

HIRE Act Tax Incentives for Employers

March 26, 2010

The Hiring Incentives to Restore Employment Act (the HIRE Act), signed into law on March 18, provides immediate tax incentives of up to \$6,621 for each qualified employee that employers hire after February 3, 2010 and before January 1, 2011. With uncharacteristic speed, the Internal Revenue Service (IRS) issued a news release the same day describing the HIRE Act tax incentives (IR-2010-33¹). On March 22, the IRS released draft payroll tax forms to administer and implement the HIRE Act. The tax incentives and eligibility requirements are briefly described below.

2010 Payroll Tax Exemption: Regardless of their size, employers are eligible for an exemption from the Social Security component of FICA taxes. Tax savings are immediately available to employers, by reducing their Social Security tax deposits for qualified new employees and reflecting the reduced taxes on the Form 941-Employer's Quarterly Federal Tax Return. While the tax savings can be significant and immediate, there are certain eligibility requirements, limitations, and factors to note:

- The tax savings are only for the employer portion of Social Security taxes on wages paid in 2010 (the employee is still subject to the full Social Security tax), so that the maximum savings are \$6,621 if a newly hired employee is paid up to the Social Security taxable wage base of \$106,800.
- The employee still receives full benefits computation credit even though the employer portion of the taxes is excluded from wages.
- The employee must be hired after February 3, 2010 and before January 1, 2011.
- The employee must have previously been unemployed for the 60 days prior to being hired. Unemployed, for this purpose, means having worked no more than 40 hours during the preceding 60 days.
- To qualify, the employee must certify under penalty of perjury that he or she was not employed for more than 40 hours during the 60-day period ending on the date employment commences.
- The tax exemption is not available for employees that displace current employees or for certain disqualified employees (generally relatives of owners in closely held businesses).
- An employer can elect to forgo the HIRE Act tax exemption in favor of the work opportunity tax credit (WOTC).

¹ Available online at <http://www.irs.gov/newsroom/article/0,,id=220326,00.html>.

- There is no limit on the number of employees that an employer may hire and claim the credit on behalf of.

Additional guidance will be forthcoming from the IRS regarding how the exemption is claimed. The guidance will explain the form of the required employee affidavits, may address retroactive certifications, and will address how to claim the exemption for prior wages paid. In that regard, for the first quarter of 2010, employers must continue to pay their share of Social Security taxes; however employers will be able to use the credit or refund mechanisms that are uniquely associated with the overpayment of payroll taxes in the second quarter and possibly for the third and fourth quarters as well.

Retention Tax Credit: The HIRE Act also introduces a new tax credit that is related to the tax exemption for qualified new employees. To encourage employers to keep such new hires on the payroll, the employer is eligible for a business tax credit of up to \$1,000 if the employee remains employed for at least 52 weeks. The credit is equal to the lesser of \$1,000 or 6.2% of the wages paid by the employer to each new employee. To prevent employers from keeping the employees only nominally on the payroll, the employers must pay qualified employees during the last 26 weeks of the year at least 80% of what they were paid during the first 26 weeks of employment. Unlike the tax exemption, the tax credits will be claimed in 2011 rather than 2010.

The IRS is expected to release a general fact sheet and FAQs on the HIRE Act and to finalize the Form 941 for the second quarter shortly.

If you have any questions or would like more information about the HIRE Act, please contact any of the following Morgan Lewis attorneys:

Washington, D.C. – Employee Benefits

David R. Fuller	202.739.5990	dfuller@morganlewis.com
Mary B. Hevener	202.739.5982	mhevener@morganlewis.com
Jerry E. Holmes	202.739.3869	jholmes@morganlewis.com
Vicki M. Nielsen	202.739.5641	vnielsen@morganlewis.com

Washington, D.C. – Labor and Employment

Howard M. Radzely	202.739.5996	hradzely@morganlewis.com
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Philadelphia - Labor and Employment

Michael Ossip	215.963.5761	mossip@morganlewis.com
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