

# Internal Revenue Service



## Federal, State and Local Governments

February 2013

**QUICK REFERENCE GUIDE  
FOR PUBLIC EMPLOYERS**

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# QUICK REFERENCE GUIDE FOR PUBLIC EMPLOYERS

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This guide is intended to provide basic information on the subjects covered. It reflects the interpretation by the IRS of tax laws, regulations, and court decisions. The explanations in the guide are intended for general guidance only, and are not intended to provide a specific legal determination with respect to a particular set of circumstances. Additional research may be required before a determination may be made on a particular issue. Citations to legal authority are included in the text. You may contact the IRS for additional information. You may also want to consult a tax advisor to address your situation.

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## INTRODUCTION

This guide is produced annually by the IRS office of Federal, State and Local Governments (FSLG). It is intended to provide a brief introduction to basic Federal employment tax and reporting information issues for governmental employers. For more detailed information in these areas, see IRS [Publication 963](#), Federal-State Reference Guide. For a general discussion of employment tax responsibilities that apply to all employers, see [Publication 15](#), Employer's Tax Guide. These publications discuss the general rules for reporting wages on Form W-2, Wage and Tax Statement, and on Form 941, Employer's Quarterly Employment Tax Return. They also address requirements for withholding and depositing. This product is intended to focus on the key points facing public employers and point out sources for further information.

## 1. COMPENSATION

Compensation includes any property or services provided in exchange for services. This includes all cash and noncash remuneration for services performed by an employee for an employer, unless specifically excluded. Wages are subject to Federal income tax, social security and Medicare tax, except where the law provides otherwise.

Generally, the medium in which the remuneration is paid is immaterial. Compensation may be paid in cash or, for example, services, bonds, inventory, or other forms of property. If services are paid for in a medium other than cash, the fair market value of the goods or services provided in payment is the amount to be included as wages.

### Employees

In general, an employee is anyone who performs services subject to the will and control of the individual or entity paying for the services. Payments to employees in the form of cash, property, services or other benefits are taxable wages, unless excluded by a specific provision of the law. Regulation Section 31.3401(a)-1 indicates that wages include noncash property or services received in exchange for services provided. For a more detailed discussion of how to determine who is an employee, see [Publication 963](#) or [Publication 15-A](#).

Employers report taxable wages on Form W-2, Wage and Tax Statement, which is furnished to the employees and transmitted to the Social Security Administration using Form W-3, Transmittal of Wage and Tax Statements.

### Independent Contractors

Any person or business that performs services for compensation and does not meet the control test for employees, discussed above, is an independent contractor. Generally, any payment of \$600 or more during a calendar year to an independent contractor should be reported to the payer on Form 1099-MISC, Miscellaneous Income, by January 31 of the following year. For purposes of an information return, an amount is deemed to have been paid

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when it is credited or set apart to a person without any substantial limitation or restriction. Never use Form 1099-MISC to report compensation or reimbursements to employees. Information reporting is discussed in greater detail in [Section 8](#) and the [Instructions for Form 1099-MISC](#).

## 2. SOCIAL SECURITY AND MEDICARE COVERAGE

Public employers need to be aware of the rules that govern social security and Medicare (FICA) coverage for their employees. Public employees fall into three different categories with respect to social security:

- (1) Subject to social security tax withholding through mandatory coverage,
- (2) Subject to social security through a Section 218 Agreement, or
- (3) Exempt from mandatory social security because they are covered by a public retirement system (also called a “FICA replacement plan”). These employees may or may not also be covered optionally for social security under a Section 218 Agreement.

In many cases, several issues must be considered to determine the correct social security and Medicare status of an individual worker.

A Section 218 Agreement between the Social Security Administration and a state’s Social Security Administrator provides coverage for a group of state or local government employees. To determine the coverage that applies in a given situation, it is first necessary to determine whether a Section 218 Agreement covers services performed by the worker. If the Section 218 Agreement includes the position, any employee holding that position is covered under the Agreement, regardless of other factors.

See the [Key Dates](#) section, later, for more information about the history and application of Section 218.

If you are not sure whether a worker’s position is covered, or have any questions about your Section 218 Agreement, please call your State Social Security Administrator. A list of state administrators is available at [www.ncsssa.org](http://www.ncsssa.org).

***If a position is not covered by a Section 218 Agreement***, you need to establish the date the worker in question was hired in order to determine the social security coverage for that worker. This is the date the worker began his/her current employment. If a worker was terminated and re-hired, the re-hire date is the date you use to determine whether coverage applies.

For any period after July 1, 1991, any employees who are not participating in a qualifying retirement system made available through their employer MUST be covered by social security and Medicare (although certain services may be excluded from social security).

***If the position is covered for social security***, either by a Section 218 Agreement or under mandatory coverage, the worker in that position is subject to social security tax, and the employer is responsible for contributing an additional share of the tax.

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**Note:** Employees covered under a public retirement system may also be covered for social security by a Section 218 Agreement.

All state and local government employees hired after March 31, 1986, are subject to the Medicare tax. A worker hired prior to April 1, 1986, and not covered by a section 218 Agreement, may be exempt from Medicare if he or she was a bona fide employee on that date, and has been in continuous service since that date. Any worker hired after March 31, 1986, must be covered by Medicare, either by a section 218 Agreement or under mandatory coverage provisions. See Revenue Ruling 86-88 in [Publication 963](#).

**Note:** Any Section 218 Agreement in effect on April 20, 1983, cannot be terminated regardless of whether an additional retirement plan is later made available to affected employees.

### 3. PUBLIC RETIREMENT SYSTEM

As stated above, employees are excluded from mandatory social security coverage if they are covered by a public retirement system. “A “public retirement system” is not required to be a qualified plan within the meaning of the Employees’ Retirement Income Security Act of 1974 (ERISA). The employee may be a member of any type of retirement system, including a nonqualified system (for example, a section 457(b) plan, discussed below), as long as the plan provides a minimum level of benefits, as specified by law, under that system.

A public retirement system may take one of two forms: the **defined benefit retirement system**, which is based on a guaranteed minimum benefit, and the **defined contribution retirement system**, which is based on a required contribution from the employee.

