2023 employment tax year in review

December 7, 2023

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Course description and learning objectives

Course description

The panelists will discuss payroll information relevant to year-end 2023 and 2024, including employment tax rates and limits, payroll insights, unemployment insurance developments, Form W-2/1099-NEC reporting considerations, payroll developments in 2023, multistate considerations for hybrid workers, and items to consider in the 2023 year-end checklist.

Learning objectives

- Identify the employment tax rates and limits that will apply in 2024
- Recognize state income tax and unemployment insurance trends for 2023 and beyond
- Identify multistate considerations affecting hybrid workers
- Identify key state and local payroll developments affecting 2023 and 2024
- Recognize various year-end reporting and other considerations

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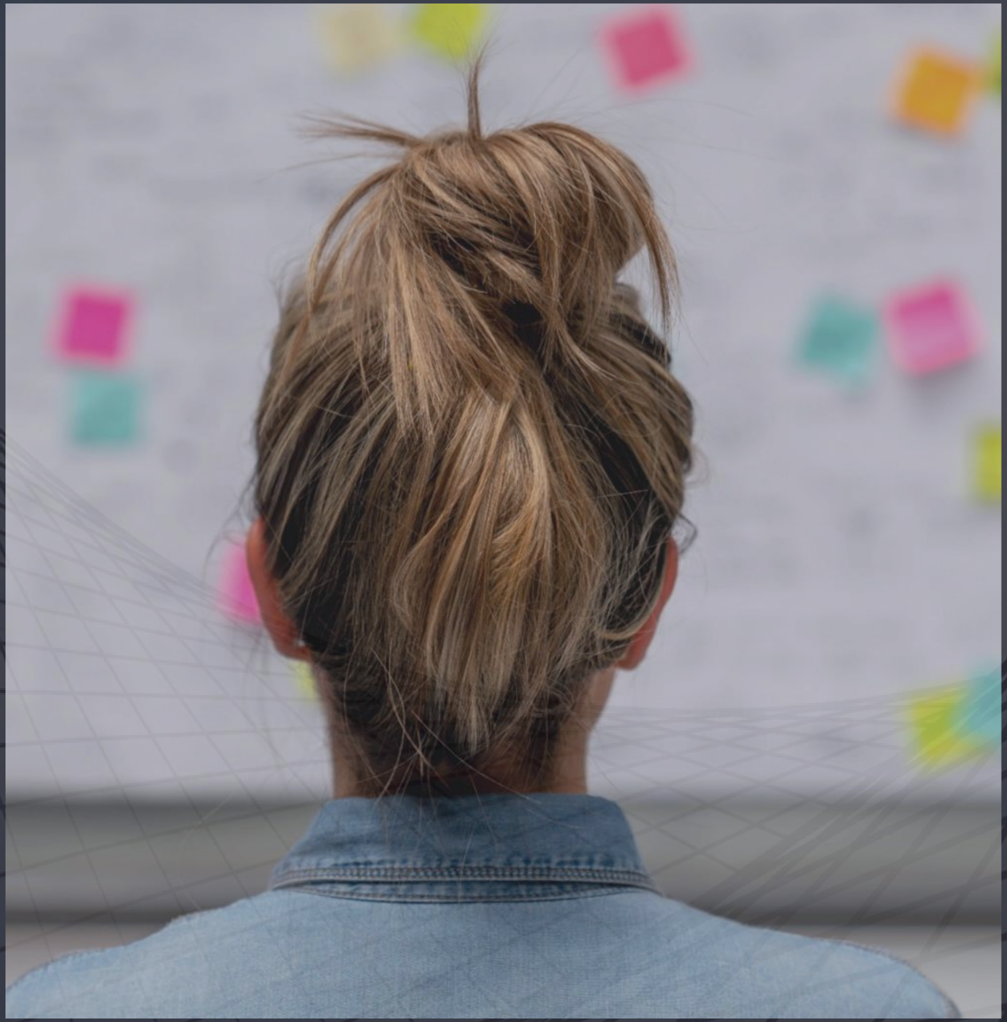

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2023 and 2024 federal employment tax limits

Category	Measure	2023 limit	2024 limit	Compared to 2023
Social Security wage base	Year	$160,200	$168,600	**UP**
Salary reduction to qualified retirement plan (e.g., 401(k))	Year	$22,500	$23,000	**UP**
Qualified parking	Month	$300	$315	**UP**
Commuter highway vehicle/transit pass	Month	$300	$315	**UP**
Adoption assistance	Per adoption	$15,950	$16,810	**UP**
Health flexible spending account (FSA) employee pretax contribution	Year	$3,050	$3,200	**UP**
Business cents per mile	Mile	$0.655	Pending	
Relocation cents per mile (relevant only to military)	Mile	$0.220	Pending	
Federal unemployment insurance wage base	Year	$7,000	$7,000	**No change**

2023 and 2024 health savings account limits

Limit type	2023	2024
Contribution*		
Self	$3,850	$4,150
Family	$7,750	$8,300
Out-of-pocket		
Self	$7,500	$8,050
Family	$15,000	$16,100
High-deductible health plan (HDHP)		
Self	$1,500	$1,600
Family	$3,000	$3,200

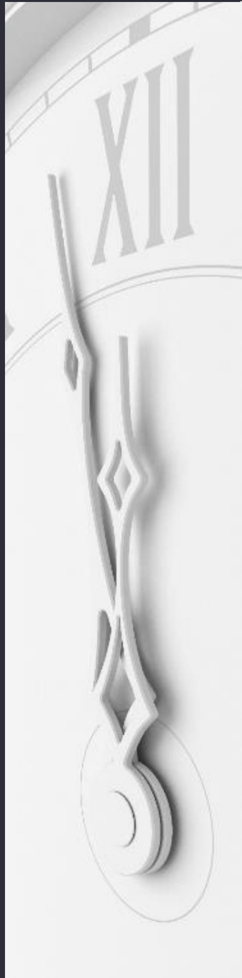
Keep in mind

The combined total of annual employer contributions plus employee pretax contributions must be reported on Form W-2, box 12, code W.

Errors in box 12, code W create tax return filing issues for employees.

* An additional contribution of $1,000 is permitted for individuals aged 55 and older. Those enrolled in Medicare are not eligible to participate. For plan years beginning in 2024, the maximum amount that may be made newly available for the plan year for an excepted Health Reimbursement Arrangement (HRA) under Reg. Section 54.9831-1(c)(3)(viii) is $2,100.

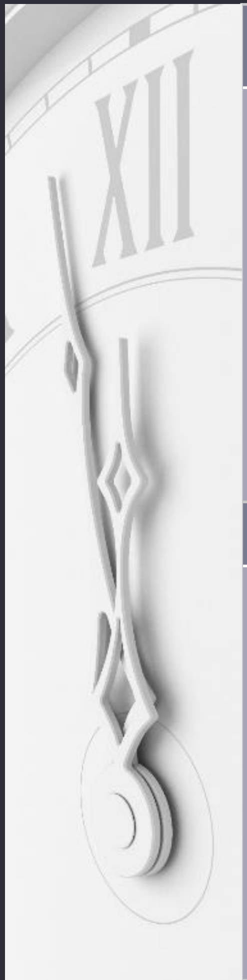
Information reporting penalties (Forms W-2 and 1099 filed in 2024)



Section 6721: Failure to timely file an accurate information return with IRS/SSA (for returns required to be filed in 2024)				
Filed/corrected on or after	**On or before**	**Penalty**	**Maximum**	**Maximum small employer**
1/1	1/31	$0	N/A	N/A
2/1	2/28	$60	$630,500	$220,500
3/1	8/1	$120	$1,891,500	$630,500
8/1		$310	$3,783,000	$1,261,000
	Intentional disregard	$630	No limit	No limit

Section 6722: Failure to furnish correct payee statements (for statements required to be furnished in 2024)				
Filed/corrected on or after	**On or before**	**Penalty**	**Maximum**	**Maximum small employer**
1/1	1/31	$0	N/A	N/A
2/1	2/28	$60	$630,500	$220,500
3/1	8/1	$120	$1,891,500	$630,500
8/1		$310	$3,783,000	$1,261,000
	Intentional disregard	$630	No limit	No limit

Information reporting penalties (Forms W-2 and 1099 filed in 2025)

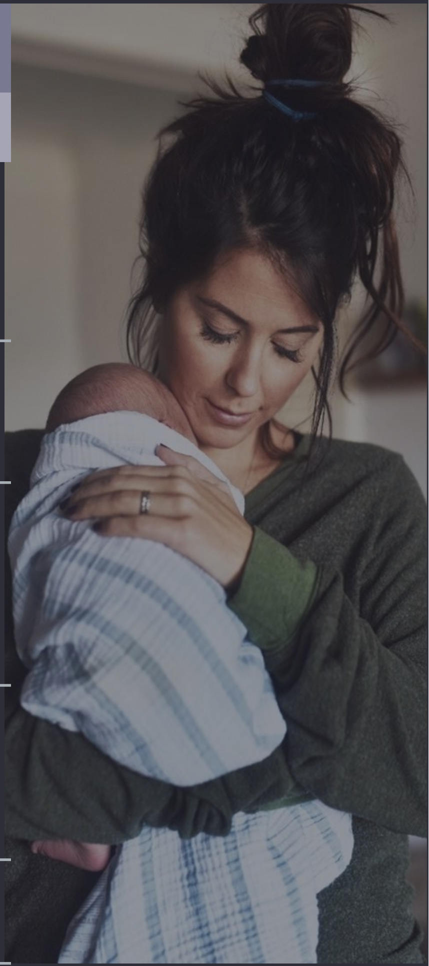


Section 6721: Failure to timely file an accurate information return with IRS/SSA (for returns required to be filed in 2025)				
Filed/corrected on or after	**On or before**	**Penalty**	**Maximum**	**Maximum small employer**
1/1	1/31	$0	N/A	N/A
2/3	3/3	$60	$664,500	$232,500
3/3	8/1	$130	$1,993,500	$664,500
8/2		$330	$3,987,000	$1,329,000
	Intentional disregard	$660	No limit	No limit

Section 6722: Failure to furnish correct payee statements (for statements required to be furnished in 2025)				
Filed/corrected on or after	**On or before**	**Penalty**	**Maximum**	**Maximum small employer**
1/1	1/31	$0	N/A	N/A
2/3	3/3	$60	$664,500	$232,500
3/3	8/1	$130	$1,993,500	$664,500
8/2		$330	$3,987,000	$1,329,000
	Intentional disregard	$660	No limit	No limit

