

**DESCRIPTION OF THE CHAIRMAN'S
MODIFICATION TO THE CHAIRMAN'S MARK
OF
THE "TAX CUTS AND JOBS ACT"**

Scheduled for
Markup Before
the
SENATE COMMITTEE ON FINANCE
on November 15, 2017

Prepared by the
Staff of the
JOINT COMMITTEE ON TAXATION



November
14, 2017
JCX-56-17

Effective Date

The proposal applies to amounts paid or incurred in taxable years beginning after December 31, 2025.

1. Employer credit for paid family and medical leave

Present Law

Present law does not provide a credit to employers for compensation paid to employees while on leave.

Description of Proposal

This proposal would allow eligible employers to claim a general business credit equal to 12.5 percent of the amount of wages paid to qualifying employees during any period in which such employees are on family and medical leave (“FMLA”) if the rate of payment under the program is 50 percent of the wages normally paid to an employee. The credit is increased by 0.25 percentage points (but not above 25 percent) for each percentage point by which the rate of payment exceeds 50 percent.

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 who allows all less-than-full-time qualifying employees a commensurate amount of leave on a pro rata basis. For purposes of this requirement, leave paid for by a State or local government is not taken into account. A “qualifying employee” means any employee as defined in section 3(e) of the Fair Labor Standards Act of 1938 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 percent of the compensation threshold for highly compensated employees.¹⁰⁰

“Family and medical leave” is defined as leave described under sections 102(a)(1)(a)-(e) or 102(a)(3) of the Family and Medical Leave Act of 1993.¹⁰¹ If an employer provides paid leave as vacation leave, personal leave, or other medical or sick leave, this paid leave would not be considered to be family and medical leave.

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

The Government Accountability Office (GAO) would complete a study that examines the effectiveness of the tax credit for access to and promotion of paid family and medical leave policies, provide recommendations for ways to modify or enhance the tax credit to further promote access to paid family and medical leave, and provide suggestions of alternative policies that Federal and State governments could implement.

¹⁰⁰ Sec. 414(g)(1)(B) (\$120,000 for 2017).

¹⁰¹ In order to be an eligible employer, an employer must provide certain protections applicable under the Family and Medical Leave Act of 1993, regardless of whether they otherwise apply. Specifically, the employer must provide paid family and medical leave in compliance with a policy which ensures that the employer will not interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under the policy and will not discharge or in any other manner discriminate against any individual for opposing any practice prohibited by the policy.