In order for a **defined benefit retirement system** to be considered a public retirement system, it must provide a benefit generally comparable to that provided by social security. The computation of the benefit that the plan provides is made based on various factors, including years of service rendered by the employee, compensation earned by the employee and the age of the employee at retirement. The Service issued Revenue Procedure 91-40 to clarify the minimum retirement benefit tests, which must be met in the plan’s formula. This Revenue Procedure can be found in the Appendix of [Publication 963](#).

In order for a **defined contribution retirement system** to be considered a qualified plan, the worker must be covered in a plan in which, generally, at least 7.5% of his/her compensation is credited to a retirement plan account on his or her behalf. This contribution can be any combination of employer and employee contributions, but must total a minimum of 7.5% of pay, and cannot include any credited interest in the calculation. The system may include any plan described in section 401(a), an annuity plan or contract under section 403(b) or a plan described in section 457(b) or (f) of the Internal Revenue Code.

Any person working for a public employer after July 1, 1991, who is not covered by a public retirement system that meets the requirements discussed above, or the defined benefit system

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safe harbor rules of Revenue Procedure 91-40, must be covered by social security and Medicare under the mandatory coverage provisions of Section 210 of the Social Security Act.

### 4. RETIREMENT PLANS

Various sections of the Code provide for favorable treatment of employee retirement plans. Under IRC section 401, employees may receive tax-deferred treatment of elective deferrals and employer contributions to retirement plans. These are referred to as qualified plans. Employer contributions are also exempt from social security and Medicare tax. In most cases, employee contributions are subject to withholding for social security and Medicare.

#### Section 403(b) Annuity Plans

Section 403(b) provides for tax-sheltered annuities for employees of public schools or tax-exempt organizations. These plans may provide for elective, nonelective, or after-tax contributions, subject to annual limits, to an annuity or custodial account. Contributions may be made See [Publication 571](#) for more information on section 403(b) plans.

#### Section 457 (Nonqualified) Plans

Nonqualified, or section 457, deferred compensation plans, can be established only by state and local governments or tax-exempt organizations. These plans do not meet the requirements for treatment under section 401, or a tax-sheltered annuity under section 403, but may still provide for deferred compensation. If it meets the requirements of IRC section 457(b), a plan is an “eligible” plan; if not, it is considered “ineligible” and is governed by the rules of IRC section 457(f).

The section 457 plan can be used either as a primary retirement plan or as a deferred compensation plan in addition to the employee’s retirement system or social security.

Governmental 457(b), or eligible, plans must be funded, with assets held in trust for the benefit of employees. Plans eligible under 457(b) may defer amounts from income tax up to an annual limit (\$17,500 in 2013). In addition, “catch-up” contributions may be made to employees age 50 or older. Social security and Medicare taxes generally apply to all employer and employee contributions. For further information regarding social security and Medicare tax withholding and reporting on amounts deferred into eligible deferred compensation plans, see Section VI of [Notice 2003-20](#) and the [irs.gov Employee Plans site](#).

The government entity holds the funds in trust until the employee is eligible for a distribution (usually at retirement) and withdraws the money. The employer can match the employee’s contribution, but is not required to do so. Employer contributions generally vest immediately. See the [irs.gov Employee Plans site](#).

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Nonqualified state or local government plans that do not meet the tests of 457(b) are ineligible, or 457(f), plans. There is no limit on the annual deferrals on these plans, but in order to defer taxation, all amounts must be subject to substantial risk of forfeiture. Distributions are generally subject to social security and Medicare taxes at the later of the time 1) when the services giving rise to the related compensation are performed, or 2) when there is no substantial risk of forfeiture of the rights to the amounts.

### 5. FEE-BASED PUBLIC OFFICIALS

In general, if an individual performs services as an official of a governmental entity and the remuneration received is paid from governmental funds, the official is an employee and the wages are subject to Federal employment taxes. Examples of public officials include, but are not limited to, the President, governor, mayor, county commissioner, judge, justice of the peace, sheriff, constable, registrar of deeds, or building inspector.

An exception to this rule applies to a **fee-based public official**. A fee-based public official receives his/her remuneration in the form of fees **directly from the public** with whom he/she conducts business. However, if the fee service is covered by a Section 218 agreement, the service is covered as employment. Section 218 coverage always supersedes other considerations.

If a public official receives remuneration or salary directly from or through a government fund on the basis of a fixed percentage, and no portion of the monies collected belongs to or can be retained by him or her as compensation, then the remuneration is not a fee, but salary subject to all employment taxes.

If an individual performs services in more than one position, each position is treated separately for purposes of determining whether the compensation for the service constitutes payment of fees to a fee-based official.

For detailed information on this subject, see [Publication 963](#), Federal-State Reference Guide, and Revenue Ruling 74-608, 1974-2 C.B. 275.

### 6. SPECIAL SITUATIONS FOR PUBLIC WORKERS

Specific statutory provisions apply to various categories of individuals who work for government entities. Some common categories of these workers are discussed below.

#### **Elected and Appointed Officials**

With the exception of fee-based officials, discussed in section 4, elected and appointed officials are generally employees for Federal income tax withholding purposes. Under section 3401(c) of the Internal Revenue Code, these officials are subject to income tax withholding. Generally, these individuals are also common-law employees for social security and Medicare purposes under section 3121(d)(2). Any individual covered under a Section 218 Agreement

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between the employer and the Social Security Administration is subject to social security and Medicare withholding under section 3121(d)(4). For more information, see [Publication 963](#).

### **Casual Laborer**

Federal tax law does not contain any special provision for a “casual laborer.” There is no “grace period” or minimum amount before withholding of employment taxes applies; you must withhold with the first dollar earned by the worker. If, for example, you hire a student to clean up the town dump or a day laborer to cut trees, under conditions of common-law employment, that worker is an employee and you must withhold, report, and pay over income, social security and Medicare taxes.

### **Volunteer Firefighters**

Volunteer firefighters are considered employees and their remuneration is generally subject to all withholding taxes. However, if the payment is reimbursement for out-of-pocket expenses actually incurred in the course of work, and the payment conforms to the requirements of Reg. 1.62-2 regarding accountable plans, then the payment is excludable from the firefighter’s Form W-2. (See the discussion of accountable plans under Fringe Benefits, later.)

