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Dear Clients and Friends:

As we begin the New Year, there are changes we would like to make you aware of as well as some internal procedures that should be reviewed for compliance. If you have any questions regarding this information, please refer to our website [www.socpapc.com](http://www.socpapc.com) or call the office.

## **2023 Important Payroll Tax Information**

- **The due date for filing 2022 Form W-2 with the Social Security Administration is January 31, 2023, whether you file paper forms or electronically.**
- **The due date for filing 2022 Form 1099-MISC and new Form 1099-NEC with the Internal Revenue Service is January 31, 2023, whether you file paper forms or electronically.**
- **Form 940 – FUTA- Mailing address without a payment:**  
Department of the Treasury  
Internal Revenue Service  
Kansas City, MO 64999-0046
- For 2023, the employee and employer tax rates for Social Security and Medicare remain the same at 12.4% (6.2% paid by employee and 6.2% paid by employer) for Social Security and 2.9% for Medicare (1.45% paid by employee and 1.45% paid by employer). However, the Maximum Taxable Earnings for Social Security increased to \$160,200, up from \$147,000 in 2022.
- The NY State Unemployment Insurance Maximum Taxable Earnings have been increased to \$12,300 up from \$12,000 in 2022.
- The NY State Minimum Wage remains the same at \$15.00/hour and the Max. Tip Credit (Tipped Food Service Worker) at \$5.00/hour.
- Effective January 1, 2023, standard mileage rates for business miles driven has increased from 62.5 cents per mile to 65.5 cents per mile.
- The earnings limit for the Social Security Benefits has increased to \$21,240 up from \$19,560.
- 2023 NYS Overtime Rules – The salary threshold of employees classified as exempt pursuant to the administrative and executive exemptions under New York State law increases dependent upon the location of the employer.
- Payment of overtime wages is required for work performed after 40/hrs. per week.
- An Administrative employee exempt from this requirement is an employee who performs office or non-manual field work directly related to management policies or general operations, regularly and directly assists an employer, regularly exercises discretion & independent judgement. The employee is paid for their services on a salary basis, inclusive of board, lodging, other allowances and facilities, of not less than the following salary threshold:
  - Westchester & Long Island: \$1,125/week (no change from 2022).

## **2023 Wage and Tax Highlights**

### **Federal**

◆ FICA (Social Security)	Maximum Taxable Earnings:	\$ 160,200
◆ FICA (Medicare)	Maximum Taxable Earnings:	No Limit
◆ FICA (Social Security)	Employee Tax Rate	6.2%
◆ FICA (Social Security)	Employer Tax Rate	6.2%
◆ FICA (Medicare)	Employee Tax Rate	1.45%
◆ FICA (Medicare)	Employer Tax Rate	1.45%
◆ FUTA (Employer-Paid)	Maximum Taxable Earnings:	\$ 7,000

### **New York**

• State Unemployment Insurance Maximum Taxable Earnings:	\$12,300
• Minimum Wage – Suffolk, Nassau and Westchester Counties	\$15.00/hour
• Minimum Wage – NYC with 10 or fewer employees	\$15.00/hour
• Minimum Wage – NYC with 11 or more employees	\$15.00/hour
• Minimum Wage – Remainder of New York State	\$14.20/hour
• Minimum Wage – Fast Food Establishments in NYC (10 or fewer emp.)	\$15.00/hour
• Minimum Wage – Fast Food Establishments outside NYC	\$15.00/hour
• Min. Cash Wage (Tipped Food Service Worker)	\$10.00/hour
• Max. Tip Credit (Tipped Food Service Worker) – Suffolk, Nassau and Westchester Counties	\$5.00/hour
• Max. Tip Credit (Tipped Food Service Worker) – NYC with 10 or fewer employees	\$5.00/hour
• Max. Tip Credit (Tipped Food Service Worker) – NYC with 11 or more employees	\$5.00/hour
• Max. Tip Credit (Tipped Food Service Worker) – Remainder of NYS	\$4.75/hour

### **Payroll and Reporting Requirements - 2023**

#### **◆ Social Security Benefits**

If you were born prior to January 1, 1957, then your full retirement age for social security benefits is 66 and 6 months. If you work and are turning 66 and 6 months in 2023, the earnings limit has increased to \$56,520, up from \$51,960 in 2022. There is no limit on earnings for workers who have reached or passed their full retirement age for the entire year.

#### **Cost of Living Adjustment (COLA):**

Based on the increase in the Consumer Price Index (CPI-W) from the 3<sup>rd</sup> quarter of 2021 through the 3<sup>rd</sup> quarter of 2022, Social Security and Supplemental Security Income (SSI) beneficiaries will receive an 8.7% COLA for 2023.

