



## "Newly Hired" Employee Defined: What This Means for Employers

by Thomas A. Dixon and Melissa A. Gerber

In April 2012, amendments to the new hire reporting requirements take effect. Since the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), employers have been obligated to report new hire information to a state directory of new hires. These directories help increase non-custodial parent compliance with child support obligations and help identify individuals who fraudulently collect unemployment compensation, workers' compensation and other benefits after returning to work.

For more than a decade, the PRWORA has not defined "newly hired" employee. Without federal guidance, states have implemented different requirements. The new amendments, however, uniformly describe newly hired as an employee who 1) has not previously been employed by the employer; or 2) was previously employed by the employer but has been separated from such prior employment for at least 60 consecutive days.

Under this definition, anytime an individual is re-employed after being "separated from" employment for more than 60 days, the employer must submit a new hire report for that employee. Currently, however, there is no

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*About the photo:* Picture of the Ohio Statehouse

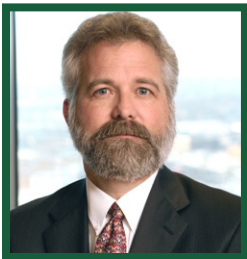
guidance to assist with the definition of separated from. For example, does it include a workers' compensation absence, short-term disability leave or an FMLA absence?

Because the penalty for failing to file a new hire report is a fine of \$25.00 for each failure, until further guidance is provided, it would be in the employer's interest to file a new hire report anytime an employee is away from work for more than 60 consecutive days.

In making the report, the employer must include the employer's Federal Employer Identification Number (FEIN), the employer's name and the employer's payroll processing address. The employer also must include the employee's first, middle and last names, mailing address, Social Security Number and date of hire, re-hire or return to work.

A multi-state employer has two options to report their new hires: 1) report newly hired employees to the state where those employees are working, or 2) select one state and electronically submit all newly hired employee reports to that state. If option two is selected, the employer must complete the "Multi-State Employer Registration" with the U.S. Dept. of Health and Human Services.

If you have any questions concerning new hire reporting requirements, please contact the attorneys at Eastman and Smith Ltd.



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