Special 16-Page Sample Issue

The Official Publication of the American Payroll Association

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PAYTECH

Inside This Special Issue:
Government Corner, Electronic Payments, Payroll Points, and State Issues

Countdown TO Compliance

Know What to Expect With Affordable Care Act

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This is a 16-page sample edition of PAYTECH, APA's exclusive monthly membership magazine. APA members receive the full-length edition, which is at least 64 pages of payroll news and features, as part of a complete lineup of APA membership benefits. Whether you need information about the latest trends in outsourcing, time and attendance technology, or legislative and regulatory issues, PAYTECH is your source.

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APA's Uniform Wage Garnishment Proposal Examined by National Commissioners

BY WILLIAM DUNN, CPP

Payroll professionals' hopes for uniformity among state garnishment provisions took a step forward in January when the National Conference of Commissioners on Uniform State Laws (NCCUSL) accepted APA's proposal for a uniform wage garnishment law. The proposal has been forwarded to the NCCUSL's Study Committee for further consideration. The uniform law would do much to standardize the administrative practices for handling creditor garnishments, as has been done in recent years for child support withholding.

The NCCUSL is responsible for drafting such laws as the Uniform Interstate Family Support Act, the Uniform Electronic Transactions Act, and the Uniform Wage Withholding and Unemployment Insurance Procedure Act, all of which impact the payroll profession. It is a nonprofit association with representatives from each state, as well as the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. Its purpose is to "secure uniformity of state laws where diversity obstructs the interests of all the citizens of the United States." The NCCUSL is responsible for more than 300 uniform acts.

THE NEED FOR A UNIFORM GARNISHMENT LAW

Wage garnishments are governed by 54 very different state and territorial laws, which create significant and unnecessary complexity for employers because no two state laws are alike.

William Dunn, CPP, is Senior Manager of Government Relations for APA.

The varying state provisions and resulting complexity create the likelihood of processing errors and the risk of financial liability for employers. Processing errors can have considerable consequences because the employer is often held liable for the entire amount owed by the employee and may face additional civil penalties. APA believes that a uniform law governing wage garnishments would do much to alleviate this complexity and enable employers to more easily fulfill their obligations, which would benefit creditors, employees, and employers.

APA's 2011 Survey of Salaries and the Payroll Profession found that, in 2010:

- for 28% of respondents, 1-3% of their workforces were subject to creditor garnishment;
- more than 20% of respondents made more than 1,250 garnishment payments;
- 33.7% had employees in only one state, while 20.1% had employees in 20 or more states; and
- 49.8% of respondents handled all of their organization's payroll processing in-house.

The role of the garnishee employer can be boiled down to its key parts: (1) answer the garnishment; (2) calculate withholding; (3) withhold income; and (4) remit withheld money to the court or the creditor. While the basic steps are the same, the variations that currently exist are nearly endless. For instance, when to answer, what to answer, where to send the answer and how often an answer is required differ from state-to-state. The variations appear to result more from disparate drafting, legislative history, and litigation procedures than from significant policy decisions or unique state public interests. APA proposed the uniform law in hopes of reducing the unnecessary confusion, cost, and risk that this diversity causes employers.

SUGGESTED ELEMENTS OF A UNIFORM LAW

In its proposal to the NCCUSL, APA included a litany of problems multistate employers face when handling garnishments, ranging from the methods used to calculate the amounts exempt from garnishment to administrative issues such as when and how often to submit reports to creditors (see the complete proposal at www.americanpayroll.org/government).

To address these issues, APA recommended 11 provisions:

1. Uniform definition of disposable income. Federal law defines disposable income as gross income minus deductions required by law. States vary this by also subtracting medical insurance premiums, life insurance premiums, union dues, retirement contributions, and other payments under the control of the employer.
2. Consistent withholding calculations. APA suggested that withholding limits be consistent with the federal Consumer Credit Protection Act.
3. Uniform effective duration. APA suggests that all creditor garnishments remain in effect until satisfied in full. This practice is consistent with federal garnishments and child support withholding and is currently the practice in 27 states. Payroll professionals report that a lengthy effective duration reduces both paperwork burdens and processing errors.
4. Allow 30 days for employer to respond to garnishment order. Insufficient time to respond to garnishment orders is a leading factor in employers being held liable for the debts of their employees. A 30-day period in which to respond is currently provided in seven states.
5. Withheld funds to be remitted each payday. Creditor garnishments are the sole type of garnishment that may require an employer to hold withheld funds in an escrow account to be paid out in full at a later time, which is burdensome for employers and inefficient. Remitting funds on each payday is consistent with the processes used for child support, tax levies, federal garnishments, etc. Currently 27 states provide that funds be remitted each payday.
6. Obligation to notify debtor. APA believes the obligation to notify the debtor employee of his or her rights in the garnishment process should rest with the creditor rather than the employer, and that the employer's responsibility should extend no further than withholding and remitting funds according to a court-issued order.
7. Uniform answer. Employers may be required to provide multiple reports to creditors or to the courts during the duration of a garnishment. To alleviate that burden, APA suggests that:
   a. employers be required to report only once;
   b. answers be sent to a single address in each state;
   c. the initial response from employer to creditor be limited to include the employee's employment status, rate of pay, and existence of competing garnishments that may prevent that garnishment from being honored in full or in part;
   d. the answer does not require a notary or attorney;
   e. the law provide for a consistent time frame (30 days) in which employers are to respond; and
   f. employers be allowed to submit payments and answers separately.
8. Notice to employer. Garnishment orders should be sent only to the party designated to receive legal documents for the garnishee, as reported to the proper authority within the states in which the garnishee conducts business. This may be an officer of the company or designated third party such as a registered agent. The aim of this provision is to ensure garnishment documents are received by a person with knowledge as to where those documents must be forwarded, so they can be processed within the required time limits. This requirement would also reduce the amount of fraud perpetrated by unscrupulous collection agents seeking to circumvent the court system by sending official-looking papers directly to employers.
9. Consistent rules for handling multiple orders. APA suggests that the uniform law allow for multiple garnishments to be honored at the same time, with amounts withheld to be divided equally among the creditors, as is the practice in Kansas.
10. Administrative fees. The uniform law should allow employers to charge a $10 fee per payment to recoup their cost of administering garnishments. Preferably this fee is to be paid by the creditor and deducted from the amount remitted.
11. Penalties. Any penalties provided under state law should be limited to the amount not withheld and remitted according to the order.

