

SENATE, No. 1466

STATE OF NEW JERSEY 209th LEGISLATURE

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Sponsored by:

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SYNOPSIS

Regulates employee leasing companies and employee leasing agreements.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/3/2000)

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 full responsibility for the payment of payroll taxes and
45 collection of taxes from payroll on each covered employee;

46 d. Retains authority to hire, terminate, discipline, and reassign each

- 1 covered employee. However, the client company may have the right
2 to accept or cancel the assignment of any covered employee;
- 3 e. Retains a right of direction and control over management of
4 safety, risk and hazard control at the work site or sites affecting each
5 covered employee including:
- 6 (1) Responsibility for performing safety inspections of client
7 company equipment and premises;
- 8 (2) Responsibility for the promulgation and administration of
9 employment and safety policies; and
- 10 (3) Responsibility for the management of workers' compensation
11 claims, the filings thereof, and procedures related thereto.
- 12 f. Has given written notice of the relationship between the
13 employee leasing company and the client company to each covered
14 employee it assigns to perform services at the client company's work
15 site.
- 16
- 17 3. The employee leasing company and the client company shall not
18 be owned or controlled by the same interests or be part of a
19 "controlled group of corporations," as that term is defined in section
20 1563 of the Internal Revenue Code, 26 U.S.C. s.1563.
- 21
- 22 4. a. An employee leasing company shall register with the
23 commissioner and provide a list of its client companies, both upon the
24 initial registration of the employee leasing company, and thereafter,
25 annually by January 31st, listing all client companies as of the
26 immediately preceding December 31st. The list shall include the
27 following information with regard to each client company:
- 28 (1) Client company's name;
- 29 (2) Client company's physical location address;
- 30 (3) Description of client company's economic activity;
- 31 (4) Client company's state tax identification number;
- 32 (5) Percent of client company's workforce being leased;
- 33 (6) Effective date and duration of employee leasing agreement;
- 34 (7) A copy of the standard form of agreement entered into between
35 the employee leasing company and the client company;
- 36 (a) The standard form of agreement shall be accompanied by a
37 certified list of all client companies contracting with the employee
38 leasing company for its services.
- 39 (b) The employee leasing company shall be required to notify the
40 Department of Labor on an annual basis of any changes in the standard
41 form of agreement which relate to the requirements set forth in section
42 2 of this act, and when any particular client company has agreed to
43 terms which deviate from the standard form of agreement;
- 44 (8) Proof of written disclosure to client companies upon the
45 signing of an employee leasing agreement, as required in section 8 of
46 this act;

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

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

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

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

17

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

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

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

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

44 c. An employee leasing company shall submit to the commissioner,
45 or his designee, within 60 days after the end of each calendar quarter,
46 a certification by an independent certified public accountant that all

1 applicable federal and state payroll taxes have been paid on a timely
2 basis for that quarter.

3

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

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

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

29

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

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

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

1 the employee leasing company and shall not be used in the calculation
2 of the employee leasing company's future contribution rates. The
3 client company shall continue to report wages and pay contributions
4 for the workforce not acquired by the employee leasing company using
5 the client company's contribution rate.

6 b. Upon dissolution of the employee leasing agreement:

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

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

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

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

1 until the following July 1.

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

8

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

15

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

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

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

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

33

34 10. a. If an employee leasing company fails to comply with any of
35 the requirements set forth in this act, the department reserves the right
36 to rescind its recognition of that employee leasing company, as such,
37 thereby also rescinding the employee leasing company's co-employer
38 status, for purposes of the act.

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

1 R.S.34:15-8 shall, as of the date upon which the department has
2 rescinded recognition of the employee leasing company, no longer
3 apply to the employee leasing company relative to personal injuries to,
4 or the death of, any employee formerly covered by the employee
5 leasing agreement, by accident arising out of and in the course of
6 employment, as otherwise provided in the workers' compensation law.

7 c. Notwithstanding any provisions of this act to the contrary,
8 repeated or egregious violations by an employee leasing company of
9 the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-
10 56.25 et seq.) shall be factors considered by the department in
11 determining, for purposes of this act, whether to rescind the employee
12 leasing company's employer status.

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

19
20 11. The commissioner shall, pursuant to the "Administrative
21 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), promulgate
22 those rules and regulations necessary to effectuate the purposes of this
23 act.

24
25 12. This act shall take effect immediately.
26
27

28 STATEMENT

29
30 This bill regulates employer leasing companies, also known as
31 professional employer organizations or PEOs. It codifies and clarifies
32 the status of an employee leasing company under New Jersey law as
33 the employer for unemployment and temporary disability insurance
34 purposes and for purposes of workers' compensation coverage.

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

39 Under the bill, the employee leasing company and the client
40 company enter into a written employee leasing agreement under which
41 a covered employee becomes "co-employed" by the employee leasing
42 company and the client company. The bill defines the parameters of
43 the employee leasing agreement, which in turn dictates the respective
44 responsibilities of the client company and the employee leasing
45 company for covered employees. In many respects, the employee
46 leasing company assumes the role of the employer. For example: it

1 assumes responsibility for the payment of wages to covered
2 employees; assumes full responsibility for the payment of payroll taxes
3 and collection of taxes from payroll on covered employees; and
4 retains authority to hire, terminate, discipline, and reassign the covered
5 employee. However, the client company may have the right to accept
6 or cancel the assignment of any covered employee and may maintain
7 sufficient direction and control over the covered employee as
8 necessary to conduct its business. Additionally, any covered employee
9 who must be licensed, registered or certified according to law shall be
10 treated as a covered employee of the client company for the purposes
11 of the license, registration or certification.

12 An employee leasing company shall register with the Commissioner
13 of Labor and provide a list of its client companies and submit certain
14 information, including a financial statement prepared by an
15 independent certified public accountant. In some cases, the
16 commissioner may permit the posting of a bond or securities as a
17 substitute for the financial statement or, under certain circumstances,
18 he may require it.

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

31 The provisions of the "New Jersey Prevailing Wage Act" would
32 remain applicable in all respects to those client companies who
33 participate in public construction contracts. By way of enforcement
34 of the bill's provisions, the department may rescind its recognition of
35 an employee leasing company which fails to comply with any of the
36 bill's provisions, thereby rescinding the employee leasing company's
37 co-employer status and thus placing full responsibility for the
38 employees with the client company.