



Governmental Employer Manual



A Guide to Social Security/Medicare
Coverage and Reporting for Kentucky
Governmental Employers

Office of the Controller
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Social Security Coverage & Reporting

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Introduction

This material has been compiled by the Division of Local Government Services (DLGS), in conjunction with the Kentucky Governmental Employers' Network, in the hope that state and local government employers will find it helpful in preparing and filing accurate and timely wage reports. Our goal is to provide assistance at a level that will be useful for those preparing their first payroll, as well as, at a level that will benefit veteran payroll officials.

This is NOT an official publication of the Internal Revenue Service or the Social Security Administration. Information contained within this manual does not amend or supersede existing laws and regulations. This manual is for informational and reference purposes only. Under no circumstances should the content be used or cited as authority for assuming, or attempting to sustain a technical position with respect to employment tax or benefit obligations. The Internal Revenue Code (IRC), Social Security Act (Act) and related regulations, rulings and case law are the only valid citations of authority for technical matters.

We welcome any comments and suggestions for improvement of the contents, text or topics of this manual. These, plus any questions about Social Security or Medicare coverage or the scope of coverage under a Section 218 Agreement of a Kentucky governmental employer should be addressed to:

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<http://finance.ky.gov/services/localgov/Pages/SScoverageandreporting.aspx>

This manual will be made available in other media upon request to accommodate those individuals with special needs.

The Division of Local Government Services

After Congress approved legislation allowing certain groups of state and local employees to voluntarily participate in Social Security, the Kentucky General Assembly passed the Kentucky Social Security Enabling Act, during its 1951 Extraordinary Session. Governor Lawrence W. Wetherby, on April 27, 1951, signed the master federal-state agreement permitting Social Security coverage to be extended to the Commonwealth's state and local government employees. The enabling legislation created the Division of Personnel Security which was responsible for administering the Commonwealth's Social Security program.

The Division remained a part of the Department of Economic Security until 1974 when it came under the Cabinet for Human Resources. On June 15, 1980, the Division was renamed the State Office for Social Security and transferred to the Finance and Administration Cabinet.

The Governor's Commission on Quality and Efficiency recommended in 1993 that a state controller be established to manage the state's finances and, in 1994, the office became the Division of Social Security, attached to the Controller's Office. The Division of Social Security was renamed the Division of Local Government Services (DLGS) in 2004. The DLGS's role and functions were defined in KRS 42.0201 and KRS 61.420 during the 2005 regular session of the General Assembly.

The functions of the DLGS during its initial 36 years included collecting and reporting FICA contributions from Kentucky's state and local employers and employees, as well as administering the coverage portion of Social Security. In 1987, the Internal Revenue Service became a participant in the nation's FICA programs and assumed responsibility for collecting FICA contributions. The DLGS, however, continues to be responsible for ensuring that the Social Security obligations of the Commonwealth and its political subdivisions are met.

Because of the IRS's increasing involvement with Social Security and Medicare, the DLGS has been forced to involve itself in the general area of employment tax reporting. The DLGS maintains direct contact with the IRS and serves as a liaison between the Commonwealth's political subdivisions and the IRS.

The DLGS reports and reconciles federal employment wage and tax data for state employees, reconciles wages and contributions paid prior to January 1987 for all government agencies and collects delinquent accounts. The 218 Agreements for Social Security coverage are negotiated by the DLGS which must determine the eligibility of political subdivisions, coverage groups and exclusions. The extent of coverage under 218 Agreements is determined by the DLGS which will assist any political subdivision with the interpretation of coverage contained in a 218 Agreement.

Social Security Coverage

Prior to 1951 Social Security coverage for state and local government employees was not available. On January 1, 1951, federal law allowed voluntary Social Security coverage for the employees of state governments and their political subdivisions through an agreement between the federal government and each state. As the legal provisions for such an agreement is included in Section 218 of the Social Security Act, it is referred to as a “**Section 218 Agreement**”.

In the beginning, Social Security for public employees was limited to those employed in positions not covered by a retirement system. The employer had only to negotiate a Section 218 Agreement with the Commonwealth to provide Social Security coverage. The Social Security Act was amended in 1954 to allow Social Security coverage for public employees in positions covered by a retirement system.

Political subdivisions provide Social Security coverage by entering into a Section 218 Agreement with the Division of Local Government Services. Once a Section 218 Agreement is signed with the political subdivision, the Commonwealth’s master agreement with the federal government is modified to include the new entity and its coverage groups.

