

EMPLOYERS HAVE THE OPPORTUNITY TO PERMIT EMPLOYEES TO DONATE ACCRUED AND UNPAID TIME OFF TO FELLOW EMPLOYEES IN NEED

Generally, individuals who have wanted to donate PTO could not do so without triggering adverse tax consequences. However, that can be resolved if an employer establishes a plan as a medical emergency leave plan or a qualified major disaster leave plan. Under these arrangements, employees can voluntarily contribute their earned and unused PTO for the benefit of other employees in need. If structured properly, the donor is not taxed and the recipient receives the donated time as taxable wages. The following is a summary of the two scenarios:

Medical Emergency Leave Plan (MELP)

A MELP is for employees who have run out of PTO but need more because of a *medical emergency*. The MELP would permit an employee to donate accrued PTO to a leave bank to help any employee or make a designation to a specific employee.

A medical emergency is defined as a condition of the employee or a family member that will result in a long absence from work. Under the current pandemic crisis, if an employee is required to be absent from work because the employee or family member is diagnosed with COVID-19, a distribution of PTO to the employee should qualify as a permissible distribution.

On the flip side, if a MELP makes an impermissible distribution, then the entire plan could lose its special status and all donations and distributions would lose the tax benefits noted above.

Major Disaster Leave Plan (MDLP)

Under a MDLP, employees who are affected by a major disaster can qualify for benefits. A major disaster is one that is declared as such by the president and warrants individual assistance or individual and public assistance from the federal government. The biggest difference is that under MDLP, an employee is prohibited from making a special designation to an individual but must deposit accrued leave in an employer-sponsored leave bank for use by those employees who are adversely affected by a specific major disaster. This declared disaster then must cause the employee or family member to be absent from work. There are some other requirements for these plans, including maximum accruals and not being able to convert the unused leave into cash. Any PTO that is not used for a specific disaster is not eligible to be left in the bank for other disasters and any unused amounts must be returned to the donor.

The regulations for these plans distinguish between a disaster and a major disaster. At first glance, it would seem reasonable since all 50 states and the District of Columbia have been declared COVID-19 major disasters by the president, and therefore all would be eligible. The sticking point is that only certain states have been declared major disasters that warrant individual assistance. I am not really sure of how this is not extended, but as it stands now, unless it is modified in the future, the MDLP would only be available in those states that have added the clause regarding individual assistance.

Employer Considerations:

Employers who are considering implementing one of these PTO leave-sharing programs should first review the applicable state laws regarding these plans. The objective would be to determine if the state and Internal Revenue Code provisions are aligned. There are also various local and municipal rules that should also be reviewed to determine if these plans also adhere to local laws.



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