

CUNY Student FICA Tax Exemption

This document provides guidelines, based on the Internal Revenue Code, and IRS regulations and directives, for determining whether a student's service in the employ of a campus (the "College") of The City University of New York (the "University") qualifies for an exemption from FICA (Social Security and Medicare) taxes imposed on wages.

Overview

Social Security and Medicare (FICA) taxes do not apply to services performed by certain eligible students employed by a school, college, or university where the student is pursuing a course of study. Determining whether employees are eligible students for this purpose requires examining the individual's employment relationship with the school to determine if employment or education is the predominant aspect of the relationship. If the employee is enrolled and regularly attending classes at the school in pursuit of an educational credential as his/her primary purpose for being there, FICA taxes will not apply to such employee's compensation.

The University will make student FICA determinations based on [Revenue Procedure 2005-11](#) safe harbor guidelines, as discussed in the next section. Students who meet these guidelines can be treated as exempt from FICA taxes, while those student employees who do not meet these guidelines will be subject to FICA tax withholding on their wages.

Background

FICA (Federal Insurance Contributions Act) taxes are imposed on all wages paid or received with respect to employment. Employers are required to withhold FICA taxes of 7.65% from the wages of an employee and pay a matching contribution, subject to certain limitations. Payments to employees for services are generally subject to FICA tax unless an exemption from the tax is provided in the IRS Code, regulations and directives.

[Section 3121\(b\) \(10\)](#) of the Internal Revenue Code sets forth an exemption from FICA tax for employees of schools, colleges or universities who are enrolled and regularly attending classes at those institutions. However, not all student employees qualify for this FICA tax exemption. The exemption is only available for those student employees who provide services that are "incident to and for the purpose of pursuing a course of study" and whose educational relationship with the school predominates over the person's employee relationship. IRS regulations set forth a broad "facts and circumstances" test that is used in determining whether a student employee qualifies for the student FICA exemption.

In addition to its regulations, the IRS issued [Revenue Procedure 2005-11](#), which sets forth certain "**safe harbor**" tests that, if met, will deem the student employee to be exempt from FICA tax. This means that if a student employee qualifies under these safe harbor rules, the person will be treated as exempt from FICA tax without the necessity of conducting a full "facts and circumstances" test. The IRS also recognizes that it may be possible for an individual not to meet the Revenue Procedure 2005-11 safe harbor tests and still qualify for the student FICA exemption based on all the facts and circumstances surrounding the student's employment. As a general rule, it is the policy of the University to make student FICA determinations based on [Revenue Procedure 2005-11](#) safe harbor guidelines; that is, those student employees who meet these guidelines will be treated as exempt from FICA tax, while those student employees who do not will generally be subject to FICA tax withholding on their wages. In a few limited circumstances, the University will treat students as exempt from FICA tax withholding based on application of the "facts and circumstances" test.

Criteria for Student FICA Tax Exemption per IRS Safe Harbor

I. General Standards

Under the [Revenue Procedure 2005-11](#) safe harbor rules, a wage payment made by the University to an individual will qualify for the student FICA exemption if the individual:

- (a) is at least a half-time undergraduate student or at least a half-time graduate or professional student of the University,
- (b) is not a full-time employee of the University,
- (c) is not a “professional employee” and
- (d) is not a career employee eligible to receive certain employment benefits or participate in certain employment benefit plans (e.g. vacation, sick leave, 403(b), etc.)

1. Student enrollment status

A student employee must be enrolled and regularly attending classes on at least a half-time basis at the University.

