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NCAE Legislative Issue Brief

HIRE Act Provides Important Tax Benefits to Agricultural Employers

A white-paper summary with hyper- links to important federal government documentation you need to comply and benefit from the provisions written for the National Council of Agricultural Employers by Varnum LLP¹. This document intended to help NCAE Members take advantage of the economic benefits offered by the recently signed Hire Act for employers hiring workers who have been unemployed for at least 60 days prior to hiring.

An important note for agricultural employers is that these financial incentives ARE available to employers of seasonal and part-time workers.

If you are hiring new employees during 2010, this paper may help you save significant employer-paid tax dollars.

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Agricultural employers should take note of significant benefits that may be available to them under the newly-enacted Hiring Incentives to Restore Employment (HIRE) Act. President Obama signed the HIRE Act into law on March 18, 2010. Under the Act, most employers are eligible for two new tax benefits – a FICA payroll tax exemption and a separate "retained worker" tax credit – designed to stimulate hiring.

In materials published since the Act's announcement, the IRS has specifically confirmed the applicability of the Act to agricultural employers. The IRS guidance further supports a finding that certain HIRE Act benefits, including the FICA payroll tax exemption, apply to employers of seasonal employees. Below is an overview of the two tax benefits under the HIRE Act, as well as information concerning how such benefits may apply in the agricultural employment setting.

FICA Payroll Tax Exemption

What is the Exemption?

The FICA payroll tax exemption relieves employers from the obligation to pay the Old-Age, Survivors, and Disability Insurance ("OASDI") portion of their FICA tax obligation (*i.e.*, 6.2 percent of wages up to \$106,800 for 2010) on wages paid to any "qualified employee" between March 19, 2010 through December 31, 2010.

A "qualified employee" is one who:

- begins employment after February 3, 2010 and before January 1, 2011;
- certifies by signed affidavit (under penalty of perjury) that he or she was not employed for more than 40 hours total during the 60-day period immediately preceding the employee's first day of work for the current employer (Note: The IRS has issued [Form W-11](#) for this purpose);
- is not hired to replace another existing employee unless that other employee "separated from employment voluntarily or for cause," and;
- is not a "relative" of the employer under rules in the Internal Revenue Code.

The IRS has confirmed that employers who undergo layoffs or reductions and who then either recall the laid-off workers or hire new workers when business needs increase are not "replacing existing employees," and therefore may take the exemption with respect to such newly hired or reinstated employees. This is good news for agricultural employers, as it indicates that the FICA payroll tax exemption should apply to their 2010 seasonal hires.

How May Agricultural Employers Take Advantage of the Exemption?

To qualify for the exemption, agricultural employers should have all qualified employees hired between February 3, 2010 and December 31, 2010 complete IRS Form W-11. (To view and download the Form W-11 from the IRS website, click [here](#).) Form W-11 is not yet available in any non-English versions, so use of a translator may be an effective means of having the form completed by any non-English speaking workers.

Employers should not submit their completed Form W-11 documents to the government, but instead should maintain them with their other payroll and income tax records. Completed Form W-11 documents are necessary to support the claimed tax exemption if requested by the IRS.

Agricultural employers will claim the payroll tax exemption on Form 941, the Employer's Quarterly Tax Return, beginning with the second quarter of 2010. No credit should be taken on the first quarterly return due April 30, 2010. A revised Form 941 is being prepared and will be issued by the IRS in the near future. (A draft Form 941 posted by the IRS may be viewed by clicking [here](#).) Employers will be able to claim credit for first quarter taxes on wages paid after March 18, 2010 on their second quarter returns.

Retained Worker Tax Credit

What is the Credit?

In addition to the FICA payroll tax exemption, employers will receive a general business tax credit for every "qualified employee" the employer retains for at least 52 consecutive weeks. The available credit is equal to 6.2% of the retained employee's wages for the 52-week period, up to a maximum amount of \$1000.00. This credit will first be available for the 2011 tax year. In order to claim the credit, the wages paid to the qualified employee during the last 26 weeks of the 52-week period must equal at least 80% of such wages for the first 26 weeks of the period.

How Does The Tax Credit Apply in the Agricultural Employment Setting?

Agricultural employers are eligible for this credit to the same extent as any other employer. As a practical matter, however, the credit will not typically be available with respect to seasonal employees, because an employee must be retained for a consecutive 52-week period in order for the credit to apply.

As with the FICA payroll tax exemption, employers must have qualified employees complete Form W-11 in order to claim the "retained worker" tax credit. Employers will claim this credit on their annual tax returns, beginning with the 2011 tax year.

For Additional Information

Employers may consult the following page on the IRS Website, "[Hire Act: Questions and Answers for Employers](#)" to obtain additional information. We will continue to monitor developments under the new Act as well.