### **Election Workers and Officials**

Payments for services to individuals for election work are exempt from income tax withholding. They may be subject to social security and Medicare tax either under the provisions of a Section 218 Agreement, or by law, if the amount of compensation exceeds an annual threshold (\$1,600 in 2013). If payments are subject to income tax, social security, or Medicare withholding, Form W-2 should be furnished to that individual. If the employee has non-election wages from the same employer, the normal Form W-2 reporting rules apply to those wages.

For more information about election workers, see [Revenue Ruling 2000-6](#) and [Publication 963](#).

### **Road Commissioners**

An individual with the title of “road commissioner” is usually an elected or appointed official of the governmental entity, and therefore is subject to the supervision, direction, and discipline characteristic of an employer. In this case, all remuneration that the road commissioner personally receives is wages.

The relationship between the employing entity and the commissioner may also allow for a fair rental payment for the use of any large equipment owned by the commissioner. This rental fee for equipment used is not wages and should be agreed upon in advance, and reported to the individual on Form 1099-MISC, box 7. Fair equipment rental rates should be determined and governmental units should be based on fair market value, which is generally what a private company would charge under normal circumstances.



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In some situations, the road commissioner may hire a crew to perform certain services. In this case, it may be necessary to review of facts and circumstances to determine whether the workers are employees of the governmental entity or of the road commissioner.

### **Animal Control Officer**

If an animal control officer holds an elected or appointed position, that is generally an indication of employee status and the remuneration is considered wages.

### **Other Workers**

Most other types of workers in a local government entity, including moderators, civil emergency directors, bus drivers, harbor masters, correction officers, fire chiefs, fire and ambulance workers, airport managers, summer aides, and librarians are generally considered employees, but in each case the common-law standards should be considered.

## **7. FRINGE BENEFITS**

Fringe benefits include any compensation other than cash wages. The general rule is that the compensation is taxable; however, the Internal Revenue Code provides exclusions for numerous forms of noncash compensation provided to employees. Some of the common fringe benefit issues encountered by public employers are discussed below. For a more detailed discussion of fringe benefits, see [Publication 15-B](#) and the [FSLG Fringe Benefit Guide](#).

### **Reimbursement for Expenses**

In general, reimbursements or expenses paid by the employer on behalf of the employee, such as travel expenses, are taxable unless they are provided for allowable excluded benefits or expenses, and made under an **accountable plan**. For payments to be considered made under an accountable plan, the employees must:

- (1) Incur the expenses in the performance of work;
- (2) Adequately account for the expenses within a reasonable period of time; and
- (3) Return any amounts in excess of expenses within a reasonable period of time.

If the accountable plan rules are met, no tax reporting is necessary. If they are not met, the reimbursements or advances are included in wages, and the employee may deduct allowable business expenses on his or her Form 1040.

### **Government-Owned Vehicles**

The personal use of a government-owned vehicle is generally a taxable fringe benefit. It may, however, be excludable as a de minimis benefit (infrequent and of little value). Personal use includes the value of commuting in a government-owned vehicle, even if the vehicle is taken home for the convenience of the employer (but see Commuting Valuation Rule, below). The

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value of the benefit must be included in wages, but withholding of income tax on the value of vehicle use is at the employer's option. Social security and Medicare withholding is required.

All of your employee's use of a **qualified nonpersonal use vehicle** qualifies as a working condition fringe. You can exclude the value of that use from employee income. A qualified nonpersonal use vehicle is any vehicle the employee is not likely to use more than minimally for personal purposes because of its design. Qualified nonpersonal use vehicles include:

- Clearly marked police, fire, and public safety officer vehicles. The employee must be on-call, required to commute in the vehicle, and be prohibited from personal travel outside the jurisdiction.
- Unmarked vehicles used by law enforcement officers. The officer must be authorized to carry a firearm, execute search warrants and make arrests.
- An ambulance or hearse used for its specific purpose.
- Any vehicle designed to carry cargo with a loaded gross vehicle weight over 14,000 pounds.
- Delivery trucks with seating for the driver only, or driver plus a folding jump seat.
- A passenger bus with a capacity of at least 20 passengers used for its specific purpose.
- School buses.
- Tractors and other special purpose farm vehicles.

### All Other Employer-Provided Vehicles

If you provide an employee with a vehicle that does meet the qualified nonpersonal use criteria, the personal use of the vehicle is a taxable fringe benefit. It is the employer's responsibility to determine the actual value of this fringe benefit and to include the taxable portion in the employee's income.

**Example:** A town-owned pickup truck is marked with the town name. It is not a police, fire, or public safety vehicle, or other qualified nonpersonal use vehicle. The employee is usually allowed to take the vehicle home because he is "on call." The vehicle is not a qualified nonpersonal use vehicle, thus the commuting is a non-cash taxable fringe benefit.

### Special Valuation Rules

There are three methods to determine the value of the vehicle provided to the employee:

- 1) Lease value rule
- 2) Cents-per-mile rule
- 3) Commuting valuation rule

#### 1) Lease Value Rule

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The lease value method may be used for any vehicle, and must be used if the conditions for using rule (2) or (3) are not met. It calculates the value of the benefit by determining the annual lease value of the vehicle, as follows:

- a) Determine the fair market value of the vehicle when first made available.
- b) Determine the annual lease value (ALV) from the table in [Publication 15-B](#), which is based on a four-year lease term. This value will generally stay the same for each year. If the vehicle remains in service after four years, it must be revalued and the ALV recomputed.
- c) Multiply the annual lease value by the percentage of personal miles out of the total miles driven by the employee. This is the value of the taxable benefit.

### 2) Cents-Per-Mile Rule

To use the vehicle cents-per-mile rule, the one of the following tests must be met:

- The employer reasonably expects the vehicle to be regularly used in the trade or business throughout the calendar year, or
- The mileage test is met.

A vehicle is considered “regularly used in the business” if:

1. At least 50% or more of the total annual mileage each year is in the employer's business, or
2. It is generally used each workday to transport at least three employees to and from work, in an employer sponsored commuting vehicle pool.

