

WHAT YOU NEED TO KNOW



## Federal Tax Credit for Employer-Provided Paid Family and Medical Leave

Updated May 24, 2018

The [Tax Cuts and Jobs Act](#) (Act) includes a new federal tax credit for employers that provide paid family and medical leave (FML) to their employees.

To be clear, the Act does not require employers to provide paid leave. However, eligible employers are allowed a tax credit based on wages paid to employees on FML. If the employer provides paid leave as vacation leave, personal leave, or medical or sick leave, then that leave will not be considered FML for purposes of the tax credit.

The tax credit would apply to employers who have a written policy that provides:

- Qualifying full-time employees with at least two weeks of annual paid FML;
- Qualifying part-time employees with an annual paid FML amount that is at least proportionate to the full-time employees' annual paid FML amount; and
- A rate of pay not less than 50 percent of the wages normally paid to employees for services performed.

The tax credit would apply to an employer's qualifying employees who are:

- Employees as defined under [Section 3\(e\) of the Fair Labor Standards Act of 1938](#), as amended;
- Employed by the employer for one year or more; and
- Not compensated in excess of 60 percent of the amount for [highly compensated employees](#) for the preceding year (for example, in 2018, employers may only apply the credit toward employees who earn less than \$72,000).

For employers who meet the above criteria and who pay 50 percent of wages, they may claim a tax credit of 12.5 percent of wages paid for up to 12 weeks of FML annually. For each percentage point increase above 50 percent of wages paid, the employer may increase the tax credit by a 0.25 percentage point (not to exceed 25 percent).

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The tax credit applies to wages paid to employees on FML in taxable years beginning after December 31, 2017, and before January 1, 2020.

In May 2018, the Internal Revenue Service (IRS) released its [Tax Reform Tax Tip 2018-69: How the Employer Credit for Family and Medical Leave Benefits Employers](#) and [Section 45S Employer Credit for Paid Family and Medical Leave FAQs](#) that primarily reiterates the [Tax Cuts and Jobs Act's](#) provisions that provide a new federal credit for employers that provide paid family and medical leave to their employees.

In its Tax Tip, the IRS explains that an employer must reduce its deduction for wages or salaries paid or incurred by the amount determined as a credit. Also, any wages taken into account in determining any other general business credit may not be used in determining this credit.

In its FAQs, the IRS indicates that, in the future, it will address when the written policy must be in place, how paid family and medical leave relates to an employer's other paid leave, how to determine whether an employee has been employed for one year or more, the impact of state and local leave requirements, and whether members of a controlled group of corporations and businesses under common control are treated as a single taxpayer in determining the credit.

1/11/2018

Updated 5/24/18

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