

Employee Retention Credit

The Employee Retention Credit is a refundable tax credit against certain employment taxes equal to 50 percent of the qualified wages an eligible employer pays to employees after March 12, 2020, and before January 1, 2021. Eligible employers can get immediate access to the credit by reducing employment tax deposits they are otherwise required to make. Also, if the employer's employment tax deposits are not sufficient to cover the credit, the employer may get an advance payment from the IRS.

For each employee, wages (including certain health plan costs) up to \$10,000 can be counted to determine the amount of the 50% credit. Because this credit can apply to wages already paid after March 12, 2020, many struggling employers can get access to this credit by reducing upcoming deposits or requesting an advance credit on [Form 7200, Advance of Employer Credits Due To COVID-19](#).

Employers, including tax-exempt organizations, are eligible for the credit if they operate a trade or business during calendar year 2020 and experience either:

1. the full or partial suspension of the operation of their trade or business during any calendar quarter because of governmental orders limiting commerce, travel, or group meetings due to COVID-19, or
2. a significant decline in gross receipts.

A significant decline in gross receipts begins:

- on the first day of the first calendar quarter of 2020
- for which an employer's gross receipts are less than 50% of its gross receipts
- for the same calendar quarter in 2019.

The significant decline in gross receipts ends:

- on the first day of the first calendar quarter following the calendar quarter
- in which gross receipts are more than 80% of its gross receipts
- for the same calendar quarter in 2019.

The credit applies to qualified wages (including certain health plan expenses) paid during this period or any calendar quarter in which operations were suspended.

Qualified wages

The definition of qualified wages depends on how many employees an eligible employer has.

If an employer averaged more than 100 full-time employees during 2019, qualified wages are generally those wages, including certain health care costs, (up to \$10,000 per employee) paid to employees that are not providing services because operations were suspended or due to the decline in gross receipts. These employers can only count wages up to the amount that the employee would have been paid for working an equivalent duration during the 30 days immediately preceding the period of economic hardship.

If an employer averaged 100 or fewer full-time employees during 2019, qualified wages are those wages, including health care costs, (up to \$10,000 per employee) paid to any employee during the period operations were suspended or the period of the decline in gross receipts, regardless of whether or not its employees are providing services.

Impact of other credit and relief provisions

An eligible employer's ability to claim the Employee Retention Credit is impacted by other credit and relief provisions as follows:

- If an employer receives a Small Business Interruption Loan under the Paycheck Protection Program, authorized under the CARES Act, then the employer is not eligible for the Employee Retention Credit.
- Wages for this credit do not include wages for which the employer received a tax credit for paid sick and family leave under the Families First Coronavirus Response Act.
- Wages counted for this credit can't be counted for the credit for paid family and medical leave under section 45S of the Internal Revenue Code.
- Employees are not counted for this credit if the employer is allowed a Work Opportunity Tax Credit under section 51 of the Internal Revenue Code for the employee.

Claiming the credit

In order to claim the new Employee Retention Credit, eligible employers will report their total qualified wages and the related health insurance costs for each quarter on their quarterly employment tax returns, which will be Form 941 for most employers, beginning with the second quarter. The credit is taken against the employer's share of social security tax but the excess is refundable under normal procedures.

In anticipation of claiming the credit, employers can retain a corresponding amount of the employment taxes that otherwise would have been deposited, including federal income tax withholding, the employees' share of Social Security and Medicare taxes, and the employer's share of Social Security and Medicare taxes for all employees, up to the amount of the credit, without penalty, taking into account any reduction for deposits in anticipation of the paid sick and family leave credit provided in the [Families First Coronavirus Response Act PDF](#).

Eligible employers can also request an advance of the Employee Retention Credit by submitting Form 7200.