

Title 34.
Chapter 8.
Employment
Agencies and
Leasing
Article 2. (New)
Leasing Companies
§§1-12 -
C.34:8-67
to 34:8-78

P.L. 2001, CHAPTER 260, *approved December 6, 2001*
Senate, No. 1466 (*Third Reprint*)

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. ²a.² Every employee leasing agreement shall provide that the

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SCM committee amendments adopted October 19, 2000.

² Assembly ALA committee amendments adopted March 22, 2001.

³ Senate amendments adopted in accordance with Governor's recommendations June 7, 2001.

1 employee leasing company:

2 ²[a.] (1)² Reserves a right of direction and control over each
3 covered employee assigned to the client company's location.
4 However, a client company may retain sufficient direction and control
5 over the covered employee as is necessary to conduct the client
6 company's business and without which the client company would be
7 unable to conduct its business, discharge any fiduciary responsibility
8 that it may have, or comply with any applicable licensure, regulatory
9 or statutory requirement of the client company;

10 ²[b.] (2)² Assumes responsibility for the payment of wages to each
11 covered employee without regard to payments by the client company
12 to the employee leasing company ², except that the provisions of this
13 paragraph shall not affect the client company's obligations with respect
14 to the payment of wages to covered employees;²

15 ²[c.] (3)² Assumes ¹[full]¹ responsibility for the payment of
16 payroll taxes and collection of taxes from payroll on each covered
17 employee;

18 ²[d.] (4)² Retains authority to hire, terminate, discipline, and
19 reassign each covered employee. However, ² no covered employee
20 shall be reassigned to another client company without that covered
21 employee's consent and² the client company may have the right to
22 accept or cancel the assignment of any covered employee;

23 ²[e. Retains]

24 (5) Has given written notice of the relationship between the
25 employee leasing company and the client company to each covered
26 employee it assigns to perform services at the client company's work
27 site;

28 (6) Shall, except for newly established business entities, hire its
29 initial employee complement from among employees of the client
30 company at the time of execution of the employee leasing agreement
31 at comparable terms and conditions of employment as are in existence
32 at the client company at the time of execution of the employee leasing
33 agreement and as designated by the client company. Throughout the
34 term of the employee leasing agreement the covered employees shall
35 be considered employees of the employee leasing company and the
36 client company and upon the termination of the employee leasing
37 agreement, the covered employees shall be considered employees of
38 the client company;

39 (7) Continue to honor and abide by existing collective bargaining
40 agreements applicable to covered employees. Upon expiration of the
41 employee leasing agreement, the client company shall continue to
42 honor and abide by all collective bargaining agreements applicable to
43 covered employees. Every employee leasing company which enters
44 into a contract with a client company, which has a collective
45 bargaining representative for the covered employees, shall require that
46 client company to enter into an agreement with the employee leasing

1 company containing the following language:

2 "The client company shall continue to honor and abide by
3 the terms of any applicable collective bargaining agreements, and
4 upon expiration thereof, any obligations of the client company
5 to bargain in good faith in connection with such collective
6 bargaining agreements shall not be affected in any manner by the
7 employee leasing agreement."

8 b. Every employee leasing agreement shall provide that the
9 employee leasing company and the client company shall each retain²
10 a right of direction and control over management of safety, risk and
11 hazard control at the work site or sites affecting each covered
12 employee including:

13 (1) Responsibility for performing safety inspections of client
14 company equipment and premises;

15 (2) Responsibility for the promulgation and administration of
16 employment and safety policies; and

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

19 ²[f. Has given written notice of the relationship between the
20 employee leasing company and the client company to each covered
21 employee it assigns to perform services at the client company's work
22 site.] c. Nothing in this section or this act shall alter the rights or
23 obligations of client companies, employee leasing companies or
24 covered employees under the National Labor Relations Act, 29 U.S.C.
25 s.151 et seq.²

26
27 3. The employee leasing company and the client company shall not
28 be owned or controlled by the same interests or be a part of a
29 "controlled group of corporations" as that term is defined in section
30 1563 of the ¹federal¹ Internal Revenue Code of 1986, ¹26U.S.C.
31 s.1563