Once a Section 218 Agreement is enacted, any services performed by an employee will be covered for Social Security purposes, unless specifically excluded in the agreement. The employee and the employer will begin paying contributions equivalent to the employee/employer share of FICA taxes and the employee will begin accruing Social Security benefits.

The term “political subdivision” includes not only cities, counties and boards of education, but also libraries, housing authorities, water districts, solid waste management districts, airport boards, conservation districts, park boards, etc. Generally, if an entity is created by an act of the legislature, by a vote of the public or by another political entity, it is a political subdivision.

If a political subdivision desires Social Security coverage for the employees who are covered by a qualified retirement system, then the political subdivision has two options and may request a majority vote or divided vote referendum. The first option is a majority vote referenda. Kentucky is authorized under Section 218(d)(3) of the Act to conduct majority vote referenda for coverage. If a majority of the eligible members of the retirement system (not a majority of those voting, unless all those voting are actually all of the eligible members of the retirement system) vote in favor of coverage, Kentucky may then submit a modification to its agreement to extend coverage to that group.

The second option is the divided vote referenda. Section 218(d)(6)(c) of the Act authorizes Kentucky to divide a retirement system based on whether the employees in positions under that system desire Social Security coverage. This allows individuals the

personal option to be covered or not covered for Social Security and/or Medicare and does not depend on a majority ballot voting.

Social Security coverage is extended by “coverage groups” and cannot be extended to individual employees. Coverage groups must be distinct and easily defined. Two examples:

- 1) A city elects to cover all its employees except those in elective positions.
- 2) The Commonwealth of Kentucky provides coverage to all groups of state employees except those who are members of the Kentucky Teachers Retirement System.

Employers can designate certain groups as optional exclusions to Social Security coverage in their Section 218 Agreement. These exclusions have to be included in the Section 218 Agreement at the time of its ratification. The agreement cannot be modified to add exclusions at a later date, but exclusions may be withdrawn and coverage extended to services performed in these positions.

Social Security coverage may not be terminated once coverage is enacted under a Section 218 Agreement. Social Security coverage continues under a Section 218 Agreement even if the services are, at a later date, covered by a retirement system. For example, in 1990, a city with employees who had no retirement coverage entered into a Section 218 Agreement with the DLGS to provide Social Security coverage to its employees. The Social Security coverage continued after the city provided a retirement system to its employees in 1995.

Optional exclusions are available for:

Elective positions - These individuals may be elected by a legislative body, by a board or committee or by a qualified electorate of the jurisdiction involved. The method of selection must constitute an election as defined in the Kentucky Revised Statutes.

Part-time positions - This is a position which, as established, does not require services in excess of 200 hours per calendar year. It is important to note that the “position” is the controlling factor, not the amount of work performed by the employee. For example, employees in a job normally work only 150 hours a year. One employee, though, must work 350 hours in a particular year. That “position” would still be excluded since the job normally requires under 200 hours per year.

Student Services - These are services performed by a student currently enrolled and attending classes at the school for which the student is working. The key here is “currently enrolled and attending classes.” Thus, services performed while school is not in session (summer break) are covered for FICA purposes

There are also universal exclusions applied for:

- 1) Positions under work relief and other programs designed strictly to relieve unemployment,
- 2) Payments for services performed by inmates or patients in a hospital, home or institution and
- 3) Election officials and election workers paid less than a threshold amount during a calendar year.
- 4) Kentucky also has a statewide exclusion for services performed on a temporary, emergency basis, such as flood, fire, earthquake, storm, snow or other similar emergency.

Withholding under the Federal Insurance Contribution Act (FICA) falls into two categories; Social Security and Medicare. Initially, withholding was for Social Security only. Medicare was added in 1965. In a fundamental policy shift of historic proportion regarding voluntary participation by the states, Medicare was made mandatory for all employees hired after March 31, 1986, who do not have full-FICA coverage (both Social Security and Medicare) under a Section 218 Agreement.

Optional Medicare-only coverage may be provided to certain employees via identical referendum procedures described above for Social Security coverage. This option is available only to employees whose positions are not covered by a Section 218 Agreement, who were hired prior to April 1, 1986 and who are participating members of a qualified retirement system.

