Top 10 Form W-2 reporting questions for 2018
## Contents

| FAQ 1 | When is “retirement plan” required to be checked in Form W-2, box 13? | 2 |
| FAQ 2 | How is taxable group-term life insurance provided to former employees reported on Form W-2? | 3 |
| FAQ 3 | How are employer-reimbursed moving expenses reported on Form W-2? | 4 |
| FAQ 4 | Is there a dollar threshold at which Forms W-2 are not required? | 5 |
| FAQ 5 | How do we report nonqualified deferred compensation paid to a deceased employee’s survivor? | 5 |
| FAQ 6 | Are we required to report wages and benefits made available to terminated or retired employees on Form W-2 or Form 1099-MISC? | 5 |
| FAQ 7 | If we withheld too little Social Security/Medicare (FICA) for the year, can we deduct the difference from federal income tax withholding for Form W-2 and Form 941 reporting purposes? | 6 |
| FAQ 8 | Can we charge employees for replacement Forms W-2/W-2c? | 6 |
| FAQ 9 | What do we do if employees do not have their Social Security Numbers at the time we are required to issue or file Forms W-2? | 6 |
| FAQ 10 | Can we report in box 2, federal income tax withheld amounts employees paid to us by personal check? | 7 |
2018 Form W-2 reporting –
Top 10 most frequently asked questions

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2018 Form W-2 FAQs at a glance

1. Box 13, Retirement plan, is required to be checked when the employee is an active participant in a defined contribution (e.g., a 401(k) plan) or a defined benefit plan.
2. You are not required to withhold FICA tax from the value of taxable group-term life insurance provided to former employees. Show the taxable amount in boxes 1, 3 (up to the wage limit) and 5. In box 12, show the taxable group-term life with Code C, the Social Security tax owed with Code M and the Medicare tax owed with Code N. Report the amounts shown in Code M and N as a credit on Form 941, line 9.
3. Effective with expenses incurred on and after January 1, 2018, you are required to report relocation payments as taxable wages in Form W-2, boxes 1, 3 (up to the Social Security wage limit, and 5. An exception applies to members of the U.S. Armed Forces.
4. If you were required to withhold Social Security, Medicare or federal income taxes from wages, the IRS generally requires that you issue a Form W-2 to the employee and file a copy with the Social Security Administration.
5. Nonqualified deferred compensation paid to a beneficiary is reported on Form 1099-MISC in box 3.
6. Wages are reported on Form W-2, whether they are paid in anticipation of or subsequent to employment.
7. It is a risky practice to rob from federal income tax to pay FICA.
8. The IRS does not prohibit you from charging employees for a replacement copy of the Form W-2, but check with your wage-hour advisor first.
9. If you don’t have a Social Security Number for an employee, show “applied for” or “000-00-0000” and don’t use an Individual Taxpayer Identification Number (ITIN).
10. You generally cannot report in Form W-2, box 2 federal income tax that an employee paid to you with a personal check.

By popular request, the following are the Form W-2 reporting most frequently asked questions (FAQs) posed to our Ernst & Young LLP payroll and employment tax professionals for tax year 2018.

FAQ 1 When is “retirement plan” required to be checked in Form W-2, box 13?
FAQ 2 How is taxable group-term life insurance provided to former employees reported on Form W-2?
FAQ 3 How are employer-reimbursed moving expenses reported on Form W-2?
FAQ 4 Is there a dollar threshold at which Forms W-2 are not required?
FAQ 5 How do we report nonqualified deferred compensation paid to a deceased employee’s survivor?
FAQ 6 Are we required to report wages and benefits made available to terminated or retired employees on Form W-2 or Form 1099-MISC?
FAQ 7 If we withheld too little Social Security/Medicare (FICA) for the year, can we deduct the difference from federal income tax withholding for Form W-2 and Form 941 reporting purposes?
FAQ 8 Can we charge employees for replacement Forms W-2/W-2c?
FAQ 9 What if employees do not have their Social Security Numbers at the time we are required to issue or file Forms W-2?
FAQ 10 Can we report in box 2, federal income tax withheld, amounts employees paid to us by personal check?
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Continued

**FAQ 1:** When is “retirement plan” required to be checked in Form W-2, box 13?

Box 13, *Retirement plan*, must be checked when the employee is an active participant in a defined contribution (e.g., a 401(k) plan) or a defined benefit plan other than a nonqualified deferred compensation or IRC §457(b) plan.