32
33 4. a. An employee leasing company shall register with the
34 commissioner and provide a list of its client companies, both upon the
35 initial registration of the employee leasing company, and thereafter,
36 annually by January 31st, listing all client companies as of the
37 immediately preceding December 31st. The list shall include the
38 following information with regard to each client company:

39 (1) Client company's name;

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

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

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

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

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

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

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

4 (b) The employee leasing company shall be required to notify the
5 Department of Labor on an annual basis of any changes in the standard
6 form of agreement which relate to the requirements set forth in section
7 2 of this act, and when any particular client company has agreed to
8 terms which deviate from the standard form of agreement;

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

12 (9) Proof of current workers' compensation coverage, which may
13 be in the form of a letter from the insurance carrier, and which shall
14 include the name of the carrier, date of commencement of coverage
15 under the policy, term of the coverage, and verification of premiums
16 paid; and

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

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

22 c. All records, reports and other information obtained from
23 employee leasing companies under this act, except to the extent
24 necessary for the proper administration by the department of this act
25 and all applicable labor laws, shall be confidential and shall not be
26 published or open to public inspection other than to public employees
27 in the performance of their public duties.

28

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

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

44 (2) The commissioner, or his designee, may also require that bond
45 or deposit if the commissioner finds that the leasing company has had
46 its license ¹or registration¹ suspended, denied, or limited in any other

1 jurisdiction; or that there have been instances in which the employee
2 leasing company has not paid covered employees' wages or benefits
3 when due, or failed to make timely payment of any federal or state
4 payroll taxes or unemployment compensation contributions when due,
5 or for other good cause.

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

9 c. An employee leasing company shall submit to the commissioner,
10 or his designee, within 60 days after the end of each calendar quarter,
11 a certification by an independent certified public accountant that all
12 applicable federal and state payroll taxes have been paid on a timely
13 basis for that quarter. ²If the commissioner or his designee does not
14 receive that certification within the 60-day period, the department shall
15 notify the employee leasing company within five calendar days of the
16 expiration of the 60-day period. If that certification is not received
17 within 10 calendar days following the notification by the department,
18 the department shall notify the client companies listed on the employee
19 leasing company's annual report required pursuant to section 4 of this
20 act that the certification was not received.²

21
22 6. a. An employee leasing company registered under this act and
23 the respective client companies with which it has entered into
24 employee leasing agreements shall be the co-employers of their
25 covered employees for the payment of wages and other employment
26 benefits due, including the obligation under the workers' compensation
27 law, R.S.34:15-1 et seq. ¹[to maintain insurance coverage for personal
28 injuries to, or for the death of, those employees by accident arising out
29 of and in the course of employment.]¹ ². to maintain insurance
30 coverage for personal injuries to, or for the death of, those employees
31 by accident arising out of and in the course of employment.²

32 b. For purposes of this act, the agreement between the employee
33 leasing company and the client company shall be one of co-
34 employment, whereby the employee leasing company, having accepted
35 the responsibilities set forth in section 2 of this act, may submit reports
36 to the department and make contributions to the Unemployment
37 Compensation and State Disability Benefits Funds in the manner
38 prescribed in section 7 of the this act, on behalf of those covered
39 employees covered by the employee leasing agreement. ¹[In addition,
40 the provisions of R.S.34:15-8, regarding the exclusivity of the remedy
41 under the workers' compensation law for personal injuries to, or for
42 the death of, employees by accident arising out of and in the course
43 of their employment, shall apply both to the employee leasing company
44 and the client company.]¹ ²In addition, the provisions of R.S.34:15-8,
45 regarding the exclusivity of the remedy under the workers'
46 compensation law for personal injuries to, or for the death of,

1 employees by accident arising out of and in the course of their
2 employment, shall apply to the employee leasing company and the
3 client company, and their employees.²

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

8

9 7. a. Upon entering into the employee leasing agreement:

10 (1) If the employee leasing company acquires the client company's
11 total workforce, the employee leasing company shall report wages and
12 pay contributions pursuant to the "unemployment compensation law,"
13 R.S.43:21-1 et seq., based on the benefit experience assigned to the
14 employee leasing company under R.S.43:21-7. The benefit experience
15 of the client company shall not be transferred to the leasing company
16 and shall not be used in the calculation of the employee leasing
17 company's future contribution rates.

