

# Lacking Time and Guidance, Businesses Won't Defer Employees' Payroll Taxes

Administrative complexity, legal uncertainties may derail president's directive

By Stephen Miller, CEBS

**C**ompanies and payroll administration firms in the U.S. say they won't be able to comply with a presidential directive that sought to allow employers to defer employees' portion of Social Security payroll taxes ([www.shrm.org/ResourcesAndTools/hr-topics/compensation/pages/actions-on-payroll-taxes-and-unemployment-benefits-promise-relief-raise-questions.aspx](http://www.shrm.org/ResourcesAndTools/hr-topics/compensation/pages/actions-on-payroll-taxes-and-unemployment-benefits-promise-relief-raise-questions.aspx)) beginning Sept. 1.

On Aug. 8, President Donald Trump issued 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 suspend 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 would have to be repaid unless Congress enacted legislation stating otherwise.

The COVID-19-related relief only applies to the Social Security portion of FICA taxes paid by employees.

"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.

In the absence of timely guidance from the Treasury Department and the IRS, however, and on the advice of benefits attorneys, most employers will likely let the Sept. 1 deadline pass without acting.

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### Waiting for Guidance

As of publication of this article, neither the Treasury Department nor, specifically, the IRS had issued guidance on how to comply with the president's directive, leaving uncertainty as to whether any instruction—perhaps in the form of Q&As—would be forthcoming before Sept. 1. If last-minute guidance is issued, it may delay the Sept. 1 implementation date the president called for.

Businesses weren't even sure if the suspended withholding would be voluntary for employers, and whether employees would have a choice to opt in or out.

Given these uncertainties, "numerous business organizations have confirmed their wariness about participation (<https://www.aei.org/economics/businesses-balk-at-payroll-tax-deferral/>)," wrote Alan D. Viard, a resident scholar for federal tax and budget policy at the American Enterprise Institute, a pro-market think tank in Washington, D.C.

For instance, an Aug. 18 letter from 33 business organizations to congressional leaders and Treasury Secretary Steven Mnuchin stated, "Therefore, many of our members will likely decline to implement deferral, choosing instead to continue to withhold and remit to the government the payroll taxes (<https://www.uschamber.com/letters-congress/coalition-letter-the-executive-order-deferring-payroll-tax-obligations>),"

The letter, signed by the U.S. Chamber of Commerce, the National Association of Manufacturers and other industry associations, stated: "Many of our members consider it unfair to employees to make a decision that would force a big tax bill on them next year. It would also be unworkable to implement a system where employees make this decision."

*[SHRM members-only content: Workers' Payroll Tax Deferral Express Request ([www.shrm.org/ResourcesAndTools/tools-and-samples/exreq/Pages/Details.aspx?Erid=1622](http://www.shrm.org/ResourcesAndTools/tools-and-samples/exreq/Pages/Details.aspx?Erid=1622))]*

### **No Time to Adjust Systems**

Payroll processors said they cannot prepare to suspend employees' Social Security payroll tax without timely guidance.

An Aug. 20 statement by the National Payroll Reporting Consortium (NPRC), a trade group whose member organizations provide payroll processing and related services to nearly 2 million U.S. employers, stated that sufficient time was not available to implement the tax deferrals for payrolls paid as of Sept. 1, and "even if guidance were available today [i.e., Aug. 20], the programming changes are substantial in scope (<https://www.nprc-inc.org/blog/wp-content/plugins/download-attachments/includes/download.php?id=457>)."

Payroll processors' ability to implement deferrals was "being delayed by the lack of IRS guidance on fundamental questions about how the deferrals will work that require answers before necessary programming changes can be made," the NPRC stated.

Benefits attorneys have also urged employers to take a cautious approach. Melissa Ostrower and Robert Perry, principals in the New York City office of law firm Jackson Lewis, recommended that employers continue to watch for guidance from the Treasury Department, "but not make any changes to their payroll withholding processes at this time (<https://www.jacksonlewis.com/publication/what-it-means-president-trump-s-executive-order-deferring-payroll-tax-obligations>)."

They added, "We realize that changes to payroll systems require lead time, but given the uncertainty surrounding how the deferral will be implemented and whether it actually will become effective, we think this is the most prudent course at this time."

American Enterprise Institute's Viard wrote, "Many employers will surely hesitate to wade into this quagmire. ... As the quagmire approaches, the hesitation appears to be widespread."

Or, as Adam Markowitz, vice president at Howard L Markowitz PA CPA, told Bloomberg News (<https://www.bloomberg.com/news/articles/2020-08-25/trump-s-payroll-tax-deferral-on-hold-without-irs-guidance>), "I don't think there is a bloody chance that, at this point, anybody is implementing anything before Labor Day."

The Treasury and IRS don't indicate when upcoming guidance may be published.

### **Related SHRM Article:**

Actions on Payroll Taxes and Unemployment Benefits Promise Relief, Raise Questions ([www.shrm.org/ResourcesAndTools/hr-topics/compensation/pages/actions-on-payroll-taxes-and-unemployment-benefits-promise-relief-raise-questions.aspx](http://www.shrm.org/ResourcesAndTools/hr-topics/compensation/pages/actions-on-payroll-taxes-and-unemployment-benefits-promise-relief-raise-questions.aspx)), *SHRM Online*, August 2020

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