

115TH CONGRESS
1ST SESSION

S. 1716

To amend the Internal Revenue Code of 1986 to provide a credit to employers who provide paid family and medical leave, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 2, 2017

Mrs. FISCHER (for herself and Mr. KING) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide a credit to employers who provide paid family and medical leave, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Strong Families Act”.

5 **SEC. 2. EMPLOYER CREDIT FOR PAID FAMILY AND MED-**
6 **ICAL LEAVE.**

7 (a) IN GENERAL.—

8 (1) ALLOWANCE OF CREDIT.—Subpart D of
9 part IV of subchapter A of chapter 1 of the Internal

1 Revenue Code of 1986 is amended by adding at the
2 end the following new section:

3 **“SEC. 45S. EMPLOYER CREDIT FOR PAID FAMILY AND MED-**
4 **ICAL LEAVE.**

5 “(a) ESTABLISHMENT OF CREDIT.—

6 “(1) IN GENERAL.—For purposes of section 38,
7 in the case of an eligible employer, the paid family
8 and medical leave credit is an amount equal to the
9 applicable percentage of the amount of wages paid
10 to qualifying employees during any period in which
11 such employees are on family and medical leave.

12 “(2) APPLICABLE PERCENTAGE.—For purposes
13 of paragraph (1), the term ‘applicable percentage’
14 means 12.5 percent increased (but not above 25 per-
15 cent) by 0.25 percentage points for each percentage
16 point by which the rate of payment (as described
17 under subsection (c)(1)(B)) exceeds 50 percent.

18 “(b) LIMITATION.—

19 “(1) IN GENERAL.—The credit allowed under
20 subsection (a) with respect to any employee for any
21 taxable year shall not exceed an amount equal to the
22 product of the normal hourly wage rate of such em-
23 ployee for each hour (or fraction thereof) of actual
24 services performed for the employer and the number

1 of hours (or fraction thereof) for which family and
2 medical leave is taken.

3 “(2) NON-HOURLY WAGE RATE.—For purposes
4 of paragraph (1), in the case of any employee who
5 is not paid on an hourly wage rate, the wages of
6 such employee shall be prorated to an hourly wage
7 rate under regulations established by the Secretary,
8 in consultation with the Secretary of Labor.

9 “(3) MAXIMUM AMOUNT OF LEAVE SUBJECT TO
10 CREDIT.—The amount of family and medical leave
11 that may be taken into account with respect to any
12 employee under subsection (a) for any taxable year
13 shall not exceed 12 weeks.

14 “(c) ELIGIBLE EMPLOYER.—For purposes of this
15 section—

16 “(1) IN GENERAL.—The term ‘eligible em-
17 ployer’ means any employer who has in place a pol-
18 icy that meets the following requirements:

19 “(A) The policy provides—

20 “(i) in the case of a qualifying em-
21 ployee who is not a part-time employee (as
22 defined in section 4980E(d)(4)(B)), not
23 less than 2 weeks of annual paid family
24 and medical leave, and

1 “(ii) in the case of a qualifying em-
 2 ployee who is a part-time employee, an
 3 amount of annual paid family and medical
 4 leave that is not less than an amount
 5 which bears the same ratio to the amount
 6 of annual paid family and medical leave
 7 that is provided to a qualifying employee
 8 described in clause (i) as—

9 “(I) the number of hours the em-
 10 ployee is expected to work during any
 11 week, bears to

12 “(II) the number of hours an
 13 equivalent qualifying employee de-
 14 scribed in clause (i) is expected to
 15 work during the week.

16 “(B) The policy requires that the rate of
 17 payment under the program is not less than 50
 18 percent of the wages normally paid to such em-
 19 ployee for services performed for the employer.

20 “(2) SPECIAL RULE FOR CERTAIN EMPLOY-
 21 ERS.—

22 “(A) IN GENERAL.—An added employer
 23 shall not be treated as an eligible employer un-
 24 less such employer provides paid family and

1 medical leave in compliance with a policy which
2 ensures that the employer—

3 “(i) will not interfere with, restrain,
4 or deny the exercise of or the attempt to
5 exercise, any right provided under the pol-
6 icy, and

7 “(ii) will not discharge or in any other
8 manner discriminate against any individual
9 for opposing any practice prohibited by the
10 policy.