18 (2) If the employee leasing company acquires less than all of the
19 client company's total workforce, the employee leasing company shall
20 report wages and pay contributions pursuant to the "unemployment
21 compensation law," R.S.43:21-1 et seq. for that portion of the
22 workforce acquired based on the benefit experience assigned to the
23 employee leasing company under R.S.43:21-7. The benefit experience
24 associated with that portion of the client company's workforce
25 acquired by the employee leasing company shall not be transferred to
26 the employee leasing company and shall not be used in the calculation
27 of the employee leasing company's future contribution rates. The
28 client company shall continue to report wages and pay contributions
29 for the workforce not acquired by the employee leasing company using
30 the client company's contribution rate.

31 b. Upon dissolution of the employee leasing agreement:

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

39 (2) If, under the dissolved employee leasing agreement, the client
40 company had leased its total workforce, and if, at the time of the
41 dissolution, the client company had leased those employees for less
42 than two full calendar years, the employee leasing company at the time
43 of dissolution shall provide the Department of Labor with the data
44 necessary to calculate the benefit experience of the client company for
45 the duration of the employee leasing agreement. That benefit
46 experience shall then be added to the client company's benefit

1 experience which was established prior to entering the employee
2 leasing agreement. Both the client company and the employee leasing
3 company shall continue to use the rate of the employee leasing
4 company for the period from the date of the dissolution of the
5 employee leasing agreement until the following July 1.

6 (3) If, under the dissolved employee leasing agreement, the client
7 company had leased less than its total workforce from the employee
8 leasing company, and if, at the time of dissolution, the client company
9 had leased those covered employees for at least two full calendar
10 years, the benefit experience associated with that portion of the client
11 company's workforce which had been leased from the employee leasing
12 company shall not be transferred to the client company and shall not
13 be used in the calculation of the client company's future contribution
14 rates.

15 (4) If, under the dissolved employee leasing agreement, the client
16 company had leased less than its total workforce from the employee
17 leasing company, and if, at the time of dissolution, the client company
18 had leased those covered employees for less than two full calendar
19 years, the leasing company shall provide the department with the data
20 necessary to calculate the benefit experience associated with that
21 portion of the client's workforce which had been leased from the
22 employee leasing company. The department shall combine that benefit
23 experience with the client company's existing benefit experience. Both
24 the client company and the employee leasing company shall continue
25 to use their own rates for the period from the date of the dissolution
26 until the following July 1.

27 (5) If, immediately upon dissolution of the employee leasing
28 agreement, the client company enters into a subsequent employee
29 leasing agreement regarding those covered employees with another
30 employee leasing company, the payroll relative to the client company
31 shall be reported and paid at the rate assigned the second employee
32 leasing company.

33

34 8. The employee leasing company shall provide to each client
35 company, upon signing of an employee leasing agreement, written
36 disclosure as to the method to be utilized for calculation of
37 unemployment benefit experience contribution rates and temporary
38 disability contribution rates upon both the inception and dissolution of
39 the employee leasing relationship.

40

41 9. a. The provisions of this act shall not apply to temporary help
42 service firms, as defined in section 1 of P.L.1989, c.331 (C.34:8-43),
43 or farm labor crew leaders who are subject to P.L.1971, c.191
44 (C.34:8A-7, et seq.).

45 b. Nothing in this act shall exempt either a client company or the
46 covered employees leased to a client company from any applicable

1 State, local, or federal licensing, registration or certification statutes
2 and regulations.

3 c. Any covered employee who must be licensed, registered or
4 certified, according to law, shall be treated as a covered employee of
5 the client company for the purposes of the license, registration or
6 certification.

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

12

13 10. a. If an employee leasing company fails to comply with any of
14 the requirements set forth in this act, the department ¹[reserves the
15 right to] may¹ rescind ¹[its recognition] the registration¹ of that
16 employee leasing company, ²[as such,]² thereby also rescinding the
17 employee leasing company's co-employer status²[,]² for purposes of
18 the act ², but not relieving the employee leasing company or client
19 company from liabilities accrued².

