

# Legislative Update: **What is in the American Rescue Plan Act of 2021 and What it Means for Your Business**

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TriNet provides its clients with legally compliant  
HR guidance and best practices.

TriNet does not provide legal, tax or accounting advice.

# Welcome

## The PPP and ERTC

## Paid Leave Updates

## Healthcare Updates



# Our Journey Continues



## THE STATE OF SUPPORT

March 18, 2020: The Families First Coronavirus Act (FFCRA)

March 27, 2020: The Coronavirus Aid, Relief, and Economic Security Act (CARES Act)

April 24, 2020: The Paycheck Protection Program and Health Care Enhancement Act

TriNet  
Webinar  
May 28, 2020

June 05, 2020: The Paycheck Protection Program Flexibility Act

TriNet  
Webinar  
July 01, 2020

December 27, 2020: Consolidated Appropriations Act, 2021

TriNet  
Webinar  
January 07, 2021

March 11, 2021: The American Rescue Plan Act

TODAY

Visit [trinet.com](https://trinet.com) for all your COVID-19 Resources



# Paycheck Protection Act Program Changes

# The PPP Keeps Humming Along



## ARPA adds:

Adds \$7.25B in PPP funding

Expands nonprofit eligibility

## To what the CAA did in Dec 2020:

Formally extends program through March 31, 2021

\$284B available for first and second-time loans

Ability to request an increase in loan amount

Retroactive updates allowable if loan has not been forgiven

Tax deductibility of expenses



# Employee Retention Tax Credits (ERTC) Changes

# The Employee Retention Tax Credit Evolution



## Continued program expansion to support SMBs



### CARES

- Mar 13 – Dec 31, 2020
- Credit amount equal to 50% of qualified wages
- Qualified wages cap of \$10,000 per employee *per year*
- Small employer definition of 100 FTEs
- Reduction in gross receipts of 50% compared to 2019

### CAA

- Extended through June 30, 2021
- Credit amount increased to 70% of qualified wages from 50%
- Qualified wages cap changed to \$10,000 per employee *per quarter*
- Small employer definition updated to 500 FTEs
- The reduction in gross receipts reduced to 20% of

### ARPA

- Extended the ERTC through quarters 3 and 4 of 2021
- Redefines eligible employment taxes to include only Medicare
- More generous definition of “qualified wages” is available to “severely distressed employers”
- “Recovery startup business” added as an eligible employer category



# PPP Loan and Retention Credits



## ERTCs now work with the PPP and can be claimed against 2020 spend

Previous to the CAA, the ERTC and PPP were mutually exclusive, you couldn't have both; the CAA adjusted this and allows SMBs to claim 2020 ERTCs

Administration is complex; whilst a PPP recipient can also claim ERTCs now, ERTCs cannot be claimed in respect of payroll cited on a PPP forgiveness application

Work closely with CPA to maximize eligibility



# Thinking About the ERTC & the PPP Interplay



## Focus on maximizing ERTC qualified wage eligibility

ERTC wages are disqualified based on two primary factors:

1. The amount of loan forgiveness awarded or assumed
2. How the forgiveness application was completed
  - a) Fully complete both the payroll and non-payroll sections of your forgiveness application to maximize flexibility for qualified ERTC eligible wages

Ask yourself: Are your potential ERTC greater than 2.5x your average monthly payroll?

# Example of interdependence between PPP and ERTC eligible wages

SMBs could inadvertently reduce their wages eligible for ERTCs based on how they complete their PPP loan forgiveness application

	Scenario
PPP Loan Amount	\$100,000
PPP Forgiveness Application	
Payroll Costs	\$100,000
<i>Payroll Costs Required (60%)</i>	<i>\$60,000</i>
Nonpayroll Costs	\$30,000
SBA Awarded PPP Loan Forgiveness Amount	\$100,000
Payroll Costs	\$70,000
Nonpayroll Costs	\$30,000
Wages <u>INELIGIBLE</u> for ERTC	\$70,000

