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**\*\*\*\* EMPLOYMENT LAW ALERT\*\*\*\***

By: Gregory A. Shantz

**Hiring Incentives to Restore Employment (HIRE) Act Signed Into Law**

On March 18, 2010, President Barack Obama signed into law the Hiring Incentives to Restore Employment (HIRE) Act. The goal of the HIRE Act is to stimulate the economy by providing tax credits to any employer that hires a new employee who was previously unemployed.

The HIRE Act has two components that provide hiring incentives to employers. The first incentive provides social security tax relief for the employer's share of social security tax on wages paid to a qualifying new employee. The second incentive provides a separate business tax credit of up to \$1,000 if the employee is employed for at least 52 weeks.

In order to take advantage of the tax credits offered by the HIRE Act, an employer must be a "qualified employer" and the new employee must be a "qualified individual" under the Act.

**Qualified Employer.** Virtually every private sector employer qualifies as a "qualified employer" pursuant to the Act. The only employers who do not qualify are state and federal agencies, political subdivisions or any other such instrumentality.

**Qualified Individual.** To be a "qualified individual" pursuant to the Act, an employee must meet the following requirements:

1. Must begin employment with a qualified employer after February 3, 2010, and before January 1, 2011;
2. Must submit an affidavit that they have not worked more than forty hours in the sixty day period ending on the date that the employee began work with the qualified employer;
3. Must not have been hired to replace an existing employee, unless such employee separated voluntarily or for cause; and

4. Must not be an individual described in Section 51(i)(1) of the Internal Revenue Code of 1986, which addresses employees who are related to their employer and employees who own, directly or indirectly, fifty percent or more of the outstanding stock of a corporation or fifty percent or more of the capital and profit interest in an entity.

If a qualified employer hires a qualified individual, the employer will not be required to pay the employer's share of social security taxes for that employee for the remainder of 2010. The employer's share of social security tax is currently 6.2% of covered wages, up to \$106,800.

The tax credit for an employer does not apply to any wages paid during the first quarter of 2010. Any social security tax paid by the employer between March 19, 2010, the date the Act was signed into law, and March 31, 2010, is treated as a payment against the employer's share of social security tax due for the second quarter of 2010. The credit will be applied as though it were a payment made on the due date of the employer's share of the social security tax in the second quarter paid to employees who are not qualified individuals.

Affidavits will be required for employers who wish to take advantage of the HIRE Act. The IRS is currently preparing model affidavits to be distributed by employers. Although employers can use their own affidavits if they wish, they will need to include identical language to the IRS form. The IRS is also developing a new Form 941, Employer's Quarterly Federal Tax Return, to address credits for social security taxes paid to qualified individuals between March 18 and 31, 2010.

The separate business tax credit provides the lesser of \$1,000 or 6.2% of the wages paid to a qualified individual during the year. To receive the credit, a qualified individual must be employed for at least fifty-two consecutive weeks and receive wages during the second twenty-six weeks that are at least eighty percent of the wages received during the first twenty-six weeks. The two tax credits are separate, so an employer can claim them both for the same employees.

If you have any questions about the above matters or any other labor or employment law concerns, please contact Gregory Shantz, Whitney Rahman or John Roland at 610-372-5588, or by e-mail at [gshantz@rolandschlegel.com](mailto:gshantz@rolandschlegel.com), [swrahman@rolandschlegel.com](mailto:swrahman@rolandschlegel.com) or [jroland@rolandschlegel.com](mailto:jroland@rolandschlegel.com).

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