

IRS Issues Q&As About Paid Family Leave Credit

The Tax Cuts and Jobs Act of 2017 includes a new tax credit ([26 USC 45S](#)) for employers offering paid family leave to their employees. The IRS has posted a series of [Questions and Answers](#) to provide basic information and requirements to claim the tax credit that is available for 2018 and 2019. The IRS indicates that more information will be forthcoming to address some of the more complex provisions of the statute identified in their Q&A response. Interested employers should check back often to learn more about this family leave tax credit.

The following are some of the questions addressed in this IRS posting:

Q: Who may claim the employer credit for paid family and medical leave? Employers must have a *written policy* in place that meets certain requirements, including providing: (i) at least two weeks of paid family and medical leave (annually) to all qualifying employees who work full time (prorated for employees who work part time), and (ii) the paid leave is not less than 50% of the wages normally paid to the employee.

Q: How is the paid family and medical leave credit calculated? The credit is a percentage of the amount of wages paid to a qualifying employee while on family and medical leave for up to 12 weeks per taxable year. The minimum percentage is 12.5% and is increased by 0.25% for each percentage point by which the amount paid to a qualifying employee exceeds 50% of the employee's wages, with a maximum of 25%. In certain cases, an additional limit may apply.

Q: Who is a qualifying employee? A qualifying employee is any employee under the Fair Labor Standards Act who has been employed by the employer for one year or more and who, for the preceding year, had compensation of not more than a certain amount. For an employer claiming a credit for wages paid to an employee in 2018, the employee must not have earned more than \$72,000 in 2017.

Q: Will the IRS provide additional information on the credit? The IRS expects that additional information will be provided that will address, for example, 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.

ADDITIONAL INFORMATION

Information contained in this Update is not intended to render tax or legal advice. Employers should consult with qualified legal and/or tax counsel for guidance with respect to matters of law, tax and related regulation. Cherry Bekaert Benefits Consulting, LLC provides comprehensive consulting and administrative services with respect to all forms of employee benefits, risk management, qualified and non-qualified retirement plans, private client services, transaction services, and compensation and human resources.

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