



Latest on the President's Employee Payroll Tax Deferral Executive Order

On Friday evening, the Treasury/IRS finally released official guidance on the payroll tax deferral Executive Order, scheduled to take effect tomorrow, September 1st. Unfortunately, the guidance fails to address some of the concerns NAW and others expressed in our letters to Treasury and leaves critical questions unanswered.

The guidance:

- Clearly identifies employers as the taxpayers even though it is the employee's portion of the payroll tax that would be deferred;
- Apparently makes the program voluntary for employers, not by clearly stating that it is but by the absence of language making it mandatory;
- Does not have any language giving employees the right to choose whether or not to participate, leaving the decision on whether to do so solely with employers;
- Would apply the tax deferral to biweekly wages of \$4,000 or less, calculated on a pay period basis, apparently obligating the employer to determine for which pay periods the tax could be deferred if an employee's pay was over \$4,000 in some pay periods but under \$4,000 in others;
- Requires the employer to withhold and pay any 2020 taxes deferred under this program beginning on January 1 – April 30, 2021, resulting in employees paying double the payroll tax for those four months;
- Leaves unanswered the question of how an employer handles the deferred taxes from an employee who has left the company, other than stating that "if necessary, the Affected Taxpayer may make arrangements to otherwise collect the total Applicable Taxes from the employee;" and
- Also leaves unanswered the question of who is responsible if an employer is unable to collect the deferred taxes from a former employee.

NAW is cautioning members to be very careful before deciding to participate in this program because businesses that defer their employees' payroll taxes now will be required to withhold the deferred taxes from their employees in the first four months of 2021 – in addition to their regular withholding – leaving those employees with what would be an unanticipated reduction in take-home pay. We urge businesses to consult with your tax advisors before deciding to participate.

You can read the official guidance [HERE](#) and a *Bloomberg* story on the issue [HERE](#).