

Payroll Services Mailbag: Child support orders, 401k hardships and more

Editor of Business Management Daily's *Payroll Legal Alert*, and employment tax compliance expert Alice Gilman answers your payroll questions in this roundup of Payroll Services Mailbag.

Too many child support orders for comfort

Question: We received four child support withholding orders for an employee whose hourly rate is \$12. The orders total \$1,831.31 a month, which he can never meet. We don't want to automatically put the employee into arrears, but we don't see a way out. Where do we begin?

Answer: If the employee can't meet his monthly obligations, it's up to him, not you, to have his support order modified. As the garnishee, your only responsibility is to enforce the orders. You should contact your state child support office and inquire how they want you to prioritize these orders. You must withhold something on each order for current support, so the issue is whether you withhold a proportionate amount or just divide this employee's disposable earnings by the number of orders and withhold an equal amount for each order.

Parsing the travel rules when employees aren't away from home

Question: If an employee travels out of the office (let's say 50 miles) for business purposes, but doesn't have to stay overnight at a hotel, are his meals taxable?

Answer: The number of miles traveled isn't relevant. What is relevant is whether employees are away from home overnight on business. If they are, their substantiated meal expenses can be reimbursed tax free. If they're not away from home overnight, their meals are personal and, therefore, nonreimbursable on a tax-free basis. A meal wouldn't be taxable if the employee was taking a client or a prospective client who was attending the same event out to eat.

What qualifies as a 401(k) hardship distribution?

Question: One of our employees wants to take a hardship distribution from his 401(k) plan to help his daughter repay her student loans. Our 401(k) plan allows for hardship distributions in line with the IRS' safe harbors. Does this qualify as grounds for a hardship distribution?

Answer: No. Educational expenses will qualify for a hardship distribution, but only if the distribution is for the payment of tuition, related fees and room and board expenses for up to the next 12 months of undergraduate or graduate school. Paying off student loans doesn't qualify because those sorts of payments don't meet the 12-month rule. If your plan allows, the employee can take out a loan, instead. He'll have five years to pay it back.

What payments are subject to child support withholding?

Question: We received an income withholding order for an employee that requires us to withhold

100% of any bonuses he receives and on the net amount of a settlement of a discrimination lawsuit. We're uncomfortable with this. Doesn't the Consumer Credit Protection Act apply here?

Answer: It does and it doesn't. In general, the CCPA will apply to any payment that represents a payment for the provision of services. So any bonus, including discretionary and non-discretionary bonuses, referral and signing bonuses or productivity and performance bonuses would be subject to the CCPA's limits of 60% if the employee didn't have a second family or 50%, if there was a second family, not 100%.

On the other hand, only back pay and front pay related to a discrimination award would be subject to the CCPA's limitations for child support withholding, since those are the only portions of the settlement that are work-related.

Your best bet is to contact the state child support agency to hash out the correction.

Lunch dates with officemates: Are they taxable or not?

Question: A salesperson has been taking employees out to lunch two or three times a week and expensing those lunches to the company as meetings. We have an accountable plan, and he's very efficient at putting in receipts for these lunches. Are these lunch meetings reimbursable tax-free?

Answer: It's great this employee is conscientious about getting and submitting receipts. But the issue here is the first part of the accountable plan rules—the business connection requirement. In other words, this employee must have paid or incurred these expenses while performing services as your employee. So it would be OK for him to take another employee out to lunch only if there was a legitimate business reason for it. But since business meetings with employees who work in the same office can be conducted on the premises, it would be safest to interpret the word "legitimate" very narrowly. That's what the IRS would do.

Does the presence of a third party change taxation?

Question: Our new VP of operations moved and the company paid the moving company directly, instead of reimbursing her. Is this payment considered taxable income to the employee even though she never received the cash?

Answer: Yes. It doesn't matter if the moving company was paid directly. Under the Tax Cuts and Jobs Act, employers' reimbursement or payment of employees' moving expenses is suspended through 2025. This employee now has imputed, or noncash, income. In order for you to withhold, you must add the payment into her regular income, withhold on the total and back out the imputed income and taxes withheld to get her take-home pay.