



# 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 ranges from 12.5% 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 must not complete or file this form if their only source for this credit is a partnership or S corporation. Instead, they must report this credit directly on line 4j in Part III of Form 3800, General Business Credit.**

### Eligible Employer

An eligible employer is an employer with a written policy in place that provides paid family and medical leave and satisfies minimum paid leave requirements (see [Minimum Paid Leave Requirements](#), later). In addition, if the employer employs any qualifying employees who aren't covered by title I of the Family and Medical Leave Act (FMLA), the employer's written policy must include "non-interference" language.

**Non-interference language.** If an employer employs at least one qualifying employee who isn't covered by title I of the FMLA (including any employee who isn't covered by title I of the FMLA because he or she works less than 1,250 hours per year), the employer must include "non-interference" language in its written policy and comply with this language to be an eligible employer. This requirement applies to:

- An employer subject to title I of the FMLA that has at least one qualifying employee who isn't covered by title I of the FMLA, and
- An employer not subject to title I of the FMLA (that has no employees covered by title I of the FMLA).

The "non-interference" language must ensure 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. The following "non-interference" language is an example of a written provision that would satisfy this requirement: [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.

**Written policy documentary requirements.** An eligible employer's written policy may be set forth in a single document or in multiple documents. For example, an employer may maintain different documents to cover different classifications of employees or different types of leave, and those documents collectively will constitute the employer's written policy. An eligible employer's written policy also may be included in the same document that governs the employer's other leave policies.

**Written policy in place.** Except as provided in the transition rule for the first tax year of an employer beginning after 2017 (discussed next), the employer's written policy must be in place before the paid family and medical leave for which the employer claims the credit is taken. The written policy is considered to be in place on the later of the following dates.

- The policy's adoption date.
- The policy's effective date.

**Example.** You adopt a written policy that satisfies all of the requirements discussed in these instructions on June 15, 2019, with an effective date of July 1, 2019. Assuming all other requirements for the credit are met, you can claim the credit with respect to family and medical leave paid in accordance with that policy to qualifying employees for leave taken on or after July 1, 2019.

**Transition rule.** For an employer's first tax year beginning after 2017, a written leave policy or an amendment to a policy (whether it's a new policy for the tax year or an existing policy) will be considered to be in place as of the effective date of the policy (or amendment), rather than a later adoption date, if:

- The policy (or amendment) is adopted on or before December 31, 2018, and
- The employer brings its leave practices into compliance with the terms of the retroactive policy (or retroactive amendment) for the entire period covered by the policy (or amendment), including making any retroactive leave payments no later than the last day of the tax year.

**Example 1.** Your tax year is the calendar year. Your employee takes 2 weeks of unpaid family and medical leave beginning January 15, 2018. You adopt a written policy that satisfies the requirements discussed in these instructions on October 1, 2018, and choose to make the

policy effective retroactive to January 1, 2018. At the time the policy is adopted, you pay the employee (at a rate of payment provided by the policy) for the 2 weeks of unpaid leave taken in January 2018. Assuming all other requirements for the credit are met, you can claim the credit with respect to the family and medical leave paid to the employee for the leave taken in January 2018.

**Example 2.** Your tax year is the calendar year. You amend your FMLA policy in writing on April 15, 2018, effective for leave taken on or after April 15, 2018, to provide that 4 weeks of FMLA leave will be paid leave. Your FMLA policy doesn't provide for leave for qualifying employees who aren't covered by title I of the FMLA or include "non-interference" language. Your employee, who is a qualifying employee, but who isn't covered by title I of the FMLA, takes 3 weeks of unpaid family and medical leave beginning June 18, 2018. On October 1, 2018, you amend your written policy to include "non-interference" language and to provide paid leave effective April 15, 2018, for qualifying employees who aren't covered by title I of the FMLA. On October 15, 2018, you pay the employee for the 3 weeks of family and medical leave the employee took beginning June 18, 2018. Assuming all other requirements for the credit are met, you can claim the credit with respect to the family and medical leave paid to the employee for the leave taken beginning in June 2018.

