

Tax Treatment of Paid Family Leave Benefits

State	Own Disability			Family Care		
	State Tax	Federal Tax	Social Security/ Medicare/ FICA	State Tax	Federal Tax	Social Security/ Medicare/ FICA
CA	No, except when considered a substitute for UI	No, except when considered a substitute for UI	No	No (Contributions post-tax)	Yes (Contributions deductible)	No
NJ	Employer Portion: Yes/ Employee Portion: No	Employer Portion: Yes/ Employee Portion: No	FICA on employer portion, not on employee portion	No (Contributions post-tax)	Yes (Contributions deductible)	No
RI	No	No	No	Yes (Contributions deductible)	Yes (Contributions deductible)	No
H.196 (as passed House General)	No ¹	No	No	Yes ²	Yes (Contributions deductible)	No
Unemployment Insurance	N/A	N/A	N/A	Yes	Yes	No
Workers' Compensation	No	No	No	N/A	N/A	N/A

¹ Includes benefits paid in relation to the employee's own serious illness, and possibly leave related to an employee's pregnancy if it is taken because of a pregnancy related disability.

² Includes benefits paid in relation to leave during pregnancy, for bonding with a new child, or to care for a seriously ill relative.

Answers to Frequently Asked Tax Questions Regarding H.196

How are benefits taxed to an employee when they are paid out?

- Taxable if considered unemployment compensation. 26 U.S.C. § 85.
 - Benefits provided under H.196 as passed the House (family care and bonding) are considered unemployment compensation.
- Non-taxable if considered disability based compensation. 26 U.S.C. § 104.
 - Benefits paid for an employee's own disability would be considered disability based compensation.

Are the Contributions for Paid Family Leave Benefits Pre-Tax or Post-Tax?

- Employee contributions to a family leave program are deductible as a state income tax. State income taxes are paid with post-tax dollars; therefore, the employee contributions are paid from post-tax dollars.

How are employee contributions taxed?

- Treated as a payment of a State income tax. *See* Rev. Rul. 81-191; IRS Memorandum 200630017, California Paid Family Leave, June 1, 2005, available at <https://www.irs.gov/pub/irs-wd/0630017.pdf>.
- Deductible as an itemized deduction on federal taxes. *See* IRS Memorandum 200630017.
- Not deductible on State level, because Vermont does not allow itemized deduction for State taxes.
- Benefit for non-itemizers is only taxed on amounts in excess of the employee's contribution; benefit for itemizers is taxed on all benefits (while allowing the deduction).

Would employee contribution affect income sensitivity?

- Income sensitivity starts with federal adjusted gross income, 32 V.S.A. § 6061(5), and there are no applicable exclusions.
- Therefore, employee contributions would likely count as income for purposes of calculating income sensitivity.

Are FICA (Social Security and Medicare) taxes due on the benefits received by an employee?

- No. FICA is due on wages paid by an employer. Under H.196, Family Leave Insurance benefits would not be paid by employers and therefore no FICA contributions would be due in relation to the benefits received by employees.

How would a mandatory employer contribution be treated for tax purposes?

- Most likely treated as a deductible state tax for either unemployment or disability based compensation. *See* Rev. Rul. 81-194.

How would a voluntary employer contribution be taxed?

- For disability-based compensation, a voluntary employer contribution would likely be considered deductible to the employer as a business expense, and taxable to the employee to the extent of the employer contribution. *See* Rev. Rul. 81-194.
- For family care and bonding benefits, the payment would likely be considered deductible to the employer as a business expense, and taxable to the employee. *See* 26 U.S.C. § 85; Rev. Rul. 81-194.