



New law permits PPP loan recipients to obtain Employee Retention Credits, extends and expands ERC for 2021

 [cohnreznick.com/insights/employee-retention-credit-now-available-to-ppp-recipients](https://www.cohnreznick.com/insights/employee-retention-credit-now-available-to-ppp-recipients)
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1/20/2021 | Dana Fried (https://www.cohnreznick.com/people/dana_fried)

For 2020, certain employers whose operations were fully or partially suspended due to a COVID-19-related government order or whose gross receipts for 2020 Quarter 2, Q3 or Q4 were less than 50% of their gross receipts for the same quarter in 2019 were eligible for a fully refundable federal payroll tax credit called the Employee Retention Credit (ERC). However, if the employer or any member of its controlled group received a Paycheck Protection Program (PPP) loan, the entire controlled group was ineligible for an ERC.

Under the *Consolidated Appropriations Act of 2021*, this is no longer the case. The Act provides for both retroactive applicability of the ERC for 2020 and extending and expanding the ERC for the first two quarters of 2021. Consequently, an employer that did not take an ERC for 2020 because it or its controlled member received a PPP loan may now be eligible for ERCs for 2020. In addition, the Act has significantly liberalized the ERC requirements for 2021.

Definition of ‘eligible employer’

To receive an ERC, an employer must qualify as an “eligible employer.” “Employer” here includes all members of a controlled group under IRC Section 52 (greater than 50% ownership test) or Section 414(m) (affiliated service group) on an aggregated basis.

“Eligible employer” is defined as:

For 2020 Q2, Q3 and/or Q4 (for Q2, including March 13 - March 31, 2020), an employer that:

- (1) Fully or partially suspended its operations due to a governmental order limiting commerce, travel, or group meetings due to COVID-19, or
- (2) Had gross receipts for such quarter that were less than 50% of its gross receipts for the same quarter in 2019.

For 2021 Q1 and/or Q2, an employer that:

- (1) Fully or partially suspends its operations due to a governmental order limiting commerce, travel, or group meetings due to COVID-19, or
- (2) Has gross receipts for such quarter that are less than 80% of its gross receipts for the same quarter in 2019 or for the immediately preceding quarter.

Amount of ERC

For 2020 Q2, Q3 and/or Q4 (for Q2, including March 13 - March 31, 2020), an employer can receive a credit equal to **50%** of the first \$10,000 of Qualified Wages paid per employee in the **aggregate for all such quarters**. The maximum ERC for all of 2020 would be \$5,000 per employee receiving Qualified Wages.

For 2021 Q1 and/or Q2, an employer can receive **70%** of the first \$10,000 of Qualified Wages paid per employee in **each quarter**. The maximum ERC for each such quarter would be \$7,000 per employee receiving Qualified Wages, and the maximum ERC for 2021 would be \$14,000 per employee receiving Qualified Wages.

‘Qualified Wages’

What counts as “Qualified Wages” is different for small and large employers.

For **small employers**: All wages paid to and Qualified Health Plan Expenses paid for all employees for the applicable quarter.

For **large employers**: Only wages paid to and Qualified Health Plan Expenses paid for employees for a period or periods that the employees did not perform services for the employer.

“Qualified Health Plan Expenses” are amounts paid or incurred by an employer to maintain a group health plan that are allocable to Qualified Wages. (This amount includes employer payments plus employee contributions made on a pre-tax basis.) Even if no wages are paid but health plan coverage is provided (e.g., coverage is continued for furloughed employees), the expenses constitute Qualified Health Plan Expenses and as such, are Qualified Wages.

The definitions for “small” and “large” employer are also different for 2020 and 2021:

Small Employer:

For 2020 Q2, Q3 and/or Q4 (for Q2, including March 13 - March 31, 2020): For 2019, averaged **100** or fewer full-time employees (30 hours per week or 130 hours per month).

For 2021 Q1 and/or Q2: For 2019, averaged **500** or fewer full-time employees.

Large Employer:

For 2020 Q2, Q3 and/or Q4 (for Q2, including March 13 - March 31, 2020): For 2019, averaged more than **100** full-time employees.

For 2021 Q1 and/or Q2: For 2019, averaged more than **500** full-time employees.

ERC/PPP interaction under the Act

Under the Act, and subject to further IRS guidance, even where an employer received/receives a PPP loan, the employer can still claim an ERC with respect to Qualified Wages. However, the same wages cannot be used both to qualify for forgiveness of a PPP loan and as ERC Qualified Wages.

3 possible scenarios in which an ERC would now be allowed include:

- 1) A controlled group member received a PPP loan and another member of the same controlled group that did not receive a PPP loan wishes to claim an ERC.
- 2) The employer's Qualified Wages were not provided by the proceeds of a PPP loan.
- 3) The employer's Qualified Wages were provided by the proceeds of a forgiven PPP loan for which forgiveness was not obtained with the same wages that would be used as ERC Qualified Wages.

What does CohnReznick think?

