PAYROLL CURRENTLY

The Compliance Publication of the American Payroll Association

February 2, 2018 | Volume 26 | Issue 2

Inside this issue...

IRS Releases 2018 Federal Income Tax Withholding Tables

On January 11, the IRS released Notice 1036, *Early Release Copies of the 2018 Percentage Method Tables for Income Tax Withholding*. The IRS also issued a news release to provide information on withholding changes for 2018 and 2019 [IR-2018-05, *Updated 2018 Withholding Tables Now Available; Taxpayers Could See Paycheck Changes by February*, 1-11-18; https://www.irs.gov/newsroom/2018-withholding-tables-now-available. The tables included in Notice 1036, along with the 2018 wage-bracket withholding tables, are in IRS Publication 15, (Circular E), *Employer's Tax Guide*. Both are available on the APA website at www.americanpayroll.org/members/forms-pubs/forms-pubs-info/. The percentage method tables plus an allowance table prepared by the APA are included in this issue of PAYROLL CURRENTLY on pages 13 and 14.

Background

The withholding tables were released later than usual because Public Law 115-97, unofficially known as the Tax Cuts and Jobs Act (TCJA), was not enacted until December 22, 2017. The new withholding tables are designed to work with the Forms W-4 that employees have already filed with their employers to claim withholding allowances. This is intended to minimize the burden on employees and employers. Employees do not have to do anything at this time.

Implement by February 15

Notice 1036 said employers should implement the 2018 withholding tables as soon as possible, but no later than February 15. Until the 2018 withholding tables are implemented, employers should continue to use the 2017 withholding tables.

The withholding allowance amounts by payroll period have changed. For 2018 they are:

Payroll Period	One Withholding Allowance
Weekly	$79.80
Biweekly	159.60
Semimonthly	172.90
Monthly	345.80
Quarterly	1,037.50
Semiannually	2,075.00
Annually	4,150.00

Payroll Period	One Withholding Allowance
Daily or Miscellaneous (each day of the payroll period)	$16.00

Other items to note

Withholding adjustment for nonresident aliens. To figure how much income tax to withhold from the wages paid to a nonresident alien (NRA) employee performing services in the United States, use these steps:

Step 1. Add to the wages paid to the NRA employee for the payroll period the amount shown in the chart for the applicable payroll period.

Payroll Period	Add Additional
Weekly	$151.00
Biweekly	301.90
Semimonthly	327.10
Monthly	654.20
Quarterly	1,962.50
Semiannually	3,925.00
Annually	7,850.00
Daily or Miscellaneous (each day of the payroll period)	30.20

Step 2. Use the amount figured in *Step 1* and the number of withholding allowances claimed (generally limited to one allowance) to figure income tax withholding. Determine the value of withholding allowances by multiplying the number of withholding allowances claimed by the value of one withholding allowance for the appropriate payroll period. Reduce the amount figured in *Step 1* by the value of withholding allowances and use that reduced amount to determine the wages subject to income tax withholding. Figure the income tax withholding using the percentage method tables. Alternatively, you can figure the income tax withholding using the wage bracket tables published in Publication 15, Circular E.

NOTE: Nonresident alien students from India and business apprentices from India are not subject to this procedure.

Rates for withholding on supplemental wages for 2018. There is a two-tiered system for withholding income tax from supplemental wages at a flat rate:

- ***Mandatory flat rate:*** 37% for supplemental wages over $1 million, and
- ***Optional flat rate:*** 22% for supplemental wages up to and including $1 million (no other percentage allowed).

Employers and other entities paying supplemental wages should implement the 22% optional flat rate for withholding on supplemental wages as soon as possible, but not later than February 15, 2018. Employers using optional flat rate withholding that withheld at a higher rate than 22% on or after January 1, 2018, and before February 15, 2018 (e.g., 25%) may, but are not required to, correct such withholding (IRS Notice 2018-14, 1-29-18; https://www.irs.gov/pub/irs-drop/n-18-14.pdf).

2018 rate for backup withholding. Payers of reportable payments generally must backup withhold 24% for federal income tax if the payee fails to provide a correct taxpayer identification number (TIN).

Withholding tax calculator to be revised. For people with simpler tax situations, the new tables are designed to produce the correct amount of tax withholding. To help people determine their withholding, the IRS is revising its withholding tax calculator. The IRS anticipates that the calculator will be available by the end of February.

Form W-4 to be revised. The IRS also is working to revise Form W-4, *Employee's Withholding Allowance Certificate*. The revised calculator and new Form W-4 can be used by employees to update their withholding in response to the TCJA or changes in their personal circumstances in 2018, and by employees starting a new job. Until a new Form W-4 is issued, employees and employers should continue to use the 2017 Form W-4.

Withholding guidance for 2019. For 2019, the IRS anticipates making further changes involving withholding. The IRS will work with the business and payroll community to encourage workers to file new Forms W-4 next year and share information on changes in the new tax law that impact withholding.

IRS creates FAQs

The IRS also posted frequently asked questions (FAQs) on the new withholding tables (IRS, *IRS Withholding Tables Frequently Asked Questions*, 1-11-18; https://www.irs.gov/newsroom/irs-withholding-tables-frequently-asked-questions). ■

IRS Releases 2018 Publication 15 (Circular E) With Form W-4 Guidance

On January 29, the IRS released Circular E, *Employer's Tax Guide* (Publication 15) for 2018, and Notice 2018-14 (https://www.irs.gov/pub/irs-drop/n-18-14.pdf). Publication 15 is available on the APA website at www.americanpayroll.org/members/Forms-Pubs/#irs. The publication and the notice provide additional withholding guidance for 2018. ***NOTE:*** When this issue of PAYROLL CURRENTLY went to press, the 2018 Publications 15-A, *Employer's Supplemental Tax Guide*, and 15-B, *Employer's Tax Guide to Fringe* Benefits, had not been released. Once available, they will be posted to the APA website.

Items to note in Pub. 15 and Notice 2018-14

- ***Future developments.*** For the latest information about developments related to Publication 15 (such as legislation enacted after its release), go to https://www.irs.gov/forms-pubs/about-publication-15.
- ***2018 withholding tables.*** Circular E includes the 2018 Percentage Method Tables and Wage Bracket Tables for Income Tax Withholding. The percentage method tables plus an allowance table prepared by the APA (see www.americanpayroll.org/members/Forms-Pubs/#allow) are included in this issue of PAYROLL CURRENTLY on pages 13

and 14.

Employers should implement the new withholding tables as soon as possible, but no later than February 15. The new tables are designed to work with the Forms W-4, *Employee's Withholding Allowance Certificate*, that employees previously filled out.

• ***2018 Form W-4 coming soon.*** The IRS is revising Form W-4 for 2018. Until a new Form W-4 is issued, employees and employers should continue to use the 2017 Form W-4.

• ***Employees with a change in status.*** Under IRC §3402(f)(2)(B) and Treas. Reg. §31.3402(f)(2)-1(b), employees who experience a change in status that reduces the number of withholding allowances to which they are entitled must provide a new Form W-4 to their employer within 10 days. Notice 2018-14 extends this deadline.

– Employees who experience a change in status that reduces the number of withholding allowances to which they are entitled have until 30 days after the 2018 Form W-4 is released to give their employer a new Form W-4.

– An employee who has a reduction in the number of withholding allowances *solely* due to changes from the Tax Cuts and Jobs Act is not required to complete a new Form W-4 during 2018 but may do so at any time.

– Current employees may use the 2017 Form W-4 to report changes to withholding allowances until 30 days after the 2018 Form W-4 is released.

– New employees may continue to claim allowances on the 2017 Form W-4 until 30 days after the 2018 Form W-4 is released.

– Employees who submit new Forms W-4 for 2018 using the 2017 Form W-4 do not need to resubmit a 2018 Form W-4 when it is released.

• ***Exempt Forms W-4.*** Generally, employees may claim exemption from federal income tax withholding because they had no federal income tax liability last year and expect none this year. To continue to be exempt from withholding in 2018, an employee must give the employer a new Form W-4 by February 28, 2018 (extended from February 15). However, the 2018 Form W-4 may not be available before February 28, 2018. Employees may claim exemption from withholding for 2018 using the 2017 Form W-4 until 30 days after the 2018 Form W-4 is released. The 2017 Form W-4 must be:

(1) edited by striking "2017" in the text on Line 7, entering "2018" in its place, and signing the form in 2018;

(2) modified by entering "Exempt 2018" on Line 7 and signing the form in 2018; or

(3) not edited but signed in 2018 and submitted under procedures established by the employer for the employee to certify entitlement to exempt status for 2018 by using the 2017 Form W-4 to claim exemption from withholding for 2018.

The employee can use any substantially similar method that clearly conveys in writing the employee's intent to certify an exemption from withholding for 2018. Employers with established electronic systems for furnishing withholding allowance certificates may change their electronic systems to conform with these options.

• ***Moving expense reimbursements.*** The exclusion for qualified moving expense reimbursements has been suspended for tax years 2018-2025. However, the exclusion is still available for members of the Armed Forces on active duty who move because of a permanent change of station.

• ***Withholding under IRC §3405 for periodic payments if no Form W-4P is on file.*** A payee receiving certain pensions, annuities, and other deferred income payments who do not have a Form W-4P, *Withholding Certificate for Pension or Annuity Payments*, on file will continue to be treated as a married individual claiming three withholding allowances.

