F-1 to H-1B employees: Are your FICA and Medicare payroll taxes correct?

By Courtney H. New

Foreign nationals who have recently received a degree and are working pursuant to a period of Optional Practical Training (“OPT”) in F-1 non-immigrant status (as well as employees in J-1, M-1 or Q nonimmigrant status) are generally not subject to Social Security or Medicare tax withholding under the Federal Insurance Contributions Act (“FICA”).

How long does the FICA exemption last for F-1 students?

Once a foreign national is present in the U.S. in F-1 status for five years or more, the FICA exemption generally no longer applies as they are then considered resident aliens subject to Social Security and Medicare tax withholding. Any part of a calendar year in F-1 status counts as a full year for this purpose. For example, if an F-1 student who began studying for an undergraduate degree in September 2011 and graduated in June 2015 would complete five years in F-1 status on December 31, 2015.

In addition, when a foreign national’s immigration status changes from F-1 status to another status, the foreign national is no longer exempt from FICA tax withholding.

What does this mean for my F-1 employees who will be in H-1B status soon?

The FICA withholding for any F-1 employees working on OPT who are making the switch to H-1B non-immigrant status will need to be adjusted. Beginning on October 1, 2016 (or the effective date of their change to H-1B status) you should start withholding FICA taxes from their wages and begin paying the employer’s portion of the tax.

Employers are responsible for identifying these foreign national employees and withholding FICA taxes from their wages immediately upon their status change. These employees will then be included on the employer’s next quarterly employment tax return.
The members of the Nixon Peabody Immigration team are available to your answer questions. Please contact any of the following:

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