The best-case 2020 scenario of a \$5,000 ERC per employee, combined with the best-case 2021 scenario (currently limited to the first two quarters of 2021) of a \$14,000 ERC, represents significant assistance to employers that meet the eligibility requirements, either due to suspension of operations or a significant decline in gross receipts. We anticipate regulatory guidance as to the ERC mechanics under the Act, as well as to the interplay of PPP loan forgiveness and ERCs, and we will provide additional information as it becomes available.

Employers will need to be mindful of the impact of the “controlled group” concept. In that regard, an employer becomes eligible either by any member of its controlled group experiencing a complete or partial suspension of operations, or on the basis of the gross receipts of the entire controlled group. Access our ERC decision trees below to assist your understanding of your ERC eligibility for 2020 and 2021.

2020 ERC Decision Tree

(https://www.cohnreznick.com/-/media/resources/2020-erc_decision-tree_cr.pdf)

2021 ERC Decision Tree

(https://www.cohnreznick.com/-/media/resources/2021-erc_decision-tree_cr.pdf)

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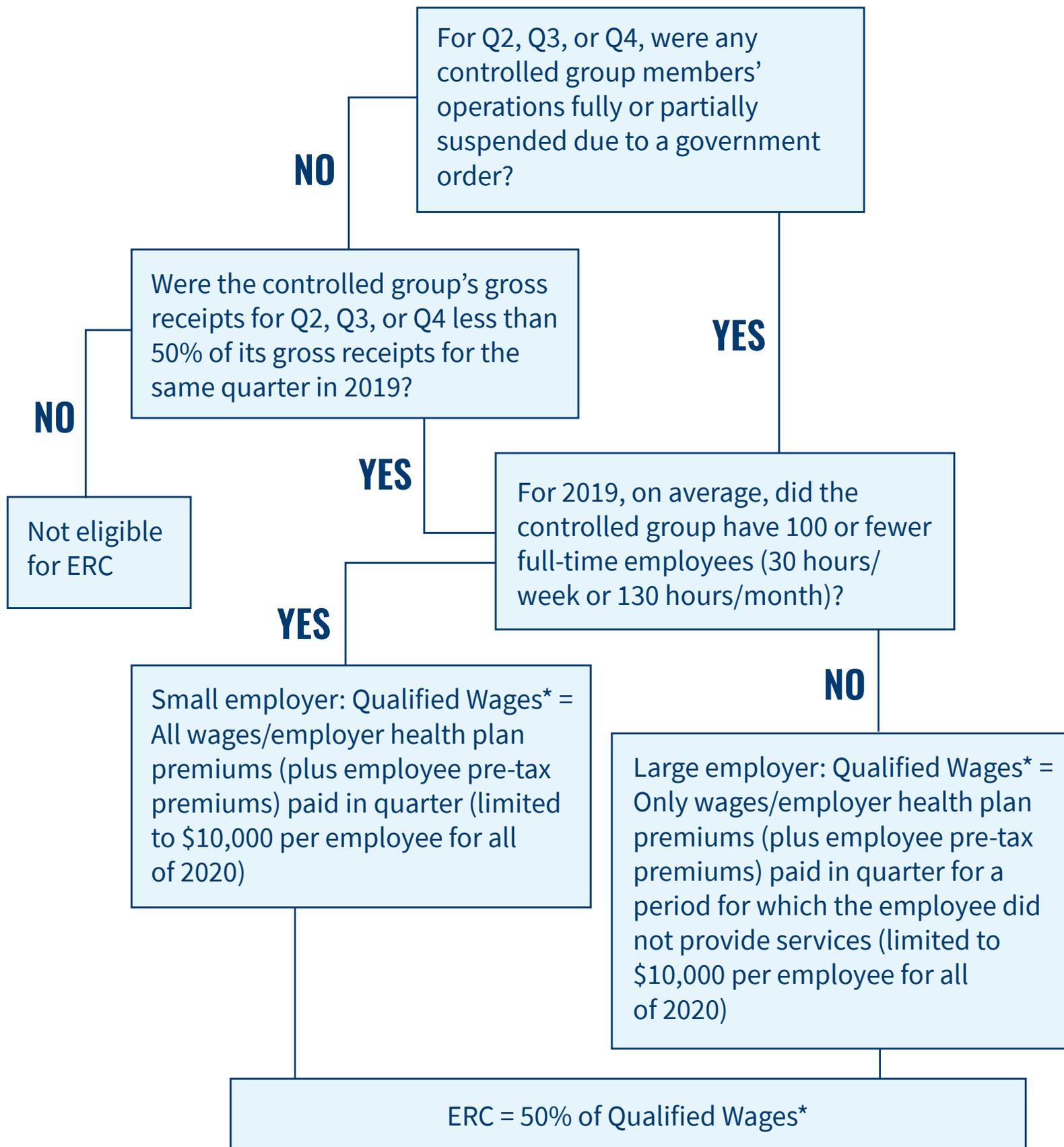
Paycheck Protection Program (PPP) Loan Forgiveness Assistance ›

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2020 ERC DECISION TREE

The Employee Retention Credit (ERC) offers relief to certain employers affected by COVID-19 in 2020, in the form of a fully refundable federal payroll tax credit. Use the decision tree below to assess your eligibility and how much credit you may be eligible for. (Note that these credits are now available to employers that received Paycheck Protection Program (PPP) loans, subject to certain restrictions.) For more details or to learn about ERC eligibility for 2021, read [our full article](#).

