



10-6-1980

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Recommended Citation

MTAS, "Technical Bulletins: Sick Pay Excluded from Wages Subject to Social Security (FICA) Taxes" (1980). *MTAS Publications: Technical Bulletins*.
https://trace.tennessee.edu/utk_mtastech/293

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technical bulletin

Municipal Technical Advisory Service
Institute for Public Service, The University of Tennessee
In cooperation with the Tennessee Municipal League

October 6, 1980

SICK PAY EXCLUDED FROM WAGES SUBJECT TO SOCIAL SECURITY (FICA) TAXES

Savings for cities and their employees could result from legislation, passed by the 1980 Tennessee General Assembly, excluding personal sick leave payments from social security contributions. Specifically, the legislation (Public Chapter No. 774) exempts from FICA taxes payments made by cities to employees who are absent from work "on account of sickness" or accident disability. It became effective July 1, 1980.

The Social Security Administration has determined that before the above described payments can be excluded from wages and exempted from social security contribution payments, the governmental entity must: (1) be able to prove that it has legal authority to "pay on account of sickness" and, (2) provide evidence that shows the payments were made under that authority according to a specific plan or system.

TO ESTABLISH A QUALIFIED SICK-PAY PLAN OR SYSTEM, THESE REQUIREMENTS MUST BE SATISFIED:

1. Evidence That Payments Made on Account of Sickness Were Made with Legal Authority -- This evidence might take one of these forms:
 - a. An ordinance, regulation, or resolution enacted by a governing body providing specifically for sick payments;
 - b. A separate appropriation solely for sick payments; or
 - c. A separate sick-pay account. The sick-pay account may be used either to make payments direct to the employee or to reimburse the regular salary account for payments made from it.
2. Evidence to Indicate That a Plan or System Exists -- The existence of any of these is evidence of a plan or system:
 - a. The plan or system is in writing;
 - b. There is reference to the plan or system in the contract of employment;
 - c. Employees contribute to the plan or system; or
 - d. There is a special fund, separate and apart from the salary account.
3. Procedures When Plan Provides Both for Payments Which Are and Are Not Excluded from Wages

There is a distinction made between payments "on account of sickness" and for sick leave. Payments "on account of sickness" refer to amounts paid only on account of an employee's personal sickness or illness, whereas compensation for sick leave refers to payments made for a variety of reasons which represent a continuation of salary. For example, some plans permit the use of sick leave to attend a funeral, or when a member of the employee's family is ill. Payments for such absence are not excluded from wages and are subject to social security deductions.

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PROCEDURES FOR APPROVAL OF SICK-PAY PLAN

Political subdivisions under social security agreements seeking to claim the sick pay exclusion should have the reporting official certify to the state agency that these conditions have been met:

1. The payments are made under a sick leave plan or system established by the employer.
2. The plan provides for employees generally, employees generally and their dependents, a class or classes of employees, or a class or classes of employees and dependents.
3. The employer has legal authority to make payments "on account of sickness" by ordinance or resolution passed and approved by the governing body and that the employer has exercised this authority (give ordinance or resolution number and date of passage).
4. The payments are made solely "on account of sickness" and are not merely a continuation of salary while the employee is absent due to illness.

A political subdivision also should submit:

- (1) A copy of your sick pay plan in writing;
- (2) A copy of the local ordinance, resolution, or statute providing specifically for sick payments; and
- (3) A copy of a payroll document or a check stub which identifies excluded payments made "on account of sickness" from other payments.

The Old Age and Survivors Insurance Agency will examine each sick pay plan submitted by political subdivision to ascertain that it has actually provided for payments "on account of sickness." Please direct any question to: Mary E. Smith, Director, Old Age & Survivors Insurance Agency, 1327 Andrew Jackson State Office Bldg., Nashville 37219, phone 615/741-7902; or contact your MTAS Personnel Consultant.

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