<u>Section 139 Qualified Disaster Relief Payment for COVID-19</u>

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Section 139 of the Internal Revenue Code of 1986, as amended (the "Code") provides that "qualified disaster relief payments" made by an employer to an employee are not required to be reported or disclosed by employers or employees, including via Form W-2 or 1099, and they are not subject to U.S. federal income tax withholding obligations. "Qualified disaster relief payments" are defined as any amount paid to an individual to reimburse or pay for **reasonable and necessary personal, family, living, or funeral expenses** incurred as a result of a "qualified disaster" (as defined in Section 165(i)(5)(A) of the Code), provided that such expense is not covered by insurance or reimbursable. Based on Notice 2020-18 from the Internal Revenue Service ("IRS"), the IRS has determined that COVID-19 constitutes a "qualified disaster" under Section 165(i)(5)(A) of the Code.

The following are examples of qualified disaster relief payments that may be considered reasonable and necessary personal, family, living, or funeral expenses:

- Medical and other health-related expenses relating to COVID-19;
- Work-from-home expenses such as the cost to set up a home office (i.e. purchasing a printer, higher speed internet, a home phone, etc.);
- Dependent care expenses such as additional educational or childcare costs (i.e. hiring a tutor, online education subscriptions, etc.)
- Funeral expenses for an employee or family member; and
- Other living expenses related to the potential exposure to COVID-19 (i.e. hotel room due to quarantine, purchasing cleaning or sanitizing products, etc.).

Section 139 of the Code does not require employers to put in place a written plan or policy to make qualified disaster payments. However, as a best practice, employers should at minimum outline: (1) who is eligible; (2) what expenses will be reimbursed or paid; (3) any limits on the amount of payments; (4) any administrative requirements of the program; and (5) the duration of the program.

While there is no specified dollar limitation on the amount of qualified disaster relief payments that may be excluded from income, there are some general limitations. First, any payments that are unreasonable or considered excess will be included in an employee's income and may not be deductible. Second, the payments must be for a specific expense and are not intended to replace the employee's income. Third, payments are not treated as qualified to the extent any expense is reimbursed by insurance or another source. Fourth, an employee receiving a qualified disaster relief payment cannot claim a deduction or credit to the extent of the excluded amount. In conclusion, businesses should consider qualified disaster relief payments when evaluating how best to help their employees and communities during the ongoing COVID-19 crisis.