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Employers May Provide Tax-Free Disaster Relief Payments to Employees Impacted by the COVID-19 Pandemic

On March 13, 2020, President Trump declared the COVID-19 pandemic to be a "national emergency." As a result, employers now have the opportunity to provide disaster relief payments to employees on a tax-favored basis pursuant to Section 139 of the Internal Revenue Code.

Qualified disaster relief payments from employers are tax-free to employees for federal income and employment tax purposes. However, they remain deductible expenses for employers. Included in the scope of what are considered to be "qualified disaster relief payments" are amounts paid to, or for the benefit of, an individual to reimburse or pay reasonable and necessary personal, family, living or funeral expenses incurred as result of a qualified disaster. However, this definition applies only to the extent for which the expenses are not otherwise compensated, such as through insurance. The payments are not limited under Section 139 by a specific dollar amount, but they must be deemed to be reasonable and necessary. Any payments must also relate to specific expenses and not just serve as a means to replace the employee's income.

While the IRS has not yet explicitly identified the kinds of disaster relief payments specifically tied to the COVID-19 pandemic that would be considered qualified under

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Section 139, an employer might consider making payments to employees to cover:

- unreimbursed COVID-19 medical expenses (including expenses for over-the-counter medications);
- disinfectants and hand sanitizers;
- working from home expenses, such as those incurred in setting up a home office;
- child care or tutoring expenses incurred as a result of school closings; and/or
- funeral expenses for employees, spouses and dependents who die from COVID-19 related causes.

A qualified disaster relief payment program is not required under Section 139 to be written, but a written policy or plan document is recommended so that employees can be informed on matters such as the types of expenses that are eligible for reimbursement as well as the dollar limits the program imposes on the amounts that may be paid.

In addition to determining which expenses are eligible for reimbursement and any applicable dollar limitations, an employer also needs to consider how such a program should be administered. Section 139 does not mandate that employees be required to furnish receipts or other proof of expenses, but the size of any payment must be reasonably expected to be commensurate with the expenses incurred. An employer may choose to require proof of expenses incurred under its program, however, to guard against fraudulent claims or as a means of controlling costs. The employer will want to weigh these concerns against the burdens associated with administering a qualified disaster relief program, which will likely be further complicated for employees who are forced to work remotely.

If you have any questions about qualified disaster relief payments or other employee benefits issues, please do not hesitate to contact Jeff Bakker, Patty Cain, Linda Hoseman or your Neal Gerber Eisenberg attorney.

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