance Resolution System ("EPCRS") to (1) allow more types of errors to be corrected internally through self-correction, (2) apply to inadvertent IRA errors, and (3) exempt certain failures to make required minimum distributions from the otherwise applicable excise tax. For example, Section 305 allows for correction of many plan loan errors through self-correction, which are a frequent area of error and can be burdensome to correct a single loan error through the Internal Revenue Service. Section 305 is effective on the date of enactment of this Act. Any guidance or revision of guidance required by Section 305 shall be promulgated no later than 2 years after the date of enactment of this Act. Revenue Procedure 2021–30 (or any successor guidance) shall be updated to take into account the provisions of this section no later than 2 years after the date of enactment of this Act.

Section 306, Eliminate the "first day of the month" requirement for governmental section 457(b) plans. Under current law, participants in a governmental 457(b) plan must request changes in their deferral rate prior to the beginning of the month in which the deferral will be made. This rule does not exist for other defined contribution plans. Section 306 allows such elections to be made at any time prior to the date that the compensation being deferred is available. Section 306 is effective for taxable years beginning after the date of enactment of this Act.

Section 307, One-time election for qualified charitable distribution to split-interest entity; increase in qualified charitable distribution limitation. Section 307 expands the IRA charitable distribution provision to allow for a one-time, $50,000 distribution to charities through charitable gift annuities, charitable remainder unitrusts, and charitable remainder annuity trusts, effective for distributions made in taxable years beginning after the date of enactment of this Act. Section 307 also indexes for inflation the annual IRA charitable distribution limit of $100,000**,** effective for distributions made in taxable years ending after the date of enactment of this Act.

Section 308, Distribution to firefighters. Under current law, if an employee terminates employment after age 55 and takes a distribution from a retirement plan, the 10 percent early distribution tax does not apply. However, there is a special rule for "qualified public safety employees" in governmental plans, under which age 50 is substituted for age 55 for purposes of this exception from the 10 percent tax. This exemption applies to public sector firefighters, but not private sector firefighters. Section 308 extends the age 50 rule to private sector firefighters, who merit the same treatment for distributions. Section 308 is effective for distributions made after the date of enactment of this Act.

Section 309, Exclusion of certain disability-related first responder treatment payments. Section 309 permits first responders to exclude service-connected disability pension payments from gross income after reaching retirement age. Section 309 is effective for amounts received in taxable years beginning after December 31, 2026.

Section 310, Application of top heavy rules to defined contribution plans covering excludable employees. Under current law, qualified retirement plans must pass the top-heavy test, in addition to other nondiscrimination tests. Plans that are deemed top-heavy are required to provide employees with a minimum of a 3 percent of pay nonelective contribution, which is a significant cost to small businesses. Other nondiscrimination tests that apply to 401(k) plans allow an employer to test otherwise excludable employees (e.g., those who are under age 21 and have less than 1 year of service) separately. This was intended to encourage plan sponsors to permit employees to defer earlier than the minimum age and service conditions permitted under the law because it reduces the situations where plans would fail the nondiscrimination tests if these employees were included when performing the test. However, this separate testing is not allowed for the top-heavy test. Small business retirement plans often do not cover excludable employees because, if the plan is or becomes top heavy, the employer may be required to contribute a top-heavy employer contribution for all employees who are eligible to participate in the plan, straining the budget for these small businesses. Section 310 allows an employer to perform the top-heavy test separately on the non-excludable and excludable employees. This removes the financial incentive to exclude employees from the 401(k) plan and increase retirement plan coverage to more workers. Section 310 is effective for plan years beginning after December 31, 2023.

Section 311, Repayment of qualified birth or adoption distribution limited to 3 years. The SECURE Act included a provision that allows individuals to receive distributions from their retirement plan in the case of birth or adoption without paying the 10 percent additional tax under Code section 72(t) (known as a qualified birth or adoption distribution, or "QBAD"). The distributions can be recontributed to a retirement plan at any time and are treated as rollovers. The problem with current law is the allowance of recontributions at any time. Code section 6511 prevents a refund from being provided to a taxpayer after the period of limitations for the return has closed, which is generally a 3 year period. Thus, there would not be a mechanism under the

Code allowing someone who took a birth/adoption distribution to recontribute the distribution more than 3 years later and amend their return to receive a refund for the taxes that were paid in the year of the withdrawal. Section 311 amends the QBAD provision to restrict the recontribution period to 3 years. Section 311 is effective to distributions made after the date of the enactment of this Act and retroactively to the 3 year period beginning on the day after the date on which such distribution was received.

Section 312, Employer may rely on employee certifying that deemed hardship distribution conditions are met. Section 312 provides that, under certain circumstances, employees are permitted to self-certify that they have had an event that constitutes a hardship for purposes of taking a hardship withdrawal. This is a logical step in light of the success of the coronavirus-related distribution self-certification rules and the current hardship regulations that already permit employees to self-certify that they do not have other funds available to address a hardship. Section 312 is effective for plan years beginning after the date of enactment of this Act.

Section 313, Individual retirement plan statute of limitations for excise tax on excess contributions and certain accumulations. Under current law, the statute of limitations for excise taxes imposed on excess contributions, or required minimum distribution failures start running as of the date that a specific excise tax return (Form 5329) is filed for the violation. Individuals often are not aware of the requirement to file Form 5329, and this can lead to an indefinite period of limitations that can cause hardship for taxpayers due to the accumulation of interest and penalties (see Paschall v. C.I.R., 137 T.C. 8 (2011)). In order to provide finality for taxpayers in the administration of these excise taxes, Section 313 provides that a 3 year period of limitations begins when the taxpayer files an individual tax return (Form 1040) for the year of the violation, except in the case of excess contributions, in which case the period of limitations runs 6 years from the date Form 1040 is filed. There is a further exception from this 6 year rule for taxes that arise out of a bargain sale to the IRA. In general, these changes are intended to ensure that there is a reasonable period of limitations for violations of which taxpayers were not aware and thus did not file an excise tax return, while retaining existing law in fact scenarios that involve a bargain sale. Section 313 is effective on the date of enactment of this Act.

Section 314, Penalty-free withdrawal from retirement plans for individual case of domestic abuse. A domestic abuse survivor may need to access his or her money in their retirement account for various reasons, such as escaping an unsafe situation. Section 314 allows retirement plans to permit participants that self-certify that they experienced domestic abuse to withdraw a small amount of money (the lesser of $10,000, indexed for inflation, or 50 percent of the participant's account). A distribution made under Section 314 is not subject to the 10 percent tax on early distributions. Additionally, a participant has the opportunity to repay the withdrawn money from the retirement plan over 3 years and will be refunded for income taxes on money that is repaid. Section 318 is effective for distributions made after December 31, 2023.

Section 315, Reform of family attribution rule. Under the Code, certain related businesses must be aggregated when performing the coverage and nondiscrimination tests. The aggregation rules are generally based on the degree of common ownership of the businesses. In determining the level of ownership in a business, the tax laws have certain attribution rules whereby an individual is deemed to own stock held by other individuals or entities. Section 315 updates two stock attribution rules. The first update addresses inequities where spouses with separate businesses reside in a community property state when compared to spouses who reside in separate property states. The second update modifies the attribution of stock between parents and minor children. Section 315 is effective for plan years beginning after December 31, 2023.

Section 316, Amendments to increase benefit accruals under plan for previous plan year allowed until employer tax return due date. The SECURE Act permits an employer to adopt a new retirement plan by the due date of the employer's tax return for the fiscal year in which the plan is effective. Current law, however, provides that plan amendments to an existing plan must generally be adopted by the last day of the plan year in which the amendment is effective. This precludes an employer from adding plan provisions that may be beneficial to participants. Section 316 amends these provisions to allow discretionary amendments that increase participants' benefits to be adopted by the due date of the employer's tax return. Section 316 is effective for plan years beginning after December 31, 2023.

Section 317, Retroactive first year elective deferrals for sole proprietors. Under the SECURE Act, an employer may establish a new 401(k) plan after the end of the taxable year, but before the employer's tax filing date and treat the plan as having been established on the last day of the taxable year. Such plans may be funded by employer contributions up to the employer's tax filing date. Section 317 allows these plans, when they are sponsored by sole proprietors or single-member LLCs, to receive employee contributions up to the date of the employee's tax return filing date for the initial year. Section 317 is effective for plan years beginning after the date of enactment of this Act.

Section 318, Performance benchmarks for asset allocation funds. The DOL's participant disclosure regulation requires that each designated investment alternative's historical performance be compared to an appropriate broad-based securities market index. However, the rule does not adequately address increasingly popular investments like target date funds that include a mix of asset classes. Section 318 directs the Labor Secretary to update the DOL's regulations so that an investment that uses a mix of asset classes can be benchmarked against a blend of broad-based securities market indices, provided (a) the index blend reasonably matches the fund's asset allocation over time, (b) the index blend is reset at least once a year, and (c) the underlying indices are appropriate for the investment's component asset classes and otherwise meet the rule's conditions for index benchmarks. This change in the disclosure rule allows better comparisons and aids participant decision-making. The DOL is to update its regulations no later than two years after enactment of this Act. Section 318 also requires DOL to report to Congress on the effectiveness of its benchmarking requirements no later than 3 years after the applicability date of the regulations.

Section 319, Review and report to Congress relating to reporting and disclosure requirements. Section 319 directs the Treasury Department, DOL, and Pension Benefit Guaranty Corporation to review reporting and disclosure requirements for pension plans as soon as practicable after enactment of this Act. Section 319 further directs the agencies to make recommendations to Congress to consolidate, simplify, standardize, and improve such requirements no later than 3 years after the date of enactment of this Act.

Section 320, Eliminating unnecessary plan requirements related to unenrolled participants. Under current law, employees eligible to participate in a retirement plan are required to receive a broad array of notices that are intended to inform them of their various options and rights under the plan. In the case of eligible employees who have not elected to participate in the plan ("unenrolled participants"), these notices – such as notices regarding the different investment options available under the plan – are generally unnecessary, and can even have adverse effects on savings and coverage.

Section 320 no longer requires employers provide certain intermittent ERISA or Code notices to unenrolled participants who have not elected to participate in a workplace retirement plan. However, to further encourage participation of unenrolled participants, the plan is required to send (1) an annual reminder notice of the participant's eligibility to participate in the plan and any applicable election deadlines, and (2) any otherwise required document requested at any time by the participant. This rule applies only with respect to an unenrolled participant who received the summary plan description, in connection with initial eligibility under the plan, and any other notices related to eligibility under the plan required to be furnished. Section 320 is effective for plan years beginning after December 31, 2022.

Section 321, Review of pension risk transfer interpretive bulletin. Section 321 requires the DOL to review the current interpretive bulletin governing pension risk transfers to determine whether amendments are warranted and to report to Congress its finding, including an assessment of any risk to participant, no later than 1 year after enactment of this Act.

Section 322, Tax treatment of IRA involved in a prohibited transaction. When an individual engages in a prohibited transaction with respect to their IRA, the IRA is disqualified and treated as distributed to the individual, irrespective of the size of the prohibited transaction. Section 322 clarifies that if an individual has multiple IRAs, only the IRA with respect to which the prohibited transaction occurred will be disqualified. Section 322 is effective for taxable years beginning after the date of enactment of this Act.

Section 323, Clarification of substantially equal periodic payment rule. Current law imposes a 10 percent additional tax on early distributions from tax-preferred retirement accounts, but an exception applies to substantially equal periodic payments that are made over the account owner's life expectancy. Section 323 provides that the exception continues to apply in the case of a rollover of the account, an exchange of an annuity providing the payments, or an annuity that satisfies the required minimum distribution rules. Section 323 is effective for transfers, rollovers, exchanges after December 31, 2023 and effective for annuity distributions on or after the date of enactment of this Act.

Section 324, Treasury guidance on rollovers. Section 324 requires the Treasury Secretary to simplify and standardize the rollover process by issuing sample forms for direct rollovers that may be used by both the incoming and outgoing retirement plan or IRA. Development and release of the sample forms must be completed no later than January 1, 2025.

Section 325, Roth plan distribution rules. Under current law, required minimum distributions are not required to begin prior to the death of the owner of a Roth IRA. However, pre-death distributions are required in the case of the owner of a Roth designated account in an employer retirement plan (e.g., 401(k) plan). Section 325 eliminates the pre-death distribution requirement for Roth accounts in employer plans, effective for taxable years beginning after December 31, 2023. Section 325 does not apply to distributions which are required with respect to years beginning before January 1, 2024, but are permitted to be paid on or after such date.

Section 326, Exception to penalty on early distributions from qualified plans for individuals with a terminal illness. Under current law, an additional 10 percent tax applies to early distributions from tax-preferred retirement accounts. Section 326 provides an exception to the tax in the case of a distribution to a terminally ill individual and would be effective for distributions made after the date of enactment of this Act.

Section 327, Surviving spouse election to be treated as employee. Section 327 allows a surviving spouse to elect to be treated as the deceased employee for purposes of the required minimum distribution rules. Section 327 is effective for calendar years beginning after December 31, 2023.

Section 328, Repeal of direct payment requirement on exclusion from gross income of distributions from governmental plans for health and long-term care insurance. Current law provides an exclusion from gross income ($3,000) for a distribution from a governmental retirement plan to a public safety officer to pay for their health insurance premiums. The exclusion requires that the plan directly pay the insurance premiums. Section 328 repeals the direct payment requirement and is effective for distributions made after the date of enactment of this Act.

Section 329, Modification of eligible age for exemption from early withdrawal penalty. The 10 percent additional tax on early distributions from tax preferred retirement savings plans does not apply to a distribution from a governmental plan to a public safety officer who is at least age 50. Section 329 extends the exception to public safety officers with at least 25 years of service with the employer sponsoring the plan and is effective for distributions made after the date of enactment of this Act.

Section 330, Exemption from early withdrawal penalty for certain State and local government corrections employees. Section 330 extends the public safety officer exception to the 10 percent early distribution tax to corrections officers who are employees of state and local governments, effective for distributions made after the date of enactment of this Act.

Section 331, Special rules for use of retirement funds in connection with qualified federally declared disasters. Section 331 provides permanent rules relating to the use of retirement funds in the case of a federally declared disaster. The permanent rules allow up to $22,000 to be distributed from employer retirement plans or IRAs for affected individuals. Such distributions are not subject to the 10 percent additional tax and are taken into account as gross income over 3 years. Distributions can be repaid to a tax preferred retirement account. Additionally, amounts distributed prior to the disaster to purchase a home can be recontributed, and an employer is permitted to provide for a larger amount to be borrowed from a plan by affected individuals and for additional time for repayment of plan loans owed by affected individuals. Section 331 is effective for disasters occurring on or after January 26, 2021.

Section 332, Employers allowed to replace SIMPLE retirement accounts with safe harbor 401(k) plans during a year. Section 332 allows an employer to replace a SIMPLE IRA plan with a SIMPLE 401(k) plan or other 401(k) plan that requires mandatory employer contributions during a plan year, and is effective for plan years beginning after December 31, 2023.

Section 333, Elimination of additional tax on corrective distributions of excess contributions. Current law requires a distribution if too much is contributed to an IRA. The corrective distribution includes the excessive contribution and any earnings allocable to that contribution. Section 333 exempts the excess contribution and earnings allocable to the excess contribution from the 10 percent additional tax on early distributions, and is effective for any determination of, or affecting, liability for taxes, interest, or penalties which is made on or after the date of enactment of this Act, without regard to whether the act (or failure to act) upon which the determination is based occurred before such date of enactment.

Section 334, Long-term care contracts purchased with retirement plan distributions. Section 334 permits retirement plans to distribute up to $2,500 per year for the payment of premiums for certain specified long term care insurance contracts. Distributions from plans to pay such premiums are exempt from the additional 10 percent tax on early distributions. Only a policy that provides for high quality coverage is eligible for early distribution and waiver of the 10 percent tax. Section 334 is effective 3 years after date of enactment of this Act.

Section 335, Corrections of mortality tables. Section 335 generally requires that for purposes of the minimum funding rules, a pension plan is not required to assume beyond the plan's valuation date future mortality improvements at any age greater than 0.78 percent. The Treasury Secretary shall amend the relevant regulation on the matter within 18 months, though Section 335 shall be deemed to take effect on the date of enactment of this Act.

Section 336, Report to Congress on section 402(f) notices. Section 402(f) notices are given by employer retirement plans in the case of a distribution to a participant that is eligible for rollover to another tax preferred retirement account and describes distribution options and tax consequences. Section 336 requires the Government Accountability Office to issue a report to Congress on the effectiveness of section 402(f) notices within 18 months after the date of enactment of this Act.

Section 337, Modification of required minimum distribution rules for special needs trust. The SECURE Act placed limits on the ability of beneficiaries of defined contribution retirement plans and IRAs to receive lifetime distributions after the account owner's death. Special rules apply in the case of certain beneficiaries, such as those with a disability. Section 337 clarifies that, in the case of a special needs trust established for a beneficiary with a disability, the trust may provide for a charitable organization as the remainder beneficiary. Section 337 is effective for calendar years beginning after the date of enactment of this Act.

Section 338, Requirement to provider paper statements in certain cases. Section 338 amends ERISA to generally provide that, with respect to defined contribution plans, unless a participant elects otherwise, the plan is required to provide a paper benefit statement at least once annually. The other three quarterly statements required under ERISA are not subject to this rule (i.e., they can be provided electronically). For defined benefit plans, unless a participant elects otherwise, the statement that must be provided once every 3 years under ERISA must be a paper statement. The Labor Secretary must update the relevant sections of their regulations and corresponding guidance by December 31, 2024, and the annual paper statement is effective for plan years beginning after December 31, 2025.

Section 339, Recognition of tribal government domestic relations orders. Section 339 adds Tribal courts to the list of courts authorized under federal law to issue qualified domestic relations orders. Section 339 is effective to domestic relations orders received by plan administrators after December 31, 2022, including any such order which is submitted for reconsideration after such date.

Section 340, Defined contribution plan fee disclosure improvements. Section 340 builds on recommendations recently made to the DOL by the Government Accountability Office, and requires the agency to review its fiduciary disclosure requirements in participant-directed individual account plan regulations. A report must be submitted to Congress within 3 years on such findings, including recommendations for legislative changes.

Section 341, Consolidation of defined contribution plan notices. Current law requires certain retirement plan notices to be provided to participants as individual notices. Section 341 directs the Treasury and DOL Secretaries within 2 years to amend regulations to permit a plan to consolidate certain required plan notices.

Section 342, Information needed for financial options risk mitigation act. Section 342 requires pension plan administrators to provide plan participants and retirees with critical information that would allow people considering what is best for their financial futures to compare between benefits offered under the plan and the lump sum, and would explain how the lump sum was calculated, the ramifications of accepting a lump sum, such as the loss of certain federal protections, details about the election period, where to follow up with questions, and other information. The DOL Secretary must issue regulations implementing this provision not earlier 1 year after enactment. Such regulations must be applicable not earlier than the issuance of a final rule and not later than 1 year after issuance of a final rule.

Section 343, Defined benefit annual funding notices. Section 343 aims identify defined benefit pension plan funding issues more clearly on a plan's annual funding notice. Section 343 is effective for plan years beginning after December 31, 2023.

Section 344, Report on pooled employer plans. Section 344 requires the DOL Secretary to conduct a study on the new and growing pooled employer plan industry. A report on the findings of the study must be completed within 5 years, with subsequent reports completed every 5 years thereafter.

Section 345, Annual audits for group of plans. Under current law, generally, a Form 5500 for a defined contribution plan must contain an opinion from an independent qualified public accountant as to whether the plan's financial statements and schedules are fairly presented. However, no such opinion is required with respect to a plan covering fewer than 100 participants. Section 345 clarifies that plans filing under a Group of Plans need only to submit an audit opinion if they have 100 participants or more. In other words, DOL and Treasury would continue to receive full audit information on at least the number of plans as under current law. Section 345 is effective on the date of enactment of this Act.

Section 346, Worker Ownership, Readiness, and Knowledge (WORK) Act. Section 346 boosts employee ownership programs through the DOL, which may make grants to promote employee ownership through existing and new programs. Funds are authorized to be appropriated for the purpose of making grants for fiscal years 2025 to 2029.

Section 347, Report by the Secretary of Labor in the impact of inflation on retirement savings. Section 347 directs the DOL Secretary, in consultation with the Treasury Secretary, to study the impact of inflation on retirement savings and submit a report to Congress within 90 days on the findings of the study.

Section 348, Cash balance. Section 348 clarifies the application of the Code and ERISA's rules, prohibiting the backloading of benefit accruals, as they relate to hybrid plans that credit variable interest. Specifically, Section 348 clarifies that, for purposes of the applicable Code and ERISA rules, the interest crediting rate that is treated as in effect and as the projected interest crediting rate is a reasonable projection of such variable interest rate, subject to a maximum of 6 percent. This clarification will allow plan sponsors to provide larger pay credits for older longer service workers. Section 346 is effective for plan years beginning after the date of enactment of this Act.

Section 349, Termination of variable rate premium indexing. Section 349 removes the "applicable dollar amount" language in the rules for determining the premium fund target for purposes of unfunded vested benefits and replaces it with a flat $52 for each $1,000 of unfunded vested benefits. Section 349 is effective on the date of enactment of this Act.

Section 350, Safe harbor for corrections of employee elective deferral failures. Under current law, employers that adopt a retirement plan with automatic enrollment and automatic escalation features could be subject to significant penalties if even honest mistakes are made. The Internal Revenue Service has issued guidance on the correction of failures relating to default enrollment of employees into retirement plans. This guidance includes a safe harbor, which expires December 31, 2023, that permits correction if notice is given to the affected employee, correct deferrals commence within certain specified time periods, and the employer provides the employee with any matching contributions that would have been made if the failure had not occurred. Employers are concerned about the lapse of the safe harbor at the end of 2023. Section 350 eases these concerns by allowing for a grace period to correct, without penalty, reasonable errors in administering these automatic enrollment and automatic escalation features. Errors must be corrected prior to 9 ½ months after the end of the plan year in which the mistakes were made. Section 350 is effective to errors after December 31, 2023.

Title IV – Technical Amendments

Section 401, Amendments relating to Setting Every Community Up for Retirement Enhancement Act of 2019. Section 401 includes three technical and five clerical amendments to the SECURE Act. These amendments are effective as if included in the section of the SECURE Act to which the amendment relates.

Title V – Administrative Provisions

Section 501, Provisions relating to plan amendments. Section 501 allows plan amendments made pursuant to this Act to be made on or before the last day of the first plan year beginning on or after January 1, 2025 (2027 in the case of governmental plans) as long as the plan operates in accordance with such amendments as of the effective date of a bill requirement or amendment. Section 501 also conforms the plan amendment dates under the SECURE Act, the CARES Act, and the Taxpayer Certainty and Disaster Tax Relief Act of 2020 to these new dates (instead of 2022 and 2025).

Title VI – Revenue Provisions

Section 601, SIMPLE and SEP Roth IRAs. Generally, all plans that allow pre-tax employee contributions are permitted to accept Roth contributions with one exception – SIMPLE IRAs. 401(k), 403(b), and governmental 457(b) plans are allowed to accept Roth employee contributions.

Section 601 allows SIMPLE IRAs to accept Roth contributions too. In addition, aside from grandfathered salaried reduction simplified employee pension plans, under current law, simplified employee pension plans ("SEPs") can only accept employer money and not on a Roth basis. Section 601 allows employers to offer employees the ability to treat employee and employer SEP contributions as Roth (in whole or in part). The provisions in Section 601 are effective for taxable years beginning after December 31, 2022.

Section 602, Hardship withdrawal rules for 403(b) plans. Under current law**,** the distribution rules for 401(k) and 403(b) are different in certain ways that are historical anomalies for varied reasons. For example, for 401(k) plans, all amounts are available for a hardship distribution. For 403(b) plans, in some cases, only employee contributions (without earnings) are available for hardship distributions. Section 602 conforms the 403(b) rules to the 401(k) rules, effective for plan years beginning after December 31, 2023.

Section 603, Elective deferrals generally limited to regular contribution limit. Under current law, catch-up contributions to a qualified retirement plan can be made on a pre-tax or Roth basis (if permitted by the plan sponsor). Section 603 provides all catch-up contributions to qualified retirement plans are subject to Roth tax treatment, effective for taxable years beginning after December 31, 2023. An exception is provided for employees with compensation of $145,000 or less (indexed).

Section 604, Optional treatment of employer matching or nonelective contributions as Roth contributions. Under current law, plan sponsors are not permitted to provide employer matching contributions in their 401(k), 403(b), and governmental 457(b) plans on a Roth basis. Matching contributions must be on a pre-tax basis only. Section 604 allows defined contribution plans to provide participants with the option of receiving matching contributions on a Roth basis, effective on the date of enactment of this Act.

Section 605, Charitable conservation easements. The tax deduction for charitable contributions of conservation easements has long played a crucial role in incentivizing the preservation of critical habitat, open spaces, and historically important areas and structures. However, since 2016 IRS has identified certain syndicated conservation easement transactions involving pass-through entities as "listed transactions" carrying a high potential for abusive tax avoidance. Section 605 disallows a charitable deduction for a qualified conservation contribution if the deduction claimed exceeds two and one half times the sum of each partner's relevant basis in the contributing partnership, unless the contribution meets a 3 year holding period test, substantially all of the contributing partnership is owned by members of a family, or the contribution relates to the preservation of a certified historic structure. In the case of a contribution for the preservation of a certified historic structure, a new reporting requirement applies. Section 605 also provides taxpayers the opportunity to correct certain defects in an easement deed (excluding easements involved in abusive transactions) and makes certain changes to statute of limitations and penalty provisions. Section 605 is generally effective for contributions made after the date of enactment of this Act.

Section 606, Enhancing retiree health benefits in pension plans. Under current law, an employer may use assets from an overfunded pension plan to pay retiree health and life insurance benefits. These rules sunset at the end of 2025. Section 606 extends the sunset date to the end of

2032 and would permit transfers to pay retiree health and life insurance benefits provided the transfer is no more than 1.75 percent of plan assets and the plan is at least 110 percent funded. Section 606 is effective for transfers made on or after the date of enactment of this Act.

Title VII – Tax Court Retirement Provisions

Section 701, Provisions relating to judges of the Tax Court. Under current law, Tax Court judges are allowed to contribute to the Thrift Savings Plan ("TSP"), but Tax Court judges are prevented from receiving TSP automatic or matching contributions. Other federal judges, in contrast, may receive automatic and matching contributions if they are not covered by a judicial retirement plan. If those judges later elect to receive judicial retirement benefits, their retired pay is offset by an amount designed to recapture those TSP automatic and matching contributions. Section 701 provides parity between other federal judges and Tax Court judges by extending the same TSP matching contributions policy to Tax Court judges. Additionally, Tax Court judges may elect to participate in a plan providing benefits for the judge's surviving spouse and dependent children. Benefits currently vest only after the judge has performed at least 5 years of service and made contributions for at least 5 years of service. In contrast, other federal judges vest after 18 months of service, and the 18-month period is waived if the judge is assassinated. Section 701 provides parity between other federal judges and Tax Court judges by applying the 18-month vesting period and assassination waiver to Tax Court judges. Lastly, Section 701 provides that compensation earned by retired Tax Court judges (i.e., those who are disabled or meet the recall requirements) for teaching is not treated as outside earned income for purposes of limitations under the Ethics in Government Act of 1978, and makes technical amendments to coordinate Tax Court judicial retirement with the Federal Employees Retirement System ("FERS") and the retirement and survivors' annuities plans. Section 701 is effective on the date of enactment of this Act, unless otherwise stated.

Section 702, Provisions relating to special trial judges of the Tax Court. Special trial judges of the Tax Court are the only judicial officers who do not have an option to participate in a judicial retirement program. Section 702 establishes a retirement plan under which a special trial judge may elect to receive retired pay in a manner and under rules similar to the regular judges of the Court. The provision provides parity between special trial judges of the Tax Court and other federal judges. Eligible special trial judges are permitted to elect to receive retired pay 180 days after enactment of this Act, including special trial judges who retire on or after the date of enactment and before the date that is 180 days afterwards.

EMPLOYMENT
(820 ILCS 192/) Paid Leave for All Workers Act.

(820 ILCS 192/1)

(This Section may contain text from a Public Act with a delayed effective date)

Sec. 1. Short title. This Act may be cited as the Paid Leave for All Workers Act.

(Source: P.A. 102-1143, eff. 1-1-24.)

(820 ILCS 192/5)

(This Section may contain text from a Public Act with a delayed effective date)

Sec. 5. Findings; legislative intent; construction.

(a) The General Assembly finds that it is in the public policy interests of the State for all working Illinoisans to have some paid leave from work to maintain their health and well-being, care for their families, or use for any other reason of their choosing.

(b) It is the intent of the General Assembly by enacting this Act:

(1) To establish a minimum paid leave standard for all workers in Illinois.

(2) To provide employment security and economic security for employees who need to use paid time off from work for any reason.

(3) To safeguard the welfare, health, safety, and prosperity of the people of Illinois.

(4) To ensure that an employee not be denied use of leave for noncompliance with leave notification policies if the employer has not provided a written copy of its notification policy to the employee.

In order to effectuate this intent, the provisions of this Act shall be liberally construed in favor of providing workers with the greatest amount of paid time off from work and employment security.

(c) Nothing in this Act shall be construed to discourage employers from adopting or retaining paid sick leave, paid vacation, paid holidays, or any other paid time off or paid leave policy more generous than policies that comply with the requirements of this Act. Nothing in this Act shall be construed to discourage or prohibit an employer from allowing the use of paid leave at an earlier date than this Act requires.

Unless otherwise provided in a collective bargaining agreement, nothing in this Act shall be construed to waive or otherwise limit an employee's right to final compensation for any type of leave promised to be paid under a contract of employment or employment policy and earned by the employee pursuant to the Illinois Wage Payment and Collection Act.

(Source: P.A. 102-1143, eff. 1-1-24.)

(820 ILCS 192/10)

(This Section may contain text from a Public Act with a delayed effective date)

Sec. 10. Definitions. As used in this Act:

"Construction industry" means any constructing, altering, reconstructing, repairing, rehabilitating, refinishing, refurbishing, remodeling, remediating, renovating, custom fabricating, maintenance, landscaping, improving, wrecking, painting, decorating, demolishing, or adding to or subtracting from any building, structure, highway, roadway, street, bridge, alley, sewer, ditch, sewage disposal plant, waterworks, parking facility, railroad, excavation or other structure, project, development, real property, or improvement, or to do any part thereof, whether or not the performance of the work herein described involves the addition to or fabrication into, any structure, project, development, real property, or improvement herein described of any material or article of merchandise.

"Construction industry" also includes moving construction related materials on the job site or to or from the job site, snow plowing, snow removal, and refuse collection.

"Department" means the Illinois Department of Labor.

"Domestic work" and "domestic worker" have the same meanings as defined in Section 10 of the Domestic Workers' Bill of Rights Act, except that "domestic worker" also includes independent contractors, sole proprietors, and partnerships.

"Employee" has the same application and meaning as that provided in Sections 1 and 2 of the Illinois Wage Payment and Collection Act. "Employee" also includes all domestic workers, and, for the purposes of this Act, domestic workers shall not be excluded as employees under the provisions of item (1), (2), or (3) of Section 2 of the Illinois Wage Payment and Collection Act. "Employee" does not include:

(1) an employee as defined in the federal Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.) or the Railway Labor Act;

(2) a student enrolled in and regularly attending classes in a college or university that is also the student's employer, and who is employed on a temporary basis at less than full time at the college or university, but this exclusion applies only to work performed for that college or university; or

(3) a short-term employee who is employed by an institution of higher education for less than 2 consecutive calendar quarters during a calendar year and who does not have a reasonable expectation that they will be rehired by the same employer of the same service in a subsequent calendar year.

"Employer" has the same application and meaning as that provided in Sections 1 and 2 of the Illinois Wage Payment and Collection Act, except that for purposes of this Act, "employer" also means the State and units of local government, any political subdivision of the State or units of local government, or any State or local government agency.

"Employer" does not include school districts organized under the School Code or park districts organized under the Park District Code.

"Writing" or "written" means a printed or printable communication in physical or electronic format, including a communication that is transmitted through electronic mail, text message, or a computer system or is otherwise sent or stored electronically.

(Source: P.A. 102-1143, eff. 1-1-24.)

(820 ILCS 192/15)

(This Section may contain text from a Public Act with a delayed effective date)

Sec. 15. Provision of paid leave.

(a) An employee who works in Illinois is entitled to earn and use up to a minimum of 40 hours of paid leave during a 12-month period or a pro rata number of hours of paid leave under the provisions of subsection (b). The paid leave may be used by the employee for any purpose as long as the paid leave is taken in accordance with the provisions of this Act.

(b) Paid leave under this Act shall accrue at the rate of one hour of paid leave for every 40 hours worked up to a minimum of 40 hours of paid leave or such greater amount if the employer provides more than 40 hours. Employees who are exempt from the overtime requirements of the federal Fair Labor Standards Act (29 U.S.C. 213(a)(1)) shall be deemed to work 40 hours in each workweek for purposes of paid leave accrual unless their regular workweek is less than 40 hours, in which case paid leave accrues based on that regular workweek. Employees shall determine how much paid leave they need to use, however employers may set a reasonable minimum increment for the use of paid leave not to exceed 2 hours per day. If an employee's scheduled workday is less than 2 hours day, the employee's scheduled workday shall be used to determine the amount of paid leave.

(c) An employer may make available the minimum number of hours of paid leave, subject to pro rata requirements provided in subsection (b), to an employee on the first day of employment or the first day of the 12-month period. Employers that provide the minimum number of hours of paid leave to an employee on the first day of employment or the first day of the 12-month period are not required to carryover paid leave from 12-month period to 12-month period and may require employees to use all paid leave prior to the end of the benefit period or forfeit the unused paid leave. However, under no circumstances shall an employee be credited with paid leave that is less than what the employee would have accrued under subsections (a) and (g) of this Section.

(d) The 12-month period may be any consecutive 12-month period designated by the employer in writing at the time of hire. Changes to the 12-month period may be made by the employer if notice is given to employees in writing prior to the change and the change does not reduce the eligible accrual rate and paid leave available to the employee. If the employer changes the designated 12-month period, the employer shall provide the employee with documentation of the balance of hours worked, paid leave accrued and taken, and the remaining paid leave balance.

(e) Paid leave under this Act may be taken by an employee for any reason of the employee's choosing. An employee is not required to provide an employer a reason for the leave and may not be required to provide documentation or certification as proof or in support of the leave. An employee may choose whether to use paid leave provided under this Act prior to using any other leave provided by the employer or State law.

(f) Employees shall be paid their hourly rate of pay for paid leave. However, employees engaged in an occupation in which gratuities or commissions have customarily and usually constituted and have been recognized as part of the remuneration for hire purposes shall be paid by their employer at least the full minimum wage in the jurisdiction in which they are employed when paid leave is taken. This wage shall be treated as the employee's regular rate of pay for purposes of this Act.

(g) Paid leave under this Act shall begin to accrue at the commencement of employment or on the effective date of this Act, whichever is later. Employees shall be entitled to begin using paid leave 90 days following commencement of their employment or 90 days following the effective date of this Act, whichever is later.

(h) Paid leave under this Act shall be provided upon the oral or written request of an employee in accordance with the employer's reasonable paid leave policy notification requirements which may include the following:

(1) If use of paid leave under this Act is foreseeable, the employer may require the employee to provide 7 calendar days' notice before the date the leave is to begin.

(2) If paid leave under this Act is not foreseeable, the employee shall provide such notice as soon as is practicable after the employee is aware of the necessity of the leave. An employer that requires notice of paid leave under this Act when the leave is not foreseeable shall provide a written policy that contains procedures for the employee to provide notice.

(3) Employers shall provide employees with written notice of the paid leave policy notification requirements in this Section in the manner provided in Section 20 for notice and posting and within 5 calendar days of any change to the employer's reasonable paid leave policy notification requirements.

(4) An employer may not require, as a condition of providing paid leave under this Act, that the employee search for or find a replacement worker to cover the hours during which the employee takes paid leave.

(i) Except as provided in subsection (c), paid leave under this Act shall carry over annually to the extent not used by the employee, provided that nothing in this Act shall be construed to require an employer to provide more than 40 hours of paid leave for an employee in the 12-month period unless the employer agrees to do so.

(j) Nothing in this Section or any other Illinois law or rule shall be construed as requiring financial or other payment to an employee from an employer upon the employee's termination, resignation, retirement, or other separation from employment for paid leave accrued under this Act that has not been used. Nothing in this Section or any other Illinois law or rule shall be construed as requiring financial or other reimbursements to an employee from an employer for unused paid leave under this Act at the end of the benefit year or any other time.

(k) If an employee is transferred to a separate division, entity, or location, but remains employed by the same employer, the employee is entitled to all paid leave accrued at the prior division, entity, or location and is entitled to use all paid leave as provided in this Section. If there is a separation from employment and the employee is rehired within 12 months of separation by the same employer, previously accrued paid leave that had not been used by the employee shall be reinstated. The employee shall be entitled to use accrued paid leave at the commencement of employment following a separation from employment of 12 months or less.

(l) Paid leave under this Act shall not be charged or otherwise credited to an employee's paid time off bank or employee account unless the employer's policy permits such a credit. If the paid leave under this Act is credited to an employee's paid time off bank or employee vacation account then any unused paid leave shall be paid to the employee upon the employee's termination, resignation, retirement, or other separation to the same extent as vacation time under existing Illinois law or rule. Nothing in this Act shall be construed to waive or otherwise limit an employee's right to final compensation for promised and earned, but unpaid vacation time or paid time off, as provided under the Illinois Wage Payment and Collection Act and rules. Employers shall provide employees with written notice of changes to the employer's vacation time, paid time off, or other paid leave policies that affect an employee's right to final compensation for such leave.

(m) During any period an employee takes leave under this Act, the employer shall maintain coverage for the employee and any family member under any group health plan for the duration of such leave at no less than the level and conditions of coverage that would have been provided if the employee had not taken the leave. The employer shall notify the employee that the employee is still responsible for paying the employee's share of the cost of the health care coverage, if any.

(n) Nothing in this Act shall be deemed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish wages or other conditions of work in excess of the applicable minimum standards established in this Act. The paid leave requirements of this Act may be waived in a bona fide collective bargaining agreement, but only if the waiver is set forth explicitly in such agreement in clear and unambiguous terms.

Nothing in this Act shall be deemed to affect the validity or change the terms of bona fide collective bargaining agreements in effect on January 1, 2024. After that date, requirements of this Act may be waived in a bona fide collective bargaining agreement, but only if the waiver is set forth explicitly in such agreement in clear and unambiguous terms.

In no event shall this Act apply to any employee working in the construction industry who is covered by a bona fide collective bargaining agreement, nor shall this Act apply to any employee who is covered by a bona fide collective bargaining agreement with an employer that provides services nationally and internationally of delivery, pickup, and transportation of parcels, documents, and freight.

Notwithstanding the provisions of this subsection, nothing in this Act shall be deemed to affect the validity or change the terms of a bona fide collective bargaining agreement applying to an employee who is employed by a State agency that is in effect on July 1, 2024. After that date, requirements of this Act may be waived in a bona fide collective bargaining agreement, but only if the waiver is set forth explicitly in such agreement in clear and unambiguous terms. As used in this subsection, "State agency" has the same meaning as set forth in Section 4 of the Forms Notice Act.

(o) An agreement by an employee to waive his or her rights under this Act is void as against public policy.

(p) The provisions of this Act shall not apply to any employer that is covered by a municipal or county ordinance that is in effect on the effective date of this Act that requires employers to give any form of paid leave to their employees, including paid sick leave or paid leave. Notwithstanding the provisions of this subsection, any employer that is not required to provide paid leave to its employees, including paid sick leave or paid leave, under a municipal or county ordinance that is in effect on the effective date of this Act shall be subject to the provisions of this Act if the employer would be required to provide paid leave under this Act to its employees.

Any local ordinance that provides paid leave, including paid sick leave or paid leave, enacted or amended after the effective date of this Act must comply with the requirements of this Act or provide benefits, rights, and remedies that are greater than or equal to the benefits, rights, and remedies afforded under this Act.

An employer in a municipality or county that enacts or amends a local ordinance that provides paid leave, including paid sick leave or paid leave, after the effective date of this Act shall only comply with the local ordinance or ordinances so long as the benefits, rights, and remedies are greater than or equal to the benefits, rights, and remedies afforded under this Act.

(Source: P.A. 102-1143, eff. 1-1-24.)

(820 ILCS 192/20)

(This Section may contain text from a Public Act with a delayed effective date)

Sec. 20. Related employer responsibilities.

(a) An employer subject to this Act shall make and preserve records documenting hours worked, paid leave accrued and taken, and remaining paid leave balance for each employee for a period of not less than 3 years and shall allow the Department access to such records, at reasonable times during business hours, to monitor compliance with the requirements of this Act. In addition, the records shall be preserved for the duration of any claim pending pursuant to Section 35. An employer that provides paid leave on an accrual basis pursuant to subsection (b) of Section 15 shall provide notice of the amount of paid leave accrued or used by an employee upon request by the employee in accordance with the employer's reasonable paid leave policy notification provisions. An employer that fails to comply with this subsection is in violation of the Act and subject to the civil penalties established in Section 35.

(b) An employer who provides any type of paid leave policy that satisfies the minimum amount of leave required by subsection (a) of Section 15 is not required to modify the policy if the policy offers an employee the option, at the employee's discretion, to take paid leave for any reason. Nothing in this Act shall be construed as requiring financial or other reimbursements to an employee from an employer for unused paid leave under this Act. Nothing in this Act shall be construed to discourage an employer from adopting a paid leave policy more generous than the requirements of this Act.

(c) For domestic workers, if an employer requires evidence of hours worked for other employers to confirm that the domestic worker has worked or is scheduled to work 8 or more hours in the aggregate for any relevant workweek, a signed statement by the domestic worker stating that he or she has performed or is scheduled to perform domestic work for 8 or more hours in the aggregate for any relevant workweek shall satisfy any documentation requirements of hours worked under the Domestic Workers' Bill of Rights Act and this Act. Such employer shall not require more than one signed statement in a calendar quarter if the hours the domestic worker has performed or is scheduled to perform domestic work have not decreased to less than 8 hours in the aggregate in any relevant workweek in that calendar quarter. An employer that requires evidence of hours worked must give the domestic worker written notice of such request and allow no fewer than 7 days or until the next scheduled workday, whichever is greater, for the domestic worker to comply with the request. The employer may not deny paid leave pending submission of the signed statement.

(d) An employer shall post and keep posted in a conspicuous place on the premises of the employer where notices to employees are customarily posted, and include it in a written document, or written employee manual or policy if the employer has one, a notice, to be prepared by the Department, summarizing the requirements of this Act and information pertaining to the filing of a charge upon commencement of an employee's employment or 90 days following the effective date of this Act, whichever is later. If an employer's workforce is comprised of a significant portion of workers who are not literate in English, the employer shall notify the Department and a notice in the appropriate language shall be prepared by the Department. Employees may also request that the Department provide a notice in languages other than English, which the employer must post in accordance with this subsection. An employer who violates this subsection shall be fined a civil penalty of $500 for the first audit violation and $1,000 for any subsequent audit violation.

(e) No employer shall interfere with, deny, or change an employee's work days or hours to avoid providing eligible paid leave time to an employee.

(Source: P.A. 102-1143, eff. 1-1-24.)

(820 ILCS 192/25)

(This Section may contain text from a Public Act with a delayed effective date)

Sec. 25. Retaliation. It is unlawful for any employer to threaten to take or to take any adverse action against an employee because the employee (1) exercises rights or attempts to exercise rights under this Act, (2) opposes practices which the employee believes to be in violation of this Act, or (3) supports the exercise of rights of another under this Act. It is unlawful for any employer to consider the use of paid leave by an employee as a negative factor in any employment action that involves evaluating, promoting, disciplining, or counting paid leave under a no-fault attendance policy. Such retaliation shall subject an employer to civil penalties pursuant to this Act.

An employee who has been unlawfully retaliated against shall also be entitled to recover through a claim filed with the Department, all legal and equitable relief as may be appropriate.

(Source: P.A. 102-1143, eff. 1-1-24.)

(820 ILCS 192/30)

(This Section may contain text from a Public Act with a delayed effective date)

Sec. 30. Department responsibilities.

(a) The Department shall administer and enforce this Act. The Department has the powers and the parties have the rights provided in the Illinois Administrative Procedure Act for contested cases.

(b) An employee may file a complaint with the Department alleging violations of the Act within 3 years after the alleged violation. An employer that violates this Act is liable to any affected employee for damages in the form of the actual underpayment, compensatory damages, and a penalty of not less than $500 and no more than $1,000. Employees shall also be entitled to such equitable relief as may be appropriate, in addition to reasonable attorney's fees; reasonable expert witness fees, and other costs of the action, which shall be paid by the employer to the employee.

(c) The Department has the power to conduct investigations in connection with the administration and enforcement of this Act, including the power to conduct depositions and discovery and to issue subpoenas. If the Department finds cause to believe that this Act has been violated, the Department shall notify the parties in writing, and the matter shall be referred to an Administrative Law Judge to schedule a formal hearing in accordance with hearing procedures established by rule. Administrative decisions shall be reviewed under the Administrative Review Law.

(d) The Department is authorized to impose civil penalties prescribed in Section 35 for any violation of this Act.

(e) The Department is authorized to collect and supervise the payment of any damages awarded pursuant to Section 25 and subsection (b) of this Section to an employee or employees under this Act. Any sums recovered by the Department on behalf of an employee or employees under this Act shall be paid to the employee or employees affected. The Department is not authorized to collect and supervise the payment of any awarded attorney's fees. Those fees shall be subject to collection by the attorney awarded such fees.

(f) The Attorney General may bring an action to enforce the collection of any awards made under this Act.

(g) The Department shall adopt rules necessary to administer and enforce this Act.

(Source: P.A. 102-1143, eff. 1-1-24.)

(820 ILCS 192/35)

(This Section may contain text from a Public Act with a delayed effective date)

Sec. 35. Penalties and enforcement. An employer that violates this Act or any rule adopted under this Act shall be subject to a civil penalty of $2,500 for each separate offense. An offense means any violation of this Act with the exception of a violation of the notice requirement in subsection (c) of Section 20. Any penalties collected from an employer under this Section or under subsection (d) of Section 20 for violations of this Act shall be deposited into the Paid Leave for All Workers Fund, a special fund created in the State treasury that is dedicated to enforcing this Act.

