

CHECKLIST FOR HIRING AN EMPLOYEE

The following information generally outlines federal and state tax and other requirements that apply to the employment relationship. Detailed descriptions of these requirements, and any exceptions and special requirements that may apply, can be found in information bulletins and instruction booklets published by the agency listed. Addresses and telephone numbers appear in the Resource Directory section of the Small Business Assistance Office publication, *A Guide To Starting A Business In Minnesota*. For specific advice on individual situations consultation with a qualified professional advisor is strongly recommended.

Note that corporations that are wholly-owned by the person who also performs services for that business are generally considered to be employers, and that owner is likewise generally considered to be an employee. Note also, as explained elsewhere in the *Guide*, persons working in the construction industry may be treated as employees for purposes of workers' compensation unless certain conditions are met.

1. Determine whether the worker is an employee.

Detailed discussion of whether a worker is an employee appears in the section of the *Guide* titled "Who is an Employee". A worker generally is considered an "employee" if the person who obtains the worker's services has the legal right to control the manner and means of performing the work. A worker may be considered an employee for certain purposes (e.g., payment of FICA taxes) and not for other purposes (e.g., income tax withholding). If a worker is an employee, the requirements described in this checklist will apply whether the person is employed full-time or part-time. Before determining that a worker is not an employee it is advisable to consult with your attorney or with the appropriate agency, e.g., Internal Revenue Service, Minnesota Department of Revenue, Minnesota Department of Employment and Economic Development, or the Minnesota Department of Labor and Industry.

The following forms and materials are available to assist in determining whether a worker is an employee.

Income tax withholding, FICA and Federal unemployment taxes:

Form: SS-8, Information for Use in Determining Whether a Worker is an Employee for Federal Employment Taxes and Income Tax Withholding. Publication 15-A, Employers' Supplemental Tax Guide, provides further information.

Available from: Internal Revenue Service.

Filed with: The IRS Service Center designated on the form.

Minnesota unemployment insurance

Form: Register with the UI office of the Department of Employment and Economic Development via its self-service unemployment insurance reporting

system. DEED will make the determination regarding employer liability based on that information.

Available from: Minnesota Department of Employment and Economic Development.

Filed with: Minnesota Department of Employment and Economic Development.

Workers' compensation

The Department of Labor and Industry has adopted rules addressing the conditions under which workers will be considered employees or independent contractors for workers' compensation purposes. These rules can be found at Minnesota Rules Chapter 5224. Copies of Minnesota Rules are available at law libraries and many public libraries, and may be purchased from the Minnesota Bookstore.

2. Obtain federal Employer Identification Number (EIN).

Form: SS-4, application for Employer Identification Number. Apply online at www.irs.gov/businesses and click on Employer Identification Number under topics. Apply by telephone, call toll-free (800) 829-4933. Have a completed Form SS-4 available before making this call or apply by fax (859) 669-5760 (not toll-free), Attn: EIN Operation.

Available from: Internal Revenue Service.

Filed with: The IRS Service Center designated on the form.

How often: Once, unless business ownership or form of organization changes.

3. Obtain Minnesota taxpayer identification number.

Form: ABR, Application for Business Registration. A Minnesota taxpayer identification number can be obtained from the Department of Revenue's website at www.revenue.state.mn.us. It can also be obtained by calling (651) 282-5225 or (800) 657-3605.

Available from: Minnesota Department of Revenue.

Filed with: Minnesota Department of Revenue.

How often: Once, unless business ownership or form of organization changes.

4. Obtain Minnesota workers' compensation insurance.

Form: None required.

Available from: Coverage is obtained through the employer's insurance company.

Filed with: Not applicable.

How often: Workers' compensation coverage is required for the entire time the employer has employees. Certain exemptions may exist. For information on these exemptions, contact your insurance company or the Minnesota Department of Labor and Industry, Workers' Compensation Division.

5. Obtain Minnesota Unemployment Insurance Employer Account Number.

Form: Unemployment Insurance Employer Account Number. Paper forms are no longer used the Unemployment Insurance (UI) Program. To register online, use the information on the website www.uimn.org. If you do not have access to the Internet, register by telephone at (651) 296-6141, option 4.

