



The National Association of Professional Employer Organizations

The COVID Relief Legislation: What's in It and What Does It Mean for PEOs?

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Consolidated Appropriations Act of 2021

- Combined COVID-19 stimulus bill and omnibus spending bill for FY 2021, with a price tag of \$2.3 trillion
- Passed Congress on December 21; signed into law by Trump on December 27
- At 5,593 pages, reportedly the longest piece of legislation ever passed by Congress
- Today's presentation will give a high-level overview of the provisions most likely to be of interest to PEOs

Unemployment Insurance

- **Unemployment Insurance Benefits Extension.** The Act extends the various pandemic unemployment insurance programs (including the expanded coverage to self-employed and gig workers) and provides an additional \$300 per week for workers receiving unemployment benefits through March 14, 2021

Individual Relief Payments

- **Individual Relief Payments.** The Act provides \$600 per individual (\$1,200 for taxpayers filing jointly) payments directly to Americans, as well as \$600 for each child dependent under the age of 17. The payments begin to phase out at an adjusted gross income of \$75,000 for an individual and \$150,000 for joint filers

Health Provisions

- **COVID-related health provisions**
- **Surprise billing “fix”**
- **Health transparency provisions**
 - Prohibits “gag” clauses
 - Mandatory broker comp disclosure
 - Mental health parity attestation regarding NQTL compliance
 - Annual reporting on pharmacy benefits and drug costs
- **Other health**
 - FSA/DCAP relief
 - Funding for COVID testing and vaccine
 - Reduced threshold for medical expense deduction on Form 1040

Return of the Paycheck Protection Program (“PPP”) and Introducing.... PPP2

- “Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act”
- Reopens the PPP until March 31, 2021, and makes some changes to the rules that apply
- Adds new “second draw” PPP loans (“PPP2”) which are intended for eligible borrowers that already received a PPP loan
- Provides that business expenses can still qualify for a tax deduction under the Code even if paid by a PPP loan that was subsequently forgiven under the CARES Act
- SBA/Treasury have already released two interim final rules on January 6

PPP- What's New

New Allowable And Forgivable Expenses

- **“Covered Operations Expenditures”** – clearly includes software and cloud computing expenses related to human resources and accounting. Open question as to how broadly this can be interpreted.
- **“Covered Property Damage Costs”**- Costs related to property damage due to public disturbances that occurred during 2020, if not covered by insurance.
- **“Covered Supplier Costs”**- Payments to a supplier pursuant to a contract/purchase order in effect prior to taking out the loan, if expenditures were essential to the recipient’s operations at the time the expenditure was made.
- **“Covered Worker Protection Expenditures”**- Costs to pay for PPE or other investments that would help the borrower comply with governmental guidelines related to COVID-19 between March 1, 2020 and the end of the national emergency declaration.

PPP- What's New

“Covered Operations Expenditures”

“(3) the term ‘covered operations expenditure’ means a payment for any business software or cloud computing service that facilitates business operations, product or service delivery, the processing, payment, or tracking of payroll expenses, human resources, sales and billing functions, or accounting or tracking of supplies, inventory, records and expenses;”;

PPP- What's New

Other Notable Changes

- Definition of “payroll costs” revised to include group life, disability, vision, or dental insurance
- More flexibility for borrower to pick the duration of the “covered period,” which is the period looked at for purposes of determining which loan proceeds are forgivable
 - Can pick any period between 8 and 24 weeks after origination date of loan
- Simplified, one-page loan forgiveness application for loans that are \$150,000 or less
- Borrowers that returned part of their PPP loan, or did not borrow the full amount for which they were eligible, may request a modification to increase the loan amount to the maximum
- Waiver of affiliation rules for certain “news organizations”
- Publicly-traded companies are now generally ineligible for PPP

PPP2- “Second Draw Loans”

- Maximum Amount: 2.5X average monthly payroll costs in the one year prior to the loan or the calendar year, up to a maximum amount of \$2 million
- Eligibility:
 - Must have not more than 300 employees
 - Must have used, or will use, the full amount of the PPP1 loan on eligible expenses
 - Must demonstrate at least a 25 percent reduction in gross receipts in a calendar quarter during 2020 relative to the same 2019 quarter. (Special rules apply for businesses not in operation in 2019)

PPP2- “Second Draw Loans”

