

## Employers Might Give Employees Tax-Free Payments During the COVID-19 Outbreak

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Employers looking to shield their employees from financial hardship as the result of the COVID-19 outbreak might be able to now give them qualified disaster relief payments. These payments can be received by employees without federal income taxation.

Normally, amounts paid to an employee are tax deductible to the employer and constitute taxable income to the employee. [Internal Revenue Service \(IRS\) Code Section 139](#) provides an important exception to this general rule, allowing employers to provide assistance through “qualified disaster relief payments” which are tax-free to the employee but still fully deductible by the employer.

In order to trigger the application of Section 139, there must be a federally declared disaster. As of March 25, 2020, President Trump has issued disaster declarations with respect to 9 states, including New Jersey and New York. Further, there is compelling evidence to suggest that Section 139 was triggered on March 13, 2020, when President Trump issued the emergency declaration declaring COVID-19 as a national emergency under the Stafford Act. Guidance is expected to be forthcoming from the IRS on the specific application to Section 139.

To be considered a “qualified disaster relief payment” under Section 139, the payments to the employee must either be: (1) to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster; or (2) to reimburse or pay reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence or repair or replacement of its contents to the extent that the need for such repair, rehabilitation, or replacement is attributable to a qualified disaster.

In addition, the payments will qualify as qualified disaster relief payments and be tax-free only to the extent that any expense compensated by such payment is not otherwise compensated for by insurance or otherwise.

Finally, payments to employees will not qualify as tax-free qualified disaster relief payments if they are intended to replace the employee’s lost income. Consequently, payments of sick pay or family medical leave will not be considered to be qualified disaster relief payment and will still be fully taxable to the employee receiving such payment.

Employers should keep in mind that there are no limits as to amounts of qualified disaster relief payments they can give to their employees (either individually or in the aggregate). Further, the payments do not need to be given pursuant to an accountable (or other written) plan.

Some examples of what may constitute qualified disaster relief payments may include payments made to allow employees to purchase computer equipment to allow employees to work at home or for payments to cover medical expenses (such as co-pays) not covered by the employee’s insurance.

If you are an employer with a question or concern about tax-free disaster relief assistance or any other employment issue, please contact [Tracy Armstrong](#), or any member of the Wilentz [Employment Law Team](#).

*This blog post is for informational purposes only and not intended to provide individual tax advice. Please consult with an accountant before proceeding with any distribution to employees.*

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