

REHIRED ANNUITANTS

Opening Announcement:

Good afternoon. This is Gilbert Corella, your host for today's presentation, Rehired Annuitants.

Before we begin, I have a few announcements.

To log onto the web portion and see the presentation, you need to click the "join the event" link that was in your confirmation email.

All participants are in listen only mode for the presentation. If you have any technical difficulties joining the web portion, please call (888) 203-7900 – select Option 2. Again, that number is (888) 203-7900 – select Option 2.

If you wish to hear the presentation over your computer speakers, you may use the audiocast feature. Click the "Start Audio" Button located in the upper right area of your computer screen. If you cannot get the audiocast to work, hit "Stop Audio" and just continue listening on the phone.

The presentation will begin shortly. Thanks very much.

[SLIDE 2]

John:

Welcome to this IRS presentation on rehired annuitants.

Hello everyone. I'm John Darr.

Lori

And I'm Lori Stieber. We're Internal Revenue agents with the IRS office of Federal, State and Local Governments.

[SLIDE 3]

John

I'm sure by the time this presentation is over you'll have some questions. At any time, you can enter your question by using the text chat which appears in the lower right hand corner of your screen. We'll save those questions and respond by email following the presentation. You can also send your questions to tege.fslg.feedback@irs.gov.

REHIRED ANNUITANTS

Lori

You should have already received the presentation slides by e-mail. If not, they are available by clicking on the link in the text chat.

This presentation is geared towards government entity employers. The content will help you to comply with employment tax obligations concerning recognizing a rehired annuitant and determining their employment tax classification.

The material in this webinar is a collaborative effort of the IRS office of Federal State and Local Governments, the Social Security Administration, and National Conference of State Social Security Administrators, who assist FSLG to promote Section 218 compliance. All three of these organizations have a different role in determining the employment tax classification of a rehired annuitant and we will discuss their roles a little later.

John

[SLIDE 4]

We will provide you with information regarding how to seek assistance from IRS Federal, State, Local Government specialists, the Social Security Administration, state public retirement system representatives and your State Social Security Administrators in these matters.

The topic of rehired annuitants is a highly technical topic, so we hope you will bear with us as we lay the ground work and background to help you understand how all the pieces come together.

We will provide you with a brief definition of a rehired annuitant for employment tax purposes. Next, we'll give you an overview of Section 218 agreements, which are between the state and the Social Security Administration to cover employees for social security and Medicare.

We'll also introduce the organizations you may refer to for assistance and the role each one plays regarding rehired annuitants. We will explain the three guiding factors to how employment tax status for rehired annuitants is determined. The three guiding factors include 218 Agreements, Mandatory Social Security and State Retirement Systems.

Finally, we will bring all this information together in some real world examples on how to approach different rehired annuitant scenarios at the end of the presentation.

[SLIDE 5]

Lori

A rehired annuitant is a former participant in a public retirement system who is rehired by the same or a different public employer. This person has retired from service with the state

REHIRED ANNUITANTS

or local government, and is either receiving retirement benefits under the retirement system or has reached the normal retirement age under the retirement system.

Employees often retire from government entity positions covered by state retirement pensions. And, with increased frequency, retirees are returning to the workforce. They may fill their old position, take on a different position at the same entity, or fill a position at a different entity. There are many possibilities. If you advise government entities or oversee either payroll or human resources, you have some important factors to consider when determining the correct employment tax status of rehired annuitants.

[SLIDE 6]

In order to correctly withhold and report employment taxes for rehired annuitants, management maneuvers statutes and regulations from the Internal Revenue Code, the Social Security Administration, state statutes and the state retirement system. While state and federal income taxes are generally due from the rehired annuitants' wages, the status of their social security and Medicare withholding may vary from that of other public employees.

Most state retirement systems are governed by at least one state statute that observes how rehired annuitant employment may be limited. For example, it is not uncommon for a state statute to require that the rehired annuitant had parted from employment with a valid termination, that is, with a minimum break in service, and having no enforceable verbal or written agreement or contract as of the employee's termination date for any future compensable state/public employment. The guarantee of a future contract is seen as counter to legitimate termination or retirement.

Typically it is the benefits administrator at the new job who will notify the state retirement system administrators when an annuitant has been hired. If a rehired annuitant is 65 or older, it is their responsibility to notify the Social Security Administration if they are working. State retirement systems have a variety of procedures to adhere to in the case of workers returning to work post-retirement. Their Social Security benefits may be impacted by continued earnings.

