

eZERC → presents:

Understanding Eligibility Regulations

for the Employee Retention
Credit in the Healthcare Industry:
Misconceptions vs. Facts



THIS IS **What you'll learn**

- 1 Employee Retention Credit (ERC) 101
- 2 Common ERC Eligibility Misconceptions in Healthcare
- 3 How to Qualify and Apply
- 4 What to Look Out For In an ERC Advisor



Introducing *today's emcee*



Adam Fisher, Esq.

General Counsel

- Tricera Capital, 2021 – 2022
- McDermott Will & Emery, 2017 – 2021
- Greenberg Traurig, 2015 – 2017
- Bilzen Sumberg, 2014 – 2015

EZ-ERC's team of Managing Directors bring 50+ years of combined Tax Advisory and Big Consulting Experience



Kyle Morabito, Esq.

CLO & Managing Director

Tenures at DLA Piper, McDermott Will & Emery, and Bilzin Sumberg



Victoria Beck, Esq.

Compliance Counsel

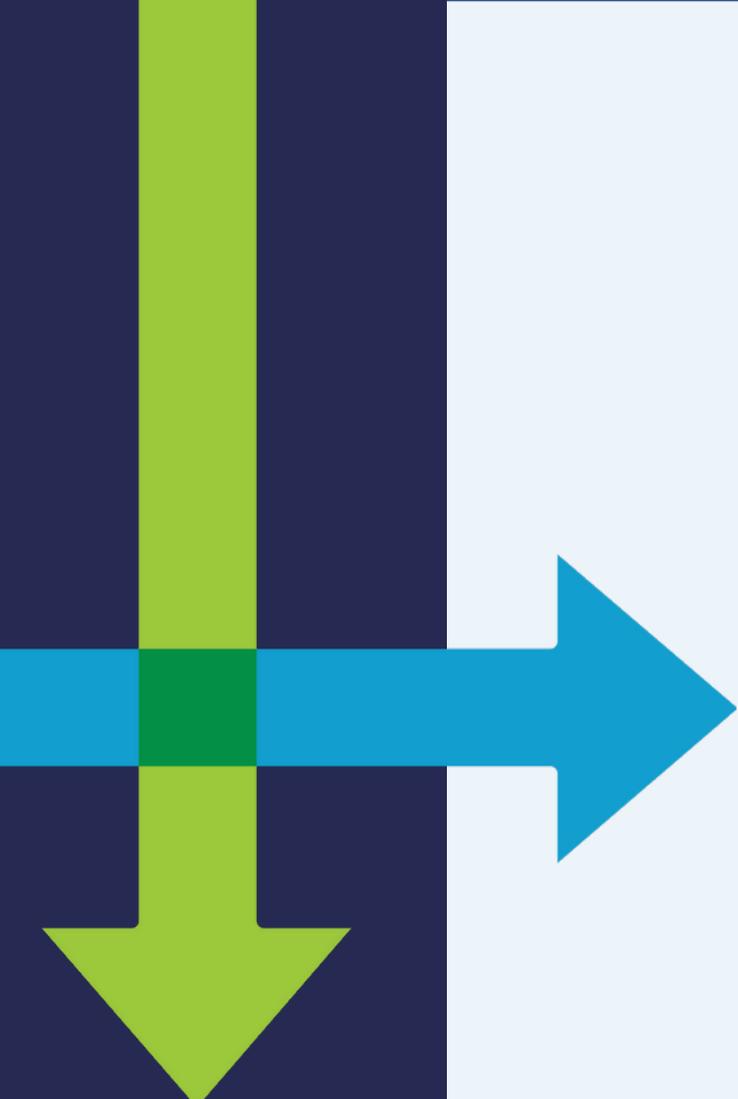
Tenures at Hill Wallack LLP and Parker McCay P.A.



JJ Budzik, JD

Managing Director

Tenures at Alvarez & Marsal, Arthur Andersen, and Deloitte



ERC 101

How much can an organization claim?

The **maximum** amount an employer can receive for any W2 employee is \$26,000.