The individual provisions suggested were drawn from existing state laws and are—from the perspective of payroll professionals who deal with wage garnishments on a daily basis—the most likely to result in greater compliance with fewer processing errors, and at lower cost to employers.

GOING FORWARD

APA is awaiting word from the NCCUSL's Study Committee on whether the proposal will progress.

"I can only believe that further research will enforce the recognition of the need for standardization," said Amorette Bryant, CPP, Co-Chair of APA's Child Support & Other Garnishments Subcommittee, which drafted the proposal.

The NCCUSL's Study Committee will send its recommendations to its Executive Committee. If the Executive Committee approves the recommendation, it will assign experts in the field to draft the uniform act. The NCCUSL will consider the draft for at least two years, gathering comments from all interested parties and stakeholders, such as APA, state courts, and collection attorneys. The draft act will then be debated by all the commissioners and subjected to a majority vote. Upon approval, it may be adopted for consideration by the states. ■

Countdown to & Affordable Care Act

Uncertainty Surrounds Implementation

BY PETE ISBERG

By now everyone has heard that, beginning in 2014, large employers will need to offer affordable health coverage meeting minimum standards, or pay a new "Shared Responsibility Assessment." Not as well understood, however, is all of the related new employer workload that will be necessary to administer the assessment. In a sense, handling any actual IRS notices will be a minor task in comparison to the many new calculations, recordkeeping, and reporting requirements that employers will be obligated to perform.

What little is known is also uncertain, in part because many of the rules that have been published to date have been in the form of "Requests for Comment." In these notices, the Internal Revenue Service (IRS), Department of Labor (DOL), and Health and Human Services (HHS), which are jointly developing regulations for the Affordable Care Act (ACA), describe a set of potential rules and ask for feedback as to their effectiveness and feasibility. These notices and other guidance provide at least a *preview* of what employers can expect in 2014.

WHO IS AFFECTED?

Under the ACA, only large employers are subject to the Shared Responsibility Assessment and related provisions. A few employers that are on the brink of being subject to the law will need to annually assess whether they will become subject during the subsequent year. A "large employer" is an employer with an average of more than 50 full-time *equivalent* employees on business days during the preceding calendar year. For this determination, seasonal employees who work more than 120 days during the year and part-time employees must be included, and total hours worked are divided by 2,040 to determine whether the employer has met the 50 full-time equivalent threshold. However, exceptions apply.

Pete Isberg is Vice President of Government Affairs for ADP, Chair of the Auto IRA Subcommittee of APA's Government Affairs Task Force, and a member of PAYTECH's Board of Contributors Writers.

SHARED RESPONSIBILITY ASSESSMENT

Beginning in 2014, employers' liability for a Shared Responsibility penalty will be largely based on the number of full-time employees each month and how many of them receive subsidized coverage through a state or federal Health Exchange.

Large employers that offer health coverage will generally be assessed a $3,000 penalty annually for each full-time employee that receives subsidized coverage under an exchange plan. To qualify for subsidized exchange coverage, individuals must not be offered qualifying employer-sponsored coverage, or the cost of such coverage must exceed 9.5% of household income. However, under one proposed safe-harbor rule, an employer will only be liable for a Shared Responsibility Assessment if the cost of such coverage is greater than 9.5% of an employee's Form W-2 Box 1 wages.

