

COVID-19 Assistance for AFL-CIO Central Labor Bodies

Federal Payroll Tax Credits and Deferrals

The CARES Act allows some employers—including AFL-CIO state, area, and local central labor bodies—to receive federal payroll tax credits in order to help retain employees. Eligibility for the credits depends on meeting certain criteria set in the new law, as does the amount of relief that is available. In addition to the tax credits that may be available to some central labor bodies, *all* central labor bodies with employees are eligible to delay paying 2020 payroll taxes in order to help manage cash flow. This memo provides an overview of the **federal payroll tax deferral** and the **employee retention federal payroll tax credit** programs for central labor bodies. *The CARES Act made some programs available to 501(c)(3) nonprofit organizations that are NOT available to labor organizations, including a loan program that cannot be used in combination with the relief described in this memo. Organizations that are not labor organizations or central labor bodies should NOT refer to this memo for information about CARES Act relief.*

Federal Payroll Tax Deferral: Available To ALL Central Labor Bodies

What help is available to central labor bodies under this tax deferral program?

All central labor bodies may delay paying the employer portion of the Social Security payroll tax that they would normally owe for wages paid to employees between March 27, 2020 and December 31, 2020. An organization must pay at least 50% of the total amount of the employer portion of the Social Security payroll tax it defers by December 31, 2021, and it must pay the remaining 50% of the deferred tax by December 31, 2022.

How can a central labor body take advantage of the option to defer paying these taxes?

The CARES Act simply permits employers to defer paying the taxes to the IRS. A central labor body wishing to take advantage of this program will still need to file the IRS Form 941 on a quarterly basis, to report the amount of payroll taxes it owes and is choosing to defer. Labor bodies should check the IRS website for more information before filing their payroll taxes: <https://www.irs.gov/coronavirus>.

Employee Retention Federal Payroll Tax Credits: Available To Some Central Labor Bodies

What help is available to central labor bodies under this tax credit program?

Eligible central labor bodies can receive a federal payroll tax credit for retaining employees. The amount of the tax credit is 50% of the what the central labor body pays each eligible employee plus the employer-paid health care costs, up to a maximum credit of \$5,000 per employee—but the exact amount available to a central labor body will depend on a number of factors. If a central labor body is eligible for a tax credit that is more than the amount it would otherwise owe its Social Security payroll taxes, the IRS will give the central labor body the excess amount. This Q&A is written to guide you through an initial look at the employee retention tax credit program. You should consult with your counsel or your accountant if you have questions about how the CARES Act applies to your organization.

When will the tax credit be available?

Eligibility for the employee retention tax credit is determined on a quarterly basis—meaning, a central labor body can be ineligible in the second quarter of 2020 but may become eligible in the third or fourth quarter of 2020. You should check for eligibility now *and* each time you pay your payroll taxes until

January 2021. The credit is available based on wages paid to employees after March 12, 2020 and before January 1, 2021, *however* the IRS has instructed employers *not* to include the credit on the first quarter payroll tax filing due April 30, 2020 (this filing is done on [IRS Form 941](#)). See below for more information about how to receive the credit.

How do I determine if this tax credit is available to my organization?

A central labor body is eligible to claim the CARES Act employee retention credit for a particular quarter if it has at least one employee *and* the labor body experiences a hardship described in the Act.

- **Who counts as an employee?** In this case, an employee is any full- or part-time worker for whom the central labor body owes Social Security and Medicare taxes to the federal government. Consultants or other workers who receive a Form 1099 do not count as employees for this program.
- **What kind of hardship makes this tax credit available?** The central labor body can claim the tax credit in any quarter in which it experiences *either or both* of the following: (1) its operations are fully *or partially* suspended because of a government order limiting commerce, travel, or group meetings due to COVID-19, *or* (2) its gross receipts are 50% less than its gross receipts in the same quarter in 2019.

What does it mean for operations to be fully or partially suspended due to a government order?

The information that the IRS has provided so far mostly clarifies this question for businesses—for example, the IRS has said that a restaurant’s operations are partially suspended (and thus it qualifies for the tax credit) if in-service dining has been ordered closed, even if the restaurant may still provide take-out and delivery options. The IRS has also said that operations are partially suspended when a business or an organization cannot operate “at its normal capacity.”

- If you think your central labor body may be eligible for the employee retention tax credit because of full or partial suspension of its operations due to a government order, you should contact your counsel or accountant. You should assemble information about programs and events that the organization has cancelled, postponed, or modified after an order in your state banning large gatherings or requiring residents to stay at home.

How does this employee retention credit relate to the tax credits for COVID-19-related paid leave?

Earlier federal legislation made a different payroll tax credit available to help employers with fewer than 500 employees pay for medical and family leave taken because of COVID-19. Central labor bodies may be eligible for those tax credits as well, and the calculations for the employee retention tax credit described here will be different for any individual employee on whom you base a claim for the medical and family leave credit. You should consult with your counsel or accountant if you are eligible for both types of payroll tax credits.

What taxes can a central labor body claim the credit against? Are there limits that apply to the amount of money the central labor body can claim?

The tax credit is applied to reduce the amount of money that the central labor body owes in Social Security payroll taxes to the federal government. There is no overall cap on the total amount of the tax credit a central labor body can claim for all its employees in combination, but it can only claim a credit of up to \$5,000 per eligible employee. The exact amount of tax credit that you can claim will depend on how many eligible employees the labor body has, how much it pays each eligible employee, and

whether the central labor body is already taking other federal payroll tax credits (like the Work Opportunity Tax Credit) for any employees.

Who is an “eligible employee” of the organization for purposes of calculating this tax credit?