• ***Social security and Medicare tax for 2018.*** For 2018, the social security tax rate is 6.2% each for employees and employers, unchanged from 2017. The social security wage base limit is $128,400 (up from $127,200 in 2017). The Medicare tax rate is 1.45% each for employers and employees in 2018, unchanged from 2017. There is no wage base limit for Medicare tax.

Social security and Medicare taxes apply to the wages of household workers you pay $2,100 or more (up from $2,000 in 2017). Social security and Medicare taxes apply to election workers who are paid $1,800 or more (unchanged from 2017).

• ***Additional Medicare Tax withholding.*** In addition to withholding Medicare tax at 1.45%, employers must withhold a 0.9% Additional Medicare Tax from Medicare taxable wages paid to an employee in excess of $200,000 in a calendar year. Additional Medicare Tax is imposed only on the employee; there is no employer share of Additional Medicare Tax.

• ***Disaster tax relief.*** Disaster tax relief was enacted for those impacted by Hurricanes Harvey, Irma, or Maria. Additionally, the IRS has provided special relief designed to support employer leave-based donation programs to aid the victims of these hurricanes and to aid the victims of the California wildfires that began October 8, 2017. For more information about disaster relief, including the treatment of amounts paid to qualified tax-exempt organizations under employer leave-based donation programs, see IRS Publication 976, *Disaster Relief*.

• ***Qualified small business payroll tax credit for increasing research activities.*** For tax years beginning after December 31, 2015, a qualified small business may elect to claim up to $250,000 of its credit for increasing research activities as a payroll tax credit against the employer's share of social security tax. The portion of the credit used against the employer's share of social security tax is allowed in the first calendar quarter beginning after the date that the qualified small business filed its income tax return. The election and determination of the credit amount that will be used against the employer's share of social security tax is made on Form 6765, *Credit for Increasing Research Activities*. The amount from Form 6765, Line 44, must then be reported on Form 8974, *Qualified Small Business Payroll Tax Credit for Increasing Research Activities*. Form 8974 is used to determine the amount of the credit that can be used in the current quarter. The amount from Form 8974, Line 12, is reported on

Form 941 or 941-SS, Line 11.

• ***Certification program for professional employer organizations.*** The Tax Increase Prevention Act of 2014 required the IRS to establish a voluntary certification program for professional employer organizations (PEOs). To become and remain certified, certified professional employer organizations (CPEOs) must meet tax status, background, experience, business location, financial reporting, bonding, and other requirements. Certification as a CPEO affects the employment tax liabilities of both the CPEO and its customers. A CPEO is generally treated as the employer of any individual performing services for a customer of the CPEO, but only for wages and other compensation paid to the individual by the CPEO. For more information, visit IRS's CPEO web page at https://www.irs.gov/for-tax-pros/basic-tools/certified-professional-employer-organization.

• ***Publication explains employment tax examinations and appeal rights.*** Publication 5146 provides employers with information on how the IRS selects employment tax returns to be examined, what happens during an exam, and what options an employer has in responding to the results of an exam, including how to appeal the results. Publication 5146 also includes information on worker classification issues and tip exams. ■

APA Answers Questions About Tax Reform

On December 22, President Trump signed H.R. 1, unofficially known as the Tax Cuts and Jobs Act (TCJA), into law (Pub. L. 115-97). The TCJA, which marks the most sweeping tax changes in 30 years, will impact payroll professionals in 2018 and beyond.

These changes in the tax law have caused confusion and raised questions for payroll professionals. Some of those questions were answered when the IRS released the 2018 withholding tables. APA has asked for and the IRS is working on additional guidance.

APA webinars available on demand

APA has two Webinars On Demand available to help you navigate 2018 payroll challenges:

• ***Tax Reform: How Will It Impact Your Payroll Process?.*** This webinar, which is free for APA members, explains:

• How long you have to put new withholding rules into effect;

• How to handle the newly taxable fringe benefits; and

• How to answer employee questions about the withholding changes.

For more information and to register, go to https://ebiz.americanpayroll.org/ebusiness/Education/ViewClass.aspx?ClassID=5258.

• ***New Year, New Challenges: It's 2018***. This webinar, available February 15, covers annual inflation adjustments and new laws and regulations that will affect payroll in 2018. This webinar provides additional information on the effects of tax reform on payroll processing. For more information and to register, go to https://ebiz.americanpayroll.org/ebusiness/Education/ViewClass.aspx?ClassID=4876.

Questions and answers from January webinar

The Webinar On Demand *Tax Reform: How Will It Impact Your Payroll Process?* was offered as a live webinar in January. Here are some questions from the audience answered by APA personnel.

Personal exemption elimination vs. withholding allowances

Q. Should we still recognize and include the personal exemption of $4,150 for 2018 federal tax calculations or disregard this as not part of the tax calculation?

A. There has been considerable confusion about the effect of the TCJA's elimination of personal exemptions. However, absent additional guidance from the IRS, the rules for withholding have not changed. You should comply with IRS Notice 1036. The notice does not say the $4,150 annual amount represents exemptions; it represents allowances. Payroll uses allowances, not exemptions, to calculate income tax withholding. Allowances are not based solely on the dependents claimed as exemptions on Form 1040; the W-4 worksheets also use the child tax credit and itemized deductions in the calculation of allowances.

Until the 2018 Form W-4 and the IRS's online withholding calculator are released, we will not be able to say exactly how allowances will be calculated. This is why we emphasize that all employees will need to review their 2018 allowances. Some individuals may need to reduce their allowances if they have been using children over the age of 17 and itemized deductions that have been suspended in the calculation of allowances to avoid being underwithheld.

Until further guidance is issued, employers implementing the 2018 percentage method tables should calculate withholding using the value of one withholding allowance as stated in Notice 1036 multiplied by the number of allowances claimed on the employee's current W-4, whether that form is from 2017 or earlier.

Communicating with employees

Because payroll professionals are sure to face questions about tax reform, APA has created a sample notice that you can adapt to send to your employees.

Sample TCJA notice

With the [insert date] payroll, your federal income tax withholding was adjusted to reflect the new tables the IRS created based on the tax reform law that was enacted in December. This law impacted not only your federal income tax withholding but also many other factors that go into the calculation of your federal income tax. Due to these changes, it is essential that you talk to your tax advisor or use the IRS withholding calculator to help you to determine the proper allowances to claim on your Form W-4. If you do not ensure your allowances for the remainder of 2018 are correct, it is possible you will be underwithheld and therefore subject to IRS penalties when you file your 2018 tax return in 2019.

If you claim exempt from federal income tax

withholding and plan to continue to claim this exemption for tax year 2018, you may do so by providing a 2017 Form W-4 no later than February 28, 2018 (the usual due date is February 15).

At this time, the IRS is working diligently on the withholding calculator and 2018 version of Form W-4. When the IRS has released them, we will let you know.

Retroactive withholding

Q. Is there any retroactive withholding back to January 1, 2018?

A. There are no retroactive adjustments after the federal withholding tables are in place. Employees will "true up" the difference when they file their personal income tax returns in 2019.

Supplemental wage tax rate

Q. I understand that the federal supplemental tax rate was lowered from 25% to 22% for 2018. I have some information from the APA that states: "The optional flat tax rate on supplemental wages up to $1 million in a taxable year is 22% (no other percentage is allowed)." Can someone not elect to have a higher percentage withheld from a bonus payment?

A. The language "no other percentage is allowed" is taken directly from IRS Notice 1036, released on January 11. So employees and employers cannot elect a flat rate percentage other than 22% on supplemental wages up to $1 million in a taxable year. ■

IRS Again Warns Employers to Avoid the Form W-2 Email Scam

The IRS has reissued its warning about phishing scams targeting payroll professionals [IR-2018-8, 1-17-18; https://www.irs.gov/newsroom/irs-states-and-tax-industry-warn-employers-to-beware-of-form-w-2-scam-tax-season-could-bring-new-surge-in-phishing-scheme]. Hundreds of organizations and hundreds of thousands of employees were victimized by the scam in 2017.

During the past two tax seasons, cybercriminals tricked payroll personnel or people with access to payroll information into disclosing sensitive information for entire workforces. The IRS said the scam affected all types of employers, from small and large businesses to public schools and universities, hospitals, and charities.

Reports to phishing@irs.gov from victims and nonvictims about this scam jumped to approximately 900 in 2017, compared to slightly more than 100 in 2016, according to the IRS. In 2017, more than 200 employers were victimized, which translated into hundreds of thousands of employees whose identities were compromised.

By alerting employers now, the IRS and the Security Summit hope to limit the success of this scam in 2018.

How the scam works

A thief, posing as a company executive or someone of authority within the organization, will send an email to an employee with payroll access, requesting a list of all employees and their Forms W-2. The thief may specify the format in which to send the information. The initial email may be a friendly request.

The reporting process

Because of the W-2 scam's threat to both federal and state tax agencies, the IRS established a special reporting process to quickly alert the proper authorities.

Here's a quick list of the steps to take in reporting these schemes:

• Send an email to dataloss@irs.gov to notify the IRS of a W-2 data loss and provide the business name, employer identification number, contact name and phone number, summary of how the loss occurred, and the number of employees affected. Type "W2 Data Loss" in the subject line. Do not attach any employee's personally identifiable information.

