## **Robert T. Stafford Disaster Relief and Emergency Assistance Act**

Our nation’s workforce is reeling from the impact of the COVID-19 outbreak, but employers can help mitigate the effects through tax-deductible qualified disaster payments to employees. These payments are available under Internal Revenue Code Section 139, which was enacted after the Sept. 11 attacks. When President Trump invoked the Robert T. Stafford Disaster Relief and Emergency Assistance Act on March 13, Section 139 became active, making these qualified disaster payments excludable from employees’ gross income.

In order for payments to qualify for this favorable tax treatment, the payment must be made to reimburse or pay the employee for reasonable and necessary personal, family, living, or funeral expenses incurred as a result of COVID-19. This provision does not apply to amounts intended to replace lost income or amounts the employee will be reimbursed for via insurance or otherwise; thus, sick pay or family medical leave payments to the employee are still fully taxable.

While the IRS has not provided specific examples of the expenses qualifying for this treatment, the following appears to be a reasonable interpretation of the code:

1. Medical expenses not compensated for by insurance (employee deductible and out-of-pocket expenses)
2. Cost of over-the-counter medicine and hand sanitizer
3. Funeral costs of an employee or member of an employee’s family
4. Costs associated with enabling an employee to work from home
5. Cost of an employee’s childcare or tutoring for family members not permitted to attend school through the pandemic

Section 139 does not note a requirement for a formal plan nor documentation to be maintained by the employer. Further guidance indicates employees would not need to submit documentation substantiating their use of the funds due to the extraordinary circumstances surrounding a qualified disaster, provided that the amounts can reasonably be expected to commensurate with the expenses incurred.

However, it would be wise for employers to document their intentions with regard to Section 139 and associated payments. Recommendations for tracking and documenting include the following:

1. Amounts paid and to whom
2. The start and end date of any Section 139 program
3. A general listing of the expenses that will be paid or reimbursed on behalf of the employees
4. Any maximum amount per employee or in the aggregate that the employer will pay

**Charitable Organizations**

Due to the emergency declaration, both public and private charities can use Section 139 to provide economic support to those undergoing financial hardships due to COVID-19. However, special rules apply to both types of charitable organizations. For employers with existing private foundations in place, the foundation should create a relief fund to facilitate the disaster relief program.