

4 important payroll issues to keep an eye on in 2023

We wish we had a crystal ball, but we don't. Nevertheless, 2023 is looking like another challenging year for Payroll as we get a few insights into what to expect. Here are five items we see coming this year.

Final e-filing regs

The IRS punted on its [final regulations](#), dropping the mandatory e-filing threshold for information returns for 2021 and 2022 W-2s, 1099s, and 1095s. It's unlikely it will postpone releasing the final regs for yet another filing season.

The mandatory e-filing threshold will drop from 250 or more returns to 100 or more returns in the first year the regs become effective, and then to 10 or more returns. You will also be required to aggregate all your information returns to determine whether you are a mandatory e-filer.

These regs will scoop up smaller employers into the e-filing net. First-time e-filers will need to register with the Social Security Administration's [Business Online Portal](#) for e-filing W-2s, and with the IRS, either for [IRIS](#) or [FIRE](#), for e-filing 1099s and [AIR](#) for filing 1095s.

Two sets of wage-and-hour regulations

Proposed regulations covering white-collar employees were included in the Department of Labor's spring 2022 [semiannual regulatory agenda](#). Everyone then anxiously anticipated the regs' release, despite the fact that items on the regulatory agenda are routinely ignored by the agency putting them there.

General consensus: Proposed regs, if they ever are released, will raise the minimum salary employees must earn to remain exempt from overtime under the Fair Labor Standards Act.

What probably will be released are [final worker status regs](#) under the FLSA. These regs codify the existing six-part test used to determine whether a worker is an employee or independent contractor. The economy has changed radically since the 1940s, when the test was devised, so the regs update some of the language and reasoning the DOL uses to determine workers' status.



Upshot: Since the FLSA is remedial

legislation—it's meant to be interpreted liberally to cover as many individuals as possible—it's likely the DOL will have more wiggle room to decide workers are employees. You need to examine your relationships with your independent contractors to ensure they are properly classified.

Axed business travel budgets

Business travel was just getting back to a post-pandemic normal when inflation started going haywire. In response, business travel budgets have been trimmed. But business travel is still vital to many companies.

You don't have to perform the equivalent of hunting around the sofa cushions for spare change if you furnish *per diem* allowances—flat daily allowances covering hotel, meal, and incidental expenses—to employees who travel.

The General Services Administration's [website](#) lists the *per diems* federal employees receive. If your *per diems* clock in at or under the GSA's rates and employees substantiate the time, place, and business purpose of their trip, your reimbursements are tax-free. You must tax *per diems* exceeding the GSA's rates, unless employees provide a full accounting of their expenses.

Rethinking medical travel benefits for reproductive health care and family planning

After the Supreme Court issued its *Dobbs v. Jackson Women's Health Organization* decision, which reversed *Roe v. Wade*, many employers began offering [medical travel benefits](#) to employees who needed to travel out of state to obtain reproductive healthcare services.

At the time, employers were advised to extend medical travel benefits to all employees who needed them. This is prescient. One current and one former EEOC commissioner have apparently filed charges against companies limiting medical travel benefits to employees seeking reproductive healthcare services, claiming such policies discriminate against other employees.

While this is unusual, the EEOC takes these charges seriously. Littler Mendelson, P.C., among the most prominent law firms representing employers, recently [wrote](#) to the EEOC asking it to investigate whether the former commissioner committed ethics violations by threatening companies offering medical travel benefits.

Issues regarding reproductive healthcare services will ramp up again as state legislatures reconvene this month.

High on the agenda of some legislatures is criminalizing medical travel benefits. Point your browser [here](#) for some possible de-risking strategies.