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Capital Summit Attendees Hear From Federal Policy Makers on Developing Payroll Issues

On March 22-23, representatives from a dozen federal government agencies appeared at APA's 3rd Annual Capital Summit in Washington, D.C., to provide a rapt audience of payroll professionals with the latest payroll news and upcoming initiatives from their respective agencies. Their presentations ran the gamut from planned changes in the look of social security cards and online photo comparisons of noncitizens' employment authorization documents to payroll's role in the 2007 Economic Census and the President's proposal to create a standard deduction for health insurance premiums that would apply to both income and FICA (social security and Medicare) taxes.

SSA Web site, SS card to get new look

Addressing the audience on Thursday morning, the Social Security

Administration's Director for Employer Wage Reporting and Relations, Chuck Liptz, said that the employer reporting portion of SSA's Web site has been redesigned to make it easier to find information by creating separate areas for new and return filers and simplifying the Business Services Online (BSO) welcome site, among other changes. Later this year, the registration process itself will be enhanced by adding a registration wizard to explain each screen and limiting what is on the screens to information related only to payroll services.

An enhancement is also slated for the Social Security Number Verification Service (SSNVS) this summer, when SSA will begin providing a response for all SSNs submitted for verification, not just those for which the submitted data elements do not match SSA's database. Where the submitted information in an employer's file matches that in the database, SSNVS will return the employee's name and the last four digits of the SSN, a feature suggested by the employer community as confirmation that its employee information is correct.

Other changes on tap include renaming the documents that contain the specifications for electronic wage reporting of Forms W-2 and W-2c from Magnetic Media Reporting and Electronic Filing (MMREF-1 and -2) to Electronic Filing of W-2s (EFW2 and EFW2c). The documents should be available on SSA's Web site in May. Still another planned change is the inclusion of a letter from the Department of Homeland Security (DHS) with no-match letters sent from SSA to employers that exceed a certain percentage of mismatched employee names and SSNs on their

Forms W-2. DHS's letter will be included after finalization of its proposed rule on an employer's responsibility, upon receiving a no-match letter, to re-verify an employee's SSN and/or work eligibility in order to avoid being considered to have constructive knowledge of employing an undocumented worker.

Liptz ended his presentation with news about upcoming changes to newly issued social security cards. Beginning in April, all new cards will have the date the card was issued shown on the bottom of the front of the card. Replacement cards will show the date they were issued, not the date the original card was issued to the individual. Beginning in August, all new cards will show the individual's last name on a different line from the first and middle names, an enhancement long sought by payroll professionals that will make it easier to determine an employee's last name and easier to match SSA's records when submitting W-2s.

More automation in the works for child support

Anne Gould, Employer Services Team Manager for the Office of Child Support Enforcement, opened her presentation by thanking employers for withholding and remitting \$19.4 billion in child support payments in fiscal year 2005, out of total collections of \$24 billion, with a third of those payments having been made electronically. She also told the audience that two new states – Oregon and Virginia – are about to join the other six that already require electronic payment of withheld child support to their state disbursement units for most employers, an indication that increased automation of the child support

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withholding process is clearly gaining ground (see p.8 of this issue of PAYROLL CURRENTLY for more information about Oregon).

Gould next recapped what has been happening with the electronic income withholding order (e-IWO) project. With the end of the pilot program, the project is continuing to add employers and state child support agencies. She said that preliminary results from the pilot show that electronic processing resulted in payments being received by custodial parents up to three weeks faster than through paper processing and an average of an additional \$150 being paid toward each order.

Perhaps the most exciting development is the next step in the automation drive – the establishment of OCSE's e-IWO Internet portal. The portal will provide one location where employers and state child support agencies will exchange e-IWO files and other child support-related information. By the end of September, OCSE hopes to have finished the first phase of the portal, which involves the following steps:

- OCSE will use its current network (OCSENet) to collect e-IWO files from the states;
- OCSE will send the files to employers at file transfer locations designated by the employers;
- Employers will acknowledge receipt of the e-IWO and let OCSE know if the noncustodial parent is no longer employed by the employer; and
- OCSE will send the employer's information to the state agencies.

