Employer FMLA Tax Credit

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As mentioned in our January 2018 Client Advisory, the Tax Cuts and Jobs Act (the “Act”), signed into law at the end of 2017, contains a temporary employer tax credit, ranging from 12.5 percent to 25 percent, that may be claimed by eligible employers for certain wages paid to qualifying employees during family and medical leave, pursuant to a written policy and subject to certain maximums and other limitations. This advisory explores some of the limitations of the new tax credit, highlighting issues employers should consider pending the issuance of additional guidance explaining and interpreting the Act’s provisions.

Eligibility Requirements. The tax credit is available to eligible employers regardless of whether they are covered by the Family and Medical Leave Act of 1993, as amended (“FMLA”), but to be eligible for the tax credit, employers’ policies must provide FMLA-like protections to their employees. That is, such employers must ensure that the employer will not interfere with the exercise of rights under the policy or discriminate against individuals opposing any practice prohibited by the policy. Furthermore, an employer must provide both full-time and part-time employees a minimum amount of annual paid family and medical leave at a rate not less than 50 percent of regular wages.

Worthwhile? In evaluating whether the potential tax credit is worth complying with the Act’s numerous requirements, employers should consider the costs and benefits of doing so. For example, for employers who pay 100 percent of regular wages during the leave, the credit is subject to a 25 percent cap; employers who pay 50 percent of regular wages are eligible for a 12.5 percent credit. The amount of credit allowed with respect to any employee is also subject to a cap based on such employee’s normal hourly wage rate for each hour of actual service performed for the employer and the number of hours for which family and medical leave is taken. In addition, the credit only applies to wages paid to employees who are employed for at least one year and who earn no more than 60 percent of the highly compensated employee limit for the preceding year (the limit is $120,000 for 2017 and 2018).

To read the full advisory, click here.