

Employer Credit for Paid Family and Medical Leave

Cross References

- Notice 2018-71

Effective for wages paid for tax years beginning in 2018, the Tax Cuts and Jobs Act (TCJA) provides for a new general business credit equal to 12.5% of the amount of wages paid to qualifying employees during any period in which such employees are on family and medical leave if the rate of payment under the program is 50% of the wages normally paid to an employee. The credit is increased by 0.25% (but not above 25%) for each percentage point by which the rate of payment exceeds 50%.

The IRS recently issued guidance on this new general business credit in the form of questions and answers. The guidance explains that to be eligible to claim the credit, an employer must have a written policy that satisfies the following requirements.

- 1) The policy must cover all qualifying employees who have been employed for a year or more and were paid not more than a specified amount during the preceding year. For 2018, a qualifying employee means one who did not have compensation from the employer of more than \$72,000 in 2017.
- 2) The policy must provide at least two weeks of annual paid family and medical leave for each full-time qualifying employee and at least a proportionate amount of leave for each part-time qualifying employee.
- 3) The policy must provide for payment of at least 50% of the qualifying employee's wages while the employee is on leave.
- 4) If an employer employs qualifying employees who are not covered by Title I of the Family and Medical Leave Act of 1993 (FMLA), the employer's written policy must include language providing "non-interference" protections.

Any leave paid by a state or local government or required by state or local law is not taken into account for any purpose in determining the amount of paid family and medical leave provided by the employer. Thus, any such leave is not taken into account in determining the amount of paid family and medical leave provided by the employer, the rate of payment under the employer's written policy, or the determination of the credit.

Wages qualifying for the credit generally have the same meaning as wages subject to the Federal Unemployment Tax Act (FUTA), determined without regard to the \$7,000 FUTA wage limitation.

Details contained in IRS Notice 2018-71 will be included in Chapter 6 of *TheTaxBook TCJA Supplement Winter Edition*.