

Puerto Rico Treasury Issues Tax Relief for Employer Assistance to Victims of Earthquakes in Puerto Rico

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An McV Employee Benefits Alert

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On February 20, 2020, the Puerto Rico Treasury Department (“PR Treasury”) issued Internal Revenue Circular Letter No. 20-08 (“CL 20-08”) establishing special rules to exclude from gross income certain payments and loans made by employers to their employees or independent contractors (collectively, “Workers”) who suffered damages or losses due to the recent earthquakes that affected Puerto Rico (“Qualified Payments for Disaster Relief”).

Qualified Payments for Disaster Relief

CL 20-08 and Section 1031.01(b)(16)(A) of the Puerto Rico Internal Revenue Code of 2011, as amended (“PR Code”) define Qualified Payments for Disaster Relief as any amount paid to, or for the benefit of Workers:

1. To supply, reimburse or pay reasonable and necessary expenses incurred by the individual or his/her family as a result of a Declared Disaster by the Puerto Rico Governor (the “Earthquakes”). Reasonable and necessary expenses for these purposes include food, gasoline, lodging, medical expenses, childcare and dependent care expenses, expenses for generation of electric power and to supply potable water, and funeral expenses.
2. To reimburse or pay reasonable and necessary expenses incurred as a result of the Earthquakes to repair or rehabilitate the individual’s principal residence, or to replace or repair personal property in the residence, provided the repair, rehabilitation or replacement is made as a consequence of the Earthquakes. Payments can be made either directly to the provider of the goods or services or to the individual. Expenses described in items 1 and 2 are collectively referred to as “Reasonable and Necessary Expenses”.
3. Payments made directly to the individual for monetary assistance to cover damages or losses due to the Earthquakes.
4. Payments made by the federal government, the Puerto Rico government, or any municipality, agency or instrumentality to promote the general welfare, but only to the extent that the expense reimbursed is not covered by an insurance or otherwise.

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To be considered exempt, Qualified Payments for Disaster Relief must meet the following requirements:

1. Payments must be made to the individual during the period starting on **February 1, 2020 and ending on April 30, 2020** (“Relief Period”). **Please be aware that these dates could be modified or extended as a consequence of the Executive Order OE 2020-23 issued by Governor Wanda Vázquez ordering the closure of the Puerto Rico Government and the private sector. We will be sending updates as events unfold.**
2. The total amount paid must be in addition to the compensation ordinarily received by the Worker;
3. Employers cannot discriminate in favor of “highly compensated employees” (as defined in Section 1032.06(d)(2) of the Code);
4. Payments must be limited to a monthly maximum amount of \$2,000 per Worker and cannot be in any way related or attributable to the Worker’s position or salary; and
5. The total amount of Qualified Payments made during the Relief Period cannot exceed \$4,000 per Worker.

Employer’s Reporting Obligation

Qualified Payments for Disaster Relief by an employer must be reported to PR Treasury as exempt salaries in the employee’s Form 499R-2/W-2PR, “Withholding Statement”. On the other hand, Qualified Payments for Disaster Relief made during the Relief Period to an independent contractor must be reported in Form 480.6D, “Informative Return- Exempt and Excluded Income and Exempt Income Subject to Alternate Basic Tax”.

Interest Free Loans to Puerto Rico Employees

Interest-free loans granted during the Relief Period by an employer to a Worker will not result in a taxable event to the Worker if the loan funds are used to cover Reasonable and Necessary Expenses.

The amount of the loan cannot exceed \$20,000 per Worker. The employer, however, may grant more than one loan to a Worker provided the aggregate of the loans does not exceed \$20,000. The employer can also offer the loan option in addition to Qualified Payments for Disaster Relief.

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If you would like more information about CL 20-08, please contact any of the Employee Benefits attorneys listed below. As you may know, due to COVID-19, Puerto Rico is currently under lock-down and all our attorneys are working remotely. You may reach them by email or on their cell phones.

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