

SENATE, No. 2164

STATE OF NEW JERSEY
214th LEGISLATURE

INTRODUCED JUNE 28, 2010

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

SYNOPSIS

Concerns employee leasing companies.

CURRENT VERSION OF TEXT

As introduced.



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2

1 AN ACT concerning employee leasing companies, amending and
2 supplementing P.L.2001, c.260, and supplementing various parts
3 of the statutory law.

4

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

7

8 1. Section 2 of P.L.2001, c.260 (C.34:8-68) is amended to read
9 as follows:

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

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

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

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

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

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

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

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

Matter underlined thus is new matter.

1 termination of the employee leasing agreement, the covered
2 employees shall be considered employees of the client company;

3 (7) Continue to honor and abide by existing collective
4 bargaining agreements applicable to covered employees. Upon
5 expiration of the employee leasing agreement, the client company
6 shall continue to honor and abide by all collective bargaining
7 agreements applicable to covered employees. Every employee
8 leasing company which enters into a contract with a client
9 company, which has a collective bargaining representative for the
10 covered employees, shall require that client company to enter into
11 an agreement with the employee leasing company containing the
12 following language:

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

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

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

26 (2) Responsibility for the promulgation and administration of
27 employment and safety policies[; and].

28 **[(3) Responsibility]** The employee leasing company shall be
29 responsible for the management of workers' compensation claims,
30 the filings thereof, and procedures related thereto.

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

35 d. (1) Nothing in P.L.2001, c.260 (C.34:8-67 et seq.) or in any
36 employee leasing agreement shall diminish, abolish or remove any
37 obligations of covered employees to a client company or any
38 obligations of any client company to a covered employee existing
39 prior to the effective date of an employee leasing agreement, or
40 create any new or additional enforceable right of a covered
41 employee against an employee leasing company that is not
42 specifically provided by the appropriate employee leasing
43 agreement P.L.2001, c.260 (C.34:8-67 et seq.).

44 (2) Nothing in P.L.2001, c.260 (C.34:8-67 et seq.) or in any
45 employee leasing agreement shall affect, modify, or amend any
46 contractual relationship or restrictive covenant between a covered
47 employee and any client company in effect at the time an employee
48 leasing agreement becomes effective; nor shall it prohibit or amend

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1 any contractual relationship or restrictive covenant that is entered
2 into subsequently between a client company and a covered
3 employee. An employee leasing company shall have no
4 responsibility or liability in connection with, or arising out of, any
5 such existing or new contractual relationship or restrictive covenant
6 unless the employee leasing company has specifically agreed
7 otherwise in writing.

8 e. (1) Nothing in P.L.2001, c.260 (C.34:8-67 et seq.) or in any
9 employee leasing agreement shall affect, modify or amend any state
10 or local registration or certification requirement applicable to any
11 client company or covered employee.

12 (2) A covered employee who is required to be licensed,
13 registered, or certified or undergo a criminal background check
14 pursuant to any State law or regulation shall be considered solely an
15 employee of the client company for purposes of that license,
16 registration, or certification requirement.

17 (3) An employee leasing company shall not be deemed to
18 engage in any occupation, trade, profession, or other activity that is
19 subject to licensing, registration, or certification requirements, or is
20 otherwise regulated by a governmental entity, solely by entering
21 into an employee leasing agreement with a client company who is
22 subject to those requirements or regulation.

23 (4) A client company shall have the sole right of direction and
24 control of the professional or licensed activities of covered
25 employees and the client company's business. Those covered
26 employees and client companies shall remain subject to regulation
27 by the regulatory or governmental entity responsible for licensing,
28 registration, or certification of those covered employees or client
29 companies.

30 f. A client company's certification as a small, minority-owned,
31 disadvantaged, woman-owned business enterprise or a historically
32 underutilized business for the purposes of any bid, contract,
33 purchase order, or agreement entered into with the State or a
34 political subdivision of the State, shall not be affected because the
35 client company has entered into an employee leasing agreement
36 with an employee leasing company.

37 g. Any benefit that a client company is required to provide to
38 covered employees that is provided to covered employees by an
39 employee leasing company through an employee leasing agreement
40 shall be credited against the client company's obligation to fulfill
41 the requirement.

