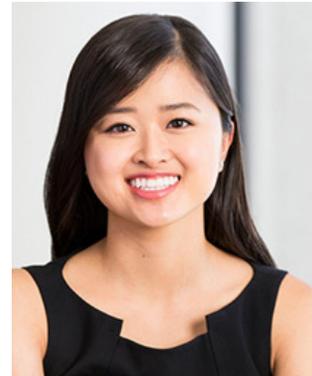


## IRS Issues FAQs

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In December 2017, the Tax Cuts and Jobs Act (the “Act”) created a federal tax credit for certain employers offering paid family and medical leave in 2018 and 2019. After much anticipation, the IRS finally posted a set of FAQs on April 9, 2018, clarifying the new tax credit.

### Background

Section 13403 of the Act added the paid family and medical leave credit as a new general business credit under Internal Revenue Code (the “Code”) section 38. However, the credit is a temporary addition to the tax code because it only applies to paid leave provided January 1, 2018 through December 31, 2019. Generally, an eligible employer may claim the tax credit based on wages paid to qualifying employees on leave for any of the purposes listed under the Family and Medical Leave Act (FMLA), provided that certain conditions are met.

### Reviewing the FAQs

To claim the credit, an “eligible employer” must have a written leave policy that:

1. Provides at least two weeks of paid family and medical leave annually to all full-time qualifying employees (the duration of the paid family and medical leave may be prorated for part-time qualifying employees);
2. Pays qualifying employees at least 50% of their normal wages; and
3. Ensures that the employer will not interfere with, restrain, or deny any rights provided under the policy, or discriminate against any individuals.

A “qualifying employee” is any employee under the Fair Labor Standards Act who has been employed by the employer for at least one year and who did not have compensation above a certain amount in the prior year. To claim the credit for paid family and medical leave in 2018, the qualifying employee cannot earn more than \$72,000 in 2017.

For purposes of qualifying for the credit, "family and medical leave" means leave that is taken by a qualifying employee for one or more of the following reasons:

1. Birth of the employee's child and to care for the child;
2. Placement of a child with the employee for adoption or foster care;
3. To care for the employee's spouse, child, or parent who has a serious health condition;
4. A serious health condition that makes the employee unable to perform the functions of his or her position;
5. Any qualifying exigency due to an employee's spouse, child, or parent being on covered active duty (or having been notified of an impending call or order to covered active duty) in the Armed Forces;
6. To care for a service member who is the employee's spouse, child, parent, or next of kin.

Any paid vacation leave, personal leave, or leave that is not for one of the purposes described above is not considered "family and medical leave." Further, any leave that is paid by a state or local government or paid in compliance with state or local law may not be taken into account for the credit. This seems to mean that an employer that pays *more than* the amount required by any applicable state or local law may claim a credit for the excess amount.

The credit is calculated as a percentage of the wages paid to a qualifying employee while on family and medical leave (up to twelve weeks of leave per taxable year). For example, the percentage begins at 12.5% for paid family and medical leave that is 50% of the qualifying employee's normal wages. If the employer provides more than 50% of the employee's normal wages, the rate increases by 0.25% for each percentage that exceeds the 50% wage minimum (up to 25%).

One of the clarifications provided by the FAQs is that the employer must reduce its deduction for wages or salaries paid or incurred by the amount of the paid family and medical leave credit. The paid family and medical leave credit cannot be based on any wages that have been taken into account for purposes of determining any other general credit (no double-dipping).

The FAQs state that employers can expect the IRS to provide additional information about the credit requirements in the future, such as clarifying when the written policy must be in place, determining whether an employee has been employed for at least one year, and the impact of state and local leave mandates.

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