# Things are Changing! What's New for Nonprofits?

Health Care Reform, Stimulus Job Creations, Interns, and Independent Contractors





### Independent Contractors -Misclassification Deb Jung



### Who are Your Workers?

- Independent Contractors Not entitled to overtime, paid per job, completes W-9 Form, org. sends 1099, no benefits, flexibility, efficiency, reduced legal exposure, lack of control, coming and going, termination limited, Intellectual Property rights
- Employees Employer pays all employment taxes, benefits, unemployment, workers comp, receives W-2, pays overtime if nonexempt, can control work, termination at will, injury recovery limited to workers comp, more expensive, more exposure to lawsuits
- \* **Contract Employees** Same rights as employees except benefits, hours, and other terms of employment can be spelled out in contract



# Purpose

- Ensure that workers classified as Independent Contractors are not really employees
- Increase tax compliance by identifying misclassified Independent Contractors (est. \$7 billion in lost revenue over next 10 years)



### **Congressional** Action

#### Employee Misclassification Prevention Act

- Strict record keeping requirements
- Higher fines for misclassification
- Taxpayer Responsibility, Accountability, and Consistency (TRAC) Act
  - Workers could petition IRS for appropriate status
  - Penalties for incorrect filing of 1099s
  - Reasonable basis test



### **Avoiding Misclassification**

 $\ast$  Evaluate all of your IC relationships using the various tests:

Maryland Test

Common Law Test

\*Federal Labor Standards Act Test

**\*IRS** Test

\*20 Factor Test (Former)

**\***ABC Test



## Maryland Test

#### Economic Reality of Work Relationship

- Right to control
  - Manner, result, means and details-direct how it will be accomplished
- Right to discharge
- In business for themselves
  - Offer services to the public, can suffer financial loss

Beware: Even if properly classified as IC, may still have to pay unemployment under Maryland law



### Common Law Test

- ${\scriptstyle \circ}$  Right to control means and manner
- Method of payment
- Furnishing of material or tools
- Control work premises
- Right to discharge



### Federal Labor Standards Act Test

Services rendered integral part of business

Permanency of relationship

IC investment in equipment

DAmount of control by principal

Deportunity for profit and loss

DAmount of initiative in competition with others

Degree of independence in organization and operation



# IRS Test

#### Behavioral control

Right to direct how work is done

#### Financial control

 • Unreimbursed business expenses, worker's investment, services available to market, how worker is paid, profit and loss

#### Relationship of the parties

 Written contract, performs services for others, worker receives employee-type benefits, permanency of relationship, services key aspect of regular business of organization



### 20 Factor Test (Former)

- The original IRS test listed 20 separate factors
- The 3 factor test focuses on behavioral and financial control, and the relationship of the parties.





- Worker free from control and direction
- Service performed outside usual course of business
- Worker engaged in an independent trade; offers similar services to others

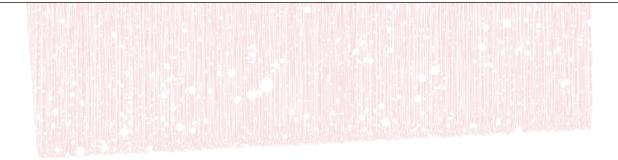


### **Consequences of Misclassification**

- Back wages
- Retroactive benefits
- Penalties and interest
- Reimbursement for legal expenses
- Payment of back taxes and insurance premiums
- Payment for back social security and Medicare
- Unpaid unemployment insurance
- Workers compensation premiums



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## Small Employer Health Credit Nancy Hall



# Overview

- Signed 3/23/10, effective 1/1/10
- Nonprofit employers included
- 25 employees or less
- Average wage \$50,000 or less
- Pay at least half of the insurance premiums at single coverage rate
- Credit max up to 25% of health premium paid



### IRS Calls it Simple!

#### **3 SIMPLE STEPS**

If you are a small employer (business or tax-exempt) that provides health insurance coverage to your employees, determine if you may qualify for the Small Business Health Care Tax Credit by following these three simple steps:

	Full-time equivalent of part-time employees:	Divide it by the number of employees from STEP 1:
	= total employees If the total number of employees is fewer than 25 GO TO STEP 2	If the result is less than \$50,000, AND
3 100	u pay at least half of the insurance premiums for your er	nployees at the single (employee-only) coverage rat
	ou may be able to claim the Small ind out more information at IRS.go	Business Health Care Tax Cre