Also, individuals with earned income of more than \$200,000 (\$250,000 for married couples filing jointly) pay an additional 0.9% in Medicare taxes.

If you are younger than full retirement age, then your social security benefits are reduced and your earnings are limited to \$21,240. If your earnings exceed \$21,240, social security benefits are reduced even further.

◆ **Wage Theft Protection Act**

- All employers are required to provide newly hired employees with notification stating their rate of pay, including overtime; whether they are paid hourly, by shift, by the day or the week, monthly or by commission; the date of their regular payday; their employer's official name and any name it uses in business; the employer's address and phone number, and any deductions such as for tips, meals and lodging. These notices must be issued at the time of hire.
- Employers must have each employee sign and date the completed notice. The notice must appear both in English and in the employee's primary language (if the DOL offers a translation). Employers must also keep records on file and give each employee a copy of their signed notification. These forms should be updated only upon change of pay rate and/or employee information. Any reduction in pay requires written notice 1 week prior to the change in pay. There are increased penalties of up to \$5,000 for noncompliance per violation and personal liability to LLC members for wages owed. Please refer to our website for more detailed information and samples of notification letters.

◆ **Form W-4 (2023)**

The updated IRS Form W-4 for 2023 removes references to the tax withholding estimator in the 2022 Form W-4. The IRS revised the form in 2020 to comply with the income tax withholding requirements in the Tax Cuts and Jobs Act. The IRS is not requiring all employees to complete a new form, however all new hires in 2023 and any employee making changes to their withholdings are required to complete the updated Form W-4.

◆ **New Hires**

All U.S. employers are responsible for completion and retention of Form I-9 for each individual they hire for employment in the United States. This includes citizens and noncitizens. On the form, the employer must verify the employment eligibility and identity documents presented by the employee and record the document information on the Form I-9. Acceptable documents are listed on the back of the form. You can also visit [www.uscis.gov](http://www.uscis.gov) for a listing of current acceptable documents.

New York State requires the reporting of any newly hired employees. The required information can be reported by submitting a completed and legible copy of the employee's New York State Form IT-2104. This must be submitted to NYS within 20 calendar days from the hiring date. You can submit this information online via the Web site at [www.nynewhire.com](http://www.nynewhire.com); or mail to:

NYS Dept. of Taxation and Finance  
New Hire Notification  
P.O. Box 15119  
Albany, NY 12212-5119

◆ **Social Security Number Verification**

The Social Security Administration (SSA) has set up several methods for employers to verify employee names and social security numbers. You must register online and receive authorization from your employer to use these services. To register, visit SSA's website at [www.socialsecurity.gov/employer](http://www.socialsecurity.gov/employer) and click on the *Business Services Online* link.

- The SSA allows you to verify up to ten (10) names and numbers with Telephone Number Employer Verification (TNEV) by calling (800) 772-6270 or (800) 772-1213.
- You can also verify SSNs on line at: [www.ssa.gov/employer/ssnv.htm](http://www.ssa.gov/employer/ssnv.htm) or [www.e-verify.gov](http://www.e-verify.gov).

◆ **Illegal Workers**

In recent years there has been an increase in ways to crack down on illegal workers by the Department of Homeland Security and the Social Security Administration. Significant civil penalties may be imposed against employers who have hired ineligible employees.

Employees have been furnishing ITIN's in lieu of social security numbers on their W-4s. These numbers begin with 9 and have a 7 or 8 as the fourth digit (i.e. 9XX-8X-XXXX). These numbers are not social security numbers and are not valid for employment. If you have any current employees who have furnished these ITIN's, please immediately review your records, request proper identification, and complete a 2023 W-4 and I-9 form for these employees.

◆ **Subcontractors & 1099 Filing Requirements**

There have been no major changes to IRS **Form 1099-NEC**, which will be used to report nonemployee compensation (NEC) and attorney fees paid over \$600 during the 2022 calendar year.

Employers with subcontractors must have updated W-9's on file for all subcontractors. Certificates of Insurance for both Workers' Compensation and General Liability will also be required from these subcontractors for the annual insurance audits. If you are using QuickBooks, the program has a section indicating if the subcontractor is to receive a 1099. Utilizing this feature will assist you in preparing 1099's. Significant penalties may apply for the failure to file form 1099.

We have seen an increase in the amount of audits that are challenging the eligibility of the subcontractor. If you have concerns that a subcontractor may meet the criteria of an employee, please call us to discuss.

◆ **Federal Tax Deposit Rules – Unchanged**

Please refer to Publication 15 on the IRS website for any questions regarding your filing requirements.

