



*HIRE Act of 2010: Frequently Asked Questions*

**Q1. IS A BUSINESS REQUIRED TO PARTICIPATE IN THE PROGRAM?**

A1. While it is at the discretion of the employer, the IRS is anticipated to develop an opt-out form to allow an employer to formally make that choice. It is expected to be available over the next few weeks.

**Q2. DOES A NEW/ START-UP BUSINESS THAT HIRES NEW EMPLOYEES QUALIFY UNDER THE ACT?**

A2. The employer exemption applies to taxable businesses and also appears to apply to start-up employers hiring employees for the first time.

**Q3. ARE NON-PROFIT ORGANIZATIONS INCLUDED?**

A3. Yes, non-profit organizations are included.

**Q4. ARE EMPLOYERS (INCLUDING SEASONAL EMPLOYERS) ALLOWED TO REHIRE EMPLOYEES WHO WERE LAID OFF?**

A4. Yes, the current understanding is that rehiring an employee (and thereby potentially applying the HIRE Act provisions) may be appropriate as long as the criteria for a qualified employee are met. However, an employer may not fire and then rehire an employee in order to attempt taking advantage of the tax incentives. Also, an employer cannot terminate current employees in order to hire new employees for the same inappropriate intent.

**Q5. ARE PART-TIME AND/OR SEASONAL EMPLOYEES ELIGIBLE?**

A5. Yes, part-time and/or seasonal employees are eligible as long as the criteria for a qualified employee are met.

**Q6. CAN AN EMPLOYER HAVE A NEW HIRE COME TO WORK BUT NOT OFFICIALLY PUT THE INDIVIDUAL ON THE PAYROLL UNTIL THE 60 DAYS HAS PASSED SO WE CAN GET THE TAX CREDIT?**

A6. No, an employer may not. All employees must be placed on payroll when they start performing work for the company.

**Q7. HOW DOES AN EMPLOYER HANDLE THOSE WHO HAD PERFORMED INDEPENDENT CONTRACTOR WORK OR SELF-EMPLOYMENT BEFORE BECOMING EMPLOYEES?**

A7. If the individual has not been employed for more than 40 hours during the 60- day period ending on the date the worker begins employment with the new employer, then the individual may be

considered as a qualified employee. The bigger issue is whether or not the independent contractor classification was done correctly. Any worker can legally be classified as an employee, but an independent contractor classification is a function of statutory authority (laws). If the worker was legally an independent contractor beforehand, then it should have no HIRE Act impact.

**Q8. ONE OF THE CRITERIONS OF A QUALIFIED EMPLOYEE IS THAT HE OR SHE CAN NOT BE A FAMILY MEMBER OR RELATIVE. DOES THIS REFER TO RELATIVES OF OTHER EMPLOYEES OR JUST THE OWNER?**

A8. According to the IRS, a new hire is not a qualified employee if he or she is related to an owner of the company (any individual who owns more than 50% of the company's outstanding stock or capital/profits interests). However, a new hire may qualify if he or she is simply related to an employee of the company who has no company ownership interests.

**Q9. DOES THE TAX INCENTIVE APPLY IF YOU ARE HIRING SOMEONE WHO HAS NEVER WORKED BEFORE, SUCH AS A STUDENT GRADUATING FROM HIGHSCHOOL OR COLLEGE?**

A9. The IRS states that a qualified employee may be one who has just completed school and/or graduated. It is not necessary that the individual was previously employed and has lost his or her job to be a qualified employee.

To be a qualified employee, the employee must:

- 1) Begin employment with a qualified employer after February 3, 2010, and before January 1, 2011,
- 2) Have been unemployed or employed for less than 40 hours during the 60-day period ending on the date such employment begins,
- 3) Not be employed by the qualified employer to replace another employee of that employer, unless the other employee separated from employment voluntarily or was terminated for cause,
- 4) Not be a family member of or related in certain other ways to the employer, and
- 5) Certify by a signed affidavit, under penalties of perjury, that he/she has not been employed for more than 40 hours during the 60-day period ending on the date he/she started employment.

**Q10. IF YOU HAVE TERMINATED AN EMPLOYEE AND YOU HIRE A NEW EMPLOYEE AS A REPLACEMENT, IS THE HEW HIRE A QUALIFIED EMPLOYEE?**

A10. As long as the former employee separated from employment voluntarily or for cause and the new hire meets all other qualifications, yes the new hire will be eligible.

**Q11. WHEN WILL THE IRS ISSUE THEIR MODEL AFFIDAVIT?**

A11. Form W-11 has been issued by the IRS and is currently available on our website. The IRS does not require employers to file Form W-11, but it does need to be available for review as of the employee's hire date.

**Q12. WHAT IS AN AFFIDAVIT IS FALSIFIED OR INCORRECT?**

A12. First of all, there is no inherent incentive for the employee to falsify unless he or she feels that the employer is going to use the HIRE Act tax incentives as a decision-maker. If it turns out the employee is not a qualified individual, then the employer simply cannot claim the person for the incentives. At the same time, the employer may discipline the employee including but not limited to

termination of employment. To minimize such a risk, the employer should double-check the information the employee also provided on the employment application.

**Q13. CAN THE SOCIAL SECURITY TAX EXEMPTION BE TAKEN IN CONJUNCTION WITH THE WORK OPPORTUNITY TAX CREDIT (WOTC)?**

A13. No, if the employer chooses to take the WOTC on a qualified worker, they cannot also take the Social Security tax exemption.

**Q14. DOES THE REDUCED TAX WITHHOLDING HAVE AN EFFECT ON THE EMPLOYEE'S SOCIAL SECURITY BENEFITS?**

A14. The 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% share of FICA taxes, as well as income taxes.

**Q15. ASSUMING THAT A COMPANY IS LOOKING AT TWO CANDIDATES THAT THEY FEEL CAN EQUALLY FULFILL THE NEEDS OF A POSITION AND ONE HAS BEEN UNEMPLOYED FOR TWO MONTHS, DOES THE TAX BREAK IMBEDDED IN THE NEWLY SIGNED HIRE ACT MAKE A DIFFERENCE ON WHO GETS HIRED?**

A15. If two candidates are equally qualified, then a good number of employers may opt to deal with the burdens of additional administrative requirements. However, the majority of the medium to small employers may not consider this program as the tipping point for hiring one candidate over another. That said, a larger employer or one that regularly hires many people is more likely to opt in to the program.

**Q16. I'VE HEARD OF A "JOBS BILL"; HOW IS IT DIFFERENT?**

A16. It's just another name for the same thing. The Hiring Incentives to Restore Employment (HIRE) Act is the formal reference.