DOL enforcement priorities

It probably came as no surprise when Paul DeCamp, Administrator of the Department of Labor's Wage and

Hour Division, said that the bulk of the Division's audits – up to 80% – are carried out in reaction to an employee's complaint. DeCamp then went on to explain where the other 20% of the Division's resources are being spent during fiscal year 2007. The priorities include some areas you might not expect, such as forestry and reforestation, aliens working on H-1B (highly skilled worker) visas, construction in the Gulf Coast region, and combating human trafficking for labor.

But they also include some that have been on the Division's list for years:

- hazardous occupations for children;
- agriculture;
- low-wage industries;
- protecting day laborers;
- special minimum wages for disabled workers; and
- regular rate of pay issues.

2007 Economic Census

Every five years, the U.S. Census Bureau conducts an economic census that provides detailed information on the structure of the U.S. economy and serves as the foundation of most of the economic statistics on which economic policy decisions are based. The information collected includes:

- what industries exist;
- where they are located;
- what inputs they consume;
- what outputs they produce; and
- what markets they serve.

2007 is an Economic Census year, and the Census Bureau is looking forward to working with APA to obtain the best results possible. Laurie Torene, a senior member of the Bureau's Customer and Respondent Outreach Staff, told the audience that payroll professionals are

often the main contact within a company and have access to much of the essential data that needs to be collected. She said the data collection forms will be sent to U.S. businesses this fall, with responses due by February 12, 2008. She also reminded everyone that businesses are legally required to respond to the request for information.

Chuck Brady, Project Manager for the Bureau's Business Help Site, offered information on where employers can go for help in understanding and completing the economic census forms, with the main site being www.census.gov/econhelp. The business help site offers a secure portal for electronic reporting, checking filing status, asking for filing extensions, researching frequently asked questions, and viewing sample forms, among other services. Brady also noted that a Web site has been created just for APA members working on the census forms at www.census.gov/apa.

Immigration reform looms large

Representatives from the Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS) and Immigration and Customs Enforcement (ICE) offered updates on the continuing development of the Basic Pilot Program for employment authorization verification and worksite enforcement initiatives. Gerri Ratliff, Chief of USCIS' Verification Division, said that 15,000 employers now use the Basic Pilot, up from 10,000 just a few months ago. This may be a result of the publicity about a possible requirement to use the program under proposed immigration reform bills, as well as new state laws encouraging or mandating use of the program, Ratliff noted.

The latest innovation in the Basic

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Payroll Solutions

Q. Our company is entering a busy season and needs employees on hand to work extended hours. To encourage employees to put in the extra hours needed and help the company meet its commitments, management wants to implement a policy of giving employees who stay late money they can use to order dinner in. Will this meal money be excludable as a de minimis fringe?

A. No. The IRS explains (see the January 2007 edition of the *Taxable Fringe Benefit Guide* (www.irs.gov/pub/irs-tege/fringe_benefit_fslg.pdf)) that in order to treat occasional meal money as an excludable de minimis fringe benefit three conditions must be met:

- **Occasional basis.** The meal is reasonable in value and is not provided regularly or frequently.
- **Provided for overtime work.** Overtime work necessitates an extension of the employee's normal work schedule.
- **Enables overtime work.** The meals are provided to enable the employee to work overtime. Meals provided on the employer's premises that are consumed during the overtime period, or meal money expended for meals consumed during that period, satisfy this condition.

The IRS explains that meal reimbursements made pursuant to a company policy or union contract may not qualify as an excludable de minimis benefit because the benefit is required and may not be considered occasional. In such situations, the employer would have the opportunity to set up the administrative procedures for reporting the benefit.

EXAMPLE: An employer has a policy of reimbursing employees for breakfast or dinner when they are required to work an extra hour before or after their normal work schedule. The reimbursements are taxable because the employer has a policy that indicates payments are routinely made. In addition, the meal reimbursement does not enable the employee to work overtime, but is an *incentive* to do so.

Pilot is the "Photo Tool" pilot. Ratliff said this program is designed to ensure that employers are relying on documents that actually pertain to the employee who provided them. Under the pilot, if an employer submits information for a noncitizen that includes an employment authorization form or a resident alien card (i.e., green card), USCIS will send the employer over the Internet a digital image of the photo on record with USCIS for that person so the employer can compare it with the document submitted by the employee as part of the Form I-9 process.

