

# Publication 15-B

## Employer's Tax Guide to Fringe Benefits

For use in **2023**

Volume 2 of 3



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# Group-Term Life Insurance Coverage

This exclusion applies to life insurance coverage that meets all the following conditions.

- It provides a general death benefit that isn't included in income.
- You provide it to a group of employees. See *The 10-employee rule*, later.
- It provides an amount of insurance to each employee based on a formula that prevents individual selection. This formula must use factors such as the employee's age, years of service, pay, or position.
- You provide it under a policy you directly or indirectly carry. Even if you don't pay any of the policy's cost, you're considered to carry it if you

arrange for payment of its cost by your employees and charge at least one employee less than, and at least one other employee more than, the cost of their insurance. Determine the cost of the insurance, for this purpose, as explained under Coverage over the limit, later.

Group-term life insurance doesn't include the following insurance.

- Insurance that doesn't provide general death benefits, such as travel insurance or a policy providing only accidental death benefits.
- Life insurance on the life of your employee's spouse or dependent. However, you may be able to exclude the cost of this insurance from the employee's wages as a de minimis benefit. See De Minimis (Minimal) Benefits, earlier in this section.

- Insurance provided under a policy that provides a permanent benefit (an economic value that extends beyond 1 policy year, such as paid-up or cash-surrender value), unless certain requirements are met. See Regulations section 1.79-1 for details.

**Employee.** For this exclusion, treat the following individuals as employees.

1. A current common-law employee.
2. A full-time life insurance agent who is a current statutory employee.
3. An individual who was formerly your employee under (1) or (2).
4. A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction and control.

***Exception for S corporation shareholders.***

Don't treat a 2% shareholder of an S corporation as an employee of the corporation

for this purpose. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but don't treat the benefit as a reduction in distributions to the 2% shareholder. For more information, see Revenue Ruling 91-26, 1991-1 C.B. 184.

**The 10-employee rule.** Generally, life insurance isn't group-term life insurance unless you provide it at some time during the calendar year to at least 10 full-time employees.

For this rule and the first exception discussed next, count employees who choose not to receive the insurance as if they do receive insurance, unless, to receive it, they must contribute to the cost of benefits other than the group-term life insurance. For example,

count an employee who could receive insurance by paying part of the cost, even if that employee chooses not to receive it. However, don't count an employee who chooses not to receive insurance if the employee must pay part or all of the cost of permanent benefits in order to obtain group-term life insurance. A permanent benefit is an economic value extending beyond 1 policy year (for example, a paid-up or cash-surrender value) that is provided under a life insurance policy.

***Exceptions.*** Even if you don't meet the 10-employee rule, two exceptions allow you to treat insurance as group-term life insurance.

Under the first exception, you don't have to meet the 10-employee rule if all the following conditions are met.

1. If evidence that the employee is insurable is required, it is limited to a

medical questionnaire (completed by the employee) that doesn't require a physical.

2. You provide the insurance to all your full-time employees or, if the insurer requires the evidence mentioned in (1), to all full-time employees who provide evidence the insurer accepts.
3. You figure the coverage based on either a uniform percentage of pay or the insurer's coverage brackets that meet certain requirements. See Regulations section 1.79-1 for details.

Under the second exception, you don't have to meet the 10-employee rule if all the following conditions are met.

- You provide the insurance under a common plan covering your employees and the employees of at least one other employer who isn't related to you.



- The insurance is restricted to, but mandatory for, all your employees who belong to, or are represented by, an organization (such as a union) that carries on substantial activities besides obtaining insurance.
- Evidence of whether an employee is insurable doesn't affect an employee's eligibility for insurance or the amount of insurance that employee gets.

To apply either exception, don't consider employees who were denied insurance for any of the following reasons.

- They were 65 or older.
- They customarily work 20 hours or less a week or 5 months or less in a calendar year.
- They haven't been employed for the waiting period given in the policy. This waiting period can't be more than 6 months.

**Exclusion from wages.** You can generally exclude the cost of up to \$50,000 of group-term life insurance coverage from the wages of an insured employee. You can exclude the same amount from the employee's wages when figuring social security and Medicare taxes. In addition, you don't have to withhold federal income tax or pay FUTA tax on any group-term life insurance you provide to an employee.

***Coverage over the limit.*** You must include in your employee's wages the cost of group-term life insurance beyond \$50,000 worth of coverage, reduced by the amount the employee paid toward the insurance. Report it as wages in boxes 1, 3, and 5 of the employee's Form W-2. Also, show it in box 12 with code "C." The amount is subject to social security and Medicare taxes, and you may, at your option, withhold federal income tax.

Figure the monthly cost of the insurance to include in the employee's wages by

multiplying the number of thousands of dollars of all insurance coverage over \$50,000 (figured to the nearest \$100) by the cost shown in Table 2-2. For all coverage provided within the calendar year, use the employee's age on the last day of the employee's tax year. You must prorate the cost from the table if less than a full month of coverage is involved.

**Table 2-2. Cost Per \$1,000 of Protection for 1 Month**

<b>Age</b>	<b>Cost</b>
Under 25 .....	\$ 0.05
25 through 29.....	0.06
30 through 34 .....	0.08
35 through 39 .....	0.09
40 through 44 .....	0.10

45 through 49 .....	0.15
50 through 54 .....	0.23
55 through 59 .....	0.43
60 through 64 .....	0.66
65 through 69 .....	1.27
70 and older .....	2.06

You figure the total cost to include in the employee's wages by multiplying the monthly cost by the number of months' coverage at that cost.

**Example.** Tom's employer provides Tom with group-term life insurance coverage of \$200,000. Tom is 45 years old, isn't a key employee, and pays \$100 per year toward the cost of the insurance. Tom's employer must include \$170 in Tom's wages. The \$200,000 of insurance coverage is reduced by \$50,000.