42 (cf: P.L.2001, c.260, s.2)

43
44 2. Section 4 of P.L.2001, c.260 (C.34:8-70) is amended to read
45 as follows:

46 4. a. An employee leasing company shall register with the
47 commissioner and provide a list of its client companies with
48 covered employees in this State, both upon the initial registration of

1 the employee leasing company, and thereafter, annually by January
2 31st, listing all client companies as of the immediately preceding
3 December 31st. The list shall include the following information
4 with regard to each client company:

- 5 (1) Client company's name;
- 6 (2) Client company's physical location address;
- 7 (3) Description of client company's economic activity;
- 8 (4) Client company's state tax identification number;
- 9 (5) Percent of client company's workforce being leased;
- 10 (6) Effective date and duration of employee leasing agreement;
- 11 (7) A copy of the standard form of agreement entered into

12 between the employee leasing company and the client company;

13 (a) The standard form of agreement shall be accompanied by a
14 certified list of all client companies with covered employees in this
15 State contracting with the employee leasing company for its
16 services.

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

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

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

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

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

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

42 d. The department shall establish a limited registration process
43 and appropriate forms for an employee leasing company that (1) is
44 not domiciled in this State; (2) is licensed or registered as an
45 employee leasing company or professional employer organization in
46 another state; (3) does not maintain an office in this State or directly
47 solicit client companies located or domiciled in this State; and (4) is
48 not on any single day responsible for more than 50 covered

1 employees employed in this State. An employee leasing company
2 requesting a limited registration pursuant to this subsection shall
3 provide the department with a list of client companies and the
4 number of covered employees at each of those companies and such
5 other minimal information as the department shall prescribe. Any
6 employee leasing company receiving a limited registration from the
7 department shall not be required to comply with the provisions of
8 subsection a. and b. of this section.

9 e. Every initial application and subsequent annual reporting
10 submitted pursuant to this section shall be accompanied by a fee of
11 \$500.

12 (cf: P.L.2001, c.260, s.4)

13

14 3. Section 5 of P.L.2001, c.260 (C.34:8-71) is amended to read
15 as follows:

16 5. a. (1) Every initial registration and subsequent annual
17 reporting shall be accompanied by **【a reviewed】** an audited
18 financial statement prepared by an independent certified public
19 accountant in accordance with generally accepted accounting
20 principles **【within six months prior to the date of application or**
21 renewal**】**, which statement shall show a **【minimum net worth of**
22 **【\$100,000】** positive working capital, computed as current assets
23 minus current liabilities. The audited financial statement shall be
24 without qualification as to the going concern status of the employee
25 leasing company.

26 (2) At the time of an application for an initial registration an
27 employee leasing company shall submit an audited financial
28 statement prepared within 13 months of the application. Thereafter,
29 an employee leasing company shall file on an annual basis, within
30 180 days of the end of the employee leasing company's fiscal year,
31 a current audited financial statement. An employee leasing
32 company may request the department for an extension for this
33 filing, which shall be accompanied by a letter from the employee
34 leasing company's independent certified public accountant stating
35 the reasons for the requested extension and the anticipated date of
36 the completion of the audited financial statement.

37 b. (1) **【As a substitute for the requirement set forth in subsection**
38 **a. of this section, the commissioner, or his designee, may require**
39 **that the employee leasing company deposit in a depository**
40 **designated by the commissioner a bond or securities with a market**
41 **value of \$75,000.】** An employee leasing company that does not
42 have a positive working capital may provide to the department, in
43 lieu thereof, a bond, irrevocable letter of credit, or securities with a
44 minimum market value equaling the amount necessary to achieve a
45 positive working capital plus \$100,000. The securities so deposited
46 shall include authorizations to the commissioner, or his designee, to
47 sell those securities in an amount sufficient to pay any taxes, wages,

1 benefits or other entitlement due a covered employee, if the
2 employee leasing company does not make those payments when
3 due.

