

HIRE Act Business Provisions

The President recently signed into law the "Hiring Incentives to Restore Employment Act of 2010" (the HIRE Act, P. L. 111-47, 03/18/2010). The centerpiece of this Act is a payroll tax holiday and up-to-\$1,000 tax credit for businesses that hire unemployed workers. In addition to these new hiring incentives, the HIRE Act also includes a one-year extension of the enhanced small business expensing option under [Code Sec. 179](#). Both of these provisions are extremely important to many businesses.

Payroll tax holiday and up-to-\$1,000 credit for employers who hire unemployed workers.

To help stimulate the hiring of workers by the private sector, the new law exempts any private-sector employer that hires a worker who had been unemployed for at least 60 days from having to pay the employer's 6.2% share of the Social Security payroll tax on that employee for the remainder of 2010. A company could save a maximum of \$6,621 if it hired an unemployed worker and paid that worker at least \$106,800—the maximum amount of wages subject to Social Security taxes—by the end of the year. As an additional incentive, for any qualifying worker hired under this initiative that the employer keeps on payroll for a continuous 52 weeks, the employer is eligible for an additional non-refundable tax credit of up to \$1,000 after the 52-week threshold is reached, to be taken on their 2011 tax return. In order to be eligible, the employee's pay in the second 26-week period must be at least 80% of the pay in the first 26-week period.

Workers hired after the date of introduction of the legislation (Feb. 3, 2010) are eligible for the payroll tax forgiveness and the retention bonus, but only wages paid after March 18 receive the exemption for payroll taxes. Some additional features of the new hiring incentive include:

- The tax benefit of the new incentive is immediate. It puts money into a business' cash flow immediately, since the tax is simply not collected in the first place.
- The tax benefit generally applies only to private-sector employment, including nonprofit organizations—public sector jobs are generally not eligible for either benefit. However, employment by a public higher education institution qualifies.
- There is no minimum weekly number of hours that the new employee must work for the employer to be eligible, and there is no limit on the dollar amount of payroll taxes per employer that may be forgiven.
- For workers that would otherwise be eligible for the Work Opportunity Tax Credit (i.e., another type of employment tax credit), the employer must select one benefit or the other for 2010. There is no double dipping.
- An employer can't claim the new tax breaks for hiring family members.
- A worker who replaces another employee who performed the same job for the employer isn't eligible for the benefit, unless the prior employee left the job voluntarily or for cause.
- For the hiring to qualify, the new hire must sign an affidavit, under penalties of perjury, stating that he or she hasn't been employed for more than 40 hours during the 60-day period ending on the date the employment begins.
- The incentive isn't biased towards either low-wage or high-wage workers. Under the measure, a business saves 6.2% on both a \$40,000 worker and a \$90,000 worker.
- The payroll tax holiday doesn't apply with respect to wages paid during the first calendar quarter of 2010, but the amount by which the Social Security payroll tax would have been

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reduced under the payroll tax holiday provision during the first calendar quarter is applied against the tax imposed on the employer for the second calendar quarter of 2010.

- The Act creates a similar new set of rules allowing a payroll tax holiday for railroad retirement tax purposes.
- The credit for retaining qualifying new hires is the lesser of \$1,000 or 6.2% of the wages paid by the taxpayer to the retained worker during the 52-consecutive-week period. Thus, the credit for a retained worker will be \$1,000 if, disregarding rounding, the retained worker's wages during the 52-consecutive-week period exceed \$16,129.03. However, the credit isn't available for pay not treated as wages under the Code (e.g., remuneration paid to domestic workers).

Extension of enhanced small business expensing. The new law gives a one-year lease on life to enhanced expensing rules, which allow qualifying businesses the option to currently deduct the cost of business machinery and equipment, instead of recovering it via depreciation over a number of years. For tax years beginning in 2010, the maximum amount that a business may expense is \$250,000, and the expensing election begins to phase out when a business buys more than \$800,000 of expensing-eligible assets. These dollar limits are the same as those that were in effect for 2008 and 2009. Had the HIRE Recovery Act not been passed and signed into law, these dollar limits would have dropped this year to \$134,000 and \$530,000 respectively.

If you would like more details about these provisions or any other aspect of the new law, please contact us. Our contact information is found on our web page www.tkcpa.com.

See Form W-11 on the next page that must be signed by qualifying employees.

See the final page for employers questions to qualify the employee.

Hiring Incentives to Restore Employment (HIRE) Act Employee Affidavit

▶ **Do not send this form to the IRS. Keep this form for your records.**

To be completed by new employee. Affidavit is not valid unless employee signs it.

I certify that I have been unemployed or have not worked for anyone for more than 40 hours during the 60-day period ending on the date I began employment with this employer.

Your name _____ Social security number ▶ _____

First date of employment ____ / ____ / ____ Name of employer _____

Under penalties of perjury, I declare that I have examined this affidavit and, to the best of my knowledge and belief, it is true, correct, and complete.

Employee's signature ▶ _____ Date ▶ ____ / ____ / ____

Instructions to the Employer

Section references are to the Internal Revenue Code.

Purpose of Form

Use Form W-11 to confirm that an employee is a qualified employee under the HIRE Act. You can use another similar statement if it contains the information above and the employee signs it under penalties of perjury.

Only employees who meet all the requirements of a qualified employee may complete this affidavit or similar statement. You cannot claim the HIRE Act benefits, including the payroll tax exemption or the new hire retention credit, unless the employee completes and signs this affidavit or similar statement under penalties of perjury and is otherwise a qualified employee.

A "qualified employee" is an employee who:

- begins employment with you after February 3, 2010, and before January 1, 2011;
- certifies by signed affidavit, or similar statement under penalties of perjury, that he or she has not been employed for more than 40 hours during the 60-day period ending on the date the employee begins employment with you;
- is not employed by you to replace another employee unless the other employee separated from employment voluntarily or for cause (including downsizing); and
- is not related to you. An employee is related to you if he or she is your child or a descendent of your child,

your sibling or stepsibling, your parent or an ancestor of your parent, your stepparent, your niece or nephew, your aunt or uncle, or your in-law. An employee also is related to you if he or she is related to anyone who owns more than 50% of your outstanding stock or capital and profits interest or is your dependent or a dependent of anyone who owns more than 50% of your outstanding stock or capital and profits interest.

If you are an estate or trust, see section 51(i)(1) and section 152(d)(2) for more details.



Do not send this form to the IRS. Keep it with your other payroll and income tax records.

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Employer Questions for Employees Qualifying under the HIRE ACT (Hiring Incentives to Restore Employment Act of 2010)

Employee Name _____

Date of Hire _____

Employer Questions:

Was the employee hired after February 3, 2010 No___ Yes___
(Employer receives the payroll tax forgiveness for wages paid in 2010 after March 18, 2010)

Did the employee replace another employee? No___ Yes___
(the addition of a new employee is an eligible employee. For replaced employees go to the next question)

If the employee replaces another employee:

Was the replaced employee terminated for cause? No___ Yes___
(If yes, the new employee is eligible)

Or, did the replaced employee leave voluntarily? No___ Yes___
(If yes, the new employee is eligible)

This employee is eligible for the 6.2% payroll tax forgiveness No___ Yes___

Is the employee subject to the lesser of \$1,000 or 6.2% of wages additional non refundable tax credit (taken by the employer) for retaining employment? No___ Yes___

(must work 52 consecutive weeks after hire with the final 26 week period wages being at least 80% of the wages in the first 26 week period)

(retain form W-11 and Employer Questions above in your payroll records. Do not send them to the IRS.)