11 “(B) ADDED EMPLOYER; ADDED EM-
12 PLOYEE.—For purposes of this paragraph—

13 “(i) ADDED EMPLOYEE.—The term
14 ‘added employee’ means a qualifying em-
15 ployee who is not covered by title I of the
16 Family and Medical Leave Act of 1993, as
17 amended.

18 “(ii) ADDED EMPLOYER.—The term
19 ‘added employer’ means an eligible em-
20 ployer (determined without regard to this
21 paragraph), whether or not covered by that
22 title I, who offers paid family and medical
23 leave to added employees.

24 “(3) AGGREGATION RULE.—All persons which
25 are treated as a single employer under subsections

1 (a) and (b) of section 52 shall be treated as a single
2 taxpayer.

3 “(4) TREATMENT OF BENEFITS MANDATED OR
4 PAID FOR BY STATE OR LOCAL GOVERNMENTS.—For
5 purposes of this section, any leave which is paid by
6 a State or local government or required by State or
7 local law shall not be taken into account in deter-
8 mining the amount of paid family and medical leave
9 provided by the employer.

10 “(5) NO INFERENCE.—Nothing in this sub-
11 section shall be construed as subjecting an employer
12 to any penalty, liability, or other consequence (other
13 than ineligibility for the credit allowed by reason of
14 subsection (a) or recapturing the benefit of such
15 credit) for failure to comply with the requirements
16 of this subsection.

17 “(d) QUALIFYING EMPLOYEES.—For purposes of
18 this section, the term ‘qualifying employee’ means any em-
19 ployee (as defined in section 3(e) of the Fair Labor Stand-
20 ards Act of 1938, as amended) who—

21 “(1) has been employed by the employer for 1
22 year or more, and

23 “(2) for the preceding year, had compensation
24 not in excess of an amount equal to 60 percent of

1 the amount applicable for such year under clause (i)
2 of section 414(q)(1)(B).

3 “(e) FAMILY AND MEDICAL LEAVE.—

4 “(1) IN GENERAL.—Except as provided in para-
5 graph (2), for purposes of this section, the term
6 ‘family and medical leave’ means leave for any 1 or
7 more of the purposes described under subparagraph
8 (A), (B), (C), (D), or (E) of paragraph (1), or para-
9 graph (3), of section 102(a) of the Family and Med-
10 ical Leave Act of 1993, as amended, whether the
11 leave is provided under that Act or by a policy of the
12 employer.

13 “(2) EXCLUSION.—If an employer provides paid
14 leave as vacation leave, personal leave, or medical or
15 sick leave (other than leave specifically for 1 or more
16 of the purposes referred to in paragraph (1)), that
17 paid leave shall not be considered to be family and
18 medical leave under paragraph (1).

19 “(3) DEFINITIONS.—In this subsection, the
20 terms ‘vacation leave’, ‘personal leave’, and ‘medical
21 or sick leave’ mean those 3 types of leave, within the
22 meaning of section 102(d)(2) of that Act.

23 “(f) WAGES.—For purposes of this section, the term
24 ‘wages’ has the meaning given such term by subsection
25 (b) of section 3306 (determined without regard to any dol-

1 lar limitation contained in such section). Such term shall
2 not include any amount taken into account for purposes
3 of determining any other credit allowed under this sub-
4 part.

5 “(g) ELECTION TO HAVE CREDIT NOT APPLY.—

6 “(1) IN GENERAL.—A taxpayer may elect to
7 have this section not apply for any taxable year.

8 “(2) OTHER RULES.—Rules similar to the rules
9 of paragraphs (2) and (3) of section 51(j) shall
10 apply for purposes of this subsection.

11 “(h) TERMINATION.—This section shall not apply to
12 wages paid in any taxable year beginning after the date
13 which is 5 years after the date of the enactment of the
14 Strong Families Act.”.

