

Payroll Management Report Letters, 1513, PAYROLL MANAGEMENT GUIDE

President's 2019 budget contains some payroll-related items

The President has submitted the 2019 budget proposal. The payroll-related items are highlighted below.

Earned income and child tax credits

A valid social security number (SSN) for work would be required in order to claim the earned income tax credit (EITC) or the child tax credit (CTC). For both credits, the requirement would apply to taxpayers, spouses, and all qualifying children. Under current law, households who do not have SSNs that are valid for work, including illegal immigrants who use individual taxpayer identification numbers (ITINs), can claim the CTC, including the refundable portion. This proposal would ensure that only individuals who are authorized to work in the U.S. could claim these credits.

Paid parental leave plan

There would be six weeks of paid family leave to new mothers and fathers, including adoptive parents. It would be achieved by using the unemployment insurance (UI) system as a base. The proposal would allow states to establish paid parental leave programs in a way that is most appropriate for their workforce and economy. States would be required to provide six weeks of parental leave and the proposal gives states broad latitude to design and finance the program. The proposal is fully offset by a package of reforms to the UI system—including reforms to reduce improper payments, help unemployed workers find jobs more quickly, and encourage states to maintain reserves in their unemployment trust fund accounts.

Child support enhancements

The budget includes a number of proposals that would strengthen the Child Support Enforcement Program, which would provide state agencies additional tools to increase efficiency, facilitate family self-sufficiency, and promote responsible parenthood.

The package of child support enforcement and establishment proposals would increase child support collections that would in turn result in savings to federal benefits programs. For example, by requiring additional data matches and reporting throughout child support establishment and enforcement processes, the proposal expands the ability to intercept sources of income for payment of child support, including insurance settlements, lump-sum payments provided by employers, gaming winnings from casinos, and state workers' compensation claims. The package also would improve enforcement procedures related to freezing and seizing certain assets held by delinquent non-custodial parents, and would require the reporting of independent contractors to state directories used to locate non-custodial parents and identify sources of income. Finally, the package provides states and tribes with access to better financial data matching programs, as well as tools that promote interstate cooperation.

In addition, there is a provision to create a Child Support Technology Fund to facilitate the needed replacement of aging IT systems in state child support programs, and increase security, efficiency, and program integrity. Incorporating the advantages of private sector approaches to operating government programs, the proposal leverages reusable technology to create savings and cost-efficiencies for the

states and federal government and to provide better service delivery to child support customers. Specifically, the proposed approach would reduce inefficiencies associated with the current process of modernizing child support IT systems, which involves each state separately designing, developing, and implementing a new system, with costs averaging \$120 million per State. The Federal Government shares these costs through 66% federal reimbursement. States would use a new generation statewide system that will be purchased by Department of Health and Human Services (HHS), allowing the federal government to avoid reimbursing up to 54 times over the costs associated with building new state systems.

Finally, the budget proposes to get non-custodial parents to work by expanding the work requirement in the Child Support Enforcement Program, while allowing for limited federal funding to support employment and training services for non-custodial parents who are behind in their child support payments. The proposal recognizes that mandated work requirement for this population is an evidence-based and cost-effective approach to obtaining regular child support payments. It promotes personal responsibility, enables non-custodial parents to provide for their children, and allows their families to avoid government dependence.

Mandatory E-Verify

The integrity of the immigration system relies upon everyone in the United States doing their part to follow the law. The budget invests \$23 million to expand the E-Verify Program for mandatory nationwide use, ensuring that businesses employ only those authorized to work in the United States.

Unemployment insurance

States are responsible for funding the benefits they provide under the state-administered UI program. To avoid raising taxes on employers in the middle of a recession, states should build balances that would allow them to cover benefits when unemployment spikes. However, despite years of recovery since the Great Recession, many states' UI accounts are still not adequately financed—as of September 30, 2017, only 24 states had sufficient reserves to weather another recession. The budget proposes to strengthen the incentive for states to prepare for the next recession and adequately fund their UI systems by reducing federal tax credits in states with particularly low reserve balances.

States are expected to build up sufficient reserves in their UI programs during non-recessionary periods to allow them to pay for benefits during the next recession. When states fail to build up sufficient balances, they either need to increase taxes on employers in the middle of a recession or borrow from the federal government, which can trigger increased taxes on employers through automatic Federal Unemployment Tax Act "credit reductions." Currently, fewer than half the states have sufficient reserves to cover a full year of benefits during a recession—the common measure of state solvency in the UI program. The budget proposes to encourage states to build up reserves in their UI accounts by implementing a minimum solvency standard, equal to the level of reserves that would be sufficient to pay six months of benefits during an average recession (half of the common solvency target). This proposal would impose credit reductions on states that fail to meet the solvency standard for two consecutive years rather than only imposing the credit reduction once states have been borrowing from the federal government for two consecutive years. This would strengthen states' incentive to adequately fund their UI systems before the Trust Funds face any future recessionary demands, resulting in a decrease in the likelihood of insolvency and the need to borrow. All funds received through the credit reduction would be applied to state UI accounts to help states rebuild balances.

