

Employer Tax Credit for Paid Family & Medical Leave (45S)

A Practical Decision Guide
for Employers



Created by FamTech.org's Policy Strategy Committee, to help employers and their partners move from policy to implementation.

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Why This Credit Matters Now



The Employer Credit for Paid Family and Medical Leave (45S) was originally created as a temporary program, with an uncertain future. In 2025, that changed.

The One, Big, Beautiful Bill Act made the credit permanent and expanded its scope beginning in 2026. This guide helps employers understand the credit and decide whether to move forward.

This credit will not apply to every employer. That's expected, and okay.

The purpose of this guide is to help you figure that out quickly. If the credit is a fit, this guide helps you understand how to proceed. If it isn't, you'll know early and can focus on other options.

Decision Tree: Are You Eligible for the 45S Credit?

How This Decision Guide Works

1. Confirm employer eligibility



2. Determine employee eligibility



3. Confirm paid leave policy eligibility



4. If eligible, estimate credit value
& make data tracking plan

You may exit at any point—that's expected.



Step 1: Employer Eligibility

Evaluate your particular circumstances to determine preliminary eligibility:

1.1 Entity Type

Are you a **for-profit entity** (C-Corp, S-Corp, Partnership, LLC, or Sole Proprietor)?

✓ **Yes:** Continue

✗ **No:** Nonprofits, government, and tribal entities are not eligible, because the credit offsets federal income tax liability only.

1.2 Federal Income Tax Liability

Did you have federal income tax liability in the prior tax year? (see Form 1120, 1120S, 1065, or Schedule C).

✓ **Yes:** continue

✗ **No:** credit cannot be claimed

(Note: the credit is non-refundable but may carry forward.)

Step 2: Employee Eligibility

Determine if you have eligible employees for this tax credit. Do you have at least one qualifying employee who meets all of the following?

- ✓ Employed 6+ months
- ✓ Customarily works 20+ hours per week
- ✓ Earns $\leq 60\%$ of the Highly Compensated Employee (HCE) limit ($\leq \approx \$95K$ in 2025)

✓ **Yes:** continue

✗ **No:** credit value will be limited



Step 3: Paid Leave Policy Eligibility

Determine if your leave policy is eligible.
Employers may claim 45S in one of two ways:

- ✓ **Wage-Based Credit:** For wages paid directly during qualifying PFML.
- ✓ **Premium-Based Credit (new in 2026):** You pay premiums for qualifying PFML or STDI insurance covering eligible employees

➔ Both paths can qualify if standards are met:

3.1 Policy Standards

✓ Eligible if the policy is wage-based or insured:

- ✓ Provides at least 2 weeks of paid family or medical leave (prorated for part-time employees)
- ✓ Replaces at least 50% of regular wages
- ✓ Is written and formally adopted (before the leave is taken)
- ✓ Includes a **non-interference clause** protecting employees not covered by FMLA
- ✓ Is applied uniformly and not discriminated by seniority or role

If any requirement is not met:

✗ Not eligible until the policy is amended

3.2 Qualifying Leave Purposes

✓ Eligible if the leave is for one or more of the FMLA-eligible reasons, including:

- ✓ Birth, adoption, or foster placement of a child
- ✓ Care for a **family member** with a serious health condition
- ✓ Employee's own serious **health condition**
- ✓ Qualifying **military** exigencies

✗ Not eligible if claimed for routine vacation, personal time, or general wellness leave



Step 4: Outcomes

Depending on your eligibility, here are some next steps:

A. Likely Eligible

Next steps:

- Confirm details with your CPA or tax advisor
 - Prepare documentation
 - Estimate credit value
-

B. Not Eligible (Today)

Common reasons include a lack of tax liability or a non-qualifying policy.

Next steps:

- Consider policy updates to alter eligibility in future years
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C. Unclear / Gray Area

Eligibility depends on interpretation, allocation, or documentation.

Next steps:

- Work with tax, legal, and benefits advisors to determine next steps



Step 5: If Eligible, Estimate Credit Value & Make a Data Tracking Plan

Credit Value

Consider these parameters:

- **Base credit:** 12.5% of eligible wages or premiums if 50% wage replacement rate
- **Add 0.25% for each 1% increase** in wage replacement above 50%, up to a maximum 25% credit

% of Normal Pay (Employee)	Credit % (Employer)
50%	12.5%
60%	15%
70%	17.5%
80%	20%
90%	22.5%
100%	25%

Data Tracking

You'll need a certification summary for employers with:

1. % of covered employees who meet eligibility requirements,
2. Replacement rate and duration of benefits,
3. Portion of the coverage that is 45S eligible,
4. Portion of premium paid by employer.

For wages paid directly, be prepared to track similar data, working internally and with relevant partners.

Resources

- For future rule updates: [IRS - Section 45S Employer Credit for Paid Family and Medical Leave \(https://www.irs.gov/newsroom/section-45s-employer-credit-for-paid-family-and-medical-leave-faqs\)](https://www.irs.gov/newsroom/section-45s-employer-credit-for-paid-family-and-medical-leave-faqs)
- For documentation: [IRS Form 8994, Employer Credit for Paid Family and Medical Leave \(irs.gov/forms-pubs/about-form-8994\)](https://www.irs.gov/forms-pubs/about-form-8994)
- For initial guidance: [Employer credit for paid family and medical leave \(www.irs.gov/pub/irs-drop/n-18-71.pdf\)](https://www.irs.gov/pub/irs-drop/n-18-71.pdf)

Connecting the Care Economy



About FamTech.org

FamTech.org is the nation's only tech hub for the Care Economy, fueling scalable solutions for families, caregivers, and the future of work.

Disclaimer

The Treasury is expected to issue additional guidance clarifying intermediary roles, qualified expenses, and documentation expectations.

This guide is for informational purposes only and does not constitute tax, legal, or accounting advice. Employers should consult their professional advisors before filing. Guidance reflects publicly available information as of January 2026.

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