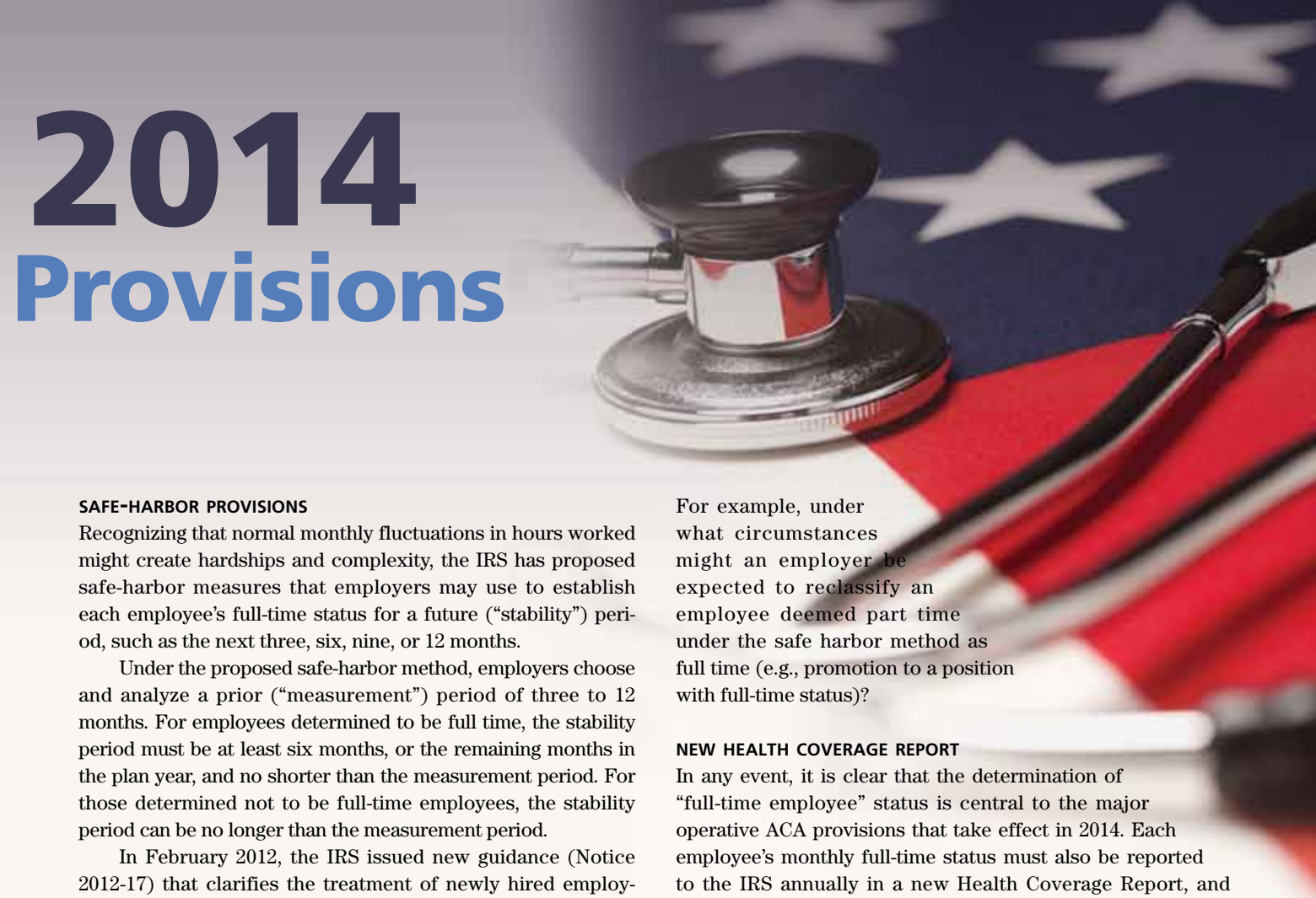
Large employers that *do not* offer health coverage and have at least one employee who receives subsidized coverage under an exchange plan will pay a $2,000 assessment annually for *each* full-time employee (minus the first 30 full-time employees), regardless of the number that receive exchange subsidies.

Although reporting and assessments may occur annually, the actual assessment will be determined separately for each month. Exchanges (whether state or federal) will directly advise employers when an employee obtains subsidized coverage. However, it will be the responsibility of the employer to carefully track and document each employee's monthly status as full time or part time to determine the employer's potential liability for the IRS Shared Responsibility Assessment.

FULL-TIME EMPLOYEE DETERMINATION

Also beginning in 2014, large employers will need to keep permanent records documenting the full-time status of each employee for each month (defined as an average of 30 hours per week, or at least 130 hours of service in a month). The hours to be tracked include hours for which an employee is paid, but not worked, such as vacation, holiday, illness or disability, jury duty, or leave of absence (up to a maximum of 160 hours for any continuous period). Many exceptions and special rules apply for specific situations.

2014 Provisions



SAFE-HARBOR PROVISIONS

Recognizing that normal monthly fluctuations in hours worked might create hardships and complexity, the IRS has proposed safe-harbor measures that employers may use to establish each employee's full-time status for a future ("stability") period, such as the next three, six, nine, or 12 months.

