

The 2010 HIRE Act

Essential Elements for PEOs



The Hiring Incentives to Restore Employment (HIRE) Act (H.R. 2847) has two major job creation incentives that are outlined below. The following are the key elements:

- **Payroll Tax Forgiveness** – The 6.2% OASDI Social Security tax liability is lifted for “qualified employees” for any 2010 period starting after enactment of the legislation.
 - Maximum Amount - Based on a FICA wage cap of \$106,800, the maximum value of this incentive would be \$6,621 per “qualified employee.”
 - Impact on WOTC - Payroll tax forgiveness is coordinated with the Work Opportunity Tax Credit (WOTC). “Wages” for WOTC does not include any amount paid or incurred during the one year period starting on the hiring date unless the qualifying employer makes an election not to have payroll forgiveness apply.
 - “Qualified employee” Limitations – A qualified employee
 - o Must start work after February 3, 2010 and before Jan 1, 2011.
 - o Must not have been employee for more than 40 hours during the 60 days before his or her start date.
 - o Must not replace a current employee (unless that employee was separated from employment voluntarily or for cause).
 - o Must not be related to the employer or directly or indirectly own more than 50% of the business.
 - o May be previously laid-off employees.
 - o May be part-time or less than full time employees.
 - Application: The payroll tax forgiveness does not apply to wages paid in the first quarter of 2010. Any amount that would have been allowed in the first quarter would be credited against the employer’s OASDI liability for the second quarter. Beginning for new hire wages paid beginning April 1, 2010, the employer would take the OASDI forgiveness into account for regularly deposited payroll taxes.
- **Retention Credit** – Employers who qualify for payroll tax forgiveness and keep the new worker on the payroll for 52 consecutive weeks can receive a tax credit. This is via the Section 38(b) business tax credit. The credit is increased with respect to each qualified retained worker by the lesser of \$1,000 or 6.2% of the wages paid to the worker during the 52 week period.
 - The new worker must be employed 52 consecutive weeks. A prorated credit for a short period is not allowed.
 - Domestic and workers eligible for a “foreign earned income exclusion” are not eligible.
 - The tax credit will be available to most employers on the 2011 income tax return. It should be noted, however, that the HIRE Act does not allow carry back of any unused Section 38 business credit that is attributable to the provision for retained workers.
- **Application of Retention Credit to PEO Clients** – The Congressional Record makes clear that a PEO client is entitled to the retention credit. (See attached)

March 15, 2010

CONGRESSIONAL RECORD

SENATE S1501

Mr. NELSON of Florida. Mr. President, I would like to ask the chairman of the Finance Committee and its ranking member a question on the application of the pending legislation, H.R. 2847, the Hiring Incentives to Restore Employment Act, to Professional Employer Organizations or PEOs. In my State we have over 700,000 workers in Florida who are working in PEO arrangements regulated by Florida law. PEOs in my State work with over 50,000 businesses, most of them small, providing a range of human resource-related services. I would like to ask the Senators to confirm that for purposes of the retention credit for newly hired individuals contained in the legislation the rules for eligibility and calculating the credits would be applied to each business working with a PEO as if the business was not in a PEO relationship. In other words, the retention credit would be claimed by the business in these cases.

Mr. BAUCUS. The Senator from Florida is correct.

Mr. GRASSLEY. I agree with the chairman.

The above “colloquy”¹ is a part of the Congressional Record of the passage of the HIRE Act. This type of very carefully developed and scripted discussion is used by the Congress to clarify its intent as it acts on pieces of legislation. This particular “colloquy” was developed by NAPEO with the offices of Senators Nelson, Baucus and Grassley to assure that the HIRE Act would be appropriately interpreted and applied to PEO arrangements. This dialogue assures that clients of PEOs will be entitled to take the retention credit in the HIRE Act.

¹ C-Span Congressional Glossary - A **COLLOQUY** is a pre-scripted floor dialogue between the chairman of a committee and another congressman. The dialogue seeks to clarify the intent behind certain provisions for purposes of legislative history. <http://www.c-span.org/guide/congress/glossary/colloquy.htm>