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

IN THE HOUSE OF REPRESENTATIVES
MAY 8, 2020
Ms. SÁNCHEZ introduced the following bill; which was referred to the Committee on Ways and Means

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.
This Act may be cited as the “Providing Essentials for Frontline Workers Act”.

SEC. 2. PAYROLL CREDIT FOR CERTAIN PANDEMIC-RELATED EMPLOYEE BENEFIT EXPENSES PAID BY EMPLOYERS.
(a) In General.—In the case of an employer, there shall be allowed as a credit against applicable employment
taxes for each calendar quarter an amount equal to the
applicable percentage of the qualified pandemic-related
employee benefit expenses paid by such employer with re-
spect to such calendar quarter.

(b) LIMITATIONS AND REFUNDABILITY.—

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

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

(3) REFUNDABILITY OF EXCESS CREDIT.—

(A) IN GENERAL.—If the amount of the
credit under subsection (a) exceeds the limitation
of paragraph (2) for any calendar quarter,
such excess shall be treated as an overpayment that shall be refunded under sections 6402(a) and 6413(b) of the Internal Revenue Code of 1986.

(B) Treatment of Payments.—For purposes of section 1324 of title 31, United States Code, any amounts due to an employer under this paragraph shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

(c) Qualified Pandemic-Related Employee Benefit Expenses.—For purposes of this section, the term “qualified pandemic-related employee benefit expenses” means any amount paid to or for the benefit of an employee in the employment of the employer if—

(1) such amount is excludible from the gross income of the employee under section 139 of the Internal Revenue Code of 1986 by reason of being a qualified disaster relief payment described in subsection (b)(1) of such section with respect to a qualified disaster described in subsection (c)(2) of such section which was declared by reason of COVID-19, and

(2) the employer elects (at such time and in such manner as the Secretary may provide) to treat
such amount as a qualified pandemic-related em-
ployee benefit expense.

(d) Applicable Percentage.—For purposes of
this section—

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

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

(B) 30 percent, in any other case.

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

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

(c) Special Rules; Other Definitions.—

(1) Application of certain non-discrimination rules.—No credit shall be allowed under this section to any employer for any calendar quarter if qualified pandemic-related employee benefit expenses are provided by such employer to employees for such calendar quarter in a manner which discriminates in favor of highly compensated individuals (within the meaning of section 125) as to eligibility for, or the amount of, such benefit expenses. An employer may elect with respect to any calendar quarter to apply this paragraph separately with respect to essential employees and with respect to all other employees.

(2) Denial of double benefit.—For purposes of chapter 1 of such Code, no deduction or credit (other than the credit allowed under this section) shall be allowed for so much of qualified pandemic-related employee benefit expenses as is equal to the credit allowed under this section.

(3) Third party payors.—Any credit allowed under this section shall be treated as a credit described in section 3511(d)(2) of such Code.
(4) Applicable Employment Taxes.—For purposes of this section, the term “applicable employment taxes” means the following:

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

(B) So much of the taxes imposed under section 3221(a) of such Code as are attributable to the rate in effect under section 3111(a) of such Code.

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

(6) Certain Terms.—

(A) In General.—Any term used in this section which is also used in chapter 21 or 22 of such Code shall have the same meaning as when used in such chapter (as the case may be).

(B) Certain Provisions Not Taken into Account Except for Purposes of Limiting Credit to Employment Taxes.—For purposes of subparagraph (A) (other than with respect to subsection (b)(2)), section 3121(b) of such Code shall be applied without regard to paragraphs (1), (5), (6), (7), (8), (10), (13),
(18), (19), and (22) thereof (except with re-
spect to services performed in a penal institu-
tion by an inmate thereof) and section
3231(e)(1) shall be applied without regard to
the sentence that begins “Such term does not
include remuneration”.

(f) CERTAIN GOVERNMENTAL EMPLOYERS.—

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

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

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

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

(1) to allow the advance payment of the credit
determined under subsection (a), subject to the limi-
tations provided in this section, based on such infor-

mation as the Secretary shall require,

(2) to provide for the reconciliation of such ad-

vance payment with the amount of the credit at the
time of filing the return of tax for the applicable
quarter or taxable year,

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

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

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

(j) TRANSFERS TO CERTAIN TRUST FUNDS.—There
are hereby appropriated to the Federal Old-Age and Sur-
vivors Insurance Trust Fund and the Federal Disability
Insurance Trust Fund established under section 201 of the Social Security Act (42 U.S.C. 401) and the Social Security Equivalent Benefit Account established under section 15A(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n–1(a)) amounts equal to the reduction in revenues to the Treasury by reason of this section (without regard to this subsection). Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Trust Fund or Account had this section not been enacted.