The yearly cost of \$150,000 of coverage is \$270 ( $\$0.15 \times 150 \times 12$ ), and is reduced by the \$100 Tom pays for the insurance. The employer includes \$170 in boxes 1, 3, and 5 of Tom's Form W-2. The employer also enters \$170 in box 12 with code "C."

***Coverage for dependents.*** Group-term life insurance coverage paid by the employer for the spouse or dependents of an employee may be excludable from income as a de minimis fringe benefit if the face amount isn't more than \$2,000. If the face amount is greater than \$2,000, the dependent coverage may be excludable from income as a de minimis fringe benefit if the excess (if any) of the cost of insurance over the amount the employee paid for it on an after-tax basis is so small that accounting for it is unreasonable or administratively impracticable.

***Former employees.*** When group-term life insurance over \$50,000 is provided to an employee (including retirees) after their

termination, the employee share of social security and Medicare taxes on that period of coverage is paid by the former employee with their tax return and isn't collected by the employer. You're not required to collect those taxes. You must, however, pay the employer share of social security and Medicare taxes. Use the Table 2-2, earlier, to determine the amount of additional income that is subject to social security and Medicare taxes for coverage provided after separation from service. Report the uncollected amounts separately in box 12 of Form W-2 using codes "M" and "N." See the General Instructions for Forms W-2 and W-3 and the instructions for your employment tax return.

***Exception for key employees.*** Generally, if your group-term life insurance plan favors key employees as to participation or benefits, you must include the entire cost of the insurance in your key employees' wages. This exception generally doesn't apply to church

plans. When figuring social security and Medicare taxes, you must also include the entire cost in the employees' wages. Include the cost in boxes 1, 3, and 5 of Form W-2. However, you don't have to withhold federal income tax or pay FUTA tax on the cost of any group-term life insurance you provide to an employee.

For this purpose, the cost of the insurance is the greater of the following amounts.

- The premiums you pay for the employee's insurance. See Regulations section 1.79-4T(Q&A 6) for more information.
- The cost you figure using Table 2-2.

For this exclusion, a key employee during 2023 is an employee or former employee who is one of the following individuals. See section 416(i) of the Internal Revenue Code for more information.

1. An officer having annual pay of more than \$215,000.
2. An individual who for 2023 is either of the following.
  - a. A 5% owner of your business.
  - b. A 1% owner of your business whose annual pay is more than \$150,000.

A former employee who was a key employee upon retirement or separation from service is also a key employee.

Your plan doesn't favor key employees as to participation if at least one of the following is true.

- It benefits at least 70% of your employees.
- At least 85% of the participating employees aren't key employees.
- It benefits employees who qualify under a set of rules you set up that don't favor key employees.



Your plan meets this participation test if it is part of a cafeteria plan (discussed earlier in section 1) and it meets the participation test for those plans.

When applying this test, don't consider employees who:

- Have not completed 3 years of service;
- Are part time or seasonal;
- Are nonresident aliens who receive no U.S. source earned income from you; or
- Aren't included in the plan but are in a unit of employees covered by a collective bargaining agreement, if the benefits provided under the plan were the subject of good-faith bargaining between you and employee representatives.

Your plan doesn't favor key employees as to benefits if all benefits available to participating key employees are also available to all other participating employees. Your plan doesn't favor key employees just because the amount of insurance you provide to your employees is uniformly related to their pay.

***S corporation shareholders.*** Because you can't treat a 2% shareholder of an S corporation as an employee for this exclusion, you must include the cost of all group-term life insurance coverage you provide the 2% shareholder in their wages. When figuring social security and Medicare taxes, you must also include the cost of this coverage in the 2% shareholder's wages. Include the cost in boxes 1, 3, and 5 of Form W-2. However, you don't have to withhold federal income tax or pay FUTA tax on the cost of any group-term life insurance coverage you provide to the 2% shareholder.

# Health Savings Accounts

A health savings account (HSA) is an account owned by a qualified individual who is generally your employee or former employee. Any contributions that you make to an HSA become the employee's property and can't be withdrawn by you. Contributions to the account are used to pay current or future medical expenses of the account owner, their spouse, and any qualified dependent. The medical expenses must not be reimbursable by insurance or other sources and their payment from HSA funds (distribution) won't give rise to a medical expense deduction on the individual's federal income tax return.

**Eligibility.** A qualified individual must be covered by a High Deductible Health Plan (HDHP) and not be covered by other health insurance except for permitted insurance listed under section 223(c)(3) or insurance for accidents, disability, dental care, vision care, long-term care, or (in the case of months

beginning after March 31, 2022, and before January 1, 2023, and plan years beginning on or before December 31, 2021, or after December 31, 2022, and before January 1, 2025) telehealth and other remote care. For calendar year 2023, a qualifying HDHP must have a deductible of at least \$1,500 for self-only coverage or \$3,000 for family coverage and must limit annual out-of-pocket expenses of the beneficiary to \$7,500 for self-only coverage and \$15,000 for family coverage.

There are no income limits that restrict an individual's eligibility to contribute to an HSA nor is there a requirement that the account owner have earned income to make a contribution.

**Exceptions.** An individual isn't a qualified individual if he or she can be claimed as a dependent on another person's tax return. Also, an employee's participation in a health FSA or health reimbursement arrangement (HRA) generally disqualifies the individual

(and employer) from making contributions to their HSA. However, an individual may qualify to participate in an HSA if he or she is participating in only a limited-purpose FSA or HRA or a post-deductible FSA. For more information, see *Other employee health plans* in Pub. 969.

