

May 2018

# HR News & Best Practices

## FAQs on Paid Family and Medical Leave Tax Credit Released

The Internal Revenue Service has released FAQs on the Paid Family and Medical Leave Tax Credit, which certain employers can soon claim based on wages paid to employees on family and medical leave. The tax credit is effective for tax years 2018 and 2019.

Among other questions, the FAQs answer:

- Which employers can claim the credit;
- How the credit is calculated; and
- How the credit impacts an employer's tax deduction for wages paid.

[Click here](#) to read the FAQs.

Check out our [Employer Tax Laws](#) section for more information regarding an employer's tax responsibilities.

## DOL Clarifies Federal Law on Tip Pooling

The U.S. Department of Labor (DOL) has released guidance clarifying federal law on tip pooling. The guidance was issued in response to a federal law that amended the federal Fair Labor Standards Act's (FLSA) tip pooling rules. The DOL guidance states that:

- Employers are **prohibited** from keeping tips received by their employees, regardless of whether the employer takes a tip credit against the minimum wage for its employees.
- Federal regulations **no longer prohibit** tip pooling when employers pay tipped employees at least the full federal minimum wage and do not claim a tip credit.
- Employers who pay at least the full federal minimum wage are **no longer prohibited** from allowing employees who are not customarily and regularly tipped—such as cooks and dishwashers—to participate in tip pools. **However, managers and supervisors are prohibited from participating in tip pools.**

Employers should remember that some states have different rules concerning tip pools and tip credits. When there are differences between state and federal laws in this area, the law more favorable to the employee generally applies.

[Click here](#) to read the DOL guidance.



### *In This Issue...*

*Are Summer Interns Subject to Minimum Wage & Overtime Pay Laws?*

*Small Businesses May Be Able to Keep Existing Health Coverage Through 2019*

*Tips for Hiring New Graduates*

*The HR Resource Every Business Needs*



For more information on the legal requirements related to tip credits, visit our [Tip Credit Rules](#) section.

# Are Summer Interns Subject to Minimum Wage & Overtime Pay Laws?

While the federal Fair Labor Standards Act (FLSA) requires for-profit employers to pay "employees" for their work, interns and students may not be employees under the FLSA. The U.S. Department of Labor (DOL) and many courts use the "primary beneficiary" test to determine whether an intern or student is, in fact, an employee under the FLSA. This test examines the "economic reality" of the intern-employer relationship to determine which party is the "primary beneficiary" of the relationship. The following seven factors are included in the test:

1. The extent to which the intern and the employer clearly understand that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee—and vice versa.
2. The extent to which the internship provides training that would be similar to that which would be given in an educational environment, including the clinical and other hands-on training provided by educational institutions.
3. The extent to which the internship is tied to the intern's formal education program by integrated coursework or the receipt of academic credit.
4. The extent to which the internship accommodates the intern's academic commitments by corresponding to the academic calendar.
5. The extent to which the internship's duration is limited to the period in which the internship provides the intern with beneficial learning.
6. The extent to which the intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.
7. The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

The primary beneficiary test is flexible, and no single factor is determinative. Instead, whether an intern or student is an employee under the FLSA depends on the unique circumstances of each case. **If analysis of these circumstances reveals that an intern or student is actually an employee, then he or she is entitled to both minimum wage and overtime pay under the FLSA.**

# Small Businesses May Be Able to Keep Existing Health Coverage Through 2019

A previously extended transitional policy that permits health insurance issuers to continue group coverage that would otherwise be terminated or cancelled due to the Affordable Care Act (ACA) has been **further extended to policy years beginning on or before October 1, 2019, provided that all policies end by December 31, 2019.** Health insurance issuers that renew coverage under the extended transitional policy are required to provide standard notices to affected small businesses for each policy year.

Policies subject to the transitional relief will not be considered to be out of compliance with key ACA provisions, including:

- The requirement to cover a core package of items and services known as essential health benefits;
- The requirement that any variations in premiums be limited with regard to a particular plan or coverage to age, tobacco use, family size, and geography; and
- The requirements regarding guaranteed availability and renewability of coverage.



[Click here](#) for more information from the DOL.

Check out our [Employee Pay Rules](#) section to learn more about federal rules regulating employee pay.



[Click here](#) to review the extended transitional policy.

Visit our [ACA by Year & Company Size](#) section for an overview of other ACA requirements.

[Click here](#) for information about nondiscrimination and classing rules for Section 125 Premium-Only-Plan and flex plans.

## Tips for Hiring New Graduates

At colleges across the country, the Class of 2018 is graduating. Thinking of staffing up your business by hiring a new college graduate? Learn some tips on how to prepare these hires for your workplace by watching the video below.



For more hiring best practices, visit our [Recruitment & Hiring](#) section.

## The HR Resource Every Business Needs

Whether you have 5 employees or 500, HR360 provides easy-to-understand guidelines that will help you remain compliant. With HR360, you'll find easy, step-by-step guidance on how to comply with a broad range of laws, from Health Care Reform, COBRA, and FMLA to how to interview, hire, and terminate employees. [Click here to learn more!](#)



Marshall & Sterling Insurance will continue to provide you with updates and information regarding important issues. Should you have specific questions or need more information, please contact us.

**Cindy Nichtberger**  
**Human Resources Services Specialist**  
**914-962-1188, x2482**  
[cnichtberger@marshallsterling.com](mailto:cnichtberger@marshallsterling.com)



Please Note: The information and materials herein are provided for general information purposes only and are not intended to constitute legal, tax, or other advice or opinions on any specific matters and are not intended to replace the advice of a qualified attorney, plan provider or other professional advisor. This information has been taken from sources which we believe to be reliable, but there is no guarantee as to its accuracy. In accordance with IRS Circular 230, this communication is not intended or written to be used, and cannot be used as or considered a 'covered opinion' or other written tax advice and should not be relied upon for any purpose other than its intended purpose. The information provided herein is intended solely for the use of our clients and members. You may not display, reproduce, copy, modify, license, sell or disseminate in any manner any information included herein, without the express permission of the Publisher. Kindly read our Terms of Use and respect our Copyright. © 2018 HR 360, Inc. - All rights reserved.

***Our People Are Your Best Insurance***

[www.marshallsterling.com/group-benefits](http://www.marshallsterling.com/group-benefits)

**866-573-4768**