(Source: P.A. 102-1143, eff. 1-1-24.)

(820 ILCS 192/95)

Sec. 95. (Amendatory provisions; text omitted).

(Source: P.A. 102-1143, eff. 1-1-24; text omitted.)

(820 ILCS 192/97)

(This Section may contain text from a Public Act with a delayed effective date)

Sec. 97. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.

(Source: P.A. 102-1143, eff. 1-1-24.)

(820 ILCS 192/99)

(This Section may contain text from a Public Act with a delayed effective date)

Sec. 99. Effective date. This Act takes effect January 1, 2024.

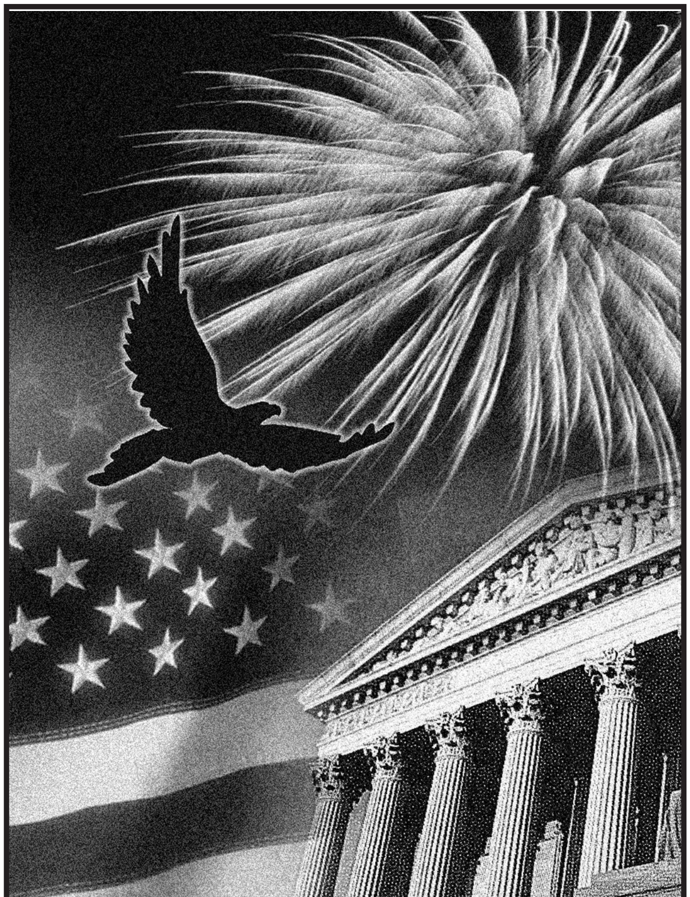
(Source: P.A. 102-1143, eff. 1-1-24.)

Department of the Treasury
Internal Revenue Service

Publication 15
Cat. No. 10000W

(Circular E), Employer's Tax Guide

For use in **2023**



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Dec 13, 2022

Contents

What's New 1
Reminders 2
Calendar 8
Introduction 10
1. Employer Identification Number (EIN) 11
2. Who Are Employees? 11
3. Family Employees 13
4. Employee's Social Security Number (SSN) . . . 14
5. Wages and Other Compensation 15
6. Tips 18
7. Supplemental Wages 19
8. Payroll Period 20
9. Withholding From Employees' Wages 21
10. Required Notice to Employees About the Earned Income Credit (EIC) 26
11. Depositing Taxes 26
12. Filing Form 941 or Form 944 32
13. Reporting Adjustments to Form 941 or Form 944 34
14. Federal Unemployment (FUTA) Tax 37
15. Special Rules for Various Types of Services and Payments 40
16. Third-Party Payer Arrangements 45
How To Get Tax Help 46
Index 49

Future Developments

For the latest information about developments related to Pub. 15, such as legislation enacted after it was published, go to *IRS.gov/Pub15*.

What's New

Social security and Medicare tax for 2023. The rate of social security tax on taxable wages, including qualified sick leave wages and qualified family leave wages paid in 2023 for leave taken after March 31, 2021, and before October 1, 2021, is 6.2% each for the employer and employee or 12.4% for both. Qualified sick leave wages and qualified family leave wages paid in 2023 for leave taken after March 31, 2020, and before April 1, 2021, aren't subject to the employer share of social security tax; therefore, the tax rate on these wages is 6.2%. The social security wage base limit is $160,200.

The Medicare tax rate is 1.45% each for the employee and employer, unchanged from 2022. There is no wage base limit for Medicare tax.

Social security and Medicare taxes apply to the wages of household workers you pay $2,600 or more in cash wages in 2023. Social security and Medicare taxes apply to election workers who are paid $2,200 or more in cash or an equivalent form of compensation in 2023.

Qualified small business payroll tax credit for increasing research activities. For tax years beginning before January 1, 2023, a qualified small business may elect to claim up to $250,000 of its credit for increasing research activities as a payroll tax credit. The Inflation Reduction Act of 2022 (the IRA) increases the election amount to $500,000 for tax years beginning after December 31, 2022. The payroll tax credit election must be made on or before the due date of the originally filed income tax return (including extensions). The portion of the credit used against payroll taxes is allowed in the first calendar quarter beginning after the date that the qualified small business filed its income tax return. The election and determination of the credit amount that will be used against the employer's payroll taxes are made on Form 6765, Credit for Increasing Research Activities. The amount from Form 6765, line 44, must then be reported on Form 8974, Qualified Small Business Payroll Tax Credit for Increasing Research Activities.

Starting in the first quarter of 2023, the payroll tax credit is first used to reduce the employer share of social security tax up to $250,000 per quarter and any remaining credit reduces the employer share of Medicare tax for the quarter. Any remaining credit, after reducing the employer share of social security tax and the employer share of Medicare tax, is then carried forward to the next quarter. Form 8974 is used to determine the amount of the credit that can be used in the current quarter. The amount from Form 8974, line 12, or, if applicable, line 17, is reported on Form 941 or Form 944. For more information about the payroll tax credit, see *IRS.gov/ResearchPayrollTC*. Also see the line 16 instructions in the Instructions for Form 941 (line 13 instructions in the Instructions for Form 944) for information on reducing your record of tax liability for this credit.

Forms 941-SS and 941-PR discontinued after 2023. Form 941-SS, Employer's QUARTERLY Federal Tax Return—American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands, and Form 941-PR, Planilla para la Declaración Federal TRIMESTRAL del Patrono, will no longer be available after the fourth quarter of 2023. Instead, employers in the U.S. territories will file Form 941, Employer's QUARTERLY Federal Tax Return, or, if you prefer your form and instructions in Spanish, you can file new Form 941 (sp), Declaración del Impuesto Federal TRIMESTRAL del Empleador.

Pubs. 51, 80, and 179 discontinued after 2023. Pub. 51, Agricultural Employer's Tax Guide; Pub. 80, Federal Tax Guide for Employers in the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands; and Pub. 179, Guía Contributiva Federal para Patronos Puertorriqueños, will no longer be available after 2023. Instead, information specific to agricultural employers and employers in the U.S. territories will be included in Pub. 15 beginning with the Pub. 15 for use in 2024 (published December 2023). Beginning in 2024, there will be a new Pub. 15 (sp) that is a Spanish-language version of Pub. 15.

Reminders

The COVID-19 related credit for qualified sick and family leave wages is limited to leave taken after March 31, 2020, and before October 1, 2021. Generally, the credit for qualified sick and family leave wages as enacted under the Families First Coronavirus Response Act (FFCRA) and amended and extended by the COVID-related Tax Relief Act of 2020 for leave taken after March 31, 2020, and before April 1, 2021, and the credit for qualified sick and family leave wages under sections 3131, 3132, and 3133 of the Internal Revenue Code, as enacted under the American Rescue Plan Act of 2021 (the ARP), for leave taken after March 31, 2021, and before October 1, 2021, have expired. However, employers that pay qualified sick and family leave wages in 2023 for leave taken after March 31, 2020, and before October 1, 2021, are eligible to claim a credit for qualified sick and family leave wages in 2023. See the March 2023 revision of the Instructions for Form 941 or the 2023 Instructions for Form 944 for more information.

Disaster tax relief. Disaster tax relief is available for those impacted by disasters. For more information about disaster relief, go to *IRS.gov/DisasterTaxRelief*.

Payroll tax credit for certain tax-exempt organizations affected by qualified disasters. Section 303(d) of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 allows for a payroll tax credit for certain tax-exempt organizations affected by certain qualified disasters **not** related to COVID-19. This credit is claimed on Form 5884-D (not on Form 941 and Form 944). Form 5884-D is filed after the Form 941 for the quarter or Form 944 for the year for which the credit is being claimed has been filed. For more information about this credit, go to *IRS.gov/Form5884D*.

2023 withholding tables. The Percentage Method and Wage Bracket Method withholding tables, the employer instructions on how to figure employee withholding, and the amount to add to a nonresident alien employee's wages for figuring income tax withholding are included in Pub. 15-T, Federal Income Tax Withholding Methods, available at *IRS.gov/Pub15T*.

Moving expense reimbursement. P.L. 115-97 suspends the exclusion for qualified moving expense reimbursements from your employee's income for tax years beginning after 2017 and before 2026. However, the exclusion is still available in the case of a member of the U.S. Armed Forces on active duty who moves because of a permanent change of station due to a military order. The exclusion applies only to reimbursement of moving expenses that the member could deduct if they had paid or incurred them without reimbursement. See *Moving Expenses* in Pub. 3, Armed Forces' Tax Guide, for the definition of what constitutes a permanent change of station and to learn which moving expenses are deductible.

Withholding on supplemental wages. P.L. 115-97 lowered the withholding rates on supplemental wages for tax years beginning after 2017 and before 2026. See section 7 for the withholding rates.

Backup withholding. P.L. 115-97 lowered the backup withholding rate to 24% for tax years beginning after 2017 and before 2026. For more information on backup withholding, see *Backup withholding*, later.

Certification program for professional employer organizations (PEOs). The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 required the IRS to establish a voluntary certification program for PEOs. PEOs handle various payroll administration and tax reporting responsibilities for their business clients and are typically paid a fee based on payroll costs. To become and remain certified under the certification program, certified professional employer organizations (CPEOs) must meet various requirements described in sections 3511 and 7705 and related published guidance. Certification as a CPEO may affect the employment tax liabilities of both the CPEO and its customers. A CPEO is generally treated for employment tax purposes as the employer of any individual who performs services for a customer of the CPEO and is covered by a contract described in section 7705(e)(2) between the CPEO and the customer (CPEO contract), but only for wages and other compensation paid to the individual by the CPEO. To become a CPEO, the organization must apply through the IRS Online Registration System. For more information or to apply to become a CPEO, go to *IRS.gov/CPEO*. Also see Revenue Procedure 2017-14, 2017-3 I.R.B. 426, available at *IRS.gov/irb/2017-03_IRB#RP-2017-14*.

Outsourcing payroll duties. Generally, as an employer, you're responsible to ensure that tax returns are filed and deposits and payments are made, even if you contract with a third party to perform these acts. You remain responsible if the third party fails to perform any required action. Before you choose to outsource any of your payroll and related tax duties (that is, withholding, reporting, and paying over social security, Medicare, FUTA, and income taxes) to a third-party payer, such as a payroll service provider or reporting agent, go to *IRS.gov/OutsourcingPayrollDuties* for helpful information on this topic. If a CPEO pays wages and other compensation to an individual performing services for you, and the services are covered by a contract described in section 7705(e)(2) between you and the CPEO (CPEO contract), then the CPEO is generally treated as the employer, but only for wages and other compensation paid to the individual by the CPEO. However, with respect to certain employees covered by a CPEO contract, you may also be treated as an employer of the employees and, consequently, may also be liable for federal employment taxes imposed on wages and other compensation paid by the CPEO to such employees. For more information on the different types of third-party payer arrangements, see section 16.

Aggregate Form 941 filers. Approved section 3504 agents and CPEOs must complete Schedule R (Form 941), Allocation Schedule for Aggregate Form 941 Filers, when filing an aggregate Form 941. Aggregate Forms 941 are filed by agents approved by the IRS under section 3504 of the Internal Revenue Code. To request approval to act as an agent for an employer, the agent files Form 2678 with the IRS unless you're a state or local government agency acting as an agent under the special procedures provided in Revenue Procedure 2013-39, 2013-52 I.R.B. 830, available at *IRS.gov/irb/2013-52_IRB#RP-2013-39*. Aggregate Forms 941 are also filed by CPEOs approved by the IRS under section 7705. To become a CPEO, the organization must apply through the IRS Online Registration System at *IRS.gov/CPEO*. CPEOs file Form 8973, Certified Professional Employer Organization/Customer Reporting Agreement, to notify the IRS that they've started or ended a service contract with a client or customer. CPEOs must generally file Form 941 and Schedule R (Form 941) electronically. For more information about a CPEO's requirement to file electronically, see Revenue Procedure 2017-14, 2017-3 I.R.B. 426, available at *IRS.gov/irb/2017-03_IRB#RP-2017-14*.

Other third-party payers that file aggregate Forms 941, such as non-certified PEOs, must complete and file Schedule R (Form 941) if they have clients that are claiming any employment tax credit (for example, the qualified small business payroll tax credit for increasing research activities).

Aggregate Form 940 filers. Approved section 3504 agents and CPEOs must complete Schedule R (Form 940), Allocation Schedule for Aggregate Form 940 Filers, when filing an aggregate Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return. Aggregate Forms 940 can be filed by agents acting on behalf of home care service recipients who receive home care services through a program administered by a federal, state, or local government. To request approval to act as an agent on behalf of home care service recipients, the agent files Form 2678 with the IRS unless you're a state or local government agency acting as an agent under the special procedures provided in *Revenue Procedure 2013-39*. Aggregate Forms 940 are also filed by CPEOs approved by the IRS under section 7705. CPEOs file Form 8973 to notify the IRS that they've started or ended a service contract with a client or customer. CPEOs must generally file Form 940 and Schedule R (Form 940) electronically. For more information about a CPEO's requirement to file electronically, see *Revenue Procedure 2017-14*.

Work opportunity tax credit for qualified tax-exempt organizations hiring qualified veterans. Qualified tax-exempt organizations that hire eligible unemployed veterans may be able to claim the work opportunity tax credit against their payroll tax liability using Form 5884-C. For more information, go to *IRS.gov/WOTC*.

Medicaid waiver payments. Notice 2014-7 provides that certain Medicaid waiver payments are excludable from income for federal income tax purposes. See Notice 2014-7, 2014-4 I.R.B. 445, available at *IRS.gov/irb/*

2014-04_IRB#NOT-2014-7. For more information, including questions and answers related to Notice 2014-7, go to IRS.gov/MedicaidWaiverPayments.

No federal income tax withholding on disability payments for injuries incurred as a direct result of a terrorist attack directed against the United States. Disability payments for injuries incurred as a direct result of a terrorist attack directed against the United States (or its allies) aren't included in income. Because federal income tax withholding is only required when a payment is includible in income, no federal income tax should be withheld from these payments. See Pub. 907, Tax Highlights for Persons With Disabilities, and Pub. 3920, Tax Relief for Victims of Terrorist Attacks.

Voluntary withholding on dividends and other distributions by an Alaska Native Corporation (ANC). A shareholder of an ANC may request voluntary income tax withholding on dividends and other distributions paid by an ANC. A shareholder may request voluntary withholding by giving the ANC a completed Form W-4V. For more information, see Notice 2013-77, 2013-50 I.R.B. 632, available at IRS.gov/irb/2013-50_IRB#NOT-2013-77.

Definition of marriage. A marriage of two individuals is recognized for federal tax purposes if the marriage is recognized by the state, possession, or territory of the United States in which the marriage is entered into, regardless of legal residence. Two individuals who enter into a relationship that is denominated as marriage under the laws of a foreign jurisdiction are recognized as married for federal tax purposes if the relationship would be recognized as marriage under the laws of at least one state, possession, or territory of the United States, regardless of legal residence. Individuals who have entered into a registered domestic partnership, civil union, or other similar relationship that isn't denominated as a marriage under the law of the state, possession, or territory of the United States where such relationship was entered into aren't lawfully married for federal tax purposes, regardless of legal residence.

Severance payments. Severance payments are wages subject to social security and Medicare taxes, income tax withholding, and FUTA tax.

You must receive written notice from the IRS to file Form 944. If you've been filing Forms 941 (or Forms 941-SS or Formularios 941-PR), and believe your employment taxes for the calendar year will be $1,000 or less, and you would like to file Form 944 instead of Forms 941, you must contact the IRS during the first calendar quarter of the tax year to request to file Form 944. You must receive written notice from the IRS to file Form 944 instead of Forms 941 before you may file this form. For more information on requesting to file Form 944, including the methods and deadlines for making a request, see the Instructions for Form 944.

Employers can request to file Forms 941 instead of Form 944. If you received notice from the IRS to file Form 944 but would like to file Forms 941 instead, you must contact the IRS during the first calendar quarter of the tax year to request to file Forms 941. You must receive written notice from the IRS to file Forms 941 instead of Form 944 before you may file these forms. For more information on requesting to file Forms 941, including the methods and deadlines for making a request, see the Instructions for Form 944.

Correcting Form 941 or 944. If you discover an error on a previously filed Form 941, make the correction using Form 941-X. If you discover an error on a previously filed Form 944, make the correction using Form 944-X. Forms 941-X and 944-X are filed separately from Forms 941 and 944. Forms 941-X and 944-X are used by employers to claim refunds or abatements of employment taxes, rather than Form 843. See section 13 for more information.

Zero wage return. If you haven't filed a "final" Form 940 and "final" Form 941 or 944, or aren't a "seasonal" employer (Form 941 only), you must continue to file a Form 940 and Forms 941 or Form 944, even for periods during which you paid no wages. The IRS encourages you to file your "zero wage" Form 940 and Form 941 or 944 electronically. Go to IRS.gov/EmploymentEfile for more information on electronic filing.

Federal tax deposits must be made by electronic funds transfer (EFT). You must use EFT to make all federal tax deposits. Generally, an EFT is made using the Electronic Federal Tax Payment System (EFTPS). If you don't want to use EFTPS, you can arrange for your tax professional, financial institution, payroll service, or other trusted third party to make electronic deposits on your behalf. Also, you may arrange for your financial institution to initiate a same-day wire payment on your behalf. EFTPS is a free service provided by the Department of the Treasury. Services provided by your tax professional, financial institution, payroll service, or other third party may have a fee.

For more information on making federal tax deposits, see How To Deposit in section 11. To get more information about EFTPS or to enroll in EFTPS, go to EFTPS.gov or call 800-555-4477. To contact EFTPS using Telecommunications Relay Services (TRS) for people who are deaf, hard of hearing, or have a speech disability, dial 711 and then provide the TRS assistant the 800-555-4477 number above or 800-733-4829. Additional information about EFTPS is also available in Pub. 966.

Pub. 5146 explains employment tax examinations and appeal rights. Pub. 5146 provides employers with information on how the IRS selects employment tax returns to be examined, what happens during an exam, and what options an employer has in responding to the results of an exam, including how to appeal the results. Pub. 5146 also includes information on worker classification issues and tip exams.

Electronic Filing and Payment

Businesses can enjoy the benefits of filing and paying their federal taxes electronically. Whether you rely on a tax professional or handle your own taxes, the IRS offers you convenient programs to make filing and payment easier.

Spend less time worrying about taxes and more time running your business. Use *e-file* and EFTPS to your benefit.

- For *e-file,* go to *IRS.gov/EmploymentEfile* for additional information. A fee may be charged to file electronically.
- For EFTPS, go to *EFTPS.gov* or call EFTPS Customer Service at 800-555-4477. To contact EFTPS using TRS for people who are deaf, hard of hearing, or have a speech disability, dial 711 and then provide the TRS assistant the 800-555-4477 number above or 800-733-4829.
- For electronic filing of Forms W-2, Wage and Tax Statement, go to *SSA.gov/employer*. You may be required to file Forms W-2 electronically. For details, see the General Instructions for Forms W-2 and W-3.

CAUTION *If you're filing your tax return or paying your federal taxes electronically, a valid employer identification number (EIN) is required at the time the return is filed or the payment is made. If a valid EIN isn't provided, the return or payment won't be processed. This may result in penalties. See section 1 for information about applying for an EIN.*

Electronic funds withdrawal (EFW). If you file your employment tax return electronically, you can *e-file* and use EFW to pay the balance due in a single step using tax preparation software or through a tax professional. However, don't use EFW to make federal tax deposits. For more information on paying your taxes using EFW, go to *IRS.gov/EFW*.

Credit or debit card payments. You can pay the balance due shown on your employment tax return by credit or debit card. Your payment will be processed by a payment processor who will charge a processing fee. Don't use a credit or debit card to make federal tax deposits. For more information on paying your taxes with a credit or debit card, go to *IRS.gov/PayByCard*.

Online payment agreement. You may be eligible to apply for an installment agreement online if you can't pay the full amount of tax you owe when you file your employment tax return. For more information, see the instructions for your employment tax return or go to *IRS.gov/OPA*.

Forms in Spanish

You can provide Formulario W-4(SP), Certificado de Retenciones del Empleado, in place of Form W-4, Employee's Withholding Certificate, to your Spanish-speaking employees. For more information, see Pub. 17(SP), El Impuesto Federal sobre los Ingresos (Para Personas Físicas). For nonemployees, such as independent contractors, Formulario W-9(SP), Solicitud y Certificación del Número de Identificación del Contribuyente, may be used in place of Form W-9, Request for Taxpayer Identification Number and Certification.

Hiring New Employees

Eligibility for employment. You must verify that each new employee is legally eligible to work in the United States. This includes completing the U.S. Citizenship and Immigration Services (USCIS) Form I-9, Employment Eligibility Verification. You can get Form I-9 at *USCIS.gov/Forms*. For more information, go to the USCIS website at *USCIS.gov/I-9-Central*, or call 800-375-5283 or 800-767-1833 (TTY).

You may use the Social Security Number Verification Service (SSNVS) at *SSA.gov/employer/ssnv.htm* to verify that an employee name matches an SSN. A person may have a valid SSN but not be authorized to work in the United States. You may use E-Verify at *E-Verify.gov* to confirm the employment eligibility of newly hired employees.

New hire reporting. You're required to report any new employee to a designated state new hire registry. A new employee is an employee who hasn't previously been employed by you or was previously employed by you but has been separated from such prior employment for at least 60 consecutive days.

Many states accept a copy of Form W-4 with employer information added. Go to the Office of Child Support Enforcement website at *acf.hhs.gov/programs/css/employers* for more information.

W-4 request. Ask each new employee to complete the 2023 Form W-4. See section 9.

Name and social security number (SSN). Record each new employee's name and SSN from their social security card. Any employee without a social security card should apply for one. See section 4.

Information Returns

You must file Forms W-2 to report wages paid to employees. You may also be required to file information returns to report certain types of payments made during the year. For example, you must file Form 1099-NEC, Nonemployee Compensation, to report payments of $600 or more to persons not treated as employees (for example, independent contractors) for services performed for your trade or business. For details about filing Forms 1099 and for information about required electronic filing, see the General Instructions for Certain Information Returns for general information, and the separate, specific instructions for each information return you file (for example, the Instructions for Forms 1099-MISC and 1099-NEC). Generally, don't use Forms 1099 to report wages and other compensation you paid to employees; report these on Form W-2. See the General Instructions for Forms W-2 and W-3 for details about filing Form W-2 and for information about required electronic filing.

Technical Services Operation (TSO). The IRS operates the TSO to answer questions about reporting on Forms W-2, W-3, and 1099, and other information returns. If you have questions related to reporting on information returns, call 866-455-7438 (toll free) or 304-263-8700 (toll

Employer Responsibilities

The following list provides a brief summary of your basic responsibilities. Because the individual circumstances for each employer can vary greatly, responsibilities for withholding, depositing, and reporting employment taxes can differ. Each item in this list has a page reference to a more detailed discussion in this publication.

New Employees:	Page
☐ Verify work eligibility of new employees	5
☐ Record employees' names and SSNs from social security cards	5
☐ Ask employees for Form W-4	5
Each Payday:	
☐ Withhold federal income tax based on each employee's Form W-4	21
☐ Withhold employee's share of social security and Medicare taxes	24
☐ Deposit: • Withheld income tax • Withheld and employer social security taxes • Withheld and employer Medicare taxes	26
Note: Due date of deposit generally depends on your deposit schedule (monthly or semiweekly).	
Quarterly (By April 30, July 31, October 31, and January 31):	
☐ Deposit FUTA tax if undeposited amount is over $500	38
☐ File Form 941 (pay tax with return if not required to deposit)	32

Annually (see *Calendar* for due dates):	Page
☐ File Form 944 if required (pay tax with return if not required to deposit)	32
☐ Remind employees to submit a new Form W-4 if they need to change their withholding	21
☐ Ask for a new Form W-4 from employees claiming exemption from income tax withholding	22
☐ Reconcile Forms 941 (or Form 944) with Forms W-2 and W-3	34
☐ Furnish each employee a Form W-2	9
☐ File Copy A of Forms W-2 and the transmittal Form W-3 with the SSA	9
☐ Furnish each other payee a Form 1099 (for example, Form 1099-NEC)	9
☐ File Forms 1099 and the transmittal Form 1096	9
☐ File Form 940	9
☐ File Form 945 for any nonpayroll income tax withholding	9

call). The center can also be reached by email at *mccirp@irs.gov*. Don't include taxpayer identification numbers (TINs) or attachments in email because email isn't secure.

Federal Income Tax Withholding

Withhold federal income tax from each wage payment or supplemental unemployment compensation plan benefit payment according to the employee's Form W-4 and the correct withholding table in Pub. 15-T. If you're paying supplemental wages to an employee, see section 7. If you have nonresident alien employees, see *Withholding income taxes on the wages of nonresident alien employees* in section 9.

See section 8 of Pub. 15-A, Employer’s Supplemental Tax Guide, for information about withholding on pensions (including distributions from tax-favored retirement plans), annuities, and individual retirement arrangements (IRAs).

Nonpayroll Income Tax Withholding

Nonpayroll federal income tax withholding (reported on Forms 1099 and Form W-2G, Certain Gambling Winnings) must be reported on Form 945, Annual Return of Withheld Federal Income Tax. Separate deposits are required for payroll (Form 941 or Form 944) and nonpayroll (Form 945) withholding. Nonpayroll items include the following.

- Pensions (including distributions from tax-favored retirement plans, for example, section 401(k), section 403(b), and governmental section 457(b) plans), annuities, and IRA distributions.
- Military retirement.
- Gambling winnings.
- Indian gaming profits.
- Certain government payments on which the recipient elected voluntary income tax withholding.
- Dividends and other distributions by an ANC on which the recipient elected voluntary income tax withholding.
- Payments subject to backup withholding.

For details on depositing and reporting nonpayroll income tax withholding, see the Instructions for Form 945.

Distributions from nonqualified pension plans and deferred compensation plans. Because distributions to participants from some nonqualified pension plans and deferred compensation plans (including section 457(b) plans of tax-exempt organizations) are treated as wages and are reported on Form W-2, income tax withheld must be reported on Form 941 or Form 944, not on Form 945. However, distributions from such plans to a beneficiary or estate of a deceased employee aren't wages and are reported on Forms 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.; income tax withheld must be reported on Form 945.

Backup withholding. You must generally withhold 24% of certain taxable payments if the payee fails to furnish you with their correct TIN. This withholding is referred to as "backup withholding."

Payments subject to backup withholding include interest, dividends, patronage dividends, rents, royalties, commissions, nonemployee compensation, payments made in settlement of payment card or third-party network transactions, and certain other payments you make in the course of your trade or business. In addition, transactions by brokers and barter exchanges and certain payments made by fishing boat operators are subject to backup withholding.

CAUTION *Backup withholding doesn't apply to wages, pensions, annuities, IRAs (including simplified employee pension (SEP) and SIMPLE retirement plans), section 404(k) distributions from an employee stock ownership plan (ESOP), medical savings accounts (MSAs), health savings accounts (HSAs), long-term-care benefits, or real estate transactions.*

You can use Form W-9 or Formulario W-9(SP) to request payees to furnish a TIN. Form W-9 or Formulario W-9(SP) must be used when payees must certify that the number furnished is correct, or when payees must certify that they're not subject to backup withholding or are exempt from backup withholding. The Instructions for the Requester of Form W-9 or Formulario W-9(SP) includes a list of types of payees who are exempt from backup withholding. For more information, see Pub. 1281, Backup Withholding for Missing and Incorrect Name/TIN(s).

Recordkeeping

Keep all records of employment taxes for at least 4 years. These should be available for IRS review. Your records should include the following information.

- Your EIN.
- Amounts and dates of all wage, annuity, and pension payments.
- Amounts of tips reported to you by your employees.
- Records of allocated tips.
- The fair market value of in-kind wages paid.
- Names, addresses, SSNs, and occupations of employees and recipients.
- Any employee copies of Forms W-2 and W-2c returned to you as undeliverable.
- Dates of employment for each employee.
- Periods for which employees and recipients were paid while absent due to sickness or injury and the amount and weekly rate of payments you or third-party payers made to them.
- Copies of employees' and recipients' income tax withholding certificates (Forms W-4, W-4P, W-4(SP), W-4S, and W-4V).
- Dates and amounts of tax deposits you made and acknowledgment numbers for deposits made by EFTPS.
- Copies of returns filed and confirmation numbers.
- Records of fringe benefits and expense reimbursements provided to your employees, including substantiation.
- Documentation to substantiate any credits claimed. Records related to qualified sick leave wages and qualified family leave wages for leave taken after March 31, 2021, and before October 1, 2021, and records related to qualified wages for the employee retention credit paid after June 30, 2021, should be kept for at least 6 years. For more information on substantiation requirements, go to IRS.gov/PLC and IRS.gov/ERC.
- Documentation to substantiate the amount of any employer or employee share of social security tax that you deferred and paid for 2020.

Change of Business Name

Notify the IRS immediately if you change your business name. Write to the IRS office where you file your returns, using the *Without a payment* address provided in the instructions for your employment tax return, to notify the IRS of any business name change. See Pub. 1635 to see if you need to apply for a new EIN.

Change of Business Address or Responsible Party

Notify the IRS immediately if you change your business address or responsible party. Complete and mail Form 8822-B to notify the IRS of a business address or responsible party change. For a definition of "responsible party," see the Instructions for Form SS-4.

Filing Addresses

Generally, your filing address for Form 940, 941, 943, 944, 945, or CT-1 depends on the location of your residence or principal place of business and whether or not you're including a payment with your return. There are separate filing addresses for these returns if you're a tax-exempt organization or government entity. See the separate instructions for Form 940, 941, 943, 944, 945, or CT-1 for the filing addresses.

Private Delivery Services

You can use certain private delivery services (PDSs) designated by the IRS to meet the “timely mailing as timely filing” rule for tax returns. Go to *IRS.gov/PDS* for the current list of PDSs.

The PDS can tell you how to get written proof of the mailing date.

For the IRS mailing address to use if you're using a PDS, go to *IRS.gov/PDSstreetAddresses*. Select the mailing address listed on the webpage that is in the same state as the address to which you would mail returns filed without a payment, as shown in the instructions for your employment tax return.

CAUTION *PDSs can't deliver items to P.O. boxes. You must use the U.S. Postal Service to mail any item to an IRS P.O. box address.*

Dishonored Payments

Any form of payment that is dishonored and returned from a financial institution is subject to a penalty. The penalty is $25 or 2% of the payment, whichever is more. However, the penalty on dishonored payments of $24.99 or less is an amount equal to the payment. For example, a dishonored payment of $18 is charged a penalty of $18.

E-News for Payroll Professionals

The IRS has a subscription-based email service for payroll professionals. Subscribers will receive periodic updates from the IRS. The updates may include information regarding recent legislative changes affecting federal payroll reporting, IRS news releases and special announcements pertaining to the payroll industry, new employment tax procedures, and other information specifically affecting federal payroll tax returns. To subscribe, go to *IRS.gov/ENewsPayroll*.

Telephone Help

Tax questions. You can call the IRS Business and Specialty Tax Line with your employment tax questions at 800-829-4933.

Help for people with disabilities. You may call 800-829-4059 (TDD/TTY for persons who are deaf, hard of hearing, or have a speech disability) with any employment tax questions. You may also use this number for assistance with unresolved tax problems.

Additional information. Go to *IRS.gov/EmploymentTaxes* for additional employment tax information. For information about employer responsibilities under the Affordable Care Act, go to *IRS.gov/ACA*. For information about COVID-19 tax relief, go to *IRS.gov/Coronavirus*.

Ordering Employer Tax Forms, Instructions, and Publications

You can view, download, or print most of the forms, instructions, and publications you may need at *IRS.gov/Forms*. Otherwise, you can go to *IRS.gov/OrderForms* to place an order and have them mailed to you. The IRS will process your order as soon as possible. Don't resubmit requests you've already sent us. You can get forms, instructions, and publications faster online.

Instead of ordering paper Forms W-2 and W-3, consider filing them electronically using the SSA's free *e-file* service. Go to the SSA's Employer W-2 Filing Instructions & Information webpage at *SSA.gov/employer* to register for Business Services Online. You’ll be able to create Forms W-2 online and submit them to the SSA by typing your wage information into easy-to-use fill-in fields. In addition, you can print out completed copies of Forms W-2 to file with state or local governments, distribute to your employees, and keep for your records. Form W-3 will be created for you based on your Forms W-2.

Photographs of Missing Children

The IRS is a proud partner with the *National Center for Missing & Exploited Children® (NCMEC)*. Photographs of missing children selected by the Center may appear in this publication on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling 1-800-THE-LOST (1-800-843-5678) if you recognize a child.

Calendar

The following is a list of important dates and responsibilities. The dates listed here haven’t been adjusted for Saturdays, Sundays, and legal holidays (see the *TIP* next). Pub. 509, Tax Calendars (for use in 2023), adjusts the dates for Saturdays, Sundays, and legal holidays. See section 11 for information about depositing taxes reported on Forms 941, 944, and 945. See section 14 for information about depositing FUTA tax. Due dates for forms required for health coverage reporting aren't listed here. For these dates, see Pub. 509.

TIP *If any date shown next for filing a return, furnishing a form, or depositing taxes falls on a Saturday, Sunday, or legal holiday, the due date is the next business day. The term "legal holiday" means any legal holiday in the District of Columbia. A statewide legal holiday delays a filing due date only if the IRS office where you’re required to file is located in that state. However, a* *statewide legal holiday doesn't delay the due date of federal tax deposits. See* Deposits Due on Business Days Only *in section 11. For any filing due date, you'll meet the "file" or "furnish" requirement if the envelope containing the return or form is properly addressed, contains sufficient postage, and is postmarked by the U.S. Postal Service on or before the due date, or sent by an IRS-designated PDS on or before the due date. See* Private Delivery Services *under* Reminders*, earlier, for more information.*

Fiscal year taxpayers. The due dates listed next apply whether you use a calendar or a fiscal year.

By January 31

File Form 941 or Form 944. File Form 941 for the fourth quarter of the previous calendar year and deposit any undeposited income, social security, and Medicare taxes. You may pay these taxes with Form 941 if your total tax liability for the quarter (Form 941, line 12) is less than $2,500. File Form 944 for the previous calendar year instead of Form 941 if the IRS has notified you in writing to file Form 944. Pay any undeposited income, social security, and Medicare taxes with your Form 944. You may pay these taxes with Form 944 if your total tax liability for the year (Form 944, line 9) is less than $2,500. For additional rules on when you can pay your taxes with your return, see *Payment with return* in section 11. If you timely deposited all taxes when due, you may file by February 10.

File Form 940. File Form 940 to report any FUTA tax. However, if you deposited all of the FUTA tax when due, you may file by February 10. See section 14 for more information on FUTA tax.

Furnish Forms 1099 and W-2. Furnish each employee a completed 2022 Form W-2. Furnish a 2022 Form 1099-NEC to payees for nonemployee compensation. Most Forms 1099 must be furnished to payees by January 31, but some can be furnished by February 15. For more information, see the *Guide to Information Returns* chart in the General Instructions for Certain Information Returns.

File Form W-2. File with the SSA Copy A of all 2022 paper and electronic Forms W-2 with Form W-3, Transmittal of Wage and Tax Statements. For more information on reporting Form W-2 information to the SSA electronically, go to the SSA's Employer W-2 Filing Instructions & Information webpage at *SSA.gov/employer*. If filing electronically, via the SSA's Form W-2 Online service, the SSA will generate Form W-3 data from the electronic submission of Form(s) W-2.

File Form 1099-NEC reporting nonemployee compensation. File with the IRS Copy A of all 2022 paper and electronic Forms 1099-NEC. Paper forms must be filed with Form 1096, Annual Summary and Transmittal of U.S. Information Returns. For information on filing information returns electronically with the IRS, see Pub. 1220, Specifications for Electronic Filing of Forms 1097, 1098, 1099, 3921, 3922, 5498, and W-2G.

File Form 945. File Form 945 to report any nonpayroll federal income tax withheld. If you deposited all taxes when due, you may file by February 10. See *Nonpayroll Income Tax Withholding* under *Reminders*, earlier, for more information.

By February 15

Request a new Form W-4 from exempt employees. Ask for a new Form W-4 from each employee who claimed exemption from income tax withholding last year.

On February 16

Forms W-4 claiming exemption from withholding expire. Any Form W-4 claiming exemption from withholding for the previous year has now expired. Begin withholding for any employee who previously claimed exemption from withholding but hasn't given you a new Form W-4 for the current year. If the employee doesn't give you a new Form W-4, withhold tax as if they had checked the box for Single or Married filing separately in Step 1(c) and made no entries in Step 2, Step 3, or Step 4 of the 2023 Form W-4. See section 9 for more information. If the employee gives you a new Form W-4 claiming exemption from withholding after February 15, you may apply the exemption to future wages, but don't refund taxes withheld while the exempt status wasn't in place.

By February 28

File paper 2022 Forms 1099 and 1096. File Copy A of all paper 2022 Forms 1099, except Forms 1099-NEC, with Form 1096 with the IRS. For electronically filed returns, see *By March 31*, later.

File paper Form 8027. File paper Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips, with the IRS. See section 6. For electronically filed returns, see *By March 31* next.

By March 31

File electronic 2022 Forms 1099 and 8027. File electronic 2022 Forms 1099, except Forms 1099-NEC, with the IRS. Also file electronic Form 8027 with the IRS. For information on filing information returns electronically with the IRS, see Pub. 1220 and Pub. 1239, Specifications for Electronic Filing of Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips.

By April 30, July 31, October 31, and January 31

Deposit FUTA taxes. Deposit FUTA tax for the quarter (including any amount carried over from other quarters) if over $500. If $500 or less, carry it over to the next quarter. See section 14 for more information.

File Form 941. File Form 941 and deposit any undeposited income, social security, and Medicare taxes. You may pay these taxes with Form 941 if your total tax liability for the quarter (Form 941, line 12) is less than $2,500. If you timely deposited all taxes when due, you may file by May 10, August 10, November 10, or February 10, respectively. Don't file Form 941 for these quarters if you have been notified to file Form 944 and you didn't request and receive written notice from the IRS to file quarterly Forms 941.

Before December 1

New Forms W-4. Remind employees to submit a new Form W-4 if their filing status, other income, deductions, or credits have changed or will change for the next year.

Introduction

This publication explains your tax responsibilities as an employer. It explains the requirements for withholding, depositing, reporting, paying, and correcting employment taxes. It explains the forms you must give to your employees, those your employees must give to you, and those you must send to the IRS and the SSA. References to “income tax” in this guide apply only to federal income tax. Contact your state or local tax department to determine their rules.

When you pay your employees, you don't pay them all the money they earned. As their employer, you have the added responsibility of withholding taxes from their paychecks. The federal income tax and employees' share of social security and Medicare taxes that you withhold from your employees' paychecks are part of their wages that you pay to the U.S. Treasury instead of to your employees. Your employees trust that you pay the withheld taxes to the U.S. Treasury by making federal tax deposits. This is the reason that these withheld taxes are called trust fund taxes. If federal income, social security, or Medicare taxes that must be withheld aren't withheld or aren't deposited or paid to the U.S. Treasury, the trust fund recovery penalty may apply. See section 11 for more information.

Additional employment tax information is available in Pubs. 15-A, 15-B, and 15-T. Pub. 15-A includes specialized information supplementing the basic employment tax information provided in this publication. Pub. 15-B, Employer's Tax Guide to Fringe Benefits, contains information about the employment tax treatment and valuation of various types of noncash compensation. Pub. 15-T includes the federal income tax withholding tables and instructions on how to use the tables.

Most employers must withhold (except FUTA), deposit, report, and pay the following employment taxes.

- Income tax.
- Social security tax.
- Medicare tax.
- FUTA tax.

There are exceptions to these requirements. See section 15 for guidance. Railroad retirement taxes are explained in the Instructions for Form CT-1. Employment taxes for agricultural employers are explained in Pub. 51. If you have employees in the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, see Pub. 80.

Comments and suggestions. We welcome your comments about this publication and suggestions for future editions.

You can send us comments through IRS.gov/FormComments.

Or, you can write to:

Internal Revenue Service
Tax Forms and Publications
1111 Constitution Ave. NW, IR-6526
Washington, DC 20224

Although we can’t respond individually to each comment received, we do appreciate your feedback and will consider your comments and suggestions as we revise our tax forms, instructions, and publications. **Don’t** send tax questions, tax returns, or payments to the above address.

Getting answers to your tax questions. If you have a tax question not answered by this publication, check IRS.gov and How To Get Tax Help at the end of this publication.

Getting tax forms, instructions, and publications. Go to IRS.gov/Forms to download current and prior-year forms, instructions, and publications.

Ordering tax forms, instructions, and publications. Go to IRS.gov/OrderForms to order current forms, instructions, and publications; call 800-829-3676 to order prior-year forms and instructions. The IRS will process your order for forms and publications as soon as possible. **Don’t** resubmit requests you’ve already sent us. You can get forms and publications faster online.

Federal government employers. The information in this publication, including the rules for making federal tax deposits, applies to federal agencies.

State and local government employers. Payments to employees for services in the employ of state and local government employers are generally subject to federal income tax withholding but not FUTA tax. Most elected and appointed public officials of state or local governments are employees under common law rules. See chapter 3 of Pub. 963, Federal-State Reference Guide. In addition, wages, with certain exceptions, are subject to social security and Medicare taxes. See section 15 for more information on the exceptions.

If an election worker is employed in another capacity with the same government entity, see Revenue Ruling 2000-6 on page 512 of Internal Revenue Bulletin 2000-6 at IRS.gov/pub/irs-irbs/irb00-06.pdf.

You can get information on reporting and social security coverage from your local IRS office. If you have any questions about coverage under a section 218 (Social Security Act) agreement, contact the appropriate state official. To find your State Social Security Administrator, go to the National Conference of State Social Security Administrators website at NCSSSA.org.

Indian tribal governments. See Pub. 4268 for employment tax information for Indian tribal governments.

Disregarded entities and qualified subchapter S subsidiaries (QSubs). Eligible single-owner disregarded entities and QSubs are treated as separate entities for employment tax purposes. Eligible single-member entities must report and pay employment taxes on wages paid to their employees using the entities' own names and EINs. See Regulations sections 1.1361-4(a)(7) and 301.7701-2(c)(2)(iv).

1. Employer Identification Number (EIN)

If you're required to report employment taxes or give tax statements to employees or annuitants, you need an EIN.

The EIN is a nine-digit number the IRS issues. The digits are arranged as follows: 00-0000000. It is used to identify the tax accounts of employers and certain others who have no employees. Use your EIN on all of the items you send to the IRS and the SSA. For more information, see Pub. 1635.

If you don't have an EIN, you may apply for one online by going to IRS.gov/EIN. You may also apply for an EIN by faxing or mailing Form SS-4 to the IRS. If the principal business was created or organized outside of the United States or U.S. territories, you may also apply for an EIN by calling 267-941-1099 (toll call). Don't use an SSN in place of an EIN.

You should have only one EIN. If you have more than one and aren't sure which one to use, call 800-829-4933 or 800-829-4059 (TDD/TTY for persons who are deaf, hard of hearing, or have a speech disability). Give the numbers you have, the name and address to which each was assigned, and the address of your main place of business. The IRS will tell you which number to use. For more information, see Pub. 1635.

If you took over another employer's business (see *Successor employer* in section 9), don't use that employer's EIN. If you've applied for an EIN but don't have your EIN by the time a return is due, file a paper return and write “Applied For” and the date you applied for it in the space shown for the number.

CAUTION *Always be sure the EIN on the form you file exactly matches the EIN the IRS assigned to your business. Don't use your SSN or individual taxpayer identification number (ITIN) on forms that ask for an EIN. If you used an EIN (including a prior owner's EIN) on Form 941, or Form 944, that is different from the EIN reported on Form W-3, see* Box h—Other EIN used this year *in the General Instructions for Forms W-2 and W-3. The name and EIN on Form 945 must match the name and EIN on your information returns where federal income tax withholding is reported (for example, backup withholding reported on Form 1099-NEC). Filing a Form 945 with an incorrect EIN or using another business's EIN may result in penalties and delays in processing your return.*

2. Who Are Employees?

Generally, employees are defined either under common law or under statutes for certain situations. See Pub. 15-A for details on statutory employees and nonemployees.

Employee status under common law. Generally, a worker who performs services for you is your employee if you have the right to control what will be done and how it will be done. This is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed. See Pub. 15-A for more information on how to determine whether an individual providing services is an independent contractor or an employee.

Generally, people in business for themselves aren't employees. For example, doctors, lawyers, veterinarians, and others in an independent trade in which they offer their services to the public are usually not employees. If the business is incorporated, corporate officers who work in the business are employees of the corporation.

If an employer-employee relationship exists, it doesn't matter what it is called. The employee may be called an agent or independent contractor. It also doesn't matter how payments are measured or paid, what they're called, or if the employee works full or part time.

Statutory employees. If someone who works for you isn't an employee under the common law rules discussed earlier, don't withhold federal income tax from their pay, unless backup withholding applies. Although the following persons may not be common law employees, they're considered employees by statute for social security and Medicare tax purposes under certain conditions.