The IRS explains that generally, employees are considered active participants if covered by (1) a defined benefit plan for any tax year that they are eligible to participate, or (2) a defined contribution plan for any tax year that employer or employee contributions (or forfeitures) are added to their accounts. The chart below is included on page 30 of the *2018 General Instructions for Forms W-2 or W-3* (IRS Notice 87-16, 1987-1 C.B. 446; IRS Notice 98-49, 1998-2 C.B. 365; IRC §219(g)(5); IRS Pub. 590-A, Contributions to Individual Retirement Arrangements (IRAs).)

**Form W-2 box 13, Retirement plan checkbox decision chart**

<table>
<thead>
<tr>
<th>Type of plan</th>
<th>Conditions</th>
<th>Check retirement plan box?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Defined benefit plan (for example, a traditional pension plan)</td>
<td>Employee qualifies for employer funding into the plan, due to age/years of service even though the employee may not be vested or ever collect benefits.</td>
<td>Yes</td>
</tr>
<tr>
<td>Defined contribution plan (for example, a 401(k) or 403(b) plan, a Roth 401(k) or 403(b) account, but not a 457 plan)</td>
<td>Employee is eligible to contribute but does not elect to contribute any money in this tax year.</td>
<td>No</td>
</tr>
<tr>
<td>Defined contribution plan (for example, a 401(k) or 403(b) plan, a Roth 401(k) or 403(b) account, but not a 457 plan)</td>
<td>Employee is eligible to contribute and elects to contribute money in this tax year.</td>
<td>Yes</td>
</tr>
<tr>
<td>Defined contribution plan (for example, a 401(k) or 403(b) plan, a Roth 401(k) or 403(b) account, but not a 457 plan)</td>
<td>Employee is eligible to contribute but does not elect to contribute any money in this tax year, but the employer does contribute funds.</td>
<td>Yes</td>
</tr>
<tr>
<td>Defined contribution plan (for example, a 401(k) or 403(b) plan, a Roth 401(k) or 403(b) account, but not a 457 plan)</td>
<td>Employee contributed in past years but not during the current tax year under report.</td>
<td>No (even if the account value grows due to gains in the investments)</td>
</tr>
<tr>
<td>Profit-sharing plan</td>
<td>Plan includes a grace period after the close of the plan year when profit sharing can be added to the participant’s account.</td>
<td>Yes, unless the employer contribution is purely discretionary and no contribution is made by end of plan year</td>
</tr>
</tbody>
</table>
FAQ 2: How is taxable group-term life insurance for former employees reported on Form W-2?

Taxable group-term life insurance is reported on Form W-2 in boxes 1, 3 (up to the wage limit) and 5, whether employees are active or terminated. Federal income tax withholding is not required. If the taxable group-term life insurance was provided to an employee during a period subsequent to termination or retirement, the employer is not required to withhold Social Security/Medicare (FICA). When FICA tax is not withheld from group-term life insurance provided to a former employee, in Form W-2, box 12, show the taxable group-term life with Code C, the Social Security tax owed with Code M and the Medicare tax of 1.45% owed with Code N. (2018 General Instructions for Forms W-2 and W-3, page 10.) (Additional Medicare Tax of 0.9% owed on the group-term life insurance, if applicable, is not reported on Form W-2.)

The amounts reported in Codes M and N are shown as a credit on Form 941, line 9.

