March 8, 2018

Employer Tax Credit for Paid Family and Medical Leave

HUMAN RESOURCES, TAX, TAX REFORM
BY

The Tax Cuts and Jobs Act ("TJCA") provides a general business credit to qualifying employers that provide paid leave pursuant to the Family Medical and Leave Act ("FMLA"). Currently, the FMLA does not require employers to compensate employees while they take FMLA leave. The TCJA, however, offers a new incentive for paid family and medical leave.

The TJCA provides a general business credit in an amount equal to the applicable percentage of the wages paid to a qualifying employee during any period in which the employee is on family and medical leave. The applicable percentage starts at 12.5% of wages paid to a qualifying employee during the period in which the employee is on family and medical leave, provided that wages paid under the program are at least 50% of the wages normally paid to the employee. The 12.5% applicable percentage increases by .25% for each percentage point by which the rate of wages paid to the employee on leave exceeds 50% of the employee’s normal wages. The applicable percentage is capped at 25%. The credit can be calculated based on up to 12 weeks of FMLA leave.

To qualify for the credit, certain criteria must be satisfied. Generally, all of the following requirements must be met:

- The employer must have a written policy in place for paid leave under FMLA for qualified employees. In addition, the policy must offer at least 2 weeks of paid FMLA leave (pro-rated for qualifying part-time employees) with compensation rates of at least 50%.
- The employee must meet all the requirements under the FMLA. For example, the employee must have been employed by the employer for the preceding year. In addition, for the prior year, the employee must have received no more than 60% of the amount of wages paid to a highly compensated employee. Thus, for 2018, the employee cannot receive wages more than 60% of $120,000, namely $72,000.
- Wages paid under the FMLA program can only be treated as a family and medical leave payment for purposes of the tax credit. This means that any payment made pursuant to a vacation or paid time off, non-FMLA leave plan does not qualify for the tax credit. Likewise, paid leave required by state or local law does not qualify.

If you have any questions about this tax credit, please contact Schneider Downs. For similar articles visit the Our Thoughts On blog.

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