### **IRS Scenario**

• Example 3: Foster Care Nonprofit

First Street Family Services: Employees: 9 Wages: \$198,000 total, or \$22,000 per worker Employee Health Care Costs: \$72,000

2010 Tax Credit: \$18,000 (25% credit) 2014 Tax Credit: \$25,200 (35% credit)

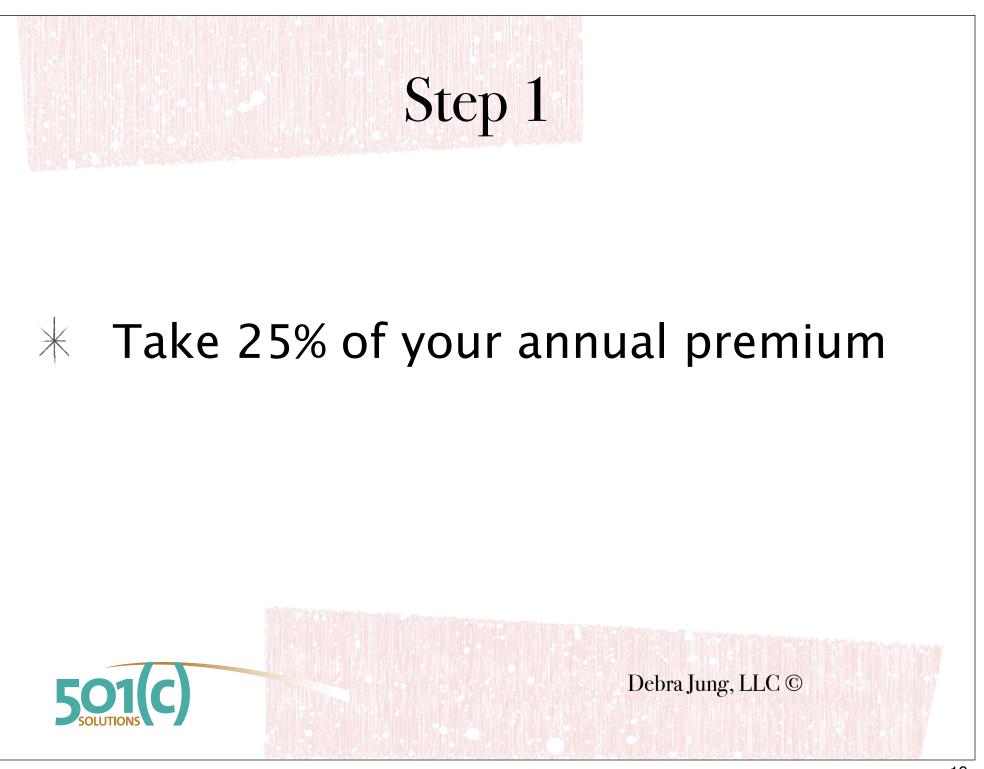




### SIMPLE Right?

### --Wrong!





### Premiums from Monthly Invoices

- 1) The amount of nonelective contributions paid on behalf of employees or
- 2) The amount of nonelective contributions equal to the average premium for small group market in state.

What counts - health, dental, vision



# Maryland Rates

- \* Single: annual \$4,837; monthly \$403
- Family: (includes Parent/Child, Husband/Wife) annual \$11,939; monthly \$995



### What to do with Employee's Share

- You must be contributing at least 50% of the cost of an individual's coverage.
- If you pay 80% of coverage, you must determine if that is more or less than 80% of the standard Maryland Rates.



