

Publications

Treasury Relents on Employee Retention Tax Credit for Health Benefits Provided to Unpaid Employees

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Following bipartisan pressure from members of both Houses of Congress and from employer groups, the IRS and Treasury have released additional guidance reversing the position taken in their recent FAQs. The IRS revised FAQs 64 and 65 so that eligible employers who provide continued health insurance benefits while not providing any compensation to furloughed employees will still be able to claim the employee retention tax credit related to those health insurance benefits.

Under the FAQs, an employer with more than 100 employees can only claim a credit for the period of time that an employee is not performing services. For example, if an employee works 80% of their prior schedule (whether paid or not for the 20% unworked, and whether the reduction is spread out across each work day or taken as a full day off) the employer would be eligible for a credit equal to 20% of an allocable share of health insurance benefit cost. The applicable allocable share is generally based on a daily premium calculation, but variations in calculation methodology are permitted.

The FAQs do not change the position of Treasury/IRS that no employee retention tax credits may be claimed in connection with terminated employees. This means that employers need to carefully consider the proper classification of furloughed employees (continuing employees on a leave of absence or terminated subject to rehire).

Contact your Vorys attorney for more details.

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Vorys COVID-19 Task Force

Outside of this new law, employers continue to face myriad issues as COVID-19 continues to spread and impact communities and workplaces (some of these issues are addressed in our prior alerts [located here](#)). We will continue to keep you posted on any important developments.

We have also established a comprehensive Coronavirus Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at vorys.com/coronavirus.