In a further erosion of the voluntary coverage concept, the federal government now requires all state and local government employees who are not covered under a Section 218 Agreement and who are not participating members of a qualified retirement system (as defined in Section 3121 of the Internal Revenue Code and its regulations) be provided with Social Security and Medicare coverage for services performed after July 1, 1991. This is referred to as “mandatory FICA.”

Mandatory FICA does not supersede a Section 218 Agreement, but it may require services performed in positions excluded by the Section 218 Agreement to be placed under Social Security coverage. For example, a city has a Section 218 Agreement which excluded elected positions, such as the mayor and council members, from Social Security coverage. Under the rules of mandatory FICA, if those individuals holding the elected positions are not participating members of an employer-provided (city-provided) qualified retirement system, employee and employer FICA contributions must be withheld, regardless of any exclusion included in the city’s Section 218 Agreement.

Also, under mandatory FICA, substitute and part-time teachers must contribute to Social Security and Medicare if they are not members of a board of education-sponsored, qualified retirement system, such as the Kentucky Teachers Retirement System. Substitute and part-time teachers may be excluded from Social Security if they are receiving KTRS retirement benefits and meet the IRS definition of a “rehired annuitant”.

The following checklist can be used to determine most employees' withholding status under FICA:

1. Is the employee's position covered under an employer's Section 218 Agreement?

If the position is not covered by a Section 218 Agreement, proceed to Item 2.

If the position is covered by a Section 218 Agreement, both Social Security and Medicare must be withheld, and you can ignore the next two steps as they do not apply to this employee.

2. Is the employee a participating member of a qualified retirement system as defined in IRC Section 3121(b)7 and associated regulations?

If the employee is not a participating member of a qualified retirement system, both Social Security and Medicare must be withheld.

If the employee is such a member, the employee is exempt from only the Social Security portion of FICA. Proceed to Item 3 to determine the employee's status for Medicare withholding.

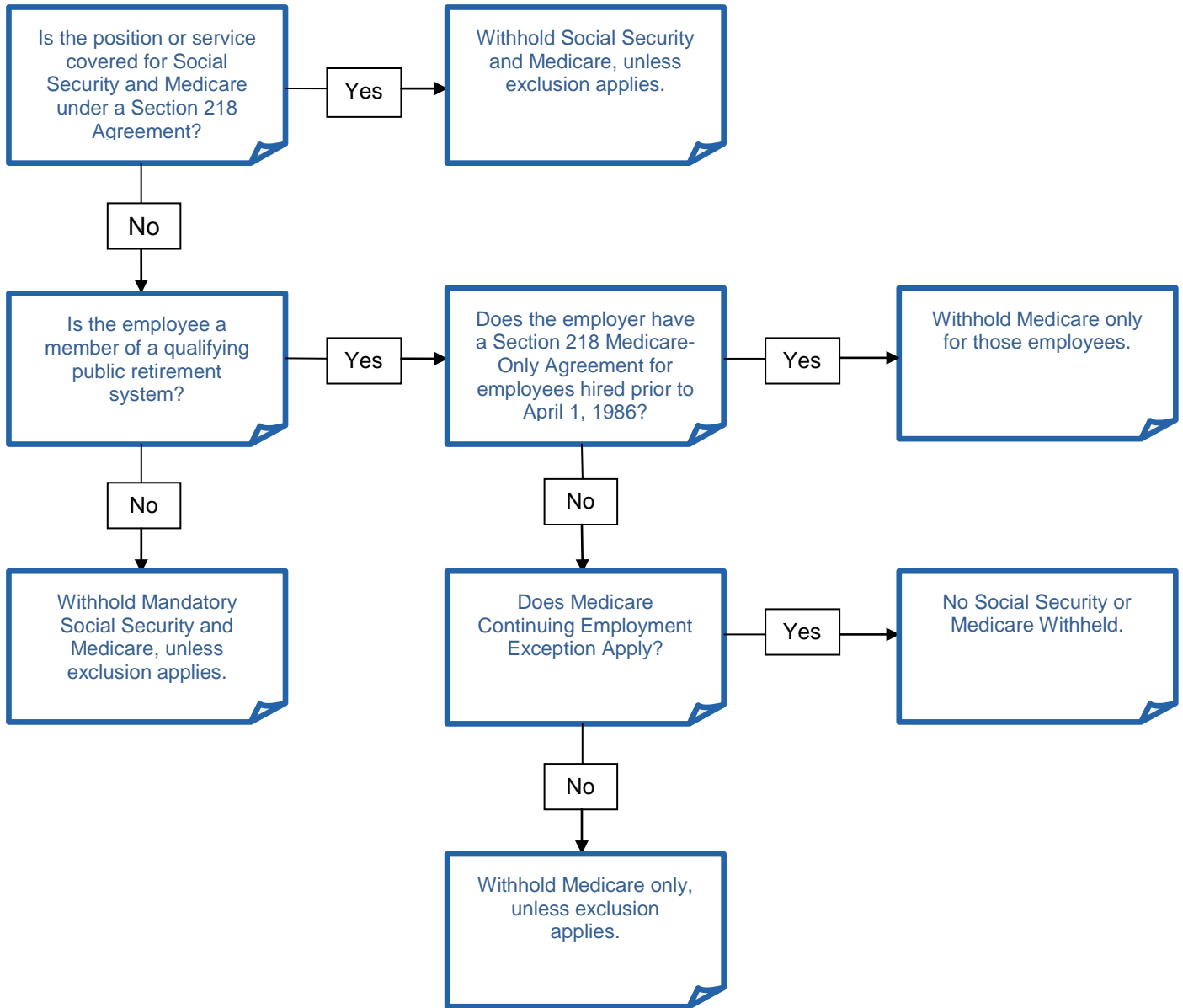
3a. Was the employee:

