

Insights

UTILIZING EMPLOYER-SPONSORED FOUNDATIONS TO ALLEVIATE EMPLOYEE HARDSHIP

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Employers are looking for ways to assist employees and their dependents experiencing financial hardship due to the Coronavirus. One potential tax-advantaged method is the use of an existing or newly formed employer-sponsored foundation which qualifies for exemption under Section 501(c)(3).

Under established IRS guidance set forth in Publication 3833, an employer-sponsored foundation may operate a fund which provides financial assistance to employees who experience financial hardship due to a qualifying event, including certain federally declared disasters or emergencies which now include circumstances resulting from the Coronavirus. If the conditions below are satisfied, persons (including the employer and other employees) making donations to the foundation are entitled to a charitable deduction under Section 170 of the Code and financial relief payments made to employees are not included in taxable compensation:

1. The class of beneficiaries must be large or indefinite (a “charitable class”) – for example, all current and future employees of an employer would qualify;
2. The recipients are selected based on an objective determination of need or distress; and
3. The selection is made using an independent selection committee comprised of a majority of individuals who consist of persons who are not in a position to exercise substantial influence over the affairs of the employer.

The aid provided by the foundation should be tailored to relieve distress in each particular case—depending on the specific employee’s needs and resources. Appropriate short-term assistance may include food, clothing and shelter. Appropriate long-term assistance may include assistance for food, medical, housing, transportation and education related expenses. In many instances, assistance may be provided to U.S. as well as non-U.S. employees.

Most existing foundations may merely expand their existing activities to include a disaster relief program via a board resolution. In some instances, formation of a new foundation may be necessary. A new foundation may be incorporated within a day or two. Securing tax-exempt status

takes several weeks, however, exemption if granted is retroactive to the date of incorporation. Thus, the foundation may initiate its activities almost immediately following formation.

We want to briefly mention other potential vehicles to provide relief include use of a donor advised fund the purpose of which is to provide financial assistance to employees as a result of a qualifying disaster, use of Section 139 of the Code, which allows employers to provide direct payments to employees in response to a qualifying disaster, and employee-sharing leave banks.

For additional information, please feel free to call or email Keith Kehrer (314-259-2063 or kjkehrer@bclplaw.com) or Erika Labelle (303-866-0454 or Erika.Labelle@bclplaw.com) or any member of our Tax-Exempt Organizations Team.

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