• Forward the full headers from the scam email to phishing@irs.gov with "W2 Scam" in the subject line. Instructions for locating the email headers in Outlook may be found on a Microsoft Office Support page at https://support.office.com/en-us/article/View-e-mail-message-headers-cd039382-dc6e-4264-ac74-c048563d212c.

Employers should forward this information to the IRS whether or not they fall for the scam.

Detailed reporting steps, including instructions on reporting data loss to state tax agencies and to law enforcement officials, may be found at https://www.irs.gov/individuals/form-w2-ssn-data-theft-information-for-businesses-and-payroll-service-providers (see PAYROLL CURRENTLY, Issue 4, Vol. 25).

Protocols to stop scams

The IRS urges employers to put additional verification procedures in place before sharing sensitive employee information. One example would be to have two people review any distribution of sensitive Form W-2 data or wire transfers. Another example would be to require a verbal confirmation before emailing Form W-2 data. ■

DOL Reissues 17 FLSA Opinion Letters

The U.S. Department of Labor's (DOL) Wage and Hour Division (WHD) reissued 17 previously withdrawn opinion letters. The letters, which were originally issued in 2009, explain how to handle certain circumstances under the Fair Labor Standards Act (FLSA) [DOL, WHD, *Opinion Letters – Fair Labor Standards Act*, 1-5-18; https://www.dol.gov/whd/opinion/flsa.htm]. The reissued opinion letters have been renumbered and dated January 5, 2018, even though the text is verbatim from 2009.

Background

An opinion letter is an official, written opinion by the WHD of how a particular law applies in specific circumstances

presented by an employer, employee, or other entity requesting the opinion. The letters were a division practice for more than 70 years until being replaced by general guidance in 2010.

In June 2017, the DOL announced that it will reinstate using opinion letters as one of its methods for providing guidance to employers (see PAYROLL CURRENTLY, Issue 7, Vol. 25).

Most of the 17 reissued opinion letters cover an issue related to the "white collar" exemption from minimum wage and overtime pay requirements in the FLSA. To qualify for this exemption, an employee must be paid on a salary basis, which means he or she "regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed."

Salary deductions from exempt employees

Two of these opinion letters address salary deductions from exempt employees.

Salary deductions for full-day absences may be calculated based on hours missed. Opinion Letter FLSA 2018-7(https://www.dol.gov/whd/opinion/FLSA/2018/2018_01_05_07_FLSA.pdf; previously FLSA 2009-25) states that an employer may make deductions based on the number of work hours missed when an employee misses an entire day of work. The DOL cited 29 C.F.R. §541.602(c), which provides that when calculating the amount of a deduction from pay allowed under §541.602(b), the employer may use the hourly or daily equivalent of the employee's full weekly salary or any other amount proportional to the time actually missed by the employee. The letter reminds employers that deductions are not permissible if the employee is absent for less than one full day of work.

Partial-day salary deduction permitted for full-day absences. Opinion Letter FLSA 2018-14 (https://www.dol.gov/whd/opinion/FLSA/2018/2018_01_05_14_FLSA.pdf; previously FLSA 2009-33) provides that an employer is permitted to make a partial-day deduction from an exempt employee's wages for a full-day absence when the employee does not have enough leave time in the leave bank to cover the entire absence. The DOL said the regulations do not prohibit a deduction equivalent to a partial-day salary if the absence is for one full day.

Including bonuses in regular rate of pay

Two of these opinion letters address whether bonuses must be included in the regular rate of pay for overtime calculations.

Some nondiscretionary bonuses can be excluded from regular rate of pay. Opinion Letter FLSA 2018-9 (https://www.dol.gov/whd/opinion/FLSA/2018/2018_01_05_09_FLSA.pdf; previously FLSA 2009-27) states that an employer may exclude previous payments properly excluded from the regular rate of pay under FLSA §207(e) when calculating a year-end bonus based on a percentage of an employee's total straight-time and overtime earnings. In the example in the letter, a bonus paid as a predetermined percentage of an employee's straight time and overtime compensation increased the straight-time and overtime earnings by the same percentage, so it included proper overtime-premium compensation without the need for additional computation.

Bonuses that should be included in regular rate of pay. Opinion Letter 2018-11 (https://www.dol.gov/whd/opinion/FLSA/2018/2018_01_05_11_FLSA.pdf; previously 2009-30) states that a daily "job bonus" of a flat dollar amount must be included when calculating an employee's regular rate of pay because it falls under the category of "all remuneration" and is not on the list of excluded items.

Other reissued letters

Here is a list of the other reissued opinion letters:

- FLSA 2018-1 (originally Opinion Letter FLSA 2009-7): *Ambulance personnel on-call time and hours worked.*
- FLSA 2018-2 (originally Opinion Letter FLSA 2009-8): *Plumbing sales/service technicians and section 7(i).*
- FLSA 2018-3 (originally Opinion Letter FLSA 2009-9): *Helicopter pilots and section 13(a)(1).*
- FLSA 2018-4 (originally Opinion Letter FLSA 2009-1NA): *Commercial construction project superintendents and section 13(a)(1).*
- FLSA 2018-5 (originally Opinion Letter FLSA 2009-2NA): *Regular rate calculation for fire fighters and alarm operators.*
- FLSA 2018-6 (originally Opinion Letter FLSA 2009-10): *Coaches and the teacher exemption under section 13(a)(1).*
- FLSA 2018-8 (originally Opinion Letter FLSA 2009-26): *Client service managers and section 13(a)(1).*
- FLSA 2018-10 (originally Opinion Letter FLSA 2009-29): *Residential construction project supervisors and section 13(a)(1).*
- FLSA 2018-12 (originally Opinion Letter FLSA 2009-31): *Consultants, clinical coordinators, coordinators, and business development managers under section 13(a)(1).*
- FLSA 2018-13 (originally Opinion Letter FLSA 2009-32): *Fraud/theft analysts and agents under section 13(a)(1).*
- FLSA 2018-15 (originally Opinion Letter FLSA 2009-34): *Product demonstration coordinators and section 13(a)(1).*
- FLSA 2018-16 (originally Opinion Letter FLSA 2009-35): *Volunteer fire company contracting for paid EMTs – joint employment and volunteer status.*
- FLSA 2018-17 (originally Opinion Letter FLSA 2009-36): *Construction supervisors employed by homebuilders and section 13(a)(1).* ■

USCIS Provides Guidance for E-Verify Users After Government Shutdown

During the government shutdown in January, E-Verify was temporarily unavailable and its customer service center was closed (*E-Verify Is Unavailable Due to Lapse in Department of Homeland Security Appropriations*, email, 1-22-18). On January 23, U.S. Citizenship and Immigration Services (USCIS) posted a notice stating E-Verify had resumed operations [USCIS, What's New, *E-Verify Is Available!*, 1-23-18; https://www.uscis.gov/e-verify/about-

program/whats-new].

Steps to follow after the shutdown

Initiating cases. Employers that needed E-Verify during the shutdown must have created an E-Verify case by January 29 for each employee hired while E-Verify was not available [USCIS, *E-Verify Resumes Operation: Guidance and Information*, 1-23-18; https://www.uscis.gov/e-verify/e-verify-resumes-operation-guidance-and-information]. Employers must use the hire date from the employee's Form I-9 when creating the E-Verify case. If you did not create an E-Verify case by the third business day after the employee began work for pay, select "Other" from the drop-down list and enter "E-Verify not Available" as the specific reason.

Receipt of a tentative nonconfirmation (TNC). If an employee received a TNC on January 22, the employer must revise the date by which the employee must contact the Social Security Administration (SSA) or the Department of Homeland Security (DHS) to begin resolving the TNC. Add one federal business day to the date on your employee's Referral Date Confirmation notice. Give this revised notice to the employee.

Employers can reprint a copy of an employee's Referral Date Confirmation by logging in to E-Verify, selecting the employee's case, and selecting the Print Confirmation button. Be sure to cross out the old date and insert the new date. Employees have until this new date to contact the SSA or DHS to resolve their cases, as applicable.

Referring a TNC. If the unavailability of E-Verify prevented an employer from referring a TNC case, the employer should continue the TNC process once the employee has decided whether or not he or she wishes to contest the TNC. For TNC cases referred after E-Verify resumed operations, do not add days to the time an employee has to contact either SSA or DHS. If the employee decided to contest the TNC when E-Verify was unavailable, refer the employee's case and follow the TNC process. ■

W-2 Verification Code Pilot Program Continues for the 2018 Filing Season

The IRS requests that employers participating in the W-2 Verification Code Pilot program encourage their employees to enter the W-2 verification code when prompted by their tax preparation software. Employees will see the 16-character, alphanumeric code on Copy B of their Forms W-2 in Box 9, which now is titled "Verification code." During the IRS's January 4 payroll industry conference call, Scott Mezistrano, IRS Industry Stakeholder Engagement and Strategy, provided additional details about the program.

For the 2018 filing season, verification codes will appear on 59 million Forms W-2, which is approximately 25% of the issued forms. While employees are strongly encouraged to include the code, the process is voluntary. The IRS will not delay the processing of tax returns that are filed without including the verification code.

