P.L. 2021, CHAPTER 39, ***approved March 26, 2021***
Senate, No. 3003 ***(First Reprint)***

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

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

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

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

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

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:
[1]Senate floor amendments adopted November 16, 2020.

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

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

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

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

(c) On the first July 1 following the termination of an employee leasing agreement, the department shall transfer the employment experience relating to the client company to the succeeding employee leasing company, if any, as a successor in interest, including any credit for past years, contributions paid, annual payrolls, or benefit charges applicable to the client company. The successor employee leasing company, however, upon the effective date of the employee leasing agreement, shall immediately receive credit for prior contributions paid on behalf of and relating to the covered employees by the predecessor employee leasing company, against wages in the tax year in which the new employee leasing agreement begins and the balance of wages due in the tax year shall be immediately subject to the existing rate of the successor employee leasing company. The department shall provide to either

employee leasing company, within 15 days of a written request, any data related to the client company's prior unemployment insurance history, including but not limited to, contributions paid, annual payrolls and benefit charges, on or after the effective date of the employee leasing agreement;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f)**]** Upon the dissolution of an employee leasing agreement, the client company shall retain the experience balance, liabilities, and wage credits for the client company's employing unit account**[**; the

client company's federal employer identification number (FEIN) shall become the primary FEIN on the employing unit's account; and the employee leasing company's FEIN shall not be associated with the client's company's employing unit account**]**.

d. For the purposes of this section, the client company which reports under the Entity Level Reporting Method or the Client Level Reporting Method, and not the employee leasing company, shall remain solely liable for any and all liabilities which originated or preceded the effective date of the employee leasing agreement.

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

e. For the purposes of this section:

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

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

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

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

2. This act shall take effect **[**1**[**immediately**]** on January 1, 2021**]**1.

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