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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.

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. ■

APA Testifies on Vermont, Connecticut Paycard Bills

In February, the APA responded to invitations to testify before state legislatures in Connecticut and Vermont on paycard bills under consideration.

Vermont S.B. 58

The Vermont legislation pertaining to paycards "contains some commendable provisions, which, were they not to be included in the law, the APA would consider best practices on the part of employers," said Bill Dunn, CPP, in testimony before the Vermont House Committee on General, Housing, and Military Affairs on February 4. "However, there remains a single provision in the bill that will make it unlikely that paycards will be used in the state of Vermont if it were to become law. That provision is the requirement to provide three free transactions per pay period."

The APA believes that there is no reason for Vermont to legislate three free transactions because cardholders actually have plenty of access to their money without incurring any fees at all. Because all paycards used in Vermont must be branded – that is, they must display a Visa, MasterCard, or Discover logo – cardholders are entitled to cash out their cards without charge at any financial institution displaying those logos.

Employers' concern is that they may be held responsible for the cost of multiple ATM transactions, which would incur fees.

"Payroll cards should be subject to the same restrictions as other payment methods, such as direct deposit," Dunn said. "There is no reason to require more restrictions. Beyond ensuring that workers can obtain the full amount of their pay without cost, at least once per pay period, employers should not be expected to assume responsibility for the discretionary banking costs of their workers."

Dunn advised the committee that, if employers were to

stop providing payroll cards, employees would likely continue to use reloadable debit cards to receive their pay, but on much less favorable terms than employers would provide. Check cashers offer such cards to their clients, which employees without bank accounts use to set up direct deposits. By passing legislation supported by employers, the state gains the ability to enforce important consumer protection provisions.

S.B. 58 includes two provisions in particular that APA considers best practices for employers. First, the bill requires that all fees that might be charged be explained up front. Second, employers must apprise employees in advance of any changes to the plan. "Employers do not benefit from programs that make their employees unhappy," Dunn told the committee. "Especially in voluntary programs, it is to the employer's benefit to follow these practices. The APA also appreciates that the bill allows for the use of nonbranded cards on a temporary basis. The use of nonbranded cards allows employers to issue cards instantly to their employees, either on the date of hire or as replacement cards."

Connecticut S.B. 94

On February 18, APA member Carl Morris told the Connecticut Senate Committee on Labor and Public Employees that "the APA commends this legislation and this body's decision to clearly define and acknowledge payment of wages via an electronic wage card. The addition of this law eliminates confusion and questions common in states with no paycard legislation."

Morris is Director of Payroll Cards for American EPAY and an active member of the APA's Government Affairs Task Force, Subcommittee on Paycards. ■

APA Testifies on Kansas Garnishment Bill

"I appreciate the opportunity to be here today to support Senate Bill 234," Debbie Lindenmuth, CPP, told the Kansas Senate Judiciary Committee on January 26. "After many hours of working in partnership with Kansas attorneys, the American Payroll Association would like to recommend the following changes to state law, which will streamline the garnishment process for everyone involved and also reduce the amount of money debtors will pay to settle their debts."

Lindenmuth is garnishment supervisor for Tyson Foods and also chairs the APA's Government Affairs Task Force, Subcommittee on Child Support and Garnishment. Tyson Foods has 4,900 employees in Kansas and a total of 110,000 across the country.

SB 234 addresses three issues of interest to payroll professionals: timely remittances, overwithholding, and administrative burden. Currently, employers withhold money from debtor-employees' paychecks and remit the funds once a month to the creditor. Under SB 234, employers would remit the earnings withheld each payday. This would serve three purposes: to reduce the recordkeeping burden on employers; to reduce the amount of interest that accumulates on the unpaid balance, thus benefiting the employee; and creditors and attorneys would receive their money faster.

Currently, overwithholding – that is, withholding more than the amount actually owed – is common because garnishees are

not aware of the actual amount owed and are required to continue to withhold until the order is released. "Overwithholding causes an unnecessary stress on employees," Lindenmuth said, "which can affect their productivity and cause problems for their employers."

SB 234 calls for the creditor to inform the garnishee of the unsatisfied balance of the judgment at the time the order is issued. Lindenmuth explained to the committee that employers have mechanisms by which they can track the balance owed and so will know that the debt is expected to be paid in full in a certain pay period. If the employer has not received a timely release, it may choose to either contact the creditor or court itself or notify the employee to do so.

Finally, garnishees are currently required to submit an answer to the creditor each month detailing computation of the nonexempt portion of the judgment debtor's wages for the pay period or periods covered. Lindenmuth said that this places an unnecessary paperwork burden on employers and creditors' attorneys. SB 234 would eliminate the need for garnishees to send regular notices to the creditor once it acknowledges receipt of the order. Since the attorneys will only receive one answer per writ, this will eliminate many hours of costly post-garnishment work.

The bill was passed by the Senate and is expected to be discussed in the House this spring. ■