How the code is used

The IRS uses the verification code to authenticate Form W-2 data. First, the IRS issues an algorithm to participating payroll service providers (PSPs). The PSPs then use the algorithm to create a 16-character, alphanumeric verification code that corresponds to certain data points on the Form W-2. The only valid characters in the code are letters A-F and digits 0-9. When the code is included on an e-filed tax return, the IRS uses the code to validate the Form W-2 data.

The IRS is also experimenting with using lowercase letters in the verification code on 55 million of the Forms W-2. Using lowercase letters will hopefully help taxpayers to distinguish letters from numbers, including a B from an 8 and a D from a 0. It does not matter if taxpayers enter the letters in uppercase or lowercase on their tax returns.

Program participants

Mezistrano announced the 10 participants in the program for the 2018 filing season: ADP, Ceridian, Interlogic Outsourcing, Intuit, the National Finance Center (a government organization that processes payroll for the IRS and other federal agencies), Paychex, Paycom, Payroll People, PrimePay, and Ultimate Software. The PSPs will let their clients know whether the client and its employees will be included in the program. For each PSP, not necessarily all of its clients are included, but all employees of a selected client will receive a Form W-2 with a verification code. ■

IRS Releases 2018 General Instructions for 1099s and More

The IRS has released the 2018 *General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W2-G*). The new publication is available on the APA website at www.americanpayroll.org/members/forms-pubs/forms-pubs-info.

What's new

There are three changes to the 2018 forms.

Backup withholding rate change. The Tax Cuts and Jobs Act (Pub. L. 115-97) lowered the backup withholding rate to 24%.

Online fillable forms. For certain forms, including Form 1099-MISC, the IRS has created online fillable forms for Copies 1, B, 2, C, and D, for filers to furnish to recipients and keep in their records.

New mailing address. The Kansas City, Mo., office has a new mailing address for filing paper returns: Department of the Treasury, Internal Revenue Service Center, P.O. Box 219256, Kansas City, MO 64121-9256. This office is used by taxpayers in: Alaska, California, Colorado, District of Columbia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Utah, Washington, Wisconsin, and Wyoming.

Future developments

For the latest developments related to this publication,

go to https://www.irs.gov/uac/about-form-1099.

Reminders

Due date for certain statements sent to recipients. The due date for furnishing statements to recipients of Form 1099-MISC, *Miscellaneous Income* (if amounts are reported in Box 8 or 14) is February 15, 2019. Otherwise it is January 31, 2019. Also, file Form 1099-MISC on paper or electronically with the IRS by January 31, 2019, when reporting nonemployee compensation in Box 7, even if information is also reported in other boxes. If nothing is reported in Box 7, the due date for paper returns is February 28, 2019, and the electronic filing deadline is April 1, 2019.

Electronic filing. These forms may be filed electronically through the IRS's Filing Information Returns Electronically (FIRE) system. E-filers must use software that can produce files with the proper specifications outlined in Publication 1220, *Specifications for Electronic Filing of Forms 1097, 1098, 1099, 3921, 3922, 5498, and W2-G*. ■

Supreme Court Allows 4th Circuit Ruling on Joint Employers to Stand

The U.S. Supreme Court has denied the petition to review a 4th Circuit ruling that identified a nonexhaustive list of factors to consider when determining whether a joint employer relationship exists between employers. [*DirecTV, LLC v. Hall*, 846 F.3d 757 (4th Cir., 1-25-17)]. The Supreme Court denied the petition on January 8 with no explanation.

4th Circuit test stands alone

The Supreme Court's denial means the test developed by the 4th Circuit to determine whether satellite TV technicians were jointly employed by DirecTV and subcontracting installation companies still stands.

The 4th Circuit found that, in the technicians' "one employment" with different entities, the technicians were "economically dependent on – and therefore jointly employed by" – DirecTV and the installation companies. The court also ruled they were employees, not independent contractors, under the Fair Labor Standards Act. The 4th Circuit's decision reversed the dismissal of the technicians' overtime claims by the district court. The 4th Circuit said that the district court applied an incorrect joint-employment test.

For the appeals court, the "fundamental question" for joint employment is "whether two or more persons or entities are 'not completely disassociated' with respect to a worker such that the persons or entities share, agree to allocate responsibility for, or otherwise co-determine – formally or informally, directly or indirectly – the essential terms and conditions of the worker's employment."

Here is the nonexhaustive list of factors that the 4th Circuit identified to assist lower courts in determining whether the relationship between two entities gives rise to joint employment:

(1) Whether, formally or as a matter of practice, the suspected joint employers jointly determine, share, or allocate the ability to direct, control, or supervise the worker, whether by direct or indirect means;

(2) Whether, formally or as a matter of practice, the suspected joint employers jointly determine, share, or allocate the power to – directly or indirectly – hire or fire the worker or modify the terms or conditions of the worker's employment;

(3) The degree of permanency and duration of the relationship between the suspected joint employers;

(4) Whether through shared management or a direct or indirect ownership interest, one suspected joint employer controls, is controlled by, or is under common control with the other suspected joint employer;

(5) Whether the work is performed on a premises owned or controlled by one or more of the suspected joint employers, independently or in connection with one another; and

(6) Whether, formally or as a matter of practice, the suspected joint employers jointly determine, share, or allocate responsibility over functions ordinarily carried out by an employer, such as handling payroll; providing workers' compensation insurance; paying payroll taxes; or providing the facilities, equipment, tools, or materials used by the employees. ■

Appeals Court Upholds Ruling That Interns Were Not Employees; DOL to Use Same Test in Determining Classification

The 2nd Circuit Court of Appeals upheld a district court ruling that students who worked for a major publishing company were classified properly as interns and were not employees [*Wang v. Hearst Corp.*, No. 16-3302, 2017 U.S. App. LEXIS 24789 (2d Cir., 12-8-17)].

Background

Unpaid student interns who worked at various Hearst publications sued Hearst Corp. to be compensated for their internship work under New York law and the Fair Labor Standards Act (FLSA). The 2nd Circuit Court of Appeals heard the appeal for *Wang* in tandem with another intern case, *Glatt v. Fox Searchlight Pictures, Inc.* (791 F.3d 376 (2d Cir., 2015)), that involved several similar facts. The 2nd Circuit's opinion in *Glatt* clarified its test for when an individual is an "employee" under the FLSA. The 2nd Circuit also directed the district court to analyze *Wang* under the new factors set forth in *Glatt*.

The district court analyzed the interns' roles under the *Glatt* factors and ruled that the interns were not employees under the FLSA (*Wang v. Hearst Corp.*, 203 F. Supp. 3d 244 (S.D. N.Y., 2016); see PAYROLL CURRENTLY, Issue 12, Vol. 24). The decision went back to the appeals court.

WHAT THE LAW SAYS – In the *Glatt* case, the 2nd Circuit ruled that the "primary beneficiary" test should be used to distinguish employees from bona fide interns. This test: (1) focuses on what the intern receives in exchange

for his or her work; and (2) gives courts the flexibility to examine the economic reality between the intern and the employer.

The court gave a nonexhaustive list of seven factors that should be applied as part of this test: (1) the extent to which the employer and the intern clearly understand that there is no expectation of compensation; (2) the internship is similar to training which would be given in an educational environment; (3) the internship is tied to the intern's formal education program by coursework and the receipt of credit; (4) the internship accommodates the intern's academic calendar; (5) the internship is limited to the period when it provides learning; (6) the extent to which the intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern; and (7) the intern is not necessarily entitled to a job at the end of the internship.

The court then looks at the "totality of the circumstances" and the facts rather than just adding up the factors for each side.

Applying the 'primary beneficiary' test

In analyzing the primary beneficiary test, the court decided that the factors overall weighed heavily in Hearst's favor. Both parties agreed at the outset that the internship positions would be unpaid and no job was promised at the end, so factors 1 and 7 went to Hearst.

On appeal, factors 2 and 5 were in contention. The students argued that the district court ignored evidence of Hearst's internships as "a poor substitute for classroom learning." The appeals court agreed with the district court in that each student learned at least some tangible skills in their internships, which gave slightly more favor to Hearst on factor 2. The appeals court said the students misread the fifth factor. The students complained they did not receive "beneficial learning" when they performed repetitive or similar tasks they had already "learned." The appeals court said the students' development of their practical skills could involve practice, and that the students could gain familiarity with an industry by day-to-day professional experience.

Factors 3 and 4 relate to academic items. Hearst worked within the school academic calendar with its interns. Even though two of the interns did not receive academic credit and two were not in school during the internships, the court favored Hearst more heavily.

Factor 6 was the only one that weighed more for the students as employees. The district court decided the interns did at least some labor that displaced the work of paid employees. However, because the interns also gained practical skills and experience, the court determined that this factor weighed only slightly in favor of the interns. However, the appeals court pointed out the *Glatt* factors specifically omitted the U.S. Department of Labor (DOL) criterion that "the alleged employer derive no immediate advantage from the activities of the intern."

The appeals court looked at the "totality of the circumstances" and upheld the district court's decision that the interns were not employees entitled to FLSA protections.

