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Clearance #5414
Child Support: New Hire Reporting Program
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To: All Clearance Reviewers

From: Barbara E. Riley, Director

Subject: New Hire Reporting Program rule

The Office of Child Support proposes to adopt rules 5101:12-10-90 "New hire reporting program", 5101:12-10-90.1 "Employer responsibilities", 5101:12-10-90.2 "New hire directory of employees", and 5101:12-10-90.3 "New hire directory of independent contractors", and to rescind 5101:1-30-12 "New hire". The rule has been reorganized and revised for clarity, and also incorporates into the rules changes to the Ohio Revised Code provisions concerning the new hire reporting program contained in House Bill 200 from the 125th General Assembly, which was signed by Governor Taft in December 2004.

Specific changes include:

- Consolidation into a single rule of definitions for "independent contractor", "employer", "employee", and "professionally licensed person" as revised or created by House Bill 200, and amended language regarding use of new hire reports;
- Consolidation of employer responsibilities into a single rule including revisions pursuant to House Bill 200;
- Consolidation of requirements surrounding the new hire directory of employees into a single rule including revisions pursuant to House Bill 200;
- Establishment of a rule describing the requirements surrounding the new hire directory of independent contractors created pursuant to House Bill 200, including a description of ODJFS and CSEA responsibilities.

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5101:1-30-12– ~~New hire.~~ 5101:12-10-90 New hire reporting program.

- (A) Federal Law requires the implementation of a new hire reporting program in each state to accomplish the purpose of locating parents, establishing paternity, and establishing and enforcing support obligations of parents. This rule and its supplemental rules describe the Ohio new hire reporting program.
- (B) The following definitions shall be used in this rule and its supplemental rules.
- (1) "Contractor" means an individual who provides services to an employer as an independent contractor for compensation that is reported as income other than wages and who is an individual, the sole shareholder of a corporation, or the sole member of a limited liability company. "Contractor" does not include any of the following
- (a) An individual performing intelligence or counterintelligence functions for a state agency if the head of the agency has determined that reporting pursuant to this section could endanger the safety of the individual or compromise an ongoing investigation or intelligence mission;
- (b) A professionally licensed person who is providing services to the employer under that license;
- (c) An individual who will receive for the services provided under the contract compensation of less than two thousand five hundred dollars per year.
- (2) "Employee" means an individual who is employed to provide services to an employer for compensation ~~to an employer and includes an individual who provides services to an employer under a contract as an independent contractor, and who is an individual, the sole shareholder of a corporation, or the sole member of a limited liability company~~ that is reported as income from wages. "Employee" does not include an individual performing intelligence or counterintelligence functions for a state agency, if the head of the agency has determined that reporting pursuant to this paragraph could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.
- (3) "Employer" means any person or government entity other than the federal government for which an individual performs any service, of whatever nature, as the employer or contractor of such person, except that:
- (a) If the person for whom the individual performs services does not have control of the payment of compensation for the services, employer means the person having control of the payment of the compensation.
- (b) In the case of a person paying compensation on behalf of a nonresident alien individual, foreign partnership, or foreign corporation not engaged in trade or business within the United States, "employer" means the person paying the compensation.
- (c) In the case of compensation paid to a contractor, "employer" does not include any person or entity that lacks a federal employer identification number.

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(4) "Professionally licensed person" has the same meaning as in section 2925.01 of the Revised Code.

(C) The new hire reports required by these rules shall not be considered public records for purposes of section 149.43 of the Revised Code. ~~The director of ODJFS may adopt rules under section 3125.51 of the Revised Code governing access to, and use and disclosure of, information contained in the new hire reports.~~ ODJFS may disclose information in the new hire reports to any agent of the department or CSEA that is under contract with the department for the purposes listed in paragraph ~~(J)(E)~~ of ~~this rule~~ 5101:12-10-90.2 and paragraph (D) of rule 5101:12-10-90.3. The department may submit to the bureau of workers' compensation a copy of any new hire report it receives.

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5101:12-10-90.1 Employer responsibilities.