#### **Providing notice of written policy to employees.**

Employers aren't required to provide notice of the written policy to qualifying employees to claim the credit. However, if an employer chooses to provide notice of the written policy to qualifying employees, the policy will not be considered to provide for paid leave to all qualifying employees (see [Minimum Paid Leave Requirements](#), later), unless the availability of paid leave is communicated to employees in a manner reasonably designed to reach each qualifying employee. This may include, for example, email communications, use of Internet websites, employee handbooks, or posted displays in employee work areas.

## **Qualifying Employee**

A qualifying employee is an employee (as defined in section 3(e) of the Fair Labor Standards Act of 1938 (FLSA), as amended) who has been employed by the employer for 1 year or more, and whose compensation for the preceding year doesn't exceed an amount equal to 60% of the amount applicable for that year under section 414(q)(1)(B)(i).

For 2017 and 2018, the applicable amount of compensation under section 414(q)(1)(B)(i) is \$120,000. Accordingly, to be a qualifying employee in 2018 or 2019, an employee must have earned no more than \$72,000 (60% of \$120,000) in compensation in the preceding year. For this purpose, an employer whose tax year isn't the calendar year can choose to use as the preceding year either:

- The employer's immediately preceding fiscal year, or
- The calendar year ending in the employer's immediately preceding fiscal year.

An employee's compensation is determined under section 415(c)(3).

**Employed for 1 year or more.** Until further guidance is issued, an employer may use any reasonable method to determine whether an employee has been employed for 1 year or more. Treating employees as employed for 1 year or more if they have been employed for 12 months, as set forth in section 825.110(b) of the FMLA regulations, 29 CFR 825.110(b), is an example of a reasonable method. However, any requirement that an employee work 12 consecutive months to be a qualifying employee would not be viewed as a reasonable method for determining whether an employee has been employed for 1 year.

**Minimum number of hours per year not required.** An employee isn't required to work a minimum number of hours per year to be a qualifying employee. Until further guidance is issued, any requirement that an employee work a minimum number of hours to be a qualifying employee would not be viewed as a reasonable method for determining whether an employee has been employed for 1 year. The rules under section 101(2)(A)(ii) of title I of the FMLA, which require an employee to work a minimum of 1,250 hours of service to be an eligible employee under the FMLA, don't apply.

**Written policy may not exclude any classification of employees.** An employer's written policy may not exclude any classification of employees (for example, collectively bargained employees) if they are qualifying employees.

**Example 1.** You have an insured short-term disability plan that provides disability benefits to any employee who becomes disabled after having completed 6 months of continuous service. Under the plan, a disability caused by or resulting from a pre-existing condition isn't covered if the disability begins in the first 12 months after the effective date of coverage. For purposes of the plan, a pre-existing condition is one for which an employee consulted a physician, received medical treatment, or took prescribed drugs in the 3 months immediately prior to the effective date of coverage. The exclusion from coverage for pre-existing conditions applies to all your employees during the applicable 12-month period. Employees subject to the pre-existing condition exclusion are effectively not covered under the plan when they first become qualifying employees. In addition, in some cases, the requirement that the employee complete 6 months of continuous service might exclude some qualifying employees. Therefore, the plan will not in all cases cover all qualifying employees. You can't claim the credit for paid family and medical leave provided under the written policy with respect to any of your employees.

**Example 2.** Same facts as in *Example 1*, except that you adopt a written policy that provides for paid leave to any qualifying employee who isn't covered under the short-term disability plan as a result of the 6 months of service requirement or the pre-existing condition exclusion. This leave is paid from your general assets and the length of the paid leave is the same as the leave that would have been available under the short-term disability plan if neither the 6 months of service requirement nor the pre-existing condition exclusion applied to a qualifying employee. Taking into account the leave available under your insured short-term disability plan and your supplemental self-insured paid leave arrangement, your

written policy doesn't exclude any classification of qualifying employees and, assuming all other requirements for the credit are met, you can claim the credit for paid family and medical leave provided under the written policy.

## Family and Medical Leave

Family and medical leave generally means leave for any one or more FMLA purposes (as defined below). However, if an employer provides paid leave as vacation leave, personal leave, or medical or sick leave (other than leave specifically for one or more of the FMLA purposes), that paid leave isn't considered family and medical leave.

