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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 font below it.

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## ***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:** Effective April 9, 2011, all employers are required to give employees at the time of hire (before work is performed), on or before February 1 of each year, or before a change in pay rate or pay day, notice of the following:
  - The employee's rate or rates of pay
  - The overtime rate of pay, if the employee is subject to overtime regulations
  - The basis of wage payment (per hour, per shift, per week, piece rate, commission, etc)
  - Any allowances the employer intends to claim as part of the minimum wage, including tip, meal and lodging allowances
  - The regular payday
  - The employer's name and any names under which the employer does business (DBA)
  - The physical address of the employer's main office or principal place of business and, if different, the employer's mailing address
  - The employer's telephone number.

Employers must provide the notice in English and the employee's primary language. The DOL has prepared templates for several common types of pay agreements, including dual language versions (available on the department's website ([www.labor.ny.gov](http://www.labor.ny.gov))). The employee must receive a signed copy of this form and the employer must keep the original for 6 years.

**New Employee Packet** *(continued)*

- 5) **Emergency Notification Form:** This form advises the company of whom to contact in the event of an emergency.
- 6) **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.).
- 7) **Employee Handbook:** If you have an employee handbook or a policy and procedure manual,

**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. It is important to note that previously an employer could report new hire information using federal Form W-4. However, since this form does not require information with respect to dependent health insurance benefits, an employer may no longer submit new hire information using only the federal Form W-4. Instead, the employer must supplement or replace the Form W-4 with the Form IT-2104, Employee's Withholding Allowance Certificate or Form IT-2104-E, Certificate of Exemption from Withholding. To report his new hire information, employers may use a variety of mechanisms, including:

- online at [www.nynewhire.com](http://www.nynewhire.com)
- electronically: contact Employer Outreach at (518) 320-1079 for current specifications;
- first class mail, private delivery service, or fax  
New York State Department of Taxation and Finance,  
New Hire Notification,  
PO Box 15119, Albany NY 12212-5119  
Fax to (518) 869-3318.

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.)

## **Personnel Files** (continued)

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.

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>

### **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
- NYS Human Rights
- NYS Dept. of Labor Wage Theft Prevention Act
- These forms can be downloaded at <http://www.labor.state.ny.us/workerprotection/laborstandards/employer/posters.shtm>

## **Labor Laws (continued)**

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.

## **New Jobs Credit**

New federal legislation signed in law on November 21, 2011 -- called the *Vow to Hire Heroes Act* -- provides an expanded jobs credit to employers who hire out-of-work veterans.

The new law allows a maximum tax credit of \$2,400 for employers who hire veterans who have been out of work for at least one month. The maximum credit is increased to \$5,600 for hiring veterans who have been unemployed for a minimum of six months. And the maximum credit per worker jumps to \$9,600 for employers who hire unemployed vets with a service-connected disability.

This legislation amends the current rules for the Work Opportunity Tax Credit. Generally, employers may claim a maximum tax credit of up to \$2,400 for hiring a worker from one of several economically-disadvantaged "target" groups, including qualified veterans.

The WOTC is equal to 40 percent of the first \$6,000 of qualified wages. A maximum credit of \$4,800 is available for hiring veterans with service-connected disabilities. For 2009 and 2010 only, unemployed veterans were treated as a target group eligible for the maximum \$2,400 credit. The WOTC is scheduled to expire after 2011, but could be extended.

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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.

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.