Funds available per W2 employee are as follows:

TIME PERIOD	CREDITS AVAILABLE
March 13, 2020 – December 31, 2020	\$5,000 (50% of the first \$10,000 earned in the period)
Q1 2021	\$7,000 (70% of the first \$10,000 earned in the period)
Q2 2021	\$7,000 (70% of the first \$10,000 earned in the period)
Q3 2021	\$7,000 (70% of the first \$10,000 earned in the period)

ERC Timeline

MARCH 2020

ERC created as part of the CARES Act

DECEMBER 2020

Extended and expanded through the Consolidated Appropriations Act of 2021

MARCH 2021

Further extended through the American Rescue Plan

APRIL 15, 2024

Filing deadline for all quarters in 2020

APRIL 15, 2025

Filing deadline for all quarters in 2021

CARES Act

Paycheck Protection Program (PPP)

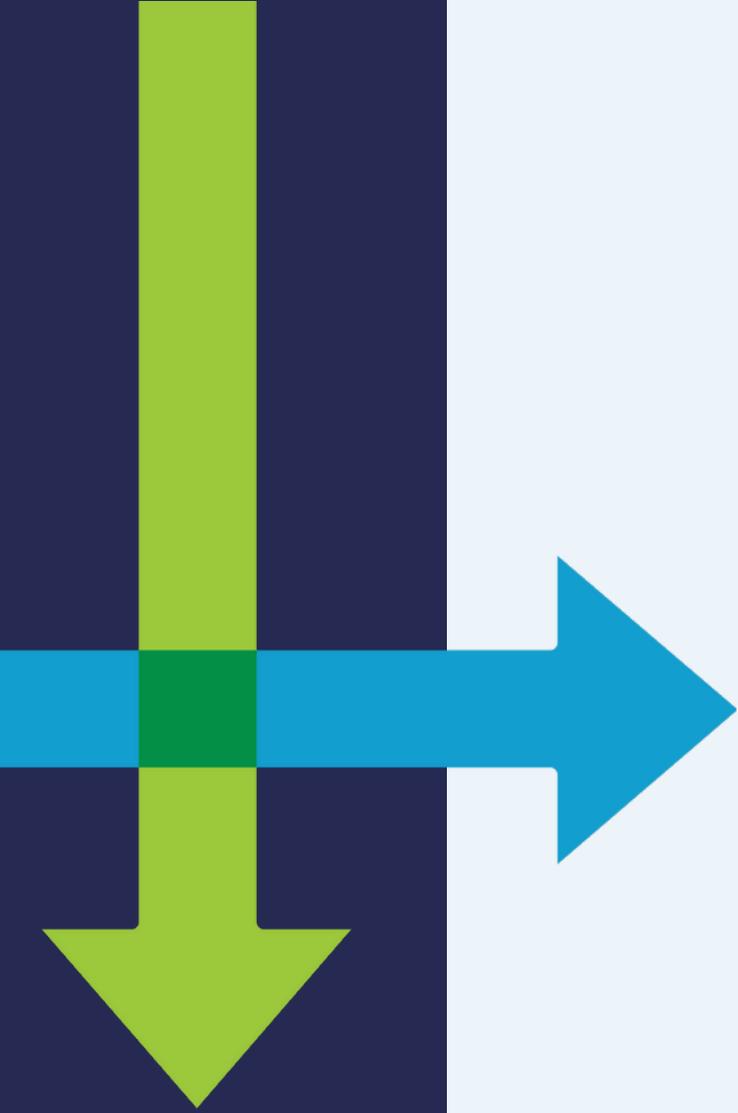
- The first COVID-19 relief taken by most organizations
- Forgivable loan
- Only to be used for qualified expenses – payroll, rent, etc.

Employee Retention Credit (ERC)

- Unlike PPP, no allocation of funds by the Small Business Administration – ERC is from U.S. Treasury
- Unlike PPP, ERC is a cash refund that can be used in any manner
- Credit earned on wages not utilized for PPP forgiveness (i.e., no double dipping)

“ **As of December 2020, it was no longer the PPP or ERC, you could take both.** What is the ERC? It's a payroll tax credit and it's refundable, meaning it's a cash credit. It's available to businesses that either had a financial statement impact because of COVID-19 or had an operational impact, where they had to change or modify the way they did business as a result of the COVID-19 restrictions. ”

– Kenneth Dettman, CEO & Managing Director



Common *ERC Eligibility Misconceptions* in Healthcare

Misconception

Our organization
is too large to
qualify



Your organization can qualify for the 2020 credit if you had 100 or fewer average monthly full-time W-2 employees in 2019 and the 2021 credit based on an increased threshold of 500 employees in 2019.

Not all employees count towards the limitation – only full-time W-2 employees from 2019 count.

