

The IRS has established guidelines regulating the salary deferral process. It applies to compensation that employees earn in one year but not paid until a future year and is considered nonqualified deferred compensation. This guide does not apply to qualified plans (such as a 401(k) plan) or to a section 403(b) plan or a section 457(b) plan.

Employees must submit advance notice of the deferral election to the employer before the first day of work for the fiscal year. The general rule under the law is that an employee who wants to defer payment of compensation earned in one year but paid in a later year must make an irrevocable election to do that **before beginning employment** of that year.

Generally, the IRS regulations require the following:

- The “Salary Deferral Authorization Form” **must be submitted before the first day of employment** for the fiscal year for which the employee is paid. Payroll must receive this form prior to the first day of employment for the year in which to start salary deferral. There is no need to sign a new form each year to continue deferring pay.
- The employees who work less than 12 months, but “elect” to be paid over 12 months, **must submit advance written notice** to avoid any additional tax of 20% from one year to the next.
- Once the decision is made to elect salary deferral, that decision is **irrevocable** for the fiscal year. Employees may **not** opt out of salary deferral during the year and may **not** opt in after the year has started.
- In order to stop salary deferral for the following fiscal year, employees must complete the “Salary Deferral Revocation Form”. Payroll must receive this form prior to the first day of employment for the year in which to stop salary deferral, otherwise salary deferral will continue indefinitely. (This enables employees to continue salary deferral from year to year without completing a new form each year.)
- The Salary Deferral Authorization Form or Salary Deferral Revocation Form must be received timely by the Payroll department located in Human Resources. Forms submitted to campus departments other than Payroll will not constitute compliance with these guidelines since only Payroll may enter or revoke salary deferral.
- Accelerated payments are prohibited and will not be distributed earlier than a) the university’s schedule of payrolls, b) the date the employee becomes disabled, or c) the employee’s separation from service.

In the event of a separation from service before the end of the 12-month payment period, employees will be paid the accumulated amount earned from the beginning of the 12-month pay period until the date of their separation from service. A lump sum payment will be issued within ninety days pending final approval.

'Separation from service' is defined as when "the employee dies, retires, or otherwise has a termination of employment with the employer. The employment relationship is treated as continuing intact while the individual is on military leave, sick leave, or other bona fide leave of absence if the period of such leave does not exceed six months, or longer, so long as the individual retains a right to reemployment with the service recipient under an applicable statute or by contract" (Section 1.409A-1(h) of the Treasury Regulations).

The Salary Deferral Guidelines, Salary Deferral Authorization Form, and Salary Deferral Revocation Form are all available on the SIUE website at [www.siu.edu/humanresources/forms/](http://www.siu.edu/humanresources/forms/). There is also a Salary Deferral Calculator, available on the website, which may be used to determine your approximate gross pay after deferral.

Salary Deferral forms may be completed on-line and e-mailed as an attachment to Payroll Officers - Rasheda King at [rajohns@siue.edu](mailto:rajohns@siue.edu) or Robyn Courtway at [rcourtw@siue.edu](mailto:rcourtw@siue.edu). The Frequently Asked Questions (FAQ's) section will address the most common questions about the program.

Employees must include an e-mail address and Payroll will confirm the receipt of a Salary Deferral Authorization Form or Salary Deferral Revocation Form. The lack of a confirmation e-mail will indicate that the appropriate form was not received by Payroll and the deferral or revocation request will not be applied.

If you have questions about salary deferral, please contact Payroll at 650-2190.