

The Law and Employee Emergency and Hardship Relief Funds

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Guests: Holly Welch Stubbing | E4E Relief & David Shevlin | Partner, Simpson Thacher

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This *Caring and Funding Podcast* is dedicated to these donors and the charities they support. Our guests are leaders in their field who join us to share tips for success and stories that inspire. Our host is Ted Hart, the CEO of CAF America. After the show, you can find all our podcasts at cafamerica.org on iTunes and now just say Alexa play C-A-F America on TuneIn. Now, welcome the host of CAF America's *Caring and Funding Podcast*, Ted Hart.

Ted Hart: Welcome to the latest edition of the *Caring and Funding Podcast*. It was 2001 when the foundation for the Carolinas received a call from then CEO of Wachovia, now Wells Fargo to find a way for their employees to make donations to support their employees and families who had been affected by the tragic events of September 11th. The first employee relief fund was then established, leading the way for compassionate companies to support employees in crisis.

Today's *Caring and Funding Podcast*, we'll focus on the legal and practical aspects of establishing employee emergency and hardship relief funds. When such funds operate through a qualified nonprofit contributions from employees as well as from companies are tax-deductible and employees are not subject to tax on the grants they receive. Following IRS regulations, such funds must have rules and structures in place for oversight of the fund's operations and applying established criteria for awarding grants.

A typical rule is that financial need stems from setbacks such as medical problems that cause family members to stop working funeral expenses, an emergency that necessitates travel or fire or hurricane or earthquake that damages an employee's home. Assisting employees in need can improve workforce morale, enhance the organization's reputation and create a culture of caring.

We are going to discuss two approaches to creating such funds along with benefits and cautions corporations should keep in mind. How these funds are legally established and how they are managed, make all the difference to topics such as will grants be tax-free to employees? Can other employees make donations to the fund and so on. Classification as a public charity versus a private foundation is important because different tax rules apply to the operations of each.

Details for these funds can be found in IRS Publication 3833. I have two expert guests who are going to help us learn both the legal and practical aspects of corporations establishing such funds. First today, Dave Shevlin who is head of exempt organizations practice at the law firm Simpson Thacher. Dave councils a variety of well-known international and domestic exempt organizations including CAF America.

He also advises donors, universities, foundations, hospitals and cultural institutions. Long active in the American Bar Association, Dave is a past chair of the ABA's Section of Taxation, the committee on exempt organizations. He has also served on the board of directors for Doctors without Borders USA. Welcome, here to the *Caring and Funding Podcast*, Dave Shevlin.

Dave Shevlin: Thank you for having me, Ted.

Ted: Dave, first up if you could help our listeners understand the legal imperatives, that legal underpinning, if you will, of creating this employee assistance and hardship funds.

David: Sure. The first thing that I'd like to say in what I say to any client who's interested in starting a disaster relief assistance fund for the employees of the company is something that I never tell clients in any other circumstance which is there is a document. It is short. It is written in plain English and it is written very well. It is Publication 3833. I don't often tell my clients to read documents that are issued by the Internal Revenue Service necessarily, that's my job but it provides an excellent short and very clear understanding of how the very complex rules work in this area. I want to put another plugin for Publication 3833. It's very important.

If you are an employer with employees that are affected by a disaster, then you have several options at your disposal but they're very important to understand the differences between these options and the overall rules and requirements that apply to them.

The first thing to note in particular given the current circumstance is that the COVID-19 has been declared to be a qualified disaster by President Trump. That means that certain qualified disaster relief payments are not taxable to employees. These include reasonable and necessary living expenses, personal expenses, housing and repair expenses. It does not include reimbursement for lost wages or income. That's very, very important and why? I'll come back to in a moment.

We have a qualified disaster on our hands and certain payments to employees are not taxable to them if they're for qualified disaster relief. An employer has several options for its own contributions as well as facilitating contributions from employees. An employer can form its own employer disaster relief fund that's not a charitable entity, but the problem with that is that the contribution to that entity by other employees and by the company are not necessarily tax-deductible, certainly not by the employees.

Employers often and smartly look for philanthropic options through which to do their disaster relief and to facilitate the contributions by other employees. One way of doing that is through an employer-controlled private foundation, like a corporate foundation the employer sets up a 501(c)(3) entity and funds that entity. It's classified as a private foundation under the tax code and it seeks to provide disaster relief assistance.

