



Economic Aid Act Employee Retention Credit FFCRA & State Sick Leave

January 21, 2021

TODAY'S
FACILITATORS:



Jonathan Boehmer

Jonathan is a Co-Founder and Vice President of PuzzleHR. He has more than 20 years of executive leadership in the Human Capital Management and Resource Outsourcing industry. He is an expert in business strategy, company culture, strategic execution and leadership.



Sue Boardman

Sue has more than 30 years experience in leading small businesses through complex human resources challenges and is an expert in navigating clients through challenging problems. Her areas of focus are state and federal regulatory compliance, payroll and benefits management, human capital management technology, change leadership, employee engagement, pay for performance and employee development. She is currently the New England Regional Manager at Puzzle HR.

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AGENDA

- Start 12:00 ET
- **Start**
 - **Employee Retention Credits – 2020 and 2021**
 - **Paycheck Protection Program – First and Second Draw**
 - **Extension of FFCRA**
 - **Q&A**

Employee Retention Credit – 2020

Does my business qualify?

- Yes, if my business was fully or partially suspended by a COVID-19 lockdown order

OR

- Yes, if for a quarter in 2020, gross receipts are less than 50% of gross receipts for the same quarter in 2019
 - Qualifying Example – Gross Receipts for Q3 2019 were \$100,000 and Gross Receipts for Q3 2020 were \$49,999 or less.



Employee Retention Credit – 2020

When can we take advantage of ERC?

- Available from March 12, 2020 through December 31, 2020 on qualified wages*
- During qualifying quarter **outside of the time period** in which you used your PPP Loan

*Qualified wages for eligible employers with 100 or fewer employees are any wages (including health premiums) paid, regardless of whether the employees were working

*Qualified wages for eligible employers with more than 100 employees on wages (including health premiums) paid to employees who were **NOT** working



Employee Retention Credit – 2020

How much is the Employee Retention Credit?

- 50% of qualified wages up to \$10,000
- Maximum credit per employee for 2020 is \$5,000



Employee Retention Credit – 2020

Special Notes

- If you received a PPP Loan, the Consolidated Appropriations Act (CAA) now allows employers to take advantage of Employee Retention Credits **retroactively** to 2020
- Guidance is forthcoming on how best to maximize 2020 Employee Retention Credits for eligible employers
- If an employer is eligible, it will require amended 2020 941 returns and refunds will come directly from the IRS
- ePay will work directly with clients to process 2020 941 Amendments (February timeframe, subject to guidance being issued)



Employee Retention Credit – 2021

Does my business qualify?

- Yes, if my business was fully or partially suspended by a COVID-19 lockdown order

OR

- Yes, if for a quarter in 2020, gross receipts were less than 80% of gross receipts for the same quarter in 2019
 - Qualifying Example – Gross Receipts for Q3 2019 were \$100,000 and Gross Receipts for Q3 2020 were \$79,999 or less.



Employee Retention Credit – 2021

When can we take advantage of ERC?

- Available from January 1, 2021 through July 1, 2021 on qualified wages*
- During qualifying quarter **outside of the time period** in which you use your First or Second Draw PPP Loan

*Qualified wages for eligible employers with **500** or fewer employees are any wages (including health premiums) paid, regardless of whether the employees were working

*Qualified wages for eligible employers with more than **500** employees on wages (including health premiums) paid to employees who were **NOT** working



Employee Retention Credit – 2021

How much is the Employee Retention Credit?

- 70% of qualified wages up to \$10,000 **per quarter**
- Maximum credit per employee **per quarter** is \$7,000
- Maximum credit per employee **for 2021** is \$14,000



Employee Retention Credit – 2021

Special Notes

Eligible employers waiting on Second Draw PPP Loans can begin taking advantage of 2021 Employee Retention Credits

Guidance is forthcoming on how best to maximize 2021 Employee Retention Credits for eligible employers

ePay will work directly with clients to process Employee Retention Credits with each payroll

Form 7200 allows employers to receive an expedited credit from the IRS



Employee Retention Credit Questions

Unanswered Questions for Eligible Employers

- 1.) If we used our PPP Loan in 16 weeks during 2020, can we start applying Employee Retention Credits immediately following the 16th week or do we need to wait until the end of the 24-week period?
- 2.) If we submitted 2020 PPP Loan Forgiveness with 100% payroll, can we modify the forgiveness to 60% payroll and 40% other to maximize the Employee Retention Credits?
- 3.) For 2021 Employee Retention Credits, should we delay the Second Draw PPP Loan in order to maximize the Q1 and Q2 2021 Employee Retention Credits?



Paycheck Protection Program – Updates with Consolidated Appropriations Act 2021

Does my business qualify?

- Employ no more than 300 employees per physical location (the same affiliation rules apply as the First Draw PPP loan).
- Have already used or plan to use the full amount of first PPP loan prior to disbursement of the second loan.
- Demonstrate at least a 25% reduction in gross receipts in the first, second, third, or fourth quarter of 2020 compared to the same quarter in 2019.



Paycheck Protection Program – Updates with Consolidated Appropriations Act 2021

How much can we obtain for PPP Loan?