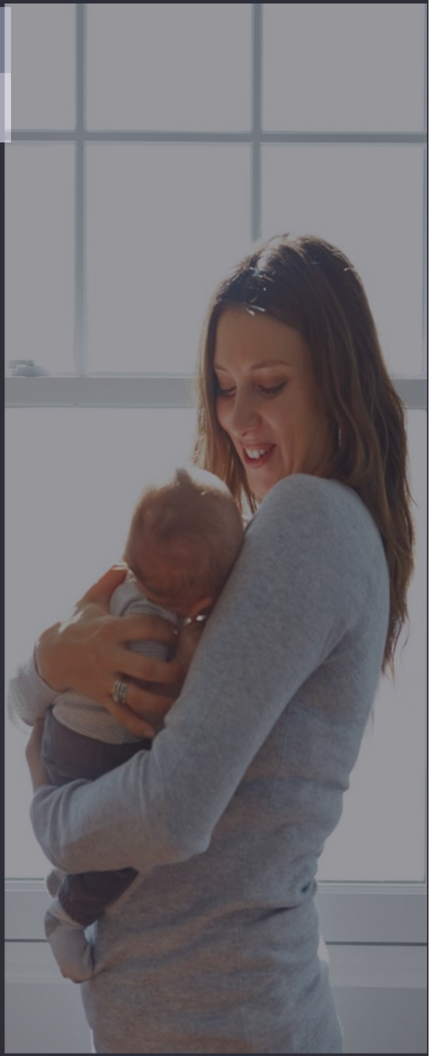
State disability and family and medical leave insurance contributions for 2024

State disability and family and medical leave insurance contribution rates for 2024			
State/jurisdiction	**Employee contribution (% of taxable wages)**	**Employer contribution (% of taxable wages)**	**Taxable wage limit if applicable**
California Disability Paid family medical leave insurance	1.1% Included in disability contribution	None N/A	None New! Included in disability contribution
Connecticut Paid family medical leave insurance	0.5%	None	$168,600 (2024 Social Securitywage limit)
Colorado Paid family medical leave insurance	50% of 0.9% (if employer has 10 or more employees; if fewer than 10 employees, employees pay 100%)	50% of 0.9% (if employer has 10 or more employees; if fewer than 10 employees, employers pay 0%)	$168,600 (2024 Social Security wage limit)
Delaware Paid family medical leave insurance Contributions start in 2025	Employers may deduct up to 50% of premium from employees' wages	Medical: 0.4%; family leave: 0.8%; parental leave: 0.32% (employers with 10 to 24 employees are subject only to parental leave and employers with nine or fewer employees are completely exempt)	Social Security wage limit
District of Columbia Paid family medical leave insurance	None	0.26%	None, payroll tax is on total wages



State disability and family and medical leave insurance contributions for 2024

State disability and family and medical leave insurance contribution rates for 2024			
State/jurisdiction	**Employee contribution (% of taxable wages)**	**Employer contribution (% of taxable wages)**	**Taxable wage limit if applicable**
Hawaii Disability	50% of cost but not more than 0.5% of covered weekly wages up to a maximum weekly contribution of $6.59)	Difference between cost and worker's contribution	For 2024, $1,374.78 (weekly)
Maryland Paid family medical leave insurance Effective October 1, 2024	50% of 0.9%	50% of 0.9%	$168,600 (2024 Social Security wage limit)
New! **Maine** Paid family medical leave insurance Effective January 1, 2025	50% of 1.0% (100% if employer has fewer than 15 employees)	50% of 1.0% (0% contribution if employer has fewer than 15 employees)	Social Security wage base
Massachusetts Paid family medical leave insurance	0.88% if employer has 25 or more employees; otherwise, 0.46% (employees pay 100% of family leave portion); if employer has 25 or more employees, 40% of medical insurance portion; otherwise, 100% of medical insurance portion	60% of medical insurance portion for employers of 25 or more employees; otherwise, 100% of medical insurance portion	$168,600 (2024 Social Security wage limit)
New! **Minnesota** Paid family medical leave insurance Contributions start January 1, 2026	0.7% for both family and medical leave benefits, 0.4% for medical leave benefits only and 0.3% for family leave benefits only paid 50% by employees	0.7% for both family and medical leave benefits, 0.4% for medical leave benefits only and 0.3% for family leave benefits only paid 50% by employees	Social Security wage limit (a lower wage base applies to employers with less than 30 employees with the lowest premium available to those with 1 to 9 employees)



State disability and family and medical leave insurance contributions for 2024

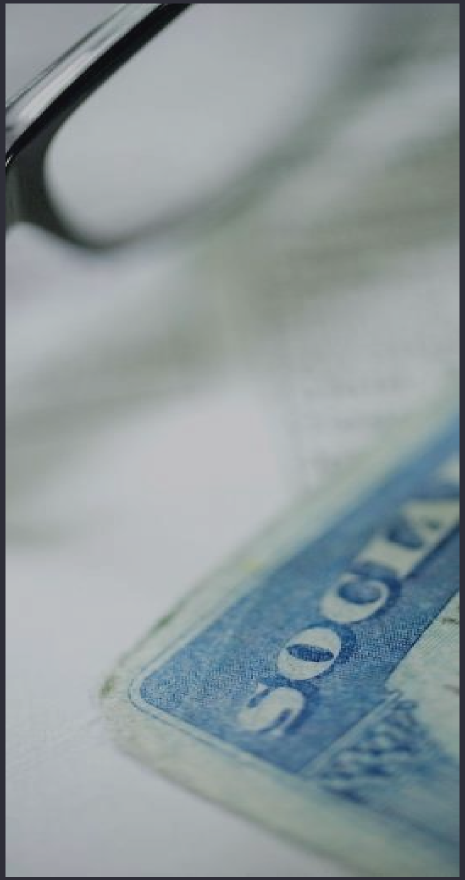
State disability and family and medical leave insurance contribution rates for 2024			
State/jurisdiction	**Employee contribution (% of taxable wages)**	**Employer contribution (% of taxable wages)**	**Taxable wage limit if applicable**
New Hampshire Paid family medical leave insurance	Effective January 1, 2023, employees may opt into the state's Granite State Paid Family Leave Fund (FMLI)	Employers that choose to participate in the FMLI program will be entitled to a tax credit, allowed against FMLI premiums due, of 50% of the premium that the employer paid for FMLI coverage for the tax period at issue	N/A
New Jersey Disability	None	New employers pay 0.5% of taxable wages if in state plan; otherwise, experience rating applies; for other employers, experience rates range from 0.1% to 0.75%	$42,300 for employers
Paid family medical leave insurance	0.09%	None	$161,400
New York Disability	0.5% up to: $0.14 daily $0.60 weekly $1.20 biweekly $1.30 semi-monthly $2.60 monthly	Balance of costs over employee contributions necessary to provide benefits	None
Paid family medical leave insurance	0.373% (maximum of $333.25 per year)	None	$89,343.80

State disability and family leave insurance contributions for 2024

State disability and family and medical leave insurance contribution rates for 2024			
State/jurisdiction	**Employee contribution (% of taxable wages)**	**Employer contribution (% of taxable wages)**	**Taxable wage limit if applicable**
Oregon Paid family medical leave insurance	60% of 1.0% if employer has 25 or more employees; otherwise, employee pays 100%	40% of 1.0% if employer has 25 or more employee; otherwise, employer pays 0%	$168,600
Puerto Rico Disability Paid family medical leave insurance	0.3% None	0.3% None	$9,000 None
Rhode Island Disability (2024 pending) Paid family medical leave insurance	1.1% Included in disability contribution	None N/A	$84,000 (2024 pending) Included in disability contribution
Washington Paid family medical leave insurance	71.43% of 0.74% if employer has more than 50 employees; otherwise, 100%	28.47% of 0. 74% if employer has 50 or more employees; otherwise, 0%	$168,600 (Social Security wage limit)
Long term care insurance Contributions started July 1, 2023	0.58% of gross wages	None	None

Forms W-2/1099-NEC changes

Truncation of the Social Security Number (SSN) on Form W-2



- The IRS issued final regulations that give employers the option of truncating the SSN on copies of Forms W-2 and W-2c provided to employees effective with information statements required to be furnished after December 31, 2020. (*T.D. 9861; REG-105004-16*.)
- Truncation is allowed only on forms provided to employees and not on copies filed with the IRS or SSA.
- The formatting of the truncated SSN is XXX–XX–1234 or ***–**–1234.
- Truncation of the SSN is not permitted on statements that insurance companies **must** provide to employers (due by January 15) detailing third-party sick payments for the prior year.
- Some states may still require the full SSN to be furnished on state copies of Forms W-2 provided to employees.

Forms W-2/1099-NEC changes, *continued*

Threshold for filing Forms W-2/1099 electronically

- The Taxpayer First Act (*Pub. Law No. 116-25*) lowers the threshold for the mandatory electronic filing of information returns (Forms W-2, 1099 series and the Affordable Care Act (ACA) returns).
- Under amended regulations, the 250-return threshold is lowered to 10 or more of all returns (Form W-2 series, Form 1099 series, ACA returns, etc.) effective for tax year 2023 filed in 2024.
  - This means that filers must combine almost all information return types to determine if electronic filing is required.
- A waiver from this lower electronic filing threshold applies to areas without internet access.
- The lower electronic filing thresholds could affect the way Forms W-2c are filed. For instance, currently up to 250 Forms W-2c can be filed on paper. Starting with 2023 returns, even one Form W-2c must be filed electronically if the combined information returns for the tax year exceed 10.
- Several states have already conformed to this new federal electronic filing threshold.

Forms W-2/1099-NEC changes, *continued*

Reporting of nonemployee compensation (Form 1099-NEC)

- The IRS requires using Form 1099-NEC to report nonemployee compensation.
- Form 1099-NEC must be furnished to payees and filed with the IRS by January 31.
- The Form 1099-NEC is included in the federal/state combined reporting program.
- Form 1099-NEC resolves the issue of the differing filing due dates for wages reported on Forms W-2 and the due date for Forms 1099-MISC for other than nonemployee compensation.
  - Through tax year 2019, Forms 1099-MISC generally had to be filed by March 31 (February 28 if filed on paper); however, Forms 1099-MISC reporting nonemployee compensation had to be filed by January 31, the same due date that applies to Forms W-2.
- Form 1099-MISC continues to be used to report wages subject to federal income tax paid after the employee's death.

Forms W-2 corrections

A safe harbor is available to protect an employer from penalties for the failure to issue Form W-2c for de minimis errors, unless the employee elects for the safe harbor not to apply and does not revoke that election.

De minimis errors:

- Dollar error no more than $100
- Withholding tax error no more than $25

For more information see Notice 2017-09

Employee election must include:*

- Clear statement of employee's election
- Employee name, address, SSN
- If desired, tax year the election applies
- If desired, type of statement (e.g., W-2)

*The employer can prescribe any reasonable manner for making the election (for example, in writing, on-line, by phone) but on-line cannot be the exclusive manner.

Other information:

- Employers are not required to notify employees about the safe harbor or the employees' right to make the election.
- Employer must retain records of employee elections and revocations for as long as they may be relevant.

Polling question

Have you taken advantage of the option to not issue Forms W-2c for de minimis errors?

a. No
b. Yes
c. Don't know
d. Does not apply (EY, faculty, other)

Missouri nonresident income tax withholding

01

Missouri's unique requirement when computing nonresident income tax withholding

- It is a general rule of thumb that nonresident income tax applies only to those wages paid for services provided in the nonresident state. The provision is automatic, meaning the employee does not need to file a special form to prevent withholding on all earned wages, regardless of where services are performed.

- Under Missouri tax law, if a nonresident performs services partly within and partly outside of the state, only wages paid for services performed within Missouri are subject to Missouri income tax withholding, provided the employee files with the employer a *Form MO W-4A, Certificate of Nonresidence or Allocation of Withholding Tax*. *(2023 State of Missouri Employer's Tax Guide, p. 4*.)

