


COVID-19-Related Employee Retention Credits: Determining When an Employer's Trade or Business Operations are Considered to be Fully or Partially Suspended Due to a Governmental Order

FAQs

This Page is Not Current

Please see [Notice 2021-20](#)  for guidance on the Employee Retention Credit as it applies to qualified wages paid after March 12, 2020, and before January 1, 2021.



These FAQs do not reflect the changes made by the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Relief Act), enacted December 27, 2020, or the American Rescue Plan Act of 2021 (ARP Act), enacted March 11, 2021. The Relief Act amended and extended the employee retention credit (and the availability of certain advance payments of the tax credits) under section 2301 of the CARES Act for the first and second calendar quarters of 2021. The ARP Act modified and extended the employee retention credit for the third and fourth quarters of 2021.

This FAQ is not included in the Internal Revenue Bulletin, and therefore may not be relied upon as legal authority. This means that the information cannot be used to support a legal argument in a court case.

An employer whose trade or business operations are fully or partially suspended during a calendar quarter due to a governmental order is an Eligible Employer that may be entitled to the Employee Retention Credit.

30. If a governmental order requires non-essential businesses to suspend operations but allows essential businesses to continue operations, is the essential business considered to have a full or partial suspension of operations? (updated June 19, 2020)

An employer that operates an essential business is not considered to have a full or partial suspension of operations if the governmental order allows the employer's operations to remain open. However, an employer that operates an essential business may be considered to have a partial suspension of operations if, under the facts and circumstances, more than a nominal portion of its business operations are suspended by a governmental order. For example, an employer that maintains both essential and non-essential business operations, each of which are more than nominal portions of the business operations, may be considered to have a partial suspension of its operations if a governmental order restricts the operations of the non-essential portion of the business, even if the essential portion of the business is unaffected. In addition, an essential business that is permitted to continue its operations may, nonetheless, be considered to have a partial suspension of its operations if a governmental order requires the business to close for a period of time during normal working hours.

For more information regarding employers whose business operations may continue for certain purposes, but not others, see "[If a governmental order causes the suppliers to an essential business to suspend their operations, is the essential business considered to have a suspension of operations?](#)"

For more information regarding the application of the full and partial suspension rules if the essential business's suppliers are required to close due to a governmental order, see "[If a governmental order causes the suppliers to an essential business to suspend their operations, is the essential business considered to have a suspension of operations?](#)"

For more information regarding the application of the full and partial suspension rules if the essential business's operating hours are affected by a governmental order, see [Are an employer's operations considered to be partially suspended for purposes of the Employee Retention Credit if the employer is required to reduce its operating hours by a governmental order?](#)

Even if an employer's operations are not considered to have been fully or partially suspended as a consequence of a governmental order, the employer may be considered an Eligible Employer and may be eligible for the Employee Retention Credit if it experiences a significant decline in gross receipts. For more information on what constitutes a significant decline in gross receipts, see [Determining When an Employer is Considered to have a Significant Decline in Gross Receipts](#).

31. If a governmental order causes the suppliers to an essential business to suspend their operations, is the essential business considered to have a suspension of operations?

An employer with an essential business may be considered to have a full or partial suspension of operations if the business's suppliers are unable to make deliveries of critical goods or materials due to a governmental order that causes the supplier to suspend its operations. If the facts and circumstances indicate that the essential business's operations are fully or partially suspended as a result of the inability to obtain critical goods or materials from its suppliers that were required to suspend operations, then the essential business would be considered an Eligible Employer and may be eligible to receive the Employee Retention Credit.

Alternatively, the employer may be an Eligible Employer if it experiences a significant decline in gross receipts. For more information on what constitutes a significant decline in gross receipts, see [Determining When an Employer is Considered to have a Significant Decline in Gross Receipts](#).

Example: Employer A operates an auto parts manufacturing business that is considered an essential trade or business in the jurisdiction where it operates. Employer A's supplier of raw materials is required to shut down its operations due to a governmental order. Employer A is unable to procure these raw materials from an alternate supplier. As a consequence of the suspension of Employer A's supplier, Employer A is not able to perform its operations. Under these facts and circumstances, Employer A would be considered an Eligible Employer because its operations have been suspended as a result of the governmental order that suspended operations of its supplier.

32. If a governmental order causes the customers of an essential business to stay at home is the essential business considered to have a suspension of operations?

No. An employer that operates an essential business that is not required to close its physical locations or otherwise suspend its operations is not considered to have a full or partial suspension of its operations for the sole reason that its customers are subject to a government order requiring them to stay at home.