Because nonpayroll costs of \$30k were included on the forgiveness application, this borrower is deemed to have disqualified \$70K\* of wages from eligibility for ERTC

\*Versus the \$100K cited on the forgiveness application

# Example continued

## All IRS Notice 2021-20 PPP and Employee Retention Credits wage eligibility scenarios

### PPP / ERTC examples from Notice 2021-20

IRS Notice 2021-20 Examples	<u>Example 1</u>	<u>Example 2</u>	<u>Example 3</u>	<u>Example 4</u>	<u>Example 5</u>	<u>Example 6</u>	<u>Example 7</u>
<b>PPP Loan Amount</b>	\$ 100,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000
<b>PPP Forgiveness Application</b>							
Payroll Costs	\$ 100,000	\$ 250,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 250,000	\$ 250,000
Payroll Costs Required (60%)	\$ 60,000	\$ 120,000	\$ 120,000	\$ 120,000	\$ 120,000	\$ 120,000	\$ 120,000
Nonpayroll Costs	\$ -	\$ -	\$ -	\$ 70,000	\$ 90,000	\$ 70,000	\$ 70,000
Nonpayroll Costs (not reported)	\$ -	\$ -	\$ 70,000	\$ -	\$ -	\$ -	\$ -
<b>SBA Awarded/Requested PPP Loan Forgiveness Amount</b>	\$ 100,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ -
Payroll Costs	\$ 100,000	\$ 250,000	\$ 200,000	\$ 130,000	\$ 120,000	\$ 130,000	\$ -
Nonpayroll Costs	\$ -	\$ -	\$ -	\$ 70,000	\$ 80,000	\$ 70,000	\$ -
<b>Wages <u>Ineligible</u> for ERTC</b>	<b>\$100,000</b>	<b>\$200,000</b>	<b>\$200,000</b>	<b>\$130,000</b>	<b>\$120,000</b>	<b>\$130,000</b>	<b>\$150,000</b>

Note how the use of nonpayroll costs on the forgiveness application decrease ineligible ERTC wages for same size loans

# Employer Credits for Paid Sick and Family Leave (FFCRA) Changes

# Paid Sick and Family Leave Credits



## Paid Sick Leave and Family and Leave Updates

New 10-day (80 hour) leave bank for paid sick leave effective April 1, 2021

Expands leave for leave taken to obtain a COVID-19 vaccine or to recover from the vaccine

Expands definition of qualifying family and medical leave for all qualifying uses of paid sick leave

Increases the limit to \$12,000 per employee (from current \$10,000) for tax credit for expanded family and medical leave

Eliminates the requirement to take unpaid FMLA leave for the first 10 days

Add a non-discrimination rule for tax credits





# Healthcare Changes

# COBRA Subsidy Updates



## We've seen this before, circa 2009

Temporary 100% COBRA subsidy for Assistance Eligible Individuals (AEIs)

Applies to coverage periods April 1, 2021-September 30, 2021

Premium advanced by the employer, plan or insurer

Credit against Medicare is available to offset the subsidy

Two new notice requirements



# COBRA Subsidy Update (continued)



## There will be notifications

### Notice #1

- A notice of the subsidy must be added to COBRA election notices
- Plan must provide notice of new election period
- DOL is required to issue Model notice by April 10th



### Notice #2

- A second notice 15-45 days before end of subsidy
- DOL is required to issue a Model Notice

# COBRA Subsidy and the States (con't)



## The states!

Impact of COBRA subsidy on state continuation coverage provisions?

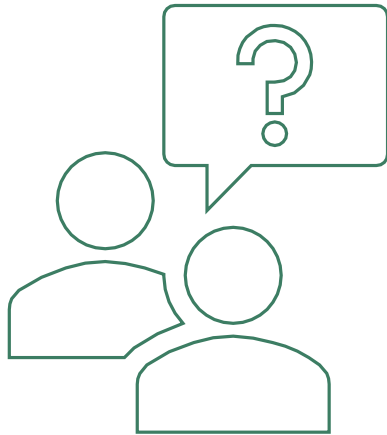
Individuals can receive the COBRA subsidy for state continuation coverage

- The special election right does not appear to apply to state continuation coverage



# Your questions answered

# Your Questions



Can we access the Employee Retention Credit through TriNet?