Some caution regarding that. Number one, as Ted mentioned at the outset of the call. You have to follow very specific rules when providing disaster relief assistance, particularly to employees. There has to be an appropriate assessment of need you have to evaluate the applications for need and document and keep records with respect to that assessment. A lot of our clients don't have the infrastructure or the expertise to do that on their own.

In addition, very important, a private foundation associated with an employer can only make payments to employees that qualify as qualified disaster relief payments. This is particularly important to understand in the current crisis. The type of expenses that we are hearing that are the most impactful and problematic right now are lost wages.

Yes, people are incurring certain incremental expenses as a result of the COVID crisis but this is not the situation of a hurricane where your house got knocked down and you need money for temporary shelter. Much of the need here is based on lost wages as a result of the dramatic cessation of our economy. Those types of payments cannot be made by an employer-controlled private foundation that are considered self-dealing.

It is very critical when you are thinking about your options that if what you are trying to do is assist your employees with the fact that they have lost income as opposed to trying to reimburse them for the incidental and incremental living or other types of expenses that they're incurring as a result of the COVID crisis. An employer-controlled private foundation is not necessarily your expeditious alternative.

The other options are an employer-controlled public charity. Again, this provides you with the flexibility to provide payments to employees that go beyond qualified disaster relief payments, so they're very, very critical. You still have the issues of needing to make the objective assessment of need. I forgot as well to mention earlier, you have to have an independent selection committee that chooses the recipients of the need. It cannot be done by those who control the company.

Moreover, if you form your own new organization, you have all of the associated timing and expense issues associated with forming your own organization. Where we have quite a number of clients right now that are looking to quickly and meaningfully help their employees. There are organizations such as E4E with which my co-panelist is associated.

That our public charities that work with companies to establish these types of funds but have the staffing and infrastructure and the experience to make these assessments, to assist with the selection of recipients. Because they are public charities, to provide the type of hardship assistance that is most needed in this time and not be limited by the rules that apply to private foundations.

I'm going to just stop there for a moment, Ted, as I've just taken 10 minutes to try and summarize this, a very complex and extensive area of the law in disaster relief assistance, but that's it in a nutshell so far.

Ted: Thank you, Dave, for doing that before we go on to our next panelist. What I do want to just ask you to summarize all the legal details that you just shared. From your experience, what is the biggest legal misconception that corporations have when they come to you and say, "I want to do this for my employees?" They want to be compassionate. They want to do the right thing. Where does the legal aspect off the rails pretty quickly in those conversations?

David: With the presumption that I need to start my own 501(c)(3) in order to accomplish this. As opposed to the opportunity to see that there are existing organizations that are charitable in nature that can assist with this already in existence.

Ted: What's the legal definition of preferring or recommending a public charity that has experience in this area? Is it the administrative burden but also the very high risk of self-dealing in trying to manage that yourself as a corporation?

David: Right, so it's twofold. We've got very specific requirements regarding assessment of need and record-keeping. An independent selection which are detailed and easy to fault and so there's the administrative burden and compliance issue there. Then very importantly, as I said I can't reiterate it enough because it's so relevant in the current situation that employer-control private foundations are limited to providing qualified disaster relief payments.

Public charities have a broader category of hardship assistance that they can help with. That is particularly critical given the type of loss and help that employees and those affected by the disaster are experiencing with respect to COVID.

Ted: Absolutely. Dave, as I said at the beginning, how this has established, how you create your fund legally makes all of the difference. Based on the recommendation from Dave Shevlin's partner at Simpson Thacher, we are going to take a very quick break. When we come back, I'm going to introduce our next panelist who is going to share with us the practical aspects of opening a fund with a public charity and we will be right back.

Announcer: Remember, our podcasts and archives are always available 24 hours a day at cafamerica.org on iTunes or just say Alexa, play C-A-F America on TuneIn. Now, back to the *Caring and Funding Podcast* and our host Ted Hart.

Ted: We are back and our guest Holly Welch Stubbing is executive vice president at the foundation for the Carolinas where she has led a team of professionals that grew assets from \$180 million to \$2.5 billion. She also serves as president and CEO of CAF America's partner E4E Relief. The foundation's social enterprise subsidiary providing employee relief funds to large multinational corporations.

