

## Emergency Assistance Funds (EAFs) for Employee Hardship and Disaster Relief: Legal, Tax and Design Considerations

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### Summary

Emergencies by nature are unexpected and can cause a tremendous financial burden. When they strike an employee, the impact can radiate to fellow employees and the employer in the form of morale, performance, absenteeism, turnover and costs. In this article, Douglas Stockham, MBA and Bryan Clontz, CFP of Emergency Assistance Foundation, Inc. - [www.emergencyassistancefdn.org](http://www.emergencyassistancefdn.org), discuss best practices on how employers can use nonprofit entities to establish and maintain employee assistance funds.

*By Douglas Stockham, MBA and Bryan Clontz, CFP®*

Emergencies by nature are unexpected and can cause a tremendous financial burden. When they strike an employee, the impact can radiate to fellow employees and the employer in the form of morale, performance, absenteeism, turnover and costs. But changes are underway as employees themselves are insisting on the establishment of employee assistance and disaster relief funds within their corporations, universities and government agencies. By allowing employees to help themselves and each other during times of economic hardship, employers are benefiting from a workforce that feels supported.

While there are many kinds of Employee Assistant Fund programs, often they created independently, without the benefit of peer best practices. Each program has unique decision criteria or administrative flows that reflect the organization's structure, history or employee class. Yet, even with this customization, there are basic criteria (either based on the IRS requirements or in order to manage the process effectively), that EAF programs must follow.

We have found that universally, those with existing programs are eager to increase their program's impact and or improve the efficiencies by learning from others experiences and adopting some "best practices" of the industry.

Here we will explore the 16 critical decisions that must be made when establishing a program.

### I. Establishing a Fund: Helping Employees Help Themselves

A tornado destroys homes, a flood ravages a town, a family member dies, or an unforeseen sickness causes unusual medical expenses. Employees who face crises like these can receive quick assistance from their employer's Employee Assistance Fund (EAF), which typically has the majority of its money donated by the employees themselves.

Once established, these EAFs can:

- Take care of the organization's most important asset
- Help reduce employee turnover
- Get employees back to work sooner
- Create a significant morale booster
- Add a familial atmosphere to the workplace
- Give the person in crisis some "breathing room" to focus
- Combine individual campaigns for worthy, outside agencies

### II. Initial Consideration

Where the employees are located and the types of relief that will be provided form the foundation upon which most of the other decisions rest.

#### A. Organizational Geographic Structure

- Are employees are in one locale or spread out over a state or country?
- Are there international employees?

#### B. Employer-sponsored assistance funds categories

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- A “qualified disaster”
- Personal hardship
- Both

### III. Type of Funding Vehicle

Typically, the employer sets up a nonprofit entity that receives contributions and disburses grants to employees. When a fund operates through a qualified public charity, contributions (from employees as well as from the organization) are tax-deductible, and employees are not subject to tax on the grants they receive.

#### Fund Options

1. Employer-sponsored charities—Important considerations for employer- sponsored charities are:

- The employer must not control the selection of aid recipients
- Whether or not a payment from the employer or the charity is considered taxable compensation
- Charity must show that payments are not for employer's benefit by:
  - Serving a sufficiently broad charitable class, such as all current and former employees
  - Selecting recipients based on an objective determination of need or distress
  - Creating an independent selection committee (i.e., a majority of the committee consists of persons not in a position to exercise substantial influence over the employer's affairs) or some similar procedures designed to ensure that any benefit to the employer is incidental
- a. Employer-sponsored Private Foundation-- If the employer sponsored foundation does not plan to solicit outside contributions to support the employee care fund, it will be considered a private foundation. This structure:
  - Does not allow for assistance in “personal hardship” situations such as illness, a spouse losing his or her job, a house fire or a similar situation
  - Can only provide support to employees in response to a “qualified disaster”
  - Are subject to self-dealing rules
- b. Employer-sponsored Public Charities—If an employer intends to solicit contributions to the fund from outside sources such as employees or the general public, it may qualify as an employer-sponsored public charity. These have broader latitude to provide relief than employer-sponsored private foundations.

2. Employer-Sponsored Funds with Outsourced Public Charity—This structure allows for grants to employees and their family members where:

- the fund provides relief in “qualified disasters” and personal hardships
- the fund serves a charitable class
- the fund makes an objective determination of need
- the fund relies on an independent selection committee
- the employer benefit is incidental
- the employee's need is documented

### IV. Funding

The initial funding is typically different from the ongoing annual funding. The sources of funding vary over time based on funding need, the type of relief being provided and employee participation.

#### Initial and Ongoing Funding

- Employee-direct donations or through payroll deductions
- Company philanthropic funds (direct or matching)
- Annual fundraiser
- Donations of Vacation time.
- New employee orientation
- Events

### V. Expenses

Each organization varies in which expenses are covered by the donated funds, paid by organization or become interwoven with existing administrative functions.

