

Bank failures and payroll — what employers should know

When Silicon Valley Bank in California and the Signature Bank in New York failed last week, employers with accounts at those banks began to fret they wouldn't be able to pay employees. Before the FDIC acted on Monday, they had good reason to—bank accounts are insured for up to \$250,000. In the corporate world, \$250,000 can be considered peanuts.

While this may have only impacted 2 banks, it certainly sent waves of concerns through companies and the financial community. Smart employers will take this as an opportunity to ensure they're protected, and lay out steps in case they ever find themselves impacted by bank failures in the future.

A close call

The FDIC [announced](#) Monday that it would protect all deposits, which means employers should have no problem making their payrolls.

But in between last Friday, when SVB failed, and Monday, when the FDIC made its announcement, an awful lot was written about the consequences of missing a payroll—the wrath of the Department of Labor, the IRS, and, most importantly for employers located in California and New York, wage payment laws imposing [penalties](#) for late wage payments and wage theft laws.

It's possible the DOL, its state counterparts and state courts would have been lenient with employers, finding the banks' failures to be reasonable cause or at least exigent circumstances for not paying employees, especially nonexempts, in full and on time. Thankfully, we'll never know.

You can jot these points down and put them away in the hopefully-we'll-never-need-to-use-this file.

- Explore whether it's possible to switch your payroll accounts to another bank.
- Try to avoid layoffs. Although employees will qualify for unemployment benefits, those benefits will be charged to your account, which will increase your tax rate next year.
- You can't allow employees to work for free. As a short-term solution, you could furlough employees until you can access your bank accounts, but furloughing employees may spark notifications under the WARN Act and COBRA benefits. Exempts should be furloughed for an entire week, since they must be paid their full salary in any week they do any work.
- You can't ask employees to waive away their rights under state wage payment laws.
- Don't allow anyone to persuade you to access employees' withheld taxes or benefit contributions to make a later payroll. Remember, this money isn't yours and the IRS (in the case of tax deposits) and the DOL (in the case of benefit contributions) take a dim view of these practices.
- You may be able to pay employees less than their full wages, with the understanding that you'll make up the difference expeditiously. Employees should sign and return an acknowledgment to you.

Employees will have questions



Bank failures have an uncanny way of tearing through society. So employees are probably going to have questions about the security of your payroll processes.

Here's what you can tell them now.

- Their money is safe. If a bank fails, the FDIC takes it over. Their direct deposits, autopayments/bill pay/online banking services, and ATM cards would work seamlessly because the bank routing and account numbers are the same.
- If employees' bank routing and account numbers change, they should notify you immediately. If they don't, their direct deposits will be impacted.
- Deposits are insured up to \$250,000. If employees have large deposits—say, IRAs from old 401(k) plans—they might want to think about spreading those deposits among several banks.

The scams have already started

The scammers are already pouncing.

The Fox Rothschild law firm [reports](#) one email scam preying on customers of SVB, who are induced to deposit their money with another bank. The other bank, of course, is the scam.

The FDIC never contacts bank customers to request private information. The FDIC advises you to be watchful for any scams to obtain information from you by individuals or entities who say they're acting on behalf of SVB or the FDIC.

If you receive an email, confirm the identity of the sender, but don't call the number provided in the email. If you can't find a reliable company website or phone number, take it for what it's worth—a scam.