DOL to follow same test

Following appeals courts' rulings in this case and others, the DOL announced that the agency will use the same "primary beneficiary" test to determine whether interns are employees under the FLSA [DOL, *U.S. Department of Labor Clarifies When Interns Working at For-Profit Employers Are Subject to the Fair Labor Standards Act,* 1-5-18; https://www.dol.gov/newsroom/releases/whd/whd20180105]. The release said that the "Wage and Hour Division (WHD) will update its enforcement policies to align with recent case law, eliminate unnecessary confusion among the regulated community, and provide the Division's investigators with increased flexibility to holistically analyze internships on a case-by-case basis."

The WHD has updated Fact Sheet 71 by listing the "primary beneficiary" test from the courts as the proper guidance for determining whether interns must be paid minimum wage (Fact Sheet 71, updated January 2018; https://www.dol.gov/whd/regs/compliance/whdfs71.htm). ■

Wage Amount for Government Control Employee Increases

The wage amount used in defining a government control employee under the commuting valuation method for valuing personal use of an employer-provided vehicle increased from $151,700 to $153,800 for 2018 (this updates *The Payroll Source®*, §3.2-2). The new rate of pay for an Executive Level V federal employee can be found in the Office of Personnel Management's (OPM) Salary Table No. 2018-EX [OPM, Salary Table No. 2018-EX; https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2018/EX.pdf].

The commuting valuation method

The commuting valuation method allows an employer to value an employee's personal commuting use of an employer-provided vehicle at $1.50 per one-way commute and $3 per round trip if these conditions are met:

(1) The vehicle is owned or leased by the employer and is provided to the employee for use in connection with the employer's trade or business.

(2) The employer, for noncompensatory business reasons, requires the employee to commute to and/or from work in the vehicle.

(3) The employer has a written policy prohibiting the employee (and the employee's spouse and dependents) from using the vehicle for personal use other than commuting or de minimis personal errands, and the policy is enforced.

(4) The employee is not a "control employee."

'Control employee' defined

In the private sector, a "control employee" is one who:

• Is a corporate officer earning at least $110,000 in 2018 (up from $105,000 in 2017).

- Is a director.
- Earns at least $220,000 in 2018 (up from $215,000 in 2017).
- Is a 1% owner.

In the public sector, a "control employee" is one who:

- Is an elected official.
- Earns more than a federal employee at Executive Level V.

Noncommercial flight valuation application

The definition of a control employee is also used as a factor when determining the value of an employee's personal flight on an employer-provided aircraft (see *The Payroll Source®*, §3.2-3). ■

Spring Ahead to Daylight Saving Time

Daylight Saving Time (DST) will begin on Sunday, March 11, at 2 a.m., when clocks are set ahead one hour. A shift worker on duty at that time will work an hour less than usual. If you pay the worker for a full shift of eight hours rather than seven, you do not need to count the extra hour as an hour worked for overtime purposes and do not need to include the extra pay when calculating the employee's regular rate of pay for the workweek (see *The Payroll Source®*, §2.6-4 for further information).

DST is not observed in the states of Arizona (other than inside the Navajo Nation) and Hawaii, and in the U.S. Territories of American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands. ■

IRS Offers Disaster Relief to California Victims

The IRS continues to offer relief for victims of federally declared disasters, which now includes California victims of the wildfires, flooding, mudflows, and debris flows that began on December 4, 2017 [CA-2018-01, *Tax Relief for Victims of Wildfires, Flooding, Mudflows, and Debris Flows in California*, 1-17-18; https://www.irs.gov/newsroom/tax-relief-for-victims-of-wildfires-flooding-mudflows-and-debris-flows-in-california]. The tax relief includes extending filing deadlines and waiving late deposit penalties. The IRS also has a general disaster relief webpage to answer questions: https://www.irs.gov/newsroom/tax-relief-in-disaster-situations.

Filing deadlines extended

The tax relief postpones various tax filing and payment deadlines that occurred starting on December 4, 2017, and before April 30, 3018. As a result, affected individuals and businesses will have until April 30, 2018, to file returns and pay any taxes that were originally due during this period. This includes quarterly estimated income tax payments originally due on January 16, 2018. In addition, penalties on payroll tax deposits due on or after December 4, 2017, and before December 19, 2017, will be abated as long as the tax deposits were made by December 19, 2017.

The postponement of time to file and pay **does not apply** to certain information returns, including Forms W-2 and the 1095 and 1099 series, or to employment and excise tax deposits (except for the penalty abatement for payroll tax deposits).

Disaster areas. Currently, Los Angeles, San Diego, Santa Barbara, and Ventura counties qualify for the extension. ■

Capitol Hill Update

Here are some recent payroll-related bills introduced in the U.S. Congress. No action has been taken on any of the bills discussed here, unless otherwise noted.

'Cadillac tax' deadline postponed

President Trump signed H.R. 195 into law on January 22 (Pub. L. 115-120), which provided funding for the federal government through February 8. Among other items, the law delays implementation of the excise tax on high-cost, employer-sponsored health plans (commonly referred to as the Cadillac tax) for an additional two years, so it is scheduled to apply for tax years beginning after December 31, 2021.

Fair Labor Standards Act (FLSA)

Hours applicable to bus drivers. S. 2017/H.R. 4156, the Driver Fatigue Prevention Act, would amend the FLSA so that over-the-road bus drivers are covered under the maximum hours (i.e., overtime) requirements.

Nursing mothers. S. 2122, the Supporting Working Moms Act of 2017, would allow reasonable break time for nursing mothers.

White collar exemption. S. 2177/H.R. 4505, the Restoring Overtime Pay Act of 2017, would establish the minimum salary threshold for white collar workers equal to the 40th percentile of earnings of full-time salaried workers in the lowest wage Census Region as determined by the Bureau of Labor Statistics. It would be indexed every three years. ***NOTE:*** This is the same salary level included in the regulations issued by the U.S. Department of Labor under the Obama administration that were invalidated by a Texas federal district court.

Affordable Care Act (ACA)

S. 2052/H.R. 4200, the Healthcare Market Certainty and Mandate Relief Act of 2017, would impose a moratorium on the individual and employer health insurance mandates after January 1, 2018. It would also increase the maximum contribution limit to health savings accounts to $2,250 and the out-of-pocket limitation to $4,500.

S. 2132, the Family Coverage Act, would change the definition of "affordable" coverage under the ACA. Currently, health insurance coverage is "deemed affordable" if the employee's share of premiums for individual coverage is less than 9.5% of family income. S. 2132 would redefine

"affordable" to allow an employee's dependents to access premium tax credits if the cost of family coverage offered by an employer is greater than 9.5% of household income.

H.R. 4616 would retroactively delay the employer health insurance mandate for tax years beginning after December 31, 2014, and ending before January 1, 2019.

Education

S. 2007/H.R. 4135, the Upward Mobility Enhancement Act, would raise the amount that can be excluded from an employee's gross income when provided under an employer's educational assistance program from $5,250 to $11,500. The amount would be adjusted for inflation.

Prevailing wage rates

S. 2295/H.R. 4775, the Federal Adjustment of Income Rates (or FAIR) Act, would increase pay rates under the statutory pay systems for prevailing rate employees by 3%.

Qualified flex time

H.R. 4219, the Workflex in the 21st Century Act, would amend the Employee Retirement Income Security Act (ERISA) to allow participating employers to establish qualified flexible workplace arrangements. Participating employers would be required to provide paid leave to all full-time and part-time employees. The amount of leave would vary by the number of employees and the years of service of each employee. Employers also would be required to offer at least one of the following workflex arrangements: telework, job sharing, predictable scheduling, or a compressed work schedule program. This legislation would pre-empt state and local paid leave and workflex laws.

Retirement plans

H.R. 4523, the Automatic Retirement Plan Act of 2017, would require certain employers that do not offer an employer-sponsored retirement plan to establish an auto-enrollment 401(k) or 403(b) plan. The plans would have a default contribution rate of 6% of wages and would increase by 1% per year until the rate reaches 10%. Employees may opt out of the plan; however, there is a triennial re-enrollment clause. Employees would automatically be re-enrolled in the plan after three years unless they opt out again. Similarly, if an employee elects to contribute less than 6%, that number would automatically increase to 6% in the fourth year, unless the employee opts for a different rate. Small employers (up to 10 employees), new businesses (not in existence for three years), governments, and churches would be exempt from the requirement to maintain an auto-enrollment plan. The legislation would establish a penalty of $10 per day per employee for noncompliance, but does offer the employer opportunities to correct the problem before a penalty is assessed. The legislation also provides a start-up tax credit for employers that establish a plan and a separate credit for small employers.

Employers that do not have more than 25 employees would be eligible for a credit for their costs up to 100% of the costs or $5,000, whichever is lower, for the first five years they maintain the plan. Employers with more than 25 employees but not more than 100 employees would be eligible for a tax credit for costs associated with establishing an automatic individual retirement account (IRA) arrangement.

H.R. 4637, the SAVE Act of 2017, would modify requirements of employer-established IRAs by changing some of the safe harbor provisions.

Tax calculator

H.R. 4780, the Transparency for Taxpayers Act, would require the U.S. Department of the Treasury to create an online tool to allow taxpayers to calculate the approximate change in income tax liability because of the enactment of the Tax Cuts and Jobs Act. ***NOTE:*** The IRS is revising its withholding tax calculator and hopes to release it by the end of February.

Tax rates

S. 2281/S. 2291 would make permanent the individual tax rates established by the Tax Cuts and Jobs Act in effect for 2018-2025.

