

April 8, 2010

## **Hiring Incentives to Restore Employment Act**

On March 18, 2010, President Obama signed into law the Hiring Incentives to Restore Employment Act (“HIRE Act”) which, as its name suggests, encourages employers to hire unemployed Americans. The Act incentivizes employers through various tax benefits.

Under the new law, employers who hire “qualified employees” (defined below) between February 4, 2010 and December 31, 2010 are exempt from paying the *employer’s* portion of Social Security (FICA) taxes from April 1, 2010 to January 1, 2011. This reduced tax withholding will not affect the employee’s future Social Security benefits. It is important to note that employers must still withhold the *employee’s* share of Social Security taxes, income taxes, and both the employer’s and the employee’s share of Medicare taxes for all wages paid to “qualified employees”. In addition, if a “qualified employee” is retained for at least 52 consecutive weeks, an employer may, under certain circumstances, be entitled to an additional tax credit on its 2011 tax return of the lesser of \$1,000 or 6.2% of the wages paid to the employee during the 52-week period.

A “qualified employee” is an individual who begins employment after February 3, 2010 and before January 1, 2011 and who certifies, by signed affidavit, that s/he has been unemployed or worked fewer than 40 hours during the 60-day period prior to the beginning of employment. Additionally, the employee cannot be hired to replace a former employee unless the former employee had voluntarily quit or had been discharged for cause.

In order to take advantage of the tax benefits available under the HIRE Act, employers are encouraged to identify any new hires who began employment on or after February 4, 2010 who had been out of work during the 60-day period prior to employment and/or who were employed for fewer than 40 hours during that period. Such new hires then must sign an affidavit to that effect. In addition, employers should confirm that the new hires did not replace former employees who were terminated “without cause” or otherwise involuntarily left their position. Lastly, employers should consult with their payroll department and business accountants in order to take advantage of the tax benefits available to them.

If you have any questions about the HIRE Act, please contact [Farah Mollo](#) at (212) 758-7600 or any other attorney at the Firm.

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