Under the proposed safe-harbor method, employers choose and analyze a prior ("measurement") period of three to 12 months. For employees determined to be full time, the stability period must be at least six months, or the remaining months in the plan year, and no shorter than the measurement period. For those determined not to be full-time employees, the stability period can be no longer than the measurement period.

In February 2012, the IRS issued new guidance (Notice 2012-17) that clarifies the treatment of newly hired employees within the proposed safe-harbor provisions. Basically, whether new employees are deemed full time depends on whether they are "*reasonably expected" to* work full time on an annual basis, *and actually do* work full time during the first three months of employment. Some observers have noted that the "reasonably expected" provision adds a subjective element which could be difficult to administer; i.e., it depends on a case-by-case personal judgment, which would need to be documented in case the IRS questions an employer's FTE determinations.

If a newly hired employee is not expected to work full time on an annual basis, but actually does work full time during the first three months, there is another subjective judgment. The employer must assess whether the employee's hours are representative of the average hours he or she is expected to work annually. Depending on the answers, new workers may be deemed full or part time for shorter durations than other employees as well.

As elsewhere, many exceptions apply and many questions remain unanswered by the initial guidance. For example, under what circumstances might an employer be expected to reclassify an employee deemed part time under the safe harbor method as full time (e.g., promotion to a position with full-time status)?

> All APA members will receive more ACA news through APA Compliance Updates, *Payroll Currently*, PAYTECH, and PAYTECHonline.

NEW HEALTH COVERAGE REPORT

In any event, it is clear that the determination of "full-time employee" status is central to the major operative ACA provisions that take effect in 2014. Each employee's monthly full-time status must also be reported to the IRS annually in a new Health Coverage Report, and records supporting the determination must be kept as part of the employer's tax records.

Section 1514 of the ACA established this new information reporting requirement under IRC Section 6056 ("Large Employers Required to Report on Health Insurance Coverage"). The annual return will include such information as a certification as to whether the employer offers minimum essential coverage; the number of full-time employees for each month; and the name, address, and SSN of each full-time employee and the months during which he or she was covered under the health plan. An information statement must also be furnished to each full-time employee whose information was provided to the IRS by January 31.

The ACA includes provisions permitting this information to be reported by insurance carriers, if authorized by the employer, together with other new health coverage information returns under Section 1502 of the ACA, so it's not clear yet how involved employers and payroll departments will be with this new reporting. ■

ANALYTICS

What's Your T&A System Telling You?

BY JAYSON SABA

Payroll professionals depend on time and attendance systems to ensure accurate data capture, which results in higher-quality payroll. Like it or not, time and attendance systems put the gross in gross-to-net; and ensuring the accuracy of this input makes it easier to tackle weekly, biweekly, or semimonthly chores of making certain employees are paid accurately and on time. From business rules to overtime and absences, time and attendance systems and processes are essential to ensuring compliance and alleviating the tactical burden on payroll professionals. However, according to a 2011 report conducted by the Aberdeen Group, a surprising one-in-three companies still rely on spreadsheets or other manual input to track this function rather than automated time and attendance systems.

Organizations that invest in automating workforce management processes, specifically time and attendance, are being driven more by economic pressures to reduce cost than they are by regulation and compliance. The top goal cited by nearly half the sample in the Aberdeen report is the ability to make better labor deployment decisions.

TIME AND ANALYTICS

As with most HR functions, the maturity curve to maximize the impact of payroll on the business begins with the process. Once processes and policies are vetted and standardized, automating time and attendance and integrating it with the payroll system is a logical next step. Most organizations are currently grappling with these two fronts—process and technology. Just over a quarter of them, however, have taken the next step of implementing analytics and reporting tools in order to better leverage the data.

For the purposes of this article, analytics are defined as the tools used to find, retrieve, and report on workforce data, such as payroll, time, labor, and attendance. Examples can include template reports, custom ad-hoc reports, charts, dashboard meters, and indicators (e.g., overtime as percentage of total, minimum hours required, etc.).

Those employers that are adopting analytics find that it is paying off on several fronts:

Labor costs. By the time it is received by the payroll function, time and attendance data is an invaluable information resource that can impact the bottom line. Payroll managers are in

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position to be an objective observer of the time data submitted.

For example, at an aggregate level time data reveals which units, regions, or departments are controlling their overtime costs. While in an ideal world, managers are operating within one or two percentage points of planned labor—that is rarely the case. This is where workforce analytics can place payroll in a strategic position. In fact, best-in-class companies in Aberdeen's report are 58% more likely than laggard performers to have a formal process for payroll to review time data before submitting to process the run cycle. This data allows decision makers to implement objective and educated decisions that improve agility and drive value.

Compliance. Let's face it, operating managers, who are the main stakeholder in scheduling employees, are understandably focused on the core business—production, customers, revenue, etc. While managers may know they cannot schedule employees for a certain number of consecutive hours or shifts, most are not fully aware of the ever-changing regulations.

For instance, the Department of Labor has recently reclassified certain roles (such as assistant managers in a retail environment) as nonexempt employees. This means those managers now must receive overtime pay. While most modern timekeeping systems account for such considerations, manual processes and some legacy solutions do not.

