

HIRE Act Frequently Asked Questions

General

Q: What is the HIRE Act?

A: The federal Hiring Incentives to Restore Employment (HIRE) Act, enacted March 18, 2010, makes two new tax benefits available to employers who hire certain previously unemployed workers: 1) a Social Security Tax exemption and 2) a new-hire retention credit.

(See “Payroll tax exemption” and “New-hire tax credit” sections below for more detail.)

Q: Who qualifies?

A: Qualified employees are individuals who:

- Begin employment with a qualified employer after February 3, 2010, and before January 1, 2011;
- Have been unemployed or employed for less than 40 hours total during the continuous 60-day period immediately before the employment begins; and
- Are not family members of or related in certain other ways to the employer.

Q: Is the 60-day period continuous?

A: The 60-day period must be continuous. It may reach back as far as December 5, 2009, for an eligible individual hired on February 3, 2010.

Q: Does the new employment have to be full-time?

A: No. A qualifying employee does not have to work full-time, and there is no minimum number of work hours required.

Q: How are employees determined to be qualified?

A: Qualified employees must sign an affidavit stating that they have been employed for less than 40 hours during the 60 days prior to starting their new job. The IRS has posted a model affidavit that can be used for this purpose: <http://www.irs.ustreas.gov/pub/irs-pdf/fw11.pdf>.

Signed affidavits are kept by the employers. Employers do **not** have to contact Employment Security or other government agency to verify a job candidate’s affidavit.

Q: Do independent contractors qualify?

A: It depends on the number of hours worked during the prior 60 days. If the person was self-employed as an independent contractor for fewer than 40 hours over the previous 60 days and is now hired as an employee, the employer could get the payroll-tax exemption -- and eventually the retention credit if the requirements are met. A self-employed independent contractor who worked 40 or more hours in the previous 60 days would not qualify.

Payroll-Tax Exemption

Q: What is the payroll-tax exemption?

A: The payroll-tax exemption waives the employer's 6.2 percent share of the Social Security tax on all wages paid to qualified employees from March 19, 2010 (the day after the HIRE Act was enacted), through December 31, 2010. The employee's 6.2 percent share of the Social Security tax and the employer's and employee's shares of Medicare tax still apply to all wages.

Q: Which employers qualify for the payroll-tax exemption?

A: Businesses, agricultural employers, tax-exempt organizations and public colleges and universities all qualify.

(The payroll-tax exemption applies to wages for services in the employer's trade or business or for activities that further the purpose of a tax-exempt organization.)

Q: Which employers do not qualify?

A: Federal, state or local government employers, except for public colleges and universities, do not qualify for the exemption. Neither do household employers (since the wages are not for services performed in the employer's trade or business).

Q: If an employer starts a new business, does the payroll-tax exemption apply to wages paid to employees hired for the new business?

A: Yes, if they are qualified employees.

Q: Does the payroll-tax exemption apply to wages paid to a qualified employee hired to replace an existing worker whose employment terminated?

A: The exemption does not apply to wages paid to an employee who is hired to replace an existing worker, **unless** the existing worker terminated employment voluntarily or was terminated for cause.

Q: Does the payroll-tax exemption apply to wages paid to an employee who was previously laid off and then rehired by the same or a related employer after a 60-day period?

A: Yes, an employer may apply the exemption to wages paid to a rehired employee who is otherwise a qualified employee.

Q: If an employer lays an employee off because of lack of work and later, when work picks up, hires a new employee, can the payroll tax exemption apply to wages paid to the new employee?

A: Yes, if the new employee is a qualified employee (i.e., was employed for less than 40 hours during the prior 60 days). (If the layoff and new-hire occur very close together, the employer's eligibility for the credit could be in question.)

Q: Does the payroll-tax exemption apply only if the employer previously laid employees off?

A: No. The payroll tax exemption can apply to wages paid to any qualified new hire.

Q: If an employer hires a recent graduate who has been in school for some or all of the 60 days preceding the start of his employment, does the payroll-tax exemption apply to wages paid to the employee?

A: Yes, if the employee is a qualified employee. To qualify, it is not necessary that the individual was previously employed and lost his or her job.

Q: **How does the employer claim the payroll-tax exemption?**

A: The payroll-tax exemption is claimed on Form 941, Employer's Quarterly Federal Tax Return, beginning with the second quarter of 2010.

Q: **How does the employer claim the payroll-tax exemption for wages paid to qualified employees during the period March 19 through March 31, 2010 (the first quarter of 2010)?**

A: The payroll tax exemption for wages paid during this period will be claimed on an employer's Form 941 for the second quarter of 2010.

Q: **Can an employer claim the COBRA premium-assistance credit and the payroll tax exemption for new hires on the same employment tax return?**

A: Yes.

Q: **How does the payroll-tax exemption for wages paid to a qualified employee affect the availability of the Work Opportunity Tax Credit with respect to that employee?**

A: If an employer claims the payroll-tax exemption, the wages subject to the exemption may not be taken into account in calculating the Work Opportunity Tax Credit. An employer that wishes to claim the Work Opportunity Tax Credit for an eligible hire can elect out of the payroll-tax exemption.

New-Hire Retention Credit

Q: **What is the new-hire retention credit and what does it apply to?**

A: This is a general business credit to encourage employers to retain the new hires. The employer may claim the credit for each employee who qualified for the payroll-tax exemption and who remains an employee for 52 consecutive weeks, provided that the employee's pay does not decrease significantly in the second half of the year. The amount of the credit is \$1,000 or 6.2 percent of wages, whichever is less, paid to the employee during the 52-consecutive-week period.

Q: **How will the new-hire retention credit be claimed?**

A: The new-hire retention credit will be claimed on the employer's 2011 income-tax return.

More information

IRS information website ~ <http://www.irs.gov/irs/article/0,,id=223909,00.html>

IRS news release ~ <http://www.irs.gov/newsroom/article/0,,id=220326,00.html>

New-hire affidavit ~ <http://www.irs.ustreas.gov/pub/irs-pdf/fw11.pdf>

Governor Gregoire news release ~ <http://governor.wa.gov/news/news-view.asp?pressRelease=1515&newsType=1>

For help finding eligible unemployed workers, contact a local WorkSource business representative.

WorkSource addresses and phone numbers are listed online at www.Go2WorkSource.com, click on "WorkSource Offices" in the upper right.