



# LEGAL UPDATE

## IRS Offers Guidance on COVID-19 Employee Leave-sharing Plans

In recently issued [frequently asked questions](#) (FAQs), the IRS said employers may set up leave-sharing plans under [IRS Notice 2006-59](#) to benefit employees adversely affected by COVID-19.

### The IRS FAQs

The FAQs explain that leave-sharing plans permit employees to deposit leave in an employer-sponsored leave bank for use by other employees who have been adversely affected by a major disaster such as the COVID-19 pandemic.

Employees depositing leave in a **qualifying** plan:

- ☒ Do not include the deposited leave in income or wages.
- ☒ May not claim an expense, charitable contribution or loss deduction for the deposited leave.

The FAQs direct employers to Notice 2006-59 for information about the requirements of qualifying leave-sharing plans.

### IRS Notice 2006-59

Notice 2006-59 provides guidance on the federal tax consequences of leave-sharing plans during major disasters declared by the president. Currently, all 50 states are under a presidential major disaster declaration.

The notice lists eight features these plans must have for donor employees not to be taxed on donated leave. Among them are that use of donated leave be limited to employees for whom the major disaster has caused a severe hardship, requiring the employee's absence from work; that the plan not allow a donor to deposit leave for transfer to a specific leave recipient; and that employers make a reasonable determination, based on need, as to how much leave each approved leave recipient may receive.

### Highlights

#### Qualified Leave-sharing Plans Permitted for COVID-19 Pandemic

IRS FAQs say that employer leave-sharing plans are permitted for the COVID-19 disaster.

#### Requirements for Qualifying Plans

Donor employees won't be taxed on donated leave if the employer plan meets eight requirements described in IRS Notice 2006-59.

***IRS Notice 2006-59  
lets employees  
contribute leave to a  
bank for use by other  
employees affected  
by a major disaster.***

---

Provided to you by **Kinloch Consulting Group, Inc.** August 24, 2020

This Legal Update is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice. ©2020 Zywave, Inc. All rights reserved.

**Kinloch**  
CONSULTING GROUP  
An Optisure Risk Partner