



# TaxNewsFlash

United States



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## IRS updates FAQs on employee retention credit, treatment of health plan expenses and PPP repayments

The IRS updated a list of “frequently asked questions” (FAQs) concerning the employee retention credit, enacted as part of the “Coronavirus Aid, Relief, and Economic Security Act” (CARES Act) (Pub. L. No. 116-136).

### **Health plan expenses**

The IRS reversed its previously announced position and, according to new FAQs, will now generally treat qualified health plan expenses paid during a furloughed period as qualified wages for purposes of the employee retention credit. Read [FAQs #64 and #65](#) (FAQs in full text provided below).

A [letter \(May 7, 2020\)](#) [PDF 28 KB] from the Treasury Department to the Senate Finance Committee chairman states that guidance would be updated to clarify the treatment of allocable health plan expenses for purposes of the employee retention credit.

### **PPP loan repayment deadline, May 14, 2020**

The IRS also updated [FAQ #79](#) to clarify that employers that received a loan under the PPP, but opt to repay the loan by the May 14, 2020 deadline may claim the employee retention credit after repaying the PPP loan.

Separately, the U.S. Treasury Department on May 6, 2020, updated a list of FAQs providing that employers that repay a PPP loan by May 14, 2020, may claim the employee retention credit. Read [TaxNewsFlash](#)

## Text of FAQs

### **64. May an Eligible Employer that averaged 100 or fewer full-time employees in 2019 treat its health plan expenses as qualified wages for purposes of the Employee Retention Credit? (updated May 7, 2020)**

Yes. An Eligible Employer that averaged 100 or fewer full-time employees in 2019 may treat its health plan expenses paid or incurred, after March 12, 2020, and before January 1, 2021, during any period in a calendar quarter in which the employer's business operations are fully or partially suspended due to a governmental order or a calendar quarter in which the employer experiences a significant decline in gross receipts as qualified wages, subject to the maximum of \$10,000 per employee for all calendar quarters for all qualified wages. Eligible Employers may treat health plan expenses allocable to the applicable periods as qualified wages even if the employees are not working and the Eligible Employer does not pay the employees any wages for the time they are not working.

**Example 1:** Employer Y averaged 100 or fewer employees in 2019. Employer Y is subject to a governmental order that partially suspends the operation of its trade or business. In response to the governmental order, Employer Y reduces all employees' hours by 50 percent. It pays wages to the employees only for the time the employees are providing services, but Employer Y continues to provide the employees with full health care coverage. Employer Y's health plan expenses allocable to wages paid during the period its operations were partially suspended may be treated as qualified wages for purposes of the Employee Retention Credit.

**Example 2:** Employer Z averaged 100 or fewer employees in 2019. Employer Z is subject to a governmental order that suspends the operation of its trade or business. In response to the governmental order, Employer Z lays off or furloughs all of its employees. It does not pay wages to its employees for the time they are laid off or furloughed and not working, but it continues the employees' health care coverage. Employer Z's health plan expenses allocable to the period its operations were partially suspended may be treated as qualified wages for purposes of the Employee Retention Credit.

### **65. May an Eligible Employer that averaged more than 100 full-time employees in 2019 treat its health plan expenses as qualified wages for purposes of the Employee Retention Credit? (updated May 7, 2020)**

Yes. An Eligible Employer that averaged more than 100 full-time employees in 2019 may treat its health plan expenses paid or incurred, after March 12, 2020, and before January 1, 2021, allocable to the time that the employees are not providing services during any period in a calendar quarter in which the employer's business operations are fully or partially suspended due to a governmental order or a calendar quarter in which the employer experiences a significant decline in gross receipts as qualified wages, subject to the maximum of \$10,000 per employee for all calendar quarters for all qualified wages. However, an Eligible Employer may not treat health plan expenses allocable to the time for which the employees are receiving wages for providing services as qualified wages; only the portion of health plan expenses allocable to the time that the employees are not providing services are treated as qualified wages.

**Example 1:** Employer A averaged more than 100 full-time employees in 2019. Employer A is subject to a governmental order that partially suspends the operation of its trade or business. In response to the governmental order, Employer A reduces all employees' hours by 50 percent and pays wages to its employees only for the time that the employees are providing services, but Employer A continues to provide the employees with full health care coverage. Employer A's health plan expenses allocable to the time that employees are not providing services may be

treated as qualified wages. However, Employer A may not treat health plan expenses allocable to the time for which the employees are receiving wages for providing services as qualified wages.

**Example 2:** Employer B averaged more than 100 full-time employees in 2019. Employer B is subject to a governmental order that partially suspends the operations of its trade or business. In response to the governmental order, Employer B reduces its employees' hours by 50 percent, but it reduces its employees' wages by only 40 percent, so that the employees receive 60 percent of their wages for 50 percent of their normal hours. Employer B continues to cover 100 percent of the employees' health plan expenses. In this case, Employer X may treat as qualified wages: (i) the 10 percent of the wages that it pays employees for time the employees are not providing services, plus (ii) 50 percent of the health plan expenses, because the health plan expenses are allocable to the time that employees were not providing services.

**Example 3:** Employer C is subject to a governmental order that fully suspends the operations of its trade or business. Employer C lays off or furloughs its employees and does not pay wages to the employees, but does continue to cover 100 percent of the employees' health plan expenses. In this case, Employer C may treat as qualified wages the health plan expenses that are allocable to the time that the employees are not providing services.

### **79. Is an employer that repays its Paycheck Protection Program (PPP) loan by May 14, 2020, eligible for the Employee Retention Credit? (updated May 7, 2020)**

Yes. An employer that applied for a PPP loan, received payment, and repays the loan by May 14, 2020 (originally May 7, 2020, as provided by the Limited Safe Harbor With Respect to Certification Concerning Need for PPP Loan Request in the Interim Final Rules issued by the Small Business Administration (SBA) effective on April 28, 2020, but extended by FAQ 43 in the SBA's PPP FAQs updated on May 5, 2020), will be treated as though the employer had not received a covered loan under the PPP for purposes of the Employee Retention Credit. Therefore, the employer will be eligible for the credit if the employer is otherwise an Eligible Employer....

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