Training credit

S. 2048, the Investing in American Workers Act, would allow employers to take a worker training tax credit equal to 20% of the qualified training expenses paid during the tax year that exceed the average amount spent over the previous three years. The tax credit would be a general business tax credit, but qualified small businesses could elect to apply the credit against payroll taxes.

Worker classification

H.R. 4165, the New Economy Works to Guarantee Independence and Growth (NEW GIG) Act of 2017, would provide a safe harbor for the determination of worker classification. The determination would be based on three objective tests, which if satisfied, would ensure that the service provider (worker) would be treated as an independent contractor, not an employee, and the service recipient (customer) would not be treated as the employer. In the context of the gig economy where an internet platform or app facilitates the transactions and payments, the third party also would not be treated as the employer. ■

Court Rules That Timing Matters in FMLA Termination Case

A U.S. District Court refused to grant summary judgment for an employer that terminated an employee very shortly after he requested leave under the Family and Medical Leave Act (FMLA) [*Diamond v. American Family Mutual Insurance Co.*, No. 4:16-977-CV, 2017 U.S. Dist. LEXIS 185611 (W.D. Mo., 11-9-17)]. Because the employee provided enough evidence to show that there may have been interference with his FMLA rights, the case may proceed to trial.

Background

David Diamond worked for American Family Mutual Insurance Co. (American Family) from 1999 until he was terminated in 2015. During this time, Diamond took FMLA leave on three occasions: prior to 2006; August 31 through December 19, 2011; and October 15 through November 6, 2013.

On February 12, 2015, Diamond met with his manager Roy Caudill for his annual performance review. Caudill's comments were positive, and he rated Diamond at least "on target" for his goals. During the meeting, Diamond told Caudill he intended to arrange for upcoming FMLA leave. On February 13, Caudill requested phone reports to investigate whether Diamond made required phone calls. Caudill determined that Diamond's reports did not match his phone call log. On February 24, Caudill met with Diamond to inform him he was being terminated for falsifying company records.

WHAT THE LAW SAYS – FMLA §2612 provides that eligible employees are entitled to 12 workweeks of leave during a 12-month period due to a serious health condition or other factors. Employers cannot interfere with an employee who is attempting to exercise these rights (§2615).

The 8th Circuit recognizes three types of FMLA claims: entitlement, discrimination, and retaliation.

Entitlement. An entitlement claim occurs when an employer refuses to authorize leave under the FMLA or takes other action to avoid FMLA responsibilities. An employee must show he or she was entitled to the benefit that was denied.

Discrimination. These claims arise when an employer takes adverse action against an employee because the employee exercises rights to which he or she is entitled under the FMLA. To establish a case of FMLA discrimination, an employee must show: (1) that he or she engaged in activity protected under the FMLA, (2) that he or she suffered a materially adverse employment action, and (3) that a causal connection existed between the employee's action and the adverse employment action.

Retaliation. These claims arise when an employer takes "adverse action" against an employee who "opposes any practice made unlawful under the FMLA – for example, if an employee complains about an employer's refusal to comply with the statutory mandate to permit FMLA leave."

Diamond had basis for entitlement claim

The court decided that Diamond established his case on his entitlement claim. The court noted that it "is clearly established in the Eighth Circuit that 'every discharge of an employee while [he or she] is taking FMLA leave interferes with an employee's FMLA rights.'" Here, Diamond told Caudill he was going to take FMLA leave, and Caudill terminated Diamond shortly afterward.

The court pointed out that the FMLA does not prohibit an employer from terminating an employee for reasons unrelated to the FMLA leave. It said that falsifying records was a legitimate reason to terminate an employee. However, the court determined that there were material factual disputes related to whether Diamond falsified records or Caudill believed Diamond falsified records. Diamond's phone records were pulled *the day after* he expressed an intention to take FMLA leave. There were no written records of complaints from his customers regarding failure to make or return calls, he worked at other desks, and he used his cell phone to make calls on a regular basis. Diamond also received favorable marks during his performance review, which was the day before his phone records were pulled.

Diamond had basis for discrimination claim

Of the three elements for the discrimination claim, Diamond showed that he engaged in activity protected under the FMLA when he requested leave, and that he suffered a materially adverse employment action when American Family terminated his employment. The only element in dispute for his discrimination claim was whether Diamond's protected FMLA activity "played a part" in Caudill's decision to terminate him.

Diamond said that the day after he informed Caudill of his intention to take FMLA leave, the manager began fabricating a reason for his termination, and Diamond was terminated shortly thereafter. The court reasoned that although timing alone is "typically insufficient to establish causation, given such close proximity here, coupled with Caudill's alleged statements" about Diamond's previous leave, and the disputes regarding the veracity of the falsification allegations, explanations, and investigation, the causation element was sufficiently established at this stage in the case.

Case proceeds to trial

Since Diamond was able to establish that he may have been terminated because of his intention to take FMLA leave, the court allowed his case against American Family to go to trial. Diamond did not assert an FMLA retaliation claim.

The Diamond case reminds employers to be cautious when disciplining or terminating employees who have recently requested, taken, or returned from FMLA leave. ■

USCIS Answers Employment Verification Questions

In the January issue of *E-Verify Connection*, U.S. Citizenship and Immigration Services (USCIS) listed a few questions and answers to help employers with the employment verification process [*E-Verify Connection,* January 2018; https://www.uscis.gov/sites/default/files/USCIS/Verification/E-Verify/E-Verify_Native_Documents/Newsletters/E-Verify-Connection40.pdf].

Timing for Form I-9, *Employment Eligibility Verification*

Q. How far in advance can the Form I-9 be completed?

A. Form I-9 may be completed as soon as the employer has offered the individual a job and the individual has accepted the offer. Each newly hired employee must complete and sign section 1 of Form I-9 no later than his or her first day of employment.

E-Verify user ID retrieval

Q. I lost or forgot my user ID. How can I retrieve it?

A. Here are the instructions:

(1) From the E-Verify login page, click Forgot Your User ID.

(2) Enter the email address associated with your E-Verify user ID and click Submit. If the email address entered is on file, your user ID will be emailed to you.

(3) Check your email. Your user ID reminder should be in your inbox. Check your spam folder if the email is not in your inbox. ■

ALLOWANCE TABLE FOR WAGES PAID IN 2018								
If the number of withholding allowances is:	And wages are paid –							
	WEEKLY	BIWEEKLY	SEMI-MONTHLY	MONTHLY	QUARTERLY	SEMI-ANNUALLY	ANNUALLY	DAILY OR MISC.
	The total amount of withholding allowances for the payroll period is:							
0	$ —	$ —	$ —	$ —	$ —	$ —	$ —	$ —
1	79.80	159.60	172.90	345.80	1,037.50	2,075.00	4,150.00	16.00
2	159.60	319.20	345.80	691.60	2,075.00	4,150.00	8,300.00	32.00
3	239.40	478.80	518.70	1,037.40	3,112.50	6,225.00	12,450.00	48.00
4	319.20	638.40	691.60	1,383.20	4,150.00	8,300.00	16,600.00	64.00
5	399.00	798.00	864.50	1,729.00	5,187.50	10,375.00	20,750.00	80.00
6	478.80	957.60	1,037.40	2,074.80	6,225.00	12,450.00	24,900.00	96.00
7	558.60	1,117.20	1,210.30	2,420.60	7,262.50	14,525.00	29,050.00	112.00
8	638.40	1,276.80	1,383.20	2,766.40	8,300.00	16,600.00	33,200.00	128.00
9	718.20	1,436.40	1,556.10	3,112.20	9,337.50	18,675.00	37,350.00	144.00
10	798.00	1,596.00	1,729.00	3,458.00	10,375.00	20,750.00	41,500.00	160.00

Percentage Method Tables for Income Tax Withholding

(For Wages Paid in 2018)

TABLE 1—WEEKLY Payroll Period

(a) SINGLE person (including head of household)—				(b) MARRIED person—			
If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:		If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:	
Not over $71		$0		Not over $222		$0	
Over—	But not over—		of excess over—	Over—	But not over—		of excess over—
$71	—$254	$0.00 plus 10%	—$71	$222	—$588	$0.00 plus 10%	—$222
$254	—$815	$18.30 plus 12%	—$254	$588	—$1,711	$36.60 plus 12%	—$588
$815	—$1,658	$85.62 plus 22%	—$815	$1,711	—$3,395	$171.36 plus 22%	—$1,711
$1,658	—$3,100	$271.08 plus 24%	—$1,658	$3,395	—$6,280	$541.84 plus 24%	—$3,395
$3,100	—$3,917	$617.16 plus 32%	—$3,100	$6,280	—$7,914	$1,234.24 plus 32%	—$6,280
$3,917	—$9,687	$878.60 plus 35%	—$3,917	$7,914	—$11,761	$1,757.12 plus 35%	—$7,914
$9,687		$2,898.10 plus 37%	—$9,687	$11,761		$3,103.57 plus 37%	—$11,761

