

Actions on Payroll Taxes and Unemployment Benefits Promise Relief, Raise Questions

Payroll managers should be prepared to make withholding changes by Sept. 1

By Stephen Miller, CEBS

August 10, 2020

On Aug. 8, President Donald Trump signed a series of executive orders and memorandums intended to provide financial relief to employees and those who have lost their jobs due to the COVID-19 pandemic.

These declarations included a Memorandum on Deferring Payroll Tax Obligations in Light of the Ongoing COVID-19 Disaster (<https://www.whitehouse.gov/presidential-actions/memorandum-deferring-payroll-tax-obligations-light-ongoing-covid-19-disaster/>), which directed the Treasury Department to defer collection of the employee portion of Social Security FICA taxes—part of required payroll tax withholding—from Sept. 1 through the end of 2020. The deferred taxes may have to be subsequently repaid unless Congress enacts legislation stating otherwise.

Trump cited his authority to postpone certain tax deadlines by reason of a presidentially declared disaster (<https://reason.com/2020/08/09/the-statutory-authorization-for-president-trumps-memorandum-deferring-payroll-tax-obligations/>). Democrats, however, are expected to challenge that claim in court (<https://www.npr.org/2020/08/09/900674818/democrats-slam-trumps-executive-actions-critiquing-both-substance-and-legality>). Nevertheless, it is prudent for employers and payroll managers to stay aware of developments and prepare to move quickly if the directive and upcoming guidance are not blocked.

Payroll tax relief, as outlined in the president's directive, would require employers to take steps to ensure compliance, including working with their payroll administrators to adjust their systems by Sept. 1. Employers would also need to explain to employees that while their take-home pay may go up in the short term, they may be required to repay these deferred taxes at a future date.

Details on employer requirements, however, would depend on Treasury Department guidance, expected to be issued this week.

The other presidential actions authorized a weekly supplemental federal unemployment benefit (<https://www.whitehouse.gov/presidential-actions/memorandum-authorizing-needs-assistance-program-major-disaster-declarations-related-coronavirus-disease-2019/>) of up to \$400, reduced from the \$600 weekly supplement that expired July 31; continued student loan payment relief (<https://www.whitehouse.gov/presidential-actions/memorandum-continued-student-loan-payment-relief-covid-19-pandemic/>); and called for measures to prevent residential evictions and foreclosures (<https://www.whitehouse.gov/presidential-actions/executive-order-fighting-spread-covid-19-providing-assistance-renters-homeowners/>) resulting from financial hardships due to COVID-19.

Reduced Unemployment Insurance Supplement

Republicans in Congress argued that the initial \$600 federal supplemental payment disincentivized recipients (<https://www.foxnews.com/politics/trump-schumer-pelosi-coronavirus-relief-meeting>) from seeking jobs, since many were collecting more money unemployed than employed. Some wanted the program reduced to \$200 per week, while Democrats argued the program should be renewed at the original \$600 per week.

Questions were raised about funding for the \$400 unemployment insurance boost (<https://www.usatoday.com/story/money/2020/08/08/unemployment-benefits-trumps-executive-orders-challenged/3328428001>), which would pull from FEMA's Disaster Relief Fund to pay for a portion of the supplemental benefits while asking states to fund the remainder. Because states may not use the unemployment program to pay benefits unless they are authorized by Congress, they may have to set up a new system to pay their portion of the supplement.

Unemployment experts were also unsure about how funds will be distributed, who will qualify for benefits and how long the benefits will last, pending regulatory guidance.

FICA Taxes

Social Security and Medicare payroll taxes are collected together as the Federal Insurance Contributions Act (FICA) tax. FICA tax rates are statutorily set and are not adjusted for inflation.

Social Security is financed by a 12.4 percent payroll tax on wages up to employees' taxable earnings cap—\$137,700 for 2020—with half (6.2 percent) paid by workers and the other half paid by employers. There is no earnings cap on the Medicare portion of FICA, for which employers and employees separately pay a 1.45 percent wage tax.

The COVID-19-related payroll tax relief only applies to the Social Security portion of FICA.

SHRM RESOURCE SPOTLIGHT

Coronavirus and COVID-19 (www.shrm.org/ResourcesAndTools/Pages/communicable-diseases.aspx)

The Payroll Tax Directive

Section 2302 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, enacted in March and implemented through IRS Notice 2020-22 (<https://www.irs.gov/pub/irs-drop/n-20-22.pdf>) and a series of IRS FAQs (<https://www.irs.gov/newsroom/deferral-of-employment-tax-deposits-and-payments-through-december-31-2020>), allows eligible employers to defer the deposit and payment of the *employer's* share of Social Security FICA taxes for the period beginning March 27, 2020, through Dec. 31, 2020. The deferral also applies to 50 percent of the equivalent taxes incurred by self-employed persons. The deferred payments must subsequently be paid to the Treasury Department, with half due by Dec. 31, 2021, and the other half by Dec. 31, 2022.

