
Bailey, Carr & Co.

CERTIFIED PUBLIC ACCOUNTANTS

Dear Client:

To help jumpstart business hiring and spending, Congress has passed, and President Obama has signed, the Hiring Incentives to Restore Employment (HIRE) Act (H.R. 2847). The HIRE Act provides for payroll tax forgiveness and an employer tax credit of up to \$1,000 for qualified new hires. The HIRE Act also extends enhanced Code Sec. 179 small business expensing and makes some enhancements to tax credit bonds.

Hiring incentives

The HIRE Act provides qualified employers with temporary payroll tax forgiveness of the employer's 6.2 percent share of Social Security payroll taxes on wages paid to new hires who had been previously unemployed. Payroll tax forgiveness is effective for qualified employees on wages earned for work after March 18, 2010 and on or before December 31, 2010. A qualified employee must begin work after February 3, 2010 and before January 1, 2011. The employer generally must be a private sector for-profit or tax-exempt employer (with some limited exceptions).

The newly hired worker must not have been employed for more than 40 hours during the 60-day period ending on the date that the individual begins employment. Additionally, the newly hired employee cannot displace a worker who is currently on the employer's payroll unless the worker voluntarily separated from employment or was separated from employment for cause. Newly hired individuals who are related to the employer or who own (directly or indirectly) more than 50 percent of the business are ineligible. A qualified individual may be hired for any number of hours, full-time or part-time, since the benefits to the employer are tied only to 6.2 percent of any salary paid.

The HIRE Act requires that individuals certify they have not been employed for more than 40 hours during the 60-day period ending on the date they begin employment. The IRS is expected to issue guidance on the certification requirement.

ABC Co. hires Jean on January 25, 2010 as a full-time employee working 40 hours each week. ABC hires Luis on February 15, 2010 as a full-time employee working 40 hours each week. ABC hires Sam on March 1, 2010 as a full-time employee working 40 hours each week. Jean, Luis and Sam all certify that they had not been employed for more than 40 hours during the 60-day period ending on the date that they began employment with ABC Co.

However, Jean is not a qualified employee for purposes of payroll tax forgiveness under the HIRE Act because her hire date is before February 4, 2010. Luis and Sam are qualified employees for purpose of payroll tax forgiveness because their hire dates are after February 3, 2010.

Keep in mind that the HIRE Act's payroll tax forgiveness applies only to the employer's share of Social Security taxes. Employers remain liable for Medicare payroll taxes. The worker also must pay his or her share of Social Security taxes as well as federal income taxes.

The HIRE Act also provides that the direct payroll tax holiday will not apply to wages paid during the first calendar quarter of 2010. Instead, whatever tax holiday amount would have been allowed for first quarter 2010 will instead be credited against the employer's general OASDI liability for the second quarter of 2010. Beginning for any new-hire wages paid starting April 1, an employer takes direct OASDI forgiveness into account in depositing payroll taxes under the regular deposit rule applicable to that employer.

Retained worker business credit

Under the HIRE Act, employers that hire new workers who qualify for payroll tax forgiveness may also be eligible for a tax credit for each qualified employee. For the employer to be entitled to this new credit, the qualified employee must be retained on the employer's payroll for 52 consecutive weeks. The business credit under Code Sec. 38 will be increased, with respect to each qualified retained worker, by the lesser of \$1,000 or 6.2 percent of wages paid by the taxpayer to the qualified retained worker during the 52 week period.

A qualified retained worker must be paid an amount equal to at least 80 percent of his first 26 weeks of wages during the last 26 weeks of the 52-week qualifying period.

The HIRE Act excludes wages earned by a domestic worker or an individual eligible for the foreign earned income exclusion. The HIRE Act also includes carry-back rules for the credit.

If you have any questions about the HIRE Act, payroll tax forgiveness or the retained worker business credit, please contact our office for more details.

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