PALEY ROTHMAN
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The Payroll Leap Year: What It Is and What To Do About It

By Jessica Summers

Summary: Employers who pay their salaried employees every week or every two weeks will unavoidably encounter a year in which there is one pay day more than usual. These employers should plan ahead to identify and address these “payroll leap years” in advance.

A “payroll leap year” is a year in which an employer will have one more pay day than normal.

Because employers generally calculate the amount of a salaried employee’s paycheck by dividing that employee’s annual salary by the number of pay days per year – it is important that employers identify and address payroll leap years in advance or they may be stuck paying salaried employees an extra 3.7% over their intended annual salary.

The payroll leap year results from the fact that there are not an even 52 weeks in a year. Instead, in most years, there are 52.14 weeks per year. This means that, for employers who pay employees every week, there are generally 52 pay days per year and, for employers who employees pay every other week, there are generally 26 pay days per year. However, because of that partial week in each year, eventually there will be a year with 53 pay days for employers who pay weekly or 27 pay days for employers who pay every two weeks.

What year will be a payroll leap year depends on what day of the week an employer’s pay day falls on. For employers who pay weekly there will be a payroll leap year approximately every 5 to 6 years and for employers who pay every two weeks there will be a payroll leap year approximately every 11 years.

Take 2016 as an example – If you are an employer who pays employees every other Friday, your payroll schedule might look as follows:

- January 1, 15, 29 Paychecks 1, 2 and 3
- February 12, 26 Paychecks 4 and 5
- March 11, 25 Paychecks 6 and 7
- April 8, 22 Paychecks 8 and 9
- May 6, 20 Paychecks 10 and 11
- June 3, 17 Paychecks 12 and 13
- July, 1, 15, 29 Paychecks 14, 15 and 16
- August 12, 26 Paychecks 17 and 18
- September 9, 23 Paychecks 19 and 20
- October 7, 21 Paychecks 21 and 22
- November 4, 18 Paychecks 23 and 24
- December 2, 16, 30 Paychecks 25, 26 and **27**

The above example assumes that the employer was open and paid its employees on New Year’s Day. However, if the employer was closed on January 1, 2016, many states (including Maryland) have laws requiring that, when an employer will be closed on a pay day, employees must be paid the day before. So if the employer in the above example, was closed on New Year’s Day and therefore paid employees on December 31, 2015, then 2015 would have been the payroll leap year because (if you look at a calendar of 2015) the employees would have already received their 26th paycheck of the year on December 18, 2015 and then received a 27th paycheck on December 31.

Because this phenomenon is the result of the imperfect number of weeks in a year, employers who pay employees on a monthly (where permitted law) or twice monthly basis (ex. an employer who pays employees on the 1st and 15th of each month) will never encounter a payroll leap year.

For employers who do encounter a payroll leap year, no action needs to be taken with respect to hourly employees. For hourly employees, each paycheck represents compensation for the hours that they have actually worked so it doesn't matter how many pay days are in a given year.

Where the payroll leap year matters is with respect to salaried employees. As noted above, generally employers calculate a salaried employee's paycheck by dividing the employee's intended annual salary by the number of pay days per year. This is why it is important for employers to identify years in which there might be an extra pay day.

For example – An employee has an annual pre-tax salary of $78,000 and is paid every two weeks. Most years this employee's pre-tax paycheck should be $3,000 ($78,000/26 pay days). However, in a payroll leap year the employee's pre-tax paycheck should be $2,888.9 because the annual salary of $78,000 is being paid over twenty-seven pay days rather than twenty-six. If the employer failed to identify the payroll leap year and didn't adjust the paycheck amounts, the employee's annual pre-tax salary that year would end up being $81,000 because the employer would have paid the employee 27 paychecks at $3,000.

As can be seen from the above example, failing to identify a payroll leap year can be costly for employers.

When possible, the best way for employers to handle a payroll leap year is to identify it in advance and simply divide the employee's salary over 27 paychecks (or in the case of employees being paid weekly 55 paychecks). Employers who take this approach are well advised to inform salaried employees in advance that because there will be an extra pay day in the year each of their paychecks will be slightly smaller.

However, an employer's ability to take this approach depends largely on any offer letters or employment agreements the employer has with salaried employees. Some employers phrase the salary statement in their offer letters or employment agreements in terms of how much an employee will paid in each paycheck rather than how much an employee will get each year (ex. "employee will be paid a salary of $3,000 every two weeks"). The wisdom behind phrasing salary statements in this way has been that the alternative of stating salary in annual terms (ex. "employee will be paid an annual salary of $78,000") could suggest that the employer is promising to employ the employee for the full year and could undermine the employee's at-will status. However, if the employment agreement phrases the salary statement based on individual paychecks, an employer will not have the option to divide an employee's intended annual salary more pay days in a payroll leap year, because that would reduce the amount in each paycheck and therefore be inconsistent with the agreement.

The takeaway here is that employers who may encounter a payroll leap year, should carefully check their offer letters and employment agreements before adjusting the amount of existing an employee's paychecks in a payroll leap year. Additionally, going forward, these employers should be careful about how they phrase the salary statement in offer letters or employment agreements with new employees. One example of a salary statement that would allow the employer flexibility in payroll leap years but still make clear an employee's at-will status would be something along the lines of the following

"You will be an at-will employee and shall have no specified term of employment. However, if you remain employed by the Company for a full year, your initial annual salary will be equivalent to $____. The Company reserves the right to modify your salary at any time, including during your first year of employment. Your salary will be paid every two weeks over 26 or 27 pay checks per year, depending on year, in accordance with the Company's standard policies and practices."

While employers who will encounter a payroll leap year may want to take action to ensure that salaried employees do not receive more than there intended salary they are certainly under no obligation to do so. Employers who already have employment contracts stating salaries in terms of paycheck amounts or who simply believe that adjusting paycheck amounts in a payroll leap year would be too difficult or hurt morale can simply go ahead and pay employees as they would every other year. However, they will simply need to be aware of and budget for the increased payroll costs that will result from paying every salaried employee an additional 3.8% over the salaries they receive in non-payroll leap years.

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