



# **CARES Act Assistance for Employers and Employees—The Paycheck Protection Program, Employee Retention Tax Credit, and Unemployment Insurance Benefits: Assessment of Alternatives (Part 2)**

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The Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136) includes numerous provisions to assist employers and employees during the COVID-19 economic downturn. This Insight

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compares (1) the Small Business Administration’s (SBA’s) [Paycheck Protection Program \(PPP\)](#); (2) the [Employee Retention Tax Credit \(ERTC\)](#); and (3) [Unemployment Insurance \(UI\)](#). Firms that receive a PPP loan cannot also claim the ERTC. Additionally, when employees are retained due to a firm’s receiving a PPP loan or claiming an ERTC, employees are generally ineligible for UI during the period of retention. This Insight highlights factors employers might consider in choosing which program offers them the best support. The optimal choice from the firm’s perspective may not necessarily be what is optimal from their employees’ perspective.

In addition to PPP or ERTC, employers may take advantage of the temporary federal financing of the [Short-Time Compensation \(STC\)](#) benefit. STC allows businesses and employees to keep their employment relationship (with reduced hours and prorated UC) while allowing workers to qualify for the additional \$600 Federal Pandemic Unemployment Compensation (FPUC) weekly payment. Not all [states](#) have STC and it has historically been little used (approximately 10,000 individuals were receiving STC benefits in January 2020).

A companion product to this Insight, CRS Insight IN11324, *CARES Act Assistance for Employers and Employees—The Paycheck Protection Program, Employee Retention Tax Credit, and Unemployment Insurance Benefits: Overview*, coordinated by Molly F. Sherlock, compares the PPP, ERTC, and UI. This comparison is summarized in [Table 1](#).

**Table 1. Eligibility for and Benefits Provided by CARES Act Employers and Employees Supports**

Provisions	Eligibility	Benefits
Paycheck Protection Program	Businesses that meet the SBA’s regular size standards, as well as businesses and nonprofits with 500 or fewer employees (with some exceptions).	Loan amount of 2.5 times monthly payroll, up to \$10 million. Payroll costs capped at \$100,000 on an annualized basis for each employee.  Loan for expenses up to eight weeks can be forgiven if borrower meets certain payroll and employee retention criteria.
Employee Retention Tax Credit	All firms adversely affected by COVID-19 (adversely affected firms are those that are required to suspend operations or who have gross receipts 50% less than prior year gross receipts in the quarter).  Firms with 100 or fewer employees can claim the credit for all workers; those with more, only for workers not working/providing services.	50% credit for up to \$10,000 of wages paid per employee, beginning March 12 through the end of 2020.
Unemployment Insurance	Recently unemployed individuals, including those who were self-employed, independent contractors, or gig economy workers.	Additional \$600 weekly Federal Pandemic Unemployment Compensation (FPUC) benefit supplements most UI payments through July 2020;  13 weeks of additional coverage for regular Unemployment Compensation (UC, typically 26 weeks);  Up to 39 weeks of Pandemic Unemployment Assistance (PUA) for certain individuals affected by COVID-19 and not eligible for regular UC.  Short-Time Compensation (STC) benefits temporarily are partially or fully federally financed.

**Source:** CRS Insight IN11324, *CARES Act Assistance for Employers and Employees—The Paycheck Protection Program, Employee Retention Tax Credit, and Unemployment Insurance Benefits: Overview*, coordinated by Molly F. Sherlock.

## Comparative Benefits

Employers may choose to take a PPP loan, claim an ERTC, or lay off employees. As discussed below, this decision may vary depending on the firm's number of employees.

### Small Businesses (100 or Fewer Employees)

For many employers with 100 or fewer employees, a forgivable PPP loan may be the most attractive option. These loans can cover payroll and some non-payroll expenses, and can potentially be forgiven. A potential disadvantage of the PPP is that to receive full loan forgiveness, any decreases in full-time employment levels and compensation amounts made between February 15, 2020, and April 26, 2020, must be restored (in full for employment and within 75% of original compensation) by June 30, 2020. Another PPP loan limitation is its short term (covering eight weeks of eligible expenses); employees might be laid off or see a cut in compensation after the loan is exhausted.