- a) Hired after April 1, 1986, or
- b) Not performing regular and substantial service before April 1, 1986, or
- c) Not a bona fide employee on March 31, 1986, or
- d) Employment relationship terminated after March 1, 1986?

3b. Has the employer voluntarily elected Medicare-only coverage under the Section 218 Agreement?

If the answer is "yes" to either condition, Medicare must be withheld.

Social Security and Medicare Coverage of Kentucky Local Government Employees



Note: This chart is meant as a guide only and is not a substitute for discussing difficult Section 218 coverage situations with the Kentucky Division of Local Government Services or FICA taxation issues with the IRS FSLG Specialist for Kentucky

Employees

Government employers in Kentucky must withhold, deposit, report and pay state and federal income taxes, as well as, local taxes in some areas. In addition, government employees may be subject to Social Security and/or Medicare taxes. Wages subject to these taxes include all remuneration given an employee for services performed. The remuneration may include salaries, allowances, bonuses, commissions, per diem payments and certain fringe benefits.

The primary methods for computing the amount of federal income tax to withhold from a Kentucky government employee's wages are the wage-bracket method and the percentage method. Both utilize tables provided in IRS Publication 15. The employer may use either withholding method, but the prime consideration is probably the number of employees and the type of payroll system and payroll equipment used. The employer may change from one method to another at will, and may use one method for a group of employees and a second method for another employee group.

Please note that the wage-bracket tables do not account for quarterly, semiannual or annual payroll periods, which means the percentage tables must be used in these instances. Also, if the employee's wages exceed the amounts given in the wage-bracket tables, then the percentage tables must be used. When using the percentage tables, employers must reduce wages by the amount of total withholding allowances before using these tables.

Each new person hired should be asked to show his or her Social Security card so the employer can accurately transcribe the name and Social Security number to the employer's records. Then, when Form W-2s are prepared for these employees, the employer can be sure their wages will be correctly credited to their Social Security records.

If the employee has not applied for a Social Security card, he or she should be advised to contact any Social Security office. A card is usually available within two weeks. Once received, the employee should show it to the employer so the number can be recorded in the employer's records.

Employers must complete U.S. Immigration and Naturalization Service Form I-9 (Employment Eligibility Verification) and examine evidence of identity and eligibility for work for each new employee.

New employees must complete Form W-4 (Employee's Withholding Allowance Certificate) that shows what income tax amounts should be withheld from their wages. At the end of the calendar year, employers should advise employees to update their Forms W-4, if necessary. Employees who claimed exemption from withholding for the year must file a new Form W-4 by February 15 to continue the exemption into the next year.

All employees should be reminded to file a new Form W-4 if a change in withholding should be made because of marriage, divorce or other change of circumstances. When completion of these forms shows the employee has had a recent change of name, the employer should advise him or her to report the name change to the SSA and obtain a corrected Social Security card. This is important since the SSA will match the Form W-2 reports filed for employees to the SSA's record of Social Security names and numbers.

To continue receiving advance payments of earned income credits, employees must file a new Form W-5 (Earned Income Credit Advance Payment Certification) with the employer.

Who is an Employee?

