



PAYSTATE UPDATE

The Latest State And Local Payroll Compliance News
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California and Virgin Islands Face FUTA Credit Reduction for 2016

During the economic downturn, due to higher rates of unemployment, many states took out loans from the federal government to continue paying unemployment benefits after their unemployment insurance (UI) trust funds became insolvent. Most states have now recovered from this period, with additional states paying off their outstanding loans this year. According to the U.S. Department of Labor (DOL), *California* and *the U.S. Virgin Islands* could not pay their loans by the November 10, 2016, deadline and will lose the full Federal Unemployment Tax Act (FUTA) credit for 2016 [DOL, *States With 2016 Federal Unemployment Tax Act (FUTA) Credit Reductions*, at http://oui.doleta.gov/unemploy/futa_credit.asp (click on "Current Year Final FUTA Credit Reductions")].

The number of states facing a credit reduction has gone down each year since its peak in 2011, when 21 states/territories faced a credit reduction. Last year, California, Connecticut, Ohio, and the Virgin Islands were subject to a credit reduction (see *PAYSTATE UPDATE, Issue No. 23, Vol. 17*).

Federal Form 940, Schedule A will reflect reductions

The additional FUTA tax must be deposited by the due date of the 2016 federal Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*, which is due January 31, 2017. The 2016 Schedule A (Form 940) will contain the official list of credit reduction states, and the credit reduction total from Schedule A is reported on Form 940. Both forms will be available on the Internal Revenue Service website (www.irs.gov) when they are finalized. On December 8, the APA will present a 90-minute webinar, *Preparing Form 940 with Credit Reduction States*, to guide payroll professionals through the changes for 2016. Register at <https://ebiz.americanpayroll.org/ebusiness/Education/ViewClass.aspx?ClassID=3877>.

Credit reductions because of state loans

Under the joint federal/state UI system, states with a high rate of unemployment and difficulty meeting their benefit obligations can borrow money from the Federal Unemployment Account (FUA) to pay benefits. If states have loan balances on January 1 of at least two consecutive years and on November 10 of the second year, the FUTA credits for employers in those states are reduced, with the extra FUTA tax paid being applied against each state's loan balance (see *The Payroll Source*®, p. 7-7).

A state with an outstanding loan can avoid a credit reduction for its employers by repaying all outstanding loans by November 10 of the year the reduction is scheduled to take effect. If the loan is not repaid by that date, a credit reduction of 0.3% goes into effect, with employers in that

state having their maximum credit reduced to 5.1% (5.4% - 0.3%). The extra 0.3% in FUTA tax means that employers will have to pay an extra \$21 per employee (0.3% of the federal wage base of \$7,000).

For each additional year that the loan remains unpaid, an additional credit reduction of 0.3% is taken. California and the Virgin Islands each had a credit reduction in the past five years (2011-2015) and therefore have a credit reduction of 1.8% for 2016.

No state/territory subject to add-on

Earlier this year, California, Ohio, and the Virgin Islands applied for a waiver of the Benefit Cost Rate (BCR; sometimes referred to as Benefit Cost Ratio) add-on from the DOL by the July 1 deadline (see *PAYSTATE UPDATE, Issue No. 16, Vol. 18*). The DOL granted the requests for California and the Virgin Islands (Ohio paid off its loan, see below). Connecticut did not apply for the waiver; however, the state also paid off its loan (see below). Therefore, no state or territory is subject to the additional tax, which would vary by state and is based on a complex calculation. The calculation compares the average benefits that have been paid out by the state, the taxable wages, and the average tax rate on taxable wages in the state. The BCR add-on can apply starting in the fifth consecutive year that a state has a balance due on its loan from the FUA.

Paying off loans to avoid credit reduction

Two states repaid their FUA loans to avoid a credit reduction for 2016 – Connecticut (see *PAYSTATE UPDATE, Issue No. 8, Vol. 18*) and Ohio (see *PAYSTATE UPDATE, Issue No. 19, Vol. 18*).

State/territory losing full FUTA credit for 2016

The following chart shows the state and territory subject to a FUTA credit reduction for 2016, including the amount of the reduction and the outstanding FUA loan balance as of November 9, 2016 (see <http://workforcesecurity.doleta.gov/unemploy/budget.asp#tflows> for the latest updates on state UI loan balances).

