

Hiring Incentives to Restore Employment (HIRE) Act

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The Hiring Incentives to Restore Employment (HIRE) Act was signed into law on March 19, 2010. The purpose of the Act is to boost U.S. employment, adversely affected by the recession, by providing employers a subsidy through tax incentives to hire unemployed workers and retain them for at least a year.

The new law relieves the employer from paying its share of the Social Security tax if it hires an unemployed worker. Tax-exempt employers as well as employers in regular trades or businesses are allowed this relief. A qualified employer also includes a public institution of higher education, but does not pertain to other governmental employers. The HIRE Act does not relieve self-employed individuals from paying their own Social Security tax.

The Social Security's Old Age, Survivors, and Disability Insurance (OASDI) tax is at a rate of 6.2% on wages up to an annually adjusted wage base (\$106,800 for 2010). Because of the cap on wages, the amount of 2010 tax forgiven per employee cannot exceed \$6,621.60 (\$106,800 x 6.2%). The payroll tax holiday does not apply for wages paid during the first quarter of 2010. However, the amount of OASDI tax on first quarter wages that would have been forgiven will be allowed as a credit in the second quarter.

To qualify for the new relief, the new hire must (a) certify (by a signed affidavit) that he or she has not worked for more than 40

hours during the 60 day period ending on the date the individual begins employment with the qualified employer; (b) the employee was not employed to replace another employee (unless that other employee left work voluntarily or was fired for cause); (c) the employee is not related to the employer; and (d) the employee begins work after February 3, 2010 and before January 1, 2011. To access the form W-11 for the employee affidavit, see www.irs.gov/pub/irs-pdf/fw11.pdf.

The payroll tax holiday can apply to employees who were laid off and rehired by the same employer.

The new law also provides up to \$1,000 as a credit for "retained" workers. A retained worker is any individual who qualifies for the payroll tax holiday, and who (a) was employed during the tax year; (b) was employed for at least 52 consecutive weeks; and (c) who has wages during the last 26 weeks of the period that are equal to at least 80% of wages paid to him or her in the first 26 weeks of the period. The amount of the credit is the lesser of \$1,000; or 6.2% of the wages paid to the worker during the 52 week period. For an employer that reports taxes on a calendar year, the credit would be claimed on the 2011 tax return.

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Evelyn Haralampu heads Burns & Levinson's employee benefits/ERISA and executive compensation practice. She is also a member of the Tax, Corporate, Private Client and Labor, Employment and Employee Benefits Groups. Ms. Haralampu has extensive experience advising both businesses and non-profit entities as well as individuals. In particular, she counsels on employee benefits design, executive compensation programs, equity-based compensation, health care privacy, employment law, immigration and tax related issues. She assists employers with benefits and executive compensation issues in the context of corporate reorganizations, bankruptcies and succession planning. She also counsels individuals on benefits matters in the context of estate planning and property settlements in divorce. Ms. Haralampu represents clients before the Internal Revenue Service and U.S. Department of Labor, and counsels on ERISA controversies in the federal courts.

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