The employer may be considered an Eligible Employer and may be eligible for the Employee Retention Credit if it experiences a significant decline in gross receipts. For more information on what constitutes a significant decline in gross receipts, see [Determining When an Employer is Considered to have a Significant Decline in Gross Receipts](#).

Example: Employer B, an automobile repair service business, is an essential business and is not required to close its locations or suspend its operations. Due to a governmental order that limits travel and requires members of the community to stay at home except for certain essential travel, such as going to the grocery store, Employer B's business has declined significantly. Employer B is not considered to have a full or partial suspension of operations due to a governmental order. However, Employer B may be considered an Eligible Employer if it has a significant decline in gross receipts.

33. If a governmental order requires an employer to close its workplace, but the employer is able to continue operations comparable to its operations prior to the closure by requiring employees to telework, is the employer considered to have a suspension of operations? (updated June 19, 2020)

If an employer's workplace is closed by a governmental order, but the employer is able to continue operations comparable to its operations prior to the closure by requiring its employees to telework, the employer's operations are not considered to have been fully or partially suspended as a consequence of a governmental order.

However, if the closure of the workplace causes the employer to suspend business operations for certain purposes, but not others, it may be considered to have a partial suspension of operations due to the governmental order. For more information regarding employers whose business operations may continue for

certain purposes, but not others, see "[If a governmental order requires an employer to close its workplace for certain purposes, but the workplace may remain operational for limited purposes, is the employer considered to have a suspension of operations?](#)"

Even if an employer's operations are not considered to have been fully or partially suspended as a consequence of a governmental order, the employer may be considered an Eligible Employer and may be eligible for the Employee Retention Credit if it experiences a significant decline in gross receipts. For more information on what constitutes a significant decline in gross receipts, see [Determining When an Employer is Considered to have a Significant Decline in Gross Receipts](#).

Example 1: Employer C, a software development company maintains an office in a city where the mayor has ordered that only essential businesses may operate. Employer C's business is not essential under the mayor's order which requires Employer C to close its office. Prior to the governmental order, all employees at the company teleworked once or twice per week, and business meetings were held at various locations. Following the governmental order, the company ordered mandatory telework for all employees and limited client meetings to telephone or video conferences. Employer C's business operations are not considered to be fully or partially suspended by the governmental order because its business operations may continue in a comparable manner.

Example 2: Employer D operates a physical therapy facility in a city where the mayor has ordered that only essential businesses may operate. Employer D's business is not considered essential under the mayor's order, which requires Employer D to close its workplace. Prior to the governmental order, none of Employer D's employees provided services through telework and all appointments, administration, and other duties were carried out at Employer D's workplace. Following the governmental order, Employer D moves to an online format and is able to serve some clients remotely, but employees cannot access specific equipment or tools that they typically use in therapy and not all clients can be served remotely. Employer D's business operations are considered to be partially suspended by the governmental order because Employer D's workplace, including access to physical therapy equipment, is central to its operations, and the business operations cannot continue in a comparable manner.

Example 3: Employer E, a scientific research company with facilities in a state in which the governor has ordered that only essential businesses may operate, conducts research in a laboratory setting and through the use of computer modeling. Employer E's business is not essential under the governor's order, which requires Employer E to close its workplace. Prior to the governmental order, Employer E's laboratory-based research operations could not be conducted remotely (other than certain related administrative tasks) and employees involved in laboratory-based research worked on-site; however, Employer E's computer modeling research operations could be conducted remotely and employees engaged in this portion of the business often teleworked. Following the governmental order, all employees engaged in computer modeling research are directed to telework, and those business operations are able to continue in a comparable manner. In contrast, the employees engaged in the laboratory-based research cannot perform their work while the facility is closed and are limited to performing administrative tasks during the closure. Employer E's business operations are considered to be partially suspended by the governmental order because Employer E's laboratory-based research business operations cannot continue in a comparable manner.

34. If a governmental order requires an employer to close its workplace for certain purposes, but the workplace may remain operational for limited purposes, is the employer considered to have a suspension of operations? (updated June 19, 2020)

Yes. If an employer's workplace is closed by a governmental order for certain purposes, but the employer's workplace may remain open for other purposes or the employer is able to continue certain operations remotely, the employer's operations would be considered to be partially suspended. However, if all of an employer's business operations may continue, even if subject to modification (for example, to satisfy distancing requirements), such a modification of operations is not considered to be a partial suspension of business operations due to a governmental order, unless the modification required by the governmental order has more than a nominal effect on the business operations under the facts and circumstances.