It is also important to note that while the payroll function doesn't own this and should not be accountable for it, payroll managers and professionals can act as a first line of defense and mitigate risk associated with such events.

Equity and fairness. This is another area where payroll managers can act as a buffer. In several cases, frontline managers have been unscrupulous in favoring particular employees over others when it comes to awarding time off, overtime, and preferred shift assignments. While there needs to be a mechanism—usually an HR effort—for employees to escalate these issues beyond the immediate scheduling supervisor, payroll managers can have real-time access to these occurrences.

The data available can protect the organization in case of frivolous complaints or grievances and justify discipline or reprimand decisions in case of violations. Data provides transparency and consistency in the treatment of employees—an increasingly meaningful tool in these litigious times.

Productivity. In addition to optimizing labor costs, time and attendance data can help the organization impact productivity in a more direct fashion. By examining time and labor data, one European company highlighted in the Aberdeen report found that their absence policy was so generous it impacted productivity due to excessive sick days. The data showed that there was a direct correlation between output and sick time. Armed with the facts, they were able to use this data to negotiate a better collective bargaining agreement that rewarded employees who took less sick time. This action reduced sick time absences by 64% (from 3.77% to 2.3% of total time) and, consequently, improved productivity by 9.8% and revenue per employee by 6%.

RECOMMENDATIONS

Time and attendance data helps payroll managers gain a strategic impact that is vital to a company's success. Aberdeen found companies that use analytics for time and attendance data reduce unbudgeted overtime costs by 25%. In addition, if that data is integrated into the scheduling process (or system)—i.e., it becomes actionable—companies can achieve a 62% reduction. The business case has been built, which is in large part why leading payroll providers continue to innovate and build analytics and reporting tools for time and labor (gross) data within the payroll function.

However, by themselves these applications are merely tools. In order for companies to ensure that this data is usable and validly actionable, companies must build a foundation that is founded on the following:

> One-in-three companies still rely on spreadsheets or other manual input to track this function rather than automated time and attendance systems.
>
> — 2011 Aberdeen Group report

- ***Training.*** While data is true and as close to accurate as it can be at the payroll level, companies must empower each department manager by providing training on how to use these tools to ensure maximum returns.
- ***Collaboration.*** Time and labor data can empower payroll staff to be the catalyst for business outcomes. Working with operational managers and communicating data about overtime and absence, as well as providing this data to use in scheduling, will drive efficiencies and mitigate compliance risk.
- ***Automation***. Technology and reporting tools have evolved to empower stakeholders with several off-the-shelf real-time capabilities. But not everything must be measured. Begin with overtime and absence, and juxtapose these with business metrics such as revenue per employee or output.

Whether your company outsources its payroll function or performs it in-house, what the data reveals cannot be ignored. Payroll professionals can use this data to drive business outcomes as a result of efficiencies, better policies, and less risk. It can help payroll play a vital role for a thriving, growing company or support an organization that needs to increase its competitiveness in an uncertain economic landscape. ■

Financial Empowerment Through Electronic Wage Payment

San Francisco Launches Paperless Initiative CurrenC SF

BY CATHY S. BEYDA, ESQ.

On February 29, 2012, San Francisco Mayor Edwin M. Lee and the City's Office of Financial Empowerment (SF OFE), led by Treasurer José Cisneros, held a press conference announcing the launch of San Francisco's new paperless wage payment initiative, CurrenC SF.

The initiative builds on the city's Bank on San Francisco program, which has provided more than 72,000 bank accounts to low-income San Franciscans since 2006. Bank on San Francisco has been so successful that more than 100 cities nationwide have launched or are planning to launch a Bank on program. In addition, the U.S. Department of the Treasury has begun working on a national Bank on USA program.

Despite the tremendous success of Bank on San Francisco, the SF OFE was surprised to learn that a relatively small number of participants use their Bank on accounts for the direct deposit of wages. In fact, 67,000 working San Francisco households continue to receive cash or paper paychecks. Concerned that many low-income San Franciscans rely on expensive check cashers and other fringe financial service providers to access their wages, the SF OFE set out to explore strategies for migrating the city and its businesses to a paperless payroll. The result is the CurrenC SF Initiative. With this action, the SF OFE also hoped that electronic wage payment would help to increase the financial security of low-income workers.

Photo by Jack Hutch Photography

Above: San Francisco Treasurer José Cisneros speaks about CurrenC SF at a press conference. Left: Cisneros is joined by APA Paycards Subcommittee Chair Cathy Beyda, Esq.

"Direct deposit is safer, cheaper, and greener than getting paid by paper check," said Mayor Lee. "San Francisco is a city of innovation and we are committed to increasing direct deposit and paperless pay among our own employees to lead the way to a 100% paperless payday that will provide for financial empowerment and greater security for our residents."

