

Publication 15-B

Employer's Tax Guide to Fringe Benefits

For use in **2023**

Volume 1 of 3



Publication 15-B (Rev. 2023) Catalog Number 39243T
Department of the Treasury **Internal Revenue Service** www.irs.gov

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Future Developments

For the latest information about developments related to Pub. 15-B, such as legislation enacted after it was published, go to [IRS.gov/Pub15B](https://www.irs.gov/pub15b). For the latest guidance and information about COVID-19 tax relief, go to [IRS.gov/ Coronavirus](https://www.irs.gov/Coronavirus).

What's New

Cents-per-mile rule. The business mileage rate for 2023 is 65.5 cents per mile. You may use this rate to reimburse an employee for business use of a personal vehicle, and under certain conditions, you may use the rate under the cents-per-mile rule to value the personal use of a vehicle you provide to an employee. See *Cents-Per-Mile Rule* in section 3.

Qualified parking exclusion and commuter transportation benefit. For 2023, the monthly exclusion for qualified parking is \$300 and the monthly exclusion for commuter highway vehicle transportation and transit passes is \$300. See *Qualified Transportation Benefits* in section 2.

Contribution limit on a health flexible spending arrangement (FSA). For plan years beginning in 2023, a cafeteria plan may not allow an employee to request salary

reduction contributions for a health FSA in excess of \$3,050. For more information, including information about temporary COVID-19 relief for health and dependent care FSAs for 2022 and 2023, see *Cafeteria Plans* in section 1.

Reminders

Moving expense reimbursements. P.L. 115-97, Tax Cuts and Jobs Act, suspends the exclusion for qualified moving expense reimbursements from your employee's income for tax years beginning after 2017 and before 2026. However, the exclusion is still available in the case of a member of the U.S. Armed Forces on active duty who moves because of a permanent change of station due to a military order. The exclusion applies only to reimbursement of moving expenses that the member could deduct if they had paid or incurred them without reimbursement. See *Moving Expenses* in Pub. 3, Armed Forces' Tax Guide, for the definition

of what constitutes a permanent change of station and to learn which moving expenses are deductible.

Bicycle commuting reimbursements. P.L. 115-97 suspends the exclusion of qualified bicycle commuting reimbursements from your employee's income for tax years beginning after 2017 and before 2026. See *Transportation (Commuting) Benefits* in section 2.

Withholding on supplemental wages. P.L. 115-97 lowered the federal income tax withholding rates on supplemental wages for tax years beginning after 2017 and before 2026. See *Withholding and depositing taxes* in section 4 for the withholding rates.

Form 1099-NEC. Use Form 1099-NEC to report nonemployee compensation paid in 2022. The 2022 Form 1099-NEC is due January 31, 2023.

Additional permitted election changes for health coverage under a cafeteria plan.

Notice 2014-55, 2014-41 I.R.B. 672, available at [IRS.gov/irb/2014-41_IRB#NOT-2014-55](https://www.irs.gov/irb/2014-41_IRB#NOT-2014-55), expands the application of the permitted change rules for health coverage under a cafeteria plan and discusses two specific situations in which a cafeteria plan participant is permitted to revoke their election under a cafeteria plan during a period of coverage.

Definition of marriage. A marriage of two individuals is recognized for federal tax purposes if the marriage is recognized by the state, possession, or territory of the United States in which the marriage is entered into, regardless of legal residence. Two individuals who enter into a relationship that is denominated as a marriage under the laws of a foreign jurisdiction are recognized as married for federal tax purposes if the relationship would be recognized as a marriage under the laws of at least one state,

possession, or territory of the United States, regardless of legal residence. Individuals who have entered into a registered domestic partnership, civil union, or other similar relationship that isn't denominated as a marriage under the law of the state, possession, or territory of the United States where such relationship was entered into aren't lawfully married for federal tax purposes, regardless of legal residence.

Notice 2014-1 discusses how certain rules for cafeteria plans, including health and dependent care FSAs, and health savings accounts (HSAs) apply to same-sex spouses participating in employee benefit plans.

Notice 2014-1, 2014-2 I.R.B. 270, is available at [IRS.gov/irb/ 2014-02 IRB#NOT-2014-1](https://www.irs.gov/irb/2014-02_IRB#NOT-2014-1).

Getting tax forms, instructions, and publications. Visit [IRS.gov/Forms](https://www.irs.gov/Forms) to download current and prior-year forms, instructions, and publications.

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Getting answers to your tax questions. If you have a tax question not answered by this publication, check IRS.gov and [*How To Get Tax Help*](#) at the end of this publication.

Photographs of missing children. The IRS is a proud partner with the [*National Center for Missing & Exploited Children® \(NCMEC\)*](#). Photographs of missing children selected by the Center may appear in this publication on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling 1-800-THE-LOST (1-800-843-5678) if you recognize a child.

Introduction

This publication supplements Pub. 15, Employer's Tax Guide, and Pub. 15-A, Employer's Supplemental Tax Guide. It contains information for employers on the employment tax treatment of fringe benefits.

Comments and suggestions. We welcome your comments about this publication and your suggestions for future editions.

You can send us comments through [IRS.gov/FormComments](https://www.irs.gov/FormComments).

