



Special Payroll Tax Exemption Form Now Available

IR-2010-43, April 7, 2010

WASHINGTON — The Internal Revenue Service today released a new form that will help employers claim the special payroll tax exemption that applies to many newly-hired workers during 2010, created by the Hiring Incentives to Restore Employment (HIRE) Act signed by President Obama on March 18.

New [Form W-11](#), Hiring Incentives to Restore Employment (HIRE) Act Employee Affidavit, is now posted on IRS.gov, along with answers to [frequently-asked questions](#) about the payroll tax exemption and the related new hire retention credit. The new law requires that employers get a statement from each eligible new hire, certifying under penalties of perjury, that he or she was unemployed during the 60 days before beginning work or, alternatively, worked fewer than a total of 40 hours for anyone during the 60-day period. Employers can use Form W-11 to meet this requirement.

Most eligible employers then use Form 941, Employer's Quarterly Federal Tax Return, to claim the payroll tax exemption for eligible new hires. This form, revised for use beginning with the second calendar quarter of 2010, is currently posted as a [draft form](#) on IRS.gov and will be released next month as a final along with the form's instructions.

Though employers need this certification to claim both the payroll tax exemption and the new hire retention credit, they do not file these statements with the IRS. Instead, they must retain them along with other payroll and income tax records.

The HIRE Act created two new tax benefits designed to encourage employers to hire and retain new workers. As a result, employers who hire unemployed workers this year (after Feb. 3, 2010, and before Jan. 1, 2011) may qualify for a 6.2-percent payroll tax incentive, in effect exempting them from the employer's share of social security tax on wages paid to these workers after March 18. This reduction will have no effect on the employee's future Social Security benefits, and employers would still need to withhold the employee's 6.2-percent share of Social Security taxes, as well as income taxes. In addition, for each unemployed worker retained for at least a year, businesses may claim a new hire retention credit of up to \$1,000 per worker when they file their 2011 income tax returns.

These two tax benefits are especially helpful to employers who are adding positions to their payrolls. New hires filling existing positions also qualify but only if the workers they are replacing left voluntarily or for cause. Family members and other relatives do not qualify for either of these tax incentives.

Businesses, agricultural employers, tax-exempt organizations, tribal governments and public colleges and universities all qualify to claim the payroll tax exemption for eligible newly-hired employees. Household employers and federal, state and local government employers, other than public colleges and universities, are not eligible. IRS.gov has more details.

Related Item: [IR-2010-33](#), Two New Tax Benefits Aid Employers Who Hire and Retain Unemployed Workers

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Two New Tax Benefits Aid Employers Who Hire and Retain Unemployed Workers

IR-2010-33, March 18, 2010

WASHINGTON — Two new tax benefits are now available to employers hiring workers who were previously unemployed or only working part time. These provisions are part of the Hiring Incentives to Restore Employment (HIRE) Act enacted into law today.

Employers who hire unemployed workers this year (after Feb. 3, 2010 and before Jan. 1, 2011) may qualify for a 6.2-percent payroll tax incentive, in effect exempting them from their share of Social Security taxes on wages paid to these workers after March 18, 2010. This reduced tax withholding will have no effect on the employee's future Social Security benefits, and employers would still need to withhold the employee's 6.2-percent share of Social Security taxes, as well as income taxes. The employer and employee's shares of Medicare taxes would also still apply to these wages.

In addition, for each worker retained for at least a year, businesses may claim an additional general business tax credit, up to \$1,000 per worker, when they file their 2011 income tax returns.

"These tax breaks offer a much-needed boost to employers willing to expand their payrolls, and businesses and nonprofits should keep these benefits in mind as they plan for the year ahead," said IRS Commissioner Doug Shulman.

The two tax benefits are especially helpful to employers who are adding positions to their payrolls. New hires filling existing positions also qualify but only if the workers they are replacing left voluntarily or for cause. Family members and other relatives do not qualify.

In addition, the new law requires that the employer get a statement from each eligible new hire certifying that he or she was unemployed during the 60 days before beginning work or, alternatively, worked fewer than a total of 40 hours for someone else during the 60-day period. The IRS is currently developing a form employees can use to make the required statement.

Businesses, agricultural employers, tax-exempt organizations and public colleges and universities all qualify to claim the payroll tax benefit for eligible newly-hired employees. Household employers cannot claim this new tax benefit.

Employers claim the payroll tax benefit on the federal employment tax return they file, usually quarterly, with the IRS. Eligible employers will be able to claim the new tax incentive on their revised employment tax form for the second quarter of 2010. Revised forms and further details on these two new tax provisions will be posted on IRS.gov during the next few weeks.

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FAQs About the Payroll Tax Exemption and Qualified Employers

QR1: What is the payroll tax exemption?

A-QR1: The payroll tax exemption is an exemption from the employer's 6.2 percent share of social security tax on all wages paid to qualified employees from March 19, 2010 (the day after the date of enactment of the HIRE Act) through December 31, 2010. The employee's 6.2 percent share of social security tax and the employer and employee's shares of Medicare tax still apply to all wages.

