

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

LAW/KR

P.L.2013, CHAPTER 225, *approved January 17, 2014*
Senate, No. 3087 (*First Reprint*)

1 AN ACT concerning employee leasing companies and
2 unemployment compensation, amending P.L.2001, c.260, and
3 supplementing chapter 21 of Title 43 of the Revised Statutes.

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

7
8 1. Section 6 of P.L.2001, c.260 (C.34:8-72) is amended to read
9 as follows:

10 6. a. An employee leasing company registered under this act
11 and the respective client companies with which it has entered into
12 employee leasing agreements shall be the co-employers of their
13 covered employees for the payment of wages and other employment
14 benefits due, including the obligation under the workers'
15 compensation law, R.S.34:15-1 et seq., to maintain insurance
16 coverage for covered employees for personal injuries to, or for the
17 death of, those employees by accident arising out of and in the
18 course of employment through policies issued by an insurance
19 carrier licensed in the State of New Jersey. Such policies shall state
20 the name of the employee leasing company as the labor contractor
21 for each client company, by name.

22 b. For purposes of **[this act]** P.L.2001, c.260 (C.34:8-67 et
23 seq.), the agreement between the employee leasing company and the
24 client company shall be one of co-employment, whereby the
25 employee leasing company, having accepted the responsibilities set
26 forth in section 2 of **[this act]** P.L.2001, c.260 (C.34:8-68), may
27 submit reports to the department and make contributions to the
28 Unemployment Compensation and State Disability Benefits Funds
29 in the manner prescribed in section 7 of **[this act]** P.L.2001, c.260
30 (C.34:8-73), on behalf of those covered employees covered by the
31 employee leasing agreement. In addition, the provisions of
32 R.S.34:15-8, regarding the exclusivity of the remedy under the
33 workers' compensation law for personal injuries to, or for the death
34 of, employees by accident arising out of and in the course of their
35 employment, shall apply to the employee leasing company and the
36 client company, and their employees.

37 c. The employee leasing company shall file reports prescribed
38 under the "unemployment compensation law," R.S.43:21-1 et seq.
39 on behalf of its covered employees **[using the State tax**
40 **identification number of the employee leasing company]** as set

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 floor amendments adopted January 9, 2014.

1 forth in section 3 of P.L. , c. (C.)(pending before the
2 Legislature as this bill).

3 (cf: P.L. 2011, c.118, s.5)

4
5 2. Section 7 of P.L.2001, c.260 (C.34:8-73) is amended to read
6 as follows:

7 7. a. Upon entering into the employee leasing agreement:

8 (1) If the employee leasing company acquires the client
9 company's total workforce, the employee leasing company shall
10 report wages and pay contributions pursuant to **the "unemployment**
11 **compensation law," R.S.43:21-1 et seq., based on the benefit**
12 **experience assigned to the employee leasing company under**
13 **R.S.43:21-7. The benefit experience of the client company shall not**
14 **be transferred to the leasing company and shall not be used in the**
15 **calculation of the employee leasing company's future contribution**
16 **rates]** section 3 of P.L. , c. (C.)(pending before the
17 Legislature as this bill).

18 (2) If the employee leasing company acquires less than all of the
19 client company's total workforce, the employee leasing company
20 shall report wages and pay contributions pursuant to **the**
21 **"unemployment compensation law," R.S.43:21-1 et seq. for that**
22 **portion of the workforce acquired based on the benefit experience**
23 **assigned to the employee leasing company under R.S.43:21-7. The**
24 **benefit experience associated with that portion of the client**
25 **company's workforce acquired by the employee leasing company**
26 **shall not be transferred to the employee leasing company and shall**
27 **not be used in the calculation of the employee leasing company's**
28 **future contribution rates. The client company shall continue to**
29 **report wages and pay contributions for the workforce not acquired**
30 **by the employee leasing company using the client company's**
31 **contribution rate]** section 3 of P.L. , c. (C.)(pending before
32 the Legislature as this bill) with respect to that portion of the
33 workforce so acquired.

34 b. Upon dissolution of the employee leasing agreement:

35 (1) If, under the dissolved employee leasing agreement, the
36 employee leasing company ¹**[elected to use] used¹ the Entity Level**
37 **Reporting Method under subsection b. of section 3 of P.L. ,**
38 **c. (C.) (pending before the Legislature as this bill) to report**
39 **and pay all required contributions to the unemployment**
40 **compensation fund as required under R.S.43:21-7, and the client**
41 **company had leased all or a portion of its total workforce, [and if,**
42 **at the time of dissolution, the client company had leased those**
43 **employees for at least two full calendar years, the client company**
44 **shall be assigned the rate of a new employer under R.S.43:21-7**
45 **until it is eligible for a rate based on benefit experience pursuant to**
46 **that section or enters into another employee leasing agreement]** the
47 employee leasing company shall, at the time of dissolution, provide

1 the department with the data necessary to calculate the benefit
2 experience of the client company for purposes of determining the
3 client company's separate benefit experience.

