



Employers to Receive Tax Break For Hiring Unemployed Workers

On March 18, President Obama signed into law the Hiring Incentives to Restore Employment Act (HIRE). Among other things, HIRE provides certain tax incentives for businesses to hire and retain new employees.

Background

Employers and employees alike are required to pay FICA taxes on employer-paid wages. The FICA tax is comprised of a 6.2% Old Age Survivor Disability Insurance (Social Security) tax on the social security wage base (\$106,800 for 2010) and a 1.45% Hospital Insurance (Medicare) tax on all wages.

To encourage job creation, [HIRE](#) offers businesses immediate relief for certain FICA taxes and deferred tax credits for hiring and retaining qualifying workers after February 3, 2010 and before January 1, 2011. The payroll tax relief applies to wages paid after March 18, 2010 (the date of HIRE's enactment) through year-end.

Hiring Incentives

HIRE effectively exempts covered employers from paying their share of the Social Security tax – but not the Medicare tax – on wages paid to qualifying new hires from March 19, 2010 through December 31, 2010. As the IRS has confirmed, the reduced tax withholding will not affect the employees' future Social Security benefits, and employers must continue to withhold the employees' full share of FICA and income taxes.

Covered Employers. HIRE applies to both for-profit and non-profit private sector employers, as well as public colleges and universities. However, other federal, state and local public employers are not covered.

Qualifying Employees. To qualify for hiring incentives under HIRE, employers must hire employees who –

- begin employment after February 3, 2010 and before January 1, 2011
- certify by signed affidavit that they were not employed for more than 40 hours during the 60-day period before beginning work
- are not hired to replace other employees, unless those employees left voluntarily or were terminated for cause
- are not related to the employer or to the majority owners of a corporate employer.

BUCK COMMENT. *In recently released [Questions and Answers for Employers](#), the IRS clarified that the payroll tax exemption would apply to previously laid-off employees rehired by the same or a related employer after 60 days and to replacements for employees who were laid-off due to lack of work, provided they are otherwise qualified employees.*

Employers may claim the tax exemption on their quarterly federal employment tax return (Form 941) beginning with the second quarter of 2010. Relief for first-quarter wages paid after March 18, 2010 will be available in the form of a credit against second quarter taxes otherwise due. The IRS has now released a revised [Form 941](#) in draft form (expected to be finalized along with instructions next month), and a form employee [affidavit](#) (Form W-11) to certify the new hire's prior unemployment status.

BUCK COMMENT. *The instructions for Form W-11 confirm that the payroll tax exemption would extend to replacements for employees who lost their jobs due to downsizing, if they are otherwise qualified.*

Employers who take advantage of the payroll tax relief cannot also claim a Work Opportunity Tax Credit (WOTC) for wages paid to the same qualified employees for the first year of their employment. Because the payroll tax exemption applies automatically, employers would have to elect out to take the WOTC credit.

New Hire Retention Credit

HIRE also provides employers a business tax credit for each qualifying employee who remains employed for at least 52 consecutive weeks, as long as certain pay levels are met. The credit is available only if the employee's taxable wages for the last 26 weeks of the 52-week period equal at least 80% of the wages for the first 26 weeks. Although there is no limit on the number of qualifying employees for whom the tax credit can be claimed, the credit per employee is limited to the lesser of \$1,000 or 6.2% of the employee's wages for the 52-week period.

The HIRE business tax credit may be claimed in the tax year that includes the end of the qualifying employee's first year of employment, and may not be carried back into a tax year beginning prior to March 18, 2010. For each employee retained, calendar year taxpayers can claim a credit on their 2011 income tax returns.

Conclusion

Employers that want to take advantage of the HIRE incentives should ensure they have adequate systems in place for tracking employee terminations and for determining replacement hires. Necessary affidavits from new hires must be obtained, service periods must be tracked for purposes of the new general business credit, and records retained. Payroll systems may have to be adjusted to reflect the payroll tax holiday and related tax credits.

Buck's consultants would be pleased to discuss the new hiring incentives with you.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.