◆ **Employer Shredding Requirements**

Federal law now requires that employers protect their employees' personal information by shredding "consumer reports" they receive about the employees they hire. To protect against identity theft, it is good practice to shred all documents containing employees' personal information.

## **NEW YORK STATE TAXES**

### ◆ **NYS Payment Requirements for NYS Withholding**

As of April 30, 2015, withholding tax returns are required to be filed electronically. Withholding requirements remain unchanged however when filing the quarterly return (NYS-45 Part C or NYS-45-ATT) you are required to complete columns D & E each quarter. Please refer to Publication NYS-50 on the NYS Tax Department's website for any questions regarding your filing requirements.

### ◆ **MTA Payroll Tax - Unchanged**

Effective April 1, 2012, the MTA Tax was eliminated for many small businesses across New York State and a reduced rate now applies for most others.

The Rates have not changed for 2023 and are:

<u>Quarterly Payroll Expense</u>	<u>Rate</u>
Up to \$312,500 per quarter	0.00%
Exceeding \$312,500 up to and including \$375,000 per quarter	0.11%
Exceeding \$375,000 up to and including \$437,500 per quarter	0.23%
Exceeding \$437,500 per quarter (rate does not change)	0.34%

### ◆ **NYS Paid Family Leave**

#### **Timeline**

Paid Family Leave was designed to phase in over four years, beginning January 1, 2018. New York State Paid Family Leave is now fully realized with benefits at their target levels as follows:

<u>Weeks Available</u>	<u>Max % of Employee Average Weekly Wage</u>
12	67%

Employees may take the maximum benefit length in any given 52-week period. The 52-week period starts on the first day the employee takes Paid Family Leave.

- Paid Family Leave (PFL) coverage will be included under the disability policy. The premium can be fully funded by employees through payroll deductions. The maximum rate of employees' contribution will be established each year by the NYS Department of Labor using the Average Weekly Wage (AWW). Even though benefits are expanding to cover more family members this year, the employee contribution rate for PFL is decreasing. For 2023, employee will contribute 0.455% of their gross wages per pay period. The maximum annual contribution for 2023 is \$399.43 (reduced from the 2022 maximum contribution rate of \$423.71).
- Despite the lower employee contribution, the maximum weekly benefit for employees taking PFL will increase in 2023. Eligible employees receive 67% of their average weekly wage up to a cap of 67% of the NYS AWW, which for 2023 AWW is \$1,688.19, making the maximum weekly benefit \$1,131.08, which is \$62.72 more than the maximum weekly benefit for 2022.
- This is in addition to the current NYS Disability deduction.

- Every full-time or part-time private employee in New York State will be eligible for Paid Family Leave.
  - Full-Time (20 or more hours/week) – must be employed full-time for 26 weeks to be eligible for the benefits.
  - Part-Time (less than 20 hours/week) – must be employed for 175 days to be eligible for the benefits.

◆ **Requirements for PromptTax Program**

EFT's are required for income tax withholding and sales and use taxes when certain thresholds are met. The threshold for combined withholding and NYS Unemployment Tax is \$100,000 liability filed for the previous tax year; and for sales and use tax the threshold is \$500,000 liability or more during the period of June 1 through May 31 of the preceding year.

If you are enrolled in the PromptTax Program, this program has updated its services and can now be filed directly on the NYS website under the Employment and Withholding taxes tab.

◆ **Employer Compensation Expense Tax (ECET)**

The Employer Compensation Expense Program (ECEP) established an optional tax (ECET) that employers can elect each year to pay if they have employees that earn over \$40,000 annually in wages and compensation in New York State.

New York established the ECET to combat the Tax Cuts and Jobs Act State & Local Tax (SALT) cap of \$10,000. Contributed funds help cover state and local income taxes for employees in the form of a tax credit on the employee's individual tax return.

Participation is optional and must be registered for each year. Once elected into, the ECET must be paid.

◆ **Pass-Through Entity Tax (PTET)**

The Pass-Through Entity Tax (PTET) is an elective tax where flow through entity business taxpayers (Partnerships and S Corporations) can pay entity level NYS tax, which will be an expense to the entity reducing Federal taxable income. The respective partners and shareholders of these entities will then receive a NYS tax credit pro-rata to their share of related entity income on their New York personal income tax return. The PTET was created as a tax savings incentive to combat the reduction of the state and local tax (SALT) cap that was imposed in the 2017 Tax Cuts and Jobs Act.

The election must be made each year the entity wishes to participate. The election for the 2023 tax year must be made by March 15, 2023 via [www.tax.ny.gov/online](http://www.tax.ny.gov/online).