**FMLA purposes.** The following are FMLA purposes for which paid family and medical leave may be provided to a qualifying employee.

- The birth of a son or daughter of the employee and in order to care for the son or daughter.
- The placement of a son or daughter with the employee for adoption or foster care.
- Caring for the spouse, or a son, daughter, or parent of the employee, if the spouse, son, daughter, or parent has a serious health condition.
- A serious health condition that makes the employee unable to perform the functions of the employee's position.
- Any qualifying exigency (as the Secretary of Labor shall, by regulation, determine) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is a member of the U.S. Armed Forces (including the National Guard and Reserves) who is on covered active duty (or has been notified of an impending call or order to covered active duty).
- Caring for a service member with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the service member.

The FMLA purposes are the purposes for which an employee may take leave under the FMLA. These terms have the same meaning as defined in section 825.102 of the FMLA regulations, 29 CFR 825.102.

**Leave specifically designated for FMLA purposes.** Other than paid leave to care for additional individuals, paid leave made available to an employee is considered family and medical leave only if the leave is specifically designated for one or more FMLA purposes, may not be used for any other reason, and is not paid by a state or local government or required by state or local law.

**Example 1.** Your written policy provides 6 weeks of annual paid leave for the birth of an employee's child, and to care for that child (an FMLA purpose). The leave may not be used for any other reason. No paid leave is provided by a state or local government or required by state or local law. Your policy provides 6 weeks of family and medical leave.

**Example 2.** Your written policy provides 3 weeks of annual paid leave that is specifically designated for any FMLA purpose and may not be used for any other reason. No paid leave is provided by a state or local government or required by state or local law. Your policy provides 3 weeks of family and medical leave.

**Example 3.** Your written policy provides 3 weeks of annual paid leave for any of the following reasons: FMLA

purposes, minor illness, vacation, or specified personal reasons. No paid leave is provided by a state or local government or required by state or local law. Your policy doesn't provide family and medical leave because the leave isn't specifically designated for one or more FMLA purposes and can be used for reasons other than FMLA purposes. This is true even if an employee uses the leave for an FMLA purpose.

**Leave to care for additional individuals.** An employer's written policy may provide paid leave that otherwise would be specifically designated for an FMLA purpose (for example, to care for a spouse, child, or parent who has a serious medical condition), except for the fact that the leave is available to care for additional individuals not specified in the FMLA (for example, a grandchild or grandparent who has a serious medical condition). In this limited circumstance, the fact that the leave could also be used to care for additional individuals for whom care under the FMLA purpose isn't required doesn't prevent the leave from being considered specifically designated for an FMLA purpose. However, the employer can't claim the credit for any leave taken to care for an individual other than a qualifying employee's spouse, parent, or child.

**Example.** Your written policy provides 4 weeks of annual paid leave to care for family members with a serious health condition. The policy's definition of "family members" includes the individuals specified in the FMLA (spouse, children, and parents), and also includes grandparents, grandchildren, and domestic partners. Your employee uses 1 week of annual paid leave to care for her grandmother, and at a later time, uses 1 week of annual paid leave to care for her son. Your policy provides paid leave specifically designated for an FMLA purpose. Although the paid leave taken by the employee to care for her grandmother isn't family and medical leave, the paid leave taken by the employee to care for her son is family and medical leave for which you can claim the credit assuming all other requirements for the credit are met.

**Leave provided by employer's short-term disability program.** Paid leave provided under an employer's short-term disability program, whether self-insured by an employer or provided through a short-term disability insurance policy, may be characterized as family and medical leave if it otherwise meets the requirements to be family and medical leave.

## Minimum Paid Leave Requirements

For an employer to be eligible to claim the credit, the employer's written policy must meet certain minimum requirements with respect to paid family and medical leave. These requirements are:

- The policy must provide at least 2 weeks of annual paid family and medical leave to all qualifying employees who aren't part-time employees, and at least a proportionate amount of paid family and medical leave to qualifying employees who are part-time employees;
- The policy must require a rate of payment that isn't less than 50% of the wages normally paid to the qualifying employee for services performed for the employer; and
- If the employer employs one or more qualifying employees who aren't covered by title I of the FMLA, the

employer's written policy also must include the "non-interference" language discussed earlier.

