

Publications

Deferring Social Security Tax Withholding

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As we [previously communicated](#), employers are currently able to defer payment of the employer's share of the social security tax.

On August 8, 2020, President Trump issued a memorandum directing the Secretary of Treasury to expand that deferral opportunity to the employee's share of the social security tax and to further explore turning the employee deferral into a waiver. We believe a waiver would require legislative action.

If an employee takes advantage of the deferral and then doesn't later pay required tax withholding (either by making a lump sum payment or withholding from other wages), under current law the employer would be required to pay the tax on behalf of the employee. In addition, any amount that is paid on behalf of the employee becomes additional taxable wages for all purposes. This means that, unless legislation is passed or Treasury adopts a rule waiving the normal consequences of an employer's failure to withhold required taxes, allowing an employee to defer his/her share of the social security tax could increase the employer's total tax bill.

We do not think that many employers will offer their employees the right to defer the employee's share of the social security tax, unless there is a legislative change or the actual guidance issued by Treasury would either mandate that offer or eliminate the employer's contingent liability for unpaid social security taxes.

We are closely monitoring Treasury's response to this memorandum.

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Vorys COVID-19 Task Force

Vorys has established a comprehensive COVID-19 Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at vorys.com/coronavirus.