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	The "Total" Advisor

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Payroll Tax Cut Temporarily Extended into 2012

Employees will continue to see a reduction of their Social Security tax withholding rate from 6.2 percent to **4.2 percent of wages paid through Feb. 29, 2012**. The two percentage point payroll tax cut, in effect for 2011, was temporarily extended by the [Temporary Payroll Tax Cut Continuation Act of 2011](#). This reduced Social Security withholding will have no effect on employees' future Social Security benefits.



According to the Internal Revenue Service (IRS), employers should implement the new payroll tax rate as soon as possible in 2012 but not later than Jan. 31, 2012. For any Social Security tax over-withheld during January, employers should make an offsetting adjustment in workers' pay as soon as possible but not later than March 31, 2012.

Additional Income Tax May Apply to Certain Higher Income Employees

Employers should note that the law includes a new "recapture" provision, which applies only to those employees who receive more than \$18,350 in wages during the two-month extension period (the Social Security wage base for 2012 is \$110,100, and \$18,350 represents two months of the full-year amount).

- This provision imposes an additional income tax on these higher-income employees in an amount equal to 2 percent of the amount of wages they receive during the two-month period in excess of \$18,350 (and not greater than \$110,100).
- This additional recapture tax is an add-on to income tax liability that the employee would otherwise pay for 2012 and is not subject to reduction by credits or deductions. The recapture tax would be payable in 2013 when the employee files his or her income tax return for the 2012 tax year.

NLRB Postpones Effective Date of New Employee Rights Posting Rule to April 30

The National Labor Relations Board (NLRB) has further [postponed the effective date](#) of its employee rights [notice-posting rule](#) at the request of the federal court in Washington, DC hearing a legal challenge regarding the rule, in order to facilitate the resolution of the legal challenges that have been filed with respect to the rule. The new implementation date for

the rule is **April 30, 2012**.

As a result of the most recent postponement, most private sector employers will be required to post the [11-by-17-inch notice](#) beginning on April 30, 2012. The notice is available at no cost from the NLRB through its website, either by [downloading and printing](#) or you may also [fill out this form](#) or call 202-273-0064 and copies will be mailed free of charge.

Additional Information
For further information about the jurisdiction and posting requirements for the new notice, please see the NLRB's [Frequently Asked Questions](#), which will be updated regularly as new questions arise. For questions that do not appear on the list, or to arrange for an NLRB presentation on the rule, employers may contact the agency at questions@nlrb.gov or 866-667-NLRB.

Our section on [Federal Poster Requirements](#) contains more information on this and other federal notices required to be displayed in the workplace.

EEOC Launches Small Business Task Force to Expand and

- With the possibility of a full-year extension of the payroll tax cut being discussed for 2012, the IRS will closely monitor the situation in case future legislation changes the recapture provision.

The IRS will issue additional guidance as needed to implement the provisions of this new two-month extension, including revised employment tax forms and instructions and information for employees who may be subject to the new "recapture" provision. For most employers, the quarterly employment tax return for the quarter ending March 31, 2012, is due April 30, 2012.

To read more about the Social Security and Medicare payroll taxes, please visit our section on the [Federal Insurance Contributions Act](#) (FICA).

IRS Announces 2012 Standard Mileage Rates

The Internal Revenue Service has [issued the 2012 optional standard mileage rates](#) used to calculate the deductible costs of operating an automobile for business, charitable, medical or moving purposes.



2012 Standard Mileage Rates

Beginning on Jan. 1, 2012, the standard mileage rates for the use of a car (also vans, pickups or panel trucks) will be:

- 55.5 cents per mile for business miles driven;
- 23 cents per mile driven for medical or moving purposes; and
- 14 cents per mile driven in service of charitable organizations.

The rate for business miles driven is unchanged from the mid-year adjustment that became effective on July 1, 2011. The medical and moving rate has been reduced by 0.5 cents per mile.

The standard mileage rate for business is based on an annual study of the fixed and variable costs of operating an automobile. The rate for medical and moving purposes is based on the variable costs as determined by the same study. Taxpayers always have the option of calculating the actual costs of using their vehicle rather than using the

Enhance Assistance to Small Businesses

The U.S. Equal Employment Opportunity Commission (EEOC) has [launched a new internal task force](#) that will focus on expanding and improving outreach and technical assistance to small businesses. The Small Business Task Force will work to find ways in which the agency can better collaborate with the small business community to ensure compliance with [federal anti-discrimination laws](#).

The Task Force will, among other things, develop recommendations on how to:

- Utilize new technology to expand outreach to small businesses;
- Develop technical assistance and training initiatives for small businesses;
- Identify specialized approaches to aid small businesses owned by women and minorities;
- Identify specialized approaches for micro businesses, generally those with 50 or fewer employees; and
- Enhance small business information and training on the EEOC's web site.

The Small Business Task Force plans to focus on newly established small

standard mileage rates.

Limitations on Use of Standard Mileage Rates

A taxpayer may not use the business standard mileage rate for a vehicle after using any depreciation method under the Modified Accelerated Cost Recovery System (MACRS) or after claiming a Section 179 deduction for that vehicle. In addition, the business standard mileage rate cannot be used for more than four vehicles used simultaneously.

These and other requirements for a taxpayer to use a standard mileage rate to calculate the amount of a deductible business, moving, medical or charitable expense are in [Rev. Proc. 2010-51](#).

