# Payroll Insights

**Employment tax news to guide you now and for the future**

July 2021

## John Montgomery's Fresh Take: Massachusetts

Massachusetts Temporary Telecommuting Regulations should be expiring effective September 15th, 2021. As such, beginning September 15, 2021 employees working remotely outside of Massachusetts should now have wages reported and taxes withheld to the state where they are physically performing services. If you are not an employer registered for payroll in these states, it is time to get ready to handle the complexity of payroll compliance for your mobile workforce.

## Payroll-Related Bills Introduced in the 117th Congress

H.R. 384, the Bicycle Commuter Act of 2021, would repeal the suspension of the exclusion for employer reimbursement of qualified bicycle commuting expenses under the Tax Cuts and Jobs Act, which suspended the exclusion through 2025. H.R. 384 would also extend the exclusion to include bike shares and low-speed electric bicycles.

H.R. 833, the Family Savings for Kids and Seniors Act, would increase the amount of employer-provided dependent care assistance by adjusting for inflation annually beginning in 2022.

H.R. 2121/S. 897, the Improving Child Care for Working Families Act of 2021, would increase the exclusion for employer-provided dependent care benefits from $5,000 to $10,500, or from $2,500 to $5,250 for a separate return filed by a married individual. This would make permanent the increase that was included in the American Rescue Plan Act.

H.R. 195, the Group Term Life Insurance Increase Act, would increase the limit on the amount of employer-provided group term life insurance that an employee may exclude from gross income. Under the bill, an employee may exclude from gross income the value of insurance coverage up to $375,000. The limit currently is set at $50,000.

H.R. 902, the Decreasing Employees Burdensome Taxes from Student Loans Act of 2021 (DEBT Act of 2021), would increase the maximum allowed for employer education assistance from $5,250 to $10,000.

H.R. 429, the Mobile Workforce State Income Tax Simplification Act of 2021, would establish a 30-day threshold before a state could impose income tax on a nonresident employee's wages.

S. 248/H.R 804, the Family and Medical Insurance Leave Act or FAMILY Act, would provide up to 12 weeks of paid family and medical leave benefits each year to qualifying workers for the birth or adoption of a new child, the serious illness of an immediate family member, or a worker's own medical condition. This would create a family and medical leave trust fund that would be funded through employment taxes that would be imposed on both employers and employees and would be set at 2% of wages.

## Fifty Percent of Social Security Deferral Repayments Due by December 31, 2021

Employers may defer the deposit and payment of their portion of Social Security taxes and certain railroad retirement taxes under section 2302 of the CARES Act. These are the taxes imposed under section 3111(a) of the Internal Revenue Code.

To be treated as timely and to avoid a penalty, the deferred deposits of the employer's share of Social Security tax must be deposited by the following dates:

- 50% of the eligible deferred amount by December 31, 2021; and
- the remaining amount by December 31, 2022.

However, if an employer pays any amount before the applicable dates, that payment is first applied to reduce the employer's liability for any amount due on December 31, 2021, and then to the amount due on December 31, 2022.

The employer may pay the amount it owes electronically using EFTPS (this is the preferred method), by credit or debit card, or by a check or money order. If an employer is using EFTPS to pay the deferred amount, an employer that files Form 941 should select Form 941, the calendar quarter in 2020 to which its payment relates and payment due on an IRS notice in EFTPS.

For more information, visit EFTPS.gov, or call 800-555-4477 or 800-733-4829 (TDD).

## Backlogged Forms 941X

As of May 21, the IRS said it is now opening mail within normal timeframes and has also "made significant progress in processing Forms 941."

Note, however, that as of May 6, the agency had a total of 1.9 million unprocessed Forms 941 from the current and previous years waiting to be opened. Additionally, as of May 7, the IRS had approximately 100,000 unprocessed Forms 941-X, Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund, which cannot be processed until the related Forms 941 are processed.

The IRS is taking actions to minimize delays, including rerouting tax returns and correspondence from locations that are behind to locations where more staff is available. The IRS has stated that tax returns are opened in the order they are received and that employers that have filed electronically and received an acknowledgement do not need to take any further action other than responding to any requests for information. The IRS has also requested that employers not file a second tax return or contact the IRS about the return's status.

## The State of Washington Passes the Long Term Trust Act

The Washington Long Term Trust Act (RCW 50B.04) requires that, beginning January 1, 2022, employers are required to withhold a premium of 0.58% on an employee's wages. The premiums paid will be contributed to a fund for providing long-term care (LTC) insurance to all employees in the state.

Employers will be responsible for withholding these premiums from the wages of all employees working in Washington. However, an employee may apply for an exemption from this withholding, if they attest that they have LTC insurance coverage purchased before November 1, 2021. Applications for exemptions may be made from October 2021 through December 31, 2022. Once an exemption is granted by the Employment Security Department (ESD), the employee will be permanently ineligible for coverage.

