

Newest COVID-19 Relief Package Extends and Enhances Employer Payroll Tax Credits



ARTICLE 12.23.20 DEAN DORTON

The latest COVID-19 relief package passed by Congress extends two employer payroll tax credits—the employee retention credit and the credit for coronavirus-related paid sick and family leave. The package, titled the Consolidated Appropriations Act of 2021 (the “Act”), also expands eligibility for the employee retention credit to include employers that received a Paycheck Protection Program (“PPP”) loan. This article discusses the major changes to these credits that will take effect if the bill is signed by President Trump.

The Employee Retention Credit*The Back Story...*

The employee retention credit is a refundable payroll tax credit created by the CARES Act, enacted in March. Currently, eligible employers can claim a credit against the employer portion of Social Security tax equal to 50% of “qualified wages” paid with respect to each employee. The amount of qualified wages that can be taken into account per employee for all calendar quarters is capped at \$10,000 (for a maximum credit of \$5,000 per employee). Under the CARES Act, the credit is available for wages paid after March 12, 2020, through and including December 31, 2020.

The CARES Act defines an “eligible employer” as any employer, including a tax-exempt organization, that was carrying on a trade or business during calendar year 2020 and meets one of the following economic hardship criteria:

1. The operation of the business is fully or partially suspended during the calendar quarter due to orders from an appropriate governmental agency limiting commerce, travel, or group meetings because of COVID-19; or
2. The calendar quarter is within the period that: (1) begins with the first calendar quarter after December 31, 2019, for which gross receipts are less than 50% of gross receipts for the same calendar quarter in the prior year; and (2) ends with the calendar quarter following the first calendar quarter for which gross receipts are greater than 80% of gross receipts for the same calendar quarter in the prior year.

The definition of “qualified wages” is more restrictive for employers that averaged more than 100 full-time employees during 2019 (“large employers”). For large employers, “qualified wages” include only wages paid when the employee is not providing services. In addition, “qualified wages” taken into account for an employee cannot exceed the amount the employee would have been paid for working an equivalent duration during the 30 days immediately preceding the period of the employer’s economic hardship (i.e., the “30-day rule”).

Employers that averaged 100 or fewer full-time employees during 2019 can count all wages paid during the period of economic hardship as “qualified wages.”

Allocable health plan expenses also can be treated as wages when computing the credit.

Importantly, the CARES Act provided that employers are not eligible for the employee retention credit if they received a PPP loan. Governmental employers, including the federal government, state and local governments, and governmental agencies and instrumentalities, also are not eligible.

For further details on the employee retention credit in the CARES Act, as originally enacted, click [here](#).

The Act's Major Changes

The Act makes several changes to the employee retention credit. Some of these changes are retroactive to the effective date of the CARES Act, while others apply going forward. Retroactively, the Act clarifies the definition of "gross receipts" for tax-exempt organizations by reference to the Internal Revenue Code. The Act also states that group health plan expenses can be considered qualified wages even when no other wages are paid to an employee. This change is consistent with previous guidance issued by the IRS.

Significantly, the Act retroactively eliminates the provision in the CARES Act that prohibited employers from claiming the credit if they received a PPP loan. The Act clarifies, however, that forgivable payroll costs for purposes of the PPP do not include qualified wages taken into account in determining the employee retention credit.

The Act extends the availability of the credit for qualified wages paid through and including June 30, 2021, and makes several prospective enhancements. For calendar quarters beginning after December 31, 2020, the Act:

- Increases the credit percentage from 50% to 70% of qualified wages;
- Raises the limit on the amount of qualified wages that can be taken into account per employee from \$10,000 for all calendar quarters to \$10,000 per calendar quarter;
- Expands eligibility for the credit by reducing the required gross receipts decline from more than 50% to more than 20% of gross receipts for the same calendar quarter in 2019;
- Allows employers to elect to use prior quarter gross receipts to determine eligibility;
- Permits certain governmental employers to claim the credit, including 501(c)(1) organizations, colleges and universities, and entities whose principal purpose or function is providing medical or hospital care;
- Provides that "qualified wages" include only wages paid when an employee is not providing services for employers that averaged more than 500 (increased from 100) full-time employees in 2019;
- Eliminates the 30-day rule for large employers;
- Directs Treasury to issue rules allowing employers that averaged 500 or fewer full-time employees during 2019 to elect to receive an advance payment of the credit; and
- Establishes rules to allow employers who were not in existence for all or part of 2019 to claim the credit.

The Act requires Treasury, in coordination with the Small Business Administration ("SBA"), to conduct a public awareness campaign regarding the availability of the credit.

Tax Credits for Paid Sick and Family LeaveThe Back Story...

The Families First Coronavirus Response Act ("FFCRA"), enacted in March, requires most government employers, as well as tax-exempt organizations and private employers with fewer than 500 employees, to provide employees with paid sick or family leave for various COVID-19 related reasons. Under the FFCRA, the amount of leave and pay to which employees are entitled vary depending on the reason for leave.

To offset the cost of providing paid leave, the FFCRA provides employers with a refundable payroll tax credit equal to 100% of qualified sick and family leave wages, plus allocable health plan expenses and the employer's share of Medicare tax, paid each calendar quarter. The credit is allowed against the employer portion of Social Security tax. Equivalent credits are available for self-employed individuals.

Under the FFCRA, the requirement to provide paid leave took effect April 1, 2020, and expires December 31, 2020. As enacted in March, the FFCRA provided that payroll tax credits for qualified sick and family leave wages were available for leave taken during this time period.

For more detail on the FFCRA sick and family leave tax credits, click [here](#).

The Act's Major Changes

The Act makes a handful of technical improvements to the FFCRA, including allowing self-employed individuals to elect to calculate the amount of the credit by using their average daily self-employment income from 2019 rather than 2020. However, the most significant change is an extension of the payroll tax credits to cover leave taken through and including March 31, 2021. Notably, the Act does not extend the requirement to provide FFCRA paid leave, which expires December 31, 2020. But, employers that provide paid leave to eligible employees from January 1 – March 31, 2021 now will have the opportunity to claim payroll tax credits for those wages.

Do you have questions about the upcoming bill? Contact your Dean Dorton advisor, or contact us at:

insights@deandorton.com