When Form W-2, box 12, Codes M and N have dollar amounts, the former employee is required to pay those taxes and any Additional Medicare Tax owed with the federal Form 1040. This provision does not apply in situations where the employee received taxable group-term life insurance while a current employee but the employer failed to withhold the FICA. This provision also does not apply to taxable dependent group-term life insurance under IRC §132(e).

If the employer fails to withhold FICA tax for current employees' taxable group-term life or from taxable dependent group-term life for current or former employees, it is liable to pay these taxes on behalf of employees (subject to gross-up).
FAQ 3: How are employer-reimbursed moving expenses reported on Form W-2?

If the moving expenses were incurred through December 31, 2017:

Employer payment of employees’ qualified moving expenses is excluded from taxable income for federal income tax (FIT), federal income tax withholding (FITW) and federal unemployment insurance (FUTA) purposes.

Examples of qualified/nontaxable moving expenses include:

- The cost of transporting household goods and personal items from the old residence to the new residence (using the most direct route)
- Up to 30 days of temporary storage expense (immediately following the move from the old residence and before moving to the new residence)
- Travel expense from the old residence to the new (includes mileage and lodging but not meals)
- Mileage reimbursement from the old residence to the new in excess of $0.18 per mile for 2018 (IRC §217(b)(1); IRS Notice 2018-03.)

Examples of nonqualified/taxable moving expenses include:

- Meal expenses while traveling from the old residence to the new
- Pre-move house-hunting trips
- Lost security deposits
- Real estate transaction costs reimbursed to an employee when selling the former residence or purchasing the new residence
- Security deposits or costs to break a lease at the former residence

Taxable moving expense reimbursements are reported in Form W-2, boxes 1, 3 and 5. Nontaxable moving expense reimbursements paid directly to the employee are reported in Form W-2, box 12, Code P. (2018 General Instructions for Forms W-2 and W-3, page 11; IR-2018-190 and Notice 2018-75.)

Examples of items reportable in Form W-2, box 12, Code P, include:

- Lodging expenses reimbursed directly to the employee for travel from the old residence to the new
- Mileage reimbursement for travel from the old residence up to $0.18 per mile (for 2018)
- Van line and temporary storage charges paid by the employee and reimbursed by the employer

If the moving expenses were incurred on and after January 1, 2018:

Under the Tax Cuts and Jobs Act (TCJA), reimbursements for moving expenses made to employees or paid directly to third parties for expenses incurred on and after January 1, 2018, and through December 31, 2025, are included in wages subject to FIT, FITW, FICA and FUTA. An exception to this provision applies to members of the Armed Forces on active duty moving pursuant to a military order and incident to a permanent change of station. (TCJA §11048.)
FAQ 4: Is there a dollar threshold at which Forms W-2 are not required?

There is no de minimis exemption from the requirement to file Forms W-2. The IRS states that “employers must file a Form W-2 for wages paid to each employee from whom: (1) income, Social Security, or Medicare taxes were withheld, or (2) income tax would have been withheld if the employee had claimed no more than one withholding allowance or had not claimed exemption from withholding on Form W-4, Employee’s Withholding Allowance Certificate. In addition, every employer engaged in a trade or business that pays remuneration for services performed by an employee, including noncash payments, must furnish a Form W-2 to each employee even if the employee is related to the employer.” (IRS Reg. §31.6051-1; Form W-2 reporting instructions, (rev. 2018).)

FAQ 5: How do we report nonqualified deferred compensation paid to a deceased employee’s survivor?

- **Form W-2.** Distributions of nonqualified deferred compensation paid to the beneficiaries of employees after death, whether in the year of death or in subsequent years, are not reported in Form W-2, box 1.

  In the year of death, amounts vested in the plan (i.e., no longer subject to substantial risk of forfeiture) are reported in Form W-2, boxes 3 and 5. If vesting occurs in the year after death, vested nonqualified deferred compensation amounts are not reported on Form W-2 in boxes 3 and 5.

  Nonqualified deferred compensation payments are not subject to Social Security or Medicare in the year following death, whether or not the employee (or the employee’s beneficiary) is vested in the plan.