[SLIDE 7]

John

While federal tax requirements generally apply on the same basis to public and private employers, special provisions do apply. Since 1951, states have been allowed to enter into voluntary agreements with the federal government to provide social security coverage to public employees as an amendment to the original Social Security Act of 1935 that extended coverage to private employers.

These arrangements are called "Section 218 Agreements" because they are authorized by Section 218 of the Social Security Act. And, since 1987, the IRS has been responsible for

REHIRED ANNUITANTS

collecting these taxes from governmental employers. All 50 states, Puerto Rico, the Virgin Islands, and approximately 60 interstate instrumentalities have Section 218 Agreements with SSA. The Social Security Administration is responsible for administering the Social Security Act and interpreting its provisions, as well as interpreting Section 218 Agreements.

U.S. Census Bureau's Statistics for 2012 Census of Governments reported about 89 thousand public employers and as of 2011 just under 20 million public employees. You can see how the terms of state agreements with modifications have the potential to vary! Most state employees participate in social security now except for employees of Alaska, Colorado, Louisiana, Maine, Massachusetts, Nevada and Ohio. Additionally, each government entity has had the right to modify coverage to some degree over time. Because Social Security coverage can vary widely within a state or even a local area it is important to carefully consider compliance with employment tax law for all coverage groups.

Do not make an assumption about Section 218 coverage simply because circumstances occur within the same state, local area, or type of governmental entity. As we will see, many factors create unique circumstances for rehired annuitants even in the same state.

[SLIDE 8]

Lori

Let's consider how the Social Security Administration, IRS, and the National Conference of State Social Security Administrators work together.

The Internal Revenue Service is responsible for administering the Internal Revenue Code, advising employers of their responsibilities, collecting taxes, and working with the Social Security Administration and State Social Security Administrators on social security coverage and related tax issues.

The IRS office of Federal, State, and Local Governments – or FSLG - provides a clear point of contact for most government entities for their tax issues with the primary focus on employment tax issues and information return compliance.

While FSLG is responsible for administering tax laws affecting government entities and ensuring compliance it also develops and delivers outreach to its customers with presentations like this one.

We support and make easily accessible voluntary compliance programs for our government customers. Contact your local FSLG office any time that you have questions about federal tax issues.

REHIRED ANNUITANTS

[SLIDE 9]

John

The State Social Security Administrator is the designated official legally appointed to act for the state in negotiations with the Social Security Administration. This official acts for the state with respect to the initial Section 218 Agreement and modifications, the performance of the state's responsibilities under the Agreement, and in all state dealings concerning the administration of the agreement.

Each state's Section 218 Agreement and Social Security Regulation 404.1204 provide a legal obligation for each state to designate such an official. In many states, however, the actual day-to-day responsibilities are delegated to the staff of the designated state official.

[SLIDE 10]

For Section 218 Agreement purposes we rely on State Administrators to do the following:

- Administer and maintain the federal-state Section 218 Agreement that governs voluntary social security and Medicare coverage by state and local government employers in the state.
- Negotiate modifications to the original agreement; conduct referendums and identify additional political subdivisions that join a covered retirement system.
- Securely maintain the state's master agreements, modifications, dissolutions and intrastate agreements.
- Provide the Social Security Administration with notice and evidence of the legal dissolution of covered state or political subdivision entities;
- Resolve coverage and taxation questions related to the agreement and modifications with the Social Security Administration and the IRS; and
- Provide information to state and local public employers covered under Agreements in accordance with the Act; and state legislation.

The State Administrator serves as the main resource to state and local employers in each state for information and advice about social security coverage, taxation and many reporting issues. Social Security Administrators, IRS, public employers and employees should contact the designated Administrator to help resolve questions as to who is and is not covered.

When the IRS or Social Security Administration conducts an audit or review of a public employer, the State Administrator for that state may be contacted to clarify the employer's status. If the employees are covered under a Section 218 Agreement, the audit or review will verify the specific exclusions that are applicable to that entity.

REHIRED ANNUITANTS

[SLIDE 11]

Lori

For over 60 years the National Conference of State Social Security Administrators – or NCSSSA - has provided an effective network of communication for federal, state, and local governments concerning social security coverage and federal employment tax policy.

With the enactment of Section 218 to the act in 1950, states could first exercise the option of providing social security coverage for state and local employees. By the end of 1951, 30 states had executed Section 218 Agreements with the federal government. The responsibility for administering the social security program varied from state to state, depending on the particular state's enabling legislation. It became apparent that a forum was needed where the administrators could address the many problems and questions posed by the new program.

