Payroll Insights

Employment tax news to guide you now and for the future

October 2025

John's fresh take: The ERC waiting game — what employers need to know

If you're an avid reader of *Payroll Insights*, you may have noticed that the status of Employee Retention Credits (ERC) has not been addressed in the past few editions. There are two main reasons for the hiatus in ERC updates: the introduction and implementation of the One Big Beautiful Bill Act (OBBBA), and the lack of movement in any capacity with ERC claims. *National Taxpayer Advocate's Objectives Report to Congress* for fiscal year 2026 reported that, as of April 26, 2025, approximately 592,000 ERC claims had not yet been processed. Of the claims that have been processed in the last five months, increasingly, we're seeing denials of ERC refund claims, even if Forms 941-X, *Amended Employer's Quarterly Tax Return*, filed by the same employer for other quarters were processed. Some of the reasons for rejection we've seen in multiple cases are:

- Unauthorized person signed Form 941-X (even if it was the same signer for other quarters);
- Taxpayer not in business for the applicable period (when the employer was, in fact, in business in the applicable period); and
- Insufficient wages were reported on the originally filed Form 941 to support the full ERC claim (and this was not accurate).

While these denials may be easily refuted or corrected, employers' responses to these notices may not see the top of the IRS agents' stacks of Forms 941-X until the thousands of remaining, outstanding claims have been reviewed.

Employers who have waited months or even years for a resolution to an ERC claim may consider applying for assistance from the Taxpayer Advocate Service (TAS). The TAS is an independent organization within the IRS, designed to help taxpayers who are experiencing significant roadblocks for resolving issues with the IRS. A few years ago, the TAS would respond to a taxpayer's inquiry within a few days. However, due to the massive influx of requests for assistance with ERC claims and recent reductions in its workforce (approximately 25% between January 25, 2025, and June 25, 2025), the intake and subsequent processing time of requests for assistance has increased exponentially. So, it may be worth your time to look into or apply for TAS assistance, but keep in mind that you might still have a long road between today and your refund.

Federal updates

Qualified tip credit clarification

The IRS issued Proposed Rule 90 FR 45340 on September 22, 2025, relating to eligible jobs for the deduction for qualified tips that was introduced in the OBBBA. The OBBBA added Internal Revenue Code (IRC) Section 224 to allow an individual to deduct qualified tips on their personal income tax returns. As discussed in detail in prior editions of *Payroll Insights*, the OBBBA defines qualified tips as, "cash tips received by an individual in an occupation which customarily and regularly received tips on or before December 31, 2024." Further, to be considered a qualified tip, the following requirements must be met:

- Is paid voluntarily without any consequence in the event of nonpayment, is not the subject of negotiation, and is determined by the payor;
- Is not received in the course of a trade or business that is a specified service trade or business as defined in section 199A(d)(2) of the Code; and
- Satisfies such other requirements as may be established by the Secretary in regulations or other guidance.

The OBBBA requires the Secretary of the Treasury to determine which occupations will be eligible to deduct qualified tips by October 2, 2025, retroactive to January 1, 2025. The Proposed Rule provides preliminary guidance for these industries, as well as clarification for some provisions of the OBBBA. The general categories of occupations qualifying for the deduction and select subcategories include, but are not limited to:

- Beverages and food service
  - Bartenders
  - Dishwashers
- Entertainment and events
  - Gambling dealers
  - Musicians
- Hospitality and guest services
  - Maids and housekeeping
  - Concierge
- Home services
  - Landscapers
  - Electricians
- Personal services
  - Elderly care
  - Private event planners
- Personal appearance and wellness
  - Exercise trainers
  - Tailors
- Recreation and instruction
  - Tour guides
  - Sports and recreation instructors
- Transportation and delivery
  - Taxi and rideshare drivers
  - Home movers

This list will be refined following the comment period (ending October 22, 2025) and public hearing (October 23, 2025). The Proposed Regulation includes instructions for individuals to provide comments and attend the public hearing (either in person or via telephone). A request to attend the public hearing must be made by 5 p.m. eastern time on October 21, 2025.

Project firewall: H-1B Visa enforcement initiative

Parallel to the September 19, 2025, announcement by the Trump Administration that the fee to sponsor an H-1B visa will increase to $100,000, the U.S. Department of Labor (DOL) released a statement introducing Project Firewall. The DOL describes Project Firewall as, "an H-1B enforcement initiative." The Secretary of Labor will certify investigations into employer compliance with H-1B visa rules. Violations of the rules may result in payment of back wages to affected workers, civil penalties, and/or restrictions from future use of the H-1B visa program.

Workday hours for remote workers

Application of labor law for remote workers is still in dispute. In the current work environment, many industries that did not previously allow work from home (WFH) arrangements have adjusted their rules due to employee demand and technological advancements. Employees of a call center, for instance, have the software and ability to perform their duties remotely. The minutes it takes for an employee to boot up and shut down their computer can add up. Absent regulatory guidance, there is ambiguity as to whether these minutes should be considered worked time for purposes of the Fair Labor Standards Act (FLSA) pay rules.

