



Coronavirus Aid, Relief, and Economic Security (CARES) Act¹ **Employee Retention Credit FAQ**

What businesses qualify for the employee retention credit? Any employer, regardless of size, is eligible for the credit during calendar year 2020 if the business: (1) is fully or partially suspended due to a governmental order related to COVID-19, or (2) experiences a significant decline in gross receipts (i.e., a reduction of 50 percent of gross receipts from the same quarter in 2019). The credit also applies to tax-exempt organizations if the operation of the organization is fully or partially suspended due to the circumstances described in (1) above. The credit generally does not apply to governmental employers, including the U.S. Government, state and local governments, or any agency of the foregoing.

Is the credit limited to businesses affected by COVID-19? Yes. The credit only applies to qualified wages paid by a business whose operations have been fully or partially suspended pursuant to a governmental order related to COVID-19, or have experienced a significant decline (i.e., 50 percent) in gross receipts, as described above, during the period from March 13, 2020 through December 31, 2020.

Does the credit only apply to small businesses? No. For eligible employers with 100 or fewer full-time employees, the credit applies to all employee wages. In contrast, eligible employers with over 100 full-time employees may only take into account qualified wages paid to employees when they are not providing services due to a governmental order related to COVID-19.

How much is the credit? How is it calculated? The credit is equal to 50 percent of the qualified wages paid by the employer with respect to each employee. The amount of qualified wages with respect to any employee for all calendar quarters in 2020 cannot exceed \$10,000. In other words, there is a \$10,000 total cap on the credit per employee for the 2020 tax year.

How much of an employee's compensation counts toward the credit? Do health care costs count? The definition of qualified wages differs depending on the size of the business. For employers with more than 100 full-time employees, qualified wages include wages paid to employees when they are not providing services due to a governmental order related to COVID-19. If an employee is performing services on a reduced schedule, wages paid to the employee are only treated as qualified wages if they exceed what the employee would have otherwise been paid for the services performed. In that case, employers will receive a credit for the difference between the total wages paid to the employee and the amount the employer would have paid for the reduced hours or services actually provided by the employee.

¹ [H.R.748](#), the *Coronavirus Aid, Relief, and Economic Security (CARES) Act* (Public Law No. 116-136) was approved unanimously by the Senate on March 25, 2020, then by the House of Representatives on March 27, 2020, and signed into law by President Trump on March 27, 2020.



For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether or not the employee is providing services to the employer. Regardless of business size, qualified wages include certain healthcare costs paid by an employer to maintain a group health plan.

Qualified wages do not include wages taken into account for purposes of the payroll tax credit for required paid sick leave or paid family leave as provided in Division G of the Families First Coronavirus Response Act (FFCRA). This exception prevents both credits from applying to the same wages paid by an employer.

Does it matter if the business is a corporation? Does it apply to limited liability companies (LLCs), S corporations, partnerships, and sole proprietors? The credit is available to corporations as well as pass-through entities, such as LLCs, S corporations, partnerships, and sole proprietors. The credit also is available to most tax-exempt organizations. Although the credit is available to all entity types, the business must meet the eligibility requirements.

Do I have to wait until my business files its 2020 tax return to claim the credit? No. The tax credit may be claimed against the employer portion of employment taxes, including Social Security and Railroad Retirement payroll taxes. To the extent the credit exceeds the employer portion of employment taxes due, the credit is treated as an overpayment and is refundable to the employer. The IRS is expected to provide guidance regarding the process for claiming the credit and receiving the refund. See [Coronavirus Tax Relief](#) on the IRS.gov website.

Does the business have to pay back the credit? No. As long as the employer meets the requirements for the credit (described in the Q&As above), the employer does not have to repay the credit or the resulting refunds.

What if the business claims the FFCRA credit for mandatory sick leave and/or family leave? If the business claims the FFCRA credit for mandatory sick leave and/or family leave, the wages associated with the FFCRA credit are not eligible as qualified wages for the employee retention credit. This prevents both credits from applying to the same wages paid by employers.

Is the credit available if the business receives one of the new SBA loans under the CARES Act? The credit is not available to employers receiving a small business interruption loan under the SBA's Paycheck Protection Program (CARES Act section 1102).

How long is the credit available? The credit is available for qualified wages paid from March 13, 2020 through December 31, 2020.

This document was prepared as an informational resource and should not be considered legal or business counsel. Please reach out to CoronavirusHelp@braun.senate.gov for general help, concerns, or additional assistance. Last updated April 1, 2020.