

## **DEVELOPING A LEAVE DONATION POLICY In the Event of a Natural Disaster or Medical Emergency**

Leave donation programs allow employees to donate accrued PTO to a general pool to be used by fellow employees who have exhausted all paid leave available to them and experience (1) medical emergencies or (2) are affected by major disasters. Leave donation programs can benefit both employees and employers. They can enhance employee morale, help to reduce absenteeism, and improve retention.

General tax laws and responsibilities play an important role in how this program should be developed and managed because PTO is considered taxable income when it is donated by one employee (referred to as DONOR) and used by another (referred to as RECIPIENT).

The Internal Revenue Service (IRS) allows for two exceptions in which leave can be donated without negative tax consequences to the DONOR. They are:

- A Major/Natural Disaster
- A Medical Emergency

NOTE: This policy can be developed for either or both situations, can be an ongoing policy, can be implemented by event, and/or can be implemented for a specific time period.

### **Major/Natural Disaster Exception<sup>1</sup>**

A "major disaster exception" is defined by the IRS as: "a disaster declared by the president under §401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act) or as a major disaster or emergency declared by the president pursuant to [5 U.S.C. §6391](#) for federal government agencies."

To qualify under this ruling, once the president declares a major disaster as stated above, your plan must:

- Be in writing and administered through the employer.
- Be created as a leave bank or pool for employees to donate accrued, unused leave, and from which leave will be distributed to RECIPIENT'S who have been adversely affected by a major disaster. In this case, an employee is considered adversely affected if the disaster has caused severe hardship to the employee or family member and requires the employee to be absent from work.
- Define who the plan covers (i.e., an employee's own hardship, or also to include the hardship of a parent, spouse, and/or child).
- Not allow a DONOR to specify a particular RECIPIENT of the donated leave.

---

<sup>1</sup> See [IRS Notice 2006-59](#).

- Limit the amount of leave donated in a year to not exceed the maximum amount of leave that an employee normally accrues during the year.
- Allow the RECIPIENT to receive paid leave from the leave bank at the RECIPIENT 's normal rate of pay.
- Provide a reasonable limit on the period of time after the disaster has occurred, during which leave may be donated and received from the leave bank.
- Not allow a RECIPIENT to receive a cash payout in lieu of taking the donated leave.
- Ensure the employer makes a reasonable determination of the amount of leave a RECIPIENT may receive.
- Ensure that leave deposited as the result of a particular disaster be used by only those employees affected by that disaster.
- Ensure leave not used by RECIPIENTS by the end of the employer specified time period be returned (in the same proportion it was donated) to the DONOR unless the amount of remaining leave is so small as to make accounting for it unreasonable or impractical.

### **Medical Emergency<sup>2</sup>**

A "medical emergency exception" is defined by the IRS as: "a medical condition of the employee or a family member that will require the prolonged/extended absence of the employee from duty and will result in a substantial loss of income to the employee due to the exhaustion of all paid leave available, apart from the leave-sharing plan."

For a plan to be considered by the IRS as a "bona-fide employer-sponsored (medical) leave-sharing arrangement," the plan should:

- Be in writing and be administered through the employer.
- Be created as a leave bank or pool for employees to donate accrued, unused leave, and from which, leave will be distributed to RECIPIENT'S who have a personal or family medical emergency.
- State that employees should be eligible to receive leave only after their request has been approved and all other available paid leave has been exhausted.
- Specify that leave is to be used only for medical emergencies. The plan should restrict these medical emergencies to major illnesses or medical conditions of employees or their family members that require extended absences.
- Define who the plan covers and under what circumstances (i.e., an employee's own medical emergency only, or also to include care for a parent, spouse, or child with a medical emergency, and whether or not the plan will also cover extended time off, and for how long, following the loss of a parent, spouse, or child).
- Have a detailed procedure in place for employees to submit a written request for leave that describes the specific medical emergency or medical condition.
- Allow the RECIPIENT to receive leave bank paid leave at the RECIPIENT'S normal rate of pay.
- Not allow a DONOR to specify a particular RECIPIENT of the donated leave.
- Not allow a RECIPIENT to receive a cash payout in lieu of taking the donated leave.
- Specify limits on the amount of leave that may be donated by an individual in any given year.

---

<sup>2</sup> You can find additional information here: [Private Ruling Letter](#), Rev. Rul. 90-29, 1990-1 C.B. 11

- Have processes in place to confirm that all leave transferred under the plan is actually being used for medical leave by the RECIPIENT.

