Lending a Helping Hand: Employer Options for Providing Financial Support to Employees Affected by the Coronavirus

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In a few short weeks, the novel coronavirus (COVID-19) has driven massive change in day-to-day activities for most Americans, and that change appears likely to accelerate. Travel restrictions, social distancing recommendations, and other public health interventions have had immediate implications for the nation’s employers, which now find themselves on the front lines of the COVID-19 response effort trying to ensure the safety of employees and customers while still continuing business operations. Employers are particularly aware of the financial challenges that may be imposed upon employees who are not permitted to work for extended periods of time, whether due to contracting COVID-19, self-quarantining due to coronavirus exposure, or office closures.

While sick employees may qualify for medical benefits under group health plans and temporary income replacement benefits under short-term disability or salary...
continuation plans, employers recognize that other employees might still be affected by coronavirus but not be eligible for salary continuation or other benefits that replace regular pay during an absence from work. The following strategies can be used by employers and their non-impacted employees to provide assistance to employees who are impacted by coronavirus/COVID-19.

1. **Emergency-Relief Donations**

A simple and direct option for employers to provide aid to impacted employees is to pay (QDRPs). While the Internal Revenue Service (IRS) is generally highly suspect of gifts from employers to employees, Congress created QDRPs in the wake of the September 11 terrorist attacks to provide a clear income tax exclusion for employer-funded relief payments to victims affected by federally-declared natural disasters and other catastrophes. QDRPs are generally only permissible after the president declared a disaster or emergency, or has approved a disaster declaration by a governor or tribal leader. On Friday, March 13, 2020, President Donald Trump declared an emergency under Section 501 of the Stafford Act, which triggered the availability of QDRPs. In a announcing the declaration, President Trump also noted that requests for a declaration of a major disaster may be appropriate and encouraged governors and tribal leaders to consider requesting federal assistance under Section 401 of the Stafford Act.

Once disaster declarations are approved, employers in the affected areas can quickly provide cash payments to affected employees to help them deal with the immediate aftermath of coronavirus-related leaves of absence, furloughs, reduced working schedules, and temporary business closures while also sparing the employee from being taxed on those payments. Importantly, these relief payments are generally deductible business expenses for employers. However, as with most situations involving the IRS, there are important requirements and conditions that employers must consider before providing such relief payments to employees. In particular, the IRS has taken the position informally that non-taxable disaster relief payments can be made for personal, family, living, or funeral expenses, including items such as food, clothing, transportation, counseling, and medical care, but that salary continuation or wage replacement benefits will not avoid taxation. There can be a fairly fine distinction between payments made to employees to assist with living expenses and those intended to replace lost wages, and some caution is therefore warranted when labeling payments made under a QDRP.

2. **Leave-Sharing Programs**

Another option that may be helpful for easing the burden of an unexpected leave of absence relating to the coronavirus response is a leave donation program. These programs allow employees to donate paid leave to other employees on a tax-advantaged basis. Although donations of paid leave from one employee to another are generally taxable to the donor employee, the IRS recognizes exceptions to this general tax rule for leave donations if the donation is made to address a “medical emergency” or is made in connection with a “major disaster.” If a leave-sharing program targets medical emergencies or major disasters (i.e., federally-approved disaster declarations under Section 401 of the Stafford Act) the leave donor is not taxed on the donated leave time, but the employee who receives the paid time off...
will recognize income equal to the payment he or she receives. The payment is treated as compensation, so the company will have to report the compensation on the recipient employee’s Form W-2 and withhold the appropriate income taxes and Federal Insurance Contributions Act (FICA) taxes. Importantly, the definition of disaster used for leave sharing does not include federally declared emergencies. As of March 25, 2020, major disaster declarations related to coronavirus have been approved for New York, Washington, California, Iowa, Louisiana, Texas, and Florida.

Qualified leave donation programs are subject to a number of specific requirements and require some degree of formality in administration (e.g., the program must be documented in writing, requests for participation must be made in writing and must provide details about the basis for the request, etc.), but they can be adopted relatively quickly to provide relief to employees who are unable to work remotely during a quarantine period.