The mileage test is met if the vehicle is it is driven by employees at least 10,000 miles (personal and business) per year and use of the vehicle is primarily by employees.

The value of the personal use of a vehicle may be figured at 56.5 cents per mile for 2013 if the following conditions are met:

If you do not provide fuel, you can reduce the value of the personal use by up to 5.5 cents per mile.

To use the cents-per-mile rule, the vehicles cannot have a greater fair market value in the year placed in service than a maximum amount determined by the IRS for each year (for 2013, \$16,000 for cars and \$17,000 for trucks).

### 3) Commuting Valuation Rule

Under this rule, you determine the value of a vehicle you provide to an employee (other than a qualified nonpersonal use vehicle, discussed earlier) for commuting by valuing each one-way commute (home to work or work to home) at \$1.50. If more than one employee commutes in the vehicle, this value applies to each employee. Unless the

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employee reimburses this amount to the employer, the amount is included in the employee's wages. This rule may be used if all of the following apply:

- a) You own or lease the vehicle and provide it to an employee to use in your business,
- b) For bona fide noncompensatory business reasons, you require the employee to commute in the vehicle,
- c) You establish a written policy allowing no personal use other than commuting or de minimis personal use (such as a stop for personal errand),
- d) Your employee does not use the vehicle for personal purposes other than commuting and de minimis personal use, and
- e) The employee is not a government control employee. A government control employee is either (i) an elected official, or (ii) an employee whose pay is at least Federal Government Executive Level V.

**Example:** An employee takes a city vehicle home in order to avoid exposing it to harm. The vehicle has a city seal on the door and policy prohibits noncommuting personal use. If this is an infrequent occurrence (less than once a month) this may be excludable as a de minimis fringe benefit. If this is a frequent or regular occurrence, the commuting may be valued using the commuting rule. If the vehicle is not a qualified nonpersonal use vehicle as discussed earlier, and the employee drives it home, there is a taxable commuting benefit.

To conform to the accountable plan rules, employees using a vehicle for business purposes (regardless of which special valuation rule is used) should keep daily records of business miles by keeping a log showing the date, mileage, destination, business purpose, and personal use (including commuting) mileage.

### **Clothing Provided by the Employer**

The value of work clothing provided by the employer is not taxable to the employee if:

- 1) The employee must wear the clothing as a condition of employment, and
- 2) The clothes are not suitable for everyday wear.

It is not enough that the employee wear distinctive clothing; the employer must specifically require the clothing as a working condition. Nor is the test met because the employee does not, in fact, wear the work clothes away from work. The clothing must not be suitable for taking the place of regular clothing.

The value and upkeep of work clothes provided to firefighters, health care workers, law enforcement officers or letter carriers is nontaxable to the employee. Similarly, the value of safety shoes or boots, safety glasses, hard hats and work gloves provided and maintained by the employer are not taxable. Reimbursements to employees for their purchase of any of these are excludable if the expenditures are substantiated under the accountable plan rules.

### **Clothing Allowances**

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If clothing provided does not qualify as a deductible expense (i.e. as a uniform), then the clothing, or reimbursement for the clothing, must be treated as a taxable fringe benefit and is subject to income, social security and Medicare taxes. Thus, a clothing allowance, such as for a police officer or firefighter uniform, qualifies for exclusion from income if it meets all the requirements of an accountable plan (qualified expense, substantiation, and return of excess). However, a detective's suit jacket and related clothing, since they are suitable for everyday wear, do not qualify as a uniform and are taxable to the employee.

### Group-Term Life Insurance

An employer may exclude from income the cost of up to \$50,000 of group-term life insurance from an employee's wages. If the employee receives more than \$50,000 insurance, as determined by a table provided by IRS regulations, then the excess is includable as wages. The tables for determining the cost of the additional insurance to be used are included in [Publication 15-B](#), Employer's Tax Guide to Fringe Benefits, and in Regulation 1.79-3(d)(2).

If the employee makes any payment toward the cost of the insurance, then the amount of coverage attributable to that payment is not considered in determining the amount of insurance provided by the employer.

Taxable employer-provided group-term life insurance is treated as wages, but is not subject to income tax withholding. It is subject to social security and Medicare tax withholding and must be included on Form W-2, in box 1, 3, 5 and 12 (code C). The taxable portion is included on Form 941, Employer's Quarterly Federal Tax Return, as part of wages, tips and other compensation, and on the lines for social security and Medicare wages.

### Meals

Reimbursement for meal expenses may be excludable if they are qualifying travel expenses paid under an accountable plan, discussed earlier. You can exclude the value of meals you furnish to an employee from the employee's wages if they meet the following tests:

- They are furnished on your business premises.
- They are furnished for your convenience.

This exclusion does not apply to additional compensation provided in lieu of meals, or to an allowance provided based on number of hours worked.

In addition to any exclusion allowable under the provisions above, you can also exclude, as de minimis fringe benefits, infrequent meals provided to employees if they have so little value that accounting for them would be unreasonable or administratively impracticable. Occasional meal money to enable an employee to work overtime may also be excludable. For more information on de minimis benefits, see the [FSLG Fringe Benefit Guide](#) and [Publication 15-B](#).

### Lodging

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Lodging provided or reimbursed under an accountable plan may be excludable as a travel expense. You can exclude the value of lodging you furnish to an employee at the job location if the following tests are met:

- It is furnished on your business premises.
- It is furnished for your convenience.
- The employee must accept the lodging as a condition of employment.

If the employee has a choice between lodging and additional wages, the value of the lodging provided is taxable because it is not a condition of employment.

### **Lodging for Educational Institutions**

Lodging is required as a condition of employment if the employer requires the employee to live on the premises to be able to perform the job duties. Common examples may include park rangers, firefighters or apartment managers. For the exclusion to apply, the employee must be required to accept lodging. Where lodging is provided as a condition of employment, meals, if provided, may qualify as excludable.

Special rules apply to certain campus lodging that is furnished to an employee or family members of an educational institution or academic health center.

Qualified campus lodging is lodging furnished to the employee by an educational institution for use as a home. The benefit applies to employees of educational institution and their spouses and dependents. The lodging must be located on or near a campus of the educational institution or an academic health center.

