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This FAQ is not included in the Internal Revenue Bulletin, and therefore may not be relied upon as legal authority. This means that the information cannot be used to support a legal argument in a court case.

An employer may be treated as an Eligible Employer for purposes of the Employee Retention Credit if its operations are fully or partially suspended during a calendar quarter 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.

28. What "orders from an appropriate governmental authority" may be taken into account for purposes of the Employee Retention Credit?

Orders, proclamations, or decrees from the Federal government, or any State or local government are considered "orders from an appropriate governmental authority" if they limit commerce, travel, or group meetings due to COVID-19 in a manner that affects an employer's operation of its trade or business, including orders that limit hours of operation and, if they are from a State or local government, they are from a State or local government that has jurisdiction over the employer's operations (referred to as a "governmental order").

Statements from a governmental official, including comments made during press conferences or in interviews with the media, do not rise to the level of a governmental order for purposes of the Employee Retention Credit. Additionally, the declaration of a state of emergency by a governmental authority is not sufficient to rise to the level of a governmental order if it does not limit commerce, travel, or group meetings in any manner. Further,

such a declaration that limits commerce, travel, or group meetings, but does so in a manner that does not affect the employer's operation of its trade or business does not rise to the level of a governmental order.

A governmental order allows employers to qualify as Eligible Employers for purposes of claiming the Employee Retention Credit without regard to the level of enforcement of the governmental order.

Governmental orders include:

- An order from the city's mayor stating that all non-essential businesses must close for a specified period;
- A State's emergency proclamation that residents must shelter in place for a specified period, other than residents who are employed by an essential business and may travel to and work at the workplace location;
- An order from a local official imposing a curfew on residents that impacts the operating hours of a trade or business for a specified period.

Example 1: Governor of State Y issues an order that all non-essential businesses must close from March 20, 2020 until April 30, 2020. The order provides a list of non-essential businesses, including gyms, spas, nightclubs, barber shops, hair salons, tattoo parlors, physical therapy offices, waxing salons, fitness centers, bowling alleys, arcades, racetracks, indoor children's play areas, theaters, chiropractors, planetariums, museums, and performing arts centers. Employers that provide essential services may remain open. The governor's order is a governmental order limiting the operations of non-essential businesses, entitling employers with non-essential businesses to claim the Employee Retention Credit for qualified wages.

Example 2: Mayor of City Y holds a press conference in which she encourages residents to practice social distancing to prevent the spread of COVID-19. The statement during the press conference is not an order limiting commerce, travel, or group meetings. Accordingly, the mayor's statement would not be a governmental order for purposes of the Employee Retention Credit.

Example 3: A restaurant is ordered by a local health department to close due to a health code violation. Since the order is unrelated to COVID-19, it would not be considered a governmental order for purposes of the Employee Retention Credit.

29. If an employer voluntarily suspends operation of a trade or business or reduces hours due to COVID-19, even though that is not required by a governmental order, is the employer eligible to receive the Employee Retention Credit?

An employer that voluntarily suspends operation of a trade or business or reduces hours and is not subject to any governmental orders that restrict its operations is not eligible for the Employee Retention Credit on the basis of a full or partial suspension of its operations due to a governmental order. However, an employer that voluntarily suspends operations due to COVID-19 may be eligible for the Employee Retention Credit if it experiences a significant decline in gross receipts.

For more information about the application of this rule to an employer that operates a trade or business in multiple locations, see [Is an employer that operates a trade or business in multiple locations and is subject to a governmental order requiring full or partial suspension of its operations in some jurisdictions, but not in others, considered to have a suspension of operations?](#). For more information on what constitutes a significant decline in gross receipts, see [Determining When an Employer is Considered to have a Significant Decline in Gross Receipts](#).

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