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BENEFITS, GENERALLY

Becoming Insured for Benefits

A worker must be “insured” under the Social Security program for the purpose of the worker or worker’s family members receiving Social Security retirement, survivors, or disability insurance benefits. The number of Social Security credits a worker has earned throughout his or her lifetime determines whether or not that worker is insured for the purpose of receiving benefits. Social Security credits are earned by working at a job covered by Social Security.¹ A person who is not insured will not receive any benefits based on his or her earnings.

The number of credits a worker has earned determines whether or not the worker is insured. The number of credits a worker earns in any given year is calculated based on the worker’s total earnings throughout the year. Prior to 1978, earnings were reported every three months, and credits were known as “quarters” of coverage. A worker would receive a quarter of coverage if the worker earned at least \$50 in a calendar quarter.² A worker would have been considered fully insured if he or she worked at least 40 quarters (ten years). After 1978, a worker earns credits based on total earnings throughout the year, without regard to quarters worked, up to a maximum of four credits each calendar year.³ The effect of this rule is that a worker may have to work only one quarter per year if his or her wages during that quarter equal or exceed the wages necessary to acquire four credits. The amount of earnings needed for one credit is determined by the Commissioner of the Social Security Administration (SSA) using a formula that reflects a national percentage increase in average wages.⁴ In 2020, the amount of earnings it takes to earn one Social

1. SOC. SEC. ADMIN., SOCIAL SECURITY HANDBOOK 2019 § 212.1 (2019) [hereinafter HANDBOOK].

2. *Id.* § 214.

3. *Id.* § 212.4.

4. *Id.* § 212.3.

Security credit is \$1,410.⁵ The wages necessary to earn credits are the same for self-employed as for other wage earners.

To be eligible to receive Social Security retirement benefits, most people need to have earned at least 40 credits during their lifetime.⁶ This rule applies to anyone born in 1929 or later. The number of credits necessary to be considered fully insured is lower for people born before 1929 (39 credits in 1928, 38 credits in 1927, etc.). Having more than 40 credits does not increase the amount of benefits. Credits can be earned for work done by the employee at any age, including after normal retirement age. The credits earned in any given year become part of a worker's permanent earnings record and do not expire.

A worker's eligibility for disability benefits depends on the age the worker was when he or she became disabled. If the worker became disabled at age 31 years or older, the worker will generally need at least 20 credits in the ten years (40 quarters) immediately before becoming disabled. This is referred to as the 20/40 rule.⁷ If the worker became disabled before age 24, he or she will need six credits in the three years (12 quarters) before becoming disabled. If the worker became disabled between ages 24 and 30, he or she will need credits for at least one-half of the calendar quarters during the period of time between turning 21 and becoming disabled.

Summary of Requirements for Insured Status⁸

<i>Monthly Social Security benefits can be paid to:</i>	<i>If the worker:</i>
A retired worker age 62 or over	Is fully insured.
A disabled worker under full retirement age	Would have been fully insured had he or she turned 62 in the month the disability began. The worker also needs 20 credits out of the 40 calendar quarters ending with the quarter that the disability began (20/40). Note: This does not apply in the case of a person disabled because of blindness.

5. *How You Earn Credits*, SOC. SEC. ADMIN., Pub. No. 05-10072 (2020), <https://www.ssa.gov/pubs/EN-05-10072.pdf>.

6. HANDBOOK, *supra* note 1, § 204.2.

7. *Id.* § 207.

8. *Id.* § 211.1.

