

# ASSEMBLY, No. 3066

## STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED JANUARY 9, 2001

**Sponsored by:**

**Assemblyman KEVIN J. O'TOOLE**

**District 21 (Essex and Union)**

**Assemblyman GEORGE F. GEIST**

**District 4 (Camden and Gloucester)**

**SYNOPSIS**

Regulates employee leasing companies and employee leasing agreements.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 3/27/2001)**

1 AN ACT concerning employee leasing companies.

2

3 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
4 *of New Jersey:*

5

6 1. For the purposes of this act:

7 "Client company" means a sole proprietorship, partnership,  
8 corporation or other business entity, which enters into an employee  
9 leasing agreement and is assigned employees by the employee leasing  
10 company.

11 "Commissioner" means the Commissioner of Labor.

12 "Covered employee" means an individual co-employed by an  
13 employee leasing company and a client company pursuant to an  
14 employee leasing agreement.

15 "Department" means the Department of Labor.

16 "Employee leasing agreement" or "professional employer  
17 agreement" means an arrangement, under written contract, whereby:

18 (1) An employee leasing company and a client company co-employ  
19 covered employees; and

20 (2) The arrangement is intended to be, or is, ongoing rather than  
21 temporary in nature, and not aimed at temporarily supplementing the  
22 client company's work force.

23 "Employee leasing company" or "professional employer  
24 organization" means a sole proprietorship, partnership, corporation or  
25 other business entity, which devotes a substantial portion of its  
26 business to providing the services of employees pursuant to one or  
27 more employee leasing agreements and provides services of a nature  
28 customarily understood to be employer responsibilities including, but  
29 not limited to, those responsibilities provided in section 2 of this act.

30

31 2. Every employee leasing agreement shall provide that the  
32 employee leasing company:

33 a. Reserves a right of direction and control over each covered  
34 employee assigned to the client company's location. However, a client  
35 company may retain sufficient direction and control over the covered  
36 employee as is necessary to conduct the client company's business and  
37 without which the client company would be unable to conduct its  
38 business, discharge any fiduciary responsibility that it may have, or  
39 comply with any applicable licensure, regulatory or statutory  
40 requirement of the client company;

41 b. Assumes responsibility for the payment of wages to each  
42 covered employee without regard to payments by the client company  
43 to the employee leasing company;

44 c. Assumes responsibility for the payment of payroll taxes and  
45 collection of taxes from payroll on each covered employee;

1 d. Retains authority to hire, terminate, discipline, and reassign each  
2 covered employee. However, the client company may have the right  
3 to accept or cancel the assignment of any covered employee;

4 e. Retains a right of direction and control over management of  
5 safety, risk and hazard control at the work site or sites affecting each  
6 covered employee including:

7 (1) Responsibility for performing safety inspections of client  
8 company equipment and premises;

9 (2) Responsibility for the promulgation and administration of  
10 employment and safety policies; and

11 (3) Responsibility for the management of workers' compensation  
12 claims, the filings thereof, and procedures related thereto.

13 f. Has given written notice of the relationship between the  
14 employee leasing company and the client company to each covered  
15 employee it assigns to perform services at the client company's work  
16 site.

17  
18 3. The employee leasing company and the client company shall not  
19 be owned or controlled by the same interests or be part of a  
20 "controlled group of corporations," as that term is defined in section  
21 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1563.  
22

23 4. a. An employee leasing company shall register with the  
24 commissioner and provide a list of its client companies, both upon the  
25 initial registration of the employee leasing company, and thereafter,  
26 annually by January 31st, listing all client companies as of the  
27 immediately proceeding December 31st. The list shall include the  
28 following information with regard to each client company:

29 (1) Client company's name;

30 (2) Client company's physical location address;

31 (3) Description of client company's economic activity;

32 (4) Client company's state tax identification number;

33 (5) Percent of client company's workforce being leased;

34 (6) Effective date and duration of employee leasing agreement;

35 (7) A copy of the standard form of agreement entered into between  
36 the employee leasing company and the client company;

37 (a) The standard form of agreement shall be accompanied by a  
38 certified list of all client companies contracting with the employee  
39 leasing company for its services.

