

# New COVID relief package extends payroll provisions

The new COVID relief package included in the Consolidated Appropriations Act, 2021 (H.R. 133) is a virtual grab bag of covid-19 relief. It includes extensions and expansions of payroll relief and another set of \$600 checks payable to most taxpayers. The law also extends expiring tax provisions and everything that could be jammed into 5,593 pages of federal legislation three days before Christmas.



*The overall price tag? North of \$2 trillion.*

## The key payroll provisions include:

- An extension of the paid sick/family leave provisions and your tax credit for providing leave.
- An expanded employee retention credit.
- Expanded criteria for loans under the Paycheck Protection Program.
- Extensions of popular payroll tax provisions.
- Relief for employers that deferred the deposit of employees' Social Security taxes.
- Relief for health savings accounts and dependent care assistance plans.
- Temporary disaster tax relief.
- Relief for employees who receive surprise medical bills.

One important payroll relief provision that was omitted: Continued authority allowing you to defer the deposit of the employer's share of Social Security taxes.

## **Paid sick/family leave is extended through March**

The COVID relief package extends paid sick and family leave, and your tax credits for providing through March 31, 2021. They were set to expire on Dec. 31. The leave and the tax credits are extended, not reset, for 2021. So if employees have maxed out on their leave in 2020, they aren't eligible for more paid leave after Dec. 31.

## **Some changes to the employee retention credit**

As originally constructed, the employee retention credit allowed you to take a tax credit against your share of Social Security taxes if you couldn't continue to operate by, say, having employees telecommute, but you continued to pay employees and provide health benefits.

The tax credit also applied if you suffered a significant decline in gross receipts, defined as a 50% drop in quarterly gross receipts when compared to the same quarter during 2019.

*Maximum credit:* \$5,000 per employee (50% of wages, up to \$10,000, annually).

Who got paid creditable wages differed, depending on size: Employers with 100 or more employees (i.e., large employers) could credit payments made to furloughed employees only; employees with fewer than 100 employees could credit payments made to all employees, regardless of whether they were furloughed.

If you needed an advance on your tax credit, you could file Form 7200 with the IRS.

The credit was set to expire Dec. 31, 2020.

Beginning Jan. 1, 2021, through June 30, 2021, the following changes extend and expand the credit:

- It increases to 70% of qualified wages and benefits, up to \$10,000 per employee, per quarter.
- The significant decline in year-over-year gross receipts decreases to 20%; a new safe harbor allows you to use prior quarter gross receipts to determine eligibility.
- For purposes of determining whether you're a large employer, the 100-employee threshold increases to employers with 500 employees.
- Advances are limited to 70% of average quarterly wages paid during 2019.

## **PPP loans are expanded**

As expected, the PPP has also been updated and extended in this latest round of COVID relief. Congress has put to rest the controversy regarding whether expenses associated with loans forgiven under the Paycheck Protection Program are deductible on your corporate return. Originally, the IRS said no because it was a double-dip. Congress now says yes, regardless of the double-dip.

PPP loans originally covered payroll, rent, utilities, and similar costs. The list of eligible expenses is expanded to include operating expenses (e.g., cloud computing services), property damage not covered by insurance, expenses related to providing protective gear to employees (e.g., renovations to add a drive-through window) and covered supplier costs.

PPP recipients with loans totaling less than \$150,000 will be able to take advantage of a simplified loan forgiveness application.

PPP loan recipients can now take the employee retention credit, provided the expenses covered by the credit

aren't also covered under the PPP loan. In addition, employers with up to 300 employees who experienced a significant drop in quarterly gross receipts when compared to the same quarter in 2019 are eligible for a second draw.

These changes are effective retroactive to March 27, 2020.

## **Tax extenders**

The following provisions of the tax code, which were slated to expire at the end of this year, are extended through Dec. 31, 2025:

- The Work Opportunity Tax Credit.
- The corporate tax credit for providing paid FMLA leave (for leave provided in 2021, employees can't have earned more than \$78,000 last year).
- The exclusion from employees' incomes if you pick up their student loan expenses, up to \$5,250 a year.

## **Deferrals of employees' Social Security taxes**

Very few private employers opted to defer employees' Social Security taxes. The deferrals were originally supposed to be paid back by April 30, 2021. The law extends the payback time to the end of 2021. *Warning:* The IRS originally required you to withhold the make-up amounts ratably and report them on Form W-2c once the withholding was complete. Until the IRS says otherwise, these two rules still apply.

## **FSA/DCAP deferrals**

Cafeteria plans with plan years ending in 2020 or 2021 may allow employees who have health flexible spending accounts or dependent care assistance plan accounts to rollover unused amounts into the next plan year. Alternatively, health FSAs and DCAPs may extend their grace periods to 12 months after the plan year ends, from three months.

For plan years ending in 2021, health FSAs and DCAPs may allow employees to make midyear changes, but all midyear changes must still be made prospectively (no cash refunds).

Employees cease to be eligible for DCAPs once their children turn 12. Under a special rule, employees are still eligible if their children turn 13 during the pandemic. *Catch:* Employees had to be enrolled in the DCAP prior to January 31, 2020.

Plan amendments will be required.

## **COVID relief package continues disaster tax relief**

Individuals and employers affected by natural disasters declared on or after Jan. 1, 2020, through 60 days after the date the law is enacted are entitled to the following relief:

- Employees may tap their 401(k) accounts, up to \$100,000, without worrying about the 10% excise tax on early withdrawals. Amounts withdrawn may be paid back ratably over three years.
- Employers can take an employee retention credit of up to 40% of wages paid (up to \$6,000 per employee). The credit applies regardless of whether employees worked. Tax-exempt employers have the option of claiming the credit against their payroll taxes.

## **Expanded meal deduction**

Through Dec. 31, 2022, you may deduct 100% of employees' substantiated meal costs, instead of the normal

50%. But you still can't write off employees' entertainment expenses, so it's best to heed the IRS' regulations and ensure employees present you with itemized receipts for the amounts they've spent on entertainment and meals.

## **Surprise medical bills**

Has this ever happened to you—you carefully select a medical provider in your network, say an MRI imaging center, but get slammed with an out-of-network bill because the doctor who read your scan wasn't in your network?

The law eliminates surprise medical bills by requiring group health plans and providers to arbitrate the dispute. You're only responsible for paying in-network charges.

**Additional Resource:** Get more of your [COVID-19 payroll questions answered](#).