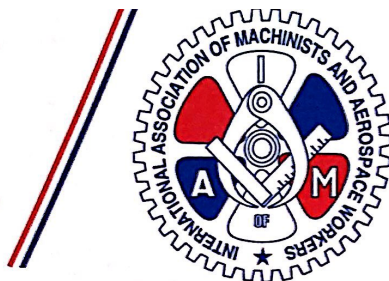


**International  
Association of  
Machinists and  
Aerospace Workers**



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**To:** United States General Vice Presidents, Chiefs of Staff, Business Representatives and District Lodge Secretary-Treasurers

**Cc:** Owen Herrnsstadt, Mark Schneider

**From:** International President Robert G. Martinez, Jr.

**Date:** April 13, 2020

**Re:** Economic Assistance for Unions Faced with COVID-19 Losses (UPDATED)

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**Question Presented**

What economic assistance is available to unions in the face of the COVID-19 pandemic?

**Overview**

There are tax credits, loans, and grants available to unions as a result of the legislation passed to help employers absorb the economic impacts of the COVID-19 pandemic. This memo focuses on the federally available COVID-19-specific programs; there may be state funds available as well, but they are not discussed herein.

**Tax Credits and Deferrals:** The Coronavirus Aid, Relief, and Economic Security Act (CARES Act), enacted on March 27, 2020, is designed to encourage eligible employers to keep employees on their payroll, despite experiencing economic hardship related to COVID-19, with a \$5,000 per employee retention tax credit (Employee Retention Credit). The Families First Coronavirus Relief Act (FFCRA) requires employers to pay sick or family leave wages to employees who are unable to work or telework due to certain circumstances related to COVID-19. Employers are entitled to a refundable tax credit for the required leave paid, up to specified limits. There is also a federal payroll tax deferral available.

**EIDL Loans and Grants:** Unions can borrow up to \$2 million at a 2.75 percent interest rate. The loans must be used for things like payroll, accounts payable, and employee sick leave. The loan program also includes an immediate \$10,000 grant that does not have to be repaid.

**Tax Credits and Deferrals**

**Summary:**

There are tax credits and a tax deferral available. The amount of qualified wages for which an employer may claim for the credit (the Employee Retention Credit) cannot include the amount



of qualified sick and family leave wages for which the employer received tax credits under the other credit (FFCRA):

- The credit covers 50 percent of payroll on the first \$10,000 of compensation, including health benefits, for each employee.
- For employers, if considered eligible (see below) with more than 100 full-time employees, the credit is for wages paid to employees when they are not providing services because of the coronavirus.
- The credit is provided through December 31, 2020.

A union is eligible if one of the following applies: (1) its operations were fully or partially suspended due to COVID-19, including governmental shutdown orders; or (2) its gross receipts declined by more than 50% when compared to the same quarter in a prior year (This calculation is defined in more detail below in the section titled Eligibility).

Another credit gives a dollar-for-dollar reimbursement for all qualifying wages paid under the FFCRA paid sick leave and paid family leave provisions, up to per diem and aggregate payment caps. Tax credits also extend to amounts paid or incurred to maintain health insurance coverage.

- FFCRA paid sick leave and paid family leave is not considered wages subject to the 6.2% FICA tax.
- Businesses can keep money that they would have deposited for FICA payroll taxes in anticipation of refunds for paid sick leave and paid FMLA leave, including amounts that would have been refunded later.

Finally, federal payroll taxes may be deferred, with half being due by the end of 2021 and the other half due by the end of 2022.

#### Detailed Explanation:

The Employee Retention Credit is a fully refundable<sup>1</sup> tax credit for employers equal to 50 percent of qualified wages (including allocable qualified health plan expenses) that employers pay

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<sup>1</sup> The credits are “fully refundable” because the employer may get a refund if the amount of the credit is more than certain federal employment taxes the employer owes. That is, if for any calendar quarter the amount of the credit the employer is entitled to exceeds the employer portion of the social security tax on all wages (or on all compensation for employers subject to Railroad Retirement amounts) paid to all employees, then the excess is treated as an overpayment and refunded to the employer under sections 6402(a) and 6413(a) of the Code. Consistent with its treatment as an overpayment, the excess will be applied to offset any remaining tax liability on the employment tax return and the amount of any remaining excess will be reflected as an overpayment on the return. Like other overpayments of federal taxes, the overpayment will be subject to offset under section 6402(a) of the Code prior to being refunded to the employer.

