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2018



Department of the Treasury
Internal Revenue Service

Instructions for Form 8994

Employer Credit for Paid Family and Medical Leave

Section references are to the Internal Revenue Code unless otherwise noted.

Future Developments

For the latest information about developments related to Form 8994 and its instructions, such as legislation enacted after they were published, go to [IRS.gov/Form8994](https://www.irs.gov/Form8994).

General Instructions

Purpose of Form

An eligible employer (defined below) uses Form 8994 to figure the employer credit for paid family and medical leave for tax years beginning after 2017. The credit is generally equal to up to 25% of certain wages paid to a qualifying employee while the employee is on family and medical leave.

You can claim or elect not to claim the employer credit for paid family and medical leave any time within 3 years from the due date of your return on either your original return or an amended return.

Partnerships and S corporations must file this form to claim the credit. All other taxpayers aren't required to complete or file this form if their only source for this credit is a partnership or S corporation. Instead, they can report this credit directly on Form 3800, General Business Credit.

Eligible Employer

An eligible employer is an employer who has a written policy in place that meets certain requirements, including providing:

1. At least 2 weeks of paid family and medical leave (annually) to all qualifying employees who work full time (prorated for employees who work part time), and
2. The paid leave is not less than 50% of the wages normally paid to the employee.

For purposes of this credit, wages paid by a third-party payer (including an employee leasing company, a professional employer organization, or a Certified Professional Employer Organization) to qualifying employees of an eligible employer are considered wages paid by the eligible employer. Only the eligible employer, and not the third-party payer, can take into account such wages in claiming the credit.

Qualifying Employee

A qualifying employee is any employee under the Fair Labor Standards Act who has been employed by the employer for 1 year or more and who, for the preceding year, had compensation of not more than a certain amount.

For wages paid in 2018, an employee with compensation of more than \$72,000 in 2017 is not a qualifying employee. For wages paid in 2019, an employee with compensation of more than \$72,000 in 2018 is not a qualifying employee.

Paid Family and Medical Leave

The credit is based on certain wages paid to a qualifying employee (defined earlier) while the employee is on family and medical leave.



Wages paid to an employee who is not a qualifying employee are not wages for purposes of this credit.

Wages. Wages qualifying for this credit generally have the same meaning as wages subject to the Federal Unemployment Tax Act (FUTA) (determined without regard to the \$7,000 FUTA tax wage base). However, any wages taken into account in determining any other general business credit may not be used to figure this credit.

Family and medical leave. For this purpose, family and medical leave is generally up to 12 weeks of leave provided for one or more 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 U.S. Armed Forces.
- To care for a service member who is the employee's spouse, child, parent, or next of kin.

However, vacation leave, personal leave, and medical or sick leave (any leave specifically for one or more of the purposes stated above), isn't considered family and medical leave. In addition, any leave paid by a state or local government or required by state or local law will not be considered in determining the amount of employer-provided paid family and medical leave.

A qualifying employer may take into account payments that exceed any family and medical leave payments mandated by state law or paid by the government, but only if the payments otherwise meet the requirements discussed earlier.

Example 1. You provide 6 weeks of paid family and medical leave at 75% of pay. State law requires you to provide 4 weeks of paid leave at 50% of pay. The leave runs concurrently. You would be eligible to claim the credit

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for only 2 weeks. This is because, disregarding the payments made under state law, your rate of payment (which must be at least 50%) is only 25% during the first 4 weeks of paid leave (75% paid minus 50% required by state law = 25%).

Example 2. You provide 2 weeks of paid family and medical leave at 100% of pay. State law requires you to provide 2 weeks of paid leave at 50% of pay. The leave runs concurrently. You can claim the credit for the amount you paid in addition to the amount required to be paid under state law because, even when the state-mandated payments are disregarded, you paid 50% of pay for those 2 weeks of leave.

Member of Controlled Group or Business Under Common Control

For purposes of figuring the credit, all members of a controlled group of corporations (as defined in section 52(a)) and all members of a group of businesses under common control (as defined in section 52(b)), are treated as a single taxpayer. As a member, figure your credit based on your proportionate share of wages giving rise to the group's credit. Attach a statement showing how your share of the credit was figured, and enter "See Attached" next to the entry space for line 1.

More Information

For more information about this credit, see the following.

- Section 45S.
- Notice 2018-xx.
- [IRS.gov/Section45S](https://www.irs.gov/Section45S).

Specific Instructions

Line A

Answer "Yes" if you meet the first requirement discussed earlier under [Eligible Employer](#). If you answer "No," don't file Form 8994 unless you are filing it for a partnership or S corporation that received from another entity a credit that must be reported on line 2. For more information, see the instructions for line 2.

Line B

Answer "Yes" if you meet the second requirement discussed earlier under [Eligible Employer](#). If you answer "No," don't file Form 8994 unless you are filing it for a partnership or S corporation that received from another entity a credit that must be reported on line 2. For more information, see the instructions for line 2.

Line C

Answer "Yes" if you paid family and medical leave to at least one qualifying employee during the tax year. See [Paid Family and Medical Leave](#) and [Qualifying Employee](#), earlier. If you answer "No," don't file Form 8994 unless you are filing it for a partnership or S corporation that received from another entity a credit that must be reported on line 2. For more information, see the instructions for line 2.

Line 1

Use the Paid Family and Medical Leave Worksheet to figure any credit amount to enter on line 1.

In general, you must reduce your deduction for salaries and wages by the amount on line 1. You must make this reduction even if you can't take the full credit this year and must carry it back or forward. If you capitalized any costs on which you figured the credit, reduce the amount capitalized by the credit attributable to these costs.

Line 2

Enter total paid family and medical leave credits from:

- Schedule K-1 (Form 1065), Partner's Share of Income, Deductions, Credits, etc., box 15 (code P); or
- Schedule K-1 (Form 1120S), Shareholder's Share of Income, Deductions, Credits, etc., box 13 (code P).

Partnerships and S corporations must always report the above credits on line 2. All other filers figuring a separate credit on line 1 also must report the above credits on line 2. All others not using line 1 to figure a separate credit can report the above credits directly on Form 3800, Part III, line 4j.

Instructions for Paid Family and Medical Leave Worksheet

TIP Although you only need to provide summary information to claim the credit, keep separate records to support the information on the Paid Family and Medical Leave Worksheet. This includes the:

- Name and social security number of each qualifying employee,
- Wages paid to each qualifying employee,
- Name and employer identification number of each qualifying employer, and
- Applicable percentage and family and medical leave policy.

Column (a), Qualifying Employees

Enter the name or other identifying information for each qualifying employee (defined earlier) to whom wages were paid while on family and medical leave (also defined earlier).

Column (b), Paid Family and Medical Leave

Enter the total family and medical leave wages (defined earlier) for the tax year for each employee listed in column (a).

Column (c), Applicable Percentage

Enter the applicable percentage for each qualifying employee. The minimum percentage is 12.5% and is increased by 0.25% for each percentage point by which the amount paid to a qualifying employee exceeds 50% of the employee wages. The maximum applicable percentage is 25%.

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You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for individual and business taxpayers filing this form is approved under OMB control numbers 1545-0074 and 1545-0123 and is included in the estimates shown in the instructions for their individual and business income tax returns. The estimated burden for all other taxpayers who file this form is shown below.

| | |
|--|---------|
| Recordkeeping | xx min. |
| Learning about the law or the form | xx min. |
| Preparing and sending the form to the IRS | xx min. |

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.

Draft as of 07/24/2018