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ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 3066

STATE OF NEW JERSEY

209th LEGISLATURE

ADOPTED MARCH 22, 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

Substitute as adopted by the Assembly Labor Committee.



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

33 (1) 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 (2) 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, except that the provisions of this
44 paragraph shall not affect the client company's obligations with respect
45 to the payment of wages to covered employees;

46 (3) Assumes responsibility for the payment of payroll taxes and

1 collection of taxes from payroll on each covered employee;

2 (4) Retains authority to hire, terminate, discipline, and reassign
3 each covered employee. However, no covered employee shall be
4 reassigned to another client company without that covered employee's
5 consent and the client company may have the right to accept or cancel
6 the assignment of any covered employee;

7 (5) Has given written notice of the relationship between the
8 employee leasing company and the client company to each covered
9 employee it assigns to perform services at the client company's work
10 site;

11 (6) Shall, except for newly established business entities, hire its
12 initial employee complement from among employees of the client
13 company at the time of execution of the employee leasing agreement
14 at comparable terms and conditions of employment as are in existence
15 at the client company at the time of execution of the employee leasing
16 agreement and as designated by the client company. Throughout the
17 term of the employee leasing agreement the covered employees shall
18 be considered employees of the employee leasing company and the
19 client company and upon the termination of the employee leasing
20 agreement, the covered employees shall be considered employees of
21 the client company;

22 (7) Continue to honor and abide by existing collective bargaining
23 agreements applicable to covered employees. Upon expiration of the
24 employee leasing agreement, the client company shall continue to
25 honor and abide by all collective bargaining agreements applicable to
26 covered employees. Every employee leasing company which enters
27 into a contract with a client company, which has a collective
28 bargaining representative for the covered employees, shall require that
29 client company to enter into an agreement with the employee leasing
30 company containing the following language:

31 "The client company shall continue to honor and abide by
32 the terms of any applicable collective bargaining agreements,
33 and upon expiration thereof, any obligations of the client
34 company to bargain in good faith in connection with such
35 collective bargaining agreements shall not be affected in any
36 manner by the employee leasing agreement."

37 b. Every employee leasing agreement shall provide that the
38 employee leasing company and the client company shall each retain a
39 right of direction and control over management of safety, risk and
40 hazard control at the work site or sites affecting each covered
41 employee including:

42 (1) Responsibility for performing safety inspections of client
43 company equipment and premises;

44 (2) Responsibility for the promulgation and administration of
45 employment and safety policies; and

46 (3) Responsibility for the management of workers' compensation

1 claims, the filings thereof, and procedures related thereto.

2 c. Nothing in this section or this act shall alter the rights or
3 obligations of client companies, employee leasing companies or
4 covered employees under the National Labor Relations Act, 29 U.S.C.
5 s.151 et seq.

6
7 3. The employee leasing company and the client company shall not
8 be owned or controlled by the same interests or be part of a
9 "controlled group of corporations," as that term is defined in section
10 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1563.

11
12 4. a. An employee leasing company shall register with the
13 commissioner and provide a list of its client companies, both upon the
14 initial registration of the employee leasing company, and thereafter,
15 annually by January 31st, listing all client companies as of the
16 immediately preceding December 31st. The list shall include the
17 following information with regard to each client company:

- 18 (1) Client company's name;
- 19 (2) Client company's physical location address;
- 20 (3) Description of client company's economic activity;
- 21 (4) Client company's state tax identification number;
- 22 (5) Percent of client company's workforce being leased;
- 23 (6) Effective date and duration of employee leasing agreement;
- 24 (7) A copy of the standard form of agreement entered into
25 between the employee leasing company and the client company;
- 26 (a) The standard form of agreement shall be accompanied by a
27 certified list of all client companies contracting with the employee
28 leasing company for its services.
- 29 (b) The employee leasing company shall be required to notify the
30 Department of Labor on an annual basis of any changes in the standard
31 form of agreement which relate to the requirements set forth in section
32 2 of this act, and when any particular client company has agreed to
33 terms which deviate from the standard form of agreement;
- 34 (8) Proof of written disclosure to client companies upon the
35 signing of an employee leasing agreement, as required in section 8 of
36 this act;
- 37 (9) Proof of current workers' compensation coverage, which may
38 be in the form of a letter from the insurance carrier, and which shall
39 include the name of the carrier, date of commencement of coverage
40 under the policy, term of the coverage, and verification of premiums
41 paid; and

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

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

1 c. All records, reports and other information obtained from
2 employee leasing companies under this act, except to the extent
3 necessary for the proper administration by the department of this act
4 and all applicable labor laws, shall be confidential and shall not be
5 published or open to public inspection other than to public employees
6 in the performance of their public duties.

7
8 5. a. Every initial registration and subsequent annual reporting
9 shall be accompanied by a reviewed financial statement prepared by an
10 independent certified public accountant in accordance with generally
11 accepted accounting principles within six months prior to the date of
12 application or renewal, which statement shall show a minimum net
13 worth of \$100,000.

14 b. (1) As a substitute for the requirement set forth in subsection
15 a. of this section, the commissioner, or his designee, may require that
16 the employee leasing company deposit in a depository designated by
17 the commissioner a bond or securities with a market value of \$75,000.
18 The securities so deposited shall include authorizations to the
19 commissioner, or his designee, to sell those securities in an amount
20 sufficient to pay any taxes, wages, benefits or other entitlement due a
21 covered employee, if the employee leasing company does not make
22 those payments when due.