For example, if an Employer pays \$10,000 in qualified wages to Employee A in Q2 2020, the Employee Retention Credit available to the Employer for the qualified wages paid to Employee A is \$5,000. This amount may be applied against the employer share of social security taxes that the Employer is liable for with respect to all employee wages paid in Q2 2020. Any excess over the employer’s share of social security taxes is treated as an overpayment and refunded to the Employer after offsetting other tax liabilities on the employment tax return and subject to any other offsets under section 6402(a) of the Code.



their employees. This Employee Retention Credit applies to qualified wages paid after March 12, 2020, and before January 1, 2021.

The maximum amount of qualified wages taken into account with respect to each employee for all calendar quarters is \$10,000, so that the maximum credit for an employer for qualified wages paid to any employee is \$5,000. The credit is allowed against the employer portion of social security taxes under section 3111(a) of the Internal Revenue Code (the "Code"), and the portion of taxes imposed on railroad employers under section 3221(a) of the Railroad Retirement Tax Act (RRTA) that corresponds to the social security taxes under section 3111(a) of the Code.

Qualified wages are wages (as defined in section 3121(a) of the Internal Revenue Code (the "Code")) and compensation (as defined in section 3231(e) of the Code) paid by an Eligible Employer to employees after March 12, 2020, and before January 1, 2021. Qualified wages include the Eligible Employer's qualified health plan expenses that are properly allocable to the wages. The definition of qualified wages depends, in part, on the average number of full-time employees (as defined in section 4980H of the Code) employed by the employer during 2019.

If the union is the Grand Lodge which averaged more than 100 full-time employees in 2019, qualified wages are the wages paid to an employee for time that the employee is not providing services due to either (1) a full or partial suspension of operations by order of a governmental authority due to COVID-19, or (2) a significant decline in gross receipts. For these employers, qualified wages taken into account for an employee may not exceed what the employee would have been paid for working an equivalent duration during the 30 days immediately preceding the period of economic hardship.

For our District and Local Lodges which average 100 or fewer full-time employees in 2019, qualified wages are the wages paid to any employee during any period of economic hardship described in (1) and (2) above. It does not matter whether the employee remains employed by the lodge as long as they have been employed at some point during the period for which tax credits are claimed.<sup>2</sup>

Union employers may claim the Employee Retention Credit for qualified wages that they pay after March 12, 2020, and before January 1, 2021. Therefore, an employer may be able to claim the credit for qualified wages paid as early as March 13, 2020. However, you are not allowed to claim the credit on your first Quarter 2020 Form 941.

Finally, all unions may delay paying the employer portion of the Social Security or RRTA payroll tax that they would normally owe for wages paid to employees between March 27, 2020 and December 31, 2020. A union must pay at least 50% of the total amount of the employer portion of the Social Security or RRTA payroll tax it defers by December 31, 2021, and it must pay the remaining 50% of the deferred tax by December 31, 2022. The CARES Act simply permits employers to defer paying the taxes to the IRS. A union 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

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<sup>2</sup> In other words, the credit cannot be claimed for wages that were not actually paid. If the affected employees are not performing work, but still on the payroll being paid, then those would be qualified wages. If an employee was subsequently laid off, credits can be claimed for the time the employee was still employed and paid wages.



it owes and is choosing to defer. Unions should check with their accountants, and the IRS website,<sup>3</sup> for more information before filing their payroll taxes.

### **Federal Government EIDL Loans and Grants**

The CARES Act also expands the Small Business Administration's EIDL program to allow nonprofits like labor unions to apply for loans that previously were available only to small businesses. The new law also makes \$10,000 emergency grants available, even to applicants that are ultimately denied the loans.<sup>4</sup>

These loans can be for amounts up to \$2 million and can be used to cover bills that cannot be paid due to the COVID-19 crisis.<sup>5</sup> Except for the \$10,000 emergency grant assistance described below, the loans must be repaid at an interest rate of 2.75 percent. Other terms are determined on a case-by-case basis, including the possibility to defer repayment for up to four years. The loan can be used for:

- Paying fixed debts;
- Payroll;
- Accounts payable;
- Employee sick leave; and
- Other bills that cannot be paid due to the disaster's impact.