While many states follow the same approach to nonresident income tax withholding, it is important not to make assumptions. Instead, conduct a careful review of the state rules with your employment tax advisor.

Louisiana employee separation notice requirements

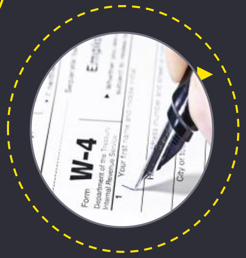
02

Louisiana's unique rule when employees are terminated

- Employer communication with the state about an employee's separation from employment is generally required only when a state notifies the employer that an employee has filed a claim for unemployment insurance (UI) benefits and the employer is protesting that claim.
- An exception to this general rule applies in Louisiana**.** When employees are permanently separated from employment for an indefinite period, or for an expected duration of seven or more days under conditions that may disqualify them from receiving UI benefits, Louisiana law requires that within three days after separation**,** the employer give to employees and file with the Louisiana Workforce Commission (LWC) a separation notice alleging disqualification. (*La. Admin. Code Title 40, Section IV-323.*)
- To comply with the law, employers must complete, in triplicate, LWC-ES 77, *Separation Notice Alleging Disqualification,* for workers who separate from employment without good cause connected with their work, are discharged for misconduct connected with their work, or are unemployed due to a labor dispute.

Employers should confirm that they are complying with state unemployment insurance notice and poster requirements. To assist in this process, review our special report, *State unemployment insurance requirements for employee notices and workplace posters*.

Claiming exemption from state income tax withholding



Watch for state rules that govern employees claiming exemption from income tax withholding (for other than a military spouse)

States that do not allow 100% exemption from withholding

- Alabama (Act 2015-504)
- Hawaii (see Form HW-4, *Employee's Withholding Allowance and Status Certificate)*

States that require a separate exemption certificate

- Arkansas (Form AR4ECSP)
- Connecticut (for nonresidents, Form CT-W4NA)
- Louisiana (Form L-4E)
- New York (Form IT-2104-E)
- North Carolina (Form NC-4EZ)
- Pennsylvania (Form REV-419)

States with no option to claim exemption from withholding

- Delaware (see Form DE W-4)
- Indiana (see Form WH-4)
- Massachusetts (only available to full-time students engaged in seasonal, part-time or temporary employment whose estimated income does not exceed $8,000, see Form M-4)
- Mississippi (available only to military spouses under the Military Spouses Residency Relief Act, see Form 89-350)
- West Virginia (see Form WV-IT-104)

Other limitations

- Illinois (federal Form W-4 must claim 100% exemption to claim 100% exemption from Illinois income tax withholding, see Form IL-W-4)
- Iowa (nonresidents cannot claim 100% exemption from Iowa income tax withholding, see Form IA W-4)

Delaware income tax withholding deposits

04

Delaware's unique approach to determining income tax withholding deposit due dates

- Generally, when determining the due date for income tax withholding deposits, taxing authorities set a withholding threshold for the respective lookback period. The income tax withholding threshold is generally fixed and legislation is required to change it. For example, federal income tax withholding must be remitted on a semiweekly basis in 2023 if the total income tax withholding was more than $50,000 for the lookback period July 1, 2021 to June 30, 2022 (*IRS Publication 15, p. 27*), while Connecticut requires state income tax withholding be remitted weekly in 2023 if total income tax withholding is more than $10,000 for the same lookback period (*Connecticut Circular CT, Pg. 13*).

- Delaware is unique because the income tax withholding thresholds for determining deposit due dates are indexed annually for inflation (*Delaware Employer's Guide*; *Annual Threshold Updates as Required by Delaware Law*).

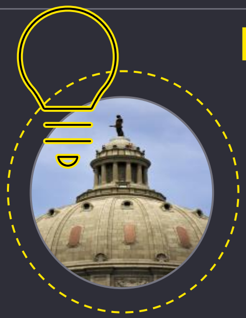
Delaware income tax withholding deposit due date thresholds

Description	Calendar year 2022 threshold	Calendar year 2023 threshold
Amount of withholding in annual lookback period under which quarterly filings are specified	$5,070	$5,530
Amount of withholding in annual lookback period between which monthly filings are specified	$5,070 & $28,180	$5,530 & $30,740
Amount of withholding in annual lookback period over which 8th- monthly filings are specified	$28,180	$30,740

Even when using a third party to make payroll tax deposits, it is important to be familiar with the specific state (and local) payroll tax deposit requirements and review compliance at least annually.

Missouri tax credit lowers income tax withholding deposit

05



Missouri Employer Compensation credit lowers state income tax withholding deposit

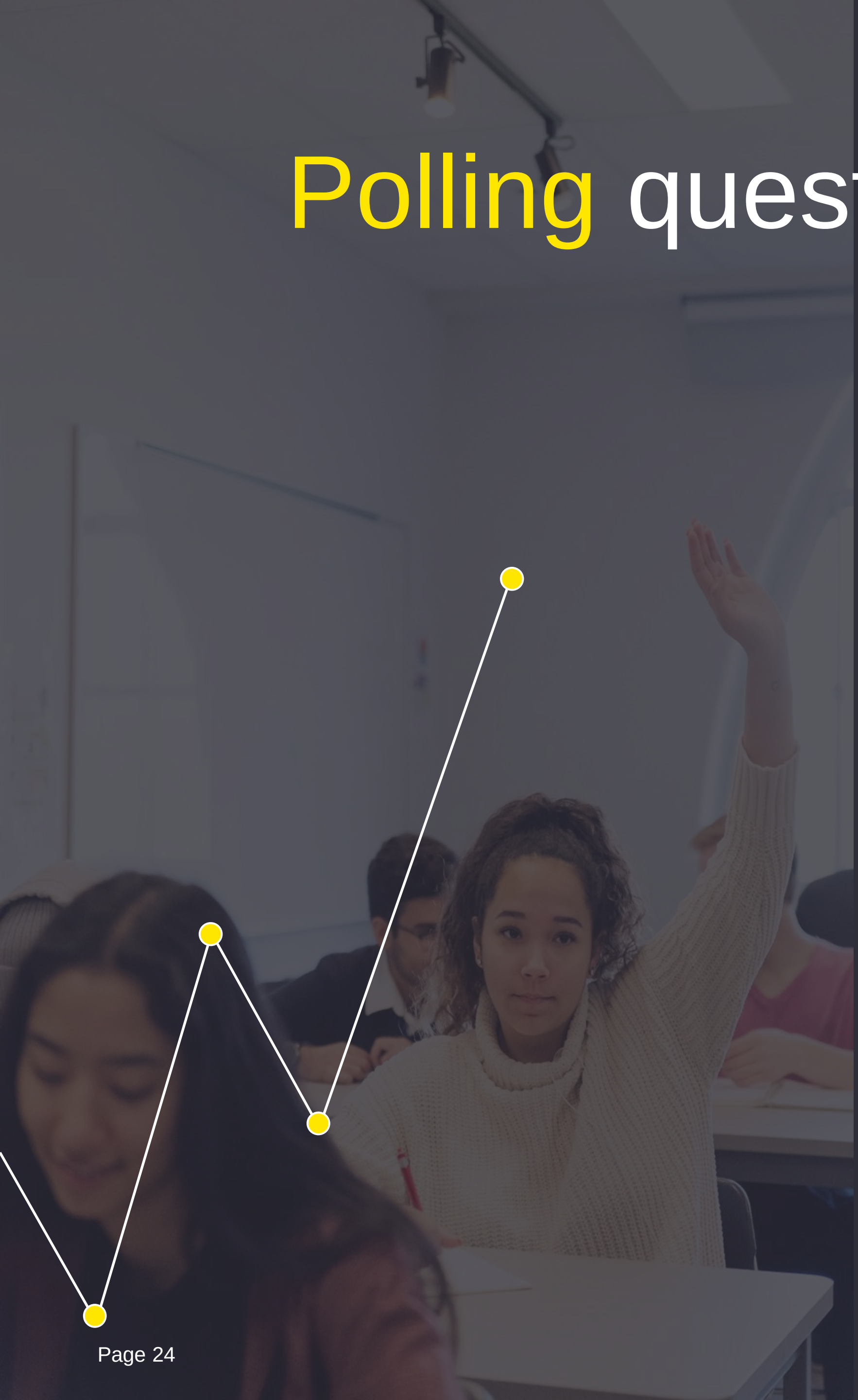
- It is generally the rule that employers **must** remit to the state 100% of the income tax they withhold from wages. Missouri employers, however, can deduct an "Employer Compensation" credit from their withholding remittance. Essentially, Missouri compensates employers for withholding and timely remitting Missouri state income tax. *(RS MO Section 143.261; State of Missouri Employer's Tax Guide, p. 8.)*
- Employers that remit their income tax withholding on or before the due date may deduct the allowable Employer Compensation credit on each withholding return filed. The Employee Compensation credit is computed as a percentage of the annual accumulative income tax withheld, as follows:

Employer Compensation percentage	Year-to date total withholding January-December
2%	$0 to $5,000
1%	$5,001 to $10,000
0.5%	In Excess of $10,000

Considering its cash-back advantage, Missouri employers should confirm whether they, or their third-party payroll providers, are claiming the Employer Compensation credit.

Employers claiming the Missouri Employer Compensation credit should confirm that they are correctly recording the cash back as income by reviewing the general ledger entries for remittances of Missouri income tax withholding.

Finally, employers should discuss with their employment or workforce tax advisors whether there are other employer credits in states where they operate. For instance, the Missouri Works Program offers employers an additional reduction in their state income tax withholding remittances for each new job created. (*State of Missouri Employer's Tax Guide, p. 8.*)



Polling question

Is your company claiming the Missouri Employer Compensation credit?

a. No
b. Yes
c. We will in the future
d. Don’t know
e. Does not apply (EY, faculty, other)

COVID-19's impact on unemployment insurance costs

COVID-19 significantly increased state unemployment insurance (SUI) claims, which has had – and will continue to have – an adverse impact on employers' federal unemployment insurance (FUTA) costs.

- Due to COVID-19, jurisdictions with insolvent SUI trust funds borrowed money to pay SUI benefits. They had the option of financing this debt through bonds or by accepting federal SUI loans.
- A total of 23 jurisdictions accepted federal SUI loans in 2020-2023; however, only three had an outstanding balance on November 10, 2023, requiring a FUTA credit reduction.
- Most states repaid their federal SUI loan balances with federal pandemic relief funds.
- Jurisdictions often pass the loan interest cost on to employers through a SUI surcharge. These surcharges are not treated as SUI contributions for purposes of reporting creditable state contributions on the Form 940.
- In anticipation of interest charges for SUI trust fund financing costs, Massachusetts, Minnesota, New York, Texas and the Virgin Islands currently allow for employer interest surcharges.

