



Tax Researcher

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FEDERAL WITHHOLDING COMPLIANCE

Are you unsure how to handle some Form W-4 issues? The IRS provides answers to questions you may have:

Q1: In the past, as an employer, I was required to submit all Forms W-4 that claimed complete exemption from withholding (when \$200 or more in weekly wages were regularly expected) or claimed more than 10 allowances. What Forms W-4 do I now have to submit to the IRS?

A1: Employers are no longer required to routinely submit Forms W-4 to the IRS. However, in certain circumstances, the IRS may direct you to submit copies of Forms W-4 for certain employees in order to ensure that the employees have adequate withholding. You are now required to submit the Forms W-4 to IRS only if directed to do so in a written notice or pursuant to specified criteria set forth in future published guidance.

Q2: If an employer no longer has to submit Forms W-4 claiming complete exemption from withholding or claiming more than 10 allowances, how does the IRS determine adequate withholding?

A2: The IRS is making more effective use of information contained in its records along with information reported on Form W-2 wage statements to ensure that employees have enough federal income tax withheld.

Q3: If the IRS determines that an employee does not have enough federal income tax withheld, what will an employer be asked to do?

A3: If the IRS determines that an employee does not have enough withholding, we will notify you to increase the amount of withholding tax by issuing a "lock-in" letter that specifies the maximum number of withholding allowances permitted for the employee. You will also receive a copy for the employee that identifies the maximum number of withholding exemptions permitted and the process by which the employee can provide additional information to the IRS for purposes of determining the appropriate number of withholding exemptions. If the employee still works for you, you must furnish the employee copy to the employee. If the employee no longer works for you, you must send a written response to the IRS office designated in the lock-in letter indicating that the employee is no longer employed by you. The employee will be given a period of time before the lock-in rate is effective to submit for approval to the IRS a new Form W-4 and a statement supporting the claims made on the Form W-4 that would decrease federal income tax withholding. The employee must send the Form W-4 and statement directly to the IRS office designated on the lock-in letter. You must withhold tax in accordance with the lock-in letter as of the date specified in the lock-in letter, unless otherwise notified by the IRS. You will be required to take this action no sooner than 45 calendar days after the date of the lock-in letter. Once a lock-in rate is effective, an employer cannot decrease withholding unless approved by the IRS.

Q4: As an employer, after I lock in withholding on an employee based on a lock-in letter from the IRS, what do I do if I receive a revised Form W-4 from the employee?

A4: After the receipt of a lock-in letter, you must disregard any Form W-4 that decreases the amount of withholding. The employee must submit for approval to the IRS any new Form W-4 and a statement supporting the claims made on the Form W-4 that would decrease federal income tax withholding. The employee should send the Form W-4 and statement directly to the address on the lock-in letter. The IRS will notify you to withhold at a specific rate if the employee's request is approved. However, if, at any time, the employee furnishes a Form W-4 that claims a number of withholding allowances less than the maximum number specified in the lock-in letter, the employer must increase withholding by withholding tax based on that Form W-4.

Q5: As an employer who has received a modification letter (letter 2808C) from the WHC (withholding compliance) program, do I wait for another 60 days to change the marital status and/or number of allowances per the modification letter?

A5: No, the modifications to the marital status and/or number of allowances become effective at the beginning of the first full pay period after you receive the letter 2808C.

Q6: I have been directed to lock in an employee's withholding. What happens if I do not lock in the employee's withholding as directed?

A6: Those employers who do not follow the IRS lock-in instructions will be liable for paying the additional amount of tax that should have been withheld.

Q7: Our employees can submit or change their Forms W-4 on line. How can I prevent them from changing their Forms W-4 after they have been locked-in by the IRS?

A7: You will need to block employees who have been locked-in from using an on line Form W-4 system to decrease their withholding.

Q8: What should I do if an employee submits a valid Form W-4 that appears to be claiming an incorrect withholding amount?

A8: You should withhold federal income tax based on the allowances claimed on the Form W-4. But, you should advise the employee that the IRS may review withholding to ensure it is adequate, and that the IRS may direct you, as the employer, to withhold income tax for the employee at a certain rate if the review indicates the employee's withholding is inadequate. Once this occurs the employee will not be allowed to decrease their withholding unless approved by the IRS.

Q9: What do I do if an employee hands me a substitute Form W-4 developed by the employee?

A9: Employers may refuse to accept a substitute form developed by an employee and the employee submitting such a form will be treated as failing to furnish a Form W-4. In such case, you should inform the employee that you will not accept this form and offer the employee an opportunity to complete an official Form W-4 or a substitute Form W-4 developed by you. Until the employee furnishes a new Form W-4, the employer must withhold from the employee as from a single person claiming no allowances; if, however, a prior Form W-4 is in effect for the employee, the employer must continue to withhold based on the prior Form W-4. As an employer, a substitute withholding exemption certificate developed by you can be used in lieu of the official Form W-4, if you provide all the tables, instructions, and worksheets contained in the Form W-4 in effect at that time to the employee.

Q10: What do I do if an employee hands me an official IRS Form W-4 that is clearly altered?

A10: Any alteration of a Form W-4 (e.g. crossed out penalties of perjury statement above the signature) will cause the Form W-4 to be invalid. If an employer receives an invalid Form W-4, the employee will be treated as failing to furnish a Form W-4; the employer must inform the employee that the Form W-4 is invalid, and must request another Form W-4 from the employee. Until the employee furnishes a new Form W-4, the employer must withhold from the employee as from a single person claiming no allowances. If, however, a prior Form W-4 is in effect for the employee, the employer must continue to withhold based on the prior Form W-4.

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