Or you can write to:

Internal Revenue Service
Tax Forms and Publications
1111 Constitution Ave. NW, IR-6526
Washington, DC 20224

Although we can't respond individually to each comment received, we do appreciate your feedback and will consider your comments as we revise our tax forms,

instructions, and publications. **Don't** send tax questions, tax returns, or payments to this address.

1. Fringe Benefit Overview

A fringe benefit is a form of pay for the performance of services. For example, you provide an employee with a fringe benefit when you allow the employee to use a business vehicle to commute to and from work.

Performance of services. A person who performs services for you doesn't have to be your employee. A person may perform services for you as an independent contractor, partner, or director. Also, for fringe benefit purposes, treat a person who agrees not to perform services (such as under a covenant not to compete) as performing services.

Provider of benefit. You're the provider of a fringe benefit if it is provided for services performed for you. You're considered the provider of a fringe benefit even if a third party, such as your client or customer, provides the benefit to your employee for services the employee performs for you. For example, if, in exchange for goods or services, your customer provides daycare services as a fringe benefit to your employees for services they provide for you as their employer, then you're the provider of this fringe benefit even though the customer is actually providing the daycare.

Recipient of benefit. The person who performs services for you is considered the recipient of a fringe benefit provided for those services. That person may be considered the recipient even if the benefit is provided to someone who didn't perform services for you. For example, your employee may be the

recipient of a fringe benefit you provide to a member of the employee's family.

Are Fringe Benefits Taxable?

Any fringe benefit you provide is taxable and must be included in the recipient's pay unless the law specifically excludes it. Section 2 discusses the exclusions that apply to certain fringe benefits. Any benefit not excluded under the rules discussed in section 2 is taxable.

Including taxable benefits in pay. You must include in a recipient's pay the amount by which the value of a fringe benefit is more than the sum of the following amounts.

- Any amount the law excludes from pay.
- Any amount the recipient paid for the benefit.

The rules used to determine the value of a fringe benefit are discussed in section 3.

If the recipient of a taxable fringe benefit is your employee, the benefit is generally subject to employment taxes and must be reported on Form W-2, Wage and Tax Statement. However, you can use special rules to withhold, deposit, and report the employment taxes. These rules are discussed in section 4.

If the recipient of a taxable fringe benefit isn't your employee, the benefit isn't subject to employment taxes. However, you may have to report the benefit on one of the following information returns.

**If the recipient
receives the
benefit as:**

Use:

An independent contractor	Form 1099-NEC, Nonemployee Compensation
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A partner	Schedule K-1 (Form 1065), Partner's Share of Income, Deductions, Credits, etc.
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For more information, see the instructions for the forms listed above.

Cafeteria Plans

A cafeteria plan, including an FSA, provides participants an opportunity to receive qualified benefits on a pre-tax basis. It is a written plan that allows your employees to choose between receiving cash or taxable benefits, instead of certain qualified benefits for which the law provides an exclusion from wages. If an employee chooses to receive a qualified benefit under the plan, the fact that the employee could have received cash or a taxable benefit instead won't make the qualified benefit taxable.

Generally, a cafeteria plan doesn't include any plan that offers a benefit that defers pay.

However, a cafeteria plan can include a qualified 401(k) plan as a benefit. Also, certain life insurance plans maintained by educational institutions can be offered as a benefit even though they defer pay.

Qualified benefits. A cafeteria plan can include the following benefits discussed in section 2.

- Accident and health benefits (but not Archer medical savings accounts (Archer MSAs) or long-term care insurance).
- Adoption assistance.
- Dependent care assistance.
- Group-term life insurance coverage (including costs that can't be excluded from wages).
- HSAs. Distributions from an HSA may be used to pay eligible long-term care

insurance premiums or to pay for qualified long-term care services.

Benefits not allowed. A cafeteria plan can't include the following benefits discussed in section 2.

- Archer MSAs. See Accident and Health Benefits in section 2.
- Athletic facilities.
- De minimis (minimal) benefits.
- Educational assistance.
- Employee discounts.
- Employer-provided cell phones.
- Lodging on your business premises.
- Meals.
- No-additional-cost services.
- Retirement planning services.
- Transportation (commuting) benefits.

- Tuition reduction.
- Working condition benefits.

It also can't include scholarships or fellowships (discussed in Pub. 970).

Contribution limit on a health FSA. For plan years beginning in 2023, a cafeteria plan may not allow an employee to request salary reduction contributions for a health FSA in excess of \$3,050.

A cafeteria plan that doesn't limit health FSA contributions to the dollar limit isn't a cafeteria plan and all benefits offered under the plan are includible in the employee's gross income.

For more information, see Notice 2012-40, 2012-26 I.R.B. 1046, available at [IRS.gov/irb/2012-26_IRB#NOT-2012-40](https://www.irs.gov/irb/2012-26_IRB#NOT-2012-40).

“Use-or-lose” rule for health FSAs.

Instead of a grace period, you may, at your option, amend your cafeteria plan to allow an

employee's unused contributions to carry over to the immediately following plan year. For more information, see Notice 2013-71, 2013-47 I.R.B. 532, available at [IRS.gov/irb/2013-47_IRB#NOT-2013-71](https://www.irs.gov/irb/2013-47_IRB#NOT-2013-71), and Notice 2020-33, 2020-22 I.R.B. 868, available at [IRS.gov/irb/2020-22_IRB#NOT-2020-33](https://www.irs.gov/irb/2020-22_IRB#NOT-2020-33).