Full-time employees are those W-2 employees who work at least 130 hours per month.

Aggregation rules must be considered to accurately determine which employees must be counted.

misconception:

Our organization took non-PPP government funding and therefore we aren't eligible



This is a case-by-case consideration:

- ❖ Health and Human Services (HHS) has explicitly said that ERC does not constitute “other assistance” (i.e., reimbursement of payroll costs) and therefore it does not negate the availability of ERC.
- ❖ ERC is calculated based on the amount of wages but it is not a reimbursement of those wages or payroll outside of the Employer-Paid FICA reimbursement (i.e., the nonrefundable piece). It's a refundable payroll tax credit.

Requirements are dependent on grants received.

We recommend working with someone who understands the intricacies of federal and state funding.

misconception:

Facilities that didn't
experience revenue
declines aren't eligible



Many U.S. healthcare facilities have *dismissed the possibility* of ERC eligibility due to stable or increased revenue over the tested eligibility period (i.e. 2020–2021)

There are two clear ways to know if you qualify for the ERC:

- the Significant Decline in Gross Receipts test (financial statement test); or
- the full or partial suspension of operations test (governmental order test).

You do not need to satisfy both.

The suspension of operations test takes *specialized knowledge* and is difficult to assess without the support of a qualified advisor.

misconception:

Our facility was never fully shutdown and therefore doesn't qualify



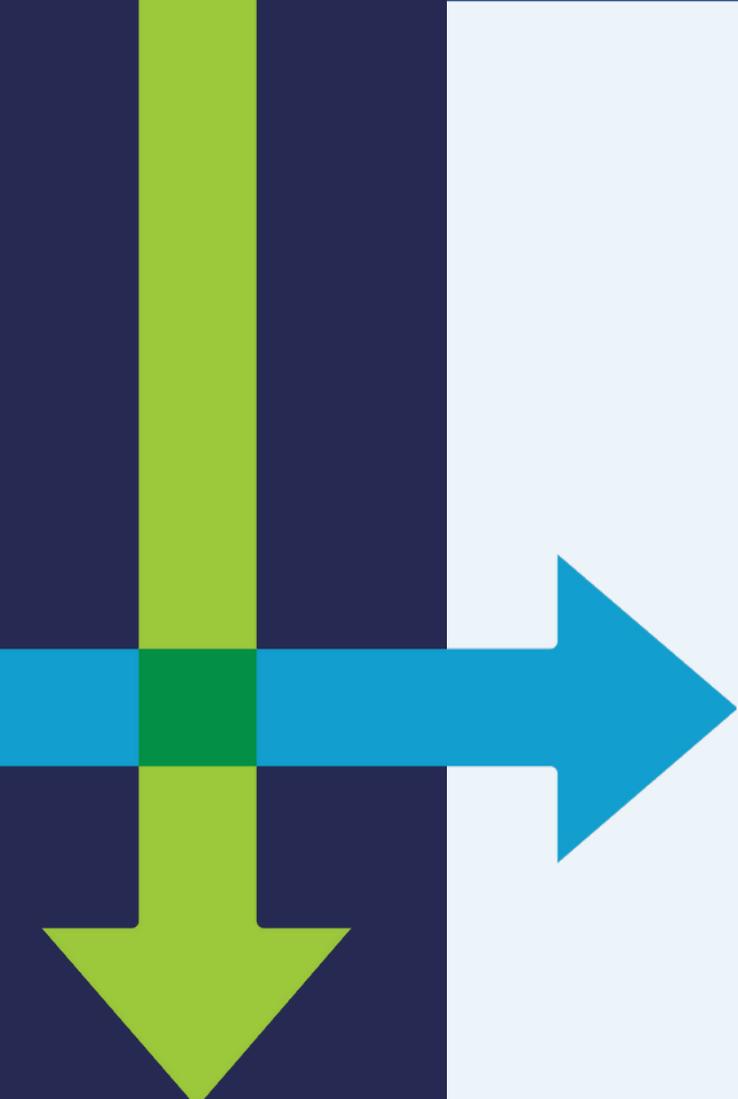
Since most U.S. healthcare facilities were considered essential and not fully shutdown they *dismissed the possibility* of ERC eligibility.