Whereas these businesses may prefer a PPP loan, lower-wage and median-wage employees may be better off under expanded UI benefits. The additional \$600 per week FPUC payment alone is worth \$15 per hour for a 40-hour week. Some who become unemployed, however, could lose access to employer-sponsored benefits (e.g., health insurance coverage, retirement account contributions). Workers would likely be even better off under STC, as it allows attachment to the workforce and would preserve benefits, while providing employees up to \$600 in FPUC. Higher-wage workers would tend to be better off under PPP, keeping their job and current level (or at least close) of compensation.

In many cases, the ERTC would appear less beneficial to employers than a PPP loan or laying off employees, as it provides the employer with up to a 50% wage subsidy subject to a cap. The credit is limited to \$5,000 per employee. Additionally, not all businesses will necessarily qualify for the ERTC because this tax credit can only be claimed by businesses required to suspend operations or that have experienced a 50% reduction in gross receipts. The ERTC might be attractive from an employer's perspective for some highly compensated employees (because the PPP loan payroll costs are capped at \$100,000 on an annualized basis for each employee). However, since credit-eligible wages are limited to \$10,000 per employee, the credit would only offset retention costs for highly compensated employees over a short period of time. For low-wage employees with longer periods of unemployment (more than the eight weeks a PPP loan would cover), the ERTC could also be attractive.

Self-employed individuals (sole proprietors and partnerships) and independent contractors are eligible for the PPP and UI under the expanded UI program, even if they have no employees (because their net income from the business qualifies as compensation) but generally not for the ERTC. However, self-employed individuals that operate as a Subchapter S corporation (a corporation that elects to be taxed as a pass-through business) may be eligible for the ERTC for earnings paid to themselves as employees. Subchapter S owner-employees generally attempt to minimize amounts paid as wages. PPP would be more attractive to these individuals under the same circumstances as other small firms, but self-employed individuals who have low incomes and smaller relative overhead would be more likely to choose UI benefits, especially during the period when the \$600 FPUC weekly benefit is available.

### Larger Small Businesses (More than 100 and Fewer than 500 Employees)

For employers who had more than 100 employees in 2019, the ERTC can only be claimed for wages paid to employees who are on the payroll but not working. Thus, the relative benefits among these three options appear similar to the case for employers with 100 or fewer employees, except that the ERTC would be less attractive.

## Large Businesses (More than 500 Employees)

PPP loans are generally not available for employers with more than 500 employees (unless they meet the special rules for the accommodation and food services industry). Thus, for these employers, two options are available: the ERTC or layoffs. As was the case above, lower- to median-compensated employees may be better off if laid off and receiving UI than if they are retained, at least in the short term. In contrast, more highly compensated laid-off employees may be less well off because UI benefits will not fully compensate for their lost wages. For highly paid employees, employers who find it valuable to retain and subsidize employees with no work to do (perhaps envisioning only a brief interruption and a costly rehiring process), and who have had to suspend operations or experienced at least a 50% decline in gross receipts, might choose to retain some employees and get the 50% tax credit for wages paid to these individuals (even though the maximum credit amount is \$5,000 per employee).

Highly compensated individuals who are owner-employees of Subchapter S firms with no employees or limited wages paid to others could find the ERTC preferable to UI.

## Unemployed Workers

Workers may face reduced hours or become involuntarily unemployed (temporarily or permanently laid off, or placed on furlough). Some workers who are involuntarily unemployed because of COVID-19 may be eligible to receive UC, and others may be eligible for PUA based upon its [temporary COVID-19 requirements](#) (Section 2102(a)(3)(A)(i)(I)(ii)) of [the CARES Act](#). Workers affected by COVID-19 may seek to use [workplace leave](#) (either [paid](#) or [unpaid](#)).

Despite the temporary expansion of UI, workers and employers may find opting for leave (even if unpaid) or reduced hours preferable to a complete separation from employment. Workers in job-protected leave or in partial employment status may be able to keep health care and other workplace benefits. Additionally, the continued employment and attachment to an employer may improve the individual's long-term employment prospects in an uncertain economy, and it also provides a skilled labor force for the employer if the economy improves.

In general, workers cannot quit a job in an attempt to receive UI benefits. According to recent guidance from the U.S. Department of Labor (DOL), quitting a job without good cause in order to obtain UI benefits, including the [\\$600 weekly FPUC benefit](#) as well as the [PUA benefit](#), is fraud. Additionally, it should be noted that regular, state-funded UI programs already disqualify individuals who [refuse suitable work without good cause](#), among [other eligibility requirements](#) for UI benefits.

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