Employee. For these plans, treat the following individuals as employees.

- A current common-law employee. See section 2 in Pub. 15.
- A full-time life insurance agent who is a current statutory 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.

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 for this purpose 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.

Plans that favor highly compensated employees. If your plan favors highly compensated employees as to eligibility to participate, contributions, or benefits, you must include in their wages the value of taxable benefits they could have selected. A plan you maintain under a collective bargaining agreement doesn't favor highly compensated employees.

A highly compensated employee for this purpose is any of the following employees.

1. An officer.
2. A shareholder who owns more than 5% of the voting power or value of all classes of the employer's stock.
3. An employee who is highly compensated based on the facts and circumstances.
4. A spouse or dependent of a person described in (1), (2), or (3).

Plans that favor key employees. If your plan favors key employees, you must include in their wages the value of taxable benefits they could have selected. A plan favors key employees if more than 25% of the total of the nontaxable benefits you provide for all employees under the plan go to key employees. However, a plan you maintain under a collective bargaining agreement doesn't favor key employees.

A key employee during 2023 is generally an employee who is either of the following.

1. An officer having annual pay of more than \$215,000.
2. An employee 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.

Simple Cafeteria Plans for Small Businesses

Eligible employers meeting contribution requirements and eligibility and participation requirements can establish a simple cafeteria plan. Simple cafeteria plans are treated as meeting the nondiscrimination requirements of a cafeteria plan and certain benefits under a cafeteria plan.

Eligible employer. You're an eligible employer if you employed an average of 100 or fewer employees during either of the 2 preceding years. If your business wasn't in existence throughout the preceding year, you're eligible if you reasonably expect to employ an average of 100 or fewer employees in the current year. If you establish a simple cafeteria plan in a year that you employ an average of 100 or fewer employees, you're considered an eligible employer for any subsequent year until the year after you employ an average of 200 or more employees.

Eligibility and participation requirements. These requirements are met if all employees who had at least 1,000 hours of service for the preceding plan year are eligible to participate and each employee eligible to participate in the plan may elect any benefit available under the plan. You may

elect to exclude from the plan employees who:

1. Are under age 21 before the close of the plan year,
2. Have less than 1 year of service with you as of any day during the plan year,
3. Are covered under a collective bargaining agreement if there is evidence that the benefits covered under the cafeteria plan were the subject of good-faith bargaining, or
4. Are nonresident aliens working outside the United States whose income didn't come from a U.S. source.

Contribution requirements. You must make a contribution to provide qualified benefits on behalf of each qualified employee in an amount equal to:

1. A uniform percentage (not less than 2%) of the employee's compensation for the plan year; or
2. An amount that is at least 6% of the employee's compensation for the plan year or twice the amount of the salary reduction contributions of each qualified employee, whichever is less.

If the contribution requirements are met using option (2), the rate of contribution to any salary reduction contribution of a highly compensated or key employee can't be greater than the rate of contribution to any other employee.

More information. For more information about cafeteria plans, see section 125 of the Internal Revenue Code and its regulations.

2. Fringe Benefit Exclusion Rules

This section discusses the exclusion rules that apply to fringe benefits. These rules exclude all or part of the value of certain benefits from the recipient's pay.

In most cases, the excluded benefits aren't subject to federal income tax withholding, social security, Medicare, federal unemployment (FUTA) tax, or Railroad Retirement Tax Act (RRTA) taxes and aren't reported on Form W-2.

This section discusses the exclusion rules for the following fringe benefits.

- Accident and health benefits.
- Achievement awards.
- Adoption assistance.
- Athletic facilities.
- De minimis (minimal) benefits.

- Dependent care assistance.
- Educational assistance.
- Employee discounts.
- Employee stock options.
- Employer-provided cell phones.
- Group-term life insurance coverage.
- HSAs.
- Lodging on your business premises.
- Meals.
- No-additional-cost services.
- Retirement planning services.
- Transportation (commuting) benefits.
- Tuition reduction.
- Working condition benefits.

See Table 2-1 for an overview of the employment tax treatment of these benefits.

Accident and Health Benefits

This exclusion applies to contributions you make to an accident or health plan for an employee, including the following.

- Contributions to the cost of accident or health insurance including qualified long-term care insurance.
- Contributions to a separate trust or fund that directly or through insurance provides accident or health benefits.
- Contributions to Archer MSAs or HSAs (discussed in Pub. 969).

This exclusion also applies to payments you directly or indirectly make to an employee under an accident or health plan for employees that are either of the following.

- Payments or reimbursements of medical expenses.

- Payments for specific permanent injuries (such as the loss of the use of an arm or leg). The payments must be figured without regard to the period the employee is absent from work.

Accident or health plan. This is an arrangement that provides benefits for your employees, their spouses, their dependents, and their children (under age 27 at the end of the tax year) in the event of personal injury or sickness. The plan may be insured or noninsured and doesn't need to be in writing.

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

- A current common-law employee.
- A full-time life insurance agent who is a current statutory employee.
- A retired employee.

