COMPLIANCE BULLETIN

New Employer Tax Credit for Paid Family and Medical Leave

HIGHLIGHTS

- The new tax law creates a temporary tax credit for employers that provide paid family and medical leave.
- The tax credit is equal to a percentage of employee wages paid during leave.
- Employers of all sizes may qualify for the credit, even employers that are not required to offer family and medical leave under the federal FMLA.

IMPORTANT DATES

2018 and 2019

The tax credit applies to wages paid in taxable years beginning after Dec. 31, 2017. It does not apply to wages paid in taxable years beginning after Dec. 31, 2019.

Provided By:

Kinloch Consulting Group, Inc.

OVERVIEW

The Tax Cuts and Jobs Act (Act), which was signed into law on Dec. 22, 2017, creates a new business tax credit for eligible employers that provide paid family and medical leave to their employees. The tax credit, which applies to taxable years beginning in 2018 and 2019, is equal to a percentage of wages paid to qualifying employees who are on family and medical leave.

To be eligible for the tax credit, an employer must have a written policy in place that provides at least two weeks of paid family and medical leave at a payment rate that is at least 50 percent of an employee's normal pay rate.

The tax credit only applies to leave that is taken for a reason permitted under the federal Family and Medical Leave Act (FMLA). Paid leave that is provided as vacation leave, personal leave or sick leave is not taken into consideration.

ACTION STEPS

Employers that want to take advantage of the new tax credit should review their leave policies to determine if they meet the requirements. It is likely that the Internal Revenue Service (IRS) will issue regulations on the tax credit in the future. Employers should monitor IRS guidance for additional details on the tax credit.

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Eligible Employers

To be eligible for the tax credit, an employer must have a **written policy** in place that meets the following requirements:

The new tax credit for paid family and medical leave is temporary. It only applies to taxable years beginning in 2018 and 2019. Thus, the tax credit will not be available for taxable years beginning in 2020 or later, unless it is extended by Congress.

- ✓ ***Amount of paid leave*** – For full-time employees, the leave policy must provide **at least two weeks** of annual paid family and medical leave.

  For part-time employees, who are defined as employees who are customarily employed for fewer than 30 hours per week, the leave policy must provide an amount of paid leave that is proportionally equal to the amount provided to full-time employees.

  Any leave that is paid by a state or local government or required by state or local law cannot be considered in determining the amount of paid family and medical leave provided by the employer.

- ✓ ***Payment rate*** – The policy must require a rate of payment for paid family and medical leave that is not less than **50 percent** of the employee's normal wages.

- ✓ ***No retaliation or discrimination*** – For any non-FMLA eligible employees, the policy must ensure that the employer will not interfere with, restrain or deny the exercise of (or attempt to exercise) an employee's right to paid leave under the policy. It also must ensure that the employer will not discharge or in any other manner discriminate against any individual for opposing a practice that is prohibited by the policy.

Amount of Tax Credit

The amount of the credit is calculated based on a **percentage of wages** that are paid to qualifying employees for paid family and medical leave. The percentage amount, which begins at 12.5 percent and is capped at 25 percent, increases by .25 percent for each percentage point by which the rate of payment for paid family and medical leave exceeds 50 percent of the employee's normal wages.

Who is a qualifying employee?
The tax credit only applies with respect to employees who have been employed by the employer for one year or more and, for the preceding year, had compensation not in excess of $72,000.

The amount of an employee's paid leave that may be used to calculate the credit for a taxable year cannot exceed 12 weeks. Also, the tax credit with respect to an employee for a taxable year cannot exceed an amount equal to the employee's normal hourly wage rate multiplied by the number of hours for which family and medical leave is taken. If an employee is not paid an hourly wage, the employee's salary must be prorated to an hourly wage rate.

Family and Medical Leave

For purposes of the tax credit, family and medical leave means leave for one or more purposes permitted under the FMLA, regardless of whether the leave is provided under the FMLA or an employer's leave policy. If the paid leave is provided for other reasons (such as vacation leave, personal leave, or medical or sick leave), then it is not considered paid family and medical leave for purposes of the tax credit.

Qualifying Reasons for Family and Medical Leave

- ✓ The birth of a child of the employee and to care for the newborn child
- ✓ The placement of a child with the employee for adoption or foster care
- ✓ A serious health condition that makes the employee unable to perform the functions of his or her job
- ✓ To care for the employee's spouse, son, daughter or parent who has a serious health condition
- ✓ Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter or parent is a military member on covered active duty or has been notified of an impending call or order to covered active duty
- ✓ To care for a covered service member with a serious injury or illness who is the employee's spouse, son, daughter, parent or next of kin