

1 **MODEL LEGISLATION ON INDEPENDENT**

2 **CONTRACTOR REPORTING**

3 **NCCSD Employer Collaboration Committee Document**

4 **Approved May 5, 2023**

5 **EXPLANATORY NOTE**

6 This model act is designed to build on the success of federal and state laws
7 requiring reporting of all newly hired employees and withholding of income pursuant to
8 income withholding orders.

9 Although income withholding orders can be issued to any payer of income, new
10 hire reporting requirements in most states are limited to traditional employees and do
11 not apply to independent contractors.

12 This act enhances new hire reporting requirements to include independent
13 contractors. Reporting requirements under the act do not extend to individuals who are
14 employees of the service recipient because those employees are already required to be
15 reported under existing state law. The act also excludes the reporting of payments for
16 personal services (e.g., to a childcare provider or house painter).

17 Reporting of independent contractors captures information about an untapped
18 and significant segment of the workforce. Reporting of independent contractors
19 increases the effectiveness of the State Director of New Hires, with the expectation of
20 increased issuance of income withholding orders (IWOs) which would lead to increased
21 support collections.

22 As a uniform act that should be adopted in all states, businesses which purchase
23 services from independent contractors will benefit because this act requires the same

1 type of information that the business is already required to obtain to complete an
2 Internal Revenue Service (IRS) form for the service provider.

3 Parents and states will benefit from the act through updated information
4 regarding the address of a service provider, automatic wage withholding, increased
5 collection of support, and increased consistency in receiving payments.

6 **SECTION 1. DEFINITIONS**

7 As used in this act:

8 (1) "Service provider" means:

9 (a) An individual over 18 years of age, a corporation with a sole
10 shareholder, or a limited liability company with a sole member;

11 (b) Who is not an employee of the service recipient; and

12 (c) (i) Who contracts or provides services for compensation to a
13 service recipient doing business in this state in an amount equal or greater than \$600 in
14 the calendar year; or

15 (ii) Who logs in as a driver to the digital network of a transportation
16 network company doing business in this state or a company operating a network in this
17 state to facilitate delivery of food, goods or services to persons seeking those services.

18 (2) "Service recipient" means:

19 (a) A person doing business in this state who enters into a contract for
20 services with a service provider or receives services from a service provider, or

21 (b) A person doing business in this state as a company which
22 maintains a digital network to facilitate services by transportation network company
23 drivers or drivers delivering food, goods or services to a person seeking those services.

Comment

The definitions in this act are written to supplement and avoid duplication with existing requirements on employers to report newly-hired employees.

“Service provider” is broadly defined to include providers doing business in their own individual name as well as business organizations owned solely by the provider. To reduce duplication, the definition of “service provider” deliberately matches the threshold at which a person must report income to the IRS as non-employee compensation, although reporting under this act may be required for some service providers whose income is not required to be reported to the IRS. Also to reduce duplication, the definition of “service provider” does not include business organizations with multiple shareholders or owners, since an individual providing services on behalf of those organizations will frequently be reported as an employee under current state law.

Ride-share companies and similar delivery services for food, goods, or services are not the ultimate recipient of such services, so there are specific components to the definitions of “service provider” and “service recipient” to include drivers earning income by logging in to a ride-sharing or delivery service network.

By design, the definitions are limited to services purchased in the course of the service recipient’s course of business and not services purchased for personal use.

SECTION 2. REPORTING OF SERVICE CONTRACTS

Each service recipient must report to the state directory of new hires, through a W-9 form or other format acceptable to the state, the following information regarding each service provider newly paid or contracted for services provided within this state:

(1) Name

1 (2) Address

2 (3) Social security number, if provided to the service recipient by the service
3 provider

4 (4) Federal taxpayer identification number, if the social security number is not
5 provided to the service recipient by the service provider, and

6 (5) An indication that the service provider is being reported as a service provider
7 and not as an employee.

8 The report also must include the service recipient's name, address, and social security
9 number or federal taxpayer identification number. A report required under this section
10 must be made no later than twenty days after the earlier of the date the service recipient
11 pays remuneration of \$600 or more to, or contracts for services of \$600 or more from, a
12 service provider in the calendar year. A service recipient may report under this section if
13 the value of the services is less than \$600 or is unknown.

14 A report is not required under this act if the service provider is providing the
15 services to a Federal or State agency performing intelligence or counterintelligence
16 functions, if the head of such agency has determined that reporting with respect to the
17 service provider could endanger the safety of the service provider or compromise an
18 ongoing investigation or intelligence mission.

19 **Comment**

20 The requirements in this section mimic longstanding requirements in federal and
21 state law for employers to report newly hired employees. The data elements that must
22 be reported, and the timeframe within which the data must be reported, are patterned
23 after existing new hire reporting requirements for employees as well as data elements

1 the service recipient must obtain from the service provider in order to report non-
2 employee compensation to the IRS.

3 To promote timely reporting, and for simplicity for multi-state service recipients,
4 this section authorizes a service recipient to report a service provider even if the
5 remuneration may be less than \$600 or is unknown when the service recipient prefers
6 to report the hiring of a service provider.

7 **SECTION 3. CONFIDENTIALITY**

8 Information provided by a service recipient to the state directory of new hires
9 under this act is confidential but must be made available for use by state agencies, in
10 this state and other states, administering state plans under title IV-D of the Social
11 Security Act.

12 **Comment**

13 Data provided under this act will be maintained as confidential the same as
14 similar data pertaining to reported employees.

15 **SECTION 4. ENFORCEMENT**

16 A failure of a service recipient to provide a report as required under this act may
17 be enforced in the same manner as a failure of an employer to report a newly hired
18 employee.

19 **Comment**

20 For simplicity, enforcement of the requirement to report independent contractors
21 is governed by the same state laws that are applicable to reporting employees.

22 **SECTION 5. IMMUNITY**

1 A service recipient who provides a report under this act in good faith is immune
2 from liability for providing the report.

3 **Comment**

4 A person who is required by state law to report hiring of an independent
5 contractor and comply with any subsequent direction from the child support agency
6 deserves to be protected from liability for acts taken to comply with state law.

7 **SECTION 6. CHOICE OF LAW**

8 The duties of service recipient under this act are governed by the laws of the
9 state where the service recipient receives the services.

10 **Comment**

11 For multi-state service recipients, this section clarifies which state laws the
12 service recipient must honor regarding the reporting of independent contractors.