# Challenges

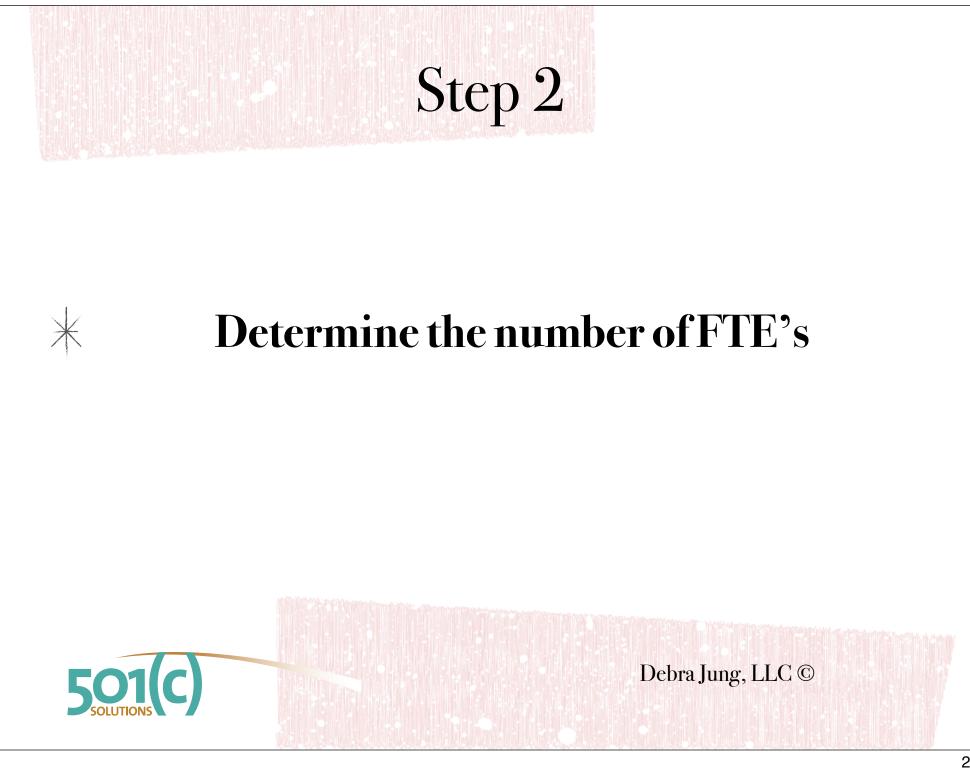
- Health care bills are monthly, salaries are bi-weekly, and IRS examples are annual.
- Most of our organizations will have a rate change for health insurance mid-way through 2010.
- Maryland Small Group Rates are age rated and nonprofits have old staff. Many organizations' rates will exceed the Maryland Standard Rates.
- State Standard only has two categories (single and family), Maryland Small Groups has additional categories.



### Suggested Process

- Calculate everything on a monthly basis.
- If you don't contribute at least 50% of individual coverage, stop now.
- Determine if you need to use state standard rates or your actual rates.
- Figure out 25% of the lower of your net premiums ( what you pay less what your employees pay).





## IRS Tell's All!

 The number of employer's FTEs is determined by dividing the total hours for which the employer pays wages to employees during the year (by not more than 2,080 hours for any employee) by 2,080. The result, if not a whole number, is then rounded to the next lowest whole number.



# Real World?

- \* Some organizations have 35 hour work weeks.
- \* We don't know how many hours folks are going to work during the year.



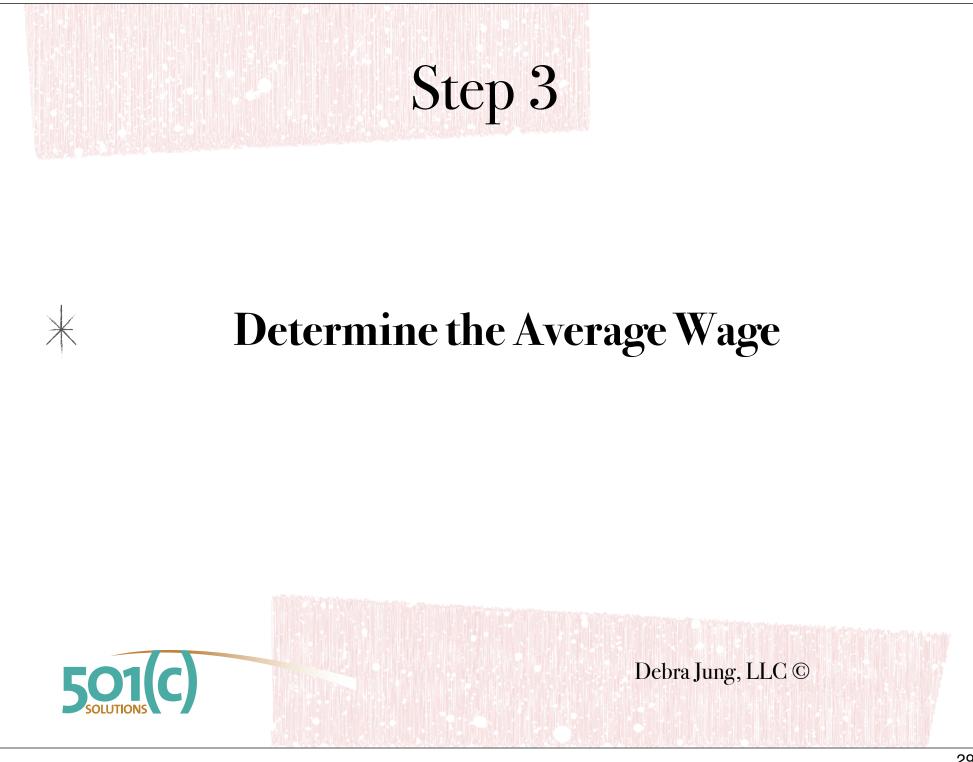
# Let's Do it This Way

Calculate the number of hours employees work during the month. Full time 40 hours a week person will work 173.3 hours.

- Don't count seasonal works who will work less than 120 days in the year.
- Divide by 173.3 hours.

Result is the number of FTE's for the month.





### Calculating...

• Take total gross pay.

If you pay monthly or bi-monthly, just take what was paid for the month...you are lucky.

If you pay every two weeks, you will have to: Calculate extra days of pay (or back out if three payroll month. Prorate the extra days.



# ...Calculating...

• Divide the total pay by the total FTE's. Should be less than \$4,166.67 for the month.



### Step 1 - Spreadsheet View

Step 1	Which prer	th premium do you use?												
What do you pay?		80%	of sir	<b>ngle pre</b>	mium	Ì								
	Monthly Premium Total from invoiœ	Employees	Avera Prem per Empl	ium	Amo paid Empl	by	State Maximi	um	80% St Maxim		Use Low		Ba	onthly æ emium
Individual	\$ 3,800	8	\$	475	\$	380	\$	403	\$	322	\$	322	\$	2,579
Family	<mark>\$ 3,786</mark>	3	\$	1,262	\$	380	\$	995	\$	796	\$	322	\$	967
			Philan	Millionada Maria			Total						\$	3,546

501(C)

### Step 2 - Spreadsheet View

Staff	Hours per week	Hours/Mon	ith			
Amy	40.00	173.33				-
Bill	32.00	138.67				-
Catherine	40.00	173.33				
Donald	20.00	86.67				
Esther	20.00	86.67				
Faison	40.00	173.33				
Gordon	24.00	104.00				
Harry	45.00	173.33	Canonly	count up t	o 40 hrs pe	er w
Kaila	40.00	173.33				
Leila	40.00	173.33				
Montel	40.00	173.33				
Noel	40.00	173.33				
<mark>Opal</mark>	40.00	173.33				_
Total	461.00	1,975.98				-
	-01.00	1,370.30				
Divided by 173.3		11.40	FTEs			
				YREEDARS	() Minimiz - were	Not minute
Round to		- 11	FTEs	If more the	nan 25, not	t eli

### Step 3 - Spreadsheet View

STEP 3 - Average Salary		
	Payroll Frequency:	Bi-weekly
Pay Period 1	<mark>14,000</mark>	
Pay Period 2	<mark>15,600</mark>	
Total	29,600	
Pro-rated for full month	32,042	
FTEs	11	
Average Salary	2,913	Note, if exceeds \$4,166 the organization is not eligible.



### Monthly Report...And Repeat

Month:	January				
Year:	2010	<mark>)</mark>			
Step 1	Monthly Base Premium	\$	3,546		
	<sup>r</sup> 25%			\$	887
Step 2	Number of Employees				
	Full Time Equivalents		11		
	Subtract 10 Employees		1		
	Divide by 15		7%	\$	(59
Step 3	Average Salary				
	Average Actual Salary	\$	2,913		
	Subract \$2,083 (\$25K annualized)	\$	830		
	Divide by \$2,083		40%		(353
		( Carrie	ina wates:	NASO AND	The Chine Katalan Same
Monthly Credit				\$	474
	Debra	Jung, LL			



- IRS has yet to figure out how nonprofits will collect the credit.
  - Options: 941, 941 X

