

THE EMPLOYEE RETENTION CREDIT FOR EMPLOYERS AFFECTED BY THE COVID-19 EMERGENCY

The economic stimulus package recently approved by the United States Congress (P.L. 116, known as “The Coronavirus Aid, Relief and Economic Security (CARES) Act”), includes an important economic benefit for employers that retain employees on their payroll during the COVID-19 emergency. The economic benefit for employers affected by governmental closing orders is a fifty percent (50%) refundable tax credit on wages paid during the coronavirus emergency, up to a maximum of ten thousand dollars (\$10,000.00) per employee.

The purpose of this benefit is to encourage businesses financially affected by the COVID-19 crisis to retain their employees and keep them on their payroll. This benefit will be administered by the U.S. Treasury Department and it applies to businesses and employers in Puerto Rico. The Internal Revenue Service (“IRS”) has published initial guidelines regarding the implementation of this credit and additional pronouncements and guidelines issued to employees are expected in the near future. In the meantime, employers in Puerto Rico should be aware of this benefit in the decision making process regarding their employees. The following are questions and answers related to the tax credit.

Who qualifies for the employee retention credit?

The employee retention credit will be available for all businesses, regardless of size, including certain non-profit organizations exempted from federal income tax payments.

Small businesses who have taken loans under the federal Paycheck Protection Program, will not be able to benefit from this credit.



It is advisable for these businesses to determine beforehand which program will be most beneficial according to their circumstances. This credit also does not apply to self-employed individuals.

What are the requirements for receiving the employee retention credit?

Businesses should comply with at least one of the following requirements during one or more quarters of calendar year 2020:

1. The business suspended operations partially or entirely due to a closing order issued by the government related to the COVID-19 emergency.
2. The business’s gross receipts (gross income) during any of the 2020 quarters are below 50% of the same quarter in 2019.

These requirements are calculated each quarter of calendar year 2020.



Employers with 100 or less employees: if the employers had an average of 100 employees or less in 2019, all wages qualify for the credit, regardless of whether the business is open or subjected to a government closing order.

How do I receive the credit?

Employers can immediately receive the credit by reducing or retaining the deposits of federal payroll taxes withheld from employees' wages by the amount of the credit. The credit is limited to the portion of the federal social security tax (known as FICA) corresponding to the employer. Any credit excess will be considered as a tax overpayment and refundable by the IRS.

For example: An employer pays \$10,000.00 in wages to employee A on the second quarter of 2020. The retention credit of the wages paid to employee A, will be \$5,000.00. This credit amount can be used to reduce social security taxes that apply to employers in respect to all wages paid during the second quarter of 2020. Any excess credit will be reimbursed to employers.

You can find more information regarding this benefit in the IRS internet portal, IRS.gov.

Should your company have any questions or interest with respect to these employee retention credits for employers, you may contact the attorneys at Vidal, Nieves & Bauzá, LLC, a corporate lawfirm with a special emphasis in energy and environmental matters, corporate, tax, transactional, real estate and insurance practices.

How to calculate the employee retention credit?

The credit will be fifty percent (50%) of the wages paid for each employee up to a maximum of ten thousand dollars (\$10,000.00). Wages paid after March 12, 2020 and before January 1, 2021, will be eligible for this credit. For these purposes wages not only include payments made in cash, but also includes the portion of a health care plan paid for by the employer.

How do I know which wages qualify?

The credit is based on wages paid to employees. The determination of which wages qualify rests on the average number of employees of the company in 2019.

Employers with more than 100 employees: if the employer had an average of more than 100 employees in 2019, the credit will be allowed only for wages paid to employees that did not work during the calendar quarter.

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