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IRS Issues New Credit Form for Paid Family/Medical Leave

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Practice Area: Compensation and Benefits/ERISA

The Internal Revenue Service ("IRS") recently issued the 2018 Form 8994 for eligible employers to complete to receive the Employer Credit for Paid Family and Medical Leave ("Employer Credit"). The Employer Credit was signed into law by President Trump on December 22, 2017 as part of the Tax Cuts and Jobs Act. The Employer Credit enables eligible employers to claim a general business credit for employees on paid family and medical leave. The Employer Credit is available for years beginning after 2017 and before 2020, and ranges from 12.5% to 25% of wages paid to a qualifying employee while the employee is on family and medical leave. Employers that qualify may claim or elect not to claim the Employer Credit any time within three (3) years from the due date of their return on either an original return or an amended return.

Eligibility
For purposes of qualification, employers interested in claiming the Employer Credit must satisfy certain criteria. Eligible employers must have a written policy that offers full- and part-time employees at least two weeks of paid family and medical leave (pro-rated for part-time employees). The paid leave cannot be less than 50% of the wages normally paid to the employee.

The policy must cover employees who have been employed by the employer for one year or more and the employee's annual pay may not exceed certain thresholds. For an employer claiming a credit for wages paid to an employee in 2018, the employee must not have earned more than $72,000 in 2017.

For purposes of the Employer Credit, "family and medical leave" mirrors the definition established from the federal Family and Medical Leave Act. Specifically, "family and medical leave" is leave for any one of the following reasons:

- Birth of an employee's child and to care for the child.
- Placement of a child with the employee for adoption or foster care.
- To care for the employee's spouse, child, or parent who has a serious health condition.
- A serious health condition that makes the employee unable to perform the functions of his or her position.
- 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.
- To care for a service member who is the employee's spouse, child, parent, or next of kin.

Calculating the Employer Credit
The Employer Credit is a percentage of the amount of wages paid to a qualifying employee who is absent from work because of family and medical leave. Employers may only credit paid family and medical leave for up to 12 weeks per taxable year. The credit begins at 12.5% based on a policy that pays employees 50% of their normal wages. For every percentage increase over 50%, the credit increases by 0.25% up to a maximum of 25%.

Form 8994
The 2018 Form 8994 is available for any eligible employer seeking to take the Employer Credit. Partnerships and S Corporations must file the form to claim the Employer Credit, but other eligible taxpayers need only report the Employer Credit directly on line 4j in Part III of Form 3800, General Business Credit. Form 8994 applies only to wages for paid family and medical leave made in the 2018 tax year. The Form contains worksheets for employers to calculate their expected credit. We recommend employers fill the worksheets out and retain them to support the claimed credit.

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