- An agent or commission driver who delivers meat, vegetable, fruit, or bakery products; beverages (other than milk); laundry; or dry cleaning for someone else.
- A full-time life insurance salesperson who sells primarily for one company.
- A homeworker who works at home or off premises according to guidelines of the person for whom the work is done, with materials or goods furnished by and returned to that person or to someone that person designates.
- A traveling or city salesperson (other than an agent or commission driver) who works full time (except for sideline sales activities) for one firm or person getting orders from customers. The orders must be for

merchandise for resale or supplies for use in the customer's business. The customers must be retailers, wholesalers, contractors, or operators of hotels, restaurants, or other businesses dealing with food or lodging.

For FUTA tax, an agent or commission driver and a traveling or city salesperson are considered statutory employees; however, a full-time life insurance salesperson and a homeworker aren't considered statutory employees.

Statutory nonemployees. Direct sellers, qualified real estate agents, and certain companion sitters are, by law, considered nonemployees. They're generally treated as self-employed for all federal tax purposes, including income and employment taxes. See Pub. 15-A for more information.

H-2A agricultural workers. On Form W-2, don't check box 13 (Statutory employee), as H-2A workers aren't statutory employees.

Treating employees as nonemployees. You'll generally be liable for social security and Medicare taxes and withheld income tax if you don't deduct and withhold these taxes because you treated an employee as a nonemployee. You may be able to figure your liability using special section 3509 rates for the employee share of social security and Medicare taxes and federal income tax withholding. The applicable rates depend on whether you filed required Forms 1099. You can't recover the employee share of social security tax, Medicare tax, or income tax withholding from the employee if the tax is paid under section 3509. You're liable for the income tax withholding regardless of whether the employee paid income tax on the wages. You continue to owe the full employer share of social security and Medicare taxes. The employee remains liable for the employee share of social security and Medicare taxes. See section 3509 for details. Also see the Instructions for Form 941-X or the Instructions for Form 944-X.

Section 3509 rates aren't available if you intentionally disregard the requirement to withhold taxes from the employee or if you withheld income taxes but not social security or Medicare taxes. Section 3509 isn't available for reclassifying statutory employees. See *Statutory employees*, earlier.

If the employer issued required information returns, the section 3509 rates are the following.

- For social security taxes: employer rate of 6.2% plus 20% of the employee rate of 6.2%, for a total rate of 7.44% of wages.
- For Medicare taxes: employer rate of 1.45% plus 20% of the employee rate of 1.45%, for a total rate of 1.74% of wages.
- For Additional Medicare Tax: 0.18% (20% of the employee rate of 0.9%) of wages subject to Additional Medicare Tax.
- For federal income tax withholding, the rate is 1.5% of wages.

If the employer didn't issue required information returns, the section 3509 rates are the following.

- For social security taxes: employer rate of 6.2% plus 40% of the employee rate of 6.2%, for a total rate of 8.68% of wages.
- For Medicare taxes: employer rate of 1.45% plus 40% of the employee rate of 1.45%, for a total rate of 2.03% of wages.
- For Additional Medicare Tax: 0.36% (40% of the employee rate of 0.9%) of wages subject to Additional Medicare Tax.
- For federal income tax withholding, the rate is 3.0% of wages.

Relief provisions. If you have a reasonable basis for not treating a worker as an employee, you may be relieved from having to pay employment taxes for that worker. To get this relief, you must file all required federal tax returns, including information returns, on a basis consistent with your treatment of the worker. You (or your predecessor) must not have treated any worker holding a substantially similar position as an employee for any periods beginning after 1977. See Pub. 1976, Do You Qualify for Relief Under Section 530.

IRS help. If you want the IRS to determine whether a worker is an employee, file Form SS-8.

Voluntary Classification Settlement Program (VCSP). Employers who are currently treating their workers (or a class or group of workers) as independent contractors or other nonemployees and want to voluntarily reclassify their workers as employees for future tax periods may be eligible to participate in the VCSP if certain requirements are met. File Form 8952 to apply for the VCSP. For more information, go to *IRS.gov/VCSP*.

Business Owned and Operated by Spouses

If you and your spouse jointly own and operate a business and share in the profits and losses, you may be partners in a partnership, whether or not you have a formal partnership agreement. See Pub. 541 for more details. The partnership is considered the employer of any employees, and is liable for any employment taxes due on wages paid to its employees.

Exception—Qualified joint venture. For tax years beginning after 2006, the Small Business and Work Opportunity Tax Act of 2007 (Public Law 110-28) provides that a "qualified joint venture," whose only members are spouses filing a joint income tax return, can elect not to be treated as a partnership for federal tax purposes. A qualified joint venture conducts a trade or business where:

- The only members of the joint venture are spouses who file a joint income tax return,
- Both spouses materially participate (see *Material participation* in the instructions for Schedule C (Form

1040), line G) in the trade or business (mere joint ownership of property isn't enough),

- Both spouses elect to not be treated as a partnership, and
- The business is co-owned by both spouses and isn't held in the name of a state law entity such as a partnership or limited liability company (LLC).

To make the election, all items of income, gain, loss, deduction, and credit must be divided between the spouses, in accordance with each spouse's interest in the venture, and reported as sole proprietors on a separate Schedule C (Form 1040) or Schedule F (Form 1040). Each spouse must also file a separate Schedule SE (Form 1040) to pay self-employment taxes, as applicable.

Spouses using the qualified joint venture rules are treated as sole proprietors for federal tax purposes and generally don't need an EIN. If employment taxes are owed by the qualified joint venture, either spouse may report and pay the employment taxes due on the wages paid to the employees using the EIN of that spouse's sole proprietorship. Generally, filing as a qualified joint venture won't increase the spouses' total tax owed on the joint income tax return. However, it gives each spouse credit for social security earnings on which retirement benefits are based and for Medicare coverage without filing a partnership return.

Note. If your spouse is your employee, not your partner, see *One spouse employed by another* in section 3.

For more information on qualified joint ventures, go to *IRS.gov/QJV*.

Exception—Community income. If you and your spouse wholly own an unincorporated business as community property under the community property laws of a state, foreign country, or U.S. possession, you can treat the business either as a sole proprietorship (of the spouse who carried on the business) or a partnership. You may still make an election to be taxed as a qualified joint venture instead of a partnership. See *Exception—Qualified joint venture*, earlier.

3. Family Employees

Child employed by parents. Payments for the services of a child under age 18 who works for their parent in a trade or business aren't subject to social security and Medicare taxes if the trade or business is a sole proprietorship or a partnership in which each partner is a parent of the child. If these payments are for work other than in a trade or business, such as domestic work in the parent's private home, they're not subject to social security and Medicare taxes until the child reaches age 21. However, see *Covered services of a child or spouse*, later. Payments for the services of a child under age 21 who works for their parent, whether or not in a trade or business, aren't subject to FUTA tax. Payments for the services of a child of any age who works for their parent are generally subject to income tax withholding unless the payments are for domestic work in the parent's home, or unless the payments are for work other than in a trade or business and are less than $50 in the quarter or the child isn't regularly employed to do such work.

One spouse employed by another. The wages for the services of an individual who works for their spouse in a trade or business are subject to income tax withholding and social security and Medicare taxes, but not to FUTA tax. However, the payments for services of one spouse employed by another in other than a trade or business, such as domestic service in a private home, aren't subject to social security, Medicare, and FUTA taxes.

Covered services of a child or spouse. The wages for the services of a child or spouse are subject to income tax withholding as well as social security, Medicare, and FUTA taxes if they work for:

- A corporation, even if it is controlled by the child's parent or the individual's spouse;
- A partnership, even if the child's parent is a partner, unless each partner is a parent of the child;
- A partnership, even if the individual's spouse is a partner; or
- An estate, even if it is the estate of a deceased parent.

In these situations, the child or spouse is considered to work for the corporation, partnership, or estate, not you.

Parent employed by their child. When the employer is a child employing their parent, the following rules apply.

- Payments for the services of a parent in their child's (the employer's) trade or business are subject to income tax withholding and social security and Medicare taxes.
- Payments for the services of a parent not in their child's (the employer's) trade or business are generally not subject to social security and Medicare taxes.

CAUTION

Social security and Medicare taxes do apply to payments made to a parent for domestic services if all of the following apply.

- *The parent is employed by their child (the employer).*
- *The employer has a child or stepchild (including an adopted child) living in the home.*
- *The employer is a surviving spouse, divorced and not remarried, or living with a spouse who, because of a mental or physical condition, can't care for their child or stepchild for at least 4 continuous weeks in the calendar quarter in which the service is performed.*
- *The child or stepchild of the employer is either under age 18 or, due to a mental or physical condition, requires the personal care of an adult for at least 4 continuous weeks in the calendar quarter in which the service is performed.*

Payments made to a parent employed by their child aren't subject to FUTA tax, regardless of the type of services provided.

4. Employee's Social Security Number (SSN)

You're required to get each employee's name and SSN and to enter them on Form W-2. This requirement also applies to resident and nonresident alien employees. You should ask your employee to show you their social security card. The employee may show the card if it is available.

CAUTION *Don't accept a social security card that says "Not valid for employment." An SSN issued with this legend doesn't permit employment.*

You may, but aren't required to, photocopy the social security card if the employee provides it. If you don't provide the correct employee name and SSN on Form W-2, you may owe a penalty unless you have reasonable cause. See Pub. 1586, Reasonable Cause Regulations & Requirements for Missing and Incorrect Name/TINs, for information on the requirement to solicit the employee's SSN.

Applying for a social security card. Any employee who is legally eligible to work in the United States and doesn't have a social security card can get one by completing Form SS-5, Application for a Social Security Card, and submitting the necessary documentation. You can get Form SS-5 from the SSA website at *SSA.gov/forms/ss-5.pdf*, at SSA offices, or by calling 800-772-1213 or 800-325-0778 (TTY). The employee must complete and sign Form SS-5; it can't be filed by the employer. You may be asked to supply a letter to accompany Form SS-5 if the employee has exceeded their yearly or lifetime limit for the number of replacement cards allowed.

Applying for an SSN. If you file Form W-2 on paper and your employee applied for an SSN but doesn't have one when you must file Form W-2, enter "Applied For" on the form. If you're filing electronically, enter all zeros (000-00-0000 if creating forms online or 000000000 if uploading a file) in the SSN field. When the employee receives the SSN, file Copy A of Form W-2c, Corrected Wage and Tax Statement, with the SSA to show the employee's SSN. Furnish Copies B, C, and 2 of Form W-2c to the employee. Up to 25 Forms W-2c for each Form W-3c, Transmittal of Corrected Wage and Tax Statements, may be filed per session over the Internet, with no limit on the number of sessions. For more information, go to the SSA's Employer W-2 Filing Instructions & Information webpage at *SSA.gov/employer*. Advise your employee to correct the SSN on their original Form W-2.

Correctly record the employee's name and SSN. Record the name and SSN of each employee as they're shown on the employee's social security card. If the employee's name isn't correct as shown on the card (for example, because of marriage or divorce), the employee should request an updated card from the SSA. Continue to report the employee's wages under the old name until the employee shows you the updated social security card with the corrected name.

If the SSA issues the employee an updated card after a name change, or a new card with a different SSN after a change in alien work status, file a Form W-2c to correct the name/SSN reported for the most recently filed Form W-2. It isn't necessary to correct other years if the previous name and number were used for years before the most recent Form W-2.

IRS individual taxpayer identification numbers (ITINs) for aliens. Don't accept an ITIN in place of an SSN for employee identification or for work. An ITIN is only available to resident and nonresident aliens who aren't eligible for U.S. employment and need identification for other tax purposes. You can identify an ITIN because it is a nine-digit number, formatted like an SSN, that starts with the number "9" and has a range of numbers from "50–65," "70–88," "90–92," and "94–99" for the fourth and fifth digits (for example, 9NN-7N-NNNN). For more information about ITINs, see the Instructions for Form W-7 or go to *IRS.gov/ITIN*.

CAUTION *An individual with an ITIN who later becomes eligible to work in the United States must obtain an SSN. If the individual is currently eligible to work in the United States, instruct the individual to apply for an SSN and follow the instructions under* Applying for an SSN*, earlier**. Don't use an ITIN in place of an SSN on Form W-2.*

Verification of SSNs. Employers and authorized reporting agents can use the Social Security Number Verification Service (SSNVS) to instantly verify that an employee name matches an SSN for up to 10 names and SSNs (per screen) at a time, or submit an electronic file of up to 250,000 names and SSNs and usually receive the results the next business day. Go to *SSA.gov/employer/ssnv.htm* for more information. A person may have a valid SSN but not be authorized to work in the United States. Employers may use E-Verify at *E-Verify.gov* to confirm the employment eligibility of newly hired employees.

Registering for SSNVS. You must register online to use SSNVS. To register, go to the SSA's website at *SSA.gov/bso* and click on the *Register* link under *Business Services Online*. Follow the registration instructions to obtain a user identification (ID) and password. You'll need to provide the following information about yourself and your company.

- Name.
- SSN.
- Date of birth.
- Type of employer.
- EIN.
- Company name, address, and telephone number.
- Email address.

When you have completed the online registration process, the SSA will mail a one-time activation code to you.

You must enter the activation code online to use SSNVS. Your employees must receive authorization from you to use SSNVS. If your employees register, the one-time activation code will be mailed to you.

5. Wages and Other Compensation

Wages subject to federal employment taxes generally include all pay you give to an employee for services performed. The pay may be in cash or in other forms. It includes salaries, vacation allowances, bonuses, commissions, and taxable fringe benefits. It doesn't matter how you measure or make the payments. Amounts an employer pays as a bonus for signing or ratifying a contract in connection with the establishment of an employer-employee relationship and an amount paid to an employee for cancellation of an employment contract and relinquishment of contract rights are wages subject to social security, Medicare, and FUTA taxes and income tax withholding. Also, compensation paid to a former employee for services performed while still employed is wages subject to employment taxes.

More information. See section 6 for a discussion of tips and section 7 for a discussion of supplemental wages. Also, see section 15 for exceptions to the general rules for wages. Pub. 15-A provides additional information on wages, including nonqualified deferred compensation, and other compensation. Pub. 15-B provides information on other forms of compensation, including:

- Accident and health benefits,
- Achievement awards,
- Adoption assistance,
- Athletic facilities,
- De minimis (minimal) benefits,
- Dependent care assistance,
- Educational assistance,
- Employee discounts,
- Employee stock options,
- Employer-provided cell phones,
- Group-term life insurance coverage,
- Health savings accounts,
- Lodging on your business premises,
- Meals,
- No-additional-cost services,
- Retirement planning services,
- Transportation (commuting) benefits,
- Tuition reduction, and
- Working condition benefits.

Employee business expense reimbursements. A reimbursement or allowance arrangement is a system by which you pay the advances, reimbursements, and charges for your employees' business expenses. How you report a reimbursement or allowance amount depends on whether you have an accountable or a nonaccountable plan. If a single payment includes both wages and an expense reimbursement, you must specify the amount of the reimbursement.

These rules apply to all allowable ordinary and necessary employee business expenses.

Accountable plan. To be an accountable plan, your reimbursement or allowance arrangement must require your employees to meet all three of the following rules.

1. They must have paid or incurred allowable expenses while performing services as your employees. The reimbursement or advance must be payment for the expenses and must not be an amount that would have otherwise been paid to the employee as wages.
2. They must substantiate these expenses to you within a reasonable period of time.
3. They must return any amounts in excess of substantiated expenses within a reasonable period of time.

Amounts paid under an accountable plan aren't wages and aren't subject to income, social security, Medicare, and FUTA taxes.

If the expenses covered by this arrangement aren't substantiated (or amounts in excess of substantiated expenses aren't returned within a reasonable period of time), the amount paid under the arrangement in excess of the substantiated expenses is treated as paid under a nonaccountable plan. This amount is subject to income, social security, Medicare, and FUTA taxes for the first payroll period following the end of the reasonable period of time.

A reasonable period of time depends on the facts and circumstances. Generally, it is considered reasonable if your employees receive their advance within 30 days of the time they pay or incur the expenses, adequately account for the expenses within 60 days after the expenses were paid or incurred, and return any amounts in excess of expenses within 120 days after the expenses were paid or incurred. Alternatively, it is considered reasonable if you give your employees a periodic statement (at least quarterly) that asks them to either return or adequately account for outstanding amounts and they do so within 120 days.

Nonaccountable plan. Payments to your employee for travel and other necessary expenses of your business under a nonaccountable plan are wages and are treated as supplemental wages and subject to income, social security, Medicare, and FUTA taxes. Your payments are treated as paid under a nonaccountable plan if:

- Your employee isn't required to or doesn't substantiate timely those expenses to you with receipts or other documentation,
- You advance an amount to your employee for business expenses and your employee isn't required to or

doesn't return timely any amount they don't use for business expenses,

- You advance or pay an amount to your employee regardless of whether you reasonably expect the employee to have business expenses related to your business, or
- You pay an amount as a reimbursement you would have otherwise paid as wages.

See section 7 for more information on supplemental wages.

Per diem or other fixed allowance. You may reimburse your employees by travel days, miles, or some other fixed allowance under the applicable revenue procedure. In these cases, your employee is considered to have accounted to you if your reimbursement doesn't exceed rates established by the federal government. The standard mileage rate for auto expenses is provided in Pub. 15-B.

The government per diem rates for meals and lodging in the continental United States can be found by going to the U.S. General Services Administration website at *GSA.gov/PerDiemRates*. Other than the amount of these expenses, your employees' business expenses must be substantiated (for example, the business purpose of the travel or the number of business miles driven). For information on substantiation methods, see Pub. 463.

If the per diem or allowance paid exceeds the amounts substantiated, you must report the excess amount as wages. This excess amount is subject to income tax withholding and payment of social security, Medicare, and FUTA taxes. Show the amount equal to the substantiated amount (that is, the nontaxable portion) in box 12 of Form W-2 using code "L."

Wages not paid in money. If in the course of your trade or business you pay your employees in a medium that is neither cash nor a readily negotiable instrument, such as a check, you're said to pay them "in kind." Payments in kind may be in the form of goods, lodging, food, clothing, or services. Generally, the fair market value of such payments at the time they're provided is subject to federal income tax withholding and social security, Medicare, and FUTA taxes.

However, noncash payments for household work, agricultural labor, and service not in the employer's trade or business are exempt from social security, Medicare, and FUTA taxes. Withhold income tax on these payments only if you and the employee agree to do so. Nonetheless, noncash payments for agricultural labor, such as commodity wages, are treated as cash payments subject to employment taxes if the substance of the transaction is a cash payment.

Meals and lodging. The value of meals isn't taxable income and isn't subject to federal income tax withholding and social security, Medicare, and FUTA taxes if the meals are furnished for the employer's convenience and on the employer's premises. The value of lodging isn't subject to federal income tax withholding and social security, Medicare, and FUTA taxes if the lodging is furnished for the employer's convenience, on the employer's premises, and as a condition of employment.

"For the convenience of the employer" means you have a substantial business reason for providing the meals and lodging other than to provide additional compensation to the employee. For example, meals you provide at the place of work so that an employee is available for emergencies during their lunch period are generally considered to be for your convenience. You must be able to show these emergency calls have occurred or can reasonably be expected to occur, and that the calls have resulted, or will result, in you calling on your employees to perform their jobs during their meal period.

Whether meals or lodging are provided for the convenience of the employer depends on all of the facts and circumstances. A written statement that the meals or lodging are for your convenience isn't sufficient.

50% test. If over 50% of the employees who are provided meals on an employer's business premises receive these meals for the convenience of the employer, all meals provided on the premises are treated as furnished for the convenience of the employer. If this 50% test is met, the value of the meals is excludable from income for all employees and isn't subject to federal income tax withholding or employment taxes. For more information, see Pub. 15-B.

Health insurance plans. If you pay the cost of an accident or health insurance plan for your employees, including an employee's spouse and dependents, your payments aren't wages and aren't subject to social security, Medicare, and FUTA taxes, or federal income tax withholding. Generally, this exclusion also applies to qualified long-term-care insurance contracts. However, for income tax withholding, the value of health insurance benefits must be included in the wages of S corporation employees who own more than 2% of the S corporation (2% shareholders). For social security, Medicare, and FUTA taxes, the health insurance benefits are excluded from the 2% shareholder's wages. See Announcement 92-16 for more information. You can find Announcement 92-16 on page 53 of Internal Revenue Bulletin 1992-5.

Health savings accounts (HSAs) and medical savings accounts (MSAs). Your contributions to an employee's HSA or Archer MSA aren't subject to social security, Medicare, or FUTA taxes, or federal income tax withholding if it is reasonable to believe at the time of payment of the contributions they'll be excludable from the income of the employee. To the extent it isn't reasonable to believe they'll be excludable, your contributions are subject to these taxes. Employee contributions to their HSAs or MSAs through a payroll deduction plan must be included in wages and are subject to social security, Medicare, and FUTA taxes and income tax withholding. However, HSA contributions made under a salary reduction arrangement in a section 125 cafeteria plan aren't wages and aren't subject to employment taxes or withholding. For more information, see the Instructions for Form 8889.

Medical care reimbursements. Generally, medical care reimbursements paid for an employee under an employer's self-insured medical reimbursement plan aren't wages and aren't subject to social security, Medicare, and FUTA taxes, or income tax withholding. See Pub. 15-B for a rule regarding inclusion of certain reimbursements in the gross income of highly compensated individuals.

Differential wage payments. Differential wage payments are any payments made by an employer to an individual for a period during which the individual is performing service in the uniformed services while on active duty for a period of more than 30 days and represent all or a portion of the wages the individual would have received from the employer if the individual were performing services for the employer.

Differential wage payments are wages for income tax withholding, but aren't subject to social security, Medicare, or FUTA taxes. Employers should report differential wage payments in box 1 of Form W-2. For more information about the tax treatment of differential wage payments, see Revenue Ruling 2009-11, 2009-18 I.R.B. 896, available at IRS.gov/irb/2009-18_IRB#RR-2009-11.

Fringe benefits. You must generally include fringe benefits in an employee's wages (but see *Nontaxable fringe benefits* next). The benefits are subject to income tax withholding and employment taxes. Fringe benefits include cars you provide, flights on aircraft you provide, free or discounted commercial flights, vacations, discounts on property or services, memberships in country clubs or other social clubs, and tickets to entertainment or sporting events. In general, the amount you must include is the amount by which the fair market value of the benefit is more than the sum of what the employee paid for it plus any amount the law excludes. There are other special rules you and your employees may use to value certain fringe benefits. See Pub. 15-B for more information.

Nontaxable fringe benefits. Some fringe benefits aren't taxable (or are minimally taxable) if certain conditions are met. See Pub. 15-B for details. The following are some examples of nontaxable fringe benefits.

- Services provided to your employees at no additional cost to you.
- Qualified employee discounts.
- Working condition fringes that are property or services that would be allowable as a business expense or depreciation expense deduction to the employee if they had paid for them. Examples include a company car for business use and subscriptions to business magazines.
- Certain minimal value fringes (including an occasional cab ride when an employee must work overtime and meals you provide at eating places you run for your employees if the meals aren't furnished at below cost).
- Qualified transportation fringes subject to specified conditions and dollar limitations (including transportation in a commuter highway vehicle, any transit pass, and qualified parking).
- The use of on-premises athletic facilities operated by you if substantially all of the use is by employees, their spouses, and their dependent children.
- Qualified tuition reduction an educational organization provides to its employees for education. For more information, see Pub. 970.
- Employer-provided cell phones provided primarily for a noncompensatory business reason.

However, don't exclude the following fringe benefits from the wages of highly compensated employees unless the benefit is available to other employees on a nondiscriminatory basis.

- No-additional-cost services.
- Qualified employee discounts.
- Meals provided at an employer-operated eating facility.
- Reduced tuition for education.

For more information, including the definition of a highly compensated employee, see Pub. 15-B.

When taxable fringe benefits are treated as paid. You may choose to treat certain taxable noncash fringe benefits as paid by the pay period, by the quarter, or on any other basis you choose, as long as you treat the benefits as paid at least once a year. You don't have to make a formal choice of payment dates or notify the IRS of the dates you choose. You don't have to make this choice for all employees. You may change methods as often as you like, as long as you treat all benefits provided in a calendar year as paid by December 31 of the calendar year. See section 4 of Pub. 15-B for more information, including a discussion of the special accounting rule for fringe benefits provided during November and December.

Valuation of fringe benefits. Generally, you must determine the value of fringe benefits no later than January 31 of the next year. Before January 31, you may reasonably estimate the value of the fringe benefits for purposes of withholding and depositing on time.

Withholding on fringe benefits. You may add the value of fringe benefits to regular wages for a payroll period and figure withholding taxes on the total, or you may withhold federal income tax on the value of the fringe benefits at the optional flat 22% supplemental wage rate. However, see *Withholding on supplemental wages when an employee receives more than $1 million of supplemental wages during the calendar year* in section 7.

You may choose not to withhold income tax on the value of an employee's personal use of a vehicle you provide. You must, however, withhold social security and Medicare taxes on the use of the vehicle. See Pub. 15-B for more information on this election.

Depositing taxes on fringe benefits. Once you choose when fringe benefits are paid, you must deposit taxes in the same deposit period you treat the fringe benefits as paid. To avoid a penalty, deposit the taxes following the general deposit rules for that deposit period.

If you determine by January 31 you overestimated the value of a fringe benefit at the time you withheld and deposited for it, you may claim a refund for the overpayment or have it applied to your next employment tax return. See *Valuation of fringe benefits*, earlier. If you underestimated the value and deposited too little, you may be subject to a failure-to-deposit (FTD) penalty. See section 11 for information on deposit penalties.

If you deposited the required amount of taxes but withheld a lesser amount from the employee, you can recover from the employee the social security, Medicare, or income taxes you deposited on their behalf and included in the employee's Form W-2. However, you must recover the income taxes before April 1 of the following year.

Sick pay. In general, sick pay is any amount you pay under a plan to an employee who is unable to work because of sickness or injury. These amounts are sometimes paid by a third party, such as an insurance company or an employees' trust. In either case, these payments are subject to social security, Medicare, and FUTA taxes. These taxes don't apply to sick pay paid more than 6 calendar months after the last calendar month in which the employee worked for the employer. The payments are always subject to federal income tax. See section 6 of Pub. 15-A for more information.

TIP *For purposes of this publication, all references to "sick pay" mean ordinary sick pay, not "qualified sick leave wages" under the FFCRA, as amended by the COVID-related Tax Relief Act of 2020, and the ARP.*

Identity protection services. The value of identity protection services provided by an employer to an employee isn't included in an employee's gross income and doesn't need to be reported on an information return (such as Form W-2) filed for an employee. This includes identity protection services provided before a data breach occurs. This exception doesn't apply to cash received instead of identity protection services or to proceeds received under an identity theft insurance policy. For more information, see Announcement 2015-22, 2015-35 I.R.B. 288, available at *IRS.gov/irb/2015-35_IRB#ANN-2015-22*; and Announcement 2016-02, 2016-3 I.R.B. 283, available at *IRS.gov/irb/2016-03_IRB#ANN-2016-02*.

6. Tips

Cash tips your employee receives from customers are generally subject to withholding. Your employee must report cash tips to you by the 10th of the month after the month the tips are received. Cash tips include tips paid by cash, check, debit card, and credit card. The report should include tips you paid over to the employee for charge customers, tips the employee received directly from customers, and tips received from other employees under any tip-sharing arrangement. Both directly and indirectly tipped employees must report tips to you. No report is required for months when tips are less than $20. Your employee reports the tips on Form 4070 or on a similar statement. The statement must be signed and dated by the employee and must include:

- The employee's name, address, and SSN;
- Your name and address;
- The month and year (or the beginning and ending dates, if the statement is for a period of less than 1 calendar month) the report covers; and
- The total of tips received during the month or period.

Both Forms 4070 and 4070-A, Employee's Daily Record of Tips, are included in Pub. 1244, Employee's Daily Record of Tips and Report to Employer.

TIP *You're permitted to establish a system for electronic tip reporting by employees. See Regulations section 31.6053-1(d).*

Collecting taxes on tips. You must collect federal income tax, employee social security tax, and employee Medicare tax on the employee's tips. The withholding rules for withholding an employee's share of Medicare tax on tips also apply to withholding the Additional Medicare Tax once wages and tips exceed $200,000 in the calendar year.

You can collect these taxes from the employee's wages (excluding tips) or from other funds they make available. See *Tips are treated as supplemental wages* in section 7 for more information. Stop collecting the employee social security tax when their wages and tips for tax year 2023 reach $160,200; collect the income and employee Medicare taxes for the whole year on all wages and tips. You're responsible for the employer social security tax on wages and tips until the wages (including tips) reach the limit. You're responsible for the employer Medicare tax for the whole year on all wages and tips. Tips are considered to be paid at the time the employee reports them to you. Deposit taxes on tips based on your deposit schedule as described in section 11. File Form 941 or Form 944 to report withholding and employment taxes on tips.

Ordering rule. If, by the 10th of the month after the month for which you received an employee's report on tips, you don't have enough employee funds available to deduct the employee tax, you no longer have to collect it. If there aren't enough funds available, withhold taxes in the following order.

1. Withhold on regular wages and other compensation.
2. Withhold social security and Medicare taxes on tips.
3. Withhold income tax on tips.

Reporting tips. Report tips and any collected and uncollected social security and Medicare taxes on Form W-2 and on Form 941, lines 5b, 5c, and, if applicable, 5d (Form 944, lines 4b, 4c, and, if applicable, 4d). Report a negative adjustment on Form 941, line 9 (Form 944, line 6), for the uncollected social security and Medicare taxes. Enter the amount of uncollected social security tax and Medicare tax in box 12 of Form W-2 with codes "A" and “B,” respectively. Don't include any uncollected Additional Medicare Tax in box 12 of Form W-2. For additional information on reporting tips, see section 13 and the General Instructions for Forms W-2 and W-3.

Revenue Ruling 2012-18 provides guidance for employers regarding social security and Medicare taxes imposed on tips, including information on the reporting of the employer share of social security and Medicare taxes under section 3121(q), the difference between tips and service charges, and the section 45B credit. See Revenue Ruling 2012-18, 2012-26 I.R.B. 1032, available at *IRS.gov/irb/2012-26_IRB#RR-2012-18*.

FUTA tax on tips. If an employee reports to you in writing $20 or more of tips in a month, the tips are also subject to FUTA tax.

Allocated tips. If you operate a large food or beverage establishment, you must report allocated tips under certain circumstances. However, don't withhold income, social security, or Medicare taxes on allocated tips.

A large food or beverage establishment is one that provides food or beverages for consumption on the premises, where tipping is customary, and where there were normally more than 10 employees on a typical business day during the preceding year.

The tips may be allocated by one of three methods—hours worked, gross receipts, or good faith agreement. For information about these allocation methods, and for information about required electronic filing of Form 8027, see the Instructions for Form 8027. For more information on filing Form 8027 electronically with the IRS, see Pub. 1239.

Tip Rate Determination and Education Program. Employers may participate in the Tip Rate Determination and Education Program. The program primarily consists of two voluntary agreements developed to improve tip income reporting by helping taxpayers to understand and meet their tip reporting responsibilities. The two agreements are the Tip Rate Determination Agreement (TRDA) and the Tip Reporting Alternative Commitment (TRAC). A tip agreement, the Gaming Industry Tip Compliance Agreement (GITCA), is available for the gaming (casino) industry. For more information, see Pub. 3144.

More information. Advise your employees to see Pub. 531 or use the IRS Interactive Tax Assistant at *IRS.gov/TipIncome* for help in determining if their tip income is taxable and for information about how to report tip income.

7. Supplemental Wages

Supplemental wages are wage payments to an employee that aren't regular wages. They include, but aren't limited to, bonuses, commissions, overtime pay, payments for accumulated sick leave, severance pay, awards, prizes, back pay, reported tips, retroactive pay increases, and payments for nondeductible moving expenses. However, employers have the option to treat overtime pay and tips as regular wages instead of supplemental wages. Other payments subject to the supplemental wage rules include taxable fringe benefits and expense allowances paid under a nonaccountable plan. How you withhold on supplemental wages depends on whether the supplemental payment is identified as a separate payment from regular wages. See Regulations section 31.3402(g)-1 for additional guidance. Also see Revenue Ruling 2008-29, 2008-24 I.R.B. 1149, available at *IRS.gov/irb/2008-24_IRB#RR-2008-29*.

Withholding on supplemental wages when an employee receives more than $1 million of supplemental wages from you during the calendar year. Special rules apply to the extent supplemental wages paid to any one employee during the calendar year exceed $1 million. If a supplemental wage payment, together with other supplemental wage payments made to the employee during the calendar year, exceeds $1 million, the excess is subject to withholding at 37% (or the highest rate of income tax for the year). Withhold using the 37% rate without regard to the employee's Form W-4. In determining supplemental wages paid to the employee during the year, include payments from all businesses under common control. For more information, see Treasury Decision 9276, 2006-37 I.R.B. 423, available at *IRS.gov/irb/2006-37_IRB#TD-9276*.

Withholding on supplemental wage payments to an employee who doesn't receive $1 million of supplemental wages during the calendar year. If the supplemental wages paid to the employee during the calendar year are less than or equal to $1 million, the following rules apply in determining the amount of income tax to be withheld.

Supplemental wages combined with regular wages. If you pay supplemental wages with regular wages but don't specify the amount of each, withhold federal income tax as if the total were a single payment for a regular payroll period.

Supplemental wages identified separately from regular wages. If you pay supplemental wages separately (or combine them in a single payment and specify the amount of each), the federal income tax withholding method depends partly on whether you withhold income tax from your employee's regular wages.

1. If you withheld income tax from an employee's regular wages in the current or immediately preceding calendar year, you can use one of the following methods for the supplemental wages.
   a. Withhold a flat 22% (no other percentage allowed).
   b. If the supplemental wages are paid concurrently with regular wages, add the supplemental wages to the concurrently paid regular wages and withhold federal income tax as if the total were a single payment for a regular payroll period. If there are no concurrently paid regular wages, add the supplemental wages to, alternatively, either the regular wages paid or to be paid for the current

payroll period or the regular wages paid for the preceding payroll period. Figure the income tax withholding as if the total of the regular wages and supplemental wages is a single payment. Subtract the tax already withheld or to be withheld from the regular wages. Withhold the remaining tax from the supplemental wages. If there were other payments of supplemental wages paid during the payroll period made before the current payment of supplemental wages, aggregate all the payments of supplemental wages paid during the payroll period with the regular wages paid during the payroll period, figure the tax on the total, subtract the tax already withheld from the regular wages and the previous supplemental wage payments, and withhold the remaining tax.

2. If you didn't withhold income tax from the employee's regular wages in the current or immediately preceding calendar year, use method 1b.

Regardless of the method you use to withhold income tax on supplemental wages, they're subject to social security, Medicare, and FUTA taxes.

Example 1. You pay John Peters a base salary on the 1st of each month. John's most recent Form W-4 is from 2018, and John is single, claims one withholding allowance, and didn't enter an amount for additional withholding on Form W-4. In January, John is paid $1,000. You decide to use the Wage Bracket Method of withholding. Using Worksheet 3 and the withholding tables in section 3 of Pub. 15-T, you withhold $20 from this amount. In February, John receives salary of $1,000 plus a commission of $500, which you combine with regular wages and don't separately identify. You figure the withholding based on the total of $1,500. The correct withholding from the tables is $72.

Example 2. You pay Sharon Warren a base salary on the 1st of each month. Sharon submitted a 2023 Form W-4 and checked the box for Single or Married filing separately. Sharon didn't complete Steps 2, 3, and 4 on Form W-4. Sharon's May 1 pay is $2,000. You decide to use the Wage Bracket Method of withholding. Using Worksheet 2 and the withholding tables in section 2 of Pub. 15-T, you withhold $86. On May 15, Sharon receives a bonus of $1,000. Electing to use supplemental wage withholding method 1b, you do the following.

1. Add the bonus amount to the amount of wages from the most recent base salary pay date (May 1) ($2,000 + $1,000 = $3,000).
2. Determine the amount of withholding on the combined $3,000 amount to be $202 using the wage bracket tables.
3. Subtract the amount withheld from wages on the most recent base salary pay date (May 1) from the combined withholding amount ($202 – $86 = $116).
4. Withhold $116 from the bonus payment.

Example 3. The facts are the same as in *Example 2*, except you elect to use the flat rate method of withholding on the bonus. You withhold 22% of $1,000, or $220, from Sharon's bonus payment.

Example 4. The facts are the same as in *Example 2*, except you elect to pay Sharon a second bonus of $2,000 on May 29. Using supplemental wage withholding method 1b, you do the following.

1. Add the first and second bonus amounts to the amount of wages from the most recent base salary pay date (May 1) ($2,000 + $1,000 + $2,000 = $5,000).
2. Determine the amount of withholding on the combined $5,000 amount to be $461 using the wage bracket tables.
3. Subtract the amounts withheld from wages on the most recent base salary pay date (May 1) and the amounts withheld from the first bonus payment from the combined withholding amount ($461 – $86 – $116 = $259).
4. Withhold $259 from the second bonus payment.

Tips are treated as supplemental wages. Withhold income tax on tips from wages earned by the employee or from other funds the employee makes available. Don't withhold the income tax due on tips from employee tips. If an employee receives regular wages and reports tips, figure income tax withholding as if the tips were supplemental wages. If you withheld income tax from the regular wages in the current or immediately preceding calendar year, you can withhold on the tips by method 1a or 1b discussed earlier in this section under *Supplemental wages identified separately from regular wages*. If you didn't withhold income tax from the regular wages in the current or immediately preceding calendar year, add the tips to the regular wages and withhold income tax on the total by method 1b discussed earlier. Employers also have the option to treat tips as regular wages rather than supplemental wages. Service charges aren't tips; therefore, withhold taxes on service charges as you would on regular wages.

Vacation pay. Vacation pay is subject to withholding as if it were a regular wage payment. When vacation pay is in addition to regular wages for the vacation period (for example, an annual lump-sum payment for unused vacation leave), treat it as a supplemental wage payment. If the vacation pay is for a time longer than your usual payroll period, spread it over the pay periods for which you pay it.

8. Payroll Period

Your payroll period is a period of service for which you usually pay wages. When you have a regular payroll period, withhold income tax for that time period even if your employee doesn't work the full period.

No regular payroll period. When you don't have a regular payroll period, withhold the tax as if you paid wages for a daily or miscellaneous payroll period. Figure the number of days (including Sundays and holidays) in the period covered by the wage payment. If the wages are unrelated to a specific length of time (for example, commissions paid on completion of a sale), count back the number of days from the payment period to the latest of:

- The last wage payment made during the same calendar year;
- The date employment began, if during the same calendar year; or
- January 1 of the same year.

Employee paid for period less than 1 week. When you pay an employee for a period of less than 1 week, and the employee signs a statement under penalties of perjury indicating they aren't working for any other employer during the same week for wages subject to withholding, figure withholding based on a weekly payroll period. If the employee later begins to work for another employer for wages subject to withholding, the employee must notify you within 10 days. You then figure withholding based on the daily or miscellaneous period.

9. Withholding From Employees' Wages

Federal Income Tax Withholding

Redesigned Form W-4. The IRS redesigned Form W-4 for 2020 and subsequent years. Before 2020, the value of a withholding allowance was tied to the amount of the personal exemption. Due to changes in the law, taxpayers can no longer claim personal exemptions or dependency exemptions; therefore, Form W-4 no longer asks an employee to report the number of withholding allowances that they are claiming. The revised Form W-4 is divided into five steps. Step 1 and Step 5 apply to all employees. In Step 1, employees enter personal information like their name and filing status. In Step 5, employees sign the form. Employees who complete only Step 1 and Step 5 will have their withholding figured based on their filing status's standard deduction and tax rates with no other adjustments. If applicable, in Step 2, employees increase their withholding to account for higher tax rates due to income from other jobs in their household. Under Step 2, employees either enter an additional amount to withhold per payroll period in Step 4(c) or check the box in Step 2(c) for higher withholding rate tables to apply to their wages. In Step 3, employees decrease their withholding by reporting the annual amount of any credits they will claim on their income tax return. In Step 4, employees may increase or decrease their withholding based on the annual amount of other income or deductions they will report on their income tax return and they may also request any additional federal income tax they want withheld each pay period.

An employee who submitted Form W-4 in any year before 2020 isn't required to submit a new form merely because of the redesign. Employers will continue to figure withholding based on the information from the employee's most recently submitted Form W-4. The withholding tables in Pub. 15-T allow employers to figure withholding based on a Form W-4 for 2019 or earlier, as well as the redesigned Form W-4. While you may ask your employee first paid wages before 2020 that hasn't yet submitted a redesigned Form W-4 to submit a new Form W-4 using the redesigned version of the form, you should explain to them that they're not required to do this and if they don't submit a new Form W-4, withholding will continue based on a valid Form W-4 previously submitted. All newly hired employees must use the redesigned form. Similarly, any other employees who wish to adjust their withholding must use the redesigned form.

Pub. 15-T provides an optional computational bridge to treat 2019 and earlier Forms W-4 as if they were 2020 or later Forms W-4 for purposes of figuring federal income tax withholding. This computational bridge allows you to use computational procedures and data fields for a 2020 and later Form W-4 to arrive at the equivalent withholding for an employee that would have applied using the computational procedures and data fields on a 2019 or earlier Form W-4. See *How To Treat 2019 and Earlier Forms W-4 as if They Were 2020 or Later Forms W-4* in the *Introduction* section of Pub. 15-T.

More information. For more information about the redesigned Form W-4 and regulations that provide guidance for employers concerning income tax withholding from employees' wages, see Treasury Decision 9924, 2020-44 I.R.B. 943, available at *IRS.gov/irb/2020-44_IRB#TD-9924*. For information about Form W-4, go to *IRS.gov/FormW4*. Employer instructions on how to figure employee withholding are provided in Pub. 15-T, available at *IRS.gov/Pub15T*.

Using Form W-4 to figure withholding. To know how much federal income tax to withhold from employees' wages, you should have a Form W-4 on file for each employee. Encourage your employees to file an updated Form W-4 for 2023, especially if they owed taxes or received a large refund when filing their 2022 tax return.

Ask all new employees to give you a signed Form W-4 when they start work. Make the form effective with the first wage payment. If a new employee doesn't give you a completed Form W-4 in 2023 (including an employee who previously worked for you and was rehired in 2023, and who fails to furnish a Form W-4), treat the new employee as if they had checked the box for Single or Married filing separately in Step 1(c) and made no entries in Step 2, Step 3, or Step 4 of the 2023 Form W-4. An employee who was paid wages before 2020 and who failed to furnish a Form W-4 should continue to be treated as single and claiming zero allowances on a 2019 Form W-4. If you use the optional computational bridge, described earlier under *Redesigned Form W-4*, you may treat this employee as if they had checked the box for Single or Married filing separately in Step 1(c), and made no entries in

Step 2 and Step 3, an entry of $8,600 in Step 4(a), and an entry of zero in Step 4(b) of the 2023 Form W-4.

Form in Spanish. You can provide Formulario W-4(SP) in place of Form W-4 to your Spanish-speaking employees. For more information, see Pub. 17(SP). The rules discussed in this section that apply to Form W-4 also apply to Formulario W-4(SP).

Electronic system to receive Form W-4. You may establish a system to electronically receive Forms W-4 from your employees. See Regulations section 31.3402(f)(5)-1(c) and Pub. 15-T for more information.

Effective date of Form W-4. A Form W-4 for 2022 or earlier years remains in effect for 2023 unless the employee gives you a 2023 Form W-4. When you receive a new Form W-4 from an employee, don't adjust withholding for pay periods before the effective date of the new form. If an employee gives you a Form W-4 that replaces an existing Form W-4, begin withholding no later than the start of the first payroll period ending on or after the 30th day from the date when you received the replacement Form W-4. For exceptions, see *Exemption from federal income tax withholding*, *IRS review of requested Forms W-4*, and *Invalid Forms W-4*, later in this section.

CAUTION *A Form W-4 that makes a change for the next calendar year won't take effect in the current calendar year.*

Successor employer. If you're a successor employer (see *Successor employer*, later in this section), secure new Forms W-4 from the transferred employees unless the "Alternative Procedure" in section 5 of Revenue Procedure 2004-53 applies. See Revenue Procedure 2004-53, 2004-34 I.R.B. 320, available at *IRS.gov/irb/2004-34_IRB#RP-2004-53*.

Completing Form W-4. The amount of any federal income tax withholding must be based on filing status, income (including income from other jobs), deductions, and credits. Your employees may not base their withholding amounts on a fixed dollar amount or percentage. However, an employee may specify a dollar amount to be withheld each pay period in addition to the amount of withholding based on filing status and other information reported on Form W-4.

Employees that are married filing jointly and have spouses that also currently work, or employees that hold more than one job at the same time, should account for their higher tax rate by completing Step 2 of their 2023 Form W-4. Employees also have the option to report on their 2023 Form W-4 other income they will receive that isn't subject to withholding and other deductions they will claim in order to increase the accuracy of their federal income tax withholding.

See Pub. 505 for more information about completing Form W-4. Along with Form W-4, you may wish to order Pub. 505 for use by your employees.

Don't accept any withholding or estimated tax payments from your employees in addition to withholding based on their Form W-4. If they require additional withholding, they should submit a new Form W-4 and, if necessary, pay estimated tax by filing Form 1040-ES or by using EFTPS to make estimated tax payments. Employees who receive tips may provide funds to their employer for withholding on tips; see *Collecting taxes on tips* in section 6.

Exemption from federal income tax withholding. Generally, an employee may claim exemption from federal income tax withholding because they had no income tax liability last year and expect none this year. See the Form W-4 instructions for more information. However, the wages are still subject to social security and Medicare taxes. See also *Invalid Forms W-4*, later in this section.

A Form W-4 claiming exemption from withholding is effective when it is given to the employer and only for that calendar year. To continue to be exempt from withholding, an employee must give you a new Form W-4 by February 15. If the employee doesn't give you a new Form W-4 by February 15, begin withholding as if they had checked the box for Single or Married filing separately in Step 1(c) and made no entries in Step 2, Step 3, or Step 4 of the 2023 Form W-4. If the employee provides a new Form W-4 claiming exemption from withholding on February 16 or later, you may apply it to future wages but don't refund any taxes withheld while the exempt status wasn't in place.

Withholding income taxes on the wages of nonresident alien employees. In general, you must withhold federal income taxes on the wages of nonresident alien employees. However, see Pub. 515 for exceptions to this general rule. Also see section 3 of Pub. 51 for guidance on H-2A visa workers.

