



Payroll Tax Deferral

On August 8, 2020, President Donald Trump signed an [executive memorandum](#) allowing for the deferral of payroll taxes on wages paid from September 1 through December 31, 2020. The IRS issued [guidance](#) on the memo on August 18, 2020.

Under the memo, employers can defer the withholding, deposit, and payment of the 6.2% employee share of Social Security tax from paychecks for those employees making less than \$4,000 in a biweekly (or equivalent) payroll period. The deferred taxes must be paid back between January 1, 2021, and April 30, 2021.

The deferral is optional for employers, and it appears that employees cannot require employers to participate. Additionally, employers are not required to give employees notice of whether they are or are not taking part in the deferral.

Outstanding Questions & Issues

Many businesses have expressed concerns about the payroll tax deferral and have argued it is unworkable. On an administrative level, it could be difficult for payroll systems to monitor and respond to employees' eligibility for the deferral if their wages vary by pay period.

Additionally, it remains unclear what happens if an employee is terminated before the deferred taxes are paid back, with the IRS potentially holding employers liable for the outstanding payments.

Further, paychecks for employees whose taxes are deferred would be much smaller for the first four months of 2021. Employers will need to increase the amount of Social Security tax withheld from paychecks from January through April, which, in some cases, could result in little to no take-home pay for low-wage workers.

Possibility of Forgiveness

The administration is pushing for the deferred taxes to be forgiven, but this would require an act of Congress. Given that Democrats are currently pursuing legislation and other means to overturn the guidance, such legislation is unlikely.

At the moment, given the uncertainty around the deferral and its associated administrative burdens, most businesses have declined to participate in the suspension plan. Both the US Chamber of Commerce and the National Retail Federation have advised against participating in the deferral.