4 (2) If, under the dissolved employee leasing agreement, the
5 **【**client company had leased its total workforce, and if, at the time of
6 the dissolution, the client company had leased those employees for
7 less than two full calendar years, the employee leasing company at
8 the time of dissolution shall provide the Department of Labor with
9 the data necessary to calculate the benefit experience of the client
10 company for the duration of the employee leasing agreement. That
11 benefit experience shall then be added to the client company's
12 benefit experience which was established prior to entering the
13 employee leasing agreement. Both the client company and the
14 employee leasing company shall continue to use the rate of the
15 employee leasing company for the period from the date of the
16 dissolution of the employee leasing agreement until the following
17 July 1】 employee leasing company elected to use the Client Level
18 Reporting Method under subsection c. of section 3 of P.L. ,
19 c. (C.) (pending before the Legislature as this bill), to report
20 and pay all required contributions to the unemployment
21 compensation fund as required under R.S. 43:21-7, and the client
22 company had leased all or a portion 'of' its total workforce, the
23 department shall compute its benefit experience in accordance with
24 subparagraph (f) of paragraph '【(3)】 (4)' of subsection c. of section
25 3 of P.L. , c. (C.)(pending before the Legislature as this bill)

26 (3) **【**If, under the dissolved employee leasing agreement, the
27 client company had leased less than its total workforce from the
28 employee leasing company, and if, at the time of dissolution, the
29 client company had leased those covered employees for at least two
30 full calendar years, the benefit experience associated with that
31 portion of the client company's workforce which had been leased
32 from the employee leasing company shall not be transferred to the
33 client company and shall not be used in the calculation of the client
34 company's future contribution rates.】 (Deleted by amendment,
35 P.L. , c. (C.)(pending before the Legislature as this bill)

36 (4) **【**If, under the dissolved employee leasing agreement, the
37 client company had leased less than its total workforce from the
38 employee leasing company, and if, at the time of dissolution, the
39 client company had leased those covered employees for less than
40 two full calendar years, the leasing company shall provide the
41 department with the data necessary to calculate the benefit
42 experience associated with that portion of the client's workforce
43 which had been leased from the employee leasing company. The
44 department shall combine that benefit experience with the client
45 company's existing benefit experience. Both the client company
46 and the employee leasing company shall continue to use their own
47 rates for the period from the date of the dissolution until the

1 following July 1.] (Deleted by amendment, P.L. _____, c. _____ (C. _____)
2 (pending before the Legislature as this bill)

3 (5) [If, immediately upon dissolution of the employee leasing
4 agreement, the client company enters into a subsequent employee
5 leasing agreement regarding those covered employees with another
6 employee leasing company, the payroll relative to the client
7 company shall be reported and paid at the rate assigned the second
8 employee leasing company.] (Deleted by amendment, P.L. _____,
9 c. _____ (C. _____) (pending before the Legislature as this bill)
10 (cf: P.L.2001, c.260, s.7)

11
12 3. (New section) a. For purposes of the “unemployment
13 compensation law,” R.S.43:21-1 et seq., a covered employee is an
14 employee of the employee leasing company. An employee leasing
15 company is responsible for the payment of contributions,
16 surcharges, penalties, and interest assessed under the
17 “unemployment compensation law,” R.S.43:21-1 et seq. on wages
18 paid by the employee leasing company to the covered employees
19 during the term of the employee leasing agreement. An employee
20 leasing company shall use the ¹[Client] Entity¹ Level Reporting
21 Method to report and pay all required contributions to the
22 unemployment compensation fund as required by R.S.43:21-7,
23 unless the employee leasing company elects the ¹[Entity] Client¹
24 Level Reporting Method under subsection ¹[b.] c.¹ of this section.
25 An employee leasing company that ¹does not¹ initially ¹[elects]
26 elect¹ the ¹[Entity] Client¹ Level Reporting Method under
27 subsection ¹[b.] c.¹ may subsequently elect the Client Level
28 Reporting Method ¹[under subsection c. of this section]¹. An
29 employee leasing company ¹[that does not elect] which, at
30 sometime after the enactment of this act, elects¹ to use the ¹[Entity]
31 Client¹ Level Reporting Method ¹[under subsection b. of this
32 section]¹ may ¹[not thereafter elect to use] switch back to¹ the
33 Entity Level Reporting Method ¹[in the future, but only with the
34 approval of the department, which may not be granted to that
35 employee leasing company more than one time¹. An employee
36 leasing company and ¹[its related entities] any related “controlled
37 group of corporations” as that term is defined in section 1563 of the
38 federal Internal Revenue Code of 1986, 26 U.S.C. s. 1563¹ shall use
39 the same reporting method for all clients.