**Employer contributions.** Up to specified dollar limits, cash contributions to the HSA of a qualified individual (determined monthly) are exempt from federal income tax withholding, social security tax, Medicare tax, and FUTA tax if you reasonably believe that the employee can exclude the benefits from gross income. For 2023, you can contribute up to \$3,850 for self-only coverage under an HDHP or \$7,750 for family coverage under an HDHP to a qualified individual's HSA.

The contribution amounts listed above are increased by \$1,000 for a qualified individual who is age 55 or older at any time during the year. For two qualified individuals who are

married to each other and who are each age 55 or older at any time during the year, each spouse's contribution limit is increased by \$1,000, provided each spouse has a separate HSA. No contributions can be made to an individual's HSA after he or she becomes enrolled in Medicare Part A or Part B.

**Nondiscrimination rules.** Your contribution amount to an employee's HSA must be comparable for all employees who have comparable coverage during the same period. Otherwise, there will be an excise tax equal to 35% of the amount you contributed to all employees' HSAs.

For guidance on employer comparable contributions to HSAs under section 4980G in instances where an employee hasn't established an HSA by December 31 and in instances where an employer accelerates contributions for the calendar year for employees who have incurred qualified

medical expenses, see Regulations section 54.4980G-4.

***Exception.*** The Tax Relief and Health Care Act of 2006 allows employers to make larger HSA contributions for a nonhighly compensated employee than for a highly compensated employee. A highly compensated employee for 2023 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than \$135,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee wasn't also in the top 20% of employees when ranked by pay for the preceding year.

**Partnerships and S corporations.** Partners and 2% shareholders of an S corporation aren't eligible for salary reduction (pre-tax) contributions to an HSA. Employer contributions to the HSA of a bona fide partner or 2% shareholder are treated as distributions or guaranteed payments, as determined by the facts and circumstances. For more information, see Notice 2005-8, 2005-4 I.R.B. 368, available at [IRS.gov/irb/2005-04\\_IRB#NOT-2005-8](https://www.irs.gov/irb/2005-04_IRB#NOT-2005-8).

**Cafeteria plans.** You may contribute to an employee's HSA using a cafeteria plan and your contributions aren't subject to the statutory comparability rules. However, cafeteria plan nondiscrimination rules still apply. For example, contributions under a cafeteria plan to employee HSAs can't be greater for higher-paid employees than they are for lower-paid employees. Contributions that favor lower-paid employees aren't prohibited.



**Reporting requirements.** You must report your contributions to an employee's HSA in box 12 of Form W-2 using code "W." The trustee or custodian of the HSA, generally a bank or insurance company, reports distributions from the HSA using Form 1099-SA.

**More information.** For more information about HSAs, see Pub. 969.

## **Lodging on Your Business Premises**

You can exclude the value of lodging you furnish to an employee from the employee's wages if it meets the following tests.

- It is furnished on your business premises.
- It is furnished for your convenience.
- The employee must accept it as a condition of employment.

Different tests may apply to lodging furnished by educational institutions. See section 119(d) of the Internal Revenue Code for details.

If you allow your employee to choose to receive additional pay instead of lodging, then the lodging, if chosen, isn't excluded. The exclusion also doesn't apply to cash allowances for lodging.

**On your business premises.** For this exclusion, your business premises is generally your employee's place of work. For example, if you're a household employer, then lodging furnished in your home to a household employee would be considered lodging furnished on your business premises. For special rules that apply to lodging furnished in a camp located in a foreign country, see section 119(c) of the Internal Revenue Code and its regulations.

**For your convenience.** Whether or not you furnish lodging for your convenience as an employer depends on all the facts and circumstances. You furnish the lodging to your employee for your convenience if you do this for a substantial business reason other than to provide the employee with additional pay. This is true even if a law or an employment contract provides that the lodging is furnished as pay. However, a written statement that the lodging is furnished for your convenience isn't sufficient.

**Condition of employment.** Lodging meets this test if you require your employees to accept the lodging because they need to live on your business premises to be able to properly perform their duties. Examples include employees who must be available at all times and employees who couldn't perform their required duties without being furnished the lodging.

It doesn't matter whether you must furnish the lodging as pay under the terms of an employment contract or a law fixing the terms of employment.

***Example of qualifying lodging.*** You employ Sam at a construction project at a remote job site in Alaska. Due to the inaccessibility of facilities for the employees who are working at the job site to obtain lodging and the prevailing weather conditions, you furnish lodging to your employees at the construction site in order to carry on the construction project. You require that your employees accept the lodging as a condition of their employment. You may exclude the lodging that you provide from Sam's wages. Additionally, since sufficient eating facilities aren't available near your place of employment, you may also exclude meals you provide to Sam from Sam's wages, as discussed in *Proper meals not otherwise*

available under *Meals on Your Business Premises*, later in this section.

**Example of nonqualifying lodging.** A hospital gives Joan, an employee of the hospital, the choice of living at the hospital free of charge or living elsewhere and receiving a cash allowance in addition to Joan's regular salary. If Joan chooses to live at the hospital, the hospital can't exclude the value of the lodging from Joan's wages because Joan isn't required to live at the hospital to properly perform the duties of Joan's employment.

**S corporation shareholders.** For this exclusion, don't treat a 2% shareholder of an S corporation as an employee of the corporation. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a

partnership for fringe benefit purposes, but don't treat the benefit as a reduction in distributions to the 2% shareholder. For more information, see Revenue Ruling 91-26, 1991-1 C.B. 184.

## **Meals**

This section discusses the exclusion rules that apply to de minimis meals and meals on your business premises.

### **De Minimis Meals**

You can exclude any occasional meal you provide to an employee if it has so little value (taking into account how frequently you provide meals to your employees) that accounting for it would be unreasonable or administratively impracticable. The exclusion applies, for example, to the following items.

- Coffee, doughnuts, or soft drinks.
- Occasional meals or meal money provided to enable an employee to

work overtime. However, the exclusion doesn't apply to meal money figured on the basis of hours worked (for example, \$2.00 per hour for each hour over 8 hours), or meals or meal money provided on a regular or routine basis.