FUTA credit reduction for unpaid COVID-19 federal SUI loans

2020

- State receives federal loan to pay unemployment insurance benefits

2021

- Interest accrues starting Sept. 6, 2021, with payment due each year by Sept. 30 (and state may create an SUI surcharge to collect cost back from employers)
- Virgin Islands has a FUTA credit reduction for unpaid loans dating back to 2009; therefore, the 2023 FUTA tax rate for Virgin Islands wages is 4.5%

2022

- FUTA credit reduction of 0.3% applies if loan balance exists on Nov.10 (paid with the 2022 Form 940)
- Interest due by Sept. 30

2023

- FUTA credit reduction of 0.6% applies if loan balance exists on Nov. 10 (paid with the 2023 Form 940)
- Interest is due on Sept. 30 (and the state may create a surcharge to collect interest from employers)

2024

- FUTA credit reduction of 0.9% applies if loan balance exists on Nov. 10 (paid with the 2024 Form 940)
- Interest is due on Sept. 30
- Additional FUTA credit reduction is triggered under the 2.7[1] add-on

2025

- FUTA credit reduction of 1.2% applies if loan balance exists on Nov. 10 (paid with the 2025 Form 940)
- Interest is due Sept. 30

- Additional BCR FUTA credit reduction is triggered
- Or, additional 2.7[1] add-on to FUTA credit reduction is triggered

2026

- FUTA credit reduction of 1.5% applies if loan balance exists on Nov.10 (paid with the 2026 Form 940)
- Interest is due Sept. 30

- Additional Benefit Cost Rate (BCR) FUTA credit reduction is triggered
- Or, additional 2.7[1] add-on to FUTA credit reduction is triggered

[1] This is not a percentage

Source: Code of Federal Regulations, Part 606

2023 FUTA credit reductions for unpaid federal SUI loans

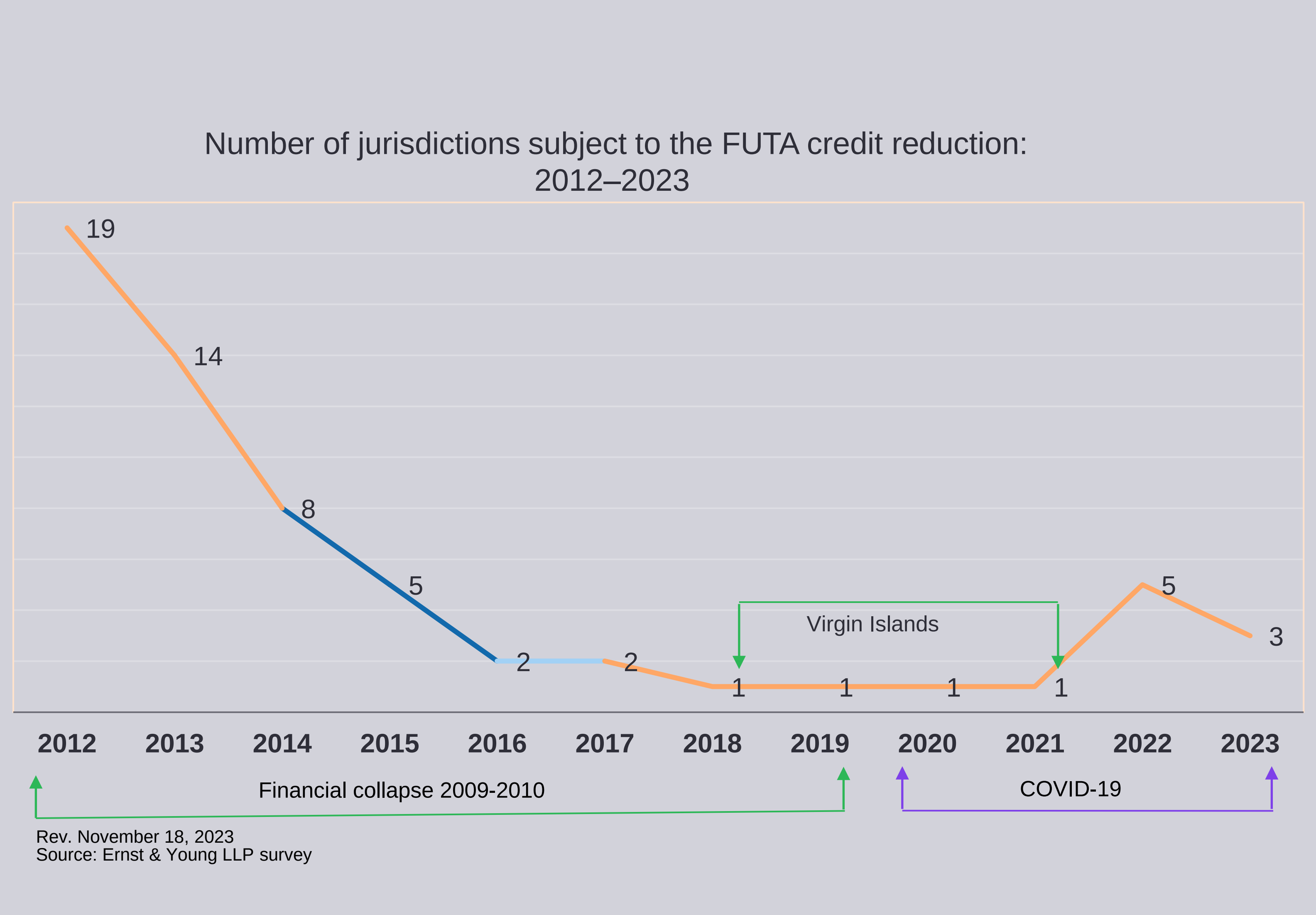
FUTA credit reductions for 2023

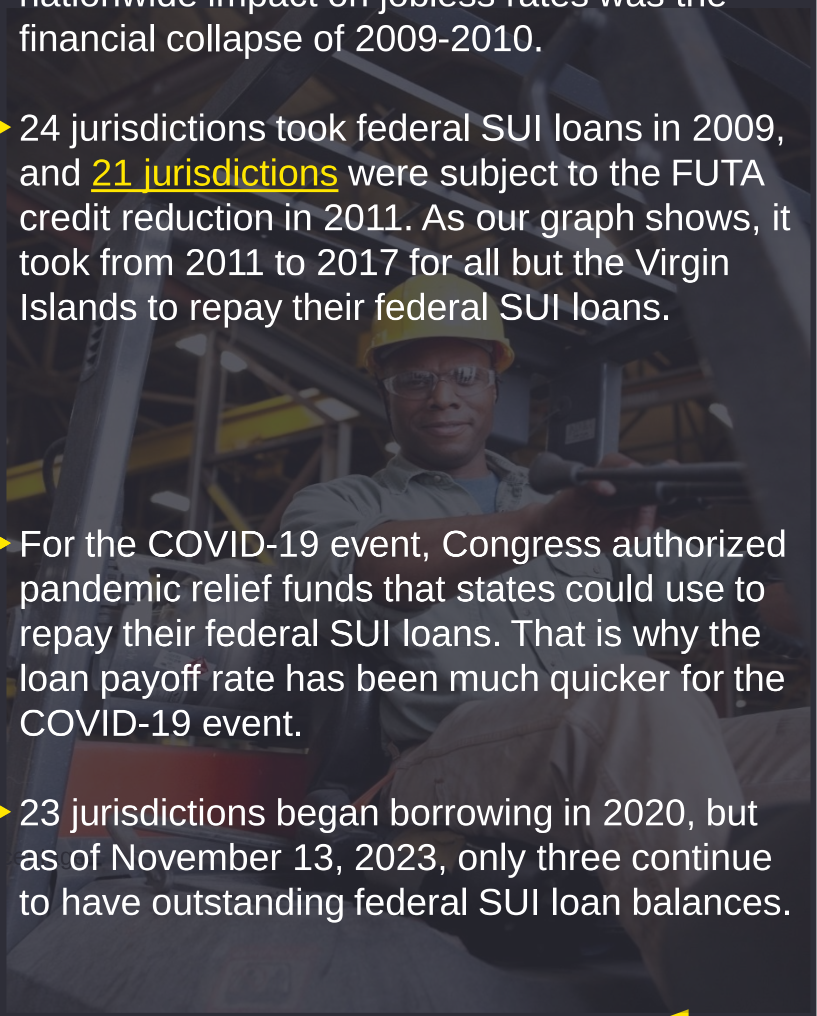
Loan balances as of November 13, 2023, per Treasury Direct

State	First year of federal SUI loan	Federal SUI loan balance as of 11-13-2023	2023 FUTA credit reduction	2023 BCR add-on	Net 2023 FUTA rate (credit reduction + .06%)	Is there an employer surtax to repay interest on the federal SUI loan?
California	2020	$19,078,109,940	0.6%	N/A	1.2%	No
New York	2020	$6,881,370,641	0.6%	N/A	1.2%	Yes For 2023 the interest assessment is 0.18% (down from 0.22% in 2022), or approximately $22.14 per employee
Virgin Islands	2009	$87,659,178	3.9%	1.0%	4.5%	Yes $25 per employee applies

Employers will be subject to a FUTA tax rate of 1.2% for tax year 2023 for the above states because they had outstanding loan balances on November 10, 2023 (and for two or more consecutive years). The Virgin Islands has a higher net FUTA rate because it has had a loan balance since 2009. (*U.S. Department of Labor* *Final 2023 FUTA Credit Reductions*.)

