

# **New Tax Exemption for Hiring**

By

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A substantial, but widely unnoticed, business tax exemption went into effect earlier this year. The exemption was included in the Hiring Incentives to Restore Employment (HIRE) Act. The HIRE Act was passed just prior to the much more publicized Health Care Act and provides two tax incentives for businesses that hire certain previously unemployed individuals. The first incentive is an exemption equal to the employer's 6.2% share of Social Security tax on wages paid to qualifying employees. The second incentive, called the "Hire Retention Credit," is a credit equal to 6.2% of wages paid to each qualified employee employed for a minimum of 52 consecutive weeks (up to a maximum of \$1,000 per employee). Today, we will look at the Employer's Social Security Exemption with an eye on helping your business hire qualified employees while reducing the cost of doing business.

Only businesses that hire "qualified employees" can receive the Social Security exemption. For the purposes of the HIRE Act, a qualified employee is an individual who has been unemployed or employed but worked 40 hours or less during the sixty-day period prior to the date they start working.

Although a qualifying employee cannot be a family member of the employer, a wide range of new-hires will qualify for the credit (so long as the employee has not worked 40 hours in the previous 60 days). Here are a few examples: an employee previously laid off and brought back by the same employer will qualify; recent high school or college graduates qualify; part-time seasonal employees, interns, and high school students also qualify. Because only hours worked as an employee count in determining whether the employee has worked 40 hours or less in the previous 60 days, even those who are currently self-employed qualify. The position for which the employee is hired does not have to be a new position at the business. If the new employee otherwise qualifies, they can replace a previous employee so long as that employee quit voluntarily or was justifiably terminated.

To qualify for the credit, the employee must sign a sworn affidavit, under penalties of perjury, affirming that they have not been employed more than 40 hours during the 60 days preceding employment. To this end, the IRS has created Form W-11, Hiring Incentives to Restore Employment Act Employee Affidavit (a copy can be obtained at [HBSbusiness.com](http://HBSbusiness.com)). The employer must have a signed Form W-11 from each qualifying employee prior to claiming the exemption. The employer must keep the affidavit(s) on file. They are not delivered to the IRS.

Both for-profit businesses and non-profits qualify for the exemption. Government entities and household employers do not qualify. The exemption applies to the wages paid to a qualifying employee between March 19, 2010 and December 31, 2010. The exemption is equal to the employer's 6.2% share of Social Security Tax. The exemption does not apply to the employer's share of the 1.45% Medicare Tax and will not affect the employees' net-pay.

Employers claim the credit on form 941, the quarterly form report that calculates and reconciles federal remittances of Federal Withholdings, Social Security and Medicare. The exemption can be claimed beginning with the 941 filed for the second quarter of 2010 – the form that reconciles wages paid between April 1 and June 30, 2010. The exemption for wages paid from March 19 through March 31 can also be claimed on the second quarter's 941. If your business hired qualifying employees and missed the exemption, have those employees complete form W-11 and amend the second quarter's Form 941.

A final thought to consider: this exemption arrived "under the radar" of many, including many payroll providers and programmers of payroll software. If you have hired qualifying employees, it may be easier (i.e. less "messy") to continue remitting the employer's share of Social Security tax paid on these individuals. Then, get these taxes back as a refund via that quarter's 941 filing.

In today's article we have reviewed the basics of the Social Security Exemption portion of the HIRE act. We did not have time to discuss how this credit may impact businesses who receive credits such as the Work Opportunity Credit, the 45B Credit, or those who receive a credit for paying COBRA assistance. In a future column we will

discuss the Hire Retentions Credit that was included in the HIRE Act. In the mean time, please feel free to contact our office or your tax/payroll professional before attempting to claim the Social Security exemption.

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