The big question for USCIS and employers, however, is whether electronic verification of employees will become mandated as part of a comprehensive immigration reform effort. Ratliff said that ramping up the Basic Pilot to become an Electronic Employee Verification System used by all employers will involve a host of issues:

- when and over how long a period mandatory verification is phased in;
- whether current employees must be verified;
- employer registration and compliance;
- ensuring ease of use by employers that use electronic I-9s;
- addressing special needs of small and special needs employers;

- working with service providers who verify new hires for client employers;

- whether a fee can be imposed on employers for using the system;
- the level of funding made available for development, including resources for SSA; and
- the future inclusion of biometrics.

ICE Supervisory Special Agent/Section Chief John Shofi shared with attendees some insights into ICE's Worksite Enforcement Program for fiscal year 2007. He said there are three key areas in which enforcement efforts and resources are currently focused:

- Critical Infrastructure Protection – power, chemical, and nuclear plants; oil storage;
- Egregious Employers – those engaged in smuggling and harboring illegal aliens; and
- Employer Partnerships and Education – IMAGE program.

Shofi concentrated his presentation on ICE's new IMAGE program – ICE Mutual Agreement between Government and Employers – which is designed to build cooperative relationships that strengthen employment practices (see *PAYROLL CURRENTLY, Issue No. 18, Vol. 14*, "ICE Announces Partnership Initiative With Businesses to Reduce Unlawful Employment of Illegal Aliens").

ICE wants to encourage employers to go beyond mere legal minimum compliance to adopt best practices in preventing the hiring and employment of unauthorized workers. The program focuses on industries with high percentages of unauthorized workers or those involved in critical infrastructure. Employers that join IMAGE are also encouraged to set an example for their suppliers, contractors, and distributors so they too will implement these best practices. For more details, go to www.ice.gov.

The best practices referred to by Shofi include:

- Basic Pilot Program participation,
- anti-discrimination awareness training,
- Form I-9 training for hiring staff,
- independent dual review of Forms I-9,
- resolution of SSA no-match letters,
- implementing an internal tip line,
- self-disclosure of deficiencies to ICE,
- annual independent I-9 process audit,
- encouraging business partners to implement IMAGE, and
- annual report to ICE.

NQDC regs almost here

At last year's Capital Summit, attorneys from IRS's Office of Chief Counsel said they thought that final

regulations explaining the definition of nonqualified deferred compensation (NQDC) under IRC §409A would be out before the end of the summer. Two of those attorneys – Stephen Tackney and John Richards – were back this year to say those regulations are finally just about ready to be issued. In fact, Tackney said their publication date is “a matter of weeks, not months.” Once those regulations are issued, Tackney said, then work can resume on proposed regulations on defining deferrals, income inclusion, and reporting, the aspects that are of most interest to payroll

professionals.

Tackney and Richards both emphasized that IRS is still looking for suggestions from employers on how to get information on deferrals for the year onto the Form W-2 when that information may not be available in time to meet reporting requirements. A suggestion offered at the meeting by Jim Medlock, CPP, APA's Senior Director of Education and Training, was to allow employers to use the special accounting rule that applies to noncash fringe benefits and thereby report deferrals made in November and December (or any shorter period) as if they were made in the next calendar year.

Other IRS initiatives

John Tuzynski, Chief of Employment Tax Operations at IRS, discussed upcoming initiatives at the Service aimed at noncompliance in the employment tax area that could help close the \$350 billion “tax gap.” These include an increase in the audit information-sharing that IRS engages in with states, subject to the disclosure restrictions of IRC §6103. While IRS already shares information with many states' revenue departments, Tuzynski said IRS hopes to increase the number of sharing agreements with state unemployment insurance agencies from 18 to 30. In a separate conversation with APA, Tuzynski explained that state UI agencies conduct worker classification audits (employee vs. independent contractor) that can be of great value to IRS.

Another target in the employment tax area is employers that file Forms W-2 for their employees but do not file Forms 941 because the withheld taxes were not paid to the IRS. And the Service is continuing its focus on employers with the worst records of employee name/SSN mismatches on Forms W-2 for possible penalty assessments, while it determines whether there is a need for “a bigger compliance emphasis” or more taxpayer education in this area.

