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Top stories

New Jersey guidance describes new convenience of the employer rule, no penalties or interest for those who comply by September 15, 2023

In the latest [guidance](#), the New Jersey Division of Taxation (Division) outlines how the new "convenience of the employer rule" will work for those who must comply with it. Although the rule, enacted July 21, 2023, is retroactively effective to January 1, 2023, the Division said it will not impose penalties and interest on employers and individual taxpayers that begin complying by September 15, 2023.

—[Read more about this development in EY Tax Alert 2023-1401](#)

New Jersey is posting list of employers that do not comply with state wage, benefit and tax obligations

The New Jersey Department of Labor has launched a new public website, the Workplace Accountability in Labor List ([WALL](#)), displaying the names of businesses barred from contracting with New Jersey state agencies, counties, local government bodies or other subdivisions because they have outstanding state wage, benefit or unemployment insurance/gross income tax liabilities. The WALL is a new tool to encourage compliance authorized by legislation enacted in 2019 ([S4226](#)).

—[Read more about this development in EY Tax Alert 2023-1433](#)

US employment tax rates and limits

Our 2023 edition of US employment tax rates and limits includes, as of August 25, 2023, the following:

- Social Security wage base for 2023
- Qualified pension plan limits for 2022 and 2023
- Health Savings Account limits for 2022 and 2023
- Fringe-benefit inflation adjustments and Form W-2 penalties for 2023
- Federal mileage rates and luxury vehicle limits for 2023
- Per diem rates under high-low substantiation method for 2023
- 2021 and 2022 FUTA credit reduction
- State unemployment insurance wage bases and tax rates for 2023
- Disability and paid family leave insurance wage base and rates for 2023

- Federal income tax withholding for 2023
- State income tax withholding tables, supplemental withholding and the highest withholding tax rates for 2023

—[Download the latest report](#)

Federal developments

Seventh Circuit agrees basketball team owner may not deduct unpaid deferred compensation in tax year ending with team's sale

In *Hoops, LP v. Commissioner*, the Seventh Circuit affirmed a Tax Court holding that the owner of a professional basketball team could not deduct unpaid deferred compensation in the tax year ending with the team's sale, even though the owner had to include the associated liability assumed by the buyer when computing its gain on the sale. Like the Tax Court, the Seventh Circuit based its holding on IRC Section 404(a)(5), which only allows employers to deduct deferred compensation in the tax year in which the employee recognizes income (e.g., upon payment).

—[Read more about this development in EY Tax Alert 2023-1446](#)

IRS ACA affordability percentage is reduced again, putting some plans at risk of noncompliance

In [Revenue Procedure 2023-29](#), the IRS announced the new Affordable Care Act (ACA) affordability percentage of 8.39% for 2024 employer health care plans. This percentage has decreased by the greatest annual amount since its inception. This could make some health plans fail to meet an affordability safe harbor and expose employers to IRC Section 4980H(b) penalties.

—[Read more about this development in EY Tax Alert 2023-1444](#)

State income tax withholding

Connecticut budget includes middle-class income tax cuts effective January 1, 2024

The Connecticut state budget ([HB 6941](#)), approved by Governor Ned Lamont on June 12, 2023, reduces the state's personal income rates for middle-class income taxpayers. The rate cuts take effect January 1, 2024.

—[Read more about this development in EY Tax Alert 2023-1429](#)

Nebraska law gradually lowers personal income tax rates over four years, starting in 2024

Nebraska Governor Jim Pillen signed into law [LB 754](#), which gradually reduces the state's top personal income tax rates and collapses the tax brackets from four to three over four years, starting in 2024.

—[Read more about this development in EY Tax Alert 2023-1362](#)

Ohio law reduces personal income tax rates retroactive to January 1, 2023

Governor Mike DeWine signed [HB 33](#), which, retroactive to January 1, 2023, gradually reduces the Ohio personal income tax rates over two years, collapsing the current four tax brackets to two by 2024. As under current law, those with Ohio annual taxable income of less than \$26,050 are exempt from Ohio personal income tax.

—[Read more about this development in EY Tax Alert 2023-1372](#)

State unemployment insurance

Nebraska law changes deadline for submitting unemployment insurance voluntary contributions

Governor Jim Pillen signed into law [LB191](#), which, effective May 26, 2023, changes the due date of state unemployment insurance (SUI) voluntary contributions and makes other changes affecting employers.