The ESD has not yet defined what type of LTC insurance plan will satisfy this requirement for exemption, but guidance is expected to be released in the coming months. Once an employee has been granted an exemption, they will be permanently ineligible for coverage under the state plan. Further, once granted an exemption, an employee is responsible for notifying their employer and will not be eligible for a refund of deductions made due to a late notification. If an employer deducts premium payments after notification is made, then the employer will be responsible for providing a refund to the impacted employee and will not be eligible for a refund from the ESD.

If an employee declines the voluntary LTC coverage offered by their employer, assuming the plan meets the EDS's requirements, and does not have an alternative LTC plan, then their wages should be subject to Washington LTC premiums.

RCW 50B.04.080(1) assesses a 0.58% premium on each employee's wages, in the state of Washington, for LTC coverage under the state plan. The initial premium will remain in place for two years, until January 1, 2024. After that time, the rate will be set, biennially, by the pension funding council but will not exceed 0.58% for any year.

http://www.wacaresfund.wa.gov/employers/

http://www.wacaresfund.wa.gov/employer-toolkit/

## Nevada Senate Bill Declared Unconstitutional by the Nevada Supreme Court

Companies that are registered employers in Nevada are receiving the following notice from the State of Nevada:

> During the 2019 Legislative Session Senate Bill 551 was passed, which repealed the biennial Modified Business Tax rate adjustment. On May 13, 2021, the Nevada Supreme Court upheld a decision that Senate Bill 551 was unconstitutional and ordered the Department of Taxation to refund any overpayment of the Modified Business Tax plus interest. The Department is developing a plan to reduce the Modified Business Tax rate for quarters ending September 31, 2019 through March 31, 2021, for General Businesses, Financial Institutions and Mining, and will soon announce when the refunds will be issued.

The notice also states that Nevada law requires the Department to verify that a credit is valid before it can be refunded. As a result, a taxpayer's account must be in compliance before the refund can be issued.

Taxpayers who have any delinquent tax returns, including sales/use tax, modified business tax, commerce tax or excise tax are encouraged file the return(s) by U.S. Mail or using Nevada Online Tax at https://tax.nv.gov/OnLineServices/Online_Services. All delinquent tax returns must be filed before the refund amount can be issued.

Refunds cannot be mailed to an invalid mailing address. Taxpayers may update their address using Nevada Online Tax or by contacting the Department at 1-866-962-3707.

The refund plan and timeline will be posted to the Department`s website as soon as it becomes available. Visit the Nevada website at https://tax.nv.gov for future updates.

## New Mexico Now Has Separate Withholding Forms

On June 7, the New Mexico Taxation and Revenue Department released Form TRD-41414, Wage Withholding Tax Return, which reports withholding from payments to employees, along with Form TRD-41409, Non-Wage Withholding Tax Return, which reports withholding from non-wage payments, such as pensions or annuities.

Previously, state income tax withholding was reported through Combined Reporting System, which allowed multiple taxes to be reported on one form. The combined form was previously due on the 25th of each month following the period being reported. The new forms will maintain that same due date.

The new forms are to be used starting July 1.

https://www.tax.newmexico.gov/forms-publications/

## Oregon's Paid Family Leave Program May be Delayed

Contributions to the Oregon paid family and medical leave program (PFML) were set to start on January 1, 2022. The Oregon Employment Department (ED) has requested legislation to delay the implementation of the PFML that was originally enacted in 2019. The program may be delayed by one year if the proposed legislation is enacted (H.B. 3398).

The delay has been requested due to the effects of the COVID-19 pandemic. The agency has shifted its focus to administering unemployment insurance benefits and has not been able to sufficiently roll out the PFML program. Under the legislation, the ED would issue the PFML regulations by September 1, 2022, with a January 1, 2023 start for remitting contributions.

Eligible employees would be able to receive benefits beginning September 1, 2023, instead of January 1, 2023.

For more information on the proposed timeline change: https://www.oregon.gov/employ/PFMLI/Pages/PFMLI-General-Information.aspx

## Meet one of our Employment Tax professionals: Mindy Mayo

Mindy is a Managing Director in KPMG's Silicon Valley office. She has over 30 years of employment tax experience and has assisted clients through a myriad of payroll issues encountered during a company's life cycle.

Recognized nationally as an expert in the field of payroll and worker classification issues, Mindy is a frequent presenter for the American Payroll Association at both local and national events and is a member of the APA's National Speaker's Bureau.

Mindy lives in San Jose with her husband and twin boys who are looking forward to the start of middle school.

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