Laurie Tuzynski, Program Manager, Servicewide Penalties, told the audience about some changes in the Information Reporting Program Civil Penalty Program, including its consolidation in the Philadelphia campus. Mailings of penalty notices for

2005 mismatched 1099s and late W-2s will be staggered during the period of August 6 – September 10, 2007, but all of them will be dated September 17, giving employers 30 days from that date to respond. If 250 or more notices are being sent out to a taxpayer, they will be sent on CD rather than tape cartridges, as in the past. In the interest of data privacy, the CDs will be encrypted, and the taxpayer will have to call the IRS with some identifying information to receive a PIN and an encryption code to read the CD.

Another initiative is new Notices CP-276A and CP-276B, which, beginning in April, will explain to employers the errors they have made in filing Forms 941 or depositing employment taxes but for which no penalty is being assessed because the amount is too small. Notice CP-276A will be sent to employers that fail to file or file an incorrect record of federal tax liability, while Notice CP-276B will be sent to employers that correctly file their record of federal tax liability but make late tax deposits. Tuzynski said that these notices will help employers understand the errors they have made so they can avoid the errors – and possible penalty assessments – in the future.

Standard deduction for health insurance

At the end of the conference, the audience got a taste of some of the payroll implications of President Bush's proposal to make employer-paid insurance premiums taxable compensation while creating a standard deduction for health insurance (see **PAYROLL CURRENTLY, Issue No. 4, Vol. 15**, “Bush Administration Fiscal 2008 Budget Proposal Has Payroll Implications”). Tom Reeder, Benefits Tax Counsel in the Treasury Department's Office of Tax Policy, explained that the proposal would hopefully reduce the cost of health insurance and increase the number of people with health insurance by eliminating the tax bias for employer-sponsored plans and pre-payment of routine health care, and making it less costly for individuals to purchase health insurance. He said that the first bill regarding the proposal could be introduced in Congress as early as next week.

News Notes...

APA to Hold 25th Anniversary Congress

On May 22-26, the American Payroll Association will hold its 25th Anniversary “Silver Safari” Congress at the Bally's and Paris Hotels in Las Vegas, Nevada. The APA Congress is the payroll profession's premier educational event and an eagerly awaited training and networking opportunity for APA members and their colleagues.

This year's five-day program will offer more than 100 workshops led by the industry's foremost authorities. Attendees will learn about the most current legislative and regulatory developments affecting payroll. Sessions will be offered on payroll specialties, accounts payable, benefits and compensation, government affairs, organization and personal management, personal finance, specialized industry issues, international issues, and technology issues.

As an added bonus, vendors will demonstrate payroll-related products and services in the industry's largest exhibit hall. From niche solutions for tax filing specialties and payroll cards, to time-saving employee self-service solutions, you will be able to find the latest, most cost-effective technology to help your organization succeed.

To register or obtain more information, call APA Membership Services at 210-224-6406, 8:00 a.m. – 6:00 p.m. CT, M-F, or visit www.americanpayroll.org/congress25/congress2007.html.

The proposal would make employer-paid and pre-tax health insurance payments taxable wages, while providing a \$15,000 deduction for family coverage (\$7,500 for individual coverage). The deduction would apply to both income and FICA taxes, and the full amount would apply regardless of how much is spent on the insurance, provided a minimum level is purchased. If the proposal is enacted, it would replace existing health care tax subsidies, including cafeteria plans and flexible spending arrangements, while retaining

Health Savings Accounts.

There were many questions from the audience about how this would affect payroll professionals. APA's Senior Manager of Government Relations, Scott Mezistrano, CPP, reviewed the feedback APA has given Treasury on this proposal and moderated the audience's questions and comments (see the upcoming April "Inside Washington," due out on April 13, for additional coverage). Reeder said that many details still have to be worked out, but that the amount of employer-paid coverage would have to be reported

on Form W-2 and would be subject to withholding and employment taxes. He also said that the FICA tax deduction could be handled on the employee's Form 1040, in much the same way that the employee can take a credit for overpaid social security tax when wages from more than one employer total more than the social security wage base. Form W-4 would also have to be altered so that employees could make the appropriate adjustments to account for the standard deduction and not be overwithheld for federal income tax. **PC**

CSX Corporation Severance Pay/FICA Litigation Update

CSX Corporation, the parent company of a group of railroads, implemented a major reduction in its workforce between 1984 and 1990. With respect to payments made to affected employees, CSX paid the employer's share of FICA (social security and Medicare) and Railroad Retirement Tax Act (RRTA) taxes and withheld and remitted the employee's share on those amounts. The company then sought a refund. When the IRS disallowed the claim, CSX sued.