Any leave that is paid by a state or local government or required by state or local law isn't taken into account for any purpose in determining the amount of paid family and medical leave provided by the employer.

### Minimum Period of Leave Requirement

An employer's written policy must provide qualifying employees who aren't part-time employees with at least 2 weeks of annual paid family and medical leave and must provide at least a proportionate amount of annual paid family and medical leave to qualifying employees who are part-time employees. For part-time employees, the paid leave ratio must be at least equal to the ratio of the expected weekly hours worked by a qualifying employee who is a part-time employee to the expected weekly hours worked by an equivalent qualifying employee who isn't a part-time employee. In determining the amount of paid family and medical leave provided by the employer, any leave paid by a state or local government or required by state or local law isn't taken into account.

**Example.** Your written policy provides 4 weeks of annual paid family and medical leave to a qualifying employee expected to work 40 hours per week, and 2 weeks of paid family and medical leave to an equivalent qualifying employee who is a part-time employee and is expected to work 20 hours per week. All of your employees work either 20 or 40 hours per week. Your policy meets the minimum paid leave requirements because each employee who isn't a part-time employee may take at least the minimum 2 weeks of annual paid leave and each part-time employee may take at least a proportionate number of weeks of leave. Specifically, with respect to the proportionate amount, the ratio of expected weekly hours worked by a qualifying employee who is a part-time employee (20 hours) to the expected weekly hours worked by an equivalent qualifying employee who isn't a part-time employee (40 hours) is 1:2, and the policy provides 2 weeks of paid leave to qualifying employees who are part-time employees and 4 weeks of paid leave to equivalent qualifying employees who aren't part-time employees, satisfying the 1:2 ratio.

**Part-time employees.** A part-time employee is an employee who is customarily employed for fewer than 30 hours per week. Until further guidance is issued, an employer may use any reasonable method to determine how many hours an employee customarily works per week for the employer. Reasonable methods include the methods set forth in 29 CFR section 2530.200b-2 for calculating hours of service in connection with certain plans, such as qualified pension plans, subject to the Employee Retirement Income Security Act of 1974, as amended.

### Minimum Rate of Payment Requirement

The employer's written policy must provide that each qualifying employee who is on paid family and medical leave will be paid at least 50% of the wages normally paid to the employee for services performed for the employer. In determining the rate of payment under the policy, leave

paid by a state or local government or required under state or local law isn't taken into account.

**Wages normally paid to an employee.** Wages normally paid to an employee means the wages normally paid to the employee for services performed for the employer. Overtime (other than regularly scheduled overtime) and discretionary bonuses are excluded from wages normally paid. Until further guidance is issued, for employees who are paid (in whole or in part) on a basis other than a salaried or hourly rate, an employer must determine wages normally paid to the employee using the rules for determining regular rate of pay set forth in regulations issued under the FLSA. See 29 CFR section 778.109.

**Leave paid by a state or local government or required by state or local law.** Leave paid by a state or local government or required by state or local law isn't taken into account in determining whether an employer's written policy provides a rate of payment of at least 50% of the wages normally paid to an employee for services performed for the employer. To be eligible to claim the credit, an employer must independently satisfy the minimum paid leave requirements, including providing a rate of payment of at least 50% of wages normally paid to an employee.

**Example 1.** Under state law, an employee on family and medical leave is eligible to receive 6 weeks of benefits paid by a state insurance fund at a rate of 50% of the employee's normal wages. Additionally, your written policy concurrently provides each qualifying employee with 6 weeks of annual paid family and medical leave at a rate of payment of 30% of the wages normally paid to the employee for services performed for the employer. Consequently, in the aggregate, a qualifying employee can receive 6 weeks of annual paid family and medical leave at a rate of payment of 80% of the wages normally paid to the employee. Your policy doesn't independently satisfy the requirement that the rate of payment be at least 50% of the wages normally paid to an employee.

