



A Crash Course in The New HIRE Act

Insights

7.01.10

(Education Update, No. 3, July 2010)

Newly-hired teachers and staff may provide your school with tax benefits under recently enacted legislation. On March 18, 2010, President Obama signed the Hiring Incentives to Restore Employment (HIRE) Act into law as part of an ongoing effort to reduce the nation's unemployment rate and spur job creation. 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.

Tax Benefits

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 individuals between March 18 and December 31, 2010. According to the IRS, this incentive has no effect on the employees' future Social Security benefits, and employers are still required to withhold the employees' 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, an employer 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.

Does My School Qualify as an Employer?

Under the Act a "Qualified Employer" includes any taxable or tax-exempt private sector employer, including non-profits, as well as public institutions of higher education.

including non-profits, as well as public institutions of higher education.

Which Employees Are Covered?

Not every employee hired in 2010 will qualify for tax breaks under the Act. 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, the individual must have been unemployed, or employed for less than 40 hours, for 60 days prior to their start date with the employer. We anticipate that some schools may ask whether the fact that teachers are not working during the summer months may count as a 60-day unemployment period. We do not believe that would likely pass muster.

Teachers who worked during 2009/2010 were likely offered a contract to return for the 2010/2011 school year in the spring. Thus, they were already promised re-employment, commencing August or September 2010. Moreover, throughout the summer months, most schools consider teachers to be actively employed as evidenced by the continuation of insurance benefits within the employee group rate. Therefore, although the law is not 100% clear on this issue, it is our opinion that a school would act with great risk in characterizing such teachers as "unemployed" in the summer months.

The 60-day period must have been a continuous period and may span 2009 through 2010. Also, if an employer hires a recent graduate, then the employer may include time the individual spent in school during that 60-day period toward determining eligibility (i.e. count the school attendance period as "unemployed").

In order to claim this tax benefit, the employer must obtain a signed statement from the 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 can be used to satisfy this requirement. This form 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 an employer lays an employee off due to lack of work, the employer may still claim the tax credit for wages paid to a new hire if the employer later hires 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.

Does My School Have To Sign Up?

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

How Does My School Claim These 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. Employers 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 your school has already begun hiring employees, or is considering doing so later as the next school year approaches, there are a few steps that you should implement 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. Teachers who sign contracts in the spring to return the following fall will not be qualified employees under the Act as they will not be considered "unemployed" during the summer break.

Also, review the position that an employee has filled to determine if he or she replaced an employee. 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. For example, if the employee qualifies for the Work Opportunity Tax Credit, that may offer a greater tax benefit than the HIRE Act, so you may want to opt out of the latter.

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.

Related People



George A. Reeves, III
Partner
803.255.0000
[Email](#)