

**EMPLOYERS HAVE UNTIL DECEMBER 31, 2017 TO ASSIST EMPLOYEES WITH QUALIFIED PAYMENTS
AND LOANS EXEMPT FROM INCOME TAX**

In the wake of Hurricane María, employers can still make a difference and have until December 31, 2017 to help their employees face adversity by granting them a qualified payment or making an interest-free loan, both of which will be exempt from income tax. On October 4, 2017, the Puerto Rico Department of Treasury published the Administrative Determination No. 17-21 (“Administrative Determination”) to provide income tax exclusion of (i) certain Qualified Payments for Assistance Due to Disaster (“Qualified Payments”) and (ii) otherwise imputed income with respect to interest-free loans offered by employers to employees to cover expenses and damages suffered in connection with Hurricane María.

Qualified Payments

Qualified Payment comprises any amount paid to, or in benefit of, a person, paid directly to the service provider (when applicable) to cover expenses and damages resulting from the passage of Hurricane María, in the following instances:

- To cover reasonable and necessary expenses of the person or his or her family such as food, medicine, medical expenses, gasoline, the care of children and dependents, housing, purchases of electricity generators and funeral expenses;
- To cover reasonable and necessary expenses incurred to repair or rehabilitate a principal residence or items therein;
- Payments made directly to the person as monetary assistance to cover damages or losses suffered by such person;
- Payments issued by the federal, state or local governments, or agencies and instrumentalities thereof to the extent any compensated expense by such assistance is not covered by any insurance or by any other means.

Requirements

Qualified Payment must be made between the period of September 21, 2017 to December 31, 2017, and must be in substitution of employees’ unearned wages during periods of business interruption resulting from Hurricane María. Moreover, for payments made to employees by employers, the total amount paid shall be in addition to employees’ ordinary wages and employers may not discriminate in favor of highly compensated employees. These payments shall be limited to \$1,000 monthly and cannot be in any manner attributable or related to the employee’s position or salary. Additionally, employers must submit to the Department of Treasury by January 31, 2018, a sworn statement indicating the name and social security number of the person who received the payments and the amount paid to such person during the covered period. Furthermore, employers must include in the employee’s Withholding At Source Receipt the amount paid as exempt wages. These payments shall be deducted for purposes of determining employers’ net income subject to the income tax.

Interest-Free Loans to Employees

The Administrative Determination also allows employers to offer interest-free loans to employees without such interest-free loan being considered imputed income. Accordingly, employers who offer interest-free loans to employees from September 21, 2017 to June 30, 2018, to assist employees or their families to cover necessary and reasonable expenses and costs of construction or reparation of employee’s principal residence incurred due to the passage of Hurricane María do not have to recognize income on such loans. Employers may grant more than one loan as long as the sum of all loans does not exceed \$20,000. These loans may be granted in addition to Qualified Payments. (See separate Puerto Rico Department of Labor guidance under the Opinion of the Secretary regarding salary withholdings for loan repayment).

Implications to Employers

Employers should consider establishing a policy to administer these loans in a uniform manner and avoid potential legal exposure. While employers may be tempted to make deductions from employees’ salaries for the loan repayment, these are not among permitted salary deductions recognized by Puerto Rico or federal law. Thus, loan agreements or deductions other than those made to base salaries must be considered in attention to applicable legal restrictions. Employers must also keep accurate and complete records of the Qualified Payments and interest-free loans given to employees. Absent the necessary records, employers may not benefit from the Administrative Determination exemption.

This document has been prepared for information purposes only and is not intended, and should not be relied upon, as legal advice. If you have any questions or wish to obtain more information related thereto, or about its possible effect(s) on policy or operational matters, please contact us at your convenience.

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