

## New Hire Reporting

This memorandum provides information regarding employers' requirements for reporting newly hired or rehired employees to New York State. This memorandum supercedes **Important Notices N-96-2, N-96-2-A, and N-97-10**, as it is a summary of information contained therein. However, it also contains information concerning temporary employees, teachers, and professional athletes that was not contained in the previously issued Important Notices.

### Purpose of New Hire Program

To facilitate the accurate and prompt determination of child support obligations, Chapter 81 of the Laws of 1995 required that all employers report to the New York State Department of Taxation and Finance certain identifying information about each newly hired employee. This information was required for employees hired on or after March 1, 1996.

Subsequently, federal welfare reform legislation (the Personal Responsibility and Work Opportunity Reconciliation Act of 1996; Public Law 104-193) was enacted which specifies employer reporting responsibilities and requires that all states implement New Hire reporting programs. Chapter 398 of the Laws of 1997 conformed the existing New York State program to the federal requirements, effective October 1, 1997.

The following is a summary of the new hire rules as they apply to employees hired on or after October 1, 1997.

### Requirements

**All employers must report to the New York State Department of Taxation and Finance certain identifying information about each newly hired or rehired employee working in New York State.**

- An *employer* for new hire purposes is defined the same as for federal income tax withholding purposes (Section 3401(d) of the Internal Revenue Code of 1996)<sup>1</sup>. This includes employers of domestic help, labor organizations (including hiring halls), and governmental entities (except for federal agencies, which report directly to the National Directory of New Hires).

---

<sup>1</sup>The term *employer* means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that: (1) if the person for whom the individual performs or performed services does not have control of the payment of the wages for such services, the term *employer* means the person having control of the payment of such wages; and (2) in the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term *employer* means such person.

- Employers have **20 calendar days** from the hiring date to report newly hired or rehired employees who will be employed in New York State. If an employer reports by magnetic media (magnetically) or electronically, the employer must report using two monthly submissions (if needed) not less than 12 nor more than 16 days apart.
- Employers may consider the hiring date to be any of the following:
  - the date the employee signed federal Form W-4, *Employee's Withholding Allowance Certificate*; **or**
  - the date the employee is appointed to a position; **or**
  - the first day of work; **or**
  - the date of first payment for service (latest acceptable date).

Employers do not have to indicate which option they choose and may switch to an alternate acceptable date at any time. In no instance, however, may the hiring date be later than the date of the first payment for services.

- The following information must be provided for each employee:
  - employee name (first, middle initial, last)
  - employee address (street, city, state, and ZIP code)
  - employee social security number
  - employer name
  - employer address (street, city, state, and ZIP code)
  - employer identification number (assigned by the Internal Revenue Service).
- The required information can be reported by submitting a completed and legible copy of the employee's federal Form W-4, *Employee's Withholding Allowance Certificate*, or an equivalent form as developed by the employer. Since employees complete the W-4 form, employers must review the form to ensure the information is complete and legible, **including boxes 8 and 10 regarding the employer's name, address, and identification number**. Reports may be furnished by first class mail, by private delivery services, magnetically, or electronically. (Only copies of W-4s for newly hired or rehired employees must be filed; copies of W-4s for existing employees who change deduction amounts or other information are not required to be submitted.)
- Employers who have employees in more than one state **and** who report magnetically or electronically may designate one state (in which he or she has employees) to report newly hired employees. Those multistate employers electing one state must notify the federal Department of Health and Human Services as to which state has been selected for reporting. Mail the multistate notification to: Department of Health and Human Services, Multistate Employer Registration, Office of Child Support Enforcement, Box 509, Randallstown MD 21133.

- Employers who are required to report to New York State (and multistate employers who designate New York as their reporting state) should submit the new hire information to:

New York State Department of Taxation and Finance  
New Hire Notification  
PO Box 15119  
Albany NY 12212-5119

or by fax to (518) 438-3715

Magnetic media filers may obtain updated specifications by contacting Employer Outreach at (518) 438-3152.

- The penalty for failure to timely report newly hired employees or for failure to file a report showing the required information is \$20, multiplied by the number of employees not reported or the number of false or incomplete reports filed. However, if the failure is a result of a conspiracy between the employer and employee, the penalty will be \$450, multiplied by the number of employees not reported or the number of false or incomplete reports filed .

## **Rules for Specific Types of Employment**

### **Seasonal Employees and Employees Recalled From Layoffs**

When seasonal employees or employees recalled from layoffs return to work, a question arises as to whether or not they must be reported as newly hired or rehired employees. The answer depends on the length of the **break in service**. If the break in service is 60 calendar days or less, then the employee does not have to be reported. If the break in service is more than 60 calendar days, then the employee must be reported. New hire information must be submitted on another report, or if the employee completes a new W-4, a copy of the new W-4 may be submitted.

### **Temporary Employees**

Employers paying temporary employees directly must report them under this program. However, employers who purchase the employee services from a temporary service agency do not have to report these employees if they remain employed by the agency. They must be reported by the temporary service agency within 20 days of the hiring date, and are not required to be reported each time they are assigned to an employer-client. This also applies to employee leasing firms.