- **Form 1099-MISC.** If a distribution of nonqualified deferred compensation is made after death, either in the year of death or subsequent years, the amount subject to federal income tax is reported in box 3 of Form 1099-MISC, Miscellaneous Income. (Rev. Rul. 86-109, 1986-2 CB 196; 2018 Instructions for Forms 1099-R and 5498, page 2.)

  Generally, amounts treated as wages are reported on Form W-2 in the tax year the payments are made or the benefits provided regardless of the status of the employment relationship (pre-employment, retired, laid off).

FAQ 6: Are we required to report wages and benefits made available to terminated or retired employees on Form W-2 or Form 1099-MISC?

Amounts paid to individuals in anticipation of employment, such as sign-on bonuses, are wages subject to FIT, FITW, FICA and FUTA, and as such are reported on Form W-2, not Form 1099-MISC.

Similarly, wages and taxable benefits provided to former employees, such as taxable group-term life insurance for retirees, are reported on Form W-2 and not Form 1099-MISC.

Generally, amounts treated as wages are reported on Form W-2 regardless of the status of the employment relationship (pre-employment, retired, laid off) and are required to be included on Form W-2 for the calendar year the payments are made or the benefits provided. (TAM 9718001; IRS Reg. §§31.3121(a)-1(i), 31.3401(a)-1(a)(5); Rev. Rul. 78-176, 1978-1 CB 303; Rev. Rul. 2004-109, 2004-50.) Also see FAQ 2.
Nonqualified deferred compensation distributions paid after death, whether in the year of death or in subsequent years, are reported on Form 1099-MISC, box 3 rather than Form W-2, box 1.

**FAQ 7: If we withheld too little FICA tax during the year, can we deduct the difference from federal income tax withholding for Form W-2 and Form 941 reporting purposes?**

It is a risky practice to rob from federal income tax withholding to pay FICA. The tax regulations establish two separate requirements for the withholding of federal income tax and FICA tax. Additionally, employers are separately liable for the employer’s share of FICA taxes.

Should the IRS audit the withholding tax records and discover that you made this transfer between FITW and FICA withholding, it will find that you have not complied with the requirements to correctly withhold employee FICA taxes under IRC §3102(a), to correctly withhold federal income tax under IRC §3402(a) or to pay the correct employer FICA under IRC §3111. Consequently, the IRS can hold the employer liable for the FICA and FITW shortages (IRC §§3102(b), 3111 and 3301) plus interest and penalties.

**FAQ 8: Can we charge employees for replacement Forms W-2/W-2c?**

The IRS states that employers are not prohibited from collecting fees for furnishing additional copies of Forms W-2 provided that “payors have timely furnished correct Forms W-2 and 1099 to employees and other payees and have satisfied their statutory obligations under the Code.” *(IRS Memorandum, SCA 1997-013)*

Before considering the practice, however, it is important to consult your wage and hour law advisor because certain involuntary payroll deductions are restricted. *(29 CFR § 531.37)*

**FAQ 9: What if employees do not have their Social Security Numbers at the time we are required to issue or file Forms W-2?**

According to the 2018 General Instructions for Forms W-2 and W-3, for paper Forms W-2 without a Social Security Number (SSN) because the Social Security card has not yet been issued, the words “applied for” should be used as the SSN. However, when filing electronically, the Social Security Administration (SSA) instructs employers to enter zeroes.

In Publication 1915, *Understanding Your Individual Taxpayer Identification Number*, the IRS states that it generally will not issue an Individual Taxpayer Identification Number (ITIN) to aliens who have met the SSA’s evidence requirements for work authorized under the immigration law but who are experiencing delays in securing an SSN caused by the SSA’s procedures.

