President Orders Paid Sick Leave for Federal Contract Workers

Under a new Executive Order signed by President Obama on Labor Day, federal contractors will be required to provide contract workers with up to seven days of paid sick leave per year [Executive Order—Establishing Paid Sick Leave for Federal Contractors, September 7, 2015]. The Order is effective immediately, but will apply only to contracts awarded on or after January 1, 2017.

The paid sick leave requirement will generally apply to the same types of contracts that are subject to the new $10.10 minimum wage for federal contract workers. The following contracts are covered contracts if wages of employees under the contract are governed by the Davis-Bacon Act, the Service Contract Act, or the Fair Labor Standards Act (including employees who are exempt from minimum wage and overtime requirements):

- Procurement contracts for services or construction,
- Contracts for services covered by the Service Contract Act,
- Contracts for concessions, and
- Contracts entered into with the federal government in connection with federal property or lands and related to offering services to federal employees or the general public.

**Sick leave requirements.** Covered contracts entered into after 2016 will be required to provide that all employees performing work on the contract will earn not less than one hour of paid sick leave for every 30 hours worked. A contractor could not limit the total accrual of paid sick leave to less than 56 hours—the equivalent of seven eight-hour days. The paid sick leave requirement will also apply to employees of subcontractors working on covered contracts. The primary contractor will be required to ensure that the paid sick leave requirement is incorporated into any lower-tier subcontractors.

Paid sick leave will cover an employee for time off for his or her own medical needs, as well as those of family members. The Executive Order provides that paid sick leave earned under the order may be used for any absence resulting from:

- Physical or mental illness, injury, or medical condition;
- Obtaining diagnosis, care, or preventive care from a health care provider;
- Caring for a family member (including a child, parent, spouse, domestic partner, or any other individual related by affinity whose close association with the employee is the equivalent of a family relationship) who has an illness, injury, or medical condition or is otherwise in need of care;
Caring for a family member (as described above) in connection with domestic violence, sexual assault, or stalking in order to obtain counseling, seek relocation, seek assistance from a victim services organization, or to take legal action.

Use of paid sick leave cannot be made contingent on the employee's finding a replacement to cover missed work time. Paid sick leave must be provided on oral or written request of an employee that includes the expected duration of the leave. If the need for leave is foreseeable, the request must be made as soon as practicable. A contractor will be permitted to require certification of a health care provider only for sick leave absences of three or more consecutive workdays. In the case of absences of three or more days in connection with domestic violence, sexual assault, or stalking, a contractor will be permitted to require documentation from an appropriate individual or organization. The contractor may require only the minimum necessary information to establish the need for leave, and may not disclose any information about the domestic violence, sexual assault, or stalking unless the employee consents or disclosure is required by law.

Accrued paid sick leave will carry over from year to year, and must be reinstated from an employee rehired by a covered contractor within 12 months after a job separation. However, a contractor will not be required to make payment to an employee for accrued sick leave on termination of employment.

A contractor's existing paid sick leave policy will satisfy the requirements if it is made available to all covered employees and the amount of paid leave is sufficient to meet the requirements of the Executive Order and leave can be used for the same purposes and under the conditions spelled out in the Order. On the other hand, the paid sick leave requirement applies on top of a contractor's prevailing wage and fringe benefit requirements under the Service Contract Act (41 U.S.C. chapter 67) or the Davis-Bacon Act (40 U.S.C. chapter 31, subchapter IV).

Regulations required. The Executive Order directs the Department of Labor to issue any necessary implementing regulations by September 30, 2016, including regulations providing exclusions from the requirements.

Estimated impact. According to a White House fact sheet, the paid sick leave requirement will give approximately 300,000 federal contract workers the new ability to earn up to seven days of paid sick leave each year. Moreover, additional workers will gain access to more sick leave than they currently have [FACT SHEET: Helping Middle-Class Families Get Ahead by Expanding Paid Sick Leave, Sept. 7, 2015].

