

Introduction to Section 218

State and Local Coverage



SSA
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Social Security Coverage

Social Security coverage for employees of State and local governments can be determined in different ways:

1. States and their political subdivisions may extend FICA coverage to services performed by their employees through voluntary Section 218 Agreements;
2. Effective for services performed after July 1, 1991, all State and local government employees, with certain exceptions, not covered under a Section 218 Agreement or by a public retirement system are mandatorily covered by FICA.



The History of Section 218

1950: On January 1, 1951 **Section 218 of the Social Security Act was enacted**, allowing States, on a voluntary basis, to extend Social Security coverage to governmental employees not covered under a retirement system by entering into a Section 218 agreement.

1954: The Social Security Amendments of 1954 expanded the Act to **allow States to extend Social Security coverage to State and local government employees who were members of public retirement system** (except police officers and firefighters) provided coverage was authorized by the State and approved through a voluntary referendum of all retirement system members.

1956: The Social Security Amendments of 1956 **authorized certain States to divide a retirement system** and cover only those members who voted for coverage—and all new members.

1965: In 1965, **Medicare was legislated** and employees covered by Social Security were automatically covered for Medicare Hospital Insurance (HI). This included employees covered under a Section 218 Agreement.

1983: Before 1983, States could terminate Social Security coverage for employees covered under the State's Section 218 Agreement. The 1983 Social Security Amendments rescinded this provision of the Act and **prohibited States from terminating coverage** beginning April 20, 1983.



1985: Medicare coverage became mandatory for State and local government employees hired or rehired after March 31, 1986.

1986: Prior to 1987, SSA and the States were responsible for collecting Social Security and Medicare payments from governmental employers. Effective January 1, 1987, responsibility shifted to the IRS. Now, governmental employers pay Social Security and Medicare taxes directly to the IRS.

1990: On July 2, 1991 Social Security and Medicare coverage became mandatory for State and local governments employees who are not members of a public retirement system and who are not covered under a Section 218 Agreement.

1994: On August 16, 1994 all States were authorized to extend Social Security and Medicare-only coverage to police and firefighters covered by a retirement system. Prior to this date, only certain States could cover the services of these positions.

2004: Social Security Protection Act of 2004 enacted, requiring public employers to disclose to newly hired public employees that they are earning retirement benefits not covered by social security, closing the Government Pension Offset loophole and allowing Kentucky and Louisiana the option to provide a divided retirement system.



Basic Section 218 Concepts

Coverage under a Section 218 Agreement is voluntary. Thus, the initiative for securing coverage under Section 218 lies with the State.

- There **must be authority under Federal and State law** (the State's enabling legislation) to enter into a Section 218 Agreement and to extend coverage under the State's original 218 Agreement. The types and extent of coverage provided under a 218 Agreement must be consistent with Federal and State laws.
- **Additional coverage is provided by Modifications** to the original Agreement. Each modification, like the original agreement, is a legal document.
- Coverage is extended to groups of employees known as **"coverage groups"** – not on an individual basis.
- Generally, an agreement may be **modified to increase the extent of coverage**, but **not to reduce the amount of coverage**.
- With certain exceptions, once coverage is provided, it continues and **cannot be terminated**.
- Employees covered under a Section 218 Agreement have the **same coverage** and benefit rights as employees mandatorily covered for Social Security and Medicare.



The State Social Security Administrator

- SSA's Regulations 20 CFR 404.1204 requires each State to designate a State Social Security Administrator to act for the State in administering that State's Section 218 Agreement.
- Serves as a bridge between State and local government employers and Federal agencies, including SSA and IRS.
- Administers and maintains the Section 218 Agreement that governs voluntary Social Security and Medicare coverage by State and local government employers in each State.
- Prepares Section 218 modifications to include additional coverage groups, correct errors in other modifications, identify additional political subdivisions that join a covered retirement system, and obtain Medicare coverage for public employees whose employment relationship with a public employer has been continuous since March 31, 1986.
- Provides SSA with notice and evidence of the legal dissolution of covered state or political subdivision entities.



- Conducts referenda for Social Security and Medicare coverage for services performed by employees in positions under a public retirement system.
- Resolves coverage and taxation questions associated with Section 218 Agreements and modifications with SSA and IRS.
- Advises public employers on Social Security and Medicare and tax withholding matters.
- Provides information to State and local public employers as appropriate and in accordance with the State's enabling legislation, policies, procedures and standards.
- Provides advice on Section 218 optional exclusions applicable to the State and/or individual modifications, and advice on State and local laws, rules, regulations and compliance concerns.
- Maintain physical custody of the State's Section 218 Agreement, modifications, dissolutions and intrastate agreements.



