23 Payroll and Labor Laws

Tab 23 Contents

Payroll Deposit Penalties

	Penalty Rate
Deposit 1 to 5 days late	2%
Deposit 6 to 15 days late	5%
Deposit 16 or more days late	10%
Deposit made within 10 days of first IRS late notice	10%
Deposits paid directly to the IRS, or paid with the tax return unless otherwise allowed	10%
Amounts still unpaid more than 10 days after first IRS late notice	15%

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

Form 941—Payroll Deposit Schedule

Total tax liability for the quarter is less than $2,500.	No deposit required—include payment when filing Form 941.	
Monthly depositor. Total tax liability during lookback period was $50,000 or less.	Deposit taxes on payments made during a month by the 15th day of the following month.	
Semiweekly depositor. Total tax liability during lookback period was more than $50,000.	If payday falls on a Wednesday, Thursday, and/or Friday:	Then deposit taxes by the following Wednesday.
	If payday falls on a Saturday, Sunday, Monday, and/or Tuesday:	Then deposit taxes by the following Friday.
Next-day deposit rule. Total tax liability accumulated is $100,000 or more on any day during a deposit period.	Deposit total accumulated undeposited tax liability by the next business day, whether employer is a monthly or semiweekly schedule depositor.	

New for 2015

- **Maximum Social Security earnings.** Wages subject to Social Security tax are limited to $118,500 for 2015. See *FICA Tax,* page 23-4. For the 2016 limit, see *What's New,* Tab 1.
- **Rejected Form W-2.** Effective January 2015, the SSA will begin rejecting certain Form W-2 electronic and paper wage reports. See *SSA rejected wage reports,* page 23-5.
- **Credit reduction state.** Wages paid in a credit reduction state are subject to additional federal unemployment tax when filing Form 940. See *FUTA Tax,* page 23-5.

2016 Employer's Payroll Tax Calendar

February

1 Issue 2015 Forms 1099 and W-2 to payees and employees.
1 File 2015 Form 940. Pay tax with form if less than $500.
1 File 4th Qtr. 2015 Form 941. Pay tax with form if less than $2,500.
1 File 2015 Form 943 if farm employer. Pay tax with form if less than $2,500.
1 File 2015 Form 944 if annual payroll tax filer. Pay tax with form if less than $2,500.
1 File 2015 Form 945 for non-payroll income tax withheld.
1 Deposit Form 940 FUTA taxes due if more than $500.
10 2015 Form 940, 943, 944, and 945 due date if all taxes were deposited when due.
10 4th Qtr. 2015 Form 941 due date if all taxes were deposited when due.
16 Begin withholding from employees claiming exempt who have not furnished a new Form W-4.
29 File 2015 Forms 1099 and 1096 with the IRS.
29 File 2015 Forms W-2 and W-3 with the Social Security Administration (SSA).
29 File 2015 Form 8027 with the IRS for tip income and allocated tips.

March

31 File 2015 electronic Forms 1099 and 8027 with the IRS.
31 File 2015 electronic Forms W-2 with SSA.

May

2 Deposit FUTA taxes due if more than $500.
2 File 1st Qtr. 2016 Form 941. Pay tax with form if less than $2,500.
10 1st Qtr. 2016 Form 941 due date if all taxes were deposited when due.

August

1 Deposit FUTA taxes due if more than $500.
1 File 2nd Qtr 2016 Form 941. Pay tax with form if less than $2,500.
10 2nd Qtr. 2016 Form 941 due date if all taxes were deposited when due.

October

31 Deposit FUTA taxes due if more than $500.
31 File 3rd Qtr. 2016 Form 941. Pay tax with form if less than $2,500.

November

10 3rd Qtr. 2016 Form 941 due date if all taxes were deposited when due.
30 Remind employees to submit a new Form W-4 if withholding allowances will change for 2017.

Payroll Tax Deposit Rules

Cross References

- IRS Pub. 966, *Electronic Choices to Pay All Your Federal Taxes*
- IRS Pub. 4132, *EFTPS Online Factsheet*
- IRS Pub. 4169, *EFTPS Tax Professional Guide*
- IRS Pub. 4275, *EFTPS Express Enrollment for New Businesses*
- IRS Pub. 4320, *EFTPS Tool Kit Order Form*

Related Topics

- Employer Identification Number (EIN), page 5-1, *1040 Edition/Deluxe Edition*
- Disqualified employment tax levy (DETL), Tab 15, *1040 Edition/Deluxe Edition*

Deposit Requirements

Employers must deposit employment taxes which includes federal income tax withheld, and the employer and employee portion of Social Security and Medicare taxes. The deposit schedule is determined based on the employment taxes reported on Forms 941 and 944. See *Deposit schedule,* below.

All taxpayers must use the Electronic Federal Tax Payment System (EFTPS) to make federal tax deposits. See *Electronic deposit requirement,* page 23-3.

Payment with return. Tax liability payments can be included with the filing of Form 941 or Form 944 instead of depositing if one of the following applies.

- Form 941 total tax liability for either the current quarter or the preceding quarter is less than $2,500, and the employer did not incur a $100,000 next-day deposit obligation during the current quarter.
- The employer is a monthly schedule depositor and makes a payment in accordance with the accuracy of deposits rule (next column). This payment may be $2,500 or more.

Employers who have been notified to file Form 944 can pay their fourth quarter tax liability with Form 944, if the fourth quarter tax liability is less than $2,500.

Credit card payments. Employers can pay the balance due on current, prior-year, and amended or adjusted Forms 940, 941, 943, 944, and 945 by credit card. These payments can include installment agreement payments for any unpaid taxes for the prior 10 years. However, do not use a credit card to make federal tax deposits.

For information about making credit card payments, visit the IRS website at www.irs.gov and type "credit card payments" in the "Search" box.

Deposit schedule. If the employer does not qualify to pay the tax with the filing of Form 941, the employer must deposit the taxes using the monthly depositor schedule or the semi-weekly depositor schedule.

Lookback period. If the employer is a Form 941 filer, the deposit schedule is determined by the total tax liability that was reported on Form 941 during a four-quarter lookback period.

Lookback Period for Calendar Year 2016

July 1, 2014 through Sept. 30, 2014	Oct. 1, 2014 through Dec. 31, 2014	Jan. 1, 2015 through Mar. 31, 2015	Apr. 1, 2015 through June 30, 2015

The lookback period for a 2016 Form 941 filer who filed Form 944 in either 2014 or 2015 is calendar year 2014.