In April 2002, a decision was released (*CSX Corp. v. U.S.*, No. 95-858T, 2002 U.S. Claims LEXIS 73 (Ct. of Fed. Cl., 4-1-02)) saying that some payments under the CSX reduction-in-force program were FICA and RRTA wages (where the separation was voluntary), but others – which qualified as supplemental unemployment compensation benefits

(where the separation was involuntary) – were not. The decision, which was widely publicized, was preliminary – not final – and therefore not appealable under procedural rules applicable to the Court of Federal Claims, where the case was being tried. *Note:* Supplemental rulings were issued in October 2003 (see **PAYROLL CURRENTLY**, Issue No. 24, Vol. 11) and June 2006 (see **PAYROLL CURRENTLY**, Issue No. 16, Vol. 14).

WHAT SHOULD EMPLOYERS DO? – Employers that have had layoffs over the last several years are often puzzled at what to do in reaction to the CSX decision. Because of the uncertainty surrounding what will happen to the decision on appeal, employers can best protect themselves by withholding and/or paying social security, Medicare, and FUTA taxes on severance payments to laid-off

employees and then filing refund claims, which the IRS will hold in abeyance until a final decision is made by a higher court (see *The Payroll Source*®, p. 3-88).

Appeal

A final judgment in the case was filed on August 8, 2006. It ordered the government to repay \$20,375,040.81 of "overpaid" employer FICA and RRTA taxes and \$8,308,154.58 of employee FICA and RRTA taxes to CSX and individual CSX employees.

Appeals were filed by the parties on September 29, 2006 (CSX), and October 12, 2006 (U.S.). The matter is now before the Federal Circuit Court of Appeals. Briefs were filed on December 28, 2006 (CSX), and March 12, 2007 (U.S.). When a decision is announced by the appellate court, it will be reported in **PAYROLL CURRENTLY**. **PC**

Wage and Hour Division Recovered Almost \$172 Million in Back Wages in Fiscal Year 2006

The Department of Labor's Wage and Hour Division reports that it recovered \$171,955,533 in back wages for 246,874 workers in fiscal year 2006 (10-1-05 through 9-30-06). The amount collected was up almost \$6 million from \$166,005,014 in fiscal year 2005, and the number of workers receiving back wages was up 5,495 (from 241,379).

The number of complaints registered with the Wage and Hour Division decreased to 26,256 (from 30,375), while the total amount of civil money penalties assessed decreased to about \$7.9 million (from about \$10.5 million in 2005).

Fair Labor Standards Act

The overwhelming majority of cases handled by the Wage and Hour Division involve the FLSA. In 2006, \$135,729,003 in back wages was collected for FLSA violations, up from \$134,237,844 in 2005. The number of employees receiving back wages for FLSA violations increased to 247,512 (from 242,195).

Of the FLSA back wages collected in 2006, over \$13.2 million was collected for violations of the white collar exemption regulations that went into effect on August 23, 2004 (down from \$13.6 million collected in 2005). The violation most frequently cited was one

News Notes...

IRS Announces Quarterly Interest Rates

The IRS has announced that the interest rates for the second quarter of 2007 (i.e., the calendar quarter beginning April 1, 2007) will not change. The rates will remain at:

- 8% (7% in the case of a corporation) for tax overpayments;
- 8% for tax underpayments;
- 10% for large corporate underpayments; and
- 5.5% for the portion of a corporate overpayment exceeding \$10,000 [Rev. Rul. 2007-16, released 3-12-07].

in which the employee's primary duty was not "the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers." This violation of the administrative duty test was cited in 353 cases and affected approximately 2,800 employees.

Employers were assessed \$2.9 million in civil money penalties in 2006, down from \$4.3 million assessed in 2005.

Family and Medical Leave Act

In 2006, the Wage and Hour Division collected \$1,772,342 in back wages for FMLA violations, down from \$1,867,807 collected in 2005. The number of employees affected by FMLA violations decreased to 1,200 (from 1,626), and the number of violation cases decreased to 1,092 (from 1,355).

