

LEGAL UPDATE



HIGHLIGHTS

The IRS has issued a notice stating employee leave donated to aid victims of the recent Hawaii wildfires will not be taxed as income of the donor employee.

Under employer-based leave donation programs, employers make cash payments to charitable organizations when employees donate their personal leave for this purpose.

The IRS notice also provides direction on how to account for the donations in tax reporting.

Leave Donated for Victims of Hawaii Fires Won't Be Taxed

Employee leave donated through employer-based programs to aid victims of Hawaii wildfires that began Aug. 8, 2023, will **not** be taxed as income of the donor employees, according to recent [guidance](#) from the IRS.

Employer-sponsored Leave-based Donation Programs

Employer leave-based donation programs allow employees to forgo vacation, sick or personal leave in exchange for cash payments made by their employers to charitable organizations described in Section 170(c) of the IRS Code.

The donated leave is taxable to donor employees unless the IRS makes an exception, which it sometimes does in response to specific situations, such as the Sept. 11, 2001, terrorist attacks and, more recently, the COVID-19 pandemic and the war in Ukraine.

IRS Notice 2023-69

In Notice 2023-69, the IRS recognized that in response to the need for charitable relief for victims of the recent Hawaii wildfires, employers may have adopted or may be considering adopting leave-based donation programs.

Employer leave-based donation payments made by an employer before Jan. 1, 2025, to Section 170(c) organizations to aid victims of the 2023 Hawaii wildfires will not be treated as gross income or wages (or compensation, as applicable) of the employer's employees.

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).

Guidance on Tax Reporting

Employers should not include the amount of qualified employer leave-based donation payments in Box 1, Box 3 (if applicable) or Box 5 of the electing employees' Forms W-2.

Electing employees are not eligible to claim charitable contribution deductions under 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 under Section 170 or Section 162 rules if the employer otherwise meets the requirements of either section.