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# The Federal HIRE Act: It Can Pay To Hire The Unemployed

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On March 18, 2010, President Obama signed into law the Hiring Incentives to Restore Employment Act (the "HIRE Act") PL111-147—a possible precursor to other legislation in the pipeline to decrease unemployment.

In brief, under the HIRE Act, an employer that hires a new "qualified employee" will be able to save on certain payroll taxes for each such new hire who:

1. Begins employment after February 3, 2010, and before January 1, 2011;
2. Certifies, by a signed affidavit, that he or she has not been employed for more than 40 hours during the 60-day period prior to the beginning of employment; and
3. Is not hired to replace another employee (unless that former employee voluntarily quit or was fired for cause).

If an employer (other than a governmental employer) hires a qualified employee who commences employment on or after February 4, 2010, and not later than December 31, 2010, the employer need not pay the employer's portion of the FICA (Social Security) tax (6.2 percent of the first $106,800 of earnings per year) during the employment period from April 1, 2010, to January 1, 2011. From the period of February 4, 2010, through March 31, 2010, an employer must continue to pay its portion of the FICA tax on wages paid to a qualified employee. Such payments, however, will be credited against the employer's portion of the FICA tax due in the second quarter relating to all of its employees.

It is also important to note that employers will still need to withhold the employee's portion of the FICA tax. Further, the employer and employee share of Medicare taxes will still be due on all wages paid to qualified employees.

In addition, if the qualified employee is retained for at least 52 consecutive weeks, the employer may be entitled to an additional tax credit of the lesser of $1,000 or 6.2 percent of the wages paid to the individual during the 52-week period. But to qualify for this credit, the employee's wages for the last 26 weeks must equal at least 80 percent of his/her wages during the first 26 weeks of the 52-week period. This tax credit would be taken on the employer's 2011 tax return.

**What the HIRE Act Means to Employers**

The HIRE Act is intended to encourage employers to hire the unemployed, and the savings can be significant. An employer who hires a qualified new hire can save thousands of dollars in taxes. Assume that a qualified employee is hired effective April 1, 2010, at a salary of $60,000 per annum. Between April 1, 2010, and January 1, 2011, the employee's earnings will be $45,000 and the employer will save 6.2 percent of $45,000 in FICA contributions (or $2,790). In addition, if the employee remains steadily employed with the employer after April 1, 2011 (a full year), the employer will be entitled to an additional $1,000 credit against payroll taxes.

**What Should Employers Do Now?**

1. Ascertain whether any new hire who starts work on or after February 4, 2010, had been out of work more than 60 days prior to employment and/or was not employed for more than 40 hours during that period;
2. Have the employee sign an affidavit to that effect;
3. Confirm that the new employee did not replace an employee who was terminated "without cause" or otherwise involuntarily left his/her position; and
4. Alert your Payroll Department or payroll service to take the following actions with respect to qualified new hires:

    a) do not to pay the employer-paid portion of FICA with respect to each such new hire for the period April 1, 2010, through December 31, 2010; and

    b) take a credit for the employer-paid portion of FICA paid for the period February 4, 2010, through March 31, 2010, in the second quarter of 2010.

We fully expect that there will be future guidance that interprets the HIRE Act, but employers should begin to document their qualification for these credits and benefits, and perhaps consider whether they are able to structure their hiring needs to take advantage of these incentives.

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