TABLE 2—BIWEEKLY Payroll Period

(a) SINGLE person (including head of household)—				(b) MARRIED person—			
If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:		If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:	
Not over $142		$0		Not over $444		$0	
Over—	But not over—		of excess over—	Over—	But not over—		of excess over—
$142	—$509	$0.00 plus 10%	—$142	$444	—$1,177	$0.00 plus 10%	—$444
$509	—$1,631	$36.70 plus 12%	—$509	$1,177	—$3,421	$73.30 plus 12%	—$1,177
$1,631	—$3,315	$171.34 plus 22%	—$1,631	$3,421	—$6,790	$342.58 plus 22%	—$3,421
$3,315	—$6,200	$541.82 plus 24%	—$3,315	$6,790	—$12,560	$1,083.76 plus 24%	—$6,790
$6,200	—$7,835	$1,234.22 plus 32%	—$6,200	$12,560	—$15,829	$2,468.56 plus 32%	—$12,560
$7,835	—$19,373	$1,757.42 plus 35%	—$7,835	$15,829	—$23,521	$3,514.64 plus 35%	—$15,829
$19,373		$5,795.72 plus 37%	—$19,373	$23,521		$6,206.84 plus 37%	—$23,521

TABLE 3—SEMIMONTHLY Payroll Period

(a) SINGLE person (including head of household)—				(b) MARRIED person—			
If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:		If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:	
Not over $154		$0		Not over $481		$0	
Over—	But not over—		of excess over—	Over—	But not over—		of excess over—
$154	—$551	$0.00 plus 10%	—$154	$481	—$1,275	$0.00 plus 10%	—$481
$551	—$1,767	$39.70 plus 12%	—$551	$1,275	—$3,706	$79.40 plus 12%	—$1,275
$1,767	—$3,592	$185.62 plus 22%	—$1,767	$3,706	—$7,356	$371.12 plus 22%	—$3,706
$3,592	—$6,717	$587.12 plus 24%	—$3,592	$7,356	—$13,606	$1,174.12 plus 24%	—$7,356
$6,717	—$8,488	$1,337.12 plus 32%	—$6,717	$13,606	—$17,148	$2,674.12 plus 32%	—$13,606
$8,488	—$20,988	$1,903.84 plus 35%	—$8,488	$17,148	—$25,481	$3,807.56 plus 35%	—$17,148
$20,988		$6,278.84 plus 37%	—$20,988	$25,481		$6,724.11 plus 37%	—$25,481

TABLE 4—MONTHLY Payroll Period

(a) SINGLE person (including head of household)—				(b) MARRIED person—			
If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:		If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:	
Not over $308		$0		Not over $963		$0	
Over—	But not over—		of excess over—	Over—	But not over—		of excess over—
$308	—$1,102	$0.00 plus 10%	—$308	$963	—$2,550	$0.00 plus 10%	—$963
$1,102	—$3,533	$79.40 plus 12%	—$1,102	$2,550	—$7,413	$158.70 plus 12%	—$2,550
$3,533	—$7,183	$371.12 plus 22%	—$3,533	$7,413	—$14,713	$742.26 plus 22%	—$7,413
$7,183	—$13,433	$1,174.12 plus 24%	—$7,183	$14,713	—$27,213	$2,348.26 plus 24%	—$14,713
$13,433	—$16,975	$2,674.12 plus 32%	—$13,433	$27,213	—$34,296	$5,348.26 plus 32%	—$27,213
$16,975	—$41,975	$3,807.56 plus 35%	—$16,975	$34,296	—$50,963	$7,614.82 plus 35%	—$34,296
$41,975		$12,557.56 plus 37%	—$41,975	$50,963		$13,448.27 plus 37%	—$50,963

Percentage Method Tables for Income Tax Withholding (continued)

(For Wages Paid in 2018)

TABLE 5—QUARTERLY Payroll Period

(a) SINGLE person (including head of household)—

If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:	
Not over $925		$0	
Over—	**But not over—**		**of excess over—**
$925	—$3,306	$0.00 plus 10%	—$925
$3,306	—$10,600	$238.10 plus 12%	—$3,306
$10,600	—$21,550	$1,113.38 plus 22%	—$10,600
$21,550	—$40,300	$3,522.38 plus 24%	—$21,550
$40,300	—$50,925	$8,022.38 plus 32%	—$40,300
$50,925	—$125,925	$11,422.38 plus 35%	—$50,925
$125,925		$37,672.38 plus 37%	—$125,925

(b) MARRIED person—

If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:	
Not over $2,888		$0	
Over—	**But not over—**		**of excess over—**
$2,888	—$7,650	$0.00 plus 10%	—$2,888
$7,650	—$22,238	$476.20 plus 12%	—$7,650
$22,238	—$44,138	$2,226.76 plus 22%	—$22,238
$44,138	—$81,638	$7,044.76 plus 24%	—$44,138
$81,638	—$102,888	$16,044.76 plus 32%	—$81,638
$102,888	—$152,888	$22,844.76 plus 35%	—$102,888
$152,888		$40,344.76 plus 37%	—$152,888

TABLE 6—SEMIANNUAL Payroll Period

(a) SINGLE person (including head of household)—

If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:	
Not over $1,850		$0	
Over—	**But not over—**		**of excess over—**
$1,850	—$6,613	$0.00 plus 10%	—$1,850
$6,613	—$21,200	$476.30 plus 12%	—$6,613
$21,200	—$43,100	$2,226.74 plus 22%	—$21,200
$43,100	—$80,600	$7,044.74 plus 24%	—$43,100
$80,600	—$101,850	$16,044.74 plus 32%	—$80,600
$101,850	—$251,850	$22,844.74 plus 35%	—$101,850
$251,850		$75,344.74 plus 37%	—$251,850

(b) MARRIED person—

If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:	
Not over $5,775		$0	
Over—	**But not over—**		**of excess over—**
$5,775	—$15,300	$0.00 plus 10%	—$5,775
$15,300	—$44,475	$952.50 plus 12%	—$15,300
$44,475	—$88,275	$4,453.50 plus 22%	—$44,475
$88,275	—$163,275	$14,089.50 plus 24%	—$88,275
$163,275	—$205,775	$32,089.50 plus 32%	—$163,275
$205,775	—$305,775	$45,689.50 plus 35%	—$205,775
$305,775		$80,689.50 plus 37%	—$305,775

TABLE 7—ANNUAL Payroll Period

(a) SINGLE person (including head of household)—

If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:	
Not over $3,700		$0	
Over—	**But not over—**		**of excess over—**
$3,700	—$13,225	$0.00 plus 10%	—$3,700
$13,225	—$42,400	$952.50 plus 12%	—$13,225
$42,400	—$86,200	$4,453.50 plus 22%	—$42,400
$86,200	—$161,200	$14,089.50 plus 24%	—$86,200
$161,200	—$203,700	$32,089.50 plus 32%	—$161,200
$203,700	—$503,700	$45,689.50 plus 35%	—$203,700
$503,700		$150,689.50 plus 37%	—$503,700

(b) MARRIED person—

If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:	
Not over $11,550		$0	
Over—	**But not over—**		**of excess over—**
$11,550	—$30,600	$0.00 plus 10%	—$11,550
$30,600	—$88,950	$1,905.00 plus 12%	—$30,600
$88,950	—$176,550	$8,907.00 plus 22%	—$88,950
$176,550	—$326,550	$28,179.00 plus 24%	—$176,550
$326,550	—$411,550	$64,179.00 plus 32%	—$326,550
$411,550	—$611,550	$91,379.00 plus 35%	—$411,550
$611,550		$161,379.00 plus 37%	—$611,550

TABLE 8—DAILY or MISCELLANEOUS Payroll Period

(a) SINGLE person (including head of household)—

If the amount of wages (after subtracting withholding allowances) divided by the number of days in the payroll period is:		The amount of income tax to withhold per day is:	
Not over $14.20		$0	
Over—	**But not over—**		**of excess over—**
$14.20	—$50.90	$0.00 plus 10%	—$14.20
$50.90	—$163.10	$3.67 plus 12%	—$50.90
$163.10	—$331.50	$17.13 plus 22%	—$163.10
$331.50	—$620.00	$54.18 plus 24%	—$331.50
$620.00	—$783.50	$123.42 plus 32%	—$620.00
$783.50	—$1,937.30	$175.74 plus 35%	—$783.50
$1,937.30		$579.57 plus 37%	—$1,937.30

(b) MARRIED person—

If the amount of wages (after subtracting withholding allowances) divided by the number of days in the payroll period is:		The amount of income tax to withhold per day is:	
Not over $44.40		$0	
Over—	**But not over—**		**of excess over—**
$44.40	—$117.70	$0.00 plus 10%	—$44.40
$117.70	—$342.10	$7.33 plus 12%	—$117.70
$342.10	—$679.00	$34.26 plus 22%	—$342.10
$679.00	—$1,256.00	$108.38 plus 24%	—$679.00
$1,256.00	—$1,582.90	$246.86 plus 32%	—$1,256.00
$1,582.90	—$2,352.10	$351.47 plus 35%	—$1,582.90
$2,352.10		$620.69 plus 37%	—$2,352.10

STATE AND LOCAL NEWS

For more state and local news, subscribe to *PayState Update* (www.americanpayroll.org/product/47/86). APA's biweekly e-newsletter is devoted exclusively to state and local payroll compliance and is now available on on the APA Bookshelf. Visit http://bookshelf.americanpayroll.org.