990 T Other Form



941	Form 941 for 2010: Employer's QUARTERLY Federal Tax Return 950110 Department of the Transacy - Internal Revenue Bankos
	Binel Employer identification number     -     -     .     .     Report for this Quarter of 2010 (Creach one.)       Name (not your tode name)     -     .     .     .
	Trade name (F an)
	One         Item         Item
	including: Mar. 12 (Quarter 1), June 12 (Quarter 2), Sept. 12 (Quarter 3), Dec. 12 (Quarter 4) 1 2 Wages, tips, and other compensation
	H no wages, tips, and other compensation are subject to social security or Medicare tax     Column 1     Column 2
	Se Taxable social security wages . X.124 =
	Total taxes before adjustments (lines 3 + 5d = line 6)     CURRENT QUARTER'S ADJUSTMENTS, for example, a fractions of cents adjustment. See the instructions.
	7a Current quarter's fractions of cents
	7d TOTAL ADJUSTMENTS. Combine all amounts on lines 7a through 7c
	Advance earned income credit (EIC) payments made to employees     Advance (EC (Ine 0 - line 9 - line 10)     Total taxes after adjustment for advance (EC (line 0 - line 9 - line 10)     Total deposits for this quarter, including overpayment applied     trons a prior quarter and overpayment applied from Form 341.X or     Form 344.X
	12a     COBRA premium assistance payments (see instructions)       12b     Number of individuals provided COBRA premium assistance reported on line 12a
	13 Add lines 11 and 12a
	Balance due. If line 10 is more than line 13, write the difference here. For information on how to pay, see the instructions
	Check one     Appy to net mann.     Check one     Bend a maturd.     Check one     Check one     Appy to net mann.     For Privacy Act and Paperwork Reduction Act Notice, see the back of the Payment Voucher.     Cat. No. 1700/2     Form 941 Ben: 22010



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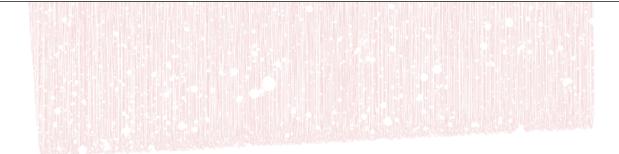
P 7000 941-X: Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refun New June 2000 Onterview of the Treasury - Treamal Revenue Service Onterview Service Ontervi
Employer identification number Check the type of return you are 0
6. Deck the OME quarter you are co
7. Address Sunter liner Sute or non norter Liner Sute or non norter
Object     Object     20 April, May, June       Object     Object     20 April, May, June
Use this torm to correct errors you made on Form 941 or 941-55 for one quarter only.     Type or print within the boxes. You MUST complete all three pages. Read the     instructions before conneiting this form. Do not attach this form to Form 941 or 941-55.
Part 1: Select ONLY one process.      Enter the calendar year of the     you are correcting:      (1) (1) (1) (1) (1) (1) (1) (1) (1)
1. Adjusted employment tex return. Check this box if you undemported amounts. Also otheck this box if you oversponted amounts and you would like to use the adjustment process to correct the errors. You must check this box if you are correcting both
Indemonstrated overreported amounts on this form. The amount shown on live 18, if     less than 0, may only be applied as a credit to your form \$44-55 form \$44-55 form.
2. Claim. Check this box if you overreported amounts only and you would like to use the claim process to ask for a refund or abatement of the amount shown on time 18. Do not
12. E check this box if you are connecting ANY underreported amounts on this form.
Part 2: Complete the certifications.  5  5  5  5  5  5  5  5  5  5  5  5  5
14. Special addition to wages for = tas
15. Combine the amounts on lines 7-14 of Column 4
(EXC) payments made to = the second sec
17a. COBRA premium assistance = = ten tenten ten tentententen ten ten
17b. Number of individuals provided = =
18. Total. Combine the amounts in lines 15, 16, and 17a of Column 4
<ul> <li>If you checked line 1, this is the amount you want applied as a credit to your Form 941 or Form 941-SS for the tax period in which you are lining this form. (If you are currently filing a Form 944-SS, Employer's ANNUAL Federal Tax Return, see the instructions.)</li> </ul>
<ul> <li>If you checked line 2, this is the amount you want refunded or abated.</li> </ul>
If line til is more than 0, this is the amount you owe. Pay this amount when you file this return. For information on how to pay, see Amount You Over in the instructions.
Page 2 Form 941-X (Res. 8-2008)

