

## CHAPTER 233

AN ACT concerning employee leasing agreements and amending P.L.2001, c.260 and P.L.2011, c.118.

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

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

C.34:8-68 Provision 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, unless the client company, in agreement with the employee leasing company elects to assume the responsibility of providing the workers' compensation insurance coverage for those employees

in an arrangement with an employee leasing company, and the employee leasing company provides notice of the election and proof of coverage to the department within 30 days of the election or once forms or procedures are decided by the department.

A client company that assumes the responsibility to provide workers compensation insurance required by an employee leasing agreement, shall provide a copy of the agreement to the insurance carrier licensed in the State of New Jersey that issues the policy for the covered employees prior to the issuance of the policy or upon entering an employee leasing agreement as appropriate. The agreement shall contain a legal mailing address for the employee leasing company and the client company shall be obligated to update that address should it change over the policy period.

In the event that a policy issued to a client company is cancelled pursuant to R.S.34:15-81, the insurance carrier licensed in the State of New Jersey that issues the policy shall provide the employee leasing company copies of all notices required to be issued to the client company pursuant to R.S.34:15-81 with at least 10 days' notice by regular mail at the address set forth in the employee leasing agreement, as updated.

Notwithstanding the provisions of this paragraph (8), if the client company, having elected to assume the responsibility of providing the workers' compensation insurance coverage for covered employees in an arrangement with an employee leasing company, fails to provide workers' compensation insurance coverage as required by law during the period of the agreement, then the employee leasing company shall provide workers' compensation insurance for the covered employees under the employee leasing agreement.

b. Every employee leasing agreement shall allocate responsibility between the employee leasing company and the client company regarding the 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 any other section of P.L.2001, c.260 (C.34:8-67 et seq.) 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.

2. Section 6 of P.L.2011, c.118 (C.34:8-68.1) is amended to read as follows:

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, for the acts, errors or omissions of covered employees with regard to those activities, and for accurately reporting wages to the employee leasing company.

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.

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 P.L.2001, c.260 (C.34:8-68), 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 P.L.2001, c.260 (C.34:8-74);

(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, except that, if the employee leasing company has entered into an employee leasing agreement with a client company who elects to maintain its own workers' compensation insurance, the client company shall provide that proof to the commissioner; and

(10) Confirmation that all leased employees are covered by workers' compensation insurance, except that, if the employee leasing company has entered into an employee leasing agreement with a client company who elects to maintain its own workers' compensation insurance, the client company shall provide that confirmation to the commissioner.

If an employee leasing company enters into an employee leasing agreement with a client company who elects to maintain its own workers' compensation insurance, the employee leasing company shall notify the department within 30 days of the election and provide the department with the name of the client company, name of the carrier and policy number.

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 P.L.2001, c.260 (C.34:8-67 et seq.), except to the extent necessary for the proper administration by the department of that 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 6 of P.L.2001, 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 P.L.2001, c.260 (C.34:8-67 et seq.) 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, unless the client company elects to assume the responsibility of providing the workers' compensation insurance coverage for the employees pursuant to section 2 of P.L.2001, c.260 (C.34:8-68).

b. For purposes of P.L.2001, c.260 (C.34:8-67 et seq.), 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 P.L.2001, c.260 (C.34:8-68), 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 P.L.2001, c.260 (C.34:8-73), 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, regardless of which party provides workers' compensation insurance coverage.

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 as set forth in section 3 of P.L.2013, c.225 (C.43:21-7.8).

5. This act shall take effect immediately, except that insurance carriers licensed in the State of New Jersey shall have up to 180 days following enactment to comply with the provisions of paragraph (8) of subsection a. of section 2 of P.L.2001, c.260 (C.34:8-68).

Approved September 13, 2017.