40 b. ¹[An employee leasing company may elect to use the] The¹
41 Entity Level Reporting Method¹ [which]¹ uses the State employer
42 account number and contribution rate of the employee leasing
43 company to report and pay all required contributions to the
44 unemployment compensation fund as required by R.S.43:21-7
45 relating exclusively to covered employees¹. ¹[An employee
46 leasing company shall make that election in writing on forms

1 prescribed by the department and make the election not later than:
2 July 1, 2014, if the employee leasing company is doing business in
3 New Jersey for reporting effective January 1, 2015; or the first date
4 the employee leasing company is liable to make contributions under
5 the “unemployment compensation law,” R.S.43:21-1 et seq., for at
6 least one covered employee, if the employee leasing company
7 begins doing business in New Jersey after July 1, 2014. An
8 employee leasing company that does not make an election under
9 this subsection b. shall use the Client Level Reporting Method
10 pursuant to subsection c. of this section.】¹ The following
11 provisions apply to an employee leasing company that ¹【elects to
12 use】 reports under¹ the Entity Level Reporting Method:

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

18 (2) The employee leasing company ¹【is】 and its client are¹
19 subject to the provisions of R.S.¹【43:21-7(c)(7)(D)】 43:21-7(c)(7),¹
20 irrespective of whether there is common ownership, ¹【beginning on
21 the effective date of the employee leasing agreement】 as follows:

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

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

1 (c) On the first July 1 following the termination of an employee
2 leasing agreement, the department shall transfer the employment
3 experience relating to the client company to the succeeding
4 employee leasing company, if any, as a successor in interest,
5 including any credit for past years, contributions paid, annual
6 payrolls, or benefit charges applicable to the client company. The
7 successor employee leasing company, however, upon the effective
8 date of the employee leasing agreement, shall immediately receive
9 credit for prior contributions paid on behalf of and relating to the
10 covered employees by the predecessor employee leasing company,
11 against wages in the tax year in which the new employee leasing
12 agreement begins and the balance of wages due in the tax year shall
13 be immediately subject to the existing rate of the successor
14 employee leasing company. The department shall provide to either
15 employee leasing company, within 15 days of a written request, any
16 data related to the client company's prior unemployment insurance
17 history, including but not limited to, contributions paid, annual
18 payrolls and benefit charges, on or after the effective date of the
19 employee leasing agreement¹;

20 (3) Whenever the employee leasing company enters into an
21 employee leasing agreement with a client company, the employee
22 leasing company shall notify the department not later than ¹[15]
23 ³⁰¹ days after the end of the quarter in which the employee leasing
24 agreement became effective; and

25 (4) The employee leasing company shall notify the department
26 in writing on forms prescribed by the department not later than
27 ¹[15] ³⁰¹ days after the date of the following:

28 (a) The ¹[employee leasing company and a client company
29 terminate] termination of¹ an employee leasing agreement; or

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

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

38 c. (1) ¹[The] An employee leasing company may elect to use
39 the¹ Client Level Reporting Method¹, which¹ uses the state
40 employer account number and contribution rate of the client
41 company to report and pay all required contributions to the
42 unemployment compensation fund as required by R.S. 43:21-7
43 ¹relating exclusively to covered employees¹.

44 (2) ¹An employee leasing company doing business in New
45 Jersey as of the effective date of this act shall make the election to
46 use the Client Level Reporting Method in writing to the department
47 not later than:

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

4 (b) September 30, 2014, for reporting and payment of
5 contributions under the “unemployment compensation law,” R.S.
6 43:21-1 et seq., effective no later than July 1, 2015.

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

12 (3)¹ An employee leasing company which uses the Entity Level
13 Reporting Method may subsequently elect the Client Level
14 Reporting Method, subject to the ¹the provisions of this section,
15 including the¹ following requirements:

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

20 (b) The election shall be made in a written notice ¹on a form
21 prescribed by ¹submitted to the department; and

22 (c) The election shall be effective ¹on January 1 of ¹for the
23 calendar year immediately following the year in which the
24 department receives the notice of election.

