

FAQs About Qualified Employees

QE1: Who are qualified employees?

A-QE1: Qualified employees are individuals who begin employment with a qualified employer after February 3, 2010, and before January 1, 2011, who have been unemployed or employed for less than 40 hours during the 60-day period ending on the date such employment begins, and who are not family members of or related in certain other ways to the employer.

QE2: Do the qualified employees need to do anything to make it possible for their employer to claim the payroll tax exemption?

A-QE2: Yes, qualified employees must certify by a signed affidavit, under penalties of perjury, that they have not been employed for more than 40 hours during the 60-day period ending on the date they started employment. The IRS plans to issue a model affidavit that can be used for this purpose.

QE3: Is the 60-day period continuous, and can it span 2009-2010?

A-QE3: The 60-day period must be continuous and can span 2009-2010.

QE4: Does the payroll tax exemption apply to wages paid to a qualified employee hired to replace an existing worker whose employment terminated?

A-QE4: The payroll tax exemption does not apply to wages paid to an employee who is hired to replace an existing worker, unless the existing worker terminated employment voluntarily or was terminated for cause.

QE5: Does the payroll tax exemption apply to wages paid to an employee who was previously laid off and then rehired by the same or a related employer after a 60-day period?

A-QE5: Yes, an employer may apply the payroll tax exemption to wages paid to a rehired employee who is otherwise a qualified employee.

QE6: If an employer lays an employee off because of lack of work and later, when work picks up, hires a new employee, can the payroll tax exemption apply to wages paid to the new employee?

A-QE6: Yes, if the new employee is a qualified employee (i.e., was employed for less than 40 hours during the prior 60 days).

QE7: Does the payroll tax exemption apply only if the employer previously laid employees off?

A-QE7: No, the payroll tax exemption can apply to wages paid to any qualified employee.

QE8: If an employer hires a recent graduate who has been in school for some or all of the 60 days preceding the start of his employment, does the payroll tax exemption apply to wages paid to the employee?

A-QE8: Yes, if the employee is a qualified employee. It is not necessary that the individual was previously employed and has lost his or her job to be a qualified employee.

QE9: Does the qualified employee have to work a set period of time for the employer to be eligible for the exemption?

A-QE9: No. Application of the payroll tax exemption does not require that a qualified employee be employed for a set number of hours or a set number of weeks.

QE10: Is there a minimum age for qualified employees? Will high school summer hires and interns be considered eligible employees?

A-QE10: There is no minimum age requirement to be a qualified employee.

QE11: Some businesses use the services of workers who are employees of a temporary agency. Can the temporary agency claim the payroll tax exemption for its qualified employee working at a client business?

A-QE11: The temporary agency can apply the exemption with respect to wages paid to a qualified employee of the temporary agency. This is determined based on when the employee begins employment with the temporary agency, and not based on when the employee begins work at a client business of the temporary agency.

QE12: If a client business hires an employee who previously provided services to the business as an employee of a temporary agency, is the client business entitled to apply the payroll tax exemption?

A-QE12: The client business can apply the exemption if the worker is a qualified employee when he or she begins employment with the client as its employee. That is, the worker must not have worked as an employee for any business (including the temporary agency) for more than 40 hours in the 60 days prior to beginning employment with the client business.

QE13: Can employers create their own affidavit or must they use IRS Form W-11?

A-QE13: Employers can use their own affidavit as long as it includes the same information as IRS Form W-11, Hiring Incentives to Restore Employment (HIRE) Act Employee Affidavit, and is signed under penalties of perjury.

QE14: Must the signed affidavit (e.g., Form W-11) be notarized?

A-QE14: No

QE15: Should employers send signed employee affidavits, such as Form W-11, to the IRS?

A-QE15: No, the employer does not file or send signed employee affidavits to the IRS. The employer should retain these affidavits with other payroll and income tax records.

QE16: Can an employer apply the payroll tax exemption even if an employee fails to sign an employee affidavit, such as Form W-11?

A-QE16: No. An employer can only apply the exemption on wages paid to a qualified employee. In order to be a qualified employee, among other requirements, the employee must sign an employee affidavit such as Form W-11.

QE17: Is there a deadline for the employer to get the signed affidavit from the employee?

A-QE17: Yes, the employer must have the signed affidavit by the time the employer files an employment tax return applying the payroll tax exemption. If the employer obtains the signed affidavit from the qualified employee after wages are paid to the employee, the employer can still apply the payroll tax exemption to determine its liability on these wages. In some cases this may require the filing of a corrected return for a prior quarter.

For example, an employer hires an otherwise qualified employee who begins employment on March 1, 2010 and is paid wages in March. The qualified employee does not provide the signed affidavit until April 15, 2010. The employer can claim the first quarter credit on the second quarter Form 941 for the amount of the exemption with respect to wages paid to the qualified employee from March 19, 2010 through March 31, 2010 and can apply the exemption to wages paid to the qualified employee starting April 1, 2010, despite the fact that the employee did not provide the signed affidavit until April 15, 2010.

In contrast, if the otherwise qualified employee does not provide the signed affidavit until August 1, 2010, the employer may not claim the first quarter credit on the second quarter Form 941 for wages paid to the qualified employee from March 19, 2010, through March 31, 2010, and cannot apply the exemption to wages paid in the second quarter because the employer did not obtain the signed affidavit by the time it filed its second quarter Form 941. Instead, the employer must file a Form 941-X to correct the second quarter of 2010 if it wants to claim the first quarter credit and apply the exemption to the second quarter wages paid to the qualified employee.

QE18: May Form W-11 (or a similar form containing the same information as the Form W-11) be transmitted electronically and signed by way of electronic signature?

A-QE18: Yes, employers may obtain signed Forms W-11 (or similar forms containing the same information) electronically. The electronic system generating the form must transmit the same information as the Form W-11, must ensure that the information transmitted and received is the information sent, and must document all occasions of user access that result in the transmission.

The electronic transmission must be signed by way of an electronic signature by the employee whose name is on the Form W-11 and the signature must be made under penalties of perjury. The perjury statement must contain the language that appears on the paper Form W-11. The electronic system must inform the employee whose name is on the Form W-11 that the employee must make the declaration contained in the perjury statement and that the declaration is made by signing the Form W-11. The instructions and the language of the perjury statement must immediately follow the employee's statements and immediately precede the employee's electronic signature. The electronic signature must be the final entry in the employee's Form W-11 submission.

The act of the electronic signature must be made by the employee whose name is on the electronic Form W-11, and the signature must also authenticate and verify the submission, by making reasonably certain that the person accessing the system and submitting the form is the employee identified on the Form W-11.

Upon request by the Internal Revenue Service during an examination, the employer must supply a hard copy of the electronic Form W-11, and a statement that, to the best of the employer's knowledge, the electronic Form W-11 was made by the employee whose name is on the form. The hard copy of the electronic Form W-11 must provide exactly the same information as, but need not be a facsimile of, the paper Form W-11