

## **1. Government requirements**

### Registration requirements

#### **Federal registration**

All US employers must obtain a federal employer identification number (EIN) from the Internal Revenue Service (IRS). To apply for an EIN, US employers must complete Form SS-4, *Application for EIN*. The Form SS-4 must list an individual with a US Social Security number (SSN) or Individual Taxpayer Identification Number (ITIN) as the party personally liable for unpaid federal employment tax obligations.

#### **State and local registration**

When doing business in the US, employers must register in every state where they pay wages subject to a wage tax. Thus, registration is required in each state where state unemployment insurance (SUI) taxes are paid and, in each state, where income tax is withheld. In many states, employers must register separately for SUI and income tax withholding. Registration is also required for each locality where the employer is required to withhold or pay taxes. State and local registration forms can be complex, and the failure to properly complete them can result in costly assessments. Businesses frequently seek assistance from their tax advisors to complete the registration process.

### Ongoing compliance requirements

#### **Tax payments and reporting**

Employers are required to make the payments of federal wage taxes, according to the IRS payment schedules and to file the related employment tax returns.

- ***Form 941, Employer's Quarterly Federal Tax Return***

Employer and employee Federal Insurance Contributions Act (FICA) contributions and Federal Income Tax Withholding (FITW) are reported with the taxable wage amounts on Form 941. The Form 941 is filed at the end of the month, following the close of the calendar quarter (due dates are 30 April, 31 July, 31 October and 31 January).

- ***Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return***

The total annual FUTA liability is reported on Form 940 by 31 January, following the close of the calendar year. Liabilities of more than USD500, at the end of the first three calendar quarters, must be paid to the IRS within 30 days following the end of the calendar quarter (due 30 April, 31 July and 31 October), with the total unpaid balance to be paid at the end of the fourth quarter (31 December), due by 31 January.

- **Form W-2, *Wage and Tax Statement***

Employers are required to report federal income tax (FIT), and FICA wages and

taxes withheld on the annual Form W-2. The employee's copy must be given to the employees by 31 January, following the close of the calendar year and the federal copies are filed with the Social Security Administration (SSA) by 31 January, following the close of the calendar year.

- **Form W-3, *Transmittal of Wage and Tax Statements***

Tax Form W-3 is a transmittal of Forms W-2, which is forwarded to the SSA, showing the total earnings, Medicare wages, Social Security wages, and withholding for all employees, encompassing the entire year.

### **State and local**

All states impose an income tax and an income tax withholding requirement, except for Alaska (AK), Florida (FL), Nevada (NV), New Hampshire (NH), South Dakota (SD), Tennessee (TN), Texas (TX), Washington (WA) and Wyoming (WY). Local payroll taxes for county, city and school districts are also imposed for localities within Alabama (AL), Delaware (DE), Indiana (IN), Kentucky (KY), Maryland (MD), Michigan (MI), Missouri (MO), New Jersey (NJ), New York (NY), Ohio (OH), Pennsylvania (PA) and West Virginia (WV). Withholding allowance certificates are required by some of these local taxing authorities, and each state and locality impose its own tax payment schedule. Periodic returns of income tax withholding are also required with varying due dates, and most require that an annual state or local Form W-2 be provided to employees and filed with the taxing authority.

### **SUI**

Under federal law, all states are required to have a SUI system. As a result, all the US states impose a SUI tax that is paid only by employers, except in

AK, NJ and PA, where employees also pay SUI tax. SUI returns and wage reports are due at the end of the month, following the close of the quarter (due dates are 30 April, 31 July, 31 October and 31 January).

Note that an exception applies to Illinois, where wage reports are filed monthly (but the SUI returns are due quarterly).

### **New hire reporting**

All employers are required to submit reports of their new hires to the state (or optionally, may submit their reports directly to the Federal Office of Child Support Enforcement). New hire reporting is used to enforce family support obligations and to prevent fraud in the filing of unemployment insurance claims.