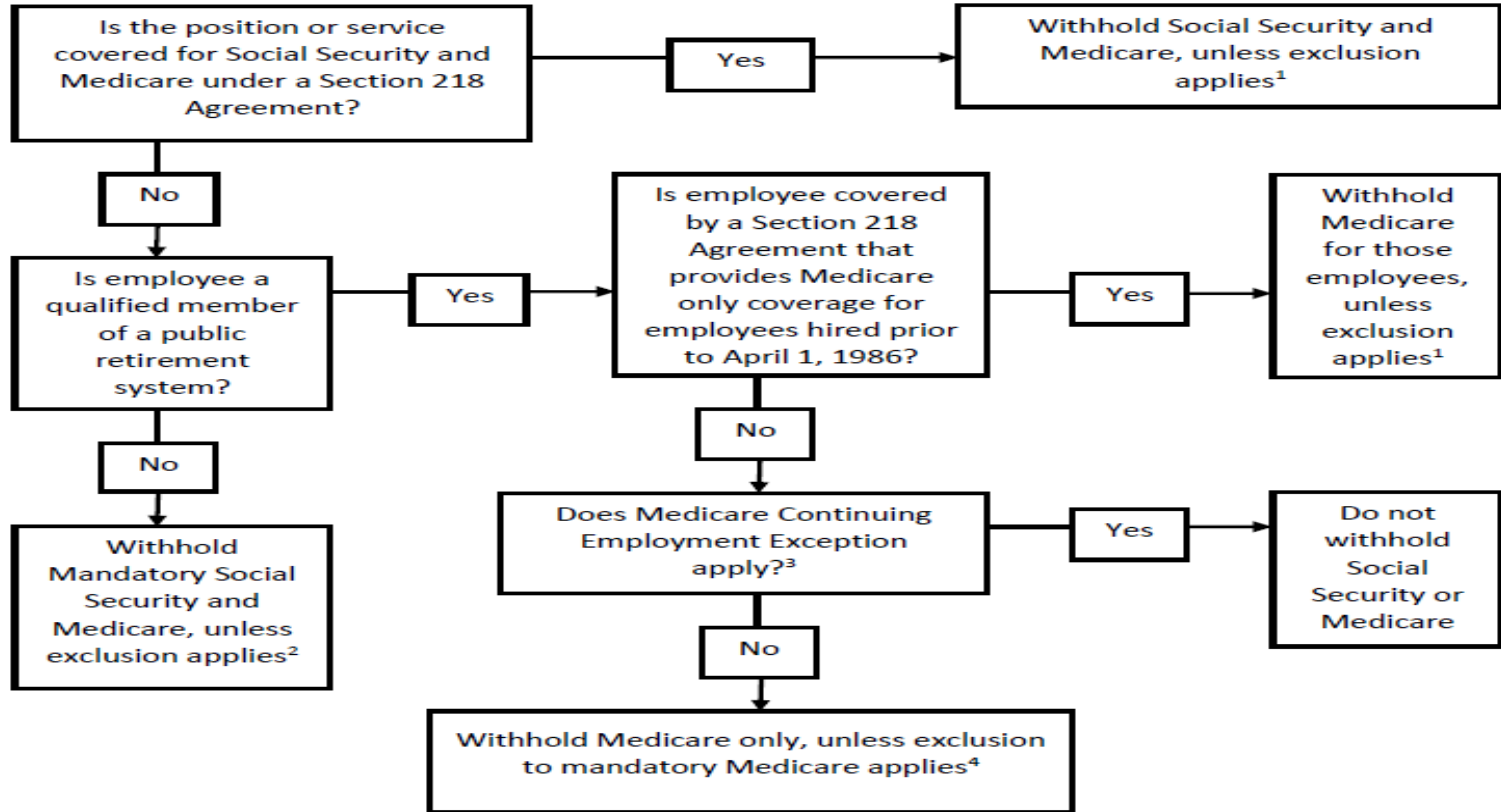
How Are Employees Covered Under A Section 218 Agreement?

Section 218 Agreements cover positions not individuals. That is, coverage is extended to groups of employees known as “coverage groups” – not to particular individuals.

If the position is covered for Social Security and Medicare under a Section 218 Agreement, then any employee filling that position is subject to Social Security and Medicare taxes.



Determining Social Security and Medicare Coverage of State and Local Government Employees



- 1: Section 218 Required and Optional Exclusions (see [SL 30001.356-.357](#))
- 2: Exclusions from mandatory Social Security and Medicare (see [SL 50001.560](#))
- 3: Medicare Continuing Employment Exception (see [SL 50001.520](#))
- 4: Services Not Subject to Mandatory Medicare Coverage (see [SL 50001.530](#))

NOTE: This chart is only a guide and is not a substitute for discussing difficult Section 218 coverage situations with your State Social Security Administrator or FICA taxation issues with the IRS. The above SL references are found in the [State and Local Coverage Handbook](#).