On the other hand, the White House fact sheet points out that an estimated 44 million private-sector workers—about 40% of the total private-sector workforce—do not have access to paid sick leave. Therefore, President Obama renewed his call for Congress to pass federal legislation guaranteeing every working American paid family and medical leave to care for a new child, a seriously ill family member, or his or her own serious illness. According to the President, “We are the only advanced country on Earth that doesn’t guarantee paid sick leave or paid maternity leave to our workers.… And that forces too many parents to make the gut-wrenching choice between a paycheck and a sick kid at home” [President Barack Obama, State of the Union Address, January 20, 2015].

Payroll Manager’s Letter
DOL Finalizes Pay Transparency Rules for Federal Contractors

The Department of Labor’s Office of Federal Contract Compliance Programs (OFCCP) has issued final regulations to prohibit federal contractors from maintaining pay secrecy policies [41 C.F.R. §§60-1.3, 60-1.35, 60-1.4]. The final regulations implement an Executive Order that was issued in 2014, directing the DOL to establish rules prohibiting federal contractors from discriminating against workers who share pay information [EO 13665, Nonretaliation for Disclosure of Compensation Information, 4-8-2014].

Under the final rule, federal contractors and subcontractors may not fire or discriminate against employees or applicants for employment for inquiring about, discussing, or disclosing their compensation or that of other employees or applicants. Job applicants or employees of federal contractors can file discrimination complaints with the OFCCP if they believe they were fired or otherwise discriminated against for discussing, inquiring about, or disclosing their compensation information or that of others. This protection generally does not apply, however, to an employee who has access to compensation information of other employees or applicants as part of the employee’s job and discloses that information other than as part of his or her job.

The transparency rules are largely aimed at gender-based pay discrimination, although they apply broadly to pay discrimination based on race, color, religion, sex, or national origin. “Pay secrecy practices will no longer facilitate the pay discrimination that is too often perpetrated against women and people of color in the workplace,” said OFCCP Director Patricia Shiu.

IRS Rules on Annual Transit Passes

The IRS recently issued a private letter ruling on the federal tax treatment of annual Smart Card transit passes issued by an employer to its employees [Ltr. Rul. 201532016].

KEY POINT The ruling serves as a useful reminder of the payroll tax rules that apply to transit passes. But it should also serve as a wake-up call for many employers that are facing a year-end deadline to switch from cash reimbursements to the use of transit passes for employee transportation fringe benefits (see below).

Facts of the ruling. An employer (a city government) purchased annual Smart Cards from the city Transit Authority for each of its full-time and part-time employees. The Smart Cards entitle employees to ride on all parts of the Transit Authority’s regular bus routes, as well as on certain rapid transit systems operated by the Transit Authority. The Smart Cards can only be used for transit on the Authority’s mass transit facilities.

At the beginning of each calendar year, the employer provides a Smart Card to each employee. Each Smart Card includes a photo of the employee and cannot be resold or transferred to another individual. Each Smart Card expires on December 31 of the calendar year for which it is issued. However, an employee’s card is deactivated if an employee terminates employment or otherwise ceases to be eligible for a Smart Card.

Basic rules. The tax law excludes “qualified transportation fringe benefits” from an employee’s gross income. Qualified benefits include transit passes, which are defined as any pass, token, farecard, voucher or similar item entitling a person to transportation (or transportation at a reduced price) on mass transit facilities or in a commuter highway vehicle (vanpooling).

When an employer distributes transit passes in-kind to employees, there are no special substantiation requirements. However, there is a monthly limit of the amount that can be excluded from the employee’s gross income. The employee must include in gross income the amount by which the monthly fair market value of a transit pass (less any amount paid by the employee) exceeds the monthly exclusion limit.

For 2015, the combined exclusion for transit passes and vanpooling is $130 per month (see “Is Another Retroactive Transit Benefit Hike Coming?” below).