Withholding adjustment for nonresident alien employees. Nonresident aliens may not claim the standard deduction on their tax returns; therefore, employers must add an amount to the wages of nonresident alien employees performing services within the United States in order to figure the amount of federal income tax to withhold from their wages. The amount is added to their wages solely for calculating federal income tax withholding. The amount isn't included in any box on the employee's Form W-2 and doesn't increase the income tax liability of the employee. The amount also doesn't increase the social security tax or Medicare tax liability of the employer or the employee, or the FUTA tax liability of the employer. See *Withholding Adjustment for Nonresident Alien Employees* in the *Introduction* section of Pub. 15-T for the amount to add to their wages for the payroll period.

Supplemental wage payment. The adjustment for determining the amount of income tax withholding for nonresident alien employees doesn't apply to a supplemental wage payment (see section 7) if the 37% mandatory flat rate withholding applies or if the 22% optional flat rate withholding is being used to calculate income tax withholding on the supplemental wage payment.

Nonresident alien employee's Form W-4. When completing Forms W-4, nonresident aliens are required to:

- Not claim exemption from income tax withholding (even if they meet both of the conditions to claim exemption from withholding listed in the Form W-4 instructions);

- Request withholding as if they're single, regardless of their actual filing status;
- Not claim the child tax credit or credit for other dependents in Step 3 of Form W-4 (if the nonresident alien is a resident of Canada, Mexico, or South Korea, or a student from India, or a business apprentice from India, they may claim, under certain circumstances (see Pub. 519), the child tax credit or credit for other dependents); and
- Write "Nonresident Alien" or "NRA" in the space below Step 4(c) of Form W-4.

If you maintain an electronic Form W-4 system, you should provide a field for nonresident aliens to enter nonresident alien status instead of writing "Nonresident Alien" or "NRA" in the space below Step 4(c) of Form W-4. You should instruct nonresident aliens to see Notice 1392, Supplemental Form W-4 Instructions for Nonresident Aliens, before completing Form W-4.

Form 8233. If a nonresident alien employee claims a tax treaty exemption from withholding, the employee must submit Form 8233 with respect to the income exempt under the treaty, instead of Form W-4. For more information, see the Instructions for Form 8233 and *Pay for Personal Services Performed* under *Withholding on Specific Income* in Pub. 515.

IRS review of requested Forms W-4. When requested by the IRS, you must make original Forms W-4 available for inspection by an IRS employee. You may also be directed to send certain Forms W-4 to the IRS. You may receive a notice from the IRS requiring you to submit a copy of Form W-4 for one or more of your named employees. Send the requested copy or copies of Form W-4 to the IRS at the address provided and in the manner directed by the notice. The IRS may also require you to submit copies of Form W-4 to the IRS as directed by a revenue procedure or notice published in the Internal Revenue Bulletin. When we refer to Form W-4, the same rules apply to Formulario W-4(SP), its Spanish translation.

After submitting a copy of a requested Form W-4 to the IRS, continue to withhold federal income tax based on that Form W-4 if it is valid (see Invalid Forms W-4, later in this section). However, if the IRS later notifies you in writing that the employee isn't entitled to claim exemption from withholding or a claimed amount of deductions or credits, withhold federal income tax based on the effective date, employee's permitted filing status, and withholding instructions specified in the IRS notice (commonly referred to as a "lock-in letter").

Initial lock-in letter. The IRS uses information reported on Form W-2 to identify employees with withholding compliance problems. In some cases, if a serious underwithholding problem is found to exist for a particular employee, the IRS may issue a lock-in letter to the employer specifying the employee's permitted filing status and providing withholding instructions for the specific employee. You'll also receive a copy for the employee that identifies the permitted filing status and provides a description of the withholding instructions you're required to follow and the process by which the employee can provide additional information to the IRS for purposes of determining the appropriate withholding and/or modifying the specified filing status. You must furnish the employee copy to the employee within 10 business days of receipt if the employee is employed by you as of the date of the notice. You may follow any reasonable business practice to furnish the employee copy to the employee. Begin withholding based on the notice on the date specified in the notice.

Implementation of lock-in letter. When you receive the notice specifying the permitted filing status and providing withholding instructions, you may not withhold immediately on the basis of the notice. You must begin withholding tax on the basis of the notice for any wages paid after the date specified in the notice. The delay between your receipt of the notice and the date to begin the withholding on the basis of the notice permits the employee time to contact the IRS.

Seasonal employees and employees not currently performing services. If you receive a notice for an employee who isn't currently performing services for you, you're still required to furnish the employee copy to the employee and withhold based on the notice if any of the following apply.

- You're paying wages for the employee's prior services and the wages are subject to income tax withholding on or after the date specified in the notice.
- You reasonably expect the employee to resume services within 12 months of the date of the notice.
- The employee is on a leave of absence that doesn't exceed 12 months or the employee has a right to reemployment after the leave of absence.

Termination and rehire of employees. If you must furnish and withhold based on the notice and the employment relationship is terminated after the date of the notice, you must continue to withhold based on the notice if you continue to pay any wages subject to income tax withholding. You must also withhold based on the notice or modification notice (explained next) if the employee resumes the employment relationship with you within 12 months after the termination of the employment relationship.

Modification notice. After issuing the notice specifying the permitted filing status and providing withholding instructions, the IRS may issue a subsequent notice (modification notice) that modifies the original notice. The modification notice may change the permitted filing status and withholding instructions. You must withhold federal income tax based on the effective date specified in the modification notice.

New Form W-4 after IRS notice. After the IRS issues a notice or modification notice, if the employee provides you with a new Form W-4 claiming complete exemption from withholding or a completed Form W-4 that results in less withholding than would result under the IRS notice or modification notice, disregard the new Form

W-4. You must withhold based on the notice or modification notice unless the IRS notifies you to withhold based on the new Form W-4. If the employee wants to put a new Form W-4 into effect that results in less withholding than required, the employee must contact the IRS.

If, after you receive an IRS notice or modification notice, your employee gives you a new completed Form W-4 that results in more withholding than would result under the notice or modification notice, you must withhold tax based on the new Form W-4. Otherwise, disregard any subsequent Forms W-4 provided by the employee and withhold based on the IRS notice or modification notice.

CAUTION *If, in a year before 2020, you received a lock-in letter for an employee, then for 2023 you should continue to follow the instructions in the lock-in letter. You will use the withholding methods described in Pub. 15-T for an employee with a Form W-4 from 2019 or earlier, or you may use the optional computational bridge to treat 2019 and earlier Forms W-4 as if they were 2020 or later Forms W-4 for purposes of figuring federal income tax withholding. See* How To Treat 2019 and Earlier Forms W-4 as if They Were 2020 or Later Forms W-4 *in the* Introduction *section of Pub. 15-T. You should continue following the instructions in the pre-2020 lock-in letter until you receive a letter releasing your employee from the lock-in procedures, you receive a modification notice, or your employee gives you a new Form W-4 that results in more withholding than would result under the notice.*

For additional information about employer withholding compliance, see IRS.gov/WHC.

Substitute Forms W-4. You're encouraged to have your employees use the official version of Form W-4. You may use a substitute version of Form W-4 to meet your business needs. However, your substitute Form W-4 must contain language that is identical to the official Form W-4 and your form must meet all current IRS rules for substitute forms. At the time you provide your substitute form to the employee, you must provide them with all tables, instructions, and worksheets from the current Form W-4. For more information, see Pub. 15-T.

You can't accept substitute Forms W-4 developed by employees. An employee who submits an employee-developed substitute Form W-4 after October 10, 2007, will be treated as failing to furnish a Form W-4. However, continue to honor any valid employee-developed Forms W-4 you accepted before October 11, 2007.

Invalid Forms W-4. Any unauthorized change or addition to Form W-4 makes it invalid. This includes taking out any language by which the employee certifies the form is correct. A Form W-4 is also invalid if, by the date an employee gives it to you, they clearly indicate it is false. An employee who submits a false Form W-4 may be subject to a $500 penalty. You may treat a Form W-4 as invalid if the employee wrote “exempt” below Step 4(c) and checked the box in Step 2(c) or entered numbers for Steps 3 and 4.

When you get an invalid Form W-4, don't use it to figure federal income tax withholding. Tell the employee it is invalid and ask for another one. If the employee doesn't give you a valid one, and you have an earlier Form W-4 for this employee that is valid, withhold as you did before. If you don't have an earlier Form W-4 that is valid, withhold tax as if the employee had checked the box for Single or Married filing separately in Step 1(c) and made no entries in Step 2, Step 3, or Step 4 of the 2023 Form W-4. However, an employee who was paid wages in 2019 who never submitted a valid Form W-4 and submits an invalid Form W-4 in 2023 should continue to be treated as single and claiming zero allowances on a 2019 Form W-4. If you use the optional computational bridge, described earlier under *Redesigned Form W-4*, you may treat this employee as if they had checked the box for Single or Married filing separately in Step 1(c), and made no entries in Step 2 and Step 3, an entry of $8,600 in Step 4(a), and an entry of zero in Step 4(b) of the 2023 Form W-4.

Amounts exempt from levy on wages, salary, and other income. If you receive a Notice of Levy on Wages, Salary, and Other Income (Forms 668-W(ACS), 668-W(c)(DO), or 668-W(ICS)), you must withhold amounts as described in the instructions for these forms. Pub. 1494 has tables to figure the amount exempt from levy. If a levy issued in a prior year is still in effect and the taxpayer submits a new Statement of Exemptions and Filing Status, use the current year Pub. 1494 to figure the exempt amount.

Social Security and Medicare Taxes

The Federal Insurance Contributions Act (FICA) provides for a federal system of old-age, survivors, disability, and hospital insurance. The old-age, survivors, and disability insurance part is financed by the social security tax. The hospital insurance part is financed by the Medicare tax. Each of these taxes is reported separately.

Generally, you're required to withhold social security and Medicare taxes from your employees' wages and pay the employer share of these taxes. Certain types of wages and compensation aren't subject to social security and Medicare taxes. See section 5 and section 15 for details. Generally, employee wages are subject to social security and Medicare taxes regardless of the employee's age or whether they are receiving social security benefits. If the employee reported tips, see section 6.

Tax rates and the social security wage base limit. Social security and Medicare taxes have different rates and only the social security tax has a wage base limit. The wage base limit is the maximum wage subject to the tax for the year. Determine the amount of withholding for social security and Medicare taxes by multiplying each payment by the employee tax rate.

For 2023, the social security tax rate is 6.2% (amount withheld) each for the employer and employee (12.4% total). The social security wage base limit is $160,200. The tax rate for Medicare is 1.45% (amount withheld) each for the employee and employer (2.9% total). There is no wage base limit for Medicare tax; all covered wages are subject to Medicare tax.

Qualified sick leave wages and qualified family leave wages for leave taken after March 31, 2020, and before April 1, 2021, aren't subject to the employer share of social security tax; therefore, the tax rate on these wages is 6.2%. Qualified sick leave wages and qualified family leave wages for leave taken after March 31, 2021, and before October 1, 2021, are subject to both the employer share (6.2%) and employee share (6.2%) of social security tax (12.4% total).

Additional Medicare Tax withholding. In addition to withholding Medicare tax at 1.45%, you must withhold a 0.9% Additional Medicare Tax from wages you pay to an employee in excess of $200,000 in a calendar year. You're required to begin withholding Additional Medicare Tax in the pay period in which you pay wages in excess of $200,000 to an employee and continue to withhold it each pay period until the end of the calendar year. Additional Medicare Tax is only imposed on the employee. There is no employer share of Additional Medicare Tax. All wages that are subject to Medicare tax are subject to Additional Medicare Tax withholding if paid in excess of the $200,000 withholding threshold.

For more information on what wages are subject to Medicare tax, see section 15. For more information on Additional Medicare Tax, go to *IRS.gov/ADMTfaqs*.

Successor employer. When corporate acquisitions meet certain requirements, wages paid by the predecessor are treated as if paid by the successor for purposes of applying the social security wage base and for applying the Additional Medicare Tax withholding threshold (that is, $200,000 in a calendar year). You should determine whether or not you should file Schedule D (Form 941), Report of Discrepancies Caused by Acquisitions, Statutory Mergers, or Consolidations, by reviewing the Instructions for Schedule D (Form 941). See Regulations section 31.3121(a)(1)-1(b) for more information. Also see Revenue Procedure 2004-53, 2004-34 I.R.B. 320, available at *IRS.gov/irb/2004-34_IRB#RP-2004-53*.

Example. Early in 2023, you bought all of the assets of a plumbing business from Mr. Martin. Mr. Brown, who had been employed by Mr. Martin and received $2,000 in wages before the date of purchase, continued to work for you. The wages you paid to Mr. Brown are subject to social security taxes on the first $158,200 ($160,200 minus $2,000). Medicare tax is due on all of the wages you pay Mr. Brown during the calendar year. You should include the $2,000 Mr. Brown received while employed by Mr. Martin in determining whether Mr. Brown's wages exceed the $200,000 for Additional Medicare Tax withholding threshold.

Motion picture project employers. All wages paid by a motion picture project employer to a motion picture project worker during a calendar year are subject to a single social security tax wage base ($160,200 for 2023) and a single FUTA tax wage base ($7,000 for 2023) regardless of the worker's status as a common law employee of multiple clients of the motion picture project employer. For more information, including the definition of a motion picture project employer and motion picture project worker, see section 3512.

Withholding social security and Medicare taxes on nonresident alien employees. In general, if you pay wages to nonresident alien employees, you must withhold social security and Medicare taxes as you would for a U.S. citizen or resident alien. However, see Pub. 515 for exceptions to this general rule.

International social security agreements. The United States has social security agreements, also known as totalization agreements, with many countries that eliminate dual social security coverage and taxation. Compensation subject to social security and Medicare taxes may be exempt under one of these agreements. You can get more information and a list of agreement countries from the SSA at *SSA.gov/international*. Also see Pub. 519, U.S. Tax Guide for Aliens.

Religious exemption. An exemption from social security and Medicare taxes is available to members of a recognized religious sect opposed to insurance. This exemption is available only if both the employee and the employer are members of the sect. For more information, see Pub. 517.

Foreign persons treated as American employers. Under section 3121(z), a foreign person who meets both of the following conditions is generally treated as an American employer for purposes of paying FICA taxes on wages paid to an employee who is a U.S. citizen or resident.

1. The foreign person is a member of a domestically controlled group of entities.
2. The employee of the foreign person performs services in connection with a contract between the U.S. Government (or an instrumentality of the U.S. Government) and any member of the domestically controlled group of entities. Ownership of more than 50% constitutes control.

Part-Time Workers

Part-time workers and workers hired for short periods of time are treated the same as full-time employees for federal income tax withholding and social security, Medicare, and FUTA tax purposes.

Generally, it doesn't matter whether the part-time worker or worker hired for a short period of time has another job or has the maximum amount of social security tax withheld by another employer. See *Successor employer*, earlier, for an exception to this rule.

Income tax withholding may be figured the same way as for full-time workers or it may be figured by the part-year employment method explained in section 6 of Pub. 15-T.

10. Required Notice to Employees About the Earned Income Credit (EIC)

You must notify employees who have no federal income tax withheld that they may be able to claim a tax refund because of the EIC. Although you don't have to notify employees who claim exemption from withholding on Form W-4 about the EIC, you're encouraged to notify any employees whose wages for 2022 were less than $53,057 ($59,187 if married filing jointly) that they may be eligible to claim the credit for 2022. This is because eligible employees may get a refund of the amount of the EIC that is more than the tax they owe.

You'll meet this notification requirement if you issue the employee Form W-2 with the EIC notice on the back of Copy B, or a substitute Form W-2 with the same statement. You'll also meet the requirement by providing Notice 797, Possible Federal Tax Refund Due to the Earned Income Credit (EIC), or your own statement that contains the same wording.

If a substitute for Form W-2 is given to the employee on time but doesn't have the required statement, you must notify the employee within 1 week of the date the substitute for Form W-2 is given. If Form W-2 is required but isn't given on time, you must give the employee Notice 797 or your written statement by the date Form W-2 is required to be given. If Form W-2 isn't required, you must notify the employee by February 7, 2023.

11. Depositing Taxes

TIP *If an employer is eligible to claim a credit for qualified sick and family leave wages during 2023, the employer can reduce their deposits by the amount of their anticipated credit. Employers won't be subject to an FTD penalty for properly reducing their deposits if certain conditions are met. For more information on reducing deposits, see Notice 2020-22, 2020-17 I.R.B. 664, available at IRS.gov/irb/2020-17_IRB#NOT-2020-22; Notice 2021-24, 2021-18 I.R.B. 1122, available at IRS.gov/irb/2021-18_IRB#NOT-2021-24; and the Instructions for Form 941 or the Instructions for Form 944. For more information about the credit for qualified sick and family leave wages, go to IRS.gov/PLC.*

Generally, you must deposit federal income tax withheld and both the employer and employee social security and Medicare taxes. You must use EFT to make all federal tax deposits. See How To Deposit, later in this section, for information on electronic deposit requirements.

Payment with return. You may make a payment with a timely filed Form 941 or Form 944 instead of depositing, without incurring a penalty, if one of the following applies.

- You're a monthly schedule depositor (defined later) and make a payment in accordance with the Accuracy of Deposits Rule, discussed later in this section. This payment may be $2,500 or more.
- Your Form 941 total tax liability (Form 941, line 12) for either the current quarter or the prior quarter is less than $2,500, and you didn't incur a $100,000 next-day deposit obligation during the current quarter. If you aren't sure your total tax liability for the current quarter will be less than $2,500 (and your liability for the prior quarter wasn't less than $2,500), make deposits using the semiweekly or monthly rules so you won't be subject to an FTD penalty.
- Your Form 944 net tax liability for the year (Form 944, line 9) is less than $2,500.
- Your Form 944 net tax liability for the year (Form 944, line 9) is $2,500 or more and you already deposited the taxes you owed for the first, second, and third quarters of the year; your net tax for the fourth quarter is less than $2,500; and you're paying, in full, the tax you owe for the fourth quarter with a timely filed return.

Separate deposit requirements for nonpayroll (Form 945) tax liabilities. Separate deposits are required for nonpayroll and payroll income tax withholding. Don't combine deposits for Forms 941 (or Form 944) and Form 945 tax liabilities. Generally, the deposit rules for nonpayroll liabilities are the same as discussed next, except the rules apply to an annual rather than a quarterly return period. If the total amount of tax for the year reported on Form 945 is less than $2,500, you're not required to make deposits during the year. See the separate Instructions for Form 945 for more information.

When To Deposit

There are two deposit schedules—monthly and semiweekly—for determining when you deposit social security, Medicare, and withheld federal income taxes. These schedules tell you when a deposit is due after a tax liability arises. Your tax liability is based on the dates payments were made or wages were paid. For taxable noncash fringe benefits, see When taxable fringe benefits are treated as paid in section 5. Before the beginning of each calendar year, you must determine which of the two deposit schedules you're required to use. The deposit schedule you must use is based on the total tax liability you reported on Forms 941, line 12, or Form 944, line 9, during a lookback period, discussed next. Your deposit schedule isn't determined by how often you pay your employees or make deposits. See special rules for Forms 944 and 945, later. Also see Application of Monthly and Semiweekly Schedules, later in this section.

CAUTION *These rules don't apply to FUTA tax. See section 14 for information on depositing FUTA tax.*

Lookback period. If you're a Form 941 filer, your deposit schedule for a calendar year is determined from the total taxes reported on Forms 941, line 12, in a 4-quarter lookback period. The lookback period begins July 1 and ends June 30 as shown next in Table 1. If you reported $50,000 or less of taxes for the lookback period, you're a monthly schedule depositor; if you reported more than $50,000, you're a semiweekly schedule depositor.

Table 1. **Lookback Period for Calendar Year 2023**

July 1, 2021, through Sept. 30, 2021	Oct. 1, 2021, through Dec. 31, 2021	Jan. 1, 2022, through Mar. 31, 2022	Apr. 1, 2022, through June 30, 2022

CAUTION *The lookback period for a 2023 Form 941 filer who filed Form 944 in either 2021 or 2022 is calendar year 2021.*

If you're a Form 944 filer for the current year or either of the preceding 2 years, your deposit schedule for a calendar year is determined from the total taxes reported during the second preceding calendar year (either on your Forms 941 for all 4 quarters of that year or your Form 944 for that year). The lookback period for 2023 for a Form 944 filer is calendar year 2021. If you reported $50,000 or less of taxes for the lookback period, you're a monthly schedule depositor; if you reported more than $50,000, you're a semiweekly schedule depositor.

If you're a Form 945 filer, your deposit schedule for a calendar year is determined from the total taxes reported on line 3 of your Form 945 for the second preceding calendar year. The lookback period for 2023 for a Form 945 filer is calendar year 2021.

TIP *Your total tax liability for the lookback period is determined based on the amount of taxes you reported on Forms 941, line 12, or Form 944, line 9. Your total liability isn't reduced by the refundable portion of the credit for qualified sick and family leave wages, the refundable portion of the employee retention credit, or the refundable portion of the COBRA premium assistance credit. For more information about these credits, see the instructions for your employment tax return that were applicable during the lookback period.*

Adjustments and the lookback rule. Adjustments made on Form 941-X, Form 944-X, and Form 945-X don't affect the amount of tax liability for previous periods for purposes of the lookback rule.

Example. An employer originally reported a tax liability of $45,000 for the lookback period. The employer discovered, during January 2023, that the tax reported for one of the lookback period quarters was understated by $10,000 and corrected this error by filing Form 941-X. This employer is a monthly schedule depositor for 2023 because the lookback period tax liabilities are based on the amounts originally reported, and they were $50,000 or less. The $10,000 adjustment is also not treated as part of the 2023 taxes.

Deposit period. The term "deposit period" refers to the period during which tax liabilities are accumulated for each required deposit due date. For monthly schedule depositors, the deposit period is a calendar month. The deposit periods for semiweekly schedule depositors are Wednesday through Friday and Saturday through Tuesday.

TIP *If you're an agent with an approved Form 2678, the deposit rules apply to you based on the total employment taxes accumulated by you for your own employees and on behalf of all employers for whom you're authorized to act. For more information on an agent with an approved Form 2678, see Revenue Procedure 2013-39, 2013-52 I.R.B. 830, available at IRS.gov/irb/2013-52_IRB#RP-2013-39.*

Monthly Deposit Schedule

You're a monthly schedule depositor for a calendar year if the total taxes on Forms 941, line 12, for the 4 quarters in your lookback period were $50,000 or less. Under the monthly deposit schedule, deposit employment taxes on payments made during a month by the 15th day of the following month. See also Deposits Due on Business Days Only and $100,000 Next-Day Deposit Rule, later in this section. Monthly schedule depositors shouldn't file Form 941 or Form 944 on a monthly basis.

New employers. Your tax liability for any quarter in the lookback period before you started or acquired your business is considered to be zero. Therefore, you're a monthly schedule depositor for the first calendar year of your business. However, see $100,000 Next-Day Deposit Rule, later in this section.

Semiweekly Deposit Schedule

You're a semiweekly schedule depositor for a calendar year if the total taxes on Forms 941, line 12, during your lookback period were more than $50,000. Under the semiweekly deposit schedule, deposit employment taxes for payments made on Wednesday, Thursday, and/or Friday by the following Wednesday. Deposit taxes for payments made on Saturday, Sunday, Monday, and/or Tuesday by the following Friday. See also Deposits Due on Business Days Only, later in this section.

CAUTION *Semiweekly schedule depositors must complete Schedule B (Form 941), Report of Tax Liability for Semiweekly Schedule Depositors, and submit it with Form 941. If you file Form 944 or Form 945 and are a semiweekly schedule depositor, complete Form 945-A, Annual Record of Federal Tax Liability, and submit it with your return (instead of Schedule B).*

Table 2. **Semiweekly Deposit Schedule**

IF the payday falls on a...	THEN deposit taxes by the following...
Wednesday, Thursday, and/or Friday	Wednesday.
Saturday, Sunday, Monday, and/or Tuesday	Friday.

Semiweekly deposit period spanning two quarters (Form 941 filers). If you have more than one pay date during a semiweekly period and the pay dates fall in different calendar quarters, you'll need to make **separate deposits** for the separate liabilities.

Example. If you have a pay date on Saturday, September 30, 2023 (third quarter), and another pay date on Monday, October 2, 2023 (fourth quarter), two separate deposits would be required even though the pay dates fall within the same semiweekly period. Both deposits would be due Friday, October 6, 2023.

Semiweekly deposit period spanning two return periods (Form 944 or Form 945 filers). The period covered by a return is the return period. The return period for annual Forms 944 and 945 is a calendar year. If you have more than one pay date during a semiweekly period and the pay dates fall in different return periods, you'll need to make separate deposits for the separate liabilities. For example, if a return period ends on Thursday, taxes accumulated on Wednesday and Thursday are subject to one deposit obligation, and taxes accumulated on Friday are subject to a separate obligation. Separate deposits are required because two different return periods are affected.

Summary of Steps to Determine Your Deposit Schedule

1. Identify your lookback period (see *Lookback period*, earlier in this section).
2. Add the total taxes you reported on Forms 941, line 12, during the lookback period.
3. Determine if you're a monthly or semiweekly schedule depositor:

IF the total taxes you reported in the lookback period were...	THEN you're a...
$50,000 or less	monthly schedule depositor.
more than $50,000	semiweekly schedule depositor.

Example of Monthly and Semiweekly Schedules

Rose Co. reported Form 941 taxes as follows:

2022 Lookback Period		2023 Lookback Period	
3rd Quarter 2020	$12,000	3rd Quarter 2021	$12,000
4th Quarter 2020	12,000	4th Quarter 2021	12,000
1st Quarter 2021	12,000	1st Quarter 2022	12,000
2nd Quarter 2021	12,000	2nd Quarter 2022	15,000
	$48,000		$51,000

Rose Co. is a monthly schedule depositor for 2022 because its tax liability for the 4 quarters in its lookback period (third quarter 2020 through second quarter 2021) wasn't more than $50,000. However, for 2023, Rose Co. will be a semiweekly schedule depositor because the total taxes exceeded $50,000 for the 4 quarters in its lookback period (third quarter 2021 through second quarter 2022).

Deposits Due on Business Days Only

If a deposit is required to be made on a day that isn't a business day, the deposit is considered timely if it is made by the close of the next business day. A business day is any day other than a Saturday, Sunday, or legal holiday. For example, if a deposit is required to be made on a Friday and Friday is a legal holiday, the deposit will be considered timely if it is made by the following Monday (if that Monday is a business day).

Semiweekly schedule depositors have at least 3 business days following the close of the semiweekly period to make a deposit. If any of the 3 weekdays after the end of a semiweekly period is a legal holiday, you'll have an additional day for each day that is a legal holiday to make the required deposit. For example, if a semiweekly schedule depositor accumulated taxes for payments made on Friday and the following Monday is a legal holiday, the deposit normally due on Wednesday may be made on Thursday (this allows 3 business days to make the deposit).

Legal holiday. The term "legal holiday" means any legal holiday in the District of Columbia. For purposes of the deposit rules, the term "legal holiday" doesn't include other statewide legal holidays. Legal holidays for 2023 are listed next.

- January 2—New Year's Day (observed)
- January 16—Birthday of Martin Luther King, Jr.
- February 20—Washington's Birthday
- April 17—District of Columbia Emancipation Day (observed)
- May 29—Memorial Day
- June 19—Juneteenth National Independence Day
- July 4—Independence Day
- September 4—Labor Day
- October 9—Columbus Day
- November 10—Veterans Day (observed)
- November 23—Thanksgiving Day
- December 25—Christmas Day

Application of Monthly and Semiweekly Schedules

The terms “monthly schedule depositor” and “semiweekly schedule depositor” don't refer to how often your business pays its employees or even how often you’re required to make deposits. The terms identify which set of deposit rules you must follow when an employment tax liability arises. The deposit rules are based on the dates when wages are paid (cash basis), not on when tax liabilities are accrued for accounting purposes.

Monthly schedule example. Spruce Co. is a monthly schedule depositor with seasonal employees. It paid wages each Friday during May but didn't pay any wages during June. Under the monthly deposit schedule, Spruce Co. must deposit the combined tax liabilities for the May paydays by June 15. Spruce Co. doesn't have a deposit requirement for June (due by July 15) because no wages were paid and, therefore, it didn't have a tax liability for June.

Semiweekly schedule example. Green, Inc., is a semiweekly schedule depositor and pays wages once each month on the last Friday of the month. Although Green, Inc., has a semiweekly deposit schedule, it will deposit just once a month because it pays wages only once a month. The deposit, however, will be made under the semiweekly deposit schedule as follows: Green, Inc.'s tax liability for the April 28, 2023 (Friday), payday must be deposited by May 3, 2023 (Wednesday). Under the semiweekly deposit schedule, liabilities for wages paid on Wednesday through Friday must be deposited by the following Wednesday.

$100,000 Next-Day Deposit Rule

If you accumulate $100,000 or more in taxes on any day during a monthly or semiweekly deposit period (see Deposit period, earlier in this section), you must deposit the tax by the next business day, whether you’re a monthly or semiweekly schedule depositor.

For purposes of the $100,000 rule, don't continue accumulating a tax liability after the end of a deposit period. For example, if a semiweekly schedule depositor has accumulated a liability of $95,000 on a Tuesday (of a Saturday-through-Tuesday deposit period) and accumulated a $10,000 liability on Wednesday, the $100,000 next-day deposit rule doesn't apply because the $10,000 is accumulated in the next deposit period. Thus, $95,000 must be deposited by Friday and $10,000 must be deposited by the following Wednesday.

However, once you accumulate at least $100,000 in a deposit period, stop accumulating at the end of that day and begin to accumulate anew on the next day. For example, Fir Co. is a semiweekly schedule depositor. On Monday, Fir Co. accumulates taxes of $110,000 and must deposit this amount on Tuesday, the next business day. On Tuesday, Fir Co. accumulates additional taxes of $30,000. Because the $30,000 isn't added to the previous $110,000 and is less than $100,000, Fir Co. must deposit the $30,000 by Friday (following the semiweekly deposit schedule).

CAUTION *If you’re a monthly schedule depositor and accumulate a $100,000 tax liability on any day during the deposit period, you become a semiweekly schedule depositor on the next day and remain so for at least the rest of the calendar year and for the following calendar year.*

Example. Elm, Inc., started its business on May 1, 2023. On Wednesday, May 3, it paid wages for the first time and accumulated a tax liability of $40,000. On Friday, May 5, Elm, Inc., paid wages and accumulated a liability of $60,000, bringing its total accumulated tax liability to $100,000. Because this was the first year of its business, the tax liability for its lookback period is considered to be zero, and it would be a monthly schedule depositor based on the lookback rules. However, since Elm, Inc., accumulated a $100,000 liability on May 5, it became a semiweekly schedule depositor on May 6. It will be a semiweekly schedule depositor for the remainder of 2023 and for 2024. Elm, Inc., is required to deposit the $100,000 by Monday, May 8, the next business day.

TIP *The $100,000 tax liability threshold requiring a next-day deposit is determined before you consider any reduction of your liability for nonrefundable credits. For more information, see frequently asked question 17 at IRS.gov/ETD.*

Accuracy of Deposits Rule

You’re required to deposit 100% of your tax liability on or before the deposit due date. However, penalties won't be applied for depositing less than 100% if both of the following conditions are met.

- Any deposit shortfall doesn't exceed the greater of $100 or 2% of the amount of taxes otherwise required to be deposited.
- The deposit shortfall is paid or deposited by the shortfall makeup date as described next.

Makeup Date for Deposit Shortfall:

1. **Monthly schedule depositor.** Deposit the shortfall or pay it with your return by the due date of your return for the return period in which the shortfall occurred. You may pay the shortfall with your return even if the amount is $2,500 or more.
2. **Semiweekly schedule depositor.** Deposit by the earlier of:
   a. The first Wednesday or Friday (whichever comes first) that falls on or after the 15th day of the month following the month in which the shortfall occurred, or
   b. The due date of your return (for the return period of the tax liability).

For example, if a semiweekly schedule depositor has a deposit shortfall during May 2023, the shortfall makeup date is June 16, 2023 (Friday). However, if the shortfall occurred on the required October 4, 2023 (Wednesday), deposit due date for the September 29, 2023 (Friday), pay date, the return due date for the September 29 pay date (October 31, 2023) would come before the November 15, 2023 (Wednesday), shortfall makeup date. In this case, the shortfall must be deposited by October 31, 2023.

How To Deposit

You must deposit employment taxes, including Form 945 taxes, by EFT. See *Payment with return*, earlier in this section, for exceptions explaining when taxes may be paid with the tax return instead of being deposited.

Electronic deposit requirement. You must use EFT to make all federal tax deposits. Generally, an EFT is made using EFTPS. If you don't want to use EFTPS, you can arrange for your tax professional, financial institution, payroll service, or other trusted third party to make electronic deposits on your behalf. EFTPS is a free service provided by the Department of the Treasury. To get more information about EFTPS or to enroll in EFTPS, go to *EFTPS.gov* or call 800-555-4477. To contact EFTPS using TRS for people who are deaf, hard of hearing, or have a speech disability, dial 711 and then provide the TRS assistant the 800-555-4477 number above or 800-733-4829. Additional information about EFTPS is also available in Pub. 966.

When you receive your EIN. If you're a new employer that indicated a federal tax obligation when requesting an EIN, you'll be pre-enrolled in EFTPS. You'll receive information about Express Enrollment in your Employer Identification Number (EIN) Package and an additional mailing containing your EFTPS personal identification number (PIN) and instructions for activating your PIN. Call the toll-free number located in your "How to Activate Your Enrollment" brochure to activate your enrollment and begin making your payroll tax deposits. If you outsource any of your payroll and related tax duties to a third-party payer, such as a payroll service provider (PSP) or reporting agent, be sure to tell them about your EFTPS enrollment.

Deposit record. For your records, an EFT Trace Number will be provided with each successful payment. The number can be used as a receipt or to trace the payment.

Depositing on time. For deposits made by EFTPS to be on time, you must submit the deposit by 8 p.m. Eastern time the day before the date the deposit is due. If you use a third party to make a deposit on your behalf, they may have different cutoff times.

Same-day wire payment option. If you fail to submit a deposit transaction on EFTPS by 8 p.m. Eastern time the day before the date a deposit is due, you can still make your deposit on time by using the Federal Tax Collection Service (FTCS) to make a same-day wire payment. To use the same-day wire payment method, you'll need to make arrangements with your financial institution ahead of time. Please check with your financial institution regarding availability, deadlines, and costs. Your financial institution may charge you a fee for payments made this way. To learn more about the information you'll need to give to your financial institution to make a same-day wire payment, go to *IRS.gov/SameDayWire*.

How to claim credit for overpayments. If you deposited more than the right amount of taxes for a quarter, you can choose on Form 941 for that quarter (or on Form 944 for that year) to have the overpayment refunded or applied as a credit to your next return. Don't ask EFTPS to request a refund from the IRS for you.

Deposit Penalties

TIP *Although the deposit penalties information provided next refers specifically to Form 941, these rules also apply to Form 945 and Form 944. The penalties won't apply if the employer qualifies for the exceptions to the deposit requirements discussed under* Payment with return*, earlier in this section).*

Penalties may apply if you don't make required deposits on time or if you make deposits for less than the required amount. The penalties don't apply if any failure to make a proper and timely deposit was due to reasonable cause and not to willful neglect. If you receive a penalty notice, you can provide an explanation of why you believe reasonable cause exists.

If you timely filed your employment tax return, the IRS may also waive deposit penalties if you inadvertently failed to deposit and it was the first quarter that you were required to deposit any employment tax, or if you inadvertently failed to deposit the first time after your deposit frequency changed. You must also meet the net worth and size limitations applicable to awards of administrative and litigation costs under section 7430; for individuals, this means that your net worth can't exceed $2 million, and for businesses, your net worth can't exceed $7 million and you also can't have more than 500 employees.

The IRS may also waive the deposit penalty the first time you're required to make a deposit if you inadvertently send the payment to the IRS rather than deposit it by EFT.

For amounts not properly or timely deposited, the penalty rates are as follows.

Penalty	Charged for...
2%	Deposits made 1 to 5 days late.
5%	Deposits made 6 to 15 days late.
10%	Deposits made 16 or more days late, but before 10 days from the date of the first notice the IRS sent asking for the tax due.
10%	Amounts that should have been deposited, but instead were paid directly to the IRS, or paid with your tax return. But see *Payment with return*, earlier in this section, for exceptions.
15%	Amounts still unpaid more than 10 days after the date of the first notice the IRS sent asking for the tax due or the day on which you received notice and demand for immediate payment, whichever is earlier.

Late deposit penalty amounts are determined using calendar days, starting from the due date of the liability.

Special rule for former Form 944 filers. If you filed Form 944 for the prior year and file Forms 941 for the current year, the FTD penalty won't apply to a late deposit of employment taxes for January of the current year if the taxes are deposited in full by March 15 of the current year.

Order in which deposits are applied. Deposits are generally applied to the most recent tax liability within the quarter. If you receive an FTD penalty notice, you may designate how your deposits are to be applied in order to minimize the amount of the penalty if you do so within 90 days of the date of the notice. Follow the instructions on the penalty notice you receive. For more information on designating deposits, see Revenue Procedure 2001-58. You can find Revenue Procedure 2001-58 on page 579 of Internal Revenue Bulletin 2001-50 at *IRS.gov/pub/irs-irbs/irb01-50.pdf*.

Example. Cedar, Inc., is required to make a deposit of $1,000 on May 15 and $1,500 on June 15. It doesn't make the deposit on May 15. On June 15, Cedar, Inc., deposits $2,000. Under the deposits rule, which applies deposits to the most recent tax liability, $1,500 of the deposit is applied to the June 15 deposit and the remaining $500 is applied to the May deposit. Accordingly, $500 of the May 15 liability remains undeposited. The penalty on this underdeposit will apply as explained earlier.

Trust fund recovery penalty. If federal income, social security, or Medicare taxes that must be withheld (that is, trust fund taxes) aren't withheld or aren't deposited or paid to the U.S. Treasury, the trust fund recovery penalty may apply. The penalty is 100% of the unpaid trust fund tax. If these unpaid taxes can't be immediately collected from the employer or business, the trust fund recovery penalty may be imposed on all persons who are determined by the IRS to be responsible for collecting, accounting for, or paying over these taxes, and who acted willfully in not doing so. The trust fund recovery penalty won't apply to any amount of trust fund taxes an employer holds back in anticipation of any credits they are entitled to.

A **responsible person** can be an officer or employee of a corporation, a partner or employee of a partnership, an accountant, a volunteer director/trustee, or an employee of a sole proprietorship, or any other person or entity that is responsible for collecting, accounting for, or paying over trust fund taxes. A responsible person may also include one who signs checks for the business or otherwise has authority to cause the spending of business funds.

Willfully means voluntarily, consciously, and intentionally. A responsible person acts willfully if the person knows the required actions of collecting, accounting for, or paying over trust fund taxes aren't taking place, or recklessly disregards obvious and known risks to the government's right to receive trust fund taxes.

Separate accounting when deposits aren't made or withheld taxes aren't paid. Separate accounting may be required if you don't pay over withheld employee social security, Medicare, or income taxes; deposit required taxes; make required payments; or file tax returns. In this case, you would receive written notice from the IRS requiring you to deposit taxes into a special trust account for the U.S. Government.

CAUTION *You may be charged with criminal penalties if you don't comply with the special bank deposit requirements for the special trust account for the U.S. Government.*

"Averaged" FTD penalty. The IRS may assess an "averaged" FTD penalty of 2% to 10% if you're a monthly schedule depositor and didn't properly complete Form 941, line 16, when your tax liability shown on Form 941, line 12, equaled or exceeded $2,500.

The IRS may also assess an "averaged" FTD penalty of 2% to 10% if you're a semiweekly schedule depositor and your tax liability shown on Form 941, line 12, equaled or exceeded $2,500 and you:

- Completed Form 941, line 16, instead of Schedule B (Form 941);
- Failed to attach a properly completed Schedule B (Form 941); or
- Improperly completed Schedule B (Form 941) by, for example, entering tax deposits instead of tax liabilities in the numbered spaces.

The FTD penalty is figured by distributing your total tax liability shown on Form 941, line 12, equally throughout the tax period. Then we apply your deposits and payments to the averaged liabilities in the date order we received your deposits. We figure the penalty on any tax not deposited, deposited late, or not deposited in the correct amounts. Your deposits and payments may not be counted as timely because the actual dates of your tax liabilities can't be accurately determined.

You can avoid an "averaged" FTD penalty by reviewing your return before you file it. Follow these steps before submitting your Form 941.

- If you're a monthly schedule depositor, report your tax liabilities (not your deposits) in the monthly entry spaces on Form 941, line 16.
- If you're a semiweekly schedule depositor, report your tax liabilities (not your deposits) on Schedule B (Form

941) on the lines that represent the dates your employees were paid.

- Verify that your total liability shown on Form 941, line 16, or the bottom of Schedule B (Form 941) equals your tax liability shown on Form 941, line 12.
- Don't show negative amounts on Form 941, line 16, or Schedule B (Form 941).
- For prior period errors, don't adjust your tax liabilities reported on Form 941, line 16, or on Schedule B (Form 941). Instead, file an adjusted return (Form 941-X, 944-X, or 945-X) if you're also adjusting your tax liability. If you're only adjusting your deposits in response to an FTD penalty notice, see the Instructions for Schedule B (Form 941) or the Instructions for Form 945-A (for Forms 944 and 945).

CAUTION *In addition to civil penalties, you may be subject to criminal prosecution (brought to trial) for willfully:*

- *Evading tax;*
- *Failing to collect or truthfully account for and pay over tax;*
- *Failing to file a return, supply information, or pay any tax due;*
- *Furnishing false or fraudulent Forms W-2 to employees or failing to furnish Forms W-2;*
- *Committing fraud and providing false statements;*
- *Preparing and filing a fraudulent return; or*
- *Committing identity theft.*

12. Filing Form 941 or Form 944

Form 941. If you paid wages subject to federal income tax withholding (including withholding on sick pay and supplemental unemployment benefits) or social security and Medicare taxes, you must file Form 941 quarterly even if you have no taxes to report, unless you filed a final return, you receive an IRS notification that you're eligible to file Form 944, or the exceptions discussed later apply. Also, if you're required to file Forms 941 but believe your employment taxes for the calendar year will be $1,000 or less, and you would like to file Form 944 instead of Forms 941, you must contact the IRS during the first calendar quarter of the tax year to request to file Form 944. You must receive written notice from the IRS to file Form 944 instead of Forms 941 before you may file this form. For more information on requesting to file Form 944, including the methods and deadlines for making a request, see the Instructions for Form 944. Form 941 must be filed by the last day of the month that follows the end of the quarter. See *Calendar*, earlier.

Form 944. If you receive written notification that you qualify for the Form 944 program, you must file Form 944 instead of Form 941. You must file Form 944 even if you have no taxes to report (or you have taxes in excess of $1,000 to report) unless you filed a final return for the prior year. If you received notification to file Form 944, but prefer to file Form 941, you can request to have your filing requirement changed to Form 941 during the first calendar quarter of the tax year. For more information on requesting to file Forms 941, including the methods and deadlines for making a request, see the Instructions for Form 944. File your 2022 Form 944 by January 31, 2023. However, if you timely deposited all taxes when due, you may file by February 10, 2023.

Exceptions. The following exceptions apply to the filing requirements for Forms 941 and 944.

- **Seasonal employers who don't have to file a Form 941 for quarters when they have no tax liability because they have paid no wages.** To alert the IRS you won't have to file a return for one or more quarters during the year, check the "Seasonal employer" box on Form 941, line 18. When you fill out Form 941, be sure to check the box on the top of the form that corresponds to the quarter reported. Generally, the IRS won't inquire about unfiled returns if at least one taxable return is filed each year. However, you must check the "Seasonal employer" box on **every** Form 941 you file. Otherwise, the IRS will expect a return to be filed for each quarter.
- **Household employers reporting social security and Medicare taxes and/or withheld income tax.** If you file Form 941 or Form 944 for business employees, you may include taxes for household employees on your Form 941 or Form 944. Otherwise, report social security and Medicare taxes and income tax withholding for household employees on Schedule H (Form 1040). See Pub. 926 for more information.
- **Employers reporting wages for employees in American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, or Puerto Rico.** If your employees aren't subject to U.S. income tax withholding, use Forms 941-SS, Form 944, or Formulario 944(SP). Employers in Puerto Rico use Formularios 941-PR, Formulario 944(SP), or Form 944. If you have both employees who are subject to U.S. income tax withholding and employees who aren't subject to U.S. income tax withholding, you must file only Form 941 (or Form 944 or Formulario 944(SP)) and include all of your employees' wages on that form. For more information, see Pub. 80, Federal Tax Guide for Employers in the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, or Pub. 179, Guía Contributiva Federal para Patronos Puertorriqueños.
- **Agricultural employers reporting social security, Medicare, and withheld income taxes.** Report these taxes on Form 943. For more information, see Pub. 51.

TIP *Employers that pay Railroad Retirement Tax Act (RRTA) taxes use Form CT-1 to report employment taxes imposed by the RRTA, and Form 941, or Form 944, to report federal income taxes withheld from their employees' wages and other compensation.*

E-file. The IRS *e-file* program allows a taxpayer to electronically file Form 941 or Form 944 using a computer with an Internet connection and commercial tax preparation software. For more information, go to *IRS.gov/EmploymentEfile*, or call 866-255-0654.

Electronic filing by reporting agents. Reporting agents filing Form 940, 941, or 944 for groups of taxpayers can file them electronically. For details, see Pub. 3112, IRS *e-file* Application and Participation. For information on electronic filing of Forms 940, 941, and 944, see Revenue Procedure 2007-40, 2007-26 I.R.B. 1488, available at *IRS.gov/irb/2007-26_IRB#RP-2007-40*. For information on the different types of third-party payer arrangements, see section 16.

Electronic filing by CPEOs. With the exception of the first quarter for which a CPEO is certified, CPEOs are required to electronically file Form 941. Under certain circumstances, the IRS may waive the electronic filing requirement. To request a waiver, the CPEO must file a written request using the IRS Online Registration System for Professional Employer Organizations at least 45 days before the due date of the return for which the CPEO is unable to electronically file. For more information on filing a waiver request electronically, go to *IRS.gov/CPEO*.

