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Employee Benefits ALERT

APRIL 15, 2010

HIRE Act will save money for qualifying employers

Why employment history matters more for 2010 new hires

True to its title, the Hiring Incentives to Restore Employment (HIRE) Act, enacted March 18, 2010, provides two tax benefits to employers who hire certain previously unemployed workers ("qualified employees"), which may offset some of the payroll costs associated with an increase in their workforce.

The Tax Benefits

Payroll Tax Exemption

The first incentive under the HIRE Act, referred to as the payroll tax exemption, provides an exemption from the employer's share of Social Security tax on wages paid to qualified employees. The employer's share of the Social Security Tax is equal to 6.2% of wages. This exemption is effective for wages paid from March 19, 2010, through December 31, 2010. The IRS has confirmed that the exemption will not affect the employee's Social Security benefits.

New Hire Retention Credit

In addition to the payroll tax exemption, for each qualified employee retained for at least 52 consecutive weeks, a business might also be eligible for a general business tax credit, referred to as the new hire retention credit, equal to 6.2 percent of wages paid to the qualified employee over the 52-week period, up to a maximum credit of $1,000. To receive the retention credit, the employee's wages for the second 6-month period of employment must be equal to at least 80% of the wages earned in the first 6 months.

Which Employers Qualify for the Incentives?

Taxable businesses and tax-exempt organizations, including newly-formed businesses and organizations, qualify for the payroll tax exemption. Federal, state or local government employers generally do not qualify for the payroll tax exemption. However, public colleges and universities can qualify for the incentives.

Employers who take advantage of the payroll tax exemption are not eligible to claim the work opportunity credit for that qualified employee. The Work Opportunity Tax Credit (WOTC) is a tax credit available to employers who hire employees included in one or more targeted groups traditionally faced with significant barriers to employment. To the extent the WOTC is more valuable to an employer with a qualified employee, the payroll tax exemption should not be claimed.

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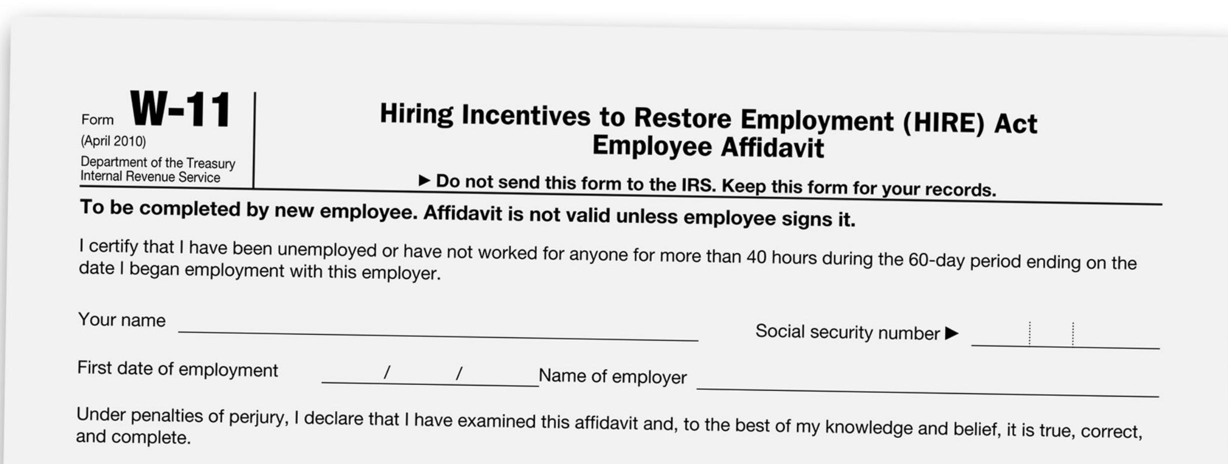

Form **W-11** (April 2010) Department of the Treasury Internal Revenue Service

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.

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Who is a "Qualified Employee?"

A qualified employee under the HIRE Act is an individual who:

1. began employment with a qualified employer after February 3, 2010, and before January 1, 2011;
2. has been unemployed or employed for less than 40 hours during the 60-day period ending on the date employment relating to the exemption begins;
3. is not a family member of or related in certain other ways to the employer; and
4. is not hired to replace another employee, unless that other employee was terminated for cause or quit voluntarily.

Based on these criteria, an individual does not need to have been terminated from a previous position to be a qualified employee. For example, recent school graduates that have never worked may be a qualified employee. Also, it is not required that an employee be new to the employer. Therefore, an employer may claim the payroll tax exemption for wages paid to a rehired employee who otherwise satisfies the above criteria.

Claiming the Benefit

If an employer hires a qualified employee in 2010, the payroll tax exemption is claimed on Form 941, Employer's Quarterly Federal Tax Return, beginning with the second quarter of 2010. For wages paid during the portion of the first quarter of 2010 for which the exemption is available (March 19 - March 31), the payroll tax exemption will be claimed as a credit on the employer's Form 941 for the second quarter of 2010. The new hire retention credit will be claimed on the employer's 2011 income tax return. A revised **Form 941** [**www.irs.gov/pub/irs-dft/f941--dft.pdf**] has been provided in draft form on the IRS website and will be released next month as a final along with the form's instructions.

In addition to properly claiming the benefits on the employer's tax returns, the employer must also have the qualified employee certify by a signed affidavit, under penalties of perjury, that they have not been employed for more than 40 hours during the 60-day period ending on the date they started employment with the employer. The IRS recently issued a draft of **Form W-11** [**www.irs.gov/pub/irs-pdf/fw11.pdf**], the HIRE Act Employee Affidavit, to assist employers claiming the tax exemption and new hire credit with satisfying this requirement.

Taking Advantage

While the tax benefits provided under the HIRE Act do not likely rise to the level necessary to induce hiring by employers not previously considering an expansion in payroll, the incentives do benefit a range of employers and potential employees. Employers making routine hires, looking to grow their business, or deciding to rebuild their workforce after recovering from previous layoffs should be careful to not overlook the cost savings associated with the HIRE Act. To avoid such an oversight, employers should routinely check each new hire's employment history to determine their potential status as a qualified employee, and therefore, the employer's eligibility to benefit from the incentives provided in the HIRE Act.

For additional information, please contact any member of **McAfee & Taft's Employee Benefits Practice Group**.

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