Transit passes can be distributed in advance for more than one month, but not for more than 12 months. When a pass is valid for more than one month, such as an annual pass, the value of the pass can be divided by the number of months for which it is valid to determine whether the value of the pass exceeds the monthly limit. When transit passes are distributed in advance, the value of passes provided for months in which an individual is not an employee must be included in wages for income tax purposes. If passes are distributed in advance for more than three months, the value of passes for months in which the individual is not an employee must be included in wages for employment tax purposes.

IRS ruling. The IRS concluded that the Smart Cards provided by the employer are transit passes for purposes of the
transportation fringe benefit rules. Therefore, employees may exclude the monthly fair market value of a Smart Card, up to the applicable monthly limit, from income. If the monthly fair market value of a Smart Card exceeds the monthly limit, the excess must be included in the employee’s income and wages. For purposes of determining if the monthly value exceeds the monthly limit, one-twelfth of the fair market value of the annual Smart Card is attributable to each month for which it is valid.

Since an employee’s Smart Card is deactivated if an employee terminates employment or ceases to be eligible, no amount will be included in income for months during which the Smart Card is deactivated.

Year-end deadline. Under the transportation fringe benefit rules, an employer can provide cash reimbursements for transit passes only if a voucher or similar item that can be exchanged only for a transit pass is not readily available for direct distribution to an employee [I.R.C. §132(f)(3)].

The IRS originally provided guidance on the use of Smart Cards, debit cards, or other electronic media for transit benefits in 2006. That guidance was scheduled to become effective January 1, 2008, but was delayed until January 1, 2012. [Rev. Rul. 2006-57, 2006-47 I.R.B. 911; Notice 2010-94, 2010-52 I.R.B. 927]. At the time that guidance was issued, electronic fare media was still in the process of development. In particular, terminal-restricted debit cards, which can be used only at merchants where fare media is sold, were not widely used. Therefore, the IRS said that it would not challenge the use of cash reimbursements when the only available voucher or other item available for direct distribution was a terminal-restricted debit card.

By contrast, in a ruling issued in late 2014, the IRS concluded that terminal-restricted debit cards are now widely used and available for purchase by employers subject to terms and costs that are similar to other forms of electronic media [Rev. Rul. 2014-32, 2014-50 I.R.B. 917]. Therefore, employers should no longer be permitted to provide transit benefits in the form of cash reimbursements in areas where a terminal-restricted debit card is readily available. The IRS delayed the effective date to give employers time to comply. However, employers that now use cash reimbursements in areas where terminal-restricted debit cards are available must make the switch for periods beginning after December 31, 2015.

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Is Another Retroactive Transit Benefit Hike Coming?

The monthly limit on the exclusion for transit benefits and/or vanpooling is currently $130 per month for 2015, while the monthly limit on qualified parking benefits is capped much higher at $250 per month.

In recent years, Congress has enacted temporary measures increasing the exclusion for transit to be in parity with the exclusion amount for qualified parking. Moreover, most recently Congress has enacted legislation after-the-fact, retroactively increasing the transit benefit exclusion.

For example, for 2011 the exclusions for both benefits were set at $230 per month under a temporary parity rule. The parity rule expired for 2012, dropping the monthly exclusion for transit benefits to just $125, compared to an exclusion of $240 per month for parking—or so it seemed. However, the American Taxpayer Relief Act of 2012, which was signed into law two days after year end, reinstated the parity for both 2012 and 2013—retroactively increasing the 2012 exclusion for transit benefits to $240 per month. And just last year, The Tax Increase Prevention Act of 2014, which was signed into law on December 19, 2014, reinstated the parity provision for 2014, retroactively increasing the 2014 exclusion for transit benefits to $250 per month [I.R.C. §132(f) as amended by Pub. L. No. 112-240 and Pub. L. No. 133-295 Div. A].

