

**§ 31.3401(a)(18)-1 Payments or benefits under a qualified educational assistance program.**

A payment made, or benefit furnished, to or for the benefit of an employee in a taxable year beginning after December 31, 1978, does not constitute wages and hence is not subject to withholding if, at the time of such payment or furnishing, it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127.

[T.D. 7898, 48 FR 31019, July 6, 1983]

**§ 31.3401(a)(19)-1 Reimbursements under a self-insured medical reimbursement plan.**

Amounts reimbursed to or on behalf of an employee after December 31, 1979, as a medical care reimbursement under a self-insured medical reimbursement plan (within the meaning of section 105(h)(6)) do not constitute wages and hence are not subject to withholding even though such reimbursement is includible in the gross income of an employee. For rules with respect to self-insured medical reimbursement plans, see section 105(h) and § 1.105-11 of this Chapter (Income Tax Regulations).

(Secs. 105(h) and 7805 Internal Revenue Code of 1954; 94 Stat. 2855, 68A Stat. 917 (26 U.S.C. 105(h) and 7805))

[T.D. 7754, 46 FR 3509, Jan. 15, 1981. Redesignated by T.D. 7898, 48 FR 31019, July 6, 1983]

**§ 31.3401(b)-1 Payroll period.**

(a) The term *payroll period* means the period of service for which a payment of wages is ordinarily made to an employee by his employer. It is immaterial that the wages are not always paid at regular intervals. For example, if an employer ordinarily pays a particular employee for each calendar week at the end of the week, but if for some reason the employee in a given week receives a payment in the middle of the week for the portion of the week already elapsed and receives the remainder at the end of the week, the payroll period is still the calendar week; or if, instead, that employee is sent on a 3-week trip by his employer and receives at the end of the trip a single wage payment for three weeks' services, the payroll period is still the calendar

week, and the wage payment shall be treated as though it were three separate weekly wage payments.

(b) For the purpose of section 3402, an employee can have but one payroll period with respect to wages paid by any one employer. Thus, if an employee is paid a regular wage for a weekly payroll period and in addition thereto is paid supplemental wages (for example, bonuses) determined with respect to a different period, the payroll period is the weekly payroll period. For computation of tax on supplemental wage payments, see § 31.3402(g)-1.

(c) The term *payroll period* also means the period of accrual of supplemental unemployment compensation benefits for which a payment of such benefits is ordinarily made. Thus if benefits are ordinarily accrued and paid on a monthly basis, the payroll period is deemed to be monthly.

(d) The term *miscellaneous payroll period* means a payroll period other than a daily, weekly, biweekly, semi-monthly, monthly, quarterly, semiannual, or annual payroll period.

[T.D. 6516, 25 FR 13096, Dec. 20, 1960, as amended by T.D. 7068, 35 FR 17329, Nov. 11, 1970]

**§ 31.3401(c)-1 Employee.**

(a) The term *employee* includes every individual performing services if the relationship between him and the person for whom he performs such services is the legal relationship of employer and employee. The term includes officers and employees, whether elected or appointed, of the United States, a State, Territory, Puerto Rico, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.

(b) Generally the relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the