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ECONOMY

Employers Cast Wary Eye on Trump Payroll-Tax Deferral

Details from the IRS will shape employers' willingness to stop withholding Social Security taxes from paychecks



Several large employers, including Walmart, said it was too early to say what they would do about a potential payroll-tax deferral option.

PHOTO: EDUARDO MUNOZ/REUTERS

By [Richard Rubin](#)

Aug. 11, 2020 5:30 am ET

WASHINGTON—Employers considering President Trump's plan to allow deferred payment of payroll taxes face a series of costs, uncertainties and headaches.

The president wants employers to stop collecting the 6.2% levy that is the employee share of Social Security taxes for many workers, starting Sept. 1 and going through the end of the year. But his move, announced in a memo Saturday, doesn't change how much tax employees and employers actually owe. Only Congress can do that.

Employers' biggest worry: If they stop withholding taxes without any guarantee that Congress will actually forgive any deferred payments, they could find themselves on the

hook. That is a particular risk in cases where employees change jobs and employers can't withhold more taxes from later paychecks to catch up on missed payments.

“The Internal Revenue Service will come to that deep pocket” of employers to collect payroll taxes, said Marianna Dyson, a lawyer at Covington & Burling LLP in Washington who specializes in payroll taxes. “Liability is going to stick to the employer like flies to flypaper.”

Employers and their lawyers are waiting for the Treasury Department and the IRS to issue formal rules to turn the president's weekend statements and directives about the payroll-tax collection suspension into action. Those details will be crucial as companies decide whether and how to implement the plan, and many employers might not even bother if they have a choice. Treasury and IRS officials declined to comment Monday about the timing or content of the rules.

Every day that passes without those rules will make it harder to make any changes by Sept. 1, the start date set by Mr. Trump.

“This is going to be a pretty big programming lift, technology lift for us to do,” said Mike Trabold, director of compliance at Paychex Inc., which processes payrolls for 680,000 employers.

Mr. Trump on Saturday ordered the Treasury Department to postpone payroll-tax deadlines for employees making up to about \$104,000 in annualized wages. The administration has authority to act under a law that lets the Treasury Secretary postpone tax deadlines after a presidentially declared disaster. It is the same law the government used to delay the April 15 tax-filing deadline to mid-July.

The president acted after congressional talks about further economic relief broke down. The president's unilateral move puts pressure on Congress to implement a payroll-tax cut that lawmakers have rejected, because not doing so could force Americans to pay any deferred taxes in the future. Mr. Trump said he would press to forgive any deferred taxes.

Lawmakers have criticized the payroll-tax cut for several reasons. They argue that it doesn't provide much of a hiring incentive, gives too much money to people who already have jobs as opposed to the unemployed and could destabilize Social Security funding.

Assuming the payroll-tax deferral is optional, like the earlier deadline delays, employers will face a choice about whether to change paycheck withholding. Several large employers, including Walmart Inc., United Parcel Service Inc. and Home Depot Inc., said Monday that it was too early to say what they would do.

The federal government hasn't said whether it will change withholding for its roughly 2 million civilian workers, in addition to the military. The Office of Management and Budget and Office of Personnel Management both declined to comment Monday.

Attorneys and payroll professionals said they would be watching for answers to several questions that weren't addressed in the memo the president issued Saturday.

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For example, the memo says taxes through Dec. 31 could be deferred but doesn't say when they would be due if Congress doesn't act. Any rules issued by the Treasury Department and the IRS would also spell out whether the IRS would seek to get money from employees through their individual tax forms, through extra paycheck withholding in the future or through audits of employers. Under the tax code, employers and employees are both liable for payroll taxes.

"We're looking at a crystal ball not knowing what we're going to see," said David Fuller, a tax lawyer at McDermott Will & Emery in Washington. "If I'm an employer, I'm not going to do anything until I see that guidance."

Employers will have to balance their own risk tolerance and administrative costs with their interest in raising workers' take-home pay in the short term.

Some employers might choose to continue withholding and paying employment taxes while hoping for Congress to pass the tax cut. Then, if Congress passes a cut and it applies broadly, employers could go back and seek refunds of overpaid taxes. That can be a complicated process.

Other employers might stop withholding Sept. 1. The real risk comes for workers who switch jobs. If employers have to pay those taxes, the costs can be bigger than they look at first. Those tax payments could be considered wages, which means employers could owe income and payroll taxes on them. On \$4,000 of wages, the employer would have to pay \$248 in payroll taxes to cover the deferred taxes plus about \$131 in other taxes, according to Ms. Dyson.

“It’s just so risky on so many levels,” she said.

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