According to the DOL, termination of employees seeking FMLA leave continues to be the primary reason that complaints are filed. Of 2,161 complaints

filed in 2006, 870 alleged termination violations.

Low-wage industries

The Wage and Hour Division continues to pursue FLSA compliance in nine low-wage industries with vulnerable, often immigrant workers and a history of chronic violations – e.g., in the restaurant, health care, janitorial service, and garment manufacturing industries.

- Back wages collected for restaurant workers totaled \$16,945,668 in 2006 (up from \$13,800,956 in 2005), while the number of restaurant workers receiving back wages was 29,102 (down from 31,755).

- Back wages collected for health care workers were \$10,094,948 in 2006 (down from \$11,917,166 in 2005), and the number of workers receiving back wages was 24,227 (down from 30,508).

- Back wages collected for janitorial service workers decreased to \$3,253,038 in 2006 (from \$3,408,819 in 2005), while the number of workers receiving back wages decreased to 4,349

(from 4,699).

- Back wages collected for garment workers totaled \$2,914,067 in 2006 (down from \$3,970,247 in 2005), while the number of workers receiving back wages was 2,882 (down from 4,679).

Child labor

The Wage and Hour Division continues to pursue targeted enforcement of the FLSA's child labor provisions. In 2006, child labor investigations decreased to 952 (from 1,406 in 2005), while the number of violations found decreased to 1,083 (from 1,129) and the number of minors found illegally employed was 3,723 (3,703 in 2005).

Hazardous Occupation (HO) violations were found in a third of the cases with violations. Violation of HO No. 12 (paper balers) was the most common violation, followed by violation of HO No. 10 (meat slicers), and HO No. 2 (driving).

Employers were assessed nearly \$3 million in child labor civil money penalties in 2006, down from \$3.7 million assessed in 2005. **PC**

Supreme Court Denies Review in Two Payroll-Related Cases

The U.S. Supreme Court has refused to hear the appeal of a dispute over whether time spent by county employees driving county-owned vehicles from a county parking site to the first worksite of the day and driving the vehicles from the last worksite of the day back to the county parking site was compensable under the Fair Labor Standards Act (FLSA) [*Burton v. Hillsborough County*, No. 06-315 (U.S. Sup. Ct., 11-6-06)]. The Eleventh Circuit Court of Appeals said the time was

compensable. Employees using county vehicles had no choice but to begin and end their workdays at a county parking facility, not the worksite. In addition, the county benefited from a policy that minimized the risk of having its vehicles in unattended locations and prevented employees from potentially using its vehicles for personal reasons. And the employees' travel time was not de minimis – recording it would present no administrative difficulty, the amount of time involved was significant, and the travel occurred on a daily basis (see **PAYROLL CURRENTLY**, Issue No. 3, Vol. 15).

The Court has also refused to hear the appeal of a dispute over whether

off-duty police officers were entitled to compensation, including overtime pay, under the FLSA for the hours when they were required to carry pagers [*Adair v. Charter County of Wayne*, No. 06-912 (U.S. Sup. Ct., 3-19-07)]. The Sixth Circuit Court of Appeals said the off-duty time was used primarily for the benefit of the officers, not the employer, and the officers were therefore not entitled to overtime pay. Officers were not disciplined for failing to respond to a page. They were able to engage in all of their normal personal activities while off duty. And even temporary restrictions imposed after 9/11 did not severely curtail these activities (see **PAYROLL CURRENTLY**, Issue No. 26, Vol. 14). **PC**

News Notes...

IRS Releases Form 1099-MISC for 2007

The IRS has released Form 1099-MISC, *Miscellaneous Income*, for 2007. The form is virtually unchanged from 2006. Both the form and the 2007 *Instructions for Form 1099-MISC* are available for downloading on the APA Web site at www.payroll.org/i4a/pages/index.cfm?pageid=139. This form is used by businesses to report certain payments to nonemployees (e.g., independent contractors, health care providers, attorneys).

May Is Direct Deposit and Direct Payment Month

May 2007 has been designated as Direct Deposit and Direct Payment Month. This is an ideal time for payroll professionals to promote direct deposit as a secure and reliable way for employees to receive their paychecks.

According to NACHA – The Electronic Payments Association,

employers and employees benefit from direct deposit in a variety of ways:

- The account reconciliation process is simplified. Your account statement will have a single dollar amount for the total amount of the direct deposit transactions versus individual check amounts to reconcile.