- Occasional parties or picnics for employees and their guests.

**Employee.** For this exclusion, treat any recipient of a de minimis meal as an employee.

**Employer-operated eating facility for employees.** The de minimis meals exclusion also applies to meals you provide at an employer-operated eating facility for employees if the annual revenue from the facility equals or exceeds the direct operating costs of the facility. Direct operating costs include the cost of food, beverages, and labor costs (including employment taxes) of employees whose services relating to the

facility are performed primarily on the premises of the eating facility. Therefore, for example, the labor costs attributable to cooks and waitstaff are included in direct operating costs, but the labor cost attributable to a manager of an eating facility whose services aren't primarily performed on the premises of the eating facility aren't included in direct operating costs.

For this purpose, your revenue from providing a meal is considered equal to the facility's direct operating costs to provide that meal if its value can be excluded from an employee's wages, as explained under *Meals on Your Business Premises*, later. If you provide free or discounted meals to volunteers at a hospital and you can reasonably determine the number of meals you provide, then you may disregard these costs and revenues. If you charge nonemployees a greater amount than employees, then you must disregard all



costs and revenues attributable to these nonemployees.

An employer-operated eating facility for employees is an eating facility that meets all the following conditions.

- You own or lease the facility.
- You operate the facility. You're considered to operate the eating facility if you have a contract with another to operate it.
- The facility is on or near your business premises.
- You provide meals (food, drinks, and related services) at the facility during, or immediately before or after, the employee's workday.

**Exclusion from wages.** You can generally exclude the value of de minimis meals you provide to an employee from the employee's wages.

***Exception for highly compensated employees.*** You can't exclude from the wages of a highly compensated employee the value of a meal provided at an employer-operated eating facility that isn't available on the same terms to one of the following groups.

- All of your employees.
- A group of employees defined under a reasonable classification you set up that doesn't favor highly compensated employees.

For this exclusion, a highly compensated employee for 2023 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than \$135,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee wasn't also in the top 20% of employees when ranked by pay for the preceding year.



*Section 13304 of P.L. 115-97 changed the rules for the deduction of food or beverage expenses that are excludable from employee income as a de minimis fringe benefit. For amounts incurred or paid after 2017, the 50% limit on deductions for food or beverage expenses also applies to food or beverage expenses excludable from employee income as a de minimis fringe benefit. However, food or beverage expenses related to employee recreation, such as holiday parties or annual picnics, aren't subject to the 50% limit on deductions when made primarily for the benefit of your employees other than employees who are officers, shareholders or other owners who own a 10% or greater interest in your business, or other highly*

*compensated employees. For more information, see chapter 2 of Pub. 535 and Regulations section 1.274-12. While your business deduction may be limited, the fringe benefit exclusion rules still apply and the de minimis fringe benefits may be excluded from your employee's wages, as discussed earlier.*

## **Meals on Your Business Premises**

You can exclude the value of meals you furnish to an employee from the employee's wages if they meet the following tests.

- They are furnished on your business premises.
- They are furnished for your convenience.

If you allow your employee to choose to receive additional pay instead of meals, then the meals, if chosen, aren't excluded. The exclusion also doesn't apply to cash allowances for meals.

**On your business premises.** Generally, for this exclusion, the employee's place of work is your business premises.

**For your convenience.** Whether you furnish meals for your convenience as an employer depends on all the facts and circumstances. You furnish the meals to your employee for your convenience if you do this for a substantial business reason other than to provide the employee with additional pay. This is true even if a law or an employment contract provides that the meals are furnished as pay. However, a written statement that the meals are furnished for your convenience isn't sufficient.

***Meals excluded for all employees if excluded for more than half.*** If more than half of your employees who are furnished meals on your business premises are furnished the meals for your convenience, you can treat all meals you furnish to

employees on your business premises as furnished for your convenience.

***Food service employees.*** Meals you furnish to a restaurant or other food service employee during, or immediately before or after, the employee's working hours are furnished for your convenience. For example, if a waitstaff works during the breakfast and lunch periods, you can exclude from their wages the value of the breakfast and lunch you furnish in your restaurant for each day they work.

***Example.*** You operate a restaurant business. You furnish your employee, Carol, who is a waitstaff working 7 a.m. to 4 p.m., two meals during each workday. You encourage but don't require Carol to have breakfast on the business premises before starting work. Carol must have lunch on the premises. Since Carol is a food service employee and works during the normal breakfast and lunch periods, you can exclude

from Carol's wages the value of Carol's breakfast and lunch.

If you also allow Carol to have meals on your business premises without charge on Carol's days off, you can't exclude the value of those meals from Carol's wages.

***Employees available for emergency calls.***

Meals you furnish during working hours so an employee will be available for emergency calls during the meal period are furnished for your convenience. You must be able to show these emergency calls have occurred or can reasonably be expected to occur, and that the calls have resulted, or will result, in you calling on your employees to perform their jobs during their meal period.

***Example.*** A hospital maintains a cafeteria on its premises where all of its 230 employees may get meals at no charge during their working hours. The hospital must have 120 of its employees available for emergencies. Each of these 120 employees is, at times, called

upon to perform services during the meal period. Although the hospital doesn't require these employees to remain on the premises, they rarely leave the hospital during their meal period. Since the hospital furnishes meals on its premises to its employees so that more than half of them are available for emergency calls during meal periods, the hospital can exclude the value of these meals from the wages of all of its employees.

***Short meal periods.*** Meals you furnish during working hours are furnished for your convenience if the nature of your business (not merely a preference) restricts an employee to a short meal period (such as 30 or 45 minutes) and the employee can't be expected to eat elsewhere in such a short time. For example, meals can qualify for this treatment if your peak workload occurs during the normal lunch hour. However, they don't qualify if the reason for the short meal



period is to allow the employee to leave earlier in the day.

