

New IRS Guidance Clarifies How Employers May Qualify For The Paid Family Leave Tax Credit

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On September 24, 2018, the IRS released Notice 2018-71 (the Notice) which provides useful FAQs related to how employers may claim the business tax credit for calendar years 2018 and 2019 for providing paid family and medical leave.

The tax credit for employers may total between 12.5% and 25% of qualifying wages. In order to qualify, an employer must have a written policy that meets certain requirements including the following: the policy must

- (1) cover all qualifying employees (generally, those employees who were paid less than \$72,000 from the employer);
- (2) provide at least two weeks of annual paid family and medical leave for each full-time qualifying employee and at least a proportionate amount of leave for each part-time qualifying employee;
- (3) include “non-interference” protection language for those qualifying employees not covered by Title I of the FMLA;
- (4) provide for payment of at least 50% of the qualifying employee's wages while the employee is on leave.

It is important to note that any leave that is paid by a State or local government or required by State or local law is not taken into account for any purpose in determining the amount of paid family and medical leave provided by the employer. Due to the written policy requirement,

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employers should review their leave policies and practices to determine whether they can take advantage of this tax credit.