State	Credit Reduction Amount	Outstanding Loan Balance as of 11/15/16
California	1.8%	\$3,345,036,978.54
Virgin Islands	1.8%	\$69,151,113.38

2016 State Ballot Roundup and Impact on Payroll

On November 8, voters in *Arizona, Colorado, Maine, South Dakota, and Washington* went to the polls to decide key issues that will impact minimum wage rates, paid sick leave (PSL), and taxes. It is important for payroll professionals to be aware of these election results to prepare for changes to come. Note that ballot measures to increase the minimum wage in *Minneapolis, Minnesota*, and mandate PSL in *Albuquerque, New Mexico*, did not appear on the November ballot (see [PAYSTATE UPDATE, Issue No. 17, Vol. 18](#)).

Minimum wage increases popular with voters in four states

Arizona. The Fair Wages and Healthy Families Act was passed by approximately 58% of voters. It will increase the state minimum wage to \$10 an hour, effective January 1, 2017 (see [PAYSTATE UPDATE, Issue No. 17, Vol. 18](#)). Thereafter, it will increase on the following schedule: to \$10.50 an hour, effective January 1, 2018; to \$11 an hour, effective January 1, 2019; and to \$12 an hour, effective January 1, 2020. Beginning in 2021, the minimum wage will be indexed for inflation. Currently, the minimum wage is \$8.05 an hour (see *The Payroll Source*®, p. 2-75). The tip credit will remain \$3 an hour (see *The Payroll Source*®, p. 2-76). *Note:* the minimum wage was previously indexed for inflation; the ballot measure increase will supersede this increase.

Colorado. The State Minimum Wage Initiative (No. 101; Amendment 70) was approved by approximately 55% of voters. The state minimum wage will increase to \$9.30 an hour, effective January 1, 2017. The minimum wage will then increase annually by 90 cents an hour, until it reaches \$12 an hour in 2020. Thereafter, the minimum wage will be adjusted annually for inflation. Currently, the minimum wage is \$8.31 an hour (see *The Payroll Source*®, p. 2-75). The measure keeps the tip credit maximum at \$3.02 an hour (see *The Payroll Source*®, p. 2-76). *Note:* this minimum wage increase supersedes the proposed increase to \$8.56 an hour due to the annual adjustment for inflation (see [PAYSTATE UPDATE, Issue No. 20, Vol. 18](#)).

Maine. Question 4 was passed by approximately 55% of voters. It will raise the minimum wage to \$9 an hour, effective January 1, 2017 (see [PAYSTATE UPDATE, Issue No. 17, Vol. 18](#)). Annual increases of \$1 will bring the minimum wage to \$12 an hour, effective January 1, 2020. Thereafter, the minimum wage will be indexed annually for inflation. Currently, the state minimum wage is \$7.50 an hour (see *The Payroll Source*®, p. 2-76).

Tip credit. The measure will set the minimum cash wage for tipped service workers at \$5 an hour in 2017, which will increase the tip credit to \$4 an hour. The tip credit may not exceed the difference between the minimum cash wage paid to a tipped employee and the state minimum wage. Beginning in 2018, the minimum

cash wage will be increased annually by \$1 until it reaches the amount of the annually adjusted minimum wage (the tip credit will remain \$4 an hour in 2018, 2019, and 2020). If less than \$1 difference, the minimum cash wage will be increased by that amount to equal the state minimum wage. This means that the tip credit will be eliminated once the minimum cash wage equals the state minimum wage. Currently, the tip credit is set at 50% of the minimum wage (\$3.75 an hour; see *The Payroll Source*®, p. 2-77).

Washington. Initiative Measure No. 1433 was passed by more than 58% of voters. It will raise the state minimum wage on the following schedule: to \$11 an hour, effective January 1, 2017; to \$11.50 an hour, effective January 1, 2018; to \$12 an hour, effective January 1, 2019; and to \$13.50 an hour, effective January 1, 2020. Thereafter, the minimum wage will be indexed annually for inflation (see [PAYSTATE UPDATE, Issue No. 17, Vol. 18](#)). Currently, the state minimum wage is \$9.47 an hour (see *The Payroll Source*®, p. 2-76). *Note:* this ballot measure will take effect (and not the scheduled annual increase to \$9.53 an hour due to inflation; see [PAYSTATE UPDATE, Issue No. 20, Vol. 18](#)).

Minimum wage decrease fails

South Dakota. A referendum that would have decreased the youth minimum wage for workers under 18 years of age to \$7.50 an hour was not passed by voters (see [PAYSTATE UPDATE, Issue No. 17, Vol. 18](#)).

Paid sick leave passed in two states

Arizona. As part of the minimum wage initiative, effective July 1, 2017, large employers (with 15 or more employees) will be required to provide one hour of PSL for every 30 hours worked, up to 40 hours in a year. Small employers (with less than 15 employees) will be required to provide one hour of PSL for every 30 hours worked, up to 24 hours in a year.

