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IRS Releases FAQs on Family Medical Leave Act Credit

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BY

The IRS recently posted to its website FAQs regarding the new Internal Revenue Code Section 45S, "Employer Credit for Paid Family and Medical Leave" ("FML credit"), added by the Tax Cuts and Jobs Act of 2017. Much of the FAQs act as a recapitulation of information already known about the FML credit (see our initial coverage on this topic [here](#)), but also serve to refine the previous understanding and provide a concise overview of the new tax credit.

The FML credit is a general business credit available to employers. Effective for wages paid in tax years beginning in 2018 and 2019, the credit is based on wages paid to qualifying employees while they are on family and medical leave.

To claim the FML credit, employers must have a written policy in place that includes (1) 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 (2) the paid leave must not be less than 50 percent of the wages normally paid to the employee.

The FML credit only applies to qualifying employees, namely, (1) any employee under the Fair Labor Standards Act who has been employed by the employer for at least one year; and, assuming the employer is claiming a FML credit for the 2018 tax year, (2) the employee did not earn more than \$72,000 in 2017.

For purposes of the FML credit, "family and medical leave" has a special definition, i.e., family and medical leave occurs for the following reasons:

- Birth of an employee's child and to provide care for the child.
- Placement of a child with an employee for adoption or foster care.
- Care for an employee's spouse, child or parent who has a serious health condition.
- A serious health condition that causes the employee to be unable to perform the functions of his or her position.
- Any qualifying exigency due to an employee's spouse, child or parent being on covered active duty in the Armed Forces.
- Care for a service member who is the employee's spouse, child, parent or next of kin.

Only employee leave taken under one of these conditions qualifies for family medical leave. Thus, employer-paid vacation leave, personal leave or medical leave for a purpose not meeting one of the above criteria does not qualify as family and medical

leave for purposes of the FML credit and employers cannot take the FML credit.

The FAQs provides a framework for calculation of the FML credit, which is a percentage of qualifying employee wages paid when such an employee is on family and medical leave, up to 12 weeks per year. The percentage begins at 12.5% and is increased by 0.25% for each percentage exceeding 50% of the employee's wages, up to a maximum of 25%.

The FML credit has other tax implications; employers must reduce their salaries and wages expense by the FML credit amount. Also, any wages used in determining another general business credit cannot again be used in calculation of the FML credit.

The IRS expects to release additional guidance on the FML credit in the future. Schneider Downs will continue to monitor such guidance and provide timely updates on this matter. If you have any questions about this topic, please [reach out to us](#) for more information.

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