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Federal Tax Credit for Employers Offering Paid Family Leave
Effective for Tax Years 2018 and 2019

The Tax Cuts and Jobs Act signed by President Trump on December 22, 2017 added a new provision to the Internal Revenue Code (section 45s) which allows eligible employers to claim a general business tax credit when they provide paid leave under the Family and Medical Leave Act (FMLA). The new provision is meant to incent employers to provide wage replacement during FMLA, a job-protected leave which does not require employers to continue wages.

Key provisions of the Paid Family Leave tax credit are summarized below:

- The leave benefit must be at least 50% of the qualifying employee’s normal pay.
- A qualifying employee is defined as being employed by the employer for at least one year and who is paid no more than 60% of the “highly compensated employee” dollar amount on an annual basis (i.e. $72,000 for 2018).
- The amount of the tax credit is 12.5% if the leave benefit amount equals 50% of normal pay, but the percentage increases incrementally up to a maximum of 25% based upon the extent that the leave benefit exceeds 50% of normal pay.
- The leave benefit must be administered pursuant to a written policy.
- The employer’s written policy must provide full-time qualifying employees at least two weeks annually of paid family and medical leave. Part-time employees must be provided a proportionate amount of paid family leave based upon the part-time employee’s expected work hours.
- The tax credit does not apply to paid leave that is mandated under state or local law (ex. New York Paid Family Leave).

Congress is required to revisit the tax credit in two years; however, employers offering paid leave programs can take advantage of the incentive for tax years beginning 2018 and 2019.


Please note: When you click on this link, you will leave the Prudential website and be taken to the United States Code website, which is not affiliated with The Prudential Insurance Company of America (Prudential).
Supplemental Wage FIT Withholding Decreases

Effective No Later than February 15, 2018

The Internal Revenue Service (IRS) recently announced a change to the Federal Income Tax (FIT) rate for Supplemental Wages. Supplemental wages are wage payments to an employee that are not regular wages, such as payments for accumulated sick leave or non-insured Short Term Disability benefits. Employers have the option to withhold FIT based upon the employee’s Form W-4 withholding rate or at a flat percentage mandated by the IRS. This flat percentage is now 22% (previously 25%).

The Prudential Insurance Company of America (Prudential) updated our disability claim system for Administrative Services Only (ASO) customers to reflect this change. Effective February 9, 2018, claimants with active ASO claims from which Mandatory FIT is being withheld at a flat percentage saw the change to the 22% FIT withholding.

Employers can access a copy of the January 2018 IRS Notice 1036 which summarizes the changes at: https://www.irs.gov/pub/irs-pdf/n1036.pdf.

PAID SICK LEAVE UPDATE

The regulatory summaries provided below are for informational purposes only. Prudential does not currently offer paid sick leave administration and as a result, we will not administer these leaves for our Absence Management customers as they become effective.

Maryland Enacts Sick and Safe Leave

Effective February 11, 2018

Maryland recently enacted the Maryland Healthy Working Families Act effective February 11, 2018, providing up to 64 hours annually of paid or unpaid sick and safe leave. This legislation preempts local paid sick and safe leave laws enacted on or after January 1, 2017 (ex. Prince George’s County paid leave passed in December 2017. However, the Montgomery County sick and safe leave law implemented in October 2016 remains in effect).

Information about Maryland’s new Sick and Safe leave is available at https://www.dllr.state.md.us/paidleave/. Highlights are summarized below.

<table>
<thead>
<tr>
<th>Maryland Enacts Sick and Safe Leave</th>
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<tbody>
<tr>
<td><strong>Covered Employers</strong></td>
</tr>
<tr>
<td>All employers whose primary work location is Maryland.</td>
</tr>
<tr>
<td>- Employers with 15 or more employees must provide <strong>paid</strong> earned sick and safe leave</td>
</tr>
<tr>
<td>- Employers with 14 or fewer employer must provide <strong>unpaid</strong> earned sick &amp; safe leave</td>
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<table>
<thead>
<tr>
<th>Eligible Employees</th>
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<tbody>
<tr>
<td>All eligible Maryland employees who regularly work 12 hours or more per week</td>
</tr>
<tr>
<td>- Ineligible employees include certain independent contractors, real estate brokers and salespersons, employees under 18 years of age, agricultural sector employees, construction workers covered by a collective bargaining agreement, as-needed health or human service industry employees, and temporary services employees.</td>
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<table>
<thead>
<tr>
<th>Accrual Methodology</th>
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<tbody>
<tr>
<td>Employees began accruing sick and safe leave on January 1, 2018 or their first day of employment, whichever is later.</td>
</tr>
<tr>
<td>Employees accrue one hour of sick and safe leave time for every 30 hours worked, up to an annual maximum of 40 hours.</td>
</tr>
<tr>
<td>A maximum of 40 hours of earned but unused leave time can be carried over to the following calendar year unless it would provide the employee with more than 64 hours of accrued leave.</td>
</tr>
<tr>
<td>Employers may elect to front-load an employee's accrual bank with 40 hours of leave at the start of the year. Under this approach, the employer is not required to allow employees to carry over unused leave time to the next calendar year.</td>
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<table>
<thead>
<tr>
<th>Usage Rules</th>
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<tbody>
<tr>
<td>Employees may begin to use earned paid sick and safe leave time after 106 days of employment.</td>
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<tr>
<td>Employees may use up to a maximum 64 hours of accrued sick and safe leave time in a calendar year.</td>
</tr>
<tr>
<td>Employers may establish a minimum leave increment not to exceed 4 hours.</td>
</tr>
<tr>
<td>Employers are not required to pay employees for accrued but unused leave upon termination.</td>
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Continued on next page
Maryland Enacts Sick and Safe Leave