Example 1: Employer F, a restaurant business, must close its restaurant to on-site dining due to a governmental order closing all restaurants, bars, and similar establishments for sit-down service. Employer F is allowed to continue food or beverage sales to the public on a carry-out, drive-through, or delivery basis. Employer F's business operations are considered to be partially suspended because a portion of its business operations – its indoor and outdoor dining service – is closed due to the governmental order.

Example 2: Same facts as Example 1, except that two months later, under a subsequent governmental order, Employer F is permitted to offer sit-down service in its outdoor space, but its indoor dining service continues to be closed. During the period in which Employer F is allowed to operate only its outdoor sit-down and carry-out service in accordance with the order, Employer F's business operations are considered to be partially suspended because, under the facts and circumstances, a more than nominal portion of its business operations – its indoor dining service -- is closed due to a governmental order. The following month, under a further governmental order, Employer F is permitted to offer indoor dining service, in addition to outdoor sit-down and carry-out service, provided that all tables in the indoor dining room must be spaced at least six feet apart. Under the facts and circumstances, the governmental order restricting the spacing of tables limits Employer F's indoor dining service capacity and has more than a nominal effect on its business operations. During this period, Employer F's business operations continue to be considered to be partially suspended because the governmental order restricting its indoor dining service has more than a nominal effect on its operations.

Example 3: Employer G, a retail business, must close its retail storefront locations due to a governmental order. The retail business also maintains a website through which it continues to fulfill online orders; the retailer's online ordering and fulfillment system is unaffected by the governmental order. Employer G's business operations are considered to have been partially suspended due to the governmental order requiring it to close its retail store locations.

Example 4: Employer H, a hospital, is considered to be operating an essential business under a governmental order with respect to its emergency department, intensive care, and other services for conditions requiring urgent medical care. However, the governmental order treats Employer H's elective and non-urgent medical procedures as non-essential business operations and prevents Employer H from performing these services. Employer H suspends operations related to elective and non-urgent medical procedures. Although Employer H is an essential business, Employer H is considered to have a partial suspension of operations due to the governmental order that prevents Employer H from performing elective and non-urgent medical procedures.

Example 5: Employer I, a grocery store, is considered to be operating an essential business under a governmental order. However, the governmental order requires grocery stores to discontinue their self-serve offerings, such as salad bars, though they may offer prepared or prepackaged food. Employer I modifies its operations to close its salad bar and other self-serve offerings and instead offers prepackaged salads and other items. The governmental order requiring Employer I to discontinue its self-serve offerings does not have more than a nominal effect on Employer I's business operations under the facts and circumstances, even though

Employer I was required to modify its business operations. Employer I's business operations are not considered to be partially suspended because the governmental order requiring closure of self-serve offerings does not have more than a nominal effect on its business operations.

Example 6: Employer J, a large retailer, is required to close its storefront location due to a governmental order, but is permitted to provide customers with curbside service to pick up items ordered online or by phone. During this period, Employer J's business operations are considered to have been partially suspended due to the governmental order requiring it to close its storefront location. Two months later, under a subsequent governmental order, Employer J is permitted to reopen its storefront location. Under the subsequent governmental order, however, Employer J must enforce social distancing guidelines that require Employer J to admit only a specified number of customers into the store per 1,000 square feet. While the governmental order results in customers waiting in line for a short period of time to enter the store during certain busy times of the week, the size of Employer J's storefront location is large enough that it is able to accommodate all of its customers after these short waits outside the store. The governmental order requiring Employer J to enforce social distancing guidelines does not have more than a nominal effect on Employer J's business operations under the facts and circumstances, even though Employer J is required to modify its business operations. During this period, Employer J's business operations are not considered to be partially suspended because the governmental order requiring enforcement of social distancing guidelines does not have more than a nominal effect on its operations.

35. Are an employer's operations considered to be partially suspended for purposes of the Employee Retention Credit if the employer is required to reduce its operating hours by a governmental order? (updated June 19, 2020)

Yes. An employer that reduces its operating hours due to a governmental order is considered to have partially suspended its operations since the employer's operations have been limited by a governmental order.

The employer may also be an Eligible Employer if it experiences a significant decline in gross receipts. For more information on what constitutes a significant decline in gross receipts, see [Determining When an Employer is Considered to have a Significant Decline in Gross Receipts](#).

Example: Employer K operates a food processing facility that normally operates 24 hours a day. A governmental order issued by the local health department requires all food processing businesses to deep clean their workplaces once every 24 hours in order to reduce the risk of COVID-19 exposure. In order to comply with the governmental order, Employer K reduces its daily operating hours by five hours per day so that a deep cleaning may be conducted within its workplace once every 24 hours. Employer K is considered to have partially suspended its operations due to the governmental order requiring it to reduce its hours of operation.

