



The HIRE Act

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Since recent employment law updates have been dominated by health care issues, many employers have overlooked the “Hiring Incentives to Restore Employment Act” (“HIRE Act”) signed into law by President Obama on March 18, 2010. The HIRE Act gives employers tax incentives for hiring previously unemployed, “qualified employees”.

A “qualified employee” is an individual who:

- Worked less than a total of 40 hours during the 60 days prior to starting work with the employer;
- Commences employment between February 3, 2010 and December 31, 2010; and,
- Does not replace another employee (unless the other employee resigned or was terminated for cause).

Employers must obtain a signed affidavit from each qualified employee certifying he/she meets the hours requirement. The IRS developed a form affidavit which can be found on its website at: <http://www.irs.gov/pub/irs-pdf/fw11.pdf>. The employee must provide the following information to complete the affidavit (which the employer keeps for its records): employee name, social security number, hire date, and employer name. The employee must sign under penalty of perjury that to the best of the employee’s knowledge and belief, the information is true and correct. The affidavit does not need to be notarized.

Employees who have been on furlough, standby status or temporary layoffs may be treated as a qualified employee only if the furlough, standby status or temporary layoff constitutes a termination of employment and, upon reestablishment of the employment relationship, the employee meets the definition of a “qualified employee.” Whether the employment relationship has been terminated depends on the facts and circumstances.



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Employers who hire qualified employees after February 3, 2010 and before January 1, 2011 are entitled to a payroll tax incentive of the 6.2% employer portion of FICA (up to the FICA wage cap of \$106,800). The employer is still required to deduct the employee portion of FICA (6.2%) from the employee's payroll check. The payroll tax exemption is claimed on the employer's Form 941, Employer's Quarterly Federal Tax Return, and began in the second quarter of 2010. The exemption runs through December 31, 2010.

Additionally, for each qualified employee retained for a year, employers may claim (on the employer's 2011 income tax return) a general business credit of up to \$1,000 per employee.

HealthCare Reform and its Effect on Employers

The most frequently asked question regarding the new healthcare reform law ("Patient Protection Affordable Care Act" or "PPACA") is "how will this affect our business"? The key to answering this question centers around whether the employer is large or small and how many of its employees are full-time.

On January 1, 2014, large employers will be required to offer health insurance to full-time employees or pay a \$2,000 per year, per full-time employee penalty (minus the first 30 employees). The penalty, to be paid monthly, is more commonly known as the "pay or play" mandate.

- "Large employer" is an employer which employs at least 50 full-time employees during the preceding calendar year.
- "Full-time employee" is an employee averaging at least 30 hours/week.

Therefore, for the 2014 penalty, PPACA does not require small employers (one employing less than 50 full-time employees in 2013) to pay a penalty. In addition, large employers will not pay a penalty for any part-time employee (an employee averaging less than 30 hours/week). Thus, a large employer may drastically reduce its penalty if it employs a number of part-time employees. An employer wanting to start its planning for the "pay or play" penalty in 2014 should begin looking at its staffing numbers to start determining what, if any, changes can be (or may need to be) made in the future.

COBRA Subsidy – Expired May 31, 2010

The COBRA subsidy expired on May 31, 2010. Any employer sending COBRA paperwork to employees terminated after May 31, 2010 should review and update its forms to exclude subsidy language since employees now (again) must pay the full cost of continuation coverage. There is no indication from Congress as to whether the subsidy will be revived or extended in the future.

If you have any questions about this *LawFax* or other employment or labor law issues please contact the author or any attorney at Seaton, Beck & Peters at (952) 896-1700

Are Your Employee Handbook And Employment Documents Protecting Your Firm Or Putting You At Risk?

If your Company's employee policy handbook, hiring and discipline materials, drug and alcohol testing policies, or other critical labor or employment documents or policies are more than 2 years old (or non-existent), your Company is at risk.

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The cost is \$975.00 for handbook and employment materials (with 2 hours customizing time included) and \$475.00 for drug and alcohol testing policy and materials (with 1 hour customizing time included). If Seaton, Beck & Peters has previously prepared a handbook for you, we are offering to update your handbook with the latest additions for \$375.00.

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