



MELTZER HELLRUNG

IMMIGRATION SOLUTIONS

FICA AND FUTA TAX OBLIGATIONS FOR FOREIGN NATIONAL EMPLOYEES

In general, when foreign nationals are performing services in the United States as employees, they and their employers are liable for U.S. Social Security and Medicare taxes. However, certain classes of foreign national employees are exempt from U.S. Social Security and Medicare taxes.

Please note that employees of religious, charitable, educational, or certain other tax-exempt organizations may not be subject to FUTA taxes.

Employees who have mistakenly had FICA taxes deducted from payroll should be refunded.

VISA TYPE	SUBJECT TO FICA	SUBJECT TO FUTA
A-1/A-2 Dependent	Yes, if employed by anyone other than a foreign government	Yes, if employed by anyone other than a foreign government
B-1 or Visa Waiver (ESTA)	Not eligible for U.S. wages	Not eligible for U.S. wages
B-2 or Visa Waiver (ESTA)	Not eligible for U.S. wages	Not eligible for U.S. wages
E-1	Yes	Yes
E-1 Dependent	Yes, if work authorized	Yes, if work authorized
E-2	Yes	Yes
E-2 Dependent	Yes, if work authorized	Yes, if work authorized
E-3	Yes	Yes
E-3 Dependent	Yes, if work authorized	Yes, if work authorized

Chart continued on following page.

VISA TYPE	SUBJECT TO FICA	SUBJECT TO FUTA
F-1 *See Appendix A for Additional Guidance	No, for first 5 calendar years in U.S. When measuring an alien's date of entry for the purposes of determining the five calendar years, the actual date of entry is not important. It is the calendar year of entry which is counted toward the five calendar years. For example, a foreign student who enters the United States on December 31, 2015 counts 2015 as the first of his five years as an "exempt individual."	No, for first 5 calendar years in U.S. When measuring an alien's date of entry for the purposes of determining the five calendar years, the actual date of entry is not important. It is the calendar year of entry which is counted toward the five calendar years. For example, a foreign student who enters the United States on December 31, 2015 counts 2015 as the first of his five years as an "exempt individual."
G-1/G-2/G-3/G-4 dependent	Yes, if employed by anyone but an international organization	Yes, if employed by anyone but an international organization
H-1B	Yes	Yes
H-2A	No	No
H-2B	Yes, except for residents of the Philippines who work in Guam	Yes, except for residents of the Philippines who work in Guam
H-3	Yes	Yes
H-4	Yes, if work authorized	Yes, if work authorized
I	Not on U.S. payroll	Not on U.S. payroll

Chart continued on following page.

VISA TYPE	SUBJECT TO FICA	SUBJECT TO FUTA
J-1	<p>No, for first 2 calendar years in U.S.</p> <p>When measuring an alien's date of entry for the purposes of determining the five calendar years, the actual date of entry is not important. It is the calendar year of entry which is counted toward the five calendar years. For example, a foreign student who enters the United States on December 31, 2015 counts 2015 as the first of his five years as an "exempt individual."</p> <p>Please note J-1 students are treated the same as F-1 students for this purpose.</p>	<p>No, for first 2 calendar years in U.S.</p> <p>When measuring an alien's date of entry for the purposes of determining the five calendar years, the actual date of entry is not important. It is the calendar year of entry which is counted toward the five calendar years. For example, a foreign student who enters the United States on December 31, 2015 counts 2015 as the first of his five years as an "exempt individual."</p> <p>Please note J-1 students are treated the same as F-1 students for this purpose.</p>
J-2	Yes, if work authorized	Yes, if work authorized
K-1	Yes	Yes
K-3/K-4	Yes	Yes
L-1	Yes	Yes
L-2	Yes, if work authorized	Yes, if work authorized
M-1	No	No
O-1	Yes	Yes
O-2	Yes	Yes
P-1	Yes	Yes
P-2	Yes	Yes
P-3	Yes	Yes

Chart continued on following page.

VISA TYPE	SUBJECT TO FICA	SUBJECT TO FUTA
Q-1	<p>No, for first 2 calendar years in U.S.</p> <p>When measuring an alien's date of entry for the purposes of determining the five calendar years, the actual date of entry is not important. It is the calendar year of entry which is counted toward the five calendar years. For example, a foreign student who enters the United States on December 31, 2015 counts 2015 as the first of his five years as an "exempt individual."</p>	<p>No, for first 2 calendar years in U.S.</p> <p>When measuring an alien's date of entry for the purposes of determining the five calendar years, the actual date of entry is not important. It is the calendar year of entry which is counted toward the five calendar years. For example, a foreign student who enters the United States on December 31, 2015 counts 2015 as the first of his five years as an "exempt individual."</p>
R-1	Yes	Yes
TN	Yes	Yes
Other Work Authorization	Yes	Yes

APPENDIX A

Guidance On F-1 Visas

Individuals on F-1 visas are exempt from FICA and FUTA for their first 5 years in the U.S. Below is a rule-of-thumb guidance on common scenarios. The facts must be assessed on a case-by-case basis to determine when the employee entered the U.S. in F-1 status.

EMPLOYEE EARNED U.S. BACHELOR'S DEGREE

Post-completion OPT: Likely Exempt

STEM OPT: Likely Not Exempt

EMPLOYEE EARNED U.S. BACHELOR'S DEGREE AND U.S. MASTER'S DEGREE OR OTHER PROFESSIONAL DEGREE

Post-completion OPT: Likely Not Exempt

STEM OPT: Likely Not Exempt

EMPLOYEE EARNED U.S. MASTER'S DEGREE OR OTHER PROFESSIONAL DEGREE, BUT NOT A U.S. BACHELOR'S DEGREE

Post-completion OPT: Likely Exempt

STEM OPT: Likely Exempt

EMPLOYEE EARNED A U.S. PH.D

Post-completion OPT: Likely Not Exempt

STEM OPT: Likely Not Exempt

When measuring a foreign national's date of entry for the purposes of determining the five calendar years or the two calendar years mentioned above, the actual date of entry is not important. It is the calendar year of entry which is counted toward the two or five calendar years respectively. For example, a foreign student who entered the United States on December 31, 2015 counts 2015 as the first of his five years as an "exempt individual."