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Is Your Construction Company Eligible for a Credit for Wages Paid under FMLA?

CONSTRUCTION, TAX, TAX REFORM
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The Tax Cuts and Jobs Act enacted late last year created an employer credit for paid leave provided under the Family and Medical Leave Act (FMLA). The credit is equal to 12.5% of wages paid to a qualifying employee during any period in which he or she is on leave under FMLA, provided the employee's pay during this period is 50% of the wages normally paid to him or her. The credit increases by 0.25% – up to a maximum of 25% – for each percentage point by which the employee's rate of payment exceeds 50%.

Here are some high-level facts about the Employer Credit for Paid Family Leave, and how it benefits employers:

- To claim the credit, employers must have a *written* policy that meets certain requirements:
 - Employers must provide at least two weeks of paid family and medical leave annually to all qualifying employees who work full-time. This can be prorated for employees who work part-time.
 - The paid leave must be not less than 50% of the wages normally paid to the employee.
- A qualifying employee is any employee who:
 - Has been employed for one year or more.
 - For the preceding year, had compensation that did not exceed 60% of the amount considered "highly compensated" under Internal Revenue Code Section 45S(d). For 2018, the employee must not have earned more than \$72,000 (60% x \$120,000) in 2017.
- For purposes of this credit, "family and medical leave" is leave for one or more of the following reasons:
 - Birth of an employee's child and to care for the newborn.
 - 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 makes an employee unable to perform the functions of his or her position.
 - Any qualifying event due to an employee's spouse, child or parent being on covered active duty – or being called to duty – in the Armed Forces.
 - Care for a service member who is an employee's spouse, child, parent or next of

kin.

- The maximum amount of leave subject to the credit for any employee may not exceed 12 weeks for any tax year.
- An employer must reduce its deduction for wages or salaries paid or incurred by the amount determined as a credit. Any wages taken into account in determining any other general business credit may not be used toward this credit.
- The credit is generally effective for wages paid in taxable years of the employer beginning after December 31, 2017 and the credit is not available for wages paid in taxable years beginning after December 31, 2019.

The FMLA credit falls under the general business credit and is allowed as a credit against the alternative minimum tax. If you have any questions regarding the FMLA credit and the application to your construction company, do not hesitate to contact [Mark Di Pietrantonio](#) or another member of the Schneider Downs Construction Industry Focus Group.

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