The CARES Act provision and related guidance did not apply to *employees'* share of the Social Security tax.

Under the new presidential directive:

- The secretary of the treasury is authorized to defer the withholding, deposit and payment to the Treasury of employees' portion of Social Security payroll taxes on applicable wages or compensation paid from Sept. 1, 2020, through Dec. 31, 2020. This provision does not apply to the Medicare portion of FICA taxes.
- The deferral is to be made available to employees whose earnings during any biweekly pay period is generally less than \$4,000, calculated on a pretax basis, which would cover salaried employees earning \$104,000 or less per year.
- Social Security taxes for these employees will be deferred without any penalties, interest, additional amount or addition to the tax.
- The secretary of the treasury is directed to issue guidance to implement the president's memorandum and to explore avenues, including legislation, to eliminate the obligation to pay the taxes deferred under the implementation of the memorandum.

Josh Blackman, a constitutional law professor at the South Texas College of Law Houston, blogged that HR lawyers will have until Sept. 1 "to figure out the details." (<https://reason.com/2020/08/08/the-mechanics-of-president-trumps-payroll-tax-deferral-memorandum/>) Because the policy terminates on Dec. 31, 2020, "President Trump, or President Biden, will be forced to decide whether to continue this program," he wrote.

[SHRM members-only HR Q&A: How Does the Families First Coronavirus Response Act (H.R. 6201) Impact Employers?

(www.shrm.org/resourcesandtools/tools-and-samples/hr-qa/pages/how-does-the-families-first-coronavirus-response-act-hr-6201-impact-employers.aspx)

A Controversial Move

"By providing this tax relief, American families will have more cash on hand during these critical next few months," according to a White House statement.

Presumptive Democratic presidential nominee Joe Biden charged that Trump would try to make the cuts permanent if re-elected and said doing so would "undermine the entire financial footing of Social Security (<https://medium.com/%40JoeBiden/statement-by-vice-president-joe-biden-on-president-trumps-executive-orders-to-sow-more-chaos-and-876805b13d08>)."

White House economic advisor Larry Kudlow said Trump's intent is not to permanently end employees' Social Security payroll taxes but added "we will take any steps possible to forgive this deferral (<https://thehill.com/homenews/sunday-talk-shows/511218-kudlow-says-trump-did-not-mean-he-was-eliminating-the-social>)," so employees will not be required to pay back the amounts deferred through Dec. 31, *The Hill* reported. However, doing so would require new legislation by Congress.

Prepare to Adjust Systems and Notify Employees

For now, HR payroll managers should:

- Discuss with their payroll administrators steps to adjust their payroll systems to exclude employees' share of FICA Social Security taxes beginning Sept. 1, pending the issuance of Treasury guidance.
- Prepare to notify employees that possibly less of their pay will be subject to payroll withholding, although the reduction in payroll taxes may have to be paid back in the future.
- Expect questions from employees who may be confused about current and future paycheck adjustments.

SHRM Senior Legal Editor Lisa Nagele-Piazza (www.shrm.org/authors/pages/lisa-nagele-piazza.aspx) contributed to this article.

Related SHRM Articles:

Don't Overlook Payroll's 'Human Side,' (www.shrm.org/ResourcesAndTools/hr-topics/compensation/Pages/do-not-overlook-human-side-of-payroll.aspx) *SHRM Online*, June 2020

2020 Payroll Taxes Will Hit Higher Incomes (www.shrm.org/resourcesandtools/hr-topics/compensation/pages/2020-fica-payroll-taxes-hit-higher-incomes.aspx), *SHRM Online*, October 2019

HR DAILY NEWSLETTER

News, trends and analysis, as well as breaking news alerts, to help HR professionals do their jobs better each business day.

Email Address

**CONTACT US (WWW.SHRM.ORG/ABOUT-SHRM/PAGES/CONTACT-US.ASPX) | 800.283.SHRM
(7476)**

© 2020 SHRM. All Rights Reserved

SHRM provides content as a service to its readers and members. It does not offer legal advice, and cannot guarantee the accuracy or suitability of its content for a particular purpose.

[Disclaimer \(www.shrm.org/about-shrm/Pages/Terms-of-Use.aspx#Disclaimer\)](http://www.shrm.org/about-shrm/Pages/Terms-of-Use.aspx#Disclaimer)