An undergraduate, graduate, or professional student pursuing a course of study leading to a degree is deemed to be enrolled on a half-time basis if he/she is carrying a half-time academic load or more, as determined by the College Registrar. The per-semester equated credit loads that qualify the student for the FICA tax exemption under the safe harbor rules are as follows:

Student Classification	Term Type	Half Time or above	Full Time
Undergraduate	Fall /Spring/Summer	6 or more	12 or more
Graduate	Fall /Spring/Summer	6 or more	9 or more*
Law	Fall/Spring	6 or more	12 or more
Law	Summer	3 or more	6 or more
Medical	Medical	6 or more	12 or more
Doctoral	Fall /Spring/Summer	6 or more	7 or more
*While nine credits will make the student eligible to be certified by the college or school as a full-time student, this in no way precludes an individual program, for purposes of cohort design, professional licensing, program accreditation or any other legitimate academic reason approved by the campus curriculum governance, from requiring students to register for more credits in one or more semesters.			

2. Full-time employees

Regardless of the University’s classification, any employee whose normal work schedule is 20 hours or more per week will be treated as a full-time employee.

3. Professional employees

Under [Revenue Procedure 2005-11](#), a student who is a professional employee does not qualify for safe harbor protections. While Graduate Assistants A, B, C and D may qualify as professional employees under this standard and thereby not meet the [Revenue Procedure 2005-11](#) safe harbor test, the University will treat those student employees as eligible for the student FICA exemption **under the facts and circumstances test**, provided that the person’s normal work schedule is not 21 or more hours per week.

4. Employment benefits

Some CUNY students are eligible to receive employment benefits, such as paid annual and sick leave and paid holidays; participation in an Internal Revenue Code §401(a), §403(b),

or §457(a) retirement plan; reduced tuition (other than a CUNY Employee Tuition Fee Waiver as set forth in the linked document below)

https://www.cuny.edu/about/administration/offices/ohrm/reports-forms/tuition_waiver_forms_4_13_06.pdf); life insurance; or qualified educational

assistance, dependent care assistance or adoption assistance. Employees eligible for CUNY Employee Tuition Fee Waiver are ordinarily not eligible for the student FICA exemption, as the employment relationship predominates over the student status. The University will treat full-time students whose normal work schedule is less than 21 hours per week as eligible for the student FICA exemption, notwithstanding receipt of employee benefits.

5. **Student Aides**

Student aides are eligible for the student FICA exemption, given that they are required to be full-time students.

II. **Graduating/Last Semester Students**

A student who is enrolled as less than a half-time student during a semester will still meet the safe harbor guidelines if the student is graduating at the end of that semester. That is, an individual in the last semester of a course of study consisting of at least two semesters who is enrolled for the number of credit hours needed to complete the degree requirements will still be regarded as at least a half-time student, even if the student is enrolled in less than half the number of credit hours required of full-time students. **If a student is exempt from FICA on the basis of their last semester but does not fulfill that requirement, the campus must recover FICA. See Recovery of FICA Deficiencies and Refund of FICA, Section VI below.**

III. **School Breaks**

An individual working for the University during the summer or during other school breaks of more than 5 weeks, but who does not have the status of a student during this period, as defined in this policy, is not eligible for the student FICA exemption on wages paid during the period. The student FICA tax exemption does apply to school breaks of 5 weeks or less (for example, winter and spring breaks) if certain conditions are met. In order to be eligible for the FICA tax exemption during school breaks of 5 weeks or less, the individual must qualify for the FICA tax exemption on the last day of the semester/quarter preceding the break and be eligible to enroll for classes in the first semester/quarter following the break.

IV. **Other Employee Groups**

According to Revenue Procedure 2005-11, the safe harbor guidelines are not available for those employees who are Postdoctoral Fellows because the services performed by these employees cannot be assumed to be incident to and for the purpose of pursuing a course of study. Thus, payments to Postdoctoral Fellows are not eligible for the student FICA exemption.

V. **FICA Status of Foreign Nationals**

A separate FICA exemption exists for students, researchers, or scholars temporarily present in the U.S. on F-1, J-1, or Q-1/Q-2 visas, who are usually exempt from FICA taxes as long as they are considered “nonresident aliens” for income tax purposes. Specific rules regarding the number of calendar years a visa holder may be present in the U.S. before ceasing to be a nonresident alien pertain to each visa and can impact whether FICA exemption is available.

