

Managing PTO Donation Requests in the COVID-19 Age

Harness employee generosity with a leave-based donation program

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July 21, 2020

As the pandemic continues to scar wide portions of our society, a number of employees have expressed to their employers an interest in donating their own paid time off (PTO) to help co-workers and community members adversely impacted by COVID-19.

Employers have the opportunity to harness this collective spirit of generosity with a special leave-based donation program designed specifically for COVID-19, or with traditional approaches adapted for this specific circumstance. If you want to provide employees with an opportunity to donate leave to assist pandemic victims, there are several options.

SHRM RESOURCE SPOTLIGHT

Coronavirus and COVID-19 (www.shrm.org/ResourcesAndTools/Pages/communicable-diseases.aspx)

New Approach

The first option stems from a pandemic-specific model outlined in a recent guidance issued by the Internal Revenue Service. IRS Notice 2020-46 (<https://www.irs.gov/pub/irs-drop/n-20-46.pdf>) provides a "COVID-19 Pandemic Leave-Based Donation Program" that allows employers to contribute the cash equivalent of employees' donated leave to charitable organizations providing relief to pandemic victims without taxing employees on the value of the leave. In a properly administered Notice 2020-46 program:

- Employees voluntarily elect to forego vacation, sick or personal leave.
- Depending on how the program is structured, the employee and/or the employer selects the charity to receive all or a portion of the cash equivalent of the foregone leave.
- The employer makes a cash payment before Jan. 1, 2021.
- The employer's cash payment must be made to an Internal Revenue Code Section 170(c) charitable organization for the relief of COVID-19 pandemic victims in "affected geographic areas"—which currently includes all 50 states, the District of Columbia, and the five main territories, American Samoa, Guam, Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands.
- The employer takes either an Internal Revenue Code Section 170 charitable deduction or a Section 162 business deduction, provided the employer meets the respective requirements of either section.

[SHRM members-only how-to guide: How to Create a Leave Donation Program (www.shrm.org/resourcesandtools/tools-and-samples/how-to-guides/pages/howtocreatealeavedonationprogram.aspx)]

Traditional Approaches

Employers also have two other traditional approaches to follow if they want to pursue this kind of program. One potential option is a traditional "Medical Emergency Leave-Sharing Plan" meeting the requirements of IRS Revenue Ruling 90-29 (https://www.benefitslawadvisor.com/wp-content/uploads/sites/172/2020/03/Rev__Rul__90_29__1990_1_CB_11____IRC_Sec_s__61.pdf). In such a program, employees may donate leave to an employer-sponsored leave bank for "medical emergencies" of fellow employees and/or their families.

A medical emergency is essentially a medical condition of an employee or their family member(s) that results in a prolonged absence from work and substantial loss of income due to the employee's exhaustion of all available paid leave. If you sponsor this type of medical emergency plan, you must be prepared to administer specific application and leave restrictions.

Another traditional option is a "Major Disaster Leave-Sharing Plan" meeting the requirements of IRS Notice 2006-59 (<https://www.irs.gov/pub/irs-drop/n-06-59.pdf>). In this type of program, employees may donate leave to an employer-sponsored leave bank for fellow employees "adversely affected" by a "Presidentially declared major disaster." If you sponsor a leave bank for these major disasters, you will be responsible for administering specific donation restrictions, determining how much leave an eligible recipient can receive, and determining how to proportionally return any unused leave.

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Conclusion

Due to the complexity of leave donation programs and the importance of ensuring intended tax consequences, these programs should be in writing and structured with guidance from a benefits attorney. The tax consequences of these programs are beyond the scope of this alert and highly fact specific.

Generally, however, if structured properly, the donor employees under these programs should not recognize income nor receive a tax deduction; employee recipients are taxed on the value of the leave they receive; and the employer receives a deduction.

If your organization is considering adopting any of these programs, we suggest you consult legal counsel regarding tax consequences and employment law considerations.

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IRS Clarifies Tax Treatment for Leave-Based Donations to COVID-19 Charities (www.shrm.org/ResourcesAndTools/hr-topics/benefits/pages/irs-clarifies-tax-treatment-for-leave-based-donations-to-coronavirus-charities.aspx?_ga=2.259815114.1336684750.1595208638-410169545.1525450797), *SHRM Online*, June 2020

Emergency Relief Funds Throw Employees a Lifeline During Pandemic (www.shrm.org/ResourcesAndTools/hr-topics/benefits/pages/emergency-relief-funds-throw-employees-lifeline-during-pandemic.aspx), *SHRM Online*, April 2020

Using Leave-Sharing Plans During the COVID-19 Pandemic (www.shrm.org/ResourcesAndTools/hr-topics/benefits/pages/using-leave-sharing-plans-with-covid-19.aspx), *SHRM Online*, March 2020

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