IRS Notice 2021-20 states:

- If an employer's workplace is closed due to a governmental order for certain purposes, but the employer's workplace may remain open for other limited purposes, the employer's operations would be considered to be partially suspended.
- If all, or all but a nominal portion, of an employer's business operations may continue, but the operations are subject to modification due to a governmental order, such a modification of operations is considered to be a partial suspension of business operations due to a governmental order if the modification required by the governmental order has more than a nominal effect on the business operations under the facts and circumstances.

The suspension of operations test takes *specialized knowledge* and is difficult to assess without the support of a qualified advisor.

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How to Qualify *&* *Apply*

Eligibility

TEST #1

Substantial Decline in Gross Receipts Test

Did your gross receipts decline by:

▶ **50%**

Per quarter

comparing each quarter in 2020 to the same quarter in 2019?

▶ **20%**

Per quarter

comparing Q1, Q2 and Q3 of 2021 to the same quarter in 2019?

TEST #2

Partial Suspension of Operations Test

Was your organization ability to provide goods or services restricted or modified by a COVID executive order?

If so, would your organization have been able to provide

▶ **10%** *in additional goods or services*

if such COVID executive orders were never enacted?

How EZ-ERC approaches the full or partial suspension analysis for healthcare organizations



Four-Pronged Approach:

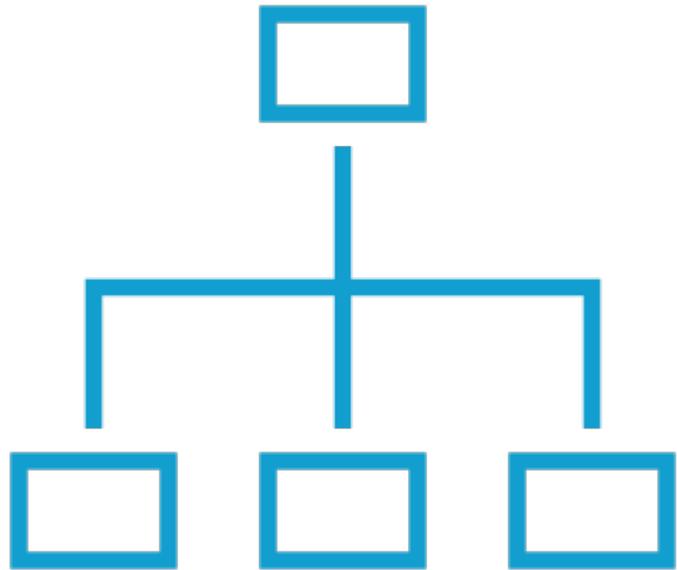
- 1 Can your operations be broken down into “portions” or “segments”?
- *Services and/or procedures provided;*
 - *Groups served;*
 - *Locations where services are delivered, etc.*
-

- 2 What COVID-19 governmental orders imposing mandated restrictions affected your organization during the pandemic?
- *Social distancing & capacity restrictions;*
 - *Increased sanitization & disinfection;*
 - *COVID-related absences & quarantine;*
 - *Changes in the format of the service, etc.*
-

- 3 What changes or modifications did you make to your business operations to comply with these governmental orders?
-

- 4 What was the impact? Was there a “more than nominal” (>10%) impact on the operations of the segment/portion?
-

Aggregation Implications



Aggregation



Full-Time Employee Count



Gross Receipts



Full or Partial Suspension of Operations



Credit per Employee

Examples of Changes in Operations to Comply with Executive Orders



Elective Procedures

Modification or restrictions to the performance of elective procedures or “emergency” procedures



Enhanced Sanitation and Hygiene Procedure

Increased efforts toward sanitization of equipment, patient rooms, common areas, air, etc. and use of “resting rooms”



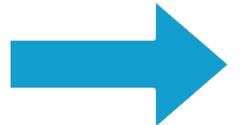
Reconfiguration of Beds/Chairs/Facilities

Removal or reconfiguration of patient beds, chairs, or facilities to accommodate social distancing



Changes to Appointment Scheduling

Modifying the length of appointments and time between appointments





Changes to Patient Entry to Facility and Processing

- Closure of waiting room or restricted to patients only;
- Changes to check-in/checkout procedures (phone, curbside)
- COVID screenings – requiring temperature checks, attestations on COVID-19 exposure/vaccinations, and testing.



Medical Personnel

Restricted access to medical facilities of “essential personnel”



Limitation on Pre- Post-Op Areas

Reducing number of patients in pre- and post-operative areas (i.e., surgery center)



COVID-19 “Wings”

Isolating services and personnel to “COVID Wings”

There's no harm in getting a second look if you're not confident that you've received your full credit.

