

Social Security Withholding Issues

History of Social Security Coverage

- **Social Security Act enacted 1935**
- **Covered only private sector employees**
- **Act amended in 1950 to cover public employees not covered by a public retirement plan**
- **Act amended in 1954 to cover employees covered by public retirement plan**

Section 218 of the Social Security Act

- **Allows for agreements between the federal government and the states to provide Social Security coverage to certain public employees**
- **Each state decides, subject to federal law, which groups to cover under its §218 agreement with the federal government**

Section 218 of the Social Security Act

- Missouri has §218 Agreement with SSA
- MO political subdivisions (school districts) enter into “modifications” to the §218 agreement to get SS coverage for its public employees
- All MO school districts should have entered into a modification (or “mod”)

PSRS and Social Security

- PSRS referendum in 1956
- Members voted against SS coverage
- PSRS members not covered by SS even if district included in SS per §218 mod

Section 218 of the Social Security Act

- SSA regs require state to name a State Social Security Administrator
- Tom Sadowski, Division of Accounting, Missouri Office of Administration is the State Social Security Administrator
 - Tom.Sadowski@oa.mo.gov or 218agreement@oa.mo.gov
- Vandee DeVore, Division of Accounting, Missouri Office of Administration
 - Vandee.DeVore@oa.mo.gov or 218agreement@oa.mo.gov.
 - 573-751-3289

Section 218 of the Social Security Act

Duties of State Social Security Administrator:

- With SSA and IRS determines what positions must have SS withheld;
- Maintains Section 218 Agreement and its modifications;
- Provides copies of all modifications to political subdivisions with explanations of any changes;
- Corrects errors in modifications or identifies additional political subdivisions that join a covered retirement system;
- Serves as an information liaison for federal, state and local agencies in the education and training of public employers;
- Provides guidance to the state's governmental employers on issues related to Section 218 coverage; and

Previous Guidance

- **5/30/97 OA letter to school districts: don't withhold SS if PSRS contributions withheld**
- **10/1/97 OA letter to school districts: don't withhold SS if PSRS contributions withheld**
- **7/23/01 OA letter to school districts: don't withhold SS if PSRS contributions withheld**
- **1/06 SSA letter to OA: PSRS members excluded from SS**

Change in SSA/OA Opinion

- **Districts that signed §218 “mods” before 8/13/84: only PSRS members in certain positions covered by PSRS before 8/13/84 exempt from SS**
- **Districts that signed §218 “mods” after 8/12/84 (apparently only 4): all PSRS members exempt from SS**

Change in SSA/OA Opinion

- **Statutory definition of “teacher” before 8/13/84: “teacher, teacher-secretary, substitute teacher, supervisor, principal, supervising principal, superintendent or assistant superintendent, nurse, or librarian and who shall be duly certificated under the law governing the certification of teachers . . .”**
- **Statutory definition of “teacher” on or after 8/13/84: “any person who shall be employed by any public school on a full-time basis and who shall be duly certificated under the law governing the certification of teachers . . .”**

Change in SSA/OA Opinion

OA descriptions of positions

- **Teacher:** A position in which the occupant is required by State law, on the date the District executed its §218 agreement, to have a Missouri teaching certificate, or, if the position was created after the District executed its §218 agreement, on the date such new position was created. If the State does not initially require the occupant of a position to have a Missouri teaching certificate but later imposes such requirement, then that position will not be a “teacher” position for §218 purposes and it will remain covered by §218 social security. If a District imposes a teacher certification requirement on a position for which State law does not require teacher certification, then that position will not be considered a “teacher” position for §218 purposes and it will remain covered by §218 social security. For example, State law does not require “hall monitors,” “study hall monitors,” “teacher’s aides,” “instructional aides,” “coaches,” etc., to have Missouri teaching certificates, thus, individuals occupying such positions are not “teachers” for §218 purposes and are covered by §218 social security.

