The HIRE Act: Who, What & How

Insights
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In an effort to reduce the nation's unemployment rate and spur job creation, President Obama signed the Hiring Incentives to Restore Employment (HIRE) Act into law on March 18 of this year. Under the HIRE Act, also commonly referred to as the "jobs bill," employers may qualify for tax benefits by hiring workers who were previously unemployed or working only part-time, and for retaining those employees. Specifically, employers who hire qualified individuals between February 3, 2010 and January 1, 2011 may receive a 6.2% payroll tax incentive. You may also claim an additional tax credit of up to $1,000 per worker if they are retained for a minimum of one year.

Who Is A Qualified Employee?
Not every employee hired in 2010 will qualify the employer for these tax breaks. Instead, an individual must meet certain criteria to be a "qualified employee."

First, employees must begin their employment after February 3, 2010, but before January 1, 2011. Employees who were laid off by the employer but subsequently rehired during this time period can also qualify, so long as the individual meets all of the additional criteria.

Second, individuals must have been unemployed, or employed for less than 40 hours, for 60 days prior to their start date with the employer. The 60-day period must have been a continuous period and may span 2009 through 2010. Also, if you hire a recent graduate, then you may include time the individual spent in school during that 60-day period toward determining eligibility.

In order to claim this tax benefit, the employer must obtain a signed statement from individuals certifying, under penalty of perjury, that they have not worked more than 40 hours during the relevant 60-day period. The IRS has recently issued Form W-11, "Hiring Incentives to Restore Employment (HIRE) Act Affidavit," which you can use to satisfy this requirement. Alternatively, you may use your own form affidavit or other certification, so long as the form uses the same language in the certification as the Form W-11. Whether you use Form W-11 or an equivalent version, the certification is not filed with the IRS but must be kept along with other payroll and income-tax records.

Third, the payroll-tax exemption does not apply to an employee who is hired to replace another employee unless that employee was terminated for cause, or voluntarily separated from employment. But if you lay off an employee due to lack of work, you may still claim the tax credit for wages paid to a new hire if you later rehire the new employee when work picks up.

Finally, to be a "qualified employee," the individual may not be a family member of, or related in other ways to, any individual who owns, directly or indirectly, more than 50% in value of the outstanding stock of the employer nor to any individual who owns more than 50% of the capital and profits interests in the employer.

Who Is A Qualified Employer?

A "Qualified Employer" includes any taxable or tax-exempt private-sector employer, including non-profits and new businesses. The Act excludes federal, state, and local government employees as well as employees of governmental agencies or instrumentalities. But the Act does apply to public institutions of higher education. Finally, household employers do not qualify for incentives under the Act.

In order to take advantage of the tax breaks, a qualified employer need not sign up. Instead, the Act provides for automatic coverage unless an employer opts out. You may wish to opt out of coverage under the Act if, for instance, you utilize the Work Opportunity Tax Credit, as an employer may not receive tax benefits under both programs for the same wages.

Benefits Provided

The purpose of the Act is to spur job growth, and to accomplish this, the Act provides two separate tax benefits to qualifying employers for not only hiring employees, but also for keeping them.

Payroll Tax Exemption

First, employers who hire qualified individuals are eligible for a 6.2% payroll tax forgiveness exempting them from their share of Social Security taxes on wages paid to the individual between March 18, 2010 and December 31, 2010. According to the IRS, this incentive has no effect on the employee's future Social Security benefits, and employers are still required to withhold the *employee's* 6.2% share of Social Security taxes as well as state and federal income and Medicare taxes.

Business Credit

The second incentive provides a general business credit to employers to retain new hires. In order to take advantage of this credit, you must retain a qualified employee for 52 consecutive weeks during the tax year, and the employee's pay during the last 26 weeks of the period must equal at least 80% of the wages for the first 26 weeks of the same period.

For each employee meeting this criteria, employers will receive a credit in the amount of either $1,000 for each qualifying employee retained for at least 52 consecutive weeks, or 6.2% of wages paid to the qualifying employee over the 52 week period, whichever is less. While an employer may carry this credit forward, it may not be carried back to a previous year.

How To Claim Benefits
Beginning in the second quarter of 2010, employers may claim the payroll tax exemption on the Employer's Quarterly Federal Tax Return, Form 941. You may also claim the payroll tax exemption for wages paid between March 19 through March 31, 2010 on the Form 941 for the second quarter of 2010. The IRS has revised Form 941 for use beginning with the second quarter of 2010. A final form, along with instructions, is expected to be available in May 2010 according to the IRS.

Finally, businesses will be able to claim the new hire retention credit for employees retained for 52 consecutive weeks on their 2011 income tax returns.

Taking Advantage Of The HIRE Act
Whether you have already begun hiring employees, or are considering doing so later in the year, there are a few steps that you should take in order to prepare to take advantage of these tax benefits:

Determine which of your employees qualify.

If you have hired employees since February 3, 2010, identify those individuals who may qualify and be sure to obtain a signed Form W-11 from any employees who were not employed more than 40 hours in the 60 day period before their start dates. Also, review the positions that employees have filled to determine if they replaced anyone. If so, the new hire may not qualify unless the former employee was terminated for cause or voluntarily separated.

Coordinate with Payroll
Your human resources department should coordinate with your payroll and tax department or providers and notify them whenever a qualified employee is either identified or hired to ensure that proper credit is taken in the second quarter for those previously hired in the first quarter, and to make sure that the proper credit is being taken in subsequent quarters for new hires.

Determine if you should opt out of coverage for an employee
Review each qualifying employee to determine whether or not you want the Act's automatic coverage to apply to that employee. If the employee qualifies for Work Opportunity Tax Credit, for example, then you may want to opt out of coverage under the HIRE Act as the tax benefits may be greater.

Prepare for 2011
In order to claim the business credit in 2011, you will need to know how many employees you have that qualify. Create HIRE Act records to record each qualified employee's date of hire to determine if the employee reaches the consecutive 52 week mark. Also, keep signed W-11 forms on file with other payroll and tax records.

Comply with Other Laws
As with any decision related to hiring, always follow applicable state and federal employment laws. In making decisions as to whether or not to retain a qualified employee, compliance with

employment laws should always take precedence over consideration of tax benefits under the HIRE Act.

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