In the Works An “extenders” bill currently being considered in Congress includes another temporary “fix” that would provide for parity in the two benefits for 2015 and 2016 [Description of the Chairman’s Mark of a Bill to Extend Certain Expired Tax Provisions (JCX-101-15), July 17, 2015]. This would, of course, mean another retroactive increase in the transit benefit exclusion—from $130 to $250 per month—for 2015, as well as continuing uncertainty about the state of the exclusion in future years.

Meanwhile, the American Payroll Association is urging Congress to apply parity to the benefits on a permanent basis. “Retroactive application is one of the most difficult aspects to administer for both employers and the employees using the benefit. Many employees will not have the opportunity to recoup the missed benefits from months past making the retroactive application irrelevant. For those who do have the opportunity, employers need to adjust the employee’s tax withholding, which can be complicated and expensive,” explains the APA.

The APA is working within a larger coalition of 52 organizations called Commuter Benefits Work for Us (www.commuterbenefitsworkforus.com). While the APA says its overriding interest is to eliminate the administrative burden and uncertainty that comes with having the benefits renewed each year, it notes that the coalition as a whole has varied interests in commuter benefits, ranging from ecological to economic [APA Works to Resolve Issues With Commuter Benefits, Aug. 27, 2015].
NLRB Expands Joint Employer Status

A new decision from the National Labor Relations Board (NLRB) greatly expands the reach of joint employer status under the National Labor Relations Act (NLRA). Under a new “refined” standard for determining joint employer status, two or more entities will be deemed joint employers of a single workforce if (1) they are both employers under common law principles, and (2) they share or codetermine those matters governing the essential terms and conditions of employment. In making its determination on joint employer status, the NLRB will consider, among other factors, whether an employer has directly or indirectly exercised control over the terms and conditions of employment or whether it has reserved the authority to do so. In other words, the NLRB can find that an employer is a joint employer if that employer has the potential to control the employees’ work, even if it does not actually exercise control.

In its decision, the NLRB found that Browning-Ferris Industries of California (BFI) was a joint employer with a company that supplied employees to BFI to perform various work functions for BFI, including cleaning and sorting recycled products. In finding that BFI was a joint employer, the NLRB relied on the indirect and direct control that BFI possessed over essential terms and conditions of employment of the employees as well as BFI’s reserved authority to control such terms and conditions [Browning-Ferris Industries of California, Inc., Case 32–RC–109684 (NLRB, August 27, 2015)].

In announcing its decision, the NLRB emphasized that its new standard is designed “to better effectuate the purposes of the Act in the current economic landscape.” Noting that more than 2.87 million of the nation’s workers were employed through temporary agencies in August 2014, the NLRB concluded that its previous joint employer standard has failed to keep pace with changes in the workplace and economic circumstances.

RAMIFICATIONS A determination of joint employer status by the NLRB exposes an employer to collective bargaining responsibilities and responsibility for labor law violations under the NLRA. However, the NLRB’s decision could have spill-over effects under other employment laws. Most notably, the Department of Labor’s Wage and Hour Division (WHD) has set its sights on what WHD Administrator David Weil calls the “fissured workplace.” In recent years, according to WHD, the employment relationship between workers and businesses has “fissured apart” as companies have contracted out or otherwise shed activities to be performed by other businesses. As a result, says Weil, “Employees are often unaware for whom they actually work.” To address this issue, WHD has launched directed investigations centered on employer and industry business models that function to obscure, or eliminate entirely, the link between the worker and the business. And WHD is likely to seize on the NLRB’s expanded test for joint employer status to support those efforts.

Another view. Not surprisingly, the NLRB’s decision has sparked sharp criticism—including in the halls of Congress. The Protecting Local Business Opportunity Act (H.R. 3459, S. 2015) would amend the NLRA to provide that two or more employers will be considered joint employers “only if each shares and exercises control over essential terms and conditions of employment and such control is actual, direct and immediate” (emphasis added).

