

[Second Reprint]

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 amended by the Senate on November 22, 2010.



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

10 1. For the purposes of this act:

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

15 "Client company" means a sole proprietorship, partnership,
 16 corporation or other business entity, which enters into an employee
 17 leasing agreement and is assigned employees by the employee
 18 leasing company.

19 "Commissioner" means the Commissioner of Labor and
 20 Workforce Development.

21 "Covered employee" means an individual co-employed by an
 22 employee leasing company and a client company pursuant to an
 23 employee leasing agreement.

24 "Department" means the Department of Labor and Workforce
 25 Development.

26 "Employee leasing agreement" or "professional employer
 27 agreement" means an arrangement, under written contract, whereby:

28 (1) An employee leasing company and a client company co-
 29 employ covered employees; and

30 (2) The arrangement is intended to be, or is, ongoing rather than
 31 temporary in nature, and not aimed at temporarily supplementing
 32 the client company's work force.

33 "Employee leasing company" or "professional employer
 34 organization" means a sole proprietorship, partnership, corporation
 35 or other business entity, which devotes a substantial portion of its
 36 business to providing the services of employees pursuant to one or
 37 more employee leasing agreements and provides services of a
 38 nature customarily understood to be employer responsibilities
 39 including, but

40 not limited to, those responsibilities provided in section 2 of this
 41 act.²

42 (cf: P.L.2001, c.260, s.1.)

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:

¹Senate SLA committee amendments adopted July 19, 2010.

²Senate floor amendments adopted November 22, 2010.

1 ²[1.] 2.² Section 2 of P.L.2001, c.260 (C.34:8-68) is amended
2 to read as follows:

3 2. a. Every employee leasing agreement shall provide that the
4 employee leasing company:

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

13 (2) Assumes responsibility for the payment of wages to each
14 covered employee without regard to payments by the client
15 company to the employee leasing company, except that the
16 provisions of this paragraph shall not affect the client company's
17 obligations with respect to the payment of wages to covered
18 employees;

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

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

26 (5) Has given written notice of the relationship between the
27 employee leasing company and the client company to each covered
28 employee it assigns to perform services at the client company's
29 work site;

30 (6) Shall, except for newly established business entities, hire its
31 initial employee complement from among employees of the client
32 company at the time of execution of the employee leasing
33 agreement at comparable terms and conditions of employment as
34 are in existence at the client company at the time of execution of the
35 employee leasing agreement and as designated by the client
36 company. Throughout the term of the employee leasing agreement
37 the covered employees shall be considered employees of the
38 employee leasing company and the client company and upon the
39 termination of the employee leasing agreement, the covered
40 employees shall be considered employees of the client company;

41 (7) Continue to honor and abide by existing collective
42 bargaining agreements applicable to covered employees. ¹['Upon
43 expiration of the employee leasing agreement, the] The¹ client
44 company shall ¹'also' continue to honor and abide by all collective
45 bargaining agreements applicable to covered employees. Every
46 employee leasing company which enters into a contract with a client
47 company, which has a collective bargaining representative for the
48 covered employees, shall require that client company to enter into

1 an agreement with the employee leasing company containing the
2 following language:

3 "The client company shall continue to honor and abide by the
4 terms of any applicable collective bargaining agreements, and upon
5 expiration thereof, any obligations of the client company to bargain
6 in good faith in connection with such collective bargaining
7 agreements shall not be affected in any manner by the employee
8 leasing agreement."

9 b. Every employee leasing agreement shall provide that [the
10 employee leasing company and] the client company shall [each]
11 retain a right of direction and control over management of safety,
12 risk and hazard control at the work site or sites affecting each
13 covered employee including:

14 (1) Responsibility for performing safety inspections of client
15 company equipment and premises; and

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

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

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

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

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

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

1 client company or covered employee.

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

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

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

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

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

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

33

34 ²**[2.] 3.**² Section 4 of P.L.2001, c.260 (C.34:8-70) is amended
35 to read as follows:

36 4. a. An employee leasing company shall register with the
37 commissioner and provide a list of its client companies with
38 covered employees in this State, both upon the initial registration of
39 the employee leasing company, and thereafter, annually by January
40 31st, listing all client companies as of the immediately proceeding
41 December 31st. The list shall include the following information
42 with regard to each client company:

- 43 (1) Client company's name;
44 (2) Client company's physical location address;
45 (3) Description of client company's economic activity;
46 (4) Client company's state tax identification number;
47 (5) Percent of client company's workforce being leased;
48 (6) Effective date and duration of employee leasing agreement;

