

## FREQUENTLY ASKED QUESTIONS

### Employers

1. *How does an employer establish a charitable leave donation program?*

The IRS does not have to approve the employer's program. In fact, the IRS does not have any formal written plan or program requirements. The employer must merely pay the donated accrued leave amounts for Hurricane Harvey relief to organizations described in section 170(c) of the Internal Revenue Code prior to January 1, 2019. See Employer Question 7. An employer can structure its program to suit its particular needs and its existing payroll and accounting systems.

2. *What are the basic requirements of a charitable leave donation program?*

The employer's cash payment must be paid (1) by January 1, 2019, (2) to a qualified tax-exempt organization, and (3) for the relief of victims of Hurricane Harvey or Tropical Storm Harvey. The IRS allows employees to donate current accrued leave or to pledge to donate leave that will accrue in the future. However, an employee's pledge to donate future leave should only be implemented and the employer donation should only be made after the leave is actually accrued during the future payroll period.

3. *Are there any special recordkeeping requirements?*

The IRS has not established any special recordkeeping requirements. Employers should observe the existing general rules for payroll and accounting, including maintaining books and records to substantiate payments to the charities.

4. *How should an employer value the donated leave?*

An employer should value the donated leave based on the particular employee's normal rate of compensation. For example, if the employee makes \$30 per hour and donates 16 hours of accrued leave, the employer should make a cash contribution associated with that employee's donated leave in the full amount of \$480 without any taxes withheld, given that the amounts are nontaxable.

5. *Can employers deduct the cash payments?*

The entire cash payment is treated as a payment by the employer for tax purposes. As employer payments, the payments to a qualified tax-exempt organization can be deducted as charitable contributions (up to the applicable limitations). Alternatively, the employer may deduct the payments as business expenses if that is more tax advantageous to the employer.

6. *Should the amounts donated by the employees be treated as wages?*

No. The amounts are not reportable on the employees' Forms W-2 and are not otherwise treated as income or wages for employment tax purposes.

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7. *To which organizations can the employer donate the cash payments?*

An employer may make cash payments to any organization described in section 170(c) of the Internal Revenue Code, as long as the organization is providing relief to victims of Hurricane Harvey or Tropical Storm Harvey. Section 170(c) organizations include religious, charitable, and education organizations. Local, state, and federal governments also are considered Section 170(c) organizations.

8. *Must the employer contributions consist of "cash"?*

IRS Notice 2017-48 refers to "cash" payments. The term cash refers to any monetary media of exchange such as cash, checks, money orders, wire transfers, or other form of monetary media of exchange.

9. *How can employers ensure that an organization is eligible?*

The IRS's Exempt Organizations Select Check is an online website that employers can use to search for tax-exempt organizations. In addition, the employer can contact the organization.

10. *How can an employer ensure that its cash payment is used for Hurricane Harvey relief?*

An employer should make a good faith effort to learn about the tax-exempt organization and its efforts assisting victims of Hurricane Harvey. This desired use of the donation can be expressed in a cover letter, on the check itself, or in a similar fashion.

11. *Can the employer make contributions directly to its employees who are victims of Hurricane Harvey?*

The special tax rules for charitable leave donation programs only apply to contributions made to tax-exempt organizations, not to direct payments to affected employees. Other tax-favored means exist that allow employers and coworkers to assist employees impacted by Hurricane Harvey such as disaster assistance leave bank programs, qualified disaster relief payments under section 139 of the Internal Revenue Code, and employer-sponsored charitable organizations.

12. *Can the employer match the employees' contributions?*

Yes. The employer can match the contributions or add as much as it wants to the amount donated by the employees.

13. *Who operates the employer's charitable leave donation program?*

The employer can decide who within the organization operates the program. However, the human resources department or the department that generally handles employees leave is likely well suited to administer the program and handle the employees' elections to participate in the program.

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14. *Are there limits on the amount of leave that an employee can contribute either through a one-time donation or a pledge?*

Yes. In order to qualify for the specific tax treatment, the employer must contribute all amounts to the designated tax-exempt organization(s) by January 1, 2019. Accordingly, the employer will need to determine when to stop accepting leave donations in order to complete any administrative tasks necessary to make the actual contribution by the IRS deadline. A minimum of thirty (30) days may be prudent to ensure that the contributions can be made on a timely basis to the designated charitable organizations, i.e., December 1, 2018.

15. *Will the IRS issue similar guidance in response to Hurricane Irma?*

Yes. We expect that the IRS will issue a specific notice related to Hurricane Irma, which will provide a different deadline for donations to be made to organizations assisting victims in the aftermath of that hurricane, in the coming days and weeks.

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## Employees

1. *Will employees who donate leave have to pay the taxes on the value of the donated leave?*

No. Donated leave under a qualifying charitable leave donation program is not treated as income and is not reported on the employee's Form W-2. Instead, it is subtracted from the employee's leave balance.

2. *Can an employee take the value of donated leave as a charitable contribution deduction on his/her individual income tax return?*

No. As explained above, the employee is not taxed on the donated leave through the program. Therefore, the employee cannot claim a charitable contribution deduction. However, the tax effect of the donated leave is greater than if the employee received and then immediately donated the wages to the same charitable organization because it is a pretax contribution made by and through the employer.

3. *How does the employer determine the monetary value of the employee's donated leave?*

The value is based on the employee's normal rate of compensation.

4. *What kind of leave can an employee donate?*

Any kind of leave (e.g., personal, sick, or vacation) permitted by the employer's charitable leave donation program can be donated. The employer determines what increments of leave (i.e., hours, days, weeks) can be donated.

5. *Can an employee donate leave that is not yet accrued?*

No. At the time the leave is actually donated and converted to a cash contribution, the maximum leave donated by the employee cannot exceed the amount of leave currently earned.

6. *Can an employee pledge to donate leave that will be accrued in the future?*

Yes. The employee can agree that it will donate leave in the future once that leave is earned or accrued.

7. *Can an employee choose the organization to which the leave donation will be contributed?*

This depends on the employer's program. Some employers may choose to donate to only one or two tax-exempt organizations supporting victims. Other employers may allow the employee to select the organization to which the amount will be donated.

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8. *Can an employee choose an individual to which the leave donation will be contributed?*

No. Charitable leave donation programs only allow employers to contribute to tax-exempt organizations, not individuals.

9. *Does the employer need to provide the employee with a receipt corresponding to the donated leave?*

No. There are no direct tax consequences to the employee associated with the leave donation, and no deduction is permitted on the individual's income tax return. Accordingly, the IRS does not require the employer to provide the employee with such a receipt or acknowledgment.

10. *Can employees contribute additional cash amounts through the charitable leave donation program?*

No. Only leave can be contributed, but employees are always encouraged to make cash contributions directly to the charitable organization(s) of their choice.

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