

## New Definition of “Dependent” under the Internal Revenue Code

This chart describes the eligibility criteria for specific types of dependents effective January 1, 2005.<sup>1</sup>

Under the new Internal Revenue Code (IRC) provisions, dependents must be either a “Qualifying Child” (QC) or “Qualifying Relative” (QR). For each situation described in column one of the chart, whether the dependent would be a “QC” or “QR” is noted. The chart also notes the special rule that applies in the case of divorced or separated parents.

In order to provide dependent coverage on a tax-favored basis, health plan administrators should confirm each dependent’s eligibility through employee certification and/or supporting documents (e.g., correspondence from placement agency or court order in the case of a foster child).

*As with all issues involving the interpretation or application of laws and regulations plan sponsors should rely on their legal counsel for authoritative advice on the implications of the Working Families Tax Relief Act for their plan(s).*

Description of Dependent <sup>2</sup>	Eligibility Criteria Under Revised §152
<b><u>Situation A – QC</u></b> Child under age 19 as of the end of the calendar year Throughout this chart, the term “child” includes the employee’s: <ul style="list-style-type: none"> <li>➤ Son or daughter</li> <li>➤ Stepchild</li> <li>➤ Adopted child (or child placed for adoption with employee)</li> <li>➤ Foster child (i.e., a child placed with the employee by an authorized placement agency or by court judgment, decree, or order)</li> </ul> The term QC also includes: <ul style="list-style-type: none"> <li>➤ Descendant of any of the above (e.g., employee’s grandchild)</li> <li>➤ Employee’s sibling or step-sibling (or descendant)</li> </ul>	1. Child must have same principal place of abode as employee for more than 1/2 of year.** 2. Child must not provide over 1/2 of his or her own support for the year.  ** Throughout this chart, two asterisks (**) indicates that different rules apply when the child’s parents are divorced or separated. See Situation F below.
<b><u>Situation B – QC</u></b> Child under age 24 who is a full-time student (Note: child must not turn 24 before the end of the calendar year)	1. Child must have same principal place of abode as employee for more than 1/2 of year.** 2. Child must not provide over 1/2 of his or her own support for the year.
<b><u>Situation C – QC</u></b> Child of any age who is permanently and totally disabled	1. Child must have same principal place of abode as employee for more than 1/2 of year.** 2. Child must not provide over 1/2 of his or her own support for the year.

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<sup>1</sup> Internal Revenue Code §152 as amended by the Working Families Tax Relief Act (Public Law No. 108-311).

<sup>2</sup> Note that all dependents must be either (1) U.S. citizens or U.S. nationals, or (2) residents of the U.S. or a country contiguous to the U.S. Adopted children may also qualify if (1) the child has the same principal place of abode as the employee for the calendar year and is a member of the employee’s household, and (2) the employee is a U.S. citizen or U.S. national.

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Description of Dependent	Eligibility Criteria Under Revised §152
<p><b>Situation D – QR</b></p> <p>Children who have aged-out of coverage (i.e., child age 19 or older who is not a full-time student and child age 24 or older) and are not permanently and totally disabled</p>	<ol style="list-style-type: none"> <li>1. Child must have gross income that is less than the dependency exemption amount (\$3,200 in 2005). <b>Note:</b> This requirement would not apply if necessary changes were made to the applicable plan documents.</li> <li>2. Employee must provide over <math>\frac{1}{2}</math> of the child's support.**</li> </ol>
<p><b>Situation E – QR</b></p> <p>Employee's parent (includes stepfather or stepmother) or other QR</p> <p>QRs include the employee's:</p> <ul style="list-style-type: none"> <li>➤ Child or descendant of child</li> <li>➤ Siblings or step-siblings</li> <li>➤ Father, mother, or ancestor of either</li> <li>➤ Stepfather or stepmother</li> <li>➤ Niece or nephew</li> <li>➤ Aunt or uncle</li> <li>➤ Certain in-laws</li> <li>➤ Other individuals who have the same principal place of abode as the employee and are members of the employee's household (relationship cannot be in violation of local law)</li> </ul>	<ol style="list-style-type: none"> <li>1. Parent (or other QR) must have gross income that is less than the dependency exemption amount (\$3,200 in 2005). <b>Note:</b> This requirement would not apply if necessary changes were made to the applicable plan documents.</li> <li>2. Employee must provide over <math>\frac{1}{2}</math> of the parent's (or other QR's) support.</li> </ol>
<p><b>Situation F – Divorced or Separated Parents<sup>3</sup></b></p> <p>Employee's child who lives with other parent (not with employee)</p>	<ol style="list-style-type: none"> <li>1. Requirement in Situations A, B or C that child have same place of abode as employee for more than <math>\frac{1}{2}</math> of the year does not apply if the child is in the custody of one or both parents for more than <math>\frac{1}{2}</math> of the year.</li> <li>2. Requirement in Situation D that employee provide over <math>\frac{1}{2}</math> of the child's support does not apply if the child receives over <math>\frac{1}{2}</math> of his or her support from both parents.</li> </ol>

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<sup>3</sup> These special rules apply when the parents (1) are divorced, (2) are legally separated under a decree of divorce or separate maintenance, (3) are separated under a written separation agreement, or (4) live apart at all times during the last 6 months of the calendar year.

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Description of Dependent	Eligibility Criteria Under Revised §152
<b><u>Situation G – QR</u></b> Employee's child who lives with grandparent for more than 1/2 of year	<ol style="list-style-type: none"> <li>1. Child (or other QR) must have gross income that is less than the dependency exemption amount (\$3,200 in 2005). <b>Note:</b> This requirement would not apply if necessary changes were made to the applicable plan documents.</li> <li>2. Employee must provide over 1/2 of the child's (or other QR's) support.</li> </ol> <p><b>Note:</b> Child who lives with someone other than the employee for over 1/2 of the year may still be a dependent, but would be considered a QR rather than a QC. However, a child cannot be a QR of his/her parent if the child meets the definition of QC with respect to any other taxpayer. Thus, situations where the child does not live with the employee/parent (except for cases of divorce or separation) deserve special scrutiny.</p>
<b><u>Situation H – QR</u></b> Employee's domestic partner (DP)	<ol style="list-style-type: none"> <li>1. DP must have same principal place of abode as employee for the entire calendar year.</li> <li>2. DP must have gross income that is less than the dependency exemption amount (\$3,200 in 2005). <b>Note:</b> This requirement would not apply if necessary changes were made to the applicable plan documents.</li> <li>3. Employee must provide over 1/2 of the DP's support.</li> <li>4. DP must be a member of the employee's household. <b>Note:</b> This requirement cannot be met if the relationship is in violation of local law.</li> </ol>
<b><u>Situation I</u></b> Employee's spouse	<p>Employee's spouse is not considered a "dependent" under §152. An employee's opposite-sex spouse may receive tax-favored health benefits without having to meet any specific income, residence, support, or other criteria under the IRC. Under federal law, same-sex spouses are not eligible for tax-favored spousal benefits.</p>

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