



# TaxNewsFlash

## United States

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### **Notice 2018-71: Employer credit for paid family and medical leave (Q&As)**

The IRS today released an advance version of Notice 2018-71 as guidance—in a “question and answer” (Q&A) format—about the employer credit for paid family and medical leave under section 45S (as added to the Code by the new tax law in the United States).

[Notice 2018-71](#) [PDF 115 KB] states that the IRS and Treasury Department intend to issue proposed regulations under section 45S that will incorporate this guidance. Comments are requested to assist the IRS and Treasury in developing the future regulations, and the comments due date is November 23, 2018.

#### **Background**

Section 45S—added to the Code by the new U.S. tax law (Pub. L. No. 115-97, enacted December 22, 2017)—allows eligible employers to claim a credit equal to 12.5% of the amount of wages paid to qualifying employees during any period in which these employees are on family and medical leave if the rate of payment under the program is 50% of the wages normally paid to an employee.

The credit is increased by 0.25 percentage points (but not above 25%) for each percentage point by which the rate of payment exceeds 50%.

- An “eligible employer” is one that allows all qualifying full-time employees not less than two weeks of annual paid family and medical leave, and that allows all less-than-full-time qualifying employees a commensurate amount of leave on a pro rata basis.
- A “qualifying employee” is any employee who has been employed by the employer for one year or more, and who for the preceding year, had compensation not in excess of 60% of the compensation threshold for highly compensated employees.

For instance, the employee must not have had compensation from the employer of more than \$72,000 in 2017.

The employer credit applies for wages paid in tax years after 2017 and before 2020 (that is, 2018 and 2019).

### **Notice 2018-71**

The Q&As in Notice 2018-71 set out details regarding the requirements of section 45S. Today's notice states that to be eligible to claim the credit, an employer must have a written policy that satisfies the following requirements:

- The policy must cover all qualifying employees.
- The policy must 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 from each part-time qualifying employee.
- The policy must provide for payment of at least 50% of the qualifying employee's wages while that person is on leave.
- The policy must include "non-interference" protections for qualifying employees who are not covered by title 1 of the Family and Medical Leave Act of 1993.

Notice 2018-71 provides a transition rule for determining when an employer's written policy must be in place. The notice highlights a transition period allowing eligible employers that set up qualifying paid family leave programs or amend existing programs by December 31, 2018, to be eligible to claim the employer credit for paid family and medical leave, retroactive to the beginning of the employer's 2018 tax year, for qualifying leave already provided.

There are 34 Q&As in Notice 2018-71, and the guidance is set out under topics such as:

- Eligible employer
- Family and medical leave
- Minimum paid leave requirements
- Calculating and claiming the credit

Read a related IRS release—[IR-2018-191](#)

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