The loan cannot be used to:

- Refinance debts incurred prior to the disaster event;
- Make payments on other loans owned by another federal agency or SBA;
- Pay tax penalties or non-tax criminal/civil fines;
- Repair physical damage; or
- Pay dividends or other disbursements to owners or partners except as related to their performance of services for the business.

Applicants for an EIDL can also request up to \$10,000 in immediate assistance in the form of an emergency grant. The emergency grant does not need to be repaid, even if the loan application is ultimately denied. The SBA will rely on the applicant's self-certification (made under penalty of perjury by submitting the online loan application) that it is eligible to receive the funds.

### **Eligibility**

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<sup>3</sup> See <https://www.irs.gov/coronavirus>.

<sup>4</sup> For the SBA loans and grants, the SBA has created an online application that is available at <https://covid19relief.sba.gov/>. Labor unions that are eligible and want to apply should do so as soon as possible. There is a limited total amount of funds available to all applicants.

<sup>5</sup> It is important to note that the expansion of this program is running into difficulty, with some businesses being told the fund does not have enough for them to access the full \$2 million cap and that they can have \$15,000 instead. See, e.g., "Small Businesses Wait for Cash as Disaster Loan Program Unravels," New York Times, April 9, 2020, *available at* <https://www.nytimes.com/2020/04/09/business/smallbusiness/small-business-disaster-loans-coronavirus.html>.



Most unions are eligible to receive this funding for the tax credit under the CARES Act and EIDL loan programs because they meet the definition of “Eligible Employers.” Eligible Employers are those that carry on a trade or business during calendar year 2020, including a tax-exempt organization, that either fully or partially suspends operation during any calendar quarter in 2020 due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19; or experiences a significant decline in gross receipts during the calendar quarter.

A significant decline in gross receipts begins with the first quarter in which an employer’s gross receipts for a calendar quarter in 2020 are less than 50 percent of its gross receipts for the same calendar quarter in 2019. The significant decline in gross receipts ends with the first calendar quarter that follows the first calendar quarter for which the employer’s 2020 gross receipts for the quarter are greater than 80 percent of its gross receipts for the same calendar quarter during 2019.

For example, if an employer’s gross receipts were \$100,000, \$190,000, and \$230,000 in the second, third, and fourth calendar quarters of 2020, respectively, and its gross receipts were \$210,000, \$230,000, and \$250,000 in the second, third, and fourth calendar quarters of 2019, respectively, the employer’s 2020 second, third, and fourth quarter gross receipts were approximately 48%, 83%, and 92% of its 2019 second, third, and fourth quarter gross receipts, respectively. This hypothetical employer had a significant decline in gross receipts commencing on the first day of the second calendar quarter of 2020 (the calendar quarter in which gross receipts were less than 50% of the same quarter in 2019) and ending on the first day of the fourth calendar quarter of 2020 (the quarter following the quarter for which the gross receipts were more than 80% of the same quarter in 2019). The employer would be entitled to a retention credit with respect to the second and third calendar quarters.

For the CARES Act employee retention credit, eligibility is determined on a quarter-by-quarter basis. A labor union is eligible to claim the CARES Act employee retention credit for a particular quarter if the union has at least one employee and the union experiences a hardship described in the Act. In this case, an employee is any full- or part-time worker for whom the union owes Social Security (or RRTA) and Medicare taxes to the federal government. (Consultants or other workers who receive a Form 1099 do not count as employees for this program.)

The union 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.

The IRS has said that operations are partially suspended when a business or an organization cannot operate “at its normal capacity.” If you think your union 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 union has cancelled, postponed, or modified after an order in your state banning large gatherings or requiring residents to stay at home. You may also want to note activities like bargaining or other representational duties that have been affected by the closure of your members’ employers.



The CARES Act makes the Small Business Administration's Economic Injury Disaster Loan (EIDL) program's loans and grants available to all private nonprofit organizations that have a current tax-exempt status with the IRS. For a local union, this generally will mean that it applied for tax-exempt status at some point in the past (or that it falls under a group exemption held by the national or international) and that its tax-exempt status isn't currently revoked, such as for failure to file its annual IRS Form 990 for three consecutive years. Unlike businesses, labor unions are eligible for the program regardless of their size or number of employees. The union will also need to certify that it does not engage in illegal activity, among other statements.

If you have questions about any of these programs, or seek assistance in applying for the tax credits, loans or grants, please contact IAM attorney Laura Ewan at (206) 902-8552, or [lewan@iamaw.org](mailto:lewan@iamaw.org).