In January of 1952 the NCSSSA was established to facilitate that needed forum. This unified state perspective at the federal level provides for an on-going annual conference committed to problem solving and the development of new policy. The NCSSSA has worked closely with the Social Security Administration and the IRS since its formation to address social security and Medicare coverage issues throughout the United States.

The NCSSSA works with federal officials to ensure that legislative and regulatory changes address state and local concerns. The NCSSSA provides leadership to state and local governments through accurate interpretation of federal laws and regulations, communication of federal tax policy, and resolution of problems arising at the state and local level. The NCSSSA hosts national workshops and annual meetings where Social Security Administration and IRS officials address the concerns of state and local government representatives in a face-to-face format. NCSSSA officials represent public sector employers on various Social Security Administration and IRS committees and work groups.

[SLIDE 12]

John

We know that all government entities that employ workers are subject to federal employment taxes on wages, except where the law provides specific exceptions.

The Internal Revenue Code defines wages and employment subject to income tax withholding under section 3401. Wages for social security and Medicare are taxed under section 3121. The social security and Medicare taxes, also referred to together as Federal Insurance Contributions Act - or FICA - taxes, consist of Old-Age, Survivors and Disability Insurance – that's OASDI or social security - and Medicare Hospital Insurance – known as Medicare. Internal Revenue Code section 3101 imposes tax on the employee, and section

REHIRED ANNUITANTS

3111 imposes tax on the employer. Employers are generally required under Internal Revenue Code section 3402 to withhold income tax from wages.

[SLIDE 13]

We are going to look more closely at the treatment of FICA – social security and Medicare referencing circumstances that are of particular interest to government employers.

With respect to social security coverage, all state and local government employees fall into one of these three categories:

[SLIDE 14]

Lori

Employees are covered for social security by a voluntary Section 218 Agreement between the State and the Social Security Administration. The entity may or may not participate in a public retirement system.

[SLIDE 15]

Employees are also required to be covered for amounts deemed social security wages because they are not members of a qualifying public retirement system and are not covered by a Section 218 Agreement. This applies to government employment not covered by Section 218 or a public retirement system after July 1st 1991.

[SLIDE 16]

Last but not least, these employees are covered by a qualifying public retirement system, and are therefore exempt from mandatory social security. They are not covered by a Section 218 Agreement.

[SLIDE 17]

John

State and local government employees can be covered for social security and Medicare through a Section 218 Agreement between the state and the Social Security Administration.

A state and the Social Security Administration may agree to extend social security coverage to services of employees of the state or its political subdivisions or instrumentalities under a section 218 agreement. If a worker's services are covered by a section 218 agreement, generally both OASDI and Medicare taxes apply, unless the services are covered for Medicare only. Medicare taxes generally apply to wages of all state and local government employees hired after March 31st 1986. This agreement can

REHIRED ANNUITANTS

provide coverage for employee groups regardless whether or not they are covered by a retirement system.

Only the State Social Security Administrator can initiate a request for Section 218 coverage on behalf of an entity in the state. Each state's original agreement incorporates the basic provisions, definitions, and conditions for coverage.

Additional coverage can be provided by modifications. Each modification, like the original Agreement, is binding upon all parties.

In order to establish an agreement, there must be authority under federal and state law – that is, state-enabling legislation - to enter into an agreement and to extend coverage under an agreement. The types and extent of coverage provided under an agreement must be consistent with federal and state laws.

State and local government employees who are covered under an agreement have the same benefit rights and responsibilities as employees who have mandatory social security coverage. The cost to the employer of providing social security protection for state and local government employees is the same as that for employees mandatorily covered under social security and Medicare.

Coverage under an agreement must be provided for employees by groups. An agreement may be modified to increase, but not to decrease, the extent of coverage.

[SLIDE 18]

Lori

Coverage under Section 218 Agreements can be extended only to groups of employees, known as coverage groups. Once an employee position is covered under a Section 218 Agreement, any employee filling that position is a member of the coverage group for social security and Medicare.

There are two types of coverage groups:

Absolute coverage groups, also called non-retirement coverage groups (employees not in a retirement system); and Retirement system coverage groups.

Each state decides which groups to include under its agreement and when coverage begins for each group, taking into consideration relevant federal and state law. The state can choose to cover absolute coverage groups, retirement system groups, or both.

[SLIDE 19]

An absolute coverage group is composed of employees in positions not covered by a state or local retirement system. Coverage is provided for all current and future employees in the

REHIRED ANNUITANTS

group unless one of these exclusions from Section 218 agreements applies because Federal law excludes them.