If the employer is a Form 944 filer for the current year or either of the two preceding years, the deposit schedule is determined by the total tax liability reported during the second preceding calendar year. The lookback period for 2016 for a Form 944 filer is calendar year 2014.

Adjustments made on Form 941-X and Form 944-X do not affect the amount of the tax liability for previous periods for purposes of the lookback rule.

Monthly depositor. If the employer reported $50,000 or less total tax liability for the lookback period, the employer is a monthly depositor. Deposit employment taxes on payments made during a month by the 15th day of the following month.

New employers. Follow rules for monthly depositors during the first calendar year as a new employer. However, see *$100,000 next-day deposit rule,* below.

Semiweekly depositor. If the employer reported more than $50,000 total tax liability for the lookback period, the employer is a semiweekly depositor. Deposit accumulated tax liability for payroll made on Wednesday, Thursday, and/or Friday by the following Wednesday. Deposit accumulated tax liability for payroll made on Saturday, Sunday, Monday, and/or Tuesday by the following Friday.

Semiweekly schedule depositors must complete Schedule B (Form 941), *Report of Tax Liability for Semiweekly Schedule Depositors,* and submit with the filing of Form 941. Semiweekly schedule depositors who file Form 944 must complete Form 945-A, *Annual Record of Federal Tax Liability,* and submit with the return (instead of Schedule B).

Pay period spanning two quarters. If a semiweekly depositor has more than one pay date during a semiweekly period, and the pay dates fall in different calendar quarters, the employer must make separate deposits for the separate liabilities.

Business days. If a deposit is required to be made on a day that is not a business day, the deposit is considered timely if it is made by the close of the next business day. In addition to legal holidays, Saturdays and Sundays are treated as non-business days.

For a semiweekly schedule depositor, if any of the three weekdays after the end of a semiweekly period is a legal holiday, the employer has one additional business day to deposit.

Legal holiday. The term legal holiday means any legal holiday in the District of Columbia.

Example: Payday for Jon's Tax Service falls on Friday. Monday is Labor Day, a legal holiday. The deposit normally due on the following Wednesday is not due until Thursday.

$100,000 next-day deposit rule. If an employer accumulates a tax liability of $100,000 or more on any day during a deposit period, the taxes must be deposited by the next business day, whether the employer is a monthly or semiweekly schedule depositor.

For purposes of this rule, do not continue accumulating tax liability after the end of a deposit period. For example, if a semiweekly schedule depositor has accumulated a liability of $95,000 on Tuesday of a Saturday through Tuesday deposit period and accumulates a $10,000 liability on Wednesday, the $100,000 next-day deposit rule does not apply. The $95,000 must be deposited by Friday, and the $10,000 must be deposited by the following Wednesday. However, once the employer accumulates at least $100,000 in a deposit period, stop accumulating at the end of that day and begin to accumulate a new amount the next day.

If a monthly depositor accumulates a $100,000 tax liability on any day, the employer becomes a semiweekly schedule depositor on the next day and remains so for at least the rest of the calendar year and for the following calendar year.

Accuracy of deposits rule. Employers must deposit 100% of their tax liability on or before the deposit due date. However, penalties will not be applied for depositing less than 100% if both the following conditions are met.

- Any deposit shortfall does not exceed the greater of $100 or 2% of the amount of taxes otherwise required to be deposited, and
- The deposit shortfall is paid or deposited by the shortfall make-up date, determined as follows.
  - ***Monthly schedule depositors.*** Deposit the shortfall or pay it with the return by the due date of the return for the quarter in which the shortfall occurred. The shortfall can be paid with the return even if it is $2,500 or more.
  - ***Semiweekly schedule depositors.*** Deposit the shortfall by the earlier of:
    a) The first Wednesday or Friday, whichever comes first, that falls on or after the 15th of the month following the month in which the shortfall occurred, or
    b) The due date of the return for the period of the tax liability.

How to Deposit

Electronic deposit requirement. Employers must use electronic funds transfer to make all federal tax deposits. Generally, electronic funds transfers are made using the Electronic Federal Tax Payment System (EFTPS). Employers with a deposit liability of less than $2,500 for the return period may remit employment taxes with the applicable return.

The EFTPS is a free service provided by the IRS that allows users to make tax payments 24 hours a day, seven days a week. Deposits can be made online or by telephone. Business taxpayers may schedule payments up to 365 days in advance of the desired payment date. To enroll, visit the EFTPS website at www.eftps.gov or call EFTPS Customer Service at 1-800-555-4477.

Use the following instructions to make a payment online or by phone.

- ***Online.*** Visit www.eftps.gov, select "Make a Payment," and log in with the taxpayer's EIN, PIN (received by mail after enrollment), and internet password (created online).
- ***By phone.*** Gather the taxpayer's EIN, PIN, and tax form number and call 1-800-555-3453.

Record the EFT acknowledgement number as a receipt. Deposits must be initiated by 8 p.m. Eastern time the day before the deposit due date to be considered timely.

New employer. A new employer that indicates a federal tax obligation when requesting an EIN will be pre-enrolled in EFTPS. The employer will receive a mailing containing the EFTPS personal identification number (PIN) and activation instructions.

Reporting agents. Reporting agents 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. (Rev. Proc. 2012-32 and 2012-34)

Other Payroll Deposit Rules

Same-day wire payment option. Employers may be able to do a same-day wire transfer through their financial institution. Employers should check with their financial institutions ahead of time for information on availability, deadlines, and costs.

When is the payroll tax liability incurred? Wages are considered paid when they are credited to the account or set apart for an employee so that they may be drawn upon by the employee at any time without any substantial limitation or restriction. [Reg. §31.3121(a)-2]

> **Example:** Mitch receives his paycheck from ARC, Inc. on January 7, 2016, for the pay period December 16, 2015 through December 31, 2015. His wages will be reported on his 2016 Form W-2, and ARC, Inc. will report the payroll tax liability in the first quarter of 2016. This is true regardless of whether ARC, Inc. is a cash or accrual accounting method taxpayer.

Deferred compensation. For an accrual taxpayer, if the all events test and the recurring item exception are met, a deduction for payroll taxes is allowed in the year the deferred compensation is earned, even though it is paid in the following year. See IRC section 461 for details regarding the all events test and the recurring item test. (Rev. Rul. 2007-12)

Bonuses and vacation pay. For an accrual taxpayer that uses the recurring item exception for payroll liabilities, a safe harbor method of accounting is available for bonuses and vacation pay. [IRC §461(h)(3)]

A deduction for employer payroll taxes is allowed in the year all events have occurred to establish the liability even though it is paid in the following year. (Rev. Proc. 2008-25)

A taxpayer's change to use the safe harbor method under the revenue procedure is considered a change in accounting method. See *Change in Accounting Method*, Tab 8.

