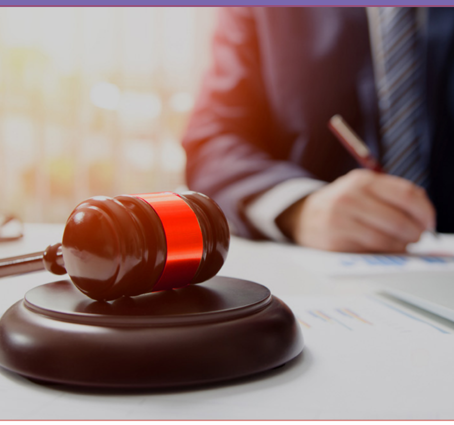
Eye on Washington

Legislative Update



Memorandum on Deferring Payroll Tax Obligations in Light of the Ongoing COVID-19 Disaster

On August 8, 2020, President Trump signed a Memorandum on Deferring Payroll Tax Obligations in Light of the Ongoing COVID-19 Disaster, which directs the Treasury Secretary to defer the withholding, deposit and payment of employee Social Security taxes for wages paid beginning September 1 through December 31, 2020.

The deferral will be available to any employee whose wages generally are less than $4,000 in a biweekly pay period, or the equivalent amount with respect to other pay periods.[1]

As background:

- Employees pay a 6.2% Social Security tax on wages up to an annual limit, which is $137,700 in 2020. For example, an employee earning $137,700 or more would pay $8,537.40 in Social Security taxes in 2020.
- Employees also pay Medicare tax, but this is not affected by the executive memorandum.

The memorandum provides that amounts deferred "shall be deferred without any penalties, interest, additional amount, or addition to the tax." Lastly, it directs the Treasury Secretary to "explore avenues, including legislation, to eliminate the obligation to pay the taxes deferred pursuant to the implementation of this memorandum."

There are several elements that will remain unknown until the Internal Revenue Service (IRS) issues guidance.

How Will the Income Limit Work?

The IRS will need to clarify whether a per-payroll limit will be enforced, or the annual limit, or some combination of the two. For example, if the per-pay period limit of $4,000 (biweekly) is enforced, the maximum tax deferral would be $2,232 (assuming nine biweekly pay periods beginning 9/1/2020). If the $104,000 annual earnings limit is enforced, the maximum tax deferral would be $6,448, assuming an employee with no prior earnings started work on September 1 and earned $104,000 or more in 2020.

[1] This maximum annual wage limit was described in a separate White House announcement as "available to Americans earning less than $100,000 a year." However, the $4,000 biweekly limit in the memorandum equates to $104,000 annually. The IRS is expected to clarify the per-payroll and/or annual maximum amount in its guidance.

The IRS also may need to clarify whether employers would be expected to adjust the deferral as employees fluctuate above and below the limit. For example, if an employee is paid $4,100 in a biweekly pay period, they would pay the full 6.2% on such earnings ($254.20). If the same person was paid $3,100 in the subsequent bi-weekly pay period, they would qualify for deferral of Social Security taxes on the $3,100. Would the employer be expected to refund the $254.20 withheld on the prior payroll, since the average earnings after September 1 is less than $4,000?

Another question is whether the deferral applies strictly to wage income. For example, employees may be eligible for the deferral based on wages, but they may have significant nonwage income, which could disqualify them from the deferral.

Employer Reporting Requirements

The IRS will need to advise employers if there will be reporting requirements associated with the deferral. Employers may need to separately report qualified Social Security wages paid during the deferral period on the Form W-2 and Form 941, and possibly other information.

ADP® will be working closely with the IRS to determine the answers to these and other questions and will provide guidance to clients as soon as possible.

ADP Compliance Resources

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