

Section 45S Family Medical Leave Credit: What You Need to Know

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Earlier this year, the Family Medical Leave Act (FMLA) turned 25 years old. Despite the cumbersome compliance requirements for employers, the good-hearted nature of the act, i.e. promoting job security for employees experiencing significant life events, has proven to be a valuable addition to the economy as a whole. Though the FMLA mandates employees undergoing qualifying circumstances before being allowed to take an unpaid leave, the IRS has now introduced a federal tax credit in an effort to incentivize employers to take it a step further and pay wages to employees on leave. Aside from the obvious benefit of providing funding to employees in trying times, the credit is designed to encourage employers to implement or clean up policies regarding the FMLA by rewarding them with tangible monetary returns through tax savings.

Before getting into the specifics of how to qualify and claim the credit, it is important to understand who is affected by the Family Medical Leave Act of 1993. While the basics of the act have remained the same, the details and qualifying factors have gone through a series of changes over the past two and a half decades. As stated by the US Department of Labor (DOL), “the FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons.” As the inclusion of words such as “eligible” and “covered” indicates, not all employers fall under the FMLA net, and even at covered employers, not all employees are included. In order for the FMLA to apply, an employer must meet **any** one of the following criteria:

- Private-sector employer, with 50 or more employees in 20 or more workweeks in the current or preceding calendar year, including joint employer or successor in interest to a covered employer.
- Public agency, including a local, state, or federal government agency, regardless of the number of employees.
- Public or private elementary or secondary school, regardless of the number of employees.

Within the aforementioned covered employers, only employees that meet **all** of the following conditions are covered by the FMLA:

- Has worked for the employer for at least 12 months;
- Has at least 1,250 hours of service for the employer during the 12 month period preceding the leave (hours requirement differs for pilots and airline flight crews);
- Works at a location where the employer has at least 50 employees within 75 miles.

Once it is determined that an employee is covered under the act, they are entitled to take an unpaid leave of absence of up to 12 workweeks within a 12 month span when **any** of the following triggering events occurs:

- The birth of a son or daughter or placement of a son or daughter with the employee for adoption or foster care.
- To care for a spouse, son, daughter, or parent who has a serious health condition.
- For a serious health condition that makes the employee unable to perform the necessary functions of his or her job.
- For any qualifying exigency arising out of the fact that a spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status.

In addition, a covered employee is also entitled to take up to a 26 week leave of absence to care for a military service-member with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the service-member. Another important thing to note is that a leave of absence stemming from an injury or illness does not necessarily need to span 12 (or 26) concurrent weeks. Under the FMLA, the covered employee is allowed to take intermittent leaves and/or work reduced hours as needed. If the leave is due to the birth, adoption, or foster care of a child, the employee must receive permission from their employer to take the leave non-concurrently or in the form of reduced workdays.

Through all of these qualifying conditions, just where does the credit come into play? One of the key attributes of the FMLA is that it only mandates employers hold the jobs of the covered employees for the duration of their leave of absence, it does not put them on the hook for paying the employees during that time. However, some employers do offer full or reduced compensation to employees on family or medical leave. These are the employers that should look further into their eligibility to claim the federal tax credit related to the amount of compensation paid to employees while on leave.


The credit, as described in Section 45S, was officially enacted in late December of 2017 and will be available for qualifying employers for the 2018 and 2019 tax years; it is possible that the credit will be extended, but as now, it only applies for the next two years. In order for an employer to qualify for the Section 45S credit (as referenced above) they must meet **all** of the following conditions:

- The employer must have a written policy in place regarding the paid leave.
- The compensation must be paid to an employee who is on leave for one of the reasons specifically listed by the FMLA (as referenced above).
- The compensation covers at least two weeks of the covered leave of absence for full time employees (prorated for part time employees).
- The compensation is not less than 50 percent of the employee's normal compensation.
- The employee was not paid more than \$72,000 in the tax year prior to the year in which the credit is being taken.

It's important to note that even employers that are not required to adhere to the FMLA may qualify for the credit, as long as they meet the conditions laid out in section 45S above. The credit is calculated by taking a percentage of the amount of compensation paid to the employee while on leave. The minimum percentage is 12.5% and is increased by 0.25% for each percentage point by which the amount paid exceeds the 50% threshold of the employee's normal compensation up to a maximum of 25%. The IRS has specifically stated that the employer's wage deduction must be reduced by the full amount of the credit taken. Wages used to calculate any other general business credit may not be used in determining the paid family and medical leave credit.

Employers who already offer paid leave to employees should certainly take advantage of the paid family and medical leave credit. And for employers who don't, the credit may serve as an extra incentive to implement such policies. It will likely provide a way to control costs and provide relief and a morale boost to employees who are under the duress of the significant life events that would trigger a leave of absence.

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