

Payroll Tax Deferral + Legislative Update

September 8, 2020

Payroll Tax Deferral

Executive Memorandum:

Employee Social Security Tax Deferral

- President Trump issued an executive memorandum on August 8th creating a “payroll tax holiday” on certain wages paid between September 1, 2020 through December 31, 2020.
- The IRS issued guidance to clarify this order on August 28th.



Here is what we know today:

Employees are only eligible to defer if they have Social Security taxable wages equal to or less than:

- weekly pay period of less than \$2,000
- bi-weekly pay period of less than \$4,000
- semi-monthly pay period of less than \$4,333
- monthly pay period of less than \$8,666

If at any point during the deferral period the taxable wages exceeds these limits, an employee will not be able to defer their Social Security tax for that particular check date.



Currently the withholding is a DEFERRAL, not a tax credit or tax cut, therefore future payback obligations will be necessary. As part of the Treasury's guidance, any employee social security that is deferred will need to be paid no later than 5/1/2021. Employers will have from 1/1/2021-4/30/2021 to withhold and pay the taxes. Taxes will be considered due based on when the taxes are withheld from the employee. IE: EE SS from 2020 that is withheld in 2021 will be due at the same time of your regular 941 taxes for the same payroll period that it is processed within.



Opt-in/Required: while the notice from the Treasury does not specifically call out whether this is optional or required, based on the authority on which the guidance relies, it appears that employers can choose whether to implement the deferral. The Notice relies on section 7508A of the Internal Revenue Code, which authorizes the IRS to postpone deadlines for various acts, but does not permit the IRS to prohibit the timely withholding and payment of taxes. Consistent with section 7508A, the IRS and Treasury press releases use permissive language to describe the guidance as “allowing” deferral and “available” to employers.

The Notice does not apply to employees. Only “employers that are required to withhold and pay the employee share of social security tax” are designated as “Affected Taxpayers” for purposes of section 7508A. The Notice does not designate employees as “Affected Taxpayers,” and so it appears that the IRS did not intend to grant employees an independent right to defer withholding, deposit and payment of the employee portion.



Please note that based on the guidance provided by the IRS and Treasury, Employers opting into this deferral will be liable for ensuring the employee's taxes are paid and on time. In the event of a terminated employee, you could end up being financially liable to pay the deferred taxes if you are unable to collect from the employee.



If an Employer wishes to participate in the program, despite the lack of detailed guidance, you may do the following:

1. Contact Customer Service @ customerservice@dominionpayroll.com and notify us that you wish to participate in this program.
2. Customer Service will provide instructions for blocking the Employee Social Security tax. You will need to block the tax manually on each paycheck for each employee. You will need to block the tax on every paycheck manually going forward until the end of the year. Payroll systems are designed to self-correct Social Security taxes in order to keep the system in balance, therefore, if you do not block the tax on each paycheck the system will attempt to catch up any unpaid amounts from previous paychecks. In the event of an employee who can defer and then goes over the limit and is not able to defer anymore, you will have to block the tax and manually calculate the amount of Social Security that needs to be deducted, due to the self-correcting.
3. You will need to monitor your 'Exceptions' report each payroll to account for any unpaid amounts for employees.
4. You will separately need to determine how to establish accountability with each employee you allow to defer these taxes. It will be your responsibility as the Employer to collect these taxes when they are due, and to cover any unpaid balances due to employee inability to pay back the unpaid balance.

Dominion Payroll will not be responsible for any penalties or interest associated with your company's participation in the program.

Based on the lack of additional guidance provided to payroll providers, we will do our best to accommodate client requests to participate in this program but we strongly encourage clients to await further guidance from the IRS.

If you do not wish to defer the employee portion of Social Security,
you do not need to contact us



We have an
employee Opt in form
available on our
website.

It will explain the
parameters of the
Employee Deferral

It will explain the
employees
responsibility as far
as the repayment of
the deferred taxes

COVID-19: Employee Social Security Deferral Opt-In Form:

This elective deferral of the employee Social Security tax (6.2%) is effective for check dates from 9/1/2020 to 12/31/2020. If you opt-in to the deferral of your Social Security taxes you are agreeing to the following:

1. This is only a deferral of taxes which means you will still be required to pay these taxes at a later date. The total amount of taxes deferred from 9/1/2020 - 12/31/2020 will be split evenly and across the check dates from 1/1/2021 - 4/30/2021. You understand and agree that you will be responsible for paying the Social Security tax not only on your current check (in 2021) but also the additional amount that was deferred from 2020.
2. In the event of a separation of employment during either the deferral period (9/1/2020-12/31/2020) and the recollection of taxes period (1/1/2021-4/30/2021), we will collect any remaining outstanding balance of taxes owed from your final paycheck. If there is still a balance owed beyond that, you understand you will need to make arrangements to pay that back to the company.
3. Employees are only eligible to defer if they have Social Security taxable wages, per weekly pay period of less than \$2,000; per bi-weekly pay period of less than \$4,000; per semi-monthly pay period of less than \$4,333 and per monthly pay period of less than \$8,666. You understand that, if at any point during the deferral period your pay exceeds those limits, you will not be able to defer your Social Security tax on that particular check date.