Health care reform

The budget supports a two-part approach to repealing and replacing the Patient Protection and Affordable Care Act's (ACA), starting with enactment of legislation modeled closely after the Graham-Cassidy-Heller-

Johnson (GCHJ) bill as soon as possible, followed by enactment of additional reforms to help set Government healthcare spending on a sustainable fiscal path that leads to higher value spending. The President is committed to rescuing states, consumers, and taxpayers from the failures of Obamacare, and supporting States as they transition to more sustainable healthcare programs that provide appropriate choices for their citizens. The Budget also provides a path for states and consumers to be relieved from many of the ACA's insurance rules and pricing restrictions that have resulted in one-size-fits-all plans with soaring premiums and deductibles. This would allow people to buy insurance plans that work for them and that are fairly priced, a substantial benefit to middle class families who do not receive coverage through the workplace. The Market-Based Health Care Grant Program would provide more equitable and sustainable funding to States to develop affordable healthcare options. The block grant program would promote structural reforms to improve the functioning of the healthcare market through greater choice and competition, with states and consumers in charge. The budget would allow states to use the block grant for a variety of approaches in order to help their citizens, including those with high cost medical needs, afford quality healthcare services. The block grant approach also reflects the Administration's view that government subsidies are better targeted to states and consumers rather than funneled through insurance companies as with the ACA.

Apprenticeship expansion

The budget would invest \$200 million in apprenticeships, "a proven earn-while-you-learn strategy that equips workers with the skills they need to fill open, high-paying jobs." The Department of Labor (DOL) is working to empower employers, educational institutions, labor-management organizations, trade associations, states, and other third parties to collaborate to create new, industry-driven apprenticeship solutions, according to the budget document. The DOL is also pursuing ways to expand apprenticeship opportunities in high-growth sectors where apprenticeships are underutilized, including healthcare, information technology, and advanced manufacturing. (*Fiscal Year 2019, An American Budget Major Savings and Reforms, Budget of the U.S. Government Office of Management and Budget, OMB.gov, February 12, 2019.*)

AFRs

IRS releases March AFRs

The March 2018 short-term, mid-term, and long-term applicable federal interest rates have been issued by the IRS. The rates are used in calculating, among other things, golden parachute payments and loans made to employees by employers. (*Rev. Rul 2018-6, IRB 2018-10, March 5, 2018.*)

REV. RUL. 2018-5 TABLE 1 Applicable Federal Rates (AFR) for February 2018

	Period for Compounding			
	Annual	Semiannual	Quarterly	Monthly
		Short-term		
AFR	1.96%	1.95%	1.95%	1.94%
110% AFR	2.16%	2.15%	2.14%	2.14%
120% AFR	2.35%	2.34%	2.33%	2.33%
130% AFR	2.56%	2.54%	2.53%	2.53%
		Mid-term		

AFR	2.57%	2.55%	2.54%	2.54%
110% AFR	2.83%	2.81%	2.80%	2.79%
120% AFR	3.08%	3.06%	3.05%	3.04%
130% AFR	3.35%	3.32%	3.31%	3.30%
150% AFR	3.87%	3.83%	3.81%	3.80%
175% AFR	4.51%	4.46%	4.44%	4.42%
Long-term				
AFR	2.88%	2.86%	2.85%	2.84%
110% AFR	3.17%	3.15%	3.14%	3.13%
120% AFR	3.46%	3.43%	3.42%	3.41%
130% AFR	3.75%	3.72%	3.70%	3.69%

TIP CREDIT

9th Circuit to revisit DOL's interpretation in tip credit case

The Ninth Circuit Court of Appeals has agreed to revisit the contentions of former servers and bartenders in a consolidated appeal that their employers improperly claimed the tip credit, thereby failing to pay the required minimum wage. In a [February 16 order](#), the appeals court ordered that the cases be reheard *en banc* and that the three-judge panel disposition in the cases "shall not be cited as precedent by or to any court of the Ninth Circuit." Judge Murguia did not participate in the deliberations or vote in these cases.

De facto new regulation?

In September 2017, a Ninth Circuit panel [ruled](#) for the employers, finding that the Labor Department's (DOL) interpretation in its Field Operations Handbook of 29 C.F.R. § 531.56(e) (addressing application of the FLSA's tip credit provision to the situation in which an employee works for an employer in two different jobs) did not merit controlling deference. The DOL's interpretation was inconsistent with the dual jobs regulation, the divided panel had found, concluding that it was an attempt to create *de facto* a new regulation. Although the appeals court agreed with the district court's analysis of the deference question, it vacated the judgment of the district court to allow the employees an opportunity to propose amended pleadings in light of its holding. The district court had held that the DOL's interpretation of the regulation was not entitled to deference and concluded that the employees failed to state claims for minimum wage violations.

