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TaxNewsFlash

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Notice 2026-28: Guidance on employer credit for paid family and medical leave under section 45S

The IRS today released **Notice 2026-28**, providing guidance on new requirements for the employer credit for paid family and medical leave (PFML) under section 45S, following amendments made by Pub. L. No. 119-21 (the "One Big Beautiful Bill Act" (OBBBA)).

As explained in the related IRS release—**IR-2026-86**—the OBBBA makes permanent and expands eligibility and coverage for employers offering PFML benefits to employees.

- **Expanded eligibility**: Employers can claim the credit for employees with six months of service and for part-time employees customarily working 20 hours or more per week.
- **Expanded coverage**: Employers can claim the credit for insurance premiums to provide leave, or wages paid during leave.
- **State and local mandates**: Employers can count leave provided under state or local mandates toward the eligibility for this federal tax credit, but not toward the credit calculation.

Notice 2026-28 addresses how the premium-based method compares to the wage-based method, how to allocate the qualifying premiums, and how to elect between the premium method and the wage method.

The notice states that the Treasury Department and IRS intend to issue proposed regulations consistent with the guidance and that the forthcoming proposed regulations will also address other issues and will apply prospectively to wages and insurance premiums paid or incurred after issuance of the final regulations. However, taxpayers may rely on the guidance contained in the notice for tax years beginning after December 31, 2025.

Comments on the notice are requested by October 16, 2026.

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