



## New IRS Guidance Update for the Employee Retention Credit (ERC)

Since the program's inception in early 2020, the ERC guidelines have been updated several times in IRS Notices. The effect of these changes over time has been a widening of the qualifications, making more companies eligible, and an increase in the credits available. For companies with W-2 employees, the ERC offers substantial opportunities for financial benefit. In the most recent IRS Notice, number 2021-23, changes to the maximum credit, eligibility rules and quarterly wage calculations have made the ERC more attractive for potential applicants.

### Maximum ERC Credit by Quarter

For the first and second calendar quarters of 2021, **the maximum ERC is 70% of qualified wages** (including allocable qualified health plan expenses) paid by the employer. **The maximum wages per employee are \$10,000 per calendar quarter**; therefore, **the maximum credit per employee is \$7,000 (\$10,000 maximum wag-**

**es per employee × 70%) per calendar quarter.** This is an increase over the rules applicable for wages paid in 2020 where the maximum ERC credit was 50% of qualified wages paid, up to \$10,000 in annual wages per employee.

### Eligible employers

**For wages paid in the first and second quarters of 2021, an eligible employer must have been carrying on a trade or business during the calendar quarter for which the ERC is claimed.** Generally, governmental employers are not eligible for the ERC, but for

wages paid in the first and second quarters of 2021, any governmental entity that is a college or university, or whose principal function is providing medical or hospital care, is treated as an eligible trade or business.

### Small employers expanded

**For the first and second calendar quarters of 2021, the employee threshold to determine whether an employer is a small employer or a large employer is expanded from 100 full-time employees to 500 full-time employees.** When determining the number of full-time employees, an employer must use the 2019 calendar year. An employee is counted as a full-time employee if he or she had an average of at least 30 hours of service per week for any month in 2019 or 130 hours of service in any month in 2019. Only full-time employees are counted for purposes of this threshold. There is

no full-time equivalent employee computation.

Example: An employer whose average number of full-time employees in 2019 was 500 or less can claim the ERC for the first and second quarters of 2021 for eligible wages paid to each employee, whether the employee was actually working or not. Employers with an average of more than 500 full-time employees in 2019 can only claim the ERC for the first and second quarters of 2021 for wages paid to employees who are not actually working.



## Determining Quarterly Wages

Small employers may use alternative forms rather than Form 941 if they report payroll annually rather than quarterly. In IRS Notice 2021-23, the IRS stated a small eligible employer determines its average quarterly wages by calculating the average amount of wages required to be reported on all of its Forms 941, Employer's Quarterly Federal Tax Return, on line 5c (Taxable Medicare wages and tips), for the 2019 calendar year.

**Employers that file annual payroll tax returns must use the following payroll tax return lines instead of Form 941, line 5c:**

- If Form 943, Employer's Annual Federal Tax Return for Agricultural Employees, was used in 2019, then use line 4;
- If Form 944, Employers Annual Federal Tax Return, was used in 2019, then use line 4c;
- If Form CT-1, Employer's Annual Railroad Retirement Tax Return, was used in 2019, then use the sum of the amounts in the compensation columns of line 2 and line 9.

**Find out if you qualify:**