

## HIRE Act Provides Tax Breaks for Hiring and Retaining Unemployed Workers

In a renewed attempt to encourage new employment and stimulate the economy, Congress recently passed the Hiring Incentives to Restore Employment Act (“the HIRE Act”), which President Obama signed into law on March 18, 2010. Under the HIRE Act, a partial payroll tax “holiday” is available to qualified employers that hire unemployed workers, and a business tax credit is available if the employer retains such employees for at least a year. Companies that intend to hire new employees during the remainder of 2010 should consider whether they can take advantage of the tax benefits under the HIRE Act.

### HIRE Act Tax Benefits

Under the HIRE Act, the following tax incentives to hire and retain unemployed workers are available:

- An employer that hires an unemployed worker on or after February 4, 2010 and before January 1, 2011 can qualify for a partial payroll tax “holiday” - specifically, exemption from paying the employer's share of Social Security taxes on wages paid to the new employee from March 19, 2010 through December 31, 2010.
- For each such newly hired employee who remains employed with the employer for at least one year, the employer can receive a one-time business tax credit of up to \$1,000.

### Partial Payroll Tax Holiday

*Background:* FICA taxes have two components:

- Employees and employers each pay the Social Security or “OASDI” (Old Age, Survivors and Disability Insurance) portion of FICA tax at the rate of 6.2% on wages paid up to the FICA wage base for the calendar year. (\$106,800 is the FICA wage base for 2010; this amount is adjusted each year to reflect changes in the cost of living.)
- In addition, employees and employers each pay the Medicare portion of FICA tax at the rate of 1.45% on all wages paid during the calendar year.

*HIRE Act Tax Benefit:* Under the HIRE ACT, qualified employers are temporarily relieved from paying the Social Security portion of FICA tax for certain workers hired on or after February 4, 2010, and before January 1, 2011. There is no holiday from the Medicare component of FICA tax, and other state and federal payroll obligations, including the federal unemployment tax (FUTA) and state unemployment tax (UI) are similarly unaffected.

The partial FICA tax exemption is available to “qualified employers”, which includes private sector for-profit and nonprofit employers and public higher education institutions. Wages paid by such a qualified employer during the period beginning March 19, 2010 and ending December 31, 2010 to a “qualified individual” are exempt from the employer’s share of the Social Security tax.

A “qualified individual” is any individual who

- begins employment with a qualified employer on or after February 4, 2010 and before January 1, 2011, on either a part-time or full-time basis (there is no minimum hours requirement),
- certifies by signed affidavit, under penalties of perjury, that such individual has not been employed for more than 40 hours during the 60-day period ending on the date the individual begins working for the employer (the IRS is developing a model affidavit),
- is not employed by the employer to replace another employee unless such other employee voluntarily quit or was terminated for “cause”, and
- is not related to the employer in the manner described in Code section 51(i)(1). (Under this Code section, a member of the employer’s family, or of the family of a significant shareholder, if the employer is a corporation, is considered related to the employer and is ineligible for certain employment related tax benefits.)

*First Quarter of 2010:* The HIRE Act was signed into law on March 18, 2010, but it applies to qualified individuals who began working on or after February 4, 2010, and before January 1, 2011. Since employers may need time to modify their payroll tax procedures, the payroll tax holiday does not directly apply to wages paid and reported during the first quarter of 2010. Instead, the Act provides for a credit against second quarter FICA taxes for taxes remitted on wages paid to qualified individuals from March 19 through December 31, 2010.

*Amount of the Tax Benefit:* Since the employer’s share of Social Security tax is equal to 6.2% of the first \$106,800 of wages paid in 2010, the maximum value of the payroll tax holiday is \$6,621.60 for each newly hired employee ( $\$106,800 \times 6.2\% = \$6,621.60$ ).

*Coordination with Work Opportunity Tax Credit:* A qualified employer may not receive the Work Opportunity Tax Credit (WOTC) on any wages paid to a qualified individual during the one-year period beginning on that individual’s date of hire unless the employer elects not to have the payroll tax holiday apply to that individual. (The WOTC is separate from the HIRE Act credit described below. The WOTC allows an employer who hires members of targeted groups before September 2011 to get an income tax credit for a percentage of a portion of the eligible new hire’s first year and sometimes second year wages. See IRS Form 5884.) Thus, if a new employee’s wages qualify for both the HIRE Act payroll tax holiday and the WOTC, the employer must choose between the two. The Congressional Committee Report for the HIRE Act indicates that the election can be made on an employee-by-employee basis.

### **Business Credit for Retained New Hires**

The HIRE Act also provides for a general business tax credit of up to \$1,000 for each qualified “retained worker”. A retained worker is a “qualified individual” (for purposes of the payroll tax holiday, as explained above) who:

- is employed on any date during the year;
- has been employed by the employer for a period of not less than 52 consecutive weeks; and
- receives wages (as defined in the manner used for purposes of income tax withholding) during the last 26 weeks of the period that are at least 80% of the wages received during the first 26 weeks of the period.

This credit is available only in the tax year that ends after the date of enactment and in which the 52 consecutive week test is *first* satisfied. For an employer who uses a calendar tax year, this credit will be available for calendar year 2011.

While business tax credits generally can be carried back, the HIRE Act credit cannot be utilized in a tax year beginning before the date of enactment.

If you have any questions about the HIRE Act tax incentives, please contact Robert W. Patterson at 716.843.3910 or [rpatterson@jaeckle.com](mailto:rpatterson@jaeckle.com), or Michele O. Heffernan at 716.843.3850 or [mheffernan@jaeckle.com](mailto:mheffernan@jaeckle.com).

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