1 (7) A copy of the standard form of agreement entered into
2 between the employee leasing company and the client company;

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

7 (b) The employee leasing company shall be required to notify
8 the Department of Labor and Workforce Development on an annual
9 basis of any ²[material] substantive² changes in the standard form
10 of agreement which relate to the requirements set forth in section 2
11 of this act, and when any particular client company has agreed to
12 terms which deviate from the standard form of agreement;

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

16 (9) Proof of current workers' compensation coverage, which
17 may be in the form of a letter from the insurance carrier, and which
18 shall include the name of the carrier, date of commencement of
19 coverage under the policy, term of the coverage, and verification of
20 premiums paid; and

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

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

26 c. All records, reports and other information obtained from
27 employee leasing companies under this act, except to the extent
28 necessary for the proper administration by the department of this act
29 and all applicable labor laws, shall be confidential and shall not be
30 published or open to public inspection other than to public
31 employees in the performance of their public duties.

32 d. The department shall establish a limited registration ²and
33 renewal² process and appropriate forms for an employee leasing
34 company that (1) is not domiciled in this State; (2) is licensed or
35 registered as an employee leasing company or professional
36 employer organization in another state; (3) does not maintain an
37 office in this State or directly solicit client companies located or
38 domiciled in this State; and (4) is not ²[on any single day]²
39 responsible for more than 50 covered employees employed in this
40 State ²on the date of registration or renewal. If during the term of a
41 limited registration an employee leasing company becomes
42 responsible for more than 50 covered employees, the employee
43 leasing company shall re-register with the department pursuant to
44 subsection a. of this section, but shall not be charged any additional
45 registration fee². An employee leasing company requesting a
46 limited registration pursuant to this subsection shall provide the
47 department with a list of client companies and the number of

1 covered employees at each of those companies and such other
2 minimal information as the department shall prescribe. Any
3 employee leasing company receiving a limited registration from the
4 department shall not be required to comply with the provisions of
5 subsection a. and b. of '[this]' section '5 of P.L.2001, c.260
6 (C.34:8-71)'.

7 e. ²Two or more employee leasing companies that are majority
8 owned by the same ultimate parent company, entity or person may
9 register as an employee leasing company group, and may satisfy the
10 registration requirements imposed pursuant to this section and the
11 financial reporting required pursuant to section 5 of P.L. 2001, c.
12 260 (C.34:8-71), and any other reporting requirements authorized
13 by the department, on a combined or consolidated basis. Each
14 employee leasing company covered under an employee leasing
15 group registration shall guarantee the financial capacity obligations
16 of each other employee leasing company covered under the
17 employee leasing company group registration.

18 f. ²Every initial application and subsequent annual reporting
19 submitted pursuant to this section shall be accompanied by a fee of
20 \$500. ²Every initial application and subsequent annual reporting
21 submitted by an employee leasing company group pursuant to
22 subsection e. of this section shall be accompanied by a fee of \$500
23 for each employee leasing company included in the employee
24 leasing company group.²

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

26
27 ²[3.] 4.² Section 5 of P.L.2001, c.260 (C.34:8-71) is amended
28 to read as follows:

29 5. a. (1) Every initial registration and subsequent annual
30 reporting shall be accompanied by [a reviewed] ²[an audited] ²
31 financial statement prepared ²in accordance with generally accepted
32 accounting principals and audited ² by an independent certified
33 public accountant ²[in accordance with generally accepted
34 accounting principles]² [within six months prior to the date of
35 application or renewal], which statement shall show a [minimum
36 net worth of \$100,000] positive working capital, computed as
37 current assets minus current liabilities. The ²[audited]² financial
38 statement shall be without qualification as to the going concern
39 status of the employee leasing company.

40 (2) At the time of an application for an initial registration an
41 employee leasing company shall submit an audited financial
42 statement prepared within 13 months of the application. Thereafter,
43 an employee leasing company shall file on an annual basis, within
44 180 days of the end of the employee leasing company's fiscal year,
45 a current audited financial statement. An employee leasing
46 company may request the department for an extension for this

1 filing, which shall be accompanied by a letter from the employee
2 leasing company's independent certified public accountant stating
3 the reasons for the requested extension and the anticipated date of
4 the completion of the audited financial statement.

5 b. (1) **【As a substitute for the requirement set forth in**
6 **subsection a. of this section, the commissioner, or his designee, may**
7 **require that the employee leasing company deposit in a depository**
8 **designated by the commissioner a bond or securities with a market**
9 **value of \$75,000.】** An employee leasing company that does not
10 have a positive working capital may provide to the department, in
11 lieu thereof, a bond, irrevocable letter of credit, or securities with a
12 minimum market value equaling the amount necessary to achieve a
13 positive working capital plus ²up to² \$100,000 ², such additional
14 amount to be determined by the commissioner or his designee².