THE CURRENC SF INITIATIVE

CurrenC SF is designed to help San Francisco businesses identify and adopt electronic payroll solutions that will empower low-income workers by delivering their wages in a secure and reliable manner, and by bringing them into the financial mainstream. At the same time, employers who implement beneficial electronic wage payment programs will be rewarded with a reduction in their payroll distribution costs and a more productive workforce. The win-win nature of the initiative creates a unique opportunity for success.

The San Francisco Chamber of Commerce, the United Way of the Bay Area, and the U.S. Small Business Administration have partnered with the SF OFE on the initiative.

Cathy S. Beyda, Esq., is an attorney with the law firm Paul, Hastings, Janofsky & Walker LLP, in Palo Alto, Calif. She is also the Chair of APA's Paycards Subcommittee of the Government Affairs Task Force (GATF) and is also Chair of APA's Paycards User Group.

In addition, CurrenC SF has received generous support from Citi Community Development, Visa, and the Levi Strauss Foundation.

"The safest way to get paid is direct deposit instead of paper checks," said United Way of the Bay Area CEO Anne Wilson. "We applaud the city and county of San Francisco for leading this effort and are proud to be their partner in this endeavor."

RESEARCH FINDINGS

In 2009, the SF OFE and the Corporation for Enterprise Development (CFED) set out to study the use of electronic wage payment as a driver of financial well-being. The research, which involved surveys of businesses and employees in San Francisco, was designed to gain a better understanding of what factors influence the decision to offer or participate in direct deposit, as well as to identify the barriers and impact of shifting to a paperless payroll.

The study revealed that 82% of participating employers offered direct deposit, but that the rates were lower for small businesses (fewer than 50 employees) and for employers with high numbers of low-income workers. In addition, employers that did offer direct deposit experienced several barriers to enrollment including employee resistance, legal restrictions, and employees without bank accounts.

At the same time, the study revealed that employees who work in companies that offer direct deposit are happier with their payroll processes than employees in companies that do not offer direct deposit. Even employees who were required to participate in electronic wage payment remained neutral or positive about the program.

Among the research participants were community college employees who had been receiving paper paychecks and were migrated to payroll cards when they did not enroll in direct deposit. These employees reported that their financial options improved as a result of the program. They also noted that payroll cards allowed them to participate in e-commerce and that they were better able to manage their finances. One participant migrated to a traditional bank account and was able to save.

BENEFITS OF ELECTRONIC WAGE PAYMENT

CurrenC SF is based on the premise that "when you modernize payroll, everyone benefits." Naturally, the financial empowerment of low-income workers is of particular interest to the SF OFE. Employees who receive their wages electronically no longer need to rely on expensive check cashing services, which can cost employees $1,000 or more each year in fees, and no longer have to worry about lost or stolen checks. These workers are further empowered because they have instant access to their full wages on payday, even when they are away from work due to travel, illness, or vacation, and even during natural disasters. Time wasted standing in line to receive or cash their paychecks is eliminated.

Employers also benefit from electronic wage payment. The SF OFE notes that employers can lower their payroll processing, printing, and distribution costs up to 90% by implementing paperless payroll. In addition, electronic wage payment eliminates the cost and administrative burdens associated with lost and stolen checks. Approximately four million paychecks are lost or stolen each year, and it costs employers an average of $8 to $10 for each replacement check.

Electronic wage payment also benefits the environment. According to the CurrenC website, the city would save 50 tons of paper and 44,800 gallons of water each year if just 10% of San Francisco workers who currently receive paper checks switch to electronic pay. In addition, the change would reduce greenhouse gases by 15,633 pounds.

Finally, the City of San Francisco will benefit when workers are financially secure and businesses have more money to create jobs and opportunities. Of course, "a cleaner, greener city is good for everybody."

"CurrenC SF is providing a framework for increased financial stability and better access to healthy financial institutions through direct deposit and paperless pay," said Treasurer Cisneros. "We have created an innovative public-private initiative that brings together business associations, nonprofits, payroll companies, and financial service organizations."

RESOURCES

The SF OFE has developed a website, www.currencsf.org, containing a number of resources to help businesses identify beneficial electronic wage payment programs and implement those programs. These resources include a complete employer toolkit and a step-by-step guide to paperless payroll. Also available on the website are marketing materials, sample documents and forms, product and services guides, best practices, and tools to help educate employees.

APA members interested in learning more about CurrenC SF should consult the new website at www.currencsf.org or contact Program Manager Jacob DuMez at Jacob.Dumez@sfgov.org.

OUTLOOK

San Francisco's goal is to become the first city in the country to empower low-income workers by attaining a completely paperless payday. At the same time, the city recognizes that its initiative has implications that go well beyond San Francisco, and hopes that other communities will benefit from the insights and teachings of CurrenC SF. In fact, other cities already are beginning to do so. The APA commends the city and county of San Francisco, and hopes that CurrenC SF, like Bank on San Francisco, will soon become a national trend. ■

IRS Publication Lists Common Information Return e-Filing Errors

BY ANNE S. LEWIS, ESQ.