[SLIDE 20]

A worker is not covered under Section 218 agreements if:

- The worker is hired to be relieved from unemployment;
- The work is as a patient or inmate in a hospital, home, or other institution thereof;
- The work is as a transportation system employee, which is compulsorily covered for Social Security. See Section 1013;
- The work is for a private employer and that work is not defined as employment under Section 210(a) of the Social Security Act; and
- Work is performed on a temporary basis in the case of a fire, storm, snow, earthquake, flood or other similar emergency.

Retirement system members and ineligibles of the retirement system are excluded from Section 218 absolute coverage unless specifically included. If the retirement system ineligibles are included as part of the absolute coverage group explicitly then the 218 optional exclusions, such as part-time positions, would apply to them as well.

Retirement system members, ineligible groups and optional groups are covered if Section 218 coverage was obtained as a result of a majority vote referendum. A state may extend Section 218 coverage to a retirement system group without considering the desires of the employees.

States may also cover ineligibles as a part of or in addition to the absolute coverage group. However, the state must decide whether coverage of the ineligibles will continue or terminate if the ineligible later becomes eligible for membership in a retirement system.

An absolute coverage group may consist of any of the following:

[SLIDE 21]

State employees engaged in performing services in connection with non-proprietary governmental functions.

State employees engaged in performing services in connection with a single proprietary function.

All employees of a political subdivision of a state engaged in performing services in connection with nonproprietary governmental functions.

All employees of a political subdivision of a state engaged in performing services in connection with a single proprietary function.

REHIRED ANNUITANTS

Certain civilian employees working with the National Guard of a state.

And, Individuals employed under an agreement between a state and the United States to perform services as inspectors of agricultural products.

John

[SLIDE 22]

A retirement system coverage group consists of employees working in positions covered by a public retirement system.

Such a group may be provided coverage under an agreement only if approved by a referendum. The act gives the state the option, for referendum purposes, of breaking down a retirement system into its components.

If a retirement system covers employee positions of one or more political subdivisions of the state, the state has the following choices. This slide provides some examples of the types of referendums it can hold:

The referendum for retirement system employees is conducted either on a majority vote basis, which is allowed in all states, or on a divided system basis, which is allowed in certain states.

[SLIDE 23]

With a majority vote referendum, social security and Medicare coverage may be extended to employees in positions covered by a retirement system only if a majority of the eligible employees vote in favor of such coverage. A majority of all of the eligible employees under the system - not a majority of the eligible employees voting - must vote in favor of coverage. Retirement system members, ineligible groups and optional groups are covered if Section 218 coverage was obtained as a result of a majority vote referendum.

All states are authorized by federal law to use the majority vote referendum procedures. Although the referendum itself is a state matter, federal law requires that the following conditions be met to establish coverage:

- Eligible employees are given at least 90 days notice of the referendum.
- An opportunity to vote is given and limited to eligible employees.
- The referendum is held by secret ballot.
- The referendum is supervised by the governor or his/her designee.
- And, a majority of the retirement system's eligible employees vote for coverage

REHIRED ANNUITANTS

Lori

[SLIDE 24]

The act authorizes certain states and all interstate instrumentalities to divide a retirement system established by the state, a political subdivision thereof, or an interstate instrumentality into separate coverage groups based on whether the employees in positions under that system want social security coverage.

Coverage of ineligibles under a divided vote referendum would depend on whether the retirement system chose to cover them with the rest of the retirement system. If the retirement system ineligibles are included as part of the retirement system coverage group, optional exclusions, such as part-time positions, would apply to them as well. Not all states have authorized ineligibles to be covered for Section 218. Contact your state administrator to determine your state's status.

If a member has a break in service after coverage is extended to the retirement system coverage group, the state determines whether that person is considered a new member upon return to employment. The state's decision depends upon the provisions of the particular retirement system involved and on state law.

John

Let's say a rehired annuitant performs services in a position under the same covered divided retirement system from which the annuitant retired and the annuitant was part of the system that did not vote for coverage. In this case, the Social Security coverage status of the rehired annuitant's services depends on whether the annuitant is considered a new member of the retirement system upon reemployment – this is a state matter.

If the rehired annuitant is considered a new member of the divided retirement system, services performed by the rehired annuitant are covered under the state's agreement with that division of the retirement system that voted for Social Security coverage.

