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James Paille • Dec. 12, 2013

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Having to run payroll for foreign nationals seems like a remote possibility for most payroll service providers. And it's true that only 14% of Thomson Reuters tax and accounting software users who process payroll reported paying foreign nationals in a recent survey.

But payroll is a fluid business. Your client could hire a foreign national tomorrow, and you'd need to be prepared. I've found that it pays to think about situations like this before they happen.

As a rule of thumb, foreign nationals who are employed in the United States as employees are liable for federal and state income taxes. Usually, they're also liable for

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3. They must be “nonresident aliens” for tax purposes.

Most FICA-exempt foreign nationals are only exempt for their first five years of residence. In their sixth calendar year, they become “resident aliens” for tax purposes and are no longer FICA exempt if their presence will exceed 183 days in that year.

While these rules do not apply 100% of the time, they cover the vast majority of foreign nationals. Let's take a look at how the rules play out in a specific hypothetical situation:

Your client's employee entered the United States as an F-1 or J-1 student for the very first time on 12/01/09. They are a non-resident alien for five years (2009, 2010, 2011, 2012, and 2013) so long as they remain either F-1 or J-1.

On 1/1/2014, you will probably need to start withholding FICA (unless you are a university, which would bring other rules into play). Other rules apply to J-1 nonstudents. The residency rules of section 7701(b) generally consider nonstudents in J-1 status as nonresidents for two calendar years out of the current seven calendar years in the United States. In their third calendar year, they become resident aliens and are then liable for FICA taxes if their presence will exceed 183 days in that year.

It's also important to note that yet another set of rules applies to foreign nationals who have made two or more visits to the United States in F, J, M, or Q status. These employees will become resident aliens sooner and will lose their FICA exemption.

There are also a number of immigration and tax treaty rules and procedures that you'll need to understand and consider to make sure that you're properly accepting the services of foreign nationals and taxing them appropriately. It's not a simple thing, but there are tools that can help you keep up.

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