While the Browning-Ferris decision dealt with contract workers, the sponsors of the bill contend that the new standard will also impact franchise businesses. “Changing the joint employer standard will impede franchising by taking away the benefits of a small entrepreneur being able to start a small business and grow it using a brand name that was established by a major corporation,” said Sen. Johnny Isakson (R-GA), Chairman of the Senate Subcommittee on Employment and Workforce Safety, in a press release announcing the bill. The bill’s sponsors contend that approximately 780,000 franchise businesses and millions of contractors will be impacted by the NLRB decision.

Comment Period Closed on Proposed OT Regs

Despite repeated calls from constituents and members of Congress for an extension, the period for public comments on the proposed white-collar exemption regulations is officially closed. With 289,891 comments on record by the September 4, 2015 cut off, Wage and Hour Administrator David Weil decided enough is enough. “[W]e believe a 60-day comment period provides sufficient time for interested parties to submit substantial comment. Equally important, a comment period of this length, coupled with the feedback already received during the initial outreach
sessions, will meet the goal described above of ensuring the Department has the level of insight from the public needed to produce a quality regulation. For these reasons we will not be extending the comment period," Weil stated.

As Payroll Manager’s Letter has reported, the proposed regulations would raise the salary threshold for the white-collar exemptions for administrative, executive, and professional employees from the current level of $455 per week ($23,660 annually) to $921 per week ($47,892 annually), while the salary threshold for highly compensated employees would rise from $100,000 to $122,148 per year. Under the proposal, these thresholds would be indexed annually, with the salary threshold for the white-collar exemptions projected as $970 per week ($50,400 per year) for 2017.

A random sampling of comments by your editors reveals some common themes, ranging from kudos, to condemnation, to calls for a more gradual approach. Here are some examples:

- The employer and employee should determine what wages are “DESERVED” not an outsider!
- I am aware of the abuses to the current rules, and am in support of making changes to better protect workers who have been classified as a “manager”, for example, yet have been required to do most of the same duties as their subordinates with no recognition of overtime pay.
- As a person working in a non-profit agency, I can tell you that we have highly educated and skilled members of our workforce, including licensed professional mental health providers, who make independent judgments based on their professional training, and don’t come close to making $50,000 a year. I think it needs to be taken into consideration that a $50,000 wage in Southern Indiana is probably a lot different than that wage in a state with much higher cost of living.
- The salary level required for exempt employees should be phased in from its current level and only increase to a level that is a much more reasonable progression.
- This massive increase will hurt my company’s employees and operations.
- Strongly support the new regulations to raise the overtime threshold to $50,440 per year! The rule should also clearly define the kind of high-level work a salaried employee must perform to be exempt from receiving overtime. Please act immediately to make this change to bring overtime protection to millions of workers who are working overtime but not getting paid for it.
- Raising the limit to the proposed amount is too high of an increase. The raising of the threshold would be better if this was done on a staged in basis over a period of time such as the next 7 years so businesses would not be adversely affected.

