



Hiring Incentives to Restore Employment (HIRE) Act Signed by President Obama

Payroll Tax Holiday in 2010 for Hiring Unemployed Workers

Under the Federal Insurance Contributions Act (FICA), there are two taxes imposed on the employers for wages paid and employees for wages received with respect to employment, social security tax, and Medicare tax. The social security tax rate is 6.2% on wages up to an annually adjusted "wage base" (\$106,800 for 2010). The Medicare tax rate is 1.45% on all wages, regardless of amount. Under pre-Act law, the social security tax was not forgiven for employers who hired the unemployed.

New law. The Act signed by President Obama on March 18, 2010 provides relief from the employer share of social security taxes for employers that hire unemployed workers. The relief applies to wages paid beginning March 19, 2010 and ending on December 31, 2010. More specifically, the social security tax on employers does not apply to wages paid by a qualified employer with respect to employment during the period beginning on March 19 and ending on December 31, 2010 of any qualified individual for services performed:

- in a trade or business of the qualified employer; or
- for a qualified employer that is a tax-exempt organization under Code Section 501(a) in furtherance of the activities related to the purpose or function on which the employer's exemption is based.

The payroll tax holiday only applies to the 6.2% employer's portion of the social security tax. It does not apply to the 1.45% employer's portion of the Medicare tax or to any part of the employee's tax. It also does not affect the self-employment tax paid by self-employed individuals.

There is a special rule that applies to the first quarter of 2010. The payroll tax holiday does not apply to wages paid during the first calendar quarter of 2010. Instead, the amount by which the qualified employer's social security tax for wages paid during the first quarter would have been reduced if the payroll tax holiday had been in effect for that quarter is treated as payment against the qualified employer's social security tax liability for the second quarter of 2010. The payment is treated as made on the date when the employer's second quarter social security tax is due.

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New Up-to-\$1,000 Credit for Each "Retained Worker"

For any tax year ending after the March 18, 2010, the Act provides an up-to-\$1,000 credit for "retained workers." A retained worker is defined as any qualified individual, as defined for purposes of the payroll tax holiday (see above):

- who was employed by the taxpayer on any date during the tax year;
- who was so employed by the taxpayer for a period of not less than 52 consecutive weeks; *and*
- whose wages for that employment during the last 26 weeks of the period (described in item 2 above) equaled at least 80% of the wages for the first 26 weeks of that period.

Amount of the credit: For any tax year ending after the enactment date, the current year business credit is *increased*, for each retained worker (as defined above) with respect to which the 52-consecutive-week requirement in 2, above, is *first* satisfied during the tax year, by the *lesser* of:

- \$1,000; or
- 6.2% of the wages paid by the taxpayer to the retained worker during the 52-consecutive-week period.

If a retained worker's wages during the 52-consecutive-week period exceed \$16,129.03, the increase to the current year business credit for that retained worker will be \$1,000. For example, ABC Corp., a taxpayer using the calendar year as its tax year, hires Earl, a retained worker, on February 15, 2010. The 52-consecutive-week requirement is first satisfied in the 2011 tax year if Earl works for ABC until February 14, 2011. His wages for the 52-consecutive-week period are \$30,000. In that case, on its 2011 tax return, ABC's current year business credit will be increased by \$1,000 for Earl.

An employer will need to keep careful records with respect to each employee hired after February 3, 2010 and before January 1, 2011 so that it can prove that each employee for whom it claims the up-to-\$1,000 increase to the current year business credit meets the definition of a retained worker.

Carryback limit on the \$1,000 increase per retained worker: No portion of the unused business credit for any tax year that is attributable to the up-to-\$1,000 increase in the current year business credit can be carried to a tax year *beginning* before the enactment date. A one-year carryback generally applies to unused business credits. However, the Act prevents a taxpayer from carrying back any portion of an unused business credit that is attributable to the up-to-\$1,000 increase of the current year business credit to a tax year beginning *before* March 18, 2010. However, a calendar year taxpayer can carry forward for 20 years that portion of any unused business credit that is attributable to the \$1,000 increase.

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HIRE Act continued...

Increased Section 179 Expensing Limits Extended to 2010

Generally, taxpayers can elect to treat the cost of any Code Section 179 property placed in service during the tax year as an expense and deduct it in the current year. For tax years beginning in 2008 and 2009, the maximum amount that could be expensed under Code Sec. 179 was \$250,000, and the maximum deductible expense was reduced dollar-to-dollar by the amount by which the cost of Code Sec. 179 property placed in service during tax year 2008 or 2009 exceeded \$800,000. The \$250,000 and \$800,000 amounts were not adjusted for inflation.

Under pre-Act law, for tax years beginning in 2010, the maximum amount that could be expensed under Code Sec. 179 was \$134,000, and the maximum deductible expense had to be reduced by the amount by which the cost of Code Sec. 179 property placed in service during the 2010 tax year exceeded \$530,000. For tax years beginning after 2010, the maximum expensing amount under Code Sec. 179 is \$25,000, the beginning-of-phase-out amount is \$200,000, and neither amount is adjusted for inflation.

Qualifying property for purposes of the Code Sec. 179 expensing election is depreciable tangible personal property purchased for use in the active conduct of a trade or business, including "off-the-shelf" computer software placed in service in tax years beginning before 2011.

New law. For tax years beginning *after 2007 and before 2011*, the Act provides that:

- the dollar limitation on the Code Sec. 179 expensing deduction is \$250,000,
- the reduction in the dollar limitation starts to take effect when property placed in service in a tax year exceeds \$800,000, and
- neither the dollar limitation nor the beginning-of-phase-out amount is adjusted for inflation.

Additionally, the increase in dollar limitation amounts and no-inflation-adjustment rule for 2008 and 2009 are removed.

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