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Insights

PTO Donations and COVID-19

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With the recent dramatic events concerning COVID-19, Krieg DeVault LLP has seen an increase in the number of client questions regarding the use of Paid Time Off ("PTO") donation programs to help offset employee demand for time off related to COVID-19 treatment and containment. The following alert provides a refresher on the existing rules and a summary of how these programs may be used by employers during these challenging times.

PTO Donation – General Rules

If properly structured, PTO donation programs qualify for an exception to the general "assignment of income" tax rule that would require income to be recognized by the PTO donor. There are no statutes or regulations governing these PTO donation arrangements. The only formal guidance available to employers regarding the favorable tax treatment is found in a couple of IRS pronouncements, based on the reason for the donation:

- For "medical emergency" leave-sharing programs, guidance is found in Revenue Ruling 90-29 ("Rev. Rul. 90-29");

- Other leave-sharing programs, such as those for "major disasters" or "military leave," are subject to different rules and may or may not receive similar tax treatment. Those rules can be found in IRS Notice 2006-59 ("Notice 06-59").

Eligible Donation Events

PTO donations are permitted to address family emergencies provided the emergency falls within one of the following IRS definitions:

- **Medical emergency:** a medical condition of an employee or a family member that would lead to the worker's absence from work for an extended length of time and cause a substantial loss of income.

- **Major disaster:** as declared by the President, an event that warrants individual or public assistance from the federal government, or has severe adverse effects on a substantial number of employees.

A qualified medical emergency includes a number of conditions. The bank or pool must be open to all

employees, not designated to a specific employee. Employees must use all of their other paid leave to qualify. Although the Rev. Rul. 90-29 program was structured as a leave-bank, under which employees donated leave into a bank for later withdrawal for an unspecified employee, the IRS, in informal guidance, has since indicated that it is permissible to allow employees to donate to specified recipients under medical emergency leave-sharing programs.

Qualified disaster relief also includes qualifying conditions. First, the event must be a major disaster declared by the President under §401 of the Stafford Act, 42 U.S.C. § 5170, and not an event impacting one individual (such as a house fire). The employee or a family member must encounter the hardship in a manner that requires the employee to be absent from work. There is also a time limit after the major disaster for employees to take advantage of the leave. The plan may not allow a leave donor to deposit leave for transfer to a specific leave recipient. Instead, the plan must allow a leave donor to deposit accrued leave in an employer-sponsored leave bank for use by other employees. The employer must make a reasonable determination, based on need, as to how much leave each approved leave recipient may receive under the leave-sharing plan.

President Trump declared a national emergency over the COVID-19 outbreak on Friday, March 13, specifically enacting the Stafford Act. As a result, donations of PTO in order to assist families who self-quarantine as a result of the COVID-19 virus, or to seek treatment for the virus, would be eligible for the favorable tax treatment described above.

Questions regarding the above information should be directed to Kendall A. Schnurpel or your regular Krieg DeVault attorney.