



# AFSCME Facts

## Employee Retention Tax Credit January 14, 2021

The COVID-19 relief package included in the Consolidated Appropriations Act, 2021 (CAA) extends and expands the employee retention credit (ERC) established under the Coronavirus Aid, Relief and Economic Security (CARES) Act. The credit is available for eligible employers that continue paying their employees if the business is closed due to a COVID-19 lockdown or suffers a significant decline in gross receipts due to loss of business. The CAA extends the credit by six months, increases the value of the credit to eligible employers, eases the standards to qualify for the credit and expands the kinds of employers eligible for the program.

### **What is the Employee Retention Tax Credit?**

The ERC is a refundable payroll tax credit based on qualified wages paid to employees. The refundable feature of the credit means that an employer may claim a benefit greater than its total payroll tax liability.

### **For what period is the credit available?**

The CARES Act covered qualified wages paid from March 13, 2020 through Dec. 31, 2020. The CAA extends the duration of the credit by six months, covering qualified wages paid through June 30, 2021.

### **What are the eligibility requirements?**

Under the CARES Act, employers eligible for the ERC are those that carry on a trade or business, including tax-exempt organizations, that either fully or partially suspended operation during any calendar quarter in 2020 due to orders from a governmental order limiting commerce due to COVID-19; or experienced a significant decline in gross receipts during the calendar quarter. Under the CAA, effective Jan. 1, 2021, employers suspended by a lockdown order or experiencing a significant decline in gross receipts (defined as detailed below) are also eligible.

### **Are governmental employers eligible?**

Governmental employers were not eligible for the ERC under the CARES Act, but under the CAA, beginning Jan. 1, 2021, the credit is available to state and local colleges, universities, entities providing medical or hospital care and certain organizations chartered by Congress. General government employers remain ineligible for the credit.

**What qualifies as a significant decline in gross receipts?**

Under the CARES Act, a significant decline in gross receipts is a quarter in 2020 in which an employer's gross receipts are less than 50% of its gross receipts for the same calendar quarter in 2019. The CAA provides that a significant decline occurs when gross receipts in either of the first two quarters of 2021 are less than 80% of gross receipts for the same quarter in 2019.

**Is the credit based on the number of employees working?**

Under the CARES Act, an eligible employer with 100 employees or fewer could take the credit on each employee, whether or not they were working. For an employer with more than 100 total employees, the credit could only be taken on employees who were being paid but no longer working. The CAA increases this threshold to 500 employees effective Jan. 1, 2021. For the first two quarters of 2021, an employer with 500 or fewer employees will be eligible for the credit, even if some employees are working.

**Are employers who took Paycheck Protection Program loans eligible for the ERC?**

Employers who took Paycheck Protection Program (PPP) loans are now eligible to take the ERC as well, but the credit may not be claimed for wages paid with the proceeds of a PPP loan that has been forgiven. This change is retroactive, so that companies that are otherwise eligible for ERC and that had PPP loans forgiven but who paid wages on or after March 13, 2020 in excess of the amount forgiven may file an amended tax return to claim the credit for 2020.

**How much is the credit?**

The amount of the credit under the CARES Act was 50% of the qualified wages paid to the employee plus the cost of health care benefits. Effective Jan. 1, 2021, the credit amount is increased to 70% of qualified wages plus the cost of providing health care benefits. The credit was capped at \$5,000 for all qualified wages per employee during 2020; that cap is increased to \$7,000 for each of the first two quarters of 2021. The CARES Act did not permit a credit for pay rate increases. The CAA eliminates that restriction, which now allows the credit for certain increases such as hazardous duty pay.