



One Minute Memo[®]

IRS Releases Finalized HIRE Act Employee Affidavit

On April 7, 2010, the IRS released its finalized version of Form W-11, Hiring Incentives to Restore Employment (HIRE) Act Employee Affidavit. The release of this form affidavit allows employers to confirm that a newly hired employee is a qualified employee under the HIRE Act. This form affidavit may be accessed at: <http://www.irs.gov/pub/irs-pdf/fw11.pdf>.

President Obama signed the HIRE Act into law on March 18, 2010. At its core, the bill grants employers an exemption for their 6.2% Social Security (FICA) payroll contribution for every new qualified employee hired after February 3, 2010 and before January 1, 2011. The exemption is effective for wages paid from March 19, 2010 through December 31, 2010.

The law also allows an additional income tax credit that is equal to 6.2% of paid wages for every new qualified employee retained for 52 consecutive weeks—up to \$1,000—to be taken on the employer's 2011 income tax. To qualify for this additional tax credit, the wages paid to the employee during the last 26 weeks must be at least 80% of wages paid for the first 26 weeks.

“Qualified Employee”

To qualify, a newly hired worker must certify by a signed affidavit (Form W-11 or another similar statement if it contains the information above and the employee signs it under penalty of perjury), that he or she: (i) has not been employed for more than 40 hours during the preceding 60-day period before the employee begins employment; (ii) is not being employed to replace another employee except one who quit voluntarily or was fired for cause (including downsizing); and (iii) is not “related” to the employer under rules set forth in the U.S. Tax Code.

The IRS does not require employers to send in the affidavits, but requests that employers keep the affidavits with their payroll and income tax records.

Revised Form 941 (Employers Quarterly Federal Tax Return) To Be Released Next Month

The IRS has announced they will release next month a revised Form 941, Employers Quarterly Federal Tax Return. A revised Form 941 is necessary because there is no credit or refund under the HIRE Act available when filing the first quarter

Form 941 (due April 30, 2010). Instead, any first quarter exempt wage amounts accumulated from March 19 through March 31 are to be reported as a credit on the revised second quarter Form 941. The IRS stated that the HIRE Act characterizes incentive amounts from the first quarter as a credit, while payroll tax forgiveness amounts taken for the remainder of the year are considered a reduction in the tax rate for the employer share of taxes.

The revised Form 941 that reflects the changes due to the HIRE Act will be used for the remainder of the year.

If you have any questions about the affidavit or the HIRE Act, please contact the Seyfarth Shaw attorney with whom you work, or any Labor and Employment attorney on our website (www.seyfarth.com/laborandemployment).



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