

Minnesota State Colleges & Universities Student FICA Tax Exemption Guidelines Effective April 1, 2005

For student employee FICA tax exemption purposes only, the following guidelines will apply:

Student employees, working for the college or university that they are attending, who are enrolled at least half time and regularly attending classes are exempt from FICA taxation **except for student employees who will have a normal work schedule of 30 or more hours per week.**

Note: This does not have an impact on college or university policies that already restrict student workers to less than 30 hours per week. Campuses may at their discretion hire students to work a normal work schedule of 30 or more hours per week, however the student employee and their college/university will be subject to FICA taxation.

Advantages of working less than 30 hours per week are:

- Institutions should not incur additional FICA tax liability;
- Students wages should remain FICA exempt;
- Provides a greater degree of certainty for students, hiring departments, student payroll departments, business offices, and institutions; and
- Allows students to concentrate on their predominant campus purpose which is education not student employment.

Summary Student FICA Exemption Guidelines:

- Students hired with a normal work schedule of 30 or more hours per week will be subject to FICA tax. Breaks of five weeks or less shall not be considered part of the normal work schedule. Individuals responsible for hiring must complete and deliver to the Student Payroll Department the "Student Employee FICA Tax – Hire Form" if they hire a student to work a "normal work schedule" of 30 or more hours per week.
- If your institution has programs or internships that require 30 or more hours per week as a normal work schedule, the student in general will not be exempt from FICA tax. The individual responsible for the program must complete the Student Employee FICA Tax – Hire Form.
- Communicate to individuals responsible for hiring student employees the FICA taxation rules and give them guidance regarding their responsibility to inform student payroll if they do hire a "full-time" (i.e., a normal work schedule of 30 or more hours) student worker.

- Provide access to the “Student Employee FICA Tax – Hire Form” for all campus individuals responsible for hiring student workers.
- Student payroll will monitor hours worked reports (ISRS Report PR0212CP) to determine if a student employee consistently works more than 60 hours per pay period. If a student does work more than 60 hours for two consecutive pay periods, follow up with the student worker's supervisor to determine if there is a possible explanation to retain the FICA exemption. For example, unforeseen circumstances (illness, etc.) may have required that the student work additional hours. Otherwise, inform the student's work supervisor that FICA is not exempt if the student was hired to work 30 or more hours per week and that they must fill out the Student Employee FICA Tax – Hire Form to communicate this information to student payroll.
- Review your institutions graduate student employment agreements to determine if they specify the number of hours worked per week as 30 hours or less. If not, please contact Tax Services.
- Determine if your institution provides employment benefits or has student employees that would be classified as a “professional employees.” Please contact Tax Services with any student employment situation (especially graduate students) where the campus or the IRS might consider that the employment aspect is predominant for the student over the student's educational aspect.
- Student employment positions should have a job title and job description (and student payroll should be given a copy).

Please contact Tax Services, System Office with questions. Here is a link to the new federal regulations: <http://www.irs.gov/pub/irs-drop/rp-05-11.pdf>

Examples illustrating Student FICA Tax Exemption Guidelines:

Example #1: A student is hired to work 34 hours per week for the summer by the college. The individual responsible for hiring this student for campus employment must complete the “Student Employee FICA Tax – Hire Form” notifying the institutions student payroll department to subject this student to FICA tax. The Student Payroll Department will need to manually override (unless the student is enrolled less than half-time or it is determined that the student is

a nonresident alien for tax purposes) the FICA and Medicare exemption in the student payroll program each pay period.

Example #2: Same as example #1, except the student works 21 hours for a particular week. Student payroll should still override the FICA exemption because the hiring department has indicated on the Student Employee FICA Tax – Hire Form that the intent is that this student will “normally” be working 30 or more hours per week. If the student consistently works significantly less than 30 hours per week, student payroll should contact the individual responsible for hiring to discuss the matter and review if circumstances have changed or if the Student Employee FICA Tax – Hire Form was incorrectly completed.

Example #3: Same as example #1, except student payroll was *not* notified that the student was hired to work 30 or more hours per week. Student payroll personnel review ISRS Report PR0212CP and discover that the student has worked 30 or more hours for 2 consecutive pay periods. Student payroll will contact the employee’s supervisor and determine if the student should be subject to FICA tax by asking if this student’s normal work schedule is 30 or more hours per week.

