

HIRE Act FAQs – 2010

Special Requirements for Employees Hired in 2010

Employers are eligible for a tax credit and a Social Security payroll tax exemption for newly hired employees who:

- begin employment between Feb. 4 and Dec. 31, 2010;
- certify through a signed, sworn statement that they have not been employed for more than 40 hours total during the 60-day period prior to beginning employment (FORM w-11);
- do not replace other employees, unless the employees left employment voluntarily or for cause; and
- are not certain employees as described under § 51(i)(1) of the federal tax code.

Employers that retain such employees for at least 52 consecutive weeks and pay wages during the last 26 weeks of such period equal to at least 80 percent of wages paid during the first 26 weeks can take a tax credit per employee of \$1,000 or 6.2 percent of wages paid during the 52-week period, whichever is less. Employers also can exempt their share of Social Security payroll taxes in 2010 for these new hires

FAQs About the Payroll Tax Exemption and Qualified Employers

Q: What is the payroll tax exemption?

A: The payroll tax exemption is an exemption from the employer's 6.2 percent share of social security tax on all wages paid to qualified employees from March 19, 2010 (the day after the date of enactment of the HIRE Act) through December 31, 2010. The employee's 6.2 percent share of social security tax and the employer and employee's shares of Medicare tax still apply to all wages.

Q: Which employers qualify for the payroll tax exemption?

A: Taxable businesses and tax-exempt organizations qualify for the payroll tax exemption. Such employers in U.S. possessions, such as Puerto Rico or the Northern Mariana Islands, that are subject to social security tax also qualify for the payroll tax exemption. Federal, State or local government employers generally do not qualify for the payroll tax exemption. However, public colleges and universities can qualify for the exemption.

Q: Does the payroll tax exemption apply to household employers?

A: No. The payroll tax exemption applies only to wages paid to a qualified employee performing services in the employer's trade or business or in activities in furtherance of a tax-exempt organization's exempt purpose.

Q: If an employer starts a new business, does the payroll tax exemption apply to wages paid to employees hired for the new business?

A: Yes, if they are qualified employees.

Q: If an employee laid off in 2009 has been receiving COBRA premium assistance, for which the employer has been taking the COBRA premium assistance credit, and the employer rehires the employee, can the employer take the payroll tax exemption under the HIRE Act for wages paid to the employee?

A: Yes, if the employee is a qualified employee.

Q: Who are qualified employees?

A: Qualified employees are individuals who begin employment with a qualified employer after February 3, 2010, and before January 1, 2011, who have been unemployed or employed for less than 40 hours during the 60-day period ending on the date such employment begins, and who are not family members of or related in certain other ways to the employer.

Q: Do the qualified employees need to do anything to make it possible for their employer to claim the payroll tax exemption?

A: Yes, qualified employees must certify by a signed affidavit, under penalties of perjury, that they have not been employed for more than 40 hours during the 60-day period ending on the date they started employment. The IRS plans to issue a model affidavit that can be used for this purpose.

Q: Is the 60-day period continuous, and can it span 2009-2010?

A: The 60-day period must be continuous and can span 2009-2010.

Q: Does the payroll tax exemption apply to wages paid to a qualified employee hired to replace an existing worker whose employment terminated?

A: The payroll tax exemption does not apply to wages paid to an employee who is hired to replace an existing worker, unless the existing worker terminated employment voluntarily or was terminated for cause.

Q: Does the payroll tax exemption apply to wages paid to an employee who was previously laid off and then rehired by the same or a related employer after a 60-day period?

A: Yes, an employer may apply the payroll tax exemption to wages paid to a rehired employee who is otherwise a qualified employee.

Q: If an employer lays an employee off because of lack of work and later, when work picks up, hires a new employee, can the payroll tax exemption apply to wages paid to the new employee?

A: Yes, if the new employee is a qualified employee (i.e., was employed for less than 40 hours during the prior 60 days).

Q: Does the payroll tax exemption apply only if the employer previously laid employees off?

A: No, the payroll tax exemption can apply to wages paid to any qualified employee.