15 (b) CREDIT PART OF GENERAL BUSINESS CREDIT.—
16 Section 38(b) of the Internal Revenue Code of 1986 is
17 amended by striking “plus” at the end of paragraph (35),
18 by striking the period at the end of paragraph (36) and
19 inserting “, plus”, and by adding at the end the following
20 new paragraph:

21 “(37) in the case of an eligible employer (as de-
22 fined in section 45S(c)), the paid family and medical
23 leave credit determined under section 45S(a).”.

24 (c) CREDIT ALLOWED AGAINST AMT.—Subpara-
25 graph (B) of section 38(c)(4) of the Internal Revenue

1 Code of 1986 is amended by redesignating clauses (vii)
 2 through (ix) as clauses (vii) through (x), respectively, and
 3 by inserting after clause (vi) the following new clause:

4 “(vii) the credit determined under sec-
 5 tion 45S,”.

6 (d) CONFORMING AMENDMENTS.—

7 (1) DENIAL OF DOUBLE BENEFIT.—Section
 8 280C(a) of the Internal Revenue Code of 1986 is
 9 amended by inserting “45S(a),” after “45P(a),”.

10 (2) ELECTION TO HAVE CREDIT NOT APPLY.—
 11 Section 6501(m) of such Code is amended by insert-
 12 ing “45S(g),” after “45H(g),”.

13 (3) CLERICAL AMENDMENT.—The table of sec-
 14 tions for subpart D of part IV of subchapter A of
 15 chapter 1 of such Code is amended by adding at the
 16 end the following new item:

“Sec. 45S. Employer credit for paid family and medical leave.”.

17 (e) EFFECTIVE DATE.—The amendments made by
 18 this section shall apply to wages paid in taxable years be-
 19 ginning after the date of the enactment of this Act.

20 **SEC. 3. GAO STUDY OF IMPACT OF TAX CREDIT TO PRO-**
 21 **MOTE ACCESS TO PAID FAMILY AND MED-**
 22 **ICAL LEAVE.**

23 (a) STUDY.—Not later than 4 years after the date
 24 of enactment of this Act, the Comptroller General of the

1 United States, in consultation with the Secretary of the
2 Treasury and the Secretary of Labor, shall—

3 (1) complete a study that—

4 (A) examines the effectiveness of the tax
5 credit for paid family and medical leave author-
6 ized under section 45S of the Internal Revenue
7 Code of 1986 (as added by this Act) in terms
8 of—

9 (i) increasing access to paid family
10 and medical leave among qualifying em-
11 ployees;

12 (ii) promoting the creation of new
13 paid family and medical leave policies
14 among eligible employers;

15 (iii) increasing the generosity of exist-
16 ing paid family and medical leave policies
17 among eligible employers; and

18 (iv) incentivizing employee or em-
19 ployer behavior that might not otherwise
20 have occurred in the absence of the credit;

21 (B) provides recommendations for ways to
22 modify or enhance the tax credit to further pro-
23 mote access to paid family and medical leave
24 for qualifying employees; and

1 (C) provides suggestions of alternative
2 policies that Federal and State governments
3 could implement to increase access to paid fam-
4 ily and medical leave, particularly among quali-
5 fying employees; and

6 (2) prepare and submit a report to the Com-
7 mittee on Finance of the Senate and the Committee
8 on Ways and Means of the House of Representatives
9 setting forth the conclusions of the study conducted
10 under paragraph (1) in such a manner that the rec-
11 ommendations included in the report can inform fu-
12 ture legislative action. Such report shall also be
13 made publicly available via the website of the Gov-
14 ernment Accountability Office.

15 (b) PROHIBITION.—In carrying out the requirements
16 of this section, the Comptroller General of the United
17 States may request qualitative and quantitative informa-
18 tion from employers and employees claiming the credit
19 under section 45S of the Internal Revenue Code of 1986,
20 but nothing in this section shall be construed as man-
21 dating additional reporting requirements for such employ-
22 ers or employees beyond what is already required by law.

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