Available from: Minnesota Department of Employment and Economic Development.

Filed with: Minnesota Department of Employment and Economic Development.

How often: Within 10 days after first wages are paid or if you have acquired, purchased, leased or assumed any part of an existing Minnesota business.

6. Verify compliance with immigration law.

Form: I-9, Employment Eligibility Verification, and Form M-274, Handbook for Employers with Instructions for Completing Form I-9. See discussion of E-Verify in the *Guide*.

Available from: Bureau of U.S. Citizenship and Immigration Services (USCIS).

Filed with: Form I-9 must be retained by the employer for three years following the date of hire or one year after the individual's employment is terminated, whichever is later.

How often: Generally, a new Form I-9 must be completed each time an individual is hired. An employer who rehires a person within three years of the date the I-9 was originally completed may be able to update and re-verify employment eligibility on the original Form I-9. Details are provided in the Employer Information Bulletin 102, *The I-9 Process in a Nutshell*, available from the Bureau of U.S. Citizenship and Immigration Services (USCIS).

7. Obtain employee withholding information (Forms W-4, W-4MN; child support and spousal maintenance obligations).

Form: Federal Form W-4, Employee's Withholding Allowance Certificate, is used to determine the amount of federal income tax withholding and in most cases, the Minnesota income tax withholding.

Minnesota form, W-4 MN, should be completed in addition to federal form W-4 in some situations.

Available from: Internal Revenue Service (Federal Form W-4) or the Minnesota Department of Revenue (Form W-4MN).

Filed with: Employers are required to keep copies of completed federal Forms, W-4 or state forms of their W-4MN employees in their files. The forms serve as verification that federal and state income taxes are being withheld according to the employee's instructions and needs to be available for inspection should the IRS or the state request it.

Previous to 2007, employers had to routinely send the IRS any Form W-4 claiming complete exemption from withholding if \$200 or more in weekly wages was expected or claiming more than 10 allowances. Employers no longer have to routinely submit these W-4 Forms to the IRS. However, Forms W-4 are still subject to review. Employers may be directed (in written notice or in future published guidance) to send certain W-4 Forms to the IRS.

You must send copies of form W-4MN to the Minnesota Department of Revenue if the employee:

- claims more the 10 Minnesota withholding allowances: or
- claims to be exempt from Minnesota withholding and you reasonably expect to the employee's wages to exceed \$200 per week (*Exception:* if the employee is a resident of a reciprocity state and has completed Form MWR); or
- claims fewer Minnesota allowances than federal allowances (Minnesota allowances cannot exceed the number of federal allowances; or
- requests additional Minnesota income tax withholding be deducted each pay period.

Mail to: Minnesota Department of Revenue, Mail Station 6501, St. Paul, MN 55146-6501.

How often: The Forms W-4 and W-4MN generally are valid until the employee provides new ones. However, employees who claim exemption from withholding must renew the exemption annually by filing new Forms W-4 or W-4MN by February 15 each year.

Whenever an employee replaces existing Forms W-4 or W-4MN with a new one, the employer must put the new W-4 into effect no later than the start of the first payroll period ending on or after the 30th day after the day on which the replacement Form W-4 or W-4MN is received. If there is no payroll period, the replacement Forms W-4 or W-4MN must be put into effect with the first payment of wages on or after the 30th day after the day on which the replacement Forms W-4 or W-4MN is received. The replacement Forms W-4 or W-4MN can be put into effect sooner, if the employer wishes.

Child Support, Medical Support, Spousal Maintenance.

With respect to the payment of child support, medical support, maintenance and related payments, Minnesota employers are required to report certain information to the Minnesota Department of Human Services on new employees (including seasonal and temporary) and independent contractors, and on rehires, within twenty days of hiring the employee or engaging the independent contractor. (This replaces the former requirement that Minnesota employers had to ask individuals who are hired for employment whether they have court-ordered support obligations that are required by law to be withheld from income, and to ask the terms of the court order.)

Employers must provide the Department of Human Services with employee or independent contractor's name, address, social security number, and if available, date of birth, along with the employer's own name, address and federal employer identification number.

