

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 3066**

STATE OF NEW JERSEY

DATED: MARCH 22, 2001

The Assembly Labor Committee reports favorably this Assembly Committee Substitute for Assembly Bill No. 3066.

This committee substitute regulates employee leasing companies, also known as professional employer organizations. It codifies and clarifies the status of an employee leasing company under New Jersey law as the employer for unemployment and temporary disability insurance purposes and for purposes of workers' compensation coverage.

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

Under the substitute, the employee leasing company and the client company enter into a written employee leasing agreement under which a covered employee becomes "co-employed" by the employee leasing company 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 employee leasing company for covered employees.

In some respects, the employee leasing company assumes the role of the employer. The employee leasing company 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 and retains authority to hire, terminate, discipline, and reassign the covered employee, except that no employee may be reassigned to another client company without the consent of the employee. The client company may have the right to accept or cancel the assignment of any covered employee and may maintain sufficient direction and control over the covered employee as necessary to conduct its business. In regard to a client company which already has a workforce, an employee leasing company is required to hire their initial employee complement from the client's current workforce and treat those employees as employees of the client company throughout the term of the contract. The bill requires that existing collective

bargaining contracts be honored and workers be notified of that fact. Both the employee leasing company 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 employee leasing company must give a written notice of the relationship between the employee leasing company and the client company to each covered employee.

An employee leasing company 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 employee leasing company 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 employee leasing company'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 employee leasing company, shall be used to determine contribution rates, under various arrangements upon the inception and dissolution of the employer leasing agreement. For example, if the employee leasing company acquires the client company's total workforce, the employee leasing company shall report wages and pay contributions based on the benefit experience assigned to the employee leasing company 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 employee leasing company 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 employee leasing company which fails to comply with any of the substitute's provisions, thereby rescinding the employee leasing company'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.

As reported by the committee, this substitute is identical to Senate, No. 1466(2R).