

TABLE 2: TAX AND REPORTING TREATMENT OF ATTORNEYS' FEES			
NATURE OF PAYMENT	INCOME TAXABLE TO EMPLOYEE?	REPORTING TO EMPLOYEE	REPORTING TO ATTORNEY
Total Employer Payment Made Jointly to Attorney and Employee			
Court award designating attorneys' fees ¹	Yes, attorneys' fees generally taxable to employee	Attorneys' fees reportable in Box 3 of 1099-MISC (not W-2). Treas. Reg. §1.6041-1(f)(1) and (2)	Box 14 of 1099-MISC in the amount of the check payable jointly to employee and attorney. Treas. Reg. §1.6045-5(a) and (f), Ex. 1
Court award without designation of attorneys fees	Yes, attorneys' fees generally taxable to employee	The total award is reportable, as appropriate (on 1099-MISC or W-2)	Box 14 of 1099-MISC in the amount of the check payable jointly to employee and attorney. Treas. Reg. §1.6045-5(a) and (f), Ex. 1
Settlement payment	Yes, attorneys' fees generally taxable to employee	To be determined based on the nature of the action. If wages, reportable on W-2; if not wages, reportable in Box 3 of 1099-MISC	Box 14 of 1099-MISC in the amount of the check payable jointly to employee and attorney. Treas. Reg. §1.6045-5(a) and (f), Ex. 1
Separate Employer Payments to Employee and to Attorney for Attorneys' Fees			
Court award designating attorneys' fees ¹	Yes, attorneys' fees generally taxable to employee	Attorneys' fees reportable in Box 3 of 1099-MISC (not W-2), even though paid separately to attorney. Treas. Reg. §1.6041-2(f)(1) and (2).	Box 14 of 1099-MISC to attorney in the amount of check payable to attorney. Treas. Reg. §1.6045-5(a) and (f), Ex. 3
Court award without designating attorneys' fees	Yes, attorneys' fees generally taxable to employee	The total award is reportable, as appropriate (on 1099-MISC or W-2) even though attorneys' fees paid separately to attorney. Treas. Reg. §1.6041-1 (f)(1) and (2).	Box 14 of 1099-MISC to attorney in the amount of check payable to attorney. Treas. Reg. §1.6045-5(a) and (f), Ex. 3
Settlement payment	Yes, attorneys' fees generally taxable to employee	To be determined based on the nature of the action. If wages, reportable on W-2; if not wages, reportable in Box 3 of 1099-MISC	Box 14 of 1099-MISC to attorney in the amount of check payable to attorney. Treas. Reg. §1.6045-5(a) and (f), Ex. 3
Total Employer Payment to Employee			
Court award designating attorneys' fees ¹	Yes, attorneys' fees generally taxable to employee	Attorneys' fees reportable in Box 3 of 1099-MISC (not W-2). Treas. Reg. §1.6041-1(f)(1) and (2).	None. See, e.g., Treas. Reg. §1.6045-5(a), (d)(4), and (f), Ex. 4.
Court award without designation of attorneys' fees	Yes, attorneys' fees generally taxable to employee	The total award is reportable, as appropriate (on 1099-MISC, W-2).	None. See, e.g., Treas. Reg. §1.6045-5(a), (d)(4), and (f), Ex. 4.
Settlement payment	Yes, attorneys' fees generally taxable to employee	To be determined based on the nature of the action. If wages, reportable on W-2; if not wages, reportable in Box 3 of 1099-MISC	None. See, e.g., Treas. Reg. §1.6045-5(a), (d)(4), and (f), Ex. 4.
Total Employer Payment to Attorney			
Court award under fee-shifting statute designated as attorneys' fees ¹	Yes, attorneys' fees generally taxable to employee	Attorneys' fees reportable in Box 3 of 1099-MISC (not W-2). Treas. Reg. §1.6041-1 (f)(1) and (2).	Total amount of check reported on 1099-MISC, Box 14. Treas. Reg. §1.6045-5(a) and (d)(4).
Court award without designation of attorneys' fees	Yes, attorneys' fees generally taxable to employee	The total award is reportable, as appropriate (on 1099 or W-2).	Total amount of check reported on 1099-MISC, Box 14. Treas. Reg. §1.6045-5(a) and (d)(4).
Settlement payment	Yes, attorneys' fees generally taxable to employee	To be determined based on the nature of the action. If wages, reportable on W-2; if not wages, reportable in Box 3 of 1099-MISC	Total amount of check reported on 1099-MISC, Box 14. Treas. Reg. §1.6045-5(a) and (d)(4).
1 Workers rights statutes, such as Title VII, generally include fee-shifting provisions			
Source: IRS, Program Manager Technical Assistance, Income and Employment Tax Consequences and Proper Reporting of Employment-Related Judgments and Settlements, Oct. 22, 2008.			

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