

# The Employee Retention Credit (ERC)

Why you likely  
qualify, even if  
your tax advisor  
said you do not.



[www.hiringincentivesinc.com/erc](http://www.hiringincentivesinc.com/erc)

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## Brief Summary of the ERC

The Employee Retention Credit (ERC), part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, was enacted in March of 2020. It was created to offset the costs of the pandemic on employers. Due to the CARES Act's timing and the ERC's vague language, many employers overlooked it. However, it is a massive tax credit for employers. If the pandemic impacted your business, you likely qualify for the ERC.



## Misinterpretation

Many employers did not file for the ERC because they did not believe they were eligible. Congress scrambled to offer relief to employers and employees. Presumably, this urgency is why the ERC was not well-defined. As a result, many employers did not see the potential of this credit. The ERC was overshadowed by the Paycheck Protection Plan (PPP) and the weight of the pandemic in general.

In 2020, when first enacted, employers could not file for both the ERC and the PPP. The PPP arguably grabbed more headlines and likely offered a more significant return at the time.



## Evolution

The ERC has evolved since its inception. It was expanded through the Consolidated Appropriations Act (CAA) and the American Rescue Plan Act (ARPA).

Both plans gave employers more opportunities to be eligible. With the enactment of the CAA, employers were allowed to file for the PPP, the ERC, and the Families First Coronavirus Response Act (FFCRA).

## For-Profit & Not-for-Profit

Both for-profit and not-for-profit entities can qualify for the ERC. The credit goes toward the payroll taxes for employees retained and paid during the pandemic.

## Small & Large Companies Are Eligible

One of the biggest misconceptions about eligibility is the size of the company. Under the guidelines of the ERC, small and large companies are defined as follows:

### 2020

Small companies: Less than 100 employees  
Large Companies: More than 100 employees

### 2021

Small companies: Less than 500 employees  
Large companies: More than 500 employees

The change in what defines small and large companies between 2020 and 2021 has caused some employers to dismiss the ERC outright. A distinction between large and small companies is crucial because it relates to qualifying factors. A small employer (as outlined above) can qualify for wages and health benefits paid to employees during the eligibility period. Large employers (as outlined above) qualify for wages paid for services not performed during the eligibility period.





## Many Essential Businesses Dismissed the ERC Too Quickly

Many employers in essential industries mistakenly believe they are not eligible for the ERC. However, there are two factors in which essential businesses can qualify: through a full or partial shutdown or a decrease in revenue. Both of these qualifying factors have specific definitions for eligibility.

## Full Shutdown vs. Partial Shutdown

A business that closed its doors is pretty straightforward. However, employers can also qualify through a partial shutdown. Partial shutdowns as a qualifying factor are complex, but a CPA experienced in employment credits can help determine what constitutes a partial shutdown.

## The Profitability Factor

One way to be eligible for the ERC is through decreased revenue. The profitability factor in determining eligibility under the ERC is outlined below.

### 2020 Guidelines

If gross receipts were 50% less than they were for the same quarter in 2019

### 2021 Guidelines

If gross receipts were 20% less than they were for the same quarter in 2019

It is possible to qualify one year and not the other or qualify for one quarter and not another.

## Supply Chain Disruptions

Supply chain disruptions have been a hurdle for employers since the start of the pandemic. There are scenarios in which these disruptions can be a qualifying factor for the ERC. An attorney and CPA experienced in employment credits and the ERC can determine if your company qualifies under this scenario.

## Potential Refund

In the earlier version of the ERC, employers could be eligible for up to \$33K per employee. Congress repealed the credit for all businesses except recovery start-ups for the 4th quarter in 2021. The repeal reduced the credit to a maximum of \$26K per employee.

Although the 4th quarter of 2021 was eliminated, employers can still obtain credit retroactively as long as it is filed within three years of each eligible quarter. The first expiration date for filing a new claim is June 30, 2023.

## Recovery Startup Business

The ERC defines Recovery Startups as companies founded after February 15, 2020. This is relevant because startups (as defined by ERC), have different rules relating to when they can file and what is considered an eligible period.

## Claiming Other Pandemic-Related Credits and the ERC

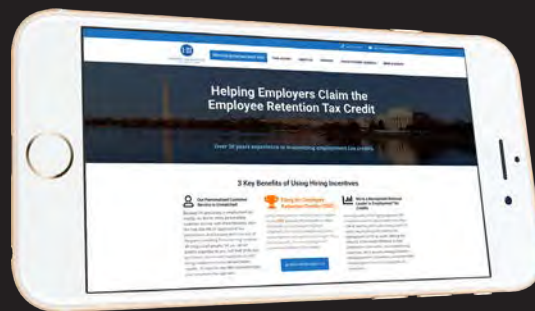
Employers can apply for the ERC, PPP, FFRCA, and other COVID relief monies. Each program has its unique benefit. Most can be combined; however, scrupulous oversight is critical to avoid double-dipping.

## An Expert in Employment Tax Credits Makes the Difference

Doctors have specialties. Lawyers have areas of practice. Although both of them can provide general guidance, they each develop their careers on expertise in subsets of their profession.

Our CPAs and legal counsel specialize in employment-related tax credits. We have over **thirty years** of experience in complex tax credits. As founding members of the National Employment Opportunity Network (NEON), we stay apprised of any developments to tax credits and maintain compliance. Our team will evaluate eligibility, calculate your ERC credits, prepare necessary documents, and provide documentation for audit review.

We provide FREE consultations to evaluate your eligibility. Contact us today.



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