



December 2022

2023 Payroll Withholding and Payroll Tax Changes

Below is our annual summary of specific provisions relating to payroll and information reporting. The provisions will be effective January 1, 2023. Please review this information carefully and share it with personnel who assist in payroll matters. There is also a separate memorandum, which discusses different types of remuneration to report as compensation on Form W-2.

INTERNET ACCESS

Most governmental taxing authorities have a website where you can access information regarding payroll. The websites for the IRS, Nebraska and Iowa are as follows:

IRS:	www.irs.gov
Nebraska Dept. of Revenue:	www.revenue.nebraska.gov
Iowa Dept. of Revenue:	www.tax.iowa.gov
Nebraska Dept. of Labor:	www.dol.nebraska.gov
Iowa Dept. of Labor:	www.iowaworkforcedevelopment.gov

WITHHOLDING ON WAGES

A new Circular E (Publication 15) has been issued for 2023. The new Circular E (Publication 15) for use in 2023 can be obtained from the Internal Revenue Service at the downtown location or by calling 800-829-3676. It can also be downloaded from the above IRS website.

In regard to your employees' federal income tax withholding, a new Form W-4 for 2023 is available and will be discussed later in this newsletter. We have provided a link to this form on our website.

A new Nebraska Circular EN, Nebraska Income Tax Withholding has been issued for wages paid on or after January 1, 2023. If you do not have the 2023 booklet, please call the Nebraska Department of Revenue at (402) 595-2065 (Omaha), or 800-742-7474 and request that a Circular EN be mailed to you. You can also download this booklet from the above website. The "special withholding rate" remains at 1.5%.

For Iowa withholding, use the Iowa Withholding Tax Rate Tables released in November 2022 to be used for wages beginning January 1, 2023. These rate tables are not reissued every year, but they

have been updated for 2023. Copies may be obtained by calling 1-800-367-3388 or downloaded from the above website. Please note the Iowa Department of Revenue requires the Form 44-095, Withholding Quarterly Return to be filed online through the GovConnectIowa web site <https://govconnect.iowa.gov/> or filed and paid by mail each quarter.

Please be aware that Federal withholding on "supplemental" wage payments (i.e. bonuses) for 2023 is 22% (37% on supplemental payments in excess of \$1,000,000), and the Nebraska rate remains at 5% for 2023.

PAYROLL TAXES

The combined FICA tax rate for 2023 is 7.65%—6.2% for social security (OASDI) and 1.45% for Medicare (hospital insurance). For 2023, the OASDI wage base is \$160,200 for a maximum OASDI tax of \$9,932.40 for both employee and employer. As in prior years, there is no limit on Medicare wages. The additional medicare tax of 0.9% continues for 2023 and is to be withheld on wages in excess of \$200,000.

As in the past, FICA taxes must be computed on gross wages, less any Internal Revenue Code Section 125 cafeteria plan deductions. There may be other pre-tax deductions. The employer withholds the tax from the employee's wages for remittance to the government, and the employer must also match the amount of FICA taxes withheld from an employee's wages. The employer's share of FICA tax is 6.2% for social security (OASDI) up to the maximum of \$9,932.40 and 1.45% for Medicare (hospital insurance). There is no employer match on the additional medicare tax noted above.

The social security (FICA) tax rate for self-employed individuals for 2023 will be 15.3%, which is twice the rate noted above. The wage bases for OASDI and Medicare will be the same as noted above. Self-employed individuals are also subject to the additional medicare tax of 0.9% based on amounts above the IRS thresholds such as \$250,000 for married filing jointly or \$200,000 for single taxpayers. As in the past, self-employed individuals report and pay the FICA and Medicare tax as part of their individual tax return but will be able to deduct one-half of the FICA tax liability on that same return. The additional medicare tax should be considered when making estimated tax payments.

