

OMB Tells Agencies to Defer Federal Workers' Payroll Taxes

Tax suspension takes effect for eligible federal workers and military service members

By Stephen Miller, CEBS

September 16, 2020

On Sept. 11, the federal Office of Management and Budget (OMB) directed executive branch agencies to stop withholding employees' Social Security payroll taxes through the end of the year "to the maximum extent feasible," in accordance with an August presidential memorandum and related IRS guidance. Social Security payroll taxes are typically 6.2 percent of employees' pay. Similarly, the Trump administration directed the payroll-tax suspension to apply to active military service members and civilian military personnel.

The deferred taxes are to be repaid after Jan. 1, 2021.

Democrats and federal employee union leaders have criticized the move, and many large private-sector employers indicated that they will not suspend withholding of their employees' payroll taxes.

Tax 'Holiday' Is Temporary

On Aug. 28, as part of COVID-19 relief, the IRS issued Notice 2020-65 (www.shrm.org/ResourcesAndTools/hr-topics/compensation/Pages/IRS-Guidance-Workers-Payroll-Tax-Holiday.aspx), which allows employers to suspend withholding and paying to the IRS eligible employees' Social Security payroll taxes—a move President Donald Trump called for on Aug. 8. The payroll-tax suspension is available from Sept. 1 through Dec. 31, 2020, and applies only to employees whose wages are less than \$4,000 for a biweekly pay period, including salaried workers earning less than \$104,000 per year.

Private- and public-sector employers that suspend collection of employees' payroll tax would collect additional amounts from workers' paychecks from Jan. 1 through April 30 next year to repay the tax obligation, unless legislation is enacted to forgive the uncollected taxes.

"It is important to note that the IRS guidance allows but does not force employers to postpone payroll taxes for the period starting Sept. 1, 2020, and ending Dec. 31, 2020," said Chatrane Birbal, vice president for public policy at the Society for Human Resource Management. "Also, this guidance only *defers* Social Security payroll taxes—it doesn't *eliminate* them, which means this tax will have to be repaid." If repayment is late, employers are subject to interest and penalties, which will begin to accrue May 1, 2021.

"As a result of these factors, coupled with uncertainty of future policy action, many employers are expected to opt out of participating to avoid dealing with the complexity of implementing a payroll-tax deferral and burdening employees with large tax bills next year," Birbal said.

OMB Memo

In his memo to federal agencies within the executive branch of government, Michael J. Rigas, acting deputy director for management at OMB, ordered that (<https://www.whitehouse.gov/wp-content/uploads/2020/09/M-20-35.pdf>):

- Agencies are to implement the deferral of applicable payroll taxes for all eligible employees (those under the income threshold on a paycheck-by-paycheck basis).
- Agencies are to continue to inform and educate employees concerning the payroll-tax deferral, including its anticipated impact on individuals' paychecks over the coming months.

"I recommend each agency coordinate with its payroll provider to disseminate information to employees and to answer questions they may have," Rigas wrote.

He added, "We appreciate you [federal agencies] making every effort to implement the deferral for all eligible employees, and to ensure that your employees are educated and aware of the particular effect on their own personal finances."

Military Personnel

For active-duty military members, the payroll-tax deferral is effective for their mid-September paycheck, posted on its website.

Military members and federal civilian employees are not eligible to opt out of the deferral if their Social Security wages fall within the stated limits, and the deferral will happen automatically, the DFAS said. "If a military member or civilian employee separates or retires in 2020 before the Social Security tax can be collected in 2021, they are still responsible for the Social Security tax repayment," and additional information on the collection process will be provided in the future, the memo stated.

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

A Political Divide

Trump and many congressional Republicans support the payroll-tax suspension and permanent forgiveness of suspended taxes, while Democratic presidential nominee Joe Biden and other Democrats have raised concerns that if these taxes are not eventually repaid, the Social Security fund would be imperiled.

"The president and the administration continue to advocate for congressional action to make the payroll-tax deferral permanent," Rigas wrote.

The Hill reported, "It remains to be seen if the risk of smaller paychecks for federal employees and service members [next year] adds enough pressure on Congress for them to pass legislation to forgive the deferred taxes (<https://thehill.com/policy/finance/515773-trump-payroll-tax-deferral-for-federal-workers-sparks-backlash>)."

Union Opposition

The American Federation of Government Employees (AFGE) President Everett Kelley criticized the decision to not allow federal employees to opt out of the payroll-tax suspension (<https://www.afge.org/article/afge-urges-administration-to-let-feds-opt-out-of-trumps-social-security-tax-scam/>). The union represents 700,000 federal and D.C. government workers.

On Sept. 8, in a letter to OMB Director Vought, Kelley wrote, "While some federal employees may wish to defer their payroll-tax obligations, many others do not. ... I have heard from many of our members. Most have been unaware that they would be required to repay the taxes starting in January 2021 and when they learn this, they are strongly opposed to having their tax deferred involuntarily."

Kelley added, "At a minimum, federal employees should have the ability to opt out of the deferral."

Private-Sector Reticence

Some of the nation's largest employers "say they won't implement the payroll-tax deferral plan, opting to leave employee paychecks alone this fall (<https://www.wsj.com/articles/some-large-employers-reject-trumps-payroll-tax-deferral-plan-11599840079>)," *The Wall Street Journal* reported on Sept. 11. Other large companies said they are still deciding whether to participate or not.

"That lack of interest from companies—some of which employ hundreds of thousands of potentially eligible workers—limits the broader economic impact of the deferral," the *Journal* reported. "For now, the largest group of affected workers is the one controlled by Mr. Trump—federal executive-branch employees and military service members who will see their paychecks grow this month and then shrink in January."

Related SHRM Articles:

Employee Social Security Tax Deferral Guidance: Too Little, Too Late? (www.shrm.org/ResourcesAndTools/hr-topics/compensation/Pages/employee-social-security-tax-deferral-guidance-too-little-too-late.aspx), *SHRM Online*, September 2020

Employers Hesitant, Confused Over Payroll Tax Suspension (www.shrm.org/ResourcesAndTools/hr-topics/compensation/Pages/employers-hesitant-confused-over-payroll-tax-suspension.aspx), *SHRM Online*, September 2020

IRS Guidance Allows Workers a Payroll Tax 'Holiday,' (www.shrm.org/ResourcesAndTools/hr-topics/compensation/Pages/IRS-Guidance-Workers-Payroll-Tax-Holiday.aspx) *SHRM Online*, August 2020

Related SHRM Resources:

Notice to Employees of Temporary Social Security Tax Deferral (www.shrm.org/ResourcesAndTools/tools-and-samples/hr-forms/Pages/Notice-of-Temporary-Social-Security-Tax-Deferral.aspx)

Notice to Employees Explaining the Decision Not to Defer Social Security Tax Withholding (www.shrm.org/ResourcesAndTools/tools-and-samples/hr-forms/Pages/Notice-Explaining-the-Decision-Not-to-Defer-Social-Security-Tax-Withholding.aspx)

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)