

Employers Must Make Payments to Charities by Jan. 1, 2023

Employee leave donated through employer-based programs to aid victims of the Russian invasion of Ukraine 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, as it now has for the war in Ukraine.

IRS Notice 2022-28

In recognition of the widespread loss of human life and other losses caused by the Russian invasion of Ukraine this year, the IRS issued Notice 2022-28 on May 19, 2022. The notice states that employers' cash payments for Ukraine victim relief made in exchange for vacation, sick or personal leave their employees elect to forgo will not be treated as employee wages or compensation, or otherwise included in employees' gross income, if the payments are:

- Made to a Section 170(c) organization to aid victims of the Russian invasion of Ukraine that began Feb. 24, 2022 (what the IRS terms the "further Russian invasion of Ukraine"); and
- Paid to a Section 170(c) organization before January 1, 2023.

Employers should not include the amount of qualified employer leave-based donation payments in Box 1, 3 or 5 of the donor employee's Form W-2.

Employees may not claim a charitable contribution deduction under section 170 for the value of the forgone leave; however, employers may deduct donation payments under the rules of section 170 or section 162 if the employer otherwise meets the requirements of either section.