Family and Medical Leave Tax Credit Extended

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In the spending bill passed into law on December 20, 2019, the employer tax credit for paid family and medical leave was extended for one additional year. This tax credit was created under the Tax Cuts and Jobs Act of 2017 and was initially available for 2018 and 2019 only. The credit is now available through the end of 2020.

Background

The tax credit is available to certain employers as to FMLA-qualifying circumstances (whether under FMLA or not) for employees earning $78,000 or less for whom paid family and medical leave is provided. Nothing in the rules requires the employer to be subject to FMLA to receive the tax credit. Thus, it is available to employers with less than 50 employees. Notably, paid leave must be provided to both full-time and part-time employees in order to claim the credit; if part-time employees are excluded from a paid leave policy, this credit is not available.

Frequently Asked Questions

The following frequently asked questions provide additional detail of the Paid Family and Medical Leave Tax Credit.

Q1. What is the amount of credit?

The credit is generally 12.5% of the amount of wages paid to qualifying employees (although it increases by .25% for every percentage point an employee's FMLA wages exceed 50% of their normal wages, capped at 25%).

The credit is also capped with respect to each employee to the normal hourly wage rate of such employee for each hour (or fraction thereof) of actual services performed for the employer multiplied by the number of hours (or fraction thereof) for which family and medical leave is taken. In the case of any employee who is not paid on an hourly wage rate, the wages of such employee are prorated to an hourly wage rate under regulations to be established by the Secretary of the Treasury.

Q2. What form does this credit take?

The credit is in the form of a general business credit.

Q3. Which employers are eligible for the credit?

To take the credit, an employer must have in place a written policy that provides not less than 50% of the wages normally paid to such employee and:

- in the case of a qualifying employee who is full-time (customarily employed for at least 30 hours per week), provides not less than 2 weeks of annual paid family and medical leave; and
- in the case of a qualifying employee who is a part-time employee (customarily employed less than 30 hours per week), provides an amount of annual paid family and medical leave that is not less than a prorated amount. Note that many existing programs do not offer paid leave to part-time employees and thus would not qualify for the credit (unless there is no part-time workforce).

If an otherwise eligible employer (whether or not subject to FMLA) provides paid family and medical leave outside of what is required under FMLA to an eligible employee, there are protections it must ensure in order to take advantage of the tax credit. In that case, the otherwise eligible employer must provide paid family and medical leave in compliance with a written policy which ensures that the employer:

- will not interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under the policy; and
- will not discharge or in any other manner discriminate against any individual for opposing any practice prohibited by the policy.

All entities in the same controlled group under Code Sec. 52(a) and (b) (more than 50% common ownership) are treated as a single employer.

Q4. Which employees qualify?

An employee for whom a credit is available is any employee who:

- has been employed for at least one year; and
- had compensation of no more than $78,000 for 2020.

Q5. What circumstances qualify?

"Family and medical leave" means leave for any one or more of the following purposes whether the leave is provided via FMLA or by a policy of the employer:

- because of the birth of a son or daughter of the employee and in order to care for such son or daughter.
- because of the placement of a son or daughter with the employee for adoption or foster care.
- in order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition.
- because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.
- because of any qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.
- to care for a servicemember as to an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember.

Vacation leave, personal leave, and medical or sick leave for any other purpose is not counted.

The IRS has clarified that an employer may take credit for paid leave provided under its short-term disability program.

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

Q6. What is the maximum amount of leave?

The amount of family and medical leave that may be taken into account is up to 12 weeks.

Q7. When is the effective date of the credit?

This credit was initially created for only 2018 and 2019 but has been extended through 2020.

A taxpayer may elect to have this section not apply for any taxable year.

Employer Action

Existing guidance for claiming the paid family and medical leave tax credit should carry forward through 2020.