**Example 2.** Same facts as *Example 1*, except that your written policy provides each qualifying employee with 6 weeks of annual paid family and medical leave at a rate of payment of 50% of the wages normally paid to the employee that runs concurrently with the state leave. Consequently, in the aggregate, a qualifying employee can receive 6 weeks of annual paid family and medical leave at a rate of payment of 100% of the wages normally paid to the employee. Your policy independently satisfies the requirement that the rate of payment be at least 50% of the wages normally paid to an employee. Only wages paid under your written policy (50% of wages normally paid to the employee) can be used to figure the credit. Wages paid pursuant to state law aren't used to figure the credit.

**Example 3.** Under state law, employers are required to provide employees 6 weeks of family and medical leave, and the state law permits this leave to be either paid or unpaid. Your written policy provides each qualifying employee with 6 weeks of annual paid family and medical leave at a rate of payment of 50% of the wages normally paid to the employee. Your policy independently satisfies

the requirement that the rate of payment be at least 50% of the wages normally paid to an employee.

### **Rate of Payment or Period Not Required To Be Uniform**

An employer's rate of payment or period of paid family and medical leave isn't required to be uniform with respect to all qualifying employees and for all FMLA purposes. However, to the extent an employer's policy provides different rates of payment or periods of paid family and medical leave for different FMLA purposes, the minimum paid leave requirements must be satisfied with respect to each FMLA purpose for which the employer intends to claim the credit. Conversely, if an employer's policy provides a uniform rate of payment and period of paid family and medical leave for all qualifying employees and for all FMLA purposes (or a uniform rate of payment and period for several specified FMLA purposes), the policy as a whole must satisfy the minimum paid leave requirements, and it isn't necessary for the minimum paid leave requirements to be satisfied separately with respect to each FMLA purpose.

**Example 1.** Your written policy provides each qualifying employee with 6 weeks of annual paid leave for the birth or adoption of the employer's child, or to care for that child (an FMLA purpose) at a rate of payment of 100% of wages normally paid to the employee for services performed for you. For all other FMLA purposes, the policy provides each qualifying employee with 2 weeks of annual paid leave at a rate of payment of 75% of wages normally paid to the employee. Your written policy satisfies the minimum paid leave requirements.

**Example 2.** Your written policy provides each qualifying employee with 2 weeks of annual paid leave for the birth or adoption of the employee's child, or to care for that child (an FMLA purpose) at a rate of payment of 100% of wages normally paid to the employee, and also provides each qualifying employee who isn't covered by a collective bargaining agreement with 2 weeks of annual paid leave for a serious health condition that makes the employee unable to perform the duties of his or her position (also an FMLA purpose) at a rate of payment of 100% of wages normally paid to the employee. The portion of your policy that provides paid leave to each qualifying employee for the birth or adoption of the employee's child, or to care for that child, satisfies the minimum paid leave requirements. However, the portion of the policy providing only certain qualifying employees (those who aren't covered by a collective bargaining agreement) with paid leave for a serious health condition that makes the employee unable to perform the duties of his or her position doesn't satisfy the minimum paid leave requirements, and you can't claim the credit for any leave taken under that portion of the policy.

**Example 3.** Your written policy provides each qualifying employee with 2 weeks of annual paid leave for any FMLA purpose at a rate of payment of 100% of the wages normally paid to the employee, and each qualifying employee who has 10 years of service with an additional 2 weeks of annual paid leave for any FMLA purpose at a rate of payment of 100% of wages normally paid to the employee. Your policy satisfies the minimum paid leave requirements.

## **Applicable Percentage**

The applicable percentage is based on the rate of payment for the leave under the employer's policy. The base applicable percentage of 12.5% applies if the rate of payment is 50%. If the rate of payment under the policy is greater than 50%, the applicable percentage is increased by 0.25 percentage points for each percentage point by which the rate of payment exceeds 50%, up to a maximum applicable percentage of 25%.

**Example 1.** Your written policy provides each qualifying employee with 4 weeks of annual paid family and medical leave at a rate of payment of 75% of the wages normally paid to the employee. Because the rate of payment under the policy exceeds 50% by 25 percentage points, the base applicable percentage of 12.5% is increased by 6.25% ( $0.25\% \times 25$ ), for an applicable percentage of 18.75% ( $12.5\% + 6.25\%$ ).