—[Read more about this development in EY Tax Alert 2023-1439](#)

Local developments

Salem, Oregon enacts new Safe Salem payroll tax; petition puts the tax up for a vote on the November 2023 ballot

On July 10, 2023, the Salem City Council passed [Ordinance Bill No. 12-23](#), which, effective July 1, 2024, creates a new [Safe Salem payroll tax](#) of 0.814% on wages and self-employment income earned within the city limits. The tax on wages applies only to employees earning more than the minimum wage.

Sufficient petition signatures were gathered to place the Safe Salem payroll tax on the November 2023 ballot.

—[Read more about this development in EY Tax Alert 2023-1208](#)

Other payroll developments

Illinois law requires employers to provide paid leave effective January 1, 2024

Effective January 1, 2024, [SB 0208](#) requires employers to provide employees working within Illinois up to 40 hours of paid leave per 12-month period. Employees must be employed for 90 days before they are entitled to use paid leave and employees hired before January 1, 2024, can begin using paid leave effective March 31, 2024.

—[Read more about this development in EY Tax Alert 2023-1463](#)

New York state law requires wage transparency effective September 17, 2023

Under legislation enacted in 2022 ([S9427A](#)) and amended in 2023 ([A999](#)), New York employers with four or more employees are subject to a state-wide wage transparency law effective September 17, 2023.

—[Read more about this development in EY Tax Alert 2023-1406](#)

Bill watch (tracking the status of legislation proposed in 2023)

Alabama

HB 217	Status: Passed House and Senate, 6-6-2023. Became law 6-6-2023 (See Tax Alert 2023-1282)	Topic: Wages subject to state income tax
Would exempt overtime pay for hours worked over 40 hours per week from state income tax.		

Alabama

SB 65	Status: Read second time in House of Origin, 3-21-2023; indefinitely postponed, 5-31-2023 (legislature adjourned 6-14-2023) Bill did not pass before session adjournment	Topic: Local tax rate control, make clear local tax applies only for work carried on within the locality (convenience of the employer rule)
<p>Would have done the following: reduce any municipal occupational license tax greater than 1% based on an annual reduction in the tax until the tax would be 1%; provide that any occupational license tax levied by any municipality does not apply to any person performing an occupation in the police jurisdiction of the municipality or on any property annexed into the municipality after January 1, 2023; provide for a referendum under certain conditions in certain counties in which two or more municipalities levied an occupational tax greater than 1% on January 1, 2023; prohibit a municipality from levying a new occupational license tax or increasing the rate of any existing municipal occupational license tax; provide for certain exceptions from any occupational taxes for certain temporary workers and for severance pay; specify the power of a municipality pursuant to Section 11-51-90 of the Code of Alabama 1975, to license an exhibition, trade, business, vocation, occupation, or profession only within the corporate limits and jurisdiction of the municipality, provide for refunds and collections of the license fees and taxes, and provide that these provisions are retroactive and declaratory of existing law.</p>		

Georgia

SB 160	Status: Approved by Governor, May 1, 2023 (See <i>Tax Alert</i> 2023-1258)	Topic: Unemployment insurance tax rates
<p>Changes the unemployment tax rate for new employers to 2.64% through 2026, increasing to 2.7% after 2026. Institutes a 0.06% administrative assessment tax in effect from 2024 through 2026 that applies to new employers and employers with an experience rating; however, reimbursing employers and those employers paying the minimum or maximum unemployment tax rate are subject to the assessment. The administrative assessment is not reported as contributions on the Form 940 and is repealed entirely effective January 1, 2027.</p>		

Illinois

HB 3129	Status: Approved by Governor, August 11, 2023	Topic: Equal Pay Act wage transparency
<p>Expands the state's current Equal Pay Registration Certificate process by requiring that Illinois employers with more than 15 employees include pay scale and benefits information in all open job postings.</p>		

Indiana

SB 419	Status: Approved by Governor, May 4, 2023 (See <i>Tax Alert</i> 2023-0871)	Topic: Nonresident income tax, de minimis exemption
<p>Simplifies individual income tax filings and reduces employers' withholding and reporting burdens related to employees working less than 30 days in Indiana.</p>		

Kansas

H.B. 2420	Status: Referred to House Committee on Taxation, 2-15-2023 (legislature adjourned) Bill did not pass before session adjournment	Topic: Nonresident income tax, de minimis exemption
<p>Would have established a 30-day safe harbor before nonresident employees traveling into the state for work duties are subject to income tax in Kansas and their employers to corresponding withholding obligations. This safe harbor would have been available only if the nonresident's work state offered a substantially similar 30-day threshold and related provisions.</p>		

Maine

LD 1638	Status: (legislature adjourned June 21, 2023) Bill did not pass before session adjournment	Topic: State personal income tax rate decrease
Would have reduced the state's individual income tax rates for tax years 2023 and 2024 from 5.8%, 6.75% and 7.15% to 5.2%, 6.3% and 7.05%, respectively. Starting with the 2025 tax year, the rates would have been reduced to 5%, 6% and 7%, respectively.		

