OCTOBER 5, 2021

Your October payroll questions answered

So before we turn our attention to post-season baseball, let’s sort through some pandemic-related payroll questions that have come to our attention.

Must we factor internet allowances into non-exempt employees' overtime calculations?

It depends. Under final regulations issued in December 2019, reimbursements to non-exempts for their substantiated business expenses can be excluded from their regular rate calculation when you’re figuring their overtime rate. These reimbursements may also be excluded from their income for tax purposes.

On the other hand, allowances provided to employees for their business expenses must be taxed and included in the regular rate if employees don’t substantiate their expenses to you by providing receipts, along with an accounting of the time, place, and business purpose of those expenses.

In Notice 2021-31, the IRS said the COBRA subsidy must be included in income. In whose income must we include this subsidy—the employee’s or the company’s?

Employers’ payment of employees’ health benefits, even COBRA benefits, isn’t taxable to employees.

The IRS was referring to the employer’s income. For corporate tax purposes, the payroll tax credit for the COBRA subsidy is treated the same as the tax credits for paid leave—you must include the amount of the tax credits in the company’s gross income, but then you can deduct the amount as an ordinary and necessary business expense.

Employees were given laptops, chairs and other equipment from the office to make them feel more comfortable at home. Can the company deduct the cost of this equipment from an employee’s final pay?

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Probably not. It would depend on several factors, including your state’s wage payment law and whether employees signed agreements to either return the items or pay for them if they're terminated.

The larger issue is whether you must include the fair market value of these items in employees’ income and tax them. There’s no cut-and-dried answer, but here’s what you need to consider:

1. Were employees working from home for the employer’s convenience? If the answer is yes, you can proceed to the next question. If the answer is no, you have to tax the items.
2. Did you have a substantial non-compensatory business reason for providing employees with laptops? For example, were the laptops loaded with proprietary information? Were employees restricted to using their laptops for business? If the answer is yes, you can proceed to the next question. If the answer is no, you have to tax employees’ personal use.
3. Did employees substantiate their business use of their company-provided laptops?

If the answer to questions one and two is yes, you don’t have to tax the items. If the answer to question 3 is yes, you have to tax employees’ personal use.

It's unlikely that you can exclude the value of lamps and chairs from employees’ income, but you might want a second opinion on this.

Our employee handbook clearly states employees must notify HR when they move. An employee moved in July and notified us of the move by providing us with a copy of her new utility bill. Then she said she really moved in May. Now she wants us to make the appropriate adjustments back to May. Is this something we can do?

You probably shouldn’t touch the second quarter. If the employee is over-withheld taxes for her old state, she can get a tax refund next year.

Having a company policy is a good thing, but company policies need to be reinforced with employees on a regular basis. This is especially true these days, when employees can work from anywhere. We had some suggestions in an earlier blog post about how you can do this.

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