- Direct deposit eliminates manual check preparation, which can reduce administrative costs.

- You'll have fewer checks to print and store.

- Payments never get lost or stolen.

- Fraud is reduced because there is less potential for counterfeit checks, stolen checks or signature plates, altered amounts, and forged signatures.

- No signatures are required, so there's no need for facsimile signature security.

- It costs more to process a paper

check.

- Direct deposit requires less manual handling than a check, which reduces the potential for errors.

- Problems are very rare. The chance of having a problem with a check is much greater than with direct deposit.

- Businesses can save anywhere from \$0.50 cents to \$1.25 per payment by using direct deposit instead of checks.

- Productivity is increased because employees spend less time away from work cashing or depositing payroll checks.

Suggestions for effective promotions are available at www.electronicpayments.org/businesses/bs.marketing-resources.promotion.php. APA's *The Guide to Successful Direct Deposit* also offers tips for marketing direct deposit to your employees. In addition, the book explains how to implement and administer a direct deposit program and discusses the federal and state regulations on direct deposit. Order the recently published 2007 edition by visiting www.americanpayroll.org/books/deposit.html or calling APA's Membership Services at 210-224-6406. **PC**

Motor Carrier Exemption Did Not Apply to Armored Truck Company's Vault Attendant

IBI Armored Services, Inc. is an armored truck company that provides secure shipment and storage services throughout North America for items such as coins, currency, precious metals, and credit cards. As a vault attendant at IBI's warehouse in Woodside, New York, Rahaman Khan spent about 75% of his time offloading arriving IBI armored trucks.

Khan, who was stationed at a check-in counter, would receive from an arriving truck crew a manifest listing all items on the truck. The truck crew would then unload cargo from the truck onto bins, which were wheeled into Khan's area. The crew would hand items from the bins across the counter to Khan, who matched tags on the cargo with the manifest.

Khan would place outgoing cargo for shipment in IBI trucks in the appropriate bins or trolleys, as directed by IBI's money room personnel. He regularly placed heavy items such as gold bars on skids. Khan also determined how cargo was placed on skids and trolleys, and used shrink wrap to secure items loaded on pallets so they would be stable during shipment.

Khan sued IBI to recover unpaid overtime that he said was owed to him under the Fair Labor Standards Act (FLSA). IBI did not dispute that there were workweeks in which Khan worked more than 40 hours without

receiving overtime pay, but said that he was exempt from FLSA overtime requirements, citing the "motor carrier" exemption. The question for the court was whether Khan's work constituted "loading."

WHAT THE LAW SAYS - An employee subject to regulation by the Secretary of Transportation is not covered by the overtime provisions of the FLSA under the "motor carrier" exemption (29 USC §213(b)(1)). The Secretary of Transportation can set the qualifications and maximum service hours for employees of a private motor carrier "when needed to promote safety of operation."

In addition, regulations specifically exclude "loaders" employed by a motor carrier from coverage under the FLSA. A loader is someone whose duties usually include "unloading and the transfer of freight between the vehicles and the warehouse." This directly affects safety of operation "so long as he has responsibility when such motor vehicles are being loaded, for exercising judgment and discretion in planning and building a balanced load or in placing, distributing, or securing the pieces of freight in such a manner that the safe operation of the vehicles on the highways in interstate or foreign commerce will not be jeopardized" (29 C.F.R. §782.5(a)).

Ruling

The court said that the bulk of

Khan's time was spent preparing the IBI depot for the receipt and dispatch of cargo, and checking in cargo

News Notes...

Restaurant Owner Sentenced to Prison for Payroll Tax Offenses

The U.S. Department of Justice recently announced that Ralph Scotto has been sentenced to 15 months in prison for evading the payment of trust fund recovery penalties of approximately \$50,000 and assisting in the filing of false payroll tax returns for corporations he owned or controlled. Scotto's New York City restaurants included Wolf's Delicatessen and Celebrity Deli. According to the indictment and Scotto's guilty plea:

Two of Scotto's corporations were delinquent in paying over to the IRS taxes withheld from their employees. Scotto, as owner, was personally assessed for those delinquencies. He then evaded payment of those assessments *for over a decade*. In addition, he assisted in filing false quarterly payroll tax returns that failed to report portions of the salaries to his corporations' employees that he had paid them in cash. The judge said that Scotto's activities in furtherance of his "serious offense" had "occupied a substantial part of his life" (www.usdoj.gov/usao/nys/pressreleases/March07/scottosentencingpr.pdf).

offloaded by the truck crew – activities that were not remotely connected to loading.