Change in SSA/OA Opinion

OA descriptions of positions

- **Teacher-Secretary**: A position whereby the individual works part-time in a “teacher” (as defined above), and part-time as a secretary. The term “Teacher-Secretary” does not include “substitute teachers” who also work “part-time as “secretaries” because the job duties and qualifications for a “teacher” are substantially different than those for a “substitute teacher.” Thus, the term “Teacher-Secretary” would include only “part-time teachers” who also work as “part-time secretaries.”
- **Substitute Teacher**: A position whereby the occupant stands in for a teacher on a temporary basis. Individuals in this position are required to have a Missouri “substitute certificate of license to teach.”
- **Supervisor**: A position whereby the occupant is certificated and is employed in the supervision of instruction, or in teaching and in the supervision of instruction.

Change in SSA/OA Opinion

OA descriptions of positions

- **Principal, Supervising principal, Superintendent or assistant superintendent:** Individuals in these positions are required by State law to have both teaching certificates and administrator certificates.
- **Nurse:** A position requiring Missouri Registered Nurses (RN) certification. This would not include LPN positions because the LPN position is a different position with different State certification requirements and legally restricted nursing duties; LPNs may only work under the direction of a doctor or RN. When the PSRS statutes were written, State law specified that it was illegal to apply the term “nurse” to anyone other than a “registered” nurse.”
- **Librarian:** A position requiring Missouri librarian certification. The Missouri Department of Elementary and Secondary Education (DESE) currently refer to the librarian position as “Library Media Specialist” and to the certification as “Library Media Specialist Certification.”

Change in SSA/OA Opinion

- Questions about specific positions should be addressed to OA. PSRS's best guess may not be accurate and OA and SSA make the final determination
- Prospective change only beginning 7/1/09
- **SS withholding on certain PSRS members:**
 - some portion of 1,563 office administration employees
 - some portion of 1,948 instructional aides
 - all nurses that are not RNs
 - possibly all 280 transportation employees
 - possibly 10 food service employees
 - possibly 52 maintenance employees
 - and some portion of 6,280 "other" employees

Change in SSA/OA Opinion

- PSRS has argued to OA and SSA the pre-8/84 definition was interpreted liberally to allow nearly all, if not all, certificated employees to be members of PSRS
- Change in statute in 8/84 was technical change to reflect liberal interpretation
- Argument was not successful

Change in SSA/OA Opinion

- **OA sent letters to school districts outlining the SSA/OA change in position on October 22.**

Effect of SS on PSRS Benefits

- Section 169.070.9 and .10 state that PSRS members who contribute to social security with "*state and local tax funds*" pay 2/3 the normal contribution amount and receive 2/3 the benefit for those years that they contribute to social security.
- Therefore, absent a statutory change, the new SSA/OA position will result in certain PSRS members for whom SS is withheld contributing 2/3 the normal contribution rate to PSRS and receiving 2/3 the normal benefit amount for those years that they contribute to social security.

Effect of SS on PSRS Benefits

- **Again, even if OA/SSA determine that a PSRS covered position (e.g., coach) is required to contribute to Social Security, the person will continue to be a PSRS member**
- **Social Security contributions have no affect on PSRS membership eligibility**

Responses

- **Legal**
 - **debate §218 (Federal law) (has not been successful)**
 - **debate PSRS eligibility prior to 1984 (has not been successful)**
 - **possible federal lawsuit from PSRS members**

Responses

- **Political**
 - Letter to Missouri Representatives and Senators in Congress and SSA
 - Letter to OA, Governor, Representatives and Senators in the General Assembly, Gubernatorial candidates
 - Letter drafted by PSRS for associations

Responses

- Member Responses
 - Contact Tom Sadowski, OA Director of Accounting, at 573-751-4013 or Vandee DeVore at 573-522-5863 or 218agreement@oa.mo.gov
 - Feel free to urge SSA to stand up for Missouri educators and fight this decision by the Social Security Administration and IRS.
 - Ask them to delay this decision until at least July 1, 2010
 - Call your state representative, state senator, Governor, Senator Kit Bond and Senator Claire McCaskill
 - Feel free to ask them to intervene to delay this decision and explore ways to resolve this issue
 - Ask them to contact SSA and IRS to allow school districts to modify their 218 agreements to reflect current practice
 - Find your Legislators by simply entering your full zip+4 code at http://www.senate.mo.gov/lookup/leg_lookup.aspx

Questions?