Penalties. For each whole or part month a return isn't filed when required, there is a failure-to-file (FTF) penalty of 5% of the unpaid tax due with that return. The maximum penalty is generally 25% of the tax due. Also, for each whole or part month the tax is paid late, there is a failure-to-pay (FTP) penalty of 0.5% per month of the amount of tax. For individual filers only, the FTP penalty is reduced from 0.5% per month to 0.25% per month if an installment agreement is in effect. You must have filed your return on or before the due date of the return to qualify for the reduced penalty. The maximum amount of the FTP penalty is also 25% of the tax due. If both penalties apply in any month, the FTF penalty is reduced by the amount of the FTP penalty. The penalties won't be charged if you have reasonable cause for failing to file or pay. If you receive a penalty notice, you can provide an explanation of why you believe reasonable cause exists.

Note. In addition to any penalties, interest accrues from the due date of the tax on any unpaid balance.

If income, social security, or Medicare taxes that must be withheld aren't withheld or aren't paid, you may be personally liable for the trust fund recovery penalty. See *Trust fund recovery penalty* in section 11.

Generally, the use of a third-party payer, such as a PSP or reporting agent, doesn't relieve an employer of the responsibility to ensure tax returns are filed and all taxes are paid or deposited correctly and on time. However, see *Certified professional employer organization (CPEO)*, later, for an exception.

Don't file more than one Form 941 per quarter or more than one Form 944 per year. Employers with multiple locations or divisions must file only one Form 941 per quarter or one Form 944 per year. Filing more than one return may result in processing delays and may require correspondence between you and the IRS. For information on making adjustments to previously filed returns, see section 13.

Reminders about filing.

- Don't report more than 1 calendar quarter on a Form 941.
- If you need Form 941 or Form 944, go to *IRS.gov/Forms*. Also see *Ordering Employer Tax Forms, Instructions, and Publications*, earlier.
- Enter your name and EIN on Form 941 or Form 944. Be sure they're exactly as they appeared on earlier returns.
- See the Instructions for Form 941 or the Instructions for Form 944 for information on preparing the form.

Final return. If you go out of business, you must file a final return for the last quarter (last year for Form 944) in which wages are paid. If you continue to pay wages or other compensation for periods following termination of your business, you must file returns for those periods. See the Instructions for Form 941 or the Instructions for Form 944 for details on how to file a final return.

If you're required to file a final return, you're also required to furnish Forms W-2 to your employees and file Forms W-2 and W-3 with the SSA by the due date of your final return. Don't send an original or copy of your Form 941 or Form 944 to the SSA. See the General Instructions for Forms W-2 and W-3 for more information.

Filing late returns for previous years. Get a copy of Form 941 or Form 944 (and separate instructions) with a revision date showing the year, and, if applicable, quarter for which your delinquent return is being filed. Prior year and/or quarter Forms 941 and 944 are available, respectively, at *IRS.gov/Form941* and *IRS.gov/Form944* (select the link for all form revisions under "Other Items You May Find Useful"). Also, see *Ordering Employer Tax Forms, Instructions, and Publications*, earlier. Contact the IRS at 800-829-4933 if you have any questions about filing late returns.

Table 3. **Social Security and Medicare Tax Rates *(for 3 Prior Years)***

Calendar Year	Wage Base Limit (each employee)	Tax Rate on Taxable Wages and Tips
2022—Social Security	$147,000	12.4%*
2022—Medicare	All Wages	2.9%
2021—Social Security	$142,800	12.4%*
2021—Medicare	All Wages	2.9%
2020—Social Security	$137,700	12.4%**
2020—Medicare	All Wages	2.9%

* Qualified sick leave wages and qualified family leave wages for leave taken after March 31, 2020, and before April 1, 2021, aren't subject to the employer share of social security tax; therefore, the tax rate on these wages is 6.2% (0.062).

** Qualified sick leave wages and qualified family leave wages aren't subject to the employer share of social security tax; therefore, the tax rate on these wages for 2020 is 6.2% (0.062).

Reconciling Forms W-2 and W-3 with Forms 941 or Form 944. When there are discrepancies between Forms 941 or Form 944 filed with the IRS and Forms W-2 and W-3 filed with the SSA, the IRS or the SSA may contact you to resolve the discrepancies.

Take the following steps to help reduce discrepancies.

1. Report bonuses as wages and as social security and Medicare wages on Forms W-2 and on Forms 941 or Form 944.
2. Report both social security and Medicare wages and taxes separately on Forms W-2 and W-3, and on Forms 941 or Form 944.
3. Report the employee share of social security taxes on Form W-2 in the box for social security tax withheld (box 4), not as social security wages.
4. Report the employee share of Medicare taxes on Form W-2 in the box for Medicare tax withheld (box 6), not as Medicare wages.
5. Make sure the social security wage amount for each employee doesn't exceed the annual social security wage base limit ($160,200 for 2023).
6. Don't report noncash wages that aren't subject to social security or Medicare taxes, as discussed earlier under *Wages not paid in money* in section 5, as social security or Medicare wages.
7. If you used an EIN on any Forms 941 or Form 944 for the year that is different from the EIN reported on Form W-3, enter the other EIN on Form W-3 in the box for “Other EIN used this year” (box h).
8. Be sure the amounts on Form W-3 are the total of amounts from Forms W-2.
9. Reconcile Form W-3 with your four quarterly Forms 941 or annual Form 944 by comparing amounts reported for the following items.
   a. Federal income tax withheld.
   b. Social security and Medicare wages.
   c. Social security and Medicare taxes. Generally, the amounts shown on Forms 941 or annual Form 944, including current year adjustments, should be approximately twice the amounts shown on Form W-3 because Form 941 and Form 944 report both the employer and employee social security and Medicare taxes while Form W-3 reports only the employee taxes.

Don't report backup withholding or withholding on nonpayroll payments, such as pensions, annuities, and gambling winnings, on Form 941 or Form 944. Withholding on nonpayroll payments is reported on Forms 1099 or W-2G and must be reported on Form 945. Only taxes and withholding reported on Form W-2 should be reported on Form 941 or Form 944.

Amounts reported on Forms W-2, W-3, and Forms 941 or Form 944 may not match for valid reasons. For example, if you withheld any Additional Medicare Tax from your employee’s wages, the amount of Medicare tax that is reported on Forms 941, line 5c, column 2, or Form 944, line 4c, column 2, won’t be twice the amount of the Medicare tax withheld that is reported in box 6 of Form W-3 because the Additional Medicare Tax is only imposed on the employee; there is no employer share of Additional Medicare Tax. Make sure there are valid reasons for any mismatch. Keep your reconciliation so you’ll have a record of why amounts didn't match in case there are inquiries from the IRS or the SSA. See the Instructions for Schedule D (Form 941) if you need to explain any discrepancies that were caused by an acquisition, statutory merger, or consolidation.

CAUTION *When reconciling Forms W-2 and W-3 to Forms 941 or Form 944, you should consider that qualified sick leave wages and qualified family leave wages for leave taken after March 31, 2020, and before April 1, 2021, aren't subject to the employer share of social security tax.*

13. Reporting Adjustments to Form 941 or Form 944

Current Period Adjustments

In certain cases, amounts reported as social security and Medicare taxes on Form 941, lines 5a–5d, column 2 (Form 944, lines 4a–4d, column 2), must be adjusted to arrive at your correct tax liability (for example, excluding amounts withheld by a third-party payer or amounts you weren't required to withhold). Current period adjustments are reported on Form 941, lines 7–9, or Form 944, line 6, and include the following types of adjustments.

Fractions-of-cents adjustment. If there is a small difference between total taxes after adjustments and nonrefundable credits (Form 941, line 12; Form 944, line 9) and total deposits (Form 941, line 13a; Form 944, line 10a), it may have been caused, all or in part, by rounding to the nearest cent each time you figured payroll. This rounding occurs when you figure the amount of social security and Medicare tax to be withheld and deposited from each employee's wages. The IRS refers to rounding differences relating to employee withholding of social security and Medicare taxes as “fractions-of-cents” adjustments. If you pay your taxes with Form 941 (or Form 944) instead of making deposits because your total taxes for the quarter (year for Form 944) are less than $2,500, you may also report a fractions-of-cents adjustment.

To determine if you have a fractions-of-cents adjustment for 2023, multiply the total wages and tips for the quarter subject to:

- Social security tax reported on Form 941 or Form 944 by 6.2% (0.062),
- Medicare tax reported on Form 941 or Form 944 by 1.45% (0.0145), and
- Additional Medicare Tax reported on Form 941 or Form 944 by 0.9% (0.009).

Compare these amounts (the employee share of social security and Medicare taxes) with the total social security and Medicare taxes actually withheld from employees and shown in your payroll records for the quarter (Form 941) or the year (Form 944). If there is a small difference, the amount, positive or negative, may be a fractions-of-cents adjustment. Fractions-of-cents adjustments are reported on Form 941, line 7, or Form 944, line 6. If the actual amount withheld is less, report a negative adjustment using a minus sign (if possible; otherwise, use parentheses) in the entry space. If the actual amount is more, report a positive adjustment.

Adjustment of tax on third-party sick pay. Report both the employer and employee share of social security and Medicare taxes for sick pay on Form 941, lines 5a and 5c (Form 944, lines 4a and 4c). If the aggregate wages paid for an employee by the employer and third-party payer exceed $200,000 for the calendar year, report the Additional Medicare Tax on Form 941, line 5d (Form 944, line 4d). Show as a negative adjustment on Form 941, line 8 (Form 944, line 6), the social security and Medicare taxes withheld on sick pay by a third-party payer. See section 6 of Pub. 15-A for more information.

Adjustment of tax on tips. If, by the 10th of the month after the month you received an employee's report on tips, you don't have enough employee funds available to withhold the employee's share of social security and Medicare taxes, you no longer have to collect it. However, report the entire amount of these tips on Form 941, lines 5b and 5c (Form 944, lines 4b and 4c). If the aggregate wages and tips paid for an employee exceed $200,000 for the calendar year, report the Additional Medicare Tax on Form 941, line 5d (Form 944, line 4d). Include as a negative adjustment on Form 941, line 9 (Form 944, line 6), the total uncollected employee share of the social security and Medicare taxes.

Adjustment of tax on group-term life insurance premiums paid for former employees. The employee share of social security and Medicare taxes for premiums on group-term life insurance over $50,000 for a former employee is paid by the former employee with their tax return and isn't collected by the employer. However, include all social security and Medicare taxes for such coverage on Form 941, lines 5a and 5c (Form 944, lines 4a and 4c). If the amount paid for an employee for premiums on group-term life insurance combined with other wages exceeds $200,000 for the calendar year, report the Additional Medicare Tax on Form 941, line 5d (Form 944, line 4d). Back out the amount of the employee share of these taxes as a negative adjustment on Form 941, line 9 (Form 944, line 6). See Pub. 15-B for more information on group-term life insurance.

TIP *For the above adjustments, prepare and retain a brief supporting statement explaining the nature and amount of each. Don't attach the statement to Form 941 or Form 944. See the General Instructions for Forms W-2 and W-3 for information on how to report the uncollected employee share of social security and Medicare taxes on tips and group-term life insurance on Form W-2.*

Example. Cedar, Inc., filed Form 941 and was entitled to the following current period adjustments.

- **Fractions of cents.** Cedar, Inc., determined the amounts withheld and deposited for social security and Medicare taxes during the quarter were a net $1.44 more than the employee share of the amount figured on Form 941, lines 5a–5d, column 2 (social security and Medicare taxes). This difference was caused by adding or dropping fractions of cents when figuring social security and Medicare taxes for each wage payment. Cedar, Inc., must report a positive $1.44 fractions-of-cents adjustment on Form 941, line 7.
- **Third-party sick pay.** Cedar, Inc., included taxes of $2,000 for sick pay on Form 941, lines 5a and 5c, column 2, for social security and Medicare taxes. However, the third-party payer of the sick pay withheld and paid the employee share ($1,000) of these taxes. Cedar, Inc., is entitled to a $1,000 sick pay adjustment (negative) on Form 941, line 8.
- **Life insurance premiums.** Cedar, Inc., paid group-term life insurance premiums for policies in excess of $50,000 for former employees. The former employees must pay the employee share of the social security and Medicare taxes ($200) on the policies. However, Cedar, Inc., must include the employee share of these taxes with the social security and Medicare taxes reported on Form 941, lines 5a and 5c, column 2. Therefore, Cedar, Inc., is entitled to a negative $200 adjustment on Form 941, line 9.

No change to record of federal tax liability. Don't make any changes to your record of federal tax liability reported on Form 941, line 16, or Schedule B (Form 941) (for Form 944 filers, Form 944, line 13, or Form 945-A) for current period adjustments. The amounts reported on the record reflect the actual amounts you withheld from employees' wages for social security and Medicare taxes. Because the current period adjustments make the amounts reported on Form 941, lines 5a–5d, column 2 (Form 944, lines 4a–4d, column 2), equal the actual amounts you withheld (the amounts reported on the record), no additional changes to the record of federal tax liability are necessary for these adjustments.

Prior Period Adjustments

Forms for prior period adjustments. Use Form 941-X or Form 944-X to make a correction after you discover an error on a previously filed Form 941 or Form 944. There are also Forms 943-X, 945-X, and CT-1 X to report corrections on the corresponding returns. Use Form 843 when requesting a refund or abatement of assessed interest or penalties.

TIP *See Revenue Ruling 2009-39, 2009-52 I.R.B. 951, for examples of how the interest-free adjustment and claim for refund rules apply in 10 different situations. You can find Revenue Ruling 2009-39 at IRS.gov/irb/2009-52_IRB#RR-2009-39.*

Background. Treasury Decision 9405 changed the process for making interest-free adjustments to employment taxes reported on Form 941 and Form 944 and for filing a claim for refund of employment taxes. Treasury Decision 9405, 2008-32 I.R.B. 293, is available at IRS.gov/irb/2008-32_IRB#TD-9405. You'll use the adjustment process if you underreported employment taxes and are making a payment, or if you overreported employment taxes and will be applying the credit to the Form 941 or Form 944 period during which you file Form 941-X or Form 944-X. You'll use the claim process if you overreported employment taxes and are requesting a refund or abatement of the overreported amount. We use the terms "correct" and "corrections" to include interest-free adjustments under sections 6205 and 6413, and claims for refund and abatement under sections 6402, 6414, and 6404.

Correcting employment taxes. When you discover an error on a previously filed Form 941 or Form 944, you must:

- Correct that error using Form 941-X or Form 944-X,
- File a separate Form 941-X or Form 944-X for each Form 941 or Form 944 you're correcting, and
- File Form 941-X or Form 944-X separately. Don't file with Form 941 or Form 944.

Report current quarter adjustments for fractions of cents, third-party sick pay, tips, and group-term life insurance on Form 941 using lines 7–9, and on Form 944 using line 6. See *Current Period Adjustments*, earlier.

Report the correction of underreported and overreported amounts for the same tax period on a single Form 941-X or Form 944-X unless you're requesting a refund. If you're requesting a refund and are correcting both underreported and overreported amounts, file one Form 941-X or Form 944-X correcting the underreported amounts only and a second Form 941-X or Form 944-X correcting the overreported amounts.

See the chart on the last page of Form 941-X or Form 944-X for help in choosing whether to use the adjustment process or the claim process. See the Instructions for Form 941-X or the Instructions for Form 944-X for details on how to make the adjustment or claim for refund or abatement.

Income tax withholding adjustments. In a current calendar year, correct prior quarter income tax withholding errors by making the correction on Form 941-X when you discover the error.

You may make an adjustment only to correct income tax withholding errors discovered during the same calendar year in which you paid the wages. This is because the employee uses the amount shown on Form W-2 or, if applicable, Form W-2c, as a credit when filing their income tax return (Form 1040, etc.).

You can't adjust amounts reported as income tax withheld in a prior calendar year unless it is to correct an administrative error or section 3509 applies. An administrative error occurs if the amount you entered on Form 941 or Form 944 isn't the amount you actually withheld. For example, if the total income tax actually withheld was incorrectly reported on Form 941 or Form 944 due to a mathematical or transposition error, this would be an administrative error. The administrative error adjustment corrects the amount reported on Form 941 or Form 944 to agree with the amount actually withheld from employees and reported on their Forms W-2.

Additional Medicare Tax withholding adjustments. Generally, the rules discussed earlier under *Income tax withholding adjustments* apply to Additional Medicare Tax withholding adjustments. That is, you may make an adjustment to correct Additional Medicare Tax withholding errors discovered during the same calendar year in which you paid wages. You can't adjust amounts reported in a prior calendar year unless it is to correct an administrative error or section 3509 applies. If you have overpaid Additional Medicare Tax, you can't file a claim for refund for the amount of the overpayment unless the amount wasn't actually withheld from the employee's wages (which would be an administrative error).

If a prior year error was a nonadministrative error, you may correct only the **wages and tips** subject to Additional Medicare Tax withholding.

Collecting underwithheld taxes from employees. If you withheld no income, social security, or Medicare taxes or less than the correct amount from an employee's wages, you can make it up from later pay to that employee. But you're the one who owes the underpayment. Reimbursement is a matter for settlement between you and the employee. Underwithheld income tax and Additional Medicare Tax must be recovered from the employee on or before the last day of the calendar year.

There are special rules for tax on tips (see section 6) and fringe benefits (see section 5).

Refunding amounts incorrectly withheld from employees. If you withheld more than the correct amount of income, social security, or Medicare taxes from wages paid, repay or reimburse the employee the excess. Any excess income tax or Additional Medicare Tax withholding must be repaid or reimbursed to the employee before the end of the calendar year in which it was withheld. Keep in your records the employee's written receipt showing the date and amount of the repayment or record of reimbursement. If you didn't repay or reimburse the employee, you must report and pay each excess amount when you file Form 941 for the quarter (or Form 944 for the year) in which you withheld too much tax.

Correcting filed Forms W-2 and W-3. When adjustments are made to correct wages and social security and Medicare taxes because of a change in the wage totals reported for a previous year, you also need to file Form W-2c and Form W-3c with the SSA. Up to 25 Forms W-2c per Form W-3c may be filed per session over the Internet, with no limit on the number of sessions. For more information, go to the SSA's Employer W-2 Filing Instructions & Information webpage at *SSA.gov/employer*.

Exceptions to interest-free corrections of employment taxes. A correction won't be eligible for interest-free treatment if:

- The failure to report relates to an issue raised in an IRS examination of a prior return, or
- The employer knowingly underreported its employment tax liability.

A correction won't be eligible for interest-free treatment after the earlier of the following.

- Receipt of an IRS notice and demand for payment after assessment.
- Receipt of an IRS notice of determination under section 7436.

Wage Repayments

If an employee repays you for wages received in error, don't offset the repayments against current year wages unless the repayments are for amounts received in error in the current year.

Repayment of current year wages. If you receive repayments for wages paid during a prior quarter in the current year, report adjustments on Form 941-X to recover income tax withholding and social security and Medicare taxes for the repaid wages.

Repayment of prior year wages. If you receive repayments for wages paid during a prior year, report an adjustment on Form 941-X or Form 944-X to recover the social security and Medicare taxes. You can't make an adjustment for income tax withholding because the wages were income to the employee for the prior year. You can't make an adjustment for Additional Medicare Tax withholding because the employee determines liability for Additional Medicare Tax on the employee's income tax return for the prior year.

You must also file Forms W-2c and W-3c with the SSA to correct social security and Medicare wages and taxes. Don't correct wages (box 1) on Form W-2c for the amount paid in error. Give a copy of Form W-2c to the employee.

Employee reporting of repayment. The wages paid in error in the prior year remain taxable to the employee for that year. This is because the employee received and had use of those funds during that year. The employee isn't entitled to file an amended return (Form 1040-X) to recover the income tax on these wages. Instead, the employee may be entitled to a deduction or credit for the repaid wages on their income tax return for the year of repayment. However, the employee should file an amended return (Form 1040-X) to recover any Additional Medicare Tax paid on the wages paid in error in the prior year. If an employee asks about reporting their wage repayment, you may tell the employee to see *Repayments* in Pub. 525 for more information.

14. Federal Unemployment (FUTA) Tax

The Federal Unemployment Tax Act (FUTA), with state unemployment systems, provides for payments of unemployment compensation to workers who have lost their jobs. Most employers pay both a federal and a state unemployment tax. For a list of state unemployment agencies, go to the U.S. Department of Labor's website at *oui.doleta.gov/unemploy/agencies.asp*. Only the employer pays FUTA tax; it isn't withheld from the employee's wages. For more information, see the Instructions for Form 940.

TIP *Services rendered to a federally recognized Indian tribal government (or any subdivision, subsidiary, or business wholly owned by such an Indian tribe) are exempt from FUTA tax, subject to the tribe's compliance with state law. For more information, see section 3309(d) and Pub. 4268.*

Who must pay? Use the following three tests to determine whether you must pay FUTA tax. Each test applies to a different category of employee, and each is independent of the others. If a test describes your situation, you're subject to FUTA tax on the wages you pay to employees in that category during the current calendar year.

1. **General test.**
   You're subject to FUTA tax in 2023 on the wages you pay employees who aren't farmworkers or household workers if:
   a. You paid wages of $1,500 or more in any calendar quarter in 2022 or 2023, or

b. You had one or more employees for at least some part of a day in any 20 or more different weeks in 2022 or 20 or more different weeks in 2023.

2. **Household employees test.**

   You're subject to FUTA tax if you paid total cash wages of $1,000 or more to household employees in any calendar quarter in 2022 or 2023. A household employee is an employee who performs household work in a private home, local college club, or local fraternity or sorority chapter.

3. **Farmworkers test.**

   You're subject to FUTA tax on the wages you pay to farmworkers if:

   a. You paid cash wages of $20,000 or more to farmworkers during any calendar quarter in 2022 or 2023, or

   b. You employed 10 or more farmworkers during at least some part of a day (whether or not at the same time) during any 20 or more different weeks in 2022 or 20 or more different weeks in 2023.

Figuring FUTA tax. For 2023, the FUTA tax rate is 6.0%. The tax applies to the first $7,000 you pay to each employee as wages during the year. The $7,000 is the federal wage base. Your state wage base may be different.

Generally, you can take a credit against your FUTA tax for amounts you paid into state unemployment funds. The credit may be as much as 5.4% of FUTA taxable wages. If you're entitled to the maximum 5.4% credit, the FUTA tax rate after credit is 0.6%. You're entitled to the maximum credit if you paid your state unemployment taxes in full, on time, and on all the same wages as are subject to FUTA tax, and as long as the state isn't determined to be a credit reduction state. See the Instructions for Form 940 to determine the credit.

In some states, the wages subject to state unemployment tax are the same as the wages subject to FUTA tax. However, certain states exclude some types of wages from state unemployment tax, even though they're subject to FUTA tax (for example, wages paid to corporate officers, certain payments of sick pay by unions, and certain fringe benefits). In such a case, you may be required to deposit more than 0.6% FUTA tax on those wages. See the Instructions for Form 940 for further guidance.

TIP *In years when there are credit reduction states, you must include liabilities owed for credit reduction with your fourth quarter deposit. You may deposit the anticipated extra liability throughout the year, but it isn't due until the due date for the deposit for the fourth quarter, and the associated liability should be recorded as being incurred in the fourth quarter. See the Instructions for Form 940 for more information.*

Successor employer. If you acquired a business from an employer who was liable for FUTA tax, you may be able to count the wages that employer paid to the employees who continue to work for you when you figure the $7,000 FUTA tax wage base. See the Instructions for Form 940.

Depositing FUTA tax. For deposit purposes, figure FUTA tax quarterly. Determine your FUTA tax liability by multiplying the amount of taxable wages paid during the quarter by 0.6%. Stop depositing FUTA tax on an employee's wages when taxable wages reach $7,000 for the calendar year.

If your FUTA tax liability for any calendar quarter is $500 or less, you don't have to deposit the tax. Instead, you may carry it forward and add it to the liability figured in the next quarter to see if you must make a deposit. If your FUTA tax liability for any calendar quarter is over $500 (including any FUTA tax carried forward from an earlier quarter), you must deposit the tax by EFT. See section 11 for more information on EFTs.

Household employees. You're not required to deposit FUTA taxes for household employees unless you report their wages on Form 941, 943, or 944. See Pub. 926 for more information.

When to deposit. Deposit the FUTA tax by the last day of the first month that follows the end of the quarter. If the due date for making your deposit falls on a Saturday, Sunday, or legal holiday, you may make your deposit on the next business day. See *Legal holiday*, earlier, for a list of legal holidays occurring in 2023.

If your liability for the fourth quarter (plus any undeposited amount from any earlier quarter) is over $500, deposit the entire amount by the due date of Form 940 (January 31). If it is $500 or less, you can make a deposit, pay the tax with a credit or debit card, or pay the tax with your Form 940 by January 31. If you file Form 940 electronically, you can *e-file* and use EFW to pay the balance due. For more information on paying your taxes with a credit or debit card or using EFW, go to *IRS.gov/Payments*.

Table 4. **When To Deposit FUTA Taxes**

Quarter	Ending	Due Date
Jan.–Feb.–Mar.	Mar. 31	Apr. 30
Apr.–May–June	June 30	July 31
July–Aug.–Sept.	Sept. 30	Oct. 31
Oct.–Nov.–Dec.	Dec. 31	Jan. 31

Reporting FUTA tax. Use Form 940 to report FUTA tax. File your 2022 Form 940 by January 31, 2023. However, if you deposited all FUTA tax when due, you may file on or before February 10, 2023.

Form 940 e-file. The Form 940 *e-file* program allows a taxpayer to electronically file Form 940 using a computer with an Internet connection and commercial tax preparation software. For more information, go to *IRS.gov/EmploymentEfile*, or call 866-255-0654.

Household employees. If you didn't report employment taxes for household employees on Form 941, 943, or 944, report FUTA tax for these employees on Schedule H (Form 1040). See Pub. 926 for more information. You must have an EIN to file Schedule H (Form 1040).

Electronic filing by reporting agents. Reporting agents filing Forms 940 for groups of taxpayers can file them electronically. See *Electronic filing by reporting agents* in section 12.

Electronic filing by CPEOs. CPEOs are required to electronically file Form 940. Under certain circumstances, the IRS may waive the electronic filing requirement. To request a waiver, the CPEO must file a written request using the IRS Online Registration System for Professional Employer Organizations at least 45 days before the due date of the return for which the CPEO is unable to electronically file. For more information on filing a waiver request electronically, go to *IRS.gov/CPEO*.

15. Special Rules for Various Types of Services and Payments

Section references are to the Internal Revenue Code unless otherwise noted.

Special Classes of Employment and Special Types of Payments	Treatment Under Employment Taxes		
	Income Tax Withholding	**Social Security and Medicare (including Additional Medicare Tax when wages are paid in excess of $200,000)**	**FUTA**
Aliens, nonresident.	See Pub. 515 and Pub. 519.		
Aliens, resident:			
1. Service performed in the U.S.	Same as U.S. citizen.	Same as U.S. citizen. (Exempt if any part of service as crew member of foreign vessel or aircraft is performed outside U.S.)	Same as U.S. citizen.
2. Service performed outside the U.S.	Withhold	Taxable if (1) working for an American employer, or (2) an American employer by agreement covers U.S. citizens and residents employed by its foreign affiliates.	Exempt unless on or in connection with an American vessel or aircraft and either performed under contract made in U.S., or alien is employed on such vessel or aircraft when it touches U.S. port.
Cafeteria plan benefits under section 125.	If employee chooses cash or other taxable benefit, subject to all employment taxes. If employee chooses a non-taxable benefit, the treatment is the same as if the benefit was provided outside the plan. See Pub. 15-B for more information.		
Deceased worker:			
1. Wages paid to beneficiary or estate in same calendar year as worker's death. See the General Instructions for Forms W-2 and W-3 for details.	Exempt	Taxable	Taxable
2. Wages paid to beneficiary or estate after calendar year of worker's death.	Exempt	Exempt	Exempt
Dependent care assistance programs.	Exempt to the extent it is reasonable to believe amounts are excludable from gross income under section 129.		
Disabled worker's wages paid after year in which worker became entitled to disability insurance benefits under the Social Security Act.	Withhold	Exempt if worker didn't perform any service for employer during the period for which payment is made.	Taxable
Employee business expense reimbursement:			
1. Accountable plan.			
a. Amounts not exceeding specified government rate for per diem or standard mileage.	Exempt	Exempt	Exempt
b. Amounts in excess of specified government rate for per diem or standard mileage.	Withhold	Taxable	Taxable
2. Nonaccountable plan. See section 5 for details.	Withhold	Taxable	Taxable
Family employees:			
1. Child employed by parent (or partnership in which each partner is a parent of the child).	Withhold	Exempt until age 18; age 21 for domestic service.	Exempt until age 21
2. Parent employed by child.	Withhold	Taxable if in course of the child's business. For domestic services, see section 3.	Exempt
3. Spouse employed by spouse. See section 3 for more information.	Withhold	Taxable if in course of spouse's business.	Exempt
Fishing and related activities.	See Pub. 334.		
Foreign governments and international organizations.	Exempt	Exempt	Exempt

Special Classes of Employment and Special Types of Payments	Treatment Under Employment Taxes		
	Income Tax Withholding	**Social Security and Medicare (including Additional Medicare Tax when wages are paid in excess of $200,000)**	**FUTA**
Foreign service by U.S. citizens:			
1. As U.S. Government employees.	Withhold	Same as within U.S.	Exempt
2. For foreign affiliates of American employers and other private employers.	Exempt if at time of payment (1) it is reasonable to believe employee is entitled to exclusion from income under section 911, or (2) the employer is required by law of the foreign country to withhold income tax on such payment.	Exempt unless (1) an American employer by agreement covers U.S. citizens employed by its foreign affiliates, or (2) U.S. citizen works for American employer.	Exempt unless (1) on American vessel or aircraft and work is performed under contract made in U.S. or worker is employed on vessel when it touches U.S. port, or (2) U.S. citizen works for American employer (except in a contiguous country with which the U.S. has an agreement for unemployment compensation) or in the U.S. Virgin Islands.
Fringe benefits.	Taxable on excess of fair market value of the benefit over the sum of an amount paid for it by the employee and any amount excludable by law. However, special valuation rules may apply. Benefits provided under cafeteria plans may qualify for exclusion from wages for social security, Medicare, and FUTA taxes. See Pub. 15-B for details.		
Government employment:			
State/local governments and political subdivisions, employees of:			
1. Salaries and wages (includes payments to most elected and appointed officials). See chapter 3 of Pub. 963.	Withhold	Generally, taxable for (1) services performed by employees who are either (a) covered under a section 218 agreement, or (b) not covered under a section 218 agreement and not a member of a public retirement system (mandatory social security and Medicare coverage); and (2) (for Medicare tax only) for services performed by employees hired or rehired after March 31, 1986, who aren't covered under a section 218 agreement or the mandatory social security provisions, unless specifically excluded by law. See Pub. 963.	Exempt
2. Election workers. Election individuals are workers who are employed to perform services for state or local governments at election booths in connection with national, state, or local elections. **Note.** File Form W-2 for payments of $600 or more even if no social security or Medicare taxes were withheld.	Exempt	Taxable if paid $2,200 or more in 2023 (lesser amount if specified by a section 218 social security agreement). See Revenue Ruling 2000-6.	Exempt
3. Emergency workers. Emergency workers who were hired on a temporary basis in response to a specific unforeseen emergency and aren't intended to become permanent employees.	Withhold	Exempt if serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency.	Exempt
U.S. federal government employees.	Withhold	Taxable for Medicare. Taxable for social security unless hired before 1984. See section 3121(b)(5).	Exempt

Special Classes of Employment and Special Types of Payments	Treatment Under Employment Taxes		
	Income Tax Withholding	**Social Security and Medicare (including Additional Medicare Tax when wages are paid in excess of $200,000)**	**FUTA**
Homeworkers (industrial, cottage industry):			
1. Common law employees.	Withhold	Taxable	Taxable
2. Statutory employees. See section 2 for details.	Exempt	Taxable if paid $100 or more in cash in a year.	Exempt
Hospital employees:			
1. Interns.	Withhold	Taxable	Exempt
2. Patients.	Withhold	Taxable (Exempt for state or local government hospitals.)	Exempt
Household employees:			
1. Domestic service in private homes.	Exempt (withhold if both employer and employee agree).	Taxable if paid $2,600 or more in cash in 2023. Exempt if performed by an individual under age 18 during any portion of the calendar year and isn't the principal occupation of the employee.	Taxable if employer paid total cash wages of $1,000 or more in any quarter in the current or preceding calendar year.
2. Domestic service in college clubs, fraternities, and sororities.	Exempt (withhold if both employer and employee agree).	Exempt if paid to regular student; also exempt if employee is paid less than $100 in a year by an income-tax-exempt employer.	Taxable if employer paid total cash wages of $1,000 or more in any quarter in the current or preceding calendar year.
Insurance for employees:			
1. Accident and health insurance premiums under a plan or system for employees and their dependents generally or for a class or classes of employees and their dependents.	Exempt (except 2% shareholder-employees of S corporations).	Exempt	Exempt
2. Group-term life insurance costs. See Pub. 15-B for details.	Exempt	Exempt, except for the cost of group-term life insurance includible in the employee's gross income. Special rules apply for former employees.	Exempt
Insurance agents or solicitors:			
1. Full-time life insurance salesperson.	Withhold only if employee under common law. See section 2.	Taxable	Taxable if (1) employee under common law, and (2) not paid solely by commissions.
2. Other salesperson of life, casualty, etc., insurance.	Withhold only if employee under common law.	Taxable only if employee under common law.	Taxable if (1) employee under common law, and (2) not paid solely by commissions.
Interest on loans with below-market interest rates (foregone interest and deemed original issue discount).	See Pub. 15-A.		
Leave-sharing plans: Amounts paid to an employee under a leave-sharing plan.	Withhold	Taxable	Taxable
Newspaper carriers and vendors: Newspaper carriers under age 18; newspaper and magazine vendors buying at fixed prices and retaining receipts from sales to customers. See Pub. 15-A for information on statutory nonemployee status.	Exempt (withhold if both employer and employee voluntarily agree).	Exempt	Exempt

Special Classes of Employment and Special Types of Payments	Treatment Under Employment Taxes		
	Income Tax Withholding	**Social Security and Medicare (including Additional Medicare Tax when wages are paid in excess of $200,000)**	**FUTA**
Noncash payments:			
1. For household work, agricultural labor, and service not in the course of the employer's trade or business.	Exempt (withhold if both employer and employee voluntarily agree).	Exempt	Exempt
2. To certain retail commission salespersons ordinarily paid solely on a cash commission basis.	Optional with employer, except to the extent employee's supplemental wages during the year exceed $1 million.	Taxable	Taxable
Nonprofit organizations.	See Pub. 15-A.		
Officers or shareholders of an S corporation: Distributions and other payments by an S corporation to a corporate officer or shareholder must be treated as wages to the extent the amounts are reasonable compensation for services to the corporation by an employee. See the Instructions for Form 1120-S.	Withhold	Taxable	Taxable
Partners: Payments to general or limited partners of a partnership. See Pub. 541 for partner reporting rules.	Exempt	Exempt	Exempt
Railroads: Payments subject to the Railroad Retirement Act. See Pub. 915 and the Instructions for Form CT-1 for more details.	Withhold	Exempt	Exempt
Religious exemptions.	See Pub. 15-A and Pub. 517.		
Retirement and pension plans:			
1. Employer contributions to a qualified plan.	Exempt	Exempt	Exempt
2. Elective employee contributions and deferrals to a plan containing a qualified cash or deferred compensation arrangement (401(k)).	Generally exempt, but see section 402(g) for limitation.	Taxable	Taxable
3. Employer contributions to individual retirement accounts under simplified employee pension (SEP) plan.	Generally exempt, but see section 402(g) for salary reduction SEP limitation.	Exempt, except for amounts contributed under a salary reduction SEP agreement.	
4. Employer contributions to section 403(b) annuities including salary reduction contributions.	Generally exempt, but see section 402(g) for limitation.	Taxable if paid through a salary reduction agreement (written or otherwise).	
5. Employee salary reduction contributions to a SIMPLE retirement account.	Exempt	Taxable	Taxable
6. Distributions from qualified retirement and pension plans and section 403(b) annuities. See Pub. 15-A for information on pensions, annuities, and employer contributions to nonqualified deferred compensation arrangements.	Withhold, but recipient may elect exemption on Form W-4P in certain cases; mandatory 20% withholding applies to an eligible rollover distribution that isn't a direct rollover; exempt for direct rollover. See Pub. 15-A.	Exempt	Exempt
7. Employer contributions to a section 457(b) plan.	Generally exempt, but see section 402(g) limitation.	Taxable	Taxable
8. Employee salary reduction contributions to a section 457(b) plan.	Generally exempt, but see section 402(g) salary reduction limitation.	Taxable	Taxable
Salespersons:			
1. Common law employees.	Withhold	Taxable	Taxable
2. Statutory employees.	Exempt	Taxable	Taxable, except for full-time life insurance sales agents.
3. Statutory nonemployees (qualified real estate agents, direct sellers, and certain companion sitters). See Pub. 15-A for details.	Exempt	Exempt	Exempt

Special Classes of Employment and Special Types of Payments	Treatment Under Employment Taxes		
	Income Tax Withholding	**Social Security and Medicare (including Additional Medicare Tax when wages are paid in excess of $200,000)**	**FUTA**
Scholarships and fellowship grants (includible in income under section 117(c)).	Withhold	Taxability depends on the nature of the employment and the status of the organization. See *Students, scholars, trainees, teachers, etc.,* below.	
Severance or dismissal pay.	Withhold	Taxable	Taxable
Service not in the course of the employer's trade or business (other than on a farm operated for profit or for household employment in private homes).	Withhold only if employee earns $50 or more in cash in a quarter and works on 24 or more different days in that quarter or in the preceding quarter.	Taxable if employee receives $100 or more in cash in a calendar year.	Taxable only if employee earns $50 or more in cash in a quarter and works on 24 or more different days in that quarter or in the preceding quarter.
Sick pay. See Pub. 15-A for more information.	Withhold	Exempt after end of 6 calendar months after the calendar month employee last worked for employer.	
Students, scholars, trainees, teachers, etc.:			
1. Student enrolled and regularly attending classes, performing services for the following.			
a. Private school, college, or university.	Withhold	Exempt	Exempt
b. Auxiliary nonprofit organization operated for and controlled by school, college, or university.	Withhold	Exempt unless services are covered by a section 218 (Social Security Act) agreement.	Exempt
c. Public school, college, or university.	Withhold	Exempt unless services are covered by a section 218 (Social Security Act) agreement.	Exempt
2. Full-time student performing service for academic credit, combining instruction with work experience as an integral part of the program.	Withhold	Taxable	Exempt unless program was established for or on behalf of an employer or group of employers.
3. Student nurse performing part-time services for nominal earnings at hospital as incidental part of training.	Withhold	Exempt	Exempt
4. Student employed by organized camps.	Withhold	Taxable	Exempt
5. Student, scholar, trainee, teacher, etc., as nonimmigrant alien under section 101(a)(15)(F), (J), (M), or (Q) of Immigration and Nationality Act (that is, aliens holding F-1, J-1, M-1, or Q-1 visas).	Withhold unless excepted by regulations.	Exempt if service is performed for purpose specified in section 101(a)(15)(F), (J), (M), or (Q) of Immigration and Nationality Act. However, these taxes may apply if the employee becomes a resident alien. See the special residency tests for exempt individuals in chapter 1 of Pub. 519.	
Supplemental unemployment compensation plan benefits.	Withhold	Exempt under certain conditions. See Pub. 15-A.	
Tips:			
1. If $20 or more in a month.	Withhold	Taxable	Taxable for all tips reported in writing to employer.
2. If less than $20 in a month. See section 6 for more information.	Exempt	Exempt	Exempt
Workers' compensation.	Exempt	Exempt	Exempt

16. Third-Party Payer Arrangements

An employer may outsource some or all of its federal employment tax withholding, reporting, and payment obligations. An employer who outsources payroll and related tax duties (that is, withholding, reporting, and paying over social security, Medicare, FUTA, and income taxes) to a third-party payer will generally remain responsible for those duties, including liability for the taxes. However, see Certified professional employer organization (CPEO), later, for an exception.

If an employer outsources some or all of its payroll responsibilities, the employer should consider the following information.

- The employer remains responsible for federal tax deposits and other federal tax payments even though the employer may forward the tax amounts to the third-party payer to make the deposits and payments. If the third party fails to make the deposits and payments, the IRS may assess penalties and interest on the employer's account. As the employer, you may be liable for all taxes, penalties, and interest due. The employer may also be held personally liable for certain unpaid federal taxes.
- If the employer's account has any issues, the IRS will send correspondence to the employer at the address of record. We strongly recommend that the employer maintain its address as the address of record with the IRS. Having correspondence sent to the address of the third-party payer may significantly limit the employer's ability to be informed about tax matters involving the employer's business. Use Form 8822-B to update your business address.
- When a third party enrolls an employer in EFTPS for federal tax deposits, the employer will receive an Inquiry PIN. The employer should activate and use this Inquiry PIN to monitor its account and ensure the third party is making the required tax deposits.

The following are common third-party payers who an employer may contract with to perform payroll and related tax duties.

- Payroll service provider (PSP).
- Reporting agent.
- Agent with approved Form 2678.
- Payer designated under section 3504.
- Certified professional employer organization (CPEO).

Payroll service provider (PSP). A PSP helps administer payroll and payroll-related tax duties on behalf of the employer. A PSP may prepare paychecks for employees, prepare and file employment tax returns, prepare Form W-2, and make federal tax deposits and other federal tax payments. A PSP performs these functions using the EIN of the employer. A PSP isn't liable as either an employer or an agent of the employer for the employer's employment taxes. If an employer is using a PSP to perform its tax duties, the employer remains liable for its employment tax obligations, including liability for employment taxes.

An employer who uses a PSP should ensure the PSP is using EFTPS to make federal tax deposits on behalf of the employer so the employer can confirm that the payments are being made on its behalf.

Reporting agent. A reporting agent is a type of PSP. A reporting agent helps administer payroll and payroll-related tax duties on behalf of the employer, including authorization to electronically sign and file forms set forth on Form 8655. An employer uses Form 8655 to authorize a reporting agent to perform functions on behalf of the employer. A reporting agent performs these functions using the EIN of the employer. A reporting agent isn't liable as either an employer or an agent of the employer for the employer's employment taxes. If an employer is using a reporting agent to perform its tax duties, the employer remains liable for its employment obligations, including liability for employment taxes.

A reporting agent must use EFTPS to make federal tax deposits on behalf of an employer. The employer has access to EFTPS to confirm federal tax deposits were made on its behalf.

For more information on reporting agents, see Revenue Procedure 2012-32, 2012-34 I.R.B. 267, available at IRS.gov/irb/2012-34_IRB#RP-2012-32; and Pub. 1474, Technical Specifications Guide for Reporting Agent Authorization and Federal Tax Depositors.

Agent with an approved Form 2678. An agent with an approved Form 2678 helps administer payroll and related tax duties on behalf of the employer. An agent authorized under section 3504 may pay wages or compensation to some or all of the employees of an employer, prepare and file employment tax returns as set forth on Form 2678, prepare Form W-2, and make federal tax deposits and other federal tax payments. An employer uses Form 2678 to request authorization to appoint an agent to perform functions on behalf of the employer. An agent with an approved Form 2678 is authorized to perform these functions using its own EIN. The agent files a Schedule R (Form 941) or, if applicable, Schedule R (Form 943) to allocate wages, taxes, and credits claimed to the employers it represents as an agent.

If an employer is using an agent with an approved Form 2678 to perform its tax duties, the agent and the employer are jointly liable for the employment taxes and related tax duties for which the agent is authorized to perform.

Form 2678 doesn't apply to FUTA taxes reportable on Form 940 unless the employer is a home care service recipient receiving home care services through a program administered by a federal, state, or local government agency.

For more information on an agent with an approved Form 2678, see Revenue Procedure 2013-39, 2013-52 I.R.B. 830, available at IRS.gov/irb/2013-52_IRB#RP-2013-39.

Payer designated under section 3504. In certain circumstances, the IRS may designate a third-party payer to perform the acts of an employer. The IRS will designate a third-party payer on behalf of an employer if the third party has a service agreement with the employer. A service agreement is an agreement between the third-party payer and an employer in which the third-party payer (1) asserts it is the employer of individuals performing services for the employer; (2) pays wages to the individuals that perform services for the employer; and (3) assumes responsibility to withhold, report, and pay federal employment taxes for the wages it pays to the individuals who perform services for the employer.

A payer designated under section 3504 performs tax duties under the service agreement using its own EIN. If the IRS designates a third-party payer under section 3504, the designated payer and the employer are jointly liable for the employment taxes and related tax duties for which the third-party payer is designated.

For more information on a payer designated under section 3504, see Regulations section 31.3504-2.

Certified professional employer organization (CPEO). The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 required the IRS to establish a voluntary certification program for professional employer organizations (PEOs). PEOs handle various payroll administration and tax reporting responsibilities for their business clients and are typically paid a fee based on payroll costs. To become and remain certified under the certification program, CPEOs must meet various requirements described in sections 3511 and 7705 and related published guidance. Certification as a CPEO may affect the employment tax liabilities of both the CPEO and its customers. A CPEO is generally treated for employment tax purposes as the employer of any individual who performs services for a customer of the CPEO and is covered by a contract described in section 7705(e)(2) between the CPEO and the customer (CPEO contract), but only for wages and other compensation paid to the individual by the CPEO. However, with respect to certain employees covered by a CPEO contract, you may also be treated as an employer of the employees and, consequently, may also be liable for federal employment taxes imposed on wages and other compensation paid by the CPEO to such employees.

CPEOs must complete Schedule R (Form 940), Schedule R (Form 941), or Schedule R (Form 943) when filing an aggregate Form 940, 941, or 943, respectively. CPEOs file Form 8973 to notify the IRS that they started or ended a service contract with a customer. To become a CPEO, the organization must apply through the IRS Online Registration System. For more information or to apply to become a CPEO, go to IRS.gov/CPEO. Also see Revenue Procedure 2017-14, 2017-3 I.R.B. 426, available at IRS.gov/irb/2017-03_IRB#RP-2017-14.

If both an employer and a section 3504 authorized agent (or CPEO or other third-party payer) paid wages to an employee during a quarter, both the employer and the section 3504 authorized agent (or CPEO or other third-party payer, if applicable) should file Form 941 reporting the wages each entity paid to the employee during the applicable quarter and issue Forms W-2 reporting the wages each entity paid to the employee during the year.

How To Get Tax Help

If you have questions about a tax issue; need help preparing your tax return; or want to download free publications, forms, or instructions, go to IRS.gov to find resources that can help you right away.

