

EMPLOYER TAX INCENTIVES FOR NEW HIRES

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Is your business beginning to look like it's on the upswing? If so, and your company is ready to hire a new employee or two, you should consider whether the new hires qualify to take advantage of the recently enacted federal Hiring Incentives to Restore Employment Act ("HIRE Act"). Signed into law on March 18, 2010, HIRE was passed to "encourage businesses to hire and help put Americans back to work." Primarily the HIRE provides two tax incentives to almost all private sector employers, except household employers, to hire individuals who are not currently working.

Employer Exemption from Portion of Social Security Taxes

To incentivize the creation of new jobs, HIRE exempts employers from having to pay their portion of the Old-Age Survivors, and Disability Insurance ("OASDI") of Social Security taxes, equal to 6.2% of wages paid to any individual during 2010 up to \$106,800, for wages paid to a "qualified employee" between March 19, 2010 and December 31, 2010. HIRE defines a "qualified employee" as an individual who:

1. Was hired between February 4, 2010 and December 31, 2010;
2. Has not worked more than a total of 40 hours during the 60 days immediately prior to beginning employment (laid-off/rehires can qualify as can recent graduates);
3. Was not hired to replace a terminated employee unless the other employee "separated from employment voluntarily or for cause;"
4. Is not related to the employer as defined by IRS rules.

Tax savings for an employer who chooses to use this exemption are immediate. This is not a rebate plan; employers do not need to wait to get back from the government. Instead, the employer's 6.2% portion of Social Security taxes due on wages paid to a "qualified employee" simply does not have to be paid. The exempt cash stays with the employer. Savings from the government really do not get much simpler, easier or quicker than this.

The savings for a company using this exemption can be significant. There is no limit on the number of employees that an employer can hire and claim

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the exemption on wages paid during 2010. There is no maximum on the dollar amount of payroll taxes per employee that are exempt. And, there is no minimum number of hours the “qualified employee” must work per week. Whether a “qualified employee” is paid \$20,000 or \$100,000 the employer can forgo paying their 6.2% portion of Social Security taxes due on the wages paid. An employer that pays a “qualified employee” \$106,800, the maximum amount of wages subject to Social Security taxes for 2010, between March 19 and December 31, 2010 would save \$6,621 if it uses this exemption.

Employers able and choosing to take advantage of this exemption must have the “qualified employee” complete and sign IRS Form W-11 swearing under penalty of perjury that s/he was not employed for more than 40 hours during the 60 day period prior to the date they began employment with the employer claiming the exemption. **It is important to note for “qualified employees” that are being asked to sign IRS Form W-11 that they will still receive full benefits computation credit for the wages they earn during 2010, even though the employer portion of OASDI is not being paid under the HIRE Act.**

Employers claim this exemption on their Form 941-Employer’s Quarterly Federal Tax Return, beginning the second quarter of 2010. Any amount of taxes exempt under the HIRE Act that an employer paid during the first quarter of 2010 will be treated as an advance payment of taxes owed for the second quarter. Employers must continue to pay their Medicare hospital (“HI”) portion of Social Security taxes on wages, 1.45%, and a “qualified employee” must still pay their portion of FICA taxes. In addition, employers cannot take advantage of this exemption and the “Work Opportunity Tax Credit.” Employers must select one or the other of these tax benefits.

Employer Retention Credit

In addition to not having to pay their portion of the Old-Age Survivors, and Disability Insurance (“OASDI”) of Social Security taxes due for wages paid to “qualified employees” during most of 2010, the HIRE Act also gives employers an additional tax credit of the lesser of \$1,000 or 6.2% of wages paid for 52 weeks following a “qualified employee” beginning work if the “qualified employee:”

1. Remains employed by the employer for at least 52 consecutive weeks; and
2. Their wages during the last 26 weeks of the 52 consecutive week period are at least 80% of their wages during the first 26 weeks of the period.

Given the 52 week continuous employment requirement of this credit, it will first become available to employers in 2011. As is the case with the employer Social Security tax exemption under the HIRE Act, employers cannot take advantage of this tax credit and the “Work Opportunity Tax

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Credit.” Employers must select one or the other of these tax benefits. However, to the extent an employee meets the qualification requirements the employer can take advantage of both the Social Security Exemption and the Retention Credit for new employees hired between February 4, 2010 and December 31, 2010.

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