The 60-day rule applied to seasonal employees and employees recalled from layoffs does not apply to employees of temporary agencies. These employees must be reported as new hires at the beginning of their engagement with the temporary agency, and again only if they were terminated by the agency or removed from its payroll records and then rehired.

## **Placement Agencies**

A placement agency is not responsible for reporting its individual clients because the clients are not employees of the agency. When the client obtains employment through the service of the placement agency, the employer is then responsible for reporting the newly hired employee.

## **Teachers and Professional Athletes**

Teachers and other employees of educational institutions who are paid an annual salary are not considered to be rehired when they return to school in September. This is true even if they are not required to report to school for more than a 60-day period.

The above policy also applies to professional athletes and employees of professional teams who are paid an annual salary and work less than a full calendar year.

## **Questions and Answers on Reporting New Hire Information**

**1. For whom must this information be reported?**

*All newly hired employees, whether hired for the first time or rehired, regardless of the type of employment, amount of remuneration, or status of the employer (such as for profit, not-for-profit, or government), must be reported. Household employers must also report newly hired employees.*

**2. For purposes of this program, who is considered to be an employee who must be reported?**

*Any newly hired or rehired person who works in New York State must be reported, whether or not the person is a resident of New York State.*

**3. What information must be reported for each newly hired or rehired employee?**

*The information required to be reported includes the employer's federal employer identification number, name, and address, and the employee's social security number, name, and address.*

**4. When must this information be filed?**

*The required information must be filed within 20 days of the hiring date. Employers who report by magnetic media or electronically must report using two monthly transmissions (if needed) not less than 12 nor more than 16 days apart.*

**5. What is the "hiring date" considered to be?**

*Employers may consider the hiring date to be the date the W-4 is signed, the appointment date, the first day of work, or the date of the first payment for service (the latest acceptable hiring date).*

**6. Can employers substitute either manually- or computer-produced listings of newly hired employees in place of copies of W-4s?**

*Yes. Employers may substitute listings or other written formats provided all the required information is included.*

**7. Can employers submit the New York State Form IT-2104, *Employees's***

***Withholding Allowance Certificate - New York State, City of New York, City of Yonkers, instead of the federal W-4?***

*Yes, provided that all the required information is reported.*

- 8. The requirements state that an employee's name must be provided in the following order: first name, middle initial, last name. Can employers provide the name in a last name, first name, middle initial order?**

*Yes. The order of the name as stated in the requirements corresponds to the order specified for federal Form W-4. Employers who provide this information in a listing or other written format may provide the name in the alternative order.*

- 9. Must employees who discontinued services within 20 days of being hired still be reported?**

*Yes. These individuals were still employees and must be reported.*

- 10. Employers sometimes transfer employees working in other states to New York State. Must these employees be reported for the new hire reporting program?**

*No. These employees are not newly hired or rehired by the employer, but merely transferred from another state.*

- 11. Can employers submit a report of all new employees hired anywhere in the country with an indicator of the state in which they work?**

*Multistate employers who report magnetically or electronically may designate one state (in which he or she has employees) to report newly hired*

*employees. See page 2 of this memorandum for more details.*

*For employers who do not report magnetically or electronically, only newly hired employees working in New York State must be reported, and employees who do not work at all in New York State must not be reported.*

- 12. Must all employees be reported as new hires in the case of takeovers, mergers, and consolidations by employers?**

*No, not if these employees have been previously reported through the quarterly wage reporting system.*

- 13. What do employers report for nonresident aliens who do not receive social security numbers?**

*Employees who legitimately do not have social security numbers still must be reported. Employers should enter **not required** in the space for social security number on their submission.*

- 14. What does an employer report for a newly hired employee who does not yet have a social security number?**

*Employees who do not have social security numbers must still be reported. The employer should enter **applied for** in the social security number field on the report.*

- 15. Must the employee's physical address be reported, or is a post office box sufficient for an employee's home address? (For example, the employee may want a post office box for receiving a paycheck from the employer.)**

*A post office box is sufficient for an employee's home address, because we do not intend to modify the W-4 process. We*

*recognize the main purpose of the W-4 is to provide federal income tax withholding information to employers.*

**16. What date does the Tax Department use for determining timeliness — the postmark or the received date?**

*For reports delivered by the U.S. Postal Service, we use the postmark date for determining if the report was submitted in*

*time. Taxpayers can use certain private delivery services, in addition to the U.S. Postal Service, with the assurance that timely mailed reports will be considered timely filed. For rules for determining the “postmark dates” when using a designated delivery service, refer to TSB-M-97(02) I. If neither the U.S. Postal Service nor a designated delivery service is used, we use the received date.*

Please direct questions regarding this program to the Business Tax Information Center at 1 800 972-1233. The call is toll free from anywhere in the U.S. (including Alaska and Hawaii) and Canada. For information, you can also call toll free (from New York State only) 1800 CALL TAX (1 800 225-5829). From areas outside New York State, call (518) 438-8581. Telephone assistance is available from 8:30 a.m. to 4:25 p.m., Monday through Friday.

If you need to write, address your letter to: NYS Tax Department, Taxpayer Assistance Bureau, W A Harriman Campus, Albany NY 12227.