LEGAL UPDATES

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# Consolidated Appropriations Act: Important Changes to the Employee Retention Credit

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The CARES Act created a refundable "employee retention credit" as an incentive for employers to retain their employees during the 2020 pandemic. Specifically, employers received a credit against their share of the Social Security taxes paid on "qualified wages" paid to retained workers during 2020. The Consolidated Appropriations Act (CAA) makes significant changes to the employee retention credit rules. One of the most significant changes is that PPP loan recipients who were prohibited from receiving the employee retention credit during 2020 may now **retroactively** claim the credit.

The table below highlights some of the key changes to these rules.

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| CARES Act | Consolidated Appropriations Act (CAA) |
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| The employee retention credit was available for qualified wages (defined below) paid between March 12, 2020 and January 1, 2021. | The employee retention credit was extended and is now available for qualified wages paid before **July 1, 2021**. |
| Eligible employers could take an immediate and refundable credit against the employer portion of their Social Security payroll tax equal to 50% of qualified wages. | Eligible employers may now take an immediate and refundable credit against the employer portion of their Social Security payroll tax equal to **70%** of qualified wages. |
| The maximum credit available per employee was $5,000 for all qualified wages paid during 2020. | The maximum credit available per employee is now **$7,000 per quarter** for all qualified wages paid during 2021. |
| "Qualified wages" for an eligible employer who averaged 100 full-time employees or less were any wages paid to employees, regardless of whether the employees were working (e.g., wages to furloughed employees and working employees were qualified wages).<br><br>"Qualified wages" for eligible employers who averaged more than 100 full-time employees were wages paid to employees who were not working (e.g., wages to furloughed employees were qualified wages and not wages paid to employees who were still working). | The maximum employer size threshold was raised to **500 employees**. Thus, qualified wages for eligible employers who average 500 or less full-time employees are now wages paid to employees, regardless of whether the employees are working. While qualified wages for eligible employers who averaged more than 500 full-time employees are wages paid to employees who are not working. |
| Employers were eligible for the employee retention credit if business operations were either (1) fully or partially suspended by a COVID-19 lockdown order, or (2) for a quarter in 2020, gross receipts were less than 50% of gross receipts for the same quarter in 2019. | Employers are now eligible for the employee retention credit in 2021 if business operations are either (1) fully or partially suspended by a COVID-19 lockdown order, or (2) for a quarter in 2021, gross receipts are **less than 80%** of gross receipts for the same quarter in 2019. |
| An employer who received a Paycheck Protection Program (PPP) loan was ineligible for the | Employers who took a PPP loan are no longer prohibited from claiming the employee retention |

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| employee retention credit. | credit and can claim the employee retention credit **retroactively** for wages paid after March 12, 2020. However, double-dipping is not allowed – meaning, an employee retention credit may not be claimed for wages paid with the proceeds of a forgiven PPP loan. Employers appear to be eligible to claim the employee retention credit for 2020 by filing amended Forms 941-X. The IRS is expected to release additional guidance in the near term. |

**Contact us**

If you have any further questions or require more information regarding this alert about the changes to the Employee Retention Credit rules, please contact Craig Kovarik, Gage Maurer or your Husch Blackwell attorney.

**CARES Act, COVID-19 & Return-to-Work Guidance**

Husch Blackwell provides guidance regarding COVID-19 updates, the CARES Act, and rapidly changing state-by-state orders, including those that impact stay-at-home and return-to-work protocols. Contact these legal teams or your Husch Blackwell attorney to plan a way through and beyond the pandemic.

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