Washington. The minimum wage ballot measure also included a PSL provision. Effective January 1, 2018, employers will be required to provide one hour of PSL for every 40 hours worked. There is no limit to the amount of PSL an employee can accrue in a year, however, only 40 hours may be carried over from one year to the next.

Healthcare initiative with payroll tax fails

Colorado. Voters did not approve a ballot measure that would have created a new health care system called ColoradoCare. The program would have been funded by a 6.67% employer-paid payroll tax and a 3.33% employee payroll tax (see [PAYSTATE UPDATE, Issue No. 14, Vol. 18](#)). The measure was overwhelmingly defeated by 79% of voters. ■

APA Expresses Concerns About Change to Pennsylvania Child Support Employer Administrative Fee

Earlier this year, a new law (Act 64) in Pennsylvania changed the administrative fee an employer may withhold from an employee's income for processing a child support order (see [PAYSTATE UPDATE, Issue No. 18, Vol. 18](#)). As of August 30, the administrative fee is a one-time fee of \$50. Previously, employers could withhold up to 2% of the amount paid under the order. On November 11, the APA sent a letter to Robert Patrick Jr., Director of the Pennsylvania Department of Human Services, Bureau of Child Support Enforcement (BCSE), to express concerns employers have with unintended consequences of the new law.

The BCSE previously provided the federal Office of Child Support Enforcement (OCSE) with answers to Frequently Asked Questions (FAQs) about the change, but certain issues still remain.

One-time fee not equitable

Under the old law, employers were allowed to deduct up to 2% of the ordered amount per pay period as reimbursement for administrative costs related to withholding. Now, an employer is limited to a one-time fee of \$50. Because many child support orders are in place for several years, this does not seem equitable to recover the costs in processing payments. APA recommends that the state reconsider and allow for nominal per-payment/remittance, with a fixed dollar amount fee. This is the practice in a majority of states today.

Remind All Employees to Check Their Withholding Allowance Certificates

By December 1 of each year, employers should ask their employees to file an amended federal Form W-4, *Employee's Withholding Allowance Certificate*, for the next calendar year if they know the number of their allowances has changed or will change at the beginning of the year (see *The Payroll Source*[®], p. 6-9). Employees also should review their filing status, exemption allowances, and exempt status on their employee withholding allowance certificates for state purposes. Check the sections that follow for more information about acceptable state forms. Employers also should be aware of how the end of income tax reciprocity between *New Jersey* and *Pennsylvania* may require affected employees to update their forms.

11 states use federal Form W-4

There are 11 states that allow employers to use an employee's federal Form W-4 to calculate state income tax withholding. These states are: *Colorado, Delaware, Idaho, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, Oregon, South Carolina, and Utah*.

11 states accept state form or federal Form W-4

There are 11 states that have their own withholding allowance certificate, but accept the federal Form W-4 for state purposes. These states are: *Arkansas, California, Georgia, Massachusetts, Minnesota, New Jersey, New York, Rhode Island, Vermont, West Virginia, and Wisconsin*. However, the state form

Problems with implementation

The change from a per-payment fee to a one-time maximum limit deduction is proving to be complicated for employers to manage. A one-time \$50 fee (or any one-time amount) is administratively difficult to manage because payroll systems do not store a balance specific to fees. Therefore, tracking the \$50 fee must be performed manually. If there are multiple child support orders processed for one employee, the employer also must investigate whether the one-time fee has already been withheld.

Conflict between state and federal law

APA also is concerned about a discrepancy between the Pennsylvania and federal laws. Pennsylvania Act 64 states, "In no case shall the employer's reimbursement be deducted from the amount of the support order." However, the language in Section 466(b)(6)(A)(i) of the federal Social Security Act allows employers to collect fees prior to remitting the payment. The section reads, "pay such amount (after deducting and retaining any portion thereof which represents the fee so established)." Employers request that Pennsylvania's child support requirements follow the federal guidelines in allowing the fee to be deducted from the amount withheld. This does not lower the amount the noncustodial parent owes to the custodial parent. ■

should be filed if the number of allowances and/or additional dollar amounts to be withheld for state purposes will be different from those on the federal Form W-4.

20 states and territories use their own form only

There are 20 states and territories that accept only their own withholding allowance certificate because state exemptions may differ from federal exemptions. The federal Form W-4 is not an acceptable substitute for state purposes. These states and territories are: *Alabama, Arizona, Connecticut, District of Columbia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Mississippi, Missouri, North Carolina, Ohio, Puerto Rico, and Virginia*.