For central labor bodies that had an average of 100 or fewer full-time employees in 2019, *all* wages paid to employees, regardless of whether the employees are providing services, qualify for the credit. A “full-time employee” is an employee who is employed on average at least 30 hours of service per week. For central labor bodies with an average of more than 100 full-time employees in 2019, only wages paid to employees who are *not providing services* to the organization, due to one of the two kinds of COVID-19 hardships this program addresses, qualify for the credit. If your organization had more than 100 full-time employees in 2019, or if you have questions about how to calculate the number of “average full-time employees” the central labor body had in 2019, you should contact your counsel or accountant to help you calculate the tax credit you may claim.

How does a central labor body claim the tax credit? What if the amount of the credit that’s available is *more* than the total amount of money the central labor body will owe in payroll taxes?

Most employers will claim the tax credit on their regular quarterly payroll tax filings. A central labor body that calculates it is eligible for a credit should reduce the amount of money it deposits into its [EFTPS](#) to account for the credit it can receive. It can withhold from deposit the employer portion of Social Security taxes—and *also* the federal income tax withheld, the employee portion of Social Security, and the employer and employee portions of Medicare taxes—up to the total amount of the credit that the central labor body is due for that quarter. The central labor body still has to file the quarterly tax form (IRS Form 741) but if the amount of the credit is more than the total amount of Social Security tax that it would normally deposit, the IRS will pay the excess to the central labor body.

The IRS has announced that it will update the quarterly payroll tax forms to include an option for requesting a refund of the excess credit. The IRS has asked that employers *wait* to apply any credit in the first quarter of 2020 (March 13 to March 31) until filing their employment tax forms for the second quarter of 2020 (in July). However, a central labor body *can* request an advance of the excess credit by filing [IRS Form 7200](#) if the total amount of the credit for a quarter is more than the total amount of Social Security tax that it would normally deposit, *and* it is in immediate need of cash flow.

When does the tax credit stop being available?

The tax credit is meant to incentivize employers to keep employees on their payroll during the COVID-19 crisis. A central labor body can claim the tax credit for an employee until one of the following things happens:

- The employee no longer works for the central labor body,
- The central labor body has claimed the maximum allowable tax credit for that employee, *or*
- The central labor body no longer meets either of the hardship requirements—full or partial suspension of operations due to a COVID-19 government order *or* a 50% reduction in gross revenue.

Specifically, the hardship measured by a reduction in gross revenue ends after a central labor body returns to taking in more than 80% of the amount of gross receipts in a quarter, compared to the previous year. In other words, if a central labor body experiences a 50% reduction in the second quarter of 2020 and in the third quarter, the central labor body bounces back to receiving 85% of what it took in during the third quarter of 2019, then the *fourth quarter* of 2020 is when it can no longer claim the tax credit.

Our central labor body has a small number of employees—what is an EXAMPLE of how this federal tax credit will work in practice?

In this example, a Central Labor Council meets the hardship requirement for the second and third quarters of 2020 because the its operations were partially suspended in April due to an order by the Governor and then from July to September, the CLC’s gross receipts were less than 50% of what it took in during the same time period in 2019. The CLC has three employees:

- **Employee A** is paid \$5,000 per month in wages and the CLC pays \$1,000 per month for her health insurance coverage, for a total of \$6,000 in credit-eligible pay per month.
- **Employee B** works part-time and is paid \$2,000 per month in wages and does not have health insurance through the CLC.
- **Employee C** is paid \$10,000 per month in wages and the CLC pays \$2,000 per month for her health insurance coverage, for a total of \$12,000 in credit-eligible pay per month.

	Employee A	Employee B	Employee C
2 nd Quarter <i>April-June, 2020</i>	Total credit-eligible pay = \$18,000 50% x \$18,000 = \$6,000, <i>higher than \$5,000 max per employee</i> Payroll credit available = \$5,000	Total credit-eligible pay = \$6,000 50% x \$6,000 = \$3,000 Payroll credit available = \$3,000	Total credit-eligible pay = \$36,000 50% x \$36,000 = \$18,000, <i>higher than \$5,000 max per employee</i> Payroll credit available = \$5,000
3 rd Quarter <i>July-Sept., 2020</i>	The CLC already claimed the maximum amount of payroll credit for this employee in the previous quarter. Payroll credit available this quarter = \$0	Total credit-eligible pay = \$6,000 50% x \$6,000 = \$3,000, <i>but the CLC already claimed \$3,000 credit in the 2nd quarter, leaving only \$2,000 in remaining possible credit</i> Payroll credit available this quarter = \$2,000	The CLC already claimed the maximum amount of payroll credit for this employee in the previous quarter. Payroll credit available this quarter = \$0

In total, the CLC can claim \$15,000 in tax credits for its employees—\$13,000 for taxes owed in the second quarter of 2020 and another \$2,000 for taxes owed based on the third quarter of 2020. Without the tax credit, the CLC would normally deposit \$7,803 into their EFTPS for the combined employer and employee FICA taxes due on the second quarter wages only—that is, 15.3% of the total \$51,000 of normally taxable wages paid to all employees. But the CLC can retain the entire amount instead, because it is less than the total \$13,000 credit it is due for the second quarter. The CLC can also apply the remaining \$5,197 in credit to the amount of its employees’ federal income tax it must deposit. If the amount of federal income tax is *less* than remaining credit the CLC is owed for the second quarter, then the CLC can also request the balance by filing IRS Form 7200 (requesting the total \$13,000 credit for the second quarter *minus* the amount of taxes it would otherwise owe but is retaining). The CLC can then repeat the process to claim the remaining \$2,000 credit at the end of the third quarter.