# Tax Breaks for Qualified Disaster Relief Payments to Employees

## Labor & Employment Law Update

on March 24, 2020

You have dedicated employees that continue to courageously and diligently work the "front lines" during this time. Or, perhaps you've had to furlough or issue temporary layoffs to employees and you want to find some way to ease the burden on them. Perhaps it's not out of the simple goodness of your heart. Perhaps it's because you're cognizant that self-isolating individuals are on social media more than ever and that everyone seems to be sharing information about the policies employers are implementing during this time.

Regardless of your motivation, when President Trump invoked the Stafford Act on February 13, 2020, he opened the door to a range of possibilities in structuring "qualified disaster mitigation" payments to your employees under Section 139 of the Code. ***These payments are advantageous to both employers and employees. They are not subject to income taxes or payroll taxes. Yet, an employer is still allowed to claim them as a deduction.***

Because it's not every day (fortunately) that a qualified disaster is declared, there is very minimal clarifying guidance from the IRS. Instead, the definitions are broad and flexible allowing for reimbursement of expenses that can be considered "reasonable and necessary" as a result of the "qualified disaster." Payments cannot simply be income replacement, such as sick, vacation, etc. The expenses you are reimbursing need to be:

1) expenses that are not otherwise covered by insurance; and

2) "reasonably related" to personal, family, medical or housing expenses related to the "qualified disaster."

There is no stated cap or limit on the amount you can issue as tax-free reimbursement. Further, the IRS has made clear that if the reimbursement amount is "reasonable," you do not need to require documentation to substantiate the expense from your employees.

To illustrate some ideas of reimbursable expense that might be considered "qualified disaster" payments under Section 139, see the following examples:

· A company sent employees to work from home with a $250 stipend for equipment they need and a $50/month allowance for internet and phone service.

· A large financial industry employer is paying for branch employees' transportation costs so they can avoid public transit systems, where they might be exposed to the virus.

· A smaller company that cannot sustain wage continuation or work from home arrangements, issues all employees on temporary layoff a $1,000 stipend as housing assistance during that time.

· Finally, another company is reimbursing hourly employees for up to $100 per day in childcare costs.

Each industry is different and addressing different concerns. But so long as they are not designed as a flat-out substitution of regular wages, an employer can be creative in designing tax-advantageous "qualified disaster" payments.