



Resolution Supporting New Hire Reporting and Income Withholding Changes for Independent Contractors

Today, millions of workers earn income as “independent contractors,” either in addition to or in substitution for income earned as “employees.”¹ One study found that “[t]he expansion of nontraditional work is the latest change with which child support programs are grappling.”² The problem is that the new hire reporting requirement in Title IV-D of the Social Security Act does not currently apply to independent contractors—resulting in unequal child support enforcement procedures that harm families and children. The other problem is that it is unclear whether the income withholding limits set by the Consumer Credit Protection Act (CCPA) for employers³ apply to independent contractors, which may result in disproportionate child support enforcement procedures that harm working parents.

Background

The Title IV-D Child Support Program has partnered with employers to collect child support for families in two historically important ways: new employee hire reporting and income withholding. Since enactment of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) in 1996, in accordance with 42 U.S.C. §653a, each state is required to have a State Directory of New Hires and every employer is required to report the hiring of a new “employee” to that State Directory. Further, each state system is required to send automated income withholding notices to employers of parents owing support—found with data-matching from the State Directory of New Hires.⁴

The combination of mandatory employee reporting with automated income withholding successfully ensures that parents owing child support pay that support while earning income from their employment. However, the current federal law does *not* require employers to report the hiring of “independent contractors” to the State Directory of New Hires. Therefore, a growing segment of the U.S. workforce avoids child support

¹ Some news reports indicate that 40% of America’s workforce will be freelancers (“contingent workers”) by 2020, more than 60 million people; that number was 30% in 2006 when last counted by the federal government. See <https://qz.com/65279/40-of-americas-workforce-will-be-freelancers-by-2020/>.

² Asaph Glosser & Justin Germain, *Independent Contractors and Nontraditional Workers: Implications for the Child Support Program*, MEF Associates, 2 (March 2019), https://childsupportresearch.org/files/Independent_Contractors_and_Nontraditional_Workers_Implications_for_the_Child_Support_Program_5_08.pdf.

³ The IRS refers to entities that issue W-2s to employees or 1099s to independent contractors as “employer” without further reference to the nature of the relationship.

⁴ See 45 CFR §303.100(e)(2) (requiring State agency to send income withholding order within two days after interface match with other sources, including State Directory of New Hires).



enforcement because there is no automated income withholding based on data matching for independent contractors with the State Directory of New Hires.⁵

On the other hand, the CCPA provides protections for employees subject to income withholding for child support by limiting the maximum amount the employer may withhold from the employee's pay.⁶ When it enacted the CCPA, Congress found that garnishment without restriction frequently results in the disruption of employment, production, and consumption that constitutes a substantial burden on interstate commerce.⁷ But courts have not definitively decided whether the CCPA's maximum withholding limits for child support apply to independent contractors.⁸

Since taxes and other mandatory deductions are generally not withheld from an independent contractor's pay, this missing maximum withholding amount for independent contractors in the CCPA means that employers currently may be withholding more than 50-65% of an independent contractor's disposable (*net*) income. When this occurs, the worker may be without sufficient income to pay taxes or afford basic life needs such as housing and food. This insufficient economic situation is unsustainable for the worker and may result in withdrawal from the workforce and only sporadic child support collections.

NCSEA Position

First, NCSEA advocates for an amendment to Title IV-D of the Social Security Act to expand the new hire reporting in order for child support agencies to swiftly and efficiently collect child support from independent contractors. While some states have enacted legislation to address this problem, a more efficient approach is to make minor—yet critical—amendments to 42 U.S.C. §653a. Noteworthy, the proposed change to federal law would not require any systems changes or enhancements in order to collect, store, and use the data from the State Directory of New Hires for the IV-D enforcement functions.

Second, NCSEA advocates for the federal Office of Child Support Enforcement (OCSE) to work with the US Department of Labor and establish, either by proposed law, regulation, or guidance, the maximum withholding levels that apply to employers honoring income withholding orders for independent contractors.

⁵ Although some states allow income withholding orders to be sent to employer of independent contractors (both for withholding of periodic earnings and also garnishments/liens on lump sum payments), it is a substandard manual process compared to automatic income withholding through the data match with the State Directory of New Hires.

⁶ See 15 U.S.C. § 1673(b) (maximum amount subject to garnishment for child support is 50-65% of the employee's disposable earnings depending on whether the employee is supporting a spouse or another dependent child and whether the employee owes arrears).

⁷ See 15 U.S.C. § 1671(a)(2).

⁸ See *In re Jones*, 318 B.R. 841 (Bankr.S.D.Ohio 2005) (holding that protections afforded by the CCPA applied to independent contractors in certain situations).



THEREFORE, NCSEA resolves to:

1. Urge Congress to amend Section 453a of the Social Security Act, 42 U.S.C. §653a, to require employers to report information including names and social security numbers to the State Directory of New Hires for newly hired individuals who meet the following definition of “independent contractor,” namely:
 - a. An individual, or an individual within a partnership, who receives \$600 or more income during the tax year for work completed in the course of the individual’s trade or business;
 - b. who is not treated as an employee within the meaning of “employee” in chapter 24 of the Internal Revenue Code of 1986; and
 - c. has completed and submitted a W-9 to the employer, and is receiving income from the employer that is reportable on a 1099-MISC or 1099-K form.
2. Urge OCSE to work with the US Department of Labor to establish, either by proposed law, regulation, or guidance, the maximum amount that employers may withhold for child support from income paid to independent contractors.

Proposed for adoption by the NCSEA Board of Directors on August 10th, 2019