

116TH CONGRESS  
2D SESSION

# H. R. 6787

To provide a payroll credit for certain pandemic-related employee benefit expenses paid by employers.

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IN THE HOUSE OF REPRESENTATIVES

MAY 8, 2020

Ms. SÁNCHEZ introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To provide a payroll credit for certain pandemic-related employee benefit expenses paid by employers.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Providing Essentials  
5 for Frontline Workers Act”.

6 **SEC. 2. PAYROLL CREDIT FOR CERTAIN PANDEMIC-RE-**  
7 **LATED EMPLOYEE BENEFIT EXPENSES PAID**  
8 **BY EMPLOYERS.**

9 (a) IN GENERAL.—In the case of an employer, there  
10 shall be allowed as a credit against applicable employment

1 taxes for each calendar quarter an amount equal to the  
2 applicable percentage of the qualified pandemic-related  
3 employee benefit expenses paid by such employer with re-  
4 spect to such calendar quarter.

5 (b) LIMITATIONS AND REFUNDABILITY.—

6 (1) DOLLAR LIMITATION PER EMPLOYEE.—The  
7 qualified pandemic-related employee benefit expenses  
8 which may be taken into account under subsection  
9 (a) with respect to any employee for any calendar  
10 quarter shall not exceed \$5,000.

11 (2) CREDIT LIMITED TO CERTAIN EMPLOYMENT  
12 TAXES.—The credit allowed by subsection (a) with  
13 respect to any calendar quarter shall not exceed the  
14 applicable employment taxes for such calendar quar-  
15 ter (reduced by any credits allowed under sub-  
16 sections (e) and (f) of section 3111 of such Code,  
17 sections 7001 and 7003 of the Families First  
18 Coronavirus Response Act, and section 2301 of the  
19 CARES Act, for such quarter) on the wages paid  
20 with respect to the employment of all the employees  
21 of the employer for such calendar quarter.

22 (3) REFUNDABILITY OF EXCESS CREDIT.—

23 (A) IN GENERAL.—If the amount of the  
24 credit under subsection (a) exceeds the limita-  
25 tion of paragraph (2) for any calendar quarter,

1           such excess shall be treated as an overpayment  
2           that shall be refunded under sections 6402(a)  
3           and 6413(b) of the Internal Revenue Code of  
4           1986.

5           (B) TREATMENT OF PAYMENTS.—For pur-  
6           poses of section 1324 of title 31, United States  
7           Code, any amounts due to an employer under  
8           this paragraph shall be treated in the same  
9           manner as a refund due from a credit provision  
10          referred to in subsection (b)(2) of such section.

11          (c) QUALIFIED PANDEMIC-RELATED EMPLOYEE  
12          BENEFIT EXPENSES.—For purposes of this section, the  
13          term “qualified pandemic-related employee benefit ex-  
14          penses” means any amount paid to or for the benefit of  
15          an employee in the employment of the employer if—

16               (1) such amount is excludible from the gross in-  
17               come of the employee under section 139 of the Inter-  
18               nal Revenue Code of 1986 by reason of being a  
19               qualified disaster relief payment described in sub-  
20               section (b)(1) of such section with respect to a quali-  
21               fied disaster described in subsection (c)(2) of such  
22               section which was declared by reason of COVID-19,  
23               and

24               (2) the employer elects (at such time and in  
25               such manner as the Secretary may provide) to treat

1       such amount as a qualified pandemic-related em-  
2       ployee benefit expense.

3       (d) APPLICABLE PERCENTAGE.—For purposes of  
4 this section—

5           (1) IN GENERAL.—The term “applicable per-  
6       centage” means—

7               (A) 50 percent, in the case of qualified  
8       pandemic-related employee benefit expenses  
9       paid with respect to an essential employee, and

10              (B) 30 percent, in any other case.

11          (2) ESSENTIAL EMPLOYEE.—The term “essen-  
12       tial employee” means, with respect to any employer  
13       for any calendar quarter, any employee of such em-  
14       ployer if a substantial portion of the services per-  
15       formed by such employee for such employer during  
16       such calendar quarter are essential work.

17          (3) ESSENTIAL WORK.—Not later than 30 days  
18       after the date of the enactment of this Act, the Di-  
19       rector of the Cybersecurity and Infrastructure Secu-  
20       rity Agency shall issue a definition of essential work  
21       for the purposes of this section. In defining the term  
22       “essential work”, the Cybersecurity and Infrastruc-  
23       ture Security Agency shall take into consideration  
24       its April 17th “Advisory Memorandum on Identifica-  
25       tion of Essential Critical Infrastructure Workers

1 During Covid-19 Response” and shall solicit public  
2 input.

3 (e) SPECIAL RULES; OTHER DEFINITIONS.—

4 (1) APPLICATION OF CERTAIN NON-DISCRIMINA-  
5 TION RULES.—No credit shall be allowed under this  
6 section to any employer for any calendar quarter if  
7 qualified pandemic-related employee benefit expenses  
8 are provided by such employer to employees for such  
9 calendar quarter in a manner which discriminates in  
10 favor of highly compensated individuals (within the  
11 meaning of section 125) as to eligibility for, or the  
12 amount of, such benefit expenses. An employer may  
13 elect with respect to any calendar quarter to apply  
14 this paragraph separately with respect to essential  
15 employees and with respect to all other employees.