- A former employee you maintain coverage for based on the employment relationship.
- A widow or widower of an individual who died while an employee.
- A widow or widower of a retired employee.
- For the exclusion of contributions to an accident or health plan, 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.

Special rule for certain government plans. For certain government accident and health plans, payments to a deceased employee's beneficiary may qualify for the exclusion from gross income if the other requirements for exclusion are met. See section 105(j) for details.

Table 2-1. Special Rules for Various Types of Fringe Benefits
(For more information, see the full discussion in this section.)

Treatment Under Employment Taxes			
Type of Fringe Benefit	Income Tax Withholding	Social Security and Medicare (including Additional Medicare Tax when wages are paid in excess of \$200,000) ¹	Federal Unemployment (FUTA)
Accident and health benefits	Exempt, ² except for long-term care benefits provided through a flexible spending or similar arrangement.	Exempt, except for certain payments to S corporation employees who are 2% shareholders.	Exempt
Achievement awards	Exempt ² up to \$1,600 for qualified plan awards (\$400 for nonqualified awards).		
Adoption assistance	Exempt ^{2,3}	Taxable	Taxable
Athletic facilities	Exempt if substantially all use during the calendar year is by employees, their spouses, and their dependent children, and the facility is operated by the employer on premises owned or leased by the employer.		
De minimis (minimal) benefits	Exempt	Exempt	Exempt
Dependent care assistance	Exempt ³ up to certain limits, \$5,000 (\$2,500 for married employee filing separate return).		
Educational assistance	Exempt up to \$5,250 of benefits each year. (See Educational Assistance , later in this section.)		
Employee discounts	Exempt ³ up to certain limits. (See Employee Discounts , later in this section.)		
Employee stock options	See Employee Stock Options , later in this section.		
Employer-provided cell phones	Exempt if provided primarily for noncompensatory business purposes.		
Group-term life insurance coverage	Exempt	Exempt ^{2,4,6} up to cost of \$50,000 of coverage. (Special rules apply to former employees.)	Exempt
Health savings accounts (HSAs)	Exempt for qualified individuals up to the HSA contribution limits. (See Health Savings Accounts , later in this section.)		
Lodging on your business premises	Exempt ² if furnished on your business premises, for your convenience, and as a condition of employment.		
Meals	Exempt ² if furnished on your business premises for your convenience.		
	Exempt if de minimis.		
No-additional-cost services	Exempt ³	Exempt ³	Exempt ³
Retirement planning services	Exempt ⁵	Exempt ⁵	Exempt ⁵
Transportation (commuting) benefits	Exempt ² up to certain limits if for rides in a commuter highway vehicle and/or transit passes (\$300) or qualified parking (\$300). (See Transportation (Commuting) Benefits , later in this section.)		
	Exempt if de minimis.		
Tuition reduction	Exempt ³ if for undergraduate education (or graduate education if the employee performs teaching or research activities).		
Working condition benefits	Exempt	Exempt	Exempt
¹ Or other railroad retirement taxes, if applicable. ² Exemption doesn't apply to S corporation employees who are 2% shareholders. ³ Exemption doesn't apply to certain highly compensated employees under a program that favors those employees. ⁴ Exemption doesn't apply to certain key employees under a plan that favors those employees. ⁵ Exemption doesn't apply to services for tax preparation, accounting, legal, or brokerage services. ⁶ 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.			

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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.

Exclusion from wages. You can generally exclude the value of accident or health benefits you provide to an employee from the employee's wages.

Exception for certain long-term care benefits. You can't exclude contributions to the cost of long-term care insurance from an employee's wages subject to federal income

tax withholding if the coverage is provided through a flexible spending or similar arrangement. This is a benefit program that reimburses specified expenses up to a maximum amount that is reasonably available to the employee and is less than five times the total cost of the insurance. However, you can exclude these contributions from the employee's wages subject to social security, Medicare, and FUTA taxes.

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 value of accident or health benefits you provide to the employee in the employee's wages subject to federal income tax withholding. However, you can exclude the value of these benefits (other than payments for specific injuries or illnesses not made under a plan set up to benefit all employees or certain groups of employees) from the employee's wages subject to social

security, Medicare, and FUTA taxes. See Announcement 92-16 for more information. You can find Announcement 92-16 on page 53 of Internal Revenue Bulletin 1992-5.

Exception for highly compensated employees. If your plan is a self-insured medical reimbursement plan that favors highly compensated employees, you must include all or part of the amounts you pay to these employees in box 1 of Form W-2. However, you can exclude these amounts (other than payments for specific injuries or illnesses not made under a plan set up to benefit all employees or certain groups of employees) from the employee's wages subject to income tax withholding and social security, Medicare, and FUTA taxes.

A self-insured plan is a plan that reimburses your employees for medical expenses not covered by an accident or health insurance policy.

A highly compensated employee for this exception is any of the following individuals.

- One of the five highest paid officers.
- An employee who owns (directly or indirectly) more than 10% in value of the employer's stock.
- An employee who is among the highest paid 25% of all employees (other than those who can be excluded from the plan).

For more information on this exception, see section 105(h) of the Internal Revenue Code and its regulations.