The amount of rent the employee pays for the year for qualified campus lodging is considered adequate if it is at least equal to the lesser of:

- 5% of the appraised value of the lodging.
- The average of rentals paid by individuals (other than employees or students) for comparable lodging held for rent by the educational institution.

The appraised value is the value is determined as of the close of the calendar year and must be reviewed on an annual basis.

If the employee pays annual rent that is less than the lesser of these amounts, the difference is included in wages.

### **SUMMARY: TREATMENT OF NONCASH FRINGE BENEFITS**

The following chart provides a quick reference to general rules for common types of fringe benefits. For complete information, see the appropriate sources. These benefits are discussed in more in [Publication 15-B](#).

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| <b>Benefit or Program</b>                 | <b>IR Code Section</b> | <b>Income Tax Withholding</b>                                                                                                                        | <b>Social Security and Medicare</b>        |
|-------------------------------------------|------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|
| Accident Insurance                        | 105, 106               | Exempt, except for certain long-term care benefits.                                                                                                  | Exempt                                     |
| Adoption Expenses                         | 137                    | Exempt                                                                                                                                               | Taxable                                    |
| Athletic Facilities, on employer premises | 132(j)(4)              | Exempt if substantially all use is by employee, spouse or dependent children                                                                         |                                            |
| Achievement Awards                        | 74, 274                | Value of noncash safety or length-of-service awards valued up to \$400 for nonqualified or \$1,600 for qualified awards (see Pub. 15-B and Pub. 535) |                                            |
| Cafeteria Plan (see specific benefit)     | 125                    | Exempt on same basis as specific benefit (see Pub. 15-B)                                                                                             |                                            |
| Clothing Provided                         | 162                    | Exempt, if required and not suitable for nonbusiness use                                                                                             |                                            |
| Dependent Care Assistance                 | 129, 3121(a), 3401(a)  | Exempt up to \$5,000 (\$2,500 for married filing separate return) per year                                                                           |                                            |
| Disability Pay                            | 3121(a)15; 6051(f)     | Taxable to extent coverage paid by employer (see Pub. 15-A)                                                                                          |                                            |
| Educational Assistance                    | 127, 132(d)            | Exempt for up to \$5,250 of benefits per year; if work related, may also qualify as working condition fringe benefit.                                |                                            |
| Group Term Life Insurance                 | 79                     | Exempt                                                                                                                                               | Exempt up to cost of \$50,000 of insurance |
| Health Insurance or Reimbursement         | 105, 106               | Exempt, except for certain long-term care benefits                                                                                                   | Exempt                                     |
| Lodging                                   | 119                    | Exempt if for employer's convenience as a condition of employment                                                                                    |                                            |
| Meals                                     | 119                    | Exempt if furnished on employer's premises for employer's convenience, or if qualifying as de minimis                                                |                                            |
| Membership Fees Paid                      | 132(a)(3)              | Exempt if for professional and business-related organizations and reasonable business purpose                                                        |                                            |

## QUICK REFERENCE GUIDE FOR PUBLIC EMPLOYERS

| Benefit or Program                          | IR Code Section         | Income Tax Withholding                                                                                                  | Social Security and Medicare |
|---------------------------------------------|-------------------------|-------------------------------------------------------------------------------------------------------------------------|------------------------------|
| Moving Expenses                             | 217                     | Exempt (up to limits) if expenses would be deductible if the employee had paid them                                     |                              |
| No-additional-cost services                 | 132(b)                  | Exempt for employees receiving benefits of goods and services in line of business (see Pub. 15-B)                       |                              |
| Sick Pay                                    | 3121(a)(15);<br>6051(f) | Taxable to extent coverage paid by employer (see Pub. 15-A)                                                             |                              |
| Tuition Reduction (educational institution) | 117                     | Exempt if for undergraduate education (or graduate education if the employee performs teaching or research activities). |                              |
| Travel Expenses                             | 162                     | Exempt if paid under an accountable plan for necessary expenses. (see Pub. 15-A)                                        |                              |
| Vehicle Provided by Employer                | 280F                    | Exempt to the extent of business use; generally, commuting use taxable (see Pub. 15-B)                                  |                              |
| Working Condition Fringe Benefit            | 132(d)                  | Exempt if cost would be deductible to employee if paid by employee (see Pub. 15-B)                                      |                              |

### 8. INFORMATION REPORTING

Employers report compensation and withholding for employees on Form W-2, and file Form 941 quarterly to report aggregate wage and withholding amounts. The requirements and procedures for employee reporting are discussed in [Publication 15](#), Employer's Tax Guide. Other information return reporting requirements are discussed in the [General Instructions for Certain Information Returns](#).

Any entity, including a governmental organization, conducting a trade or business is required to file information returns for certain types of payments. In most cases, these payments are reported on Form 1099-MISC, Miscellaneous Income. IRC 6041(a) states that all persons engaged in a trade or business and making payment in the course of the trade or business to another person of rent, of \$600 or more in any year must issue an information return indicating the amount of such income and the name and address of the recipient of the payment. Governmental entities are "persons" for this purpose.

All payments of compensation to an employee should be reported on Forms W-2 and W-3; never use Form 1099-MISC to report payments for services by an employee.

The recipient of the payment is required to furnish the entity's name, address and identification number. You should obtain this information before payments are made. This identification number must be included on the information return.



## QUICK REFERENCE GUIDE FOR PUBLIC EMPLOYERS

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Form 1099 filing requirements may apply based on the type of payment or on the type of payee. See the exceptions below.

Common payments required to be reported (payments of \$600 or more) include services, rents, income payments, awards and prizes, and medical and health care payments.

Payees for whom payments must be reported include individuals, partnerships, estates, trusts, and medical and legal service providers.