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

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

34 c. An employee leasing company shall submit to the commissioner,
35 or his designee, within 60 days after the end of each calendar quarter,
36 a certification by an independent certified public accountant that all
37 applicable federal and state payroll taxes have been paid on a timely
38 basis for that quarter. If the commissioner or his designee does not
39 receive that certification within the 60-day period, the department shall
40 notify the employee leasing company within five calendar days of the
41 expiration of the 60-day period. If that certification is not received
42 within 10 calendar days following the notification by the department,
43 the department shall notify the client companies listed on the employee
44 leasing company's annual report required pursuant to section 4 of this
45 act that the certification was not received.

1 6. a. An employee leasing company registered under this act and
2 the respective client companies with which it has entered into
3 employee leasing agreements shall be the co-employers of their
4 covered employees for the payment of wages and other employment
5 benefits due, including the obligation under the workers' compensation
6 law, R.S.34:15-1 et seq., to maintain insurance coverage for personal
7 injuries to, or for the death of, those employees by accident arising out
8 of and in the course of employment.

9 b. For purposes of this act, the agreement between the employee
10 leasing company and the client company shall be one of co-
11 employment, whereby the employee leasing company, having accepted
12 the responsibilities set forth in section 2 of this act, may submit reports
13 to the department and make contributions to the Unemployment
14 Compensation and State Disability Benefits Funds in the manner
15 prescribed in section 7 of this act, on behalf of those covered
16 employees covered by the employee leasing agreement. In addition,
17 the provisions of R.S.34:15-8, regarding the exclusivity of the remedy
18 under the workers' compensation law for personal injuries to, or for
19 the death of, employees by accident arising out of and in the course
20 their employment, shall apply to the employee leasing company and the
21 client company, and their employees.

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

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

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

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

1 for the workforce not acquired by the employee leasing company using
2 the client company's contribution rate.

3 b. Upon dissolution of the employee leasing agreement:

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

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

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

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

45 (5) If, immediately upon dissolution of the employee leasing
46 agreement, the client company enters into a subsequent employee

1 leasing agreement regarding those covered employees with another
2 employee leasing company, the payroll relative to the client company
3 shall be reported and paid at the rate assigned the second employee
4 leasing company.

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

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

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

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

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

30
31 10. a. If an employee leasing company fails to comply with any of
32 the requirements set forth in this act, the department may rescind the
33 registration of that employee leasing company, thereby also rescinding
34 the employee leasing company's co-employer status for purposes of the
35 act, but not relieving the employee leasing company or client company
36 from liabilities accrued.

37 b. If the department rescinds the registration of an employee
38 leasing company, all client companies of the employee leasing
39 company thereafter shall file reports and make contributions
40 separately, as provided in R.S.43:21-1 et seq. The department shall
41 calculate the respective unemployment benefit experience contribution
42 rates and temporary disability contribution rates of the employee
43 leasing company and client company, thereafter, as set forth in
44 subsection b. of section 7 of this act, and the exclusive remedy
45 provision of R.S.34:15-8 shall, as of the date upon which the
46 department has rescinded the registration of the employee leasing

1 company, no longer apply to the employee leasing company relative to
2 personal injuries to, or the death of, any employee formerly covered
3 by the employee leasing agreement, by accident arising out of and in
4 the course of employment, as otherwise provided in the workers'
5 compensation law.

6 c. Notwithstanding any provisions of this act to the contrary,
7 repeated or egregious violations by an employee leasing company of
8 the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-
9 56.25 et seq.), the "unemployment compensation law," R.S.43:21-1 et
10 seq., the "Temporary Disability Benefits Law," P.L.1948, c.110
11 (C.43:21-25 et seq.), the "New Jersey Gross Income Tax Act,"
12 N.J.S.54A:1-1 et seq., or other applicable State or federal tax laws,
13 the "New Jersey State Wage and Hour Law," P.L.1966, c.113
14 (C.34:11-56a et seq.), the laws concerning the regulation of child
15 labor, Chapter 2 of Title 34 of the Revised Statutes, the "Construction
16 Safety Act," P.L.1962, c.45 (C.34:5-166 et seq.), the "Worker and
17 Community Right to Know Act," P.L.1983, c.315 (C.34:5A-1 et seq.),
18 the "Worker Health and Safety Act," P.L.1965, c.154 (C.34:6A-1 et
19 seq.), the laws concerning the regulation of employment agencies,
20 including P.L.1989, c.331 (C.34:8-43, et seq.), the laws concerning
21 suppliers of labor, including P.L.1971, c.192 (C.34:8A-7 et seq.), the
22 Seasonal Farm Labor Act, P.L.1945, c.71 (C.34:9A-1 et seq.), the
23 "Construction Workers' Fringe Benefit Security Act," P.L.1987, c.150
24 (C.34:11A-1 et seq.), the "Family Leave Act," P.L.1989, c.261
25 (C.34:11B-1 et seq.), the laws concerning the regulation of labor
26 unions, including chapter 12 of Title 34 of the Revised Statutes, the
27 laws concerning the regulation of labor disputes in general, including
28 P.L.1960, c.193 (C.34:13C-1 et seq.), the workers' compensation law,
29 chapter 15 of Title 34 of the Revised Statutes, the "Conscientious
30 Employee Protection Act," P.L.1986, c.105 (C.34:19-1 et seq.), "The
31 Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-
32 56.48 et seq.), the federal "Occupational Safety and Health Act," 29
33 U.S.C. s.651 et seq., the "Fair Labor Standards Act of 1938," 29
34 U.S.C. s.201 et seq., or the "National Labor Relations Act," 29 U.S.C.
35 s.151 et seq., shall result in rescission of the registration of an
36 employee leasing company by the commissioner.

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

43 e. Whenever the department rescinds a registration, it shall
44 simultaneously notify the client companies listed on the annual report
45 required pursuant to section 4 of this act of that action.

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

5

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

10

11 13. This act shall take effect immediately.