- Borrowers may receive up to 2.5 times the average monthly payroll costs in either the one year prior to the second draw loan or calendar year 2019.
- NAICS Code 72 entities including hospitality, restaurants, bars, or establishments providing lodging, or preparing meals, snacks, and beverages may be eligible for 3.5 times the average monthly payroll cost.
- Maximum loan amounts are \$2 Million
- Loans of \$150,000 or less qualify for simplified forgiveness



Paycheck Protection Program – Updates with Consolidated Appropriations Act 2021

CAA 2021 Allows:

- First time PPP Loans for those qualifying businesses that did not obtain a loan through the CARES Act back in March 2020
- “Second Draw” PPP Loans for those qualifying businesses that need additional funding.
- Additional funding can be requested if you did not maximize your original PPP Loan
- Nonprofit Section 501c(6) organizations are now eligible for PPP loans



Paycheck Protection Program – Updates with Consolidated Appropriations Act 2021

Use of PPP Loan Amounts:

- Payroll costs (including health, dental, vision, disability, and life insurance)
- Mortgage, Rent and Utilities
- Payment for software, cloud computing, payroll services, and other human resources and accounting needs.
- Costs related to property damage due to public disturbances that occurred during 2020 and were not covered by insurance.
- Expenditures to suppliers pursuant to a contract, purchase order, or order for goods in effect prior to taking out the loan that are essential to operations at the time the expenditure was made.
- Personal protective equipment and adaptive investments to comply with federal and state health and safety guidelines between March 1, 2020 and the end of the national emergency declaration



Paycheck Protection Program – Updates with Consolidated Appropriations Act 2021

Misc Rules for PPP Loan:

- For full forgiveness, payrolls costs must account for at least 60% of the loan proceeds. Other allowable expenses can account for 40% of the loan proceeds
- Covered Period:
 - Begins on loan disbursement date*
 - Borrowers covered period can be any length of time between 8 and 24 weeks



Paycheck Protection Program – Updates with Consolidated Appropriations Act 2021

Applying for a Second Draw PPP Loan

- Borrowers must submit SBA Form 2483-SD Paycheck Protection Program Second Draw Borrower Application Form or the lenders equivalent form.
- Documentation is required to substantiate payroll costs and is the same documentation required for the first loan.
- If a borrower is using 2019 payroll data, the documentation submitted with the first PPP loan application is typically the same, so additional documentation is not required.
- Loan amounts greater than \$150,000 will require documentation to substantiate the 25% revenue reduction.
- ***Loan applications must be submitted by March 31, 2021.***



Paycheck Protection Program – Updates with Consolidated Appropriations Act 2021

Forgiveness Application Information

- Loans of \$150,000 or less are eligible for full forgiveness by submitting a 1-page certification form (to be finalized by the SBA).
- Employers must certify that they meet all requirements and retain documentation to substantiate loan and forgiveness applications.
- Economic Injury Disaster Advances between \$1,000 - \$10,000 will not reduce PPP loan forgiveness.



Families First Coronavirus Act- FFCRA Consolidated Appropriations Act

- The CAA 2021 allows FFCRA-covered employers to *voluntarily* extend two types of emergency paid leaves through March 31, 2021 that were originally *mandated* between April 1, 2020 and December 31, 2020 by the Families First Coronavirus Response Act (FFCRA).
- These FFCRA leaves are Emergency Paid Sick Leave (EPSL) and Emergency Family and Medical Leave (EFMLA).



Families First Coronavirus Act- FFCRA Consolidated Appropriations Act

- Under the new legislation, private businesses and non-profits with fewer than 500 employees who choose to do so, can take tax credits for FFCRA leaves taken between January 1, 2021 and March 31, 2021.
- Employers may now *voluntarily* choose to permit the carryover of *unused* 2020 EPSL into the first quarter of 2021. If they do, EPSL tax credits associated with this paid leave can be taken through March 31, 2021. The tax credits are an incentive for FFCRA-covered employers to choose to carryover unused EPSL.



Families First Coronavirus Act- FFCRA Consolidated Appropriations Act

- CAA 2021 does *not* provide employees with additional EPSL. Employees who emptied their EPSL tank of 10 days in 2020 have nothing to carry over into the first quarter of 2021 should their employers decide to allow EPSL carryover. The CAA 2021 merely extends the tax credit available to private employers under the FFCRA, and does not create new EPSL leave.
- Employers who choose to allow carryover EPSL should do so for all employees. Additional liability may arise under other laws if employers cherry-pick who gets to carryover EPSL and who does not.



Families First Coronavirus Act- FFCRA Consolidated Appropriations Act

- Consolidated Appropriations Act (CAA), 2021, extended employer tax credits for paid sick leave and expanded family and medical leave voluntarily provided to employees until March 31, 2021. However, the CAA did not extend employees' entitlement to FFCRA leave beyond Dec. 31, 2020, meaning employers will no longer be legally required to provide such leave.



Families First Coronavirus Act- FFCRA Consolidated Appropriations Act

- EFMLA under the CAA 2021 is *voluntary*, at the option of the employer. Private and non-profit employers who choose to continue providing EFMLA can claim the payroll tax credit through March 31, 2021. While employers are no longer *required* to provide the FFCRA leaves under the CAA 2021, the payroll tax credits are an incentive to do so. Employers should approach this decision even more thoughtfully than the decision on whether to extend EPSL because EFMLA leaves can be much longer and there are unanswered questions about the mechanics of extended EFMLA leaves.



Families First Coronavirus Act- FFCRA Consolidated Appropriations Act

- The CAA 2021 does not prohibit or require employers who choose to continue EPSL to also continue EFMLA. Thus, it appears the two decisions can be made separately and can differ. Consolidated Appropriations Act (CAA), 2021, extended employer tax credits for paid sick leave and expanded family and medical leave voluntarily provided to employees until March 31, 2021. However, the CAA did not extend employees' entitlement to FFCRA leave beyond Dec. 31, 2020, meaning employers will no longer be legally required to provide such leave.





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