25 ¹[(3)] (4)¹ The following apply to an employee leasing company
26 that elects to use the Client Level Reporting Method:

27 (a) Whenever the employee leasing company enters into an
28 employee leasing agreement with a client company, the employee
29 leasing company shall notify the department not later than ¹[15]
30 30¹ days after the end of the quarter in which the employee leasing
31 agreement became effective;

32 (b) An employee leasing company reporting ¹at ¹under the
33 ¹[entity level] Entity Level Reporting Method¹ which elects
34 ¹[client level reporting will immediately], in writing, to report
35 under the Client Level Reporting Method shall, within 30 days,¹
36 provide any¹ data ¹which the department deems necessary¹ to the
37 department to enable ¹[them] the department¹ to calculate the
38 benefit experience rate of each client company;

39 (c) If a client company is an employing unit ¹on the date
40 when¹ the employee leasing agreement becomes effective, the client
41 company retains its experience balance, liabilities, and wage
42 credits, and R.S. 43:21-7(c)(7) ¹does shall¹ not apply to the client
43 company or to the employee leasing company;

44 (d) ¹If Unless contrary to applicable law, if¹ a client company
45 is not an employing unit on the date the employee leasing
46 agreement becomes effective, the client company immediately

1 qualifies for an employer experience account under R.S. 43:21-7
2 and is subject to section 1 of P.L.1992, c.202 (C.43:21-7.7) for
3 purposes of establishing an initial contribution rate;

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

9 (f) Upon the dissolution of an employee leasing agreement, the
10 client company shall retain the experience balance, liabilities, and
11 wage credits for the client company's employing unit account; the
12 client company's federal employer identification number (FEIN)
13 shall become the primary FEIN on the employing unit's account;
14 and the employee leasing company's FEIN shall not be associated
15 with the client's company's employing unit account.

16 d. ¹**[A]** For the purposes of this section, the¹ client company
17 ¹**[**that transfers between employee leasing companies is not subject
18 to R.S. 43:21-7(c)(7) whenever:

19 (1) The employee leasing companies are not commonly owned,
20 managed, or controlled; and

21 (2) Both employee leasing companies have elected to use the
22 Entity Level Reporting Method] which reports under the Entity
23 Level Reporting Method or the Client Level Reporting Method, and
24 not the employee leasing company, shall remain solely liable for
25 any and all liabilities which originated or preceded the effective
26 date of the employee leasing agreement.

27 Regardless of the reporting method utilized by an employee
28 leasing company, either the employee leasing company or the client
29 can hold the short term private or public disability insurance policy
30 covering the covered employees¹.

31 e. For the purposes of this section:

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

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

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

41

42 4. This act shall take effect immediately.

43

44

45

46

47 Concerns employee leasing companies and unemployment
48 compensation.

SENATE, No. 3087

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED DECEMBER 5, 2013

Sponsored by:

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

Senator DAWN MARIE ADDIEGO

District 8 (Atlantic, Burlington and Camden)

Co-Sponsored by:

Senator Codey

SYNOPSIS

Concerns employee leasing companies and unemployment compensation.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/13/2013)

1 AN ACT concerning employee leasing companies and
2 unemployment compensation, amending P.L.2001, c.260, and
3 supplementing chapter 21 of Title 43 of the Revised Statutes.

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

7
8 1. Section 6 of P.L.2001, c.260 (C.34:8-72) is amended to read
9 as follows:

10 6. a. An employee leasing company registered under this act
11 and the respective client companies with which it has entered into
12 employee leasing agreements shall be the co-employers of their
13 covered employees for the payment of wages and other employment
14 benefits due, including the obligation under the workers'
15 compensation law, R.S.34:15-1 et seq., to maintain insurance
16 coverage for covered employees for personal injuries to, or for the
17 death of, those employees by accident arising out of and in the
18 course of employment through policies issued by an insurance
19 carrier licensed in the State of New Jersey. Such policies shall state
20 the name of the employee leasing company as the labor contractor
21 for each client company, by name.