If the rehired annuitant is not considered to be a new member of the divided retirement system upon reemployment, the rehired annuitant retains their vote – that is, Social Security coverage status - under this same divided retirement system before retirement. If the rehired annuitant was part of the retirement system that did not vote for Social Security coverage, the IRS rules for mandatory coverage determine the Social Security coverage status of the rehired annuitant.

Lori

If you're not sure whether a Section 218 Agreement covers a specific position, contact your State Social Security Administrator for assistance.

REHIRED ANNUITANTS

[SLIDE 25]

If a group of workers is covered under a Section 218 Agreement, the agreement cannot be terminated or modified to exclude that coverage group.

Most employees who are not covered under a Section 218 Agreement are subject to mandatory social security and Medicare unless they participate in a public retirement system.

Medicare taxes generally apply to wages of all state and local government employees hired after March 31st 1986.

In addition to determining whether specific employees are members of a social security coverage group, questions may arise as to whether certain positions constitute employment subject to the rules. It is important to know whether federal or state law is applied in making a determination on a specific issue.

John

[SLIDE 26]

An employer that considers hiring a former employee such as a retiree as an independent contractor should carefully consider whether the proposed work arrangement will meet the common law standard. Similarly, if you're considering changing the status of an individual from that of an employee to an independent contractor or vice versa, your state retirement system will review the reasons that brought about the change in status. When reviewing independent contractor arrangements, state retirement systems analyze the status of workers according to state and federal guidelines defining worker classification.

It is important to point out that current laws state that a person who is appointed as a public officer is generally a public employee for common law purposes and cannot be excluded as an independent contractor. Public officers include, but are not limited to, city or township clerks and treasurers, city managers, emergency management directors, and county auditors, treasurers, or recorders.

Lori

There can be financial consequences at both a state and federal level if an employer incorrectly designates an employee to be an independent contractor. As an additional caution; most retirement systems require that termination of employment prior to reaching normal retirement age must be considered an actual separation by the IRS. The IRS prohibits paying benefits to a member who has not reached the plan's normal retirement age unless the retiree has truly separated their service.

If there's any kind of agreement or assumed agreement between the employer and employee that the employee returns to work either as a retired employee, an independent

REHIRED ANNUITANTS

contractor, or an employee of an independent contractor, it may not be considered a valid separation. Separation is typically considered valid if there has been a good faith and complete termination of the employment relationship.

Most retired workers from public employment must terminate public service through a voluntary resignation or dismissal by the employer. They must remain out of public employment or refrain from providing paid services to employers covered by public retirement system for a pre-determined number of days after termination. And, they must refrain from making any arrangement to work for the same employer until the waiting period has passed.

While no employee deductions or employer contributions for state retirement plan coverage may be due on the earnings of re-employed retirees, the employing unit must report the gross earnings of a retiree who holds a non-elected position and who is under full retirement age. These re-employed retirees are subject to an annual earnings limits that matches the amount set by Social Security.

Therefore, earnings must be monitored in post-retirement. Earnings in some elected positions are not subject to the annual earnings limit. When employers hire a person, they must determine if the individual is a retiree.

John

[SLIDE 27]

You may have noted that federal and state statutes guide this process of determining worker status for social security coverage. Federal law determines certain areas and state law determines others.

This slide lists some areas where federal law makes the determination. Federal law determines whether earnings are wages subject to social security and Medicare.

[SLIDE 28]

This slide list the areas where state law makes the determinations. State laws have a bearing on the issue of employment, such as whether a position is that of a public official of a state. Where this is the case, you should request a state legal officer's opinion. The state's opinion will be given weight in making the decision, but it will not determine the issue. Before contacting the IRS or Social Security Administration, contact the State Social Security Administrator for guidance.

[SLIDE 29]

Because entities have different social security and retirement plan situations, it is important to determine which of two or more entities, organizations, or individuals is a worker's employer. In some cases, certain individuals, referred to as leased workers, are supplied or

REHIRED ANNUITANTS

paid by one entity but work under the direction of another. Generally, if there is a provision in a statute or ordinance that creates a position and the individual is hired or elected under this authority, the individual is an employee of the state or political subdivision to which the provision applies. If there is no such authority, the employer is the entity that has the right to control the worker in the performance of the work, for example, the common-law employer.

The employing entity is responsible for withholding and paying social security and Medicare taxes on its employees' wages, as well as reporting to the Social Security Administration the wages paid. These withholding, paying and reporting requirements apply to individuals' wages subject to mandatory social security and Medicare, as well as to wages of individuals covered under a Section 218 Agreement. See Publication 15, Circular E, Employer's Tax Guide, for more information.

