

# Employer Paid Leave Tax Credits Will Not Close Gaps in Access to Paid Leave: Why the 45S Tax Credit Should Expire

FEBRUARY 2025

Since it was enacted as part of the Tax Cuts and Jobs Act (TCJA) of 2017, the 45S paid leave tax credit for employers has done little to increase working people's access to paid family and medical leave. The 45S tax provision offers small tax credits to employers who voluntarily offer paid family and medical leave to certain employees, but has done nothing to put paid leave within reach for the millions of working people who have not won the "boss lottery."

Employer tax credits have not led to widespread changes in business practices and policies, leaving the supports that working families and the nation's economy need out of reach. Further, tax credits exacerbate the competitive disadvantage that smaller and mid-size businesses face in the absence of a national paid leave program by focusing the tax benefits on employers that already have the ability to offer paid leave.

Just 27 percent of workers in the United States have access to paid family leave at their jobs and only 43 percent have personal medical leave through employer-provided short-term disability insurance.<sup>1</sup> The country needs to invest in working people, families, businesses and the economy by creating a real national paid family and medical leave standard – one that is inclusive and affordable for all working people and businesses of all sizes.

## What Is Wrong With the 45S Tax Credit?

The 45S tax credit is a provision that was originally enacted as part of the Tax Cuts and Jobs Act (TCJA) of 2017 and will sunset on December 31, 2025.<sup>2</sup> It allows employers that provide paid leave to claim small credits on their tax returns for the wages paid to select employees during family or medical leave. There have been proposals to expand this tax credit and make it permanent, such as the [Paid Family and Medical Leave Tax Credit Extension and Enhancement Act](#), but these proposals would not address the underlying flaws of 45S.

Many companies want to be able to ensure their employees have access to paid leave, but the 45S tax credit does not offer a workable solution. In an Ernst & Young (EY) survey, fewer than 40 percent of employers, and just 35 percent of companies with fewer than 100 employees, said tax credits would influence their decision about whether to offer paid leave.<sup>3</sup>

Since the 45S tax credit was enacted, only the companies that could already afford to pay leave benefits out-of-pocket have been able to do so. This results in taxpayer dollars being spent on large companies who are already providing these benefits, and a continued precarious financial situation for everyone else whose employers are not already offering paid leave.

Key elements of 45S that prevent it from achieving broad leave access include:

- **Does nothing to help make leave more affordable for employers to offer.** A recent survey found eight in 10 small business owners would like to offer more paid family and medical leave than they can currently afford.<sup>4</sup> Years after 45S went into effect, it's clear the tax credit does nothing to help with affordability. That's because the 45S tax credit requires employers to make substantial out-of-pocket expenditures when employees take leave. In exchange, employers receive a small amount of tax relief that would not be available to them until they receive their year-end tax returns. Employers can receive a scaled tax credit between 12.5 and 25 percent of the cost of employee's wages while those employees are on leave, and based on the percentage of their employees' salary that they pay while on leave. This means employers could shoulder as much as 87.5 percent of the cost of an employee's paid leave.
- **Does nothing to help make leave more affordable for employees to take.** Under 45S, employers can receive a tax credit for offering employees as little as 50 percent of their wages during leave. This is far too low to meet workers' needs. Research shows that lower- and middle-wage workers often face adverse financial effects when they do not receive adequate wage replacement. State paid family leave experiences suggest that anything less than two-thirds of an employee's wages is not an adequate level of wage replacement, especially for workers whose typical wages are low.<sup>5</sup>
- **Sets a low bar for the amount of leave necessary to qualify for a credit – and doesn't account for the amount of time workers may actually need to provide care.** An employer's policy could provide as little as two weeks of paid leave to make them eligible for a credit, which is much less than the 12-week leave standard established by the nation's unpaid federal leave law – the Family and Medical Leave Act (FMLA) – and doesn't meet workers' needs. For example, the American Association of Pediatrics recommends at least 12 weeks of paid leave to support

maternal and infant health – including supporting breastfeeding and reducing the likelihood of postpartum depression – and knowledgeable and involved parenting by mothers and fathers.<sup>6</sup> For a parent of a child with leukemia, the average hospital stay for their child lasts 12 to 34 days, depending on type,<sup>7</sup> and a child with pediatric cancer may have three to six stays per year.<sup>8</sup>

