EFFECTIVE DATE

Section applicable to amounts paid or incurred in taxable years beginning after Dec. 31, 2009, see section 1421(f)(1) of Pub. L. 111–148, set out as an Effective Date of 2010 Amendment note under section 38 of this title.

§ 45S. Employer credit for paid family and medical leave

(a) Establishment of credit

(1) In general

For purposes of section 38, in the case of an eligible employer, the paid family and medical leave 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.

(2) Applicable percentage

For purposes of paragraph (1), the term ''applicable percentage'' means 12.5 percent increased (but not above 25 percent) by 0.25 percentage points for each percentage point by which the rate of payment (as described under subsection (c)(1)(B)) exceeds 50 percent.

(b) Limitation

(1) In general

The credit allowed under subsection (a) with respect to any employee for any taxable year shall not exceed an amount equal to the product of the normal hourly wage rate of such employee 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.

(2) Non-hourly wage rate

For purposes of paragraph (1), in the case of any employee who is not paid on an hourly wage rate, the wages of such employee shall be prorated to an hourly wage rate under regulations established by the Secretary.

(3) Maximum amount of leave subject to credit

The amount of family and medical leave that may be taken into account with respect to any employee under subsection (a) for any taxable year shall not exceed 12 weeks.

(c) Eligible employer

For purposes of this section—

(1) In general

The term ''eligible employer'' means any employer who has in place a written policy that meets the following requirements:

(A) The policy provides—

(i) in the case of a qualifying employee who is not a part-time employee (as defined in section 4980E(d)(4)(B)), not less than 2 weeks of annual paid family and medical leave, and

(ii) in the case of a qualifying employee who is a part-time employee, an amount of annual paid family and medical leave that is not less than an amount which bears the same ratio to the amount of annual paid family and medical leave that is provided to a qualifying employee described in clause (i) as—

(I) the number of hours the employee is expected to work during any week, bears to

(II) the number of hours an equivalent qualifying employee described in clause (i) is expected to work during the week.

(B) The policy requires that the rate of payment under the program is not less than 50 percent of the wages normally paid to such employee for services performed for the employer.

(2) Special rule for certain employers

(A) In general

An added employer shall not be treated as an eligible employer unless such employer provides paid family and medical leave in compliance with a written policy which ensures that the employer—

(i) will not interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under the policy, and

(ii) will not discharge or in any other manner discriminate against any individual for opposing any practice prohibited by the policy.

(B) Added employer; added employee

For purposes of this paragraph—

(i) Added employee

The term ''added employee'' means a qualifying employee who is not covered by title I of the Family and Medical Leave Act of 1993, as amended.

(ii) Added employer

The term ''added employer'' means an eligible employer (determined without regard to this paragraph), whether or not covered by that title I, who offers paid family and medical leave to added employees.

(3) Aggregation rule

All persons which are treated as a single employer under subsections (a) and (b) of section 52 shall be treated as a single taxpayer.

(4) Treatment of benefits mandated or paid for by state or local governments

For purposes of this section, any leave which is paid by a State or local government or required by State or local law shall not be taken into account in determining the amount of paid family and medical leave provided by the employer.

(5) No inference

Nothing in this subsection shall be construed as subjecting an employer to any penalty, liability, or other consequence (other than ineligibility for the credit allowed by reason of subsection (a) or recapturing the benefit of such credit) for failure to comply with the requirements of this subsection.

(d) Qualifying employees

For purposes of this section, the term ''qualifying employee'' means any employee (as defined in section 3(e) of the Fair Labor Standards Act of 1938, as amended) who—

(1) has been employed by the employer for 1 year or more, and

(2) for the preceding year, had compensation not in excess of an amount equal to 60 percent

of the amount applicable for such year under clause (i) of section 414(q)(1)(B).

(e) Family and medical leave

(1) In general

Except as provided in paragraph (2), for purposes of this section, the term ''family and medical leave'' means leave for any 1 or more of the purposes described under subparagraph (A), (B), (C), (D), or (E) of paragraph (1), or paragraph (3), of section 102(a) of the Family and Medical Leave Act of 1993, as amended, whether the leave is provided under that Act or by a policy of the employer.

(2) Exclusion

If an employer provides paid leave as vacation leave, personal leave, or medical or sick leave (other than leave specifically for 1 or more of the purposes referred to in paragraph (1)), that paid leave shall not be considered to be family and medical leave under paragraph (1).

(3) Definitions

In this subsection, the terms ''vacation leave'', ''personal leave'', and ''medical or sick leave'' mean those 3 types of leave, within the meaning of section 102(d)(2) of that Act.

