



## Employee Retention Credit

The Employee Retention Credit (ERC) is a refundable tax credit against the employer's share of Social Security tax. Employers who meet the eligibility requirements could receive a credit of up to \$5,000 per employee for the year 2020, and up to \$7,000 per employee for each of the first three quarters of 2021. While the credit expired after 2021, eligible employers can still take advantage of this credit by filing amended payroll tax returns.

### Who can benefit?

All employers, regardless of size and tax status, who:

- » Paid qualified wages in 2020 or 2021,
- » AND meet at least one of the following situations:
  1. Experienced a significant decline in gross receipts compared to 2019  
For 2020, this revenue decline needed to be 50% or more.  
For 2021, revenue decline of 20% or more, OR
  2. Operations were either fully or partially suspended due to a COVID-19-related government order during an eligible calendar quarter. A partial suspension of operations requires that a government order have a more than a nominal impact on the employer's operations. A revenue decline is not required.

	Small Employers	Large Employers
Definition	<ul style="list-style-type: none"><li>• Average of 100 or fewer full-time employees in 2019 (2020 version of the ERC)</li><li>• Average of 500 or fewer full-time employees in 2019 (2021 version of the ERC)</li></ul>	<ul style="list-style-type: none"><li>• Average of 100 or more employees in 2020</li><li>• 500 or more full-time employees in 2021</li></ul>
Qualified wages <i>(law as of 1/1/2021)</i>	Wages paid to all employees during the time that operations were partially or fully suspended	Wages paid to employees who were not providing services because of full or partial suspension of operations

### KEY DEFINITIONS

#### Qualified wages

- » The maximum amount of qualified wages per employee is \$10,000  
For the 2020 version of the credit, the 50% of the \$10,000 maximum is calculated for the entire year.  
For the 2021 version of the credit, the 70% of the \$10,000 maximum is calculated for each quarter.
- » Part-time employees are completely excluded from the calculation of employer size, but the part time employee wages are eligible for the credit.
- » While the receipt of a Paycheck Protection Program (PPP) loan does not exclude an employer from eligibility, wages funded by PPP loans cannot be included in the ERC calculation.

- » Paid sick leave credits under the Families First Coronavirus Response Act (FFCRA) are excluded from being claimed under ERC.
- » Wages funded by Provider Relief Fund (PRF) distributions may be eligible for ERC, depending upon when the organization was eligible for the ERC.

**Nominal impact:** The IRS guidance establishes a safe harbor definition of a “more than nominal impact” as an impact from a government order that reduces an employer’s ability to provide goods or services in the normal course of operations by at least 10%. This impact does not necessarily need to be a revenue decline.

## DOCUMENTATION REQUIREMENTS

- » Organizations claiming the credit based on a decline in gross receipts must show a decline of at least 20% as compared to the same quarter in 2019.
- » Organizations claiming the credit based upon the partial or full suspension of operations due to a government order must provide the specific government order (i.e., federal, state, and/or local) and specify the duration of the order, including effective and expiry dates.
- » When a partial suspension of operations occurred, an organization must substantiate that there was more than a “nominal impact.”

## DEADLINES FOR CLAIMING THE CREDIT

- » April 15, 2024 for 2020 ERC.
- » April 18, 2025 for 2021 ERC.

### Possible Federal government orders that may have impacted operations:

- » Nursing homes must close to visitation.
- » Nursing home residents required to stay in their rooms.
- » Adult day providers required to close; social distancing requirements.
- » CMS: Nursing homes must close to admissions/move-ins due to outbreak status.
- » CMS: Nursing homes must isolate newly admitted residents (including readmitted).
- » CMS: Social programs and congregate dining prohibited.

### Check with your state for orders regarding:

- » Assisted Living closures
- » Limitations and suspensions on restaurant/ food service operations
- » Requirements for group gatherings, masking or social distancing that disrupted normal operations

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