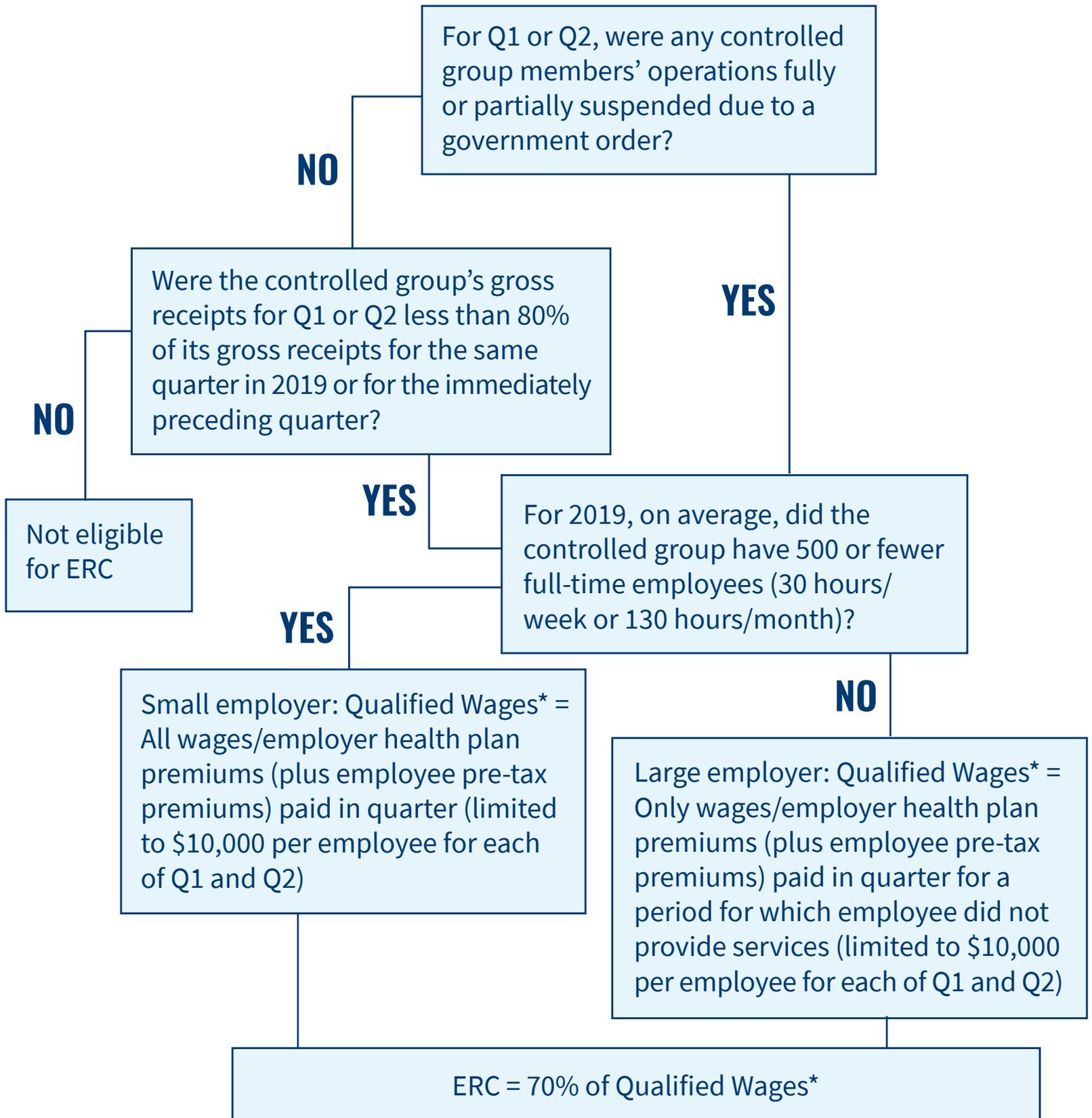


**The same wages cannot be used as both ERC Qualified Wages and to obtain PPP loan forgiveness.*

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2021 ERC DECISION TREE

The Employee Retention Credit (ERC) offered relief to certain employers affected by COVID-19 in 2020, in the form of a fully refundable federal payroll tax credit. It was later extended to the first two quarters of 2021, with certain changes – most notably the fact that Paycheck Protection Program (PPP) loan recipients can now claim these credits, subject to certain restrictions. Use the decision tree below to assess your eligibility and how much credit you may be eligible for. For more details or to learn about ERC eligibility for 2020, read [our full article](#).



**The same wages cannot be used as both ERC Qualified Wages and to obtain PPP loan forgiveness.*

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