

April 13, 2020

CARES Act Provides Employee Retention Credit for Some Employers Impacted by COVID-19 Pandemic

Section 2301 of the Coronavirus Aid, Relief, and Economic Security Act (the Act) provides employee retention credit for eligible employers subject to closure due to the coronavirus disease (COVID-19).

Eligible employers that qualify to receive a retention credit under the Act are those in which trade or business has been fully or partially suspended during a calendar quarter in 2020 as a result of the government limiting commerce, travel and group meetings due to COVID-19. An employer may also be eligible if its business has experienced a significant decline in gross revenue over a period commencing when the business's gross receipts are less than 50 percent of the gross receipts for the same calendar quarter in the previous year until the gross receipts have increased to greater than 80 percent for the same calendar quarter in the previous year.

Pursuant to the Act, eligible employers may receive a refundable credit against applicable employment taxes for each calendar quarter for up to 50 percent of the qualified wages of each employee for that quarter. Eligible employers may claim a retention credit for qualified wages paid from March 13 through January 1, 2021. The criteria for qualified wages is dependent on the number of full-time employees of the business. For businesses that averaged more than 100 employees for 2019, qualified wages include only wages paid to employees during periods when the employees were not providing services due to COVID-19. However, for businesses with fewer than 100 employees in 2019, a retention credit may be given on all employee wages. Qualified wages may also include certain health plan expenses.

The total qualified wages for each employee are capped at \$10,000. Hence, eligible employers can expect to receive a maximum retention credit of \$5,000 per employee. The retention credit allowed for each quarter may not exceed the applicable employment taxes for all employees in that quarter, but if it does, the excess may be treated as an overpayment of tax and refunded.

Notably, an employer may not receive a double benefit from multiple federal programs; it must choose one. For example, employers will not qualify for a retention credit if they also receive Work Opportunity Tax Credits, an Employer Credit for Paid Family and Medical Leave or a loan pursuant to the Paycheck Protection Program of the Act. Also, retention credits will be reduced by any credits allowed under the Families First Coronavirus Response Act.

For more Day Pitney alerts and articles related to the impact of COVID-19, as well as information from other reliable sources, please visit our [COVID-19 Resource Center](#).

COVID-19 DISCLAIMER: As you are aware, as a result of the COVID-19 pandemic, things are changing quickly and the effect, enforceability and interpretation of laws may be affected by future events. The material set forth in this document is not an unequivocal statement of law, but instead represents our best interpretation of where things stand as of the date of first publication. We have not attempted to address the potential impacts of all local, state and federal orders that may have been issued in response to the COVID-19 pandemic.

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