

NEW YORK EMPLOYERS' QUARTERLY WAGE AND NEW HIRE REPORTING REQUIREMENTS EXPANDED BY CHILD SUPPORT LEGISLATION

By Scott J. Wenner and Alizah Z. Diamond

New York employers are now required under recently effective amendments to the New York State Tax Law to report the availability of dependent health care coverage to employees when filing mandatory quarterly wage and new hire reports with the State.

The Low Income Support Obligation and Performance Act, signed by Governor Cuomo July 15, 2010, Laws of 2010, ch. 182 (the "Act"), amends provisions of the New York State Tax Law, the Family Court Act, the Domestic Relations Law and the Social Services Law, in relation to employer reporting of new hires and quarterly earnings, the modification of child support orders, work programs and the noncustodial earned income tax credit. As described in more detail below, Sections 3 and 4 of the Act specifically amend the Tax Law §§ 171-a and 171-h to require employers to report the availability of employer-sponsored family health insurance for each employee.

The stated purpose of the Act is to amplify support for and benefits available to children in the State's child support program and address issues concerning children in the program from low income families. The Act's new reporting requirements, which took effect on July 15, 2011, are considered part of the Governor's effort to provide universal health coverage for New York children. They are intended to increase access to available employer-sponsored health insurance or, where not available, identify where public coverage is needed, for children served through the State child support program.

Quarterly Wage Reports — New York Tax Law §171-a

Under the New York Tax Law §171-a, New York employers must file quarterly wage reports with the New York State Tax Department that provide certain information, including, among other items, the name, Social Security number and gross wages paid to each of its employees who either reside or are employed in the State. Quarterly reports are made on Form NYS-45, Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return.

The Act amends §171-a to require an employer's quarterly report also to state whether employer-provided dependent health insurance benefits are available to each of its employees. The State is in the process of revising Form NYS-45 to include a new entry for the availability of dependent health insurance benefits, beginning with the third quarter (July 1 – September 30) of 2011. Employers will be liable for penalties for failure to comply with the quarterly reporting requirements.

New Hire Reports — New York Tax Law § 171-h

New York Tax Law § 171-h requires New York employers to report to the State Tax Department within 20 calendar days of the hiring or rehire date certain identifying information about newly hired or rehired employees who work in the State. The required information includes, *inter*

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alia, the name, address and Social Security number of each employee. Previously, employers could complete the reporting obligations by submitting a Form IT-2104, Employee's Withholding Allowance Certificate, or Form IT-2104-E, Certificate of Exemption from Withholding, or a copy of the employee's federal Form W-4. That no longer will be the case.

The Act amends §171-h to expand an employer's new hire reporting obligations to include: (i) whether dependent health insurance benefits are available to a newly hired or rehired employee and, if so, (ii) the date that the employee qualifies for such benefits. This information must be reported with all previously required information on an updated Form IT-2104 or Form IT-2104-E. Submitting an employee's federal Form W-4 is now insufficient to satisfy an employer's new hire reporting obligations without also submitting an updated Form IT-2104 or Form IT-2104-E. Updated Forms IT-2104 and Forms IT-2104-E can be found at the Tax Department's website at www.tax.ny.gov/forms/withholding_cur_forms.htm. Employers may also report new hire information electronically through the Tax Department's New Hire website at www.nynewhire.com.

What it Means for You

Compliance with the new reporting requirements of the Low Income Support Obligation and Performance Act will require added effort and oversight. New York employers should immediately contact and work with their human resources departments and/or payroll providers to: (i) determine whether and what dependent health

coverage is available to employees, (ii) identify employees who are eligible for dependent health coverage, if any, and (iii) the dates on which employees qualified for such benefits. Employers should also routinely confirm that their human resources departments or payroll providers are regularly monitoring and storing this information for reporting purposes, using the correct Form NYS-45, Form IT-2104 or Form IT-2104-E and that the quarterly and new hire reports contain all new information required by the Act. ♦

This document is a basic summary of legal issues. It should not be relied upon as an authoritative statement of the law. You should obtain detailed legal advice before taking legal action.

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