WEST VIRGINIA CODE: §48-18-125

§48-18-125. Employment and income reporting.

(a) For purposes of this section:

(1) "Employee" means an individual who is an "employee" for purposes of federal income tax withholding, as defined in 26 U.S.C. §3401;

(2) "Employer" means the person or entity for whom an individual performs or performed any service of whatever nature and who has control of the payment of the individual's wages for performance of the service or services, as defined in 26 U.S.C. §3401;

(3) "Independent Contractor" means an individual who is not an employee of the employer and who receives compensation or executes a contract for services performed for that employer. Independent contractor does not include a direct seller as defined in 26 U. S. C. §3508(b)(2).

(4) An individual is considered a "new hire" on the first day in which that individual performs services for remuneration and on which an employer begins to withhold amounts for income tax purposes.

(b) Except as provided in subsections (c) and (d) of this section, all employers doing business in the state shall report to the Bureau for Child Support enforcement:

(1) The hiring of any person who resides or works in this state to whom the employer anticipates paying earnings;

(2) The rehiring or return to work of any employee or independent contractor who resides or works in this state; and

(3) The contracting for services in the state with an independent contractor when payment for the services is $2500 or more. Payment for the services shall be reported within fourteen days of the earlier of first making payments that in the aggregate equal or exceed $2500 in any year or contracts with an independent contractor providing for payments that in the aggregate equal or exceed $2500 in any year.

(c) Employers are not required to report the hiring, rehiring or return to work of any person who is an employee or independent contractor of a federal or state agency performing intelligence or counterintelligence functions if the head of the agency has determined that reporting could endanger the safety of the employee or independent contractor or compromise an ongoing investigation or intelligence mission.

(d) An employer that has employees or independent contractors in states other than this state and that transmits reports magnetically or electronically is not required to report to

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the Bureau for Child Support enforcement the hiring, rehiring or return to work of any employee or independent contractor if the employer has filed with the secretary of the federal department of health and human services, as required by 42 U.S.C. §653A, a written designation of another state in which it has employees or independent contractors as the reporting state.

(e) Employers shall report by mailing the required information to the Bureau for Child Support enforcement or may transmit the information through another means if approved in writing by the Bureau for Child Support enforcement prior to the transmittal. The report shall include the employee's or independent contractor's name, address and social security number, start date, the employer's name and address, any different address of the payroll office and the employer's federal tax identification number. The employer may report other information, such as date of birth or income information, if desired.

(f) Employers shall submit a report within fourteen days of the date of the hiring, rehiring or return to work of the employee or independent contractor. However, if the employer transmits the reports magnetically or electronically by two monthly submissions, the reports shall be submitted not less than twelve days nor more than sixteen days apart.

(g) An employer shall provide to the Bureau for Child Support enforcement, upon its written request, information regarding an obligor's employment, wages or salary, medical insurance, start date and location of employment.

(h) Any employer who fails to report in accordance with the provisions of this section shall be assessed a civil penalty of no more than $25 per failure. If the failure to report is the result of a conspiracy between the employer and the employee or independent contractor not to supply the required report or to supply a false or incomplete report, the employer shall be assessed a civil penalty of no more than $500.

(i) Employers required to report under this section may assess each employee or independent contractor reported $1 for the administrative costs of reporting.

(j) Uses for the new hire information include, but are not limited to, the following:

(1) The state directory of new hires shall furnish the information to the national directory of new hires;

(2) The Bureau for Child Support enforcement shall use information received pursuant to this section to locate individuals for purposes of establishing paternity and of establishing, modifying and enforcing child support obligations and may disclose the information to any agent of the agency that is under contract with the bureau to carry out those purposes;

(3) State agencies responsible for administering a program specified in 42 U.S.C. §1320b-7(b) shall have access to information reported by employers for purposes of verifying eligibility for the program; and

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(4) The Bureau of Employment Programs and the Workers' Compensation Commission shall have access to information reported by employers for purposes of administering employment security and Workers' Compensation Programs.

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