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

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

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

28 d. The department shall adopt, pursuant to the "Administrative
29 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) rules and
30 regulations to permit, to the extent practicable, employee leasing
31 companies to electronically file applications, documents, reports
32 and other filings required by P.L.2001, c.260 (C.34:8-67 et seq.).
33 (cf: P.L.2001, c.260, s.5)

34
35 4. (New section) a. Except to the extent otherwise expressly
36 provided by an applicable employee leasing agreement, a client
37 company shall be solely responsible for the quality, adequacy or
38 safety of the goods or services produced or sold in the client
39 company's business, for directing, supervising, training and
40 controlling the work of the covered employees with respect to the
41 business activities of the client company, and for the acts, errors or
42 omissions of covered employees with regard to those activities.

43 b. Except to the extent otherwise expressly provided by an
44 applicable employee leasing agreement, a client company shall not
45 be liable for the acts, errors or omissions of an employee leasing
46 company, or of any covered employee when the covered employee
47 is acting under the express direction and control of the employee
48 leasing company, and an employee leasing company shall not be

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1 liable for the acts, errors, or omissions of a client company or of
2 any covered employee when the covered employee is acting under
3 the express direction and control of the client company.

4 c. Except to the extent otherwise expressly provided by an
5 applicable employee leasing agreement or other employment
6 contract, insurance contract or bond, a covered employee shall not
7 be considered, solely as the result of being a covered employee, an
8 employee of the employee leasing company for purposes of general
9 liability insurance, fidelity bonds, surety bonds, employer's liability
10 which is not covered by workers' compensation, or other liability
11 insurance carried by the employee leasing company.

12
13 5. (New section) For purposes of determining economic
14 incentives or benefit based on employment provided by law, rule or
15 regulation by the State or other government entity, covered
16 employees of a client company shall be considered employees
17 solely of the client company, and the client company shall be
18 entitled to the benefit of any economic incentive or other benefit
19 based on the number of the client company's covered employees,
20 notwithstanding that an employee leasing company is the W-2
21 reporting employer for the covered employees. Each client
22 company shall be treated as employing only those covered
23 employees co-employed by the client company, and not covered
24 employees employed by other client companies of the employee
25 leasing company. Each employee leasing company shall provide,
26 upon request by the State or any political subdivision thereof,
27 employment information reasonably required for the administration
28 of any economic incentive or benefit program. Each employee
29 leasing company shall provide, upon request by a client company,
30 employment information necessary to support any request, claim,
31 application, or other action by a client company seeking any such
32 economic incentive or benefit. As used in this section, "covered
33 employee," "client company," and "employee leasing company"
34 shall have the same meaning as set forth in section 1 of P.L.2001,
35 c.260 (C.34:8-67).

36 6. (New section). For the purposes of implementing the "Sales
37 and Use Tax Act," (P.L.1966, c.30; C.54:32B-1 et seq.) any taxes due
38 for services performed by covered employees shall be paid by the
39 client company and not by the employee leasing company. As used in
40 this section "covered employee," "client company" and "employee
41 leasing company" shall have the same meaning as set forth in section 1
42 of P.L.2001, c.260 (C. 34:8-67).

43 7. (New Section) For the purposes of implementing the "Sales and
44 Use Tax Act," P.L.1966, c.30; C.54:32B-1 et seq.) any sales tax
45 imposed on employee leasing services provided by an employee
46 leasing company to a client company shall be imposed only on receipts

1 that reflect the amounts charged to client companies for employee
2 leasing services and not on receipts that represent the amounts charged
3 for the payment of wages, salaries, benefits, worker's compensation
4 costs, withholding taxes, or other assessments paid to or on behalf of a
5 covered employee by the employee leasing company under an
6 employee leasing agreement. As used in this section, "employee
7 leasing company," "client company," "covered employee" and
8 "employee leasing agreement" shall have the same meaning as set
9 forth in section 1 of P.L.2001, c.260 (C.34:8-67).

10 8. (New section) For the purposes of implementing any tax
11 imposed on an employer on a per employee basis, the tax shall be
12 imposed on a client company for its covered employees and on an
13 employee leasing company for its employees that are not covered
14 employees. As used in this section, "employee leasing company,"
15 "client company," and "covered employee" shall have the same
16 meaning as set forth in section 1 of P.L.2001, c.260 (C.34:8-67).

