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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 "Certified Public Accountants" in a smaller, sans-serif font below it.

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The Low Income Support Obligation and Performance Improvement Act

The Low Income Support Obligation and Performance Improvement Act (hereinafter “the Act”) requires employers of individuals working in the State of New York to provide information on the availability of dependent health insurance benefits to their employees. Beginning July 15, 2011, the Act requires employers to report this additional employee information on two different forms that are regularly provided to the New York State Department of Taxation and Finance:

- the new hire report that must be submitted 20 days from the hiring date of all new or rehired employees working in the State of New York; and
- Form NYS-45 Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return.

Following is a summary of the new reporting requirements for each form.

NEW HIRE REPORTING

In the State of New York, employers must report all new or rehired employees to NYS. The Act ADDS new requirements to the already existing requirements. Before the Act became effective, all employers who hired or rehired a person working in New York State were required to report the newly hired or rehired employee's name, address and Social Security number within 20 calendar days of the employee's hiring date. Now, all employers, including for-profit, not-for-profit, government and household employers, must include additional information regarding the availability of dependent health insurance benefits to the new employee, and the date the employee is eligible for these benefits.

To report this new hire information, employers may use a variety of mechanisms, including:

- online at 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: (518) 320-1080

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.

If an employer's new hire reports do not include the required dependent health insurance benefits information, the Commissioner will assess a penalty of \$20 per number of incomplete reports filed. If an employer fails to file a timely report, the employer will be subject to a penalty of \$20 per the number of employees not reported.

QUARTERLY WAGE WITHHOLDING FORM (FORM NYS-45)

Any employer liable for New York State unemployment insurance contributions or who withholds New York State income tax from an employee's wages must file Form NYS-45 each calendar quarter. In accordance with the Act's new requirements, when submitting Form NYS-45, an employer must report if dependent health insurance benefits are available to any employees working in New York State. This requires the employer to check a box on Form NYS-45 indicating either "yes" or "no" in regards to the availability of these benefits. Beginning with the third quarter of 2011, Form NYS-45 will be updated to accommodate this information.

In the event an employer fails to provide complete and correct quarterly wage withholding information, and subsequently fails to file a corrected Form NYS-45 within 30 days of receipt of a written request to do so from the Commissioner, a penalty equal to the greater of \$1,000 or \$50 times the number of employees shown on the last Form NYS-45 (up to a maximum of \$10,000) may be assessed. There is no penalty if the employer files a corrected return within 30 days.

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.