

Dependent Care

Qualified expenses

Most importantly, a qualified expense must enable the employee (and spouse, if married) to be gainfully employed or to look for gainful employment. Volunteer work is not considered gainful employment. Beyond that requirement, numerous standards apply in determining a qualified expense.

Schooling. As noted above, the purpose of qualified dependent care assistance is to help pay of care for a qualifying individual so that a parent or guardian can be gainfully employed or can look for a job. In most cases, this means care for a child so that a parent can work. Only “custodial” expenses – those related to a child’s protection and well-being – may be reimbursed under a dependent care FSA; expenses that are educational in nature do not qualify. In addressing the definition of educational expenses, the relevant IRS regulations specify two standards.

- (1) The full amount paid to a nursery school is considered a qualified expense (even if the nursery school provides educational services); and
- (2) Educational expenses for a child in first grade or above are not qualified expenses.

Although the regulations do not address enrollment in kindergarten, an information letter issued by the IRS in September 2000 indicated that kindergarten expenses are generally for education, not custodial care. Thus, the appropriate standard seems to be that in the setting of a school or educational facility, only nursery school expenses should be reimbursed through a dependent care FSA.

Camps and babysitting. Summer day camp expenses qualify as eligible expenses, but over-night camp expenses do not. Generally, evening babysitting would not qualify as an eligible expense unless a single parent or both married parents work in the evening.

Transportation, entertainment and food. Qualified expenses only include the cost of services for the dependent’s well-being and safety; they do not include the cost of transportation, entertainment, food or clothing unless such items are incidental and cannot be separated from the cost of the care provided. This means that the cost of getting a child or other qualified dependent from home to a care provider, or from school to a care provider is not a qualified expense. Public transportation fares, such as for travel by bus, subway or taxi, are not qualified expenses, nor are any costs associated with operating a private car. This rule applies to providers as well as dependents – that is, transportation costs associated with bringing a care provider to an employee’s home are not qualified expenses.

Household expenses. Expenses paid for household services are qualified if they: (1) pertain to services provided in the employee’s home that are “ordinary and usual” and “necessary to the maintenance of the household” (such as a maid, housekeeper or cook);

and (2) are attributable at least in part to the care of the qualifying individual. The services of a gardener or chauffeur, for example, would not qualify as eligible expenses.

Payroll taxes. Payment of payroll taxes by an employee in connection with compensation paid to a service provider is a qualified expense. These taxes include Social Security (FICA) / Medicare tax, federal unemployment tax (FUTA) or similar state payroll taxes.