<p>A worker disabled before age 31 who does not have sufficient credits to meet the 20/40 requirement</p> <p>Note: Special insured status may apply to a worker who becomes disabled after age 31, provided the individual had a period of disability prior to age 31.</p>	<p>Has credits in one-half of the quarters elapsing in the period after the quarter of reaching age 21 and up to and including the quarter of becoming disabled. The worker needs at least six credits, or, if disabled in a quarter before turning 24, he or she needs six credits in the 12 calendar-quarter period, including the quarter in which the disability began, immediately before becoming disabled.</p>
<p>Worker disabled due to blindness</p>	<p>Has at least one credit for each year after reaching age 21 (or 1950, if later) up to the year the qualifying credit is earned. Must have a minimum of six credits.</p>
<p>The spouse of a person entitled to disability or retirement insurance benefits, if he or she is (A) age 62 or over (may be divorced spouse in certain circumstances); or (B) caring for a child who is under age 16 or a child under a disability that began before the child reached age 22 and was entitled to benefits</p>	<p>If fully insured for disability benefits, whichever is applicable as shown above.</p>
<p>A widow(er) (may be surviving divorced spouse in certain circumstances) age 60 or over</p>	<p>Is fully insured.</p>
<p>A widow(er) and, under certain conditions, a surviving divorced spouse, if the widow(er) or divorced spouse is caring for a child entitled to benefits if the child is under 16 or disabled</p>	<p>Is either fully or currently insured.⁹</p>
<p>A disabled widow(er) (may be surviving divorced spouse in certain circumstances) age 50 or over but under age 60 whose disability began within a certain period</p>	<p>Is fully insured.</p>
<p>A dependent, unmarried child of a deceased worker if the child is (A) under 18; (B) under 19 and a full-time elementary or secondary school student; or (C) age 18 or over and under a disability that began before the child reached age 22</p>	<p>Is either fully or currently insured.</p>
<p>The dependent parents age 62 or over of the deceased worker:</p>	<p>Is fully insured.</p>

9. Currently insured status is all that is required for certain benefits. Currently insured status requires the worker to have at least six Social Security credits during the full 13-quarter period prior to the quarter that the worker died, became entitled to disability benefits, or became entitled to retirement benefits. 20 C.F.R. § 404.120 (2019).

Who Is Covered by Social Security

Social Security credits are earned by working in employment covered under the Social Security Act (the Act). The Act covers most types of employment in the United States. Approximately nine out of ten workers in the United States are employees or self-employed people covered by the retirement, survivors, and disability insurance plans.¹⁰ However, there are different tax rates for employees and self-employed workers under the Act. Before an employer can know how (or if) to tax the earnings of his or her employees, the employer needs to know what category that employee falls into.¹¹

Covered Employment

A worker is considered an employee for the purposes of receiving Social Security if the worker falls into one of three categories: (1) the worker meets the “common-law test,” (2) the worker is an officer of a corporation, or (3) the worker is in a specific occupation.¹²

A worker is an employee under the common-law test if the employer “has the right to tell you what to do, how, when, and where to do your job.”¹³ It is important to note that the employer does not need to actually tell the employee what to do, he or she just needs to have the right.¹⁴ It is of no effect what the relationship is labeled; the substance of the relationship, as determined by the factors, is what counts. An employer is someone who has the right “to control workers in performing their services, including hiring, firing, and supervising.”¹⁵ In making the determination of whether or not an employer has “control” of a person, the SSA does not look at any one factor but carefully evaluates all facts taken together. The factors applied include the following:

- Is the worker required to follow instructions at work?
- Is the worker trained on how to do his or her job?
- Are the worker's services integrated into the business (is the job the worker does critical to the success of the business?)
- Does the worker personally perform his or her job functions?
- Is there an ongoing working relationship?
- Does the worker have set hours at work?

10. HANDBOOK, *supra* note 1, § 108.

11. I.R.S. Pub. 15-A, Employer's Supplemental Tax Guide (Supplement to Pub. 15, Employer's Tax Guide) (2020), <https://www.irs.gov/pub/irs-pdf/p15a.pdf>.

12. HANDBOOK, *supra* note 1, § 800.

13. *Id.* § 802.1.

14. *Id.* § 802.2.

15. *Id.* § 801.

- Does the worker work full time?
- Does the worker work on the premises?
- Does the worker submit reports to the employer?
- Is the worker paid at intervals specified by the employer?
- Are the worker's work-related expenses paid by the employer?
- Is the worker provided with tools and materials for the purpose of the job?
- Does the employer provide all necessary facilities to do the job?
- Does the employer have the right to fire the worker?
- Does the worker have the right to end the working relationship at any time?