3. Other Forms of Assistance

Employers might also consider supplementing their own relief efforts by facilitating donations from employees less affected by the coronavirus. While permissible, this is where things get more complicated. There are a number of options available, but they may not offer the kind of quick solution preferred during the coronavirus pandemic.

- **Establish a charitable 501(c)(3) employee relief fund.**

An employer can establish a tax-exempt 501(c)(3) nonprofit corporation to receive and disburse donated funds to affected employees. This approach yields the best tax results to all parties involved (e.g., tax deductibility for donors, no tax liability for the recipients, and no tax liability for the employer) and offers complete control over distribution of aid—subject, as always, to IRS requirements. This approach does require the creation of a corporate entity along with the attendant formalities and also requires an application to the IRS to secure tax-exempt status for the entity.

Aside from the initial time commitment to establish a new charitable organization, this approach presupposes an ongoing charitable mission. In other words, an employer probably wouldn’t want to establish a new 501(c)(3) entity solely to provide relief for a single disaster or emergency situation. However, for employers that already maintain an employee relief fund operating as a private foundation, President Trump’s emergency declaration provides additional flexibility. Although private foundations cannot generally disburse donated funds directly to affected employees without facing significant excise taxes, the emergency declaration permits employee relief funds operating as private foundations to provide direct aid to employees on the same basis as 501(c)(3) public charities.

- **Establish a donor-advised fund with an existing charity.**

An employer can set up a fund under the umbrella of an existing charitable foundation and achieve the same tax advantages as would be available with a new 501(c)(3) entity. Under this approach, donations could be made by the employer, employees, or the general public to the new fund, and the existing charity would
then be responsible for distributing those funds, with significant input from the employer, subject to applicable IRS regulations.

- **Crowdfunding.**

As crowdfunding has become a more accepted way of fundraising for startups, charitable activities, and other similar ventures, many employers have naturally considered its uses for providing emergency or disaster relief on an expedited basis. This approach might involve establishment of a new bank account to receive donations or might involve the use of a third-party online funding aggregator.

Although this approach does have the benefit of relative simplicity and speed—very desirable characteristics when disaster or emergency relief needs are urgent—in the final analysis, it may not be quite as simple or cost-effective as other alternatives. The crowdfunding approach does not permit favorable tax benefits to donor employees, and might also create tax-related complexities for the employer that organizes the funding campaign, unless the relief payments qualify as QDRPs. Moreover, third-party aggregators tend to impose fairly substantial administrative fees for their services, and they do not assume responsibility for actually disbursing funds.

### 4. Low-Cost Ways to Help Affected Employees

For employers that are not in a financial position to make donations to employees and/or are without the administrative resources to set up a donation platform, there are no-cost and low-cost ways they can also help their impacted employees:

- Consider whether coronavirus-related challenges entitle their employees to loans or hardship distributions from the company’s 401(k) plan. If the 401(k) plan already permits these options but on a more limited basis, there may be changes the 401(k) sponsor can make now to give affected employees greater access to their funds.
- Consider providing no-interest or low-interest loans to employees. Keep in mind that such loans must be properly documented and may result in some additional taxable income to the employee.

### 5. Use Caution With Involuntary Leaves/Furloughs

Many common benefit plans maintained by employers expect covered employees to work a minimum number of hours per pay period in order to remain eligible. Leaves and furloughs—particularly if they are for an extended duration—can cause affected employees to lose access to health plan and other insurance coverage, and even where coverage continues, employers may face difficulties in collecting required employee contributions for coverage. The need for a furlough may arise quickly, but it is still important for employers to consider benefit plan participation and administration issues when making plans for a temporary suspension of business operations.

### Conclusion
Employers face unprecedented challenges as they work rapidly to support their employees during the coronavirus outbreak. But hasty actions can have unexpected consequences for both employers and employees. Before proceeding with any sort of employee relief effort, recognize that there is no “one size fits all” approach. Different industries face different competitive environments and their employees may have their own unique needs and challenges. Understanding those needs and challenges is the key to developing appropriate strategies for helping employees cope with the stresses caused by COVID-19. The good news is that there are viable options available to concerned employers, both to facilitate donations from employees, to fund relief payments, and to provide other help to affected employees through existing benefit plans and programs.


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