

NEW HAMPSHIRE'S REVISED "DEPENDENT CHILD" DEFINITION FOR HEALTH COVERAGE: IS MY DEPENDENT CHILD ELIGIBLE? WILL I HAVE TO PAY INCOME TAX?

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OCTOBER 2, 2009

Effective September 14, 2009, the definition of a "dependent child" for New Hampshire group health insurance purposes has changed. Now, the state definition more closely aligns with the federal income tax rules, which should make it easier for employers to calculate and withhold any payroll taxes that may be payable on behalf of covered employees who include their children on the health plan. However, there are still some situations in which employers must remain vigilant in order to continue to comply with the federal payroll tax withholding rules as applied to some of their covered employees and their children.

The Old "Dependent Child" Definition

In 2007, the New Hampshire legislature passed a number of bills that affected employer-provided health coverage. One of these bills, HB 790, broadened the eligibility criteria for dependent coverage for health insurance purposes. We discussed this bill at its passage in a prior email alert on October 19, 2007. At that time, the law expanded the definition of an eligible dependent child to include an employee's child who met all of the following criteria:

- less than 26 years of age;
- unmarried;
- resident of New Hampshire or enrolled at a public or private institution of higher education;
- not provided coverage as a named subscriber under any other group or individual plan or entitled to benefits under certain governmental programs.

Since then, employers and employees who are considering enrollment in work-based health care coverage have had to answer a two-part question: 1) is an employee's child a dependent for New

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Hampshire insurance law purposes - and thus eligible for coverage, and 2) can that child benefit from the coverage without requiring the employee/parent to pay additional income tax on the cost of the benefit?

Income Taxation of Employer Provided Health Coverage

Because the Internal Revenue Service's definition of a tax-favored "dependent" does not completely match the New Hampshire insurance law definition of a "dependent child", there can be instances when a child is eligible for coverage under an employer's health plan but is not deemed a "dependent" under the Tax Code. If that is so, then the employer must take steps to properly withhold additional payroll tax on behalf of some employees on account of this mismatch between state and federal law. This additional withholding can be an unpleasant surprise for affected employees, and a challenge for the employer to calculate and explain.

The New "Dependent Child" Definition

HB 330 revised the part of RSA Section 415:5 that defines a "dependent child" for purposes of group health insurance to now read as follows:

[T]he term "dependent child" shall include a subscriber's child by blood or by law, who is unmarried and one of the following:

- (1) Under age 19.
- (2) Under age 25 if the child is a full-time enrolled student at an educational institution.
- (3) Under age 26, a resident of New Hampshire, and is not provided coverage as a named subscriber, insured, enrollee, or covered person under any other group or individual health benefits plan, group health plan, church plan, or health benefits plan, or entitled to benefits under Title XVIII of the Social Security Act, Public Law 89-97, 42 U.S.C. section 1395 *et seq.*

Analysis of New Definition

Each of the three criteria describes a dependent child who is eligible for health coverage under a policy issued in New Hampshire. What has changed from the prior definition?

The **under age 19** criteria now matches an IRS age-related criteria for tax-favored treatment. So long as a child under age 19 lives with the employee and derives at least half of his support from the employee, then that child is a tax-favored dependent and premiums

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paid for the child's New Hampshire health coverage will not be subject to federal income taxation.

The **under-25 student** criteria is close, but does not completely match, the IRS's terms. Under the Tax Code, a child who is a student and "has not attained the age of 24" is a tax-favored dependent, so long as that child is also deemed to reside with the employee (when not in school) and still relies on the employee for support. Therefore, coverage for a New Hampshire "dependent child" between 24 and 25 who is a full-time student may still trigger federal income taxation - depending on support and residency considerations. Also, readers may note that the revised New Hampshire student criteria in this category is more restrictive than in the 2007 version - now requiring full-time school enrollment. This was not the case previously, as many employers noted. Now, mere enrollment in a class or two is not enough to satisfy this New Hampshire eligibility criteria.

The **under 26, New Hampshire resident** criteria does not have a word-for-word corollary in the Tax Code. This definition retains the then-new definition that was added in 2007. Employers will still need to conduct a "support test" for these dependent children who are included under an employee's coverage to determine whether or not the cost of the child's coverage is taxable for income tax purposes.

What To Do

As new enrollment periods begin, employers need to double-check that their materials are updated to reflect this change in New Hampshire health insurance coverage eligibility for dependent children. Separately, employers should also confirm that their procedures for determining and reporting employees' income tax liability for health insurance premium payments are still reliable.

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