Preparing and filing your tax return. Go to IRS.gov/EmploymentEfile for more information on filing your employment tax returns electronically.

Getting answers to your tax questions. On IRS.gov, you can get up-to-date information on current events and changes in tax law.

- IRS.gov/Help: A variety of tools to help you get answers to some of the most common tax questions.
- IRS.gov/Forms: Find forms, instructions, and publications. You will find details on the most recent tax changes and interactive links to help you find answers to your questions.
- You may also be able to access tax law information in your electronic filing software.

Need someone to prepare your tax return? There are various types of tax return preparers, including enrolled agents, certified public accountants (CPAs), attorneys, and many others who don't have professional credentials. If you choose to have someone prepare your tax return, choose that preparer wisely. A paid tax preparer is:

- Primarily responsible for the overall substantive accuracy of your return,
- Required to sign the return, and
- Required to include their preparer tax identification number (PTIN).

Although the tax preparer always signs the return, you're ultimately responsible for providing all the information required for the preparer to accurately prepare your return. Anyone paid to prepare tax returns for others should have a thorough understanding of tax matters. For more information on how to choose a tax preparer, go to Tips for Choosing a Tax Preparer on IRS.gov.

Coronavirus. Go to IRS.gov/Coronavirus for links to information on the impact of the coronavirus, as well as tax relief available for individuals and families, small and large businesses, and tax-exempt organizations.

Employers can register to use Business Services Online. The Social Security Administration (SSA) offers online service at SSA.gov/employer for fast, free, and secure online W-2 filing options to CPAs, accountants, enrolled agents, and individuals who process Form W-2 and Form W-2c.

IRS social media. Go to *IRS.gov/SocialMedia* to see the various social media tools the IRS uses to share the latest information on tax changes, scam alerts, initiatives, products, and services. At the IRS, privacy and security are our highest priority. We use these tools to share public information with you. **Don't** post your social security number (SSN) or other confidential information on social media sites. Always protect your identity when using any social networking site.

The following IRS YouTube channels provide short, informative videos on various tax-related topics in English, Spanish, and ASL.

- *Youtube.com/irsvideos*.
- *Youtube.com/irsvideosmultilingua*.
- *Youtube.com/irsvideosASL*.

Watching IRS videos. The IRS Video portal (*IRSVideos.gov*) contains video and audio presentations for individuals, small businesses, and tax professionals.

Online tax information in other languages. You can find information on *IRS.gov/MyLanguage* if English isn't your native language.

Free Over-the-Phone Interpreter (OPI) Service. The IRS is committed to serving our multilingual customers by offering OPI services. The OPI Service is a federally funded program and is available at Taxpayer Assistance Centers (TACs), other IRS offices, and every VITA/TCE return site. The OPI Service is accessible in more than 350 languages.

Accessibility Helpline available for taxpayers with disabilities. Taxpayers who need information about accessibility services can call 833-690-0598. The Accessibility Helpline can answer questions related to current and future accessibility products and services available in alternative media formats (for example, braille, large print, audio, etc.). The Accessibility Helpline doesn't have access to your IRS account. For help with tax law, refunds, or account-related issues, go to *IRS.gov/LetUsHelp*.

Disasters. Go to *Disaster Assistance and Emergency Relief for Individuals and Businesses* to review the available disaster tax relief.

Getting tax forms and publications. Go to *IRS.gov/Forms* to view, download, or print most of the forms, instructions, and publications you may need. Or, you can go to *IRS.gov/OrderForms* to place an order.

Getting tax publications and instructions in eBook format. You can also download and view popular tax publications and instructions (including Pub. 15) on mobile devices as eBooks at *IRS.gov/eBooks*.

Note. IRS eBooks have been tested using Apple's iBooks for iPad. Our eBooks haven't been tested on other dedicated eBook readers, and eBook functionality may not operate as intended.

Getting a transcript of your return. You can get a copy of your tax transcript or a copy of your return by calling 800-829-4933 or by mailing Form 4506-T (transcript request) or Form 4506 (copy of return) to the IRS.

Reporting and resolving your tax-related identity theft issues.

- Tax-related identity theft happens when someone steals your personal information to commit tax fraud. Your taxes can be affected if your EIN is used to file a fraudulent return or to claim a refund or credit.
- The IRS doesn't initiate contact with taxpayers by email, text messages (including shortened links), telephone calls, or social media channels to request or verify personal or financial information. This includes requests for personal identification numbers (PINs), passwords, or similar information for credit cards, banks, or other financial accounts.
- Go to *IRS.gov/IdentityTheft*, the IRS Identity Theft Central webpage, for information on identity theft and data security protection for taxpayers, tax professionals, and businesses. If your EIN has been lost or stolen or you suspect you're a victim of tax-related identity theft, you can learn what steps you should take.

Making a tax payment. Go to *IRS.gov/Payments* for information on how to make a payment using any of the following options.

- *Debit or Credit Card*: Choose an approved payment processor to pay online or by phone.
- *Electronic Funds Withdrawal*: Schedule a payment when filing your federal taxes using tax return preparation software or through a tax professional.
- *Electronic Federal Tax Payment System*: Best option for businesses. Enrollment is required.
- *Check or Money Order*: Mail your payment to the address listed on the notice or instructions.
- *Cash*: You may be able to pay your taxes with cash at a participating retail store.
- *Same-Day Wire*: You may be able to do same-day wire from your financial institution. Contact your financial institution for availability, cost, and time frames.

Note. The IRS uses the latest encryption technology to ensure that the electronic payments you make online, by phone, or from a mobile device using the IRS2Go app are safe and secure. Paying electronically is quick, easy, and faster than mailing in a check or money order.

What if I can't pay now? Go to *IRS.gov/Payments* for more information about your options.

- Apply for an *online payment agreement* (*IRS.gov/OPA*) to meet your tax obligation in monthly installments if you can't pay your taxes in full today. Once you complete the online process, you will receive immediate notification of whether your agreement has been approved.

- Use the *Offer in Compromise Pre-Qualifier* to see if you can settle your tax debt for less than the full amount you owe. For more information on the Offer in Compromise program, go to *IRS.gov/OIC*.

Understanding an IRS notice or letter you've received. Go to *IRS.gov/Notices* to find additional information about responding to an IRS notice or letter.

Contacting your local IRS office. Keep in mind, many questions can be answered on IRS.gov without visiting an IRS TAC. Go to *IRS.gov/LetUsHelp* for the topics people ask about most. If you still need help, IRS TACs provide tax help when a tax issue can't be handled online or by phone. All TACs now provide service by appointment, so you'll know in advance that you can get the service you need without long wait times. Before you visit, go to *IRS.gov/TACLocator* to find the nearest TAC and to check hours, available services, and appointment options. Or, on the IRS2Go app, under the Stay Connected tab, choose the Contact Us option and click on "Local Offices."

The Taxpayer Advocate Service (TAS) Is Here To Help You

What Is TAS?

TAS is an ***independent*** organization within the IRS that helps taxpayers and protects taxpayer rights. Their job is to ensure that every taxpayer is treated fairly and that you know and understand your rights under the *Taxpayer Bill of Rights*.

How Can You Learn About Your Taxpayer Rights?

The Taxpayer Bill of Rights describes 10 basic rights that all taxpayers have when dealing with the IRS. Go to *TaxpayerAdvocate.IRS.gov* to help you understand what these rights mean to you and how they apply. These are ***your*** rights. Know them. Use them.

What Can TAS Do for You?

TAS can help you resolve problems that you can't resolve with the IRS. And their service is free. If you qualify for their assistance, you will be assigned to one advocate who will work with you throughout the process and will do everything possible to resolve your issue. TAS can help you if:

- Your problem is causing financial difficulty for you, your family, or your business;
- You face (or your business is facing) an immediate threat of adverse action; or
- You've tried repeatedly to contact the IRS but no one has responded, or the IRS hasn't responded by the date promised.

How Can You Reach TAS?

TAS has offices *in every state, the District of Columbia, and Puerto Rico*. Your local advocate's number is in your local directory and at *TaxpayerAdvocate.IRS.gov/Contact-Us*. You can also call them at 877-777-4778.

How Else Does TAS Help Taxpayers?

TAS works to resolve large-scale problems that affect many taxpayers. If you know of one of these broad issues, report it to them at *IRS.gov/SAMS*.

TAS for Tax Professionals

TAS can provide a variety of information for tax professionals, including tax law updates and guidance, TAS programs, and ways to let TAS know about systemic problems you've seen in your practice.

Index

To help us develop a more useful index, please let us know if you have ideas for index entries. See “Comments and Suggestions” in the “Introduction” for the ways you can reach us.

A

Accuracy of deposits rule 29
Additional Medicare Tax 25, 36
Adjustments 34
Aliens, nonresident 22, 25
Allocated tips 19
Archer MSAs 16
Assistance (*See* Tax help)

B

Backup withholding 7
Business expenses, employee 15

C

Calendar 8
Certified professional employer organizations (CPEOs) 3, 46
Change of business address or responsible party 7
Correcting employment taxes 36
Correcting errors (prior period adjustments) 36
Criminal prosecution

D

Delivery services, private 8
Depositing taxes:
- Penalties 30
- Rules 26

Differential wage payments 17
Disaster tax relief 2

E

E-file 33
E-news for payroll professionals 8
Election worker 10
Electronic deposit requirement 30
Electronic Federal Tax Payment System (EFTPS) 30
Electronic filing 4, 33
Eligibility for employment 5
Employees defined 11
Employer identification number (EIN) 11
Employer responsibilities 6

F

Family employees 13
Final return 33
Foreign persons treated as American employers 25
Form 944 32
Fringe benefits 17
FUTA tax 37

G

Government employers 10

H

Health insurance plans 16
Health savings accounts (HSAs) 16
Hiring new employees 5
Household employees 32

I

Identity protection services 18
Income tax withholding 21
Information returns 5
International social security agreements 25

L

Long-term-care insurance 16
Lookback period 26

M

Meals and lodging 16
Medicaid waiver payments 3
Medical care 17
Medical savings accounts (MSAs) 16
Medicare tax 24
Mileage 16
Monthly deposit schedule 27
Motion picture project employers 25
Moving expense reimbursement 2

N

New employees 5
Noncash wages 16
Nonemployee compensation 7

O

Outsourcing payroll duties 3

P

Part-time workers 25
Payroll period 20
Payroll service provider (PSP) 45
Penalties 30, 33
Private delivery services (PDSs) 8
Publications (*See* Tax help)

Q

Qualified small business payroll tax credit for increasing research activities 2

R

Reconciling Forms W-2 and Forms 941 or Form 944 34
Recordkeeping 7
Reimbursements 15
Repayments, wages 37
Reporting agent 45

S

Seasonal employers 32
Semiweekly deposit schedule 27
Severance payments 4
Sick pay 18
Social security and Medicare taxes 24
Social security number, employee 14
Spouse 12
Standard mileage rate 16
Statutory employees 11
Statutory nonemployees 12
Successor employer 25, 38
Supplemental wages 19

T

Tax help 46
Telephone help 8
Third-party payer arrangements 45
Third-party sick pay tax adjustment 35
Tip rate determination agreement 19
Tip rate determination and education program 19
Tips 18, 20
Trust fund recovery penalty 31

U

Unemployment tax, federal 37

V

Vacation pay 20

W

Wage repayments 37
Wages defined 15
Wages not paid in money 16
Withholding:
- Backup 7
- Certificate 21
- Exemption 22
- Fringe benefits 17
- Income tax 21
- Levies 24
- Nonresident aliens 25
- Pensions and annuities 6
- Social security and Medicare taxes 24
- Tips 20

Z

Zero wage return 4

Table 2-1. Special Rules for Various Types of Fringe Benefits

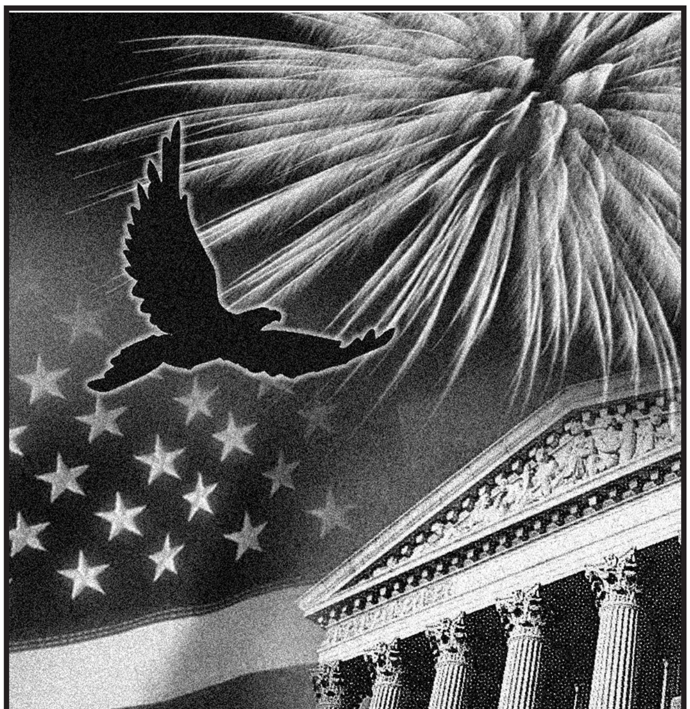
Type of Fringe Benefit	Income Tax Withholding	Social Security and Medicare	Federal Unemployment (FUTA)
Accident and Health Benefits	Exempt except for long-term care benefits provided through a flexible spending or similar arrangement	Exempt except for certain payment to S-corporation employees who are 2% shareholders	Exempt
Achievement Awards	Exempt up to $1,600 for qualified plan awards ($400 for nonqualified awards)		
Adoption Assistance	Exempt	Taxable	Taxable
Atheltic Facilities	Exempt if substantially all use during the calendar year is by employees, their spouses, and their dependent children, and the facility is perated by the employer on the premises owned or leased by the employer		
De minimus Benefits	Exempt	Exempt	Exempt
Dependent Care Benefits	Exempt up to certain limits, $5,000 ($2,500 for married filed separate)		
Educational Assistance	Exempt up to $5,250 of benefits each year		
Employee Discounts	Exempt up to certain limits		
Employee Stock Options			
Employer-provided Cell Phones	Exempt if provided primarily for noncompensatory business purposes		
Group-Term Life Insurance	Exempt	Exempt up to cost of $50,000 of coverage	Exempt
Health Savings Accounts (HSAs)	Exempt for qualified individuals up to the H.S.A contribution limits		
Lodging on your Business Premises	Exempt if furnished on your business premises, for your conveniece, and as a condition of employment.		
Meals	Exempt if furnished on your business premises for your conveniece. Exempt if de minimis.		
No-Additional-Cost Services	Exempt	Exempt	Exempt
Retirement Planning Services	Exempt	Exempt	Exempt
Transportation (Commuting) Benefits	Exempt up to certain limits if for rides in a commuter highway vehicle and/or transit passes ($280) or qualified parking ($280). Exempt if de minimis.		
Tuition Reduction	Exempt if for undergraduate education (or graduate education if the employee performs teaching or research activities)		
Working Condition Benefits	Exempt	Exempt	Exempt

Department of the Treasury
Internal Revenue Service

Publication 15-B
Cat. No. 29744N

Employer's Tax Guide to Fringe Benefits

For use in **2023**



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- *IRS.gov/Vietnamese* (Tiếng Việt)

Jan 5, 2023

Contents

What's New 1
Reminders 2
Introduction 2
1. Fringe Benefit Overview 3
2. Fringe Benefit Exclusion Rules 5
Accident and Health Benefits 5
Achievement Awards 7
Adoption Assistance 8
Athletic Facilities 9
De Minimis (Minimal) Benefits 9
Dependent Care Assistance 9
Educational Assistance 10
Employee Discounts 11
Employee Stock Options 12
Employer-Provided Cell Phones 13
Group-Term Life Insurance Coverage 13
Health Savings Accounts 15
Lodging on Your Business Premises 16
Meals 17
No-Additional-Cost Services 19
Retirement Planning Services 20
Transportation (Commuting) Benefits 20
Tuition Reduction 22
Working Condition Benefits 22
3. Fringe Benefit Valuation Rules 24
General Valuation Rule 24
Cents-Per-Mile Rule 25
Commuting Rule 26
Lease Value Rule 26
Unsafe Conditions Commuting Rule 29
4. Rules for Withholding, Depositing, and Reporting 29
How To Get Tax Help 31
Index 34

Future Developments

For the latest information about developments related to Pub. 15-B, such as legislation enacted after it was published, go to *IRS.gov/Pub15B*. For the latest guidance and information about COVID-19 tax relief, go to *IRS.gov/Coronavirus*.

What's New

Cents-per-mile rule. The business mileage rate for 2023 is 65.5 cents per mile. You may use this rate to reimburse an employee for business use of a personal vehicle, and under certain conditions, you may use the rate under the cents-per-mile rule to value the personal use of a vehicle you provide to an employee. See Cents-Per-Mile Rule in section 3.

Qualified parking exclusion and commuter transportation benefit. For 2023, the monthly exclusion for qualified parking is $300 and the monthly exclusion for commuter highway vehicle transportation and transit passes is $300. See Qualified Transportation Benefits in section 2.

Contribution limit on a health flexible spending arrangement (FSA). For plan years beginning in 2023, a cafeteria plan may not allow an employee to request salary reduction contributions for a health FSA in excess of $3,050. For more information, including information about temporary COVID-19 relief for health and dependent care FSAs for 2022 and 2023, see Cafeteria Plans in section 1.

Reminders

Moving expense reimbursements. P.L. 115-97, Tax Cuts and Jobs Act, suspends the exclusion for qualified moving expense reimbursements from your employee's income for tax years beginning after 2017 and before 2026. However, the exclusion is still available in the case of a member of the U.S. Armed Forces on active duty who moves because of a permanent change of station due to a military order. The exclusion applies only to reimbursement of moving expenses that the member could deduct if they had paid or incurred them without reimbursement. See *Moving Expenses* in Pub. 3, Armed Forces' Tax Guide, for the definition of what constitutes a permanent change of station and to learn which moving expenses are deductible.

Bicycle commuting reimbursements. P.L. 115-97 suspends the exclusion of qualified bicycle commuting reimbursements from your employee's income for tax years beginning after 2017 and before 2026. See Transportation (Commuting) Benefits in section 2.

Withholding on supplemental wages. P.L. 115-97 lowered the federal income tax withholding rates on supplemental wages for tax years beginning after 2017 and before 2026. See Withholding and depositing taxes in section 4 for the withholding rates.

Form 1099-NEC. Use Form 1099-NEC to report nonemployee compensation paid in 2022. The 2022 Form 1099-NEC is due January 31, 2023.

Additional permitted election changes for health coverage under a cafeteria plan. Notice 2014-55, 2014-41 I.R.B. 672, available at IRS.gov/irb/2014-41_IRB#NOT-2014-55, expands the application of the permitted change rules for health coverage under a cafeteria plan and discusses two specific situations in which a cafeteria plan participant is permitted to revoke their election under a cafeteria plan during a period of coverage.

Definition of marriage. A marriage of two individuals is recognized for federal tax purposes if the marriage is recognized by the state, possession, or territory of the United States in which the marriage is entered into, regardless of legal residence. Two individuals who enter into a relationship that is denominated as a marriage under the laws of a foreign jurisdiction are recognized as married for federal tax purposes if the relationship would be recognized as a marriage under the laws of at least one state, possession, or territory of the United States, regardless of legal residence. Individuals who have entered into a registered domestic partnership, civil union, or other similar relationship that isn't denominated as a marriage under the law of the state, possession, or territory of the United States where such relationship was entered into aren't lawfully married for federal tax purposes, regardless of legal residence.

Notice 2014-1 discusses how certain rules for cafeteria plans, including health and dependent care FSAs, and health savings accounts (HSAs) apply to same-sex spouses participating in employee benefit plans. Notice 2014-1, 2014-2 I.R.B. 270, is available at IRS.gov/irb/2014-02_IRB#NOT-2014-1.

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Getting answers to your tax questions. If you have a tax question not answered by this publication, check IRS.gov and How To Get Tax Help at the end of this publication.

Photographs of missing children. The IRS is a proud partner with the National Center for Missing & Exploited Children® (NCMEC). Photographs of missing children selected by the Center may appear in this publication on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling 1-800-THE-LOST (1-800-843-5678) if you recognize a child.

Introduction

This publication supplements Pub. 15, Employer's Tax Guide, and Pub. 15-A, Employer's Supplemental Tax Guide. It contains information for employers on the employment tax treatment of fringe benefits.

Comments and suggestions. We welcome your comments about this publication and your suggestions for future editions.

You can send us comments through IRS.gov/FormComments.

Or you can write to:

Internal Revenue Service
Tax Forms and Publications
1111 Constitution Ave. NW, IR-6526
Washington, DC 20224

Although we can't respond individually to each comment received, we do appreciate your feedback and will consider your comments as we revise our tax forms, instructions, and publications. **Don't** send tax questions, tax returns, or payments to this address.

1. Fringe Benefit Overview

A fringe benefit is a form of pay for the performance of services. For example, you provide an employee with a fringe benefit when you allow the employee to use a business vehicle to commute to and from work.

Performance of services. A person who performs services for you doesn't have to be your employee. A person may perform services for you as an independent contractor, partner, or director. Also, for fringe benefit purposes, treat a person who agrees not to perform services (such as under a covenant not to compete) as performing services.

Provider of benefit. You're the provider of a fringe benefit if it is provided for services performed for you. You're considered the provider of a fringe benefit even if a third party, such as your client or customer, provides the benefit to your employee for services the employee performs for you. For example, if, in exchange for goods or services, your customer provides daycare services as a fringe benefit to your employees for services they provide for you as their employer, then you're the provider of this fringe benefit even though the customer is actually providing the daycare.

Recipient of benefit. The person who performs services for you is considered the recipient of a fringe benefit provided for those services. That person may be considered the recipient even if the benefit is provided to someone who didn't perform services for you. For example, your employee may be the recipient of a fringe benefit you provide to a member of the employee's family.

Are Fringe Benefits Taxable?

Any fringe benefit you provide is taxable and must be included in the recipient's pay unless the law specifically excludes it. Section 2 discusses the exclusions that apply to certain fringe benefits. Any benefit not excluded under the rules discussed in section 2 is taxable.

Including taxable benefits in pay. You must include in a recipient's pay the amount by which the value of a fringe benefit is more than the sum of the following amounts.

- Any amount the law excludes from pay.
- Any amount the recipient paid for the benefit.

The rules used to determine the value of a fringe benefit are discussed in section 3.

If the recipient of a taxable fringe benefit is your employee, the benefit is generally subject to employment taxes and must be reported on Form W-2, Wage and Tax Statement. However, you can use special rules to withhold, deposit, and report the employment taxes. These rules are discussed in section 4.

If the recipient of a taxable fringe benefit isn't your employee, the benefit isn't subject to employment taxes. However, you may have to report the benefit on one of the following information returns.

If the recipient receives the benefit as:	Use:
An independent contractor	Form 1099-NEC, Nonemployee Compensation
A partner	Schedule K-1 (Form 1065), Partner's Share of Income, Deductions, Credits, etc.

For more information, see the instructions for the forms listed above.

Cafeteria Plans

A cafeteria plan, including an FSA, provides participants an opportunity to receive qualified benefits on a pre-tax basis. It is a written plan that allows your employees to choose between receiving cash or taxable benefits, instead of certain qualified benefits for which the law provides an exclusion from wages. If an employee chooses to receive a qualified benefit under the plan, the fact that the employee could have received cash or a taxable benefit instead won't make the qualified benefit taxable.

Generally, a cafeteria plan doesn't include any plan that offers a benefit that defers pay. However, a cafeteria plan can include a qualified 401(k) plan as a benefit. Also, certain life insurance plans maintained by educational institutions can be offered as a benefit even though they defer pay.

Qualified benefits. A cafeteria plan can include the following benefits discussed in section 2.

- Accident and health benefits (but not Archer medical savings accounts (Archer MSAs) or long-term care insurance).
- Adoption assistance.
- Dependent care assistance.
- Group-term life insurance coverage (including costs that can't be excluded from wages).
- HSAs. Distributions from an HSA may be used to pay eligible long-term care insurance premiums or to pay for qualified long-term care services.

Benefits not allowed. A cafeteria plan can't include the following benefits discussed in section 2.

- Archer MSAs. See *Accident and Health Benefits* in section 2.
- Athletic facilities.
- De minimis (minimal) benefits.

- Educational assistance.
- Employee discounts.
- Employer-provided cell phones.
- Lodging on your business premises.
- Meals.
- No-additional-cost services.
- Retirement planning services.
- Transportation (commuting) benefits.
- Tuition reduction.
- Working condition benefits.

It also can't include scholarships or fellowships (discussed in Pub. 970).

Contribution limit on a health FSA. For plan years beginning in 2023, a cafeteria plan may not allow an employee to request salary reduction contributions for a health FSA in excess of $3,050.

A cafeteria plan that doesn't limit health FSA contributions to the dollar limit isn't a cafeteria plan and all benefits offered under the plan are includible in the employee's gross income.

For more information, see Notice 2012-40, 2012-26 I.R.B. 1046, available at *IRS.gov/irb/2012-26_IRB#NOT-2012-40*.

"Use-or-lose" rule for health FSAs. Instead of a grace period, you may, at your option, amend your cafeteria plan to allow an employee's unused contributions to carry over to the immediately following plan year. For more information, see Notice 2013-71, 2013-47 I.R.B. 532, available at *IRS.gov/irb/2013-47_IRB#NOT-2013-71*, and Notice 2020-33, 2020-22 I.R.B. 868, available at *IRS.gov/irb/2020-22_IRB#NOT-2020-33*.

Employee. For these plans, treat the following individuals as employees.

- A current common-law employee. See section 2 in Pub. 15.
- A full-time life insurance agent who is a current statutory employee.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.

Exception for S corporation shareholders. Don't treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder for this purpose is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but don't treat the benefit as a reduction in distributions to the 2% shareholder. For more information, see Revenue Ruling 91-26, 1991-1 C.B. 184.

Plans that favor highly compensated employees. If your plan favors highly compensated employees as to eligibility to participate, contributions, or benefits, you must include in their wages the value of taxable benefits they could have selected. A plan you maintain under a collective bargaining agreement doesn't favor highly compensated employees.

A highly compensated employee for this purpose is any of the following employees.

1. An officer.
2. A shareholder who owns more than 5% of the voting power or value of all classes of the employer's stock.
3. An employee who is highly compensated based on the facts and circumstances.
4. A spouse or dependent of a person described in (1), (2), or (3).

Plans that favor key employees. If your plan favors key employees, you must include in their wages the value of taxable benefits they could have selected. A plan favors key employees if more than 25% of the total of the nontaxable benefits you provide for all employees under the plan go to key employees. However, a plan you maintain under a collective bargaining agreement doesn't favor key employees.

A key employee during 2023 is generally an employee who is either of the following.

1. An officer having annual pay of more than $215,000.
2. An employee who for 2023 is either of the following.
   a. A 5% owner of your business.
   b. A 1% owner of your business whose annual pay is more than $150,000.

Simple Cafeteria Plans for Small Businesses

Eligible employers meeting contribution requirements and eligibility and participation requirements can establish a simple cafeteria plan. Simple cafeteria plans are treated as meeting the nondiscrimination requirements of a cafeteria plan and certain benefits under a cafeteria plan.

Eligible employer. You're an eligible employer if you employed an average of 100 or fewer employees during either of the 2 preceding years. If your business wasn't in existence throughout the preceding year, you're eligible if you reasonably expect to employ an average of 100 or fewer employees in the current year. If you establish a simple cafeteria plan in a year that you employ an average of 100 or fewer employees, you're considered an eligible employer for any subsequent year until the year after you employ an average of 200 or more employees.

Eligibility and participation requirements. These requirements are met if all employees who had at least 1,000 hours of service for the preceding plan year are eligible to participate and each employee eligible to participate in the plan may elect any benefit available under the plan. You may elect to exclude from the plan employees who:

1. Are under age 21 before the close of the plan year,
2. Have less than 1 year of service with you as of any day during the plan year,
3. Are covered under a collective bargaining agreement if there is evidence that the benefits covered under the cafeteria plan were the subject of good-faith bargaining, or
4. Are nonresident aliens working outside the United States whose income didn't come from a U.S. source.

Contribution requirements. You must make a contribution to provide qualified benefits on behalf of each qualified employee in an amount equal to:

1. A uniform percentage (not less than 2%) of the employee's compensation for the plan year; or
2. An amount that is at least 6% of the employee's compensation for the plan year or twice the amount of the salary reduction contributions of each qualified employee, whichever is less.

If the contribution requirements are met using option (2), the rate of contribution to any salary reduction contribution of a highly compensated or key employee can't be greater than the rate of contribution to any other employee.

More information. For more information about cafeteria plans, see section 125 of the Internal Revenue Code and its regulations.

2. Fringe Benefit Exclusion Rules

This section discusses the exclusion rules that apply to fringe benefits. These rules exclude all or part of the value of certain benefits from the recipient's pay.

In most cases, the excluded benefits aren't subject to federal income tax withholding, social security, Medicare, federal unemployment (FUTA) tax, or Railroad Retirement Tax Act (RRTA) taxes and aren't reported on Form W-2.

This section discusses the exclusion rules for the following fringe benefits.

- Accident and health benefits.
- Achievement awards.
- Adoption assistance.
- Athletic facilities.
- De minimis (minimal) benefits.
- Dependent care assistance.
- Educational assistance.
- Employee discounts.
- Employee stock options.
- Employer-provided cell phones.
- Group-term life insurance coverage.
- HSAs.
- Lodging on your business premises.
- Meals.
- No-additional-cost services.
- Retirement planning services.
- Transportation (commuting) benefits.
- Tuition reduction.
- Working condition benefits.

See Table 2-1 for an overview of the employment tax treatment of these benefits.

Accident and Health Benefits

This exclusion applies to contributions you make to an accident or health plan for an employee, including the following.

- Contributions to the cost of accident or health insurance including qualified long-term care insurance.
- Contributions to a separate trust or fund that directly or through insurance provides accident or health benefits.
- Contributions to Archer MSAs or HSAs (discussed in Pub. 969).

This exclusion also applies to payments you directly or indirectly make to an employee under an accident or health plan for employees that are either of the following.

- Payments or reimbursements of medical expenses.
- Payments for specific permanent injuries (such as the loss of the use of an arm or leg). The payments must be figured without regard to the period the employee is absent from work.

Accident or health plan. This is an arrangement that provides benefits for your employees, their spouses, their dependents, and their children (under age 27 at the end of the tax year) in the event of personal injury or sickness. The plan may be insured or noninsured and doesn't need to be in writing.

Employee. For this exclusion, treat the following individuals as employees.

- A current common-law employee.
- A full-time life insurance agent who is a current statutory employee.
- A retired employee.
- A former employee you maintain coverage for based on the employment relationship.
- A widow or widower of an individual who died while an employee.
- A widow or widower of a retired employee.

Table 2-1. Special Rules for Various Types of Fringe Benefits

(For more information, see the full discussion in this section.)

	Treatment Under Employment Taxes		
Type of Fringe Benefit	**Income Tax Withholding**	**Social Security and Medicare (including Additional Medicare Tax when wages are paid in excess of $200,000)[1]**	**Federal Unemployment (FUTA)**
Accident and health benefits	Exempt,[2] except for long-term care benefits provided through a flexible spending or similar arrangement.	Exempt, except for certain payments to S corporation employees who are 2% shareholders.	Exempt
Achievement awards	Exempt[2] up to $1,600 for qualified plan awards ($400 for nonqualified awards).		
Adoption assistance	Exempt[2,3]	Taxable	Taxable
Athletic facilities	Exempt if substantially all use during the calendar year is by employees, their spouses, and their dependent children, and the facility is operated by the employer on premises owned or leased by the employer.		
De minimis (minimal) benefits	Exempt	Exempt	Exempt
Dependent care assistance	Exempt[3] up to certain limits, $5,000 ($2,500 for married employee filing separate return).		
Educational assistance	Exempt up to $5,250 of benefits each year. (See Educational Assistance, later in this section.)		
Employee discounts	Exempt[3] up to certain limits. (See Employee Discounts, later in this section.)		
Employee stock options	See Employee Stock Options, later in this section.		
Employer-provided cell phones	Exempt if provided primarily for noncompensatory business purposes.		
Group-term life insurance coverage	Exempt	Exempt[2,4,6] up to cost of $50,000 of coverage. (Special rules apply to former employees.)	Exempt
Health savings accounts (HSAs)	Exempt for qualified individuals up to the HSA contribution limits. (See Health Savings Accounts, later in this section.)		
Lodging on your business premises	Exempt[2] if furnished on your business premises, for your convenience, and as a condition of employment.		
Meals	Exempt[2] if furnished on your business premises for your convenience.		
	Exempt if de minimis.		
No-additional-cost services	Exempt[3]	Exempt[3]	Exempt[3]
Retirement planning services	Exempt[5]	Exempt[5]	Exempt[5]
Transportation (commuting) benefits	Exempt[2] up to certain limits if for rides in a commuter highway vehicle and/or transit passes ($300) or qualified parking ($300). (See Transportation (Commuting) Benefits, later in this section.)		
	Exempt if de minimis.		
Tuition reduction	Exempt[3] if for undergraduate education (or graduate education if the employee performs teaching or research activities).		
Working condition benefits	Exempt	Exempt	Exempt

[1] Or other railroad retirement taxes, if applicable.

[2] Exemption doesn't apply to S corporation employees who are 2% shareholders.

[3] Exemption doesn't apply to certain highly compensated employees under a program that favors those employees.

[4] Exemption doesn't apply to certain key employees under a plan that favors those employees.

[5] Exemption doesn't apply to services for tax preparation, accounting, legal, or brokerage services.

[6] You must include in your employee's wages the cost of group-term life insurance beyond $50,000 worth of coverage, reduced by the amount the employee paid toward the insurance. Report it as wages in boxes 1, 3, and 5 of the employee's Form W-2. Also, show it in box 12 with code "C." The amount is subject to social security and Medicare taxes, and you may, at your option, withhold federal income tax.

- For the exclusion of contributions to an accident or health plan, a leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.

Special rule for certain government plans. For certain government accident and health plans, payments to a deceased employee's beneficiary may qualify for the exclusion from gross income if the other requirements for exclusion are met. See section 105(j) for details.

Exception for S corporation shareholders. Don't treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but don't treat the benefit as a reduction in distributions to the 2% shareholder. For more information, see Revenue Ruling 91-26, 1991-1 C.B. 184.

Exclusion from wages. You can generally exclude the value of accident or health benefits you provide to an employee from the employee's wages.

Exception for certain long-term care benefits. You can't exclude contributions to the cost of long-term care insurance from an employee's wages subject to federal income tax withholding if the coverage is provided through a flexible spending or similar arrangement. This is a benefit program that reimburses specified expenses up to a maximum amount that is reasonably available to the employee and is less than five times the total cost of the insurance. However, you can exclude these contributions from the employee's wages subject to social security, Medicare, and FUTA taxes.

S corporation shareholders. Because you can't treat a 2% shareholder of an S corporation as an employee for this exclusion, you must include the value of accident or health benefits you provide to the employee in the employee's wages subject to federal income tax withholding. However, you can exclude the value of these benefits (other than payments for specific injuries or illnesses not made under a plan set up to benefit all employees or certain groups of employees) from the employee's wages subject to social security, Medicare, and FUTA taxes. See Announcement 92-16 for more information. You can find Announcement 92-16 on page 53 of Internal Revenue Bulletin 1992-5.

Exception for highly compensated employees. If your plan is a self-insured medical reimbursement plan that favors highly compensated employees, you must include all or part of the amounts you pay to these employees in box 1 of Form W-2. However, you can exclude these amounts (other than payments for specific injuries or illnesses not made under a plan set up to benefit all employees or certain groups of employees) from the employee's wages subject to income tax withholding and social security, Medicare, and FUTA taxes.

A self-insured plan is a plan that reimburses your employees for medical expenses not covered by an accident or health insurance policy.

A highly compensated employee for this exception is any of the following individuals.

- One of the five highest paid officers.
- An employee who owns (directly or indirectly) more than 10% in value of the employer's stock.
- An employee who is among the highest paid 25% of all employees (other than those who can be excluded from the plan).

For more information on this exception, see section 105(h) of the Internal Revenue Code and its regulations.

COBRA premiums. The exclusion for accident and health benefits applies to amounts you pay to maintain medical coverage for a current or former employee under the Combined Omnibus Budget Reconciliation Act of 1986 (COBRA). The exclusion applies regardless of the length of employment, whether you directly pay the premiums or reimburse the former employee for premiums paid, and whether the employee's separation is permanent or temporary.

Qualified small employer health reimbursement arrangements (QSEHRAs). QSEHRAs allow eligible small employers to pay or reimburse medical care expenses, including health insurance premiums, of eligible employees and their family members. A QSEHRA isn't a group health plan, and, therefore, isn't subject to group health plan requirements. Generally, payments from a QSEHRA to reimburse an eligible employee's medical expenses aren't includible in the employee's gross income if the employee has coverage that provides minimum essential coverage, as defined in section 5000A(f) of the Internal Revenue Code.

A QSEHRA is an arrangement that meets all the following requirements.

1. The arrangement is funded solely by you, and no salary reduction contributions may be made under the arrangement.
2. The arrangement provides, after the eligible employee provides proof of coverage, for the payment or reimbursement of the medical expenses incurred by the employee or the employee's family members.
3. The amount of payments and reimbursements doesn't exceed $5,850 ($11,800, for family coverage) for 2023.
4. The arrangement is generally provided on the same terms to all your eligible employees. However, your QSEHRA may exclude employees who haven't completed 90 days of service, employees who haven't attained age 25 before the beginning of the plan year, part-time or seasonal employees, employees covered by a collective bargaining agreement if health benefits were the subject of good-faith bargaining, and employees who are nonresident aliens with no earned income from sources within the United States.

Eligible employer. To be an eligible employer, you must not be an applicable large employer, which is defined as an employer that generally employed at least 50 full-time employees, including full-time equivalent employees, in the prior calendar year. You must also not offer a group health plan (including a health reimbursement arrangement (HRA) or a health FSA) to any of your employees. For more information about the Affordable Care Act and group health plan requirements, go to *IRS.gov/ACA*. For more information about QSEHRAs, including information about the requirement to give a written notice to each eligible employee, see Notice 2017-67, 2017-47 I.R.B. 517, available at *IRS.gov/irb/2017-47_IRB#NOT-2017-67*.

Reporting requirements. You must report in box 12 of Form W-2 using code "FF" the amount of payments and reimbursements that your employee is entitled to receive from the QSEHRA for the calendar year without regard to the amount of payments or reimbursements actually received. For example, if your QSEHRA provides a permitted benefit of $3,000 and your employee receives reimbursements of $2,000, on Form W-2, you would report a permitted benefit of $3,000 in box 12 using code "FF."

Achievement Awards

This exclusion applies to the value of any tangible personal property you give to an employee as an award for either length of service or safety achievement. The exclusion doesn't apply to awards of cash, cash equivalents, gift cards, gift coupons, or gift certificates (other than arrangements granting only the right to select and receive tangible personal property from a limited assortment of items preselected or preapproved by you). The exclusion also doesn't apply to vacations, meals, lodging, tickets to theater or sporting events, stocks, bonds, other securities, and other similar items. The award must meet the requirements for employee achievement awards discussed in chapter 2 of Pub. 535.

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A former common-law employee you maintain coverage for in consideration of or based on an agreement relating to prior service as an employee.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.

Exception for S corporation shareholders. Don't treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but don't treat the benefit as a reduction in distributions to the 2% shareholder. For more information, see Revenue Ruling 91-26, 1991-1 C.B. 184.

Exclusion from wages. You can generally exclude the value of achievement awards you give to an employee from the employee's wages if their cost isn't more than the amount you can deduct as a business expense for the year. The excludable annual amount is $1,600 ($400 for awards that aren't "qualified plan awards"). See chapter 2 of Pub. 535 for more information about the limit on deductions for employee achievement awards.

CAUTION *To determine for 2023 whether an achievement award is a "qualified plan award" under the deduction rules described in Pub. 535, treat any employee who received more than $135,000 in pay for 2022 as a highly compensated employee.*

If the cost of awards given to an employee is more than your allowable deduction, include in the employee's wages the larger of the following amounts.

- The part of the cost that is more than your allowable deduction (up to the value of the awards).
- The amount by which the value of the awards exceeds your allowable deduction.

Exclude the remaining value of the awards from the employee's wages.

Adoption Assistance

An adoption assistance program is a separate written plan of an employer that meets all of the following requirements.

1. It benefits employees who qualify under rules set up by you, which don't favor highly compensated employees or their dependents. To determine whether your plan meets this test, don't consider employees excluded from your plan who are covered by a collective bargaining agreement if there is evidence that adoption assistance was a subject of good-faith bargaining.
2. It doesn't pay more than 5% of its payments during the year for shareholders or owners (or their spouses or dependents). A shareholder or owner is someone who owns (on any day of the year) more than 5% of the stock or of the capital or profits interest of your business.
3. You give reasonable notice of the plan to eligible employees.
4. Employees provide reasonable substantiation that payments or reimbursements are for qualifying expenses.

For this exclusion, a highly compensated employee for 2023 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than $135,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee wasn't also in the top 20% of employees when ranked by pay for the preceding year.

You must exclude all payments or reimbursements you make under an adoption assistance program for an employee's qualified adoption expenses from the employee's wages subject to federal income tax withholding. However, you can't exclude these payments from wages subject to social security, Medicare, and FUTA taxes.

You must report all qualifying adoption expenses you paid or reimbursed under your adoption assistance program for each employee for the year in box 12 of the employee's Form W-2. Report all amounts including those in excess of the $15,950 exclusion for 2023. Use code "T" to identify this amount.

Exception for S corporation shareholders. For this exclusion, don't treat a 2% shareholder of an S corporation as an employee of the corporation. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but don't treat the benefit as a reduction in distributions to the 2% shareholder. For more information, see Revenue Ruling 91-26, 1991-1 C.B. 184.

More information. For more information on adoption benefits, see Notice 97-9, which is on page 35 of Internal Revenue Bulletin 1997-2 at *IRS.gov/pub/irs-irbs/irb97-02.pdf*. Advise your employees to see the Instructions for Form 8839.

Athletic Facilities

You can exclude the value of an employee's use of an on-premises gym or other athletic facility you operate from an employee's wages if substantially all use of the facility during the calendar year is by your employees, their spouses, and their dependent children. For this purpose, an employee's dependent child is a child or stepchild who is the employee's dependent or who, if both parents are deceased, hasn't attained the age of 25. The exclusion doesn't apply to any athletic facility if access to the facility is made available to the general public through the sale of memberships, the rental of the facility, or a similar arrangement.

On-premises facility. The athletic facility must be located on premises you own or lease and must be operated by you. It doesn't have to be located on your business premises. However, the exclusion doesn't apply to an athletic facility that is a facility for residential use, such as athletic facilities that are part of a resort.

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A former employee who retired or left on disability.
- A widow or widower of an individual who died while an employee.
- A widow or widower of a former employee who retired or left on disability.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.
- A partner who performs services for a partnership.

De Minimis (Minimal) Benefits

You can exclude the value of a de minimis benefit you provide to an employee from the employee's wages. A de minimis benefit is any property or service you provide to an employee that has so little value (taking into account how frequently you provide similar benefits to your employees) that accounting for it would be unreasonable or administratively impracticable. Cash and cash equivalent fringe benefits (for example, gift certificates, gift cards, and the use of a charge card or credit card), no matter how little, are never excludable as a de minimis benefit. However, meal money and local transportation fare, if provided on an occasional basis and because of overtime work, may be excluded, as discussed later.

Examples of de minimis benefits include the following.

- Personal use of an employer-provided cell phone provided primarily for noncompensatory business purposes. See *Employer-Provided Cell Phones*, later in this section, for details.
- Occasional personal use of a company copying machine if you sufficiently control its use so that at least 85% of its use is for business purposes.
- Holiday or birthday gifts, other than cash, with a low fair market value. Also, flowers or fruit or similar items provided to employees under special circumstances (for example, on account of illness, a family crisis, or outstanding performance).
- Group-term life insurance payable on the death of an employee's spouse or dependent if the face amount isn't more than $2,000.
- Certain meals. See *Meals*, later in this section, for details.
- Occasional parties or picnics for employees and their guests.
- Occasional tickets for theater or sporting events.
- Certain transportation fare. See *Transportation (Commuting) Benefits*, later in this section, for details.

Some examples of benefits that aren’t excludable as de minimis fringe benefits are season tickets to sporting or theatrical events; the commuting use of an employer-provided automobile or other vehicle more than 1 day a month; membership in a private country club or athletic facility, regardless of the frequency with which the employee uses the facility; and use of employer-owned or leased facilities (such as an apartment, hunting lodge, boat, etc.) for a weekend. If a benefit provided to an employee doesn't qualify as de minimis (for example, the frequency exceeds a limit described earlier), then generally the entire benefit must be included in income.

Employee. For this exclusion, treat any recipient of a de minimis benefit as an employee.

Dependent Care Assistance

This exclusion applies to household and dependent care services you directly or indirectly pay for or provide to an employee under a written dependent care assistance program (DCAP) that covers only your employees. The services must be for a qualifying person's care and must be provided to allow the employee to work. These requirements are basically the same as the tests the employee would have to meet to claim the dependent care credit if the employee paid for the services. For more information, see *Can You Claim the Credit?* in Pub. 503.

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.
- Yourself (if you're a sole proprietor).
- A partner who performs services for a partnership.

Exclusion from wages. You can exclude the value of benefits you provide to an employee under a DCAP from the employee's wages if you reasonably believe that the employee can exclude the benefits from gross income.

An employee can generally exclude from gross income up to $5,000 ($2,500 if married filing separately) of benefits received under a DCAP each year.

However, the exclusion can't be more than the smaller of the earned income of either the employee or employee's spouse. Special rules apply to determine the earned income of a spouse who is either a student or not able to care for themselves. For more information on the earned income limit, see Pub. 503.

Exception for highly compensated employees. You can't exclude dependent care assistance from the wages of a highly compensated employee unless the benefits provided under the program don't favor highly compensated employees and the program meets the requirements described in section 129(d) of the Internal Revenue Code.

For this exclusion, a highly compensated employee for 2023 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than $135,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee wasn't also in the top 20% of employees when ranked by pay for the preceding year.