Maine

LD 1946	Status: Referred to Committee on Taxation Voted Ought Not to Pass , 5-31-2023 (legislature adjourned June 21, 2023)	Topic: Expand the state personal middle income tax bracket
Would have, effective January 1, 2023, increased the taxable income subject to the 6.75% and 7.15% tax rates.		

Maryland

S.B. 828	Status: Approved by Governor, 5-3-2023 (See <i>EY Tax Alert 2023-1029</i>)	Topic: Paid family and medical leave insurance
Delays the start date for employer/employee contributions to the state paid family and medical leave insurance plan from October 1, 2023, to October 1, 2024; prohibits a total contribution rate of more than 1.2% to be paid 50% by employers and employees; changes the definition of taxable wages.		

Minnesota

SF 2346	Status: Referred to Taxes, introduction and first reading, 3-1-2023 (legislature adjourned May 22, 2023) Bill did not pass before session adjournment	Topic: Nonresident income tax, de minimis exemption
Would have established a 30-day safe harbor before nonresident employees traveling into the state for work duties are subject to income tax in Minnesota and their employers to corresponding withholding obligations. This safe harbor would have been available only if the nonresident's work state offered a substantially similar 30-day threshold and related provisions.		

Minnesota

H.F. 442	Status: Introduction and first reading, referred to Taxes, 1-17-2023 (legislature adjourned May 22, 2023) Bill did not pass before session adjournment	Topic: State personal income tax rate increase
Effective retroactive to January 1, 2023, would have established a new tax rate of 10.85% on incomes over \$600,000 for single filers; over \$800,000 for heads of household; and over \$1 million for joint filers. The bill would also have raised the income thresholds for the existing income tax brackets for all filers.		

Minnesota

HF 2	Status: Approved by Governor 5-25-2023 (See <i>Tax Alert</i> 2023-1111)	Topic: State paid family and medical leave insurance
<p>Establishes a state paid family and medical insurance program with contributions and benefits beginning January 1, 2026, with employer quarterly wage detail reports starting July 1, 2025. The premium rate is 0.7% for an employer participating in both family and medical benefit programs; 0.4% for an employer participating in only the medical benefit program with an approved private plan for the family benefit program; and 0.3% for an employer participating in only the family benefit program with an approved private plan for the medical benefit program. Contributions are paid up to the Social Security wage limit; however, small employers pay at a lower wage limit based on number of employees. Employers may deduct up to 50% of the contributions from employees' wages.</p>		

Minnesota

SF 3035	Status: Approved by Governor 5-24-2023 (See <i>Tax Alert</i> 2023-1088)	Topic: Earned sick and safe leave (ESSL)
<p>Effective January 1, 2024, provides covered employees up to 48 hours of earned ESSL for a variety of purposes. The state earned sick and safe leave law does not preempt local ESSL laws.</p>		

Montana

H.B. 447	Status: Approved by Governor, 5-18-2023 (See <i>Tax Alert</i> 2023-0919)	Topic: Nonresident income tax, de minimis exemption
<p>Establishes a 30-day safe harbor before nonresident employees traveling to the state for work are subject to income tax in Montana and their employers to corresponding withholding obligations. The provision includes a "key employee" exception for employees who earn over \$500,000 in compensation in the prior year.</p>		

Nebraska

LB 416	Status: Notice of hearing 2-15-2023 (legislature is adjourned) Bill did not pass before session adjournment	Topic: Nonresident income tax, convenience of the employer rule
<p>Would only have imposed the convenience of the employer rule if the employee was present in Nebraska for more than 30 days in the tax year.</p>		

Nebraska

L.B. 173	Status: Notice of hearing 2-23-2023 (legislature is adjourned) Bill did not pass before session adjournment	Topic: Nonresident income tax, de minimis exemption
<p>Would have established a 30-day safe harbor before nonresident employees traveling into the state for work duties were subject to income tax in Nebraska and their employers to corresponding withholding obligations.</p>		

Nebraska

L.B 754	Status: Approved by Governor, 5-31-2023 (See <i>Tax Alert</i> 2023-1362)	Topic: Personal income tax decrease
<p>Collapses the current personal income tax brackets to three and lowers the rates in stages over four years starting in 2024.</p>		