Eligible Reasons for Leave
- To care for or treat the employee’s mental or physical illness, injury, or condition;
- To obtain preventative medical care for the employee or the employee’s family member;
- To care for a family member with a mental or physical illness, injury, or condition;
- For maternity or paternity leave; or
- For an absence due to domestic violence, sexual assault, or stalking committed against the employee or employee’s family member under certain circumstances.

Other comments:
- Employers may request reasonable documentation of the need for leave in certain circumstances.
- Employees may be asked to provide advance notification for foreseeable absences or as soon as is practicable for unforeseeable absences.
- Retaliation against an employee for requesting or using earned sick and safe leave is prohibited.
- Each pay period, employers are required to give eligible employees notice of their earned sick and safe leave available for use.
- Employers are required to post a written notice of employee sick and safe leave rights to be provided by the state Commissioner of Labor.

Puerto Rico Implements Special Paid Leave for Employee Catastrophic Illnesses

Effective February 20, 2018

The governor of Puerto Rico recently signed into law Act 28, the Special Leave for Employees with Serious Catastrophic Illnesses Law. Effective February 20, 2018, eligible employees may use special leave time if they have been diagnosed with one of the illnesses listed in the table below. This leave is in addition to the sick leave entitlement available under Puerto Rico’s Minimum Wage, Vacation, and Sick Leave Act.


Highlights of Puerto Rico’s new leave law are summarized below.

Eligible Reasons for Leave
- Special paid leave may be used if the employee has been diagnosed with any of the catastrophic illnesses listed in the Health Insurance Administration of Puerto Rico Special Coverage (HIAPRSC), including:
  - AIDS
  - Tuberculosis
  - Leprosy
  - Lupus
  - Cystic Fibrosis
  - Cancer
  - Hemophilia
  - Aplastic Anemia
  - Rheumatoid Arthritis
  - Autism
  - Post-Organ Transplant
  - Scleroderma
  - Multiple Sclerosis
  - Amyotrophic Lateral Sclerosis (ALS)
  - Chronic Renal Disease in Stages 3, 4, and 5

Other comments:
- The use of this special paid leave will be considered “time worked” for purposes of accrual of all employee benefits.
- Retaliation against an employee for requesting or using earned special paid sick leave is prohibited and employers may not consider the use of this special paid leave as a negative factor in an employee’s performance evaluation.
Austin, Texas Passes Earned Sick Time Ordinance

Effective October 1, 2018

Effective October 1, 2018, Austin, Texas’ Earned Sick Time Ordinance goes into effect for employers with more than 5 employees. The requirements take effect October 1, 2020 for employers with five or fewer employees. This makes Austin the first Texas city, and the first city in the southern United States, to pass a paid sick-day ordinance.

Employers can access Austin’s Earned Sick Time Ordinance at: http://assets.austintexas.gov/austincouncilforum/0E-20180215135505.pdf.

Key provisions of the new leave are summarized below.

