

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 3066
STATE OF NEW JERSEY
209th LEGISLATURE

DATED: APRIL 16, 2001

SUMMARY

Synopsis: Regulates employee leasing companies and employee leasing agreements.

Type of Impact: Potential minimal administrative costs.

Agencies Affected: Department of Labor.

Office of Legislative Services Estimate

| Fiscal Impact | <u>Year 1</u> | <u>Year 2</u> | <u>Year 3</u> |
|----------------------|----------------------|----------------------|----------------------|
| State Cost | minimal | minimal | minimal |
| State Revenue | none | none | none |

- ! Requires employee leasing companies (ELCs) to register with the Commissioner of Labor.
- ! Requires ELCs to provide the Department of Labor (DOL) a list of its client companies, certain information about those companies and a financial statement prepared by a independent certified public accountant, upon initial registration and subsequent annual renewal.
- ! Requires each ELC to have a net worth of at least \$100,000 or, in the alternative, deposit with the commissioner a bond or securities with a market value of \$75,000.
- ! Permits the commissioner to require bonds or deposits, under certain circumstances.
- ! Requires ELCs to report to the department, on a quarterly basis, wage information regarding each covered employee.
- ! Does not impose fees or otherwise provide for the cost of its implementation by the Department of Labor.
- ! Permits the department to rescind the registration of an ELC, under certain circumstances.

BILL DESCRIPTION

Assembly Committee Substitute for Assembly Bill No. 3066 regulates employee leasing companies (ELCs), also known as professional employer organizations or PEOs.

Employee leasing companies contract with employers to perform various administrative or personnel functions on behalf of their clients. The average client company of an ELC has 18 employees.

Under the substitute, the ELC and the client company enter into a written employee leasing agreement under which a covered employee becomes "co-employed" by the ELC and the client company. The substitute defines the parameters of the employee leasing agreement, which in turn dictates the respective responsibilities of the client company and the ELC for covered employees.

In some respects, the ELC assumes the role of the employer. The ELC assumes responsibility for the payment of wages to covered employees, except that the client company's wage payment obligations are not diminished. The leasing company assumes full responsibility for the payment of payroll taxes and collection of taxes from payroll on covered employees. Both the ELC and the client company retain the right of direction and control over management of safety, risk and hazard control, including safety inspections, safety policies and workers' compensation. Additionally, any covered employee who must be licensed, registered or certified according to law is treated by the substitute as a covered employee of the client company for the purposes of the license, registration or certification. The ELC must give a written notice of the relationship between the ELC and the client company to each covered employee.

An ELC is required to register with the Commissioner of Labor and provide a list of its client companies and submit certain information about those companies, including a financial statement prepared by an independent certified public accountant. At registration and renewal, an ELC must have a net worth of at least \$100,000 or, in the alternative, deposit with the commissioner a bond or securities with a market value of \$75,000. Under certain circumstances, the commissioner may require the bond or securities.

The substitute sets forth the ELC's responsibilities under the "unemployment compensation law," R.S.43:21-1 et seq. and the workers' compensation law, R.S.34:15-1. Specifically with respect to unemployment contributions, section 7 of the substitute details whose benefit experience, as between the client company and the ELC, shall be used to determine contribution rates, under various arrangements upon the inception and dissolution of the employer leasing agreement. For example, if the ELC acquires the client company's total workforce, the ELC shall report wages and pay contributions based on the benefit experience assigned to the ELC under R.S.43:21-7.

The provisions of the "New Jersey Prevailing Wage Act" would remain applicable in all respects to those client companies who participate in public construction contracts; and nothing in the substitute exempts an ELC or its employees from complying with the "New Jersey Insurance Producer Licensing Act," if its activities fall within the scope of that act.

To enforce the substitute's provisions, the department may rescind the registration of an ELC which fails to comply with any of the substitute's provisions, thereby rescinding the ELC's co-employer status and thus placing full responsibility for the employees with the client company. The department is required to rescind the registration in the case of repeated or egregious violations of any of a listed series of State and federal laws regarding payment of certain required taxes and labor conditions, generally.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

According to information provided by the New Jersey Association of Professional Employer Organizations, the ProEmp Journal, the National Association of Professional Employer Organizations and Team Link (a private ELC), there are approximately 12-25 ELCs, either doing business in New Jersey or located in New Jersey, who would be subject to the provisions of the bill. All four organizations indicate that there may be additional ELCs operating in the State, but not associated with their respective organizations. It is estimated that there are approximately 4,000 client companies in New Jersey and over 50,000 covered employees, although the ELCs regard this information as proprietary and therefore it may be difficult to estimate these figures accurately.

The department informally reports that this legislation does not have a significant, quantifiable, fiscal impact on the department. Due to the potential number of registrants, the department intends to utilize existing staff and resources to fulfill their responsibilities under the bill. The department noted that modifications may be necessary to the department's tax system to accommodate the department's reporting requirements under the bill; however, the extent of those modifications remains unclear at this time.

The Office of Legislative Services concurs with this assessment. However, the OLS notes that, unlike most laws in New Jersey that require some form of registration with a department, this bill does not require any registration or renewal fees to defray even minimal administrative costs, nor does it permit the commissioner to establish fees sufficient to defray administrative costs, if necessary.

Section: *Commerce, Labor and Industry*

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.