FUTA credit reductions 2012-2023





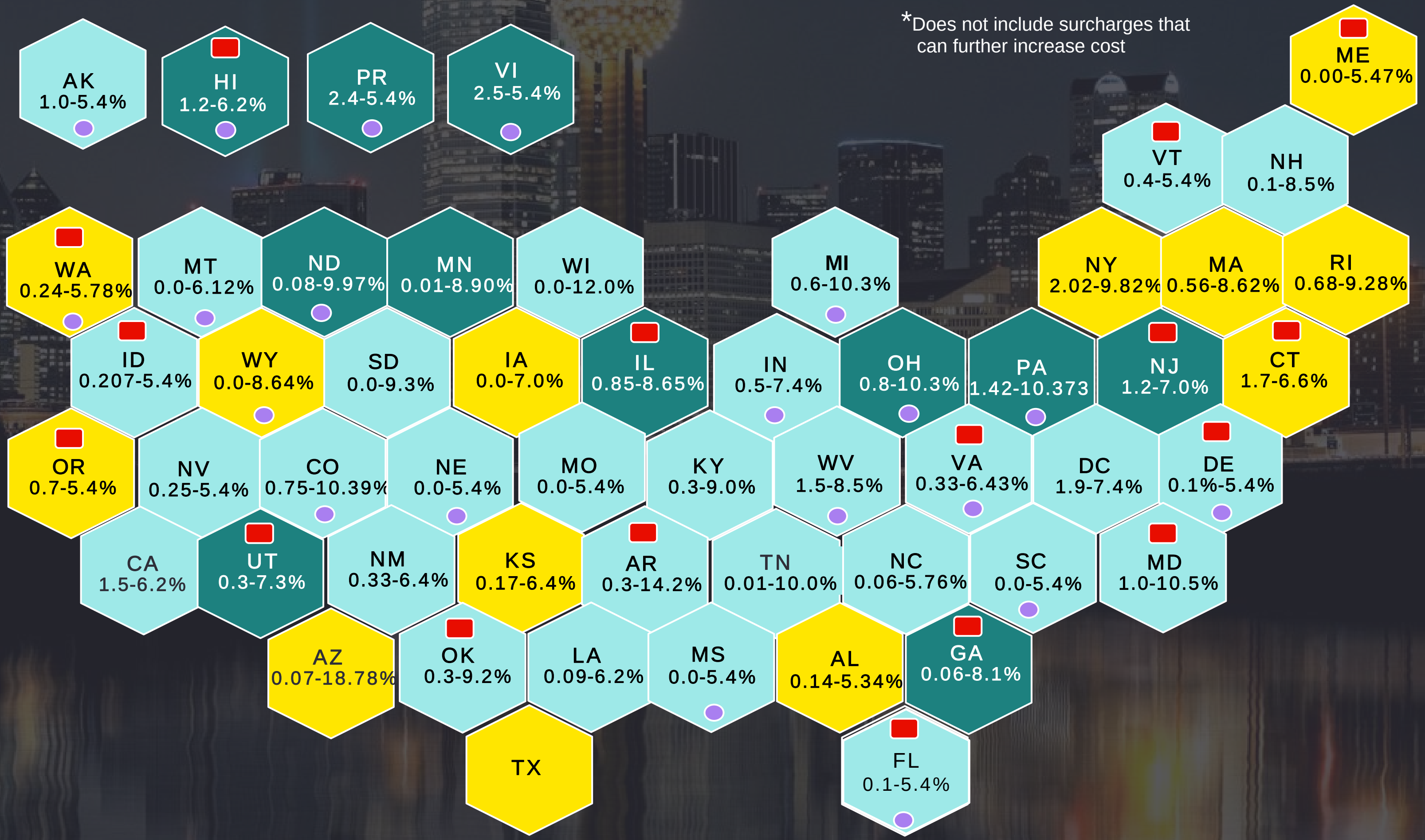
- The last significant event that caused a nationwide impact on jobless rates was the financial collapse of 2009-2010.
- 24 jurisdictions took federal SUI loans in 2009, and 21 jurisdictions were subject to the FUTA credit reduction in 2011. As our graph shows, it took from 2011 to 2017 for all but the Virgin Islands to repay their federal SUI loans.
- For the COVID-19 event, Congress authorized pandemic relief funds that states could use to repay their federal SUI loans. That is why the loan payoff rate has been much quicker for the COVID-19 event.
- 23 jurisdictions began borrowing in 2020, but as of November 13, 2023, only three continue to have outstanding federal SUI loan balances.

2023 SUI wage bases

Rev. November 18, 2023
Source: Ernst & Young LLP survey

Federal minimum wage base of $7,000
Wage base of $7,001 to $34,800
Wage base of $34,801 to $67,600
Wage base is adjusted annually

2023 SUI base tax rates for experience-rated employers*



*Does not include surcharges that can further increase cost

Rev. November 18, 2023
Source: Ernst & Young LLP survey

- SUI base tax rates decreased from 2022
- SUI base tax rates unchanged from 2022
- SUI base tax rates increased from 2022
- Action taken to lower 2023 SUI tax rates
- A higher penalty rate applies to delinquent employers

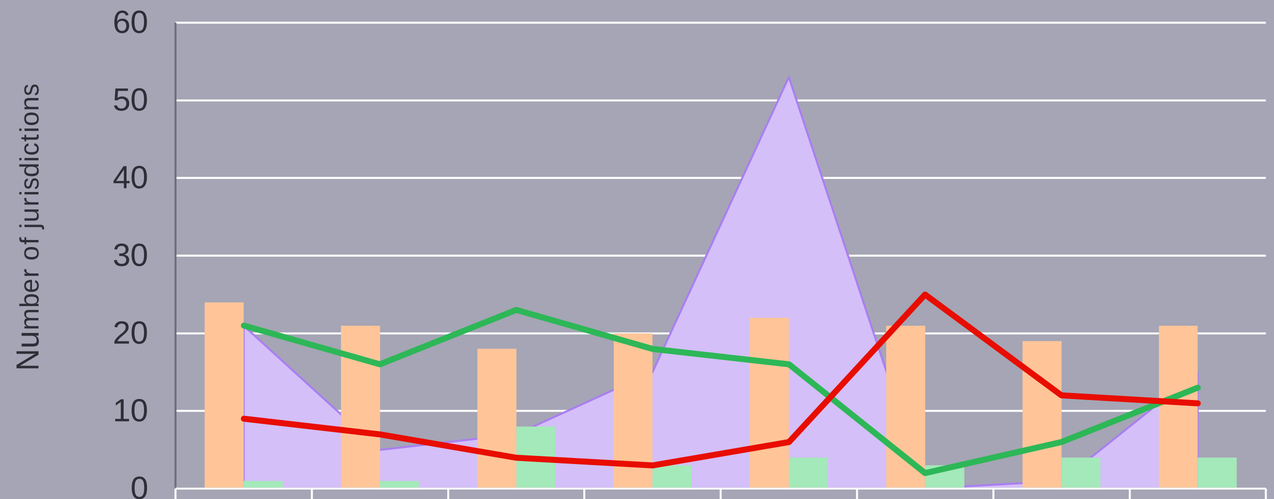
2023 SUI cost trends

State jobless rate exceeds the October 2023 average of 3.9%*	October 2023 jobless rate (↑) (↓) increase or decrease from 2022
Puerto Rico	5.8% (↓)
Nevada	5.4%(↑)
District of Columbia	5.0% (↓)
California	4.8% (↓)
Illinois	4.6% (↓)
New Jersey	4.6% (↑)
Alaska	4.3% (↓)
Arizona	4.2% (↑)
Delaware	4.2% (↑)
Kentucky	4.2% (↑)
New York	4.2% (↓)
Michigan	4.1% (↓)
Texas	4.1% (↓)
West Virginia	4.0% (↑)

* Source: US Bureau of Labor Statistics

SUI wage base, tax rates and jobless rates

Comparison 2015–2023**



	2015	2017	2018	2019	2020	2021	2022	2023
States with increase in jobless rate	21	5	7	15	53	0	1	15
Increase in wage base	24	21	18	20	22	21	19	21
Decrease in SUI wage base	1	1	8	3	4	3	4	4
Decrease in SUI base tax rates	21	16	23	18	16	2	6	13
Increase in SUI base tax rates	9	7	4	3	6	25	12	11

** Source: Ernst & Young LLP survey

EY

Unemployment insurance developments in 2023

Connecticut

- SB 1091, enacted this year, repeals the expanded data reporting required on SUI returns. The requirement had applied starting with the 2023 third quarter SUI return.
- Prior law would have required that employers provide information for 15 new data elements such as each employee's gender identity, age, race, hours worked and days worked.
- SB 1091 provides that, beginning with the third quarter of 2026, employers MAY provide (1) each employee's occupation and hours worked and (2) the employer's business mailing address and ZIP code. (*See Tax Alert 2023-1801*)

Delaware

- HB 236, enacted this year, will do the following:
  - Extend the 2023 special reduced SUI tax rates to 2024 (0.1% to 5.4%, down from 0.3% to 8.2% from 2022).
  - Redirect the current 0.2% special assessment from the SUI trust fund to a Special Administrative Fund starting in 2024 for the state's future technology needs. Accordingly, the 0.2% surtax will not be included in certified SUI contributions reported on the 2024 Form 940.
- HB 176, also enacted this year, increases the time employers and claimants have available to appeal a SUI benefit determination from 10 to 15 calendar days. (*See Tax Alert 2023-1813*)

Unemployment insurance developments, *continued*

Georgia

- SB 160, enacted this year, lowers the new employer SUI rate from 2.7% to 2.64% effective January 1, 2023 and through December 31, 2026.
- Effective January 1, 2024, SB 160 also restores the 0.6% administrative assessment, which had been allowed to lapse for 2023. (*See Tax Alert 2023-1258*)

Montana

- HB 652, enacted this year and effective July 1, 2023, lowers the maximum number of SUI benefit weeks from 28 to 24. (*See Tax Alert 2023-1621*)
- This legislation has the indirect effect of lowering employers' SUI costs while also reducing cash outflows from the Montana's SUI trust fund.
- Montana's prior SUI benefit cap of 28 weeks was one of the highest in the nation, with most states having a maximum of 26 weeks. With the enactment of HB 652, Montana joins just nine other states (Alabama, Arkansas, Florida, Georgia, Iowa, Michigan, Missouri, Oklahoma and South Carolina) with maximum SUI benefit weeks below 26. (*U.S. Department of Labor, 2022 Comparison of State Unemployment Laws*.)
- This year Iowa also lowered its maximum SUI benefit weeks from 26 weeks to 16 under HF 2355. .

Unemployment insurance developments, *continued*

Nebraska

- LB 191 changes the due date for SUI voluntary contributions from January 10 to February 28 effective for voluntary contributions paid for calendar year 2024.
- The ability to make voluntary SUI contributions gives employers an opportunity to potentially lower the SUI taxes they pay; however, careful evaluation is needed to confirm that this advance SUI payment will result in tax savings. LB 191 gives employers some extra time to perform this vital evaluation. (*See Tax Alert 2023-1439*) .

Oklahoma

- HB 1933, enacted in 2022 and effective January 1, 2023 and through December 31, 2024, allows unemployed individuals to collect UI benefits for up to 16 weeks, down from the 26 weeks available through December 31, 2022.
- Effective January 1, 2025, UI claimants may collect between 16 to 20 weeks, depending on the state's weekly average UI claims for the 13 weeks beginning with the first week of July in the previous calendar year. (*See Tax Alert 2023-0425*)

Polling question

Do you accrue your SUI tax costs for the upcoming year?

a. No
b. Yes
c. We will in the future
d. Don't know
e. Not applicable (EY, faculty, other)

State personal income tax rate changes

Retroactive to January 1, 2023

- Arkansas. Lowers the state's top marginal state personal income tax rate from 4.9% to 4.7%.
- Idaho. Changes the tax system from a graduated state personal income tax to a flat tax of 5.8% on income over $2,500 ($5,000 for married filing joint).
- North Dakota. Lowers the state's personal income tax rates by collapsing the tax brackets from five to three with tax rates of 0%, 1.95% and 2.5%. Under prior law, the highest tax rate was 2.9%.
- Ohio. Lowers the state personal income tax rates to a range of 2.7% to 3.75%.
- Utah. Lowers the state's personal income tax rate from 4.85% to 4.65%.
- West Virginia. Lowers the state's personal income tax rates by an average of 21.25%.

- Employers should confirm that 2023 retroactive state income tax withholding changes were applied in 2023, and if not, adjust accordingly.
- State income tax withholding cannot be adjusted after December 31, 2023.

Effective January 1, 2024

- Arkansas. Lowers the top personal income tax rate from 4.7% to 4.4%.
- Connecticut. Taxes the first $10,000 ($20,000 for married filing joint) at 2%, down from 3%. Taxes next $40,000 ($80,000 for married filing joint) at 4.5%, down from 5%. This tax relief is capped for individual taxpayers earning $150,000 or more and married couples filing joint earning $300,000 or more.
- Georgia. Replaces the graduated tax with a flat tax of 5.49% if a delay is not required due to budget goals.
- Indiana. Lowers tax rates to 3.05% (effective January 1, 2024); 3.0% (effective January 1, 2025); 2.95% (effective January 1, 2026); 2.90% (effective January 1, 2027).
- Kentucky. Lowers the state personal income tax rate to 4.0%.
- Montana. Reduces the top tax rate from 6.5% to 5.9%.
- Nebraska. Lowers the top individual income tax rate from 6.84% to 5.84% for tax year 2024, 5.2% for 2025, 4.55% for 2026 and 3.99% for 2027 and subsequent years.
- North Carolina. Gradually lowers the state's personal income tax rate to 4.50% in 2024, 4.25% in 2025 and 3.99% after 2025.
- Ohio. Lowers tax rates to a range of 2.7% to 3.5.