- (A) ~~Except as provided in paragraph (A) of this rule, every~~ Every employer shall make a new hire report to the department of job and family services (ODJFS) regarding the hiring, rehiring, or return to work as an employee, or the completion of a contract for the performance of services as a contractor, of a person who resides, works, or will be assigned to work in this state to whom the employer anticipates paying compensation.
- (B) An employer with employees or contractors in two or more states that transmits new hire reports magnetically or electronically may make the new hire report to another state if the employer does both of the following:
- (1) Notifies ODJFS and the United States Secretary of Health and Human Services in writing that the employer has designated another state as the state to which the employer will transmit the report;
 - (2) Transmits the report to that state in compliance with federal law.
- (C) An employer shall include all of the following in each new hire report:
- (1) ~~The~~ For each employee, the employee's name, address, date of birth, social security number, and date of hire, rehire, or return to work;
 - (2) For each contractor, the contractor's name, address, social security or tax identification number, the date payments begin, and the length of time the contractor will be performing services for the employer;
 - ~~(2)(3)~~ The employer's name, address, and identification number.
- (D) An employer may make a new hire report by submitting a copy of the United States Internal Revenue Service form W-4 (employee's withholding allowance certificate) for the employee, a form provided by ODJFS, or any other hiring document or date storage device or mechanism ODJFS authorizes. An employer may make the new hire report by mail, fax, magnetic or electronic means, or other means ODJFS authorizes. If an employer makes a new hire report by mail, the date of making the report is the postmark date if the report is mailed in the United States with first-class postage and is addressed as ODJFS authorizes. An employer shall make the new hire report not later than twenty days after the date on which the employer hires or rehires an employee or the employee returns to work or the date on which the employer engages or re-engages the contractor of the contractor resumes providing services under the contract.
- (E) An employer that fails to make a new hire report shall be ~~required by~~ liable to ODJFS to ~~pay a fee of not more than~~ for a civil penalty of twenty-five dollars for each failure to make a report. If the failure to make a new hire report is the result of a conspiracy between the employer and the employee not to supply the report or to supply a false or incomplete report, ~~ODJFS shall require the employer to pay a fee of not more than~~ shall be liable for civil penalty of five hundred dollars for each such failure.

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5101:12-10-90.2 New hire directory of employees

- (A) ODJFS shall, within five days of receipt from an employer of a new hire report regarding an employee, enter the information described in section 3121.892(A)(1) of the Revised Code into the new hire directory of employees, which shall be part of or accessible to the automated data processing system required pursuant to section 3125.07 of the Revised Code.
- (B) ODJFS shall make comparisons of the social security numbers obtained pursuant to section 3121.892(A)(1) of the Revised Code and the social security numbers appearing in the case registry maintained pursuant to sections 3121.81 to 3121.86 of the Revised Code.
- (C) If the comparison conducted by ODJFS described in paragraph ~~(G)~~ (B) of this rule results in a match, the support enforcement tracking system (SETS) will automatically generate, within two business days, a JFS 04047, "Notice to Income Provider to Withhold Obligor Income/Assets," to the employer pursuant to section 3121.03 of the Revised Code, unless the employee's income is not subject to withholding, and shall take any other appropriate action under Chapters 3119, 3121, 3123, and 3125 of the Revised Code.
- (D) Within three business days after information is entered into the new hires directory, ODJFS shall furnish the information to the national directory of new hires. ODJFS shall furnish to the national directory of new hires on a quarterly basis, such information contained in the records of the department as is required by state and federal law.
- (E) ODJFS shall use the new hire reports it receives to locate individuals for the purposes of establishing paternity; for establishing, modifying, and enforcing support orders being administered by child support enforcement agencies in this state; and to detect fraud in any program administered by the department.

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5101:12-10-90.3 New hire directory of independent contractors

- (A) The Ohio department of job and family services (ODJFS) shall, within five days of receipt from an employer of a new hire report regarding an independent contractor, enter the information described in section 3121.892(A)(2) of the Revised Code into the new hire directory of independent contractors.
- (B) ODJFS shall make comparisons of the social security numbers obtained pursuant to section 3121.892(A)(2) of the Revised Code and the social security numbers appearing in the case registry maintained pursuant to sections 3121.81 to 3121.86 of the Revised Code.
- (C) If the comparison conducted by ODJFS described in paragraph (B) of this rule results in a match, ODJFS shall notify the child support enforcement agency (CSEA) with administrative responsibility for the case in which the social security number matches that of the obligor.
- (D) The CSEA shall use the new hire reports it receives to locate individuals for the purposes of establishing paternity; for establishing, modifying, and enforcing support orders being administered by child support enforcement agencies in this state; and to detect fraud in any program administered by the department.