- The Labor Department would convert many retail managers from exempt to non-exempt, depriving them of the guaranteed income, status, career opportunities and flexibility of a salaried management position (from Dollar Tree stores).
- To be clear, we [the National Restaurant Association] do support raising the salary threshold.... It is then clear that, at least in reference to the restaurant industry—the nation’s second-largest private-sector employer—the proposed salary level does exclude from exemption an unacceptably high number of employees who meet the duties test.
- One of the most harmful provisions to business planning will be the Department’s proposal to automatically raise the salary level each year. Such unpredictable, automatic increases will make budgeting and accounting very maddening for a small business owner like me, and are likely to escalate the salary threshold level to an inappropriately high level in a matter of a few years.
- This change is too much, too fast, and will disproportionately affect nonprofits.
- While I am glad to see that there are some changes being proposed to the exemption requirements under FLSA, as a Human Resources professional who is tasked with interpreting exemption requirements for my company, I feel that there is more that could be done. Specifically, I would like to see the exemption tests eliminated entirely. Instead, make this a bright-line test: If the position earns more than $X/week (or year) in base pay, it is considered exempt. Index that amount to increase annually or biannually. Any position earning less than that amount will be considered non-exempt, regardless of duties. This would make it much more clear-cut for employers to determine who must be paid overtime.
- As an employer in the construction industry, I write to comment on the proposal by the Department of Labor (DOL) to change the exemption standards for overtime requirements under the Fair Labor Standards Act (FLSA). The proposal will have major negative repercussions for my business, and I strongly urge DOL to reconsider the proposal.
- While I would agree that the current standard may be too low, raising it by 113% would have substantial implications on businesses. The impact would be threefold. First, productivity of affected employees would be impacted by reducing the amount of work that can be completed due to time restrictions. Second, there would be significant cost increases due to needing to hire additional personnel to make up for the lost productivity or by paying higher overtime rates. Third, due to the increase in costs, product pricing must be adjusted upward to maintain profitability.
For our company, this proposal will affect 20 of our salary employees who currently make less than the proposed $970 per week but make more than the current limit of $455 per week. We have 78 salary positions (not counting outside salesmen who will not be affected by the proposal since no changes are being made to that group of employees). In addition, the proposal will affect 3 HCE that currently make between the current limit of $100,000 & the proposed $122,148. Just for the record, our company employs a total of 270 full time employees. It is our company’s recommendation that this proposal not be passed.

A far more detailed—and scientific—analysis of comments by FiscalNote showed, not surprisingly, that employers tend to oppose the rule and employees support it. However, the proposed changes are viewed by both opponents and supporters as drastic in size, scope, and impact. Moreover, even supporters of a rule change have suggested a more incremental approach might be in order.

FiscalNote, which provides a real-time legislative and regulatory intelligence platform, aggregated data about public sentiment, a traditionally untapped resource in analysis, using Sonar—an app that searches, tracks, and analyzes proposed and final federal regulations, while providing sentiment analysis across comments from stakeholders in order to distill insights about the proposed DOL rule.

One common criticism from commentators on the proposed rule was its failure to take into account geographic differences in compensation. And an analysis conducted by Oxford Economics for the National Retail Federation bears out those differences. According to the analysis, the proposed salary threshold for the white-collar exemptions was set by the DOL to give overtime to the lowest-paid 40% of all workers (or, more accurately, the salary threshold is set at the 40th percentile of earnings for all salaried workers). However, the analysis shows that only one state—Maine—would hit the 40% target. In 10 states—Alabama, Georgia, Hawaii, Idaho, Kentucky, Nevada, North Dakota, South Carolina, South Dakota, and Texas—the proposed salary threshold would bring at least 45% of full-time salaried workers under the overtime rules. And another eight states—Arkansas, Florida, Louisiana, Mississippi, North Carolina, Oklahoma, Tennessee, and West Virginia—would see at least 50% of full-time salaried workers covered [NRF Press Release, One-Size-Fits-All Overtime Proposal Fails to Consider Cost-of-Living, 9-1-2015].

DOL Delays Enforcement of Home Care Regulations

A s we have reported, a three-judge panel of the Circuit Court of Appeals for the District of Columbia has officially upheld the Department of Labor’s (DOL) tough new regulations revising the Fair Labor Standards Act (FLSA) rules for home care workers [Home Care Association of America v., Weil, No. 15-5018 (DC Cir., 8-21-2015)] (see the September 21, 2015 issue). The regulations significantly narrow the FLSA minimum wage and overtime exemptions for companion services and live-in domestic services and preclude third-party employers from claiming the exemptions.

ON HOLD Despite its victory in court, the Department of Labor (DOL) has announced that it will not enforce the final rule until 30 days after the federal appeals court issues a mandate making its opinion effective [Application of the FLSA to Domestic Service; Announcement of 30-Day Period of Non-Enforcement, 80 Fed. Reg. 55029 (September 14, 2015)].