Remaining 10 states and territory

Pennsylvania does not have a state withholding allowance certificate nor does it use the federal Form W-4 because it does not permit any withholding exemptions and the tax rate is a flat 3.07%. There is no state income tax withholding in the following nine states and one territory: *Alaska, Florida, Nevada, New Hampshire, South Dakota, Tennessee, Texas, Virgin Islands, Washington, and Wyoming*.

End of New Jersey/Pennsylvania income tax reciprocity

Tax reciprocity between New Jersey and Pennsylvania will end on January 1, 2017, so employers should request that certain employees fill out new withholding allowance certificates (see [PAYSTATE UPDATE, Issue No. 22, Vol. 18](#)).

Pennsylvania residents working in New Jersey should fill out new Forms NJ-W4, *Employee's Withholding Allowance Certificate* (the federal Form W-4 is an acceptable substitute). These workers will likely be paying more in taxes since New Jersey income tax rates range from 1.4% to 8.97%. New Jersey residents working in Pennsylvania should be reminded to double check their Forms NJ-W4 in light of the Pennsylvania tax to be withheld from their paychecks. Impacted workers

may owe tax to both states, and some workers may have to make estimated quarterly income tax payments. Most workers will need to file tax returns to both states beginning in 2018. Pennsylvania residents will get a credit for income tax paid to New Jersey on wages earned there, and New Jersey will do the same for its residents who work in Pennsylvania. More information is available on the Pennsylvania Department of Revenue website at www.revenue.pa.gov. ■

Pennsylvania Payroll Card Bill Enacted

A bill recently signed into law by Pennsylvania Gov. Tom Wolf officially permits payroll card use in the state, effective May 3, 2017 [S.B. 1265, L. 2016]. Last month, in a ruling by the Superior Court of Pennsylvania, the court stated that the “use of a voluntary payroll debit card may be an appropriate method of wage payment” (see [PAYSTATE UPDATE, Issue No. 22, Vol. 18](#)).

Definition

Under the new law, a “payroll card account” is defined as “an account that is directly or indirectly established through an employer, to which transfers of the employee’s wages, salary, commissions or other compensation are made.”

Requirements

The following provisions apply when payments of wages are made through transfers to a payroll card account:

- (1) The employee must be issued a payroll card in accordance with the relevant provisions of Regulation E.
- (2) The payroll card account must be established at a financial institution whose funds are insured by the Federal Deposit Insurance Corporation (FDIC) or National Credit Union Administration.
- (3) No employer may make the payment of wages via payroll card account a condition of employment.
- (4) Prior to obtaining the employee’s authorization, the employer must provide the employee with clear and conspicuous notice in writing or electronically of: all of the employee’s wage payment options, the terms and conditions of the payroll card account, including the fees that may be deducted from the account by the card issuer, notice that third parties may assess fees, and the methods available to the employee for accessing wages without fees.
- (5) The payroll card account must allow the employee,

without charge, to: make at least one withdrawal each pay period for any amount (up to and including the full amount of net wages) or one such withdrawal weekly (if employee paid more frequently than weekly), and one in-network ATM withdrawal each pay period or weekly (if employee paid more frequently).

(6) The payroll card account must provide the employee with a means of finding out the balance in the payroll card account through an automated phone system or other electronic means without cost.

(7) An employer is prohibited from using a payroll card account that charges fees for: the application, initiation, or privilege of participating in the program, the issuance of the initial card, the issuance of one replacement card per calendar year upon employee request, the transfer of wages from the employer to the account, purchase transactions at the point-of-sale, or inactivity fees (if the nonuse is less than 12 months in duration).

(8) The funds in the payroll card account cannot expire. If the card has an expiration date during the period when wages are applied to the card by the employer and for 60 days after the last transfer of wages to the card, the employee must be provided with a replacement card without cost prior to the expiration date (unless prior to that date the account becomes the property of the state or unclaimed wages).

(9) The employer must honor an employee’s written or electronic request to change the employee’s method of wage payment from payroll card account to direct deposit or paper check. The change must take effect as soon as practicable but no later than the first payday after 14 days from the employer’s receipt of the employee’s request (and information necessary to implement the change). ■

STATE-BY-STATE

CONNECTICUT

Electronic filing of Forms W-2. The Department of Revenue Services (DRS) has updated its publication on Form W-2 electronic filing requirements for tax year 2016. Employers are reminded that the deadline for filing Forms W-2 with DRS is 1-31-17 (the due date changed last year, see [PAYSTATE UPDATE, Issue No. 18, Vol. 17](#)) [DRS, IP 2016(13) *Form W-2 Electronic Filing Requirements for Tax Year 2016*, 11-4-16].