Under the Social Security Act, the term “employee” includes:

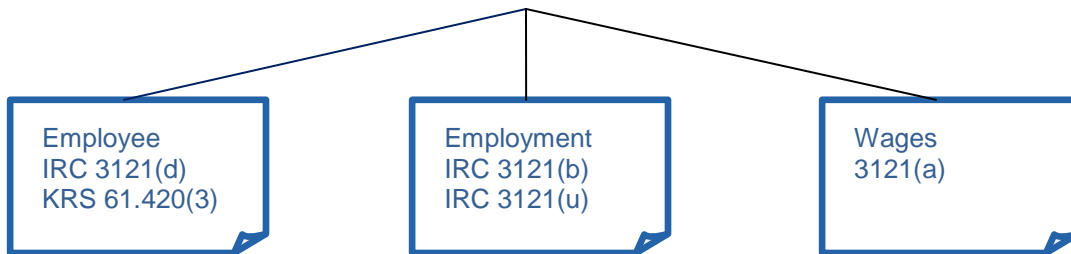
- a. An individual who, under the usual common-law rules applicable in determining an employer-employee relationship, has the status of an employee, and
 - b. An officer of a state or political subdivision.
- Section 3401(c) of the Internal Revenue Code defines “employee” as: An officer, employee or elected official of the United States; a State or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing.
 - The Kentucky Revised Statutes—KRS 61.420(3)—says an “employee” is: Any person in the service of the Commonwealth, a political subdivision or an interstate instrumentality of which the Commonwealth is a principal and shall include all persons designated officers, including those which are elected and those which are appointed.

Elected and appointed officials are considered officers and therefore employees of their political subdivision for federal employment tax purposes. Such Kentucky local officials include, but are not limited to, mayors, city council/commission members, school board members, conservation district supervisors, any board/commission members appointed by the city or county. Wages paid these employees should be report at the end of each calendar year on Form W-2, not Form 1099.

Services performed by elected and appointed officials are, generally, covered for Social Security and Medicare purposes and such taxes should be withheld from any wages paid.

Some officials, however, due to the current or past participation in a public retirement system may be exempt from the Social Security portion of the FICA tax but may be covered for Medicare. Contact the Kentucky Division of Local Government Services to inquire about the conditions of a Section 218 Agreement and the appropriate Social Security and Medicare coverage for elected and appointed officials.

FICA



Employee:

IRC 3121(d) - For purposes of this chapter, the term "employee" means:

- (2) Any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee; or
- (4) Any individual who performs services that are included under an agreement entered into pursuant to section 218 of the Social Security Act.

KRS 61420 – The term employee means:

- (3) "Employee" means any person in the service of the Commonwealth, a political subdivision, or an interstate instrumentality of which the Commonwealth is a principal and shall include all persons designated officers including those which are elected and those which are appointed.

Employment:

IRC 3121(b) - For the purposes of this chapter, the term "employment" means any service, of whatever nature, except:

- (7) Service performed in the employ of a state, or any political subdivision except:
 - (E) Service included under an agreement entered into pursuant to section 218 of the Social Security Act, or
 - (F) Service in the employ of a State or political subdivision by an individual who is not a member of a qualified public retirement system of such State.

IRC 3121(u)

- (2) – Medicare tax shall be imposed on state and local employment except:
 - (B) (i) Services included under a Section 218 Agreement, or
 - (C) (I) Services performed by an individual who was performing regular and substantial service before April 1, 1986.

Wages:

IRC 3121(a) - For purposes of this chapter, the term "wages" means all remuneration for employment except that which is excluded.

Mandatory FICA

On July 1, 1991, mandatory FICA coverage became a reality for state and local employees **in positions not covered by a Section 218 Agreement** and who are not qualified participants in a qualified public retirement system.

Political subdivisions **may voluntarily enter into a Section 218 Agreement** with the State Division of Local Government Services to provide Social Security coverage for their employees, if the employees are qualified participants (according to Internal Revenue Service regulation) of a qualified retirement system (according to IRS regulation). **This is the only way a political subdivision can provide Social Security coverage for employees who are members of a qualified retirement system.** The subdivisions with a Section 218 Agreement can elect to exclude certain positions from Social Security coverage.

Employees who are not qualified participants in a qualified public retirement system must have FICA taxes withheld and matched by the employer. According to the IRS, elected officials who were excluded in the past meet the definition of an “employee” and must now contribute to FICA unless they are members of the EMPLOYER’S retirement system.

