



## About the State Social Security Administrator Program Newsletter

The State Social Security Administrator Program Newsletter provides information about Social Security and Medicare coverage for state and local government employees.

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## State Social Security Administrator Program Newsletter

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### Mandatory Social Security and Medicare

Social Security coverage for government employees is not as straight forward as it is for private sector employees. While all private sector employees contribute to Social Security, not all government employees do.

Government employees must be covered for either Social Security or a retirement system. Employees can have both if the agency has a Section 218 Agreement, but the employee must have at least one benefit.

For government employees, Social Security coverage may be applied in three different ways:

- Section 218 Agreement Voluntary Coverage
- Section 210 Mandatory Coverage – Often referred to as Mandatory Social Security
- No Social Security Coverage

In this article we will focus on Section 210 Mandatory Coverage, or Mandatory Social Security.

Effective July 2, 1991, Congress amended the Internal Revenue Code (IRC) and the Social Security Act, making Social Security and Medicare coverage mandatory for most state and local government employees not covered by a qualifying public retirement system or a Section 218 Agreement. This law became known as Mandatory Social Security, which is different from mandatory Medicare. Medicare is mandatory regardless of the existence of a retirement system, but Social Security is mandatory only in the absence of a retirement system or Section 218 agreement. Employees covered under Section 210 Mandatory Coverage are required to participate in Social Security.

It's important to note that Section 210 Mandatory Coverage ceases if an employee is later covered by a qualifying retirement system. In this case, if your agency still wants to cover employees for Social Security this is when a Section 218 Voluntary Agreement is required. We will provide more information about Section 218 Agreements in our January and February webinars. Refer to the webinar section of this newsletter for details regarding dates and times.

In general, if a government employee is not covered under a Section 218 Agreement or is not a qualified participant in a public retirement system (also called a "Federal Insurance Contributions Act (FICA) replacement plan"), then you should withhold Social Security taxes.

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### **Board Members - Independent Contractors or Employees?**

Generally, members of an agency's governing body are considered employees by the Internal Revenue Service (IRS). The IRS indicates that an officer, employee, or elected government official is an employee for income tax withholding purposes. Thus, the government entity is responsible for withholding and paying federal income tax, Social Security, and Medicare taxes for these employees. Simply naming a position as Independent Contractor is insufficient in determining worker status. The IRS applies a [common law control test](#) to determine whether an employee-employer relationship exists.

A common misconception is that stipends issued to board members are not considered wages. An agency may then treat the board member as an independent contractor by reporting stipends on an IRS Form 1099 without tax withholdings. If this is your approach, you may wish to reconsider and review how the Social Security Administration (SSA) defines wages. The SSA defines wages as any compensation paid in cash or some other form for services performed by an employee and states that the label given to the payment is immaterial. If your governing body members are receiving any form of compensation it will be considered wages, and they should have the appropriate taxes and contributions withheld.

Social Security and Medicare tax withholding varies according to various facts and circumstances. All employees hired or rehired after April 1, 1986, are subject to Medicare taxes. Social Security tax withholding may fall under one of the following:

- If the agency's retirement system covers board members, then the agency may not have to withhold Social Security taxes.
- If the agency's retirement system covers board members AND

has a Section 218 Agreement, then the agency may need to withhold Social Security taxes if the position is not excluded from the Section 218 Agreement.

- If the agency DOES NOT offer a retirement system and DOES NOT have a Section 218 Agreement, then the board members will be subject to Mandatory Social Security unless an exclusion applies. Alternatively, the agency may offer a FICA replacement plan in lieu of Mandatory Social Security coverage.

Be aware that rehired/retired annuitants serving on your agency's board may be exempt from Mandatory Social Security tax withholding. Please contact our office for guidance.

If you cannot determine the status of the worker, refer to Form [SS-8](#) titled Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding, to request IRS assistance in making a determination.

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### Upcoming Webinars

Join us for an interactive presentation to learn more about the State Administrator, Social Security, and Medicare. Register for a [webinar](#).

2020 Webinar Schedule	
Date	Topics
January 22, 2020	Section 218 Agreement Overview
February 26, 2020	Establishing a Section 218 Agreement
March 25, 2020	Social Security and Medicare for Schools
April 29, 2020	Annual Information Request for Schools and Public Agencies
May 27, 2020	Common Errors in Social Security & Medicare Withholding

Please visit our [webpage](#) to view a complete list.