**Example 2.** Same facts as *Example 1*, except that your written policy provides each qualifying employee who has at least 10 years of service a rate of payment of 100% of the wages normally paid to the employee for services performed by the employee, rather than 75%. Because the rate of payment for a qualifying employee who has at least 10 years of service is 100% (which is 50 percentage points greater than 50%), the base applicable percentage for these employees is increased by 12.5% ( $0.25\% \times 50$ ), for an applicable percentage of 25% ( $12.5\% + 12.5\%$ ). For a qualifying employee who has less than 10 years of service, the applicable percentage is the same as determined in *Example 1*.

## **How To Figure the Credit**

In the case of an eligible employer, the credit is an amount equal to the applicable percentage of the amount of wages paid to qualifying employees during any period in which such employees are on family and medical leave. The term "applicable percentage" means 12.5% increased (but not above 25%) by 0.25 percentage points for each percentage point by which the rate of payment exceeds 50%.

The amount of family and medical leave that may be taken into account with respect to any qualifying employee for any tax year may not exceed 12 weeks. The credit with respect to any qualifying employee for any tax year can't exceed an amount equal to the product of the employee's normal hourly wage rate for each hour (or fraction thereof) of actual services performed for the employer and the number of hours (or fraction thereof) for which family and medical leave is taken.

**Figuring the credit.** The credit is equal to the applicable percentage of the amount of wages paid to a qualifying employee during any period (up to 12 weeks) that the employee is on family and medical leave.

**Example 1.** Your written policy provides each qualifying employee with 4 weeks of annual paid family and medical leave at a rate of payment of 75% of wages normally paid to the employee. During 2018, your employee takes 4 weeks of leave under the policy. The employee is normally paid \$1,000 per week. You pay the employee a total of \$3,000 (\$750 per week for 4 weeks) for family and medical leave. Assuming all other requirements for the credit are met, you can claim a credit

of \$562.50 with respect to the employee (18.75% of \$3,000).

**Example 2.** Same facts as *Example 1*, except that your written policy provides each qualifying employee who has at least 10 years of service with a rate of payment of 100% of the wages normally paid to the employee. During 2018, Employee A, who has been employed for 12 years, takes leave under the policy for 4 weeks, and Employee B, who has been employed for 5 years, takes leave under the policy for 2 weeks. Both Employee A and Employee B are normally paid \$1,000 per week. You pay Employee A a total of \$4,000 and Employee B a total of \$1,500 for family and medical leave. Assuming all other requirements for the credit are met, you can claim a total credit of \$1,281.25 with respect to Employee A and Employee B. The credit for Employee A is \$1,000 (25% of \$4,000), and the credit for Employee B is \$281.25 (18.75% of \$1,500).

**Wages defined.** The term “wages” has the same meaning given to that term by section 3306(b) (regarding FUTA wages), determined without regard to the \$7,000 FUTA wage limitation. Section 3306(b) generally defines wages as all remuneration for employment, as defined by section 3306(c), subject to certain limitations. However, for this purpose, the term “wages” doesn’t include any amount taken into account for purposes of determining any other credit allowed under section 38, which provides for several separate business-related credits.

**Example 1.** You pay wages to your employee that qualify as a research expense for purposes of determining the amount of your research credit under section 41(a). The research credit under section 41(a) is a general business credit allowed under section 38. Some of the wages paid to your employee for the performance of qualified services under section 41(b) were paid while the employee was on family and medical leave. To figure your credit, you must exclude from the wages paid while your employee was on family and medical leave any wages treated as a qualified research expense for purposes of determining the amount of your research credit under section 41(a).

**Example 2.** The employer is tax-exempt under section 501(a) as an educational organization described in section 501(c)(3). Because employment with the employer isn’t employment for purposes of FUTA tax, wages paid by the employer aren’t FUTA wages. Although the employer is exempt from federal income tax, it earns unrelated business taxable income from a trade or business that isn’t substantially related to the performance of the employer’s exempt purpose. The employer maintains a written paid leave policy that provides at least 2 weeks of paid family and medical leave to all qualifying employees, including those performing services for the unrelated trade or business. The employer would like to claim the credit against its unrelated business income tax liability. Because the employer doesn’t pay FUTA wages, wages paid by the employer aren’t wages for purposes of the credit. Consequently, amounts paid the employer to its employees while on paid family and medical leave aren’t eligible for the credit.