Types of Coverage Under Section 218

State and local government employees are brought under a Section 218 Agreement in groups known as coverage groups. There are two basic coverage groups:

Absolute Coverage Groups & Retirement System Coverage Group

An **absolute coverage group**, under section 218(b)(5) (aka (b)(5) groups), consists of positions not under a retirement system at the time the modification is executed. (These positions remain covered even if they later come under a retirement system.) The State does not need consent of affected employees to establish an absolute coverage group. An absolute coverage group is also referred to as a non-retirement system coverage group or a Section 218(b)(5) coverage group or a (b)(5) coverage group.

A **retirement system coverage group**, under section 218(d) consists of positions for a particular entity under a particular retirement system. Coverage can be extended to positions under a retirement system only after a referendum has been held among employees in affected positions.



Required Exclusions From Voluntary Social Security Coverage

Required exclusions apply to voluntary Social Security coverage situations (coverage via a Section 218 Agreement) and should not be confused with the different set of exclusions that applies to mandatory Social Security and mandatory Medicare situations.

The following services are required to be excluded from Section 218 coverage:

1. Services performed by individuals hired to be **relieved from unemployment**.
2. Services performed in a hospital, home or other institution **by a patient or inmate** thereof as an employee of a state or local government employer;
3. Services performed by an employee **on a temporary basis in case of fire**, storm, snow, earthquake, flood or other similar emergency;
4. **Transportation services** covered under Section 210(k) of the Act;
5. Services that would be excluded if performed for a private employer because the work is **not defined as employment under Section 210(a)** of the Act (e.g., non-resident aliens with F-1, J-1, M-1, and Q-1 visas).



Remember:

Required exclusions apply only to **voluntary** Social Security coverage situations (via a Section 218 Agreement) and should **not** be confused with the different set of exclusions that applies to mandatory social security situations.



Optional Exclusions From Voluntary Social Security Coverage

When a State elects to extend Section 218 coverage to a coverage group, it has the option of excluding or covering certain services and positions. It may exercise these exclusions on a statewide basis or selectively by coverage groups. Optional exclusions not taken when the coverage group is brought under the agreement are covered.

1. **Agricultural labor**, but only those services that would be excluded if performed for a private employer;
2. **Elective positions**;
3. **Election workers and election officials** whose pay in a calendar year is less than the amount mandated by law, unless the Section 218 Agreement covers election workers;
4. **Positions compensated solely by fees** that are subject to SECA (Self-Employment Contributions Act), unless the Section 218 Agreement covers these services;
5. **Part-time positions**;
6. **Students** enrolled and regularly attending classes at the school, college or university where they are working.



Exclusions from Mandatory Social Security Coverage

1. Service for relief from unemployment.
2. Service in a hospital, home or other institution by an inmate or patient.
3. Emergency service, e.g., services rendered on a temporary basis during a fire, storm, earthquake, etc. (Note that this exclusion does not refer to, for example, professional police and fire services.)
4. Non-resident aliens who have visas under Section 101(a)(15)(F1), (J1), (M1), or (Q1) of the Immigration and Nationality Act.
5. Services in positions compensated solely by fees that are subject to SECA (Self-Employment Contributions Act), unless the Section 218 Agreement covers these services.
6. Services performed by a student enrolled and regularly attending classes at the school, college or university where they are working, unless the Section 218 Agreement covers student services.
7. Services performed by an election worker or official whose pay in a calendar year is less than the amount mandated by law, unless the Section 218 agreement covers election workers.
8. Services that would be excluded if performed for a private employer because it is not work defined as employment under Section 210(a) of the Social Security Act, unless the Section 218 Agreement covers certain agricultural services.



Remember:

Mandatory Social Security coverage applies to members not covered under a Section 218 Agreement or by a qualifying public retirement system.



Retirement System Defined

Retirement System: A pension, annuity, retirement or similar fund maintained by a State or local government that provides a retirement benefit to the employee that is comparable to the benefit provided under Social Security. A retirement system can include a group annuity policy purchased by a State or local government from a private insurance company to provide retirement benefits.

State and local laws determine if a position is under a retirement system.

Generally, you are considered a member of a retirement system if you can qualify for benefits under that system based on your present job.

In order to qualify the system must provide retirement benefits substantially equivalent to the retirement portion of Social Security. The public employer retirement system must be a qualifying retirement system as defined by 26 CFR §31.3121(b)(7)-2 and Revenue Procedure 91-40.



Types of Retirement Systems

Defined Contribution Plan

A defined contribution plan provides an individual account for each participant and provides benefits based solely on the amount contributed to the participant's account, and any income, expenses, gains or losses, etc. that may be allocated to that participant's account. See IRC section 414(i). A defined contribution plan that satisfies the definition of a retirement system must provide for an allocation to the employee's account of at least **7.5 percent of the employee's compensation** during any period under consideration. This plan could be established under IRC sections 401(a), 403(b) or 457, for example. Contributions from both the employer and the employee may be used to make up the 7.5 percent.

