



Webinar Q&A

American Rescue Plan Act: What Business Owners Need to Know

DISCLAIMER: These responses were answered to the best of our ability based on the information available as of 3/31/2021. The responses should not be taken as legal advice.

Q: Please clarify the employee retention credit requirement for loss of income in 2020 versus 2021

A: For 2020, the decline in gross receipts requirement for the Employee Retention Credit is as follows: For any quarter in 2020, gross receipts must be less than 50% of gross receipts for the same quarter in 2019. For 2021, the decline in gross receipts requirement is as follows: For any quarter in 2021, gross receipts must be less than 80% of gross receipts for the same quarter in 2019. Many businesses will be eligible for the ERC in 2021 due to the lowering of the requirement on reduction in gross receipts (from a 50% reduction in gross receipts to a 20% reduction) compared to the same quarter in 2019.

The following is directly from the Internal Revenue Service website:

Effective January 1, 2021, employers are eligible if they operate a trade or business during January 1, 2021, through June 30, 2021, and experience either:

A full or partial suspension of the operation of their trade or business during this period because of governmental orders limiting commerce, travel or group meetings due to COVID-19, or

A decline in gross receipts in a calendar quarter in 2021 where the gross receipts of that calendar quarter are less than 80% of the gross receipts in the same calendar quarter in 2019 (to be eligible based on a decline in gross receipts in 2020 the gross receipts were required to be less than 50%).

Employers that did not exist in 2019 can use the corresponding quarter in 2020 to measure the decline in their gross receipts. In addition, for the first and second calendar quarters in 2021, employers may elect in a manner provided in future IRS guidance to measure the decline in their gross receipts using the immediately preceding calendar quarter (i.e., the fourth calendar quarter of 2020 and first calendar quarter of 2021, respectively) compared to the same calendar quarter in 2019.

In addition, effective January 1, 2021, the definition of qualified wages was changed to provide:

For an employer that averaged more than 500 full-time employees in 2019, qualified wages are generally those wages paid to employees that are not providing services because operations were fully or partially suspended or due to the decline in gross receipts.

For an employer that averaged 500 or fewer full-time employees in 2019, qualified wages are generally those wages paid to all employees during a period that operations were fully or partially suspended or during the quarter that the employer had a decline in gross receipts regardless of whether the employees are providing services.

Retroactive to the March 27, 2020, enactment of the CARES Act, the law now allows employers who received Paycheck Protection Program (PPP) loans to claim the ERC for qualified wages that are not treated as payroll costs in obtaining forgiveness of the PPP loan.

For more information, visit the IRS.gov website.

Q: Does the employer have to show a reduction in revenue to qualify for the ERC?

A: An employer may be eligible for the ERC if they experienced a full or partial suspension of the operation of their trade or business because of governmental orders limiting commerce, travel or group meetings due to COVID-19. See the answer to Question #1 for more details.

Q: Has there been any clarification of whether public/government entities are exempt from the COBRA PAT Credit?

A: It is expected that this may be addressed in the Department of Labor's Model Notice, which should be published by April 10.

Q: Are employers subject to the Employee's decision to accept COBRA benefits? For example, I have an employee that retired on 12/31/2020. She qualifies for Medicare. Can she choose to enroll in COBRA instead of Medicare?

A: No. The COBRA subsidy only applies to employees who do not have any other option for insurance coverage, such as Medicare or another employer's group health plan. Also, if the employee retired voluntarily, she is not eligible because the COBRA subsidy only applies to employees who lost their jobs or experienced a reduction in hours involuntarily.

Q: Do the COBRA regulations only apply to employees who lost jobs/coverage as a result of COVID? What about employees who voluntarily left or retired are they exempt?

A: The new COBRA subsidy only applies to employees who had an involuntary termination of employment or an involuntary reduction of hours in November 2019 or later. The subsidy does not apply to employees who voluntarily terminate employment or who are eligible for another employer's group health plan or Medicare. It is not clear at this time whether the reason for the loss of employment must be related to COVID—the Department of Labor should clarify this in their Model Notice to be published by April 10.

Q: If an employee quit during COVID for a better job and did not sign up for COBRA, would the COBRA regulation apply in this case?

A: No. The new COBRA subsidy only applies to involuntary terminations. Employees who quit voluntarily are not eligible.

Q: For the FFCRA, we got paid on 4/2 for pay period 3/15-3/26, was that the last time for this current FFCRA? What happens if we have an employee out for 3/29 due to COVID will I be able to add that on the next payroll, if we are not going to continue with our FFCRA effective 4/1?

A: Yes, that is no problem. You may submit any hours for time off through March 31 with your next payroll (or with another future payroll if needed). Our new FFCRA Excel time sheet has separate columns for the codes prior to April 1 and separate columns for the codes starting on April 1 (ARPA).

Q: You have to have FTE of 20 employees for COBRA, don't you?

A: This is directly from the Department of Labor website: COBRA generally applies to all group health plans maintained by private-sector employers or by state and local governments with at least 20 employees. COBRA covers group health plans sponsored by an employer (private-sector or state/local government) that employed at least 20 employees on more than 50 percent of its typical business days in the previous calendar year. Both full-time and part-time employees are counted to determine whether a plan is subject to COBRA. Each part-time employee counts as a fraction of a full-time employee, with the fraction equal to the number of hours that the part-time employee worked divided by the hours an employee must work to be considered full-time.

Q: Can we amend our 1st PPP forgiveness to take out payroll and add in other expenses to take advantage of payroll tax credits with those payroll numbers?

A: We suggest that you contact your lender about this.

Q: For the FFCRA, is it an all or nothing situation? From January 1 2021 is what I am asking about.

A: As far as we can see, this has not been specifically addressed by the Department of Labor. However, the bill does not prohibit an employer from offering FFCRA for a portion of time (as opposed to the entire voluntary period). Also, we have read that an employer may choose to offer the Sick Leave Pay without the FMLA pay (or vice versa). However, when an employer decides to offer the FFCRA, the rules must be followed as if it was mandatory in order to qualify for the credits.

Q: Are all 9 of the FFCRA optional for employers?? If an employer does not offer any of the FFCRA extensions are they not eligible for the tax credits you presented today?

A: In order to be eligible for the federal tax credits for FFCRA pay, an employer must follow the rules as if the FFCRA was mandatory. As stated in the answer to Question #10, an employer can decide the time frame to offer the voluntary FFCRA, and the employer can choose to offer only the Sick Leave Pay or only the FMLA Pay. However, once the employer decides how long and whether they are offering the Sick Leave Pay and/or the FMLA Pay, we recommend that employers follow the rules as if the FFCRA was mandatory (which means all 9 reasons should be allowed). Employers also should communicate their FFCRA decision to their employees and make sure the decision is fair to all employees. If an employer decides not to offer FFCRA, they can still pay employees for Covid-related time off under any rules that the employer determines. Those wages would be fully-funded by the employer and would not qualify for the FFCRA tax credits.