

Dependent Day Care Qualifications

FSA eligibility criteria for Dependent Day Care expenses

A Section 125 Cafeteria Plan (FlexSystem FSA) allows for the inclusion of Dependent Day Care (Section 129 of the Internal Revenue Code) benefits. Eligibility for the dependent day care benefit requires that certain criteria be met with respect to the expense, the provider, etc.

FlexSystem FSA Dependent Day Care

- A) **The dependent day care expenses must be work related.** The care must be necessary for the employee and the employee's spouse to work, look for work, or attend school full-time, or if they are physically unable to care for their children.
- B) **The dependent day care expenses provided during a calendar year cannot exceed \$5,000.** In the case of a separate return by a married individual, the limit is \$2,500. This amount may be less if the employee's earned income or spouse's earned income is less than \$5,000.

The dependent day care expenses must be for the care of one or more qualifying persons. A qualifying person is one of the following:

- A) A dependent who was under age 13 when the care was provided and for whom a tax exemption can be claimed.
- B) A spouse who was physically or mentally not able to care for himself or herself, and lived with you for more than half the year.
- C) A dependent who was physically or mentally not able to care for himself or herself and for whom a tax exemption can be claimed, and lived with you for more than half the year.

To receive the dependent day care benefit, one must follow these procedures:

- A) All persons and organizations that provide dependent day care for a qualified person must be identified. This information is requested on Form 2441. The name, address, and taxpayer identification number of the provider must be included. Under certain circumstances, the taxpayer identification number will be a social security number.
- B) If the care is being provided by a center that cares for more than six persons, the center must comply with all state and local regulations.
- C) Payments made to relatives who are not dependents can be included. However, do not include amounts paid to a dependent for whom you can claim a tax exemption or for your child who is under age 19 at the end of the year, regardless of whether he or she is your dependent.
- D) Use Form W-10 to request the required information from the dependent day care provider.

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Special rules apply to children of divorced or separated parents:

Even if you cannot claim your child as a tax exemption or tax dependent, he or she is treated as your qualifying person if all of the following are true:

- The child was under age 13 or was not physically or mentally able to care for himself or herself.
- One or both parents provided more than half of the child's support for the year and are divorced, legally separated, or lived apart at all times during the last 6 months of the calendar year.
- One or both parents had custody of the child for more than half of the year.
- You were the child's custodial parent. The custodial parent is the parent having custody for the greater portion of the calendar year. If the child was with both parents for an equal number of nights the parent with the higher adjusted gross income is the custodial parent.

A non-custodial parent that is entitled to claim the child as a dependent on their tax return may not treat the child as a qualifying individual for the dependent day care benefit even when that parent is financially responsible for providing the care. Only one parent (the custodial parent) may qualify for the dependent day care benefit for a taxable year. The regulations do not provide any relief for a non-custodial parent that incurs dependent day care expenses for the portion of the year in which they have custody of the child to enable the non-custodial parent to work.

Eligible and Ineligible Expenses for FSA Dependent Day Care (partial list):

Eligible Expenses (must be employment related)

- FICA/FUTA taxes of dependent day care provider.
- Nanny expenses attributed to dependent day care.
- Nursery school (preschool).
- Late pick up fees.
- Day Camp – primary purpose must be custodial care and not educational in nature.
- Day care when one parent is working and the other is sleeping during daytime hours.

Ineligible Expenses

- Kindergarten.
- Activity fees/supplies.
- Late payment charges.
- Overnight camp.
- Transportation.
- Fees paid to a provider not reporting the income to the IRS.

For more information regarding dependent day care expenses, please review IRS Publication 503.