If a worker does not meet the common-law test, he or she is likely to be considered an independent contractor, and the employer does not need to withhold Social Security taxes from that person.¹⁶ Factors that suggest that the worker is an independent contractor, rather than an employee, include the following:

- Is the worker in a position to realize a profit or suffer a loss from his or her services?
- Does the worker work for multiple entities?
- Does the worker make his or her services available to the public?
- Did the worker agree to be employed for a specific contract period?¹⁷

As stated earlier, corporate officers are typically considered employees, unless the officer performs no services or minor services and is not entitled to receive any pay.¹⁸ Corporate directors are considered to be self-employed, unless they also perform services outside of the scope of director, in which case, for the purposes of those services only, they are considered employees.¹⁹

If a worker does not meet the common-law test, he or she may nevertheless be treated as an employee for tax purposes. These employees are considered "statutory employees." The Act deems the following types of workers statutory employees:

1. Certain drivers who distribute beverages (other than milk), or meat, vegetable, fruit or bakery products; or who pick up and deliver laundry or dry cleaning;
2. Certain life insurance sales agents;
3. Certain workers who work at home on materials or goods that are supplied by the employer;

16. I.R.S. Pub. 15-A, *supra* note 11.

17. 20 C.F.R. § 4004.1008 (2019); HANDBOOK, *supra* note 1, §§ 804–823.

18. I.R.S. Pub. 15-A, *supra* note 11.

19. HANDBOOK, *supra* note 1, § 824.

4. Certain traveling salespeople.²⁰

If a worker falls into one of these categories, to be considered a statutory employee, the worker must also meet the following requirements:

1. The contract must state or imply that the worker must perform substantially all of the services;
2. The worker has not invested in the equipment or property used to perform the services (other than transportation);
3. There is a continuing work relationship.²¹

Self-Employment

Unlike employees, whose employers deduct Social Security taxes from their paychecks, self-employed workers must report their earnings and pay their taxes directly to the IRS. Self-employed workers must pay 12.4 percent Social Security tax on up to \$137,700 (in 2020) of their net earnings and a 2.9 percent Medicare tax.

Self-employed workers earn credits the way that employees do,²² and the wages necessary to earn credits are the same as for employees. For the purposes of Social Security, self-employment income is based on “net earnings from self-employment” derived from a “trade or business” covered by the law.²³ The definition of “trade or business” for Social Security purposes is the same as the term “trade or business” for income-tax purposes pursuant to section 162 of the Internal Revenue Code. Although “trade or business” is not specifically defined in the Act or Internal Revenue Code, court opinions have provided a set of guidelines, set forth in the Social Security Handbook as follows:

1. You started and carried on the activity in good faith with the intention of making a profit or producing income;
2. You carried on the activity regularly, with a continuity of operation, a continual repetition of transactions, or a regularity of activities;
3. The activity is your regular occupation or calling that you carry on to make a living or a profit; and
4. You present yourself to the public as being engaged in the settling of goods and/or services.²⁴

20. I.R.S. Pub. 15-A, *supra* note 11.

21. *Id.*

22. HANDBOOK, *supra* note 1, § 215.

23. *Id.* § 1100.3.

24. *Id.* § 1101.2. Note that the Social Security Handbook goes on to state that “any of these factors standing alone is not enough to show that a trade or business exists, but not all the factors need be present.” *Id.*

These guidelines, along with the facts of each case, determine whether the activity is a trade or business.²⁵ A self-employed worker includes a sole proprietor, partner, independent contractor, real estate agent, or direct seller. Other examples of self-employed workers include architects, professional engineers, accountants, funeral directors, lawyers, dentists, physicians, veterinarians, chiropractors, and optometrists. It is interesting to note that the illegality of a business does not prevent its being considered a covered self-employment business. For example, professional gamblers and bookies are considered self-employed and are required to report their income and pay self-employment taxes on their earnings.²⁶

Who Is Not Covered by Social Security

While Social Security covers most types of employment in the United States, there are some types of employees that are excluded from coverage.