The Federal unemployment tax rate for 2023 will be 0.6% (6.0% less 5.4% credit for state taxes) on the first \$7,000 of wages paid to each employee (gross wages x .006). The liability may be increased due to states with a credit reduction rate. If the total liability per quarter for all employees is \$500 or less (including any FUTA tax carried forward from an earlier quarter), no deposit is required. If the cumulative liability exceeds \$500 for any calendar quarter, a deposit for the total liability must be made by the end of the month following the close of the quarter, where the liability exceeds \$500 (April, July, October and January). **NOTE: The 0.6% rate applies only if all state unemployment payments are made in a timely manner.**

The Nebraska unemployment tax rate is determined by Nebraska Workforce Development each year, based on the employer's experience account. The notice for determination will be issued in December 2022. For employers in Categories 1-19, the taxable wage base for 2023 remains at

\$9,000 of wages paid to each employee. The wage base for Category 20 employers is \$24,000 of wages paid to each employee. You can potentially lower your Nebraska unemployment rate by paying your reserve deficiency as instructed by the Nebraska Department of Labor. You can file your quarterly unemployment insurance reports electronically via the internet. Employers who had \$100,000 or more in payroll in either of the two preceding years are required to file and pay their quarterly unemployment insurance tax electronically through the Nebraska Workforce website. **The website to file Nebraska unemployment tax returns changed in the prior year to <https://neworks.nebraska.gov>. Employers may need to call 402-471-9898 to obtain their account information and login to update their account and take care of responses to unemployment claims, look for employees or post job opportunities.**

If you pay Iowa unemployment, they will send your 2023 unemployment tax rate to you. The wage base for 2023 is \$36,100. Information and forms are available from their Internet website.

The Internal Revenue Service continues to process Forms 940 and 941 by optical character recognition. In order to read entries correctly on these forms, they ask that you type or print in black ink. In addition, no erasures, whiteouts or strikeouts will be accepted. The IRS accepts Forms 940 and 941 produced by software applications, such as QuickBooks.

Form 941, Employer's Quarterly Federal Tax Return, and Form 940, Employer's Annual Federal Unemployment tax return may be filed using the Employment Tax E-File System through an authorized IRS e-file provider. We are an authorized IRS e-file provider.

Forms 941-X and 944-X are to be used for correcting previously filed Forms 941 or 944.

Both the Federal and Nebraska agencies encourage electronic filing of W-2 forms. If you file 250 or more W-2 forms, you are required to file them electronically with the Federal agency. Pending IRS issuing final regulations, this may be reduced to 100 or more W-2 forms. Nebraska requires you to file W-2 forms electronically if you file 50 or more. The Federal Copy A of Form W-2 and Form W-3 is due by January 31, 2023. The Nebraska Form W-3N and the Nebraska copies of Forms W-2, W-2G, 1099-MISC, 1099-R, and 1099-NEC are due January 31, 2023.

If you are doing business in other states or have employees working in other states, you may be subject to payroll tax reporting/withholding requirements in that state. As a result of the Covid-19 pandemic, remote out-of-state employees have become more common, so be aware of these situations.

DEPOSITS

The rules affecting payroll tax deposits remain the same as 2023. The IRS divides taxpayers into two groups for making payroll tax deposits:

1. Monthly, or
2. Semi-weekly

The IRS makes the determination for 2023 based on the total tax liability you reported on Forms 941 during the previous four-quarter lookback period (July 1, 2021 through June 30, 2022). If you had \$50,000 or less of deposits during this period, you are in the monthly group; otherwise, you are in the

semi-weekly group. It is your responsibility to watch your tax liability and start depositing on the semi-weekly basis when necessary. **You may have received a notice from the IRS indicating whether you are a monthly or semi-weekly depositor for 2023. It has come to our attention that due to the IRS being behind on processing returns, the liability for all four quarters may not have been included in their calculation. Therefore, please make sure you calculate your 941 tax liability from Line 12 of each Form 941 for July 1, 2021 through June 30, 2022. If the total is more than \$50,000, you are a semi-weekly depositor for 2023.**

