The HIRE Act

Important Tax Breaks for a Recovering Economy

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To help jumpstart business hiring and investment, Congress has passed, and President Obama has signed, the Hiring Incentives to Restore Employment (HIRE) Act. The HIRE Act provides for payroll tax forgiveness and an employer income tax credit of up to $1,000 for qualified new hires. The payroll tax forgiveness is significant as, for the first time, the hiring of formerly unemployed workers will benefit businesses regardless of their profitability. The payroll tax forgiveness can benefit EVERY business and most nonprofits.

Hiring Incentive

The HIRE Act provides qualified employers with temporary payroll tax forgiveness of the employer's 6.2 percent share of Social Security payroll taxes on wages paid to new hires who had been previously unemployed. Payroll tax forgiveness is effective for qualified employees on wages earned for work after March 18, 2010 and on or before December 31, 2010. A qualified employee must begin work any time after February 3, 2010 and before January 1, 2011. The newly hired worker must not have been employed for more than 40 hours during the 60-day period ending on the date that the individual begins employment. The rehiring of former employees is eligible for this hiring incentive, as long as they have been unemployed for the 60-day period. Therefore, recalling laid off workers can qualify. Additionally, full time and part time employees both qualify and there is no age requirement for the new hires.

It is important to note that hired workers will be required to sign an affidavit certifying that they have not been employed for more than 40 hours during the 60-day period they were unemployed. The IRS has produced a "model affidavit" that eligible hires will be required to sign.

Retained Worker Business Credit

Additionally, under the HIRE Act, employers that hire new workers who qualify for payroll tax forgiveness may also be eligible for an income tax credit for each qualified employee. For the employer to be entitled to this new credit, the qualified employee must be retained on the employer's payroll for 52 consecutive weeks. The credit, with respect to each qualified retained worker, will be the lesser of $1,000 or 6.2 percent of wages paid by the taxpayer to the qualified retained worker during the 52 week period.

Example:

The hiring incentive and retained worker business credit can provide a notable tax break for hiring or rehiring qualified individuals. The following is a range of the potential tax breaks at different wage levels (using a 6/1/2010 hire date):

Employee Wage *(52 Week Period)*	$15,000	$25,000	$50,000	$75,000	$100,000	$125,000
Hiring Incentive*	543	904	1,808	2,713	3,617	4,521
Worker Credit**	930	1,000	1,000	1,000	1,000	1,000
	$ 1,473	$ 1,904	$ 2,808	$ 3,713	$ 4,617	$ 5,521

Tax Break per Qualified Employee

* Equals 6.2% of wages paid in 2010 under the $106,800 Social Security wage cap.
** Equals the lesser of $1,000 or 6.2% of wages paid throughout the 52 week period.

The following are Q&A's from the IRS website on the HIRE Act:

Q: Who are qualified employees?
A: Qualified employees are individuals who begin employment with a qualified employer after February 3, 2010, and before January 1, 2011, who have been unemployed or employed for less than 40 hours during the 60-day period ending on the date such employment begins, and who are not family members of or related in certain other ways to the employer.

Q: Do the qualified employees need to do anything to make it possible for their employer to claim the payroll tax exemption?
A: Yes, qualified employees must certify by a signed affidavit, under penalties of perjury, that they have not been employed for more than 40 hours during the 60-day period ending on the date they started employment. The IRS plans to issue a model affidavit that can be used for this purpose.

Q: Is the 60-day period continuous, and can it span 2009-2010?
A: The 60-day period must be continuous and can span 2009-2010.

Q: Does the payroll tax exemption apply to wages paid to a qualified employee hired to replace an existing worker whose employment terminated?
A: The payroll tax exemption does not apply to wages paid to an employee who is hired to replace an existing worker, unless the existing worker terminated employment voluntarily or was terminated for cause.

Q: Does the payroll tax exemption apply to wages paid to an employee who was previously laid off and then rehired by the same or a related employer after a 60-day period?
A: Yes, an employer may apply the payroll tax exemption to wages paid to a rehired employee who is otherwise a qualified employee.

Q: If an employer lays an employee off because of lack of work and later, when work picks up, hires a new employee, can the payroll tax exemption apply to wages paid to the new employee?
A: Yes, if the new employee is a qualified employee (i.e., was employed for less than 40 hours during the prior 60 days).

Q: Does the payroll tax exemption apply only if the employer previously laid employees off?
A: No, the payroll tax exemption can apply to wages paid to any qualified employee.

Q: If an employer hires a recent graduate who has been in school for some or all of the 60 days preceding the start of his employment, does the payroll tax exemption apply to wages paid to the employee?
A: Yes, if the employee is a qualified employee. It is not necessary that the individual was previously employed and has lost his or her job to be a qualified employee.

Q: What is the payroll tax exemption?
A: The payroll tax exemption is an exemption from the employer's 6.2 percent share of social security tax on all wages paid to qualified employees from March 19, 2010 (the day after the date of enactment of the HIRE Act) through December 31, 2010. The employee's 6.2 percent share of social security tax and the employer and employee's shares of Medicare tax still apply to all wages.

Q: Which employers qualify for the payroll tax exemption?
A: Taxable businesses and tax-exempt organizations qualify for the payroll tax exemption. Such employers in U.S. possessions, such as Puerto Rico or the Northern Mariana Islands, that are subject to social security tax also qualify for the payroll tax exemption. Federal, State or local government employers generally do not qualify for the payroll tax exemption. However, public colleges and universities can qualify for the exemption.

Q: Does the payroll tax exemption apply to household employers?
A: No. The payroll tax exemption applies only to wages paid to a qualified employee performing services in the employer's trade or business or in activities in furtherance of a tax-exempt organization's exempt purpose.

Q: If an employer starts a new business, does the payroll tax exemption apply to wages paid to employees hired for the new business?
A: Yes, if they are qualified employees.

Q: If an employee laid off in 2009 has been receiving COBRA premium assistance, for which the employer has been taking the COBRA premium assistance credit, and the employer rehires the employee, can the employer take the payroll tax exemption under the HIRE Act for wages paid to the employee?
A: Yes, if the employee is a qualified employee.

Q: How does the employer claim the payroll tax exemption for wages paid to qualified employees?
A: The payroll tax exemption is claimed on Form 941, Employer's QUARTERLY Federal Tax Return, beginning with the second quarter of 2010.

Q: How does the employer claim the payroll tax exemption for wages paid to qualified employees during the period March 19 through March 31, 2010 (the first quarter of 2010)?
A: The payroll tax exemption for wages paid during this period will be claimed on the employer's Form 941 for the second quarter of 2010.

Q: Can an employer claim the COBRA premium assistance credit and the payroll tax exemption for new hires on the same employment tax return?
A: Yes.

Q: How does application of the payroll tax exemption to wages paid to a qualified employee affect the availability of the Work Opportunity Tax Credit with respect to that employee?
A: If an employer applies the payroll tax exemption to wages paid to a qualified employee, such wages paid to the employee during the one-year period beginning with the employee's hiring date may not be taken into account for purposes of the Work Opportunity Tax Credit. An employer that wishes to claim the Work Opportunity Tax Credit with respect to a qualified employee can elect out of the payroll tax exemption with respect to wages paid to that qualified employee.

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