## **2. Pension requirements**

Social Security is part of the retirement plan for almost every American worker. It provides replacement income for qualified retirees and their families. Social Security replaces a percentage of a worker's preretirement income based on their lifetime earnings. The portion of your preretirement wages that Social Security replaces is based on your highest 35 years of earnings and varies, depending on how much you earn and when you choose to start benefits.

There is no separate filing requirement. It is a part of the quarterly and annual filing requirement as mentioned above.

### **FICA**

For 2021, employers and employees pay Social Security tax at 6.2% of covered wages up to USD142,800 for the year. Employers and employees pay Medicare tax at 1.45% of all covered wages. Employees pay Additional Medicare Tax of 0.9% on all wages in excess of USD200,000. Certain US visa holders are exempt from FICA tax and a Social Security treaty exemption may apply to certain US nonresident aliens.

## **3. Employment obligations**

US businesses must comply with federal, state and local labor laws. These laws govern work conditions, minimum wages, hours of work, the frequency and manner of making wage payments, meals and rest periods, and the requirement for certain benefits, such as paid and unpaid

leave. Federal labor requirements are enforced by the U.S Department of Labor, state labor laws are enforced by state labor departments, and local laws are generally enforced by the city mayor or a county agency.

Following are some of the labor laws that apply:

- **Workers' compensation insurance:** Most states require that employers carry workers' compensation insurance that provides coverage for medical expenses and disability for work-related injuries and illnesses. Except in monopolistic states, where the workers' compensation insurance is provided only through a state fund, employers generally purchase this insurance through private carriers.
- **Health insurance coverage:** There is no federal labor requirement to provide health insurance to employees. However, under the Affordable Care Act (ACA), large employers are subject to a monetary penalty from the IRS for failure to provide a minimum level of health insurance coverage to employees. The penalty provisions apply to an employer with 50 or more full-time employees or full-time equivalents.
- **Minimum wage:** Under federal law, employees must generally be paid at least USD7.25 per hour. States and localities may require paying a higher hourly minimum wage.
- **Overtime pays:** Under federal law, nonexempt employees must generally be paid 1.5 times the regular rate of pay for all hours actually worked, over 40 hours per week. An exemption from the overtime pay requirement applies to certain categories of employees (e.g., executive, administrative and professional), provided the requirements are met. Some states and localities may require overtime pay for exceeding a daily hour threshold and, in some instances, may require an overtime rate of two times the regular rate of pay.
- **Paid time off:** There is no requirement for paid time off under federal law (an exception applies for employers with fewer than 500 employees, who are absent for reasons connected with COVID-19). Hence, there is no requirement to pay employees for the time off they take for sick leave, holiday or vacation. Numerous states and localities do impose paid time off for illness and other purposes.
- **Unpaid leave:** The federal Family and Medical Leave Act (FMLA) entitles eligible employees of covered employers to take unpaid, job-protected

leave for specified family and medical reasons, with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.

Most states impose requirements similar to the FMLA. Some states and localities also require unpaid leave for jury duty, voting, surgery for certain organ donors, and for other purposes.

## **FUTA**

For each covered employee, employers pay 6.0% of covered wages up to USD7,000 for the year. A maximum credit of up to 5.4% applies, making the net FUTA tax rate 0.6% for most employers that pay their state unemployment insurance taxes on time and for the full amount.

Exemptions from FUTA apply to public sector employers, nonprofit organizations and certain US visa holders.

## **4. Payroll requirements**

**Method of payment:** In general, wages must be paid by cash or cheque. Most states permit payment by direct deposit or by debit card, but only with the written consent of employees and only if the employees are not subject to a fee to withdraw their pay.

**Frequency of wage payments:** Most states regulate the frequency at which employees must be paid. For instance, some states require that hourly employees be paid no less frequently than every two weeks.

**Pay statements:** Many states have specific requirements for the information that must be provided to employees each payday, including regular hours, regular pay, overtime hours and overtime pay.

**Garnishment:** An employer is responsible for executing garnishment orders and must deduct amounts from an employee's pay every period and transmit the funds to applicable agencies.

## **5. Banking requirements related to payroll**

This section is not applicable to the US.

