

Changes Related to the Employee Retention Tax Credit (ERC)

The original Coronavirus Aid, Relief and Economic Security Act (CARES Act) signed into law on March 27, 2020 did not allow employers to both obtain a Paycheck Protection Program (PPP) loan and claim the ERC. The Consolidated Appropriations Act, 2021 signed into law on December 27, 2020, provides an important modification to the CARES Act, now allowing eligible employers to claim the ERC available to the eligible companies in 2021. Eligible employers can obtain both the 2nd PPP loan and claim the ERC in 2021. The ERC maximum per employee is different for 2020 and 2021 as noted below:

- For wages paid after March 12, 2020 and before January 1, 2021, the ERC can be applied to 50% of qualifying wages up to \$10,000. This means a maximum of \$5,000 per employee could be credited back to your company if it qualifies.
- For wages paid after January 1st, 2021, and before January 1, 2022, the ERC can be applied to 70% of qualifying wages of up to \$10,000 per quarter. This means companies could receive a maximum of \$28,000 per employee through December 31, 2021.

Eligibility Requirements

- 2020 ERC eligibility requirements: Employers with 100 employees or less, business operations that were fully or partially suspended by a Covid-19 lockdown; or, for any quarter in 2020, if gross receipts are less than 50% of gross receipts for the same quarter of 2019.
- 2021 ERC eligibility requirements: Employers with 500 employees or less, business operations that are either fully or partially suspended by COVID-19 lockdown; or, for a quarter in 2021, if gross receipts are less than 80% of gross receipts for the same quarter in 2019.
- There are other ways to qualify and should be discussed with an ERC professional.

Qualified Wages

- Wages are not limited to cash payments but can also include a portion of the cost of employer-provided health care. However, compensation does not include paid sick or family leave for which the employer is reimbursed under the Families First Coronavirus Response Act.
- The qualified wages for PPP loans cannot be used. Thus, wages used for ERC cannot be used for PPP forgiveness.

Representative Examples of ERC:

- A trucking company with approximately 90 employees qualified for \$890K in ERC for Q1 & Q2 2021 while preserving forgiveness on a \$1.4MM Paycheck Protection Program ("PPP") loan.
- A software development company with approximately 50 employees qualified for \$643K in ERC for Q1 & Q2 2021 while preserving forgiveness on a \$1.1MM PPP loan.
- A restaurant chain with 10 employees qualified for \$106K in ERC for 2020, Q1 & Q2 2021 while preserving forgiveness on their first and second PPP loans.
- A restaurant chain with 10 locations qualified for \$2.8MM in ERC for Q1 & Q2 2021 while preserving forgiveness on their first and second PPP loans.



Matt Hatfield, Partner

If you think your company may be eligible for the Employee Retention Tax Credit, please contact Lohman Company, PLLC at 480-355-1100 to speak to a professional.

*** All information is based on our current understandings of the topic. Please note the information is rapidly changing. Some information becomes outdated the same date it is posted. We encourage you to contact Lohman Company, PLLC for the latest information.*