17 9. (New section) For the purposes of implementing any tax
18 imposed on an employer on the basis of total payroll, an employee
19 leasing company, in computing the tax on behalf of the client
20 company, shall be authorized to apply any small business allowance
21 or exemption made available pursuant to law to the client company
22 for covered employees. As used in this section, "employee leasing
23 company," "client company," and "covered employee" shall have
24 the same meaning as set forth in section 1 of P.L.2001, c.260
25 (C.34:8-67).

26
27 10. (New section) For the purposes of determining any tax credit
28 based on employment provided by law, rule or regulation by the
29 State, covered employees of a client company shall be considered
30 employees solely of the client company, and the client company
31 shall be entitled to the tax credit based on the number of the client
32 company's covered employees, notwithstanding that an employee
33 leasing company is the W-2 reporting employer for the covered
34 employees. Each client company shall be treated as employing only
35 those covered employees co-employed by the client company, and
36 not covered employees employed by other client companies of the
37 employee leasing company. Each employee leasing company shall
38 provide, upon request of the Division of Taxation in the Department
39 of the Treasury, employment information reasonably required for
40 the administration of any tax credit program. Each employee leasing
41 company shall provide, upon request by a client company,
42 employment information necessary to support any request, claim,
43 application, or other action by a client company seeking any such
44 tax credit. As used in this section, "employee leasing company,"
45 "client company," and "covered employee" shall have the same
46 meaning as set forth in section 1 of P.L.2001, c.260 (C.34:8-67).

1 11. This act shall take effect nine months following enactment.

2

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STATEMENT

4 This bill makes various changes to several laws that affect the
5 regulation and business operations of employee leasing companies,
6 or professional employer organizations (PEOs). Employee leasing
7 companies are business entities that manage human resources,
8 employee benefits, health insurance, and payroll and workers'
9 compensation for small businesses. Companies contract with an
10 employee leasing company to assist them with employee related
11 matters such as health benefits, workers' compensation claims,
12 payroll, payroll tax compliance, and unemployment insurance
13 claims, allowing the client companies to concentrate on the
14 operational aspects of their businesses. Employee leasing
15 companies are not temporary employment agencies; employee
16 leasing companies become "co-employers" of the employees of the
17 businesses to which they provide services. Employee leasing
18 companies are regulated by the Department of Labor and Workforce
19 Development pursuant to P.L.2001, c.260 (34:8-67 et seq.).

20 Specifically this bill amends the New Jersey employee leasing
21 company statute to:

22 1. Establish a limited registration process for employee leasing
23 companies domiciled and licensed in another state and with fewer
24 than 50 employees in this State;

25 2. Change the financial test for registration of employee
26 leasing companies by the department from a set minimum worth to
27 positive working capital, require employee leasing companies to
28 submit audited, rather than reviewed, financial statements, and
29 require employee leasing companies that cannot demonstrate a
30 positive working capital to post a bond equal to the amount needed
31 to achieve a positive working capital plus \$100,000.

32 3. Direct the department to authorize, to the extent practicable,
33 electronic filing of documents and other compliance documents;

34 4. Clarify various responsibilities, rights and liabilities of
35 employee leasing companies, client companies, and covered
36 employees under an employee leasing agreement;

37 5. Clarify that an employee leasing agreement is not affect
38 certain rights of covered employees, or affect any contractual
39 relationship between a client company and a covered employee;

40 6. Clarify that an employee leasing company is not required to
41 obtain professional licenses or State permits required of a client
42 company solely by virtue of an employee leasing agreement;

43 7. Require that an employee leasing company submit a fee of
44 \$500 with every initial application and subsequent annual reporting;
45 and

46 8. Provide that a client company, not an employee leasing
47 company, is responsible for workplace safety issues and policies.

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1 This bill also supplements the “Sales and Use Tax Act,”
2 P.L.1966, c.32 (C.54:32B-1 et seq.) to clarify and allocate the tax
3 liabilities of client companies and employee leasing companies if
4 the tax were to be applied to services provided by client companies
5 or to services provided by employee leasing companies. Also, this
6 bill similarly clarifies and allocates tax liabilities of a per-employee
7 tax or payroll tax imposed on a client company or an employee
8 leasing company. Lastly, this bill clarifies that a tax credit or
9 economic benefit or incentive available to employers accrues to a
10 client company employer with an agreement with an employee
11 leasing company.