VI. Recovery of FICA Deficiencies and Refund of FICA

The campus must take steps to recover any FICA deficiency (underpayment) by a former or current employee or similarly to process a refund claimed by an employee. See the attached OSC Payroll Bulletins that outline the process for employees on the State payroll. For employees on the City payroll check with University Payroll.

[TO BE FILLED IN BY CAMPUS]**Name and Contact Information for Questions / Clarifications:****Payroll Department**

Frequently Asked Questions for Student Employees – FICA Taxes

What is FICA?

FICA is the abbreviation for Federal Insurance Contributions Act taxes, which are withheld from employee paychecks and matched by employers in order to fund Social Security and Medicare. FICA taxes consist of an employer's and employee's share of tax on wages for Social Security (6.2%) and Medicare (1.45%), plus an equal amount paid by the University. The employee and employer each pay 7.65% for a total of 15.3%. The Social Security amount will be paid into Social Security be utilized in determining your benefit upon retirement. There are maximum limits, adjusted annually, up to which a person's wages are subject to the FICA tax.

Are Students exempt from the FICA Taxes?

The IRS provides an exemption from FICA taxes for students paid by the colleges and universities in which they are enrolled. There are regulations that define who is a student and, therefore, eligible for the exemption from these taxes.

How many credits do I have to take to be considered a student under the student FICA exemption?

IRS rules require that students be "enrolled and regularly attending classes." The number of credits you need to be taking at your college is determined by whether you are an undergraduate or graduate student, and for graduate students, what degree program you are in. The following chart shows the number of credits that you must take to be considered a student for purposes of the exemption. Determination of student status is made each semester.

FICA CHART OF MINIMUM ACADEMIC PROGRESS UNITS

Student Classification	Minimum Academic Progress Units Per Semester (Note 1)		Full Time (Note 3)
Student Classification	Fall/Spring/Medical	Summer (Note 2)	Fall/Spring/Medical/Summer
Undergraduate	6	6	12 or more
Graduate	6	6	9 or more*
Law	6	3	12 or more
Medical	6	6	12 or more
Doctoral	6	6	7 or more
*While nine credits will make the student eligible to be certified by the college or school as a full-time student, this in no way precludes an individual program, for purposes of cohort design, professional licensing, program accreditation or any other legitimate academic reason approved by the campus curriculum governance, from requiring students to register for more credits in			

one or more semesters.

Notes:

1. A student in their final semester (has applied for graduation) and enrolled in the number of hours needed to complete graduation requirements, is still eligible for the FICA exemption, even if taking fewer credit hours than shown here.
2. Summer semester is defined as all sessions within the summer term.
3. Full time status provided for reference.

How many hours can I work and still be subject to the student FICA Exemption?

As long as you work fewer than 21 hours per week, you may be eligible for the student FICA exemption.

Can a student still receive the FICA exemption if he/she is employed by both the University and a campus related entity? Yes, if the total hours a student works on all the payrolls do not exceed 20. Otherwise, the student will pay FICA taxes on all paychecks received.

What if a student works at one CUNY College but attends another CUNY College?

That student is eligible for the student FICA exemption. The University is one employer for these purposes.

Will a student always pay FICA taxes if he/she works 21 hours or more during a week?

If a student occasionally works 21 or more hours, the tax exemption will remain in effect. However, if working 21 hours or more becomes a pattern, the FICA exemption will be removed and the student will be taxed.

How can a student who receives fringe benefits still be exempt from paying FICA taxes?

The University generally applies the safe harbor tests provided for in [Revenue Procedure 2005-11](#), to determine whether a student is eligible for the FICA tax exemption. An employee receiving benefits is generally not eligible. However, a “fact and circumstances” test can be applied to compare the educational versus service aspects of the student’s relationship with the University. The University will treat the following two categories of employees as eligible for the student FICA exemption despite receipt of employee benefits: 1) full time students whose normal work schedule is not 21 or more hours per week, and 2) employees with the following titles: Graduate Assistant, Student Aide. Other student employees receiving employee benefits are generally treated as subject to FICA withholding.