



## Healthcare Employment Law IN Brief

By: Greg Kult

### COBRA Extension

As expected, the American Recovery and Reinvestment Act of 2009 recently was amended to further **extend COBRA premium assistance, this time through May 31, 2010.**

You may recall that the subsidy covers 65% of an eligible employee's COBRA premium payments for up to 15 months. Employers typically pay the 65% and then take a credit on their quarterly payroll tax returns.

Employees who are involuntarily terminated on or before May 31, 2010 now may be eligible for the subsidy. If you have terminated an employee since April 1, 2010 and provided a COBRA notice that did not include the COBRA subsidy information, you might need to provide a supplemental notice containing that information. Hopefully the DOL will provide model notices to reflect this most recent extension. Model notices for the previous extensions could be downloaded at no cost at:

<http://www.dol.gov/ebsa/cobramodelnotice.html>.

Consider checking that site periodically for updates. Of course, we would be happy to help you prepare a notice in the interim.

Stay tuned . . . there is proposed legislation pending (H.R. 4213) that would extend the subsidy through the end of 2010.

### Hiring Incentives to Restore Employment Act

On March 29, 2010, I wrote about the new federal HIRE Act, which provides a payroll tax holiday for much of 2010 for Qualified Employers--which includes most private sector for-profit and non-profit employers, and public higher education institutions--hiring new workers that essentially have been unemployed for the previous sixty (60) days and business tax credits to Qualified Employers for retaining those workers.

I noted that the HIRE Act applies only to Qualified Individuals who:

- begin employment with a Qualified Employer after February 3, 2010 and before January 1, 2011;
- certify by signed affidavit, under penalty of perjury, that the individual has not been employed more than 40 hours during the 60-day period ending when employment with the Qualified Employer starts;
- are not employed by the Qualified Employer to replace another employee, unless such employee resigned voluntarily or was terminated for cause; and
- are not a family member as described in Internal Revenue Code § 51(i)(1).

**The Internal Revenue Service has created a form affidavit (IRS Form W-11) for use by employers to help them comply with the affidavit requirement of the HIRE Act referenced above.** A copy is attached.

Employers are not required to use IRS Form W-11, but they may not claim the payroll tax exemption or the retention credit until the employee signs an affidavit that complies with the HIRE Act (of course, the employee also must meet all other requirements to be a Qualified Individual).

Employers do not submit Form W-11 (or an alternative affidavit) to the IRS. They must maintain the document to confirm eligibility for HIRE Act benefits.

**\*This briefing does not constitute legal advice. Please see an attorney about any particular matter.**

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## Hiring Incentives to Restore Employment (HIRE) Act Employee Affidavit

▶ **Do not send this form to the IRS. Keep this form for your records.**

**To be completed by new employee. Affidavit is not valid unless employee signs it.**

I certify that I have been unemployed or have not worked for anyone for more than 40 hours during the 60-day period ending on the date I began employment with this employer.

Your name \_\_\_\_\_ Social security number ▶ \_\_\_\_\_

First date of employment \_\_\_\_ / \_\_\_\_ / \_\_\_\_ Name of employer \_\_\_\_\_

Under penalties of perjury, I declare that I have examined this affidavit and, to the best of my knowledge and belief, it is true, correct, and complete.

Employee's signature ▶ \_\_\_\_\_ Date ▶ \_\_\_\_ / \_\_\_\_ / \_\_\_\_

### Instructions to the Employer

Section references are to the Internal Revenue Code.

#### Purpose of Form

Use Form W-11 to confirm that an employee is a qualified employee under the HIRE Act. You can use another similar statement if it contains the information above and the employee signs it under penalties of perjury.

Only employees who meet all the requirements of a qualified employee may complete this affidavit or similar statement. You cannot claim the HIRE Act benefits, including the payroll tax exemption or the new hire retention credit, unless the employee completes and signs this affidavit or similar statement under penalties of perjury and is otherwise a qualified employee.

A "qualified employee" is an employee who:

- begins employment with you after February 3, 2010, and before January 1, 2011;
- certifies by signed affidavit, or similar statement under penalties of perjury, that he or she has not been employed for more than 40 hours during the 60-day period ending on the date the employee begins employment with you;
- is not employed by you to replace another employee unless the other employee separated from employment voluntarily or for cause (including downsizing); and
- is not related to you. An employee is related to you if he or she is your child or a descendent of your child,

your sibling or stepsibling, your parent or an ancestor of your parent, your stepparent, your niece or nephew, your aunt or uncle, or your in-law. An employee also is related to you if he or she is related to anyone who owns more than 50% of your outstanding stock or capital and profits interest or is your dependent or a dependent of anyone who owns more than 50% of your outstanding stock or capital and profits interest.

If you are an estate or trust, see section 51(i)(1) and section 152(d)(2) for more details.



**Do not send this form to the IRS. Keep it with your other payroll and income tax records.**