Q: If an employer hires a recent graduate who has been in school for some or all of the 60 days preceding the start of his employment, does the payroll tax exemption apply to wages paid to the employee?

A: Yes, if the employee is a qualified employee. It is not necessary that the individual was previously employed and has lost his or her job to be a qualified employee.

The 2010 HIRE Act Impact on PEO Clients

The PEO industry has worked with Congressional leaders to assure that PEO clients are entitled to the retention credit authorized by The Hiring Incentives to Restore Employment (HIRE) Act (H.R. 2847). The following answers the most common questions:

1. Question: can a PEO client receive the new HIRE retention credit for a qualified employee that it hires and keeps on the payroll for 52 weeks.

Answer: During the passage of the HIRE Act this question was specifically asked and answered during Senate deliberations. 1 This dialogue between Senator Nelson of Florida, Senator Baucus of Montana (Chair of the Senate Finance Committee) and Senator Grassley of Iowa (ranking minority member of the Senate Finance Committee) is in the Congressional Record of March 15, 2010 at S1501

Mr. NELSON of Florida. Mr. President, I would like to ask the chairman of the Finance Committee and its ranking member a question on the application of the pending legislation, H.R. 2847, the Hiring Incentives to Restore Employment Act, to Professional Employer Organizations or PEOs. In my State we have over 700,000 workers in Florida who are working in PEO arrangements regulated by Florida law. PEOs in my State work with over 50,000 businesses, most of them small, providing a range of human resource-related services. I would like to ask the Senators to confirm that for purposes of the retention credit for newly hired individuals contained in the legislation the rules for eligibility and calculating the credits would be applied to each business working with a PEO as if the business was not in a PEO relationship. In other words, the retention credit would be claimed by the business in these cases.

Mr. BAUCUS. The Senator from Florida is correct.

Mr. GRASSLEY. I agree with the chairman.

2. What is a "qualified employee?"

Answer: A qualified employee

- Must start work after February 3, 2010 and before Jan 1, 2011.
- Must not have been employee for more than 40 hours during the 60 days before his or her start date.
- Must not replace a current employee (unless that employee was separated from employment voluntarily or for cause).
- Must not be related to the employer or directly or indirectly own more than 50% of the business.
- May be previously laid-off employees.
- May be part-time or less than full time employees.

3. What is the maximum amount of the credit?

Answer: With respect to each qualified retained worker is the lesser of \$1,000 or 6.2% of the wages paid to the worker during

the 52 week period.

4. How is the credit taken?

Answer: The credit is a Section 38(b) business tax credit. The tax credit will be available to most employers on the 2011 income tax return. (Note: the HIRE Act does not allow carry back of any unused Section 38 business credit that is attributable to the provision for retained workers.)

5. Are there limitations on the credit?

Answer: Yes. The new worker must be employed 52 consecutive weeks. A prorated credit for a shorter period is not allowed. Workers eligible for a "foreign earned income exclusion" are not eligible.

6. What is the Payroll Tax Forgiveness Provision?

Answer: The 6.2% OASDI Social Security tax liability is lifted for "qualified employees" for any 2010 period starting after enactment of the legislation. (Note: Payroll tax forgiveness is coordinated with the Work Opportunity Tax Credit (WOTC). "Wages" for WOTC does not include any amount paid or incurred during the one year period starting on the hiring date unless the qualifying employer makes an election not to have payroll forgiveness apply.)

7. When does it start for a "qualified employee"?

Answer: The payroll tax forgiveness does not apply to wages paid in the first quarter of 2010. Any amount that would have been allowed in the first quarter would be credited against the employer's OASDI liability for the second quarter. Beginning for new hire wages paid beginning April 1, 2010, the employer would take the OASDI forgiveness into account for regularly deposited payroll taxes.

8. Is there a maximum amount?

Answer: Yes. Based on a FICA wage cap of \$106,800, the maximum value of this incentive would be \$6,621 per "qualified employee."

9. How will I benefit from this?

Answer: Your PEO will handle this as a part of the payment of OASDI. How this is reflected in your invoices will depend upon your PEO's billing procedures and your client service agreement.