Treasury, IRS Issue Guidance for PFML Tax Credit

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On Aug. 5, 2026, the Treasury Department and the IRS issued [Notice 2026-28](), providing guidance on amendments made by the One Big Beautiful Bill Act (OBBBA) to an employer credit in the IRS Code for paid family and medical leave (PFML). The changes have been in effect for taxable years beginning after Dec. 31, 2025.

Background

Section 45S of the Code allows a tax credit for certain employer expenses incurred as a result of providing PFML. Before the OBBBA was passed in July 2025, the credit was scheduled to expire on Dec. 31, 2025. The OBBBA made the credit permanent and extended its coverage to a percentage of any premiums an employer paid for a PFML insurance policy, regardless of whether employees actually took PFML during the tax year. Previously, the credit was available only for a percentage of the wages of employees on PFML. The amendments also allowed the credit for leave taken by employees who have worked for their employer for only six months (down from one year). The OBBBA limited the credit to leave taken by employees who work at least 20 hours per week.

Employers must provide at least two weeks of PFML for the credit to apply. The OBBBA amendments allow employers to count leave provided under state or local mandates toward their eligibility for the credit, but as with the prior version, not toward the credit calculation.

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The new guidance on the amendments is in the form of questions and answers on taking the credit for PFML insurance premiums. Specifically, it addresses the following issues:

- How the premium-based method of determining the credit compares to the wage-based method;
- How to allocate qualifying premiums; and
- How to elect between the premium method and the wage method.

According to the guidance, any portion of a PFML insurance premium that provides funding for leave that would not be eligible for credit under the wage method is not eligible for the credit. In addition, only the portions of premiums paid to cover PFML-qualified employees as defined in the Code qualify for the credit. Employers may allocate a "blended" premium between creditable and noncreditable portions by any reasonable method consistent with the policy terms and supported by contemporaneous records.

Upcoming Regulations

The notice states that the Treasury Department and the IRS intend to incorporate the guidance into proposed regulations, but that taxpayers may rely on the notice before the proposed regulations are issued. Comments are requested on topics covered in the notice by Oct. 16, 2026.