The following is only a general rendition of the regulation governing mandatory FICA, 26 CFR 31.3121(b)(7)-2, and should **NOT** be relied upon as an official interpretation. The IRS is the sole source of specific and official explanations of the context and content of the regulation. Copies of the regulation may be obtained from the DLGS or from the IRS.

What is a Qualified Retirement System?

In general, the IRS addresses two concepts of retirement systems—the defined benefit system and the defined contribution system.

A qualified defined benefit retirement system (such as the County Employees Retirement System) is a pension, annuity, retirement or similar fund maintained by the state or political subdivision and provides a retirement benefit to the employee that is comparable to the benefits provided under the Old-Age or Retirement portion of Social Security. This determination can be made by applying the retirement system’s benefits to Revenue Procedure 91-40, copies of which are available from the DLGS.

A qualified defined contribution retirement system (Section 401(k), 403(b) or 457 plans, for example) is also a governmental employer-maintained pension, annuity, retirement or similar fund which must receive an allocation to the employee’s account of at least 7.5 percent of the employee’s compensation for services during the period. Combinations of employer and employee contributions may be used to arrive at the 7.5%. However, the 7.5% cannot include any earnings on the account. The employee’s

account must be credited with a reasonable interest rate or it must be held in a separate trust subject to fiduciary standards and credited with actual earnings.

The definition of compensation used in determining the qualification of a defined contribution retirement system must generally be no less inclusive than the definition of the employee's base pay as designated by the employer or retirement system. A defined contribution system will not fail to meet this requirement if it disregards any of the following: overtime pay; bonuses; or lump sum payments received on account of death, or separation from employment under a bona fide vacation, compensatory time or sick pay plan or under severance pay plans. In other words, compensation is the employee's base pay. Any compensation in excess of the Social Security contribution wage base may also be disregarded.

Who is a Qualified Participant?

The IRS considers an employee a qualified participant of a defined benefit retirement system if he/she is or ever has been an actual participant in the retirement system and has accrued benefits equal to the Social Security retirement benefit. A qualified participant of a defined contribution retirement system is a member of the retirement system and is having an amount equal to at least 7.5 percent of the employee's base pay deposited to his/her account which is earning a reasonable interest rate or, the funds are placed in a trust subject to fiduciary standards and are credited with actual earnings.

Whether or not an employee is a qualified participant of a retirement system is generally determined on an individual basis.

What about Part-time, Seasonal and Temporary Employees?

A part-time, seasonal or temporary employee, as defined in the IRS regulation, is generally not a qualified participant of a retirement system unless the following conditions are met:

- Any benefit relied upon to meet the qualification requirements must 100 percent non forfeitable.
- The employee must be unconditionally entitled to a single sum distribution upon death or separation of service.
- The distribution must be equal to at least 7.5 percent of the employee's compensation and a "reasonable" interest rate must be paid with the distribution. (A reasonable interest rate is determined after reducing the rate to adjust for administrative expenses.)

The IRS considers a part-time employee as one who normally works 20 hours or less per week and a seasonal employee as one who works full-time less than five months

per year. A person performing services under a contractual agreement of two years or less is considered a temporary employee.

In regard to the classification of temporary employees, contract extensions may be considered in determining the temporary status of an employee. Contract extensions may be considered only if there is a significant likelihood that the employee's contract will be extended. The IRS said there is a "significant likelihood" if, on average, 80 percent of the employees in the same or similar position with expiring contracts were offered renewals within the last two academic or calendar years. Also, contract extensions are considered significantly likely if the employee has a history of extension with respect to his/her current position (teachers, for example.)

What is the "Look-Back" Rule"?

An employer can avoid the need to determine an employee's qualification on a day-by-day basis by using an alternative look-back rule, copies of which are available from the DLGS. Any employer using the look-back rule must use it consistently from year to year and, if it is used for one employee, it must apply to all applicable employees.

The look-back rule says that an employee may be treated as a qualified participant in a retirement system for an entire calendar year if he/she was a qualified participant in the system at the end of the plan year ending in the previous calendar year. New employees are considered qualified participants if it is reasonable to assume that they will be qualified on the last day of the plan year. Employees leaving the system are treated as qualified participants until their departure if it is reasonable to believe they will be qualified on the last day of employment.