The IRS instructs employers in this case to keep documentation to show that the failure to supply a payee’s SSN was caused solely by the SSA’s procedures for issuing SSNs to aliens. (Note that the SSA routinely verifies the name and SSN as reported on Forms W-2; if an ITIN appears in box A of Form W-2, the SSA treats it as an invalid SSN.)
FAQ 10: Can we report in box 2, federal income tax withheld, amounts employees paid to us by personal check?

It depends on the circumstances. If the employee is writing a personal check to cover the federal income tax withholding on a taxable noncash fringe benefit and the check is given to you at the time the withholding obligation is incurred, the IRS would likely have no issue with this practice. (IRS Reg. §31.6205-1.)

If the employee is giving you a check to cover federal income tax payment shortages that accumulated throughout the year, accepting the personal check could put the employer at risk.

The IRC requires that federal income tax liabilities be paid throughout the year, not all at once at the end of the year. Hence, an employee's options for paying the current year’s federal income tax liability are (1) federal income tax withholding based on the Form W-4 and/or (2) quarterly estimated tax payments. To avoid an estimated tax penalty, individual taxpayers generally must pay in 90% of their current-year federal income tax liability or 100% of their prior year’s federal income tax liability by the end of the calendar year through withholding and/or estimated tax payments (the final estimated tax payment generally is due on January 15 of the subsequent year). (IRC §6654(d)(1)(B) and (C).) Thus, in the case of an individual who has income from which tax is withheld (i.e., wages) and income from which tax has not been withheld (e.g., dividends, bank interest), penalties can be avoided by increasing federal income tax withholding based on the Form W-4 and/or by making quarterly estimated tax payments.

Supporting the intent of the law is a statement in Publication 15, Circular E, Employer’s Tax Guide, rev. 2018, instructing employers not to “accept any withholding or estimated tax payments from employees in addition to withholding based on their Form W-4.” In other words, the IRS instructs employers that they should not accept personal checks from employees, the purpose of which is to assist employees in evading IRS late payment penalties.

Regardless of whether a business is in the practice of accepting personal checks for federal income tax withholding, employees should be notified that the business will not accept personal checks to remedy federal income tax withholding shortfalls throughout the year. This notification should include information concerning the employees’ options of adjusting their federal income tax withholding throughout the year, the IRS would likely rely on IRC §7206, which provides that any taxpayer who “willfully makes and subscribes any return, statement, or other document ... which he does not believe to be true and correct as to every material matter” shall be guilty of a felony. Upon conviction thereof, the consequence to corporations for the felony offense of assisting employees in evading estimated tax penalties by falsifying the amount of federal income tax withheld is a fine of up to $500,000 ($100,000 in the case of individual employers), not more than three years’ imprisonment, or both, plus the costs of prosecution.

There is some indication that the IRS might also rely on IRC §6701 and §7201. The extent to which the IRS would be successful in imposing these additional sanctions is arguable; however, because the IRS would probably rely on them, it is relevant to take them into consideration:

- IRC §6701. This section applies to anyone who aids or assists in preparing a return understating a tax liability. The penalty is $1,000 or, in the case of a return relating to the liability of a corporation, $10,000. Whether this provision can be stretched to apply to the evasion of the estimated tax penalty may be questionable.

- IRC §7201. This section imposes a sanction against “any person who willfully attempts in any manner to evade or defeat any tax imposed” by the Internal Revenue Code. Such person is guilty of a felony and, upon conviction, subject to a fine of not more than $100,000 ($500,000 in the case of a corporation), imprisonment of up to five years, or both, plus the costs of prosecution. Whether this provision applies to the estimated tax penalty may be questionable.

Regardless of whether a business is in the practice of accepting personal checks for federal income tax withholding, employees should be notified that the business will not accept personal checks to remedy federal income tax withholding shortfalls throughout the year. This notification should include information concerning the employees' options of adjusting the Form W-4 and/or making quarterly estimated federal income tax payments. Copies of your organization's policy against accepting personal checks for federal income tax withholding shortfalls can be distributed with the 2018 Forms W-2 or mailed separately together with a blank 2019 Form W-4.
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