- **Employers’ policies could address as few as just one of the reasons people need leave.** An employer could receive a tax credit even if its policy is to provide paid leave for just one of the family and medical reasons people qualify for under the FMLA, parental leave, family care leave, personal medical leave, military caregiving leave or military deployment leave. Skimpy policies that cover just a few, rather than all these reasons, could exclude older workers, workers caring for seriously ill or injured family members or workers with serious health needs.
- **Credits don’t apply to wages paid to all workers.** Employers can only receive credits for wages paid to employees with compensation in the prior year that was at or below 60 percent of the compensation threshold for “highly compensated employees” under the Internal Revenue Code. In 2025, that means employers only receive a credit for the paid leave they provide to employees paid \$96,000 or less.<sup>9</sup>
- **Credits don’t boost access to paid leave for low-income workers.** Workers who are currently without paid leave have not gained it through the 45S tax credit. In particular, the lower-wage workers this credit suggests it targets – disproportionately women and people of color<sup>10</sup> – have not seen meaningful changes to employers’ policies as a result of the proposal. Notably, since 2017 paid family leave access among the lowest-paid ten percent of workers has hardly changed, increasing from 4 percent to just 6 percent in 2023, while access for the highest-paid ten percent of workers – largely outside the scope of 45S – has increased from 26 to 48 percent.<sup>11</sup>
- **Fails to support self-employed and contingent workers who face serious health or caregiving needs.** A significant share of working people are self-employed or working on a temporary or contract basis.<sup>12</sup> The tax credit provides no income support to a self-employed or contingent worker who needs to take time away from work for a serious health condition or family caregiving.

## **Employer Tax Credits Do Not Offer Meaningful Incentives and Result in Corporate Giveaways**

- **The 45S tax credit exacerbates the uneven playing field among companies.** The credit offers tax breaks to larger companies that can afford or already provide paid leave while leaving paid leave out of reach for smaller companies and those that have thinner margins or variable cash flows. Data reported by the Treasury Department indicates that firms with more than \$1 billion in revenue have claimed

nearly 90 percent of dollars claimed under 45S.<sup>13</sup> Even though 45S has been available since 2018, only one in five employees of small employers has access to paid family leave.<sup>14</sup>

- **Small business owners would prefer to replace 45S with a guaranteed family and medical leave insurance program.** In a recent survey, when presented with a description of 45S, just 16 percent of small business owners wanted to keep the current tax credit as their only federal support for providing leave.<sup>15</sup>

## **State Paid Leave Programs Do More for Employer and Employee Affordability Than 45S**

For both employees and employers, a state paid leave program such as Colorado's provides a more secure benefit to employees at a more predictable and affordable cost to employers. Take for example a new mother, working full-time at Colorado's minimum wage (\$14.81 per hour), who needs 12 weeks of paid leave to recover from birth and care for her infant.

- Under 45S, if her employer opts to provide 12 weeks at the minimum required benefit, she would receive just \$296 per week (or \$7.40 an hour) – 50 percent of her usual pay. Her employer would have to pay \$3,554 up front, and would receive \$444 months later at tax time, with a net cost to the employer of \$3,110.
- Under Colorado Family and Medical Leave Insurance, she would be guaranteed 12 weeks of parental leave and would receive \$533 per week (or \$13.33 an hour) – 90 percent of her usual pay.<sup>16</sup> Because the leave benefit would be paid out of the state fund, the employer would not pay anything up front. The employer's net annual cost would be \$139 in payroll contributions (which are deductible as a business expense) – or \$0 for employers with fewer than 10 employees.

## **America's Need for Paid Leave is Best Addressed Through a Real, Inclusive Policy**

Working families' financial challenges often grow when serious family and medical needs arise and paid leave is not available. Among workers in households with incomes below \$75,000 per year who took leave with partial or no pay, more than half reported dipping into savings set aside for another purpose, about four in 10 reported taking on debt and/or putting off paying bills, and more than one-fifth reported needing to use public assistance.<sup>17</sup> All working people deserve the security of paid leave for serious personal and family health issues.