### EXAMPLES OF REPORTABLE PAYMENTS

#### Nonemployee compensation (Form 1099-MISC Box 7)

- Accounting services
- Advertising
- Appraisal services
- Attorney fees
- Auto repair
- Construction
- Consultant fees
- Custodial and maintenance services
- Engineering services
- Game officials and referees
- Landscapers
- Photographers and printing services
- Trash removal

#### Medical and Health Care Services (1099-MISC Box 6)

- Ambulance services
- Doctors, dentists, and optometrists
- For-profit hospitals
- Lab services
- Private duty nurses
- Psychiatrists, psychologists
- Rehabilitation centers
- Therapists

#### Rents (Form 1099-MISC Box 1)

- Equipment
- Office space
- Parking lot space
- Vehicles
- Welfare rental assistance (to landlords)

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## QUICK REFERENCE GUIDE FOR PUBLIC EMPLOYERS

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### Exceptions to Reporting Requirements

Information returns are **not** required for:

- a) Generally, payments to exempt organizations, including units of government.
- b) Payments by a broker to his/her customer.
- c) Generally, payments to a corporation; but required for payments to a corporation for legal, medical and health care services, Federal executive agency payments, and certain other items.
- d) Payments of bills for merchandise, telegrams, telephone, freight, storage and similar charges.
- e) Payments of rent made to real estate agents.
- f) Salaries and profits paid or distributed by a partnership to the individual partners.
- g) Payments of commissions to general agents by fire insurance companies or other companies insuring property.
- h) Payments made by merchant or credit card reportable by the payment settlement entity on Form 1099-K.

Payments for services not specifically excluded are reportable on an information return.

You should obtain vendor information before any payments are made. Use [Form W-9](#), Request for Taxpayer Identification Number and Certification, or a substitute, to collect the owner's name (if sole proprietor), legal business name, mailing address, taxpayer identification number.

Under the backup withholding provisions, if the vendor fails to supply an identification number, the payer must withhold 28% and report these amounts to the IRS on annual Form 945. The person or entity receiving the payment will claim the amount withheld as a credit on its income tax return; the amounts are not returned by the payer. Backup withholding is discussed in the next section.

### When and How To File

Payers responsible for filing 250 or more information returns per year must file them electronically. This requirement applies separately to each type (1099-MISC, 1099-INT, etc.) Filers of less than 250 returns may file electronically or use paper forms. For each information return you are required to file, send copy B to the recipient by January 31 of the following year. Send copy A to the IRS by the last day of February, or by March 31 if filed electronically.

Basic information about information return requirements is available in the [General Instructions for Certain Information Returns](#), as well as in the individual form instructions, such as [Instructions for Form 1099-MISC](#). These instructions are revised annually as new versions of the forms are produced.

### Information Reporting Customer Service Site

The IRS operates a centralized customer service site to answer questions about reporting on Forms W-2, W-3, 1099, and other information returns. If you have questions about reporting on these forms, call 1-866-455-7438 (toll-free), Monday through Friday, 8:30 a.m. to 4:30 p.m., Eastern time.

## 9. BACKUP WITHHOLDING

Government entities are subject to rules that require payers to withhold income tax of 28% from certain payments if the payee is not exempt from backup withholding and fails to furnish correct taxpayer identification number (TIN). The IRS may also notify a payer to begin backup withholding because of payee underreporting.

Failure to follow the backup withholding rules can result in penalties to the payer for filing incorrect information returns. The payer may also become liable for any uncollected amounts.

Payments subject to backup withholding include rents, nonemployee compensation for services, royalties, and reportable gross proceeds paid to attorneys, and other fixed or determinable gains, profits, or income payments that are reportable on Form 1099-MISC, Miscellaneous Income. The total backup withholding is shown in Form 1099-MISC, box 4.

For all payees, you must make an initial solicitation for a TIN when the payee opens an account or when the transaction occurs. Use [Form W-9](#), Request for Taxpayer Identification Number, to request the taxpayer identification number.

**Note:** Authorized payers can register for electronic taxpayer identification matching, which provides the opportunity to match 1099 payee information against IRS records prior to filing information returns. For more information, see [Publication 2108A](#).

Backup withholding may be required immediately if the payee fails to furnish a TIN. In other cases, the payer is instructed to begin backup withholding through notification by the IRS. In general, in the case of any reportable payment, if the payee fails to furnish his taxpayer identification number to the payer in the manner required, then the payer must deduct and withhold tax equal to 28% of the payment. The tax collected from backup withholding is reported on [Form 945](#), Annual Return of Withheld Income Tax, and is subject to deposit requirements. The deposit rules for backup withholding and other nonpayroll withholding are the same as the rules for depositing employment taxes; however, they are accrued and paid separately.

The payer is liable for the payment of the tax required to be deducted and withheld under the backup withholding rules. If the payer fails to deduct and withhold tax at a rate of 28% from a reportable payment, and the payee fails to furnish the TIN, the payer is then liable for the payment of the tax.

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## QUICK REFERENCE GUIDE FOR PUBLIC EMPLOYERS

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### **"B" Notice**

If the IRS sends you a CP2100 or CP2100A Notice indicating an incorrect payee TIN, you are required to send the "B" Notice to the payer within 15 days from the date you received it, or the date of the CP2100/2100A, whichever is later. See [Publication 1281](#) for details. Begin backup withholding no later than 30 business days after the date of the CP2100 notice or the date you received it, whichever is later. Stop backup withholding no later than 30 days after the payee furnishes a TIN and certifies that it is correct.

### **"C" Notice**

If the IRS sends you a "C" notice indicating notified payee underreporting, you must withhold on any reportable payment no later than 30 days after receipt. The IRS will notify you when to stop withholding.

### **Payments Exempt from Backup Withholding**

As noted above, backup withholding does not apply to wages. In addition payments from pension or annuity plans, distributions from medical or health savings accounts, certain gambling winnings not subject to other withholding, certain real estate transactions, and other payments are exempt from the backup withholding rules. See the [General Instructions for Certain Information Returns](#).

### **Payees Exempt from Backup Withholding**

Government entities are required to backup withhold. However, these entities themselves are not subject to backup withholding by other payers. All of the following entities are exempt:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2).
2. The United States or any of its agencies or instrumentalities.
3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities.
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities.
5. An international organization or any of its agencies or instrumentalities.