40 (b) The employee leasing company shall be required to notify the  
41 Department of Labor on an annual basis of any changes in the standard  
42 form of agreement which relate to the requirements set forth in section  
43 2 of this act, and when any particular client company has agreed to  
44 terms which deviate from the standard form of agreement;

1 (8) Proof of written disclosure to client companies upon the  
2 signing of an employee leasing agreement, as required in section 8 of  
3 this act;

4 (9) Proof of current workers' compensation coverage, which may  
5 be in the form of a letter from the insurance carrier, and which shall  
6 include the name of the carrier, date of commencement of coverage  
7 under the policy, term of the coverage, and verification of premiums  
8 paid; and

9 (10) Confirmation that all leased employees are covered by  
10 workers' compensation insurance.

11 b. Employee leasing companies shall also report to the department,  
12 on a quarterly basis, wage information regarding each covered  
13 employee as required by law, rule or regulation.

14 c. All records, reports and other information obtained from  
15 employee leasing companies under this act, except to the extent  
16 necessary for the proper administration by the department of this act  
17 and all applicable labor laws, shall be confidential and shall not be  
18 published or open to public inspection other than to public employees  
19 in the performance of their public duties.

20

21 5. a. Every initial registration and subsequent annual reporting  
22 shall be accompanied by a reviewed financial statement prepared by an  
23 independent certified public accountant in accordance with generally  
24 accepted accounting principles within six months prior to the date of  
25 application or renewal, which statement shall show a minimum net  
26 worth of \$100,000.

27 b. (1) As a substitute for the requirement set forth in subsection  
28 a. of this section, the commissioner, or his designee, may require that  
29 the employee leasing company deposit in a depository designated by  
30 the commissioner a bond or securities with a market value of \$75,000.  
31 The securities so deposited shall include authorizations to the  
32 commissioner, or his designee, to sell those securities in an amount  
33 sufficient to pay any taxes, wages, benefits or other entitlement due a  
34 covered employee, if the employee leasing company does not make  
35 those payments when due.

36 (2) The commissioner, or his designee, may also require that bond  
37 or deposit if the commissioner finds that the leasing company has had  
38 its license or registration suspended, denied, or limited in any other  
39 jurisdiction; or that there have been instances in which the employee  
40 leasing company has not paid covered employees' wages or benefits  
41 when due, or failed to make timely payment of any federal or state  
42 payroll taxes or unemployment compensation contributions when due,  
43 or for other good cause.

44 (3) Any bond or securities deposited under this subsection shall not  
45 be included for the purpose of the calculation of net worth required by  
46 subsection a. of this section.

1 c. An employee leasing company shall submit to the commissioner,  
2 or his designee, within 60 days after the end of each calendar quarter,  
3 a certification by an independent certified public accountant that all  
4 applicable federal and state payroll taxes have been paid on a timely  
5 basis for that quarter.

6  
7 6. a. An employee leasing company registered under this act and  
8 the respective client companies with which it has entered into  
9 employee leasing agreements shall be the co-employers of their  
10 covered employees for the payment of wages and other employment  
11 benefits due, including the obligation under the workers' compensation  
12 law, R.S.34:15-1 et seq.

13 b. For purposes of this act, the agreement between the employee  
14 leasing company and the client company shall be one of co-  
15 employment, whereby the employee leasing company, having accepted  
16 the responsibilities set forth in section 2 of this act, may submit reports  
17 to the department and make contributions to the Unemployment  
18 Compensation and State Disability Benefits Funds in the manner  
19 prescribed in section 7 of the this act, on behalf of those covered  
20 employees covered by the employee leasing agreement.

21 c. The employee leasing company shall file reports prescribed  
22 under the "unemployment compensation law," R.S. 43:21-1, et seq.  
23 on behalf of its covered employees using the State tax identification  
24 number of the employee leasing company.

25  
26 7. a. Upon entering into the employee leasing agreement:

27 (1) If the employee leasing company acquires the client company's  
28 total workforce, the employee leasing company shall report wages and  
29 pay contributions pursuant to the "unemployment compensation law,"  
30 R.S. 43:21-1 et seq., based on the benefit experience assigned to the  
31 employee leasing company under R.S. 43:21-7. The benefit  
32 experience of the client company shall not be transferred to the leasing  
33 company and shall not be used in the calculation of the employee  
34 leasing company's future contribution rates.

35 (2) If the employee leasing company acquires less than all of the  
36 client company's total workforce, the employee leasing company shall  
37 report wages and pay contributions pursuant to the "unemployment  
38 compensation law," R.S. 43:21-1 et seq. for that portion of the  
39 workforce acquired based on the benefit experience assigned to the  
40 employee leasing company under R.S. 43:21-7. The benefit  
41 experience associated with that portion of the client company's  
42 workforce acquired by the employee leasing company shall not be  
43 transferred to the employee leasing company and shall not be used in  
44 the calculation of the employee leasing company's future contribution  
45 rates. The client company shall continue to report wages and pay  
46 contributions for the workforce not acquired by the employee leasing

1 company using the client company's contribution rate.