- Loan forgiveness rules for PPP2 loans are much like rules for PPP1 loans
- Loan forgiveness available for amounts spent on:
 - Payroll costs
 - Covered mortgage, rent, utility payments
 - Covered operations expenditures
 - Covered property damage costs
 - Covered supplier costs
 - Covered worker protection expenditures
- In order to receive full loan forgiveness, at least 60% must be spent on payroll costs vs. non-payroll costs (as with PPP1)

Employee Retention Tax Credit (ERTC)

	PRE-CAA Rules	Prospective Changes (calendar quarters beginning after 12/31/20)
DURATION OF CREDIT	The ERTC applies with respect to wages paid by eligible employers after March 12, 2020 and before January 1, 2021	ERTC extended for 6 months -- through June 30, 2021
AMOUNT OF CREDIT	ERTC is a credit against employment taxes equal to 50% of “qualified wages” with respect to each employee for the quarter	For wages paid January 1, 2021 through June 30, 2021, the ERTC rate is increased to 70%
MAXIMUM CREDIT	Total wages considered for any employee are capped at \$10,000, i.e., maximum credit is \$5,000 per employee during 2020	For 2021 per-employee limit on qualified wages increased to \$10,000 for each quarter, i.e., maximum credit is \$7,000 for each of the first two quarters of 2021, for a total credit in 2021 of \$14,000 per employee

ERTC – Eligible Employers

	PRE-CAA Rules	Prospective Changes (calendar quarters beginning after 12/31/20)
ELIGIBLE EMPLOYERS, IN GENERAL	<p>The ERTC is available to employers that</p> <ul style="list-style-type: none"> • had operations fully or partially suspended under government orders due to COVID-19, or • had a decline of at least 50% in gross receipts as compared to the same calendar quarter in 2019 	<p>Any business with a decline in gross receipts of more than 20% compared to the same calendar quarter in 2019 would be eligible</p> <p>Allows the option of determining eligibility based on gross receipts in the immediately preceding calendar quarter (compared with the corresponding quarter in 2019)</p>
TAX-EXEMPTS AND GOVERNMENTS	<p>501(c) tax-exempt organizations are eligible; governments are not</p>	<p>Prohibition on governments claiming ERTC lifted for certain public instrumentalities</p>

ERTC – Qualified Wages

	PRE-CAA Rules	Prospective Changes (calendar quarters beginning after 12/31/20)
QUALIFIED WAGES	For employers with 100 or fewer “full-time employees” all employee wages are qualified. Other employers are limited to wages paid to employees not performing services due to COVID-19-related circumstances	For 2021, the more generous small employer definition of qualified wages applies to employers that have 500 or fewer employees
LIMITATION ON QUALIFIED WAGES	In certain cases qualified wages do not include pay increases	The limitation based on the employee’s past pay no longer applies for wages paid in 2021

ERTC – Key Retroactive Changes

	PRE-CAA Rules	Retroactive Change (treated as if enacted in the CARES Act)
INTERACTION WITH THE PAYCHECK PROTECTION PROGRAM (PPP)	Under the CARES Act, the ERTC was <u>not</u> available if an eligible employer received a covered loan under the PPP	The section denying the ERTC to employers receiving a PPP loan is repealed retroactively. Mechanisms are created to prevent the same wages from being used for both PPP loan forgiveness and the ERTC
QUALIFIED HEALTH PLAN EXPENSES	Credit calculation includes employer’s “properly allocable” qualified health plan expenses with respect to the employee’s wages	Clarifies that group health plan expenses are qualified wages even if no other wages are paid to the employee
SPECIAL REPORTING RULES FOR RETROACTIVE CHANGES		Employers that have already filed a tax return with respect to applicable employment taxes before December 27, 2020, may treat certain amounts as paid in Q4 2020