A second look can lead to:



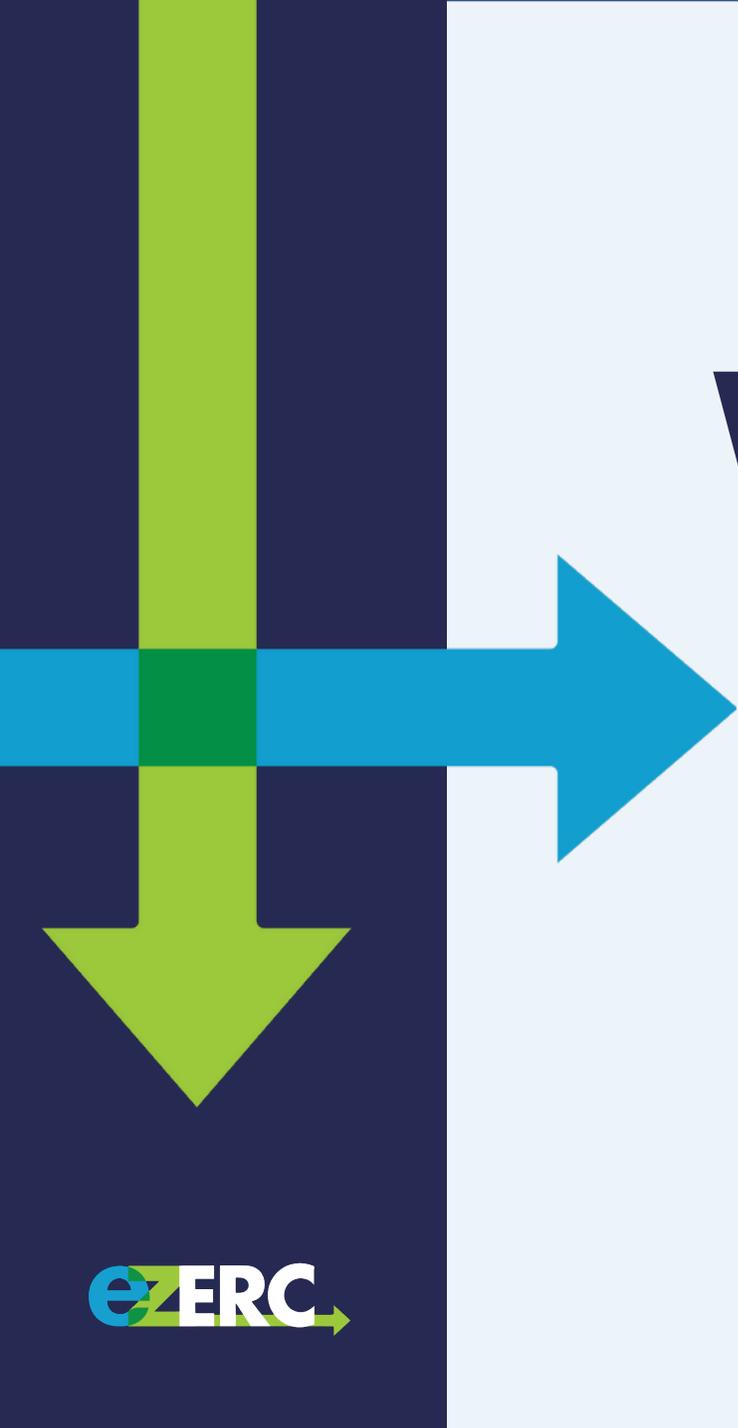
Refiling previously filed quarters to receive full credit.



Filing for quarters you previously missed.

If you've already filed for an ERC claim, but did any of the following, you should consider a second look:

- "Blacked out" your entire PPP Covered Period from ERC eligibility
- Did not fully evaluate partial suspension through the end of local social distancing orders
- Used W2 count instead of FTE count



What To Look For In An *ERC Advisor*

What *differentiates* EZ-ERC from its competitors?

