

Client Alert: To Defer or Not to Defer—Efficacy of President Trump’s Payroll Tax Memorandum

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Employers, payroll processors, and their advisors are essentially ignoring the President’s payroll tax deferral memo, and Treasury’s limited guidance, as unworkable. One employer, however, seems undeterred by the concerns plaguing private employers—the federal government. Senior federal officials announced that the federal government, as an employer, will implement the President’s payroll tax deferral.

See <https://federalnewsnetwork.com/pay/2020/08/trump-aiming-for-late-september-launch-of-payroll-tax-deferral-for-federal-employees/>.

For now, the federal government appears to be an outlier in plans to adopt the deferral. News outlets report that employer groups and employers are, in general, not planning to implement the deferral despite Treasury’s recent guidance. See e.g., US Chamber of Commerce, <https://www.uschamber.com/letters-congress/coalition-letter-the-executive-order-deferring-payroll-tax-obligations> (given the burdens on employees and employers under current guidance “many of our members will likely decline to implement deferral, choosing instead to continue to withhold and remit to the government the payroll taxes required by law”); <https://www.wsj.com/articles/trump-payroll-tax-deferral-leaves-employers-wary-as-plan-starts-11598958000> (“many employers are unlikely to adopt the policy”).

The payroll tax deferral memo would give employees a short-term boost in take-home pay; one that will be required to be paid back next year—effectively resulting in a short-term interest free loan to employees. In a political sense, the payroll tax deferral appears to be an attempt to break a legislative logjam and probably intended to boost the President’s approval in the months before the November election. So far, the deferral is not likely to benefit many private

employers and employees. The obligation to repay deferred payroll taxes, administrative and implementation burdens, and employers' ultimate risk of repayment have made the program unpalatable. And the potential political benefits appear to be muted by a general sense that the payroll tax deferral is unworkable and will not be widely implemented.

In this Alert, we summarize the memorandum and Treasury guidance, answer some basic questions about the program, and describe the reasons why employers are wary and are unlikely to implement the deferral.

To read the full alert, please [click here](#).

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