Lori

[SLIDE 30]

Regardless of social security coverage, most public employees are covered by some form of retirement plan. The terms of these plans may vary greatly, but in general provide for tax-deferred income placed in trust for the employees' benefit. These plans may involve employee or employer contributions, or both. Under certain provisions of the Internal Revenue Code, contributions may be deferred from tax until they are withdrawn. Plans covered under Internal Revenue Code section 401 are considered "qualified," meaning they meet specific provisions of the Employee Retirement Income Security Act – or ERISA - that enable them to offer certain tax advantages. Many public employees are covered by nonqualified plans, generally under IRC sections 403(b) or 457.

Internal Revenue Regulations inform us that a retirement system provides retirement-type benefits. A retirement system includes any pension, annuity, retirement or similar fund or system within the meaning of Section 218 of the Social Security Act that is maintained by a state, political subdivision or instrumentality thereof to provide retirement benefits to its employees who are participants.

Facts and circumstances determine whether a plan is maintained to provide retirement benefits with respect to an employee.

For example, a plan providing only retiree health insurance or other deferred welfare benefits is not considered a retirement system for this purpose. The legal form of the system is generally not relevant.

There are a number of regulations that describe how a retirement system may include a plan. For example, you can review section 401(a).

A retirement system may include plans described in sections 401(a), 403 or 457(b) or (f).

REHIRED ANNUITANTS

Internal Revenue Code Section 3121 clearly states that the Social Security system is not considered a retirement system.

It also maintains a requirement that the retirement system provides a minimum level of benefits.

In general, a pension, annuity, retirement or similar fund or system is not a retirement system with respect to an employee unless it provides a retirement benefit to the employee that is comparable to the benefit provided under the Old-Age portion of the Old-Age, Survivor and Disability Insurance program of Social Security.

Whether a retirement system meets this requirement is generally determined on an individual-by-individual basis. Thus, for example, a pension plan that is not a retirement system with respect to an employee may nevertheless be a retirement system with respect to other employees covered by the system.

John

There are two types of retirement systems that qualify as a FICA replacement plan. – defined benefit and defined contribution.

[SLIDE 31]

A defined benefit retirement system is maintained by a state, political subdivision or instrumentality. It projects how much the employer has to contribute using actuarial calculations, to obtain a similar retirement benefit as what Social Security would provide. See Section 3121 (e)(2).

[SLIDE 32]

With a defined contribution retirement system there must be a 7.5 percent minimum contribution of the employee's compensation. Either the employer or employee or both can make the contribution. See Section 3121(e)(2)(i).

Lori

Under an employment arrangement, a portion of an employee's compensation is regularly deferred for 5 years. Because this arrangement defers the receipt of compensation for a short period of time rather than until retirement - it is not a plan that provides retirement benefits. Therefore, this arrangement is not a retirement system. You can review Section 3121(b)(7)(F) for more specifics.

Remember: a Section 218 agreement takes precedence unless the employee is a member of a retirement system. Let's take a look at how this might work.

An individual holds two positions with the same political subdivision. The wages earned in

REHIRED ANNUITANTS

one position are covered under the social security system through a Section 218 agreement; the other position is not.

Section 3121(b)(7)(F) provides an exception from employment as a member of a retirement system. Because the second position is not covered under the retirement system, this exception does not apply.

You can find similar examples in Publication 963.

John

[SLIDE 33]

Since July 2nd 1991 Social Security and Medicare coverage has been mandatory for state and local government employees who are not members of a public retirement system and who are not covered under a Section 218 Agreement, unless specifically excluded by law. These mandatory Social Security provisions also apply to those state and political subdivision employees who have the option to become members of the retirement system but have chosen not to do so and those employees who are personally ineligible for membership in the retirement system.

Mandatory Social Security coverage ceases when a state or local government employee becomes a member of a public retirement system.

If an employee was hired before April 1st 1986 and was not a member of a public retirement system, the employee is covered for Social Security and Medicare. If the employee subsequently becomes a member of a retirement system, the employee ceases to be covered for Social Security and Medicare.

If an employee was hired after April 1st 1986 and is not a member of a public retirement system, the employee is covered for Social Security and Medicare. If the employee subsequently becomes a member of a retirement system, the employee ceases to be covered for Social Security - but not Medicare, because the employee was hired after April 1st 1986.

Employees hired or rehired after March 31st 1986 remain covered for Medicare regardless of their membership in a retirement system.

