



New Hampshire Municipal Association

Guidance Regarding Employment Taxes Under the Families First Coronavirus Response Act

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The Families First Coronavirus Response Act (FFCRA or the Act) expands family and medical leave eligibility and requires paid sick leave in certain circumstances. Questions have been raised about the applicability of the Federal Insurance Contributions Act taxes, commonly known as FICA, on municipal employers and employees. In short, some portions of the Act do not apply to governmental entities, but other sections do apply to governmental entities.

Division G of the Act deals with “Tax Credits for Paid Sick and Paid Family and Medical Leave”. Sections 7001-7004 of that Division either exempt, or are not applicable to, governmental employers. However, section 7005 refers to “any wages required to be paid” under the Act, and contains no language exempting governmental employers from that special rule, unlike the previous sections dealing with the tax credits.

Section 7005 Special Rule Related to Tax on Employers states “Any wages required to be paid by reason of the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act shall not be considered wages for purposes of section 3111(a) of the Internal Revenue Code of 1986 or compensation for purposes of section 3221(a) of such Code.”

FICA is comprised of two tax components as specified in the Internal Revenue Code (IRC) as follows:

- IRC 3111(a) which is the old-age, survivors and disability insurance (OSDI) tax of 6.2%, commonly referred to as the Social Security portion, and
- IRC 3111(b) hospital insurance tax of 1.45%, commonly referred to as the Medicare portion.

Together these equal a FICA tax of 7.65% on wages paid by the employer. IRC 3101 requires identical taxes to be paid by employees.

Under the section 7005 special rule, all employers (private and governmental) are exempt from paying the IRC 3111(a) Social Security tax portion (6.2%) of FICA on all wages required to be paid under FFCRA. However, there is no exemption from paying the IRC 3111(b) Medicare portion (1.45%) of FICA on FFCRA required wages (although private employers will be able to recoup that Medicare tax under the tax credit provisions).

Finally, the full amount of FICA (7.65%) must be withheld from the employee’s wages as there is no exemption in the Act for their share of the Social Security tax required under IRC 3101. All other required federal tax withholdings also continue to apply to the wages paid under FFCRA.