15 The securities so deposited shall include authorizations to the
16 commissioner, or his designee, to sell those securities in an amount
17 sufficient to pay any taxes, wages, benefits or other entitlement due
18 a covered employee, if the employee leasing company does not
19 make those payments when due.

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

28 (3) Any bond or securities deposited under this subsection shall
29 not be included for the purpose of the calculation of ¹**【net worth】**
30 positive working capital¹ required by subsection a. of this section.

31 c. An employee leasing company shall submit to the
32 commissioner, or his designee, within 60 days after the end of each
33 calendar quarter, a certification by an independent certified public
34 accountant that all applicable federal and state payroll taxes for
35 covered employees in this State have been paid on a timely basis for
36 that quarter. If the commissioner or his designee does not receive
37 that certification within the 60-day period, the department shall
38 notify the employee leasing company within five ²**【calendar】**
39 business² days of the expiration of the 60-day period. If that
40 certification is not received within 10 ²**【calendar】** business² days
41 following the notification by the department, the department shall
42 notify the client companies listed on the employee leasing
43 company's annual report required pursuant to section 4 of this act
44 that the certification was not received.

45 d. ²Two or more employee leasing companies that are majority
46 owned by the same ultimate parent company, entity or person may

1 comply with the provisions of this section pursuant to subsection e.
2 of section 4 of P.L. 2001, c. 260 (C.34:8-70).

3 e.² The department may adopt, pursuant to the “Administrative
4 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.) rules and
5 regulations to permit, to the extent ²[practicable] authorized
6 pursuant to the “Uniform Electronic Transactions Act,” P.L.2001,
7 c.116 (C.12A:12-1 et seq.)², employee leasing companies to
8 electronically file applications, documents, reports and other filings
9 required by P.L.2001, c.260 (C.34:8-67 et seq.). ²Those rules may
10 provide for the acceptance of electronic filings and other assurance
11 by an independent and qualified assurance organization approved
12 by the commissioner that provides satisfactory assurance of
13 compliance acceptable to the department consistent with or in lieu
14 of the requirements of section 4 of P.L.2001, c.260 (C.34:8-70 and
15 C.34:8-71) and of this section and other requirements of P.L.2001,
16 c.260 (C.34:8-67 et seq.) or the rules promulgated pursuant to it.
17 The rules may permit an employee leasing company or an employee
18 leasing company group to authorize an assurance organization
19 approved by the commissioner to act on behalf of an employee
20 leasing company or an employee leasing company group in
21 complying with P.L.2001, c.260 (C.34:8-67 et seq.) and any rules
22 and regulations adopted pursuant thereto, including electronic
23 filings of information and payment of fees. The rules and
24 regulations adopted pursuant to this subsection may include, but
25 need not be limited to, a requirement that any independent
26 assurance organization be approved by the commissioner and an
27 identification of those other provisions of P.L.2001, c.260 (C.34:8-
28 67 et seq.) that may be complied with through an independent
29 assurance organization. Use of an approved assurance organization
30 shall be optional and not mandatory for an employee leasing
31 company or an employee leasing company group. Nothing in this
32 subsection shall limit or change the department’s authority to
33 register or rescind the registration of an employee leasing company
34 or to investigate or enforce any provision of P.L.2001, c.260
35 (C.34:8-67 et seq.).²

36 (cf: P.L.2001, c.260, s.5)

37
38 ²[4.] 5.² (New section) a. Except to the extent otherwise
39 expressly provided by an applicable employee leasing agreement, a
40 client company shall be solely responsible for the quality, adequacy
41 or safety of the goods or services produced or sold in the client
42 company’s business, for directing, supervising, training and
43 controlling the work of the covered employees with respect to the
44 business activities of the client company, and for the acts, errors or
45 omissions of covered employees with regard to those activities.

46 b. Except to the extent otherwise expressly provided by an
47 applicable employee leasing agreement, a client company shall not

1 be liable for the acts, errors or omissions of an employee leasing
2 company, or of any covered employee when the covered employee
3 is acting under the express direction and control of the employee
4 leasing company, and an employee leasing company shall not be
5 liable for the acts, errors, or omissions of a client company or of
6 any covered employee when the covered employee is acting under
7 the express direction and control of the client company.