California

Commission wage payment for licensed barbers and cosmetologists established. Effective 1-1-18, commission wages paid to any employee licensed under the Barbering and Cosmetology Act – barbers, cosmetologists, aestheticians, manicurists, electrologists, and apprentices – are due and payable at least twice during each calendar month on a day designated in advance by the employer as the regular payday. An employer and employee can agree to a commission in addition to a base hourly rate. Commission wages are wages paid as a percentage or a flat sum portion of the sums paid to the employee by the client receiving the service, and for selling goods, as long as the employee is paid a regular base hourly rate of at least two times the state minimum wage rate in addition to commissions paid. The employee must be compensated for rest and recovery periods at a pay rate equal to or greater than the employee's regular base hourly rate [S.B. 490, L. 2017].

Disability insurance elective coverage rate increased. For 2018, the disability insurance elective coverage rate for employers electing state disability insurance will increase to 4.59% (previously 4.55%) up to the wage base of $114,967 (previously $110,902). The premium includes contributions for state disability insurance (SDI) and paid family leave (PFL) benefits [Employment Development Department, Pub. DE 3DI-I, *Disability Insurance Elective Coverage (DIEC) Rate Notice and Instructions for Computing Annual Premiums*, rev. 12-17, available at www.edd.ca.gov/pdf_pub_ctr/de3dii.pdf].

Employer's guide released. The 2018 Pub. DE 44, *California Employer's Guide*, is available from the Employment Development Department (EDD) at www.edd.ca.gov/pdf_pub_ctr/de44.pdf. The guide is a resource for employers on how to comply with California's payroll tax laws [EDD, *Tax Branch News 368*, 1-10-18].

Colorado

Minimum wage increased. Effective 1-1-18, the state minimum wage increased to $10.20 per hour from $9.30 per hour (this updates *The Payroll Source®*, §2.11-1). The tip credit remains $3.02 per hour (see *The Payroll Source®*, §2.11-2), meaning the minimum cash wage for tipped employees increased to $7.18 per hour from $6.28 per hour, effective 1-1-18 [Colorado Minimum Wage Order 34].

Withholding rounding rule repealed. Effective 1-1-18, 1 CCR 201-2, Regulation 39-22-604.5, which required all state tax withholding to be deducted in whole dollar amounts, was repealed. The rule required employers to round all withholding deductions to the nearest dollar amount (see www.sos.state.co.us/CCR/eDocketDetails.do?trackingNum=2017-00433).

Connecticut

Tax amnesty program offered. The Department of Revenue Services (DRS) is offering a tax amnesty program called Fresh Start, which began on 10-31-17 and will last through 11-30-18. Employers can sign up for the voluntary program, available for most taxes administered by the DRS including withholding taxes, but note that the program does not cover unemployment insurance taxes administered by the state Department of Labor. Employers that failed to file a return or failed to report the full amount of tax on a previously filed return for any tax return due on or before 12-31-16 may be eligible. The program provides incentives to taxpayers that voluntarily come forward and pay unreported tax liabilities. Those incentives could include a waiver of penalties and 50% of the interest owed, a limited lookback period for certain non-filers, and the avoidance of criminal investigations or prosecutions related to applications submitted and taxes paid in good faith under the program. More information is available on the DRS website at www.ct.gov/drs/cwp/view.asp?a=3686&q=598998 [S.B. 1502A, L. 2017].

Georgia

Withholding tables issued. The Department of Revenue (DOR) recently released a revised version of the tax guide for employers, which is available at https://dor.georgia.gov/documents/2018-employers-tax-guide. It contains withholding tax tables (there are no changes to the tax tables) [DOR, *Employer's Tax Guide*, rev. 1-18].

Hawaii

Electronic filing, W-2s required. New this year, employers are required to electronically file Forms W-2 with the Department of Taxation (DOT) by 2-28-18 if they are required to file electronically with the federal government. Magnetic media is not accepted. There are two electronic filing methods: web file upload through Hawaii Tax Online or bulk upload via the Hawaii Bulk Electronic Filing System. More information is available in the DOT Publication EF-10, *Form W-2 and W-2c Electronic Filing Specifications,* rev. 1-16-18 (at http://files.hawaii.gov/tax/eservices/ebiz/2017%20Pub%20EF-10_HI_EFW2SpecsGuideV3.pdf).

Illinois

Electronic filing of withholding return required. Effective 1-1-18, Form IL-941, *Illinois Withholding Income Tax Return*, is required to be filed electronically. Employers may request a waiver if there is no internet access or it is a hardship. Contact Taxpayer Assistance at 800-732-8866 to request a waiver form. Electronic filing is available using MyTax Illinois at https://mytax.illinois.gov/_/

[Department of Revenue, FY 2018-18, 12-17].

Indiana

County income tax rates changed. Effective 1-1-18, 12 counties have income tax rate changes: Bartholomew – the rate increased to 0.0175 from 0.0125; Carroll – the rate increased to 0.020733 from 0.017039; Daviess – the rate decreased to 0.015 from 0.0175; Decatur – the rate increased to 0.0235 from 0.0133; Greene – the rate increased to 0.0175 from 0.0125; Howard – the rate increased to 0.0175 from 0.0165; Martin – the rate increased to 0.0175 from 0.015; Montgomery – the rate increased to 0.023 from 0.021; Orange – the rate increased to 0.0175 from 0.0125; Putnam – the rate increased to 0.02 from 0.0175; Scott – the rate increased to 0.0216 from 0.0141; and Vanderburgh – the rate increased to 0.012 from 0.01 [DOR, Departmental Notice No. 1, *How to Compute Withholding for State and County Income Tax*, rev. 12-17].

Maryland

Paid sick leave enacted. On 1-12-18, the state legislature enacted the Maryland Healthy Working Families Act requiring certain employers to provide paid sick leave (PSL) to employees, overriding last year's veto by Gov. Larry Hogan. Since Maryland bills usually become law 30 days after a veto is overridden, this would make the effective date of the PSL requirements 2-11-18. However, some business groups are pushing for a delay in the effective date to give employers more time to comply. Some state legislators and Gov. Hogan have indicated they would support extending the effective date to 90 days from passage (4-12-18) [H.B. 1, L. 2018].

New Jersey

EITC notice due. Employers must comply with federal and state requirements to send notices about the Earned Income Tax Credit (EITC), even though employees no longer receive advance payments of the credit as of 2011. In New Jersey, the notice must be given to potentially eligible employees between January 1 and February 15 of each year to coincide with the employer's distribution of Forms W-2. The written notification must use the statement developed by the State Treasurer, which is available at www.state.nj.us/treasury/taxation/pdf/eitcstatement.pdf.

Texas

EITC notice due. Employers must comply with federal and state requirements to send notices about the Earned Income Tax Credit (EITC), even though employees no longer receive advance payments of the credit as of 2011. In Texas, the notice must be given no later than March 1 of each year. The Texas Workforce Commission provides information about EITC notification at www.twc.state.tx.us/customers/bemp/earned-income-tax-credit-notification.html.

Washington

Seattle paid sick and safe leave ordinance amended. Effective 1-14-18, the Seattle Paid Sick and Safe Time requirements reflect changes required by the Washington State paid sick leave (PSL) law, which took effect on 1-1-18. Notably, whereas the statewide PSL law only applies to nonexempt employees, the Seattle PSL ordinance applies equally to nonexempt and exempt employees (with a few limited exceptions). The amendments maintain the city law's broad coverage. The Seattle PSL requirements will now apply to all employers with at least one employee, whereas before they applied only to employers with at least four full-time employees. More information on additional changes to the city ordinance and a 2018 Workplace Poster can be found on the Seattle Office of Labor Standards paid sick and safe time ordinance website at www.seattle.gov/laborstandards/ordinances/paid-sick-and-safe-time [Seattle Council Bills 119144 and 119145, L. 2017].

Spokane paid sick leave ordinance phased out. Effective 12-31-17, the sunset provision of the Spokane Earned Sick and Safe Leave Ordinance went into effect because the Washington paid sick leave (PSL) law took effect on 1-1-18. This means that the Spokane ordinance is no longer in effect, so employers with employees working within Spokane should check to make sure their PSL plans comply with state PSL requirements. Employers are encouraged – but not required – to carry over PSL earned under the Spokane ordinance [City of Spokane, Earned Sick and Safe Leave Ordinance Sunset FAQs, rev. 12-21-17].

PAYROLL CURRENTLY

Publisher, Executive Director
Dan Maddux

Senior Director of Publications, Education, and Government Relations
Michael P. O'Toole, Esq.

Director of Publications
Laura Lough, Esq.

Managing Editor
Curtis E. Tatum, Esq.

Editors
Edward Kowalski, Esq.
Lia Coniglio, Esq.
Jyme Mariani, Esq.
Mavanee Anderson, Esq.

Inside Washington
William Dunn, CPP
Alice Jacobsohn, Esq.

Graphic Designer
Caren J. Bennett

Web Implementation
Rosemary Birardi

PAYROLL CURRENTLY NEWSLETTER

Payroll Currently (ISSN 1065-6529) is published by the American Payroll Institute, Inc., in cooperation with The American Payroll Association, 660 North Main Avenue, Suite 100, San Antonio, TX 78205-1217; Tel: 210-226-4600; Fax: 210-226-4027. Payroll Currently is designed to provide authoritative information in regard to the subject matter covered. It is provided with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought.