



TRUSAIC

Regulatory Update

The CARES Act
Employee Retention
Credit

Content Outline

- Overview of the Employee Retention Credit
- Employee Retention Credit maximization with TRUSAIC

The Employee Retention Credit (“ERC”)

- First enacted on March 27, 2020 in response to the COVID-19 pandemic (and since amended to expand the ERC).
- Refundable credit against employment taxes (IRS Form 941). ERC is calculated based on “qualified wages” paid to employees between **March 13, 2020 to December 31, 2021** (21+ month time period)
- Available to both profit and non-profit entities and limited government employers.

The Employee Retention Credit

Employers may be eligible for up to **\$33,000 in ERCs per employee**

Example Credit Scenarios

Company 1

110 total employees,
65 FT employees

\$3.6 million

in total potential benefit

Company 2

400 total employees,
250 FT employees

\$13.2 million

in total potential benefit

Company 3

875 total employees,
450 FT employees

\$28.9 million

in total potential benefit

Eligibility Test for the Employee Retention Credit

To be able to claim the Employee Retention Credit, an employer must have carried on a business in 2020 and meet one of the following:

1. Employer's **operations were fully or partially suspended due to COVID-19** related governmental order.
2. Incurred a **decline in gross receipts** during a calendar quarter compared to the same calendar quarter during 2019
 - For quarters in 2020, the decline must be greater than 50%
 - piggy back quarter
 - For quarters in 2021, the decline must be greater than 20%
 - alternative quarter test (immediately preceding quarter)

Note: For entities with affiliated entities or controlled groups, the entire group must be examined under IRC sections 52(a), 52(b), 414(m) and 414(o) as a single “employer.”

How do I Calculate the Amount of the Credit?

For 2020

- An employer can receive a credit for **50% of the first \$10,000** of Qualified Wages paid per employee in the **aggregate for all quarters**
- The maximum ERC for all of 2020 would be \$5,000 per employee receiving Qualified Wages

For 2021

- An employer can receive **70% of the first \$10,000** of Qualified Wages paid per employee in **each quarter**
- The maximum per quarter is \$7,000 per quarter
- The maximum for 2021 is \$28,000 per employee

Simple Examples

A small number of employees, only subject to a COVID order for a limited period of time, or had decline in profits for only one quarter, the ERC can still generate a meaningful amount.

- employer with 5 employees with significant decline in gross receipts for 2020 and Q1 2021: \$60,000
- employer with 10 employees with significant decline in gross receipts for only 1 quarter in 2021: \$70,000
- employer with 10 employees subject to a partial COVID suspension order (such as a restaurant) for 2020 and Q1 2021: \$120,000
- employer with 20 employees subject to COVID suspension order for 2020 only: \$100,000
- employer with 20 employees subject to COVID suspension order for 2020 and Q1 2021: \$240,000

What are Qualified Wages?

Qualified Wages are dependent on the Full Time count in 2019. The FT count includes employees with at least 30 hours of service per week / 130 hours per month as defined under IRC Section 4980H, using either the IRS Look-Back Measurement Method or IRS Monthly Measurement Method.

“Qualified Wages include both wages and allocable health plan expenses paid by employer.

	if <100 FT employees in 2019	if 100 - 500 FT employees in 2019	if 500+ FT employees in 2019
2020 Eligibility is based on 2019 FT count	Qualified wages are those paid to <u>all employees</u>	Qualified wages are those paid to employee not performing services due to COVID-19	Qualified wages are those paid to employee not performing services due to COVID-19
2021 Eligibility is based on 2019 FT count	Qualified wages are those paid to <u>all employees</u>	Qualified wages are those paid to <u>all employees</u>	Qualified wages are those paid to employee not performing services due to COVID-19

Frequently Asked Questions

Question: If I have more than 500 employees can I still claim the Employee Retention Credit?

Answer: Yes. Many employers mistakenly believe that they do not qualify for the ERC because they have more than 500 employees. However, the eligibility criteria are based on **Full Time** employees as measured under the **ACA Compliance guidelines (IRC 4980H)**. Most ERC vendors do NOT have the capacity to accurately perform the required Full Time measurements which is unfortunate because it will lead many employers failing to claim the ERC.

Question: If I took out a Paycheck Protection Program (“PPP”) loan, can I still claim the Employee Retention Credit?

Answer: Yes. *However*, careful analysis of PPP and ERC eligibility is required to ensure that you minimize risk of compliance issues (and associated audits), and special attention should be given to the *timing* of the PPP loan and ERC refund claims to maximize the financial benefits from both.

Question: Do I have to measure my Full Time employees in a specific way? What are the implications of performing the calculation incorrectly?

Answer: Yes. **FT counts must be analyzed using the ACA methodology prescribed in the IRC 4980H Final Regulations** - either the IRS Look-Back Measurement Method or the IRS Monthly Measurement Method must be used. Failure to do so could subject the organization to compliance issues and result in inaccurately claiming the tax credit owed.

500+ employees? You may still qualify.

In this example, the employer was initially told by their CPA firm that they did NOT qualify for the Employee Retention Credit.

Number of Employees	1,400 employees
----------------------------	-----------------

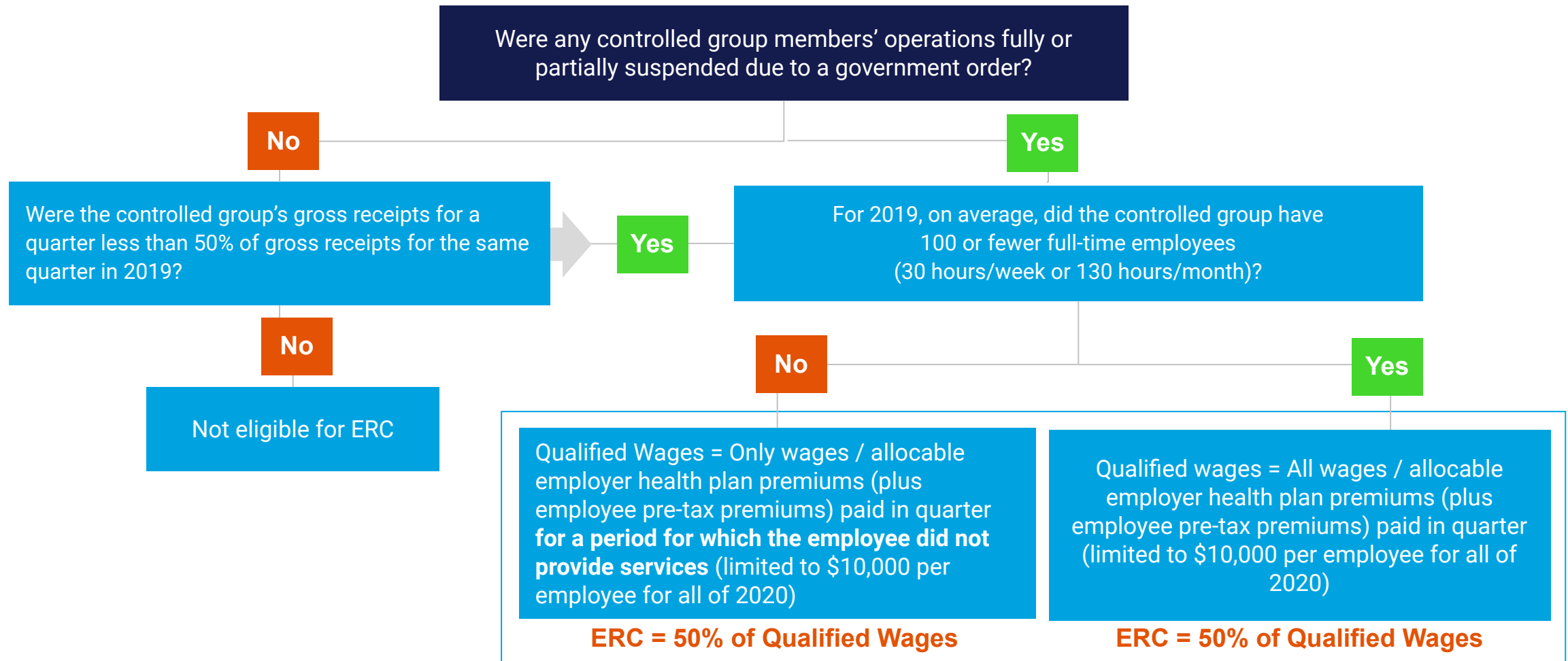
Industry	Restaurants / Food Services
-----------------	-----------------------------

Number of Locations	35 locations
----------------------------	--------------

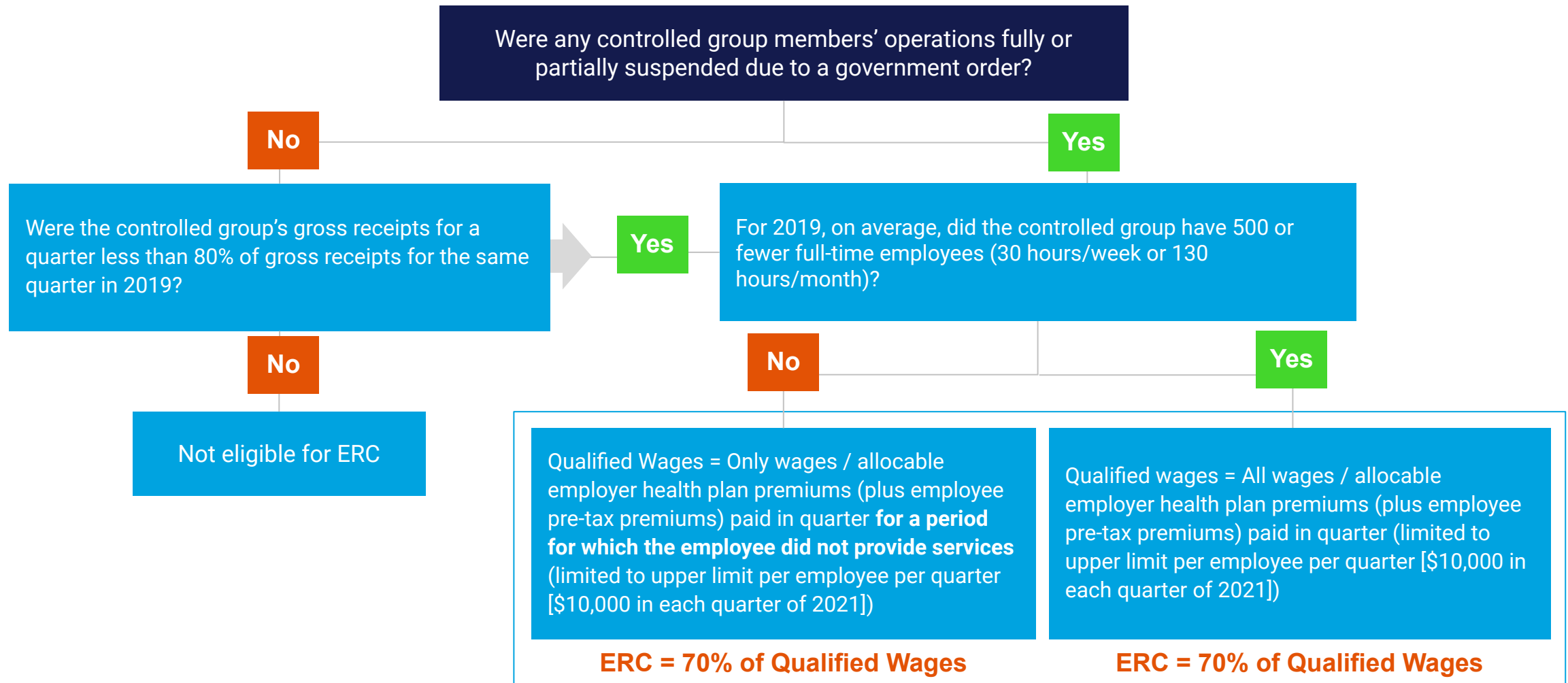
Geographic location	Southern California
----------------------------	---------------------

However, once Trusaic accurately applied the IRS Look-Back Measurement Method under IRC 4980H, the employer was determined to have 370 average monthly ACA Full-Time employees during 2019, rendering them eligible for the ERC in 2021.

2020 Logic Tree for ERC



2021 Logic Tree for ERC



Interplay Between ERC and Paycheck Protection Program (PPP)

Employers that received PPP are allowed to claim the Employee Retention Credit:

- However, employers cannot “double dip” with respect to qualified wages
- The same wages cannot be used both to qualify for forgiveness of a PPP loan and as ERC Qualified Wages
- To the extent that PPP forgiveness allocated to wages is less than total wages in a quarter, you can treat remaining wages in that quarter as ERC-eligible (subject to the upper limitation of Qualified Wages per employee, e.g., \$10,000 per employee for any quarter in 2021)
- Note: PPP borrowers may use payroll costs included on the PPP loan forgiveness application that is not forgiven.