Single member LLCs. A single member LLC filing Schedule C as a sole proprietor must report wages and employment taxes paid in the name and EIN of the LLC. The regulations state that the LLC, and not its single member owner, is responsible for filing and paying all employment taxes on wages paid to its employees.

Deposit Penalties

Penalties apply if required deposits are not made on time or if deposits are for less than the required amount.

Deposits are applied to the most recent tax liability within the quarter. If an employer receives a failure-to-deposit penalty notice, the employer may designate how the payment is to be applied in order to minimize the amount of the penalty.

See *Payroll Deposit Penalties* chart, page 23-1.

Form W-4, *Employees Withholding Allowance Certificate*

Employers are required to withhold federal income tax from each wage payment according to the employee's Form W-4 and correct withholding rate. For an online W-4 calculator, see www.irs.gov/Individuals/IRS-Withholding-Calculator.

Employers are not required to notify the IRS if an employee claims exempt from withholding or claims a large number of withholding allowances (such as 10 or more). The IRS may notify the employer to increase withholding if withholding reported on the W-2 is not enough to cover the tax liability reported on the tax return.

Form 941, *Employer's Quarterly Federal Tax Return*

Cross References

- Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*
- Form 943, *Employer's Annual Federal Tax Return for Agricultural Employees*
- Form 944, *Employer's Annual Federal Tax Return*
- Form 945, *Annual Return of Withheld Federal Income Tax*

Related Topics

- Taxes and licenses, page 5-11, *1040 Edition/Deluxe Edition*
- Household Employees, page 14-1, *1040 Edition/Deluxe Edition*

FICA Tax

Under the Federal Insurance Contributions Act (FICA), wages are subject to two taxes.
- Old-age, survivors, and disability insurance (Social Security), and
- Hospital insurance (Medicare).

Tax rates. The Social Security tax rate has been 6.2% since 1990 (4.2% for employees in 2011 and 2012). The Medicare tax rate has remained at 1.45% since 1986. (IRC §3101)

The employer is required to collect FICA taxes from the employees through wage withholding. In addition, the employer is subject to FICA tax. For 2015, the total employer and employee share of FICA is 15.3% of employee wages (6.20% plus 6.20% plus 1.45% plus 1.45%). (IRC §3102)

Limits on Social Security tax. There is no limit to wages subject to the Medicare portion of FICA. Wages subject to the Social Security portion of FICA are limited to $118,500 for 2015. See *Social Security and Medicare,* Tab 1, for earnings limits.

Additional Medicare tax. A 0.9% additional Medicare tax must be withheld on wages paid to an employee in excess of $200,000 in a calendar year. The additional Medicare tax is only withheld from the employee. There is no employer share.

Wages exempt from FICA. See *Special Rules for Various Types of Employment,* page 23-6.

Employer's Quarterly Return (Form 941)

Filing requirements. Each quarter, all employers who pay wages subject to income tax withholding or Social Security and Medicare taxes must file Form 941, *Employer's Quarterly Federal Tax Return,* by the last day of the month that follows the end of the quarter. The following exceptions apply.
- Seasonal employers are not required to file for quarters in which they have no tax liability because they have paid no wages. Check the seasonal employer box on every Form 941 filed to alert the IRS that the employer is a seasonal employer.
- Household employers report Social Security taxes, Medicare taxes, and withheld income tax on Schedule H (Form 1040), *Household Employment Taxes,* rather than Form 941. See *Household Employees,* page 14-1.
- Employers for employees in American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and Puerto Rico use Form 941-SS or 941-PR rather than Form 941.
- Agricultural employers reporting Social Security, Medicare, and withheld income taxes use Form 943 rather than Form 941.
- Small employers receiving written notification from the IRS that they qualify for the Form 944 program must file Form 944 instead of Form 941. Employers that prefer to file Form 941 can request to have the filing requirement changed. See *Choosing to file Form 941 instead of Form 944,* next column.
- Backup withholding or income tax withholding on non-payroll payments, such as pensions, annuities, and gambling winnings are reported on Form 945 rather than Form 941.

Sick pay and supplemental unemployment benefits. Form 941 (or Form 944) must be filed if sick pay or supplemental unemployment benefits subject to income tax withholding or Social Security and Medicare were paid. See *Special Rules for Various Types of Employment* chart, page 23-6.

Penalties. For each whole or part month that a return is not filed when required, there is a penalty of 5% of the unpaid tax due with that return. The maximum penalty is 25% of the tax due.

For each whole or part month that the tax is paid late, the penalty is 0.5% of the unpaid tax due. The maximum penalty is 25% of the tax due.

For each month both penalties apply, the failure-to-file penalty is reduced by the amount of the failure-to-pay penalty. In addition to the penalties, interest accrues from the due date of the tax on any unpaid balance.

Form 943, *Employer's Annual Federal Tax Return for Agricultural Employees.* Agricultural employers use Form 943 to file their annual payroll tax return. Cash wages paid to farm workers are subject to Social Security, Medicare, and federal income tax withholding for any calendar year the employer meets either of the following.
- The employer pays an employee cash wages of $150 or more in a year for farm work, or
- The total cash and noncash wages paid to all farm workers is $2,500 or more.

If the $2,500 or more test for the group is not met, the $150 or more test for an individual still applies.

Social Security, Medicare, and federal income tax withholding do not apply to certain hand-harvest laborers who receive less then $150 in annual cash wages, even if the employer pays $2,500 or more during the year to all farm workers. The hand-harvester laborer must be paid on a piece-rate basis, commute daily from his or her home to the farm, and be employed in agriculture less than 13 weeks in the preceding calendar year. Amounts paid to these seasonal farm workers counts toward the $2,500-or-more test to determine if other farm workers are subject to Social Security, Medicare, and federal income tax withholding.

Form 944, *Employer's Annual Federal Tax Return.* Form 944 is designed so small employers can file and pay employment taxes only once a year instead of every quarter. Qualified employers are those with an annual liability for Social Security, Medicare, and withheld federal income taxes of $1,000 or less. Household employers and agricultural employers do not qualify. Form 944 is due by January 31, after the end of the calendar year.

In general, if the IRS has informed an employer to file Form 944 instead of Form 941, they must do so. Employers cannot file Form 944 unless they are notified by the IRS that they qualify. Currently, the IRS only sends notification of eligibility to file Form 944 upon request by the qualified employer. See *Choosing to file Form 941 instead of Form 944,* below.