***IMPORTANT CONSIDERATIONS RELEVANT TO DEVELOPING AND IMPLEMENTING A LEAVE DONATION PROGRAM:***

**1: Decide Which Type of Leave Donation Program to Implement**

A company may develop a plan that covers one or both situations. Each situation must be defined separately as outlined above to qualify for protections from negative tax consequences to the donor.

Under both medical emergency plans and major disaster plans, DONOR employees may not claim an expense, a tax deduction or a charitable contribution for any of the leave donated under the plans. Additionally, all paid leave granted to the RECIPIENT employee is considered wages and is subject to Federal Insurance Contributions Act (FICA) withholding, Federal Unemployment Tax Act (FUTA) withholding and other required tax withholdings.

Should a plan fail to meet the specified criteria to qualify for an IRS exception for a Medical Emergency and/or Natural Disaster, leave donations paid out to a RECIPIENT are considered taxable wages to the DONOR as well.

**2: Budget Implications**

Employees who use very little leave and have large leave balances may be more likely to donate leave to be used by others. This may result in an overall increase in the use of paid leave that may have otherwise been forfeited in years past. Other unknowns, such as when natural disasters may occur, and the frequency of significant medical emergencies, can have a cost impact on this program. Placing a cap on the amount of leave that can be donated or used, or specifying a time period by event, can help control the impact of the plan on the organization.

Plan design features that should be considered during planning and budgeting for a PTO donation policy are:

- ***DONOR eligibility:*** Who can donate to the leave bank? Is there a minimum length of service or minimum leave balance required? Are any classes of employees excluded from eligibility (e.g., executives)?
- ***Donation amounts:*** Is there a minimum and/or a maximum an employee can donate and will those amounts be established for a calendar year or a rolling 12 months? Does an employee have to maintain a minimum balance in his or her own leave account? Can the donation be made at any time or only during open enrollment? Can leave balances which are typically forfeited be donated to the “bank” instead of being forfeited?
- ***RECIPIENT eligibility:*** Who is eligible to receive leave from the bank? Is there a minimum length of service? Are any classes of employees excluded from eligibility (e.g., executives)? Will you allow a donation to someone who has alternative wage replacement (STD, LTD, UI)?
- ***RECIPIENT amounts:*** Is there a minimum and/or maximum an employee may receive from the bank and will those amounts be established for a calendar year or a rolling 12 months?

Is there a waiting or elimination period before eligibility? Will employees be required to exhaust other types of paid leave prior to receipt?

- **Value of donated leave:** Will leave always be valued at the RECIPIENT 's rate of pay or converted to a comparative dollar rate?

Financial issues for an employer can potentially arise when lower-paid employees are a larger part of donating employees and higher-paid employees are more frequently the RECIPIENT s of the leave benefits. An employer may handle this situation in one of two ways.

- Wage basis. This method accounts for the salary differences in comparable dollar values by converting the dollar value of the leave into equivalent leave hours for the employee receiving leave. For example, Employee A has an hourly rate of \$30. Employee A donates two hours of leave totaling \$60. Employee B requests three hours of leave at a rate of \$15 per hour. Employee B then exhausts the dollar value of \$45 (three hours of leave), and a total value of \$15 of Employee A's donation remains in the emergency leave bank.
- Hour-for-hour basis. This method allows the receiving employee to be paid at the employee's prevailing wage rate. While this method is easier to administer, the employer risks the possibility of higher paid employees using leave donated at a lower rate of pay and a liability of having to absorb fund discrepancies.

### 3. Program Design & Implementation

In addition to ensuring the elements required to allow the plan to qualify under the provisions of the IRS are followed, other best practice design and implementation considerations are:

- Implementing clearly stated, neutral eligibility criteria applied equally across all employee groups to avoid claims of discrimination and unfair treatment, unless there is a legitimate business reason not to do so.
- Understanding how distributions may affect STD, LTD or Unemployment Insurance benefits. Will the receipt of distributions from the leave bank potentially delay or reduce STD/LTD benefits, or be used to supplement the disability benefits once the employee has exhausted all of his or her available paid leave?
- Ensuring that employees' privacy is protected. Although HIPAA generally does not apply to information obtained in the administration of a leave donation program, the confidentiality requirements of the ADA must still be considered. You may need to omit the employee's medical condition on documents that are shared with others during the administration of the plan.
- Using a robust and effective communication process to ensure that both the employee and the employer receive the maximum value from the program.

10/10/2024 8:36 AM