

HURRICANE-RELATED TAX BREAKS AND EXEMPTIONS FOR EMPLOYERS

As employers in North and South Carolina join the nation's effort to help the Gulf States recover from Hurricane Katrina, employers should be aware that the federal government has implemented tax breaks and exemptions from various legal requirements so affected employers can better respond to the disaster.

Tax Credits: On September 23, 2005, President Bush signed new legislation authorizing employers to claim "Work Opportunity Tax Credits" (WOTC) when they hire new employees who lived in the disaster zone and are unemployed because their previous employer's business was destroyed. Employers in the Carolinas are eligible for the WOTC tax credit for three months. Employers in the disaster zone are eligible for two years.

The new law also includes an employee retention tax credit for small employers that keep employees who worked in disaster zones on their payroll, even if such individuals are no longer performing their job because of the hurricane. To be eligible, the employer must have an average of 200 or fewer employees in the current taxable year and the employer's business must now be inoperable as a result of Katrina-related damage. The employee retention tax credit is available to employers until the end of this calendar year.

Leave Donation: The Internal Revenue Service recently issued Notice 2005-68, which provides special relief to support leave-based donation programs to aid victims who have suffered from Hurricane Katrina's destruction. For a limited time, employers, including Carolinas-based employers, can allow leave-based donation programs through which employees give all or a portion of their vacation, sick, or personal leave in exchange for employer cash payments made to qualified tax-exempt organizations providing relief for Katrina victims.

The IRS will not assert that cash payments an employer makes in exchange for donated leave constitute taxable gross income or wages of employees, provided that (1) the payments are made to qualified tax-exempt organizations for the relief of victims of Hurricane Katrina, and (2) the payments are made before January 1, 2007. Additionally, the IRS will not assert that the opportunity to make such an election results in constructive receipt of taxable gross income or wages for employees. However, the employees electing to make leave donations may not claim a charitable contribution deduction with respect to the value of forgone leave excluded from compensation and wages.

Affirmative Action Requirements: The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) has announced that as of September 9, 2005, all private companies awarded federal contracts for supply and service projects in response to the aftermath of Hurricane Katrina are exempted from the general federal requirement to submit a written affirmative action program. This waiver will last for three months and may be extended if the national interest requires.

Also, as of September 8, 2005, President Bush has indefinitely exempted federal construction contractors from the prevailing wage requirements of the Davis-Bacon Act.

EEO-1 Deadline: The U.S. Equal Employment Opportunity Commission (EEOC) has extended the filing deadline for the Employer Information (EEO-1) Report from September 30, 2005, to March 31, 2006, for employers affected by both Hurricanes Katrina and Rita.

Private employers of 100 or more employees and some federal government contractors with 50 or more employees must file the EEO-1 annually. The report calls for a workforce breakdown by job category and by race, ethnicity, and sex and is filed by an estimated 45,000 private employers annually.

I-9 Requirements: The U.S. Department of Homeland Security (DHS) announced on September 6, 2005, that for 45 days (through October 21, 2005), it will not "sanction employers for hiring victims of Hurricane Katrina who, at this time, are unable to provide documentation normally required" by the Employment Eligibility Verification (I-9) Form.

The I-9 form requires employers to verify an employee's eligibility and establish his or her identity through original documentation presented by the employee within three days of hiring. However, many victims' documentation was either destroyed or lost during their evacuation or displacement to shelters and temporary housing. Victims required to reapply for such documentation likely will not receive it in the normal period of time mandated by the employment verification rules.

DHS advises, however, that employers complete the I-9 form to the extent possible and note that the documentation normally required is not available at this time because of the events involving Hurricane Katrina.

Job Connection: The U.S. Department of Labor has established the "Katrina Recovery Job Connection" website to help connect individuals displaced by the hurricane with employers. Prospective employers can register at <http://www.jobsearch.org/katrinajobs/>. The site includes information on how to post a job listing and a clean up and recovery job, and how to search for resumes of potential employees.

Preparing for Future Disasters: DHS has endorsed the voluntary NFPA (National Fire Protection Association) 1600 Standard on Disaster/Emergency Management and Business Continuity Programs. NFPA 1600, which offers a comprehensive process for employers to establish an emergency preparedness plan, can be found at <http://www.nfpa.org/search.asp?query=1600>. According to the NFPA 1600, issues to consider include emergency training for employees, evacuation procedures, maintaining emergency contact information, establishing communication plans, evaluating the means by which critical information regarding the company's operations is stored – both electronically and in hard copy – and reviewing insurance policies.

Because the coastlines of North and South Carolina are prime targets for hurricanes every year, employers in both states should develop an emergency preparedness plan and communicate the plan to their employees. Taking appropriate steps now to prepare for a hurricane or another disaster before it strikes will better enable employers and their employees to deal with the aftermath.

This Employment Law Update is published as a service to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation.

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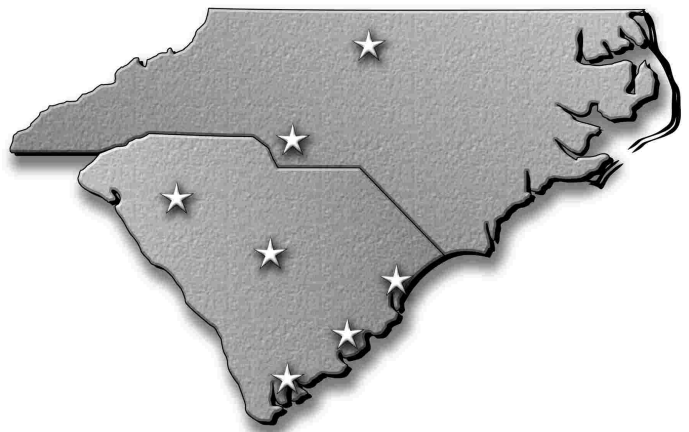
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