Paying tipped employees

The FLSA creates a special rule for how an employer can compensate a "tipped employee," defined as "any employee engaged in an occupation in which he customarily and regularly receives more than \$30 a month in tips." Employers may pay tipped employees a cash wage of \$2.13 and make up the difference between \$2.13 and the federal minimum wage by taking a credit for the employee's tips.

In the district court

In May 2014, the lead plaintiff filed a suit alleging that his employer violated the minimum wage provisions of the FLSA by failing to pay him an appropriate minimum wage. As part of his job as a server, the employee also brewed tea during the opening shift, cut and arranged lemons and limes, cleaned the soft drink dispenser, replaced soft drink syrup, and stocked ice. He was also assigned duties cleaning tables, scrubbing walls, taking out trash, sweeping floors, and cleaning restrooms.

The employer took the tip credit for the *entire* time the employee spent working, including the time he spent on duties that were not directly connected to generating tips. Because those "related duties" took up more than 20 percent of his working hours, the employee alleged that the employer improperly took a tip credit for the time he spent on "related duties." The employee relied on the DOL's interpretation of the dual jobs regulation in Section 531.56(e). According to the employee, he should have been paid a cash wage of \$7.25 per hour for time spent on related and unrelated duties that were not directed towards generating tips.

The district court held that the employee's complaint did not allege that he was working dual jobs, as defined in the dual-job regulation, and rejected his reliance on the DOL's interpretation of the regulation. Alternatively, the district court held that "no minimum wage violation occurs so long as the employer's total wage paid to an employee in any given workweek divided by the total hours worked in the workweek equal or exceeds the minimum wage rate." Because the complaint did not allege the employee's average hourly wage was below the federal minimum wage, he failed to state a claim.

The cases are [Nos. 15-15791, 15-15794, 15-16561, 15-16659, 16-15003, 16-15004, 16-15005, 16-15118 and 16-16033.](#)

OTHER NEW DEVELOPMENTS

SIFL rates issued for the first half of 2018

The Department of Transportation has released the applicable terminal charge and standard industry fare level (SIFL) mileage rates for January 1, 2018 through June 30, 2018. These rates will be used by the IRS to determine the value of noncommercial flights on employer-provided aircraft. The terminal charge is \$41.71. The SIFL rates are \$.2282 per mile for the first 500 miles; \$.1740 per mile for 501 miles through 1,500 miles; and \$.1673 per mile for miles over 1,500. (*U.S. Department of Transportation, Attachment B, February 8, 2018.*)

Alaska eliminates minimum wage exemption for disabilities

Following a regulatory change that became effective February 16, 2018, Alaska employers are no longer allowed to pay less than minimum wage to workers who experience disabilities. In repealing 8 AAC 15.120, Alaska joins New Hampshire and Maryland as the first states in the nation to eliminate payment of subminimum wages for persons with disabilities.

An exemption from paying minimum wage to persons with disabilities has existed for many years, beginning at the federal level with the Fair Labor Standards Act of 1938, and in Alaska regulations since 1978. Historically, minimum wage exemptions were considered necessary to help people with disabilities gain employment. Experience over the past two decades has shown that workers with disabilities can succeed in jobs earning minimum wage or more.

“Workers who experience disabilities are valued members of Alaska’s workforce,” said Department of Labor and Workforce Development Acting Commissioner Greg Cashen. “They deserve minimum wage protections as much as any other Alaskan worker.”

The Alaska Department of Labor and Workforce Development received written comments expressing support for repealing the regulation that allowed the minimum wage exemption from the Governor’s Council on Disabilities and Special Education, the State Vocational Rehabilitation Committee, the Statewide Independent Living Council, and the Alaska Workforce Investment Board.

The elimination of the minimum wage exemption brings employment practices into alignment with Alaska Employment First Act of 2014, which requires vocational services help people with disabilities to become gainfully employed at or above the minimum wage. (*Source: State of Alaska Department of Labor and Workforce Development News Release, February 16, 2018.*)

Unemployment Insurance

Puerto Rico.—Contribution rates. Rate Schedule E is in effect for 2018 in the Commonwealth of Puerto Rico. Under this schedule, rates for positive-balance employers range from 2.0% to 4.4% and rates for negative-balance employers range from 4.5% to 5.4%. The 1.0% special tax is not reflected in the Rate Schedule. The rate for new employers for 2018 is 3.1%. (*DOL Communication.*)

Virgin Islands.—Taxable wage base. For 2018, the taxable wage base in the Virgin Islands is \$24,200, up \$700 from the 2017 taxable wage base amount of \$23,500. (*DOL Communication.*)

Virginia.—Contribution rates. For 2018, the fund balance factor is 75%. There is also a pool cost charge of 0.01%, but there is no fund building charge this year. For 2018, rates range from 0.11% to 6.21%, including the pool cost charge. The new employer rate is 2.51%. In 2018, foreign contractors and delinquent and nonrated employers pay 6.21%. (*VEC Communication.*)