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U.S. Department of Labor informs multistate employers that New Hire Registry reporting requirements may be met by registered employers reporting to a single state.

Multistate Employers Should Review Their “New Hire” Reporting

By GJ Stillson MacDonnell and William Hays Weissman

Most employers are by now familiar with the general obligation, in existence since October 1, 1997, due to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, to report new hires to the federal New Hire Registry (NHR) through a state reporting process. Some states also have enacted requirements to report independent contractors. What some employers may not know is that when they have employees in multiple states, they may report all new hires to a single state.

In March 2006 the U.S. Department of Labor’s Office of Child Support Enforcement (OCSE) sent out letters to 89,000 multistate employers reminding them of this opportunity. In order to take advantage of the option to report to a single state, an employer must register with the U.S. Department of Health and Human Services (DHHS), and thereafter keep its registration information up-to-date. Also, multistate employers that choose to report to a single state must submit new hire reports electronically or magnetically. Federal law requires new hires to be reported within 20 days of the date of hire, but electronic or magnetic submissions are required twice per month, usually 12 to 16 days apart.

The OCSE also sent letters to approximately 63,000 multistate employers that report all new hires to a single state, but have not yet registered with DHHS. There are two options for reg-

istering with DHHS: (1) by mailing the registration form; or (2) online at <http://151.196.108.21/ocse/>.

In addition to the obligation to report new hires, several states also have reporting requirements for independent contractors. For example, California requires reporting of independent contractors if they are paid over \$600. Also, Maine requires reporting for independent contractors retained by the state itself, while Minnesota requires reporting of independent contractors retained by the state and all political subdivisions (e.g., counties and cities).

The purpose of the reporting requirement is to help locate non-custodial parents who are not making required child support or medical support payments and to help the government collect on delinquent federal student loans. The information reported to the NHR is strictly limited, and can only be disclosed to state agencies administering the Child Support Enforcement Program and the Temporary Assistance for Needy Families Program; the Secretary of the Treasury for purposes of administering the Earned Income Tax Credit Program; the Commissioner of Social Security for purposes of administering Social Security programs; and the Secretary of the Department of Education for purposes of administering the student loan program. Certain other people responsible for enforcing child support orders may

also have access to the NHR; however, creditors are not entitled to obtain the information from the NHR.

Why should multistate employers take advantage of the opportunity to report to a single state? Besides the administrative convenience of only dealing with a single reporting obligation, there are significant differences among the states in the information required to be reported. Federal law only requires that six items be reported: the employee's name, address and social security number; and the employer's name, address, and federal employer identification number (FEIN). These are commonly referred to as the "W-4 elements."

However, some states require additional information that may be time consuming and burdensome to collect and submit. If multistate employers report to all states in which they operate, they might find themselves having to obtain and report different sets of information. For example, in addition to the W-4 elements, California also requires the date of hire and state employer identification number, while Maryland requires the starting date, medical insurance availability, and state unemployment insurance account number in addition to the W-4 elements.

Further, if a multistate employer chooses to report to a state that does not have an independent contractor reporting requirement, the employer does not need to report independent contractors hired in other states, even if such other states require such reporting. Conversely, if an employer chooses to report to a state that does require the reporting of independent contractors, then it must report all independent contractors, even if they are hired in states that do not require such reporting.

Finally, many states have differing penalties for failing to comply with the reporting requirements. For example, several states have a \$25 per employee penalty, with

larger penalties for conspiracy between the employer and employee not to report the new hire. Other states have no penalties at all.

It thus makes sense for multistate employers to review their reporting of new hires to determine whether they may report to a state that only requires the minimum W-4 information, has no penalties for failing to report, and does not require reporting of independent contractors. Such states include: Arkansas, Arizona, Colorado, Kansas, Michigan, Oregon, Virginia and Wyoming. Reporting in these states can save employers time and potentially money as well. Multistate employers should contact their counsel if they have any questions about their reporting obligations.

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