***Example.*** Frank is a bank teller who works from 9 a.m. to 5 p.m. The bank furnishes Frank's lunch without charge in a cafeteria the bank maintains on its premises. The bank furnishes these meals to Frank to limit Frank's lunch period to 30 minutes, because the bank's peak workload occurs during the normal lunch period. If Frank got lunch elsewhere, it would take Frank much longer than 30 minutes and the bank strictly enforces the time limit. The bank can exclude the value of these meals from Frank's wages.

***Proper meals not otherwise available.***

Meals you furnish during working hours are furnished for your convenience if the employee couldn't otherwise get proper meals within a reasonable period of time. For example, meals can qualify for this treatment if there are insufficient eating facilities near the place of employment. For an example of

this, see Example of qualifying lodging, earlier in this section.

***Meals after work hours.*** Generally, meals furnished before or after the working hours of an employee aren't considered as furnished for your convenience. However, meals you furnish to an employee immediately after working hours are furnished for your convenience if you would have furnished them during working hours for a substantial nonpay business reason but, because of the work duties, they weren't obtained during working hours.

***Meals you furnish to promote goodwill, boost morale, or attract prospective employees.*** Meals you furnish to promote goodwill, boost morale, or attract prospective employees aren't considered furnished for your convenience. However, you may be able to exclude their value, as discussed under De Minimis Meals, earlier.

***Meals furnished on nonworkdays or with lodging.*** You generally can't exclude from an employee's wages the value of meals you furnish on a day when the employee isn't working. However, you can exclude these meals if they are furnished with lodging that is excluded from the employee's wages. See *Lodging on Your Business Premises*, earlier in this section.

***Meals with a charge.*** The fact that you charge for the meals and that your employees may accept or decline the meals isn't taken into account in determining whether or not meals are furnished for your convenience.

**S corporation shareholders.** For this exclusion, don't treat a 2% shareholder of an S corporation as an employee of the corporation. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2%

shareholder as you would a partner in a partnership for fringe benefit purposes, but don't treat the benefit as a reduction in distributions to the 2% shareholder. For more information, see Revenue Ruling 91-26, 1991-1 C.B. 184.

## **No-Additional-Cost Services**

This exclusion applies to a service you provide to an employee if it doesn't cause you to incur any substantial additional costs. The service must be offered to customers in the ordinary course of the line of business in which the employee performs substantial services.

No-additional-cost services are excess capacity services, such as airline, bus, or train tickets; hotel rooms; or telephone services provided free, at a reduced price, or through a cash rebate to employees working in those lines of business. Services that aren't eligible for treatment as no-additional-cost services are non-excess capacity services, such as the

facilitation by a stock brokerage firm of the purchase of stock by employees. These services may, however, be eligible for a qualified employee discount of up to 20% of the value of the service provided. See *Employee Discounts*, earlier.

**Substantial additional costs.** To determine whether you incur substantial additional costs to provide a service to an employee, count any lost revenue as a cost. Don't reduce the costs you incur by any amount the employee pays for the service. You're considered to incur substantial additional costs if you or your employees spend a substantial amount of time in providing the service, even if the time spent would otherwise be idle or if the services are provided outside normal business hours.

**Example.** A commercial airline allows its employees to take personal flights on the airline at no charge and receive reserved seating. Because the employer gives up

potential revenue by allowing the employees to reserve seats, employees receiving such free flights aren't eligible for the no-additional-cost exclusion.

**Reciprocal agreements.** A no-additional-cost service provided to your employee by an unrelated employer may qualify as a no-additional-cost service if all the following tests are met.

- The service is the same type of service generally provided to customers in both the line of business in which the employee works and the line of business in which the service is provided.
- You and the employer providing the service have a written reciprocal agreement under which a group of employees of each employer, all of whom perform substantial services in the same line of business, may receive

no-additional-cost services from the other employer.

- Neither you nor the other employer incurs any substantial additional cost (including lost revenue) either in providing the service or because of the written agreement.

**Employee.** For this exclusion, treat the following individuals as employees.

1. A current employee.
2. A former employee who retired or left on disability.
3. A widow or widower of an individual who died while an employee.
4. A widow or widower of a former employee who retired or left on disability.
5. A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.

6. A partner who performs services for a partnership.

Treat services you provide to the spouse or dependent child of an employee as provided to the employee. For this fringe benefit, dependent child is a child or stepchild who is the employee's dependent or who, if both parents are deceased, hasn't attained the age of 25. Treat a child of divorced parents as a dependent of both parents.

Treat any use of air transportation by the parent of an employee as use by the employee. This rule doesn't apply to use by the parent of a person considered an employee because of item (3) or (4) above.

**Exclusion from wages.** You can generally exclude the value of a no-additional-cost service you provide to an employee from the employee's wages.



***Exception for highly compensated employees.*** You can't exclude from the wages of a highly compensated employee the value of a no-additional-cost service that isn't available on the same terms to one of the following groups.

- All of your employees.
- A group of employees defined under a reasonable classification you set up that doesn't favor highly compensated employees.

For this exclusion, a highly compensated employee for 2023 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than \$135,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee wasn't also in the top 20% of employees when ranked by pay for the preceding year.

## **Retirement Planning Services**

You may exclude from an employee's wages the value of any retirement planning advice or information you provide to your employee or their spouse if you maintain a qualified retirement plan. A qualified retirement plan includes a plan, contract, pension, or account described in section 219(g)(5) of the Internal Revenue Code. In addition to employer plan advice and information, the services provided may include general advice and information on retirement. However, the exclusion doesn't apply to services for tax preparation, accounting, legal, or brokerage services. You can't exclude from the wages of a highly compensated employee retirement planning services that aren't available on the same terms to each member of a group of

employees normally provided education and information about the employer's qualified retirement plan.