2 b. Upon dissolution of the employee leasing agreement:

3 (1) If, under the dissolved employee leasing agreement, the client  
4 company had leased its total workforce, and if, at the time of  
5 dissolution, the client company had leased those employees for at least  
6 two full calendar years, the client company shall be assigned the rate  
7 of a new employer under R.S. 43:21-7 until it is eligible for a rate  
8 based on benefit experience pursuant to that section or enters into  
9 another employee leasing agreement.

10 (2) If, under the dissolved employee leasing agreement, the client  
11 company had leased its total workforce, and if, at the time of the  
12 dissolution, the client company had leased those employees for less  
13 than two full calendar years, the employee leasing company at the time  
14 of dissolution shall provide the Department of Labor with the data  
15 necessary to calculate the benefit experience of the client company for  
16 the duration of the employee leasing agreement. That benefit  
17 experience shall then be added to the client company's benefit  
18 experience which was established prior to entering the employee  
19 leasing agreement. Both the client company and the employee leasing  
20 company shall continue to use the rate of the employee leasing  
21 company for the period from the date of the dissolution of the  
22 employee leasing agreement until the following July 1.

23 (3) If, under the dissolved employee leasing agreement, the client  
24 company had leased less than its total workforce from the employee  
25 leasing company, and if, at the time of dissolution, the client company  
26 had leased those covered employees for at least two full calendar  
27 years, the benefit experience associated with that portion of the client  
28 company's workforce which had been leased from the employee leasing  
29 company shall not be transferred to the client company and shall not  
30 be used in the calculation of the client company's future contribution  
31 rates.

32 (4) If, under the dissolved employee leasing agreement, the client  
33 company had leased less than its total workforce from the employee  
34 leasing company, and if, at the time of dissolution, the client company  
35 had leased those covered employees for less than two full calendar  
36 years, the leasing company shall provide the department with the data  
37 necessary to calculate the benefit experience associated with that  
38 portion of the client's workforce which had been leased from the  
39 employee leasing company. The department shall combine that benefit  
40 experience with the client company's existing benefit experience. Both  
41 the client company and the employee leasing company shall continue  
42 to use their own rates for the period from the date of the dissolution  
43 until the following July 1.

44 (5) If, immediately upon dissolution of the employee leasing  
45 agreement, the client company enters into a subsequent employee  
46 leasing agreement regarding those covered employees with another

1 employee leasing company, the payroll relative to the client company  
2 shall be reported and paid at the rate assigned the second employee  
3 leasing company.

4

5 8. The employee leasing company shall provide to each client  
6 company, upon signing of an employee leasing agreement, written  
7 disclosure as to the method to be utilized for calculation of  
8 unemployment benefit experience contribution rates and temporary  
9 disability contribution rates upon both the inception and dissolution of  
10 the employee leasing relationship.

11

12 9. a. The provisions of this act shall not apply to temporary help  
13 service firms, as defined in section 1 of P.L.1989, c.331 (C.34:8-43),  
14 or farm labor crew leaders who are subject to P.L.1971, c.192  
15 (C.34:8A-7 et seq.).

16 b. Nothing in this act shall exempt either a client company or the  
17 covered employees leased to a client company from any applicable  
18 State, local, or federal licensing, registration or certification statutes  
19 and regulations.

20 c. Any covered employee who must be licensed, registered or  
21 certified, according to law, shall be treated as a covered employee of  
22 the client company for the purposes of the license, registration or  
23 certification.

24 d. The provisions of the "New Jersey Prevailing Wage Act,"  
25 P.L.1963, c.150 (C.34:11-56.25 et seq.) shall remain applicable in all  
26 respects to those client companies of the employee leasing company  
27 who participate in public construction contracts as set forth in that  
28 act.

29

30 10. a. If an employee leasing company fails to comply with any of  
31 the requirements set forth in this act, the department may rescind the  
32 registration of that employee leasing company, as such, thereby also  
33 rescinding the employee leasing company's co-employer status, for  
34 purposes of the act.

