

§ 110-129.2. State Directory of New Hires established; employers required to report; civil penalties for noncompliance; definitions.

(a) **Directory Established.** – There is established the State Directory of New Hires. The Directory shall be developed and maintained by the Department. The Directory shall be a central repository for employment information to assist in the location of persons owing child support, and in the establishment and enforcement of child support orders.

(b) **Employer Reporting.** – Every employer in this State shall report to the Directory the hiring of every employee for whom a federal W-4 form is required to be completed by the employee at the time of hiring. The employer shall report the information required under this section not later than 20 days from the date of hire, or, in the case of an employer who transmits new hire reports magnetically or electronically by two monthly transmissions, not less than 12 nor more than 16 days apart. The Department shall notify employers of the information they must report under this section and of the penalties for not reporting the required information. The required forms must be provided by the Department to employers.

(c) **Report Contents.** – Each report required by this section shall contain the name, address, social security number of the newly hired employee, the date services for remuneration were first performed by the newly hired employee, and the name and address of the employer and the employer's identifying number assigned under section 6109 of the Internal Revenue Code of 1986 and the employer's State employer identification number. Reports shall be made on the W-4 form or, at the option of the employer, an equivalent form, and may be transmitted magnetically, electronically, or by first-class mail.

(d) **Penalties for Failure to Report.** – Upon a finding that an employer has failed to comply with the reporting requirements of this section, the district court shall impose a civil penalty in an amount not to exceed twenty-five dollars (\$25.00). If the court finds that an employer's failure to comply with the reporting requirements is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report, then the court shall impose upon the employer a civil penalty in an amount not to exceed five hundred dollars (\$500.00). Penalties collected under this subsection shall be deposited to the General Fund.

(e) **Entry of Report Data Into Directory.** – Within five business days of receipt of the report from the employer, the Department shall enter the information from the report into the Directory.

(f) **Notice to Employer to Withhold.** – Within two business days of the date the information was entered into the Directory, the Department or its designated representative as defined under G.S. 110-129(5) shall transmit notice to the employer of the newly hired employee directing the employer to withhold from the income of the employee an amount equal to the monthly or other periodic child support obligation, including any past-due support obligation of the employee and subject to the limitations of G.S. 110-136.6, unless the employee's income is not subject to withholding.

(g) **Other Uses of Directory Information.** – The following agencies may access information entered into the Directory from employer reports for the purposes stated:

- (1) The Division of Employment Security for the purpose of administering employment security programs.
- (2) The North Carolina Industrial Commission for the purpose of administering workers' compensation programs.
- (3) The Department of Revenue for the purpose of administering the taxes it has a duty to collect under Chapter 105 of the General Statutes.

(h) **Department May Contract for Services.** – The Department may contract with other State or private entities to perform the services necessary to implement this section.

(i) Information Confidential. – Except as otherwise provided in this section, information contained in the Directory is confidential and may be used only by the State Child Support Enforcement Program.

(j) Definitions. – As used in this section, unless the context clearly requires otherwise, the term:

- (1) "Business day" means a day on which State offices are open for business.
- (2) "Department" means the Department of Health and Human Services.
- (3) "Employee" means an individual who is an employee within the meaning of Chapter 24 of the Internal Revenue Code of 1986. The term "employee" does not include an employee of a federal or State agency performing intelligence or counterintelligence functions, if the head of the agency has determined that reporting information as required under this section could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.
- (4) "Employer" has the meaning given the term in section 3401(d) of the Internal Revenue Code of 1986 and includes persons who are governmental entities and labor organizations. The term "labor organization" shall have the meaning given that term in section 2(5) of the National Labor Relations Act, and includes any entity which is used by the organization and an employer to carry out requirements described in section 8(f)(3) of the National Labor Relations Act of an agreement between the organization and the employer.
- (5) "Newly hired employee" means (i) an employee who has not previously been employed by the employer and (ii) an employee who was previously employed by the employer but has been separated from such prior employment for at least 60 consecutive days. (1997-433, s. 1; 1997-443, s. 11A.122; 1998-17, s. 1; 1999-438, s. 30; 2011-401, s. 3.13; 2012-134, s. 3(a), (b).)