

F. Compensation of Mayor and Councilmembers

1. Payroll

For purposes of tax withholding, an elected official is an employee of the city. Even if taxes are not being withheld, the IRS treats them as employees for tax purposes. Therefore, the city should collect a W-4 form and any other forms or information necessary to set them up in the city's payroll system. Elected officials should be paid via payroll check with any applicable taxes withheld and should receive a W-2 at the end of the year. The same is true for any appointed members of boards and commission who receive compensation.



Tax Withholding for Government Workers

In most cases, individuals who serve as public officials are government employees. Therefore, the government entity is responsible for withholding and paying Federal income tax, social security and Medicare taxes. They must also issue a Form W-2, Wage and Tax Statement, to a public official. These facts and relevant examples are discussed in detail in Publication 15-A, and on the Independent Contractor (Self-Employed) or Employee? page.

Public Officials, Elected Officials and Public Officers

Internal Revenue Code section 3401(c) indicates that an “officer, employee, or elected official” of government is an employee for income tax withholding purposes. However, in some special cases the law or a Section 218 Agreement may specify otherwise.

The courts generally define “public official” and “public officer” to mean anyone who exercises significant authority pursuant to public laws. This includes any official who administers or enforces public laws whether the public elected the individual or an office appointed them.

Regulations for section 1402, addressing the applicability of self-employment tax, indicate that performance of the functions of a public office does not constitute a trade or business. Therefore, holders of “public office” are not subject to self-employment tax. An exception applies for certain public officials paid solely on a fee basis. All other holders of public office, paid on a salary basis, are excepted from self-employment tax and are presumed to be employees receiving wages.

Definition of “Public Office”

The following facts indicate that an office is a “public office”:

- The constitution, legislation, or a municipality or other body with authority conferred by the legislature created the office

Related Topics

- Publication 15-A
- Publication 963, Federal-State Reference Guide
- State and Local Government Employees Social Security and Medicare Coverage
- Independent contractor (self-employed) or employee?

Video

- Governmental Information Letter Video [↗](#)

- The office was delegated a portion of the powers of a government body
- Legislative authority or law defined, either directly or indirectly, the powers conferred and the duties to be discharged by the office

Section 218 Agreement Common-law rules

- Government Worker Classification
- The office performs its duties independently and without control of a superior power other than the law
- The office has some permanency and continuity
- The officer takes an official oath

Examples of public officers include:

- President and the vice president
- Governor or mayor
- Secretary of state
- A member of a legislative body such as a state legislature, county commission, city council, school board, utility or hospital district
- A judge, a justice of the peace, a county or city attorney, a marshal, a sheriff, a constable and a registrar of deeds
- Tax collectors and assessors
- Members of advisory boards and committees like boards of education, water boards and other boards and commissions

If there is not any authority in a public law to hire or elect an individual to fill a position, a determination must be made about the employment status of that position under the general common-law rules.

Fee-Basis Officials

A fee-basis public official receives and retains remuneration directly from the public. This work is considered self-employment under IRC 1402(c)(2)(E) and these individuals are not employees with respect to this work. An official who receives salary, even if it's called "fees," is a common-law employee and is subject to social security and Medicare withholding. Fee-basis public officials are subject to self-employment tax.

A position compensated by salary and fees is considered a fee-basis position if the fees are the principal source of compensation, unless a state law provides that a position for which any salary is paid is not a fee-basis position. A Section 218 Agreement may provide an exclusion from social security tax for individuals.

Emergency Workers

Individuals hired on a temporary basis in case of fire, storm, snow, earthquake, flood or other emergencies are excluded from social security and Medicare under IRC 3121(b)(7)(F)(iii). This does not include permanent employees, both full time and part time, who work regularly in response to emergencies; these individuals are subject to social security and Medicare if they are common-law employees.

Election Workers

Election workers are common-law employees; however, under IRC 3121(b)(7)(F)(iv) an exception from FICA is provided for election officials and workers who earn less than a specified amount for a calendar year (\$2,200 for 2023). See Election Workers: Reporting and Withholding for details and relevant examples.

Medical Residents

Most medical residents meet the tests to be common-law employees and are therefore employees of the hospital where they work. However, under IRC 3121(b)(10), enrolled students who work less than full-time and for whom education, not employment, is the primary purpose of the relationship, may be excepted from FICA. See Internal Revenue Bulletin: 2005-2 .

Refer to Publication 963, Federal State Reference Guide [PDF](#) for details on Section 218 Agreements and all classes of workers mentioned above.