

Top Regulatory Issues Facing Businesses in 2023



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Gene Marks:

Hey, everybody, this is Gene Marks and welcome to the Week in Review, a Paychex Thrive podcast. Thanks so much for joining me this week. And listeners, we're ending the year of 2023; sorry, 2022, and looking ahead to 2023, my smartest clients, people running businesses, are – what they all have in common is that they're always looking ahead. They're always trying to consider about events that are coming in the future, regulations, issues, things that they need to deal with so they can make their plans.

So, in 2023, there are some regulatory issues that are absolutely going to be of concern and challenges to a lot of small-business owners like you and me, and I think we should be knowing about them now so we can make some plans.

Now, I will be revisiting some of these issues as we get into 2023 and offering you some more detailed thoughts about them. But I just want to make sure that you are fully aware of what some of the issues are, some of the things that you should be keeping your eye on as we head into the new year.

So, the first has to do with funding and specifically the employment retention tax credit, the Employee Retention Tax Credit, the ERTC. The ERTC is still a tax credit that is absolutely available for many small businesses that retained employees during the pandemic. There are specific rules of eligibility around it, but if you are eligible, you could actually be entitled to some pretty significant credits – cash back from the government for payroll taxes that you might have paid sometime during 2020 or 2021.

The ERTC will take a while before it is fully expired. You can go back and you can amend some of your prior tax returns to take advantage of it. So, if you are unsure, you should at least be checking with your accountant about the Employee Retention Tax Credit or checking with your payroll service – maybe Paychex because they offer services to help you calculate the ERTC. If you're eligible, it could be a lot of money that is due to you and could be an important part of funding, particularly next year, which is predicted to be a pretty slow year from an economic base.

So, small business funding, the ERTC is number one.

Number two, be careful about pay equity. The Department of Labor is looking into rules about this and there are many states and jurisdictions around the country that are implementing regulations around pay equity – that means being transparent about what you are paying your employees. It means when you put out job postings for employees, giving a range of what those salaries are. A lot of it goes back to discrimination, particularly gender discrimination. I mean, there have been countless studies that have shown that women have historically earned less than men. So, asking them what they earned at a prior job could be putting them behind the eight ball. So, you don't want to do that.

What you want to do is you want to be transparent, at least within a range of what your pay is for your employees and again, depending on where you live, what state, what city you're in, you could be subject to specific rules and regulations around that transparency. In addition, just keep an eye out because the Department of Labor itself might be coming out with rules around this on a national basis.

The next thing has to do with employee classification, employee classification means basically worker classification, and as I'm recording this, the Department of Labor is moving along toward finalizing its rules around worker classifications.

What does that mean for you? It means 1099 or independent contractor workers. The department is moving more towards the ABC rule, which has a lot of the same rules that we've used in the past, but it does have some significant differences. The biggest being that if workers themselves are contributing to the revenue of a business. In other words, if they are instrumental in the, you know, in the operations of a business, particularly if they are independent contractors. There is a scenario where you would have to classify those independent contractors as employees. This means that you would have to pay payroll taxes and workers' compensation costs and maybe make them eligible for employee benefit plans, and certainly they would be subject to the rights that employees have within your state and that the federal government provides.

So, be careful because the Department of Labor is coming out with these new worker classification rules and you may have to find yourself reclassifying some of these independent 1099 contractors as employees, depending on the types of services that they are providing for your company. Talk to your payroll company about that or talk to your accountant or business attorney because it could have a significant impact on your business.

Next is retirement savings. The SECURE Act 2.0 will enable us to put money more, more money away for retirement to our 401k plans for our employees. There will be tax credits and other incentives from the government. It will also expand the number of people that can put money away for their retirement as well. The Secure Act 2.0 is designed to encourage more people to save more for retirement and for businesses to put money away for retirement as well for both themselves and their employees.

The next has to do with wage and hour regulations because those are, you know, consistently changing, but the biggest change that I'm expecting to see in 2023 is overtime regulations. Right now, if you're paying your employees around \$35,000 a year and they're not supervising anybody in their salaried, and there are other rules around this, you probably don't have to pay them overtime if they're making more than that amount.

Those overtime wages could significantly go up in 2023, some cases to as much as \$80,000 a year – I don't think it's going to go that high – but the Department of Labor is looking closely at changing overtime rules and the workers that are classified or are eligible for overtime. So, you do want to be well-aware of the fact that some of the workers right now that are not receiving overtime pay may be eligible for overtime pay in 2023. So that's another thing that you want to keep your eyes open for.

Two quick things left before I let you go. One is about paid leave. There are around the country many states and jurisdictions that are implementing more paid leave programs, particularly family and medical leave and other types of paid leave for sick time. That trend is going to continue. I'm not expecting to see anything on the federal level regarding paid leave, but I am expecting to see on the local level more states and cities require employers of all sizes, even the smallest of businesses, to provide some type of paid family medical leave or sick time to their employees. So be well-aware of that.

And finally, will be cybersecurity. It will continue to be a big issue that will affect companies around the world. The brunt of the ransomware and malware attacks, according to the FBI, are mostly small businesses because we do fall prey to a lot of that stuff. So, you really want to be aware of your cybersecurity risks. You want to make sure your employees are getting training. You want to make sure anybody working from home is working in a secure environment and updating their operating systems and have had their routers in such reviewed. There are definitely some steps you need to take, and you probably want to be hiring an IT firm to help you make sure that your business is completely secure.

Those are what I'm looking for in 2023. I hope this information helps you and this has been the Week in Review. This podcast is brought to you by Paychex. If you have any advice or tips or would like to suggest any guest visit us at payx.me/thrivetopics. My name again is Gene Marks. Thanks so much for joining.

We'll see you again very soon with our next Week in Review. Take care.

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