The look-back rule has a special section that applies to defined contribution plans where only a partial year is taken into account and includes the requirement that the employee must receive a monthly allocation and prohibits the back-loading of any allocations.

Who is Excluded from Mandatory FICA Coverage?

There are several exclusions that apply to mandatory FICA coverage for services performed by:

- Participating members of a qualified public retirement system who are not covered for Social Security purposes under a Section 218 Agreement;
- Individuals employed in programs which are designed to relieve unemployment;
- Individuals paid for services performed in a hospital, home or other institution where they are a patient or inmate;
- Individuals employed on a temporary basis in case of fire, storm, snow, earthquake, flood or other similar emergency;

- Election workers and election officials paid less than a threshold amount per calendar year;
- Employees compensated solely on a fee basis and who are reporting such fees as self-employment income;
- Nonresident aliens who hold F1, J1, M1 or Q1 visas;
- Students enrolled and regularly attending classes at the school which is the employer and who were not previously covered under a Section 218 Agreement.

Excluded from mandatory Social Security coverage only (not Medicare coverage) are rehired annuitants. These are employees who are former participants in a retirement system who have retired from service with the state or political subdivision and who are either receiving retirement benefits under the retirement system or have reached the normal retirement age under the retirement system.

For example, if a teacher retires from service, begins to receive KTRS benefits and later becomes a substitute teacher in another school district, the teacher would be considered a rehired annuitant and, therefore, excluded from mandatory Social Security coverage. The substitute teacher, being a rehired annuitant, is NOT excluded from the Medicare portion of FICA.

Note: Coverage under a Section 218 Agreement always takes precedence over other employment circumstances. When considering whether the mandatory social security coverage and exclusion rules apply to a worker's services, first determine whether the services are covered by a Section 218 Agreement.

What about Medicare?

There is no change in the Medicare procedures for employees currently participating in a qualified retirement system and not covered under a Section 218 Agreement. Those who are not participating in a qualified retirement system come under the provisions of mandatory FICA coverage and are required to participate in Medicare. There is no "new-hire/old-hire" Medicare differentiation for those under mandatory FICA coverage.

Using the Look-back Rule for Mandatory FICA

An employer can avoid the need to determine if an employee is a qualified participant of a retirement system (for mandatory FICA purposes) on a day-by-day basis by using the “alternative look-back rule.” This rule says that an employee may be treated as a qualified participant in the employer’s retirement system for an entire calendar year if the employee was a qualified participant in the system at the end of the plan year ending in the previous calendar year.

The following two scenarios assume that a part-time teacher accrues a 100% non-forfeitable benefit, as defined by IRC regulations.

Scenario 1

- If a part-time teacher makes a contribution to the KTRS on 12/1/90 for services performed 7/1/89 to 6/30/90 and the teacher receives a KTRS benefit for that plan year ending 6/30/90, is that teacher excluded from mandatory FICA for the calendar year 1991?

The IRS said, “Yes, providing the employer uses the alternative look-back rule consistently for all employees from year to year. The employee status for mandatory FICA for 1992 must be determined again by determining the employee’s status with KTRS for the plan year ending 6/30/91.”

- Using the same scenario, but the employer does not use the alternative look-back rule. Could the employer request an IRS refund of previously withheld mandatory FICA taxes when the teacher makes a retroactive contribution to the KTRS?

“No. The IRS intended that under the general rule, the employee would still be covered for mandatory FICA and, therefore, ineligible for a FICA refund, even though a retroactive retirement contribution is made. See Reg. 31.3121(b)(7)-2(d)(1)(i) Example 1.”

Scenario 2

This scenario concerns employees who are covered by a retirement system, but who must work for six months before becoming contributing members of the system. The retirement system is a defined benefit system and operates on a plan year that begins July 1 and ends June 30.

- Would an individual hired on October 1 be subject to FICA withholding during the first six-month period?

The IRS said, “In the first year of participation, an employee who participates in the retirement system may be treated as a qualified participant on any given day during the employee’s first

plan year of participation in a retirement system if, and only if, it is reasonable on such day to believe that the employee will be a qualified participant of such plan year. Therefore, the individual would not be subject to FICA withholding during the first six-month period, if it is reasonable to believe that the individual hired on October 1 will be a participant on the last day of the plan year (June 30)."

- Would an individual hired on March 1 be subject to FICA withholding during the first six-month period?

"The same would hold true for an individual hired on March 1."

- Would the employee be required to make retroactive retirement contributions back to his date of hire for the employer to be eligible to apply the look-back rule?

