

# Understanding the Tax Implications of Rolling Out New Employee Benefits Programs During the COVID-19 Pandemic

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The COVID-19 crisis has forced employers to adjust normal business operations and now, more than ever, employees are working from home by necessity and by choice. While there are upsides to working remotely, many employees have become accustomed to, and even expect, employers to provide benefits at their home offices.

Recently, Google responded to this demand by paying each of its employees \$1,000 for equipment and office furniture as they continue working from home. Other employers are following suit to gain a competitive advantage, increase retention and encourage productivity. A number of employers have offered grants to employees to pay for the costs of working from home (increased utilities, use of home space to establish an office, etc.). The tax implications of these payments must be considered.

Without proper planning, employers might be forced to include certain benefits as compensation, increasing payroll tax costs for employers and giving employees an unwelcome surprise when reviewing their W2s at the end of the year.

The tax code allows certain tax-free benefit options at the office but they become taxable when offered outside the office. The materials below are potential avenues employers can explore for offering nontaxable benefits to their employees to make working from home more productive and enjoyable.

## Fringe Benefits – Working Condition

Under the Internal Revenue Code (IRC) Section 61, employees are taxed on all income unless an exception applies. The tax code has special carve outs for fringe benefits or regular benefits other than base compensation. One possible option an employer could offer that is nontaxable to the

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employee is the working condition fringe benefit. This encompasses “property or services that, if the employee had paid for the property or service, the cost would have been allowable as a business expense deduction to the employee.” There are three requirements for this benefit:

- It must be related to the employer’s business
- It is an allowable business expense that could be deductible
- The employee has records to substantiate the expense which could include education related expenses or allowing employees to use company cars for business purposes

**Fringe Benefit – De Minimis** Another option an employer should consider is the de minimis fringe benefit. The thought behind this is that the value or frequency is so small that accounting for these benefits would be unreasonable or impracticable. Examples of this type of benefit include:

- Personal use of a printer or copier
- Group meals such as coffee, doughnuts, or lunch
- Event tickets
- Birthday or holiday gifts

**Fringe Benefit – Reimbursement Plan** A reimbursement plan (or accountable plan) is another option an employer could consider. Under this method, employees incur the expense for a fringe benefit out of pocket and then apply for reimbursement from the employer. This plan has three major requirements

- The expense must have a business connection
- There must be adequate accounting by the business
- The employee must return excess reimbursements

To qualify as a business connection, an employee must have incurred the allowable business expense while acting as an employee.

Furthermore, this expense must be separate from the employee’s normal wages. Adequate accounting also requires the employee to provide the “date, time, place, amount, and business purpose of expenses” through a receipt or statement of products purchased. If the employee chooses not to return any excess reimbursement, then the employer must report that amount on the

employee's W2 as compensation.

### Benefits While Working at Home

Pre-COVID-19, many employers used fringe benefits such as donuts and snacks, happy hours, and lavishly furnished office space to promote employee satisfaction and entice new employees to join their business without increasing their tax burden.

As more businesses are offering remote work, employers have been forced to find ways to adapt these same types of benefits while at the employee's home office. Employees are relying on personal cell phones, spare tables, and books for their work space while at home. Employers can create programs to assist employees with their mobile telephone and other work-related personal expenses through any of the three aforementioned fringe benefit options. For example, an employer could offer to pay employee's internet bill. Under a strict reading of the working condition fringe benefit or an accountable plan, an employee can only be reimbursed or paid for the portion of the internet bill devoted to business use.

However, extrapolating from IRS guidance regarding cell phones; an employer is allowed to reimburse an employee for the entire bill by treating it as a working condition fringe benefit and treating any personal use as a de minimis benefit.

Employers could also offer all employees \$500 to upgrade their WiFi, microphone, camera, speakers, or green screen in order for employees to have more professional Zoom calls with clients. Under the working condition fringe benefit, an employer can offer cash, so long as it is done as a prearranged business activity and the employer verifies the cash was actually spent on those activities. If an employee did not spend all the cash, they would be required to return it or be taxed on it.

But what about a home office deduction? Normally, under the Tax Cuts and Jobs Act, an employee cannot claim this deduction. However, an employer could create an accountable plan where employees could submit their bills from their home office to be reimbursed, including utilities or rent.

For best practice, an employer should create a policy where each employee states how much of their home is devoted to their office. The policy would place a maximum threshold for reimbursements. This places a precautionary check from an employee claiming their entire home as a home office.

Providing employees the opportunity to sharpen their professional skills has also become more complicated. If employees cannot gather for in-person training classes, online self-study courses may be introduced into the company's accountable plan for reimbursement.

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One silver lining of the remote work environment is that employers will soon reap the benefit of lower utility bills while office spaces are closed; others might even reduce their office space as leases come up for renewal. Some employers may want to pass along part of that benefit to the employees who are now facing higher bills working from home.

Employers might also choose to reimburse employees for the portion of their utility bills derived from their home offices or provide an outside gym membership in lieu of the office gym. However, there are limitations to these programs. For example, in most situations, an off-site gym membership will not qualify as a fringe benefit and if offered, will be considered taxable compensation. These common scenarios are just a few ways employers could offer new benefits to employees working from home to ease the transition and boost morale without increasing employees' taxable compensation. This is an ever evolving topic and the IRS may well issue additional specific guidance to address these very questions in the near future. Bailey Glasser stands ready to assist if you have any questions or would like any advice on the tax implications of potential new employee benefits.

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Tax