## **Transportation (Commuting) Benefits**

This section discusses exclusion rules that apply to benefits you provide to your employees for their personal transportation, such as commuting to and from work. These rules apply to the following transportation benefits.

- De minimis transportation benefits.
- Qualified transportation benefits.

Special rules that apply to demonstrator cars and qualified nonpersonal use vehicles are discussed under *Working Condition Benefits*, later in this section.

## **De Minimis Transportation Benefits**

You can exclude the value of any de minimis transportation benefit you provide to an employee from the employee's wages. A de minimis transportation benefit is any local transportation benefit you provide to an employee if it has so little value (taking into account how frequently you provide transportation to your employees) that accounting for it would be unreasonable or administratively impracticable. For example, it applies to occasional local transportation fare you give an employee because the employee is working overtime if the benefit is reasonable and isn't based on hours worked. Local transportation fare provided on a regular or routine basis doesn't qualify for this exclusion.

A special rule allows you to exclude as a de minimis benefit public transit passes, tokens, or fare cards you provide at a discount to defray your employee's commuting costs on

the public transit system if the discount doesn't exceed \$21 in any month. Similarly, you may also provide a voucher or similar instrument that is exchangeable solely for tokens, fare cards, or other instruments that enable your employee to use the public transit system if the value of the vouchers and other instruments in any month doesn't exceed \$21. You may also reimburse your employee to cover the cost of commuting on a public transit system, provided your employee doesn't receive more than \$21 in reimbursements for commuting costs in any month. The reimbursement must be made under a bona fide reimbursement arrangement, where you establish appropriate procedures for verifying on a periodic basis that your employee's use of public transportation for commuting is consistent with the value of the benefit provided. The exclusion doesn't apply to the provision of any benefit to defray public

transit expenses incurred for personal travel other than commuting.

**Employee.** For this exclusion, treat any recipient of a de minimis transportation benefit as an employee.

## **Qualified Transportation Benefits**

This exclusion applies to the following benefits.

- A ride in a commuter highway vehicle between the employee's home and work place.
- A transit pass.
- Qualified parking.

You may provide an employee with any one or more of these benefits at the same time.

Qualified transportation benefits can be provided directly by you or through a bona fide reimbursement arrangement. A bona fide reimbursement arrangement requires that the

employee incur and substantiate expenses for qualified transportation benefits before reimbursement. However, cash reimbursements for transit passes qualify only if a voucher or a similar item that the employee can exchange only for a transit pass isn't readily available for direct distribution by you to your employee. A voucher is readily available for direct distribution only if an employer can obtain it from a voucher provider that doesn't impose fare media charges or other restrictions that effectively prevent the employer from obtaining vouchers. See Regulations section 1.132-9(b)(Q&A 16–19) for more information.

**Compensation reduction agreements.** A compensation reduction agreement is a way to provide qualified transportation benefits on a pre-tax basis by offering your employees a choice between cash compensation and any qualified transportation benefit. A compensation reduction arrangement can be

used with a bona fide reimbursement arrangement. For each month, the amount of the compensation reduction can't exceed the monthly limits for transportation benefits described in Exclusion from wages, later. For more information about providing qualified transportation fringe benefits under a compensation reduction agreement, see Regulations section 1.132-9(b)(Q&A 11– 15).

**Commuter highway vehicle.** A commuter highway vehicle is any highway vehicle that seats at least 6 adults (not including the driver). In addition, you must reasonably expect that at least 80% of the vehicle mileage will be for transporting employees between their homes and workplace with employees occupying at least one-half the vehicle's seats (not including the driver's).

**Transit pass.** A transit pass is any pass, token, farecard, voucher, or similar item entitling a person to ride, free of charge or at a reduced rate, on one of the following.



- Mass transit.
- In a vehicle that seats at least 6 adults (not including the driver) if a person in the business of transporting persons for pay or hire operates it.

Mass transit may be publicly or privately operated and includes bus, rail, or ferry. For guidance on the use of smart cards and debit cards to provide qualified transportation fringes, see Revenue Ruling 2014-32, 2014-50 I.R.B. 917, available at [IRS.gov/irb/2014-50\\_IRB#RR-2014-32](https://www.irs.gov/irb/2014-50_IRB#RR-2014-32).

**Qualified parking.** Qualified parking is parking you provide to your employees on or near your business premises. It includes parking on or near the location from which your employees commute to work using mass transit, commuter highway vehicles, or carpools. It doesn't include parking at or near your employee's home.



***Qualified bicycle commuting reimbursement suspended.*** Section 11047 of P.L. 115-97 suspends the exclusion of qualified bicycle commuting reimbursements from your employee's income for any tax year beginning after 2017 and before 2026.

**Employee.** For this exclusion, treat the following individuals as employees.

- A current employee.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.

A self-employed individual isn't an employee for qualified transportation benefit purposes.

***Exception for S corporation shareholders.*** Don't treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder is

someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but don't treat the benefit as a reduction in distributions to the 2% shareholder. For more information, see Revenue Ruling 91-26, 1991-1 C.B. 184.

**Relation to other fringe benefits.** You can't exclude a qualified transportation benefit you provide to an employee under the de minimis or working condition benefit rules. However, if you provide a local transportation benefit other than by transit pass or commuter highway vehicle, or to a person other than an employee, you may be able to exclude all or part of the benefit under other fringe benefit rules (de minimis, working condition, etc.).

**Exclusion from wages.** You can generally exclude the value of transportation benefits that you provide to an employee during 2023 from the employee's wages up to the following limits.

- \$300 per month for combined commuter highway vehicle transportation and transit passes.
- \$300 per month for qualified parking.