COBRA premiums. The exclusion for accident and health benefits applies to amounts you pay to maintain medical coverage for a current or former employee under the Combined Omnibus Budget Reconciliation Act of 1986 (COBRA). The exclusion applies regardless of the length of employment, whether you directly pay the

premiums or reimburse the former employee for premiums paid, and whether the employee's separation is permanent or temporary.

Qualified small employer health reimbursement arrangements

(QSEHRAs). QSEHRAs allow eligible small employers to pay or reimburse medical care expenses, including health insurance premiums, of eligible employees and their family members. A QSEHRA isn't a group health plan, and, therefore, isn't subject to group health plan requirements. Generally, payments from a QSEHRA to reimburse an eligible employee's medical expenses aren't includible in the employee's gross income if the employee has coverage that provides minimum essential coverage, as defined in section 5000A(f) of the Internal Revenue Code.

A QSEHRA is an arrangement that meets all the following requirements.

1. The arrangement is funded solely by you, and no salary reduction contributions may be made under the arrangement.
2. The arrangement provides, after the eligible employee provides proof of coverage, for the payment or reimbursement of the medical expenses incurred by the employee or the employee's family members.
3. The amount of payments and reimbursements doesn't exceed \$5,850 (\$11,800, for family coverage) for 2023.
4. The arrangement is generally provided on the same terms to all your eligible employees. However, your QSEHRA may exclude employees who haven't completed 90 days of service, employees who haven't attained age 25 before the beginning of the plan year, part-time or seasonal employees,

employees covered by a collective bargaining agreement if health benefits were the subject of good-faith bargaining, and employees who are nonresident aliens with no earned income from sources within the United States.

Eligible employer. To be an eligible employer, you must not be an applicable large employer, which is defined as an employer that generally employed at least 50 full-time employees, including full-time equivalent employees, in the prior calendar year. You must also not offer a group health plan (including a health reimbursement arrangement (HRA) or a health FSA) to any of your employees. For more information about the Affordable Care Act and group health plan requirements, go to [IRS.gov/ACA](https://www.irs.gov/aca). For more information about QSEHRAs, including information about the requirement to give a written notice to each eligible employee, see

Notice 2017-67, 2017-47 I.R.B. 517, available at [IRS.gov/irb/2017-47_IRB#NOT-2017-67](https://www.irs.gov/irb/2017-47_IRB#NOT-2017-67).

Reporting requirements. You must report in box 12 of Form W-2 using code "FF" the amount of payments and reimbursements that your employee is entitled to receive from the QSEHRA for the calendar year without regard to the amount of payments or reimbursements actually received. For example, if your QSEHRA provides a permitted benefit of \$3,000 and your employee receives reimbursements of \$2,000, on Form W-2, you would report a permitted benefit of \$3,000 in box 12 using code "FF."

Achievement Awards

This exclusion applies to the value of any tangible personal property you give to an employee as an award for either length of service or safety achievement. The exclusion doesn't apply to awards of cash, cash

equivalents, gift cards, gift coupons, or gift certificates (other than arrangements granting only the right to select and receive tangible personal property from a limited assortment of items preselected or preapproved by you). The exclusion also doesn't apply to vacations, meals, lodging, tickets to theater or sporting events, stocks, bonds, other securities, and other similar items. The award must meet the requirements for employee achievement awards discussed in chapter 2 of Pub. 535.

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

- A current employee.
- A former common-law employee you maintain coverage for in consideration of or based on an agreement relating to prior service as an 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.

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.

Exclusion from wages. You can generally exclude the value of achievement awards you give to an employee from the employee's wages if their cost isn't more than the amount you can deduct as a business expense for the

year. The excludable annual amount is \$1,600 (\$400 for awards that aren't "qualified plan awards"). See chapter 2 of Pub. 535 for more information about the limit on deductions for employee achievement awards.



To determine for 2023 whether an achievement award is a "qualified plan award" under the deduction rules described in Pub. 535, treat any employee who received more than \$135,000 in pay for 2022 as a highly compensated employee.

If the cost of awards given to an employee is more than your allowable deduction, include in the employee's wages the larger of the following amounts.

- The part of the cost that is more than your allowable deduction (up to the value of the awards).

- The amount by which the value of the awards exceeds your allowable deduction.

Exclude the remaining value of the awards from the employee's wages.

Adoption Assistance

An adoption assistance program is a separate written plan of an employer that meets all of the following requirements.

1. It benefits employees who qualify under rules set up by you, which don't favor highly compensated employees or their dependents. To determine whether your plan meets this test, don't consider employees excluded from your plan who are covered by a collective bargaining agreement if there is evidence that adoption assistance was a subject of good-faith bargaining.

2. It doesn't pay more than 5% of its payments during the year for shareholders or owners (or their spouses or dependents). A shareholder or owner is someone who owns (on any day of the year) more than 5% of the stock or of the capital or profits interest of your business.
3. You give reasonable notice of the plan to eligible employees.
4. Employees provide reasonable substantiation that payments or reimbursements are for qualifying expenses.

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.

You must exclude all payments or reimbursements you make under an adoption assistance program for an employee's qualified adoption expenses from the employee's wages subject to federal income tax withholding. However, you can't exclude these payments from wages subject to social security, Medicare, and FUTA taxes.

You must report all qualifying adoption expenses you paid or reimbursed under your adoption assistance program for each employee for the year in box 12 of the employee's Form W-2. Report all amounts including those in excess of the \$15,950

exclusion for 2023. Use code "T" to identify this amount.

