

HIRE Act Provides Tax Incentives for Businesses to Hire Unemployed Workers

For more information regarding this or any other employment-related issue, please contact your Vorys attorney or a member of the Vorys Labor and Employment Group by calling 614.464.6400.

On March 18, 2010, President Obama signed into law the Hiring Incentives to Restore Employment (“HIRE”) Act (also known as the “Jobs Bill”). Of particular significance to employers, the HIRE Act provides (1) a payroll tax exemption for private sector businesses that hire unemployed workers, and (2) a tax credit for retaining those new hires for at least one year.

Payroll Tax Exemption for Newly Hired Workers

The HIRE Act gives businesses an exemption from paying the 6.2% Social Security payroll tax for each worker hired in 2010 that has been unemployed for at least 60 days. To qualify for the payroll tax exemption, an individual:

- must begin employment after February 3, 2010 and before January 1, 2011; and
- must certify with a signed affidavit, under the penalty of perjury, that the individual has not been employed for more than 40 hours during the 60-day period ending on the first day of employment.

The Social Security payroll tax exemption is effective beginning March 20, 2010, and ends on December 31, 2010.

Tax Benefits are for New Positions Only

Under the HIRE Act, an employer cannot replace a current employee with a HIRE-qualified worker unless the current employee is terminated “for cause” or voluntarily quits.

Additional Tax Credit for Businesses that Retain New Hires

The HIRE Act also provides businesses a “retention” income tax credit for the lesser of \$1,000 or 6.2% of wages paid to newly hired (and retained) employees. To qualify for the retention tax credit, an employee must:

- be employed by the business during the tax year;
- be employed by the business no less than 52 consecutive weeks; and
- receive wages during the second 26 weeks of employment that are at least 80% of the employee’s wages for the first 26 weeks of employment.

Although the Social Security payroll tax exemption cannot be taken in conjunction with the Work Opportunity Tax Credit (WOTC) for the same employee, an employer may claim the WOTC and the retention tax credit for the same employee.

Employers should note that there is a limited period of time to take advantage of the HIRE Act’s tax benefits, which apply for workers who begin employment after February 3, 2010 and before January 1, 2011. Employers who are interested in benefiting from the HIRE Act should implement front-end measures to screen potential hires for HIRE Act eligibility, or integrate such measures into existing WOTC screening. Furthermore, employers should ensure that all eligibility (including the new hire’s self-attestation of prior unemployment) and wage information is properly documented and maintained.

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