



2016 Payroll Fact Sheet

SPECIAL REPORT: Payroll Questions Answered by Federal Panel at APA Congress

Correcting an employee's timesheet

Q. I'm being told that it is never okay to go back and The Compliance Publication of the American Payroll Association correct an employee's timecard after the wages for that week have been paid. Occasionally, we may underpay or overpay a worker. If we overpay them, we might just let it go depending on the amount of the overpayment. But if we underpay the worker, we want to be sure we pay what we owe them. How do we correct the record if I can't adjust the old timecard?

A. You should not make corrections on the original timecard. You want to make the adjustment on a second timesheet, make a notation, and have the employee sign that they acknowledge the fact that you've made the correction to the timesheet. Under 29 C.F.R. §516, employers are required to maintain an accurate record of all hours worked. So, if there is an issue with a particular time record, you want to have a correction to that time record and you want to indicate on that second timekeeping record that this is a correction to the original timesheet. Even if the time change is beneficial to the employee, you still should get the employee's signature. Also, it would be best to have that person either sign or initial the change as opposed to approval by email. An automated system with an electronic signature or sign-off or PIN and password that has an audit trail could also be used by the employee to signify approval of the change.

Health insurance premium refunds

Q. Years ago one of our employees participating in our IRC §125 medical plan got a divorce but didn't notify anyone in HR or payroll. For 10 years the employee continued to pay for married health insurance coverage. Eventually, the employee asked the insurance company for a refund, which was granted. The insurance company sent us the check, saying they couldn't refund cafeteria plan premiums directly to the employee because they were pre-tax deductions. Should we refund the amount to the employee?

A. Technically, there's no provision in the Internal Revenue Code under §125, or in the corresponding regulations, addressing this particular scenario. However, because the insurance company refunded the money, correctly or incorrectly, and sent it to the employer, it should be refunded to the employee. The refund should be included in wages in the year the premiums are refunded since the premiums paid initially were pre-tax.

Reimbursements for FICA overpayments

Q. Employers often find out about an employee's FICA exempt status along after the year is closed and the Form W-2 is issued. Employees receive a letter telling them to get the refund from the employer. This requires an amended return and a journal entry to offset the taxes.

Shouldn't it be the employee's responsibility to prove that they are exempt when hired? This seems like a lot of work for the employer. Why can't SSA refund the money to the employee? They can keep the employer portion.

A. Without getting really technical about why SSA can't make the payments, the answer is that SSA does not make any payments. All the FICA taxes that you pay go through Treasury, and they all get deposited into the General Trust Fund. Based on the W-2s that have been submitted, that money is then drawn down into what's called the Social Security Trust Fund.

All SSA does is determine the eligibility of an individual and the amount of the payment, and then provide that to Treasury. Treasury is the only one that can make actual payments by disbursing the money from the government.

Nonexempt employee temporarily assuming exempt position

Q. If a manager is out for an entire week and we have an assistant manager take over the duties of the manager for that week, might the assistant manager qualify for an exemption from the FLSA's overtime provisions for that week? And what if the assistant took over during a manager's 12-week maternity leave?

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A. The answer to both of those questions is yes, that assistant manager could be exempt from the overtime provisions under 29 CFR §541.100. Under the overtime regulations there are four criteria that one must meet to be exempt. Here, the assistant manager would have to be receiving a guaranteed salary of \$455 a week or more; would have to supervise two or more employees; have management as his or her primary duty; and make decisions that carry particular weight. So, if that assistant manager met all of those criteria, in both of those examples that assistant manager would definitely be exempt from the overtime provisions of the law.

Terminating an employee who is on FMLA leave

Q. An employee has been out on FMLA leave for four months. During this absence we found out that the employee had violated company policies that warrant termination. Should the employee be allowed to return to work before we process the termination or can we terminate while the employee is on leave, perhaps via email? What are the risks associated with firing employees for violations discovered while they are out on FMLA leave?

A. Either way it's going to cause concerns with the termination. But as long as you have documentation to state why you terminated the employee and what portion of the policy the employee violated, then that's going to be your support. The risk is always there because you're going to have an employee say that he was terminated as a result of his FMLA leave. But if you have the documentation to support you, then you can provide it to WHD when we request documentation in response to a complaint filed by the employee.

Status of the new Form I-9

Q. When the new Form I-9 is released, do we have to update all the existing Forms I-9 with the new form?

A. No. The former I-9 expired on March 31 and a new one has not been released yet. Thankfully, you won't have to update the former Forms I-9. We did have two public comment periods for this release in the Federal Register. The last comment period ended on April 27. We are reviewing those latest comments and are still updating the Form I-9.

Completing the Form I-9 for remote employees

Q. My company has a main office with a lot of employees who work in other states out of their homes.

Is there anything specific that I need to do when we complete those employees' Forms I-9? We have registered agents in each of the states, but often not in the same cities as the employees. Can I use a notary public to verify the employee's documents?

A. The Form I-9 verification process remains the same. This is a great question that uses the term "registered agents." We use the term "authorized representative." The Form I-9 has three sections. The first section is completed by the employee. The second section is where the employer verifies the identity and employment eligibility documents of the employee. This needs to be done in person and an authorized representative can be used. For the Form I-9 verification, we are very flexible with who can act as an authorized representative. You can use a notary public. The employer can select anyone to act as the authorized representative on its behalf. The company will remain liable for everything on the Form I-9. If the person you select makes errors, you are able to correct those or send them back to be corrected. The timelines remain the same for remote hiring. Your Form I-9 Section 2 needs to be completed by the close of business on the third day after the employee starts working for pay. Here's how we count this third day. If the employee starts work for pay on a Monday, we count the three days as Tuesday, Wednesday, and Thursday.

Change in employment status and reverifications

Q. If existing employees have a change of status, for example, from alien authorized to work to lawful permanent resident, and they present new documents to support the change, are the employees then required to update Section 1 to reflect the change of attestation in addition to the reverification in Section 3?

A. That's a good question and I want to clarify something in that last statement, "in addition to the reverification in Section 3." That insinuates that when an alien changes status you need to do a reverification, which is not the case. You need to re-verify employees' work authorization when their temporary employment authorization expires. If the status is upgraded, as in this example, from an alien with temporary employment authorization, to a lawful permanent resident, you can update it when employees bring you the new documents. The reverification does not have to happen as soon as the status is changed, it just must be done before their temporary work authorization expires. You would use Section 3 for the update. The Section 1 change to reflect the change of attestation is not required. If employees want to make that change, they could make the correction when they provide their document or anytime they choose. They could simply make the correction, initial it, and date it.