

CHAPTER 118

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

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

1. Section 1 of P.L.2001, c.260 (C.34:8-67) is amended to read as follows:

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

1. For the purposes of this act:

"Assurance organization" means an independent and qualified entity approved by the commissioner to certify the qualifications of an employee leasing company or employee leasing company group for registration under P.L.2001, c.260 (C.34:8-67 et seq.).

"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 and Workforce Development.

"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 and Workforce Development.

"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.

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

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. The client company shall also 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.”

(8) Shall provide workers' compensation insurance for their covered employees.

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.

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

(2) Nothing in P.L.2001, c.260 (C.34:8-67 et seq.) or in any employee leasing agreement shall affect, modify, or amend any contractual relationship or restrictive covenant between a covered employee and any client company in effect at the time an employee leasing agreement becomes effective; nor shall it prohibit or amend any contractual relationship or restrictive covenant that is entered into subsequently between a client company and a covered employee. An employee leasing company shall have no responsibility or liability in connection with, or arising out of, any such existing or new contractual relationship or restrictive covenant unless the employee leasing company has specifically agreed otherwise in writing.

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

(2) A covered employee who is required to be licensed, registered, or certified pursuant to any State law or regulation shall be considered solely an employee of the client company for purposes of that license, registration, or certification requirement.

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

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

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

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

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

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 with covered employees in this State, 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 with covered employees in this State contracting with the employee leasing company for its services.

(b) The employee leasing company shall be required to notify the Department of Labor and Workforce Development on an annual basis of any material 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.

d. The department shall establish a limited registration and renewal process and appropriate forms for an employee leasing company that (1) is not domiciled in this State; (2) is licensed or registered as an employee leasing company or professional employer organization in another state; (3) does not maintain an office in this State or directly solicit client companies located or domiciled in this State; and (4) is not responsible for more than 50 covered employees employed in this State on the date of registration or renewal. If during the term of a limited registration an employee leasing company becomes responsible for more than 50 covered employees, the employee leasing company shall re-register with the department pursuant to subsection a. of this section within 30 days of the end of the quarter in which the employee leasing company became responsible for more than 50 covered employees, but shall not be charged any additional registration fee, if a registration fee is required. An employee leasing company requesting a limited registration pursuant to this subsection shall provide the department with a list of client companies and the number of covered employees at each of those companies and such other information as the department shall prescribe. Any employee leasing company receiving a limited registration from the department shall not be required to comply with the provisions of subsections a. and b. of section 5 of P.L.2001, c.260 (C.34:8-71).

e. Two or more employee leasing companies that are majority owned by the same ultimate parent company, entity or person may register as an employee leasing company group, and may satisfy the registration requirements imposed pursuant to this section and the financial reporting required pursuant to section 5 of P.L.2001, c.260 (C.34:8-71), and any other filing requirements authorized by the department, on a combined or consolidated basis,

provided that the employee leasing company group demonstrates positive working capital pursuant to section 5 of P.L.2001, c.260 (C.34:8-71). Each employee leasing company covered under an employee leasing company group registration shall guarantee the financial capacity obligations of each other employee leasing company covered under the employee leasing company group registration.

f. The department may require that every initial application and subsequent annual reporting submitted pursuant to this section shall be accompanied by a fee of up to \$500. If such a fee is required, every initial application and subsequent annual reporting submitted by an employee leasing company group pursuant to subsection e. of this section shall be accompanied by a fee of the required amount for each employee leasing company included in the employee leasing company group.

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

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

5. a. (1) Every initial registration and subsequent annual reporting shall be accompanied by a financial statement prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant, which statement shall show a positive working capital, computed as current assets minus current liabilities. The financial statement shall be without qualification as to the going concern status of the employee leasing company.

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

b. (1) An employee leasing company that does not have a positive working capital may provide to the department, in lieu thereof, a bond, irrevocable letter of credit, or securities with a minimum market value equaling the amount necessary to achieve a positive working capital plus up to \$100,000, such additional amount to be determined by the commissioner or his designee. 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. The provisions of this paragraph shall not apply to an employee leasing company group registered pursuant to subsection e. of section 4 of P.L.2001, c.260 (C.34:8-70).

