

Hiring Incentives to Restore Employment Act (HIRE Act)

The Hiring Incentives to Restore Employment Act (the HIRE Act) became law on March 18th. The legislation includes two temporary payroll tax breaks intended to boost hiring. An interesting point about these breaks is that they can potentially be claimed for wages paid to a business owner's newly hired spouse.

This letter briefly summarizes how the two new breaks can apply to wages paid to spouses and other relatives of business owners.

Temporary Employer Social Security Tax Exemption for Wages Paid to Eligible New Hires

Wages paid by a private-sector business (large and small alike) to a *qualified new employee* between March 19, 2010 and December 31, 2010 are exempt from the 6.2% employer portion of the social security tax. The maximum amount of employer social security tax savings for a high-paid employee is \$6,622 (6.2% × \$106,800 social security tax ceiling for 2010). However, the actual savings realized will be less for lower-paid employees and for high-paid workers who are paid less than \$106,800 between March 19, 2010 and year-end.

Qualified new employees are full-time or part-time workers who start work between February 4, 2010 and December 31, 2010 and who provide the employer with a signed IRS Form W-11, Hiring Incentives to Restore Employment (HIRE) Act Employee Affidavit, certifying that they were not employed more than 40 hours during the 60-day period ending on their start dates. However, the new worker cannot replace another worker unless that person quit voluntarily or was discharged for cause.

Employer Is a Sole Proprietor: When the employer is a sole proprietorship or a single-member LLC that is treated as a sole proprietorship for tax purposes, wages paid between the specified dates to the taxpayer's (owner's) newly-hired spouse are eligible for the temporary social security tax exemption as long as the spouse meets the preceding definition of a qualified new employee. Wages paid to other newly-hired relatives of the owner (including in-laws) will generally be ineligible.

Employer Is a Corporation: When the employer is a corporation, wages paid between the specified dates to a majority shareholder's newly-hired spouse are eligible for the temporary social security tax exemption as long as the spouse meets the definition of a qualified new employee. Wages paid to other newly-hired relatives of a majority shareholder (including in-laws) will generally be ineligible. However, wages paid to a newly-hired spouse or other relative of a minority shareholder are eligible if the new hire meets the definition of a qualified new employee and is not a relative of the majority owner.

Employer Is a Partnership: When the employer is a partnership (including a multimember LLC that is treated as a partnership for tax purposes), wages paid between the specified dates to a majority partner's newly-hired spouse are eligible for the temporary social security tax exemption as long as the spouse meets the definition of a qualified new employee. Wages paid to other newly-hired relatives of a majority partner (including in-laws) will generally be ineligible. However, wages paid to a newly-hired spouse or other relative of a minority partner are eligible if the new hire meets the definition of a qualified new employee and is not a relative of the majority partner.

Temporary Tax Credit for Retaining Eligible New Hires

Above and beyond the temporary social security tax exemption, employers can also claim a temporary new tax credit of up to \$1,000 for wages paid to each *qualified new employee* who is retained for at least 52 consecutive weeks. In addition, wages paid during the second 26 weeks of the 52-week period must equal at least 80% of wages paid during the first 26 weeks of that period. The definition of a qualified new employee is the same as for the social security tax exemption.

The credit amount equals the lesser of 6.2% of wages paid during the 52-consecutive-week period or \$1,000. To claim the maximum \$1,000 credit, the worker must be paid at least \$16,130 during the 52-week period.

Here's the important point: when a newly-hired spouse or relative of a business owner is eligible for the social security tax exemption, wages paid to that spouse or relative may also be eligible for the new employee retention credit. That's because the definition of a qualified new employee is the same for both breaks.

Contact Us for More Information

If you have questions or want more information about the temporary social security tax exemption or the temporary new employee retention credit, please contact us. The eligibility rules in family business situations are complicated, and these breaks have a relatively short fuse, so time is of the essence.