Holly is also German Marshall Fund Marshall Memorial Fellow and a recipient of the Charlotte Business Journal's women in business award and 40 under 40 recognition. Holly holds a global executive MBA from Georgetown University McDonough School of Business and a JD from the University of Dayton School of Law. Holly is a member of both the North Carolina and Tennessee Bar Associations. Welcome here to the Care and Funding Podcast, Holly Welch Stubbing.

Holly Welch Stubbing: Thank you, so glad to be here, Ted.

Ted: Holly, thank you so much for joining us today. You were in the green room listening to Dave Shevlin when he very clearly outlined the legal imperatives for these employers who want to do the right thing. These compassionate companies want to support their employees in crisis but Dave could not have been clearer structure matters, detail matters.

Take it away here and help the companies, the executives that are listening to this podcast understand the practical aspect, the questions that you're asked and what would be helpful for these corporate executives to know before they contact E4E Relief to open a fund.

Holly: Great. I'm happy to do so, Ted. E4E Relief is a public charity that offers employee relief programs to companies. We are particularly impacted and available to help companies who are looking at COVID-specific responses. We're looking at developing employer-sponsored relief programs for the long haul. We're getting hundreds of calls right now from companies who are interested and they're really talking about a variety of things when they call.

One of the main considerations that we talked to companies about is who they want to help in their employee base? What does that eligible employee look like and how much relief they intend to provide to those employees? How many people are they trying to help? We end up counseling them and walking them through a process as it relates to a way to divide that employee base in times like this. That might be the type of--

Ted: Holly, let me stop you there. Before you go further, let me stop you there because I want to accentuate the points that you just made because these are critical to establishing the fund, correct? You need to establish the qualified group, right?

Holly: That's correct.

Ted: Who can be eligible for these funds? Give us an example of what that might look like. I'm a company coming to you. I don't know what that means. What's a qualified group? How I might that be organized?

Holly: Well, I think normally without a COVID-response, we would be providing it to the entire employee base, but what's happening right now is the people are looking at trying to isolate by type of job, by geography, by those that have contracted the illness or those that are under particular types of isolation or quarantine. Maybe it's a particular part of the world that has been more hard-hit than other parts of the world.

While an employer-sponsored program like this employee relief funds would normally be, in many instances accessible to all full-time employees or all full-time and part-time employees with certain criteria established by the company in the setup of the relationship. In a COVID situation, we're finding that maybe that is being continually narrowed to talk to folks about who they want to help and in what way they want to help.

That's important because people are trying to decide if they have the right funding stream and what funding do they have, where is it coming from, are they planning to fundraise from their existing employees, from vendors, from partners or do they have funding ready to go? That funding stream in the particular COVID environment is directly related to this group that you want to support.

Ted: Right. It's important to define that group ahead of time. You can't do that on the fly when you're establishing the fund. It's established for a group. Then the second part of that that you mentioned is what will the benefits be? What could the apply for that also needs to be established for the fund upfront? That's open and fair to all of the qualified members of that qualifying group.

Holly: That's correct. E4E will spend a lot of time providing counsel to the company to help walk them through a process to develop that criteria for who they want to support. How much do we have grant maximums, what are those grant maximums will look like in an environment like this where volumes may be very high? This concept around are they coming on board during a time where they would like to establish the long-term program that they're trying to create something specific for COVID and then something for the long term.

Most of the companies that we work with have decided, in essence, outsource this. They did not create their own private foundation grant-making portfolio. They did not create a public charity but they or they might've created one and now they're terminating it, moving it into a relief fund. They are looking at some doing something for the long haul for, as you said, weather-related disasters, future weather-related disasters and personal hardships that are impacting both the HR department within the company and the employee base as well as just the normal corporate social responsibility response for companies and C-suite execs who wants to support their employees in situations like this where there are devastating impacts at play.

Ted: I'm sorry I interrupted you. I did want to focus-in on establishing the qualified group and then establishing what can the benefits be. Let me let you get back to again, those practical aspects of what corporations need to know before they open a fund.

Holly: No, I think what you asked me is one of the more critical questions in terms of how we work with companies on the front end is who they want to help and how much. The other thing I would say is, what is the timing? How quickly do they want to move? What parts of the organization will need to be involved? Do they have the CEO or C-suite buy-in for the program? All of those things will impact the funding stream and the ability to move quickly.