In several recent court cases, employees of a call center argued that their workday should begin at the time they boot up their computer to log into the software. The most recent case, *Kiara LOTT, et al., Plaintiffs, v. RECKER CONSULTING, LLC, et al., Defendants,* U.S. District Judge Douglas R. Cole ruled that the workday begins when the employee has opened all programs required to perform their job and clocked into the employer's timekeeping system. This ruling is in contrast to the U.S. Appeals Court for the Ninth Circuit's determination in *Cadena v. Customer Connexx LLC* (July 2024) that the workday includes the time when the employee begins to boot up their computer and the time it takes to shut down their computer at the end of the shift. Lott claimed that it could take 10 to 20 minutes to boot up and shut down her computer at the beginning and end of the day, and that time was not considered hours worked by her employer.

As the DOL and IRS have not issued formal rulings with regard to these WFH arrangements, contrasting court rulings expose employers to significant back-wages and penalties when the employer believes they are in compliance with FLSA rules pursuant to another court's rulings.

Federal tax underpayment and overpayment interest rates released

Revenue Ruling 2025-18 details the tax underpayment and overpayment interest rates effective October 1, 2025, through December 31, 2025. The interest rate for both underpayments and overpayments is 7%, consistent with the first three quarters of 2025.

Regulations issued for 401(k) catch-up contributions

In T.D. 10033, 90 FR 44527, the IRS issued final regulations providing guidance for catch-up contributions to 401(k) and 403(b) plans under IRC Section 414(v). Beginning January 1, 2027, highly compensated employees over 50 years old may contribute catch-up contributions, but only to Roth accounts. The provisions consider a highly compensated employee to be an employee with FICA wages from the employer in the prior calendar year in excess of $145,000 (to be adjusted for inflation).

Draft federal form releases

- 2025 Instructions for Form 945, *Annual Return of Withheld Federal Income Tax*
- 2025 Instructions for Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*
- Form W-9 (Rev. January 2026), *Request for Taxpayer Identification Number and Certification*
- Second draft of 2026 Form W-2, *Wage and Tax Statement,* adds Box 12 codes for the OBBBA provisions.
- 2026 Form W-2AS, *American Samoa Wage and Tax Statement*
- 2026 Form W-2GU, *Guam Wage and Tax Statement*
- 2026 Form W-2VI, *U.S. Virgin Islands Wage and Tax Statement*
- 2026 Form W-4R, *Withholding Certificate for Nonperiodic Payments and Eligible Rollover Distributions*
- 2026 Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*

State updates

Massachusetts 2025 interest rates

On September 18, 2025, the Massachusetts Department of Revenue (MA DOR) released interest rates on overpayments and underpayments. Usually, these rates are provided on a quarterly basis. However, for 2025 the MA DOR issued an overpayment interest rate of 6% and an underpayment interest rate of 8% for the entire calendar year.

Ohio revises withholding tables

Effective October 1, 2025, Ohio implemented revised employer withholding tables, decreasing from six brackets to three. Employers should confirm with their payroll providers that the tax tables have been updated.

New Hampshire releases 2026 interest rates

New Hampshire Department of Revenue released the interest rates for underpayment and over payment of taxes (9% and 6%, respectively). These rates are a decrease of 1% from the 2025 interest rates.

New Jersey clarifies employment separation reports

New Jersey Public Law 2025, Chapter 130 clarifies that the client of an employee leasing company, not the employee leasing company, is solely responsible for complying with the New Jersey rules for reporting separation from employment.

New York releases Q4 2025 interest rates

New York underpayment and overpayment interest rates are now available for the period October 1, 2025, through December 31, 2025. Specifically, for income tax withholding, the interest rate for underpayments is 11%, and the interest rate for overpayments is 6%.

Virginia releases Q4 2025 interest rates

The Virginia Code calculates quarterly interest rates by adding 2% to the federal tax rates. Therefore, Virginia tax underpayment and overpayment interest rates remain at 9% for October 1, 2025, through December 31, 2025.

Contact us

John Montgomery
National Employment Tax Lead Partner
T: 212-872-2156
E: jmontgomery@kpmg.com

Mindy Mayo
Senior Managing Director, Employment Tax
T: 408-367-5764
E: mindymayo@kpmg.com

Samantha-Jo Marciliano
Managing Director, Employment Tax
T: 212-954-3841
E: smarciliano@kpmg.com

Manan Shah
Partner, Employment Tax
T: 404-739-5247
E: mananshah@kpmg.com

Reagan Aikins
Managing Director, Employment Tax
T: 703-286-6596
E: raikins@kpmg.com

Jon Stone
Managing Director, Employment Tax
T: 408-367-1983
E: jwstone@kpmg.com

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