

Employer Leave-Based Donation Programs

Cross References

- Notice 2023-69

In response to the extreme need for charitable relief for victims of wildfires beginning on August 8, 2023, in the state of Hawaii (2023 Hawaii Wildfires), employers may have adopted or may be considering adopting leave-based donation programs.

The IRS has issued guidance on the federal income and employment tax treatment of cash payments made by employers under leave-based donation programs for the relief of victims of the 2023 Hawaii wildfires.

Under employer leave-based donation programs, employees can elect to forgo vacation, sick, or personal leave in exchange for their employers making cash payments to charitable organizations. Cash payments made by an employer to IRC section 170(c) organizations under an employer leave-based donation program are referred to as “employer leave-based donation payments.”

Employer leave-based donation payments made by an employer before January 1, 2025, to IRC section 170(c) organizations to aid victims of the 2023 Hawaii Wildfires (qualified employer leave-based donation payments) will not be treated as gross income or wages (or compensation, as applicable) of the employees of the employer. Similarly, employees electing or with an opportunity to elect to forgo leave that funds the qualified employer leave-based donation payments will not be treated as having constructively received gross income or wages (or compensation, as applicable). Employers should not include the amount of qualified employer leave-based donation payments in Box 1, 3 (if applicable), or 5 of the electing employees’ Forms W-2. Electing employees are not eligible to claim charitable contribution deductions under IRC section 170 for the value of the forgone leave that funds qualified employer leave-based donation payments.

An employer may deduct qualified employer leave-based donation payments either as charitable contributions (IRC §170) or as ordinary business expenses (IRC §162) if the employer otherwise meets the respective requirements of either section of the Code.