Federal employees hired prior to 1984 were covered under the Civil Service Retirement System, and no Social Security taxes were paid on these workers' earnings prior to 1984. In 1984, the Federal Employees Retirement System was introduced, which did require the payment of Social Security taxes.²⁷ So, federal workers who were hired prior to 1984 are not covered by Social Security, unless the worker switched coverage to the Federal Employees Retirement System, in which case he or she is covered by Social Security. Workers hired before 1984 who did not switch over are still covered under the Medicare program. Employees of state and local governments are not covered if they are a member of the state/local government's retirement system and they are not covered by a voluntary federal/state Social Security agreement.²⁸

Certain agricultural and domestic work may not be covered; there are special rules for agricultural labor,²⁹ work done in connection with waterways, ditches, etc.,³⁰ processing or packaging of agricultural commodities,³¹ domestic

25. The Social Security Handbook provides guidance on many categories of self-employment, including partnerships (§§ 1107–12), writers (§ 1113), nonprofessional fiduciaries, such as executors or administrators (§ 1114), trust beneficiaries and/or executors or administrators that operate trade or business (§§ 1115–16), mail carriers (§ 1117), landowners and sharefarmers (§§ 1118–22), newspaper vendors (§ 1123), employees of foreign governments (§ 1124), state and local government employees (§ 1125), public office holders (§ 1126), federal court reporters (§ 1127), members of certain religious groups and church employees (§§ 1128–33, 1136), crews on fishing boats (§ 1134), and real estate agents and direct sellers (§ 1135).

26. HANDBOOK, *supra* note 1, § 1104.

27. Soc. Sec. Admin., *Federal Government Employment*, SSA.GOV, <https://www.ssa.gov/planners/retire/fedgovees.html> (last visited Apr. 11, 2020).

28. HANDBOOK, *supra* note 1, § 108.

29. 20 C.F.R. § 4004.1018 (2019); HANDBOOK, *supra* note 1, § 901.

30. *Id.* § 912.

31. *Id.* § 913.

service in private homes,³² services performed by students for schools, colleges, or universities,³³ work done by an employee for an employer that is not in the course of the employer's trade or business,³⁴ certain types of family employment,³⁵ delivering and distributing newspapers,³⁶ work for nonprofit and religious institutions,³⁷ crews on fishing boats,³⁸ and employment for foreign governments.³⁹

Many railroad employees participate in the Railroad Retirement Program, which provides benefits that are similar, but not identical, to Social Security benefits. The Railroad Retirement Program was established in the 1930s and provides retirement, survivor, unemployment, and disability benefits to railroad employees and their dependents and survivors, including benefits for divorced spouses. The programs are similar in that they generally calculate benefits in the same manner. Divorced spouses are generally eligible for benefits under the same conditions as Social Security. However, there is a distinction between "Tier I" and "Tier II" benefits; Tier II benefits are provided to current spouses and survivors, but Tier II benefits are only available to divorced spouses if this is included in the property settlement agreement.⁴⁰ Tier II benefits are similar to a private pension.

While family employment is typically covered by Social Security, there are certain exclusions. An exclusion applies if the worker is

- A. a child under age 18 working for his or her parents;
- B. a child age 18 to 21 working for his or her parents, but not performing work in the course of the parent's trade or business;
- C. a husband working for his wife, but not performing work in the course of the wife's trade or business;
- D. a wife working for her husband, but not performing work in the course of the husband's trade or business; or
- E. a parent working for his or her son or daughter performing
 - (1) domestic service in or about the private home of their son or

32. *Id.* §§ 915–20.

33. *Id.* §§ 921–23.

34. *Id.* §§ 924–25.

35. *Id.* §§ 926–28.

36. *Id.* §§ 929–30.

37. *Id.* §§ 931–35.

38. *Id.* § 936.

39. *Id.* § 937.

40. Kevin Whitman, *An Overview of the Railroad Retirement Program*, 68(2) SOC. SEC. BULLETIN 44–45 (2008).

daughter⁴¹ or (2) work not in the course of their son or daughter's trade or business.