Employers notified to file Form 944, whose business exceeds the $1,000 threshold during the year, should still file Form 944 until they are notified by the IRS that their filing requirement has changed.

New employers. New employers are eligible to file Form 944 if they meet the requirements. New employers are advised of their employment tax filing requirement when issued their EIN, based on information from Form SS-4, *Application for Employer Identification Number.*

Choosing to file Form 941 instead of Form 944. To request to file quarterly Form 941, call the IRS at 1-800-829-4933 by April 1 of the current calendar year or send a written request to one of the mailing addresses specified in the instructions for Form 944 by March 15 of the current calendar year. Continue filing Form 941 until the employer receives a written notice from the IRS that the filing requirement has been changed.

Form 945, *Annual Return of Withheld Federal Income Tax.* For non-payroll federal income tax withholding, use Form 945. The types of federal withholding that should be reported on Form 945 include withholding from:
- Pensions, annuities, and IRAs.
- Military retirement.

• Gambling winnings.
• Indian gaming profits.
• Backup withholding.
• Voluntary withholding on certain government payments.

Backup withholding. The payer must withhold federal income tax at a rate of 28% if the payee fails to furnish the payer his or her correct TIN. Payments subject to backup withholding include interest, dividends, patronage dividends, rents, royalties, commissions, non-employee compensation, broker and barter exchange transactions, certain payments made by fishing boat operators, and certain other payments that are made in the course of a trade or business.

Backup withholding does not apply to wages, pensions, annuities, IRAs, medical savings accounts, health savings accounts, long-term care benefits, or real estate transactions.

Form W-9, Request for Taxpayer Identification Number and Certification. Use Form W-9 to request that payees furnish a correct TIN. The form can also be used to get certification from payees that they are not subject to backup withholding. For more information, see IRS Pub. 1281, *Backup Withholding for Missing and Incorrect Name/TIN(s).*

Current period adjustments. In certain cases, amounts reported as Social Security and Medicare taxes must be adjusted to arrive at the correct tax liability.

Fractions-of-cents adjustment. Enter adjustments for fractions-of-cents relating to the employee share of Social Security and Medicare taxes withheld. The employee share may differ slightly from the amounts actually withheld from the employees' paychecks due to rounding of Social Security and Medicare taxes based on statutory rates.

Third-party sick pay adjustment. Enter the adjustment for the employee share of Social Security and Medicare taxes that were withheld and deposited by the employer's third-party sick pay payer with regard to sick pay paid by the third-party.

Group-term life insurance adjustment. Enter adjustments for the uncollected employee share of Social Security and Medicare taxes on group-term life insurance premiums paid for former employees.

Employee reported tips adjustment. Enter adjustments for the uncollected employee share of Social Security and Medicare taxes on employee reported tips.

Do not make any changes to the employer's record of federal tax liability. The amounts reported on the record reflect the actual amounts withheld from employees' wages for Social Security and Medicare taxes. The current period adjustments make the amounts reported equal the actual amounts withheld.

Employment tax form corrections. Errors on prior period employment tax forms can be corrected by using the following forms.
• Form 941X, *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund,*
• Form 943X, *Adjusted Employer's Annual Federal Tax Return for Agricultural Employees or Claim for Refund,*
• Form 944X, *Adjusted Employer's Annual Federal Tax Return or Claim for Refund,*
• Form 945X, *Adjusted Annual Return of Withheld Federal Income Tax or Claim for Refund,* and
• Form CT-1X, *Adjusted Employer's Annual Railroad Retirement Tax Return or Claim for Refund.*

Prepare a separate X series form for each form (period) that is being corrected and file each X series form separately from the return it is correcting.

Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return,* is used to file amended Form 940 returns.

Collecting under-withheld taxes from employees. If too little taxes were withheld from employee wages, an employer can make it up from later pay to that employee. However, the employer is the one who owes the correct tax liability to the government. Reimbursement is a matter for settlement between the employer and the employee. Employers generally cannot recover under-withheld income tax from employees after the end of the calendar year.

Exception: Special rules apply for tax on tips. See Form 8846, *Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips,* Tab 30, *Small Business Edition.*

Refunding too much withholding from employees. Employers that withhold more than the correct amount of income, Social Security, or Medicare taxes from wages must reimburse the employee for the excess. Over-withheld income taxes must be reimbursed before the end of the calendar year.

Correcting filed Forms W-2 and W-3. When adjustments are made to correct Social Security and Medicare taxes because of a change in the wage totals reported for a previous year, the employer may also need to file Form W-2c, *Corrected Wage and Tax Statement,* and Form W-3c, *Transmittal of Corrected Wage and Tax Statements,* with the Social Security Administration (SSA).

Forms W-2 and W-3

Employers must file Form W-2 , *Wage and Tax Statement,* and Form W-3, *Transmittal of Wage and Tax Statements,* with the SSA and issue copies of Form W-2 to employees for wages if:
• Income, Social Security, or Medicare tax was withheld, or
• Income tax would have been withheld if the employee had claimed no more than one withholding allowance or had not claimed exemption from withholding on Form W-4, *Employee's Withholding Allowance Certificate.*

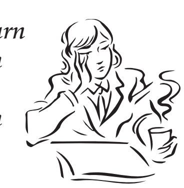
Who may sign Form W-3. A transmitter or sender (including a service bureau, paying agent, or disbursing agent) may sign Form W-3 for the employer or payer only if the sender is authorized to sign and writes "For (name of payer)" next to the signature.

SSA rejected wage reports. Effective January 2015, the SSA will reject the following Form W-2 electronic and paper wage reports.
• Medicare wages and tips are less than Social Security wages and tips,
• Social Security tax is greater than zero and Social Security wages and tips are equal to zero, and
• Medicare tax is greater than zero and Medicare wages and tips are equal to zero.

Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*

Cross References

• Form 941, *Employer's Quarterly Federal Tax Return*
• Form 943, *Employer's Annual Federal Tax Return for Agricultural Employees*
• Form 944, *Employer's Annual Federal Tax Return*



Related Topics

• Taxes and licenses, page 5-11, *1040 Edition/Deluxe Edition*
• Household Employees, page 14-1, *1040 Edition/Deluxe Edition*

FUTA Tax

Under the Federal Unemployment Tax Act (FUTA), wages are subject to the following tax rates.
• 6.2% for 1988 through June 30, 2011, and
• 6.0% for July 1, 2011 and beyond. (IRC §3301)

For purposes of the above tax rates, the amount of wages per employee per calendar year subject to FUTA is $7,000 [IRC §3306(b)(1)]. Wages in excess of $7,000 for any one employee of an employer are not subject to FUTA. The tax is imposed on the employer, not the employee. The employer does not withhold the tax from employee wages.

