

CHAPTER 260

AN ACT concerning employee leasing companies.

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

C.34:8-67 Definitions relative to employee leasing companies.

1. For the purposes of this act:

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

"Commissioner" means the Commissioner of Labor.

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

"Department" means the Department of Labor.

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

- (1) An employee leasing company and a client company co-employ covered employees; and
- (2) The arrangement is intended to be, or is, ongoing rather than temporary in nature, and not aimed at temporarily supplementing the client company's work force.

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

C.34:8-68 Provisions of leasing agreements.

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

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

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

(3) Assumes responsibility for the payment of payroll taxes and collection of taxes from payroll on each covered employee;

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

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

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

(7) Continue to honor and abide by existing collective bargaining agreements applicable to covered employees. Upon expiration of the employee leasing agreement, the client company shall continue to honor and abide by all collective bargaining agreements applicable to covered

employees. Every employee leasing company which enters into a contract with a client company, which has a collective bargaining representative for the covered employees, shall require that client company to enter into an agreement with the employee leasing company containing the following language:

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

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

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

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

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

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

C.34:8-69 Relationship between leasing company, client company.

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

C.34:8-70 Registration of leasing company.

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

(1) Client company's name;

(2) Client company's physical location address;

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

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

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

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

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

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

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

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

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

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

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

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

C.34:8-71 Registration, annual reporting.

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

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

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

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

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

C.34:8-72 Co-employment of covered employees.

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

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

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

C.34:8-73 Actions upon entry, dissolution of leasing agreement.

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

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

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

b. Upon dissolution of the employee leasing agreement:

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

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

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

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

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

C.34:8-74 Calculation of unemployment benefit experience.

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

C.34:8-75 Inapplicability to temporary help service firms.

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

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

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

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

C.34:8-76 Noncompliance, rescinding of registration.

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

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

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

et seq., shall result in rescission of registration of an employee leasing company by the commissioner.

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

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

C.34:8-77 Compliance with C.17:22A-1 et seq.

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

C.34:8-78 Rules, regulations.

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

13. This act shall take effect immediately.

Approved December 6, 2001.