<table>
<thead>
<tr>
<th>Covered Employers</th>
<th>All employers doing business in Austin are subject to the new law, with the exclusion of federal and state agencies.</th>
</tr>
</thead>
</table>
| Eligible Employees | - Employees who perform at least 80 hours of work within the City of Austin in a calendar year for a covered employer  
                            - Persons who work solely on commission are considered independent contractors and are not covered under the ordinance |
| Eligible Reasons for Leave | Employees may use earned sick leave for:  
                            - The employee’s physical or mental illness or injury, preventative medical or health care, or health condition;  
                            - The employee’s need to care for a family member’s physical or mental illness, preventative medical or health care, or health condition; or  
                            - The employee’s need to seek medical attention or to participate in legal or court-ordered action related to an incident of domestic abuse, sexual assault, or stalking involving the employee or employee’s family member |
| Accrual Methodology | Beginning October 1, 2018, employees accrue 1 hour of leave for every 30 hours worked up to the following annual maximums:  
                             - 64 hours for employers with more than 15 employees  
                             - 48 hours for employers with 15 or fewer employees |
| Usage Rules | - Employees may begin to use earned sick leave as soon as it is accrued. However, employers may require employees hired on or after October 1 to complete a 60-day probation period before using their leave.  
                            - Employers may limit an employee’s use of earned sick leave to 8 calendar days in a calendar year.  
                            - Accrued but unused sick leave up to the annual cap is carried over from one calendar year to the next unless the employer front loads employee allotments with at least the annual cap amount of leave.  
                            - Employees rehired by an employer within 6 months following separation may use any earned but unused sick leave available at the time of separation.  
                            - Employers may require reasonable documentation for absences of 3 or more consecutive workdays |
| Other comments: | - On a monthly basis, employers are required to provide employees with a statement of their available earned sick leave.  
                            - Employers are required to post a written notice of employee’s rights under the earned sick leave ordinance once it is made available by the City of Austin.  
                            - Retaliation against an employee for requesting or using paid sick leave is prohibited.  
                            - Retaliation against an employee for requesting or using earned sick leave is prohibited. |

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Update: Washington State Paid Family and Medical Leave (PFML)

Premium Assessment effective January 1, 2019
Benefit Eligibility effective January 1, 2020

As previously reported in the October 2017 issue of the Legislative Monitor, Washington state is implementing Paid Family and Medical Leave (WA PFML). Premium assessments will begin January 1, 2019, with benefits to begin a year later on January 1, 2020.

To prepare for the implementation, Washington’s Employment Security Department (ESD) has organized the rulemaking into 4 phases to address different parts of the law. Phase 1, which includes Collective Bargaining Agreements, premium liability, and voluntary plans, is currently under way. A draft of the Phase 1 rules is available on the state’s website: https://esd.wa.gov/paid-family-medical-leave. After stakeholder and public comment periods, ESD is targeting finalization of Phase 1 rules by early May with an effective date in mid-June.

Prudential will continue to monitor the rulemaking process and will provide updates when available.

Update: Washington, D.C. Universal Paid Leave (UPLAA)

Premium Assessment effective July 1, 2019
Benefit Eligibility effective July 1, 2020

As previously reported in the April 2017 issue of the Legislative Monitor, Washington D.C. is implementing a Universal Paid Leave program. Employers will be required to start paying into the fund on July 1, 2019, with benefits to begin a year later on July 1, 2020.

Although the bill was passed in December 2016, legislators are actively considering several measures that could change who is responsible for funding the leave program and how much they will need to pay. The law as currently proposed will be funded by a 0.62% per-employee tax on employers.

Possible changes to the law include:

- Dropping the tax down to 0.54% for employers
- Allowing businesses who currently offer the same type of paid leave to opt out of the program, however still pay a 0.15% tax to the City for each of their employees
- Allowing businesses to offer paid leave through insurance
- Having a third-party contractor run the program

Prudential will continue to monitor the implementation of D.C.’s Universal Paid Leave program and will provide updates when available. Employers can review the enacted legislation at: http://lims.dccouncil.us/Download/34613/B21-0415-Enrollment.pdf.

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SAVE THE DATE
for 2 Upcoming Industry Events

DMEC is an industry association dedicated to providing education on integrated disability, absence management, and return-to-work solutions.

April 30–May 3, 2018
2018 DMEC FMLA/ADA Employer Compliance Conference

The Disability Management Employer Coalition’s (DMEC) annual FMLA/ADA Employer Compliance Conference will be held in Orlando, Florida April 30–May 3, 2018. DMEC is an industry association dedicated to providing education on integrated disability, absence management, and return-to-work solutions. The conference will provide tools and knowledge to manage FMLA and ADA compliance responsibilities and help to reduce employers’ risk of lawsuits and regulatory enforcement actions.

Full conference and registration information is available at www.dmec.org.

August 6–9, 2018
2018 DMEC Annual Conference

The Disability Management Employer Coalition’s (DMEC) Annual Conference will be held in Austin, Texas from August 6–9, 2018. Attendees will explore employer best practices, real-world strategies, and valuable ideas that can immediately be applied to their absence, disability management, and return to work programs. Plus, employers will learn about controlling the escalating costs of absence and operational disruptions while remaining compliant with state and federal leave laws.

Conference information is available at www.dmec.org.