***Benefits more than the limit.*** If the value of a benefit for any month is more than its limit, include in the employee's wages the amount over the limit minus any amount the employee paid for the benefit. You can't exclude the excess from the employee's wages as a de minimis transportation benefit.



***Qualified transportation benefits aren't deductible.*** Sections 274(a)(4) and 274(l) provide that no deduction is allowed for qualified transportation benefits (whether provided

*directly by you, through a bona fide reimbursement arrangement, or through a compensation reduction agreement) incurred or paid after 2017. Also, no deduction is allowed for any expense incurred for providing any transportation, or any payment or reimbursement to your employee, in connection with travel between your employee's residence and place of employment, except as necessary for ensuring the safety of your employee or for qualified bicycle commuting reimbursements, as described in section 132(f)(5)(F) (even though the exclusion for qualified bicycle commuting reimbursements is suspended, as discussed earlier). While you may no longer deduct payments for qualified transportation benefits, the fringe benefit exclusion rules still apply and the payments may be excluded from your employee's wages, as discussed earlier. Although the value of a qualified transportation fringe benefit is relevant in determining the fringe benefit exclusion and*

*whether the section 274(e)(2) exception for expenses treated as compensation applies, the deduction that is disallowed relates to the expense of providing a qualified transportation fringe, not its value. For more information, see Regulations sections 1.274-13 and 1.274-14.*

**More information.** For more information on qualified transportation benefits, including van pools, and how to determine the value of parking, see Regulations section 1.132-9.

## **Tuition Reduction**

An educational organization can exclude the value of a qualified tuition reduction it provides to an employee from the employee's wages.

A tuition reduction for undergraduate education generally qualifies for this exclusion if it is for the education of one of the following individuals.

1. A current employee.
2. A former employee who retired or left on disability.
3. A widow or widower of an individual who died while an employee.
4. A widow or widower of a former employee who retired or left on disability.
5. A dependent child or spouse of any individual listed in (1) through (4) above.

A tuition reduction for graduate education qualifies for this exclusion only if it is for the education of a graduate student who performs teaching or research activities for the educational organization.

For more information on this exclusion, see *Qualified Tuition Reduction* under *Other Types of Educational Assistance* in chapter 1 of Pub. 970.

# Working Condition Benefits

This exclusion applies to property and services you provide to an employee so that the employee can perform their job. It applies to the extent the cost of the property or services would be allowable as a business expense or depreciation expense deduction to the employee if he or she had paid for it. The employee must meet any substantiation requirements that apply to the deduction.

Examples of working condition benefits include an employee's use of a company car for business, an employer-provided cell phone provided primarily for noncompensatory business purposes (discussed earlier), and job-related education provided to an employee.

This exclusion also applies to a cash payment you provide for an employee's expenses for a specific or prearranged business activity if such expenses would otherwise be allowable as a business expense or depreciation



expense deduction to the employee. You must require the employee to verify that the payment is actually used for those expenses and to return any unused part of the payment.

The exclusion doesn't apply to the following items.

- A service or property provided under a flexible spending account in which you agree to provide the employee, over a time period, a certain level of unspecified noncash benefits with a predetermined cash value.
- A physical examination program you provide, even if mandatory.
- Any item to the extent the payment would be allowable as a deduction to the employee as an expense for a trade or business other than your trade or business. For more

information, see Regulations section 1.132-5(a)(2).

**Employee.** For this exclusion, treat the following individuals as employees.

- A current employee.
- A partner who performs services for a partnership.
- A director of your company.
- An independent contractor who performs services for you.

**Vehicle allocation rules.** If you provide a car for an employee's use, the amount you can exclude as a working condition benefit is the amount that would be allowable as a deductible business expense if the employee paid for its use. If the employee uses the car for both business and personal use, the value of the working condition benefit is the part determined to be for business use of the vehicle. See *Business use of your car* under

*Personal Versus Business Expenses* in chapter 1 of Pub. 535. Also, see the special rules for certain demonstrator cars and qualified nonpersonal use vehicles discussed later.

**Demonstrator cars.** Generally, all of the use of a demonstrator car by your full-time auto salesperson in the sales area in which your sales office is located qualifies as a working condition benefit if the use is primarily to facilitate the services the salesperson provides for you and there are substantial restrictions on personal use. For more information and the definition of “full-time auto salesperson,” see Regulations section 1.132-5(o). For optional, simplified methods used to determine if full, partial, or no exclusion of income to the employee for personal use of a demonstrator car applies, see Revenue Procedure 2001-56. You can find Revenue Procedure 2001-56 on page 590 of Internal Revenue Bulletin 2001-51 at [IRS.gov/pub/irs-irbs/irb01-51.pdf](https://www.irs.gov/pub/irs-irbs/irb01-51.pdf).

**Qualified nonpersonal use vehicles.** All of an employee's use of a qualified nonpersonal use vehicle is a working condition benefit. A qualified nonpersonal use vehicle is any vehicle the employee isn't likely to use more than minimally for personal purposes because of its design. Qualified nonpersonal use vehicles generally include all of the following vehicles.

- Clearly marked, through painted insignia or words, police, fire, and public safety vehicles, provided that any personal use of the vehicle (other than commuting) is prohibited by the governmental unit.
- Unmarked vehicles used by law enforcement officers if the use is officially authorized. Any personal use must be authorized by the employer, and must be related to law-enforcement functions, such as being able to report directly from home to an

emergency situation. Use of an unmarked vehicle for vacation or recreation trips can't qualify as an authorized use.

- An ambulance or hearse used for its specific purpose.
- Any vehicle designed to carry cargo with a loaded gross vehicle weight over 14,000 pounds.
- Delivery trucks with seating for the driver only, or the driver plus a folding jump seat.
- A passenger bus with a capacity of at least 20 passengers used for its specific purpose and school buses. The working condition benefit is available only for the driver, not for any passengers.
- Tractors and other special-purpose farm vehicles.