Noteworthy state payroll developments

Alabama exempts overtime pay from taxable wages. Effective January 1, 2024, and through June 30, 2025, HB 217 exempts from wages subject to state income tax and withholding the compensation required to be paid to employees for hours worked over 40 per week under the federal Fair Labor Standards Act (FLSA). See the Alabama Department of Revenue guidance.

Colorado Earned Income Tax notices. Starting with tax year 2023, employers must provide employees with an annual notice concerning the availability of the federal and Colorado earned income tax and child tax credits.

Illinois paid leave. 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.

Illinois mandatory transit benefits. Effective January 1, 2024, HB 2068 requires that Illinois employers with 50 or more employees in designated transit zones provide transit benefits to their covered employees.

Massachusetts fringe benefits conform to federal law. Due to legislation enacted as part of the Massachusetts Fiscal Year 2023 budget, Massachusetts issued TIR 23-5, confirming that the taxation of numerous fringe benefits now conforms to the federal Internal Revenue Code (e.g., transportation fringe benefits, educational assistance, moving expenses, adoption assistance).

Minnesota earned sick and safe leave (ESSL) law. The Omnibus Jobs Act (SF 3035) includes a provision that, effective January 1, 2024, requires that employers with one or more employees provide their employees with ESSL of one hour for every 30 hours worked up to 48 hours per year.

Minnesota salary history ban. Effective January 1, 2024, Minnesota SF 2909 prohibits inquiries into an applicant’s current wage, salary, benefits or other compensation for purposes of determining the compensation that will be paid to the applicant. The law applies to employers, employment agencies and labor organizations doing business in Minnesota.

New Jersey public display of noncompliant employers. In 2023, New Jersey Department of Labor launched a new website, the Workplace Accountability in Labor List (WALL), to hold employers accountable for outstanding liabilities for unpaid wages or unemployment insurance/withholding taxes. Businesses that are unable to contract with New Jersey state and local governmental bodies because they have failed to satisfy their state wage, benefit and tax obligations are publicly listed on the WALL.

Vermont new childcare payroll tax. The Vermont House and Senate overrode Vermont Governor Phil Scott’s veto of H. 217, which, effective July 1, 2024, imposes a new childcare tax of 0.44% on wages and 0.11% on self-employment income. The Vermont Department of Taxes provides guidance here.

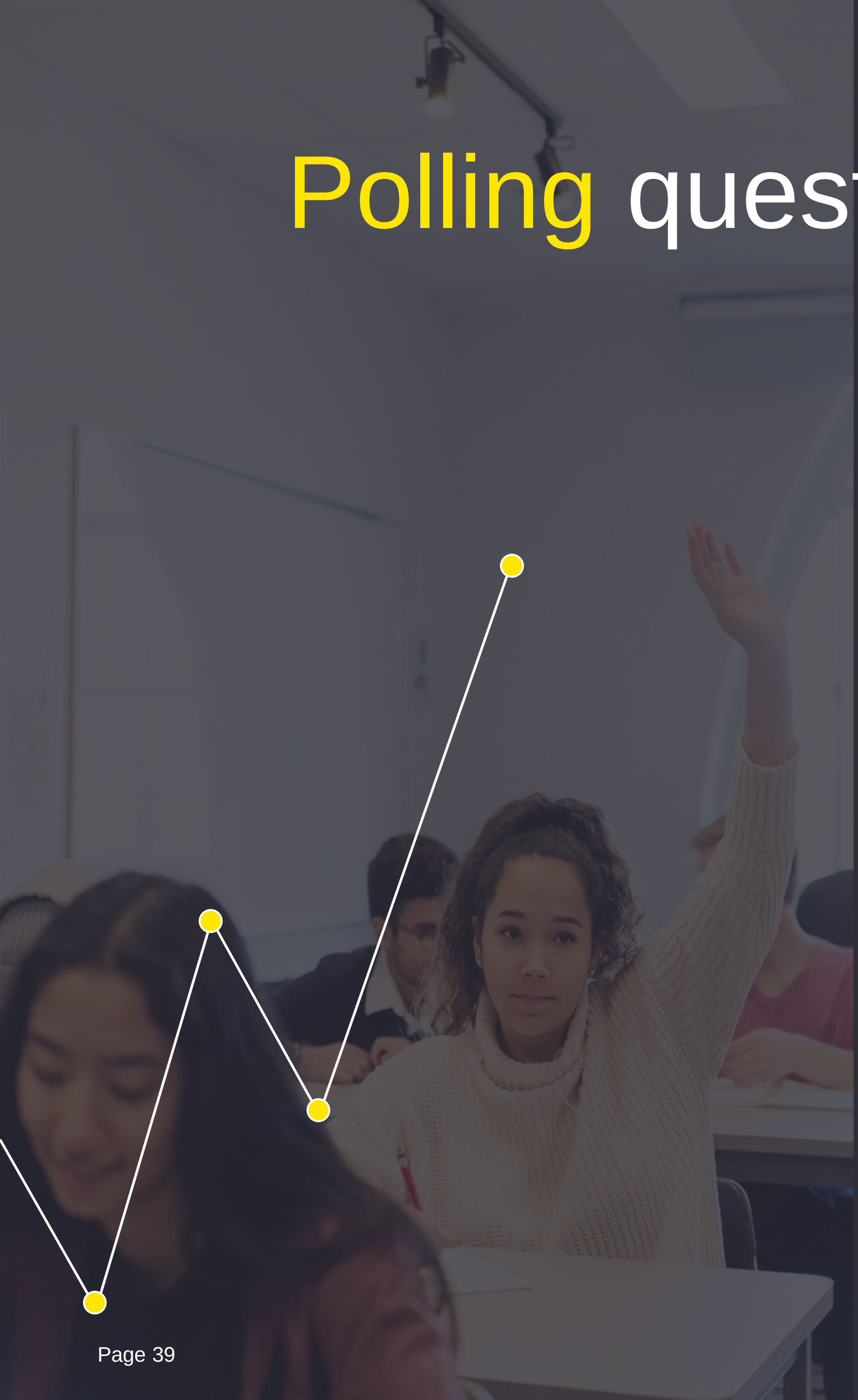
Noteworthy local payroll developments

Bloomington, Minnesota implements earned sick and safe leave (ESSL). On July 1, 2023, Bloomington required that employees accrue one hour of earned sick and safe leave for every 30 hours worked up to 48 hours per year and they may carry over up to 80 hours of unused ESSL from year to year. Accrual of ESSL begins July 1, 2023, or the first day of employment, whichever is later.

Salem, Oregon payroll tax overturned by voters. On November 7, 2023, over 81% of Marion County voters voted against Salem's 0.814% payroll tax on wages and self-employment income earned within the city limits, thereby repealing the tax. The tax on wages would have applied only to employees earning more than the minimum wage.

Philadelphia, Pennsylvania requires transportation benefits. Effective December 31, 2022, Philadelphia ordinance (Bill No. 22033701) requires employers with 50 or more covered employees to provide mass transit or bicycle commuter benefits to covered employees under its new Employee Commuter Transit Benefit Program.

Polling question



Do you have staff assigned to monitor state and local payroll developments on a regular basis?

a. No
b. Yes
c. We will in the future
d. Don't know
e. Does not apply (EY, faculty, other)

Multistate payroll tax challenges for hybrid teleworkers

01 Sourcing wages to the correct jurisdictions

To which jurisdictions do income tax and unemployment insurance apply? Pursuant to state income tax, does a reciprocal agreement apply?

02 Convenience of the employer rule

Does the state/locality where the employee reports impose the convenience of the employer rule?

03 De minimis exceptions

When the employee works in the state or locality for short periods, does nonresident income tax apply?

04 Apportionment

For #03, how is the portion of taxable wages that is sourced to the nonresident state apportioned for income tax and withholding purposes?

05 Trailing compensation

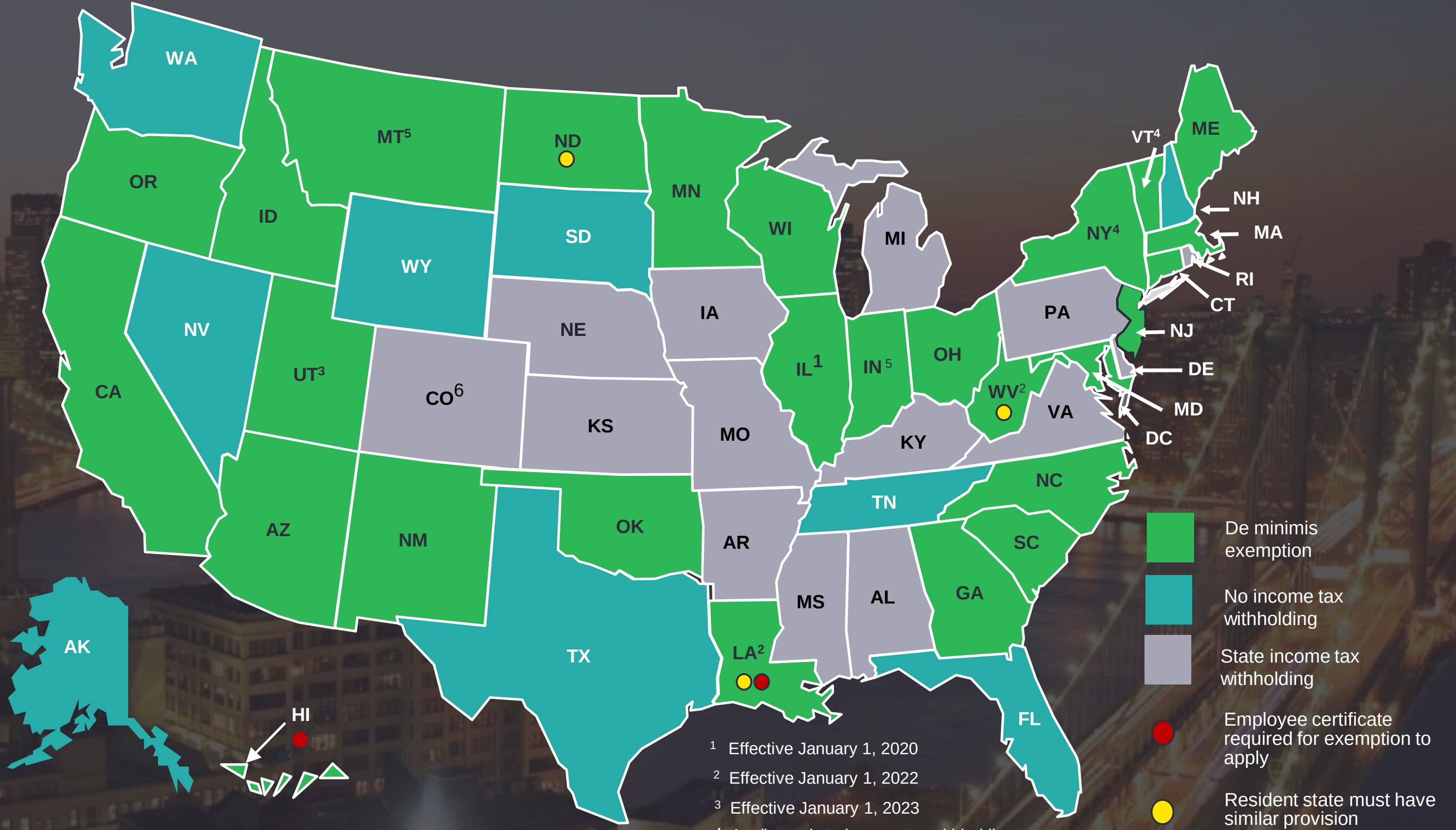
Does the state require income tax based on where wages were earned for compensation that accrues over more than one payroll period?

