



PAYROLL CURRENTLY

The Compliance Publication of the American Payroll Association

Inside Washington

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HIRE Act Presents Significant Implementation Challenges

The Hiring Incentives to Restore Employment (HIRE) Act as passed by the U.S. Senate presents two significant challenges for employers, payroll service providers, and payroll software developers. It would take effect in the middle of a pay period for many employers and it would require the creation of a new employee-level wage accumulator: year-to-date wages earned (not “paid”) since the enactment date of the Act (a date unlikely to coincide with an employee’s hire date or the first of a month or quarter).

The American Payroll Association and the National Payroll Reporting Consortium (NPRC) have expressed their concerns and suggested changes in the legislative language to the Senate Finance Committee, the House Ways and Means Committee, and the Joint Committee on Taxation. These changes would need to be accepted by both the House of Representatives and the Senate in order to be included in the final law.

What would the HIRE Act do?

In its current form, the HIRE Act would exempt employers from the employer share of social security tax for 2010 on certain wages of employees who are hired after February 3, 2010, and who had been unemployed for 60 days (see [PAYROLL CURRENTLY, Issue No. 3, Vol. 18](#)).

Apply exemption to wages paid, not services performed

The HIRE Act would eliminate the employer social security tax on wages *earned* during a particular period, as opposed to wages *paid* during that period. Specifically, it says the tax “... shall not apply to wages paid by a qualified employer *with respect to employment* during the period beginning on the day after the date of the enactment ...” (emphasis added).

We explained that payroll systems track wages based on when they are paid, not when they are earned. For example, wages earned in the last week of December 2008 were paid by many employers in the first week of January 2009. For employees of such employers, those wages appeared on the 2009 Form W-2, were included on their 2009 income tax returns, and were applied to their 2009 social security wage bases.

We suggested that the phrase “with respect to employment” be removed from the legislative language.

Use one effective date for both ‘qualified individual’ and exempt wages

As currently written, the Act uses two dates to determine the employer social security tax exemption. The exemption would apply to the wages of a qualifying individual who begins employment after February 3, but only to his or her 2010 wages earned after enactment of the Act.

This would require separate tracking of wages paid to qualifying workers during 2010:

- the wages earned from the hire date through the date of enactment, and
- the wages earned after the date of enactment.



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Payroll software would need to create new employee-level accumulators in order to calculate the tax correctly on these two sets of wages and correctly report these two sets of wages on Form 941, *Employer's Quarterly Federal Tax Return*.

We recommended a single effective date. We suggested the exemption should apply to all 2010 wages paid to qualifying individuals who begin employment after February 3, 2010. We recognized that this would apply the exemption to a greater amount of wages, but, assuming both chambers of Congress pass this bill soon, the amount of wages paid between February 3 and the date of enactment to new workers who had been unemployed for 60 days should not be too great.

A single effective date could also make enforcement easier for the Internal Revenue Service. The IRS would only need to know which employees were qualifying individuals, multiply their social security wages by 6.2%, and compare it with the credit taken on Form 941.

Changes for Form 941?

In separate conversations with congressional staffers, we have argued against an attachment to Form 941 on which employers would list the names, social security numbers, hire dates, and social security wages of qualifying individuals. Instead, employers could be required to keep supporting records to substantiate their credit if requested by the IRS. This is similar to the recordkeeping requirement for substantiation for the COBRA Premium Assistance Credit.

Employers would need to indicate the reduction in their social security tax liability somehow on Form 941 without getting in the way of the current reconciliation of social security wages and taxes between the 941 and Form W-2. We suggested the following as options:

- Create a new line under line 5 (the "Taxable social security and Medicare wages and tips" section) on which the employer would list the social security wages of qualifying employees in Column 1 and multiply by 6.2% to get the social security tax reduction in Column 2.
- Create a new line under line 7 (the "Current Quarter's Adjustments" section), on which the employer would list the social security tax reduction.
- If there is no room for another line and/or if the IRS won't have time to create a new Form 941 by the time the bill becomes law, allow line 7a, "Current Quarter's fraction of cents," to also be used for the social security tax reduction.