Under the monthly rule, all payroll taxes withheld during the month must be paid by the 15th day of the following month. Under the semi-weekly rule, taxes accumulated from payroll paid on Wednesday, Thursday or Friday must be deposited by the close of banking on the following Wednesday. Amounts accumulated from payroll made on Saturday, Sunday, Monday or Tuesday must be deposited by the following Friday. When a semi-weekly period (Wednesday-Friday or Saturday-Tuesday) straddles the end of a quarter, two separate deposits are required for taxes accumulated in the different quarters. For example, if one quarterly return period ends on Thursday and a new quarter begins on Friday, employment taxes accumulated on Wednesday and Thursday are subject to one deposit obligation and taxes accumulated on Friday are subject to a separate obligation. Separate Electronic Federal Tax Payment System (EFTPS) Deposits are required for each deposit obligation.

A special rule overrides both rules noted above. First, if total accumulated taxes reach or exceed \$100,000 during a deposit period, it must be deposited the next day. Second, if total accumulated taxes are less than \$2,500 during a quarter, the amount due can be paid with the tax return for the quarter (Form 941).

Certain taxpayers may file their employment taxes annually. You will be notified by the IRS if you qualify to file Form 944, Employer's Annual Federal Tax Return. If your Federal payroll tax liability will be \$1,000 or less and you have not received notification from the IRS, you can call the IRS at 1-800-829-4933 before April 1, 2023 to determine if you can file Form 944 for calendar year 2023. You may also request filing the quarterly Form 941 rather than the annual Form 944 by calling the number noted above prior to April 1, 2023.

For any deposit due on a day that is not a banking day, the deposit is due the next banking day. **Payments by EFTPS must be scheduled by 8 p.m. Eastern Time the day before the due date to be received timely by the IRS.**

Please contact us if you need assistance with applying these rules.

NOTE: It is our recommendation that a deposit be made with each payroll, thereby eliminating penalties and interest.

EFTPS

As of January 1, 2011, all Federal Tax Deposits must be made using the Electronic Federal Tax Payment System (EFTPS) as the Form 8109 Federal Tax Deposit Coupons have been eliminated. As noted above, if the total tax liability is less than \$2,500 during a quarter, the amount due can be paid with Form 941. If you are required to use EFTPS and fail to do so, you may be subject to a 10% penalty.

Before you can make deposits electronically, you must enroll in the EFTPS system. To enroll, visit www.eftps.gov and enroll online or call EFTPS Customer Service at (800) 555-4477 to request an enrollment form or to request your PIN by providing them with your federal identification number when allowed. You can receive information from the IRS (800) 555-4477 or on the internet at www.eftps.gov. After enrolling and receiving your PIN, logon to www.eftps.gov to obtain your Internet password and begin making your EFTPS payments via the internet.

Nebraska also has a program for making electronic payments. Beginning July 1, 2017, employers withholding \$5,000 or more during the previous tax year are required to remit amounts withheld via electronic funds transfer. Covered employers will be notified at least three months in advance of the requirement to remit electronically. You are encouraged to file your returns and make business tax payments electronically via the internet. You can receive information on the Nebraska Department of Revenue website or from the Electronic Commerce Help Line at (800) 742-7474.

FEDERAL FORM W-4 AND NEBRASKA FORM W-4N

All employees must complete a Form W-4, Employee's Withholding Allowance Certificate, when hired, or when they request a change in withholding. The websites, www.paycheckcity.com or www.irs.gov, can assist employees with completing Form W-4. Please be prepared for more employees to revise their W-4s for 2023.

Federal Form W-4 for 2023:

The Internal Revenue Service has issued a new Form W-4 which must be used for employees hired in 2023 and anyone who makes withholding changes in 2023. Employees with multiple jobs or have working spouses need to read the instructions carefully when completing the form to have their withholding be most accurate for their situation. Employees may also want to use the IRS's Tax Withholding Estimator at www.irs.gov/W4App to perform a "paycheck checkup" to see if they need to make adjustments to their current withholding. This may also assist your employees who are not completing a new W-4 for 2023.

