



A Guide to the HIRE Act of 2010 CURRENT AS OF APRIL 7, 2010

Background

The Hiring Incentives to Restore Employment Act (HIRE) Act, also known as the “jobs bill” was signed into law on March 18, 2010.

The HIRE Act provides a federal program for employers with incentives to hire and retain employees.

The HIRE Act will exempt an employer from paying the employer portion of Social Security taxes for the remainder of the year on new hires who are currently unemployed. The HIRE Act essentially eliminates the current 6.2% employer Social Security tax for eligible new hires, generating immediate savings that will positively impact a business' bottom line.

If impacted workers stay on the payroll for at least a year (specifically if a worker is employed for at least 52 consecutive weeks), the employer would also get up to a \$1,000 business tax credit per qualified employee.

Key Dates

- ✓ February 3, 2010, but before January 1, 2011: The hiring of a “qualified employee.”
- ✓ March 19, 2010 and December 31, 2010: The FICA payroll holiday period for wages paid to a qualified employee.

Social Security Tax

The 6.2% employer portion of the Social Security tax would be exempt for any qualified individual hired after February 3, 2010 and before January 1, 2011, for wages paid between March 19, 2010 and December 31, 2010 up to the \$106,800 Social Security wage base.

A qualified individual meets the following requirements:

- ✓ Begins employment with a qualified employer after February 3, 2010, but before January 1, 2011.
- ✓ Has not been employed for more than 40 hours during the previous 60 days. The individual must sign an affidavit attesting to the employer that he was not employed in the previous 60 days, or was employed for no more than 40 hours total.
- ✓ Is not hired to replace another employee unless the previous employee was separated from employment voluntarily or for cause.
- ✓ Is not a family member of the business owner.

An employer can save up to \$6,622 in employer Social Security tax for each qualified hire. There is no limit to the total amount of tax benefits or hires during this period, so employers will receive greater tax benefits by hiring individuals earlier in the year.

Business Tax Credit

A business tax credit can also be claimed by the employer for each qualified individual hired after February 3, 2010 who stays with the employer for 52 consecutive weeks. This business credit will be the lesser of \$1,000 or 6.2 percent of the wages paid by the employer to the retained worker during the 52 consecutive week retention period.

For the employer to claim this additional Retained Worker Tax Credit (RWTC) credit, wages paid during the previous 26 weeks must equal at least 80% of wages during the first 26 weeks of employment.

IRS Guidance

The IRS is issuing guidance as quickly possible on the many tax deposit and reporting issues created by the Act.

The credit is for eligible employees hired after February 3, 2010, but only wages paid between March 19, 2010 and December 31, 2010 are eligible.

A new Form 941 will be updated to account for the tax credits beginning with the second quarter form. First quarter wages and credits will also be reported on the second quarter form.

Employers can reduce their federal deposit amounts throughout the quarter by the eligible employer Social Security tax amount, or they can wait to claim the credit on their 941 return.

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IRS Guidance

The credit can not be claimed by household or government employers.

There will be a standard affidavit for employers to use for eligible employees. Employers may create their own version as long as it has identical wording as the IRS version. The attestation should be retained by the employer for possible future audit, and not filed with the IRS.

The IRS will also provide other information about the payroll holiday in the next few weeks.

Documentation

Any new hire must certify his/her previous employment status by signed affidavit which should include, at least, the following information:

- ✓ A statement of “under penalty of perjury, that I, [Name of Employee], have not been employed for more than 40 hours during the 60-day period ending on the date of employment of XX-XX-XX with the [Company Name].”
- ✓ Last Date of Employment and the Name of the Previous Employer.
- ✓ Employee Signature.

Tracking

Millennium is working on a solution to track these employees. We do not have an exact time frame for the update or how much of the tracking will be supported. At least temporarily, there needs to be a tracking system in place, whether it's using spreadsheets or an HRIS solution of some sort.

Whatever the solution, be sure that you're able to achieve the following:

- ✓ Screen new hires to identify eligible employees.
- ✓ Establish a method for new hires to complete the certification by affidavit.
- ✓ Be able to provide daily reports of the employees who are eligible.
- ✓ Periodically run regular compliance reports to help ensure eligible new hires complete the affidavit process.
- ✓ House and maintain all employee certification documentation to help more easily respond to related audits.
- ✓ Enable a notification process of the availability of the \$1,000 per qualified employee new-hire income tax credit after an eligible employee completes 52 weeks of employment.

Hiring Checklist

- ✓ Make sure the new hire completes and signs an Employment Application.
- ✓ Have the newly-hired employee complete the affidavit.
- ✓ Make sure you communicate clearly the reasons of the affidavit.

Next Steps

To take advantage of these tax benefits, employers should identify all current employees who may meet the requirements of a qualified employee and ask each such employee to sign the affidavit described above.

Additionally, employers should ask each newly hired employee through the end of the year to sign an affidavit as well.

Employers also should coordinate with their payroll vendors or payroll departments to discuss adjusting their payroll systems to reflect the payroll tax holiday and to take a credit for the first quarter of the relevant Old age, survivors, and disability insurance (OASDI) / Social Security taxes that are paid but that would otherwise be subject to the holiday rules.

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