Paid leave employer tax credits exacerbate the status quo, in which children suffer, working people are hurt and smaller and low-margin companies can't compete. In contrast, a meaningful, inclusive plan – a real national paid leave plan that applies to all employers and covers all working people no matter where they live or work or their jobs – would offer personal, family and business security that would truly create stronger families, a stronger workforce and a stronger economy. Seventy-nine percent of small business owners support the creation of a national paid family and medical leave program.<sup>18</sup>

Learn more about paid leave and the need for a strong national policy at [NationalPartnership.org/PaidLeave](https://NationalPartnership.org/PaidLeave).

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<sup>1</sup> The most recent available data for paid family leave is from 2023. U.S. Bureau of Labor Statistics. (2023, September). *National Compensation Survey: Employee Benefits in the United States, March 2023*. (See Excel tables, Civilian workers, Leave). Retrieved 12 February 2025, from <https://www.bls.gov/ebs/publications/annual-benefits-summary.htm>; U.S. Bureau of Labor Statistics. (2024, September). *National Compensation Survey: Employee Benefits in the United States, March 2024*. (See Excel tables, Civilian workers, Short-term disability). Retrieved 12 February 2025, from <https://www.bls.gov/ebs/publications/annual-benefits-summary.htm>

<sup>2</sup> Congressional Research Service. (2023, February 27). *Employer Tax Credit for Paid Family and Medical Leave*. Retrieved 12 February 2025, from <https://crsreports.congress.gov/product/pdf/IF/IF11141>

<sup>3</sup> Ernst & Young. (2017, March). *Viewpoints on paid family and medical leave: Findings from a survey of US employers and employees*. Retrieved 10 February 2025, from Internet Archive:

[https://web.archive.org/web/20181215091302/http://www.ey.com/Publication/vwLUAssets/EY-viewpoints-on-paid-family-and-medical-leave/\\$FILE/EY-viewpoints-on-paid-family-and-medical-leave.pdf](https://web.archive.org/web/20181215091302/http://www.ey.com/Publication/vwLUAssets/EY-viewpoints-on-paid-family-and-medical-leave/$FILE/EY-viewpoints-on-paid-family-and-medical-leave.pdf)

<sup>4</sup> Small Business Majority and National Partnership for Women & Families. (2024, October). *Small Businesses Support a National Paid Family and Medical Leave Program*. Retrieved 12 February 2025, from <https://nationalpartnership.org/report/small-businesses-support-national-paid-family-medical-leave-program/>

<sup>5</sup> Schumacher, K. (2022, February). *Paid Family Leave Payments Don't Add Up for California Workers*. California Budget & Policy Center Publication. Retrieved 12 February 2025, from <https://calbudgetcenter.org/resources/paid-family-leave-program-is-out-of-reach-for-many-californians/>; WORLD Policy Analysis Center, UCLA Fielding School of Public Health. (2018, February). *A Review of the Evidence on Payment and Financing of Family and Medical Leave*. Retrieved 12 February 2025, from

[https://www.worldpolicycenter.org/sites/default/files/WORLD%20Brief%20-%20Payment%20and%20Financing%20of%20Paid%20Family%20and%20Medical%20Leave\\_0.pdf](https://www.worldpolicycenter.org/sites/default/files/WORLD%20Brief%20-%20Payment%20and%20Financing%20of%20Paid%20Family%20and%20Medical%20Leave_0.pdf); National Partnership for Women & Families. (2018, July). *Meeting the Promise of Paid Leave: Best Practices in State Paid Leave Implementation*. Retrieved 12 February 2025, from <https://nationalpartnership.org/wp-content/uploads/2023/02/meeting-the-promise-of-paid-leave.pdf>; Setty, S., Skinner, C., & Wilson-Simmons, R. (2016, March 1). *Protecting Workers, Nurturing Families: Building an Inclusive Family Leave Insurance Program: Findings and Recommendations from the New Jersey Parenting Project*. National Center for Children in Poverty Publication. Retrieved 12 February 2025, from <https://www.nccp.org/publication/protecting-workers-nurturing-families/>