36. Is an employer that operates a trade or business in multiple locations and is subject to a governmental order requiring full or partial suspension of its operations in some jurisdictions, but not in others, considered to have a suspension of operations?

Yes. Employers that operate a trade or business in multiple locations and are subject to State and local governmental orders limiting operations in some, but not all, jurisdictions are considered to have a partial suspension of operations. Employers that operate a trade or business on a national or regional basis may be

subject to governmental orders requiring closure of their locations in certain jurisdictions, but may not be subject to such a governmental order in other jurisdictions, including because it may be an essential business in some of those jurisdictions. To operate in a consistent manner in all jurisdictions, these employers may establish a policy that complies with the local governmental orders, as well as the Center for Disease Control and Prevention (CDC) recommendations and the Department of Homeland Security (DHS) guidance; in this case, even though the employer may not be subject to a governmental order to suspend operations of its trade or business in certain jurisdictions, and may merely be following CDC or DHS guidelines in those jurisdictions, the employer would still be considered to have partially suspended operations. Therefore, the employer would be an Eligible Employer with respect to all of its operations in all locations. For more information regarding the application of the aggregation rules, see [If the operations of a trade or business of one member of an aggregated group are suspended by a governmental order, are the operations of that trade or business of the other members of the aggregated group considered to be fully or partially suspended for purposes of the Employee Retention Credit?](#)

Example: Employer F is a national retail store chain with operations in every state in the United States. In some jurisdictions, Employer F is subject to a governmental order to close its stores, but it is permitted to provide customers with curbside service to pick up items ordered online or by phone. In other jurisdictions, Employer F is not subject to any governmental order to close its stores or is considered an essential business permitting its stores to remain open. Employer F establishes a company-wide policy, in compliance with the local governmental orders and consistent with the CDC and DHS recommendations and guidance, requiring the closure of all stores and operating with curbside pick-up only, even in those jurisdictions where the business was not subject to a governmental order. As a result of the governmental orders requiring closure of Employer F's stores in certain jurisdictions, Employer F has a partial suspension of operations of its trade or business. The partial suspension results in Employer F being an Eligible Employer nationwide.

The employer may also be an Eligible Employer if it experiences a significant decline in gross receipts. For more information on what constitutes a significant decline in gross receipts, see [Determining When an Employer is Considered to have a Significant Decline in Gross Receipts](#).

37. If the operations of a trade or business of one member of an aggregated group are suspended by a governmental order, are the operations of that trade or business of the other members of the aggregated group considered to be fully or partially suspended for purposes of the Employee Retention Credit?

Yes. All members of an aggregated group are treated as a single employer for purposes of the Employee Retention Credit. Accordingly, if a trade or business is operated by multiple members of an aggregated group and if the operations of one member of the aggregated group are suspended by a governmental order, then all members of the aggregated group are considered to have their operations partially suspended, even if another member of the group is in a jurisdiction that is not subject to a governmental order.

Example: Employer Group G is a restaurant chain that operates a single trade or business through multiple subsidiary corporations located in various jurisdictions. Certain members of Employer Group G's operations are closed by a governmental order, while other members of Employer Group G's operations remain open. As a result of a governmental order causing the suspension of operations of certain of Employer Group G members, the operations of all members of Employer Group G's controlled group of corporations are treated as partially suspended due to the governmental order.

For more information on the aggregation rules, see [Determining Which Entities are Considered a Single Employer Under the Aggregation Rules](#).

Alternatively, the employer may be an Eligible Employer if the aggregated group experiences a significant decline in gross receipts. For more information on what constitutes a significant decline in gross receipts, see [Determining When an Employer is Considered to have a Significant Decline in Gross Receipts](#).

38. If an employer is subject to a governmental order to fully or partially suspend its business operations and the order is subsequently lifted, is the employer considered to have business operations that were suspended?

Yes, but only for periods during the calendar quarters in which the trade or business operations were fully or partially suspended. If the order was effective for a portion of the calendar quarter, then the employer is an Eligible Employer for the entire calendar quarter but can only claim a credit for wages paid during the period the order is in force.

Example: State Y issued a governmental order for all non-essential businesses to close from March 10 through April 30 and the governmental order was not extended. Pursuant to the order, Employer H, which operates a non-essential business in State Y, closes from March 10 through April 30. Employer H is an Eligible Employer in the first quarter (for wages paid from March 13, the effective date of section 2301 of the CARES Act, through March 31) and the second quarter (for wages paid from April 1 through April 30).

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Page Last Reviewed or Updated: 18-Mar-2021