Beginning January 1, 2023, entities that elect into the PTET must make four estimated tax payments throughout the year due March 15<sup>th</sup>, June 15<sup>th</sup>, September 15<sup>th</sup>, and December 15<sup>th</sup>.

◆ **Household Employees (Schedule H)**

Social Security and Medicare (FICA) taxes must be withheld from Household Employees, if they earn cash wages of \$2,600 or more in 2023 (up from \$2,400 in 2022). Employers can choose to pay the employee's share of FICA from their own funds should they prefer.

### **Pensions - Elective Salary Deferral Plans**

- ◆ The 2023 maximum salary deferrals are as follows:

	Taxpayers Under 50	Taxpayers Over 50
401(k) Plans	\$22,500	\$30,000
403(b) Plans	\$22,500	\$30,000
Simple Plans	\$15,500	\$19,000

- ◆ Employer Match Recommendation - We recommend that the employer salary deferral match be made each quarter when completing your 941.
- ◆ If an eligible employee decides to “Opt-Out” of an employer sponsored plan, the employer should have the employee sign a disclaimer form and place it in their personnel file. The disclaimer should be updated annually.

### **New York State’s Secure Choice Savings Plan**

In October 2021, Governor Kathy Hochul signed new legislation requiring private employers that meet certain criteria to automatically enroll their employees in the State’s Secure Choice Savings Program. This Program is a retirement plan administered by the State. This applies to both nonprofit and for-profit employers that:

- have employed at least 10 employees in the State, at all times, in the previous calendar year.
- have been in business in the State for at least 2 years.
- do not already offer qualified retirement options, such as a 401(a), 401(k), 403(a), 403(b), 408(k), 408(p), or 457(b) plan, as listed in the statute, or other pension benefit plan, in the preceding 2 years. Employers already offering such plans may not terminate those plans to participate in the Secure Choice program.

Employers must provide all employees with a form prior to offering the plan, where the employee may either opt out of participation or participate at a contribution level other than the automatically enrolled 3% of wages.

### **Other Items**

#### ◆ Insurance

All NYS employers are required to carry NYS Workers’ Compensation and PFL/Disability Insurance policies with few exceptions.

Most companies are experiencing insurance rate increases. Please review your coverage well in advance of your expiration dates. During the past year the Workers' Compensation and general liability auditors have been requesting additional data. The additional information is:

- Copies of invoices to your clients showing the type of work being done and the location of that work.
- The Certificates of Insurance from subcontractors must include the coverage for the period of the audit.

- The vendor's insurance certificate must indicate whether anyone has been exempted from insurance and must list the employer as an additional insured.

◆ **Health Insurance**

Most companies are experiencing insurance rate increases. Please review your coverage well in advance of your expiration dates. If an eligible employee decides to "Opt-Out" of an employer sponsored health plan the employer should have the employee sign a disclaimer form and place it in their personnel file. The disclaimer should be updated annually.

◆ **Sales Tax**

The NYS Sales Tax Department in conducting its audits has asked to review sales invoices. Please be sure that your invoices differentiate between taxable and non-taxable services and products. Businesses that purchase taxable items from out-of-state or the internet and are not charged for NYS Sales Tax will have to remit the required sales tax as a use tax on their sales tax returns. This is true for all materials, supplies, and equipment.

◆ **Sales Tax – Materials Credit**

New York State in its effort to collect more revenue, is reviewing those returns that claim a materials credit. This will require a more detailed allocation of costs (from invoices) to support the calculation. If you would like for us to review the calculation with you, please give us a call.

◆ **Employee Posters**

Federal and state employment laws must always be posted in a conspicuous place.

◆ **Payroll Forms**

For your convenience, Form W-4, Form IT-2104, Form W-9 and Form I-9 can be downloaded from our Website at [www.socpapc.com](http://www.socpapc.com). Please click on "News" then "Payroll Forms" on our home page and then choose the Form you want to print. If you prefer, you can call our office and we will mail you these forms.

◆ **Agency internet web sites:**

- Internal Revenue Service: [www.irs.gov](http://www.irs.gov)
- Social Security Administration: [www.ssa.gov](http://www.ssa.gov)
- U.S. Dept. of Labor: [www.dol.gov](http://www.dol.gov)
- Dept. of Taxation & Finance: [www.tax.ny.gov](http://www.tax.ny.gov)
- NY Dept. of Labor: [www.labor.ny.gov/home](http://www.labor.ny.gov/home)
- US Dept. of Homeland Security: [www.uscis.gov](http://www.uscis.gov)