**Wages paid by third-party payer.** Wages paid by a third-party payer (including an insurance company, a professional employer organization, or a Certified

Professional Employer Organization) to qualifying employees for services performed for an eligible employer are considered wages for purposes of the credit. However, only the eligible employer, and not the third-party payer, can take these wages into account when figuring the credit.

**Leave paid by a state or local government or required by a state or local law.** Leave paid by a state or local government or required by a state or local law isn’t taken into account when figuring the credit.

**Wages paid through a short-term disability program.** Wages paid through an employer’s short-term disability program for family and medical leave are taken into account in figuring the credit provided that the program (in combination with any other employer-paid leave arrangement) meets the minimum paid leave requirements.

**Employee becomes a qualifying employee after leave is taken.** An eligible employer may claim the credit only with respect to wages paid to an employee who is a qualifying employee at the time family and medical leave is taken. Wages paid to an employee for family and medical leave before an employee becomes a qualifying employee are excluded in determining the employer’s credit. However, if an employer’s written policy provides that employees may take paid family and medical leave before they become qualifying employees and doesn’t provide a dedicated amount of leave meeting the minimum paid leave requirements that may only be taken after an employee becomes a qualifying employee, the leave will not fail to (a) be specifically designated for an FMLA purpose, or (b) meet the minimum paid leave requirements, solely because an employee may take paid leave before becoming a qualifying employee.

**Example.** Your written policy provides all employees who have completed at least 6 months of employment with 4 weeks of annual paid family and medical leave at a rate of payment of 100% of wages normally paid to the employee for services performed by the employee. Your employee completes 6 months of employment with you as of January 1, 2019, and 1 year of employment (becoming a qualifying employee) as of July 1, 2019. On June 15, 2019, your employee begins a 4-week period of paid family and medical leave under the policy. Assuming all other requirements for the credit are met, you can use wages paid to the employee for family and medical leave on or after July 1, 2019, the date that employee becomes a qualifying employee, to figure the credit. Wages paid for family and medical leave taken before the employee becomes a qualifying employee aren’t eligible for the credit.

**Eligible employer for whom qualifying employees perform services.** Only an eligible employer for whom qualifying employees perform services can claim the credit with respect to wages paid.

**Normal hourly wage rate of an employee not paid an hourly wage rate.** Until further guidance is issued, an employer may use any reasonable method to convert the normal wages paid to an employee who isn’t paid an hourly wage rate to an hourly rate.

## Aggregation Rules

Section 45S(c)(3) provides that all persons who are treated as a single employer under section 52(a) and (b) are treated as a single taxpayer. In accordance with this aggregation rule, employers are aggregated for purposes of section 45S(h)(1), which provides that a taxpayer may elect to have section 45S not apply for any tax year. Consequently, employers aren't aggregated for any other purpose, including figuring the credit.

## Members of Controlled Groups or Businesses Under Common Control

Each member of a controlled group of corporations and each member of a group of businesses under common control generally makes a separate election to claim or not to claim the credit in accordance with rules set forth under section 51(j)(2) and (3). However, in the case of a consolidated group (as defined in Regulations section 1.1502-1(h)), the election is made by the agent (as defined in Regulations section 1.1502-77) of the group. An election to claim or not to claim the credit is made for the tax year in which the credit is available by claiming or not claiming the credit on either an original return or an amended return filed for that tax year.

## More Information

For more information about this credit, see the following.

- Section 45S.
- Notice 2018-71, 2018-41 I.R.B. 548, available at [IRS.gov/irb/2018-41\\_IRB#NOT-2018-71](https://www.irs.gov/irb/2018-41_IRB#NOT-2018-71).