- **Tax Guidance:** Kenneth Dettman (former partner at Alvarez & Marsal and Co-Head of their ERC Taskforce) signs every ERC filing as paid preparer; thereby taking responsibility for our clients' ERC tax positions;
- **Legal Guidance:** We work side-by-side with some of the top law firms in the country specializing in the ERC and even work several lawyers who were integral in writing the ERC legislation;
- **Legal Opinion:** EZ-ERC pays for a tax attorney to prepare a legal analysis and/or opinion, where applicable, substantiating our clients' ERC legal eligibility; thereby taking responsibility for our clients' ERC legal positions;
- **Tax Insurance:** EZ-ERC has relationships with insurance providers that can source tax insurance policies to protect our clients' ERC claims;
- **Timing:** We can finalize and submit an ERC claim to the IRS within a month from the time a client signs our engagement; and
- **Price:** EZ-ERC generally charges 10-20% of the credit (competitors generally charge 25-30%).

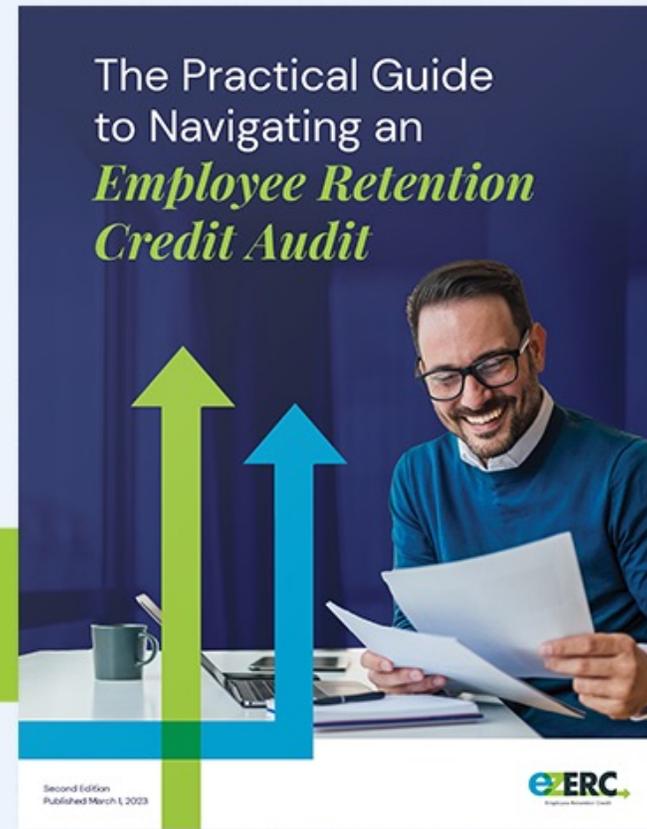
Documentation Required

- Ownership and Related Party Information
- Full-Time Employee Count (2019)
- Gross Receipt Substantiation (2019–2021 Quarterly P&Ls)
- Payroll Tax Filings
- Payroll and Employer–Paid Health Information
- PPP Information
- Tax Return Support
- Other Wage–Based Tax Credits

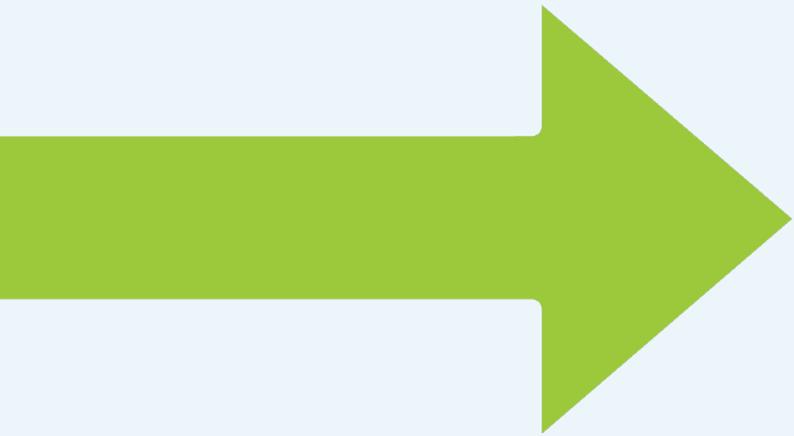
The *Unofficial* Audit Guide

The Practical Guide to Navigating an *Employee Retention Credit Audit*

Key insights for ERC substantiation
and audit protection



<https://www.ez-erc.com/practical-guide/>



Q&A

Contacts



Adam Fisher, Esq.
General Counsel

adamfischer@ez-erc.com



Kyle Morabito, Esq.
Managing Director

kyle@ez-erc.com



Victoria Beck, Esq.
Compliance Counsel

victoria@ez-erc.com



JJ Budzik, JD
Managing Director

jeffb@ez-erc.com