Lori

[SLIDE 34]

Section 419(c) of Public Law 108-203, the Social Security Protection Act of 2004, requires state and local government employers to disclose the effect of the Windfall Elimination Provision and the Government Pension Offset to employees hired on or after January 1st 2005 in jobs not covered by Social Security.

REHIRED ANNUITANTS

The law requires newly hired public employees to sign a statement that they are aware of a possible reduction in their future Social Security benefit entitlement.

For more detailed information about this law and to view a copy of the statement concerning employment in a job not covered by Social Security see Form SSA-1945.

Although these employees are not covered by Social Security, they are covered by a qualifying public retirement system. Because a FICA replacement system is in place to meet the equivalent of Social Security coverage, these employees are therefore exempt from mandatory social security. They are not covered by a Section 218 Agreement.

John

Let's review.

[SLIDE 35]

We discussed the background on 218 Agreements. We also talked about how agencies work together to advise government entities on 218 related matters, how retirement systems work, who is an employee and what is covered employment. With this information we can determine how rehired annuitants are treated for Social Security and/or Medicare coverage.

An individual in a position covered by a section 218 agreement providing for full coverage is subject to social security tax under the agreement's terms. The 218 agreement takes precedence over the state retirement system rules that would exclude the position from social security.

Let's take a look at some more examples.

[SLIDE 36]

A teacher who was covered under a state retirement system retired and was rehired as a bus driver - a position covered by a 218 agreement. The individual is subject to social security tax under the terms of the 218 agreement.

[SLIDE 37]

For our second example, let's look at a teacher who is not of retirement age and retires from service due to a permanent disability. She was a member of the state teachers' retirement system and begins receiving annuity payments from the system.

In 2007 she returns to work for the same school district as a part-time tutor. The school district has no 218 agreement, and the new position is not covered by a state retirement plan. The teacher is a rehired annuitant and is not subject to social security tax. Because she was rehired after March 31, 1986, her wages are subject to Medicare tax.

REHIRED ANNUITANTS

Lori

[SLIDE 38]

Here are a few things to keep in mind:

- Under section 218 rules, if rehired annuitants are currently working in positions covered by a retirement system but cannot join that retirement system, then for section 218 purposes, they are considered retirement system ineligible.
- If the entity's section 218 agreement covers these ineligible, then rehired annuitants are covered by section 218 Social Security/Medicare. If the entity's section 218 agreement does not cover ineligible of that retirement system, then apply the mandatory Social Security and mandatory Medicare rules.
- The regulations provide that a rehired annuitant in a particular retirement system is deemed to be a qualified participant in the retirement system. This is regardless of whether he or she continues to accrue a benefit or whether benefits continue during the employment period. Contributions are not required to be made to the state retirement system on the retired annuitant's behalf.

John

[SLIDE 39]

Here are some key mandatory Social Security and Medicare rules.

A retiree of a public retirement system is exempt from Social Security coverage if he or she is employed by the same employer or another employer who maintains the same retirement system that the retiree formerly participated in.

All employees hired after March 31st 1986, are mandatorily covered for Medicare unless specifically excluded under Section 210(p) of the Social Security Act.

The key for determining mandatory coverage requirements is the retirement system - not the position.

Per Internal Revenue regulations, a rehired annuitant, who is a former participant in the retirement system, is deemed to be a qualified participant without regard to whether they continue to accrue a benefit or whether the distribution of benefits under the retirement system has been suspended pending cessation of services.

Internal Revenue Regulations also state that a former participant in the retirement system may continue to be a qualified participant after becoming re-employed if they meet the minimum required benefit. This includes the requirement that the system provides a retirement benefit to the employee that is comparable to the benefit provided under the Old-

REHIRED ANNUITANTS

Age portion of the Old-Age, Survivor and Disability Insurance program of Social Security. In other words, the retirement system of the current employer meets the qualifying FICA replacement plan requirements.

Lori

What if a rehired annuitant works for an entity that maintains the same retirement system as the one they retired from?

Then mandatory Social Security does not apply. This is because the annuitant is considered a member of a retirement system - even if the position is excluded from coverage. Medicare coverage, however, is mandatory for employees rehired after March 31st 1986.

Let's take this example:

[SLIDE 40]

Jane is a teacher who retires from County A as a member of the Statewide Teachers Retirement System. County B hires her as a bus driver in March 2000. The bus driver position is not covered by a Section 218 agreement. Counties A and B are part of the same retirement system. Although Jane is qualified to receive a pension from County A, her position as a bus driver is not covered under the retirement system.

So what is the coverage status of the bus driver position?

Remember – the bus driver position is not covered by a Section 218 agreement.