Exception for 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.

More information. For more information on adoption benefits, see Notice 97-9, which is on page 35 of Internal Revenue Bulletin 1997-2 at [IRS.gov/pub/irs-irbs/irb97-02.pdf](https://www.irs.gov/pub/irs-irbs/irb97-02.pdf). Advise your employees to see the Instructions for Form 8839.

Athletic Facilities

You can exclude the value of an employee's use of an on-premises gym or other athletic facility you operate from an employee's wages if substantially all use of the facility during the calendar year is by your employees, their spouses, and their dependent children. For this purpose, an employee's 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. The exclusion doesn't apply to any athletic facility if access to the facility is made available to the general public through the sale of memberships, the rental of the facility, or a similar arrangement.

On-premises facility. The athletic facility must be located on premises you own or lease and must be operated by you. It doesn't have to be located on your business premises. However, the exclusion doesn't apply to an athletic facility that is a facility for

residential use, such as athletic facilities that are part of a resort.

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

- A current employee.
- A former employee who retired or left on disability.
- A widow or widower of an individual who died while an employee.
- A widow or widower of a former employee who retired or left on disability.
- 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 partner who performs services for a partnership.

De Minimis (Minimal) Benefits

You can exclude the value of a de minimis benefit you provide to an employee from the employee's wages. A de minimis benefit is any property or service you provide to an employee that has so little value (taking into account how frequently you provide similar benefits to your employees) that accounting for it would be unreasonable or administratively impracticable. Cash and cash equivalent fringe benefits (for example, gift certificates, gift cards, and the use of a charge card or credit card), no matter how little, are never excludable as a de minimis benefit.

However, meal money and local transportation fare, if provided on an occasional basis and because of overtime work, may be excluded, as discussed later.

Examples of de minimis benefits include the following.

- Personal use of an employer-provided cell phone provided primarily for noncompensatory business purposes. See *Employer-Provided Cell Phones*, later in this section, for details.
- Occasional personal use of a company copying machine if you sufficiently control its use so that at least 85% of its use is for business purposes.
- Holiday or birthday gifts, other than cash, with a low fair market value. Also, flowers or fruit or similar items provided to employees under special circumstances (for example, on account of illness, a family crisis, or outstanding performance).
- Group-term life insurance payable on the death of an employee's spouse or

dependent if the face amount isn't more than \$2,000.

- Certain meals. See Meals, later in this section, for details.
- Occasional parties or picnics for employees and their guests.
- Occasional tickets for theater or sporting events.
- Certain transportation fare. See Transportation (Commuting) Benefits, later in this section, for details.

Some examples of benefits that aren't excludable as de minimis fringe benefits are season tickets to sporting or theatrical events; the commuting use of an employer-provided automobile or other vehicle more than 1 day a month; membership in a private country club or athletic facility, regardless of the frequency with which the employee uses the facility; and use of employer-owned or leased facilities (such as an apartment,

hunting lodge, boat, etc.) for a weekend. If a benefit provided to an employee doesn't qualify as de minimis (for example, the frequency exceeds a limit described earlier), then generally the entire benefit must be included in income.

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

Dependent Care Assistance

This exclusion applies to household and dependent care services you directly or indirectly pay for or provide to an employee under a written dependent care assistance program (DCAP) that covers only your employees. The services must be for a qualifying person's care and must be provided to allow the employee to work. These requirements are basically the same as the tests the employee would have to meet to claim the dependent care credit if the

employee paid for the services. For more information, see *Can You Claim the Credit?* in Pub. 503.

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.
- Yourself (if you're a sole proprietor).
- A partner who performs services for a partnership.

Exclusion from wages. You can exclude the value of benefits you provide to an employee under a DCAP from the employee's wages if you reasonably believe that the employee can exclude the benefits from gross income.

An employee can generally exclude from gross income up to \$5,000 (\$2,500 if married filing separately) of benefits received under a DCAP each year.

However, the exclusion can't be more than the smaller of the earned income of either the employee or employee's spouse. Special rules apply to determine the earned income of a spouse who is either a student or not able to care for themselves. For more information on the earned income limit, see Pub. 503.

Exception for highly compensated employees. You can't exclude dependent care assistance from the wages of a highly compensated employee unless the benefits provided under the program don't favor highly compensated employees and the program meets the requirements described in section 129(d) of the Internal Revenue Code.

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.

Form W-2. Report the value of all dependent care assistance you provide to an employee under a DCAP in box 10 of the employee's Form W-2. Include any amounts you can't exclude from the employee's wages in boxes 1, 3, and 5. Report in box 10 both the nontaxable portion of assistance (up to \$5,000) and any assistance above that amount that is taxable to the employee.

Example. Oak Co. provides a dependent care assistance FSA to its employees through a cafeteria plan. In addition, it provides occasional on-site dependent care to its employees at no cost. Emily, an employee of Oak Co., had \$4,500 deducted from Emily's pay for the dependent care FSA. In addition, Emily used the on-site dependent care several times. The fair market value of the on-site care was \$700. Emily's Form W-2 should report \$5,200 of dependent care assistance in box 10 (\$4,500 FSA plus \$700 on-site dependent care). Boxes 1, 3, and 5 should include \$200 (the amount in excess of the nontaxable assistance), and applicable taxes should be withheld on that amount.