Form W-2. Report the value of all dependent care assistance you provide to an employee under a DCAP in box 10 of the employee's Form W-2. Include any amounts you can't exclude from the employee's wages in boxes 1, 3, and 5. Report in box 10 both the nontaxable portion of assistance (up to $5,000) and any assistance above that amount that is taxable to the employee.

Example. Oak Co. provides a dependent care assistance FSA to its employees through a cafeteria plan. In addition, it provides occasional on-site dependent care to its employees at no cost. Emily, an employee of Oak Co., had $4,500 deducted from Emily's pay for the dependent care FSA. In addition, Emily used the on-site dependent care several times. The fair market value of the on-site care was $700. Emily's Form W-2 should report $5,200 of dependent care assistance in box 10 ($4,500 FSA plus $700 on-site dependent care). Boxes 1, 3, and 5 should include $200 (the amount in excess of the nontaxable assistance), and applicable taxes should be withheld on that amount.

Educational Assistance

This exclusion applies to educational assistance you provide to employees under an educational assistance program. The exclusion also applies to graduate-level courses.

Educational assistance means amounts you pay or incur for your employees' education expenses. These expenses generally include the cost of books, equipment, fees, supplies, and tuition. However, these expenses don't include the cost of a course or other education involving sports, games, or hobbies, unless the education:

- Has a reasonable relationship to your business, or
- Is required as part of a degree program.

Education expenses don't include the cost of tools or supplies (other than textbooks) your employee is allowed to keep at the end of the course. Nor do they include the cost of lodging, meals, or transportation. Your employee must be able to provide substantiation to you that the educational assistance provided was used for qualifying education expenses.

Exclusion for employer payments of student loans. Employer-provided educational assistance benefits include payments made after March 27, 2020, and before January 1, 2026, whether paid to the employee or to a lender, of principal or interest on any qualified education loan incurred by the employee for education of the employee. Qualified education loans are defined in chapter 10 of Pub. 970.

Educational assistance program. An educational assistance program is a separate written plan that provides educational assistance only to your employees. The program qualifies only if all of the following tests are met.

- The program benefits employees who qualify under rules set up by you that don't favor highly compensated employees. To determine whether your program meets this test, don't consider employees excluded from your program who are covered by a collective bargaining agreement if there is evidence that educational assistance was a subject of good-faith bargaining.
- The program doesn't provide more than 5% of its benefits during the year for shareholders or owners (or their spouses or dependents). A shareholder or owner is someone who owns (on any day of the year) more than 5% of the stock or of the capital or profits interest of your business.
- The program doesn't allow employees to choose to receive cash or other benefits that must be included in gross income instead of educational assistance.
- You give reasonable notice of the program to eligible employees.

Your program can cover former employees if their employment is the reason for the coverage.

For this exclusion, a highly compensated employee for 2023 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than $135,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee wasn't also in the top 20% of employees when ranked by pay for the preceding year.

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A former employee who retired, left on disability, or was laid off.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.
- Yourself (if you're a sole proprietor).
- A partner who performs services for a partnership.

Exclusion from wages. You can exclude up to $5,250 of educational assistance you provide to an employee under an educational assistance program from the employee's wages each year.

Assistance over $5,250. If you don't have an educational assistance plan, or you provide an employee with assistance exceeding $5,250, you must include the value of these benefits as wages, unless the benefits are working condition benefits. Working condition benefits may be excluded from wages. Property or a service provided is a working condition benefit to the extent that if the employee paid for it, the amount paid would have been allowable as a business or depreciation expense. See Working Condition Benefits, later in this section.

Employee Discounts

This exclusion applies to a price reduction you give your employee on property or services you offer to customers in the ordinary course of the line of business in which the employee performs substantial services. It applies whether the property or service is provided at no charge (in which case only part of the discount may be excludable as a qualified employee discount) or at a reduced price. It also applies if the benefit is provided through a partial or total cash rebate.

The benefit may be provided either directly by you or indirectly through a third party. For example, an employee of an appliance manufacturer may receive a qualified employee discount on the manufacturer's appliances purchased at a retail store that offers the appliances for sale to customers.

Employee discounts don't apply to discounts on real property or discounts on personal property of a kind commonly held for investment (such as stocks or bonds). They also don't include discounts on a line of business of the employer for which the employee doesn't provide substantial services, or discounts on property or services of a kind that aren't offered for sale to customers. Therefore, discounts on items sold in an employee store that aren't sold to customers aren't excluded from employee income. Also, employee discounts provided by another employer through a reciprocal agreement aren't excluded.

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A former employee who retired or left on disability.
- A widow or widower of an individual who died while an employee.
- A widow or widower of an employee who retired or left on disability.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.
- A partner who performs services for a partnership.

Treat discounts you provide to the spouse or dependent child of an employee as provided to the employee. For this fringe benefit, dependent child is a child or stepchild who is the employee's dependent or who, if both parents are deceased, hasn't attained the age of 25. Treat a child of divorced parents as a dependent of both parents.

Exclusion from wages. You can generally exclude the value of an employee discount you provide an employee from the employee's wages, up to the following limits.

- For a discount on services, 20% of the price you charge nonemployee customers for the service.
- For a discount on merchandise or other property, your gross profit percentage times the price you charge nonemployee customers for the property.

Generally, determine your gross profit percentage in the line of business based on all property you offer to customers (including employee customers) and your experience during the tax year immediately before the tax year in which the discount is available. To figure your gross profit percentage, subtract the total cost of the property from the total sales price of the property and divide the result by the total sales price of the property. Employers that are in their first year of existence may estimate their gross profit percentage based on its mark-up from cost or refer to an appropriate industry average. If substantial changes in an employer's business indicate at any time that it is inappropriate for the prior year's gross profit percentage to be used for the current year, the employer must, within a reasonable period, redetermine the gross profit percentage for the remaining portion of the current year as if such portion of the year were the first year of the employer's existence.

Exception for highly compensated employees. You can't exclude from the wages of a highly compensated employee any part of the value of a discount that isn't available on the same terms to one of the following groups.

- All of your employees.
- A group of employees defined under a reasonable classification you set up that doesn't favor highly compensated employees.

For this exclusion, a highly compensated employee for 2023 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than $135,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee wasn't also in the top 20% of employees when ranked by pay for the preceding year.

Employee Stock Options

There are three kinds of stock options—incentive stock options, employee stock purchase plan options, and nonstatutory (nonqualified) stock options.

Wages for social security, Medicare, and FUTA taxes don't include remuneration resulting from the exercise of an incentive stock option or an employee stock purchase plan option, or from any disposition of stock acquired by exercising such an option.

Additionally, federal income tax withholding isn't required on the income resulting from a disqualifying disposition of stock acquired by the exercise of an incentive stock option or an employee stock purchase plan option, or on income equal to the discount portion of stock acquired by the exercise of an employee stock purchase plan option resulting from any qualifying disposition of the stock. The employer must report as income in box 1 of Form W-2 (a) the discount portion of stock acquired by the exercise of an employee stock purchase plan option upon a qualifying disposition of the stock, and (b) the spread (between the exercise price and the fair market value of the stock at the time of exercise) upon a disqualifying disposition of stock acquired by the exercise of an incentive stock option or an employee stock purchase plan option.

An employer must report the excess of the fair market value of stock received upon exercise of a nonstatutory stock option over the amount paid for the stock option on Form W-2 in boxes 1, 3 (up to the social security wage base), and 5, and in box 12 using the code "V." See Regulations section 1.83-7.

An employee who transfers their interest in nonstatutory stock options to the employee's former spouse incident to a divorce isn't required to include an amount in gross income upon the transfer. The former spouse, rather than the employee, is required to include an amount in gross income when the former spouse exercises the stock options. See Revenue Ruling 2002-22 and Revenue Ruling 2004-60 for details. You can find Revenue Ruling 2002-22 on page 849 of Internal Revenue Bulletin 2002-19 at *IRS.gov/pub/irs-irbs/irb02-19.pdf*. Revenue Ruling 2004-60, 2004-24 I.R.B. 1051, is available at *IRS.gov/irb/2004-24_IRB#RR-2004-60*.

Employee stock options aren't subject to Railroad Retirement Tax. In *Wisconsin Central Ltd.* v. *United States*, 138 S. Ct. 2067, the U. S. Supreme Court ruled that employee stock options (whether statutory or nonstatutory) aren't "money remuneration" subject to the Railroad Retirement Tax Act (RRTA). If you're a railroad employer, don't withhold Tier 1 and Tier 2 taxes on compensation from railroad employees covered by the RRTA exercising such options. You must still withhold federal income tax on taxable compensation from railroad employees exercising their options.

Section 83(i) election to defer income on equity grants. Under section 83(i) of the Internal Revenue Code, qualified employees who are granted stock options or restricted stock units (RSUs) and who later receive stock upon exercise of the option or upon settlement of the RSU (qualified stock) may elect to defer the recognition of income for up to 5 years if the corporation's stock wasn't readily tradable on an established securities market during any prior calendar year, if the corporation has a written plan under which not less than 80% of all U.S. employees are granted options or RSUs with the same rights and privileges to receive qualified stock, and if certain other requirements are met. An election under section 83(i) applies only for federal income tax purposes. The election has no effect on the application of social security, Medicare, and unemployment taxes. For federal income tax purposes, the employer must withhold federal income tax at 37% in the tax year that the amount deferred is included in the employee's income. If a section 83(i) election is made for an option exercise, that option will not be considered an incentive stock option or an option granted pursuant to an employee stock purchase plan. These rules apply to stock attributable to options exercised, or RSUs settled, after December 31, 2017. For more information, see section 83(i) and Notice 2018-97, 2018-52 I.R.B. 1062, available at *IRS.gov/irb/2018-52_IRB#NOT-2018-97*.

Reporting requirements. For each employee, you must report in box 12 of Form W-2 using code "GG" the amount included in income in the calendar year from qualified equity grants under section 83(i). You must also report in box 12 using code "HH" the total amount of income deferred under section 83(i) determined as of the close of the calendar year.

More information. For more information about employee stock options, see sections 83, 421, 422, and 423 of the Internal Revenue Code and their related regulations.

Employer-Provided Cell Phones

The value of the business use of an employer-provided cell phone, provided primarily for noncompensatory business reasons, is excludable from an employee's income as a working condition fringe benefit. Personal use of an employer-provided cell phone, provided primarily for noncompensatory business reasons, is excludable from an employee's income as a de minimis fringe benefit. The term “cell phone” also includes other similar telecommunications equipment. For the rules relating to these types of benefits, see De Minimis (Minimal) Benefits, earlier in this section, and Working Condition Benefits, later in this section.

Noncompensatory business purposes. You provide a cell phone primarily for noncompensatory business purposes if there are substantial business reasons for providing the cell phone. Examples of substantial business reasons include the employer's:

- Need to contact the employee at all times for work-related emergencies,
- Requirement that the employee be available to speak with clients at times when the employee is away from the office, and
- Need to speak with clients located in other time zones at times outside the employee's normal workday.

Cell phones provided to promote goodwill, boost morale, or attract prospective employees. You can't exclude from an employee's wages the value of a cell phone provided to promote goodwill of an employee, to attract a prospective employee, or as a means of providing additional compensation to an employee.

Additional information. For additional information on the tax treatment of employer-provided cell phones, see Notice 2011-72, 2011-38 I.R.B. 407, available at *IRS.gov/irb/2011-38_IRB#NOT-2011-72*.

Group-Term Life Insurance Coverage

This exclusion applies to life insurance coverage that meets all the following conditions.

- It provides a general death benefit that isn't included in income.
- You provide it to a group of employees. See The 10-employee rule, later.
- It provides an amount of insurance to each employee based on a formula that prevents individual selection. This formula must use factors such as the employee's age, years of service, pay, or position.
- You provide it under a policy you directly or indirectly carry. Even if you don't pay any of the policy's cost, you’re considered to carry it if you arrange for payment of its cost by your employees and charge at least one employee less than, and at least one other employee more than, the cost of their insurance. Determine the cost of the insurance, for this purpose, as explained under Coverage over the limit, later.

Group-term life insurance doesn't include the following insurance.

- Insurance that doesn't provide general death benefits, such as travel insurance or a policy providing only accidental death benefits.
- Life insurance on the life of your employee's spouse or dependent. However, you may be able to exclude the cost of this insurance from the employee's wages as a de minimis benefit. See De Minimis (Minimal) Benefits, earlier in this section.
- Insurance provided under a policy that provides a permanent benefit (an economic value that extends beyond 1 policy year, such as paid-up or cash-surrender value), unless certain requirements are met. See Regulations section 1.79-1 for details.

Employee. For this exclusion, treat the following individuals as employees.

1. A current common-law employee.
2. A full-time life insurance agent who is a current statutory employee.
3. An individual who was formerly your employee under (1) or (2).
4. A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction and control.

Exception for S corporation shareholders. Don't treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but don't treat the benefit as a reduction in distributions to the 2% shareholder. For more information, see Revenue Ruling 91-26, 1991-1 C.B. 184.

The 10-employee rule. Generally, life insurance isn't group-term life insurance unless you provide it at some time during the calendar year to at least 10 full-time employees.

For this rule and the first exception discussed next, count employees who choose not to receive the insurance as if they do receive insurance, unless, to receive it, they must contribute to the cost of benefits other than the group-term life insurance. For example, count an employee who could receive insurance by paying part of the cost, even if that employee chooses not to receive it. However, don't count an employee who chooses not to receive insurance if the employee must pay part or all of the cost of permanent benefits in order to obtain group-term life insurance. A permanent benefit is an economic value extending beyond 1 policy year (for example, a paid-up or cash-surrender value) that is provided under a life insurance policy.

Exceptions. Even if you don't meet the 10-employee rule, two exceptions allow you to treat insurance as group-term life insurance.

Under the first exception, you don't have to meet the 10-employee rule if all the following conditions are met.

1. If evidence that the employee is insurable is required, it is limited to a medical questionnaire (completed by the employee) that doesn't require a physical.
2. You provide the insurance to all your full-time employees or, if the insurer requires the evidence mentioned in (1), to all full-time employees who provide evidence the insurer accepts.
3. You figure the coverage based on either a uniform percentage of pay or the insurer's coverage brackets that meet certain requirements. See Regulations section 1.79-1 for details.

Under the second exception, you don't have to meet the 10-employee rule if all the following conditions are met.

- You provide the insurance under a common plan covering your employees and the employees of at least one other employer who isn't related to you.
- The insurance is restricted to, but mandatory for, all your employees who belong to, or are represented by, an organization (such as a union) that carries on substantial activities besides obtaining insurance.
- Evidence of whether an employee is insurable doesn't affect an employee's eligibility for insurance or the amount of insurance that employee gets.

To apply either exception, don't consider employees who were denied insurance for any of the following reasons.

- They were 65 or older.
- They customarily work 20 hours or less a week or 5 months or less in a calendar year.
- They haven't been employed for the waiting period given in the policy. This waiting period can't be more than 6 months.

Exclusion from wages. You can generally exclude the cost of up to $50,000 of group-term life insurance coverage from the wages of an insured employee. You can exclude the same amount from the employee's wages when figuring social security and Medicare taxes. In addition, you don't have to withhold federal income tax or pay FUTA tax on any group-term life insurance you provide to an employee.

Coverage over the limit. You must include in your employee's wages the cost of group-term life insurance beyond $50,000 worth of coverage, reduced by the amount the employee paid toward the insurance. Report it as wages in boxes 1, 3, and 5 of the employee's Form W-2. Also, show it in box 12 with code “C.” The amount is subject to social security and Medicare taxes, and you may, at your option, withhold federal income tax.

Figure the monthly cost of the insurance to include in the employee's wages by multiplying the number of thousands of dollars of all insurance coverage over $50,000 (figured to the nearest $100) by the cost shown in Table 2-2. For all coverage provided within the calendar year, use the employee's age on the last day of the employee's tax year. You must prorate the cost from the table if less than a full month of coverage is involved.

Table 2-2. Cost Per $1,000 of Protection for 1 Month

Age	Cost
Under 25	$ 0.05
25 through 29	0.06
30 through 34	0.08
35 through 39	0.09
40 through 44	0.10
45 through 49	0.15
50 through 54	0.23
55 through 59	0.43
60 through 64	0.66
65 through 69	1.27
70 and older	2.06

You figure the total cost to include in the employee's wages by multiplying the monthly cost by the number of months' coverage at that cost.

Example. Tom's employer provides Tom with group-term life insurance coverage of $200,000. Tom is 45 years old, isn't a key employee, and pays $100 per year toward the cost of the insurance. Tom's employer must include $170 in Tom’s wages. The $200,000 of insurance coverage is reduced by $50,000. The yearly cost of $150,000 of coverage is $270 ($0.15 x 150 x 12), and is reduced by the $100 Tom pays for the insurance. The employer includes $170 in boxes 1, 3, and 5 of Tom's Form W-2. The employer also enters $170 in box 12 with code “C.”

Coverage for dependents. Group-term life insurance coverage paid by the employer for the spouse or dependents of an employee may be excludable from income as a de minimis fringe benefit if the face amount isn't more than $2,000. If the face amount is greater than $2,000, the dependent coverage may be excludable from income as a de minimis fringe benefit if the excess (if any) of the cost of insurance over the amount the employee paid for it on an after-tax basis is so small that accounting for it is unreasonable or administratively impracticable.

Former employees. When group-term life insurance over $50,000 is provided to an employee (including retirees) after their termination, the employee share of social security and Medicare taxes on that period of coverage is paid by the former employee with their tax return and isn't collected by the employer. You’re not required to collect those taxes. You must, however, pay the employer share of social security and Medicare taxes. Use the Table 2-2, earlier, to determine the amount of additional income that is subject to social security and Medicare taxes for coverage provided after separation from service. Report the uncollected amounts separately in box 12 of Form W-2 using codes “M” and “N.” See the General Instructions for Forms W-2 and W-3 and the instructions for your employment tax return.

Exception for key employees. Generally, if your group-term life insurance plan favors key employees as to participation or benefits, you must include the entire cost of the insurance in your key employees' wages. This exception generally doesn't apply to church plans. When figuring social security and Medicare taxes, you must also include the entire cost in the employees' wages. Include the cost in boxes 1, 3, and 5 of Form W-2. However, you don't have to withhold federal income tax or pay FUTA tax on the cost of any group-term life insurance you provide to an employee.

For this purpose, the cost of the insurance is the greater of the following amounts.

- The premiums you pay for the employee's insurance. See Regulations section 1.79-4T(Q&A 6) for more information.
- The cost you figure using Table 2-2.

For this exclusion, a key employee during 2023 is an employee or former employee who is one of the following individuals. See section 416(i) of the Internal Revenue Code for more information.

1. An officer having annual pay of more than $215,000.
2. An individual who for 2023 is either of the following.
   a. A 5% owner of your business.
   b. A 1% owner of your business whose annual pay is more than $150,000.

A former employee who was a key employee upon retirement or separation from service is also a key employee.

Your plan doesn't favor key employees as to participation if at least one of the following is true.

- It benefits at least 70% of your employees.
- At least 85% of the participating employees aren't key employees.
- It benefits employees who qualify under a set of rules you set up that don't favor key employees.

Your plan meets this participation test if it is part of a cafeteria plan (discussed earlier in section 1) and it meets the participation test for those plans.

When applying this test, don't consider employees who:

- Have not completed 3 years of service;
- Are part time or seasonal;
- Are nonresident aliens who receive no U.S. source earned income from you; or
- Aren’t included in the plan but are in a unit of employees covered by a collective bargaining agreement, if the benefits provided under the plan were the subject of good-faith bargaining between you and employee representatives.

Your plan doesn't favor key employees as to benefits if all benefits available to participating key employees are also available to all other participating employees. Your plan doesn't favor key employees just because the amount of insurance you provide to your employees is uniformly related to their pay.

S corporation shareholders. Because you can't treat a 2% shareholder of an S corporation as an employee for this exclusion, you must include the cost of all group-term life insurance coverage you provide the 2% shareholder in their wages. When figuring social security and Medicare taxes, you must also include the cost of this coverage in the 2% shareholder's wages. Include the cost in boxes 1, 3, and 5 of Form W-2. However, you don't have to withhold federal income tax or pay FUTA tax on the cost of any group-term life insurance coverage you provide to the 2% shareholder.

Health Savings Accounts

A health savings account (HSA) is an account owned by a qualified individual who is generally your employee or former employee. Any contributions that you make to an HSA become the employee's property and can't be withdrawn by you. Contributions to the account are used to pay current or future medical expenses of the account owner, their spouse, and any qualified dependent. The medical expenses must not be reimbursable by insurance or other sources and their payment from HSA funds (distribution) won't give rise to a medical expense deduction on the individual's federal income tax return.

Eligibility. A qualified individual must be covered by a High Deductible Health Plan (HDHP) and not be covered by other health insurance except for permitted insurance listed under section 223(c)(3) or insurance for accidents, disability, dental care, vision care, long-term care, or (in the case of months beginning after March 31, 2022, and before January 1, 2023, and plan years beginning on or before December 31, 2021, or after December 31, 2022, and before January 1, 2025) telehealth and other remote care. For calendar year 2023, a qualifying HDHP must have a deductible of at least $1,500 for self-only coverage or $3,000 for family coverage and must limit annual out-of-pocket expenses of the beneficiary to $7,500 for self-only coverage and $15,000 for family coverage.

There are no income limits that restrict an individual's eligibility to contribute to an HSA nor is there a requirement that the account owner have earned income to make a contribution.

Exceptions. An individual isn't a qualified individual if he or she can be claimed as a dependent on another person's tax return. Also, an employee's participation in a health FSA or health reimbursement arrangement (HRA) generally disqualifies the individual (and employer) from making contributions to their HSA. However, an individual may qualify to participate in an HSA if he or she is participating in only a limited-purpose FSA or HRA or a post-deductible FSA. For more information, see *Other employee health plans* in Pub. 969.

Employer contributions. Up to specified dollar limits, cash contributions to the HSA of a qualified individual (determined monthly) are exempt from federal income tax withholding, social security tax, Medicare tax, and FUTA tax if you reasonably believe that the employee can exclude the benefits from gross income. For 2023, you can contribute up to $3,850 for self-only coverage under an HDHP or $7,750 for family coverage under an HDHP to a qualified individual's HSA.

The contribution amounts listed above are increased by $1,000 for a qualified individual who is age 55 or older at any time during the year. For two qualified individuals who are married to each other and who are each age 55 or older at any time during the year, each spouse's contribution limit is increased by $1,000, provided each spouse has a separate HSA. No contributions can be made to an individual's HSA after he or she becomes enrolled in Medicare Part A or Part B.

Nondiscrimination rules. Your contribution amount to an employee's HSA must be comparable for all employees who have comparable coverage during the same period. Otherwise, there will be an excise tax equal to 35% of the amount you contributed to all employees' HSAs.

For guidance on employer comparable contributions to HSAs under section 4980G in instances where an employee hasn't established an HSA by December 31 and in instances where an employer accelerates contributions for the calendar year for employees who have incurred qualified medical expenses, see Regulations section 54.4980G-4.

Exception. The Tax Relief and Health Care Act of 2006 allows employers to make larger HSA contributions for a nonhighly compensated employee than for a highly compensated employee. A highly compensated employee for 2023 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than $135,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee wasn't also in the top 20% of employees when ranked by pay for the preceding year.

Partnerships and S corporations. Partners and 2% shareholders of an S corporation aren't eligible for salary reduction (pre-tax) contributions to an HSA. Employer contributions to the HSA of a bona fide partner or 2% shareholder are treated as distributions or guaranteed payments, as determined by the facts and circumstances. For more information, see Notice 2005-8, 2005-4 I.R.B. 368, available at *IRS.gov/irb/2005-04_IRB#NOT-2005-8*.

Cafeteria plans. You may contribute to an employee's HSA using a cafeteria plan and your contributions aren't subject to the statutory comparability rules. However, cafeteria plan nondiscrimination rules still apply. For example, contributions under a cafeteria plan to employee HSAs can't be greater for higher-paid employees than they are for lower-paid employees. Contributions that favor lower-paid employees aren't prohibited.

Reporting requirements. You must report your contributions to an employee's HSA in box 12 of Form W-2 using code “W.” The trustee or custodian of the HSA, generally a bank or insurance company, reports distributions from the HSA using Form 1099-SA.

More information. For more information about HSAs, see Pub. 969.

Lodging on Your Business Premises

You can exclude the value of lodging you furnish to an employee from the employee's wages if it meets the following tests.

- It is furnished on your business premises.
- It is furnished for your convenience.
- The employee must accept it as a condition of employment.

Different tests may apply to lodging furnished by educational institutions. See section 119(d) of the Internal Revenue Code for details.

If you allow your employee to choose to receive additional pay instead of lodging, then the lodging, if chosen, isn’t excluded. The exclusion also doesn't apply to cash allowances for lodging.

On your business premises. For this exclusion, your business premises is generally your employee's place of work. For example, if you're a household employer, then lodging furnished in your home to a household employee would be considered lodging furnished on your business premises. For special rules that apply to lodging furnished in a camp located in a foreign country, see section 119(c) of the Internal Revenue Code and its regulations.

For your convenience. Whether or not you furnish lodging for your convenience as an employer depends on all the facts and circumstances. You furnish the lodging to your employee for your convenience if you do this for a substantial business reason other than to provide the employee with additional pay. This is true even if a law or an employment contract provides that the lodging is furnished as pay. However, a written statement that the lodging is furnished for your convenience isn't sufficient.

Condition of employment. Lodging meets this test if you require your employees to accept the lodging because they need to live on your business premises to be able to properly perform their duties. Examples include employees who must be available at all times and employees who couldn't perform their required duties without being furnished the lodging.

It doesn't matter whether you must furnish the lodging as pay under the terms of an employment contract or a law fixing the terms of employment.

Example of qualifying lodging. You employ Sam at a construction project at a remote job site in Alaska. Due to the inaccessibility of facilities for the employees who are working at the job site to obtain lodging and the prevailing weather conditions, you furnish lodging to your employees at the construction site in order to carry on the construction project. You require that your employees accept the lodging as a condition of their employment. You may exclude the lodging that you provide from Sam's wages. Additionally, since sufficient eating facilities aren't available near your place of employment, you may also exclude meals you provide to Sam from Sam's wages, as discussed in *Proper meals not otherwise available* under *Meals on Your Business Premises*, later in this section.

Example of nonqualifying lodging. A hospital gives Joan, an employee of the hospital, the choice of living at the hospital free of charge or living elsewhere and receiving a cash allowance in addition to Joan's regular salary. If Joan chooses to live at the hospital, the hospital can't exclude the value of the lodging from Joan's wages because Joan isn't required to live at the hospital to properly perform the duties of Joan's employment.

S corporation shareholders. For this exclusion, don't treat a 2% shareholder of an S corporation as an employee of the corporation. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but don't treat the benefit as a reduction in distributions to the 2% shareholder. For more information, see Revenue Ruling 91-26, 1991-1 C.B. 184.

Meals

This section discusses the exclusion rules that apply to de minimis meals and meals on your business premises.

De Minimis Meals

You can exclude any occasional meal you provide to an employee if it has so little value (taking into account how frequently you provide meals to your employees) that accounting for it would be unreasonable or administratively impracticable. The exclusion applies, for example, to the following items.

- Coffee, doughnuts, or soft drinks.
- Occasional meals or meal money provided to enable an employee to work overtime. However, the exclusion doesn't apply to meal money figured on the basis of hours worked (for example, $2.00 per hour for each hour over 8 hours), or meals or meal money provided on a regular or routine basis.
- Occasional parties or picnics for employees and their guests.

Employee. For this exclusion, treat any recipient of a de minimis meal as an employee.

Employer-operated eating facility for employees. The de minimis meals exclusion also applies to meals you provide at an employer-operated eating facility for employees if the annual revenue from the facility equals or exceeds the direct operating costs of the facility. Direct operating costs include the cost of food, beverages, and labor costs (including employment taxes) of employees whose services relating to the facility are performed primarily on the premises of the eating facility. Therefore, for example, the labor costs attributable to cooks and waitstaff are included in direct operating costs, but the labor cost attributable to a manager of an eating facility whose services aren't primarily performed on the premises of the eating facility aren't included in direct operating costs.

For this purpose, your revenue from providing a meal is considered equal to the facility's direct operating costs to provide that meal if its value can be excluded from an employee's wages, as explained under *Meals on Your Business Premises*, later. If you provide free or discounted meals to volunteers at a hospital and you can reasonably determine the number of meals you provide, then you may disregard these costs and revenues. If you charge nonemployees a greater amount than employees, then you must disregard all costs and revenues attributable to these nonemployees.

An employer-operated eating facility for employees is an eating facility that meets all the following conditions.

- You own or lease the facility.
- You operate the facility. You're considered to operate the eating facility if you have a contract with another to operate it.
- The facility is on or near your business premises.
- You provide meals (food, drinks, and related services) at the facility during, or immediately before or after, the employee's workday.

Exclusion from wages. You can generally exclude the value of de minimis meals you provide to an employee from the employee's wages.

Exception for highly compensated employees. You can't exclude from the wages of a highly compensated employee the value of a meal provided at an employer-operated eating facility that isn't available on the same terms to one of the following groups.

- All of your employees.
- A group of employees defined under a reasonable classification you set up that doesn't favor highly compensated employees.

For this exclusion, a highly compensated employee for 2023 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than $135,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee wasn't also in the top 20% of employees when ranked by pay for the preceding year.

TIP *Section 13304 of P.L. 115-97 changed the rules for the deduction of food or beverage expenses that are excludable from employee income as a de minimis fringe benefit. For amounts incurred or paid after 2017, the 50% limit on deductions for food or beverage expenses also applies to food or beverage expenses excludable from employee income as a de minimis fringe benefit. However, food or beverage expenses related to employee recreation, such as holiday parties or annual picnics, aren't subject to the 50% limit on deductions when made primarily for the benefit of your employees other than employees who are officers, shareholders or other owners who own a 10% or greater interest in your business, or other highly compensated employees. For more information, see chapter 2 of Pub. 535 and Regulations section 1.274-12. While your business deduction may be limited, the fringe benefit exclusion rules still apply and the de minimis fringe benefits may be excluded from your employee's wages, as discussed earlier.*

Meals on Your Business Premises

You can exclude the value of meals you furnish to an employee from the employee's wages if they meet the following tests.

- They are furnished on your business premises.
- They are furnished for your convenience.

If you allow your employee to choose to receive additional pay instead of meals, then the meals, if chosen, aren't excluded. The exclusion also doesn't apply to cash allowances for meals.

On your business premises. Generally, for this exclusion, the employee's place of work is your business premises.

For your convenience. Whether you furnish meals for your convenience as an employer depends on all the facts and circumstances. You furnish the meals to your employee for your convenience if you do this for a substantial business reason other than to provide the employee with additional pay. This is true even if a law or an employment contract provides that the meals are furnished as pay. However, a written statement that the meals are furnished for your convenience isn't sufficient.

Meals excluded for all employees if excluded for more than half. If more than half of your employees who are furnished meals on your business premises are furnished the meals for your convenience, you can treat all meals you furnish to employees on your business premises as furnished for your convenience.

Food service employees. Meals you furnish to a restaurant or other food service employee during, or immediately before or after, the employee's working hours are furnished for your convenience. For example, if a waitstaff works during the breakfast and lunch periods, you can exclude from their wages the value of the breakfast and lunch you furnish in your restaurant for each day they work.

Example. You operate a restaurant business. You furnish your employee, Carol, who is a waitstaff working 7 a.m. to 4 p.m., two meals during each workday. You encourage but don't require Carol to have breakfast on the business premises before starting work. Carol must have lunch on the premises. Since Carol is a food service employee and works during the normal breakfast and lunch periods, you can exclude from Carol's wages the value of Carol's breakfast and lunch.

If you also allow Carol to have meals on your business premises without charge on Carol's days off, you can't exclude the value of those meals from Carol's wages.

Employees available for emergency calls. Meals you furnish during working hours so an employee will be available for emergency calls during the meal period are furnished for your convenience. You must be able to show these emergency calls have occurred or can reasonably be expected to occur, and that the calls have resulted, or will result, in you calling on your employees to perform their jobs during their meal period.

Example. A hospital maintains a cafeteria on its premises where all of its 230 employees may get meals at no charge during their working hours. The hospital must have 120 of its employees available for emergencies. Each of these 120 employees is, at times, called upon to perform services during the meal period. Although the hospital doesn't require these employees to remain on the premises, they rarely leave the hospital during their meal period. Since the hospital furnishes meals on its premises to its employees so that more than half of them are available for emergency calls during meal periods, the hospital can exclude the value of these meals from the wages of all of its employees.

Short meal periods. Meals you furnish during working hours are furnished for your convenience if the nature of your business (not merely a preference) restricts an employee to a short meal period (such as 30 or 45 minutes) and the employee can't be expected to eat elsewhere in such a short time. For example, meals can qualify for this treatment if your peak workload occurs during the normal lunch hour. However, they don't qualify if the reason for the short meal period is to allow the employee to leave earlier in the day.

Example. Frank is a bank teller who works from 9 a.m. to 5 p.m. The bank furnishes Frank's lunch without charge in a cafeteria the bank maintains on its premises. The bank furnishes these meals to Frank to limit Frank's lunch period to 30 minutes, because the bank's peak workload occurs during the normal lunch period. If Frank got lunch elsewhere, it would take Frank much longer than

30 minutes and the bank strictly enforces the time limit. The bank can exclude the value of these meals from Frank's wages.

Proper meals not otherwise available. Meals you furnish during working hours are furnished for your convenience if the employee couldn't otherwise get proper meals within a reasonable period of time. For example, meals can qualify for this treatment if there are insufficient eating facilities near the place of employment. For an example of this, see *Example of qualifying lodging*, earlier in this section.

Meals after work hours. Generally, meals furnished before or after the working hours of an employee aren't considered as furnished for your convenience. However, meals you furnish to an employee immediately after working hours are furnished for your convenience if you would have furnished them during working hours for a substantial nonpay business reason but, because of the work duties, they weren't obtained during working hours.

Meals you furnish to promote goodwill, boost morale, or attract prospective employees. Meals you furnish to promote goodwill, boost morale, or attract prospective employees aren't considered furnished for your convenience. However, you may be able to exclude their value, as discussed under *De Minimis Meals*, earlier.

Meals furnished on nonworkdays or with lodging. You generally can't exclude from an employee's wages the value of meals you furnish on a day when the employee isn't working. However, you can exclude these meals if they are furnished with lodging that is excluded from the employee's wages. See *Lodging on Your Business Premises*, earlier in this section.

Meals with a charge. The fact that you charge for the meals and that your employees may accept or decline the meals isn't taken into account in determining whether or not meals are furnished for your convenience.

S corporation shareholders. For this exclusion, don't treat a 2% shareholder of an S corporation as an employee of the corporation. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but don't treat the benefit as a reduction in distributions to the 2% shareholder. For more information, see Revenue Ruling 91-26, 1991-1 C.B. 184.

No-Additional-Cost Services

This exclusion applies to a service you provide to an employee if it doesn't cause you to incur any substantial additional costs. The service must be offered to customers in the ordinary course of the line of business in which the employee performs substantial services.

No-additional-cost services are excess capacity services, such as airline, bus, or train tickets; hotel rooms; or telephone services provided free, at a reduced price, or through a cash rebate to employees working in those lines of business. Services that aren't eligible for treatment as no-additional-cost services are non-excess capacity services, such as the facilitation by a stock brokerage firm of the purchase of stock by employees. These services may, however, be eligible for a qualified employee discount of up to 20% of the value of the service provided. See *Employee Discounts*, earlier.

Substantial additional costs. To determine whether you incur substantial additional costs to provide a service to an employee, count any lost revenue as a cost. Don't reduce the costs you incur by any amount the employee pays for the service. You're considered to incur substantial additional costs if you or your employees spend a substantial amount of time in providing the service, even if the time spent would otherwise be idle or if the services are provided outside normal business hours.

Example. A commercial airline allows its employees to take personal flights on the airline at no charge and receive reserved seating. Because the employer gives up potential revenue by allowing the employees to reserve seats, employees receiving such free flights aren't eligible for the no-additional-cost exclusion.

Reciprocal agreements. A no-additional-cost service provided to your employee by an unrelated employer may qualify as a no-additional-cost service if all the following tests are met.

- The service is the same type of service generally provided to customers in both the line of business in which the employee works and the line of business in which the service is provided.
- You and the employer providing the service have a written reciprocal agreement under which a group of employees of each employer, all of whom perform substantial services in the same line of business, may receive no-additional-cost services from the other employer.
- Neither you nor the other employer incurs any substantial additional cost (including lost revenue) either in providing the service or because of the written agreement.

Employee. For this exclusion, treat the following individuals as employees.

1. A current employee.
2. A former employee who retired or left on disability.
3. A widow or widower of an individual who died while an employee.
4. A widow or widower of a former employee who retired or left on disability.
5. A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.
6. A partner who performs services for a partnership.

Treat services you provide to the spouse or dependent child of an employee as provided to the employee. For this fringe benefit, dependent child is a child or stepchild who is the employee's dependent or who, if both parents are deceased, hasn't attained the age of 25. Treat a child of divorced parents as a dependent of both parents.

Treat any use of air transportation by the parent of an employee as use by the employee. This rule doesn't apply to use by the parent of a person considered an employee because of item (3) or (4) above.

Exclusion from wages. You can generally exclude the value of a no-additional-cost service you provide to an employee from the employee's wages.

Exception for highly compensated employees. You can't exclude from the wages of a highly compensated employee the value of a no-additional-cost service that isn't available on the same terms to one of the following groups.

- All of your employees.
- A group of employees defined under a reasonable classification you set up that doesn't favor highly compensated employees.

For this exclusion, a highly compensated employee for 2023 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than $135,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee wasn't also in the top 20% of employees when ranked by pay for the preceding year.

Retirement Planning Services

You may exclude from an employee's wages the value of any retirement planning advice or information you provide to your employee or their spouse if you maintain a qualified retirement plan. A qualified retirement plan includes a plan, contract, pension, or account described in section 219(g)(5) of the Internal Revenue Code. In addition to employer plan advice and information, the services provided may include general advice and information on retirement. However, the exclusion doesn't apply to services for tax preparation, accounting, legal, or brokerage services. You can't exclude from the wages of a highly compensated employee retirement planning services that aren't available on the same terms to each member of a group of employees normally provided education and information about the employer's qualified retirement plan.

Transportation (Commuting) Benefits

This section discusses exclusion rules that apply to benefits you provide to your employees for their personal transportation, such as commuting to and from work. These rules apply to the following transportation benefits.

- De minimis transportation benefits.
- Qualified transportation benefits.

Special rules that apply to demonstrator cars and qualified nonpersonal use vehicles are discussed under *Working Condition Benefits*, later in this section.

De Minimis Transportation Benefits

You can exclude the value of any de minimis transportation benefit you provide to an employee from the employee's wages. A de minimis transportation benefit is any local transportation benefit you provide to an employee if it has so little value (taking into account how frequently you provide transportation to your employees) that accounting for it would be unreasonable or administratively impracticable. For example, it applies to occasional local transportation fare you give an employee because the employee is working overtime if the benefit is reasonable and isn't based on hours worked. Local transportation fare provided on a regular or routine basis doesn't qualify for this exclusion.

A special rule allows you to exclude as a de minimis benefit public transit passes, tokens, or fare cards you provide at a discount to defray your employee's commuting costs on the public transit system if the discount doesn't exceed $21 in any month. Similarly, you may also provide a voucher or similar instrument that is exchangeable solely for tokens, fare cards, or other instruments that enable your employee to use the public transit system if the value of the vouchers and other instruments in any month doesn't exceed $21. You may also reimburse your employee to cover the cost of commuting on a public transit system, provided your employee doesn't receive more than $21 in reimbursements for commuting costs in any month. The reimbursement must be made under a bona fide reimbursement arrangement, where you establish appropriate procedures for verifying on a periodic basis that your employee's use of public transportation for commuting is consistent with the value of the benefit provided. The exclusion doesn't apply to the provision of any benefit to defray public transit expenses incurred for personal travel other than commuting.

Employee. For this exclusion, treat any recipient of a de minimis transportation benefit as an employee.

Qualified Transportation Benefits

This exclusion applies to the following benefits.

- A ride in a commuter highway vehicle between the employee's home and work place.
- A transit pass.

- Qualified parking.

You may provide an employee with any one or more of these benefits at the same time.

Qualified transportation benefits can be provided directly by you or through a bona fide reimbursement arrangement. A bona fide reimbursement arrangement requires that the employee incur and substantiate expenses for qualified transportation benefits before reimbursement. However, cash reimbursements for transit passes qualify only if a voucher or a similar item that the employee can exchange only for a transit pass isn't readily available for direct distribution by you to your employee. A voucher is readily available for direct distribution only if an employer can obtain it from a voucher provider that doesn't impose fare media charges or other restrictions that effectively prevent the employer from obtaining vouchers. See Regulations section 1.132-9(b)(Q&A 16–19) for more information.

Compensation reduction agreements. A compensation reduction agreement is a way to provide qualified transportation benefits on a pre-tax basis by offering your employees a choice between cash compensation and any qualified transportation benefit. A compensation reduction arrangement can be used with a bona fide reimbursement arrangement. For each month, the amount of the compensation reduction can't exceed the monthly limits for transportation benefits described in *Exclusion from wages*, later. For more information about providing qualified transportation fringe benefits under a compensation reduction agreement, see Regulations section 1.132-9(b)(Q&A 11–15).

Commuter highway vehicle. A commuter highway vehicle is any highway vehicle that seats at least 6 adults (not including the driver). In addition, you must reasonably expect that at least 80% of the vehicle mileage will be for transporting employees between their homes and workplace with employees occupying at least one-half the vehicle's seats (not including the driver's).

Transit pass. A transit pass is any pass, token, farecard, voucher, or similar item entitling a person to ride, free of charge or at a reduced rate, on one of the following.

- Mass transit.
- In a vehicle that seats at least 6 adults (not including the driver) if a person in the business of transporting persons for pay or hire operates it.

Mass transit may be publicly or privately operated and includes bus, rail, or ferry. For guidance on the use of smart cards and debit cards to provide qualified transportation fringes, see Revenue Ruling 2014-32, 2014-50 I.R.B. 917, available at *IRS.gov/irb/2014-50_IRB#RR-2014-32*.

Qualified parking. Qualified parking is parking you provide to your employees on or near your business premises. It includes parking on or near the location from which your employees commute to work using mass transit, commuter highway vehicles, or carpools. It doesn't include parking at or near your employee's home.

CAUTION

Qualified bicycle commuting reimbursement suspended. *Section 11047 of P.L. 115-97 suspends the exclusion of qualified bicycle commuting reimbursements from your employee's income for any tax year beginning after 2017 and before 2026.*

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.

A self-employed individual isn't an employee for qualified transportation benefit purposes.

Exception for S corporation shareholders. Don't treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but don't treat the benefit as a reduction in distributions to the 2% shareholder. For more information, see Revenue Ruling 91-26, 1991-1 C.B. 184.

Relation to other fringe benefits. You can't exclude a qualified transportation benefit you provide to an employee under the de minimis or working condition benefit rules. However, if you provide a local transportation benefit other than by transit pass or commuter highway vehicle, or to a person other than an employee, you may be able to exclude all or part of the benefit under other fringe benefit rules (de minimis, working condition, etc.).

Exclusion from wages. You can generally exclude the value of transportation benefits that you provide to an employee during 2023 from the employee's wages up to the following limits.

- $300 per month for combined commuter highway vehicle transportation and transit passes.
- $300 per month for qualified parking.

Benefits more than the limit. If the value of a benefit for any month is more than its limit, include in the employee's wages the amount over the limit minus any amount the employee paid for the benefit. You can't exclude the excess from the employee's wages as a de minimis transportation benefit.

TIP

Qualified transportation benefits aren't deductible. *Sections 274(a)(4) and 274(l) provide that no deduction is allowed for qualified transportation benefits (whether provided directly by you, through a bona fide reimbursement arrangement, or through a compensation reduction agreement) incurred or paid after*

2017. Also, no deduction is allowed for any expense incurred for providing any transportation, or any payment or reimbursement to your employee, in connection with travel between your employee's residence and place of employment, except as necessary for ensuring the safety of your employee or for qualified bicycle commuting reimbursements, as described in section 132(f)(5)(F) (even though the exclusion for qualified bicycle commuting reimbursements is suspended, as discussed earlier). While you may no longer deduct payments for qualified transportation benefits, the fringe benefit exclusion rules still apply and the payments may be excluded from your employee's wages, as discussed earlier. Although the value of a qualified transportation fringe benefit is relevant in determining the fringe benefit exclusion and whether the section 274(e)(2) exception for expenses treated as compensation applies, the deduction that is disallowed relates to the expense of providing a qualified transportation fringe, not its value. For more information, see Regulations sections 1.274-13 and 1.274-14.

More information. For more information on qualified transportation benefits, including van pools, and how to determine the value of parking, see Regulations section 1.132-9.

Tuition Reduction

An educational organization can exclude the value of a qualified tuition reduction it provides to an employee from the employee's wages.

A tuition reduction for undergraduate education generally qualifies for this exclusion if it is for the education of one of the following individuals.

1. A current employee.
2. A former employee who retired or left on disability.
3. A widow or widower of an individual who died while an employee.
4. A widow or widower of a former employee who retired or left on disability.
5. A dependent child or spouse of any individual listed in (1) through (4) above.

A tuition reduction for graduate education qualifies for this exclusion only if it is for the education of a graduate student who performs teaching or research activities for the educational organization.

For more information on this exclusion, see *Qualified Tuition Reduction* under *Other Types of Educational Assistance* in chapter 1 of Pub. 970.

Working Condition Benefits

This exclusion applies to property and services you provide to an employee so that the employee can perform their job. It applies to the extent the cost of the property or services would be allowable as a business expense or depreciation expense deduction to the employee if he or she had paid for it. The employee must meet any substantiation requirements that apply to the deduction. Examples of working condition benefits include an employee's use of a company car for business, an employer-provided cell phone provided primarily for noncompensatory business purposes (discussed earlier), and job-related education provided to an employee.

This exclusion also applies to a cash payment you provide for an employee's expenses for a specific or prearranged business activity if such expenses would otherwise be allowable as a business expense or depreciation expense deduction to the employee. You must require the employee to verify that the payment is actually used for those expenses and to return any unused part of the payment.

