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## Employee Benefits – Question of the Month

October 2018

**Q:** I've seen some articles about a new tax credit for employers that offer paid FMLA, but I can't find anything that explains it very clearly. My main question is what types of leave the tax credit can be claimed for. For example, we have very generous paid vacation, sick leave, and parental leave policies, all three of which can be used during FMLA leave. Our COO wants to claim the credit for employees who use any of those paid leave benefits to receive compensation during a leave that is covered by the FMLA. Is that allowed? If not, in what circumstances are we allowed to claim the credit?

**A:** While the IRS hasn't yet finalized regulations explaining the specific ins and outs of the new tax credit, it did just recently issue guidance to help employers understand it and take the necessary steps to claim the credit for 2018. While there are a lot of intricacies to claiming the credit, I will try to address some basics as well as answer your specific question.

The basics are that for 2018 and 2019, employers can claim a tax credit of up to 25 percent of the amount of compensation paid to certain employees under a written "paid FMLA" policy. As to your specific question, the credit is available for paid leave that is taken for any FMLA-qualifying reason, with the following limitations:

- The leave must be taken pursuant to a written policy under which leave is available only for one or more FMLA-qualifying reasons. If the policy allows leave for non-FMLA purposes, the credit does not apply.
- The policy must grant paid leave to any employee who has worked for the employer for at least 12 months, including to part-time employees on a pro rata basis.
- In general, the credit *cannot* be claimed for employees who made more than \$72,000 in the year before the leave was taken.

So under your scenario, it appears that the credit may be available for employees who take leave under your parental leave policy, but not for those who receive compensation under your vacation or sick leave policies while out on FMLA.

Employers have until the end of this year to get a written policy in place in order to claim the credit for 2018.

As I said, these are just the basics, and there are many other potential complications for employers wanting to take advantage of the credit. We recommend consulting the [IRS guidance](#) and your own attorney or accountant for additional information.

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