

Joel N. Kessler, CPA (NY & FL)  
Philip A. Liscia, CPA  
Rebecca Gonzalez, CPA  

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Debra Timms, CPA

The logo for Kessler & Liscia, PC features a stylized blue and black graphic above the company name. The name is in a serif font, with "Kessler & Liscia, PC" in a larger size and "Certified Public Accountants" in a smaller size below it.

**KESSLER & LISCIA, PC**  
Certified Public Accountants

910 Middle Country Rd  
Selden, NY 11784  
Phone: 631-732-7575  
Fax: 631-732-7161  
www.KesslerLiscia.com

## *Employee Documentation*

A couple of years ago we issued this bulletin on employee documentation. Since there have been changes in the law we decided to update this bulletin to keep you informed of the new laws. On a regular basis our clients ask us pertinent questions regarding human resources. What forms do new employees have to fill out? What belongs in a personnel file? How long do I have to keep payroll records? Since this is an important topic, we decided to share some valuable information with you.

### **New Employee Packet**

Ideally, new employees should fill out any job-related paperwork before their first day of work. To speed the process, have new employee packets on hand to give to out the day the new employee accepts the job. If employment paperwork isn't filled out prior to a new employee's first day on the job, make completion of paperwork the person's first on-the-job task. Never wait more than a day after an employee's hire date to get important documents signed. If you wait too long, the paperwork could be rendered ineffective. Typically, your new employee packet should include the following paperwork:

- 1) **IRS Form W-4:** Each employee must complete this form for the company to determine the appropriate level of tax withholding. A copy of this form is attached for you to photocopy.
- 2) **State Employee Withholding Allowance Form (Form IT-2104 for New York):** Each employee must complete this form for the company to determine the appropriate level of tax withholding for their state. A copy of the New York form is attached for you to photocopy.
- 3) **INS Form I-9:** This form is required by the United States Immigration and Naturalization Service. A copy of this form is attached for you to photocopy.
- 4) **NYS Notice and Acknowledgement of Wage Rate and Designated Payday:** This form is required by NYS for all employees hired on or after October 26, 2009. The employer completes the form and both the employer and employee sign it. A copy is given to the employee and the original is kept in the employee's personnel file. A copy of this form is attached for you to photocopy.
- 5) **IRS Form W-11:** Under the Hiring Incentives to Restore Employment (HIRE) Act, an employer may qualify for a temporary tax incentive equal to 6.2% of wages on qualified newly-hired employees. A qualified employee begins employment after February 2, 2010 and before January 1, 2011, has not been employed for more than 40 hours total during the previous 60 days, is not hired to replace another employee unless the previous employee was separated from employment voluntarily or for cause, and is not a family member of the business owner. This form is an affidavit attesting that the employee is qualified. (See more information later in this bulletin)
- 6) **Emergency Notification Form:** This form advises the company of whom to contact in the event of an emergency.
- 7) **Employee benefit elections:** If your business provides employee benefit programs such as medical insurance or pension plans, the employee should sign up and provide relevant information (identifying dependents, making required elections, etc.).
- 8) **Employee Handbook:** If you have an employee handbook or a policy and procedure manual, get a receipt that the employee has received and reviewed it.

## **New Hire Reporting**

All employers must report to their state information about every newly hired or rehired employee. Employers have 20 calendar days from the date of hire to report this information. This can be accomplished by submitting a completed and legible copy of the employee's federal Form W-4 to your state. In New York State you can mail the copy to New York State Department of Taxation and Finance, New Hire Notification, PO Box 15119, Albany NY 12212-5119 or send a copy by fax to (518) 869-3318. NYS also has a new hire website at [www.nynewhire.com](http://www.nynewhire.com) where you can easily sign up to report your new hires online. Special rules apply to those who are required to report electronically and for those who have employees in multi states. Please contact our office for further information if either of these applies to your company.

## **Personnel Files**

A personnel file is a historical record of information pertaining to an employee from the date of hire. Your employee personnel files may contain many items, including the following:

- 1) Job application and resume
- 2) Emergency Notification Form
- 3) Reference checks
- 4) Pre-employment tests
- 5) Job description
- 6) Form W-4 and State Employee Withholding Allowance Form
- 7) Form NYS Notice and Acknowledgement of Wage Rate and Designated Payday
- 8) Form W-11 (if qualified)
- 9) Employee benefit elections
- 10) Receipt for employee handbook
- 11) Development records such as training, education, and degrees
- 12) Work history including date of hire, performance evaluations, disciplinary letters, special awards, commendation letters, etc.
- 13) Time and attendance records including sick days, vacation days, etc.
- 14) Status changes (address, name, job position, etc.)

It is important to keep medical records and data separate from the employee's personnel file. This includes medical histories, worker's compensation information, drug tests, therapy, and the like. Since government agencies can audit certain records, companies may want to keep some records in a separate location. This allows the company to easily make available to auditors only the requested information.

## **I-9 Forms**

The law requires employers to properly complete and retain a Form I-9 for every current employee hired after November 6, 1986. The Form I-9 should be filled out no later than the first day of employment. The employer must examine original documents to establish identity and work eligibility within three business days, and complete Section 2 of the form. The Immigration Reform and Control Act imposes penalties on employers who knowingly hire or continue to employ persons who are not authorized to work in the United States.

