

The 2010 HIRE Act Impact on PEO Clients



The PEO industry has worked with Congressional leaders to assure that PEO clients are entitled to the retention credit authorized by The Hiring Incentives to Restore Employment (HIRE) Act (H.R. 2847). The following answers the most common questions:

1. Question: can a PEO client receive the new HIRE retention credit for a qualified employee that it hires and keeps on the payroll for 52 weeks.

Answer: Yes. During the passage of the HIRE Act this question was specifically asked and answered during Senate deliberations.¹

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.

2. What is a “qualified employee?”

Answer: A qualified employee

- Must start work after February 3, 2010 and before Jan 1, 2011.
- Must not have been employee for more than 40 hours during the 60 days before his or her start date.
- Must not replace a current employee (unless that employee was separated from employment voluntarily or for cause).
- Must not be related to the employer or directly or indirectly own more than 50% of the business.
- May be previously laid-off employees.
- May be part-time or less than full time employees.

¹ This dialogue between Senator Nelson of Florida, Senator Baucus of Montana (Chair of the Senate Finance Committee) and Senator Grassley of Iowa (ranking minority member of the Senate Finance Committee) is in the Congressional Record of March 15, 2010 at S1501

3. What is the maximum amount of the credit?

Answer: With respect to each qualified retained worker is the lesser of \$1,000 or 6.2% of the wages paid to the worker during the 52 week period.

4. How is the credit taken?

Answer: The credit is a Section 38(b) business tax credit. The tax credit will be available to most employers on the 2011 income tax return. (Note: the HIRE Act does not allow carry back of any unused Section 38 business credit that is attributable to the provision for retained workers.)

5. Are there limitations on the credit?

Answer: Yes. The new worker must be employed 52 consecutive weeks. A prorated credit for a shorter period is not allowed. Workers eligible for a “foreign earned income exclusion” are not eligible.

6. What is the Payroll Tax Forgiveness Provision?

Answer: The 6.2% OASDI Social Security tax liability is lifted for “qualified employees” for any 2010 period starting after enactment of the legislation. (Note: 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.)

7. When does it start for a “qualified employee”?

Answer: 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.

8. Is there a maximum amount?

Answer: Yes. Based on a FICA wage cap of \$106,800, the maximum value of this incentive would be \$6,621 per “qualified employee.”

9. How will I benefit from this?

Answer: Your PEO will handle this as a part of the payment of OASDI. How this is reflected in your invoices will depend upon your PEO’s billing procedures and your client service agreement.