Again, in an environment like this, people are calling and wanting to move immediately on COVID specific program in a normal environment. It would be more of four to six-week process probably to work through those criteria, identify the eligible employees and funding streams and work through their own internal requirements.

One of the things I would say is it's not the best time to open a program is not when a disaster is happening, but rather when a disaster is not happening so that all of the normal practices that a company would want to put into play in reviewing and being part of this decisioning, would be able to go its normal pathway. Now we'll say this a disaster does tend to move things along and make some of that stuff easier internally. For the players that are trying to drive these programs internally, sometimes there's nothing more than a crisis to help people move faster to get things done.

Once people make the decision to create the program, then one of the things that we talked to them about is how do you communicate and build awareness around the program? What will be the best practices to roll out this type of program to your employees so that they know it exists and they can apply? There's a real art, if you will, to letting people know that they're telling stories about other grant-making programs and how those have been impactful or telling stories about existing employees who's been helped in other situations. Those things tend to really build awareness about the program.

Also, I would talk a little bit more about funding streams. In an environment like this, I think people are really trying to figure out can they realistically fundraise in this environment for these programs? Will employees want to give to other employees? It really is depending upon the industry certain industries have vendors and partners lined up and ready to help certain kinds of employees. Others, the industries are really suffering.

In a normal environment though, one of the best things about these programs is that they really are a peer to peer funding mechanism where I can be an employee of a company, I can make a gift to the fund and I can feel I helped my colleague down the road when something comes up. It's really a pay-it-forward concept using related technology tools. One of the things that I'm working with a partner like E4E Relief brings is the infrastructure, the technology, the data privacy and security, the partnerships like we built with CAF America around international grant-making. We bring all of those things to the table in a turnkey concept that's ready to go for the corporation that they otherwise would have to build themselves.

It allows for readiness planning in this environment. All the companies that we work with and we support almost 3 million employees across the US and the globe. Those companies and the employees we work with, everybody we already signed out prior to COVID had a readiness plan in place and we were ready to go with applications for them.

Ted: let's not minimize the experience that you bring across a company's. Any one company as Dave mentioned could establish there are some legal hurdles to establishing and running your own program. He advises to work with a public charity like yours, but you represent many companies and so the experience and the broad view from all those companies helps benefit the next company signing up.

We only have a couple of minutes left, so I'm going to bring Dave Shevlin back into to join Holly Welch Stubbing here. As we wrap up here, I'm going to ask, Dave, please just your parting thought here on the show. Then, Holly, we'll give you an opportunity to give your parting advice as well. Dave

David: Unprecedented crisis, great needs that need to be met fast. Think about using an organization with the established infrastructure and expertise to help your company. You won't be sorry with this complexity of legal requirements they're easy to trip up, but we need to get the need and the help out there quickly. Think hard about using a service provider like you've heard today.

Ted: Terrific. Thank you, Dave. Holly Welch Stubbing, your final advice to listeners of this podcast.

Holly: E4E Relief recently conducted the first research that we believe it's the only research that's ever been conducted on employee relief grant-making. We haven't released the survey yet but one of the main things that that survey said was that even those who were declined from a grant, which is not that many people, but those that were declined and those that are, were awarded feel more connected and engaged with their company as a result of having the employee relief program. One thing we really haven't touched on today is what it does for the business to have this a font to impose these in a disaster, they feel more loyal to your firm for having taken the responsibility of creating this program.

E4E Relief stands ready to work with companies who have this compassionate view on their employee base. Really in large part because of our relationship with CAF America, we can not only make grants in the US that we can make those grants all over the world and the right way and with confidence that we're handling things like they should be handled. To your point, Ted, because of our experience with various industries and companies for over now, 19 years.

Ted: That's terrific. Holly Welch Stubbing, president and CEO of E4E Relief. Thank you so much for being our guest here on the *Caring and Funding Podcast* and Dave Shevlin, head of exempt organizations practice as a law firm, Simpson Thatcher. Thank you for helping us understand employee emergency and hardship relief funds. The summary I think here is work with those who know what they're doing, make sure that you are properly structuring this so that you can be the compassionate company that is supporting employees in crisis. Thank you so much for being here on the *Caring and Funding Podcast*.

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