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ASSEMBLY, No. 5014

STATE OF NEW JERSEY

219th LEGISLATURE

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Sponsored by:

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District 17 (Middlesex and Somerset)

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SYNOPSIS

Concerns contributions to the unemployment compensation fund by employee leasing companies.

CURRENT VERSION OF TEXT

As reported by the Assembly Labor Committee on December 14, 2020, with amendments.



(Sponsorship Updated As Of: 12/14/2020)

1 AN ACT concerning contributions to the unemployment
2 compensation fund by employee leasing companies and
3 amending P.L.2013, c.225.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 3 of P.L.2013, c.225 (C.43:21-7.8) is amended to
9 read as follows:

10 3. a. For purposes of the "unemployment compensation law,"
11 R.S.43:21-1 et seq., a covered employee is an employee of the
12 employee leasing company. An employee leasing company is
13 responsible for the payment of contributions, surcharges, penalties,
14 and interest assessed under the "unemployment compensation law,"
15 R.S.43:21-1 et seq. on wages paid by the employee leasing
16 company to the covered employees during the term of the employee
17 leasing agreement. An employee leasing company shall use the
18 Entity Level Reporting Method to report and pay all required
19 contributions to the unemployment compensation fund as required
20 by R.S.43:21-7, unless the employee leasing company elects the
21 Client Level Reporting Method under subsection c. of this section.
22 An employee leasing company that does not initially elect the
23 Client Level Reporting Method under subsection c. may
24 subsequently elect the Client Level Reporting Method. An
25 employee leasing company which, at sometime after the enactment
26 of this act, elects to use the Client Level Reporting Method may
27 switch back to the Entity Level Reporting Method in the future, but
28 only with the approval of the department, which may not be granted
29 to that employee leasing company more than one time. An
30 employee leasing company and any related "controlled group of
31 corporations" as that term is defined in section 1563 of the federal
32 Internal Revenue Code of 1986, 26 U.S.C. s. 1563 shall use the
33 same reporting method for all clients.

34 b. The Entity Level Reporting Method uses the State employer
35 account number and contribution rate of the employee leasing
36 company to report and pay all required contributions to the
37 unemployment compensation fund as required by R.S.43:21-7
38 relating exclusively to covered employees. The following
39 provisions apply to an employee leasing company that reports under
40 the Entity Level Reporting Method:

41 (1) The employee leasing company shall file all quarterly
42 contribution and wage reports in accordance with R.S.43:21-7 using
43 the state tax identification number and the contribution rate of the
44 employee leasing company as determined under the "unemployment
45 compensation law," R.S.43:21-1 et seq.;

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

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ALA committee amendments adopted December 14, 2020.

1 (2) The employee leasing company and its client are subject to
2 the provisions of R.S.43:21-7(c)(7), irrespective of whether there is
3 common ownership, as follows:

4 (a) On July 1 of the year following the effective date of the
5 employee leasing agreement, the department shall transfer the
6 employment experience of the client company to the employee
7 leasing company as a successor in interest, including any credit for
8 past years, contributions paid, annual payrolls, or benefit charges
9 applicable to the client company. The employee leasing company,
10 however, upon the effective date of the employee leasing
11 agreement, shall immediately receive credit for prior contributions
12 paid on behalf of and relating to the covered employees by the
13 client company or, if applicable, another employee leasing
14 company, against wages in the tax year in which the employee
15 leasing agreement begins and shall be immediately subject to the
16 existing rate of the employee leasing company. The department
17 shall provide to the employee leasing company, within 15 days of
18 request, any data related to the client's prior unemployment
19 insurance history, including but not limited to, contributions paid,
20 annual payrolls and benefit charges, on or after the effective date of
21 the employee leasing agreement.

22 (b) Upon dissolution of an employee leasing agreement, the
23 department shall transfer all of the employment experience of the
24 client company relating to covered employees as a successor in
25 interest from the employee leasing company, including any credit
26 for past years, contributions paid, annual payrolls, or benefit
27 charges applicable to the client company. The employee leasing
28 company shall provide the department with the data the department
29 deems necessary to make that transfer.

30 (c) On the first July 1 following the termination of an employee
31 leasing agreement, the department shall transfer the employment
32 experience relating to the client company to the succeeding
33 employee leasing company, if any, as a successor in interest,
34 including any credit for past years, contributions paid, annual
35 payrolls, or benefit charges applicable to the client company. The
36 successor employee leasing company, however, upon the effective
37 date of the employee leasing agreement, shall immediately receive
38 credit for prior contributions paid on behalf of and relating to the
39 covered employees by the predecessor employee leasing company,
40 against wages in the tax year in which the new employee leasing
41 agreement begins and the balance of wages due in the tax year shall
42 be immediately subject to the existing rate of the successor
43 employee leasing company. The department shall provide to either
44 employee leasing company, within 15 days of a written request, any
45 data related to the client company's prior unemployment insurance
46 history, including but not limited to, contributions paid, annual
47 payrolls and benefit charges, on or after the effective date of the
48 employee leasing agreement;

1 (3) Whenever the employee leasing company enters into an
2 employee leasing agreement with a client company, the employee
3 leasing company shall notify the department not later than 30 days
4 after the end of the quarter in which the employee leasing
5 agreement became effective; and

6 (4) The employee leasing company shall notify the department
7 in writing on forms prescribed by the department not later than 30
8 days after the date of the following:

9 (a) The termination of an employee leasing agreement; or

10 (b) The employee leasing company elects the Client Level
11 Reporting Method under subsection c. of this section.

