



EMPLOYEE BENEFITS CLIENT ALERT

March 30, 2010

TAX INCENTIVES FOR HIRING NEW WORKERS

On March 18, 2010, President Obama signed a \$17.6 billion jobs package, the Hiring Incentives to Restore Employment Act (the "HIRE Act"). The HIRE Act provides a payroll tax exemption for businesses that hire previously unemployed workers and provides for a tax credit for employers who retain qualified new workers for 52 consecutive weeks.

PAYROLL TAX EXEMPTION

Employers and employees contribute toward employee Social Security benefits. Typically, an employer withholds an employee's share of the contribution from his or her wages. The employer pays the total contribution through the payroll tax process. In most instances, the employee's Social Security contribution and the employer's Social Security contribution each equal 6.2% of wages, up to certain limits.

Under the HIRE Act, if a "Qualified Employer" hires a "Qualified Employee," who begins working after February 3, 2010 and before January 1, 2011, the Qualified Employer is temporarily exempt from making its Social Security contribution, i.e. the employer saves 6.2% of wages paid to Qualified Employees.

Almost all private companies are **Qualified Employers**. Private companies are not Qualified Employers, however, if they are taking advantage of the Work Opportunity Tax Credit ("WOTC"). This means that some companies may have to choose between the WOTC and the payroll tax exemption. Public employers—federal and state governments, their political subdivisions and their instrumentalities—generally are not Qualified Employers and cannot take advantage of the payroll tax exemption. However, state colleges and universities are Qualified Employers.

To be a **Qualified Employee**, an individual must meet all of the following requirements:

- The individual must have worked less than 40 hours during the 60-day period ending on the date of employment with the Qualified Employer.
- The individual must not displace an existing employee, unless the existing employee quit voluntarily or was terminated for cause. (In other words, employers cannot fire existing workers and hire replacements simply for the tax benefit.)
- The individual must not own 50% of the employer (either directly or indirectly) and must not be related to any such individual.

The payroll tax exemption applies to work performed between March 19, 2010 and December 31, 2010. Even with the exemption, employers must continue to make the payroll tax contributions that relate toward Medicare, and they must continue to withhold and pay the employees' contributions.

RETAINED WORKER TAX CREDIT

Internal Revenue Code Section 38(b) already provides that a company may take certain "general business credits" against the company's taxable income. The HIRE Act adds a credit for retaining workers.

To be eligible for the credit, all of the following requirements must be met:

- The company must be a Qualified Employer that hired a Qualified Employee and is eligible for the payroll tax exemption described above.
- The company must retain the employee for at least 52 consecutive weeks.
- The employee's wages do not have to remain constant during the entire 52-week period. However, the employee's wages during the second half of the period must be at least 80% of the employee's wages during the first half of the period.

ADDITIONAL INFORMATION

Many questions and issues remain with respect to the HIRE Act. The members of the Kutak Rock Employee Benefits Practice Group are able to assist with any questions you may have regarding the HIRE Act. If you are concerned about whether your business qualifies for the HIRE Act tax incentives, please contact us so that we may review the status of your situation.

If you wish to visit with us regarding employee benefits plan compliance, please contact your Kutak Rock LLP attorney or a member of our Employee Benefits Practice Group listed below. For more information on our Employee Benefits practice and for recent Employee Benefits news and alerts, please visit us at www.kutakrock.com.

John E. Schembari
Juliana Reno
William C. McCartney

Peter C. Langdon
Michelle M. Ueding
Margaret A. Olsen

Janis J. Winterhof
Kathryn M. Magli
Autumn Long

Kutak Rock LLP | The Omaha Building | 1650 Farnam Street | Omaha, NE 68102-2186 | (402) 346-6000

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