06 Income tax withholding

Does the resident state allow for reduction of income tax withholding for income tax withheld in the nonresident state? What employee withholding certificates are required?

De minimis exemptions from nonresident income tax

- It is the normal rule that all wages paid for services provided in the nonresident state are subject to nonresident income tax withholding.
- 28 states currently exempt wages from nonresident income tax/withholding based on short stays or low earnings (de minimis exemption).
- Exceptions to nonresident income tax withholding also apply under reciprocal agreements and in those states that impose the convenience of the employer rule.
- Company policies that blanketly withhold nonresident income tax only when an employee's time in the state exceeds a set number of days could expose the company to liability for underwithholding, penalties and interest.



1 Effective January 1, 2020
2 Effective January 1, 2022
3 Effective January 1, 2023
4 Applies only to income tax withholding
5 Effective January 1, 2024
6 Repealed in 2018

Source: Ernst & Young LLP *US payroll tax factfinder*, Rev. August 2023

Convenience of the employer rule

- In most states, the default rule is that employees who are residents of one state (State A) but work for an employer in another state (State B), are taxed by State B only on wages earned for days the employee is physically present in State B.

- However, if State B has a convenience of the employer rule, a State A resident working from home for his/her own convenience within State A for an employer in State B is subject to State B nonresident income tax for all wages earned in State A and State B despite not being physically present to work in State B.

- Generally, the convenience of the employer rule applies if, for their own convenience, and not the necessity of the employer, employees are performing services from their homes within their resident states, rather than the locations of their employers in nonresident states.

  - New York has a more elaborate "test" as set forth in TCB-M-06(5)I.

    Alabama applies the rule if an employee is working from home outside of Alabama for an Alabama employer (no reference to convenience of employee or necessity of employer).

States that impose the convenience of the employer rule

Arkansas (reversed effective April 30, 2021)
Legal Opinion No. 20200203

Alabama
Alabama Tax Tribunal ruling, March 8, 2023, and May 19, 2023

Connecticut*
Conn. Gen. Stat. Section 12-711(b)(2)(C)

Delaware
Del. Code. Tit. 30, Section 1124(b)(1)(b)

Nebraska
316 Neb. Admin. Code Section 22-003.01C(1)

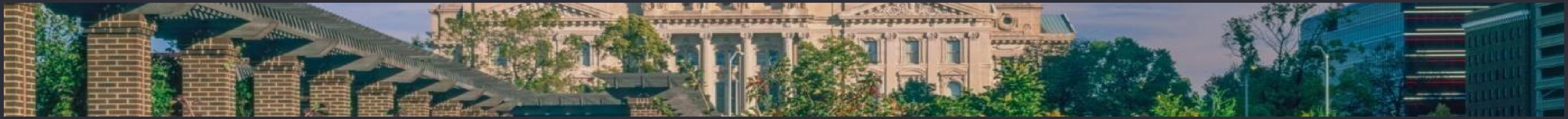
New York
20 NYCRR Section 132.18(a); Technical Memorandum TSB-M-06(5)I)

New Jersey*
A.4694 (enacted in 2023, effective 1-1-2023)

Pennsylvania
61 Pa. Code Section 109.8

*Applies only if resident state also imposes the rule.

Multistate income tax: 2023 developments



Court cases

Alabama, state income tax. On March 8, 2023, the Alabama Tax Tribunal upheld an Alabama Department of Revenue assessment of income tax on the wages that a remote worker earned from his Alabama employer while working from his home office in Idaho (convenience of the employer rule). (*Mark E. Bollinger v. State of Ala. Dep't of Rev., Inc. 22-390-LP*) A similar ruling was made by the tribunal on May 19, 2023, involving a Florida employee working remotely for an Alabama employer. (*Michael J. Baty v State of Ala. Dep't of Rev, Inc. 22-928-LP*)

Missouri, St. Louis earnings tax. In a January 2023 decision (*Boles v. City of St. Louis: Cause No. 2122-CC00713)*, the trial court agreed that employees working for a St. Louis employer outside of St. Louis during the COVID-19 emergency were owed refunds of the earnings tax for 2020 and beyond. The Missouri Supreme Court declined to rule on whether affected taxpayers can file a class action suit; therefore, the question remains whether individuals will have to file separate lawsuits to claim refunds.

State/local legislation and guidance

Indiana. SB 419. Effective January 1, 2024, the law exempts from Indiana source income compensation received by nonresident employees for services they provide within Indiana for 30 days or less during the calendar year.

Montana H.B.447. Effective January 1, 2024, the law exempts from Montana source income compensation received by nonresident employees for services they provide within Montana for 30 days or less during the calendar year. Key employees with annual compensation of more than $500,000 are excluded from the provision.

New Jersey A.4694. Effective January 1, 2023, the law imposes the convenience of the employer rule if the nonresident employee's resident state imposes a similar rule.

Philadelphia, Pennsylvania. The Philadelphia Department of Revenue issued guidance on applying its convenience of the employer rule.

New Jersey convenience of the employer rule: implementation

The New Jersey Division of Taxation (Division) issued guidance explaining the following:

- Penalties and interest did not apply until September 15, 2023.
- In determining states that have a "similar rule" (triggering states), Pennsylvania is not included due to the reciprocal agreement between the states and Connecticut is also excluded because its rule is also triggered only if the resident state has a similar rule.
- Employers should apply the rules of the employee's resident state (triggering state) in determining when the convenience of the employer rule applies.
  - For example, a New York resident who, for his own convenience, performs services in his New York home for a New Jersey employer, is subject to New York's test in determining whether the convenience of the employer rule will apply to this New Jersey nonresident.

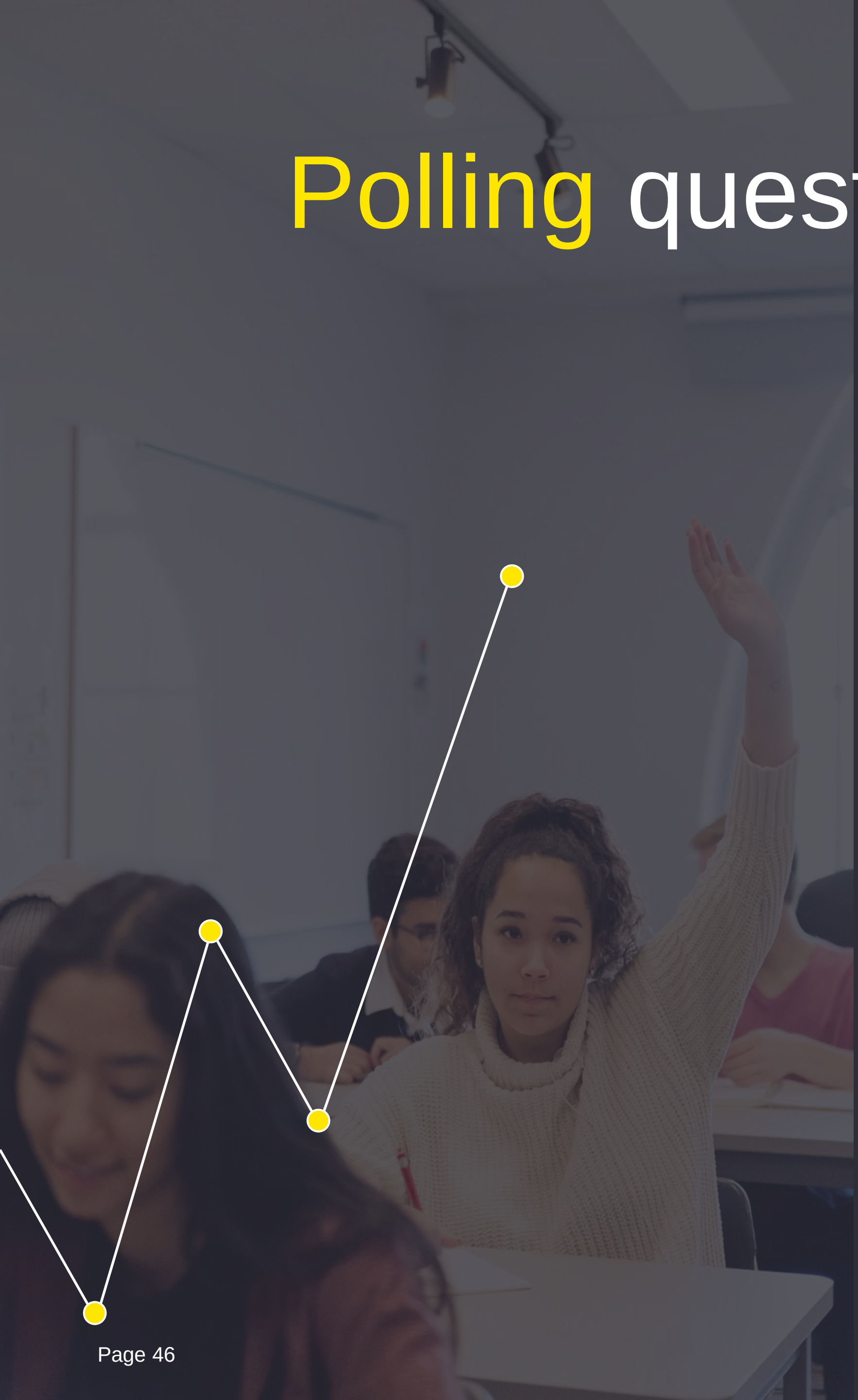
2023 withholding guidance

- Because New Jersey's convenience of the employer rule is effective retroactive to January 1, 2023, the Division instructs that employers must begin withholding (or individuals begin making estimated tax payments) as soon as possible so that taxpayers will have the correct amount of New Jersey income tax paid by April 15, 2024.
- The Division also suggests that as an accommodation to their employees, employers should consider making withholding adjustments so that their employees will have the correct New Jersey income tax withheld from their wages for 2023.