ERTC – Treasury/IRS Guidance Direction

	PRE-CAA Rules	Prospective Changes (calendar quarters beginning after 12/31/20)
GUIDANCE GENERALLY	IRS directed to issue ERTC forms, instructions, regulations and guidance, as necessary, on various issues	IRS specifically authorized to issue anti-abuse guidance, “including through the leaseback of employees”
ADVANCE PAYMENTS	If an employer cannot claim the ERTC against applicable employment taxes, any excess credit is treated as an overpayment and refunded. These excess credits are claimed through the use of Form 7200	Advance payments are limited to employers with an average number of “full-time employees” during 2019 of 500 or fewer. Also, the maximum advance payment is capped at 70% of the average 2019 quarterly wages
INTERACTION WITH OTHER TAX CREDITS	Employers may not double count for purposes of the ERTC and credits under sections 41 (R&D), 45S (voluntary family and medical leave credit), 51 (WOTC), or for qualified leave wages under the FFCRA	The anti-double dip rules would be modified (in some cases) and prospectively be extended to tax credits under sections, 45A (Indian employment), 45P (active duty military), and 1396 (empowerment zones)

ERTC – PEO Liability & New Disaster Provision

	PRE-CAA Rules	Prospective Changes (calendar quarters beginning after 12/31/20)
LIABILITY RELIEF FOR PEOs AND OTHER THIRD PARTY PAYORS	The IRS is directed to issue guidance, as necessary, with respect to the application of the credit to “third party payors” (including specifically PEOs, CPEOs or agents under section 3504 of the Code); including guidance allowing such payors to submit documentation necessary to substantiate the eligible employer status of employers that use such payors	The IRS direction is modified by the following: “Any forms, instructions, regulations, or guidance . . . shall require the customer to be responsible for the accounting of the credit and for any liability for improperly claimed credits and shall require the certified professional employer organization or other third party payor to accurately report such tax credits based on the information provided by the customer”
NEW DISASTER-RELATED ERTC	Congress has provided a separate ERTC for employers in specified disaster zones. This has been a general business credit against income tax, and not a credit against payroll tax.	A temporary 40% ERTC is provided for certain 2020 qualified disasters (but NOT disasters declared only by reason of COVID-19). This new credit is a general business credit against income taxes, but the CAA provides it is available against payroll taxes for some tax-exempt organizations

FFCRA Employer Paid Leave Mandate & Tax Credits

- **Families First Coronavirus Response Act (FFCRA)**

- Required certain employers to provide paid sick and paid family and medical leave for certain reasons related to COVID-19 through 12/31/2020
- Provided employer tax credits to offset, on a dollar-for-dollar basis, the amount of wages paid to an employee due to the mandate through 12/31/2020

- **Consolidated Appropriations Act, 2021 (CAA)**

- FFCRA's employer mandate → **NOT EXTENDED**
- FFCRA's employer tax credits → **EXTENDED THREE MONTHS TO 3/31/2021**
 - An employer is generally eligible for the extended tax credits if it would be eligible had the mandate also been extended (i.e., same general terms and conditions apply)

PPP Loans and Expense Deduction

- CARES Act
 - Created the Paycheck Protection Program and provided for PPP loan forgiveness
 - Specifies that the amount of forgiven PPP loans “shall be excluded from gross income”
- IRS Guidance
 - Expenses are not deductible if paid for with PPP loans that are later forgiven
- CAA
 - **CLARIFIES THAT EXPENSES MAY BE DEDUCTED, EVEN IF PAID FOR WITH A PPP LOAN THAT IS FORGIVEN & EXCLUDED FROM INCOME**
 - Applies to taxable years ending after March 27, 2020 (CARES Act date of enactment)



Payroll Tax Deferral

Employer Deferral

- CARES Act
 - Allowed employers to defer the deposit and payment of the employer share of Social Security tax through December 31, 2020
 - 50% of deferred amount due 12/31/2021
 - Remaining 50% due 12/31/2022
- CAA
 - **NO EXTENSION OR OTHER CHANGES**

Employee Deferral

- Trump Presidential Memorandum
 - Directed Treasury to provide for a deferment of the withholding, deposit, and payment of employee share of Social Security tax for wages paid 9/1/2020 – 12/31/2020, subject to limitations
- IRS Notice 2020-65
 - Deferred amounts must generally be withheld and paid ratably over the period 1/1/2021 – 4/30/2021
- CAA
 - **EXTENDS REPAYMENT PERIOD THROUGH 12/31/21**

CAA's Extension of Expiring Tax Code Provisions

EXTENDED THROUGH 2025:

- Work Opportunity Tax Credit (Code § 51)
- Employer Credit for Paid Family and Medical Leave (Code § 45S)
- Exclusion for Employer Payment of Student Loans (Code § 127(c)(1)(B))



Questions?

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