20 b. If the department rescinds ¹[recognition] the registration¹ of
21 ¹[the] an¹ employee leasing company, all client companies of the
22 employee leasing company thereafter shall file reports and make
23 contributions separately, as provided in R.S.43:21-1 et seq. The
24 department shall calculate the respective unemployment benefit
25 experience contribution rates and temporary disability contribution
26 rates of the employee leasing company and client company, thereafter,
27 as set forth in subsection b. of section 7 of this act, and the exclusive
28 remedy provision of R.S.34:15-8 shall, as of the date upon which the
29 department has rescinded ¹[recognition] the registration¹ of the
30 employee leasing company, no longer apply to the employee leasing
31 company relative to personal injuries to, or the death of, any employee
32 formerly covered by the employee leasing agreement, by accident
33 arising out of and in the course of employment, as otherwise provided
34 in the workers' compensation law.

35 c. Notwithstanding any provisions of this act to the contrary,
36 repeated ³[or] and³ egregious violations by an employee leasing
37 company of the "New Jersey Prevailing Wage Act," P.L.1963, c.150
38 (C.34:11-56.25 et seq.) ²[shall be factors considered by the
39 department in determining, for purposes of this act, whether to rescind
40 the], the "unemployment compensation law," R.S.43:21-1 et seq., the
41 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et
42 seq.), the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.,
43 or other applicable State or federal tax laws, the "New Jersey State
44 Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.), the laws
45 concerning the regulation of child labor, Chapter 2 of Title 34 of the

1 Revised Statutes, the "Construction Safety Act," P.L.1962, c.45
 2 (C.34:5-166 et seq.), the "Worker and Community Right to Know
 3 Act," P.L.1983, c.315 (C.34:5A-1 et seq.), the "Worker Health and
 4 Safety Act," P.L.1965, c.154 (C.34:6A-1 et seq.), the laws concerning
 5 the regulation of employment agencies, including P.L.1989, c.331
 6 (C.34:8-43, et seq.), the laws concerning suppliers of labor, including
 7 P.L.1971, c.192 (C.34:8A-7 et seq.), the Seasonal Farm Labor Act,
 8 P.L.1945, c.71 (C.34:9A-1 et seq.), the "Construction Workers' Fringe
 9 Benefit Security Act," P.L.1987, c.150 (C.34:11A-1 et seq.), the
 10 "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.), the laws
 11 concerning the regulation of labor unions, including chapter 12 of Title
 12 34 of the Revised Statutes, the laws concerning the regulation of labor
 13 disputes in general, including P.L.1960, c.193 (C.34:13C-1 et seq.),
 14 the workers' compensation law, chapter 15 of Title 34 of the Revised
 15 Statutes, the "Conscientious Employee Protection Act," P.L.1986,
 16 c.105 (C.34:19-1 et seq.), "The Public Works Contractor Registration
 17 Act," P.L.1999, c.238 (C.34:11-56.48 et seq.), the federal
 18 "Occupational Safety and Health Act," 29 U.S.C. s.651 et seq., the
 19 "Fair Labor Standards Act of 1938," 29 U.S.C. s.201 et seq., or the
 20 "National Labor Relations Act," 29 U.S.C. s.151 et seq., shall result
 21 in rescission of² ¹registration of an¹ employee leasing ¹[company's
 22 employer status] company¹ ²by the commissioner².

23 d. Whenever the department shall find cause to rescind ¹[its
 24 recognition] the registration¹ of an employee leasing company, it shall
 25 notify the registrant in writing of the reasons therefor, and provide the
 26 registrant with an opportunity for a hearing in accordance with the
 27 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
 28 seq.).

29 ²e. Whenever the department rescinds a registration, it shall
 30 simultaneously notify the client companies listed on the annual report
 31 required pursuant to section 4 of this act of that action.²
 32

33 ¹11. Nothing in this act shall exempt an employee leasing company
 34 or any employee thereof from compliance with the provisions of
 35 P.L.1987, c.293 (C.17:22A-1 et seq.) if its activities fall within the
 36 scope of that act or any regulation promulgated pursuant to that act.¹
 37

38 ¹[11.] 12.¹ The commissioner shall, pursuant to the
 39 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
 40 seq.), promulgate those rules and regulations necessary to effectuate
 41 the purposes of this act.
 42

43 ¹[12.] 13.¹ This act shall take effect immediately.

1

2

3 Regulates employee leasing companies and employee leasing
4 agreements.