

Employee Retention Credit, Emergency Paid Sick Leave, and Expanded Family Medical Leave Updates

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CPAs

Employee Retention Credit–The Big Headline

- Employers that received a PPP loan are now eligible for the Employee Retention Credit (ERC).
- Extended and expanded into 2021.

ERC: Back to the Basics

- Fully refundable payroll tax credit for qualifying wages starting March 13th, 2020 and extended to June 30th, 2021.
- Intended to provide liquidity to employers during the COVID-19 pandemic.
- Employers of **any size**, including tax-exempt organizations engaged in a trade or business are eligible for the credit.

ERC: Qualifying Employer

- Fully or partially suspended operations during any calendar quarter in 2020 or 1st or 2nd quarter of 2021 due to a government order limiting commerce, travel or group meetings due to COVID-19.

OR

- Experience a significant decline in Gross Receipts. The cause of decline is **not** required to be related to COVID-19

ERC: Decline in Gross Receipts

2020	2021
50% quarterly decline in Gross Receipts compared to same quarter in 2019.	20% quarterly decline in Gross Receipts compared to same quarter in 2019.

ERC: Fully or Partially Suspended

Fully or partially suspended due to “orders from an appropriate governmental authority limiting commerce, travel or group meetings due to COVID-19”

- Government orders include:
 - An order from the City’s Mayor stating that all non-essential business must close for a specified period.
 - Shelter in place order
 - An order imposing a curfew that impacts operating hours of a trade of business.

ERC: Fully or Partially Suspended (cont.)

- A statement at a press conference by a government official does not rise to government order.
- An employer that voluntarily suspends operations that is not subject to any government order is not eligible for the credit.
- An employer that operates an essential business is not considered to have full or partial suspension if the government order allows the employer to stay open.
- If the employer's workplace is closed by a government order but the employer is able to continue comparable operations by requiring employees to telework, the employer is not considered to have been fully or partially suspended.

ERC: Qualifying Wages

- Definition depends in part on the average number of full-time employees employed during 2019.

2020	2021
>100 employees = qualified wages paid for the time employee is not providing services	>500 employees = qualified wages paid for the time employee is not providing services
<100 employees = qualified wages paid to any employee during the period employer qualifies	<500 employees = qualified wages paid to any employee during the period employer qualified

ERC: Qualifying Wages (cont.)

- **Qualifying Wages**—Gross wages subject to FICA plus an employer's cost of providing medical, dental and vision benefits, plus employee's share of the same benefits made on a pre-tax basis.

ERC: Value of the Credit

2020	2021
50% of Qualifying Wages	70% of qualifying wages
\$10,000 <i>Annual</i> Cap of Qualifying Wages per employee	\$10,000 <i>Quarterly</i> Cap of Qualifying Wages for 1 st and 2 nd Quarter per employee
Credit = Maximum of \$5,000 per employee (\$10,000 x 50%) for the year	Credit = \$7,000 per employee (\$10,000 x 70%) for each quarter Maximum of \$14,000 for 2021

How to Claim the Credit

- Credit is claimed on quarterly 941's
- Claiming credit is retroactive to 2020
 - We are waiting on guidance from the IRS on if we will amend the quarterly 941's or take in a current quarter

ERC: PPP Loan and ERC

- Employers who received a PPP loan are now eligible for the ERC and should evaluate if they qualify.
- May not use the same wages for ERC used for the following:
 - PPP Loan
 - Paid Sick Leave and Family Leave Credits
 - Work Opportunity Credit, R&D Credit and others
- **Rethink wages used in completing the PPP Loan Forgiveness Application.**

Summary of ERC

2020	2021
50% Revenue Decline (if not impacted by government order)	20% Revenue Decline (if not impacted by government order)
Up to \$5,000 Credit per employee for wages paid from March 13 th , 2020 to December 31 st , 2020	Up to \$7,000 Credit per employee per quarter for Q1 and Q2 of 2021
Wage and Credit Caps applied Annually	Wage and Credit Caps applied Quarterly
Up to \$5,000 of potential benefit per employee	Up to \$14,000 of potential benefit per employee

FFCRA and CAA: A Little History

- **April 2020**—Families First Coronavirus Response Act (FFCRA) was enacted at the outset of the COVID-19 pandemic and provided for up to 80 hours of Emergency Paid Sick Leave (EPSL) and up to an additional 12 weeks (10 weeks paid) of Expanded Family Medical Leave (EFMLA) for employees who were unable to work (or work remotely) for a qualifying reason related to the pandemic.
- The provisions of the Act applied from the April 2020 effective date through December 31st, 2020.

FFCRA and CAA: A Little History (cont.)

- The FFCRA applied to businesses with fewer than 500 employees and certain public employers.
 - Small businesses with less than 50 employees may qualify for an exemption if leave requirements would jeopardize the viability of the business.
- Employers are not required to provide Families First Coronavirus Response Act (FFCRA) leave after December 31st, 2020.

New Updates

- The Consolidated Appropriations Act (CAA) of 2021 extended the employer tax credits for EPSL and EFMLA.
- Beginning January 1st, 2021, covered employers can **voluntarily** continue FFCRA-related paid leave to their employees and still claim a tax credit until March 31, 2021 if the employee would have qualified for FFCRA had it not expired.
- The CAA does NOT provide additional hours of leave. Employee unused leave from 2020 can be carried forward to 2021 if the employer chooses to do so.
 - Example: An Employee was paid for 60 hours of EPSL in 2020. As of January 1st, 2021, the employee would only have 20 hours of EPSL to use through March 31st, 2021.

Considerations

- The EPSL and EFMLA requirements under FFCRA do **not** preempt any state or local paid leave mandates. Employers need to watch for guidance from state and local authorities.
 - Such as in New York, which has a COVID-19 paid sick leave requirement which did not end on December 31st, 2020.
- Although the EPSL and EFMLA requirements expired on December 31st, 2020, employers should be mindful of any continuing obligations under the Americans with Disabilities Act (ADA) and regular FMLA.

Things to Do

- ✓ Employers should consider whether they will continue to provide paid leave to employees until March 31st, 2021.
- ✓ If continuing, revise the end date in your previous FFCRA Policy from December 31st, 2020 to March 31st, 2021.
- ✓ Continue tracking the leave as you did in 2020, and continue taking the tax credit up through March 31st, 2021.
- ✓ Don't stress, the Baldwin team is here to help you!

Questions? Contact Us.

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