New Jersey

AB 4694/ SB 3128	Status: Approved by Governor, 7-21-2023 (See <i>Tax Alert</i> 2023-1291)	Topic: Convenience of the employer rule
Provides that, retroactive to January 1, 2023, if another state in which an employee resides imposes tax on the income of an employee who works out-of-state for an in-state employer due to the convenience of the employee, that same rule will apply to a person who works for a New Jersey employer but who resides and works outside of New Jersey at the employee's convenience. This means that if an employee's state of residence determines the source of income of nonresidents by a "convenience of the employer test," and the employee works for a New Jersey employer from a location in the employee's state of residence for the employee's own convenience, then the New Jersey employer is required to include those days as days worked in New Jersey and withhold income tax accordingly.		

New York

SB 5572/AB 6796	Status: Passed the Assembly, 6-7-2023. Returned to the Senate, 6-7-2023 (legislature adjourns 12-31-2023)	Topic: Salary threshold for exempt employees
Would raise the salary threshold for salaried-exempt employees from \$900 per week to \$1,300 per week.		

North Carolina

HB 490	Status: Referred to Committee on Finance, 3-28-2023 (legislature has no set adjournment date)	Topic: Wages subject to state income tax
Would exempt certain bonuses and overtime pay for hours worked over 40 hours per week from state income tax.		

Pennsylvania (currently impacts Philadelphia)

S.B. 671	Status: Referred to House finance, 5-5-2023 (legislature adjourns December 31, 2023)	Topic: Convenience of the employer rule
Would prohibit imposing the Philadelphia wage tax on nonresidents working for employers within the city if the employee performs all duties or services outside of the city and makes clear that the tax can only be imposed for services physically provided by nonresidents within the city.		

South Carolina

HB 3450	Status: Referred to Committee on House Ways and Means, 1-10-2023 (legislature adjourned 5-11-2023) Bill did not pass before session adjournment	Topic: Wages subject to state income tax
Would have exempted certain bonuses and overtime pay for hours worked over 40 hours per week from state income tax.		

Vermont

H. 217	Status: Passed by House and Senate, 5/12/2023, House and Senate overrode the Governor's veto, 6-20-2023 (See <i>Tax Alert</i> 2023-1338)	Topic: Payroll tax to fund child care
Requires that, effective July 1, 2024, employers pay a Child Care Contribution of 0.44% of covered wages (0.11% of self-employed income). Allows employers to withhold a maximum of 25% of the contribution from employees' wages.		

For hybrid workers, to which state is unemployment insurance paid?

For state income tax withholding purposes, wages are generally sourced to the resident state and to the state(s) where services are provided. Further, if there is a change in the state of residence or work state, income tax withholding liabilities are immediately impacted.

Example 1: Employee Marge works for DesignCo, an engineering firm with offices in Arizona, New Mexico and Utah. As of January 1, 2023, Marge works 50% of the time in the Arizona branch office and 50% from her home office in Utah. Effective June 15, 2023, Marge is reassigned to the New Mexico branch office. She will continue to work from her Utah home office 40% of the time.

From January 1, 2023 through June 14, 2023, DesignCo is required to withhold Utah resident income tax for all wages paid and Arizona nonresident income tax for work performed within the state. Effective June 15, 2023, DesignCo is required to withhold Utah resident income tax for all wages paid and New Mexico nonresident income tax for work performed within the state.

Unlike state income tax withholding, state unemployment insurance (SUI) applies only in one state and is determined on a quarterly basis. The federal "four-prong" test is used to determine the state to which SUI contributions are paid. (*US Department of Labor, [Program Letter 20-04.](#)*)

Under the federal four-prong test, SUI contributions are paid where the employee performs some work, and, in the state that:

1. The work is localized
2. If the work is not localized, then where the employee has his or her base of operations
3. If there is no work where the employee has a base of operations, then from where the employee's work is directed and controlled
4. If none of the above applies, then where the employee lives

Example 2: Assume the facts in Example 1. Because Marge works 50% of the time from her home office and 50% in the employer's office, there is no single state where work is localized. Further, there is no single base of operations or place of direction and control. Accordingly, SUI is paid to her resident state of Utah.

Key takeaways

Employers should carefully review the SUI state assigned to hybrid workers and confirm that SUI contributions are paid to only one state. If employees work 100% from home, employers should also confirm that SUI contributions are paid to the home office state.

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