I, _____, hereby authorize [COMPANY NAME] to defer my portion of Social Security tax from (starting check date)-12/31/2020. I understand that I will be paying back the deferred Social Security tax during the period of 1/1/2021-4/30/2021. I further agree that, in the event my employment shall terminate, either voluntarily or involuntarily, prior to the full repayment of the total amount of Social Security tax deferred from (starting check date)-12/31/2020, the company may withhold the remaining amount owed from my final pay, except to the extent prohibited by federal or state minimum wage law. If there is any remaining balance owed after my final pay, I understand that I am responsible for making arrangements with [company name] to pay off the balance owed. I represent that this authorization is executed voluntarily and has not been made as a condition of my continued employment.

Employee Name Payroll Name HR Name

Date Date Date

Employee Signature Payroll Signature HR Signature



While Notice 2020-65 offered some guidance and direction for employers, there remains several questions regarding this payroll tax deferral program:

- **The Notice does not cover self-employed workers, only employees, but questions have surfaced about whether self-employed workers would be included in this program.**
- **The Notice did not offer guidance on how to opt out of the program. Thus, if an employer or employee does not want to participate in this payroll tax deferral, how do they elect out?**
- **On August 12, 2020 (shortly after the EO was issued), Treasury Secretary Steve Mnuchin stated, “We can’t force people to participate, but I think many small businesses will and pass on the benefits.” This comment opened the door for employers or employees to not be part of the program, but the Notice did not address how this is done.**
- **The Notice states that “for further information regarding the guidance in this Notice, please call the Notice 2020-65 Hotline at 202-317-5436.” This hotline is a good place to start with any questions you may have on the payroll deferral program, whether it is the mechanics of opting out or other inquiries. I called this hotline today to inquire about any opt-out guidelines or procedures but did not get through and left a message with my question.**
- **Lastly, the IRS may release other guidance as this payroll tax deferral program unfolds, which we will continue to monitor.**



Update: Unemployment Benefits



Extended Unemployment Benefits Update

Unemployed workers may be getting an extra \$300 or \$400 a week in benefits through a new “lost wages” grant program.

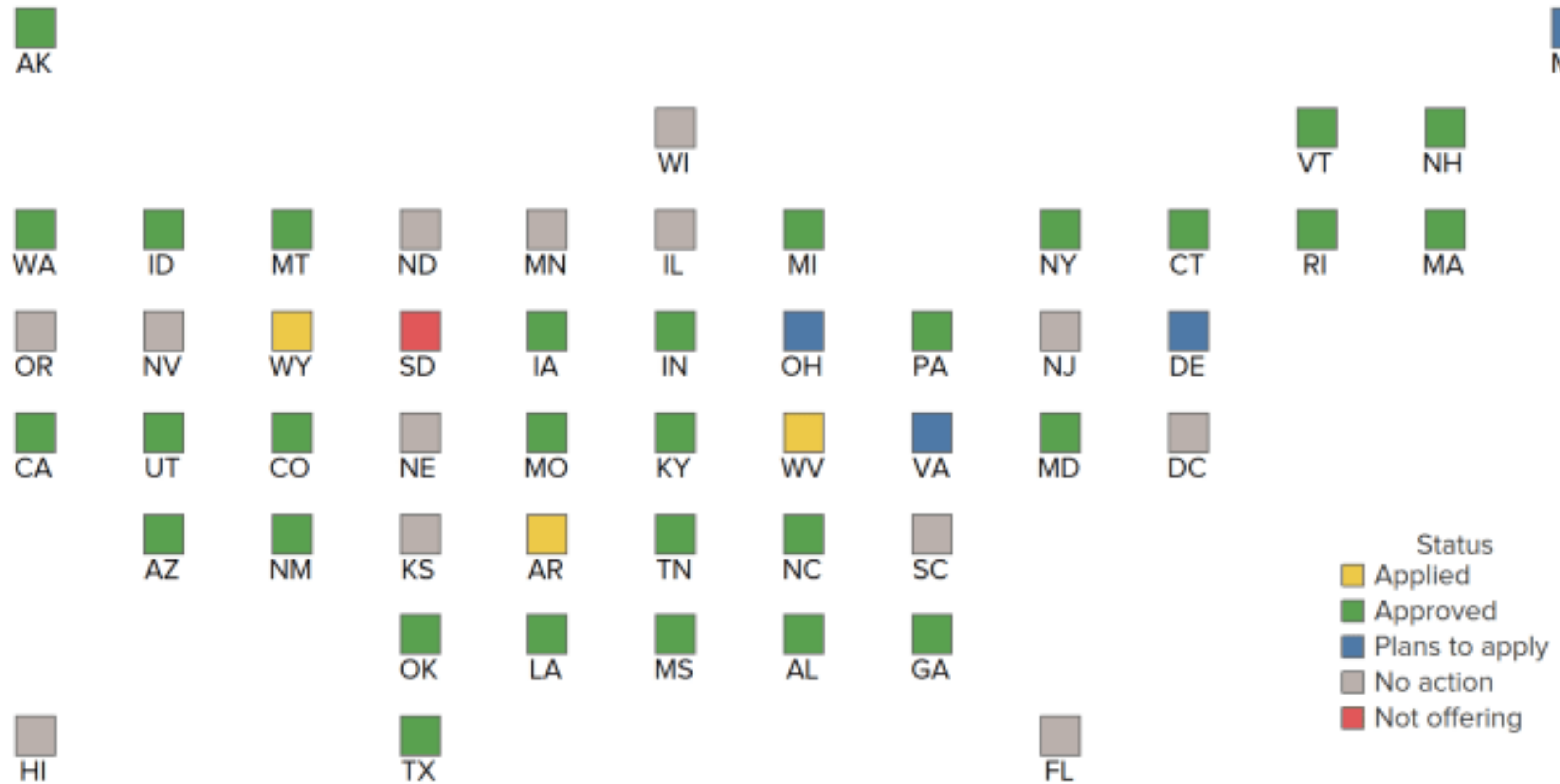
States must apply, and be approved for, the financial assistance.