In addition to the reporting to the Department of Human Services employers are required to ask all new employees whether they have court-ordered medical support or dependent insurance obligations that must be withheld from income, and the terms of any court order. If amounts for medical support must be withheld, the employer must do the appropriate withholding. If the employee is required to obtain dependent insurance the employer must tell the employee about the application process and enroll the employee and the dependents in the plan.

Note that employers are required to make such withholdings within a specified time period, and there are limits on the percentage of wages that can be withheld.

8. Withhold federal income tax and FICA tax (employee share)

and

9. Withhold Minnesota income taxes.

Form: No specific form is required. These are accounting entries on the employer's books. The amounts also must be listed on the employee's pay statement. Tables showing amounts to be withheld are provided by the Internal Revenue Service (see *Publication 15 (Circular E) Employer's Tax Guide*) and the Minnesota Department of Revenue. The taxes are paid through periodic deposits and quarterly tax returns. (See Steps 14 and 16.)

Available from: Not applicable.

Filed with: Accounting records are retained by the employer and are subject to inspection by the Internal Revenue Service and Minnesota Department of Revenue.

How often: Withholding must be done each time wages are paid.

10. Account for employer's share of payroll taxes.

Payroll taxes include the employer's share of the FICA (Social Security and Medicare) tax, federal unemployment tax (FUTA) and Minnesota unemployment tax.

Form: No specific form is required. These are accounting entries made on the employer's books each time wages are paid. The taxes are paid through deposits or with quarterly or annual tax returns. (See Steps 12, 13 and 17.)

Available from: Not applicable.

Filed with: These taxes must be deposited in a bank as specified by, or paid directly to, the Internal Revenue Service and the Minnesota Department of Employment and Economic Development. Note that electronic filing of these taxes may be required.

How often: The accounting entries are made each time wages are paid.

11. Deposit withheld federal income tax and employer's and employees' share of FICA tax.

and

12. Deposit federal unemployment (FUTA) tax.

Form: With few exceptions, electronic fund transfers are made using EFTPS (Electronic Federal Tax Payment System) for all federal tax deposits.

Filed with: Deposits are made to the U.S. Department of Treasury using EFTPS (Electronic Federal Tax Payment System).

Information on EFTPS may found at www.eftps.gov or by calling the U.S. Treasury Department customer service at (800) 555-4477.

How often: For federal income tax and FICA tax, the accumulated liability usually must be deposited monthly or semiweekly (or by the next day if the liability is \$100,000 or more). For this purpose, the "liability" is the sum of the withheld federal income tax, the employees' and the employer's share of Social Security and Medicare, minus any advanced earned income credit paid by the employer. Generally, employers with a liability of \$50,000 or less accrued during a designated four-quarter period will deposit monthly and employers whose liability is more than \$50,000 are required to deposit semi-weekly. The employer will follow the appropriate deposit schedule for the entire calendar year. The specific rules may be found in IRS Publication 15, Circular E, Employer's Tax Guide which may be obtained from the Internal Revenue Service.

FUTA tax deposits are made quarterly (by the end of the month following the end of the quarter), unless the amount of FUTA tax owed but not deposited is \$500 or less. If the tax is \$500 or less at the end of the quarter, no deposit is required. The tax is added to the tax for the next quarter.

13. Deposit withheld Minnesota income tax.

Form: The employer can make Minnesota tax deposits in one of three ways: electronically, via the Department of Revenue's e-File Minnesota system at www.revenue.state.mn.us, by touchtone telephone (800) 570-3329, or by mailing in form MW-5, Withholding Tax Deposit Form.

Available from: www.revenue.state.mn.us (to use e-File Minnesota), or by telephoning (800) 570-3329, (to use touchtone telephone), or from the Department. The Minnesota Department of Revenue will mail customized forms to employers registered for withholding tax upon request. The Minnesota Department of Revenue requests that employers use the customized forms only if the employer chooses to pay by check.

Note: some employers are required to pay electronically.

Filed with: Minnesota Department of Revenue.

How often: The total amount of accumulated undeposited withholding tax will determine how often deposits must be made. Note that electronic payment may be required. For further information see the Minnesota Income Tax Withholding instruction booklet, available at www.revenue.state.mn.us or from the Minnesota Department of Revenue.