(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 positive working capital 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 for covered employees in this State 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 business days of the expiration of the 60-day period. If that certification is not received within 10 business 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.

d. Two or more employee leasing companies that are majority owned by the same ultimate parent company, entity or person may comply with the provisions of this section pursuant to subsection e. of section 4 of P.L.2001, c.260 (C.34:8-70).

e. The department may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) rules and regulations to permit, to the extent authorized pursuant to the "Uniform Electronic Transactions Act," P.L.2001, c.116 (C.12A:12-1 et seq.), employee leasing companies to electronically file applications, documents, reports and other filings required by P.L.2001, c.260 (C.34:8-67 et seq.). The department may also adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules to provide for the acceptance of electronic filings and other assurance by an assurance organization that provides satisfactory assurance of compliance acceptable to the department consistent with or in lieu of the requirements of section 4 of P.L.2001, c.260 (C.34:8-70) and of this section and other requirements of P.L.2001, c.260 (C.34:8-67 et seq.) or the rules promulgated pursuant to it. The rules may permit an employee leasing company or an employee leasing company group to authorize an assurance organization to act on behalf of an employee leasing company or an employee leasing company group in complying with P.L.2001, c.260 (C.34:8-67 et seq.) and any rules and regulations adopted pursuant thereto, including electronic filings of information and payment of fees that may be required. The rules and regulations adopted pursuant to this subsection may include, but need not be limited to, an identification of those other provisions of P.L.2001, c.260 (C.34:8-67 et seq.) that may be complied with through an independent assurance organization. Use of an approved assurance organization shall be optional and not mandatory for an employee leasing company or an employee leasing company group. Nothing in this subsection shall limit or change the department's authority to register or rescind the registration of an employee leasing company or to investigate or enforce any provision of P.L.2001, c.260 (C.34:8-67 et seq.).

5. Section 6 of P.L.2002, c.260 (C.34:8-72) is amended to read as follows:

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 covered employees for personal injuries to, or for

the death of, those employees by accident arising out of and in the course of employment through policies issued by an insurance carrier licensed in the State of New Jersey. Such policies shall state the name of the employee leasing company as the labor contractor for each client company, by name.

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 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.34:8-68.1 Responsibilities of client company.

6. a. Except to the extent otherwise expressly provided by an applicable employee leasing agreement, a client company shall be solely responsible for the quality, adequacy or safety of the goods or services produced or sold in the client company's business, for directing, supervising, training and controlling the work of the covered employees with respect to the business activities of the client company, and for the acts, errors or omissions of covered employees with regard to those activities.

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

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

C.54:54-1 Covered employees considered employees of client company.

7. For purposes of determining economic incentives or benefit based on employment provided by law, rule or regulation by the State or other government entity, covered employees of a client company shall be considered employees solely of the client company, and the client company shall be entitled to the benefit of any economic incentive or other benefit based on the number of the client company's covered employees, notwithstanding that an employee leasing company is the W-2 reporting employer for the covered employees. Each client company shall be treated as employing only those covered employees co-employed by the client company, and not covered employees employed by other client

companies of the employee leasing company. Each employee leasing company shall provide, upon request by the State or any political subdivision thereof, employment information reasonably required for the administration of any economic incentive or benefit program. Each employee leasing company shall provide, upon request by a client company, employment information necessary to support any request, claim, application, or other action by a client company seeking any such economic incentive or benefit. As used in this section, "covered employee," "client company," and "employee leasing company" shall have the same meaning as set forth in section 1 of P.L.2001, c.260 (C.34:8-67).

C.54:54-2 Taxes paid by client company.

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

C.54:54-3 Imposition of sales tax on certain receipts.

9. For the purposes of implementing the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) any sales tax imposed on employee leasing services provided by an employee leasing company to a client company pursuant to a law enacted after the effective date of P.L.2011, c.118 (C.34:8-68.1 et al.) shall be imposed only on receipts that reflect the amounts charged to client companies for employee leasing services and not on receipts that represent the amounts charged for the payment of wages, salaries, benefits, workers' compensation costs, withholding taxes, or other assessments paid to or on behalf of a covered employee by the employee leasing company under an employee leasing agreement. As used in this section, "employee leasing company," "client company," "covered employee" and "employee leasing agreement" shall have the same meaning as set forth in section 1 of P.L.2001, c.260 (C.34:8-67).

C.54:54-4 Calculation of tax imposed on client company, employee leasing company.

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

C.54:54-5 Tax imposed on basis of total payroll.

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

C.54:54-6 Determination of tax credit.

12. For the purposes of determining any tax credit based on employment provided by law, rule or regulation by the State, covered employees of a client company shall be considered

employees solely of the client company, and the client company shall be entitled to the tax credit based on the number of the client company's covered employees, notwithstanding that an employee leasing company is the W-2 reporting employer for the covered employees. Each client company shall be treated as employing only those covered employees co-employed by the client company, and not covered employees employed by other client companies of the employee leasing company. Each employee leasing company shall provide, upon request of the Division of Taxation in the Department of the Treasury, employment information reasonably required for the administration of any tax credit program. Each employee leasing company shall provide, upon request by a client company, employment information necessary to support any request, claim, application, or other action by a client company seeking any such tax credit. As used in this section, "employee leasing company," "client company," and "covered employee" shall have the same meaning as set forth in section 1 of P.L.2001, c.260 (C.34:8-67).

13. This act shall take effect 12 months following enactment.

Approved August 19, 2011.