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

16
17 ²[5.] 6.² (New section) For purposes of determining economic
18 incentives or benefit based on employment provided by law, rule or
19 regulation by the State or other government entity, covered
20 employees of a client company shall be considered employees
21 solely of the client company, and the client company shall be
22 entitled to the benefit of any economic incentive or other benefit
23 based on the number of the client company's covered employees,
24 notwithstanding that an employee leasing company is the W-2
25 reporting employer for the covered employees. Each client
26 company shall be treated as employing only those covered
27 employees co-employed by the client company, and not covered
28 employees employed by other client companies of the employee
29 leasing company. Each employee leasing company shall provide,
30 upon request by the State or any political subdivision thereof,
31 employment information reasonably required for the administration
32 of any economic incentive or benefit program. Each employee
33 leasing company shall provide, upon request by a client company,
34 employment information necessary to support any request, claim,
35 application, or other action by a client company seeking any such
36 economic incentive or benefit. As used in this section, "covered
37 employee," "client company," and "employee leasing company"
38 shall have the same meaning as set forth in section 1 of P.L.2001,
39 c.260 (C.34:8-67).

40
41 ²[6.] 7.² (New section). For the purposes of implementing the
42 "Sales and Use Tax Act," (P.L.1966, c.30; C.54:32B-1 et seq.) any
43 taxes due for services performed by covered employees shall be
44 paid by the client company and not by the employee leasing
45 company. As used in this section "covered employee," "client
46 company" and "employee leasing company" shall have the same
47 meaning as set forth in section 1 of P.L.2001, c.260 (C. 34:8-67).

1 ²[7.] 8.² (New Section) For the purposes of implementing the
2 “Sales and Use Tax Act,” P.L.1966, c.30; C.54:32B-1 et seq.) any
3 sales tax imposed on employee leasing services provided by an
4 employee leasing company to a client company shall be imposed
5 only on receipts that reflect the amounts charged to client
6 companies for employee leasing services and not on receipts that
7 represent the amounts charged for the payment of wages, salaries,
8 benefits, worker’s compensation costs, withholding taxes, or other
9 assessments paid to or on behalf of a covered employee by the
10 employee leasing company under an employee leasing agreement.
11 As used in this section, “employee leasing company,” “client
12 company,” “covered employee” and “employee leasing agreement”
13 shall have the same meaning as set forth in section 1 of P.L.2001,
14 c.260 (C.34:8-67).

15
16 ²[8.] 9.² (New section) For the purposes of implementing any
17 tax imposed on an employer on a per employee basis, the tax
18 ²[shall be]² imposed on a client company ²[for] shall be calculated
19 on the basis of² its covered employees ², ² and ²the tax imposed² on
20 an employee leasing company ²[for] shall be calculated on the
21 basis of² its employees that are not covered employees. As used in
22 this section, “employee leasing company,” “client company,” and
23 “covered employee” shall have the same meaning as set forth in
24 section 1 of P.L.2001, c.260 (C.34:8-67).

25
26 ²[9.] 10.² (New section) For the purposes of implementing any
27 tax imposed on an employer on the basis of total payroll, an
28 employee leasing company, in computing the tax on behalf of the
29 client company, shall be authorized to apply any small business
30 allowance or exemption made available pursuant to law to the client
31 company for covered employees. As used in this section, “employee
32 leasing company,” “client company,” and “covered employee” shall
33 have the same meaning as set forth in section 1 of P.L.2001, c.260
34 (C.34:8-67).

35
36 ²[10.] 11.² (New section) For the purposes of determining any
37 tax credit based on employment provided by law, rule or regulation
38 by the State, covered employees of a client company shall be
39 considered employees solely of the client company, and the client
40 company shall be entitled to the tax credit based on the number of
41 the client company’s covered employees, notwithstanding that an
42 employee leasing company is the W-2 reporting employer for the
43 covered employees. Each client company shall be treated as
44 employing only those covered employees co-employed by the client
45 company, and not covered employees employed by other client
46 companies of the employee leasing company. Each employee
47 leasing company shall provide, upon request of the Division of

1 Taxation in the Department of the Treasury, employment
2 information reasonably required for the administration of any tax
3 credit program. Each employee leasing company shall provide,
4 upon request by a client company, employment information
5 necessary to support any request, claim, application, or other action
6 by a client company seeking any such tax credit. As used in this
7 section, “employee leasing company,” “client company,” and
8 “covered employee” shall have the same meaning as set forth in
9 section 1 of P.L.2001, c.260 (C.34:8-67).

10

11 ²[11.] 12.² This act shall take effect ²[nine] 12² months
12 following enactment.