12 Upon dissolution of an employee leasing agreement: the client
13 company's contribution rate and benefit experience shall be
14 determined in accordance with subsection b. of section 7 of
15 P.L.2001, c.260 (C.34:8-73); and the employee leasing company
16 shall provide the department with the information required by
17 subsection b. of section 7 of P.L.2001, c.260 (C.34:8-73).

18 c. (1) An employee leasing company may elect to use the
19 Client Level Reporting Method, **【which uses】** using the state
20 employer account, account number and contribution rate of the
21 client company to report and pay all required contributions to the
22 unemployment compensation fund as required by R.S.43:21-7
23 relating exclusively to covered employees.

24 (2) An employee leasing company doing business in New Jersey
25 as of the effective date of this act shall make the election to use the
26 Client Level Reporting Method in writing to the department not
27 later than:

28 (a) 60 days after the effective date of this act for reporting and
29 payment of contributions under the "unemployment compensation
30 law," R.S.43:21-1 et seq., for the 2014 calendar year; or

31 (b) September 30, 2014, for reporting and payment of
32 contributions under the "unemployment compensation law,"
33 R.S.43:21-1 et seq., effective no later than July 1, 2015.

34 An employee leasing company not doing business in New Jersey
35 or not registered pursuant to P.L.2001, c.260 (C.34:8-67 et seq.) as
36 of the effective date of this act shall, if it so desires, make the
37 election to use the Client Level Reporting Method and notify the
38 department in writing of that election at the time of registration.

39 (3) An employee leasing company which uses the Entity Level
40 Reporting Method may subsequently elect the Client Level
41 Reporting Method, subject to the provisions of this section,
42 including the following requirements:

43 (a) The employee leasing company shall make the election to
44 use the Client Level Reporting Method not later than December 1 of
45 the calendar year before the calendar year in which the election is to
46 be effective;

47 (b) The election shall be made in a written notice submitted to
48 the department; and

1 (c) The election shall be effective for the calendar year
2 immediately following the year in which the department receives
3 the notice of election.

4 (4) The following apply to an employee leasing company that
5 elects to use the Client Level Reporting Method:

6 (a) Whenever the employee leasing company enters into an
7 employee leasing agreement with a client company, the employee
8 leasing company shall notify the department not later than 30 days
9 after the end of the quarter in which the employee leasing
10 agreement became effective;

11 (b) An employee leasing company reporting under the Entity
12 Level Reporting Method which elects, in writing, to report under
13 the Client Level Reporting Method shall, within 30 days, provide
14 any data which the department deems necessary to the department
15 to enable the department to calculate the benefit experience rate of
16 each client company;

17 (c) If a client company is an employing unit when the employee
18 leasing agreement becomes effective, the **client** employee leasing
19 company **retains its** shall use the client company's account,
20 account number, experience **balance** rate, liabilities, and wage
21 credits, and R.S. 43:21-7(c)(7) shall not apply to the client
22 company or to the employee leasing company **to file quarterly**
23 wage reports and remit payment for taxes associated with those
24 wages;

25 (d) Unless contrary to applicable law, if a client company is not
26 an employing unit on the date the employee leasing agreement
27 becomes effective, the client company immediately qualifies for an
28 employer experience account under R.S. 43:21-7 and is subject to
29 section 1 of P.L.1992, c.202 (C.43:21-7.7) for purposes of
30 establishing an initial contribution rate and the employee leasing
31 company shall use the client company's account and account
32 number to file quarterly wage reports and remit payment for taxes
33 associated with those wages; and

34 (e) **A** client is associated with the employee leasing company's
35 employer experience account by means of the employee leasing
36 company's primary federal employer identification number (FEIN)
37 for purposes of liability under the "unemployment compensation
38 law," R.S.43:21-1 et seq. and federal certification; and

39 **f** Upon the dissolution of an employee leasing agreement, the
40 client company shall retain the experience balance, liabilities, and
41 wage credits for the client company's employing unit account **;** the
42 client company's federal employer identification number (FEIN)
43 shall become the primary FEIN on the employing unit's account;
44 and the employee leasing company's FEIN shall not be associated
45 with the client's company's employing unit account **].**

46 d. For the purposes of this section, the client company which
47 reports under the Entity Level Reporting Method or the Client Level

1 Reporting Method, and not the employee leasing company, shall
2 remain solely liable for any and all liabilities which originated or
3 preceded the effective date of the employee leasing agreement.

4 Regardless of the reporting method utilized by an employee
5 leasing company, either the employee leasing company or the client
6 can hold the short term private or public disability insurance policy
7 covering the covered employees.

8 e. For the purposes of this section:

9 (1) The term "Client Level Reporting Method" has the meaning
10 set forth in subsection c. of this section;

11 (2) The term "Entity Level Reporting Method" has the meaning
12 set forth in subsection b. of this section; and

13 (3) The terms "client company," "covered employee,"
14 "employee leasing agreement" or "professional employer
15 agreement," and "employee leasing company" or "professional
16 employer organization" have the meanings set forth in section 1 of
17 P.L.2001, c.260 (C.34:8-67).

18 (cf: P.L.2013, c.225, s.3)

19

20 2. This act shall take effect ¹**【immediately】** on January 1,
21 2021¹.