

More Hurricane Relief & Expansion of DoL Relief to Hurricane Irma

09.15.17

Leave donation program was extended to assist victims of Hurricanes Irma today. The new leave donation program permits an employee to donate his leave to a charitable organization that is eligible to receive charitable contributions if those donated amounts are either paid to (1) a charitable organization for the relief of victims of Hurricane and Tropical Storm Irma and are paid to the charitable organization before January 1, 2019.

The Internal Revenue Service stated that it will not assert that the employee's election will result in constructive receipt of the income or wages for the employees. Employees electing to forgo wages to have them contributed to such a charitable organization may not claim a charitable contribution for the amount of wages foregone. The Internal Revenue Service also stated that it will not treat these amounts as charitable contributions subject to the limitations on charitable contributions that might apply to the employer in its federal income tax return, instead of as a deduction of trade or business expenses.

DOL Guidance on Hurricane Harvey Extended to Hurricane Irma and Applies to Both Retirement Plans and Health Plans

U.S. Department of Labor ("DoL") weighed in with two pieces following Hurricane Harvey and today's announcement extended the Harvey guidance to victims of Hurricane Irma as well, but did not restate the prior guidance. The original relief is explained below including the application to victims of both hurricanes. One is a set of FAQs which are directed to employees, former employees and retirees which directs them to look for certain information in their records to prove their rights to benefits and instructs them about ways to maintain health coverage if there might be issues in its continuation after Hurricane Harvey or Irma. Employers should be ready for an increase in requests for copies of summary plan descriptions from employees located in the areas affected by Hurricane Harvey and Irma and also for a potential increase in contacts from the DoL, particularly if you have affected employees and you do not have an alternate way for individuals to contact your business office, if Hurricane Harvey or Irma may have rendered your normal office non-functioning.

Deposit of Payroll Deductions

The DoL's guidance applies generally to employee benefit plans, plan sponsors, employers, employees and their service providers who are located in a county identified for individual assistance by FEMA. The compliance guidance reminds that amounts deducted from employees' pay as plan contributions are plan assets and must be promptly deposited in the plan. It then recognizes that there may be issues with making such timely deposits due to Hurricane Harvey or Irma and if the failure is solely on the basis of and attributable to Hurricane Harvey or Irma, the DoL will not assess a penalty if such contributions are forwarded to the benefit plan as soon as practicable under the circumstances.

Blackout Notice Requirement Relief

The DoL recognizes that Blackout Notices for periods when participants are not able to engage in transactions in their retirement plan account investments is required to be provided at least 30 days in advance, and if there is an inability to meet the 30 day requirement the plan administrator was required to make a determination in writing in advance of the blackout period commencing. The DoL recognizes that Hurricane Harvey or Irma may result in a plan not being able to issue this notice in a timely manner or to make the required advance determination as the result of Hurricane Harvey or Irma

and the DoL for a failure solely because the plan sponsor did not make the written determination required to not meet the 30 day advance notice of the Blackout period as required.

ERISA Plan Claim Procedure Deadlines and COBRA Election Deadlines

The DoL next recognized that plan participants and beneficiaries may have difficulty in meeting the deadlines under the ERISA claim and appeal procedures to be able to pursue claims for benefits and also have difficulty in making COBRA elections in a timely manner. The DoL states that plan administrators should make reasonable accommodations to prevent the loss of benefits in such cases and to minimize the possibility of individuals missing benefits due to failure to meet the standard deadlines for elections or pursuit of claims or appeals. The DoL also recognized that they will emphasize compliance assistance, grace periods and relief where appropriate when physical disruption to a plan or its service provider makes timely compliance with requirements, including disclosures impossible.

Contacts:

Greta Cowart

214.745.5275

gcowart@winstead.com

Marsha Clarke (Admitted in MO and IL)

214.745.5877

mclarke@winstead.com

Nancy Furney

214.745.5228

nfurney@winstead.com

Lori Oliphant

214.745.5643

loliphant@winstead.com

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