Nebraska Form W-4N Requirement:

As a reminder, all new employees are required to complete the Nebraska Form W-4N. In addition, an employee who requests changes to their withholding on or after January 1, 2023 must complete a new Nebraska Form W-4N. Failure to secure Form W-4N could potentially result in penalties being assessed against the employer.

NEW HIRE REPORTING – Effective January 1, 2010, Nebraska employers are required to report all independent contractors in addition to new hires and rehired employees (previously employed but separated from employer for at least 60 consecutive days). Employers must report newly hired, rehired employees, and independent contractors within 20 days after the date of hire or rehire. You should transmit the required information by forwarding a copy of the employee's Federal W-4 or any other approved form. The employer name, address and Federal identification number must be on the form. Nebraska employers should fax the forms to 866-808-2007 or mail the forms to:

Nebraska State Directory of New Hires
P.O. Box 483
Norwell, MA 02061

Registration and reporting can be done on the internet by accessing their website at <https://ne-newhire.com/>.

Employers in states other than Nebraska should contact that state for the correct address or contact us for assistance.

Under new regulations, you are not automatically required to send a copy of a questionable W-4 to the Internal Revenue Service. Now, you only have to submit copies when you receive written notice from the IRS or are directed to do so with a revenue procedure or notice in the Internal Revenue Bulletin.

Note: Form W-4 on which an employee claims exemption from withholding legally expires on February 15 of the year after it is filed, thereby requiring an employee to complete Form W-4 for the new year.

FORM I-9

As part of the Immigration Reform and Control Act, employers are required to verify that employees are not illegal or unauthorized aliens. It is unlawful to hire or employ an unauthorized alien. To comply with and document this verification, employers should have all employees and subsequent new hires complete Form I-9, Employment Eligibility Verification. The current edition of Form I-9 is dated 10/21/2019 and is available at <https://www.uscis.gov/sites/default/files/document/forms/i-9-paper-version.pdf>. You may need to update your Adobe software to open this file. This edition of the form is set to expire October 31, 2022. You should consult an attorney familiar with this law if you have any questions or concerns. These forms must be kept in a file separate from other employee information.

Effective October 1, 2009, the State of Nebraska requires that all private employers seeking contracts with public employers and all public contractors and/or their subcontractors need to verify the legal work status of new employees using the federal immigration verification system. For more information, go to www.dhs.gov/E-verify.

SOCIAL SECURITY NUMBER VERIFICATION

The Internal Revenue Code provides that the employer may be penalized up to \$580 for each incorrect Form W-2. Therefore, it is important to verify each employee's name and Social Security number. You may call (800) 772-6270 to verify up to ten Social Security numbers. You may present a paper list of up to fifty Social Security numbers to the local Social Security Administration office.

The Social Security Administration's Employee Verification Service may handle over fifty verification requests; however, pre-registration is required. We are a registered agent to verify Social Security numbers.

More information is available at www.ssa.gov/employer/ssnv.htm or you can call (800) 772-6270 or (800) 772-1213.

EMPLOYER FEDERAL PENALTIES AND INTEREST

1. The penalty for late filing of a payroll tax return is 5% per month of the tax not paid on time, with a maximum penalty of 25%.
2. The penalties for failure to make deposits of taxes are based on applicable percentages of the amount of underpayment determined by the number of days the deposit is late. If failure is:
 - a) not more than 5 days late, the applicable percentage is 2% of the under-deposited taxes;
 - b) more than 5 days but not more than 15 days late, the applicable percentage is 5% of the under-deposited taxes; or
 - c) if the failure is more than 15 days late, the penalty is 10%.

