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Employee Retention Tax Credit Extended and Expanded

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The employee retention tax credit aimed at helping businesses hit hard by the coronavirus pandemic will be extended and expanded under the new stimulus bill recently passed by Congress and awaiting President Trump's signature.

Current Benefits From April 2020 Stimulus

As discussed in two previous Gould & Ratner articles on [CARES Act tax relief](#) and [COVID-19 tax credit details and instructions](#), under current law, employers whose trade or business operations were fully or partially suspended due to COVID-19, or whose gross receipts for a calendar quarter beginning after Dec. 31, 2019, are less than 50% of gross receipts in the same calendar quarter for the prior year, are eligible for a credit against employment taxes up to 50% of wages paid to employees after March 12, 2020, and before Jan. 1, 2021, not to exceed \$10,000 with respect to any employee for all calendar quarters.

Under current law, employers with more than 100 full-time employees in 2019 are eligible for the credit for wages paid to employees who are not providing services due to suspension or slowdown of business. Employers with 100 or fewer full-time employees in 2019 are eligible for the credit for wages paid to employees during the period operations were suspended or the period of the decline in gross receipts. In addition, for those employers, the credit for wages during such period is available for wages paid to employees who are performing services. Expenses that qualify for the credit include amounts paid or incurred by an employer to provide and maintain a group health plan. Additionally, under current law, an employer who received a Paycheck Protection Program (PPP) loan under the CARES Act is not eligible for the credit.

Changes Under New Stimulus Plan

The new stimulus bill passed by Congress this week extends the timeframe in which eligible wages can be paid to July 1, 2021, and expands the current credit as follows:

- The credit rate is increased from 50% to 70% of qualified wages.
- Eligibility for the credit is expanded by reducing the required decrease in gross receipts from 50% to 20% and providing a safe harbor allowing employers to use the prior quarter's gross receipts instead of the current quarter's gross receipts to determine eligibility.
- The limit of creditable wages per employee is increased from \$10,000 per year to \$10,000 per quarter.
- The applicable number of employees in the rules described above have been increased from 100 to 500 employees. This will permit employers who had 500 or fewer full-time employees in 2019 to take the credit for wages paid to employees who continue to perform services, provided they meet the other requirements.
- The limitation that employers can only count wages up to the amount that an employee would have been paid for working an equivalent duration during the 30 days immediately preceding the period of economic hardship has been removed, allowing employers to claim the credit, for example, for bonus pay to essential workers.
- With certain limitations, businesses with 500 or fewer employees in 2019 are permitted to take an advance of the credit.
- Employers who were not in existence for all or part of 2019 will be allowed to claim the credit.
- Employers who receive or received a PPP loan will qualify for the credit with respect to wages that are not paid for with forgiven PPP loan proceeds.

If you have questions about the proposed expansion of the employee retention tax credit, please do not hesitate to contact one of the attorneys in Gould & Ratner's [Tax Planning and Compliance Practice](#).