



HR Bulletin

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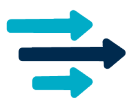
Executive Order Directs IRS to Defer Certain Payroll Tax Obligations

On **August 8, 2020**, President Donald J. Trump signed an [executive memorandum](#) that directs the U.S. Department of the Treasury to defer certain payroll tax obligations for employees in order to lighten their financial burden during this ongoing COVID-19 pandemic. In addition, on August 28, 2020, the Treasury and IRS issued [Notice 2020-65](#) to further articulate how this tax deferral will be implemented. It is important to note that this program only delays the payment of the taxes; tax obligations are not forgiven.



Plan Details and Eligibility

The tax deferral only pertains to the employee's share of Social Security tax; employers shall continue to pay their portion of the Social Security taxes. Employees will continue to pay all other applicable taxes, as well. Based on the language in the memorandum and the notice, employers have the flexibility to opt in or opt out of this program. However, an individual employee does not have the ability to opt in or out on his/her own. Furthermore, only employees **earning less than \$4,000** in the specific biweekly pay period are eligible for the tax deferral and that compensation excluded from FICA taxes does not count in making a determination of eligibility.



Deferral and Repayment Timeline

The payroll tax payment "holiday" started on **September 1, 2020 and carries through December 31, 2020**. Once the new calendar year begins, all amounts must be paid back between January 1, 2021 and April 30, 2021. If employees do not pay the amounts back by April 30, 2021, interest and penalties will be assessed beginning May 1, 2021. Employers maintain the administrative burden of stopping the current Social Security payroll deduction, arranging for repayment of the tax deferrals, and collecting money to fund any interest and penalties assessed, if applicable. The IRS has released a draft of an [updated Form 941](#) that accounts for the deferred

amount of the employee share of Social Security tax in line 24, but full instructions will be published at a later date.



Lingering Questions

The memorandum and notice did not clear up any concerns regarding **what happens when an employee terminates employment prior to repaying the taxes. There is no mention of relief for employers if they get stuck with a payroll liability from a departed employee**, and as such employers should be prepared to cover those liabilities from their own funds. Employers may want to structure “arrangements to otherwise collect” the deferred taxes, such as by collecting the taxes from a final paycheck or by separate check from the employee. If an employer chooses this type of arrangement, it will be necessary to consider state and federal wage payment laws in developing the strategy.

In addition, there are some thoughts that President Trump may ask Congress to forgive the deferred amounts or possibly implement permanent tax cuts. With all of these issues still up in the air, employers should consult with both their payroll provider and tax advisor regarding the implementation and implications of this tax deferral plan and how best to communicate the details to employees.