For Additional Information

[Notice 2012-01](#) contains the standard mileage rates, the amount a taxpayer must use in calculating reductions to basis for depreciation taken under the business standard mileage rate, and the maximum standard automobile cost that a taxpayer may use in computing the allowance under a fixed and variable rate plan. For more on employer-provided transportation benefits, please see our section on [Fringe Benefits](#).

Allowing Employees to Work "Off the Clock:" How to Avoid a Costly Mistake

Did you know if your employees are putting in extra time outside of normal working hours, even though you haven't requested it, you may be responsible for paying them for that time "off the clock"? Consider the following examples:

- An employee voluntarily continues to work at the end of regular working hours to finish an assigned task or finish waiting on a customer.
- An employee takes work home to complete in the evening or on weekends to meet a deadline.

If your employees are covered under the federal [Fair Labor Standards Act](#) (FLSA), all of these are examples of hours worked that generally must be compensated.

What counts as "hours worked" under the FLSA?

In general, "hours worked" includes all time an employee must be on duty, or on the employer's premises or at any other designated place of work, from the beginning of the first principal activity of the work day to the end of the last principal work activity of the workday.

Also included is any additional time the employee is *allowed* to work. This means that time spent doing work not requested by the employer, but still allowed, is generally hours worked, since the employer knows or has reason to

businesses and those that are too small to afford lawyers or human resource personnel.

Anti-Discrimination Laws Enforced by EEOC

The EEOC enforces [federal laws prohibiting employment discrimination](#). The laws enforced by the EEOC apply to employers who meet the threshold number of employees for coverage.

- [Title VII of the Civil Rights Act of 1964](#), the [Americans with Disabilities Act](#), and the [Genetic Information Nondiscrimination Act](#) apply to employers who have **at least 15 employees** in 20 or more weeks of the calendar year.

- The [Age Discrimination in Employment Act](#) applies to employers with **20 or more employees**.

- The [Equal Pay Act](#) does not contain a minimum number of employees for coverage.

- Additionally, employers with **100 or more employees** (50 if the employer is a government contractor) are required annually to file the [EEO-1 Report](#), providing a breakdown of the workforce by race, sex, and national origin in nine broad job categories.

For information about the

believe that the employees are continuing to work and the employer is benefiting from the work being done.

Pay special attention to the following situations:

- **Rework.** When an employee must correct mistakes in his or her work, the time must be treated as hours worked, even when the employee voluntarily does the rework.
- **Waiting for Work.** Time, which an employee is required to be at work or allowed to work for his or her employer, is hours worked. A person hired to do nothing or to do nothing but wait for something to do or something to happen is still working.
- **Place of Work.** Hours worked include all the time during which an employee is required or allowed to perform work for an employer, regardless of where the work is done, whether on the employer's premises, at home or at some other location.

Employers should be especially careful when it comes to allowing non-exempt employees to read and respond to work-related emails after hours through the use of smart phones or similar devices. The time spent on these emails may be considered "hours worked," entitling such employees to compensation.

Remember - it's your responsibility to exercise control and see that work you do not want performed is not done. Merely making a rule against "off the clock" work is not enough. The employer has the power to enforce the rule and must make every effort to do so.

For more information, check out the U.S. Department of Labor's [Hours Worked Advisor](#). Our section on [Employee Pay](#) includes information on other issues related to employee compensation.

Retirement Planning Resources for Your Business

It's a brand new year and it's never too early to start taking advantage of the benefits of retirement planning. As a business owner, a retirement plan allows you to invest now for financial security when you and your employees retire. As a bonus, you and your employees can receive significant tax advantages and other incentives. Consider the following benefits of setting up a retirement plan:

Business Benefits

- Employer contributions are tax-deductible.
- Assets in the plan grow tax-free.

federal nondiscrimination laws enforced by the EEOC, you can contact the Commission's [small business liaisons](#) or visit our section on [Discrimination](#).

- Flexible plan options are available.
- Tax credits and other incentives for starting a plan may reduce costs.
- A retirement plan can attract and retain better employees, reducing new employee training costs.

Employee Benefits

- Employee contributions can reduce current taxable income.
- Contributions and investment gains are not taxed until distributed.
- Contributions are easy to make through payroll deductions.
- Compounding interest over time allows small regular contributions to grow to significant retirement savings.
- Retirement assets can be carried from one employer to another.
- A special tax credit known as the "[Saver's Credit](#)" may be available.
- The employee has an opportunity to improve financial security in retirement.

Retirement Plan Resources from the IRS

The [Small Business Retirement Plan Resources](#) provided by the Internal Revenue Service include helpful information for choosing, operating and maintaining your retirement plan. Here is a list of resources to help you get started:

- [Types of Plans](#) - Starting and maintaining specific types of retirement plans
- [Publication 560](#) - Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)
- [Publication 590](#) - Individual Retirement Arrangements (IRAs)
- [Publication 3998](#) - Choosing a Retirement Solution for Your Small Business
- [Publication 4222](#) - 401(k) Plans for Small Businesses
- [Publication 4333](#) - SEP Retirement Plans for Small Businesses
- [Publication 4334](#) - SIMPLE IRA Plans for Small Businesses
- [Publication 4587](#) - Payroll Deduction IRAs for Small Businesses

You can also check out the [Retirement Plans Navigator](#), an online guide for choosing a retirement plan, maintaining it and correcting plan errors.

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