The IRS has released an updated version of Publication 3609, Filing Information Returns Electronically for Business e-Filers (see www.irs.gov/pub/irs-pdf/p3609.pdf). Publication 3609 applies to information returns that are filed electronically via the FIRE (Filing Information Returns Electronically) system at http://fire.irs.gov, including Forms 1042-S, 1097, 1098, 1099, 3921, 3922, 5498, 8027, 8935, 8955-SSA, and W-2G. Note: Forms W-2 are filed with the Social Security Administration through SSA's Business Services Online (BSO).

The IRS explains that any filer of information returns may file electronically. Taxpayers filing 250 or more information returns for any calendar year must file them electronically; taxpayers filing fewer than 250 information returns are encouraged to file electronically as well.

The updated publication identifies the following non-format errors commonly made by electronic information return filers:

- Spam filters are not set to receive email from fire@irs.gov and irs.e-helpmail@irs.gov. To receive emails concerning files, processing results, reminders, and notices, set the spam filter to receive email from fire@irs.gov and irs.e-helpmail@irs.gov.
- Incorrect email address provided. When the "Verify Your Filing Information" screen is displayed, make sure the correct email address is listed. If not, please update with the correct email address.
- Transmitter does not check the FIRE system to determine why the file is bad. Generally, the results of a file transfer are posted to the FIRE system within two business days. If the correct email address was provided on the "Verify Your Filing Information" screen when the file was sent, an email will be sent regarding the FILE STATUS. If the results in the email indicate "Good, Not Released" and the "Count of Payees" is correct, the filer is finished with this file. If any other results are received, follow the instructions in the "Check File Status" option. If the file contains errors, get an online listing of the errors. If the file status is good, but the file should not be processed, contact IRS/IRB within 10 calendar days from the transmission of the file.
- Incorrect file is not replaced timely. If a file is bad, fix the file and resubmit timely as a replacement.
- Transmitter sends an original file that is good, and then sends a correction file for the entire file even though there are only a few changes. The correction file, containing the proper coding, should only contain the records needing correction. Do not send the entire file. Improper submission can result in duplicate reporting of payee information.
- Transmitter sends a file and "CHECK FILE STATUS" indicates that the file is good, but the transmitter wants to send another file containing the same information. Once a file has been transmitted, a replacement file cannot be sent unless the "CHECK FILE STATUS" indicates the file is bad (one to two business days after the file was transmitted). If a file should not be processed, contact IRS/IRB at (866) 455-7438 to see if this is a possibility.
- Transmitter compresses several files into one. Only compress one file at a time. For example, if there are 10 uncompressed files to send, compress each file separately and send 10 separate compressed files.
- File is formatted in EBCDIC. All files submitted electronically must be in standard ASCII code.
- Transmitter has one Transmitter Control Code (TCC), but is filing for multiple companies. Which Taxpayer Identification Number (TIN) should be used when sending the file? When sending the file electronically, enter the TIN of the company assigned to the TCC. The uploaded file should contain the TINs of the companies reporting information returns. The payer TIN is the information that will be passed forward.
- Transmitter sent the wrong file. What should be done? Call IRS/IRB at (866) 455-7438. IRB may be able to stop the file before it has been processed. ■

Anne S. Lewis, Esq., is the Senior Manager of Payroll Information Resources.

IRS Offers Advice on Social Security Tax Liability of Employees Transferred Abroad

BY ANNE S. LEWIS, ESQ.

The IRS has issued Chief Counsel Advice (CCA) explaining when employees working in foreign countries are subject to U.S. social security taxes [CCA 201214023, 4-6-12; www.irs.gov/pub/irs-wd/1214023.pdf].

IRS ADVICE

The IRS explains that the general rule set forth in totalization agreements is that an employee is subject to social security taxes of only the country where the employee is working. The exception, under which the employee is subject to social security taxes of only the home country from which the employee was sent, only applies if the employment in the foreign country is not expected to exceed five years. It is known as the "detached worker rule."

If a U.S. citizen is transferred permanently by his or her employer to work in a foreign country, the employee's wages should be subject to foreign social security taxes only, and not U.S. social security tax, even if a §3121(l) agreement has been entered into with respect to that individual.

The detached worker rule only applies if the employee is transferred to work in a foreign country for five years or less. If the detached worker rule doesn't apply, then the employee is subject to social security taxes only in the foreign country where the employee is working (and is not subject to U.S. social security tax).

Amounts paid by a domestic corporation under a §3121(l) agreement are considered taxes for purposes of §§3101(c) and 3111(c). Thus, to the extent that a totalization agreement provides that the wages of an individual employee are subject exclusively to foreign social security taxes, the employer is relieved of the obligation to make payments under the §3121(l) agreement for that employee.

