



The PFML tax credit: What Notice 2026-28 clarifies

**A concise guide to eligibility, calculation,
and premium allocation**



The permanent expansion of Internal Revenue Code Section 45S gives eligible employers a new way to evaluate the economics of paid family and medical leave. Beginning in 2026, the credit may be based on qualifying wages or qualifying insurance premiums.

Executive takeaway

The credit can help employers revisit paid leave, disability, and absence strategy. Notice 2026-28 provides important rules for the premium method, but employers still need advisor review, careful allocation, and documentation.



The tax credit, in brief

Section 45S provides eligible employers a federal general business tax credit for qualifying paid family and medical leave. The One Big Beautiful Bill Act made the credit permanent and, beginning in 2026, added a premium-based method alongside the original wage-based method.¹

The credit starts at 12.5% for a qualifying plan that replaces 50% of employee wages. It increases by 0.25 percentage points for each additional percentage point of wage replacement, up to a maximum credit of 25%.

Core plan requirements

- An employer's policy must provide at least two weeks of annual paid family and medical leave to qualifying full-time employees, and is prorated for qualifying part-time employees.
- The benefit must replace at least 50% of normal wages.
- Leave must be provided for qualifying FMLA reasons, including an employee's serious health condition, family caregiving, bonding following birth or placement, and qualifying military-related leave.
- Only qualifying employees and qualifying employer-paid wages or premiums may support the credit.



Why employers should care

The premium method may create a credit opportunity even when no employee takes leave during the year. It also gives employers another way to compare self-funded leave, insured coverage, cost predictability, and employee support.

What changed, and what Notice 2026-28 clarifies

Employee eligibility

The updated statute permits an employer to elect a six-month service threshold instead of one year. Qualifying employees must customarily work at least 20 hours per week. The prior-year compensation ceiling remains an existing eligibility requirement rather than a new Notice 2026-28 rule.

Wage and premium methods

Employers may use the wage method for qualifying self-funded leave and the premium method for qualifying insured coverage. Both may be used in the same year, including for separately funded portions of a benefit, but not for the same instance of leave.

Creditable coverage

A premium is creditable only to the extent it funds a benefit that would qualify under the wage method. Premiums funding non-FMLA leave, nonqualifying employees, mandated state or local benefits, or benefits that would not replace wages under Section 3306(b) are noncreditable.

State mandates and excess coverage

State- or local mandated leave may count toward satisfying the plan's eligibility requirements, but mandated benefits are excluded from the credit calculation. A blended premium may be allocated to identify potentially creditable coverage provided in excess of the mandate.



Forthcoming guidance

Treasury and the IRS intend to incorporate Notice 2026-28 into proposed regulations. Employers may rely on the notice for taxable years beginning after December 31, 2025, and before proposed regulations are issued. External claims should be revisited as additional guidance is published.

Fully insured group coverage that provides PFML under Section 45S

The following is a list of group fully insured group plans that could be eligible for the premium tax credit. This list provides only examples of such plans, and is not intended to be comprehensive:

- Non-contributory (employer paid) group STD
- Non-contributory (employer paid) group STD with a paid leave rider
- Stand-alone group paid leave policies
- Contributory (cost share) group STD (with or without a paid leave rider).
Note: credit would only apply to the employer-paid premium.
- Private plans for state PFML or state-mandated disability — the tax credit would only be available for the employer-paid share of premium that provides benefits in excess of the benefits required by state or local law.





How premium allocation works

When one premium funds both creditable and noncreditable coverage, Notice 2026-28 permits the employer to allocate the premium using a reasonable method. The method must:

- Be consistent with the insurance policy terms.
- Use objective criteria.
- Be supported by contemporaneous records.
- Be applied consistently for the taxable year.

Factors relevant to both premium and wage methods

Employee eligibility, FMLA leave reasons, wage replacement, state and local mandates, method selection, employer-paid amounts, and documentation should be evaluated under either method. The premium method additionally requires analysis of creditable coverage and any allocation of blended premiums.



Example: state-mandated and excess benefits

If one policy funds both a state-required benefit and an employer-sponsored benefit above the state requirement, the state-required portion is noncreditable. The employer may use a reasonable, documented allocation to identify the premium attributable to excess coverage and then evaluate that portion under the remaining Section 45S requirements.



Employer decision

Employers should compare the two methods using their actual plan terms, workforce, funding arrangement, utilization, and documentation capabilities. The decision is not only which method produces the larger estimated credit, but which method is supportable under the employer's facts and advisor-reviewed tax position.

A practical calculation example

Illustrative input	Amount
Employer-paid qualifying premium	\$27,000
Wage replacement rate	60%
Applicable credit rate	15%
Illustrative Section 45S credit	\$4,050

Calculation caveat

Only the employer-paid premium attributable to creditable coverage enters the premium-method calculation. If the policy funds noncreditable coverage, the premium base must first be reasonably allocated. Employers should also review how claiming the credit affects any otherwise available business deduction.

Wage method: Qualifying leave wages × applicable credit rate = estimated credit.

Premium method: Employer-paid premiums attributable to creditable coverage × applicable credit rate = estimated credit.



Guardian highlights	Potential for Section 45S Credit
Fully insured paid leave solution integrated with short term disability coverage.	Beginning in 2026, the premium-based tax credit method may create a credit opportunity for employers offering qualifying insured paid leave coverage.
Flexible plan design with 20%-100% wage replacement and 2-26 week leave durations.	Helps employers design benefits that align with key requirements, like minimum leave duration and wage replacement thresholds.
Coverage for parental/bonding and family care leave.	Provides coverage for a range of family and medical leave situations, including bonding, caregiving, and certain military-related leave events.

1 One Big Beautiful Bill Act (H.R. 1, 119th Congress), Congress.gov, <https://www.congress.gov/bill/119th-congress/house-bill/1/text>

Unless otherwise noted, all stats come from PFML TaxCredit: Notice 2026-28 - <https://www.irs.gov/pub/irs-drop/n-26-28.pdf>

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