QR2: Which employers qualify for the payroll tax exemption?

A-QR2: Taxable businesses and tax-exempt organizations qualify for the payroll tax exemption. Such employers in U.S. territories (i.e., American Samoa, Commonwealth of Northern Mariana Islands, Guam, the U.S. Virgin Islands and Puerto Rico) that are subject to federal social security tax also qualify for the payroll tax exemption. Federal, State or local government employers generally do not qualify for the payroll tax exemption. However, public colleges and universities can qualify for the exemption. Indian tribal governments also qualify for the exemption.

QR3: Does the payroll tax exemption apply to household employers?

A-QR3: No. The payroll tax exemption applies only to wages paid to a qualified employee performing services in the employer's trade or business or in activities in furtherance of a tax-exempt organization's exempt purpose.

QR4: If an employer starts a new business, does the payroll tax exemption apply to wages paid to employees hired for the new business?

A-QR4: Yes, if they are qualified employees.

QR5: If an employee laid off in 2009 has been receiving COBRA premium assistance, for which the employer has been taking the COBRA premium assistance credit, and the employer rehires the employee, can the employer take the payroll tax exemption under the HIRE Act for wages paid to the employee?

A-QR5: Yes, if the employee is a qualified employee.

References/Related Topics

- [Payroll Tax Exemption for Hiring Unemployed Workers](#)
- [HIRE Act: Questions and Answers for Employers](#)

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FAQs About Qualified Employees

QE1: Who are qualified employees?

A-QE1: Qualified employees are individuals who begin employment with a qualified employer after February 3, 2010, and before January 1, 2011, who have been unemployed or employed for less than 40 hours during the 60-day period ending on the date such employment begins, and who are not family members of or related in certain other ways to the employer.

QE2: Do the qualified employees need to do anything to make it possible for their employer to claim the payroll tax exemption?

A-QE2: Yes, qualified employees must certify by a signed affidavit, under penalties of perjury, that they have not been employed for more than 40 hours during the 60-day period ending on the date they started employment. The IRS plans to issue a model affidavit that can be used for this purpose.

QE3: Is the 60-day period continuous, and can it span 2009-2010?

A-QE3: The 60-day period must be continuous and can span 2009-2010.

QE4: Does the payroll tax exemption apply to wages paid to a qualified employee hired to replace an existing worker whose employment terminated?

A-QE4: The payroll tax 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.

QE5: 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-QE5: Yes, an employer may apply the payroll tax exemption to wages paid to a rehired employee who is otherwise a qualified employee.

QE6: 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-QE6: Yes, if the new employee is a qualified employee (i.e., was employed for less than 40 hours during the prior 60 days).

QE7: Does the payroll tax exemption apply only if the employer previously laid employees off?

A-QE7: No, the payroll tax exemption can apply to wages paid to any qualified employee.

QE8: 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-QE8: Yes, if the employee is a qualified employee. It is not necessary that the individual was previously employed and has lost his or her job to be a qualified employee.

References/Related Topics

- [Payroll Tax Exemption for Hiring Unemployed Workers](#)
- [HIRE Act: Questions and Answers for Employers](#)

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FAQs About Claiming the Payroll Exemption

PE1: How does the employer claim the payroll tax exemption for wages paid to qualified employees?

A-PE1: The payroll tax exemption is claimed on Form 941, Employer's QUARTERLY Federal Tax Return, beginning with the second quarter of 2010.

PE2: 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-PE2: The payroll tax exemption for wages paid during this period will be claimed on the employer's Form 941 for the second quarter of 2010.

PE3: Can an employer claim the COBRA premium assistance credit and the payroll tax exemption for new hires on the same employment tax return?

A-PE3: Yes.

PE4: How does application of the payroll tax exemption to wages paid to a qualified employee affect the availability of the Work Opportunity Tax Credit with respect to that employee?

A-PE4: If an employer applies the payroll tax exemption to wages paid to a qualified employee, such wages paid to the employee during the one-year period beginning with the employee's hiring date may not be taken into account for purposes of the Work Opportunity Tax Credit. An employer that wishes to claim the Work Opportunity Tax Credit with respect to a qualified employee can elect out of the payroll tax exemption with respect to wages paid to that qualified employee.

References/Related Topics

- [Payroll Tax Exemption for Hiring Unemployed Workers](#)
- [HIRE Act: Questions and Answers for Employers](#)

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Business Credit for Retention of Certain Newly Hired Individuals in 2010

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

A: This is a general business credit to encourage retention of the new hires. The employer may claim the credit for each employee who is a qualified employee for purposes of 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 the lesser of \$1,000 or 6.2 percent of wages (as defined for income tax withholding purposes) paid by the employer to the retained qualified employee during the 52 consecutive week period. The credit cannot be carried back but may be carried forward.

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.

References/Related Topics

- [HIRE Act: Questions and Answers for Employers](#)

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