State credit against tax. Employers are allowed a state credit against the FUTA tax for amounts that are paid into state unemployment funds. The credit may be as much as 5.4% of FUTA taxable wages. If the employer is entitled to the maximum 5.4% credit, the FUTA tax rate after the credit is 0.6%. The employer is entitled to the maximum credit if state unemployment taxes were paid in full, on time, and on all the same wages as are subject to FUTA tax, and as long as the state is not determined to be a credit reduction state.

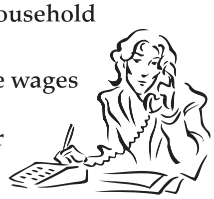
If any part of wages subject to FUTA is exempt from state unemployment tax, the state credit is reduced. For example, wages in some states paid to corporate officers are exempt from state unemployment tax but are taxable for FUTA purposes. In such a case, the employer may be required to deposit more than 0.6% FUTA tax on those wages.

Credit reduction state. A state that has not repaid money it borrowed from the federal government to pay unemployment benefits is a credit reduction state. The Department of Labor determines these states. An employer that pays wages in a credit reduction state must pay additional FUTA when filing Form 940. These states change yearly. See Schedule A (Form 940) for current year credit reduction states.

Employers subject to FUTA. An employer is subject to FUTA in 2016 on the wages paid to employees who are not farm workers or household workers if:

- The employer pays wages of $1,500 or more in any calendar quarter in 2015 or 2016, or
- The employer has one or more employees for at least some part of a day in any 20 or more different weeks in 2015 or 20 or more different weeks in 2016.

See *Household Employees,* page 14-1, for the household employee test.



Employers are subject to FUTA in 2016 on the wages paid to farm workers if:

- The employer pays cash wages of $20,000 or more to farm workers during any calendar quarter in 2015 or 2016, or
- The employer employs 10 or more farm workers during at least some part of a day during any 20 or more different weeks in 2015 or 20 or more different weeks in 2016.

Depositing FUTA tax. FUTA tax must be deposited by electronic funds transfer. If the FUTA tax liability for a quarter is $500 or less, the tax does not need to be deposited. Instead, the employer may carry it forward and add it to the liability figured in the next quarter. When the FUTA liability for any quarter is over $500 (including amounts carried over from the previous quarter), the employer must deposit the tax by using EFTPS. The due date for depositing FUTA taxes is the last day of the first month that follows the end of the quarter in which the liability exceeds $500. If the liability for the fourth quarter (plus amounts carried over from the previous quarter) is $500 or less, the payment of the FUTA tax can be made with the tax return (Form 940) rather than depositing the tax.

Example: New Construction Co. has a total FUTA liability of $400 in the first quarter of 2016. That amount is carried over to the second quarter. The liability for the second quarter of 2016 equals $200. The $600 accumulated liability must be deposited by July 31, 2016. Total liability for the third and fourth quarter of 2016 is $150. The payment for the $150 liability can be included with the filing of the 2016 Form 940, which is due January 31, 2017. If the $150 liability is deposited by January 31, 2017, the tax return due date for Form 940 is not until February 10, 2017.

Special Rules for Various Types of Employment

Cross References

- IRS Pub. 15, *(Circular E), Employer's Tax Guide*
- IRS Pub. 15-A, *Employer's Supplemental Tax Guide*

Related Topics

- Kids in Business—Paper Routes, Babysitting, and Lawn Mowing, page 5-18, *1040 Edition/Deluxe Edition*
- Family Businesses—Employing Family Members, page 5-19, *1040 Edition/Deluxe Edition*
- Worker Classifications, page 5-21, *1040 Edition/Deluxe Edition*
- Household Employees, page 14-1, *1040 Edition/Deluxe Edition*

Exempt for purposes of federal withholding means the employer is not required to withhold federal income taxes on those wages. However, the employee is still subject to federal income tax on those wages.

Type of Employment/Payment	*Federal Withholding*	*FICA*	*FUTA*
Deceased worker, year of death	Exempt	Taxable	Taxable
Deceased worker, after year of death	Exempt	Exempt	Exempt
Disabled worker, no services performed	Withhold	Exempt	Taxable
Child under 18 employed by parent[1]	Withhold	Exempt	Exempt
Child under 21 employed by parent[1]	Withhold	Taxable	Exempt
Child under 21, domestic work (parent[1])	Withhold	Exempt	Exempt
Parent employed by child	Withhold	Taxable	Exempt
Spouse employed by spouse	Withhold	Taxable	Exempt
Statutory employees, home worker	Exempt	Taxable	Exempt
Statutory employees, salespersons	Exempt	Taxable	Taxable
Statutory employees, life insurance	Exempt	Taxable	Exempt
Statutory non-employees	Exempt	Exempt	Exempt
Household employee	Exempt	Taxable[2]	Taxable[3]
Household employee under 18	Exempt	Exempt[4]	Taxable[3]
Newspaper carriers under 18	Exempt	Exempt	Exempt
Sick pay after six months of no work	Withhold	Exempt	Exempt
Student working for school	Withhold	Exempt[5]	Exempt
Supplemental unemployment benefits	Withhold	Exempt[6]	Exempt[6]
Tips less than $20 per month	Exempt	Exempt	Exempt
Differential pay, employees in military	Withhold	Exempt	Exempt

1 Parent employer as a sole proprietor or partnership if each partner is a parent.
2 If paid $1,900 or more during 2015. Exempt if paid less.
3 If employer paid total wages of $1,000 or more for all household employees. Exempt if paid less.
4 If it is not the principal occupation of the employee. A student can be the principal occupation.
5 Exceptions for work covered by a Social Security Act agreement, work performed for academic credit, and student employed by organized camps.
6 Exempt under certain conditions. See Pub. 15-A, *Employer's Supplemental Tax Guide.* Also see *Quality Stores, Inc.,* 6th Cir., September 7, 2012).

Example: Pete is a sole proprietor operating a hardware store. Pete hires his son, Alex, age 17, part-time to stock shelves. Pete is in the 39.6% tax bracket. Alex has no earnings or income from other sources. In 2015, Alex earns $6,300. Pete saves $2,495 (39.6% of $6,300) in income taxes at no tax cost to his son, who can use his $6,300 standard deduction to completely shelter his earnings. Alex is exempt from FICA and FUTA taxes since he is under 18, and he can also contribute $5,500 to a Roth IRA since he received taxable compensation of $6,300.