14. File federal quarterly withholding return or

Form: 941, Employer's Quarterly Federal Tax Return. (Different forms are required for employers of agricultural employees).

Available from: Internal Revenue Service.

Filed with: The IRS Service Center designated on the form.

How often: The employer must file a return quarterly (annually for employers of agricultural employees using Form 943).

File employment taxes annually.

Form: 944, Employer's Annual Federal Tax Return (optional).

Available from: Internal Revenue Service. Small businesses may be affected by changes to Form 944, Employers ANNUAL Federal Tax Return. The changes include the ability for small employers to elect whether they want to file Form 944 or Form 941, Employer's QUARTERLY Federal Tax Return. Additionally, Form 944 has a line for small employers to claim the COBRA credit.

Filed with: Employers who have estimated employment tax liability of \$1,000 or less for the entire calendar year are eligible to file annual Form 944 rather than the quarterly Form 941. In the past, filing this form has been mandatory for employers who met the qualifications and were notified by the Internal Revenue Service to file Form 944.

How often: Employers who are Form 944 filers can opt out by telephone no later than April 1, 2012, or in writing no later than March 15, 2012. Form 941 employers, who want to file Form 944 and are eligible, can opt in to filing a Form 944 during the same election period by the same methods. Whether opting in or opting out of Form 944 filing, after contacting the IRS, the taxpayer will be notified in writing about which return to file.

Revenue Procedure 2009-51 has more information about the election, including contact phone numbers and addresses to make the election to file Form 941. More information about Form 944 is available at www.irs.gov.

15. File Minnesota quarterly withholding return.

Form: Quarterly Withholding Tax Return (for the first three quarters of the year); Year-End Withholding Return/Reconciliation (for the fourth quarter).

Available from: Returns must be filed electronically via the Internet or by touchtone telephone.

Filed with: Minnesota Department of Revenue either via the Internet, using e-File Minnesota (at www.revenue.state.mn.us) or by touchtone telephone, at (800) 570-3329.

How often: Quarterly. A return must be filed even if the employer paid no wages subject to withholding, had no employees during the quarter or had not withheld tax.

16. File Minnesota unemployment insurance wage detail.

Form: All wage detail reports must be filed electronically. Wage detail reports filed on paper will not be accepted. See www.uimn.org for additional information.

Available from: Minnesota Department of Employment and Economic Development, Unemployment Insurance (UI) Division.

Filed with: Minnesota Department of Employment and Economic Development, Unemployment Insurance (UI) Division.

How often: Quarterly.

17. File federal unemployment tax (FUTA) return.

Form: 940, Employer's Annual Federal Unemployment (FUTA) Tax Return

Available from: Internal Revenue Service.

Filed with: The IRS Service Center designated on the form.

How often: Annually, by January 31 of each year. See the section in the *Guide* on Unemployment Taxes for situations in which Form 940-EZ may be filed.

18. Provide Form W-2 to employee and others.

Form: W-2, Wage and Tax Statement.

Available from: Internal Revenue Service.

Filed with: Employee (three copies); Social Security Administration (one copy); Minnesota Department of Revenue (one copy). One copy is retained by the employer.

How often: At the end of the year, the employer must complete Form W-2, Wage and Tax Statement (PDF) to report wages, tips and other compensation paid to an employee. A copy of this form must be given to the employee by January 31st after the end of the year. If the employee stops working for the employer and requests the W-2 before the January 31 deadline, it must be provided within 30 days following the request. The employer must also send a copy of the W-2 to the Social Security Administration (SSA) by February 28 each year. Employers can prepare and file up to 20 W-2s at a time at the Social Security Administration's Website. Using SSA's online W-2 filing (www.ssa.gov/employer/), employers can also print out all the necessary copies of the W-2 for their employees, state taxing agencies, etc.

19. Information returns, pensions and other payments.

Employers who make payments to consultants, independent contractors, and others who are exempt from withholding may be required to provide a federal Form 1099-MISC to those individuals, and file the form with the Internal Revenue Service. Employers who pay pensions are required to issue Form 1099R to the recipients. The Internal Revenue Service and the Minnesota Department of Revenue have established special rules applicable to these situations.