35 b. If the department rescinds the registration of an employee  
36 leasing company, all client companies of the employee leasing  
37 company thereafter shall file reports and make contributions  
38 separately, as provided in R.S. 43:21-1 et seq. The department shall  
39 calculate the respective unemployment benefit experience contribution  
40 rates and temporary disability contribution rates of the employee  
41 leasing company and client company, thereafter, as set forth in  
42 subsection b. of section 7 of this act, and the exclusive remedy  
43 provision of R.S. 34:15-8 shall, as of the date upon which the  
44 department has rescinded the registration of the employee leasing  
45 company, no longer apply to the employee leasing company relative to  
46 personal injuries to, or the death of, any employee formerly covered

1 by the employee leasing agreement, by accident arising out of and in  
2 the course of employment, as otherwise provided in the workers'  
3 compensation law.

4 c. Notwithstanding any provisions of this act to the contrary,  
5 repeated or egregious violations by an employee leasing company of  
6 the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-  
7 56.25 et seq.) shall be factors considered by the department in  
8 determining, for purposes of this act, whether to rescind the  
9 registration of an employee leasing company.

10 d. Whenever the department shall find cause to rescind the  
11 registration of an employee leasing company, it shall notify the  
12 registrant in writing of the reasons therefor, and provide the registrant  
13 with an opportunity for a hearing in accordance with the  
14 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
15 seq.).

16  
17 11. Nothing in this act shall exempt an employee leasing company  
18 or any employee thereof from compliance with the provisions of  
19 P.L.1987, c.293 (C.17:22A-1 et seq.) if its activities fall within the  
20 scope of that act or any regulation promulgated pursuant to that act.

21  
22 12. The commissioner shall, pursuant to the "Administrative  
23 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), promulgate  
24 those rules and regulations necessary to effectuate the purposes of this  
25 act.

26  
27 13. This act shall take effect immediately.

28  
29  
30 STATEMENT

31  
32 This bill regulates employer leasing companies, also known as  
33 professional employer organizations or PEOs. It codifies and clarifies  
34 the status of an employee leasing company under New Jersey law as  
35 the employer for unemployment and temporary disability insurance  
36 purposes and for purposes of workers' compensation coverage.

37 Employee leasing companies contract with (generally) small  
38 employers to perform various administrative or personnel functions on  
39 behalf of their clients. The average client company of an employee  
40 leasing company has 18 employees.

41 Under the bill, the employee leasing company and the client  
42 company enter into a written employee leasing agreement under which  
43 a covered employee becomes "co-employed" by the employee leasing  
44 company and the client company. The bill defines the parameters of  
45 the employee leasing agreement, which in turn dictates the respective  
46 responsibilities of the client company and the employee leasing

1 company for covered employees. In many respects, the employee  
2 leasing company assumes the role of the employer. For example: it  
3 assumes responsibility for the payment of wages to covered  
4 employees; assumes full responsibility for the payment of payroll taxes  
5 and collection of taxes from payroll on covered employees; and  
6 retains authority to hire, terminate, discipline, and reassign the covered  
7 employee. However, the client company may have the right to accept  
8 or cancel the assignment of any covered employee and may maintain  
9 sufficient direction and control over the covered employee as  
10 necessary to conduct its business. Additionally, any covered employee  
11 who must be licensed, registered or certified according to law shall be  
12 treated as a covered employee of the client company for the purposes  
13 of the license, registration or certification. The employee leasing  
14 company must give a written notice of the relationship between the  
15 employee leasing company and the client company to each covered  
16 employee.

17 An employee leasing company shall register with the Commissioner  
18 of Labor and provide a list of its client companies and submit certain  
19 information about those companies, including a financial statement  
20 prepared by an independent certified public accountant. At  
21 registration and renewal, an employee leasing company must have a  
22 net worth of at least \$100,000 or, in the alternative, deposit with the  
23 commissioner a bond or securities with market value of \$75,000.  
24 Under certain circumstances, the commissioner may require the bond  
25 or securities.

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

38 The provisions of the "New Jersey Prevailing Wage Act" would  
39 remain applicable in all respects to those client companies who  
40 participate in public construction contracts; and nothing in the bill shall  
41 exempt an employee leasing company or its employees from complying  
42 with the "New Jersey Insurance Producer Licensing Act," if its  
43 activities fall within the scope of that act.

44 By way of enforcement of the bill's provisions, the department may  
45 rescind its recognition of an employee leasing company which fails to  
46 comply with any of the bill's provisions, thereby rescinding the

- 1 employee leasing company's co-employer status and thus placing full
- 2 responsibility for the employees with the client company.