"It is not necessary for the employee to make such payments in order for the employer to be eligible to use the alternative look-back rule."

- Is the defined contribution system treated any differently than a defined benefit system?

"The determination of whether the employee is actually a qualified participant at the end of the plan year must take into account all compensation since the commencement of participation."

Errata

- The County Employees Retirement System, the Kentucky Employees Retirement System and the Kentucky Teachers Retirement System have determined that they meet the conditions to be a “qualified retirement system” for mandatory FICA purposes under Section 3121(b)(7)F of the Internal Revenue Code.
- Agencies utilizing retirement programs other than those offered by the CERS, KERS and KTRS must use IRC Section 3121(b)(7)F--and its related regulations--and IRS Revenue Procedure 91-40 to determine if their respective retirement plans meet the IRS guidelines to be a “qualified retirement system” for mandatory FICA purposes. Copies of Revenue Procedure 91-40 are available from the Division of Local Government Services. **No other definitions, qualifications, regulations or statutes apply to the requirements of IRC Section 3121 in determining what is a “Qualified Retirement System” for Mandatory FICA purposes.**
- According to IRC Section 3401(c), “the term employee includes an officer, employee or **elected official** of a state or any political subdivision thereof, or any agency or instrumentality of any of the foregoing.” Wages for elected officials must be reported on Form W-2.
- A teacher who has retired and is currently receiving retirement benefits from the KTRS but, who has returned to work as a substitute teacher (known to the IRS as a “rehired annuitant”) in a KTRS position is excluded from mandatory Social Security. **PLEASE NOTE: Rehired annuitants who are substitute teachers must still contribute to Medicare.** The IRS said that *“even though the services performed may be substantial, the services are not regular because they are performed on an as needed basis.”* A KTRS retiree who returns to work as a bus driver is covered for full Social Security under Section 218 Agreement.
- Publication 15 clarifies student exclusions by stating student services are exempt unless services are covered by a Section 218 Agreement. In other words, all students employed by a board of education are exempt from Social Security and Medicare contributions **IF** the board of education has a student exclusion and the student is enrolled and regularly attending classes.

If the board does NOT have student exclusions, or if the student is not enrolled and regularly attending classes, Social Security and Medicare contributions must be withheld because these student services are covered under a Section 218 Agreement.

Student services performed at Kentucky’s state universities are exempt from Social Security and Medicare if the student is enrolled and regularly attending classes, as defined by the IRS and SSA.

Sources of Assistance

Most questions posed by state and local government employers on annual wage reporting to the federal government can be answered by consulting one of the following Internal Revenue Service or Social Security Administration publications.

Available from the IRS:

- Federal-State Reference Guide (Publication 963)--The Fed-State Reference Guide examines Social Security and Medicare coverage of governmental employees and FICA reporting by governmental employers.
- Employers Tax Guide (Publication 15/15A)—This publication explains employer requirements for withholding, depositing, reporting and paying federal employment taxes.
- Publication 15B: Employer's guide to Fringe Benefits.

Also, information may be obtained from the IRS via two toll-free telephone numbers, (800) 829-1040 for general assistance and (800) 829-3676 for information on forms and publications. Questions related to withholding, reporting and paying federal employment taxes can be directed to the IRS website at www.irs.gov or FSLG website <https://www.irs.gov/Government-Entities/Federal,-State-&-Local-Governments>. TE/GE Customer Account Services can be reached toll free at (877) 829-5500.

Available from the SSA:

- Magnetic media reporting and electronic filing can be found at <http://www.ssa.gov/bsowelcome.htm>.
- Additional publications may be obtained by going to <http://www.ssa.gov/>.
- Access to an SSA regional wage reporting specialist may be gained by contacting the Social Security Administration at 61 Forsyth St, SW, Suite 22T64, Atlanta, GA. 30303 or by telephone at (404) 562-1315.

Available from the Division of Local Government Services:

- Governmental Employer Manual--The manual is an unofficial guide to Social Security and Medicare coverage and reporting specifically for Kentucky's governmental employers.
- Who Is a Governmental Employee?--This is information on how to determine if an individual is an employee or an independent contractor for a governmental employer.
- Employer Provided Vehicles--These rules can be used to ascertain the taxable value of a vehicle provided to an employee.

DLGS employees will also answer questions from governmental employers regarding Social Security coverage and reporting requirements.

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