Educational Assistance

This exclusion applies to educational assistance you provide to employees under an educational assistance program. The exclusion also applies to graduate-level courses.

Educational assistance means amounts you pay or incur for your employees' education expenses. These expenses generally include the cost of books, equipment, fees, supplies, and tuition. However, these expenses don't include the cost of a course or other education involving sports, games, or hobbies, unless the education:

- Has a reasonable relationship to your business, or
- Is required as part of a degree program.

Education expenses don't include the cost of tools or supplies (other than textbooks) your employee is allowed to keep at the end of the course. Nor do they include the cost of lodging, meals, or transportation. Your employee must be able to provide substantiation to you that the educational assistance provided was used for qualifying education expenses.

Exclusion for employer payments of student loans. Employer-provided educational assistance benefits include payments made after March 27, 2020, and before January 1, 2026, whether paid to the employee or to a lender, of principal or interest on any qualified education loan incurred by the employee for education of the employee. Qualified education loans are defined in chapter 10 of Pub. 970.

Educational assistance program. An educational assistance program is a separate written plan that provides educational assistance only to your employees. The program qualifies only if all of the following tests are met.

- The program benefits employees who qualify under rules set up by you that don't favor highly compensated employees. To determine whether your program meets this test, don't consider employees excluded from

your program who are covered by a collective bargaining agreement if there is evidence that educational assistance was a subject of good-faith bargaining.

- The program doesn't provide more than 5% of its benefits during the year for shareholders or owners (or their spouses or dependents). A shareholder or owner is someone who owns (on any day of the year) more than 5% of the stock or of the capital or profits interest of your business.
- The program doesn't allow employees to choose to receive cash or other benefits that must be included in gross income instead of educational assistance.
- You give reasonable notice of the program to eligible employees.

Your program can cover former employees if their employment is the reason for the coverage.

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.

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

- A current employee.
- A former employee who retired, left on disability, or was laid off.
- 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.
- Yourself (if you're a sole proprietor).
- A partner who performs services for a partnership.

Exclusion from wages. You can exclude up to \$5,250 of educational assistance you provide to an employee under an educational assistance program from the employee's wages each year.

Assistance over \$5,250. If you don't have an educational assistance plan, or you provide an employee with assistance exceeding \$5,250, you must include the value of these benefits as wages, unless the benefits are working condition benefits. Working condition benefits may be excluded from wages. Property or a service provided is a working condition benefit to the extent that if the employee paid for it, the amount paid would have been allowable as a business or depreciation expense. See *Working Condition Benefits*, later in this section.

Employee Discounts

This exclusion applies to a price reduction you give your employee on property or services you offer to customers in the ordinary course of the line of business in which the employee performs substantial services. It applies whether the property or service is provided at no charge (in which case only part of the discount may be excludable as a qualified

employee discount) or at a reduced price. It also applies if the benefit is provided through a partial or total cash rebate.

The benefit may be provided either directly by you or indirectly through a third party. For example, an employee of an appliance manufacturer may receive a qualified employee discount on the manufacturer's appliances purchased at a retail store that offers the appliances for sale to customers.

Employee discounts don't apply to discounts on real property or discounts on personal property of a kind commonly held for investment (such as stocks or bonds). They also don't include discounts on a line of business of the employer for which the employee doesn't provide substantial services, or discounts on property or services of a kind that aren't offered for sale to customers. Therefore, discounts on items sold in an employee store that aren't sold to customers aren't excluded from employee

income. Also, employee discounts provided by another employer through a reciprocal agreement aren't excluded.

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

- A current employee.
- A former employee who retired or left on disability.
- A widow or widower of an individual who died while an employee.
- A widow or widower of an employee who retired or left on disability.
- 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 partner who performs services for a partnership.

Treat discounts 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.

Exclusion from wages. You can generally exclude the value of an employee discount you provide an employee from the employee's wages, up to the following limits.

- For a discount on services, 20% of the price you charge nonemployee customers for the service.
- For a discount on merchandise or other property, your gross profit percentage times the price you charge nonemployee customers for the property.

Generally, determine your gross profit percentage in the line of business based on all property you offer to customers (including employee customers) and your experience during the tax year immediately before the tax year in which the discount is available. To figure your gross profit percentage, subtract the total cost of the property from the total sales price of the property and divide the result by the total sales price of the property. Employers that are in their first year of existence may estimate their gross profit percentage based on its mark-up from cost or refer to an appropriate industry average. If substantial changes in an employer's business indicate at any time that it is inappropriate for the prior year's gross profit percentage to be used for the current year, the employer must, within a reasonable period, redetermine the gross profit percentage for the remaining portion of the current year as if such portion of the year were the first year of the employer's existence.

Exception for highly compensated employees. You can't exclude from the wages of a highly compensated employee any part of the value of a discount 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.

Employee Stock Options

There are three kinds of stock options— incentive stock options, employee stock purchase plan options, and nonstatutory (nonqualified) stock options.

Wages for social security, Medicare, and FUTA taxes don't include remuneration resulting from the exercise of an incentive stock option or an employee stock purchase plan option, or from any disposition of stock acquired by exercising such an option.