At the time the regulations were issued in 2013, the IRS provided a 15-month window until January 1, 2015, for implementation of the new rules. Subsequently, the DOL announced that the agency would not bring enforcement actions for violations of the new rules for the first six months of 2015 and would exercise discretion in determining whether to bring enforcement actions during the remainder of 2015, giving strong consideration to good faith efforts to bring home care programs into FLSA compliance [An Announcement Concerning the Home Care Final Rule, 10-7-2014]. What’s more, the DOL’s non-enforcement policy became mandatory when a U.S district court enjoined the DOL from implementing the rule changes [Home Care Association of America v. Weil, No. 14-cv-967 (RJL) (D DC, 12-22-2014); Home Care Association of America v. Weil, No. 14-cv-967 (RJL) (D DC, 1-15-2014)].

The D.C. Circuit Court’s decision overturning that injunction paves the way for full enforcement of the controversial rules. However, the DOL points out that the court’s decision will become effective only when that court issues a mandate directing the district court to enter a new judgment in favor of the DOL. Moreover, the DOL will extend its non-enforcement policy for 30 days after that mandate is issued.

The DOL notes that the 30-day non-enforcement policy does not replace or affect the timeline of the Department’s existing time-limited non-enforcement policy announced in October 2014.
New stats on health FSA rollovers. A new study by the Healthcare Trends Institute reports that more than half (51%) of surveyed employers adopted the new $500 rollover option for health flexible spending arrangements (FSAs) when it first became available in 2014, while 49% elected to offer the more traditional 2½ month post-year-end grace period for using unused FSA contributions. Employers that passed on the rollover option cited reluctance to change systems or process to manage the change (37%), the need for increased employee communications (20.4%), or satisfaction with the rollover option (20.4%) as reasons for not making the change. However, of those employers that did not offer the rollover option for 2014, 40.5% said they will consider the option in the future. Most companies that did make the switch (66%) did not experience any problems adopting the rollover option, but almost 20% (19.1%) reported administrative challenges and 17% reported system compatibility issues. A smaller number grappled with employee education (12.8%) and communication (10.6%) issues [Healthcare Trends Institute, Benchmark Study: 2014 Flexible Spending Accounts (FSAs)].

Michigan lowers UI wage base. Michigan’s unemployment tax wage base dropped to $9,000 for the third and fourth quarters of 2015. In 2011, amendments to the Michigan Employment Security Act increased the wage base from $9,000 to $9,500. The amendments, which were enacted as a result of depletion of the Michigan Unemployment Trust Fund during the recession, included a triggering mechanism to decrease the wage base to $9,000 when the Trust Fund is expected to maintain a $2.5 trillion balance for two consecutive quarters. That condition was met as of July 27, 2015, thus reducing the wage base starting with the third quarter of 2015 [Michigan UIA Communication].


IRS issues specs for substitute 941s. The IRS has provided the general rules and specifications for reproducing paper and computer-generated paper substitutes of Form 941, Employer’s QUARTERLY Federal Tax Return, and related schedules [Rev. Proc. 2015-38, 2015-36 I.R.B. 295 (reprinted as Publication 4436), 9-7-2015].

Responsible person owes tax despite lack of notice. If a business fails to remit payroll taxes that have been withheld from employees’ incomes, the IRS can collect the unpaid taxes in the form of a trust fund recovery penalty (TFRP) from the business’ “responsible person” [I.R.C. 6672(a)]. Before assessing a TFRP, the IRS must send a notice to the responsible person’s last known address informing him or her that a TFRP may be assessed [I.R.C. §6672(b)(1)]. However, according to the U.S. Tax Court, the fact that the responsible person never received the notice doesn’t bar the IRS from assessing the penalty. In the case before the court, the IRS properly sent a notice by certified mail to a business’ responsible person at his last known address, but the notice was returned to the IRS as “undeliverable.” Nonetheless, the Tax Court held that the IRS’s subsequent TFRP assessments against the responsible person were valid. The Tax Court found that mailing of a notice to a responsible person’s last known address is enough to satisfy the notice requirement, even if the notice is not received [Obiakor, TC Memo 2015-112].