

ALERTS AND UPDATES

Employer Tax Benefits in Newly Enacted HIRE Act

April 5, 2010

On March 18, 2010, President Obama signed into law the [Hiring Incentives to Restore Employment Act](#) (the "HIRE Act").¹ The HIRE Act creates tax breaks for employers hiring and retaining new workers who have been unemployed for at least 60 days.

Under the HIRE Act, employers are eligible to receive an exemption from paying their portion of Social Security Federal Insurance Contributions Act (FICA) taxes for employees hired during the period of February 4, 2010, through December 31, 2010. Additionally, if these employees are retained for a full year, the employer may be eligible for an income tax credit of up to \$1,000, per employee.

Payroll Tax Exemption for Newly Hired Employees

The HIRE Act encourages employers to hire new employees by giving employers a tax exemption if the employee meets several requirements. In order to be eligible for the tax exemption, the employee must be:

1. Hired during the period of February 4, 2010, through December 31, 2010;
2. Willing to sign an affidavit certifying that he or she has not been employed for a total of more than 40 hours during the 60-day period immediately preceding the his or her date of hire;
3. An addition to the employer's workforce and not hired as a replacement for another employee (unless the employee being replaced voluntarily resigned or was terminated for cause); and
4. Unrelated to the employer and not in ownership of more than 50 percent of the business.

If an employer hires an employee meeting these requirements, the employer will not be required to pay its portion of the Social Security payroll tax, 6.2 percent, for that employee from March 18, 2010—the enactment date of the HIRE Act—through December 31, 2010. In 2010, the maximum Social Security wage cap is \$106,800, making the maximum value of this exemption \$6,621.60.

The IRS has issued guidance and draft forms to help employers process this exemption, including a sample affidavit for eligible employees to sign, which employers may want to maintain in their records.

Tax Credits for Retained Employees

Employers gain an additional benefit under the HIRE Act if they retain the newly hired employees mentioned above for a full year—a business tax credit equal to the lesser amount of either 6.2 percent of the employee's wages or \$1,000 per qualifying employee.

In order for an employee to be a qualifying employee for purposes of this tax credit, the HIRE Act states the employee must meet the same standards articulated above for new hires. Furthermore, the employee must have been hired during the 2010 tax year and have been employed for 52 consecutive weeks. Finally, the employee's wages for the last 26 weeks of the 52-week period must be equal to at least 80 percent of that employee's wages for the first 26 weeks of the 52-week period.

Employers may want to reconsider their staffing needs now to avail themselves of this incentive. To do so, during the 2010 calendar year, they would need to: (i) increase their workforce, cut and replace employees where there is cause to do so or replace employees upon their resignation, and (ii) take steps to ensure that applicants meet the 60-day unemployed criterion.

For Further Information

If you have any questions about this *Alert*, please contact any of the [attorneys](#) in our [Employment, Labor, Benefits and Immigration Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

Note

1. Hiring Incentives to Restore Employment Act, Public Law No. 111-147.

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