16 (2) DENIAL OF DOUBLE BENEFIT.—For pur-  
17 poses of chapter 1 of such Code, no deduction or  
18 credit (other than the credit allowed under this sec-  
19 tion) shall be allowed for so much of qualified pan-  
20 demic-related employee benefit expenses as is equal  
21 to the credit allowed under this section.

22 (3) THIRD PARTY PAYORS.—Any credit allowed  
23 under this section shall be treated as a credit de-  
24 scribed in section 3511(d)(2) of such Code.

1           (4) APPLICABLE EMPLOYMENT TAXES.—For  
2       purposes of this section, the term “applicable em-  
3       ployment taxes” means the following:

4           (A) The taxes imposed under section  
5       3111(a) of the Internal Revenue Code of 1986.

6           (B) So much of the taxes imposed under  
7       section 3221(a) of such Code as are attrib-  
8       utable to the rate in effect under section  
9       3111(a) of such Code.

10          (5) SECRETARY.—For purposes of this section,  
11       the term “Secretary” means the Secretary of the  
12       Treasury or the Secretary’s delegate.

13          (6) CERTAIN TERMS.—

14           (A) IN GENERAL.—Any term used in this  
15       section which is also used in chapter 21 or 22  
16       of such Code shall have the same meaning as  
17       when used in such chapter (as the case may  
18       be).

19           (B) CERTAIN PROVISIONS NOT TAKEN  
20       INTO ACCOUNT EXCEPT FOR PURPOSES OF LIM-  
21       ITING CREDIT TO EMPLOYMENT TAXES.—For  
22       purposes of subparagraph (A) (other than with  
23       respect to subsection (b)(2)), section 3121(b) of  
24       such Code shall be applied without regard to  
25       paragraphs (1), (5), (6), (7), (8), (10), (13),

1 (18), (19), and (22) thereof (except with re-  
2 spect to services performed in a penal institu-  
3 tion by an inmate thereof) and section  
4 3231(e)(1) shall be applied without regard to  
5 the sentence that begins “Such term does not  
6 include remuneration”.

7 (f) CERTAIN GOVERNMENTAL EMPLOYERS.—

8 (1) IN GENERAL.—The credit under this section  
9 shall not be allowed to the Federal Government or  
10 any agency or instrumentality thereof.

11 (2) EXCEPTION.—Paragraph (1) shall not  
12 apply to any organization described in section  
13 501(c)(1) of the Internal Revenue Code of 1986 and  
14 exempt from tax under section 501(a) of such Code.

15 (g) TREATMENT OF DEPOSITS.—The Secretary shall  
16 waive any penalty under section 6656 of such Code for  
17 any failure to make a deposit of applicable employment  
18 taxes if the Secretary determines that such failure was due  
19 to the anticipation of the credit allowed under this section.

20 (h) REGULATIONS.—The Secretary shall prescribe  
21 such regulations or other guidance as may be necessary  
22 to carry out the purposes of this section, including regula-  
23 tions or other guidance—

24 (1) to allow the advance payment of the credit  
25 determined under subsection (a), subject to the limi-

1        tations provided in this section, based on such infor-  
2        mation as the Secretary shall require,

3            (2) to provide for the reconciliation of such ad-  
4        vance payment with the amount of the credit at the  
5        time of filing the return of tax for the applicable  
6        quarter or taxable year,

7            (3) for recapturing the benefit of credits deter-  
8        mined under this section in cases where there is a  
9        subsequent adjustment to the credit determined  
10       under subsection (a), and

11           (4) with respect to the application of the credit  
12       to third party payors (including professional em-  
13       ployer organizations, certified professional employer  
14       organizations, or agents under section 3504 of such  
15       Code), including to allow such payors to submit doc-  
16       umentation necessary to substantiate eligibility for,  
17       and the amount of, the credit allowed under this sec-  
18       tion.

19       (i) APPLICATION OF SECTION.—This section shall  
20       apply only to qualified pandemic-related employee benefit  
21       expenses paid after March 12, 2020, and before January  
22       1, 2021.

23       (j) TRANSFERS TO CERTAIN TRUST FUNDS.—There  
24       are hereby appropriated to the Federal Old-Age and Sur-  
25       vivors Insurance Trust Fund and the Federal Disability



1 Insurance Trust Fund established under section 201 of  
2 the Social Security Act (42 U.S.C. 401) and the Social  
3 Security Equivalent Benefit Account established under  
4 section 15A(a) of the Railroad Retirement Act of 1974  
5 (45 U.S.C. 231n-1(a)) amounts equal to the reduction in  
6 revenues to the Treasury by reason of this section (without  
7 regard to this subsection). Amounts appropriated by the  
8 preceding sentence shall be transferred from the general  
9 fund at such times and in such manner as to replicate  
10 to the extent possible the transfers which would have oc-  
11 curred to such Trust Fund or Account had this section  
12 not been enacted.

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