The second aspect of Khan's work activity – manifesting cargo for dispatch and placing cargo in bins or containers prior to loading – did not qualify as loading. Khan never physically boarded an armored truck. Instead, he transferred cargo from containers to truck crews who alone were responsible for loading IBI's trucks. Khan's responsibility was to remain in the bay area to provide security and accountability for the cargo while it was in the wheeled containers before they were emptied

and transferred by a truck crew onto a truck. He had no responsibility for placing cargo onto a truck, distributing a cargo load in a truck, or securing it for safe transportation.

Khan's job description included responsibility for being present on a standby basis while the vault supervisor loaded pallets aboard the truck using a forklift and for operating the forklift to load the truck in the supervisor's absence. However, Khan's actual job duties did not involve these activities. Khan was unable to operate a forklift, and the fact that IBI kept Khan on the job for over two years without ever requiring him to

acquire that skill was proof that the operation of a forklift was not one of his responsibilities.

The court concluded that Khan was not a loader subject to the motor carrier exemption, but a packer who was covered by the FLSA and therefore entitled to overtime pay. Additionally, the court awarded Khan liquidated damages because IBI did not show that it had a reasonable basis for denying Khan overtime pay other than its failed motor carrier exemption defense [*Khan v. IBI Armored Services, Inc.*, No. 1:04-cv-762-ENV-SMG, 2007 U.S. Dist. LEXIS 12218 (ED N.Y., 2-22-07)]. **PC**



STATE AND LOCAL NEWS

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Delaware Beginning in 2008, employers must file Forms W-2 electronically with the Division of Revenue (DOR) if they are required to file Forms W-2 electronically with the federal government (this updates *The Payroll Source*®, p. 8-103). Under federal law, employers that file 250 or more Forms W-2 (Copy A) for a calendar year must file them electronically. After 2007, the DOR will no longer accept Forms W-2 filed on magnetic media (diskettes, CDs, or tapes). The DOR's new online filing system for Forms W-2, *Online W2 Submission*, is available at <https://dorweb.revenue.state.de.us/w2send>.

Minnesota Beginning in 2008, the Department of Revenue will no longer accept Forms W-2 filed on magnetic media (CDs or diskettes). Employers with more than 250 employees will be required to file Forms W-2 electronically (this updates *The Payroll Source*®, p. 8-104). Currently, there are three electronic filing methods available using e-File Minnesota at www.taxes.state.mn.us: (1) key and send – enter data directly into the system (limited to employers with no more than 25 employees); (2) fixed or delimited file – create an Excel file and upload the data; or (3) MMREF – upload a file in the MMREF format. Bulk filers can electronically submit an MMREF file on behalf of multiple clients using e-File Minnesota.

Nevada Effective 4-10-07, the Labor Commissioner has adopted temporary minimum wage regulations. Emergency regulations have been in place since 12-12-06. There are two state minimum wage tiers: \$5.15 an hour if an employee is offered qualified health insurance benefits and \$6.15 an hour if an employee is not offered such benefits. The temporary regulations explain the conditions that an employer must meet in order to pay the lower minimum wage tier: a health benefit plan must meet certain requirements and an employee's share of the cost of the premium cannot exceed 10% of the employee's gross taxable income attributable to the employer. Download the temporary regulations at www.laborcommissioner.com [LCB File No. T004-07, 3-6-07].

Oregon Effective 4-2-07, most employers are required to remit child support payments to the Department of Justice (DOJ), Division of Child Support, through electronic funds transfer (EFT). There are two EFT payment options for employers to use: Automated Clearing House (ACH) credit and ACH debit. ACH debit will use the Child Support Payment System (CSPay) and will be available in May 2007. While the proposed rule requiring electronic payments will be finalized in April, employers can rely on the proposed rule language becoming the final rule, according to the DOJ (see *PAYROLL CURRENTLY, Issue No. 5, Vol. 15*) [DOJ Media Release, 3-19-07; Or. Adm. R. §137-055-5035].