<sup>6</sup> Dammann, C. E. L., Montez, K., Mathyur, M., Alterman, S. L., & Bunik, M. (2024, October 28). Paid Family and Medical Leave: Policy Statement. *Pediatrics*, 154(5), e2024068958. doi: 10.1542/peds.2024-068958

<sup>7</sup> Average length of inpatient stay, children only, for leukemias (CCSR diagnosis codes NEO059 – NEO062); most recent year available was 2019. HCUPnet, Healthcare Cost and Utilization Project. (n.d.) *HCUPnet: Inpatient Stays, Children Only, National*. Retrieved 12 February 2025, from Agency for Healthcare Research and Quality website:

<https://datatools.ahrq.gov/hcupnet/?tab=inpatient-setting&dash=37>

<sup>8</sup> WORLD Policy Analysis Center, UCLA Fielding School of Public Health. (2018, February). *A Review of the Evidence on the Length of Paid Family and Medical Leave*. Retrieved 12 February 2025, from <https://www.worldpolicycenter.org/sites/default/files/WORLD%20Brief%20-%20Length%20Paid%20Family%20and%20Medical%20Leave.pdf>

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<sup>9</sup> The threshold for the definition of “highly compensated employee” in 2025 is \$160,000. Internal Revenue Service. (2024, November 1). *Notice 2024-80*. Retrieved 12 February 2025, from <https://www.irs.gov/pub/irs-drop/n-24-80.pdf>

<sup>10</sup> National Partnership for Women & Families. (2024, September). *America's Women and the Wage Gap*. Retrieved 12 February 2025, from <https://nationalpartnership.org/wp-content/uploads/2023/02/americas-women-and-the-wage-gap.pdf>

<sup>11</sup> See note 1.

<sup>12</sup> Weston Williamson, M. (2023, September 21). *Understanding the Self-Employed in the United States*. Center for American Progress Publication. Retrieved 12 February 2025, from <https://www.americanprogress.org/article/understanding-the-self-employed-in-the-united-states/>

<sup>13</sup> U.S. Department of the Treasury, Office of Tax Analysis. (2023, October 18). *Section 45S, Employer Credit for Paid Family and Medical Leave: Claims, Counts and Dollars*. Retrieved 12 February 2025, from <https://home.treasury.gov/system/files/131/Section-45S-Claims-Tables-10172023.pdf>

<sup>14</sup> See note 1, civilian workers at employers with fewer than 50 employees

<sup>15</sup> Twenty-three percent would support both a guaranteed paid family leave insurance program and a tax credit, and 21 percent answered neither or don't know. Small Business Majority and National Partnership for Women & Families. (2024, October). *Small Businesses Support a National Paid Family and Medical Leave Program*. Retrieved 12 February 2025, from <https://nationalpartnership.org/report/small-businesses-support-national-paid-family-medical-leave-program/>

<sup>16</sup> National Partnership for Women & Families. (2024, July). *State Paid Family & Medical Leave Insurance Laws*. Retrieved 12 February 2025, from <https://nationalpartnership.org/wp-content/uploads/2023/02/state-paid-family-leave-laws.pdf>

<sup>17</sup> Pew Research Center. (2017, March). 2016 Paid Parental, Family And Medical Leave Survey. Retrieved 12 February 2025, from <http://assets.pewresearch.org/wp-content/uploads/sites/3/2017/03/26130703/Paid-family-and-medical-leave-topline-FINAL.pdf> (unpublished tabulations provided by Pew Research Center to the National Partnership for Women & Families, available on request)

<sup>18</sup> Small Business Majority and National Partnership for Women & Families. (2024, October). *Small Businesses Support a National Paid Family and Medical Leave Program*. Retrieved 12 February 2025, from <https://nationalpartnership.org/report/small-businesses-support-national-paid-family-medical-leave-program/>