

## **Internal Revenue Code Section 45S(b)(3)**

### Employer credit for paid family and medical leave

(a) Establishment of credit.

(1) In general.

For purposes of section 38 , in the case of an eligible employer, the paid family and medical leave credit is an amount equal to the applicable percentage of the amount of wages paid to qualifying employees during any period in which such employees are on family and medical leave.

(2) Applicable percentage.

For purposes of paragraph (1) , the term "applicable percentage" means 12.5 percent increased (but not above 25 percent) by 0.25 percentage points for each percentage point by which the rate of payment (as described under subsection (c)(1)(B) ) exceeds 50 percent.

(b) Limitation.

(1) In general.

The credit allowed under subsection (a) with respect to any employee for any taxable year shall not exceed an amount equal to the product of the normal hourly wage rate of such employee for each hour (or fraction thereof) of actual services performed for the employer and the number of hours (or fraction thereof) for which family and medical leave is taken.

(2) Non-hourly wage rate.

For purposes of paragraph (1) , in the case of any employee who is not paid on an hourly wage rate, the wages of such employee shall be prorated to an hourly wage rate under regulations established by the Secretary.

(3) Maximum amount of leave subject to credit.

The amount of family and medical leave that may be taken into account with respect to any employee under subsection (a) for any taxable year shall not exceed 12 weeks

(c) Eligible employer.

For purposes of this section-

(1) In general

The term "eligible employer" means any employer who has in place a written policy that meets the following requirements:

(A) The policy provides-

- (i) in the case of a qualifying employee who is not a part-time employee (as defined in section 4980E(d)(4)(B) ), not less than 2 weeks of annual paid family and medical leave, and



(ii) in the case of a qualifying employee who is a part-time employee, an amount of annual paid family and medical leave that is not less than an amount which bears the same ratio to the amount of annual paid family and medical leave that is provided to a qualifying employee described in clause (i) as-

(I) the number of hours the employee is expected to work during any week, bears to

(II) the number of hours an equivalent qualifying employee described in clause (i) is expected to work during the week.

(B) The policy requires that the rate of payment under the program is not less than 50 percent of the wages normally paid to such employee for services performed for the employer.

(2) Special rule for certain employers.

(A) In general.

An added employer shall not be treated as an eligible employer, unless such employer provides paid family and medical leave in compliance with a written policy which ensures that the employer-

(i) will not interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under the policy, and

(ii) will not discharge or in any other manner discriminate against any individual for opposing any practice prohibited by the policy.

(B) Added employer; added employee.

For purposes of this paragraph-

(i) Added employee.

The term "added employee" means a qualifying employee who is not covered by title I of the Family and Medical Leave Act of 1993, as amended.

(ii) Added employer.

The term "added employer" means an eligible employer (determined without regard to this paragraph), whether or not covered by that title I, who offers paid family and medical leave to added employees.

(3) Aggregation rule.

All persons which are treated as a single employer under subsections (a) and (b) of section 52 shall be treated as a single taxpayer.

(4) Treatment of benefits mandated or paid for by state or local governments.

For purposes of this section, any leave which is paid by a State or local government or required by State or local law shall not be taken into account in determining the amount of paid family and medical leave provided by the employer.

(5) No inference.

Nothing in this subsection shall be construed as subjecting an employer to any penalty, liability, or other consequence (other than ineligibility for the credit allowed by reason of subsection (a) or recapturing the benefit of such credit) for failure to comply with the requirements of this subsection.

(d) Qualifying employees.

For purposes of this section, the term "qualifying employee" means any employee (as defined in section 3(e) of the Fair Labor Standards Act of 1938, as amended) who-

(1) has been employed by the employer for 1 year or more, and

(2) for the preceding year, had compensation not in excess of an amount equal to 60 percent of the amount applicable for such year under clause (i) of section 414(q)(1)(B) .

(e) Family and medical leave.

(1) In general.

Except as provided in paragraph (2) , for purposes of this section, the term "family and medical leave" means leave for any 1 or more of the purposes described under subparagraph (A), (B), (C), (D), or (E) of paragraph (1), or paragraph (3), of section 102(a) of the Family and Medical Leave Act of 1993, as amended, whether the leave is provided under that Act or by a policy of the employer.

(2) Exclusion.

If an employer provides paid leave as vacation leave, personal leave, or medical or sick leave (other than leave specifically for 1 or more of the purposes referred to in paragraph (1) ), that paid leave shall not be considered to be family and medical leave under paragraph (1) .

(3) Definitions.

In this subsection, the terms "vacation leave", "personal leave", and "medical or sick leave" mean those 3 types of leave, within the meaning of section 102(d)(2) of that Act.

(f) Determinations made by secretary of treasury.

For purposes of this section, any determination as to whether an employer or an employee satisfies the applicable requirements for an eligible employer (as described in subsection (c) ) or qualifying employee (as described in subsection (d) ), respectively, shall be made by the Secretary based on such information, to be provided by the employer, as the Secretary determines to be necessary or appropriate.

(g) Wages.

For purposes of this section, the term "wages" has the meaning given such term by subsection (b) of section 3306 (determined without regard to any dollar limitation contained in such section). Such term shall not include any amount taken into account for purposes of determining any other credit allowed under this subpart.

(h) Election to have credit not apply.

(1) In general.

A taxpayer may elect to have this section not apply for any taxable year

(2) Other rules.

Rules similar to the rules of paragraphs (2) and (3) of section 51(j) shall apply for purposes of this subsection

(i) Termination.

This section shall not apply to wages paid in taxable years beginning after December 31, 2019.