This exclusion does not apply to work performed by a family member for either a corporation (or an association classifiable as a corporation) or a partnership, unless the child is under age 18 and is a child of each of the partners.⁴²

Payment of Benefits

A worker becomes entitled to receive monthly retirement insurance benefits when he or she turns 62 years old and is fully insured. All workers must file an application with the SSA to begin receiving retirement insurance benefits. If the worker is receiving disability insurance benefits in the month before full retirement age, disability benefits end and retirement insurance benefits automatically begin.⁴³

A worker must wait until his or her full retirement age to receive the full retirement benefits rate. See chart on page 00 for how to determine a worker's full retirement age. The retirement insurance amount is called the primary insurance amount and, generally speaking, is calculated based on total earnings averaged over the number of years worked.⁴⁴ A worker who has reached age 62 but has not yet reached his or her full retirement age is still eligible to receive a reduced benefit. It is important to note that this reduced benefit rate will continue to be paid after the worker reaches retirement age. A worker's retirement insurance benefits end upon his or her death; however, survivor benefits may be payable to the worker's spouse and children. These benefits are explained more fully in the following chapters.

Earnings as a Basis for Benefits

The number of credits a worker earns during his or her lifetime determines eligibility for benefits. That worker's earnings, as reported to the SSA, determine the amount of retirement, survivors, or disability benefits the worker is entitled to. An increase in the worker's average earnings will increase the amount of the insurance benefit that is ultimately paid.

The worker's earnings record reflects the total earnings reported by the worker or the worker's employer to the SSA for each period earnings were reported.⁴⁵ Employers must file Reports of Earnings for their employees

41. For exceptions to this rule, see HANDBOOK, *supra* note 1, § 927.

42. *Id.* § 928.

43. *Id.* § 301.2.

44. *Id.* § 700.1. For a full explanation of how PIA is computed, see *id.* §§ 700–22.

45. *Id.* § 1403.

annually. Employers are defined as “any person or organization for whom a person performs any service and receives payment as an employee.” Employers deduct Social Security taxes from the worker’s wages at a certain rate up to a maximum amount. An employee’s tips are included in determining wages.⁴⁶ Self-employed workers must pay the self-employment tax quarterly to the IRS. The IRS reports the earnings to the SSA for posting to the self-employed worker’s earnings record.⁴⁷ For self-employed workers, the SSA is obligated to look behind the form of self-employment tax returns that a person has filed; it is the actual receipt of self-employment income, not the reporting or payment of taxes thereon, that is the crucial test for establishing the amounts reported.⁴⁸

Primary Insurance Amount

The SSA uses a figure known as the primary insurance amount (PIA) to determine the amount of the monthly benefit both the worker and the worker’s dependents and survivors are entitled to. In its simplest form, the PIA is the dollar amount that a worker would receive if the worker elected to begin receiving retirement benefits at normal retirement age. The amount of benefits paid to a worker’s dependents will be calculated as a percentage of that worker’s PIA. Essentially, the PIA is based on the average taxable earnings over the number of years worked. This average represents a monthly benefit designed to replace the loss of the worker’s income.⁴⁹ The PIA calculation is different for workers who first became eligible for benefits before 1979 and for those who first became eligible for benefits in 1979 or later. The SSA follows the following steps in computing the PIA of a person who was born after 1979:

1. Identify the worker’s average indexed monthly earnings (AIME);
2. Find the benefit formula in effect for the year the worker became eligible for benefits (the year he or she reached age 62 or became disabled before age 62);
3. Apply that benefit formula to the AIME to determine the PIA;
4. Apply any automatic cost-of-living increase that became effective after the year the worker reached age 62.⁵⁰

There is a limit on the amount of annual earnings that can be used to calculate a worker’s AIME and PIA. The below chart demonstrates the maximum earnings for each year from 2001 to 2020.⁵¹

46. *Id.* § 1405.2.

47. *Id.* § 1414.2.

48. *Hernandez v. Secretary of Health, Education, and Welfare*, 307 F. Supp. 338 (D.P.R. 1969).

49. HANDBOOK, *supra* note 1, § 700.1.

50. *Id.* §§ 700–22.

51. *Id.* § 714.