

New Tax Law with Employer Tax Credit

BENEFITS SPOTLIGHT

The new federal tax law, signed by President Trump in December, contains a number of provisions that will impact the workplace and employers.

As many are aware, FMLA requires employers to provide certain employees with up to 12 weeks of job-protected leave annually for specified family and medical reasons. The leave may be paid or unpaid.

Covered Employers

Generally, an employer with 50 or more employees within a 75-mile radius of the location where an employee is based is subject to the FMLA.

New Business Tax Credit

To encourage employers to provide eligible employees with paid leave under FMLA, the new tax law provides eligible employers with a new business credit equal to 12.5% of the amount of wages paid to "qualifying employees" during any period in which such employees are on FMLA as long as the rate of payment under the program is at least 50% of the employee's normal wages.

The credit can be used to lower an employer's taxable income, subject to limitations, and applicable alternative minimum tax. The amount of paid family and medical leave used to determine the tax credit for an employee may not exceed 12 weeks.

Eligibility for Tax Credit

To be eligible for the credit, an employer must have a written policy that provides all qualifying full-time employees with at least two weeks of annual paid family and medical leave.

Part-time employees are also to be allowed a commensurate amount of leave on a pro rata basis. Qualifying employees are those who have worked for the company for at least one year and were paid no more than 60% of the compensation threshold for highly compensated employees in the previous year. (For 2018, 60% of the compensation threshold is equal to $60\% \times \$120,000 = \$72,000$.)

Who Determines Eligibility for Tax Credit

The Secretary of Treasury will determine whether an employer or an employee satisfies applicable requirements for the employer to be eligible for the tax credit based on information provided by the employer as the Secretary determines to be necessary or appropriate.

If the employee takes a paid leave for other reasons, such as vacation leave, personal leave, or other medical or sick leave, this paid leave will not be considered to be family and medical leave for purposes of the credit.

The credit is effective for wages paid in taxable years starting on January 1, 2018. It is set to expire for wages paid in taxable years beginning after December 31, 2019.