22 b. For purposes of **[this act]** P.L.2001, c.260 (C.34:8-67 et
23 seq.), the agreement between the employee leasing company and the
24 client company shall be one of co-employment, whereby the
25 employee leasing company, having accepted the responsibilities set
26 forth in section 2 of **[this act]** P.L.2001, c.260 (C.34:8-68), may
27 submit reports to the department and make contributions to the
28 Unemployment Compensation and State Disability Benefits Funds
29 in the manner prescribed in section 7 of **[this act]** P.L.2001, c.260
30 (C.34:8-73), on behalf of those covered employees covered by the
31 employee leasing agreement. In addition, the provisions of
32 R.S.34:15-8, regarding the exclusivity of the remedy under the
33 workers' compensation law for personal injuries to, or for the death
34 of, employees by accident arising out of and in the course of their
35 employment, shall apply to the employee leasing company and the
36 client company, and their employees.

37 c. The employee leasing company shall file reports prescribed
38 under the "unemployment compensation law," R.S.43:21-1 et seq.
39 on behalf of its covered employees **[using the State tax**
40 **identification number of the employee leasing company]** as set
41 forth in section 3 of P.L. , c. (C.)(pending before the
42 Legislature as this bill).

43 (cf: P.L. 2011, c.118, s.5)

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.

1 2. Section 7 of P.L.2001, c.260 (C.34:8-73) is amended to read
2 as follows:

3 7. a. Upon entering into the employee leasing agreement:

4 (1) If the employee leasing company acquires the client
5 company's total workforce, the employee leasing company shall
6 report wages and pay contributions pursuant to **the** "unemployment
7 compensation law," R.S.43:21-1 et seq., based on the benefit
8 experience assigned to the employee leasing company under
9 R.S.43:21-7. The benefit experience of the client company shall not
10 be transferred to the leasing company and shall not be used in the
11 calculation of the employee leasing company's future contribution
12 rates **section 3 of P.L. , c. (C.)(pending before the**
13 Legislature as this bill).

14 (2) If the employee leasing company acquires less than all of the
15 client company's total workforce, the employee leasing company
16 shall report wages and pay contributions pursuant to **the**
17 "unemployment compensation law," R.S.43:21-1 et seq. for that
18 portion of the workforce acquired based on the benefit experience
19 assigned to the employee leasing company under R.S.43:21-7. The
20 benefit experience associated with that portion of the client
21 company's workforce acquired by the employee leasing company
22 shall not be transferred to the employee leasing company and shall
23 not be used in the calculation of the employee leasing company's
24 future contribution rates. The client company shall continue to
25 report wages and pay contributions for the workforce not acquired
26 by the employee leasing company using the client company's
27 contribution rate **section 3 of P.L. , c. (C.)(pending before**
28 the Legislature as this bill) with respect to that portion of the
29 workforce so acquired.

30 b. Upon dissolution of the employee leasing agreement:

31 (1) If, under the dissolved employee leasing agreement, the
32 employee leasing company elected to use the Entity Level
33 Reporting Method under subsection b. of section 3 of P.L. ,
34 c. (C.)(pending before the Legislature as this bill) to report
35 and pay all required contributions to the unemployment
36 compensation fund as required under R.S.43:21-7, and the client
37 company had leased all or a portion of its total workforce, [and if,
38 at the time of dissolution, the client company had leased those
39 employees for at least two full calendar years, the client company
40 shall be assigned the rate of a new employer under R.S.43:21-7
41 until it is eligible for a rate based on benefit experience pursuant to
42 that section or enters into another employee leasing agreement] **the**
43 employee leasing company shall, at the time of dissolution, provide
44 the department with the data necessary to calculate the benefit
45 experience of the client company for purposes of determining the
46 client company's separate benefit experience.

1 (2) If, under the dissolved employee leasing agreement, the
2 **【**client company had leased its total workforce, and if, at the time of
3 the dissolution, the client company had leased those employees for
4 less than two full calendar years, the employee leasing company at
5 the time of dissolution shall provide the Department of Labor with
6 the data necessary to calculate the benefit experience of the client
7 company for the duration of the employee leasing agreement. That
8 benefit experience shall then be added to the client company's
9 benefit experience which was established prior to entering the
10 employee leasing agreement. Both the client company and the
11 employee leasing company shall continue to use the rate of the
12 employee leasing company for the period from the date of the
13 dissolution of the employee leasing agreement until the following
14 **July 1】** employee leasing company elected to use the Client Level
15 Reporting Method under subsection c. of section 3 of P.L. ,
16 c. (C.) (pending before the Legislature as this bill), to report
17 and pay all required contributions to the unemployment
18 compensation fund as required under R.S. 43:21-7, and the client
19 company had leased all or a portion its total workforce, the
20 department shall compute its benefit experience in accordance with
21 subparagraph (f) of paragraph (3) of subsection c. of section 3 of
22 P.L. , c. (C.)(pending before the Legislature as this bill)