Trust Fund Recovery Penalty

Cross References

- IRS Pub. 5, *Your Appeal Rights and How to Prepare a Protest if You Don't Agree*
- IRS Pub. 594, *The IRS Collection Process*

Related Topics

- IRS Collection Process, Tab 15, *1040 Edition/Deluxe Edition*

To encourage prompt payment of withheld income and employment taxes, such as Social Security and Medicare taxes, a law was passed that provides for the Trust Fund Recovery Penalty (TFRP). Employment taxes are called trust fund taxes because the employer is holding the employee's money in trust until the federal deposit is made. If unpaid trust fund taxes cannot be immediately collected from the employer, the IRS may assess the TFRP against any person who:

- Is responsible for collecting or paying withheld income and employment taxes, and
- Willfully fails to collect or pay them.

Responsible person. Any person or group of people who have the duty to perform and the power to direct the collecting, accounting, and paying of trust fund taxes is considered a responsible person.

A responsible person can be:

- An officer or employee of a corporation,
- A partner or employee of a partnership,
- A corporate director or shareholder,
- An accountant,
- A volunteer director/trustee,
- An employee of a sole proprietorship, or
- Another corporation or third-party payer.

A responsible person also may include one who signs checks for the business or otherwise has authority to cause the spending of business funds.

Willfulness. For willfulness to exist, the responsible person:

- Must have been, or should have been, aware of the outstanding taxes, and
- Either intentionally disregarded the law or was plainly indifferent to its requirements. No bad motive is required.

Using available funds to pay other creditors when the business is unable to pay the employment taxes is an indication of willfulness.

Third-party payers. The TFRP may be recommended against a third-party payer, such as a payroll service provider or professional employer organization, that willfully fails to collect, account for, and pay over taxes held in trust on behalf of its client (employer).

The use of an outside payroll service does not relieve the employer or its employees who are responsible for collecting, accounting for, and paying the employer's payroll taxes from the responsibility of ensuring all the employer's payroll tax obligations are met. The responsible persons of the employer may still be assessed the TFRP when an outside payroll service does not pay over taxes held in trust.

Amount of penalty. The penalty is an alternative means of collecting unpaid trust fund taxes not fully collected from the business. The penalty is equal to the unpaid trust fund tax.

- The unpaid income taxes withheld, plus
- The employee's portion of the withheld FICA taxes.

✎ **Author's Comment:** The IRS will try to include as many people as possible in a trust fund investigation. They will likely consider anyone with bank signature authorization to be a responsible person. They will probably attempt to conduct interviews with all potentially responsible persons. Obtain Form 4180, *Report of Interview with Individual Relative to Trust Fund Recovery Penalty or Personal Liability for Excise Taxes*, and complete it ahead of the IRS' interview. Have written statements of explanation for all 'yes' answers. Form 4180 can be found using an online search engine, though it is not an official form on the IRS' website.

Form 1099-MISC, *Miscellaneous Income*

Cross References

- Form 945, *Annual Return of Withheld Federal Income Tax*

Related Topics

- Independent Contractor vs. Employee, page 5-21, *1040 Edition/Deluxe Edition*

Non-Employee Payments for Work Performed by Outside Workers

File Form 1099-MISC for each person to whom the taxpayer has paid the following during the course of a trade or business.

- At least $10 in royalties or broker payments in lieu of dividends,
- At least $600 in rents, services, prizes and awards, other income payments, medical and health care payments, crop insurance proceeds, or cash from payments for fish purchased from anyone engaged in the trade or business of catching fish, or any fishing boat proceeds,
- Gross proceeds of $600 or more paid to an attorney,
- Direct sales of $5,000 or more of consumer products to a buyer for resale anywhere other than a permanent retail establishment, or
- Any payment from which federal income tax has been withheld under the backup withholding rules.

Form 1099-MISC reporting is not required for a taxpayer engaged in a rental real estate activity unless the taxpayer is otherwise considered to be engaged in a trade or business.

Exceptions: Some payments are currently not required to be reported on Form 1099-MISC, although they may be taxable to the recipient. Examples include:

- Payments to corporations. See *Reportable payments to corporations,* below.
- Payments for merchandise, telegrams, telephone, freight, storage, and similar items.
- Payments of rent to real estate agents.
- Payments to a tax-exempt organization including tax-exempt trusts, the United States, a state, the District of Columbia, a U.S. possession, or a foreign government.

Reportable payments to corporations. The following payments made to corporations generally must be reported on Form 1099-MISC.

- Medical and health care payments reported in box 6.
- Fish purchases for cash reported in box 7.
- Attorneys' fees reported in box 7.
- Gross proceeds paid to an attorney reported in box 14.
- Substitute payments in lieu of dividends reported in box 8.

Payments to attorneys. The term attorney includes a law firm or other provider of legal services. It also includes a corporation providing legal services.

- Attorneys' fees of $600 or more paid in the course of business are reported in box 7.
- Report gross proceeds paid to an attorney in the course of business in connection with legal services, for example as in a settlement agreement, that total $600 or more in box 14, unless reportable in box 7.

2nd TIN notification. Enter an "X" in this box if the payer has been notified by the IRS twice within three calendar years that the payee provided an incorrect TIN. If this box is marked, the IRS will not send any further notices about this account.

✎ **Author's Comment:** A payer must withhold backup withholding on amounts paid more than 30 days after receiving an IRS notice of an incorrect TIN. Stop withholding within 30 days after receiving a certified Form W-9 or other form that requires the payee to certify under penalty of perjury. (Rev. Proc. 2014-43)

Penalties for failure to file correctly by due date. If a correct Form 1099-MISC is not filed by the due date and reasonable cause cannot be shown, the following penalties apply.
- $30 per Form 1099-MISC if not more than 30 days late.
- $60 per Form 1099-MISC if more than 30 days late but by August 1.
- $100 per Form 1099-MISC if filed after August 1.
- $250 per Form 1099-MISC for intentional disregard of the filing requirements.

Box 1. Rents. Enter amounts of $600 or more for all types of rents, such as real estate rentals paid for office space, machine rentals, and pasture rentals. If the machine rental is part of a contract that includes both the use of the machine and the operator, prorate the amount between the rent of the machine, reported in box 1, and the operator's charge reported as nonemployee compensation in box 7.

Box 2. Royalties. Enter gross royalty payments of $10 or more before reduction for severance and other taxes that may have been withheld and paid.

Box 3. Other income. Enter other income of $600 or more required to be reported that is not reportable in one of the other boxes on the form. See *Self-employment tax,* next column.