Interplay Between ERC and Paycheck Protection Program (PPP)

Careful analysis of PPP and ERC eligibility should be conducted to ensure that you:

- **Minimize Risk**
 - Minimize risk of compliance issues (and associated audits) due to failure to properly account for interplay between the ERC and PPP
- **Maximize Financial Benefit**
 - Maximize financial benefit available from the PPP and ERC

Other “Double Dipping” Avoidance

In addition to the Paycheck Protection Program, it is important to perform careful analysis to avoid the possibility of “double dipping” between the ERC and the following:

- FFCRA
- Work Opportunity Tax Credits
- paid sick and family leave credits
- R&D Tax Credits
- Indian Employment Credits
- Employer wage credits for active military duty members
- Empowerment Zone Credits
- Shuttered Venue Operator Grants
- Restaurant Revitalization Grants
- Covered loans under Section 7(a)(37) or 7A of the SBA

Potential for Audit - IRS extends Statute of Limitations

- The IRS has extended the Statute of Limitations from the standard 3 years to 5 years, foreshadowing increased likelihood of future IRS audits around the Employee Retention Credit.
- It is critical that employers work with a vendor that can help them to properly analyze and document the interplay between the Employee Retention Credit and other workforce incentives programs (e.g. Paycheck Protection Program, WOTC) to minimize risk from audit.

What Documentation Should be Retained?

- **Qualifying reason.** If your organization is basing eligibility on a full or partial suspension due a COVID-19 related governmental order, retain a copy of the relevant order(s) and documentation showing suspension. If your organization is basing eligibility under the gross receipts test, maintain documentation to show the decline in gross receipts for the qualifying period(s).
- **Employee count calculations.** Because the ERC calculation varies depending on the FT count for the baseline year (2019), maintain documentation of the number of FTs and how that number was calculated.
- **Calculations to support the amount of the ERCs.** Because the amount of the ERCs is based on Qualified Wages, which are wages and allocable qualified health expenses, maintain documentation of such Qualified Wages.
- **Credit reimbursement method.** Since there are multiple ways to receive the ERCs, maintain records of the method(s) your organization uses to receive the ERCs.
- **For PPP borrowers.** Because forgiven payroll costs under the PPP loan forgiveness provisions cannot be included as Qualified Wages, such overlapping forgiven payroll costs (such as wages) should be excluded from Qualified Wages, and documentation of such exclusion should be maintained.

The Trusaic Solution:

Maximize your Employee Retention Credit. Reduce risk of audit.

TRUSAIC will guide you through the entire process:

- Assess IRS aggregated group (controlled group/affiliated service group) under IRC §§52(a), 52(b), 414(m) and 414(o)
- Determine accurate Full Time employee counts under IRC §4980H
- Document eligibility via (a) gross receipts test or (b) full or partial suspension due to COVID order
- Identify qualifying employees and qualifying wages via payroll records, client interviews, data/documentation gathering
- Optimize ERC balanced against PPP loan repayment requirements and avoid other “double dipping”
- Perform the ERC credit calculation on a quarterly basis
- Prepare IRS Forms to claim refunds
- Prepare audit-ready memorandum documenting key calculations
- IRS Audit Defense assistance

Employee Retention Credit **Benefits with TRUSAIC**

1. Minimize risk of compliance issues and IRS audit
2. Ensure optimal ERC strategy balanced against PPP loan repayment requirements and other tax credits
3. Maximize financial benefit to the organization

The Trusaic Solution:

Employee Retention Credit - Implementation Steps

Step 1

- Assess IRS Aggregated Grouping under IRC §§52(a), 52(b), 414(m) and 414(o)
- Determine accurate Full Time counts under IRC §4980H

Step 2

- Document eligibility via (a) Gross Receipts Test, or (b) Suspension Due to COVID Order
- Identify qualifying employees and wages via payroll record review, data, document and information gathering, and client interviews
- Perform the ERC credit calculation on a quarterly basis

Step 3

- Prepare Forms to claim refunds for IRS submission
- Prepare audit-ready memorandum documenting key calculations

Step 4

Client receives Employee Retention Credit refund from IRS.

Step 5

- IRS Audit Defense assistance provided if required
- Trusaic stands behind its work



Let's Get Started

Sign up for services today.

Trusaic

www.trusaic.com

Gregg Kasubuchi, VP Partnerships

Email: gkasubuchi@trusaic.com

Direct: 213-355-5108

3530 Wilshire Blvd

Los Angeles, CA 90010



About Trusaic

Combining state-of-the-art analytics with comprehensive expertise, Trusaic is committed to helping business leaders identify and manage risk, avoid penalties, and empower their companies through smart, innovative, and accurate data solutions. We help you increase efficiency and improve the bottom line—all while doing right by your employees.

Our world-class Net Promoter Score of 75 is proof that our clients trust us to get the job **Done and Done Right**.

“QUALITY IN A SERVICE AND PRODUCT IS DETERMINED MOST IMPORTANTLY BY WHAT THE CUSTOMER GETS OUT OF IT”

ROBERT SHEEN, CEO

