

THE CONSTRUCTION LAW BRIEFING PAPER

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The HIRE Act, Work Opportunity Tax Credit and the Minnesota Jobs Bill

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It's spring time again! As you are gearing up for another busy construction season, don't miss the opportunity to take advantage of some new (and old) tax incentive programs such as the Hiring Incentives to Restore Employment (HIRE) Act, the Minnesota Jobs Bill and the Work Opportunity Tax Credit. These provide tax credits/deductions to employers for hiring new employees, as well as incentives for owners to finance new construction projects.

The HIRE Act

The HIRE Act is a payroll tax holiday, and is now available to qualified business owners who are adding to their workforce. The benefit is also available to seasonal employers (e.g. construction companies).

Briefly, the HIRE Act exempts any qualified employer who hires a worker who has been unemployed for at least 60 days from having to pay the employer's 6.2% share of the Social Security payroll tax on that employee for the remainder of 2010. Workers hired after February 3, 2010 are eligible, but only wages paid after March 18 receive the exemption for Social Security payroll taxes.

In addition to the requirement that the worker be hired after February 3, 2010, to be qualified, a worker must also: (1) certify by a signed affidavit (see IRS Form W-11, posted on www.irs.gov) that he or she was employed for a total of 40 hours or less during a 60-day period ending on the date such employment begins; (2) not be employed to replace another employee of the employer unless such employee separated from employment voluntarily or for cause; and (3) is not related to the employer. The employee is not, however, required to work a minimum number of hours per week.

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With respect to (2) above, re-hired workers who were laid off in the winter due to the seasonality of a business are eligible for this payroll tax holiday.

To list a few other benefits, under the HIRE Act the employer is not required to pay the tax and then later seek a refund. Rather, the money never leaves the employer's pocket. Also, there is not a limit on the dollar amount of payroll taxes per worker that may be forgiven. Further, if the employer retains the new workers for 52 consecutive weeks and meets certain other requirements, the employer will be entitled to a credit against current and future income of \$1,000 per worker (subject to AMT limitations).

Impact: While this sounds like a good perk, the benefit probably doesn't justify changing your business (i.e. you may not want to hire a worker just to take advantage of the HIRE Act). For example, if a company pays someone \$25,000 per year, the savings for that person is only \$1,550. However, for seasonal construction companies that rehire workers in the spring to meet seasonal demands, this is a great benefit.

Pitfalls: Make sure to avoid the following problems: (1) for workers that would otherwise be eligible for the Work Opportunity Tax Credit (discussed in more detail below), the employer must select one benefit or the other for 2010...no double dipping; (2) for the worker to qualify, as stated above, the worker must sign an affidavit (IRS Form W-11) certifying he or she has been unemployed for at least 60 days; and (3) also as stated above, the worker can't be related to the employer.

The Minnesota Jobs Bills

If you haven't heard, with the help of the Minnesota Jobs Coalition, Minnesota Governor Tim Pawlenty signed into law the Minnesota Jobs Bill (H.F. 2695 / S.F. 2568) intended to create employment opportunities across multiple sectors of Minnesota's economy. The bill provides tax credits to encourage investment in high tech, manufacturing, construction and green businesses. Below is a brief bullet point summary of a few of its benefits:

- **Voluntary Energy Improvements Financing Program for Local Governments.** This program permits local governments to finance energy improvements to qualifying real property with the net proceeds and interest earnings of revenue bonds. The financing must have a term that does not exceed the weighted average of the useful life of the energy improvements installed, but in no event can the term exceed 20 years. The principal amount must not exceed the lesser of 10% of the assessed value of the real property on which the improvements are to be installed or the actual cost of installing the energy improvements. The financing must have an interest rate sufficient to pay the financing costs of the program.
- **Credit for Historic Structure Rehabilitation.** This provision allows a refundable credit equal to the amount of the federal rehabilitation credit for certified historic structures. The federal credit is 20%, and this increased the combined federal and Minnesota credit to 40%. In lieu of the refundable credit, a grant equal to 90% of the credit may be allowed.

- Qualified Green Building and Sustainable Design Projects. This authorizes the issuance of revenue bonds for qualified green building and sustainable design projects. Note that at least 75% of the building's square footage must be certified as complying with a recognized rating system, such as LEED, Green Globes or GreenStar.
- Temporary Authority to Stimulate Construction. Allows for the use of excess tax increments to provide improvements, loans or assistance in any from to private development consisting of the construction or substantial rehabilitation of buildings, if doing so will create jobs in this state, provided that the construction must commence before July 1, 2011 and but for the assistance provided, the construction would not have occurred before that date.

Don't Forget to Take Advantage of Other Tax Benefits

There are several other tax-credit and deduction programs that have been around for a few years of which many contractors are not aware. For example, the federal Work Opportunity Tax Credit ("WOTC") reduces labors costs for new hires in certain targeted groups (e.g. qualified food stamp recipients, summer youth employees, qualified ex-felons, SSI recipients and unemployed veterans).

The WOTC for hiring most target group members can now be as much as \$1,000 to \$9,000 for each to qualified employee. The credits are calculated on days and hours worked and wages paid to the certified employee.

There is also The Energy Efficient Commercial Building Tax Deduction which allows for a deduction of up to \$1.80 per square feet for energy-efficient upgrades to building elements such as HVAC systems, lighting and the building envelope in commercial buildings.

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Announcements

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On March 24, 2010, [Gary Eidson](#) will be speaking on "Special Issues for Retail/Office Property" at the Minnesota CLE Real Estate Purchase & Sale which will be held at the Minnesota CLE Conference Center. Please contact Gary for more details. 612.359.7621 or geidson@fwhtlaw.com.

[Marv Fabyanske](#) will be speaking at the Thomson Reuters conference entitled Concentrated Course in Construction Contracts to be held May 10-13, 2010 at the Flamingo Las Vegas in Las Vegas, Nevada. For more information, please contact Marv at 612.359.7623 or mfabyanske@fwhtlaw.com.

[Marv Fabyanske](#) will be speaking for the National Business Institute on Construction Insurance and Disputes on May 26, 2010 in Minneapolis, Minnesota. Contact Marv at 612.359.7623 or mfabyanske@fwhtlaw.com for more details.

Congratulations to [Dean Thomson](#), who recently received the Burton Award for Legal Achievement for his article *A Modest Proposal: Conflicting Judicial Decisions Should Mandate Insurance Coverage for the Insured under the Ambiguity Doctrine*, which was published in the Journal of the American College of Construction Lawyers (2010). The Burton Award program is a non-profit academic effort and is held in association with the Library of Congress. The program selects articles that have been published within the last year for recognition from those and have been submitted for consideration by the nation's 1,000 largest and most prestigious law firms.

[Greg Spalj](#) will be speaking on the subject of Mechanics' Lien at the Debtor-Creditor Seminar sponsored by the Minnesota State Bar Association on April 27, 2010. For more information, please contact Greg at 612.359.7631 or gspalj@fwhtlaw.com.