Additionally, federal income tax withholding isn't required on the income resulting from a disqualifying disposition of stock acquired by the exercise of an incentive stock option or an employee stock purchase plan option, or on income equal to the discount portion of stock

acquired by the exercise of an employee stock purchase plan option resulting from any qualifying disposition of the stock. The employer must report as income in box 1 of Form W-2 (a) the discount portion of stock acquired by the exercise of an employee stock purchase plan option upon a qualifying disposition of the stock, and (b) the spread (between the exercise price and the fair market value of the stock at the time of exercise) upon a disqualifying disposition of stock acquired by the exercise of an incentive stock option or an employee stock purchase plan option.

An employer must report the excess of the fair market value of stock received upon exercise of a nonstatutory stock option over the amount paid for the stock option on Form W-2 in boxes 1, 3 (up to the social security wage base), and 5, and in box 12 using the code "V." See Regulations section 1.83-7.

An employee who transfers their interest in nonstatutory stock options to the employee's former spouse incident to a divorce isn't required to include an amount in gross income upon the transfer. The former spouse, rather than the employee, is required to include an amount in gross income when the former spouse exercises the stock options. See Revenue Ruling 2002-22 and Revenue Ruling 2004-60 for details. You can find Revenue Ruling 2002-22 on page 849 of Internal Revenue Bulletin 2002-19 at [IRS.gov/pub/irs-irbs/irb02-19.pdf](https://www.irs.gov/pub/irs-irbs/irb02-19.pdf). Revenue Ruling 2004-60, 2004-24 I.R.B. 1051, is available at [IRS.gov/irb/2004-24_IRB#RR-2004-60](https://www.irs.gov/irb/2004-24_IRB#RR-2004-60).

Employee stock options aren't subject to Railroad Retirement Tax. In *Wisconsin Central Ltd. v. United States*, 138 S. Ct. 2067, the U. S. Supreme Court ruled that employee stock options (whether statutory or nonstatutory) aren't “money remuneration”

subject to the Railroad Retirement Tax Act (RRTA). If you're a railroad employer, don't withhold Tier 1 and Tier 2 taxes on compensation from railroad employees covered by the RRTA exercising such options. You must still withhold federal income tax on taxable compensation from railroad employees exercising their options.

Section 83(i) election to defer income on equity grants. Under section 83(i) of the Internal Revenue Code, qualified employees who are granted stock options or restricted stock units (RSUs) and who later receive stock upon exercise of the option or upon settlement of the RSU (qualified stock) may elect to defer the recognition of income for up to 5 years if the corporation's stock wasn't readily tradable on an established securities market during any prior calendar year, if the corporation has a written plan under which not less than 80% of all U.S. employees are granted options or RSUs with the same rights

and privileges to receive qualified stock, and if certain other requirements are met. An election under section 83(i) applies only for federal income tax purposes. The election has no effect on the application of social security, Medicare, and unemployment taxes. For federal income tax purposes, the employer must withhold federal income tax at 37% in the tax year that the amount deferred is included in the employee's income. If a section 83(i) election is made for an option exercise, that option will not be considered an incentive stock option or an option granted pursuant to an employee stock purchase plan. These rules apply to stock attributable to options exercised, or RSUs settled, after December 31, 2017. For more information, see section 83(i) and Notice 2018-97, 2018-52 I.R.B. 1062, available at [IRS.gov/irb/2018-52_IRB#NOT-2018-97](https://www.irs.gov/irb/2018-52_IRB#NOT-2018-97).

Reporting requirements. For each employee, you must report in box 12 of Form W-2 using code “GG” the amount included in income in the calendar year from qualified equity grants under section 83(i). You must also report in box 12 using code “HH” the total amount of income deferred under section 83(i) determined as of the close of the calendar year.

More information. For more information about employee stock options, see sections 83, 421, 422, and 423 of the Internal Revenue Code and their related regulations.

Employer-Provided Cell Phones

The value of the business use of an employer-provided cell phone, provided primarily for noncompensatory business reasons, is excludable from an employee's income as a working condition fringe benefit. Personal use of an employer-provided cell phone, provided

primarily for noncompensatory business reasons, is excludable from an employee's income as a de minimis fringe benefit. The term "cell phone" also includes other similar telecommunications equipment. For the rules relating to these types of benefits, see De Minimis (Minimal) Benefits, earlier in this section, and Working Condition Benefits, later in this section.

Noncompensatory business purposes.

You provide a cell phone primarily for noncompensatory business purposes if there are substantial business reasons for providing the cell phone. Examples of substantial business reasons include the employer's:

- Need to contact the employee at all times for work-related emergencies,
- Requirement that the employee be available to speak with clients at times when the employee is away from the office, and

- Need to speak with clients located in other time zones at times outside the employee's normal workday.

Cell phones provided to promote goodwill, boost morale, or attract prospective employees. You can't exclude from an employee's wages the value of a cell phone provided to promote goodwill of an employee, to attract a prospective employee, or as a means of providing additional compensation to an employee.

Additional information. For additional information on the tax treatment of employer-provided cell phones, see Notice 2011-72, 2011-38 I.R.B. 407, available at IRS.gov/irb/2011-38_IRB#NOT-2011-72.