

Legislative Update

Employee Benefits



Services offered through Mesirow Insurance Services, Inc.

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Illinois Dependent Age Limit for Health Care Coverage: Supplement

This Legislative Update supplements the Amended Illinois Dependent Age Limit for Health Care Coverage, issued November 26, 2008.

Extension of Dependent Age Limit

The subject law (now Public Act 95-0958) became effective on June 1, 2009 (see Effective Dates section below), bringing with it questions about how and when to administer it. This supplement is intended to help clarify some outstanding questions. NOTE: This law does not apply to self-insured employers.

Prior to the enactment of the new law, qualified dependents were generally eligible until age 19, or until age 25 if a full-time student. Among other things, the new law extends a dependent's ability to be covered under his/her parents' health plan until age 26, regardless of student status. Active duty or veteran status dependents may remain on their parents' health plan until age 30 and must be residents of Illinois. Other eligible dependents are not required to live at home or in Illinois. All dependents must remain unmarried to continue to be eligible under this law.

Employee Tax Implications

Under federal tax law, only certain dependents of an employee may qualify to receive employer-provided health coverage on a tax-free basis. If coverage is provided to a dependent who no longer meets the IRS definition of a "qualified tax dependent" per Sections 152 and 105(b) of the Internal Revenue Code (IRC), federal

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income and payroll tax consequences will result. In addition to post-tax payroll deductions, the employee will incur additional taxable income or "imputed income."

In this case, the amount of income to be imputed (the amount on which the tax is calculated) is determined by assessing the fair market value (FMV) of the employer-provided health benefits for his/her non-tax qualified dependents. The imputed income, like other wages, will be subject to income tax withholding and payroll taxes such as Social Security and Medicare. *Please note that health care expenses for non-tax dependents are not reimbursable under a health care flexible spending account.*

Determining a Tax Dependent

For a dependent to be a qualified tax dependent (or "qualifying child"), certain requirements in IRC Sections 152 and 105(b) (definition of "dependent") must be satisfied. The child must be the employee's biological, adopted, foster or stepchild; the employee must provide over one-half of the child's support during the relevant calendar year; the child must not have attained age 19 as of the close of the calendar year, or is a full-time student who has not attained age 24 as of the close of the calendar year; the child is permanently and totally disabled (regardless of age) at any time during the calendar year.

Once the child exceeds the ages described above, he/she is considered for tax purposes to be a "qualifying relative" — an individual, who, with respect to the taxpayer employee for any taxable year, bears an IRS-specified familial relationship with the employee; for whom the employee provides over 1/2 of the support for the calendar year; and who is not the "qualifying child" of the employee or any other individual (for tax purposes) during the tax year.

Support can include food, shelter, clothing, medical and dental care, education and the like.

Also, the child may not be claimed as a qualifying dependent child by any other taxpayer for the relevant year (see IRS Publication 501 - Exemptions, Standard Deduction and Filing Information to determine the amount of support - available at www.irs.gov).

Given these parameters, an employee with a dependent child (if not disabled) who is over age 23 at the end of the calendar year, may still be able to provide that dependent child with coverage under the employer's group health plan (if the plan so permits), but will be required to pay for that child's cost of coverage either on an after-tax or imputed tax basis.

To summarize:

- If your adult child qualifies as IRS tax dependent, premium deductions generally will be made on a pre-tax basis using the same rate structure as all other qualified IRS tax dependents.
- If your adult child does NOT qualify as an IRS tax dependent, the dependent's health plan coverage will be subject to federal taxation under the imputed income and related rules described above.

For the convenience of your employees in determining the dependent status of their children, we have included a sample affidavit of dependent status form with this Legislative Update.

Calculating Fair Market Value (FMV)

An employee who obtains coverage for a dependent who no longer qualifies as a tax dependent must have the value of that coverage included as imputed income. In general, the IRS defines the FMV of such benefit coverage as the amount that an

individual would have to pay for that coverage in an "arm's length transaction" — usually the single rate for COBRA coverage. Other methods to determine the FMV of benefits may also be applied. Please check with your tax advisor to determine the method your organization should use to determine the specific amount of imputed income to apply to coverage for non-tax dependents.

Effective Dates

Although the law became effective on June 1, 2009, your plan is affected on the next renewal date following June 1. For example, if your plan renews on January 1, 2010, you must begin complying with the new law on January 1, 2010.

Enrollment Periods

Beginning on the first day of your first renewal following the effective date of the new law, you are required to offer a special minimum 90-day open enrollment period for employees to enroll newly-eligible dependents. After the special 90-day open

enrollment period expires, eligible dependents may be enrolled during regular (generally annual) open enrollment periods. Dependents are not eligible to enroll or claim coverage until the company's next renewal date on or after June 1, 2009.