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## Specific Instructions

### Line A

Answer "Yes" if you have a written policy providing at least 2 weeks of annual paid family and medical leave for all of your qualifying employee(s) to whom wages are paid (prorated for any part-time employees). See [Minimum Period of Leave Requirement](#) 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 B

Answer "Yes" if the written policy provides paid family and medical leave of at least 50% of the wages normally paid to each qualifying employee. See [Family and Medical Leave](#) and [Minimum Rate of Payment Requirement](#), 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 C

Answer "Yes" if you paid family and medical leave to at least one qualifying employee during the tax year. See [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 D

Answer "Yes" if you either (1) did not employ any employees who weren't covered by the FMLA or (2) employed at least one employee who wasn't covered by the FMLA and you included in your written policy and otherwise complied with "non-interference" language. See [Non-interference language](#) under *Eligible Employer*, earlier. If you answer "No," don't file Form 8994 unless you're 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 Credit 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 must report the above credits directly on Form 3800, Part III, line 4j.

**Paid Family and Medical Leave Credit Worksheet**

You may use this worksheet to figure your credit for certain wages paid during your tax year to any qualifying employee(s) while the employee is on family and medical leave. If you need more rows, use a separate sheet and include the additional amounts in the totals below.

<b>(a) Qualifying Employee</b>	<b>(b) Paid Family and Medical Leave</b>	<b>(c) Applicable Percentage</b> (shown as a decimal (25% = 0.25))	<b>(d) Credit Amount</b> (multiply column (b) by column (c))
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			
21.			
22.			
23.			
24.			
25.			
26.			
27.			
28.			
29.			
30.			
<b>Total amount shown in column (d) from all sheets</b> .....			



# Instructions for Paid Family and Medical Leave Credit Worksheet



Although you only need to provide summary information to claim the credit, keep separate records that include the necessary information to support the amount of credit you are claiming. The Paid Family and Medical Leave Credit Worksheet is one method of reflecting the necessary information and is provided to assist you in this process. You should retain this Worksheet (or any other document you use for capturing this information) in your records. The information needed to support the amount of credit you are claiming 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,
- Applicable percentage, and
- Family and medical leave policy.

## Column (a), Qualifying Employees

Enter the name or other identifying information for each qualifying employee to whom wages were paid while on family and medical leave. See [Qualifying Employee](#) and [Family and Medical Leave](#), earlier.

## Column (b), Paid Family and Medical Leave

Enter the total family and medical leave wages paid during the tax year for each employee listed in column (a). See [Family and Medical Leave](#) and [Minimum Rate of Payment Requirement](#), earlier.

## Column (c), Applicable Percentage

The applicable percentage is based on the rate of payment for the leave under the employer's policy. The base applicable percentage of 12.5% applies if the rate of payment is 50%. If the rate of payment under the policy is greater than 50%, the applicable percentage is increased by 0.25 percentage points for each percentage point by

which the rate of payment exceeds 50%, up to a maximum applicable percentage of 25%. See [Applicable Percentage](#), earlier, for examples. You can use the following Applicable Percentage Worksheet to figure the applicable percentage(s) to enter in column (c).

## Applicable Percentage Worksheet

- |  |                  |
|--|------------------|
| 1. Enter the percentage required under your written policy for the payment of family and medical leave* . . . . .  | 1. _____ %       |
| 2. Minimum percentage required to claim the credit . . . . .   | 2. <u>50</u> %   |
| 3. Subtract line 2 from line 1. If the result is less than zero, stop here, skip lines 4 and 5, and enter -0- one line 6 . . . . .   | 3. _____ %       |
| 4. Multiply the number (percentage points) on line 3 by 0.25 percentage points. For example, if line 3 is 25%, then $25 \times 0.25 = 6.25$ percentage points or 6.25% . . . . .   | 4. _____ %       |
| 5. Base applicable percentage . . . . .  | 5. <u>12.5</u> % |
| 6. Add lines 4 and 5. Enter this applicable percentage shown as a decimal (for example, 18.75% would be shown as 0.1875) in column (c) of the Paid Family and Medical Leave Credit Worksheet for all qualified employees to whom the rate of payment shown on line 1 applies . . . . . | 6. _____ %       |

\*Complete a separate worksheet for each separate percentage required and used under your written policy for the payment of family and medical leave.

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**Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

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.

<b>Recordkeeping</b> .....	1 hr., 54 min.
<b>Preparing and sending the form to the IRS</b> .....	1 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.

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