#### A. Foundation or Fund Expenses

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- Staffing including benefits, overhead and indirect costs
- Legal and accounting fees

B. Administration Expenses— Does the organization or fund pay or share in the following expenses?

- Administration
- Start up
- Grants
- Investment fees

## VI. Types of Hardships/Disasters that EAFs Cover

Organizations vary between provide for both Qualified Disasters and well as employee Hardship as well as which hardships are accepted. The list of accepted personal hardships often evolves as employee needs change.

### A. Qualified disaster

- results from terrorist or military actions
- results from an accident involving a common carrier
- is a Presidentially-declared disaster
- is deemed catastrophic by the Secretary of the Treasury

### B. Personal hardship

- Serious illness or injury
- Undue hardship not caused by employee
- Fire, flood or natural disaster
- Military deployment
- Violent crime
- Death of employee or eligible dependent

## VII. Charitable Class

To ensure the program is not impermissibly serving the related employer, the class of beneficiaries must be large or indefinite (a “charitable class”).

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### Who is in the class?

- Present employees
- Past employees
- Only those below a specific supervision level
- Only those beneath a certain salary level

## VIII. Needy or Distressed Test

The Internal Revenue Service's rules as to who qualifies to receive grants are different for “qualified disasters” versus “personal hardships”:

- The charity must make a specific assessment that a recipient of aid is financially or otherwise in need
- The organization should establish specific written criteria for the application, selection, and disbursement of funds
- How funds will be distributed must be based on an objective valuation of the victim needs at the time the grant is made
- Individuals do not have to be totally destitute to be financially needy— they may merely lack the resources to obtain basic necessities
- Funds cannot be distributed to individuals merely because they are victims of a disaster

## IX. Employee Assistance Administration

Although crisis funds are focused on the big picture of helping people, they also involve many smaller details and procedures, and consist of two distinct parts, Employee Communication and Grant Administration.

### A. Employee Communication

- Publicize the fund as widely as possible to existing and new employees
- Celebrate the program's successes
- Continually update employees on the status of the fund
- Significant employee donation participation is normally a result of an organization's internal communication efforts

- The percentage of employees who take advantage of the fund is closely tied to the percentage of employees who contribute

#### B. Grant Administration

- Decentralized vs. centralized
- Outsource or in-house
- Training in-house expertise
- Cross-training employees on the process
- Compliance overview

#### X. Application Process

Whether or not the process is simple or more complex is related to how interwoven the process was formatted around existing work processes and information flow or was it developed as a separate entity as well as the sophistication of the employee class.

Most significant issues are:

- Disseminate applications (hardcopy, internet download)
- Collecting applications (mail, fax, email, by hand)
- Maintaining anonymity
- Documentation required for each relief category
- Review of application for completeness
- Supervision: Human Resources vs. outside disinterested party
- Reports on key criteria (e.g., number of applications, approvals, etc.)

#### XI. Independent Selection Committee

The organization should establish a committee, consisting of persons who aside from serving on the committee have no financial interest in the employer, to administer the program.

- Committee function
  1. Establishes grant acceptance criteria
  2. Provides oversight of process
  3. Reviews each application and decides
- Committee membership
  1. Selection criteria
  2. Terms

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#### XII. Accepting/Denying Grant Applications

To ensure the program is not impermissibly serving the related employer, the following requirements must be met:

- Class of beneficiaries must be large or indefinite (a "charitable class")
- Recipients must be selected by objective determination of need or distress
- Recipients must be selected by an independent selection committee or adequate substitute procedures must be in place to ensure that any benefit to the employer is incidental or tenuous

If these requirements are met, the public charity's payments in response to a disaster or emergency hardship are presumed to:

- Be made for charitable purposes
- Not result in taxable compensation to the employees
- Assist corporate employees who are victims of all disasters, present and future, so to provide assistance to an indefinite class

#### XIII. Grant Making

The Selection Committee should establish policy and guidelines for:

- Maximum grant size for each type of "qualified disaster" or "personal hardship"
- Targeted, average grant size relative to maximum
- Distribution of payments to:
  - a. Vendors
  - b. Employee
  - c. Or both

#### XIV. Documentation of Application Process and Grants

Proper documentation facilitates reporting and reduces potential problems or confusion as the program ages.