Prizes and awards. Enter prizes and awards that are not for services performed. Include amounts paid to a winner of a sweepstakes not involving a wager. Do not include prizes and awards paid to employees. Prizes and awards paid for services performed by nonemployees, such as an award for the top commission salesperson, are reported in box 7.

Foreign agricultural workers. Report compensation of $600 or more paid to an H-2A visa agricultural worker who did not provide a valid TIN.

Other items to be reported in box 3 include the following.
- Deceased employee's wages paid after the year of death.
- Payments to Indian tribal members of net gaming profits.
- Payments for participating in a medical research study.
- Termination payments to former self-employed insurance salespeople.
- All punitive damages, any damages for nonphysical injuries or sickness, and any other taxable damages.
- All compensatory damages for nonphysical injuries or sickness.

Exceptions: Do not include compensatory damages that are:
- Received on account of personal physical injuries or physical sickness, or
- Less than the amount paid for medical care, or
- For a replacement of capital.

Box 5. Fishing boat proceeds. Enter proceeds from the sale of a catch or FMV of a distribution in kind to each crew member of fishing boats with normally fewer than 10 crew members. Also report cash payments of up to $100 per trip that are contingent on a minimum catch and paid solely for additional duties (such as mate, engineer, or cook) for which additional cash payments are traditional in the industry.

Box 6. Medical and health care payments. Enter payments of $600 or more made in the course of a trade or business to each physician or other supplier or provider of medical or health care services.

Box 7. Nonemployee compensation. Enter nonemployee compensation of $600 or more. Include fees, commissions, prizes and awards for services performed as a nonemployee, and other forms of compensation for services performed for the taxpayer's trade or business by an individual who is not employed by that business. Include oil and gas payments for a working interest whether or not services are performed. Also include expenses incurred for the use of an entertainment facility treated as compensation to a nonemployee.

What is nonemployee compensation? If the following four conditions are met, a payment is generally reported as nonemployee compensation.
- The payment is made to someone who is not the payer's employee,
- The payment is made for services in the course of the payer's trade or business,
- The payment is made to an individual, partnership, estate, or, in some cases, a corporation, and
- Payments to the payee totaled at least $600 during the year.

Self-employment tax. Generally, amounts reported in box 7 are subject to self-employment tax. If payments to individuals are not subject to this tax, and are not reportable elsewhere on Form 1099-MISC, report the payments in box 3.

Box 9. Payer made direct sales of $5,000 or more. Enter an "X" in the checkbox for sales by the payer of $5,000 or more of consumer products to a person on a buy-sell, deposit-commission, or other commission basis for resale by the buyer or any other person anywhere other than in a permanent retail establishment. If there is an amount reported in box 7, box 9 may also be checked on the same Form 1099-MISC.

Other Payroll Issues

Cross References
- IRS Pub. 15, *(Circular E) Employer's Tax Guide*
- IRS Pub. 15-A, *Employer's Supplemental Tax Guide*
- IRS Pub. 15-B, *Employer's Tax Guide to Fringe Benefits*

Related Topics
- Employee Fringe Benefits, Tab 13, *1040 Edition/Deluxe Edition*

Payroll Recordkeeping
Payroll records must be kept for at least four years. Records should include:
- Employer identification number (EIN).
- Amounts and dates of all wage, annuity, and pension payments.
- Amounts of tips reported to the employer by the employees.
- Records of allocated tips.
- The FMV of in-kind wages paid.
- Names, addresses, Social Security numbers, and occupations of employees and recipients.
- Employee copies of Forms W-2 and W-2c that were returned to the employer 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 the employer or a third-party payer made to them.
- Copies of employees' and recipients' income tax withholding allowance certificates (Forms W-4, W-4P, W-4S, and W-4V).
- Dates and amounts of tax deposits 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 employees, including substantiation.

Gross-Up Computation

Author's Comment: Often an employer will gross-up wages for purposes of taxable fringe benefits so that the employer, and not the employee, pays the payroll taxes on the benefit.

Gross-up computation. If the employer grosses up the wage to pay the tax on the benefit, the gross-up is also taxable to the employee. To calculate the tax on the gross-up, use the following worksheet.

1)	Enter the net wage or value of fringe benefit the employee actually received	1) ________
2)	Enter 100%..	2) ________
3)	Enter the total percentage for FICA, federal, and state income withholding	3) ________
4)	Subtract line 3 from line 2...	4) ________
5)	Taxable wage, divide line 1 by line 4	5) ________
6)	Total FICA, federal, and state withholding, multiply line 5 by line 3..	6) ________

Taxable wages from line 5 minus total withholding from line 6 should equal net wage on line 1.

Note: Employers can use this computation only if the percentage method of withholding is used.

Fringe Benefits

Fringe benefits are subject to income and employment taxes, unless a specific benefit is excluded from taxable income under the Internal Revenue Code. See *Employee Fringe Benefits,* Tab 13, *1040 Edition/Deluxe Edition,* for a discussion of excludable fringe benefits.

Supplemental Wages

Supplemental wages are compensation paid in addition to an employee's regular wages. They include, but are not limited to, bonuses, commissions, overtime pay, payments for accumulated sick leave, severance pay, awards, prizes, back pay, retroactive pay increases, payments for nondeductible moving expenses, taxable fringe benefits, and expense allowances paid under a nonaccountable plan.

If supplemental wages are combined with regular wages, and the amount of each is not specified, withhold federal income tax as if the total were a single payment for a regular payroll period. If the amount for each is separately paid, or each amount is specified, the employer can use one of the following methods for the supplemental wages.

- Withhold at a flat rate of 25%.
- Add the supplemental and regular wages for the most recent payroll period. Then figure withholding as if the total was a single payment. Subtract the tax already withheld from the regular wages and withhold the remaining tax from the supplemental wages.

Note: Special rules apply to wages exceeding $1 million in one year. See IRS Pub. 15, *(Circular E) Employer's Tax Guide,* for details.

Tip vs. Wage

Service charges may be treated as a tip or a wage. A payment is a tip if:

- It is made free from compulsion,
- The customer has the unrestricted right to determine the amount,
- The payment is not subject to negotiation or dictated by employer policy, and
- The customer has the right to determine who receives the payment.

Service charges are typically included on the tip line of the bill. The restaurant then distributes this amount to the wait staff. Affected customers do not have the right to determine the amount of the payment or who receives the payment. The service charge is thus treated as a wage to the employee, not a tip (Rev. Rul. 2012-18). See *Tip Reporting,* Tab 3, *1040 Edition/Deluxe Edition.*

Example: Joe's Sushi Shack has a policy to add an 18% charge to bills for parties of six or more customers. This service charge distributed to the wait staff is treated as a wage.

