



Legal Alert: IRS Issues Employee Affidavit for the HIRE Act

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As previously discussed in our March 19, 2010 Legal Alert, available on our web site at <http://www.fordharrison.com/shownews.aspx?show=5932>, President Obama recently signed the Hiring Incentives to Restore Employment (HIRE) Act. Among other things, the HIRE Act provides certain tax incentives for employers who hire "qualified employees" who have been unemployed for the preceding 60 days. Under the Act, a "qualified employee" is one who:

- Begins employment after February 3, 2010 and before January 1, 2011;
- Has not been employed for more than 40 hours during the 60-day period ending on the date the employee begins employment (including students or recent graduates);
- Is not hired to replace another employee unless the other employee separated from employment voluntarily or for cause (including downsizing); and
- Is not related to the employer.

Before an employer can claim HIRE Act benefits, the employer must obtain an affidavit from the employee certifying that he or she meets the definition of a "qualified employee" under the HIRE Act. To assist employers in obtaining the required statement, the IRS has issued Form W-11, **Hiring Incentives to Restore Employment (HIRE) Act Employee Affidavit**, which can be accessed at: <http://www.irs.gov/pub/irs-pdf/fw11.pdf>. The IRS has also posted a series of Frequently Asked Questions (FAQs) and answers regarding the payroll tax exemption for newly hired workers and the related new hire retention credit. The FAQs can be accessed at the IRS web site: <http://www.irs.gov/businesses/small/article/0,,id=220745,00.html>, along with other HIRE Act materials. Employers generally use Form 941, Employer's Quarterly Federal Tax Return, to claim the payroll tax exemption for eligible new hires. The IRS has revised this form for use beginning with the second calendar quarter of 2010. The agency has made a draft Form 941 available on its web site, <http://www.irs.gov/pub/irs-dft/f941--dft.pdf>, and has indicated that it will release the final form next month, along with instructions for the form's use. For further discussion on this topic, please see our previously published Legal Alert located at: <http://www.fordharrison.com/shownews.aspx?show=5932>. If you have any

questions regarding the new law or other labor or employment related issues, please contact Jeffrey Ashendorf, jashendorf@fordharrison.com, 212-453-5926, Isabella Lee, ilee@fordharrison.com, 404-888-3856 or the Ford & Harrison attorney with whom you usually work.