Which quarters are compared to determine ERTC eligibility under the gross receipts test?

To Determine Eligibility for	Compare gross receipts of	Permitted Alternative
Q1 2020 (March 12-March 30)	Q1 2019 to Q1 2020	
Q2 2019	Q2 2019 to Q2 2020	
Q3 2019	Q3 2019 to Q3 2020	
Q4 2019	Q4 2019 to Q4 2020	
Q1 2019	Q1 2019 to Q1 2021	Q4 2019 to Q4 2020
Q2 2019	Q2 2019 to Q2 2021	Q1 2019 to Q1 2021



# Your Questions



If an employer opts to extend FFCRA leave through 9/30, what happens to the EXISTING leave balance? Does it start over with 10 days on 4/1 or does unused time carry over?

Can an employee receive FFCRA paid sick leave if they get vaccinated OUTSIDE of normal business hours? For example, if the office is open Mon. - Fri. 8:00 am - 5:00 pm and an employee gets vaccinated at 6:00 pm can they receive FFCRA sick pay?

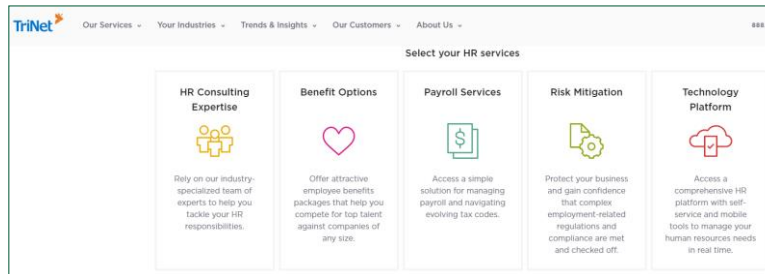
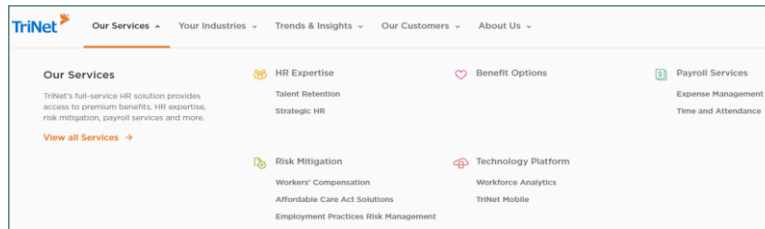
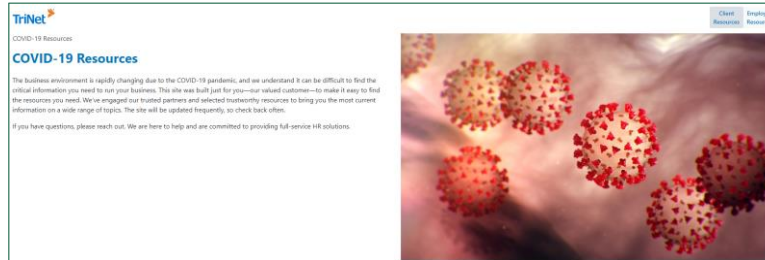
# Your Questions



If I was eligible for the last two rounds of PPP, am I eligible for this third round?

What loans are available besides the PPP and EIDL if any?

# Reminders and takeaways



- Visit the **Client Resources site** on the TriNet platform
- Read our **COVID-19 Newsletters**, sent to you weekly
- Keep up to date on other **webinars, blogs** and events by visiting [TriNet.com](https://www.trinet.com)
- [alex.g.warren@trinet.com](mailto:alex.g.warren@trinet.com)

# Thank you!