

IRS Form W-11: IRS Issues Draft Employee Affidavit Under the Hiring Incentives to Restore Employment Act (“HIRE Act”)

By **Lori L. Dwyer, Esq. & Steven R. Gerlach, Esq.** | April 13, 2010

In response to the passage of the HIRE Act (Pub. L. No. 111-147, signed into law on March 18, 2010), the IRS has issued Form W-11 to facilitate second quarter employer filings. Form W-11 is an employee affidavit that provides the employee’s declaration, under penalty of perjury, that he or she is a “qualified employee” under the HIRE Act. It can be accessed at <http://www.irs.gov/pub/irs-pdf/fw11.pdf>.

The HIRE Act is intended to stimulate job growth through tax incentives to businesses. It provides a payroll tax exemption for employers from their 6.2% share of Social Security taxes on all wages paid to “qualified employees.” A “qualified employee” is anyone who begins employment between February 3, 2010 and January 1, 2011, and who has been unemployed (or employed for less than 40 hours) in the 60 days prior to commencement of his or her employment. The 60-day period of unemployment must be continuous. Form W-11 will serve as the requisite proof to the IRS that the employee for whom the tax exemption is being claimed was in fact unemployed for 60 days prior to hire.

The tax exemption applies to qualified employees hired into new positions. It also applies to qualified employees hired into existing positions, but only if the workers being replaced left voluntarily or were terminated for cause (meaning they were not part of a reduction in force). The exemption may be claimed for employment during the period beginning March 19, 2010 and ending December 31, 2010.

The HIRE Act also allows employers to increase their general business tax credit by up to \$1,000 for each worker retained for at least a year (52 consecutive weeks) when the employer files its 2011 income tax return.

These tax incentives apply to businesses, agricultural employers, tax-exempt organizations, and public colleges and universities. Employers can claim the payroll tax benefit on their federal employment tax returns (Forms 941 or 944). The IRS will be issuing a revised quarterly tax form in the very near future, which will provide a line item where employers can claim the exemption for the latter part of the first quarter and for the second quarter. Along with the quarterly tax return, employers will have to file the Form W-11 employee affidavits to demonstrate their right to claim the exemption.

For more information on this tax-incentive, contact [Steve Gerlach](#) (207 774-1200) in Portland, Maine, or [Karen Aframe](#) (603 623-8700) in Manchester, New Hampshire.

You may also wish to visit the “Frequently Asked Questions on the IRS website, <http://www.irs.gov/businesses/small/article/0,,id=220745,00.html>