

# Eye on Washington Regulatory Update

## Reminder – New Employee Retention Tax Credit Provisions Take Effect July 1, 2021

As a reminder, the **American Rescue Plan Act (ARPA)** signed into law in March extended the **Employee Retention Tax Credit (ERTC)** through December 2021, and made a number of related changes. The ERTC remains a key support available to businesses seeking to recover from the effects of the COVID pandemic, potentially returning \$28,000 per employee to qualifying employers for wages paid in 2021. The information below should be evaluated to assess whether the ERTC may be available to an employer. Employers should consult appropriate legal and/or tax advisors to assess their situation.

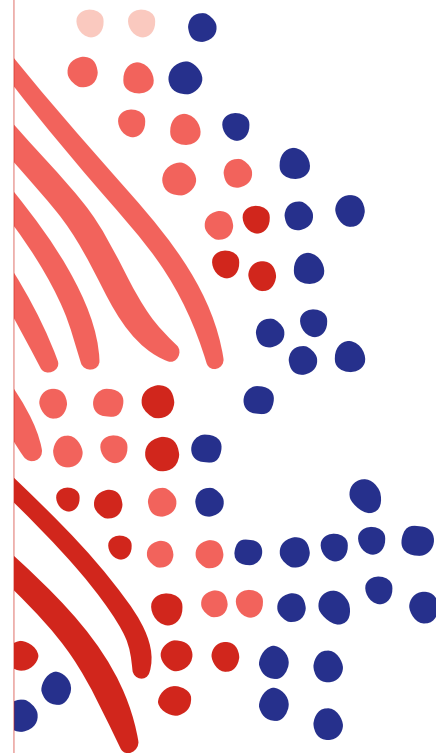
### Background

In March 2020, Congress enacted the **Coronavirus Aid, Relief, and Economic Security Act ("CARES Act")** to provide relief to employers and individuals affected by COVID-19. Among other things, the Act established the Employee Retention Tax Credit for employers subject to closure due to COVID-19. This provided private-sector employers with a refundable tax credit against employer Social Security tax of up to \$5,000 per employee, for employers whose operation was at least partially suspended due to orders from a governmental authority limiting commerce, travel or meetings due to COVID-19, or who experienced a 50 percent decline in gross receipts when compared to the same quarter of the prior year. The credit included the employer's share of health costs related to such wages.

Employers with more than 100 full-time employees were only able to apply the credit for wages paid to employees that provided no services during the shutdown; i.e., paid time off. Employers with under 100 full-time employees were able to apply the credit to all wages without regard to whether employees provided services. However, the ERTC cannot apply to family and or sick leave paid under the Families First Coronavirus Response Act for which a credit is taken. The ERTC was originally in effect for wages paid after March 12, 2020, and before 2021.

On December 27, 2020, the **Consolidated Appropriations Act (CAA)** was signed into law, among other things extending the Employee Retention Tax Credit through June 2021. The CAA also increased the value of the ERTC for wages paid from January 1, 2021 through June 30, 2021 to 70 percent (from 50 percent) of qualified wages, which were increased from \$10,000 per year to \$10,000 per quarter. Thus, the maximum credit per employee for wages paid between January and June 2021 is \$14,000.

The CAA made it easier to qualify, as well. Employers became eligible in 2021 if they were able to demonstrate revenue declines of 20 percent (formerly 50 percent) to determine eligibility. Eligibility was also expanded to certain public instrumentalities, such as public universities, hospitals and medical-care providers, and new employers not in existence in 2019. Finally, the CARES Act limitation that employers with more than 100 employees could



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only take the credit for wages paid for which no services were provided was relaxed by changing the 100-employee threshold to 500 for 2021.

The CAA enabled employers that received PPP loans to also qualify for the ERTC. This provision was both effective in 2021 — and retroactive to March 2020. The maximum credit remains \$5,000 per employee for 2020 while other limits in effect in 2020 continue to apply (e.g., revenue declines of 50 percent or more). Qualifying employers who received PPP loans in 2020 can amend their federal employment tax returns to request refunds for the ERTC.

### American Rescue Plan Act

On March 11, 2021, the **American Rescue Plan Act** was signed into law to provide further support to employers — including state and local governments — affected by the COVID-19 pandemic. The ERTC, which had been scheduled to expire on June 30, was extended through December 2021. The credit percentage remains 70 percent of up to \$10,000 in qualified wages per employee per quarter; i.e., a \$28,000 maximum credit per employee for 2021.

Employers may qualify if their operation was at least partially suspended due to orders from a governmental

authority related to COVID-19, or can demonstrate that gross receipts for a calendar quarter declined by at least 20 percent (generally compared to the same calendar quarter in 2019).

The ERTC was also extended to new businesses, which started after February 15, 2020, with average annual receipts of under \$1,000,000. For such businesses, the amount of the credit may not exceed \$50,000 per quarter.

The ARPA also enabled “severely distressed” employers — those that can demonstrate reductions in gross receipts of 90 percent or more, generally compared to the same calendar quarter in 2019. These organizations are permitted to take the ERTC for all wages paid to employees (up to the applicable limit), even if they have over 500 employees. Otherwise, employers with over 500 employees can only take the ERTC for wages paid to employees for which an employee is not providing services (i.e., paid time off).

The **Employee Retention Tax Credit (ERTC)** remains a generous and helpful support for qualifying businesses as they recover from the effects of the COVID pandemic. The summary, provided above, is intended to present only a brief explanation of the tax credit. Employers should consult appropriate legal and/or tax advisors to assess whether they may be eligible.

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