



DATE: April 19, 2010
TO: Our Valued Client Partners & Friends
FROM: HIB Account Team
RE: **EMPLOYER ALERT 2010-04**
Hiring Incentives to Restore Employment (HIRE) Act

We are pleased to bring you our **Employer Alert 2010-42: Hiring Incentives to Restore Employment (HIRE) Act**. This Act, signed into law on March 18, 2010, and commonly referred to as the “Jobs Bill”, does include two new tax benefits for employers to employ laid-off workers.

We hope you find this useful and please, if you have any questions, contact your HIB Account Team for assistance.

HIRING INCENTIVES TO RESTORE EMPLOYMENT (HIRE) ACT (H.R. 2847)

THE NEW LAW

On March 18, 2010, President Obama signed the **Hiring Incentives to Restore Employment (HIRE) Act** (also known as the “jobs bill”) into law. While the majority of the bill addresses the extension of federal highway programs, it also adds two new tax benefits for employers as an incentive to employ laid-off workers.

All employers, except certain governmental employers, may be eligible for these tax benefits. State universities and colleges are eligible for the benefits even though they are government employers. We will summarize what this law means to you, and suggest actions you should take to avail yourself of the tax exemption and tax credit.

SOCIAL SECURITY (FICA - - EMPLOYER OASDI PORTION) TAX EXEMPTION

The first tax benefit permits an employer to forego paying the employer portion of their Social Security tax obligation (6.2 percent on wages up to the \$106,800-compensation cap for 2010) on wages paid to certain qualified employees. The FICA tax exemption does not apply to:

1. the employer’s obligation to pay the Medicare Hospital Insurance (HI) portion of FICA taxes,
2. the employee’s obligation to pay FICA taxes, or
3. taxpayers employing household help.



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The FICA payroll tax exemption applies to wages paid from March 19, 2010 through December 31, 2010 to a qualified employee. A qualified employee is an employee who:

1. Is employed by the employer after February 3, 2010 and prior to January 1, 2011
2. Signs an affidavit, under penalty 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 individual begins employment with the employer
3. Is not hired to replace another employee unless that other employee was terminated for cause (includes a termination for lack of work) or quit voluntarily
4. Is not related to the employer.

NOTE: *An employer who takes advantage of the FICA tax exemption is 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 such as veterans, ex-felons, and summer youth employees. The WOTC may be more valuable, especially for low-wage employees and employees hired later in 2010. However, the WOTC may be harder to qualify for because it is available only for certain types of employees, and a state agency must certify that the employee is part of one of the targeted groups.*

RETAINED WORKER TAX CREDIT (RWTC)

An employer who retains a qualified employee in employment for 52 consecutive weeks may be able to claim the Retained Worker Tax Credit (RWTC), which is equal to the lesser of \$1,000 or 6.2 percent of such employee's wages for the 52-week period. Thus, for any qualified employee whose wages for such period are at least \$16,130, the \$1,000 tax credit will apply.

The RWTC may be claimed for any tax year that ends after the date of enactment, but because of the 52-week employment requirement, the credit will not be able to be claimed for at least one full year. In other words, the credit can first be claimed with respect to the 2011 tax year for calendar-year taxpayers.

In order to claim the credit, the wages paid to the qualified employee during the last 26 weeks of the 52-week employment period must equal at least 80 percent of such wages for the first 26 weeks of the period.

NOTE: *The assumption is that an employer that decides to opt out of the FICA tax exemption in order to take advantage of the WOTC is eligible for the retained worker credit.*



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Any unused RWTC may not be carried back to any tax year beginning before March 18, 2010.

IRS GUIDANCE

The IRS is issuing guidance as quickly possible on the many tax deposit and reporting issues created by the Act. Here is what is known so far:

- The credit is for eligible employees hired after February 3, 2010, but only wages paid between March 19, 2010 and December 31, 2010 are eligible.
- A new Form 941 will be updated to account for the tax credits beginning with the second quarter form. First quarter wages and credits will also be reported on the second quarter form.
- Employers can reduce their federal deposit amounts throughout the quarter by the eligible employer Social Security tax amount, or they can wait to claim the credit on their 941 return.
- There will be a standard affidavit for employers to use for eligible employees. Employers may create their own version as long as it has identical wording as the IRS version. The attestation should be retained by the employer for possible future audit, and not filed with the IRS.
- The credit can not be claimed by household employers or (except as noted above) by government employers.

WHAT EMPLOYERS SHOULD DO

Identify all current employees who may meet the requirements of a “qualified employee” and ask each of these employees to sign the affidavit described above. Additionally, ask each newly hired employee through the end of 2010 to sign an affidavit as well.

Be sure to coordinate with your payroll vendor or payroll department to discuss adjusting your payroll system to reflect the OASDI tax exemption and to take a credit for the first quarter OASDI taxes that are paid but that would otherwise be subject to the exemption rules.



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