New Jersey convenience of the employer rule: Implementation

1. Identify New Jersey nonresidents working from home for a New Jersey office
2. Determine whether the New Jersey nonresidents are residents of a triggering state
3. Analyze the convenience of the employer test of each nonresident's resident state to determine whether New Jersey's convenience of the employer rule will apply
4. Where New Jersey's convenience of the employer rule applies, determine the 2023 withholding adjustment
5. Communicate to affected employees the additional withholding required
6. Deduct the withholding adjustment from future 2023 wages or make other arrangements for payment of the added New Jersey state income tax

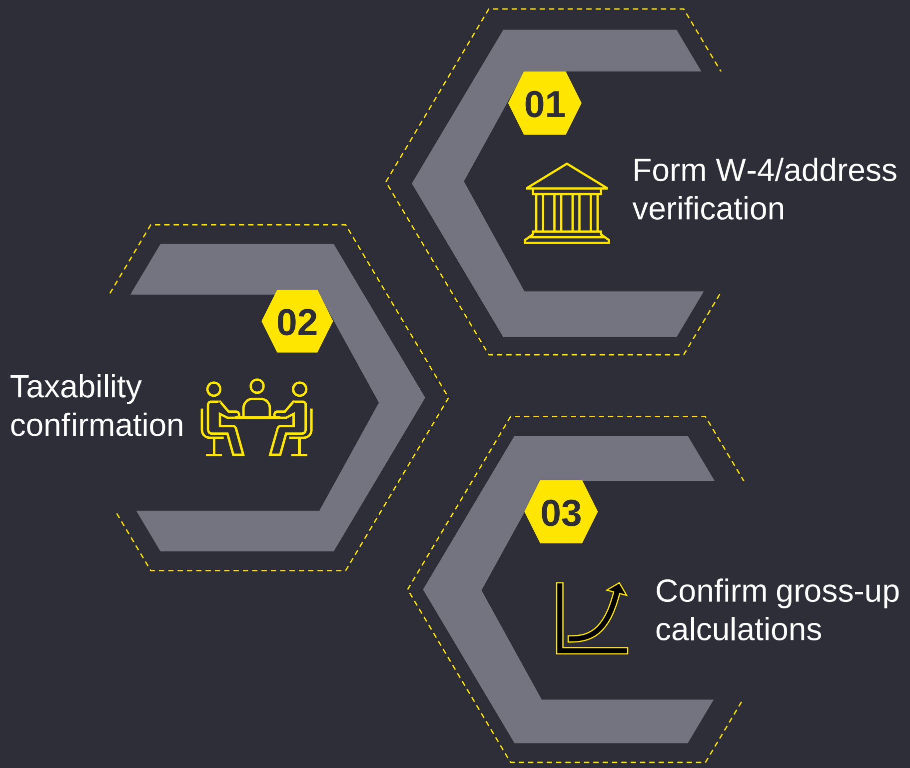
Polling question



Are you a Certified Payroll Professional (CPP) or Fundamental Payroll Certification (FPC) professional through the American Payroll Association?

a. No
b. Yes

Top three payroll year-end checklist items

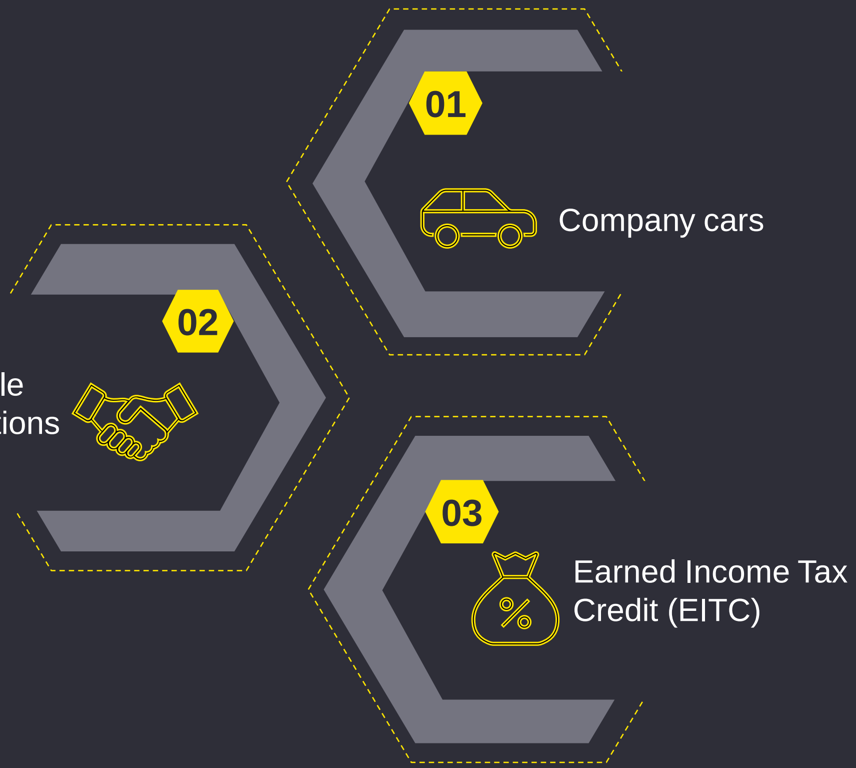


01 Ask that employees verify their home address. This is important not only for mailing Forms W-2, but to confirm correct reporting of state wages on Form W-2. Also identify employees who are required to submit a new federal, state or local Form W-4 for 2024 (e.g., claimed exemption from withholding) and request they give you a new form before January 1, 2024.

02 Before releasing 2023 Forms W-2, review payroll system tax configurations for the correct tax treatment and reporting of fringe benefits. Also review to confirm that benefit limits have not been exceeded (e.g., limit on health savings account contributions). See our 2023 federal fringe benefits reporting chart.

03 The Form 941-X instructions clarify that prior-year adjustments to federal income tax withholding and the Additional Medicare Tax are not allowed merely because these taxes were paid by the employer in connection with a gross-up. Businesses will need to carefully review their 2023 gross-up calculations prior to December 31, 2023, to avoid federal income tax and Additional Medicare Tax overpayments they cannot recover after the close of the year. (*See Form 941-X instructions, page 3.*)

Three federally-required year-end employee notices



01 Employee notices should be provided by January 31, 2024, if the special accounting rule was used in 2023 or if the employer will elect not to withhold federal income tax from the value of personal use of company cars in 2024.

02 Employers are required to provide employees with a report of the annual total of charitable contributions paid through payroll deduction. Consider using Form W-2, box 14, for this purpose. See IRS Publication 1771.

03 For federal purposes, Form W-2, Copy B, includes the notice that employers are required to provide to employees concerning their eligibility for the ETIC. Some states and localities require a separate notification (other than Form W-2, Copy B) and may also impose a different annual deadline for making it available to employees. See more information on the federal EITC here.

Avoid these common Form W-2 errors

01 Reporting wages to the wrong state

This can happen because employees have not informed employers about a change in residence, or wages earned within and outside of the state are incorrectly reported to the resident and/or nonresident state(s).

02 Failure to consider void or manual checks in Form W-2 wages

This error can be avoided by doing a bank reconciliation through December 2023 and comparing the check data to 2023 payroll register data.

03 Excess contributions to fringe benefit plans

Qualified pension plans, health savings accounts, and health flexible spending accounts are examples where annual contributions have a limit. These errors can be avoided by running an analysis after the last payroll of the year, and correcting errors prior to December 31.

04 Failure to issue Forms W-2 for third-party sick pay

This error can be avoided by confirming with the third-party insurance (TPI) company what the contract agreement is. For instance, will the TPI file Forms W-2 with the SSA and mail the Forms W-2 to employees? The company will need to handle any aspect not taken care of by the TPI.

05 Failure to correctly check the pension plan indicator in Box 13

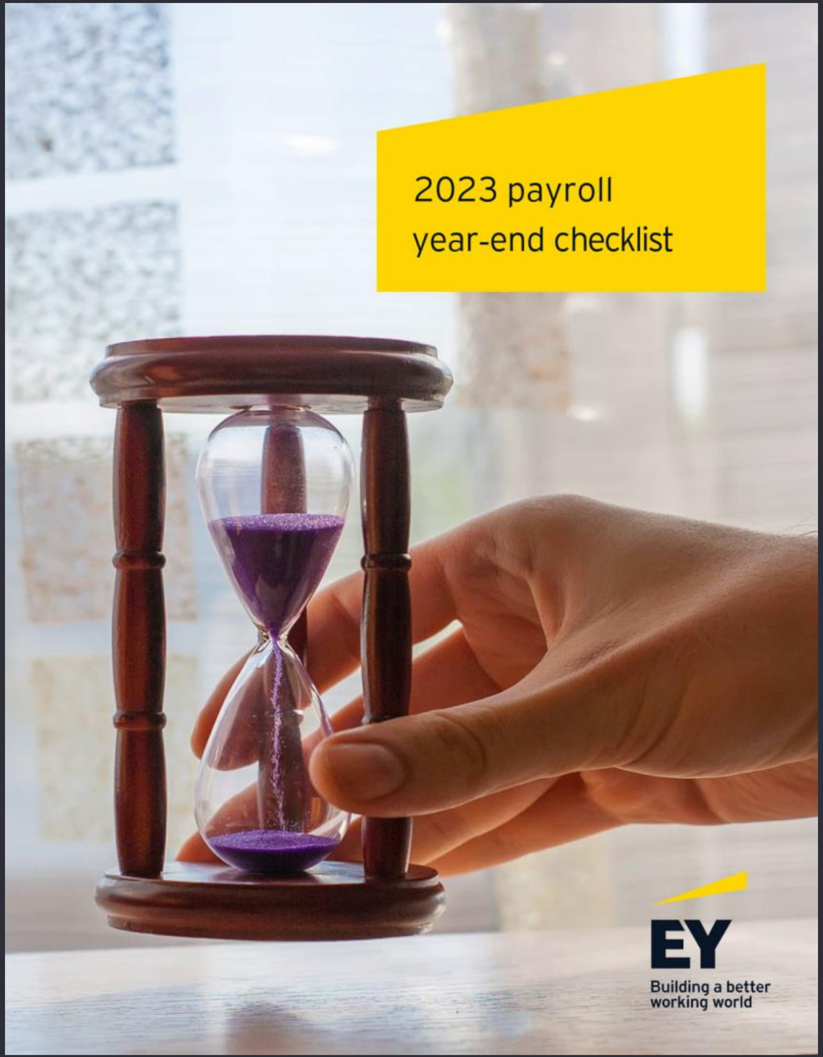
This error can be avoided by reviewing the guidance provided by the IRS in the Form W-2 reporting instructions, p. 30.

06 Failure to correct employment tax returns after issuing Forms W-2c

Correct all federal/state returns that are impacted by Forms W-2c. This error can be better prevented by submitting Forms W-2c to the SSA in periodic batches, allowing necessary time to prepare and submit corresponding adjustments to federal, state and local returns.

Resources

Ernst & Young LLP special reports



- 2023 payroll year-end checklist
- Fringe benefits reporting: frequently asked questions for 2023
- Federal reporting for fringe benefits chart for 2023
- US employment tax rates and limits for 2023
- Federal and state Form W-4 compliance for 2023
- State unemployment insurance requirements for employee notices and workplace posters
- Taking the stress our of Affordable Care Act reporting

IRS and SSA Form W-2 resources

- 2023 Form W-2
- 2023 Form W-2 and W-3 instructions
- SSA specifications for filing electronically
- SSA AccuWage (testing files)
- IRS specifications for substitute forms (Pub. 1141)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