

IRS Issues Form 8994 on the Paid Family and Medical Leave Tax Credit

January 2019

The Internal Revenue Service (IRS) recently issued Form 8994 (Employer Credit for Paid Family and Medical Leave) and instructions on the paid family and medical leave (FML) tax credit pilot program that was enacted in 2017. Under the pilot program, employers that provide paid FMLA benefits to certain employees in 2018 and 2019 are eligible for a general business tax credit under Code Section 45S. Form 8994 is to be filed with an employer's corporate tax return and IRS Form 3800 (General Business Credit).

Form 8994 and Instructions

Form 8994 is just over half a page long and consists of four yes or no questions and a three-line form. In contrast, the instructions are 10 pages in length, and largely parrot the information from IRS Notice 2018-71. (Please see the Aon bulletin, *IRS Issues Employer Guidance on Paid Family and Medical Leave Tax Credit*, available in the Resources section.)

As the Notice did, the instructions to Form 8994 make clear that an employer must have a written policy in place that provides paid FML benefits to claim the tax credit. If an employer is not subject to the FMLA or has even one employee who is not FMLA-eligible (for example, due to not yet meeting the hours requirement), the written policy must include "non-interference" language, such as this from the instructions to Form 8994:

[Employer] will not interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this policy. [Employer] will not discharge, or in any other manner discriminate against, any individual for opposing any practice prohibited by this policy.

The instructions also reiterate the terms of the transition rule for claiming the credit for 2018. If the employer adopted a written policy (or an amendment to a policy) by December 31, 2018, the employer may claim the credit with respect to FML benefits paid retroactive to the effective date of the policy or amendment (but no earlier than January 1, 2018). This transition rule is only in effect for 2018.

What Employers Should Do Now

Employers should:

- Review the terms of any paid FML policies that might be used to qualify for the credit for coverage of all classes of qualified employees, pro rata benefits for part-time employees, and non-interference language; and
- Obtain financial and legal advice on the leave program.

Employers are not required to provide employees any notice about the paid FML to claim the credit. However, because the credit is based on benefits paid, failing to notify employees about a paid FML policy may decrease the amount of credit an employer is eligible to take.

Resources

IRS 2018 Form 8994 (Employer Credit for Paid Family and Medical Leave) is available [here](#).

Instructions for IRS 2018 Form 8994 (Employer Credit for Paid Family and Medical Leave) are available [here](#).

The Aon bulletin on IRS Notice 2018-71 (*IRS Issues Employer Guidance on Paid Family and Medical Leave Tax Credit*) is available [here](#). (The bulletin provides links to the Notice and news release.)

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