### **990-T**

	III Tax Computation						Pag
	Organizations Taxable as Co Controlled group members (sect Enter your share of the \$50,000, ( (1) 5 2) Enter organization's share of (1).	ions 1561 and 1563) check has \$25,000, and \$9,925,000 taxab \$(3)	re    See in   se income braci	structions and:	100		
	(2) Additional 3% tax (not more t	than \$100,000)		1	▶ 35c		
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-	the amount on line 34 from:	Tax rate schedule or D Sche	Idule D (Form 1		▶ 36		_
7	Proxy tax. See page 16 of the in	structions			► 37		-
8	Alternative minimum tax Total. Add lines 37 and 38 to lin	e 35c or 36, whichever apples			38		-+
_	Tax and Payments	a site of any many state without					-
	Foreign tax credit (corporations att	ach Form 1118: trusts attach Fo	m 1116 4	Ce l			-
ь	Other credits (see page 16 of the			06	100		- 1
•	General business credit. Attach Fo			00	122		- 1
đ	Credit for prior year minimum tax			0d	10.0		- 1
٠	Total credits. Add lines 40a thro				. 40e		-
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2	Other taxes. Check if from: Form 425	15 Form 8611 Form 8657 C	] Form 8866 [](	Wher (allach schedule)	. 42		-+
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ě	2009 estimated tax payments			4c	- 22		- 1
-	Tax deposited with Form 8868 Foreign organizations: Tax paid o	withheld at any you lease instru-		4d	- 33		- 1
-	Backup withholding (see instruct		conversion of the second	40	- 183		- 1
ĩ	Other credits and payments:	Form 2439			- 22		- 1
	Form 4136	C Other	Total P 4	41	12.8		- 1
5	Total payments. Add lines 44a t	through 44f			45		
	Entirements of Array and another factors are not	A REAL PROPERTY AND A REAL	Form 2220 is (	stached . F			
6	Estimated tax penalty (see page	4 of the instructions). Check if					
8	Tax due. If line 45 is less than th	e total of lines 43 and 45, enti-	er amount owe		► 47		_
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## Interns Deb Jung



## Unpaid Staff and DOL

#### Interns or Trainee

- Exempt from the FLSA if legally categorized as an intern
- No minimum wage or overtime
- Must meet all factors of the six factors

#### Employee

• Must be paid minimum wage, overtime, etc.

#### Volunteer

- Not paid any wage or stipend
- Cannot receive any employee benefit
- Can be reimbursed for expenses



### Six-Factor Test

- 1. Training similar to vocational school or educational institution
- 2. Training for the benefit of the trainee
- 3. Trainees don't displace employees & are closely supervised
- 4. Employer gets no immediate advantage from trainee; work may even be impeded
- 5. Trainees not entitled to a job when training concludes
- 6. Trainee and employer understand no wages are due



# **DOL Opinion Letters**

#### • 1983 DOL letter

- To be considered student interns
- should receive college credit
- Involve students in real-life situations
- Provide students with unique educational experiences

#### • 1988 DOL Opinion Letter

- Internship provides student with professional experience in furtherance of education
- \*Academically oriented for benefit of intern



### **Special Issues for Interns**

- Cannot volunteer for job employee does
- Can volunteer for a nonprofit and not meet the six factor test, but not really an "intern"
- Stipends-can be used to reimburse for expenses
- Can pay volunteers a nominal fee IF

they volunteer for state or local gov't

Can pay a subminimum wage to

certain groups





## COBRA Deb Jung



### **COBRA** Extension

- Subsidy extended to employees who are involuntarily terminated through May 31<sup>st</sup>
- What does it mean: only have to pay 35% of health and dental insurance premium for a period of up to 9 months
- Who does it affect: Involuntarily terminated employees and others covered under their policy



## **COBRA** Extension

- What does the employer do: notify the insurer of the employee's eligibility; keep accurate records; determine former employee's eligibility; collect COBRA payments
- The Future: Congress poised to extend the subsidy again; likely to continue through the end of the year





# Unemployment Deb Jung



### **Unemployment Extension**

- Emergency unemployment benefits extended until June 2<sup>nd</sup>
- Legislation pending to extend it again
- Would not apply to those who have previously exhausted all benefits



## **Unemployment Extension**

- Continued access to benefits depends on state guidelines
- Employers will pay out more in benefits (if selfinsured) and premiums will rise for those who buy insurance





# Job's Bill Update Nancy Hall



## Tax Credit Qualification

- Hiring must occur after 2/3/10 and before 1/1/11.
- Credit given for pay after 3/19/10
- Persons hired must be unemployed for at least 60 days.
- Persons must sign an affidavit to that effect.
- No credit to replace person terminated "unless such other person is separated from employment voluntarily or for cause