All I-9 forms and any photocopies of supporting documents must be maintained *separately* from the employee's personnel file. Penalties may be imposed if the I-9 forms are stored in the employee's personnel file. I-9s should remain locked or access to the room where they are stored should be limited to authorized personnel.

## **I-9 Forms (continued)**

An employer cannot specify that a Social Security card be presented for I-9 purposes. However, an employer can register with the Social Security administration to have access to verify names and Social Security numbers online and receive immediate results. Visit Social Security online at <http://www.ssa.gov/employer/ssnv.htm#verify> for further information or to register.

## **Labor Laws**

Employers should be aware of and comply with the poster requirements of the laws administered by the U.S. Department of Labor and their state Department of Labor. These poster requirements include:

### **Mandatory Federal Labor Law Posters**

- Occupational Safety and Health Act – OSHA
- Federal Minimum Wage notice
- Employee Polygraph Protection Notice
- Employment Opportunity
- Family and Medical Leave Act of 1993
- USERRA – The Uniformed Services Employment and Reemployment Rights Act
- These forms can be downloaded at <http://www.dol.gov/oasam/programs/osdbu/sbrefa/poster/matrix.htm>

### **Mandatory New York Labor Law Posters**

- Discrimination
- Criminal Convictions Record Law Article 23-A
- New York State Minimum Wage notice
- DOSH – NYS Department of Labor’s Division of Safety and Health
- Notice of Pay Rate and Payday for New Hires
- These forms can be downloaded at <http://www.labor.state.ny.us/workerprotection/laborstandards/employer/posters.shtm>

Please note that additional postings could apply to your industry, and some employers may not be covered by each of the statutes and therefore may not be required to post a specific notice. If you would like a copy of these forms, please contact our office and we would be happy to provide you with a set of these posters.

## **Record Retention**

There are federal regulations on how long certain records must be maintained. Some states go beyond federal requirements and may require records to be kept for a longer period of time. The following is a simplified guide to follow:

<b>EMPLOYEE RECORDS</b>	<b>RETENTION PERIOD</b>
Benefit Plans	Permanent
Employee files (ex-employees)	7 years or statute of limitations for employee lawsuits)
Employment applications	3 years
Employment taxes	7 years
Payroll records	7 years
Pension/profit sharing plans	Permanent

## Payroll Taxes

Employers are responsible to withhold payroll taxes, such as federal and state withholding tax, Social Security tax, and Medicare tax, from their employee's gross wages. Employers are responsible for prompt remittance of these taxes along with the employer's portion of Social Security and Medicare taxes. Employers are also responsible for remitting prompt payments for other withholdings such as health insurance premiums, or 401(k) deferrals. Employers are responsible to maintain mandatory disability insurance, workers compensation insurance, as well as federal and state unemployment insurance.

## Hiring Incentives to Restore Employment (HIRE) Act

On March 18, 2010 the HIRE Act was signed into law. This act was designed to encourage employers to hire and retain new workers. Under this act an employer may qualify for a temporary tax incentive equal to 6.2% of wages on qualified newly-hired employees. A qualified employee begins employment after February 2, 2010 and before January 1, 2011, has not been employed for more than 40 hours total during the previous 60 days, is not hired to replace another employee unless the previous employee was separated from employment voluntarily or for cause, and is not a family member of the business owner. Employers are required to get a signed statement from each eligible new hire, certifying under penalties of perjury, that he or she is qualified. Form W-11 Employee Affidavit can be used to meet this requirement. Employers should retain this form in the employee's personnel file. This incentive exempts the employer from their share of Social Security tax on wages paid to these workers from March 19, 2010 through December 31, 2010, but does not have an effect on the employee's future Social Security benefits.

Employers claim the payroll tax exemption on their federal employment tax return (Form 941) which is filed with the IRS quarterly. Eligible employers will be able to claim the new tax incentive on their revised employment tax form beginning with the second quarter of 2010. The payroll tax exemption for wages paid during the period March 19, 2010 through March 31, 2010 will be claimed on the employer's Form 941 for the second quarter of 2010.

The HIRE Act also provided a general business tax credit. For each qualified employee retained for at least a year whose wages did not significantly decrease in the second half of the year, businesses may claim a new hire retention credit of up to \$1,000 per worker on their 2011 income tax return.

The Work Opportunity Tax Credit (WOTC) offers tax savings to businesses that hire employees belonging to various targeted groups. These groups include people ages 18 to 39 living in designated communities in 43 states and the District of Columbia, recipients of various types of public assistance, certain veterans, ex-felons and certain youth workers. The instructions for Form 8850 detail the requirements for each of these groups. Certification by the state workforce agency is generally required. Normally, a business must file Form 8850 with the state workforce agency within 28 days after the eligible worker begins work.

An eligible employer **can** claim both the WOTC and the **new hire retention credit** for the same employee. However, an employer may **not** claim both the **payroll tax exemption** and the WOTC for the same employee. Therefore, any employer that chooses to apply the exemption to wages paid to a qualified employee may not receive the WOTC on any wages paid to that employee during the one-year period beginning on the employee's hiring date.

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New changes in the law from the Patient Protection and Affordable Care Act and the Health Care Education Affordability Reconciliation Act are not covered in this bulletin. Kessler & Liscia, P.C. will be issuing a bulletin in the near future explaining how these laws will have an effect on you and your business.

Although this does not cover all topics related to human resources, we hope this information is of help to you. Please be advised that the information included in this bulletin is not intended as legal advice. If you have additional questions regarding your employee records do not hesitate to contact us.