Also, a penalty of 15% may be imposed if the under-deposited taxes are not paid on or before the earlier of:

- a) 10 days after the first delinquency notice; or
 - b) the day on which notice and demand for immediate payment is given.
3. A penalty is assessed by the IRS for bad checks or money orders. The penalty is \$25 or 2% of the check, whichever is more. If bad check is less than \$25, the penalty is equal to the payment.
4. There are also employer's penalties for (a) failure to withhold, (b) fraudulent wage and tax statements, (c) failure to furnish wage and tax statements, (d) failure to file information returns, Forms 1099, Forms W-2 and Forms W-3, (e) perjury, (f) failure to include taxpayer identification number, employer or employee's numbers, and (g) failure to permit inspection of books. If further information is needed on these penalties, please contact our office.
5. The January-March 2023 interest rate on underpayment of Federal taxes is 7%. This rate may be adjusted quarterly.

EMPLOYER STATE PENALTIES AND INTEREST

The Nebraska penalty for late filing of withholding tax returns is 5% per month, up to a maximum of 25%. The interest rate as of January 1, 2023 is 5%. The Nebraska Workforce Development penalty

for late payment is equal to 0.1% of the total gross wages paid during the quarter, but not less than \$25 or more than \$200. The interest charges will be 1.5% of tax due per month.

In Iowa, if at least 90% of the correct tax is not paid by the due date of the return, a 10% penalty will be added to the unpaid portion of the tax due for failure to timely file a return. The penalty will not be waived due to reasonable cause. Interest is also added to unpaid tax at a rate prescribed by law from the due date of the return until payment is received.

EMPLOYEE PENALTIES

Employees are subject to penalties for providing false or fraudulent information to their employer.

WAGES

Wages for purposes of withholding and payroll taxes include all reported tips. If non-tip income is not sufficient to cover required withholding, special rules must be followed. Allocated tips may also have to be computed and reported for food and beverage establishments that employ 10 or more employees per day.

The Federal minimum wage is \$7.25 per hour effective July 24, 2009. The minimum wage for Iowa is also \$7.25 per hour. The minimum wage for Nebraska as of January 1, 2016 is \$9.00. As with the Federal minimum wage, some states have increased their minimum wage for tipped employees.

Tip credit. Restaurateurs and other employers that tip workers can continue to pay their workers \$2.13 an hour if the tips bring the hourly wage up to the prevailing minimum wage.

STATE WAGES

Generally, all states require employers to withhold and remit state income taxes for employees working in their state. If your employees cross state boundaries from your resident state, you likely have an obligation to pay taxes in the non-resident state. It is important you familiarize yourself with those state rules as they relate to doing business within the state.

FEDERAL NON-EMPLOYEE PAYMENTS (FORM 1099)

All persons (including corporations, partnerships and proprietorships) engaged in a trade or business must file an information return (Form 1099) for payments in excess of \$600 made to a non-corporate entity as compensation for services, rents, prizes and awards and other income payments. The law also requires that the payer report payments to non-corporate entities in excess of \$10 for interest, dividends, royalties and pensions on Form 1099. You can order forms and the separate instruction booklet by calling 800-829-3676, or by going to www.irs.gov and clicking on “Forms and Publications” to select the appropriate materials for downloading.

For reporting non-employee compensation paid in 2022, Forms 1099-NEC and 1099-MISC must include all payments made in connection with a trade or business during a calendar year. You may exclude payments to vendors via credit card, debit card, or third-party systems such as PayPal since they will be reported to the vendor by the third-party payment processing companies. The Form

1099-NEC must be filed with the Internal Revenue Service by January 31 of the following year when reporting nonemployee compensation payments in Box 1. A copy of the information return for most 1099 forms must be given to the payee by January 31. Several other 1099 forms, such as Form 1099-MISC are due to the Internal Revenue Service by February 28 if paper filed. Our firm is authorized to file 1099s electronically. Nebraska and Iowa do not require a copy of the 1099 form at this time unless there is state withholding reported on Form 1099.