### What's a W-11



#### 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

Act benefits, including the payroll tax

credit, unless the employee completes and signs this affidavit or similar statement under penalties of perjury and is otherwise a qualified employee.

exemption or the new hire retention

/ / 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	your sibling or stepsibling, your parent or an ancestor of your parent, your stepparent, your niece or nephew, your				
Section references are to the Internal Revenue Code.	<ul> <li>begins employment with you after February 3, 2010, and before January 1, 2011;</li> </ul>	aunt or uncle, or your in-law. An employee also is related to you if he or			
Purpose of Form	she is related to anyone who owns more than 50% of your outstanding stock or				
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	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;	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.			
information above and the employee signs it under penalties of perjury.	<ul> <li>is not employed by you to replace</li> </ul>	If you are an estate or trust, see			
Only employees who meet all the	another employee unless the other employee separated from employment	section 51(i)(1) and section 152(d)(2) for more details.			
may complete this affidavit or similar	downsizing); and	Do not send this form to the IRS. Keep it with your other payroll			
requirements of a qualified employee	voluntarily or for cause (including	Do not send this form to the IRS.			

 is not related to you. An employee is related to you if he or she is your child or a descendent of your child,

Keep it with your other payroll CAUTION and income tax records.

Cat. No. 10744F

Form W-11 (4-2010)



(614)		Rese	ert for this Quarter of 2010
	koyer identification number		k one.)
Nam	e (tot your trade neme)	0"	January, February, March
Trad	Se name (Y ary)	2	April, May, June
A44			July, August, September
	Number Date of ton number	0.	October, November, December
50	Oy Bain SProde		1.2
_	the separate instructions before you complete Form 941. Type or print within the boxes.	S	
1	It is Answer litered questions for this quarter. Number of employees who received wages, tips, or other compensation for the pr	w neriod	
	including: Mar. 12 (Quarter 1), June 12 (Quarter 2), Sept. 12 (Quarter 3), or Dec. 12 (Q		
2	Wages, tips, and other compensation	2	
3	Income tax withheld from wages, tips, and other compensation	3	
4	If no wages, tips, and other compensation are subject to social security or Medic	are tax	Check and go to line 6e.
	Column 7 Column	n 2	Vieport wages/tips for this quart
5a	Taxable social security wages*	•	including those paid to qualifier new employees, on lines 5a-5c
5b	Taxable social security tips*	•	Your liability for exempt wages/t) will be reduced on line 6d (see
50	Taxable Medicare wages & tips* x .029 =		instructions).
5d	Add Column 2 line 5a, Column 2 line 5b, and Column 2 line 5c	50	
60	Number of qualified employees first paid exempt wages/tips this quarter		See instructions for definitions of
66	Number of qualified employees paid exempt wages/tips this quarter		"qualified employees" and "exampt wages tips."
60	Exempt wages/tips paid to qualified employees this quarter	×.062 = 6d	
	Total taxes before adjustments (line 3 + line 5d - line 6d = line 6e)		
78	Current guarter's fractions of cents	74	
75	Current guarter's sick pay		
70	Current guarter's adjustments for tips and group-term life insurance		
	Total taxes after adjustments. Combine lines de through 7c		
	Advance earned income credit (EIC) payments made to employees	0	· · ·
10	Total taxes after adjustment for advance EIC (line 8 - line 9 = line 10)		
11	Total deposits including prior guarter overpayments	11	
12.0	COBRA premium assistance payments (see instructions)	12	
128			
_	Number of individuals provided COBRA premium assistance	_	Complete lines 12c, 12d, and 12 only for the 2nd quarter of 2010
120	Number of qualified employees paid exempt wages/tips March 19-31		
126	Exempt wages/tips paid to qualified employees March 19-31	×.062 = 12	
13	Add lines 11, 12a, and 12e	13	· · ·
14	Balance due. If line 10 is more than line 13, enter difference and see instructions	14	
		-	



# How to Account

- Reduction of payroll taxes?
- Reduction of health care costs? If so, set up subaccount to isolate.
- Miscellaneous income item? (Recommended)

Think about setting liability up on a monthly basis.



# Other Issues

- Coverage extended for young persons under age 27 through parents' insurances.
- Large employers (50 or more) will have to "play or pay" after 2013.
- Grandfathered plans.
- Non-discrimination.
- 10% tax on tanning parlor services.
- Chain restaurants and vending machines must display calorie counts.
- Members of congress must buy "common person" insurance in 2014.





### THANK YOU!

