

Davidson v. Henkel: A Painful Reminder of the Special Rules for FICA Taxation of Nonqualified Deferred Compensation

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Although the compensation that an employer pays to an employee is generally subject to FICA taxation at the time the compensation is paid, there are special rules for the FICA tax treatment of amounts payable under nonqualified deferred compensation plans (such as long-term incentive plans or supplemental retirement programs). These rules affect both the timing, and the amount, of the FICA tax that is payable with respect to such compensation (which tax is typically shared 50/50 by the employer and employee). In the recent case of Davidson v. Henkel, an employer that failed to heed those special rules found itself facing the prospect of bearing substantial additional tax liability – for both the employer's and the employee's share of the FICA tax. This case serves as a reminder that employers should pay special attention to when amounts deferred under a nonqualified plan are properly taken into account as "wages" for purposes of FICA taxes.

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