Example #4: A student works the following hours for the university: 1st pay period 79 hours, 2nd pay period 58 hours, and 3rd pay period 77 hours. Notice has *not* been given to the student payroll department that this is a “full-time” student employee. Student payroll should contact the student employee’s supervisor and inquire as to the supervisor’s intent regarding the student’s “normal work schedule” and discuss the fact that the student appears to be a “fulltime” (for tax purposes) student employee and not FICA exempt.

Background to the new student FICA guidelines:

The general student FICA (Federal Insurance Contributions Act) tax exemption rule is as follows: Payments for services performed in the employ of a college or university are exempt from FICA if the services are performed by a student who is enrolled and regularly attending classes at the college or university.

For services performed on or after **April 1, 2005**, the following student FICA and Medicare tax modifications occurred because of changes to Internal Revenue Service (IRS) regulations:

Colleges and universities must determine if services performed by a student employee are considered “full-time” either by IRS definition or by institution standards and practices. Student employees who have a “**normal work schedule**” of **40 hours or more per week** will **always** be considered full-time employees according to the IRS, regardless of how the institution classifies them. The IRS reasons that “services of a full-time employee are not incident to and for the purpose of pursuing a course of study.”

Colleges and universities should evaluate a student employee's normal work schedule at the beginning of each academic term. Many institutions already have policies which limit students to substantially less hours of employment per week (most institutions have indicated a policy of 20 hours or less per week). If your institution permits students to work “40 hours or more per week” or allows students to work 40 or more hours per week during academic breaks of more than five weeks, then **individuals responsible for hiring student employees must report if they are hiring the student as a “full-time employee” to your institutions student payroll department (See Student Employee FICA Tax – Hire Form)**. The student payroll department will need to manually override (unless the student is enrolled less than half-time) the FICA exemption each pay period.

The following should also be noted in this student FICA exemption discussion:

- Students who work 40 or more hours per week during academic breaks of five weeks or less will not be considered full-time employees and thus are still eligible for the FICA exemption (if they were a student enrolled at least half-time and regularly attending classes before and after the academic break).
- A student employee's normal work schedule is not affected by increases in hours worked caused by work demands unforeseen at the start of the academic term. For example, if another individual is sick (or there is a sudden increase in work) requiring a student employee to work 40 or more hours in a given week, this would not by itself change the employee's status to that of a full-time employee.
- The nonresident alien student FICA exemption still applies even if a student is deemed to be a “full-time” employee.

- If the student employee changes employment positions during the term, the institution must reassess whether the employee is full-time. If a student works in multiple positions during the same time frame, consider the total hours the student works for the institution when determining if the student works “full-time.”
- If the employee is considered a “full-time” worker based on college/university practices, the student would not be FICA exempt even if they do not work 40 or more hours per week.
- Even if the student works less than 40 hours per week, the IRS could determine based on the facts and circumstances that the student is more like an employee than a student and therefore, not FICA exempt. For example, if the employee’s normal work schedule is 37, 38 or 39 hours per week, the IRS would likely still consider the individual a “full-time” employee and not FICA exempt.
- Note: If a student is *not* enrolled in coursework (for example, during summer break), FICA tax is already required to be collected; therefore, hours worked would not alter the FICA tax exemption determination.

The new IRS regulations also include **subjective** tests. The IRS requires institutions to determine **whether the “educational” or “service” aspect is predominant** for the individual. The facts and circumstances of each situation will determine whether an individual is eligible for the student FICA exception. For example, if a student receives employment benefits such as life insurance, sick or vacation pay, retirement plans, or certain tuition reductions, the IRS states that the institution must then determine whether education or service predominates. Also, individuals performing services involving advanced knowledge, consistent exercise of discretion and judgment, and are predominately intellectual and varied in character are considered “professional employees;” therefore, the situation must be reviewed based on the facts and circumstances to determine if they are eligible for the student FICA exception. The “professional employee” and benefits issues usually will arise with graduate students. For example, if you have a graduate student working 35 hours per week, receiving tuition reductions, and exercising advanced knowledge and judgment in an intellectually varied position and the student is only taking one course, the IRS could contend that they are not eligible for the student FICA exemption. Please contact Tax Services and review the situation prior to requiring graduate students to pay student FICA based on these new regulations.