(f) Determinations made by Secretary of Treasury

For purposes of this section, any determination as to whether an employer or an employee satisfies the applicable requirements for an eligible employer (as described in subsection (c)) or qualifying employee (as described in subsection (d)), respectively, shall be made by the Secretary based on such information, to be provided by the employer, as the Secretary determines to be necessary or appropriate.

(g) Wages

For purposes of this section, the term ''wages'' has the meaning given such term by subsection (b) of section 3306 (determined without regard to any dollar limitation contained in such section). Such term shall not include any amount taken into account for purposes of determining any other credit allowed under this subpart.

(h) Election to have credit not apply

(1) In general

A taxpayer may elect to have this section not apply for any taxable year.

(2) Other rules

Rules similar to the rules of paragraphs (2) and (3) of section 51(j) shall apply for purposes of this subsection.

(i) Termination

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

(Added Pub. L. 115–97, title I, § 13403(a)(1), Dec. 22, 2017, 131 Stat. 2135.)

REFERENCES IN TEXT

The Family and Medical Leave Act of 1993 and that Act, referred to in subsecs. (c)(2)(B) and (e)(1), (3), is Pub. L. 103–3, Feb. 5, 1993, 107 Stat. 6. Title I of the Act is classified generally to subchapter I (§ 2611 et seq.) of chapter 28 of Title 29, Labor. Section 102 of the Act is classified to section 2612 of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 29 and Tables.

Section 3(e) of the Fair Labor Standards Act of 1938, referred to in subsec. (d), is classified to section 203(e) of Title 29, Labor.

EFFECTIVE DATE

Section applicable to wages paid in taxable years beginning after Dec. 31, 2017, see section 13403(e) of Pub. L. 115–97, set out as an Effective Date of 2017 Amendment note under section 38 of this title.

SUBPART E—RULES FOR COMPUTING INVESTMENT CREDIT

AMENDMENTS

2010—Pub. L. 111–148, title IX, § 9023(d), Mar. 23, 2010, 124 Stat. 881, added item 48D.

2009—Pub. L. 111–5, div. B, title I, § 1302(c)(2), Feb. 17, 2009, 123 Stat. 348, added item 48C.

2005—Pub. L. 109–58, title XIII, § 1307(c)(2), Aug. 8, 2005, 119 Stat. 1006, added items 48A and 48B.

2004—Pub. L. 108–357, title III, § 322(d)(2)(C), Oct. 22, 2004, 118 Stat. 1475, which directed amendment of item 48 by striking out '', reforestation credit'', was executed by striking out ''; reforestation credit'' after ''Energy credit'' to reflect the probable intent of Congress.

1990—Pub. L. 101–508, title XI, § 11813(a), Nov. 5, 1990, 104 Stat. 1388–536, amended heading and analysis generally, substituting in heading ''Investment Credit'' for ''Credit for Investment in Certain Depreciable Property'', in item 47 ''Rehabilitation Credit'' for ''Certain dispositions, etc., of section 38 property'', in item 48 ''Energy credit; reforestation credit'' for ''Definitions; special rules'', in item 49 ''At-risk rules'' for ''Termination of regular percentage'', and adding item 50.

1986—Pub. L. 99–514, title II, § 211(c), Oct. 22, 1986, 100 Stat. 2168, added item 49.

1984—Pub. L. 98–369, div. A, title IV, § 474(n)(1), July 18, 1984, 98 Stat. 833, substituted ''E'' for ''B'' as subpart designation.

1978—Pub. L. 95–600, title III, § 312(c)(5), Nov. 6, 1978, 92 Stat. 2826, struck out item 49 ''Termination for period beginning April 19, 1969, and ending during 1971'' and item 50 ''Restoration of credit''.

1971—Pub. L. 92–178, title I, § 101(b)(5), Dec. 10, 1971, 85 Stat. 499, substituted ''Termination for period beginning April 19, 1969, and ending during 1971'' for ''Termination of credit'' in item 49 and added item 50.

1969—Pub. L. 91–172, title VII, § 703(d), Dec. 30, 1969, 83 Stat. 667, added item 49.

1962—Pub. L. 87–834, § 2(b), Oct. 16, 1962, 76 Stat. 963, added subpart B.

§ 46. Amount of credit

For purposes of section 38, the amount of the investment credit determined under this section for any taxable year shall be the sum of—

(1) the rehabilitation credit,

(2) the energy credit,

(3) the qualifying advanced coal project credit,

(4) the qualifying gasification project credit,