



Legislative Brief

The HIRE Act of 2010



EXECUTIVE SUMMARY

President Obama signed the Hiring Incentives to Restore Employment Act (HIRE Act) on March 18, 2010. The HIRE Act was enacted to foster job growth through immediate tax incentives to employers who hire formerly unemployed or part-time workers. The HIRE Act:

- offers tax breaks to covered employers for hiring qualified individuals in 2010 on or after **February 3, 2010**;
- gives employers incentives to retain workers for at least one year; and
- applies to for-profit and not-for-profit private sector employers of any size, as well as public higher education institutions.

This Cypress Benefits Group, Inc. Legislative Brief provides an overview of the HIRE Act. Please read below for more information.

OVERVIEW OF THE HIRE ACT

Payroll Incentives

The HIRE Act was intended to offer a much-needed tax incentive to employers willing to expand their payrolls. Employers who hire qualified formerly unemployed or part-time workers this year (after February 3, 2010 and before January 1, 2011) may be eligible for a 6.2 percent payroll tax incentive. Under the incentive, qualified employers are exempt from their share of Social Security taxes on wages paid to these workers after March 18, 2010. This reduced tax withholding will have no effect on the employee's future Social Security benefits. Employers still need to withhold the employee's 6.2 percent share of Social Security taxes, as well as income taxes. The employer and employee's shares of Medicare taxes would also still apply to these wages.

General Business Tax Credit

For each worker retained for at least a year, businesses may claim an additional general business tax credit, up to \$1,000 per worker, when they file their 2011 income tax returns. In order for an employer to be eligible for this business tax credit, the qualified individual must be employed by the employer for a period of not less than 52 consecutive weeks, and the employee's wages for such employment during the last 26 weeks of the period must equal at least 80 percent of the wages for the first 26 weeks of the period.

Qualified Employers

Private sector businesses, agricultural employers, tax-exempt organizations and public colleges and universities all qualify to claim tax benefits for hiring qualified individuals. Those who do not qualify include household employers, other federal, state and local government employers and governmental instrumentalities.

Qualified Individuals

A qualified employer must hire a qualified individual in order to receive the tax breaks and incentives. The HIRE Act defines a qualified individual as one who:

- begins employment with a qualified employer after February 3, 2010, and before January 1, 2011;

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- provides the employer with a signed affidavit certifying that he or she was unemployed during the 60 days before beginning work or, alternatively, worked fewer than a total of 40 hours for someone else during the 60-day period;
- was not hired to replace another employee, unless such employee voluntarily quit or was terminated for cause; and
- is not a family member.

The IRS issued a new Form W-11 Employee Affidavit which newly-hired employees can use to certify that they were unemployed or did not exceed 40 hours of employment during the 60-day period ending on their hire date.

How to Claim Benefits

Employers claim the payroll tax benefit on the federal employment tax return they file, usually quarterly, with the IRS (Form 941). Qualified employers will be able to claim the new tax incentive for the first quarter wages paid to qualified individuals on their revised employment tax form for the second quarter of 2010. The IRS is in the process of revising Form 941, although it released a draft revised Form 941. For each worker retained for at least a year, businesses may claim an additional general business tax credit, up to \$1,000 per worker, when they file their 2011 income tax returns. An employer should carefully consider whether it can benefit from the HIRE Act, after consulting with the appropriate human resources, payroll and tax consultants.

IRS Guidance

The IRS issued a set of Frequently Asked Questions (FAQs) in response to the immediate effective date of the law. The FAQs specifically address the payroll tax exemption and how to claim it, qualified employers and qualified employees. One area the IRS clarified in its FAQs, for example, relates to employees laid off in 2009 who have been receiving COBRA premium assistance for which an employer has been taking the COBRA premium assistance credit. The IRS stated that if the employer rehires the employee, the employer can take the payroll tax exemption under the HIRE Act for wages paid to the employee if the employee is a qualified employee.

The FAQ, Form W-11 Employee Affidavit and the draft revised Form 941 may be found on the IRS web site at: www.irs.gov/businesses/small/article/0,,id=220746,00.html

Other Miscellaneous Provisions

The HIRE Act also provides for other miscellaneous business incentives in an effort to increase employment. For example, the HIRE Act includes funding for major transportation projects and extends capital expenditures (up to \$250,000) tax deductions for small and mid-sized businesses.

The President and congressional leaders have promised more legislative action, like the HIRE Act, to increase job growth. Cypress Benefits Group, Inc. will keep on top of developments regarding these and other legislative initiatives and will work to keep you informed.

This Cypress Benefits Group, Inc. Legislative Brief is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

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