About half of states had been approved for the unemployment benefits as of 8/24/2020.



Status of extra unemployment benefits

States must apply with the federal government to offer an extra \$300 or \$400 a week in unemployment benefits. Here's where things stand.



Virginia

FEMA Status: Approved 8/26/2020

Amount: \$300

Payments Begin: 9/30/2020

The Virginia Employment Commission announced that it expects to begin sending out payments at the end of the month. An NBC affiliate has [reported](#) that payments could go out as early as the week of September 20th.

North Carolina

FEMA Status: Approved 8/21/2020

Amount: \$300

Payments Begin: Started

North Carolina has started issuing payments and more will be [released](#) over the next several days.

Tennessee

FEMA Status: Approved 8/22/2020

Amount: \$300

Payments Begin: Started

According to one [news report](#), LWA payments began about a week ago.



Florida

FEMA Status: Approved 8/29/2020

Amount: \$300

Payments Begin: 9/11/2020

Texas

FEMA Status: Approved 8/21/2020

Amount: \$300

Payments Begin: Started

A news outlet [reports](#) that benefits should go out by September 11th. The Florida Department of Economic Opportunity provided this [statement](#) on September 4th:

“The Department is working diligently to implement the necessary technology changes to ensure eligible Floridians receive the Lost Wages Assistance (LWA) Program benefits as quickly as possible. The LWA program will allow Florida to offer an additional \$300 per week to eligible Reemployment Assistance claimants. To be eligible for this benefit, claimants must have a weekly benefit amount of at least \$100 in an approved Reemployment Assistance program and must certify that they are unemployed or partially unemployed due to COVID-19. Payments will be retroactive to the week ending August 1, 2020.”



States approved for aid are guaranteed just three weeks of funding, with payments backdated to the week ended Aug. 1. However, they may get more aid, depending on how many states apply and how quickly the money is drawn down.

Not all unemployed workers are eligible for the payments. Those currently getting less than \$100 a week in unemployment benefits won't receive the assistance



Legislative Update



Economic Stimulus & Coronavirus Relief

- Congress is back in session Tuesday, September 8th.
- A second round of stimulus checks, extended unemployment benefits, and a continuation of the PPP program are all on the table, but Republicans and Democrats remain at odds.
- If there is going to be another round of legislation, we will likely see movement in Congress next week with an effort to pass something the 3rd week of September.
- Deadline for Congress to pass a federal budget is October 1st. Short term spending bill likely to pass.



Virginia Workplace Standards

- The Virginia Department of Labor & Industry is soliciting public comment on their intent to adopt a permanent standard for infectious disease prevention.
- Review the proposed permanent standard here:
<https://www.doli.virginia.gov/wp-content/uploads/2020/07/Proposed-Permanent-Standard-for-Infectious-Disease-Prevention-for-COVID-19-7.24.2020.pdf>
- Public commentary here:
<https://townhall.virginia.gov/L/comments.cfm?GeneralNoticeid=1137>



COVID-19 Lawsuits & Your Business

- U.S. Chamber of Commerce pushes legislation granting broad immunity for business owners and property owners from being sued by workers, customers, or visitors claiming they were infected with COVID-19 due to lax social distancing or cleanliness standards.
- Potential conflict with workplace safety standards issued by OSHA, CDC and various state authorities.
- In Virginia, possible legislation died in committee in the State Senate last week.



We are answering your questions live on the air right now.

Please submit questions through the **Q&A function**,
not the chat option at the bottom of your screen.



Questions?

For legislative and regulatory questions, please email:

questions@dominionpayroll.com

For inquiries about Dominion Payroll services, please email:

mbreuer@dominionpayroll.com





Don't forget to wash your hands!