23 (3) **【**If, under the dissolved employee leasing agreement, the
24 client company had leased less than its total workforce from the
25 employee leasing company, and if, at the time of dissolution, the
26 client company had leased those covered employees for at least two
27 full calendar years, the benefit experience associated with that
28 portion of the client company's workforce which had been leased
29 from the employee leasing company shall not be transferred to the
30 client company and shall not be used in the calculation of the client
31 company's future contribution rates.**】** (Deleted by amendment,
32 P.L. , c. (C.)(pending before the Legislature as this bill)

33 (4) **【**If, under the dissolved employee leasing agreement, the
34 client company had leased less than its total workforce from the
35 employee leasing company, and if, at the time of dissolution, the
36 client company had leased those covered employees for less than
37 two full calendar years, the leasing company shall provide the
38 department with the data necessary to calculate the benefit
39 experience associated with that portion of the client's workforce
40 which had been leased from the employee leasing company. The
41 department shall combine that benefit experience with the client
42 company's existing benefit experience. Both the client company
43 and the employee leasing company shall continue to use their own
44 rates for the period from the date of the dissolution until the
45 following July 1.**】** (Deleted by amendment, P.L. , c. (C.)
46 (pending before the Legislature as this bill)

1 (5) **【If, immediately upon dissolution of the employee leasing**
2 **agreement, the client company enters into a subsequent employee**
3 **leasing agreement regarding those covered employees with another**
4 **employee leasing company, the payroll relative to the client**
5 **company shall be reported and paid at the rate assigned the second**
6 **employee leasing company】** (Deleted by amendment, P.L. _____,
7 c. (C.) (pending before the Legislature as this bill)
8 (cf: P.L.2001, c.260, s.7)

9
10 3. (New section) a. For purposes of the “unemployment
11 compensation law,” R.S.43:21-1 et seq., a covered employee is an
12 employee of the employee leasing company. An employee leasing
13 company is responsible for the payment of contributions,
14 surcharges, penalties, and interest assessed under the
15 “unemployment compensation law,” R.S.43:21-1 et seq. on wages
16 paid by the employee leasing company to the covered employees
17 during the term of the employee leasing agreement. An employee
18 leasing company shall use the Client Level Reporting Method to
19 report and pay all required contributions to the unemployment
20 compensation fund as required by R.S.43:21-7, unless the employee
21 leasing company elects the Entity Level Reporting Method under
22 subsection b. of this section. An employee leasing company that
23 initially elects the Entity Level Reporting Method under subsection
24 b. may subsequently elect the Client Level Reporting Method under
25 subsection c. of this section. An employee leasing company that
26 does not elect to use the Entity Level Reporting Method under
27 subsection b. of this section may not thereafter elect to use the
28 Entity Level Reporting Method. An employee leasing company and
29 its related entities shall use the same reporting method for all
30 clients.

31 b. An employee leasing company may elect to use the Entity
32 Level Reporting Method, which uses the State employer account
33 number and contribution rate of the employee leasing company to
34 report and pay all required contributions to the unemployment
35 compensation fund as required by R.S.43:21-7. An employee
36 leasing company shall make that election in writing on forms
37 prescribed by the department and make the election not later than:
38 July 1, 2014, if the employee leasing company is doing business in
39 New Jersey for reporting effective January 1, 2015; or the first date
40 the employee leasing company is liable to make contributions under
41 the “unemployment compensation law,” R.S.43:21-1 et seq., for at
42 least one covered employee, if the employee leasing company
43 begins doing business in New Jersey after July 1, 2014. An
44 employee leasing company that does not make an election under
45 this subsection b. shall use the Client Level Reporting Method
46 pursuant to subsection c. of this section. The following provisions
47 apply to an employee leasing company that elects to use the Entity
48 Level Reporting Method:

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

6 (2) The employee leasing company is subject to the provisions
7 of R.S. 43:21-7(c)(7)(D) irrespective of whether there is common
8 ownership, beginning on the effective date of the employee leasing
9 agreement;

10 (3) Whenever the employee leasing company enters into an
11 employee leasing agreement with a client company, the employee
12 leasing company shall notify the department not later than 15 days
13 after the end of the quarter in which the employee leasing
14 agreement became effective; and

15 (4) The employee leasing company shall notify the department
16 in writing on forms prescribed by the department not later than 15
17 days after the date of the following:

18 (a) The employee leasing company and a client company
19 terminate an employee leasing agreement; or

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

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

28 c. (1) The Client Level Reporting Method uses the state
29 employer account number and contribution rate of the client
30 company to report and pay all required contributions to the
31 unemployment compensation fund as required by R.S. 43:21-7.

