

WAC 296-14-524 How do I determine whether an employer provided benefit qualifies as "consideration of like nature" to board, housing and fuel? To qualify as "consideration of like nature" the employer provided benefit must meet all of the following elements:

(1) The benefit must be objectively critical to protecting the worker's basic health and survival at the time of injury or date of disease manifestation.

(a) The benefit must be one that provides a necessity of life at the time of injury or date of disease manifestation without which employees cannot survive a period of even temporary disability.

(b) This is not a subjective determination. The benefit must be one that virtually all employees in all employment typically use to protect their immediate health and survival while employed.

(c) The benefit itself must be critical to protecting the employee's immediate health and survival. The fact that a benefit has a cash value that can be assigned, transferred, or "cashed out" by an employee and used to meet one or more of the employee's basic needs is not sufficient to satisfy this element.

(2) The benefit must be readily identifiable. The general terms and extent of the benefit must be established through the employer's written policies, or the written or verbal employment contract between the employer and worker (for example, a collective bargaining agreement that requires the employer to pay a certain sum for the employee's health insurance).

(3) The monthly amount paid by the employer for the benefit must be reasonably calculable (for example, as part of the employment contract, the employer agrees to pay three dollars for each hour worked by the employee for that person's health insurance).

Examples of benefits that qualify as "consideration of like nature" are medical, dental and vision insurance provided by the employer.

Examples of benefits that do **not** qualify as "consideration of like nature" are retirement benefits or payments into a retirement plan or stock option, union dues and life insurance provided by the employer.

[Statutory Authority: RCW 51.04.010, 51.04.020 and 142 Wn.2d 801 (2001). WSR 03-11-035, § 296-14-524, filed 5/15/03, effective 6/15/03.]