

WHO IS A GOVERNMENTAL EMPLOYEE FOR FEDERAL TAX PURPOSES?

- Under the Social Security Act, the term “employee” includes:
 - 1) An individual who, under the usual common-law rules applicable in determining an employer-employee relationship, has the status of an employee, and
 - 2) An officer of a state or political subdivision.
- Section 3121(d) of the Internal Revenue Code defines “employee” as:
 - 1) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee, and
 - 2) any individual who performs services that are included under an agreement entered into pursuant to section 218 of the Social Security Act.
- 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.



Members of Kentucky’s boards of education are considered employees of their school district for federal employment tax purposes. These employees should be reported, at the end of each calendar year, on Form W-2, not Form 1099.

Generally, services performed by board members are covered for social security and medicare purposes and such taxes should be withheld from any wages paid.

However, some members may be considered “reired annuitants” by the IRS and exempt from the social security portion of the FICA tax. This exemption occurs when a board of education has chosen an elective exclusion as part of its Section 218 social security coverage agreement and the board member is a KTRS or CERS retiree. In these situations, such a board member who is elected after March 31, 1986 is covered for only the medicare portion of the FICA tax.

Contact the Kentucky Division of Social Security to inquire on the conditions of a Section 218 agreement or the appropriate coverage for board members.

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