GEORGIA

Accelerated filing deadline for Forms W-2 and annual reconciliation return, rule adopted. Effective 11-23-16, the proposed rule amendment regarding the accelerated deadline to file annual reconciliation returns, Form G-1003, *Withholding Income Statement Transmittal*, and Forms W-2 is adopted (see [PAYSTATE UPDATE, Issue No. 20, Vol. 18](#)). The deadline for 2016 forms due in 2017 is 1-31-17 [Department of Revenue, Email, 11-10-16; Rule No. 560-7-8-33].

INDIANA

Employer liable for withholding county tax at incorrect rate. An Indiana employer located in Marion County denied that it owed additional withholding tax and objected to a 10% negligence penalty, arguing that it acted reasonably, though it failed to withhold county income tax at the correct rate for three employees. The employer admitted that it failed to secure properly completed Forms WH-4, *Employee's Withholding Exemption and County Status Certificate*, from the employees, but claimed it was acting with due diligence by withholding at the nonresident Marion County rate because the county of residence was not known. The Department of Revenue (DOR) disagreed, as it is the employer's responsibility to obtain and retain records sufficient to determine any tax liability. Note that county resident and nonresident rates will be the same, effective 1-1-17 (see **PAYSTATE UPDATE, Issue No. 20, Vol. 18**) [DOR, Letter of Findings, No. 03-20160301, 10-26-16].

KENTUCKY

Withholding tables issued. Effective for wages paid on or after 1-1-17, the Department of Revenue (DOR) has issued wage-bracket withholding tables and the computer formula at <http://revenue.ky.gov/Business/Pages/Employer-Payroll-Withholding.aspx>. Employers that use the computer formula to compute withholding may use the standard deduction for the current year. For 2017, the standard deduction will increase to \$2,480 from \$2,460.

MASSACHUSETTS

Accelerated filing deadline for Forms W-2, annual reconciliation returns. The Department of Revenue (DOR) has announced that due to the accelerated deadline for federal Forms W-2, the state deadline for filing Forms W-2 is also accelerated for 2016 forms due in 2017. This means that Forms W-2 are due 1-31-17. Employers below the mandated machine-readable filing threshold of 50 or more Forms W-2 must file their forms electronically or on paper with the DOR. Paper copies of Forms W-2 must be accompanied by Forms M-3, *Reconciliation of Massachusetts Income Taxes Withheld for Employers*, and are due on 1-31-17 [DOR, November News, 11-3-16; *Tax Year 2016 W-2 Handbook*, rev. 10-20-16].

MINNESOTA

UI taxable wage base increase. For 2017, the

unemployment insurance (UI) taxable wage base will increase to \$32,000 from \$31,000 (this updates *The Payroll Source*®, p. 7-24) [UI Program, Overview of 2017 Tax Rates].

Withholding tables and computer formula revised. Effective for wages paid on or after 1-1-17, the Department of Revenue (DOR) has issued revised withholding tables and computer formula. They are available on the DOR's website at www.revenue.state.mn.us/businesses/withholding/Pages/Forms.aspx [DOR, 2017 Minnesota Withholding Tax Tables].

MISSOURI

Minimum wage, tip credit increase. Effective 1-1-17, the state minimum wage will increase to \$7.70 an hour from \$7.65 an hour (this updates *The Payroll Source*®, p. 2-76). Since the state tip credit is 50% of the minimum wage, it will increase to \$3.85 an hour from \$3.82 an hour, effective 1-1-17 (this updates *The Payroll Source*®, p. 2-77) [Department of Labor and Industrial Relations, News Release, 11-15-16].

New UI tax system. The Division of Employment Security (DES) is transitioning to a new employment insurance (UI) tax system – UInteract. The new system became available on 11-16-16. The old system (UStar) is no longer available. More information is available on the DES website at <https://labor.mo.gov/Employers/UInteract>.

OREGON

UI taxable wage base increase. For 2017, the unemployment insurance (UI) taxable wage base will increase to \$38,400 from \$36,900 (this updates *The Payroll Source*®, p. 7-24).

PENNSYLVANIA

Act 32, bill vetoed. Recently, Gov. Tom Wolf vetoed a bill (H.B. 245) that would have amended, and sought to fix, issues with Act 32, the law that reformed the state's local tax system.

RHODE ISLAND

UI taxable wage base increase. For 2017, the unemployment insurance (UI) taxable wage base will increase to \$22,400 from \$22,000 for most employers. It will increase to \$23,900 from \$23,500 for employers in the highest UI tax rate group (this updates *The Payroll Source*®, p. 7-24).

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