32 (2) An employee leasing company which uses the Entity Level
33 Reporting Method may subsequently elect the Client Level
34 Reporting Method, subject to the following requirements:

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

39 (b) The election shall be made in a written notice on a form
40 prescribed by the department; and

41 (c) The election shall be effective on January 1 of the calendar
42 year immediately following the year in which the department
43 receives the notice of election.

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

46 (a) Whenever the employee leasing company enters into an
47 employee leasing agreement with a client company, the employee
48 leasing company shall notify the department not later than 15 days

1 after the end of the quarter in which the employee leasing
2 agreement became effective;

3 (b) An employee leasing company reporting at the entity level
4 which elects client level reporting will immediately provide data to
5 the department to enable them to calculate the benefit experience
6 rate of each client company;

7 (c) If a client company is an employing unit on the date the
8 employee leasing agreement becomes effective, the client company
9 retains its experience balance, liabilities, and wage credits, and R.S.
10 43:21-7(c)(7) does not apply to the client company or to the
11 employee leasing company;

12 (d) If a client company is not an employing unit on the date the
13 employee leasing agreement becomes effective, the client company
14 immediately qualifies for an employer experience account under
15 R.S. 43:21-7 and is subject to section 1 of P.L.1992, c.202
16 (C.43:21-7.7) for purposes of establishing an initial contribution
17 rate;

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

23 (f) Upon the dissolution of an employee leasing agreement, the
24 client company shall retain the experience balance, liabilities, and
25 wage credits for the client company's employing unit account; the
26 client company's federal employer identification number (FEIN)
27 shall become the primary FEIN on the employing unit's account;
28 and the employee leasing company's FEIN shall not be associated
29 with the client's company's employing unit account.

30 d. A client company that transfers between employee leasing
31 companies is not subject to R.S. 43:21-7(c)(7) whenever:

32 (1) The employee leasing companies are not commonly owned,
33 managed, or controlled; and

34 (2) Both employee leasing companies have elected to use the
35 Entity Level Reporting Method.

36 e. For the purposes of this section:

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

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

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

46

47 4. This act shall take effect immediately.

1 STATEMENT

2

3 This bill changes the manner in which unemployment insurance
4 (UI) taxes are determined for an employee leasing company (ELC),
5 by permitting an ELC to have the taxes determined on the basis of
6 either the experience rating of the ELC or of the ELC's client
7 companies.

8 Under the bill, an ELC may elect to use an "Entity Level
9 Reporting Method" if the ELC does so not later than July 1, 2014,
10 or the first date that the ELC is liable to pay UI taxes, if the ELC
11 begins doing business after July 1, 2014. It may subsequently elect
12 to change to a "Client Level Reporting Method." If the ELC does
13 elect the "Client Level Reporting Method," it is not permitted to
14 elect, or to return to, the "Entity Level Reporting Method."

15 Under current law, UI tax rates for an ELC are based exclusively
16 on the experience of the ELC, not its client companies.

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 3087

STATE OF NEW JERSEY

DATED: DECEMBER 12, 2013

The Senate Labor Committee reports favorably Senate Bill No. 3087.

This bill changes the manner in which unemployment insurance (UI) taxes are determined for an employee leasing company (ELC), by permitting an ELC to have the taxes determined on the basis of the unemployment experience of either the ELC or of the ELC's client companies.

Under the bill, an ELC may elect to use an "Entity Level Reporting Method," that is, using its own experience, if the ELC does so not later than July 1, 2014, or the first date that the ELC is liable to pay UI taxes, if the ELC begins doing business after July 1, 2014. It may subsequently elect to change to a "Client Level Reporting Method," meaning it would use the experience of the ELC's client companies. If the ELC does elect the "Client Level Reporting Method," it is not permitted to elect, or to return to, the "Entity Level Reporting Method."

Under current law, UI tax rates for an ELC are based exclusively on the experience of the ELC, not its client companies.

STATEMENT TO
SENATE, No. 3087

with Senate Floor Amendments
(Proposed by Senator MADDEN)

ADOPTED: JANUARY 9, 2014

These amendments extend from 15 days to 30 days the amount of time provided to an employee leasing company (ELC) to provide the Department of Labor and Workforce Development with various notifications. The amendments also require, for the first time, that the ELC provide certain data to the department.

