

New tax credit offers incentive to employers offering paid family and medical leave

Frequently asked questions and answers about the employer paid leave tax credit

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A new tax credit is available for employers that provide qualifying employees with paid family and medical leave. Employers of any size can qualify for the credit if they have a leave plan that meets the specified requirements. The credit is currently available only for 2018 and 2019, but it's possible that the credit will be extended by Congress. The IRS has recently issued guidance providing details about how employers can qualify for and claim the credit. This article provides an overview of the credit as a start to help you determine if the credit is right for your business.

EMPLOYER PAID LEAVE CREDIT AT A GLANCE

- » Employers of any size with a qualifying leave program are eligible for the credit.
- » Employer must have a written leave policy and
 - » Cover all “qualifying employees,” meaning employees who have been employed at least 12 months (even if not consecutive months) and whose compensation for the prior year is no more than \$72,000. The employer cannot require an employee to work a minimum number of hours per year to qualify for the credit.
 - » Provide at least two weeks of annual paid family and medical leave for full-time employees and a proportionate amount of paid leave for part-time employees. A part-time employee is an employee customarily employed for less than 30 hours per week.
 - » Pay at least 50 percent of the employee’s regular wages during the period of paid leave.
- » The basic credit amount is 12.5 percent of qualifying wages. This percentage is increased on a sliding scale if the rate of wage replacement exceeds 50 percent. The maximum credit percentage is 50 percent of qualifying wages. The credit applies to a maximum of 12 weeks of paid leave.

- » Only family and medical leave that cannot be used for any other purpose qualifies for the credit.
- » Wages paid under short-term disability insurance may qualify for the credit.
- » The credit is not available for leave paid by a state or local government or required by state or local law.
- » Currently available for 2018 and 2019 only, unless extended by Congress.

Can some classes of qualifying employees be excluded under the paid leave program?

No. The employer cannot exclude any classification of employees (for example, collectively bargained employees, part-time employees or employees that do not have a minimum number of hours of service) if they are qualifying employees. Note: In the case of an employer that is part of a controlled group of corporations or a group of businesses under common control, the requirement to cover all qualifying employees generally applies separately to each member of the group.

What type of leave qualifies for the credit?

The types of leave that qualify for the credit are leave for one of the purposes described in the federal Family and Medical Leave Act (FMLA). The FMLA generally requires employers with at least 50 employees to provide up to 12 weeks annually of unpaid, job-protected leave taken for an FMLA purpose. Although the definition of qualifying leave is taken from the FMLA, an employer does not have to be covered by the FMLA to qualify for the tax credit. The employer does not have to provide qualifying paid leave for all FMLA purposes in order to qualify for the credit, but each type of leave for which the employer claims the credit must satisfy the minimum leave requirements.

Qualifying FMLA Purpose Leave

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| <ul style="list-style-type: none"> » Birth of a child of the employee to care for the child. Caring for a spouse, child or parent with a serious health condition. » Placement of a child with the employee for adoption or foster care. » A serious health condition of the employee. | <ul style="list-style-type: none"> » Certain leave arising out of the fact that the spouse, child or parent of the employee is a member of the armed forces. » Caring for a covered service member with a serious injury or illness if the employee is the spouse, child, parent or next of kin of the service member. |
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The leave must be specifically designated as only for FMLA purposes and cannot be available for any other purpose. IRS guidance provides one narrow exception to this rule. If the employer allows the leave to be taken for care for additional individuals not specified in the FMLA (such as a grandchild or grandparent), the fact that the leave could be used to care for additional persons does not disqualify the entire leave program. The credit, however, could not be claimed for leave taken to care for such other individuals.

Can different periods of leave and/or level of wage replacement be provided to different classes of qualifying employees?

Yes, as long as the minimum leave requirements are met for all qualifying employees. In addition, if the employer provides different rates of wage replacement or different periods of leave for different FMLA purposes, the minimum paid leave requirements must be satisfied for each FMLA purpose for which the employer claims the credit. For example, if the employer provides four weeks of paid leave following the birth of a child to care for the child, but only one week of paid leave due to the placement of a child with the employee for adoption, the employer could not claim the credit with respect to the adoption leave.

Can short-term disability insurance be used to qualify for the credit?

Yes, wages paid through an employer-paid short-term disability program, whether self-insured or provided through a short-term disability policy, may be taken into account in determining the credit if the requirements for credit are otherwise satisfied. While we believe wages paid under salary-reduction-funded short-term disability coverage should qualify, after-tax employee-funded coverage likely does not. Additional IRS guidance on both issues is needed.

Does claiming the credit affect the employer's deduction for wages and salaries?

Yes, the employer's deduction for wages is reduced by the amount of the credit.

How does the credit interact with state or local paid leave laws?

A few states, such as California and New Jersey, provide for paid family leave through state programs. Also, an increasing number of states and localities have adopted or are considering laws that require employers to provide paid leave. Many state and local paid leave laws provide an exception for small employers. General information about state leave laws compiled by the National Association of State Legislators may be found [here](#).

Leave that is paid through a state fund or required under state or local law does not qualify for the federal credit. Some employers may consider "topping up" paid leave to augment state or local law requirements.

However, the federal credit applies only if the employer's plan satisfies the requirements for the credit on its own, without taking into account any state-provided or -required paid leave. For example, suppose a state requires an employer to provide four weeks of annual paid family and medical leave at a rate of 30 percent of wages and an employer pays the employee an additional 30 percent of wages for such leave. Although the total rate of paid leave exceeds the credit requirement, the employer's plan taken by itself without regard to the required paid leave is less than 50 percent, so the credit is not available.

Where can I find more information?

The [IRS website](#) provides general information on the credit. The IRS notice providing details on the credit may be found [here](#).

CONCLUSION

The employer paid leave credit is provided as an incentive for employers to voluntarily provide paid leave for FMLA purposes. Whether it is a good fit for any particular employer depends on the circumstances. Employers should review not only the particulars of the tax credit and their own tax situation, but also relevant state leave laws to determine if the credit is right for them.

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