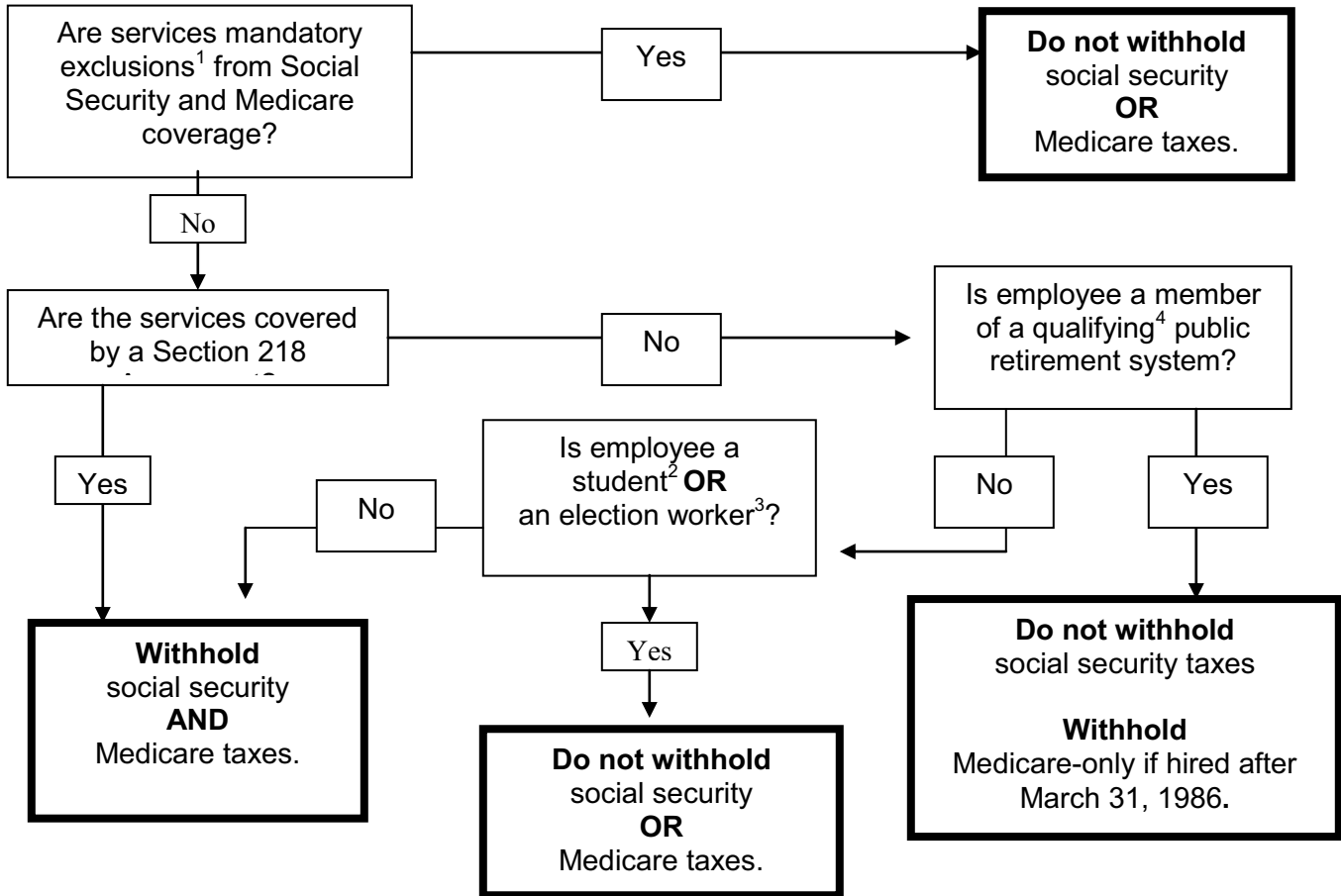
For more information, see [Publication 1281](#), Backup Withholding for Missing and Incorrect Name/TIN(s), and [General Instructions for Certain Information Returns](#)

**SECTION 218 OF THE SOCIAL SECURITY ACT  
KEY DATES**

- **Before 1951** - No social security coverage for public employees
- **1951** - Section 218 Added to Social Security Act; coverage became available for positions not covered under public retirement systems
- **1955** – Governmental employers with retirement systems allowed to participate in 218 coverage
- **1966** – Medicare coverage begins; employees covered by a Section 218 Agreement or mandatory social security are subject to Medicare tax
- **Beginning April 20, 1983** - Termination of a Section 218 agreement is prohibited
- **Beginning April 1, 1986** - Mandatory Medicare coverage applies to all new hires
- **Beginning July 2, 1991** - Mandatory social security coverage applies unless employees participate in a qualifying retirement system or are covered by a Section 218 Agreement

**SOCIAL SECURITY COVERAGE**

This chart is meant as a guide only and is not a substitute for discussing difficult Section 218 coverage situations with your State Social Security Administrator or taxation issues with your IRS FSLG agent.



<sup>1</sup> **Mandatory Exclusions from Social Security and Medicare (FICA) coverage**

Services performed:

