

Payroll Services Mailbag: Third-party payroll, taxable perks and more

Employment tax compliance expert Alice Gilman, along with the editors of Business Management Daily's Payroll Legal Alert, answer subscribers questions on payroll.

W-2s: Pay to play?

Question: One of the reasons the company switched third-party payroll providers was to allow employees to access their W-2s from home. Most employees didn't bite for last year's forms, so we mailed them out, as usual. To encourage employees to print their own forms this year, we'd like to try some tough love and charge each employee \$25 for their original W-2s. Management likes this idea. Can we do this?

Answer: No, not for original W-2s or original W-2c forms. You can try to obtain employees' consent to have their W-2s electronically delivered or you can drop employees' copies in the mail on Jan. 31, 2020. Anyone expecting an early tax refund from the IRS will be disappointed.

You can charge employees a fee for replacement W-2s, since you've met your obligation to provide them with original forms. However, your fee can't be so high that employees who are nonexempt would take home less than the minimum wage.

How voluntary is a voluntary wage assignment?

Question: The Payroll department received a voluntary wage assignment for an employee who apparently took out a payday loan. The loan company is in Utah, and we're based in California. It's company policy to honor garnishments, not voluntary wage assignments. Must we honor this wage assignment?

Answer: Not if you don't want to. In California, employers have the option of honoring a voluntary wage assignment. If you choose not to honor it, contact the loan company and advise them to seek a garnishment order against this employee. Payday loan companies usually go for the quick buck, so it's unlikely you will hear from them again. Then, to avoid this situation in the future, tell employees the company doesn't honor voluntary wage assignments.

O'Dowd, O Dowd or O-Dowd?

Question: Our timekeeping software doesn't let us use apostrophes when formatting an employee's surname. For W-2 purposes, the Social Security Administration gives employers the option to use a hyphen or a blank space. We want to do this for timekeeping, but HR says we can't, because we'd be changing the employee's last name. If the SSA allows it, why can't we do it?

Answer: Apostrophes are punctuation and not part of someone's name, so you're not changing anything.

Before taking HR to task, see if your IT department can come up with a solution—perhaps a blank space where the apostrophe used to be. If a blank space can be used, you'd be consistent with your time records and your W-2s.

Questions for the Social Security Administration

Question: We uploaded a W-2 file to the Social Security Administration that contained only one month of data. We discovered the mistake and sent a corrected file for the full year's earnings. However, instead of replacing the first file, the SSA added the second file to it. Must we issue Forms W-2c to employees, since the printed W-2s they received were correct?

Answer: Yes. You need to provide employees with Forms W-2c to correct the error. Drop the 13 months back to 12, by putting 13 in the previously reported column and 12 in the correct information column. If employees' printed W-2s were correct, they'll be fine; they won't have to file a 1040-X with the IRS.

Question: Three months after hiring a new employee, we discovered the Social Security number belonged to someone who never worked here. The employee was fired and the matter forwarded to law enforcement in the state in which the victim lives. The SSA has instructed us to issue a Form W-2 to the victim, who is then supposed to take the W-2 to a local SSA office and work everything out. Is this right?

Answer: Yes. This type of fraud is hard to spot and problematic for victims, but they must resolve the issue themselves. The W-2 should reflect the information on the fired employee's W-4. The earnings, which don't belong to the victim, will be disclaimed and shuttled over to the Earnings Suspense file until they're assigned to the proper wage earner.

Questions for U.S. Citizenship and Immigration Services

Question: As a partner and co-owner of a new company, will I need to complete a Form I-9?

Answer: Yes. If you own a company and receive wages, you're an employee of the company, so you must complete an I-9 form. HR can sign for the owner.

Question: I participate in E-Verify. I have an employee whom I rehired. Must I create a case in E-Verify for this employee?

Answer: You may treat the employee as a new employee for Form I-9 purposes; use Section 3. But if the employee was E-Verified in the past, you don't have to use E-Verify again.

Question: If a newly arrived employee has applied for but not yet received a Social Security number, directions say to make a note on the employee's I-9 form and set it aside. How long should an employer wait for the employee to provide the SSN?

Answer: There is no time period for waiting; it's a business decision. Remember, SSNs are optional on the I-9, but mandatory for E-Verify.

Question for the Office of Child Support Enforcement

Question: We sometimes receive income withholding orders for individuals who aren't employees paid through payroll. Should we also check with Accounts Payable to see if the person is an independent contractor? Are we required to withhold from independent contractors?

Answer: Gig workers are a hot topic in child support right now. Yes, you should check with Accounts Payable.

Whether you have to withhold from independent contractors depends on your state's law; 16 states do require child support withholding from independent contractors.

Reporting taxable perks for VPs

Question: Vice presidents are allowed to charge gym memberships to their corporate cards. Is there a specific box on the W-2 where this is reported?

Answer: No. The full fair market value of gym memberships, not any corporate discount, is taxable and reportable on employees' W-2s as wages in Boxes 1, 2, 3, 4, 5 and 6. It's not too late to withhold taxes on these payments. Since this is a noncash perk, you'll have to impute the amount into employees' cash income, withhold on the total and subtract out the taxes withheld and the imputed income to arrive at their take-home pay. If you choose, you can report the gym memberships separately to employees in Box 14, but there's no requirement for you to do so.