DEFINITIONS

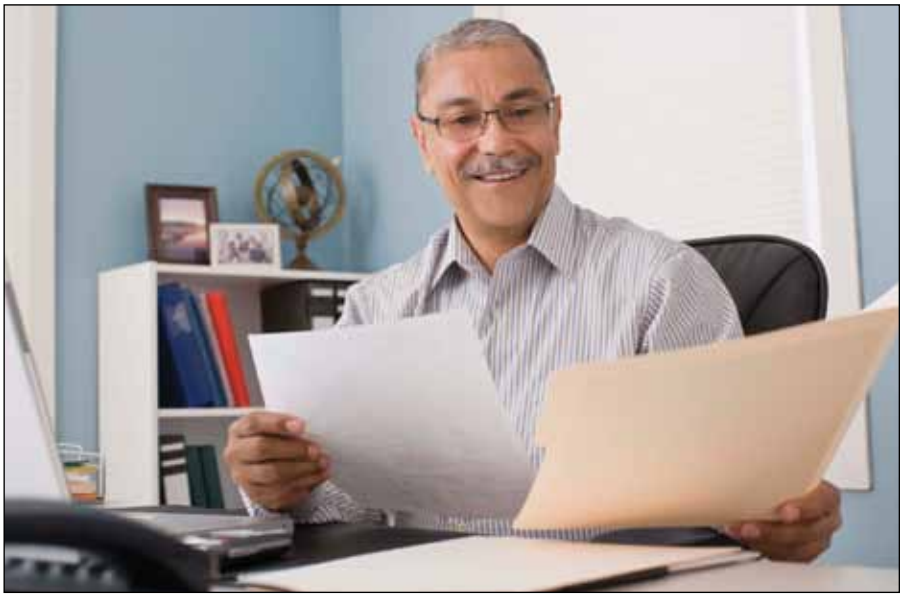
A totalization agreement relieves U.S. workers and their employers from the burden of contributing to the social security systems of two countries. Under these agreements, U.S. employers and employees contribute to either the United States or foreign social security system, but not both, depending on how long they are in the country where they are working. Without a totalization agreement in place, it is possible for workers dividing their time between the United States and another country to fail to qualify for social security benefits from either country because they do not meet minimum eligibility requirements.

A §3121(l) agreement is entered into at an American employer's request with the Secretary of the Treasury to provide social security coverage for U.S. citizens and residents employed by a foreign affiliate of the employer outside the United States.

A detached worker is an employee who is sent by his or her employer in one country to work temporarily in another country for the same employer or an affiliate of that employer. A detached worker remains subject only to the social security taxation and coverage laws of the country *from which* the employer transfers him or her, provided that the period of work in the host country is expected to last no more than five years, the employment relationship existed before the worker transfers from the home country, and the (American) employer has entered into an agreement under IRC §3121(l). *Note:* The agreement with Italy is an exception to other U.S. agreements in that it does not include a detached worker rule. ■

One Sales Employee in Virginia Created Withholding Obligation for Employer

BY LAURA LOUGH, ESQ.



The Virginia Tax Commissioner has ruled that an out-of-state employer is required to withhold Virginia income tax from compensation paid to a sales employee who works from a home office in Virginia because the employee's presence creates nexus. It is important for payroll professionals to be aware that *the presence of even one employee in a state* may be enough to establish nexus for withholding tax purposes in some states.

EMPLOYEE LIVED, WORKED IN VA

The employer is incorporated and located out-of-state. It sells products to customers both within and outside Virginia. One of its sales representatives lived in Virginia and solicited sales from a home office. The employee did not advertise to the public on behalf of the employer. All inventories, sales orders, shipping, and billing was performed out-of-state. Although the employer was registered for corporate income and employee withholding taxes in Virginia, it argued it did not have nexus with the state and requested an exemption from both corporate income and withholding taxes.

What the Law Says–Va. Code §58.1-461 requires employers to withhold taxes from employee wages for each payroll period. Va. Code §58.1-460 defines "employer" as "the person, whether a resident or nonresident of [Virginia] for whom an individual performs or performed any service as an employee." The same section defines "employee" as "an individual, whether a resident or nonresident of [Virginia] who performs or performed any service in [Virginia] for wages."

FEDERAL LAW DID NOT APPLY

The employer argued that federal law exempted it from the requirement to withhold Virginia tax. Pub. L. No. 86-272 prohibits a state from imposing a net income tax where the only contacts with a state are a narrowly defined set of activities constituting solicitation of orders for sales of tangible personal property (see 15 USC §§381-384). However, the Tax Commissioner explained that this law only applies to a state's ability to impose a net income tax. "It has no application when evaluating a state's ability to impose a requirement to withhold income taxes from employees," said the Tax Commissioner.

EMPLOYEE PRESENCE CREATED NEXUS

A 1995 ruling by the Tax Commissioner established that the presence of employees in Virginia clearly constitutes the nexus required to impose withholding tax liability on an employer. Here the employer had one employee living and working in Virginia from a home office. One employee is enough to create nexus and establish a requirement to withhold Virginia income taxes.

Note: The Tax Commissioner indicated that the employer should analyze the activities of its employee in Virginia to verify that they exceed the mere solicitation of sales. If not, then the employer would not be subject to Virginia corporate income tax under the federal law [Virginia Department of Taxation, Ruling No. 12-37, 3-30-12]. ■

Laura Lough, Esq., is Senior Manager of State Payroll Information Resources for APA.

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