For more information, visit:

<http://www.ilga.gov/legislation/publicacts/fulltext.asp?name=095-0958> or contact your Mesirow Financial representative.

To view our archive of *Mesirow Financial Legislative Updates* and *Looks At* newsletters, please visit:

<http://www.mesirowfinancial.com/benefits/default.jsp>

This article is intended as an overview and should not be viewed as or relied upon as legal or tax advice. Please consult with your attorney or tax professional if you have any questions about this legislation.

AFFIDAVIT OF STATUS FOR DEPENDENT CHILDREN

Name of Employee: _____
Last First M.I.

Employee's Social Security Number (SSN): _____

Name of Dependent: _____
Last First M.I.

Dependent's Date of Birth: _____ Dependent's SSN: _____

Effective immediately we will begin offering health coverage to any of your unmarried children up to the age of 26, or up to the age of 30 in the case of eligible unmarried children who have served as members of the active or reserve components of any branch of the U.S. Armed Forces.

In accordance with our current employer-sponsored group health coverage, only spouses and children can be added as dependents listed on the benefit plan. If an individual does not meet the federal tax definition of a dependent but is a dependent listed on the benefit plan, then the value of that coverage would be considered as income for federal tax purposes. This form is meant to assist in determining whether your Dependent qualifies as a federal tax dependent.

PART I.	
A. Initial the box for the statement below that describes your relationship to the Dependent and then go to Section B. <u>If none apply, this person is NOT an eligible dependent and cannot be added to your health benefits coverage.</u>	
	The Dependent is my biological child.
	The Dependent is my adopted child OR a child placed with me for adoption by me.
	The Dependent is my stepchild.
	The Dependent is my grandchild.
	The Dependent is my step-grandchild.
	The Dependent permanently resides with me and I am his/her testamentary or court-appointed guardian for a non-temporary guardianship of not less than 12 months.
	The Dependent is related to me by blood and/or marriage, permanently resides with me and I provide his/her sole support.
B. If the Dependent is NOT married, initial the box below and then go to Section C. <u>If the Dependent is married, he/she is NOT an eligible dependent and cannot be added to your health benefits coverage.</u>	
	The Dependent is NOT married.
C. Initial the box below for the statement that describes the Dependent and then go to Part II. If neither statement describes the Dependent, this person is NOT an eligible dependent and cannot be added to your health benefits coverage.	
	The Dependent is under the age of 26.
	The Dependent is any age and is incapable of self-support because of a mental or physical incapacity which incurred before reaching age 26 and is chiefly dependent on me for support.

AND

PART II. The Dependent must meet all tax criteria for either Qualifying Child OR Qualifying Relative. Initial the box for each criterion that is true for this Dependent. If you cannot initial all four Qualifying Child OR all three Qualifying Relative criteria, the Dependent is NOT an eligible dependent and cannot be added to your health benefits coverage.	
Qualifying Child Test: Initial each criteria that applies to the Dependent – must meet all four	
1	The child is my biological child or adopted child (or placed with me for adoption by me), my legal ward or child placed with me under court order (not temporary for less than 12 months), my step-child, sibling, or a descendant of my child or sibling (i.e. my grandchild, niece, etc.) AND
2	The child lives with me for more than half of the year (more than six months) or is my biological or adopted child and meets the following residence exception: - The child receives over half of the child's support during the calendar year from the child's parents, who (1) are divorced or legally separated under a decree of divorce or separate maintenance, or (2) are separated under a written separation agreement, or (3) live apart at all times during the last six months of the calendar year; and - The child is in the custody of one or both of the child's parents for more than half of the calendar year; AND
3	The child (1) has not attained age 19 as of the close of the calendar year in which coverage is provided, or (2) is a full-time student for at least five months of the calendar year and has not attained age 24 as of the end of the calendar year in which coverage is provided, or (3) is permanently and totally disabled; AND
4	The child has not provided more than half of his/her own support for the calendar year in which coverage is provided.
OR	
Qualifying Relative Test: Initial each criteria that applies to the Dependent – must meet all three	
1	The Dependent has a specified relationship to me: my biological child, my adopted child (or placed with me for adoption by me), my step-child, my grandchild, my niece, my nephew, my sibling, or a person who is not my lawful spouse who lives with me and is a member of my household for the entire year (this includes a legal ward); AND
2	I provide over half of the Dependent's support for the calendar year in which coverage is provided; AND
3	The Dependent is not my or anyone else's qualifying child for the tax year in which coverage is provided. (If this child meets all four tax criteria for the Qualifying Child Test, this statement is not true.)

I solemnly affirm that the contents of this document in regards to the Dependent are true to the best of my knowledge, information and belief. I also understand that my employer may request verification of the information presented in this document. If any of the above information should change in the future, it will be my responsibility to notify my employer of those changes within 30 days of the date of the change.

Signature of Employee: _____ Date: _____