#### A. Required

- Complete description of the assistance
- Cost of the assistance
- Purpose for which the assistance was given
- Charity's objective criteria for disbursing assistance under each program
- How the recipients were selected
- Name, address, and amount distributed to each recipient
- Relationship between the recipient and officers, directors, or key employees of or substantial contributors to the organization
- Composition of the selection committee approving the assistance

#### B. Recommended

- All correspondence made with applicant (especially important if grant is declined) including all types of communication (letter, phone call, email) including what was said/sent and dates and times

### XV. Reporting

- Form 990, Return of Organization Exempt from Income Tax
- Quarterly reports to Independent Selection Committee
- Fund statistics (critical for oversight and making adjustments)
  - a. Inquiries
  - b. Applications
  - c. Approvals - by reason
  - d. Denials - by reason

### XVI. Ongoing Decisions and Adjustments

Employee Assistance programs continue to evolve as employee needs change, the programs become more widely used and to maintain a balance between donations and grants.

- Targeting percent of employees who apply annually ( $\frac{1}{4}$  - 1 percent is normal)
- Reviewing and adjusting grant criteria
- Establishing timely response to applications
- Receiving donations - tax deductible
- Making grants - non-taxable

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### Conclusion

We hope that this article has provided a decision framework for employers, charities and professional advisors as they consider establishing an emergency assistance fund. If designed correctly, these programs can provide critical support to employees when they need it most - either because of a personal hardship or disaster. The fact that their employer and their fellow employees are providing the direct support creates a deep level of gratitude and family atmosphere. Charity can indeed begin at work.

### Appendix: Two Case Studies

#### University Benevolent Fund

The Benevolent Fund at a major university provides its own system of supporting charitable, service, and health agencies by providing a mechanism for university employees to help themselves and those in need in the local area. Since its inception, the fund has contributed millions of dollars to university employees through the Employee Emergency Assistance Program and to independent charitable agencies in the local area.

The Employee Emergency Assistance Program is a means by which part of the fund's donations are used to assist university employees who have experienced emergency situations that require them to seek financial assistance.

Decisions regarding the solicitation and distribution of funds are made by a council of university employees representing all areas of the university including the university's Hospital/Health System, Academic Programs, Health Services Foundation, and Central Administration.

The Fund relies on employee donations which are typically made via payroll deduction. The university conducts an annual campaign. Employee donations are tax-deductible; however the grants are considered taxable income.

**Hardship** - Any employee who is in the charitable class defined by The Fund may apply for a grant if they experience an incident The Fund is designed to address. These incidents must be unexpected

circumstances that arise outside of the employee's control and cause economic hardship, including:

- Medical expenses not eligible for reimbursement by insurance
- Housing (rent and/or mortgage)
- Utilities (water, gas, electric)
- Other essential necessities

**Application** - To begin the application process, an employee calls the Benevolent Fund Program Manager and is prescreened to determine eligibility. Then the employee brings all required documentation and the application is prepared. The completed application is presented to the EEAC who makes the approval decision. Currently, the Fund receives nearly 250 applications each year. The information required includes documentation of:

- the qualifying emergency,
- all family income, and
- all family expenses.

**Grants** - The maximum allowable grant is \$1,250 per incident. The Council determines if applications fall within the guidelines and if so, are approved. Then the grants are made via checks payable to the vendors to whom the employee owes payment.

#### Bank Employee Assistance Fund

An Employee Assistance Fund for a large national bank was created in 2008 to celebrate the 62,000 employees who made the bank successful. From providing shelter after natural disaster strikes, to helping with costs from an unexpected illness or other extreme circumstances, the Fund seeks to make a positive impact in the lives of the bank's employees.

The Fund relies on employee donations and has raised more than \$1,500,000. Donations are made via payroll deduction, check or marketable securities. The bank conducts an annual campaign and matches all new and increased contributions. Employee donations are tax-deductible, because The Fund is part of a third-party Foundation (501(c)(3) charity).

**Hardship** - Any employee who is in the charitable class defined by The Fund may apply for a grant if they experience an incident The Fund is designed to address. These incidents must be unexpected circumstances that arise outside of the employee's control and cause economic hardship, including:

- Medical expenses not eligible for reimbursement by insurance
- Housing (rent, mortgage and/or security deposit)
- Utilities (water, gas, electric)
- Food
- Other essential necessities

**Application** - The employee downloads the application from the company website. The completed application is sent to the Foundation. Currently, The Fund receives nearly 100 applications each year. The information required includes:

- General (name, address, etc.)
- Personal financial statement
- Incident report
- Detailed list of bills for consideration

**Grants** - The maximum allowable grant is \$15,000 per incident. The Foundation determines if applications fall within the guidelines and if so, are approved. Then the Foundation issues the grant via checks payable to the vendors to whom the employee owes payment.

#### Why The Bank Uses a Third Party Public Foundation

1. Provides the anonymity needed for both the legal requirements and for employees to feel that the application and selection is truly anonymous
2. The donations are tax-deductible, because the fund is held by a third party Foundation (a 501(c)(3) charity).
3. The process is very efficient and cost effective.

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#### About the Authors

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