CREATING A CHARITABLE TRUST
In The Event of a Natural Disaster

Is it possible for us to create a charitable trust through which employees can make tax-deductible contributions to assist other employees who suffered losses in the storm?
Yes, employers wanting to create a long-term assistance program for employees impacted by natural disasters and other hardships may also consider establishing a501(c)(3) foundation.

This process now makes it possible for an employer to establish a 501(c)(3) private foundation for the sole purpose of providing disaster relief assistance to the employer's employees and their families (an "Employer-Controlled Foundation").

Once you establish this fund, all contributions are tax-deductible to the donors and all distributions are income tax-free to the recipients.

How can we create an Employer-Controlled Foundation?
In order to avoid IRS concerns regarding private inurement, there are very specific requirements that you must follow to preserve tax advantages. We have provided an overview of basic guidelines involved in this process. We also recommend you consult guidance from an experienced resource should you want to pursue this option.

- You must take all appropriate steps to establish an official 501(c)(3) charitable organization, which normally requires creation of a not-for-profit entity and the filing of certain tax forms (both initially and on an ongoing basis).

- The class of disaster relief recipients must be "large or indefinite".

- You must select disaster relief recipients based upon "an objective determination of need" (e.g., disaster relief distributions must be purely needs-based, and may not be based upon factors such as the recipient's position or seniority with the employer).

- The selection of disaster relief recipients and the determination of need must be made by either(i) an independent committee of the Employer-Controlled Foundation, "a majority of the members of which are persons other than persons who are in a position to exercise substantial influence over the affairs of the controlling employer" or (ii) "other procedures and standards" that are "adequate substitutes to ensure that any benefit to the employer is incidental and tenuous".

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- Disaster relief distributions may not be made to, or for the benefit of, a "disqualified person "with respect to the employer (generally, "any person who was, at any time during the five-year period ending on the date of such transaction, in a position to exercise substantial influence over the affairs of the organization" and members of such a person's family) or a member of the independent committee referred to in the above bullet point.

Most of these requirements exist to ensure that an Employer-Controlled Foundation has a purely charitable purpose, and is not simply an additional employee benefit offered by the employer. If any of these requirements are not satisfied, there is a risk that contributions for disaster relief assistance will not be tax-deductible to the donors.