Reporting Employer-Sponsored Health Insurance

For employers who file fewer than 250 Forms W-2, the requirement to report the cost of health insurance coverage under an employer-sponsored group health plan on the employee's Form W-2 is optional until further notice. (Notice 2012-9)

Labor Laws

Cross References

- IRS Pub. 15-A, *Employer's Supplemental Tax Guide*
- IRS Pub. 957, *Reporting Back Pay and Special Wage Payments to the Social Security Administration*

Related Topics

- Hiring Practices, Tab 31, *Small Business Edition*

Fair Labor Standards Act (FLSA)

The FLSA prescribes standards for the basic minimum wage and overtime pay affecting most private and public employers.

Minimum wage. The federal minimum was set at $7.25 per hour when it was last adjusted on July 24, 2009.

Exceptions:

- Youths under 20 years of age may be paid a minimum wage of not less than $4.25 an hour during the first 90 consecutive calendar days of employment as long as they do not displace other workers.
- Tipped employees are considered to have their tips count toward the employer meeting the minimum wage standard, but employers must pay a direct wage on top of tips of at least $2.13 per hour if they claim a tip credit.
- Employers are required to pay covered nonexempt employees overtime pay for all hours worked over 40 in a work week at one-and-a-half times the regular rate of pay.
- The hours that children under age 16 can work are restricted.
- The employment of children under age 18 in certain jobs deemed too dangerous is forbidden.

Poster rules. Every employer subject to FLSA must post, and keep posted, a notice explaining the Act in a conspicuous place in all of the employer's establishments so as to permit employees to readily read it. An approved copy of the minimum wage poster is available at the U.S. Department of Labor website: www.dol.gov.

Child labor laws. Under FLSA, the following rules restrict the age and types of work children can do. Once an employee is age 18, child labor laws no longer apply.

- The minimum age for most non-agricultural work is age 14. Exceptions to this rule are jobs delivering newspapers, performing for radio, television, movies, and theatrical productions, work in businesses owned by their parents (except mining, manufacturing, or hazardous jobs), and performing babysitting or minor chores around a private home.
- Children age 14 and 15 for most non-agricultural work are restricted to the following.
  - Cannot work more than 40 hours per week on a non-school week.
  - Cannot work more than 18 hours per week in a school week.
  - Cannot work more than eight hours in one day on a non-school day.
  - Cannot work more than three hours per day on a school day.
  - Can only work between 7 a.m. and 7 p.m. on any day, except during the summer when they can work until 9 p.m.

- Children employed by parents in the family farm can work any time of day and for any number of hours.
- Children age 16 or older are not limited by the number of hours or times of day they can work.

Family and Medical Leave Act

Employers with 50 or more employees must grant eligible employees unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance under the same terms and conditions as if the employee had not taken leave. Eligible employees are entitled to:

- 12 work weeks of leave in a 12-month period for:
  - The birth and care of a newborn child within one year of birth,
  - The placement and care of a child for adoption or foster care within one year of placement,
  - The care of the employee's spouse, child, or parent with a serious health condition,
  - A serious health condition that makes the employee unable to work,
  - Any qualifying exigency arising from the employee's spouse, son, daughter, or parent who is a covered military member on "covered active duty," or

- 26 work weeks of leave during a single 12-month period to care for a covered service member with serious injury or illness if the eligible employee is the service member's spouse, son, daughter, parent, or next of kin (military caregiver leave).

Qualifying exigency. Eligible employees may take leave to address the most common issues that arise when a military member is deployed in a foreign country including, attending military sponsored functions, making appropriate financial and legal arrangements, and arranging for alternative childcare.

The military provisions apply to families of members of both the active duty and reserve components of the Armed Forces.

Equal Employment Opportunity (EEO)

The EEO laws prohibit specific types of job discrimination in certain workplaces. The Department of Labor has two agencies which deal with EEO monitoring and enforcement.

- Civil Rights Center, and
- The Office of Federal Contract Compliance Programs.

Federal laws designed to promote EEO include:

- The Age Discrimination in Employment Act of 1967, which protects certain applicants and employees 40 years of age and older from discrimination on the basis of age in hiring, promotion, discharge, compensation, or terms, conditions or privileges of employment.
- The Americans with Disabilities Act, which prohibits employers of 15 or more workers from discriminating against individuals with disabilities.
- The Vietnam Era Veterans' Readjustment Assistance Act, which prohibits discrimination and requires affirmative action for certain disabled veterans.
- The Civil Rights Act of 1964, which prohibits discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color, religion, sex, or national origin.
- The Uniformed Services Employment and Reemployment Rights Act, which gives eligible members of the uniformed services the right to be reemployed in their civilian job when they leave their military service.
- The Immigration and Nationality Act, which prohibits employers hiring, discharging, or recruiting from discriminating because of national origin against U.S. citizens, U.S. nationals, and authorized aliens or discriminating because of citizenship status against U.S. citizens, U.S. nationals, permanent residents, legal temporary residents, refugees, and asylees, if they have authorization to work in the United States.
- The Genetic Information Nondiscrimination Act of 2008, which prohibits discrimination against employees or applicants because of genetic information.

Occupational Safety and Health Act of 1970 (OSHA)

The OSHA laws require employers to provide workplaces free from serious recognized hazards and to comply with occupational safety and health standards. Visit www.osha.gov for more information.

New Hire Reporting Requirements

Form I-9, *Employment Eligibility Verification.* Form I-9 can be obtained by visiting the U.S. Citizenship and Immigration services website at www.uscis.gov or calling 1-800-870-3676.

All U.S. employers must complete and retain Form I-9 for each individual they hire for employment in the United States. This includes citizens and noncitizens. The employer must examine the employment eligibility and identity documents presented by the employee to determine whether the documents reasonably appear to be genuine and relate to the individual. The document information is then recorded on Form I-9. The list of acceptable documents can be found on the last page of the form.

Form I-9 must be completed and signed within three business days of the employee's first day of employment. If the employee is hired for less than three days, the form must be completed no later than the first day of employment.

Social Security number. Employers should verify employee names and Social Security numbers by comparing with the employee's Social Security card or verifying with the Social Security Administration (SSA) online at www.ssa.gov/employer/verifySSN.htm or calling the SSA at 1-800-772-6270.

State new hire reporting. An employer must report any new employees to a designated state new hire registry. See www.acf.hhs.gov/programs/css and search "state new hire reporting" for detailed state information.

W-4. See *Form W-4, Employees Withholding Allowance Certificate,* page 23-3.

~ End ~