

COMMERCIAL INSURANCE

EMPLOYEE BENEFITS

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Tax-Favored Employee Benefit for Disaster Relief FAQ's

Section 139 allows employers to provide their employees with tax-favored disaster relief funds for certain unreimbursed expenses. The payments are tax-free (not subject to income or employment taxes) for both the employer and the employee.

Q: What is considered a qualified disaster?

A presidentially declared disaster warranting federal assistance under the Stafford Act.

Q: What can the funds be used for?

To be excluded from income, payments must be for a qualified disaster relief payment. These payments cover "reasonable and necessary" expenses:

- Personal, family, living, or funeral expenses that are incurred because of the disaster
 - This includes the expenses incurred if evacuated due to a coming disaster
- Expenses incurred for the repair or rehabilitation of a personal residence or repair or replacement of its contents, to the extent that the need for such repair, rehabilitation, or replacement is attributable to the qualified disaster.

The IRS has not issued specific guidance regarding what type of expenses would be reimbursed for the COVID-19 pandemic; however, the underlying purpose of section 139 suggests that there are several categories of expenses that would be eligible, like:

- Medical expenses not covered by insurance (COVID-19-related copays, deductibles, over-the-counter medications)
- Health-related expenses (hand sanitizer, face masks, sanitizing cleaning products)

- Dependent care expenses due to school/place of care closings
- Tutoring and home-schooling related expenses due to school closures (internet, computers to directly aid education, online education applications)
- Working-from-home expenses (cost of a personal computer, printer, supplies, internet services)
- Incremental utility costs due to working from home
- Critical care and funeral expenses for an employee or their family due to COVID-19
- Counseling
- Temporary housing
- Non-perishable foods for reserve
- Additional travel/food expense for a returning student

The funds cannot be used for:

- Items covered by insurance or other sources
- Nonessential items, luxury items, decorative items, and services
- Payments for lost income or compensation

Q: Do you need a plan document or policy for a disaster relief program?

These are not ERISA plans, so there is no requirement that the employer's disaster relief program be established in writing. However, we recommend that employers create a plan document or policy that outlines their intent in the event of a disaster. This document could include items as simple as:

- Who is eligible for the funds (full-time, part-time, family members)

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- What the funds can be used for (as broad as section 139 allowed expenses or narrower if preferred)
- A statement that the eligibility for the funds is in accordance with the section 139 requirements (federally declared disasters, or where government funds are being provided for relief)
- The most the employer would pay for a single disaster (not required; there are no limits except that the amount be reasonable)
- How the employees can access the funds and method of payment
- Who is administering the program
- How long the program will last (beginning and end date)
- A statement about the employer reserving the right to change or terminate the program at any time, at their sole discretion

Q: Do your employees have to submit receipts or proof of their expenses when requesting funds?

Section 139 requires little or nothing in the way of recordkeeping or substantiation. However, you will still want to maintain adequate records to support the payments. A best practice would be to collect receipts (if available) or some type of written confirmation that the employee incurred qualified expenses (like an affidavit or claim form).

If you have more questions, contact your Parker, Smith & Feek account team.

Q: Do payments have to be reported on the Form W-2 or 1099?

No, this is not income.

Q: Is there a limit on how much an employer can payout in section 139 payments?

No, other than it must be "reasonable and necessary."

Q: Is it OK to make reasonable set payments to all employees for a specific out-of-pocket expense, such as a work-at-home technology payment?

Yes, so long as the payment is based on reasonably expected expenses.

Q: Can you create a program for just COVID-19 and with no intent to provide ongoing funds for future disasters?

Yes.

DISCLAIMER

The information provided here is based on the Washington PFML statute, website information, benefit guides, and questions Parker, Smith & Feek has posed to the State. It is not intended to provide legal or actuarial advice. The issues and analyses presented here should be reviewed with outside counsel before serving as the basis of any legal or other decision.
