

Employee Retention Credit NOW Available for Many Businesses Financially Impacted by COVID-19

Labor & Employment Law Update

on April 1, 2020

On March 31, 2020, the Treasury Department and the Internal Revenue Service launched the Employee Retention Credit, designed to encourage businesses to keep employees on their payroll. The refundable tax credit is 50 percent of up to \$10,000 in wages paid by an eligible employer whose business has been financially impacted by COVID-19.

How to determine if your business qualifies for the Employee Retention Credit:

The credit is available to all employers regardless of size, including tax-exempt organizations. There are only two exceptions: state and local governments and their instrumentalities **and small businesses which take Small Business Loans. If an employer takes an SBA loan under the CARES Act (for example, the Paycheck Protection Program, Economic Injury Disaster Loans, and other SBA loans) the employer is not eligible for the retention credit.**

Qualifying employers must fall into one of two categories:

1. The employer's business is fully or partially suspended by government order due to COVID-19 during the calendar quarter.
2. The employer's gross receipts are below 50 percent of the comparable quarter in 2019. Once the employer's gross receipts go above 80 percent of a comparable quarter in 2019 they no longer qualify after the end of that quarter.

These measures are calculated each calendar quarter.

Calculating your credit:

The amount of the credit is 50 percent of qualifying wages paid up to \$10,000 in total. Wages paid after March 12, 2020, and before January 1, 2021 are eligible for the credit. Wages taken into account are not limited to cash payments, but also include a portion of the cost of employer provided health care.

Determining which wages qualify:

Qualifying wages are based on the average number of a business's employees in 2019.

- For employers with less than 100 employees: If the employer had 100 or fewer employees on average in 2019, the credit is based on wages paid to all employees, regardless if they worked or not. If the employees worked full time and were paid for full time work, the employer still receives the credit.
- Employers with more than 100 employees: If the employer had more than 100 employees on average in 2019, then the credit is allowed only for wages paid to employees who did not work during the calendar quarter.

Receiving your credit (perhaps the most important step):

Employers can be immediately reimbursed for the credit by reducing their required deposits of payroll taxes that have been withheld from employees' wages by the amount of the credit.

Eligible employers will report their total qualified wages and the related health insurance costs for each quarter on their quarterly employment tax returns or Form 941 beginning with the second quarter.

If the employer's employment tax deposits are not sufficient to cover the credit, the employer may receive an advance payment from the IRS by submitting Form 7200, Advance Payment of Employer Credits Due to COVID-19. Eligible employers can also request an advance of the Employee Retention Credit by submitting Form 7200.

Form 7200 can be found on the IRS website.

Instructions for Form 7200 can also be found on the IRS website.

It will be critically important that you determine if you will receive more aid using the Employee Retention Credit or using the Paycheck Protection Program, Economic Injury Disaster Loans and Loan Advance, SBA Debt Relief, and SBA Express Bridge Loans. You can learn more about those programs on the U.S. Small Business Administration website.

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