Defined Benefit Plan

A defined benefit plan is any plan other than a defined contribution plan. A defined benefit plan determines benefits on the basis of a formula, generally based on age, years of service and salary level. A defined benefit retirement system that can be an alternative to social security **provides for a retirement benefit to the employee that is comparable to the benefit provided by the social security part of FICA**. Apply the formulas in Revenue Procedure 91-40 and the IRS regulations to determine whether a defined benefit retirement system provides a sufficient benefit. **Generally, a plan meets the requirement if the benefit under the system is at least 1.5 percent of average compensation during an employee's last three years of employment**, multiplied by the employee's number of years of service.



Majority Vote Referendum

- Under this type of referendum, social security and Medicare coverage may be extended to employees in positions covered by a retirement system only if a majority of the eligible employees vote in favor of such coverage.
- A majority of all of the eligible employees under the system, rather than a majority of the eligible employees voting, must favor coverage.
- All states are authorized by federal law to use the majority vote referendum procedures.
- Although the referendum itself is a state matter, federal law requires that the following conditions be met:
 1. Eligible employees are given not less than 90 days notice of the referendum,
 2. An opportunity to vote is given and limited to eligible employees,
 3. The referendum is held by secret ballot,
 4. The referendum is supervised by the Governor (or his/her designee),
 5. A majority of the retirement system's eligible employees voted for coverage, and
 6. The referendum procedures must be conducted under the direction of the State Social Security Administrator.



Divided Vote Referendum

States authorized to use the divided retirement system to extend coverage may use either of two voting procedures:

- (1) polling all eligible members and dividing the system into two parts, with each member placed based on his or her choice, or
- (2) subdivide the retirement system into two parts or systems based on individual members' choices and then conduct a majority vote referendum among the employees who chose coverage.

Most States prefer procedure (1).

- The conditions for a divided vote referendum are the same as those given for the majority vote referendum with one exception. The ballots are not secret, because the individuals choosing coverage must be identified. New hires will be included in the coverage group.
- Employees who become members of the retirement system after the referendum (division) date and before the execution of the modification extending coverage to the retirement system coverage group may be given a coverage choice at the discretion of the state.
- The referendum procedures must be conducted under the direction of the State Social Security Administrator.



The Modification

Additional coverage may be extended through a modification of the State's agreement. In general, a modification can only expand the scope of coverage, not restrict it. Before April 20, 1983, a State could terminate a section 218 Agreement with respect to any specified coverage group, but since that date coverage cannot be terminated.

Each modification, like the original Agreement, is binding upon all parties.



The Modification Process

The State is responsible for preparing Section 218 modifications to include additional coverage groups, correct errors in other modifications, identify additional political subdivisions that join a covered retirement system, and obtain Medicare coverage for public employees whose employment relationship with a public employer has been continuous since March 31, 1986. These processes may include conducting referenda for Social Security and Medicare coverage for services performed by employees in positions under a public retirement system.

The Regional Office (RO) reviews the modification. In this process, the Regional 218 Specialist completes a technical review of the modification. The Regional Office of General Counsel provides legal clearance. Then the modification is executed on behalf of the Commissioner of Social Security.



The RO reviews the modification and approves (or denies) coverage:

Step I. The Regional 218 specialist reviews the modification and verifies that the modification number has not been used before.

Step II. The Regional specialist reviews their collection of modifications, the summaries of agreements and the State's agreement and verifies that the coverage group represented in the modification does not conflict with existing coverage.

Step III. The Regional specialist reviews the modification packet for completeness, clarity and accuracy.



Step IV. The Regional specialist photocopies all modification material, including the envelope

Step V. The Regional specialist requests an OGC legal review of the modification. The Regional specialist should follow-up with OGC in 30 days if a response has not been received.

Step VI. Upon OGC approval, the Regional specialist prepares a notification of approval letter and hand delivers the entire modification packet to the Regional Commissioner, or designated official. The Regional Commissioner must sign the approval letter and all original copies of the modification.

Important: SSA decisions are FINAL. A modification must meet the requirements of Federal and State laws. If it does not, the State must either withdraw the modification or the modification will be disapproved by the Commissioner and all copies will be returned to the State with an explanation for the disapproval.



Step vii. After final approval by the Regional Commissioner, the RO specialist will:

1. Date the approval letters and make copies.
2. File an ORIGINAL signed modification packet in a locked fire-proof file cabinet.
3. Send the other original signed modification to the State Administrator.
4. Fax a copy of the modification to the IRS at (855)243-4014.



Final Thought

Section 218 is merely a channel through which government employees can obtain the same Social Security and Medicare coverage and benefit rights as employees in the private sector.