The exclusion doesn't apply to the following items.

- A service or property provided under a flexible spending account in which you agree to provide the employee, over a time period, a certain level of unspecified noncash benefits with a predetermined cash value.
- A physical examination program you provide, even if mandatory.
- Any item to the extent the payment would be allowable as a deduction to the employee as an expense for a trade or business other than your trade or business. For more information, see Regulations section 1.132-5(a)(2).

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A partner who performs services for a partnership.
- A director of your company.
- An independent contractor who performs services for you.

Vehicle allocation rules. If you provide a car for an employee's use, the amount you can exclude as a working condition benefit is the amount that would be allowable as a deductible business expense if the employee paid for its use. If the employee uses the car for both business and personal use, the value of the working condition benefit is the part determined to be for business use of the vehicle. See *Business use of your car* under *Personal Versus Business Expenses* in chapter 1 of Pub. 535. Also, see the special rules for certain demonstrator cars and qualified nonpersonal use vehicles discussed later.

Demonstrator cars. Generally, all of the use of a demonstrator car by your full-time auto salesperson in the sales area in which your sales office is located qualifies as a working condition benefit if the use is primarily to facilitate the services the salesperson provides for you and there are substantial restrictions on personal use. For more information and the definition of “full-time auto salesperson,” see Regulations section 1.132-5(o). For optional, simplified methods used to determine if full, partial, or no exclusion of income to the employee for personal use of a demonstrator car applies, see Revenue Procedure 2001-56. You can find Revenue Procedure 2001-56 on page 590 of Internal Revenue Bulletin 2001-51 at *IRS.gov/pub/irs-irbs/irb01-51.pdf*.

Qualified nonpersonal use vehicles. All of an employee's use of a qualified nonpersonal use vehicle is a working condition benefit. A qualified nonpersonal use vehicle is any vehicle the employee isn't likely to use more than minimally for personal purposes because of its design. Qualified nonpersonal use vehicles generally include all of the following vehicles.

- Clearly marked, through painted insignia or words, police, fire, and public safety vehicles, provided that any personal use of the vehicle (other than commuting) is prohibited by the governmental unit.
- Unmarked vehicles used by law enforcement officers if the use is officially authorized. Any personal use must be authorized by the employer, and must be related to law-enforcement functions, such as being able to report directly from home to an emergency situation. Use of an unmarked vehicle for vacation or recreation trips can't qualify as an authorized use.
- An ambulance or hearse used for its specific purpose.
- Any vehicle designed to carry cargo with a loaded gross vehicle weight over 14,000 pounds.
- Delivery trucks with seating for the driver only, or the driver plus a folding jump seat.
- A passenger bus with a capacity of at least 20 passengers used for its specific purpose and school buses. The working condition benefit is available only for the driver, not for any passengers.
- Tractors and other special-purpose farm vehicles.
- Bucket trucks, cement mixers, combines, cranes and derricks, dump trucks (including garbage trucks), flatbed trucks, forklifts, qualified moving vans, qualified specialized utility repair trucks, and refrigerated trucks.

See Regulations section 1.274-5(k) for the definition of qualified moving van and qualified specialized utility repair truck.

Pickup trucks. A pickup truck with a loaded gross vehicle weight of 14,000 pounds or less is a qualified nonpersonal use vehicle if it has been specially modified so it isn't likely to be used more than minimally for personal purposes. For example, a pickup truck qualifies if it is clearly marked with permanently affixed decals, special painting, or other advertising associated with your trade, business, or function and meets either of the following requirements.

1. It is equipped with at least one of the following items.
   a. A hydraulic lift gate.
   b. Permanent tanks or drums.
   c. Permanent side boards or panels that materially raise the level of the sides of the truck bed.
   d. Other heavy equipment (such as an electric generator, welder, boom, or crane used to tow automobiles and other vehicles).
2. It is used primarily to transport a particular type of load (other than over the public highways) in a construction, manufacturing, processing, farming, mining, drilling, timbering, or other similar operation for which it was specially designed or significantly modified.

Vans. A van with a loaded gross vehicle weight of 14,000 pounds or less is a qualified nonpersonal use vehicle if it has been specially modified so it isn't likely to be used more than minimally for personal purposes. For example, a van qualifies if it is clearly marked with permanently affixed decals, special painting, or other advertising associated with your trade, business, or function and has a seat for the driver only (or the driver and one other person) and either of the following items.

- Permanent shelving that fills most of the cargo area.
- An open cargo area and the van always carries merchandise, material, or equipment used in your trade, business, or function.

Education. Certain job-related education you provide to an employee may qualify for exclusion as a working condition benefit. To qualify, the education must meet the same requirements that would apply for determining whether the employee could deduct the expenses had the employee paid the expenses. Degree programs as a whole don't necessarily qualify as a working condition benefit. Each course in the program must be evaluated individually for qualification as a working condition benefit. The education must meet at least one of the following tests.

- The education is required by the employer or by law for the employee to keep their present salary, status, or job. The required education must serve a bona fide business purpose of the employer.
- The education maintains or improves skills needed in the job.

However, even if the education meets one or both of the above tests, it isn't qualifying education if it:

- Is needed to meet the minimum educational requirements of the employee's present trade or business, or
- Is part of a program of study that will qualify the employee for a new trade or business.

Outplacement services. An employee's use of outplacement services qualifies as a working condition benefit if you provide the services to the employee on the basis of need, you get a substantial business benefit from the services distinct from the benefit you would get from the payment of additional wages, and the employee is seeking new employment in the same kind of trade or business in which the employee is presently working. Substantial business benefits include promoting a positive business image, maintaining employee morale, and avoiding wrongful termination suits.

Outplacement services don't qualify as a working condition benefit if the employee can choose to receive cash or taxable benefits in place of the services. If you maintain a severance plan and permit employees to get outplacement services with reduced severance pay, include in the employee's wages the difference between the unreduced severance and the reduced severance payments.

Product testing. The fair market value of the use of consumer goods, which are manufactured for sale to nonemployees, for product testing and evaluation by your employee outside your workplace, qualifies as a working condition benefit if all of the following conditions are met.

- Consumer testing and evaluation of the product is an ordinary and necessary business expense for you.
- Business reasons necessitate that the testing and evaluation must be performed off your business premises. For example, the testing and evaluation can't be carried out adequately in your office or in laboratory testing facilities.
- You provide the product to your employee for purposes of testing and evaluation.
- You provide the product to your employee for no longer than necessary to test and evaluate its performance, and (to the extent not finished) the product must be returned to you at completion of the testing and evaluation period.
- You impose limitations on your employee's use of the product that significantly reduce the value of any personal benefit to your employee. This includes limiting your employee's ability to select among different models or varieties of the consumer product, and prohibiting the use of the product by persons other than your employee.
- Your employee submits detailed reports to you on the testing and evaluation.

The program won't qualify if you don't use and examine the results of the detailed reports submitted by employees within a reasonable period of time after expiration of the testing period. Additionally, existence of one or more of the following factors may also establish that the program isn't a bona fide product-testing program.

- The program is in essence a leasing program under which employees lease the consumer goods from you for a fee.
- The nature of the product and other considerations are insufficient to justify the testing program.
- The expense of the program outweighs the benefits to be gained from testing and evaluation.

The program must also not be limited to only certain classes of employees (such as highly compensated employees), unless you can show a business reason for providing the products only to specific employees. For example, an automobile manufacturer may limit providing automobiles for testing and evaluation to only their design engineers and supervisory mechanics, as they can properly evaluate the automobiles.

Exclusion from wages. You can generally exclude the value of a working condition benefit you provide to an employee from the employee's wages.

Exception for independent contractors who perform services for you. You can't exclude the use of consumer goods you provide in a product-testing program from the compensation you pay to an independent contractor. You can't exclude the value of parking as a working condition benefit, but you may be able to exclude it as a de minimis fringe benefit. Transit passes provided to independent contractors may be excluded as a working condition benefit if they meet the requirements of a working condition benefit described earlier. However, personal commuting expenses are not deductible as a business expense. Transit passes may also be excluded as a de minimis fringe benefit. For more information on de minimis transportation benefits, see *De Minimis Transportation Benefits*, earlier in this section.

Exception for company directors. You can't exclude the value of the use of consumer goods you provide in a product-testing program from the compensation you pay to a director.

3. Fringe Benefit Valuation Rules

This section discusses the rules you must use to determine the value of a fringe benefit you provide to an employee. You must determine the value of any benefit you can't exclude under the rules in section 2 or for which the amount you can exclude is limited. See *Including taxable benefits in pay* in section 1.

In most cases, you must use the general valuation rule to value a fringe benefit. However, you may be able to use a special valuation rule to determine the value of certain benefits.

This section doesn't discuss the special valuation rule used to value meals provided at an employer-operated eating facility for employees. For that rule, see Regulations section 1.61-21(j). This section also doesn't discuss the special valuation rules used to value the use of aircraft. For those rules, see Regulations sections 1.61-21(g) and (h). The aircraft fringe benefit valuation formulas are published in the Internal Revenue Bulletin as Revenue Rulings twice during the year. The formula applicable for the first half of the year is usually available at the end of March. The formula applicable for the second half of the year is usually available at the end of September.

General Valuation Rule

You must use the general valuation rule to determine the value of most fringe benefits. Under this rule, the value of a fringe benefit is its fair market value.

Fair market value (FMV). The FMV of a fringe benefit is the amount an employee would have to pay a third party in an arm's-length transaction to buy or lease the benefit. Determine this amount on the basis of all the facts and circumstances.

Neither the amount the employee considers to be the value of the fringe benefit nor the cost you incur to provide the benefit determines its FMV.

Employer-provided vehicles. In general, the FMV of an employer-provided vehicle is the amount the employee would have to pay a third party to lease the same or similar vehicle on the same or comparable terms in the geographic area where the employee uses the vehicle. A comparable lease term would be the amount of time the vehicle is available for the employee's use, such as a 1-year period.

Don't determine the FMV by multiplying a cents-per-mile rate times the number of miles driven unless the employee can prove the vehicle could have been leased on a cents-per-mile basis.

Cents-Per-Mile Rule

Under this rule, you determine the value of a vehicle you provide to an employee for personal use by multiplying the standard mileage rate by the total miles the employee drives the vehicle for personal purposes. Personal use is any use of the vehicle other than use in your trade or business. This amount must be included in the employee's wages or reimbursed by the employee. For 2023, the standard mileage rate is 65.5 cents per mile.

You can use the cents-per-mile rule if either of the following requirements is met.

- You reasonably expect the vehicle to be regularly used in your trade or business throughout the calendar year (or for a shorter period during which you own or lease it).
- The vehicle meets the mileage test.

CAUTION

Maximum automobile value. *You can't use the cents-per-mile rule for an automobile (including a truck or van) if its value when you first make it available to any employee for personal use in calendar year 2023 is more than $60,800. For guidance related to the impact of P.L. 115-97 on this rule, see Treasury Decision 9893, 2020-09 I.R.B. 449, available at IRS.gov/irb/2020-09_IRB#TD-9893. If you and the employee own or lease the automobile together, see Regulations sections 1.61-21(e)(1)(iii)(B) and (C).*

Vehicle. For the cents-per-mile rule, a vehicle is any motorized wheeled vehicle, including an automobile, manufactured primarily for use on public streets, roads, and highways.

Regular use in your trade or business. Whether a vehicle is regularly used in your trade or business is determined on the basis of all facts and circumstances. A vehicle is considered regularly used in your trade or business if one of the following safe harbor conditions is met.

- At least 50% of the vehicle's total annual mileage is for your trade or business.
- You sponsor a commuting pool that generally uses the vehicle each workday to drive at least three employees to and from work.

Infrequent business use of the vehicle, such as for occasional trips to the airport or between your multiple business premises, isn't regular use of the vehicle in your trade or business.

Mileage test. A vehicle meets the mileage test for a calendar year if both of the following requirements are met.

- The vehicle is actually driven at least 10,000 miles during the year. If you own or lease the vehicle only part of the year, reduce the 10,000-mile requirement proportionately.
- The vehicle is used during the year primarily by employees. Consider the vehicle used primarily by employees if they use it consistently for commuting. Don't treat the use of the vehicle by another individual whose use would be taxed to the employee as use by the employee.

For example, if only one employee uses a vehicle during the calendar year and that employee drives the vehicle at least 10,000 miles in that year, the vehicle meets the mileage test even if all miles driven by the employee are personal.

Consistency requirements. If you use the cents-per-mile rule, the following requirements apply.

- You must begin using the cents-per-mile rule on the first day you make the vehicle available to any employee for personal use. However, if you use the commuting rule (discussed later) when you first make the vehicle available to any employee for personal use, you can change to the cents-per-mile rule on the first day for which you don't use the commuting rule.
- You must use the cents-per-mile rule for all later years in which you make the vehicle available to any employee and the vehicle qualifies, except that you can use the commuting rule for any year during which use of the vehicle qualifies under the commuting rules. However, if the vehicle doesn't qualify for the cents-per-mile rule during a later year, you can use for that year and thereafter any other rule for which the vehicle then qualifies.
- You must continue to use the cents-per-mile rule if you provide a replacement vehicle to the employee (and the vehicle qualifies for the use of this rule) and your primary reason for the replacement is to reduce federal taxes.

Items included in cents-per-mile rate. The cents-per-mile rate includes the value of maintenance and insurance for the vehicle. Don't reduce the rate by the value of any service included in the rate that you didn't provide. You can take into account the services actually provided for the vehicle by using the *General Valuation Rule*, earlier.

For miles driven in the United States, its territories and possessions, Canada, and Mexico, the cents-per-mile rate includes the value of fuel you provide. If you don't provide fuel, you can reduce the rate by no more than 5.5 cents.

For special rules that apply to fuel you provide for miles driven outside the United States, Canada, and Mexico, see Regulations section 1.61-21(e)(3)(ii)(B).

The value of any other service you provide for a vehicle isn't included in the cents-per-mile rate. Use the general valuation rule to value these services.

Commuting Rule

Under this rule, you determine the value of a vehicle you provide to an employee for commuting use by multiplying each one-way commute (that is, from home to work or from work to home) by $1.50. If more than one employee commutes in the vehicle, this value applies to each employee. This amount must be included in the employee's wages or reimbursed by the employee.

You can use the commuting rule if all the following requirements are met.

- You provide the vehicle to an employee for use in your trade or business and, for bona fide noncompensatory business reasons, you require the employee to commute in the vehicle. You will be treated as if you had met this requirement if the vehicle is generally used each workday to carry at least three employees to and from work in an employer-sponsored commuting pool.
- You establish a written policy under which you don't allow the employee, nor any individual whose use would be taxable to the employee, to use the vehicle for personal purposes other than for commuting or de minimis personal use (such as a stop for a personal errand on the way between a business delivery and the employee's home). Personal use of a vehicle is all use that isn't for your trade or business.
- The employee doesn't use the vehicle for personal purposes other than commuting and de minimis personal use.
- If this vehicle is an automobile (any four-wheeled vehicle, such as a car, pickup truck, or van), the employee who uses it for commuting isn't a control employee. See *Control employee*, later.

Vehicle. For this rule, a vehicle is any motorized wheeled vehicle (including an automobile) manufactured primarily for use on public streets, roads, and highways.

Control employee. A control employee of a nongovernment employer for 2023 is generally any of the following employees.

- A board or shareholder-appointed, confirmed, or elected officer whose pay is $130,000 or more.
- A director.
- An employee whose pay is $265,000 or more.
- An employee who owns a 1% or more equity, capital, or profits interest in your business.

A control employee for a government employer for 2023 is either of the following.

- A government employee whose compensation is equal to or exceeds Federal Government Executive Level V. See the Office of Personnel Management website at *OPM.gov/policy-data-oversight/pay-leave/salaries-wages* for 2023 compensation information.
- An elected official.

Highly compensated employee alternative. Instead of using the preceding definition, you can choose to define a control employee as any highly compensated employee. A highly compensated employee for 2023 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than $135,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee wasn't also in the top 20% of employees when ranked by pay for the preceding year.

Lease Value Rule

Under this rule, you determine the value of an automobile you provide to an employee by using its annual lease value. For an automobile provided only part of the year, use either its prorated annual lease value or its daily lease value (discussed later).

If the automobile is used by the employee in your business, you generally reduce the lease value by the amount that is excluded from the employee's wages as a working condition benefit (discussed earlier in section 2). In order to do this, the employee must account to the employer for the business use. This is done by substantiating the usage (mileage, for example), the time and place of the travel, and the business purpose of the travel. Written records made at the time of each business use are the best evidence. Any use of a company-provided vehicle that isn't substantiated as business use is included in income. The working condition benefit is the amount that would be an allowable business expense deduction for the employee if the employee paid for the use of the vehicle.

Automobile. For this rule, an automobile is any four-wheeled vehicle (such as a car, pickup truck, or van) manufactured primarily for use on public streets, roads, and highways.

Consistency requirements. If you use the lease value rule, the following requirements apply.

1. You must begin using this rule on the first day you make the automobile available to any employee for personal use. However, the following exceptions apply.

a. If you use the commuting rule (discussed earlier in this section) when you first make the automobile available to any employee for personal use, you can change to the lease value rule on the first day for which you don't use the commuting rule.

b. If you use the cents-per-mile rule (discussed earlier in this section) when you first make the automobile available to any employee for personal use, you can change to the lease value rule on the first day on which the automobile no longer qualifies for the cents-per-mile rule.

2. You must use this rule for all later years in which you make the automobile available to any employee, except that you can use the commuting rule for any year during which use of the automobile qualifies.

3. You must continue to use this rule if you provide a replacement automobile to the employee and your primary reason for the replacement is to reduce federal taxes.

Annual Lease Value

Generally, you figure the annual lease value of an automobile as follows.

1. Determine the FMV of the automobile on the first date it is available to any employee for personal use.

2. Using Table 3-1, read down column (1) until you come to the dollar range within which the FMV of the automobile falls. Then read across to column (2) to find the annual lease value.

3. Multiply the annual lease value by the percentage of personal miles out of total miles driven by the employee.

Table 3-1. Annual Lease Value Table

(1) Automobile FMV	(2) Annual Lease Value
$ 0 to 999	$ 600
1,000 to 1,999	850
2,000 to 2,999	1,100
3,000 to 3,999	1,350
4,000 to 4,999	1,600
5,000 to 5,999	1,850
6,000 to 6,999	2,100
7,000 to 7,999	2,350
8,000 to 8,999	2,600
9,000 to 9,999	2,850
10,000 to 10,999	3,100
11,000 to 11,999	3,350
12,000 to 12,999	3,600
13,000 to 13,999	3,850
14,000 to 14,999	4,100
15,000 to 15,999	4,350
16,000 to 16,999	4,600
17,000 to 17,999	4,850
18,000 to 18,999	5,100
19,000 to 19,999	5,350
20,000 to 20,999	5,600
21,000 to 21,999	5,850
22,000 to 22,999	6,100
23,000 to 23,999	6,350
24,000 to 24,999	6,600
25,000 to 25,999	6,850
26,000 to 27,999	7,250
28,000 to 29,999	7,750
30,000 to 31,999	8,250
32,000 to 33,999	8,750
34,000 to 35,999	9,250
36,000 to 37,999	9,750
38,000 to 39,999	10,250
40,000 to 41,999	10,750
42,000 to 43,999	11,250
44,000 to 45,999	11,750
46,000 to 47,999	12,250
48,000 to 49,999	12,750
50,000 to 51,999	13,250
52,000 to 53,999	13,750
54,000 to 55,999	14,250
56,000 to 57,999	14,750
58,000 to 59,999	15,250

For automobiles with an FMV of more than $59,999, the annual lease value equals (0.25 × the FMV of the automobile) + $500.

FMV. The FMV of an automobile is the amount a person would pay to buy it from a third party in an arm's-length transaction in the area in which the automobile is bought or leased. That amount includes all purchase expenses, such as sales tax and title fees.

If you have 20 or more automobiles, see Regulations section 1.61-21(d)(5)(v). If you and the employee own or lease the automobile together, see Regulations section 1.61-21(d)(2)(ii).

You don't have to include the value of a telephone or any specialized equipment added to, or carried in, the automobile if the equipment is necessary for your business. However, include the value of specialized equipment if the employee to whom the automobile is available uses the specialized equipment in a trade or business other than yours.

Neither the amount the employee considers to be the value of the benefit nor your cost for either buying or leasing the automobile determines its FMV. However, see *Safe-harbor value* next.

Safe-harbor value. You may be able to use a safe-harbor value as the FMV.

For an automobile you bought at arm's length, the safe-harbor value is your cost, including sales tax, title, and other purchase expenses. This method isn't available for an automobile you manufactured.

For an automobile you lease, you can use any of the following as the safe-harbor value.

- The manufacturer's invoice price (including options) plus 4%.
- The manufacturer's suggested retail price minus 8% (including sales tax, title, and other expenses of purchase).
- The retail value of the automobile reported by a nationally recognized pricing source if that retail value is reasonable for the automobile.

Items included in annual lease value table. Each annual lease value in the table includes the value of maintenance and insurance for the automobile. Don't reduce the annual lease value by the value of any of these services that you didn't provide. For example, don't reduce the annual lease value by the value of a maintenance service contract or insurance you didn't provide. You can take into account the services actually provided for the automobile by using the general valuation rule discussed earlier.

Items not included. The annual lease value doesn't include the value of fuel you provide to an employee for personal use, regardless of whether you provide it, reimburse its cost, or have it charged to you. You must include the value of the fuel separately in the employee's wages. You can value fuel you provided at FMV or at 5.5 cents per mile for all miles driven by the employee. However, you can't value at 5.5 cents per mile fuel you provide for miles driven outside the United States (including its possessions and territories), Canada, and Mexico.

If you reimburse an employee for the cost of fuel, or have it charged to you, you generally value the fuel at the amount you reimburse, or the amount charged to you if it was bought at arm's length.

If you have 20 or more automobiles, see Regulations section 1.61-21(d)(3)(ii)(D).

If you provide any service other than maintenance and insurance for an automobile, you must add the FMV of that service to the annual lease value of the automobile to figure the value of the benefit.

4-year lease term. The annual lease values in the table are based on a 4-year lease term. These values will generally stay the same for the period that begins with the first date you use this rule for the automobile and ends on December 31 of the fourth full calendar year following that date.

Figure the annual lease value for each later 4-year period by determining the FMV of the automobile on January 1 of the first year of the later 4-year period and selecting the amount in column (2) of the table that corresponds to the appropriate dollar range in column (1).

Using the special accounting rule. If you use the special accounting rule for fringe benefits discussed in section 4, you can figure the annual lease value for each later 4-year period at the beginning of the special accounting period that starts immediately before the January 1 date described in the previous paragraph.

For example, assume that you use the special accounting rule and that, beginning on November 1, 2022, the special accounting period is November 1 to October 31. You elected to use the lease value rule as of January 1, 2023. You can refigure the annual lease value on November 1, 2026, rather than on January 1, 2027.

Transferring an automobile from one employee to another. Unless the primary purpose of the transfer is to reduce federal taxes, you can refigure the annual lease value based on the FMV of the automobile on January 1 of the calendar year of transfer.

However, if you use the special accounting rule for fringe benefits discussed in section 4, you can refigure the annual lease value (based on the FMV of the automobile) at the beginning of the special accounting period in which the transfer occurs.

Prorated Annual Lease Value

If you provide an automobile to an employee for a continuous period of 30 or more days but less than an entire calendar year, you can prorate the annual lease value. Figure the prorated annual lease value by multiplying the annual lease value by a fraction, using the number of days of availability as the numerator and 365 as the denominator.

If you provide an automobile continuously for at least 30 days, but the period covers 2 calendar years (or 2 special accounting periods if you're using the special accounting rule for fringe benefits discussed in section 4), you can use the prorated annual lease value or the daily lease value.

If you have 20 or more automobiles, see Regulations section 1.61-21(d)(6).

If an automobile is unavailable to the employee because of the employee's personal reasons (for example, if the employee is on vacation), you can't take into account the periods of unavailability when you use a prorated annual lease value.

CAUTION *You can't use a prorated annual lease value if the reduction of federal tax is the main reason the automobile is unavailable.*

Daily Lease Value

If you provide an automobile to an employee for a continuous period of less than 30 days, use the daily lease value to figure its value. Figure the daily lease value by multiplying the annual lease value by a fraction, using four times the number of days of availability as the numerator and 365 as the denominator.

However, you can apply a prorated annual lease value for a period of continuous availability of less than 30 days by treating the automobile as if it had been available for 30 days. Use a prorated annual lease value if it would result in a lower valuation than applying the daily lease value to the shorter period of availability.

Unsafe Conditions Commuting Rule

Under this rule, the value of commuting transportation you provide to a qualified employee solely because of unsafe conditions is $1.50 for a one-way commute (that is, from home to work or from work to home). If more than one employee commutes in the vehicle, this value applies to each employee. This amount must be included in the employee's wages or reimbursed by the employee.

You can use the unsafe conditions commuting rule for qualified employees if all of the following requirements are met.

- The employee would ordinarily walk or use public transportation for commuting.
- You have a written policy under which you don't provide the transportation for personal purposes other than commuting because of unsafe conditions.
- The employee doesn't use the transportation for personal purposes other than commuting because of unsafe conditions.

These requirements must be met on a trip-by-trip basis.

Commuting transportation. This is transportation to or from work using any motorized wheeled vehicle (including an automobile) manufactured for use on public streets, roads, and highways. You or the employee must buy the transportation from a party that isn't related to you. If the employee buys it, you must reimburse the employee for its cost (for example, cab fare) under a bona fide reimbursement arrangement.

Qualified employee. A qualified employee for 2023 is one who:

- Performs services during the year;
- Is paid on an hourly basis;
- Isn't claimed under section 213(a)(1) of the Fair Labor Standards Act (FLSA) of 1938 (as amended) to be exempt from the minimum wage and maximum hour provisions;
- Is within a classification for which you actually pay, or have specified in writing that you will pay, overtime pay of at least one and one-half times the regular rate provided in section 207 of FLSA; and
- Received pay of not more than $135,000 during 2022.

However, an employee isn't considered a qualified employee if you don't comply with the recordkeeping requirements concerning the employee's wages, hours, and other conditions and practices of employment under section 211(c) of FLSA and the related regulations.

Unsafe conditions. Unsafe conditions exist if, under the facts and circumstances, a reasonable person would consider it unsafe for the employee to walk or use public transportation at the time of day the employee must commute. One factor indicating whether it is unsafe is the history of crime in the geographic area surrounding the employee's workplace or home at the time of day the employee commutes.

4. Rules for Withholding, Depositing, and Reporting

Use the following guidelines for withholding, depositing, and reporting taxable noncash fringe benefits.

Valuation of taxable fringe benefits. Generally, you must determine the value of taxable noncash fringe benefits no later than January 31 of the next year. Before January 31, you may reasonably estimate the value of the fringe benefits for purposes of withholding and depositing on time.

Choice of period for withholding, depositing, and reporting. For employment tax and withholding purposes, you can treat taxable noncash fringe benefits (including personal use of employer-provided highway motor vehicles) as paid on a pay period, quarter, semiannual, annual, or other basis. But the benefits must be treated as paid no less frequently than annually. You don't have to choose the same period for all employees. You can withhold more frequently for some employees than for others.

You can change the period as often as you like as long as you treat all of the benefits provided in a calendar year as paid no later than December 31 of the calendar year.

You can also treat the value of a single fringe benefit as paid on one or more dates in the same calendar year, even if the employee receives the entire benefit at one time. For example, if your employee receives a fringe benefit valued at $1,000 in one pay period during 2023, you can treat it as made in four payments of $250, each in a different pay period of 2023. You don't have to notify the IRS of the use of the periods discussed above.

Transfer of property. The above choice for reporting and withholding doesn't apply to a cash fringe benefit or a fringe benefit that is a transfer of tangible or intangible personal property of a kind normally held for investment or a transfer of real property. For these kinds of fringe benefits, you must use the actual date the property was transferred to the employee.

Withholding and depositing taxes. You can add the value of taxable fringe benefits to regular wages for a payroll period and figure income tax withholding on the total. Or you can withhold federal income tax on the value of fringe benefits at the flat 22% rate that applies to supplemental wages. See section 7 of Pub. 15 for the flat rate (37%) when supplemental wage payments to an individual exceed $1 million during the year.

You must withhold the applicable income, social security, and Medicare taxes on the date or dates you chose to treat the benefits as paid. Deposit the amounts withheld as discussed in section 11 of Pub. 15.

Additional Medicare Tax withholding. In addition to withholding Medicare tax at 1.45%, you must withhold a 0.9% Additional Medicare Tax from wages you pay to an employee in excess of $200,000 in a calendar year. You're required to begin withholding Additional Medicare Tax in the pay period in which you pay wages in excess of $200,000 to an employee and continue to withhold it each pay period until the end of the calendar year. Additional Medicare Tax is only imposed on the employee. There is no employer share of Additional Medicare Tax. All wages that are subject to Medicare tax are subject to Additional Medicare Tax withholding if paid in excess of the $200,000 withholding threshold.

For more information on what wages are subject to Medicare tax, see Table 2-1, earlier, and the chart, *Special Rules for Various Types of Services and Payments*, in section 15 of Pub. 15. For more information on Additional Medicare Tax, go to *IRS.gov/ADMTfaqs*.

Amount of deposit. To estimate the amount of income tax withholding and employment taxes and to deposit them on time, make a reasonable estimate of the value of the taxable fringe benefits provided on the date or dates you chose to treat the benefits as paid. Determine the estimated deposit by figuring the amount you would have had to deposit if you had paid cash wages equal to the estimated value of the fringe benefits and withheld taxes from those cash wages. Even if you don't know which employee will receive the fringe benefit on the date the deposit is due, you should follow this procedure.

If you underestimate the value of the fringe benefits and deposit less than the amount you would have had to deposit if the applicable taxes had been withheld, you may be subject to a penalty.

If you overestimate the value of the fringe benefit and overdeposit, you can either claim a refund or have the overpayment applied to your next employment tax return. See the instructions for your employment tax return.

If you paid the required amount of taxes but withheld a lesser amount from the employee, you can recover from the employee the social security, Medicare, or income taxes you deposited on the employee's behalf and included on the employee's Form W-2. However, you must recover the income taxes before April 1 of the following year.

Paying your employee's share of social security and Medicare taxes. If you choose to pay your employee's social security and Medicare taxes on taxable fringe benefits without deducting them from the employee's pay, you must include the amount of the payments in the employee's wages. Also, if your employee leaves your employment and you have unpaid and uncollected taxes for noncash benefits, you're still liable for those taxes. You must add the uncollected employee share of social security and Medicare tax to the employee's wages. Follow the procedure discussed under *Employee's Portion of Taxes Paid by Employer* in section 7 of Pub. 15-A. Don't use withheld federal income tax to pay the social security and Medicare tax.

Special accounting rule. You can treat the value of taxable noncash benefits as paid on a pay period, quarter, semiannual, annual, or other basis, provided that the benefits are treated as paid no less frequently than annually. You can treat the value of taxable noncash fringe benefits provided during the last 2 months of the calendar year, or any shorter period within the last 2 months, as paid in the next year. Thus, the value of taxable noncash benefits actually provided in the last 2 months of 2022 could be treated as provided in 2023 together with the value of benefits provided in the first 10 months of 2023. This doesn't mean that all benefits treated as paid during the last 2 months of a calendar year can be deferred until the next year. Only the value of benefits actually provided during the last 2 months of the calendar year can be treated as paid in the next calendar year.

Limitation. The special accounting rule can't be used, however, for a fringe benefit that is a transfer of tangible or intangible personal property of a kind normally held for investment or a transfer of real property.

Conformity rules. Use of the special accounting rule is optional. You can use the rule for some fringe benefits but not others. The period of use need not be the same for each fringe benefit. However, if you use the rule for a particular fringe benefit, you must use it for all employees who receive that benefit.

If you use the special accounting rule, your employee must also use it for the same period you use it. But your employee can't use the special accounting rule unless you do.

You don't have to notify the IRS if you use the special accounting rule. You may also, for appropriate administrative reasons, change the period for which you use the rule without notifying the IRS. But you must report the income and deposit the withheld taxes as required for the changed period.

Special rules for highway motor vehicles. If an employee uses the employer's vehicle for personal purposes, the value of that use must be determined by the employer and included in the employee's wages. The value of the personal use must be based on the FMV or determined by using one of the following three special valuation rules previously discussed in section 3.

- The cents-per-mile rule.
- The commuting rule (for commuting use only).
- The lease value rule.

Election not to withhold income tax. You can choose not to withhold income tax on the value of an employee's personal use of a highway motor vehicle you provided. You don't have to make this choice for all employees. You can withhold income tax from the wages of some employees but not others. You must, however, withhold the applicable social security and Medicare taxes on such benefits.

You can choose not to withhold income tax on an employee's personal use of a highway motor vehicle by:

- Notifying the employee (as described below) that you choose not to withhold; and
- Including the value of the benefits in boxes 1, 3, 5, and 14 on a timely furnished Form W-2. For use of a separate statement in lieu of using box 14, see the General Instructions for Forms W-2 and W-3.

The notice must be in writing and must be provided to the employee by January 31 of the election year or within 30 days after a vehicle is first provided to the employee, whichever is later. This notice must be provided in a manner reasonably expected to come to the attention of the affected employee. For example, the notice may be mailed to the employee, included with a paycheck, or posted where the employee could reasonably be expected to see it. You can also change your election not to withhold at any time by notifying the employee in the same manner.

Amount to report on Form 941 (or Form 943, 944, or CT-1) and Form W-2. The actual value of fringe benefits provided during a calendar year (or other period as explained under *Special accounting rule*, earlier in this section) must be determined by January 31 of the following year. You must report the actual value on Form 941 (or Form 943, 944, or CT-1) and Form W-2. If you choose, you can use a separate Form W-2 for fringe benefits and any other benefit information.

Include the value of the fringe benefit in box 1 of Form W-2. Also include it in boxes 3 and 5, if applicable. You may show the total value of the fringe benefits provided in the calendar year or other period in box 14 of Form W-2. For additional information about reporting of fringe benefits on Form W-2, see the General Instructions for Forms W-2 and W-3.

If you use the special accounting rule, you must notify the affected employees of the period in which you used it. You must give this notice at or near the date you give the Form W-2, but not earlier than with the employee's last paycheck of the calendar year.

How To Get Tax Help

If you have questions about a tax issue, need help preparing your tax return, or want to download free publications, forms, or instructions, go to *IRS.gov* and find resources that can help you right away.

Preparing and filing your tax return. Go to *IRS.gov/EmploymentEfile* for more information on filing your employment tax returns electronically.

Getting answers to your tax questions. On IRS.gov, you can get up-to-date information on current events and changes in tax law.

- *IRS.gov/Help*: A variety of tools to help you get answers to some of the most common tax questions.
- *IRS.gov/Forms*: Find forms, instructions, and publications. You will find details on the most recent tax changes and hundreds of interactive links to help you find answers to your questions.
- You may also be able to access tax law information in your electronic filing software.

Need someone to prepare your tax return? There are various types of tax return preparers, including tax preparers, enrolled agents, certified public accountants (CPAs), attorneys, and many others who don't have professional credentials. If you choose to have someone prepare your tax return, choose that preparer wisely. A paid tax preparer is:

- Primarily responsible for the overall substantive accuracy of your return,
- Required to sign the return, and
- Required to include their preparer tax identification number (PTIN).

Although the tax preparer always signs the return, you're ultimately responsible for providing all the information required for the preparer to accurately prepare your return. Anyone paid to prepare tax returns for others should have a thorough understanding of tax matters. For more information on how to choose a tax preparer, go to *Tips for Choosing a Tax Preparer* on IRS.gov.

Coronavirus. Go to *IRS.gov/Coronavirus* for links to information on the impact of the coronavirus, as well as tax relief available for individuals and families, small and large businesses, and tax-exempt organizations.

Employers can register to use Business Services Online. The Social Security Administration (SSA) offers online service at *SSA.gov/employer* for fast, free, and secure online W-2 filing options to CPAs, accountants, enrolled agents, and individuals who process Form W-2 and Form W-2c, Corrected Wage and Tax Statement.

IRS social media. Go to *IRS.gov/SocialMedia* to see the various social media tools the IRS uses to share the latest information on tax changes, scam alerts, initiatives, products, and services. At the IRS, privacy and security are paramount. We use these tools to share public information with you. **Don't** post your SSN or other confidential information on social media sites. Always protect your identity when using any social networking site.

The following IRS YouTube channels provide short, informative videos on various tax-related topics in English, Spanish, and ASL.

- *Youtube.com/irsvideos*.
- *Youtube.com/irsvideosmultilingua*.

- Youtube.com/irsvideosASL.

Watching IRS videos. The IRS Video portal (IRSVideos.gov) contains video and audio presentations for individuals, small businesses, and tax professionals.

Online tax information in other languages. You can find information on IRS.gov/MyLanguage if English isn't your native language.

Free over-the-phone interpreter (OPI) service. The IRS is committed to serving our multilingual customers by offering OPI services. OPI is a federally funded program and is available at Taxpayer Assistance Centers (TACs), other IRS offices, and every VITA/TCE return site. OPI service is accessible in more than 350 languages.

Accessibility Helpline available for taxpayers with disabilities. Taxpayers who need information about accessibility services can call 833-690-0598. The Accessibility Helpline can answer questions related to current and future accessibility products and services available in alternative media formats (for example, braille, large print, audio, etc.). The Accessibility Helpline doesn't have access to your IRS account. For help with tax law, refunds, or account-related issues, go to IRS.gov/LetUsHelp.

Disasters. Go to Disaster Assistance and Emergency Relief for Individuals and Businesses to review the available disaster tax relief.

Getting tax forms and publications. Go to IRS.gov/Forms to view, download, or print most of the forms, instructions, and publications you may need. Or you can go to IRS.gov/OrderForms to place an order.

Getting tax publications and instructions in eBook format. You can also download and view popular tax publications and instructions (including Pub. 15-B) on mobile devices as eBooks at IRS.gov/eBooks.

Note. IRS eBooks have been tested using Apple's iBooks for iPad. Our eBooks haven't been tested on other dedicated eBook readers, and eBook functionality may not operate as intended.

Getting a transcript of your return. You can get a copy of your tax transcript or a copy of your return by calling 800-829-4933 or by mailing Form 4506-T (transcript request) or Form 4506 (copy of return) to the IRS.

Reporting and resolving your tax-related identity theft issues.

- Tax-related identity theft happens when someone steals your personal information to commit tax fraud. Your taxes can be affected if your EIN is used to file a fraudulent return or to claim a refund or credit.
- The IRS doesn't initiate contact with taxpayers by email, text messages, telephone calls, or social media channels to request personal or financial information. This includes requests for personal identification numbers (PINs), passwords, or similar information for credit cards, banks, or other financial accounts.
- Go to IRS.gov/IdentityTheft, the IRS Identity Theft Central webpage, for information on identity theft and data security protection for taxpayers, tax professionals, and businesses. If your EIN has been lost or stolen or you suspect you're a victim of tax-related identity theft, you can learn what steps you should take.

Making a tax payment. Go to IRS.gov/Payments for information on how to make a payment using any of the following options.

- Debit or Credit Card: Choose an approved payment processor to pay online or by phone.
- Electronic Funds Withdrawal: Schedule a payment when filing your federal taxes using tax return preparation software or through a tax professional.
- Electronic Federal Tax Payment System: Best option for businesses. Enrollment is required.
- Check or Money Order: Mail your payment to the address listed on the notice or instructions.
- Cash: You may be able to pay your taxes with cash at a participating retail store.
- Same-Day Wire: You may be able to do same-day wire from your financial institution. Contact your financial institution for availability, cost, and cut-off times.

Note. The IRS uses the latest encryption technology to ensure that the electronic payments you make online, by phone, or from a mobile device using the IRS2Go app are safe and secure. Paying electronically is quick, easy, and faster than mailing in a check or money order.

What if I can't pay now? Go to IRS.gov/Payments for more information about your options.

- Apply for an online payment agreement (IRS.gov/OPA) to meet your tax obligation in monthly installments if you can't pay your taxes in full today. Once you complete the online process, you will receive immediate notification of whether your agreement has been approved.
- Use the Offer in Compromise Pre-Qualifier to see if you can settle your tax debt for less than the full amount you owe. For more information on the Offer in Compromise program, go to IRS.gov/OIC.

Understanding an IRS notice or letter you've received. Go to IRS.gov/Notices to find additional information about responding to an IRS notice or letter.

Contacting your local IRS office. Keep in mind, many questions can be answered on IRS.gov without visiting an IRS TAC. Go to IRS.gov/LetUsHelp for the topics people ask about most. If you still need help, IRS TACs provide tax help when a tax issue can't be handled online or by phone. All TACs now provide service by appointment, so you'll know in advance that you can get the service you need without long wait times. Before you visit, go to IRS.gov/TACLocator to find the nearest TAC and to check hours, available services, and appointment options. Or, on the IRS2Go app, under the Stay Connected tab, choose the Contact Us option and click on “Local Offices.”

The Taxpayer Advocate Service (TAS) Is Here To Help You

What Is TAS?

TAS is an ***independent*** organization within the IRS that helps taxpayers and protects taxpayer rights. Their job is to ensure that every taxpayer is treated fairly and that you know and understand your rights under the *Taxpayer Bill of Rights*.

How Can You Learn About Your Taxpayer Rights?

The Taxpayer Bill of Rights describes 10 basic rights that all taxpayers have when dealing with the IRS. Go to *TaxpayerAdvocate.IRS.gov* to help you understand what these rights mean to you and how they apply. These are ***your*** rights. Know them. Use them.

What Can TAS Do For You?

TAS can help you resolve problems that you can’t resolve with the IRS. And their service is free. If you qualify for their assistance, you will be assigned to one advocate who will work with you throughout the process and will do everything possible to resolve your issue. TAS can help you if:

- Your problem is causing financial difficulty for you, your family, or your business;
- You face (or your business is facing) an immediate threat of adverse action; or
- You’ve tried repeatedly to contact the IRS but no one has responded, or the IRS hasn’t responded by the date promised.

How Can You Reach TAS?

TAS has offices *in every state, the District of Columbia, and Puerto Rico*. Your local advocate’s number is in your local directory and at *TaxpayerAdvocate.IRS.gov/Contact-Us*. You can also call them at 877-777-4778.

How Else Does TAS Help Taxpayers?

TAS works to resolve large-scale problems that affect many taxpayers. If you know of one of these broad issues, report it to them at *IRS.gov/SAMS*.

TAS for Tax Professionals

TAS can provide a variety of information for tax professionals, including tax law updates and guidance, TAS programs, and ways to let TAS know about systemic problems you’ve seen in your practice.

Index

To help us develop a more useful index, please let us know if you have ideas for index entries. See “Comments and Suggestions” in the “Introduction” for the ways you can reach us.

A

Accident benefits 5
Achievement awards 7
Additional Medicare Tax 30
Adoption assistance 8
Annual lease value 27
Annual lease value table 27
Assistance (*See* Tax help)
Athletic facilities 9
Automobile (*See* Vehicles)
Awards, achievement 7

B

Bicycle commuting reimbursement 2, 21
Birthday gifts 9

C

Cafeteria plans 3
Cents-per-mile rule 1, 25
COBRA premiums 7
Comments on publication 2
Commuter highway vehicle 21
Commuting rule 26
Compensation reduction agreements 21
Copying machine use 9

D

Daily lease value 29
De minimis (minimal) benefits:
- In general 9
- Meals 17
- Transportation 20

Definition of marriage 2
Demonstrator cars 22
Dependent care assistance 9
Deposit rules 29
Discounts for employees 11

E

Educational assistance 10
Employee benefit programs:
- Accident and health benefits 5
- Cafeteria plans 3
- Dependent care assistance 9
- Educational assistance 10
- Group-term life insurance 13

Employee discounts 11
Employee stock options 12
Employer-operated eating facility 17
Employer-provided cell phones 13
Exclusion rules 5

F

Fair market value (FMV) 25
Fringe benefit overview 3
Fringe benefits:
- Special accounting rule 30
- Valuation rules 24

G

General valuation rule 24
Group-term life insurance 13

H

Health benefits 5
Health flexible spending arrangement (FSA) 2, 4
Health savings accounts (HSAs) 15
Holiday gifts 9

I

Insurance:
- Accident and health 5
- Group-term life 13
- Long-term care 6

L

Lease value rule 26
Length of service awards 7
Life insurance:
- Group-term 13
- Spouse or dependent 9

Lodging 16
Long-term care insurance 6

M

Meals:
- De minimis 17
- On your business premises 18

Medical reimbursement plans 5
Minimal benefits 9
Moving expense reimbursement 2

N

No-additional-cost services 19
Nonpersonal use vehicles, qualified 23

O

Options on stock 12
Outplacement services 23

P

P.L. 115-97, Tax Cuts and Jobs Act 2, 18, 21
Parking, qualified 21
Parties 9
Performance of services 3
Pickup trucks 23
Picnics 9
Product testing 24
Prorated annual lease value 28
Provider defined 3
Publications (*See* Tax help)

Q

Qualified small employer health reimbursement arrangements (QSEHRAs) 7
Qualified transportation benefits 20

R

Recipient defined 3
Reporting rules 29
Retirement planning services 20

S

Safety achievement awards 7
Self insurance (medical reimbursement plans) 5
Services, no-additional-cost 19
Simple cafeteria plans for small businesses 4
Special accounting rule 30
Stock options, employee 12
Student loan payment exclusion 10
Suggestions for publication 2

T

Tax help 31
Taxable benefits 3
Tickets for theater or sporting events 9
Transit pass 21
Transportation benefits:
- De minimis 20
- Qualified 20

Tuition reduction 22

U

Unsafe conditions commuting rule 29

V

Valuation rules 24
Vans 23
Vehicles:
- Business use of (*See* Working condition benefits)
- Commuter highway 21
- Qualified nonpersonal use 23
- Valuation of 25

W

Withholding rules 29
Working condition benefits 22

Membership

Talent Acquisition

HR Consulting

Background Checks

Training

Missouri: 12851 Manchester Road | Suite 150 | St. Louis, MO 63131 | 314.968.3600
Illinois: 300 Hamilton Blvd., Suite L110 | Peoria, IL 61602 | O: 309.637.3333
Indiana: 450 E 96th St., Suite 500 | Indianapolis, IN 46240 | O: 317.960.3487
Florida: 43 Skyline Drive, Suite 1001, Lake Mary, FL 32746
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