Jane – the annuitant – is a retired teacher under the same retirement system. Therefore, mandatory Social Security does not apply, even though her new position as a bus driver is not covered under the retirement system or the Section 218 agreement. Her earnings as a bus driver will not have social security taxes withheld.

You should request a copy of the 218 Agreement and any modification associated with it. The State Social Security Administrator will provide this information. Be careful to understand dates for applicable coverage of specific positions.

Is the annuitant working for an entity that maintains the same state retirement system as the one from which she is qualified to receive a pension?

The answer is yes. The state retirement system can confirm that an entity is covered under its plan. The annuitant is “covered” under the retirement system, so mandatory social

REHIRED ANNUITANTS

security does not come into play even though the bus driver position is not covered by the 218 agreement. Additional earnings will not have social security taxes withheld.

Is the annuitant rehired after March 31st 1986?

The answer is yes. Jane retired after March 31st, 1986. Therefore, mandatory Medicare applies. Even though she was originally hired before March 31st 1986, her retirement constitutes a break in service, thus causing her to be covered under mandatory Medicare.

John

Here's another example.

[SLIDE 41]

What if a worker is a rehired annuitant into a position with the same retirement system but the 218 agreement coverage referendum was based on a divided vote referendum? Would the new job be covered by the agreement?

The retirement system rules of the state determine if the individual is now a new member of the retirement system. The status as a new member or an existing member determines whether the individual holds onto their original divided referendum vote.

If determined to be a new member the worker is covered by the 218 agreement with the "yes" group of the divided referendum.

If not a new member, the worker retains their vote. Yes voters carries their yes vote and they are covered by Social Security and Medicare under the agreement not under mandatory Section 210 provisions.

If not a new member and a "no" voter, the worker is not covered under the agreement. Here, mandatory provisions could apply if the retirement system is deemed a different system for the participant. Coverage here depends upon whether the rehired annuitant is considered a new member of the retirement system upon re-employment. This is determined by the state's retirement system rules.

Lori

[Slide 42]

To determine how a rehired annuitant may be treated for employment tax purposes, and in particular social security and Medicare, consider these questions:

REHIRED ANNUITANTS

Is the rehired annuitant working for the same or a different employer?

- If a different employer, does that employer maintain the same retirement system as the original employer?
- What is the title of the position the rehired annuitant now occupies?

How does Section 218 apply to the position?

- If it does apply to the position, know the modification number and the date the modification became applicable. Make sure it applies to the position in question.
- What services are specifically covered by the Section 218 agreement?
- Were retirement system ineligible covered by that modification or subsequent modification?
- What exclusions were there? If part-time, what was the definition on the applicable date?
- If part-time, what is the definition of part-time?

Do the mandatory Social Security and Medicare rules apply to the employee?

What retirement systems did the entity participate in on the absolute coverage applicable date?

Is the retirement system the rehired annuitant is part of covered by a system-wide Section 218 modification?

Are retirement system ineligible covered by that modification or a subsequent modification?

Is Section 218 coverage extended retirement system-wide or has coverage been extended on an entity-by-entity basis?

Is the retirement system in question a qualifying FICA replacement plan during the period of time being reviewed?

Does the employer have an absolute coverage modification?

If the retirement system is a qualifying FICA replacement plan and the employer does not have an absolute coverage modification, mandatory Social Security would not apply but Medicare would apply for employees hired on or after April 1st 1986.

If it is and the employer does have an absolute coverage modification:

- What positions were covered by the retirement system and what were the requirements of the position?
- Has the retirement system expanded coverage since the applicable date of the current employer's absolute coverage modification?
- And what was the expanded position part of the absolute coverage group prior to participating in the retirement system?

REHIRED ANNUITANTS

John

Rehired annuitants are common in the workplace and determining the correct tax status for the withholding tax due on related earnings can be complex. You can rely on your State Social Security Administrator and your State Retirement System representatives for much of the required information to assist you in compliance with employment taxes. The Social Security Administration can clarify coverage for Section 218 purposes.

The Internal Revenue Service FSLG Specialists are here to assist you with answering certain questions such as:

What is a qualified retirement system?

Who is a qualified participant?

Who is a “new hire” for mandatory Medicare?

We can also help you with FICA tax withholding for mandatory (non-section 218) covered employment questions.

Lori

[Slide 43]

This slide lists some resources to assist you. You will have the opportunity to download this slide presentation.

[Slide 44]

And don't forget – if you have any questions you can e-mail us and visit the FSLG website. Thank you for joining us!