

Financial Emergency Assistance

Structuring hardship support for program participants and employees of charitable organizations



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To provide free legal assistance to community-based nonprofits that serve low-income or disadvantaged individuals.

We match eligible organizations with volunteer lawyers from the leading corporations and law firms in Atlanta who can assist nonprofits with their business law matters.

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Client Criteria

In order to be a client of Pro Bono Partnership of Atlanta, an organization must:

- Be a 501(c)(3) nonprofit.
- Be located in or serve the greater Atlanta area.
- Serve low-income or disadvantaged individuals.
- Be unable to afford legal services.
- Employ at least one paid staff person.

Visit our website at www.pbpatl.org to apply.

Legal Information

This webinar presents general guidelines for Georgia nonprofit organizations and should not be construed as legal advice. Always consult an attorney to address your particular situation.

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Overview

1

Mission-Driven Programs

501(c)(3) tax-exempt organizations are established to serve a specific public benefit purpose, such as advancing education, protecting human or civil rights, or relieving poverty. Many operate programs for groups of participants with whom they build an ongoing relationship.

2

Emergency Requests

Program participants and employees may ask for, or may be identified as needing, monetary help with unexpected emergencies: a housing gap, medical bills from an accident, or a car problem that blocks getting to work or school.

3

Structure Depends on Recipient

How an organization structures assistance may depend on whether the individual is a program participant or an employee.

Participant Financial Emergency Assistance

Structuring Financial Assistance for program participants:

Adopt a formal policy that lets team members approve assistance quickly, consistently, and within the organization's mission

Policy Design Principles

Requests can be approved as they come in, but a formal policy may become necessary or desirable to govern when team members can approve assistance.

Objective Standards

- Let team members easily determine whether a request qualifies

Clear but Flexible Categories

- Define eligible expense categories clearly
- Avoid overly-specific terms that create unintended exclusions

Mission and Reputation

- Keep expenses consistent with charitable purposes to protect tax-exempt status
- Exclude illegal expenses or those that could reflect poorly on the organization

Covered Individuals

- Participant's own expenses (clearly eligible)
- Expenses of a minor participant's immediate family or primary caregiver
- Expenses of participants aged 18 to 26
- Expenses of a parent, boyfriend, spouse, or the participant's own child

Self-Dealing/'Excess Benefit Transaction' Safeguards

Consider whether to exclude employees and their family members from the assistance policy OR elevating employee-related requests to the Director or other upper management

Could exclude only lower-level employees, but disqualified person is determined based on facts and circumstances, so risk involved

Built-In Controls

Dollar Limits

- Protect finances and allow quick approval of non-material requests
- Let team members approve up to a set amount (e.g., \$500) without the Director or Board
- Apply limits on a rolling basis (e.g., 12 months) to prevent abuse

Payment Method

- Pay vendors directly (e.g., hotel, Uber) where possible
- Allow reimbursement after the fact upon adequate proof

Request Form

- Document the reasons for assistance to support audits or inquiries
- Allow the participant, a family member, or the team member to complete the form after a verbal request

Escalation and Tax Treatment

Out-of-Policy Requests

- Refer requests above the dollar limit or outside eligible categories to the Director or Board for mission-based review
- Structure the escalation process to allow prompt decisions on urgent needs
- Expect participant payments to be excludable from the participant's income

Discussion Example

Mission: help young women complete their education and enter the workforce.

Request: A 19-year-old participant asks for help with legal expenses because her parents, who are not U.S. citizens, have been notified that their visas are being revoked.

Should this be eligible?

Who should approve?

Employee Financial Emergency Assistance

Structuring Financial Assistance for employees:

Payments to employees are generally taxable compensation unless a specific tax code exclusion applies

Employee Assistance Framework

Taxable by Default

Unlike payments to participants, payments to employees are generally taxable compensation unless they satisfy a specific exclusion under the tax code.

Self-Dealing/Excess Benefit Transaction & Employment Law Concerns

In all cases, consider both the self-dealing/excess benefit transaction rules that apply to your organization and the general employment discrimination rules.

Structuring Options

- 1 Taxable Compensation
- 2 Qualified Disaster Relief (IRC §139)
- 3 Employee Leave Donation Program
- 4 Employer-Sponsored Public Charity

Taxable Compensation vs. Disaster Relief

Taxable Compensation

- Follows the participant policy's general procedures
- Moves approvals to the Director or Board
- Treats payments as wages (e.g., a bonus) for tax purposes

Qualified Disaster Relief Payments (IRC §139)

Qualified disaster: federally declared disasters (e.g., most FEMA response activities); disasters from terroristic or military action; or events the Secretary determines are catastrophic (e.g., COVID-19, certain hurricanes and earthquakes).

Eligible: personal, family, living, or funeral expenses resulting from the disaster; repair or rehabilitation of a personal residence or its contents attributable to the disaster. Expenses compensated by insurance or otherwise are not eligible.

Records: no substantiation required if payments are reasonably commensurate with expenses.

Tax: non-taxable for all purposes.

Leave Donation and Sponsored Charities

Employee Leave Donation Program

- Offers employees another use for unused vacation or PTO
- Requires the employer to establish and administer the program
- Lets employees donate leave and apply for it for medical emergencies (and major disasters, if IRS requirements are met)
- Creates taxable wages for the recipient but not the donor
- Is generally exempt from ERISA but warrants ADEA review

Employer-Sponsored Public Charity

- Permits a broader range of assistance, including employee hardship situations
- Is much more complicated to set up and administer
- Requires an independent committee to make objective determinations without excessive employer control
- Provides payments that are non-taxable to employees

Comparison of Options

Approach	Recipient*	Tax Treatment	Key Considerations
Financial Assistance Policy	Program participants	Should be excludable from income	Mission fit, dollar limits, documentation, escalation
Financial Assistance Policy	Employees	Taxable wages	Director/Board approval
Qualified Disaster Relief (§139)	Employees	Non-taxable for all purposes	Qualified disaster required; no insured expenses
Leave Donation Program	Employees	Wages to recipient; not to donor	Employer-administered; ERISA/ADEA
Employer-Sponsored Public Charity	Employees	Non-taxable to employees	Complex; independent committee

*Assumes employee is not a 'disqualified person'

Key Takeaways

- Adopt an objective, mission-aligned written policy for participant assistance
- Choose an employee structure deliberately: taxable compensation, §139 disaster relief, leave donation, or an employer-sponsored charity, but be sure to exclude disqualified persons
- Build in dollar limits, direct payment, and request documentation
- Route out-of-policy and employee-related requests to the Director or Board promptly
- Consistency is important
- Consider whether and how to publicize
- Monitor self-dealing/excess benefit transaction and employment discrimination rules throughout

Questions?

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