- Bucket trucks, cement mixers, combines, cranes and derricks, dump trucks (including garbage trucks), flatbed trucks, forklifts, qualified moving vans, qualified specialized utility repair trucks, and refrigerated trucks.

See Regulations section 1.274-5(k) for the definition of qualified moving van and qualified specialized utility repair truck.

***Pickup trucks.*** A pickup truck with a loaded gross vehicle weight of 14,000 pounds or less is a qualified nonpersonal use vehicle if it has been specially modified so it isn't likely to be used more than minimally for personal purposes. For example, a pickup truck qualifies if it is clearly marked with permanently affixed decals, special painting, or other advertising associated with your trade, business, or function and meets either of the following requirements.

1. It is equipped with at least one of the following items.
  - a. A hydraulic lift gate.
  - b. Permanent tanks or drums.
  - c. Permanent side boards or panels that materially raise the level of the sides of the truck bed.
  - d. Other heavy equipment (such as an electric generator, welder, boom, or crane used to tow automobiles and other vehicles).
2. It is used primarily to transport a particular type of load (other than over the public highways) in a construction, manufacturing, processing, farming, mining, drilling, timbering, or other similar operation for which it was specially designed or significantly modified.

***Vans.*** A van with a loaded gross vehicle weight of 14,000 pounds or less is a qualified nonpersonal use vehicle if it has been

specially modified so it isn't likely to be used more than minimally for personal purposes. For example, a van qualifies if it is clearly marked with permanently affixed decals, special painting, or other advertising associated with your trade, business, or function and has a seat for the driver only (or the driver and one other person) and either of the following items.

- Permanent shelving that fills most of the cargo area.
- An open cargo area and the van always carries merchandise, material, or equipment used in your trade, business, or function.

**Education.** Certain job-related education you provide to an employee may qualify for exclusion as a working condition benefit. To qualify, the education must meet the same requirements that would apply for determining whether the employee could deduct the expenses had the employee paid



the expenses. Degree programs as a whole don't necessarily qualify as a working condition benefit. Each course in the program must be evaluated individually for qualification as a working condition benefit. The education must meet at least one of the following tests.

- The education is required by the employer or by law for the employee to keep their present salary, status, or job. The required education must serve a bona fide business purpose of the employer.
- The education maintains or improves skills needed in the job.

However, even if the education meets one or both of the above tests, it isn't qualifying education if it:

- Is needed to meet the minimum educational requirements of the

employee's present trade or business,  
or

- Is part of a program of study that will qualify the employee for a new trade or business.

**Outplacement services.** An employee's use of outplacement services qualifies as a working condition benefit if you provide the services to the employee on the basis of need, you get a substantial business benefit from the services distinct from the benefit you would get from the payment of additional wages, and the employee is seeking new employment in the same kind of trade or business in which the employee is presently working. Substantial business benefits include promoting a positive business image, maintaining employee morale, and avoiding wrongful termination suits.

Outplacement services don't qualify as a working condition benefit if the employee can choose to receive cash or taxable benefits in

place of the services. If you maintain a severance plan and permit employees to get outplacement services with reduced severance pay, include in the employee's wages the difference between the unreduced severance and the reduced severance payments.

**Product testing.** The fair market value of the use of consumer goods, which are manufactured for sale to nonemployees, for product testing and evaluation by your employee outside your workplace, qualifies as a working condition benefit if all of the following conditions are met.

- Consumer testing and evaluation of the product is an ordinary and necessary business expense for you.
- Business reasons necessitate that the testing and evaluation must be performed off your business premises. For example, the testing and evaluation can't be carried out

adequately in your office or in laboratory testing facilities.

- You provide the product to your employee for purposes of testing and evaluation.
- You provide the product to your employee for no longer than necessary to test and evaluate its performance, and (to the extent not finished) the product must be returned to you at completion of the testing and evaluation period.
- You impose limitations on your employee's use of the product that significantly reduce the value of any personal benefit to your employee. This includes limiting your employee's ability to select among different models or varieties of the consumer product, and prohibiting the use of the product by persons other than your employee.

- Your employee submits detailed reports to you on the testing and evaluation.

The program won't qualify if you don't use and examine the results of the detailed reports submitted by employees within a reasonable period of time after expiration of the testing period. Additionally, existence of one or more of the following factors may also establish that the program isn't a bona fide product-testing program.

- The program is in essence a leasing program under which employees lease the consumer goods from you for a fee.
- The nature of the product and other considerations are insufficient to justify the testing program.
- The expense of the program outweighs the benefits to be gained from testing and evaluation.

The program must also not be limited to only certain classes of employees (such as highly compensated employees), unless you can show a business reason for providing the products only to specific employees. For example, an automobile manufacturer may limit providing automobiles for testing and evaluation to only their design engineers and supervisory mechanics, as they can properly evaluate the automobiles.

**Exclusion from wages.** You can generally exclude the value of a working condition benefit you provide to an employee from the employee's wages.

***Exception for independent contractors who perform services for you.*** You can't exclude the use of consumer goods you provide in a product-testing program from the compensation you pay to an independent contractor. You can't exclude the value of parking as a working condition benefit, but you may be able to exclude it as a de minimis

fringe benefit. Transit passes provided to independent contractors may be excluded as a working condition benefit if they meet the requirements of a working condition benefit described earlier. However, personal commuting expenses are not deductible as a business expense. Transit passes may also be excluded as a de minimis fringe benefit. For more information on de minimis transportation benefits, see *De Minimis Transportation Benefits*, earlier in this section.

***Exception for company directors.*** You can't exclude the value of the use of consumer goods you provide in a product-testing program from the compensation you pay to a director.

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