The law encompasses all payments for services performed for the trade or business by a non-corporate entity and services performed by any professional entity. If the payee is a corporation, no Form 1099 is generally required, but there are a few exceptions including payments made to attorneys for legal services. Services to be reported include labor costs to repair your plant or equipment by non-employees (full cost of repairs including replacement parts may have to be reported), cleaning or lawn services, attorney and accounting services, painters, exterminators, consultants and other non-employee labor. Also, the fair market value of prizes and awards given to non-employees should be reported in Box 3 on the 1099-MISC.

The Form 1099 must include your name, identification number and phone number, the payee's name, address and identification number, and the amount of payment. **Be sure your 1099 forms include the telephone number of the person that your payees/recipients should contact.**

In order to accurately complete the Form 1099, you must request the payee's tax identification number, and/or exempt status. Form W-9 is used to request the necessary information from the payee. If you do not receive the identification number or confirmation of exempt status, you are required to withhold 24% of the payment and remit it to the Internal Revenue Service on a quarterly basis.

Failure to file the Form 1099 when required can result in a penalty of up to \$570 for each Form 1099 not filed; however, failure to request the identification number along with failure to withhold 24% of the payment will result in much more serious penalties. The Internal Revenue Service will assess the payor 24% of the total amount paid as withholding taxes. In addition, it will assess a penalty of 5% per month, up to 25%, and charge interest on the amount not withheld.

If it is proven the payee reported the income, the Internal Revenue Service will not assess the 24% withholding tax. However, the Internal Revenue Service will still assess the penalty and interest.

Note: Even though we may process your monthly records, we do not have the necessary information to prepare the Form 1099 information returns. If you need assistance, please let us know as soon as possible.

Continued From 2018: As part of the Tax Cuts and Jobs Act of 2017, if you are involved in a rental activity, and are planning on claiming the 20% QBI (Qualified Business Income) deduction, you are thereby electing to treat your rental activity as a trade or business for 2022. Therefore, we are recommending that you issue 1099s from this activity for 2022 as well. You will need to secure the payees' name, address, social security or employer identification numbers and quantify the total amount paid to those payees in 2022 and issue 1099s to them as well. Frankel Zacharia can assist you in preparing the 1099s for these payees if desired.

NEBRASKA NON-EMPLOYEE COMPENSATION

Nebraska requires employers to withhold income taxes on payments made to a nonresident of Nebraska for personal services. Withholding is required where payments to the nonresident exceed \$600. The total payments and amounts withheld must be reported to the payee and state of Nebraska.

Employers should have the service provider complete Form W-4NA. If annual payments are less than \$28,000, the withholding rate is 4% of the payments, less applicable expenses. If payments equal or exceed \$28,000, the withholding rate is 6% of the payment, less applicable expenses. Withholding is required where payment is made to a corporation or partnership if the individual performing the services controls the corporation or partnership.

Please refer to your Nebraska Circular EN for more information.

HEALTH CARE REPORTING REQUIREMENTS

The Affordable Care Act requires employers with 50 or more full-time employees or equivalents to report the cost of coverage under an employer-sponsored group health plan on the 2022 Form W-2. In general, the amount reported should include both the portion paid by the employer and the portion paid by the employee. This information is to be reported using Code DD in Box 12 of Form W-2.

Additional reporting requirements have been implemented beginning in 2015 for many employers including Forms 1094-C, Transmittal of Employer Provided Health Insurance Offer and Coverage Information Return and 1095-C, Employer Provided Health Insurance Offer and Coverage.

Your payroll department should be given a copy of this bulletin for future reference. If you have any questions or would like further explanation of the changes, please contact our office.

Our office has a complete payroll department capable of performing all payroll services, including preparation of checks, quarterly and annual reports, and employer summary reports. Please contact us if you would like us to perform any payroll services for you.

* * * * *

Please be advised that, based on current IRS rules and standards, the advice contained herein is not intended to be used, nor can it be used, for the avoidance of any tax penalty that the Internal Revenue Service should assess related to this matter.