Policy 2.11
Student Employees and Foreign Nationals - FICA

Guidelines for FICA exemption for student employees.

Applicability

Student Employees.

Policy Details

2.11.1 Student Employee Payroll Policy and the Internal Revenue Service Code

Section 3121(b) (10) of the Internal Revenue Code exempts students enrolled and regularly attending classes from being required to pay FICA tax. The services that exempt students perform must be incident to and for the purpose of pursuing a course of study. (FICA is commonly referred to as Social Security Tax.)

2.11.2 Student Employment Semester Hours Policy

In order to be eligible for the exemption from FICA during the fall and spring semesters, both undergraduate and graduate students must be enrolled for a minimum of six semester hours. An exception to this rule is granted for students who need fewer semester hours in order to graduate.

During the Summer Session, six semester hours are required for eligibility for both undergraduate and graduate students.

When classes are not in session, a student who has been working less than or equal to one month, either before or after an academic term, is exempt from FICA withholding.

Students must be enrolled at Emory University. Students enrolled at other institutions are not eligible for the FICA exemption for employment at Emory University.

University Payroll Office and the student information system will be matched during the course of each semester to
ensure that student employees are enrolled for the requisite number of semester hours. Student employees falling below the threshold will have their FICA status changed, unless there are extenuating circumstances.

Emory University will be responsible for monitoring adherence to the semester hour policy.

2.11.3 Full-time Employees Ineligible for FICA Exemption

Faculty and staff employees are not eligible for the FICA exemption regardless of the number of hours for which they are enrolled as students. The reason for this policy is that it is presumed that salaried employees are primarily employees and not students. Their presence at the University is not incident to and for the purpose of pursuing a course of study.

2.11.4 Changing Status of Persons Ineligible for FICA Exemption

Student employees found to be ineligible for the FICA exemption fall into two categories, and their status determines how they are treated. The categories are: enrolled employees who are enrolled in fewer than the requisite semester hours and those who are no longer or never were Emory University students.

2.11.4.1 Student Employees Who Do Not Meet the Criteria for FICA Exemption

These students remain as student employees, but their FICA status must be changed.

2.11.4.2 Student Employees who are No Longer Enrolled or Who Never Were Emory University Students

This situation can occur when a student drops out of school, or when a student of another institution is erroneously hired as a student employee although they are not eligible for such employment. The employment of student employees in this situation must be terminated. Rehiring these persons must be through the normal University Human Resources hourly wage employee hiring process.

2.11.5 Foreign National Individuals

Employees who are non-residents for tax purposes are exempt from FICA in certain circumstances, depending on visa type and how long the person has been in the United States. Generally, an F-1 or J-1 student is exempt for the first five calendar years (or any part of a calendar year). J-1 scholars are normally exempt for two calendar years (or any part of a calendar year), if the scholar has been in the United States for less than two of the past six calendar years.

All other international employees are subject to FICA withholding.

All international students and scholars visiting Emory with a non-immigrant visa (generally F, J, H, O, or TN) who will be receiving any payment for services on campus must complete a questionnaire and schedule an appointment to determine the status of FICA withholding as well as Federal and Georgia Income tax liability.

In many cases, some or all income tax (limited either by dollar amount or time spent in the United States) may be exempt based on treaties the United States has in place with other countries. This process begins with the online submission of immigration information to the Office of the Controller where residency status (FICA) and treaty eligibility (income tax) are verified. The individual must first contact Mary Chenault (mchenau@ctrl.emory.edu) to obtain a password allowing access to a secure website in order to complete the questionnaire. Until this process is complete, income tax will be withheld at the maximum amount in addition to FICA tax. Income taxes withheld, prior to consulting with a tax specialist and completion of the appropriate forms, cannot be refunded by the University.

The laws covering taxation of nonresidents are lengthy and complex. Information can be found in the following publications at http://www.irs.gov or by calling 1-800-TAX-FORM:

- Publication 515 Withholding of Tax on Non-resident Aliens
- Publication 519 U.S. Tax Guide for Aliens
- Publication 901 U.S. Tax Treaties

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Revision History

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