

UPDATE: COVID-19 Presents Another Opportunity for Leave Sharing

By: Alex Mattingly on June 17, 2020 on graydon.law

[In a prior blog post](#), we discussed how COVID-19 presented a potential opportunity for employers to set up a leave-sharing program for those affected by COVID-19. At that time, we discussed IRS guidance related to major disaster leave-sharing programs. Those programs, if a very specific set of circumstances are met, permit employees to make a tax-free donation of leave if made to an employer-sponsored leave bank for use by other employees adversely affected by a national emergency (such as COVID-19).

As many travel restrictions are still in place and many individuals are still apprehensive about taking that summer vacation, you may find you have employees with higher than usual PTO banks this year. In good news for employees and employers, the IRS recently issued guidance on leave-donation programs through [Notice 2020-46](#), which provides some of the same benefits as the program in our earlier post discussed but with far fewer hoops.

As a refresher, normally an employee who donates vacation, sick, or personal leave in any type of leave-sharing or leave-donation program will have taxable income equal to the value of the donated time, based on their normal rate of pay. This general rule applies to all programs, including employer-sponsored programs that allow employees to donate paid leave in exchange for a charitable contribution by their employer.

With Notice 2020-46, the IRS provides an exception to this general rule and gives preferential tax treatment to both employees and employers, but only if the charitable contributions made under a leave-donation program are: (1) made to a charitable organization (described in section 170(c) of the Code) for the relief of victims of the COVID-19 pandemic in the affected geographic areas; and (2) paid to the charitable organization before January 1, 2021. The new guidance allows employees to forgo or “donate” leave under an employer-sponsored program tax-free; the value of the leave is not taxable income, and does not appear on the employees W-2. In addition, the employer that makes the charitable contributions as a result of donated leave can deduct the payments as a business expense.

This new guidance is very welcome and provides a relatively easy way for employees and

employers to help individuals impacted by the pandemic. For questions about setting up a leave-sharing plan under 2020-46 or any other benefit issues, please reach out to any of Graydon's labor and employment or employee benefits attorneys.