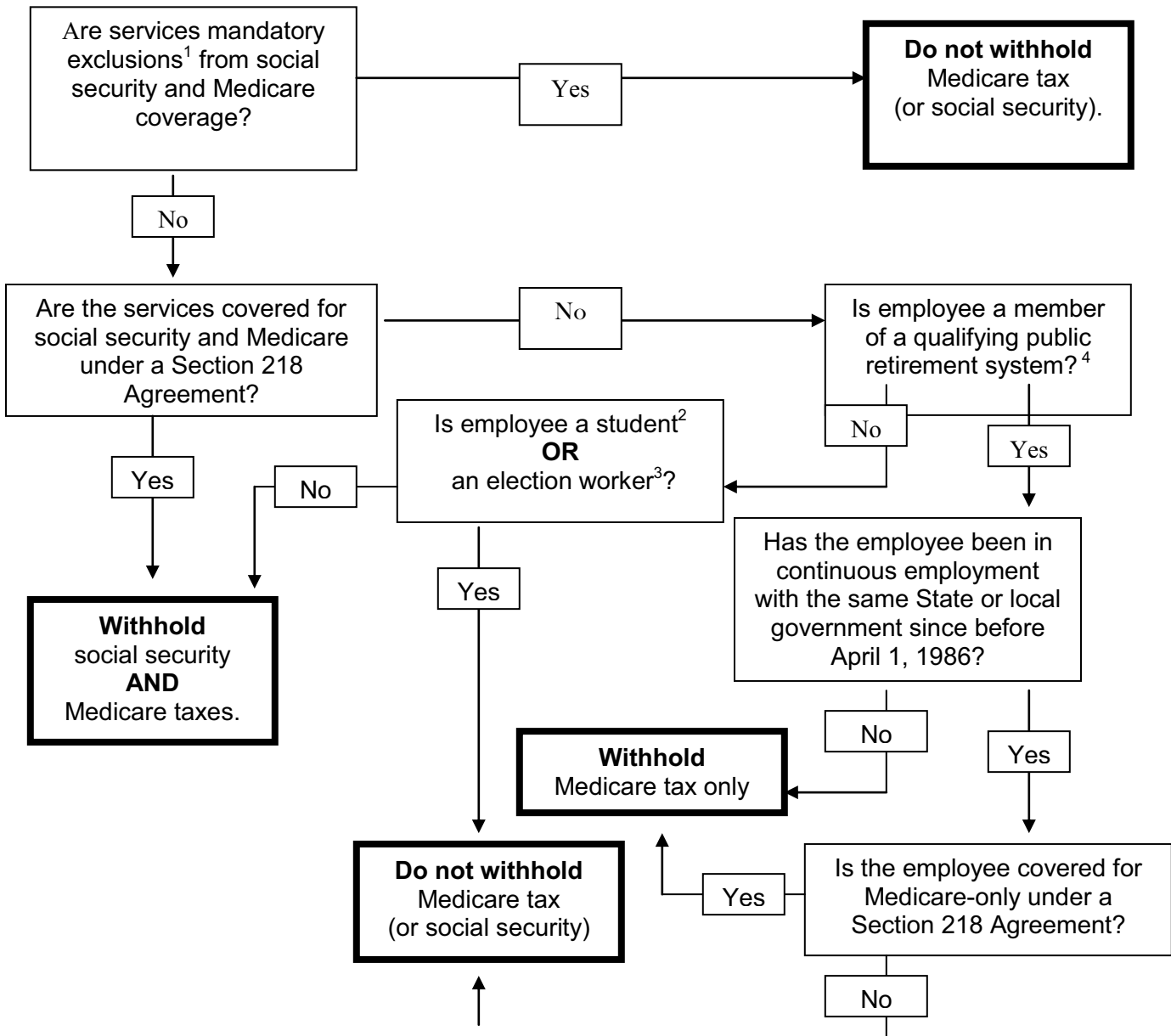
- by individuals hired solely to be relieved from unemployment
- in a hospital, home or other institution by a patient or inmate
- by workers hired on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar **emergency**
- by non-resident aliens with F-1, J-1, M-1 & Q-1 visas
- in positions compensated solely by fees that are subject to SECA  
(NOTE: These services may be covered by a 218 Agreement and subject to FICA.)
- by students<sup>2</sup> enrolled and regularly attending classes at the school where they are working  
(NOTE: These services may be covered by a 218 Agreement and subject to FICA.)
- by election workers<sup>3</sup> paid less than the threshold amount mandated by law  
(NOTE: These services may be covered by a 218 Agreement and subject to FICA.)
- that are excluded from definition of employment in Section 210 of the Social Security Act

<sup>4</sup> **Qualifying Public Retirement System** – See information under “Pension Coverage” in this booklet. For more information and discussion of **rehired annuitants**, see *Pub 963, Federal-State Reference Guide*.

# QUICK REFERENCE GUIDE FOR PUBLIC EMPLOYERS

## MEDICARE COVERAGE

This chart is meant as a guide only and is not a substitute for discussing difficult Section 218 coverage situations with your State Social Security Administrator or taxation issues with your IRS FSLG agent.



<sup>1</sup> Mandatory Exclusions from Social Security and Medicare (FICA) coverage includes services performed:

- by individuals hired solely to be relieved from unemployment
- in a hospital, home or other institution by a patient or inmate
- by workers hired on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency
- by non-resident aliens with F-1, J-1, M-1 & Q-1 visas
- in positions compensated solely by fees that are subject to self-employment tax (SECA)

<sup>2</sup> Student enrolled and regularly attending classes at the school where services are performed

<sup>3</sup> Election worker paid less than the mandatory coverage threshold (\$1,600 in 2013)

<sup>4</sup> Qualifies as a social security replacement plan. See section 4, Retirement Plans.

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# QUICK REFERENCE GUIDE FOR PUBLIC EMPLOYERS

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## MORE INFORMATION

### Office of Federal, State, and Local Governments (FSLG)

The IRS Office of Federal, State and Local Governments is responsible for ensuring Federal tax compliance by Federal, quasi-governmental and state agencies; city, county and other units of local government; and American Samoa, Guam, Puerto Rico and the U.S. Virgin Islands. The office coordinates activities with other IRS offices, such as Customer Account Services, Counsel, Government Liaison & Disclosure, and Employee Plans to better assist you. Additionally, FSLG works with the Taxpayer Advocate Service to resolve tax problems.

For more information about FSLG's outreach and compliance activities, tax law issues and developments of interest to government entities, or to locate an FSLG Specialist in your area, visit the FSLG website at [www.irs.gov/govts](http://www.irs.gov/govts).

### Customer Account Services

You can call the IRS toll-free at (877) 829-5500 for assistance with the following as they relate to government entities:

- Account-related questions
- Request for affirmation letter of tax exemption
- Request for a private letter ruling
- FSLG telephone numbers

## HELFPUL PUBLICATIONS

[Publication 15](#), Employer's Tax Guide  
[Publication 15-A](#), Employer's Supplemental Tax Guide  
[Publication 15-B](#), Employer's Guide to Fringe Benefits  
[Publication 963](#), Federal, State Reference Guide  
[FSLG Fringe Benefit Guide](#)

## OTHER USEFUL WEBSITES

[www.irs.gov](http://www.irs.gov) - Internal Revenue Service home page

[www.ssa.gov](http://www.ssa.gov) - Social Security Administration homepage

[www.ssa.gov/slge](http://www.ssa.gov/slge) - Social Security Administration site for state and local government employers

[www.ncsssa.org](http://www.ncsssa.org) - National Conference of State Social Security Administrators (NCSSSA)