The amendments further provide an ELC more flexibility in choosing whether its unemployment insurance (UI) taxes are determined on the basis of either the experience rating of the ELC or of the ELC's client companies. Under the amendments, an ELC shall use the Entity Level Reporting Method, unless it elects to use the Client Level Reporting Method, as those two respective methods are described in the bill. The amendments also revise the terms and conditions under which, and when, this election may be made. The amendments also permit an ELC that has elected to use the Client Level Reporting Method to “switch back” to the Entity Level Reporting Method, but only one time and only after written notification of, and approval by, the department.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 3087 STATE OF NEW JERSEY 215th LEGISLATURE

DATED: JANUARY 16, 2014

SUMMARY

Synopsis: Concerns employee leasing companies and unemployment compensation.

Type of Impact: Indeterminate impact on the unemployment insurance compensation trust fund (UI trust fund).

Agencies Affected: Department of Labor and Workforce Development

Office of Legislative Services Estimate

Fiscal Impact	
State Revenue	
UI trust fund	Indeterminate impact – See comments below

- The Office of Legislative Services (OLS) notes that this bill may have an indeterminate impact on the unemployment insurance compensation trust fund (UI trust fund). The UI tax rate for certain companies may change pursuant to the proposed legislation. Therefore, the revenue collected from the companies' UI taxes may also fluctuate and impact the total revenue collected for the UI trust fund.
- This bill permits employee leasing companies (ELC) to elect for the UI tax rate charged to its clients be determined by the unemployment experience of either the ELC or its client companies.

BILL DESCRIPTION

Senate Bill No. 3087 (1R) of 2013 changes the manner in which UI taxes are determined for an ELC, by permitting an ELC to have the taxes determined on the basis of either the experience rating of the ELC or of the ELC's client companies.

Under the bill, an ELC may elect to use an "Entity Level Reporting Method" if the ELC does so not later than July 1, 2014, or the first date that the ELC is liable to pay UI taxes, if the ELC begins doing business after July 1, 2014. It may subsequently elect to change to a "Client Level

Reporting Method.” If the ELC does elect the “Client Level Reporting Method,” it is permitted to elect, or to return to, the “Entity Level Reporting Method,” but only one time and only after written notification of, and approval by, the Department of Labor and Workforce Development.

Under current law, UI tax rates for an ELC are based exclusively on the experience of the ELC, not its client companies.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS notes that this bill may have an indeterminate impact on the UI trust fund. This bill permits ELCs to elect if the UI tax rate charged to its clients is determined by the unemployment experience of the ELC or its client companies. This bill may result in behavior which permits client companies and ELCs to choose the UI tax rate which is the lowest for the client, which may result in lower overall UI taxes being collected from employers who elect to participate in ELCs.

It is not possible for the OLS to estimate the overall impact of this legislation with any certainty. Even if the OLS had access to the current UI tax rate for the approximately 110 compliant ELCs operating in New Jersey and the current UI tax rate for each of the client companies of the ELCs, it would still need to predict the future behavior of the ELCs and their client companies. However, it is noted that the legislation may have an indeterminate impact on the UI trust fund due to possible changes to the UI tax rate for the client companies of ELCs.

Section: Commerce, Labor and Industry

Analyst: Robin C. Ford
Senior Fiscal Analyst

Approved: David J. Rosen
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY, No. 4528

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED DECEMBER 12, 2013

Sponsored by:

**Assemblyman JOSEPH V. EGAN
District 17 (Middlesex and Somerset)**

Co-Sponsored by:

Assemblyman DeAngelo

SYNOPSIS

Concerns employee leasing companies and unemployment compensation.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/17/2013)

1 AN ACT concerning employee leasing companies and
2 unemployment compensation, amending P.L.2001, c.260, and
3 supplementing chapter 21 of Title 43 of the Revised Statutes.

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

7
8 1. Section 6 of P.L.2001, c.260 (C.34:8-72) is amended to read
9 as follows:

10 6. a. An employee leasing company registered under this act
11 and the respective client companies with which it has entered into
12 employee leasing agreements shall be the co-employers of their
13 covered employees for the payment of wages and other employment
14 benefits due, including the obligation under the workers'
15 compensation law, R.S.34:15-1 et seq., to maintain insurance
16 coverage for covered employees for personal injuries to, or for the
17 death of, those employees by accident arising out of and in the
18 course of employment through policies issued by an insurance
19 carrier licensed in the State of New Jersey. Such policies shall state
20 the name of the employee leasing company as the labor contractor
21 for each client company, by name.

22 b. For purposes of **[this act]** P.L.2001, c.260 (C.34:8-67 et
23 seq.), the agreement between the employee leasing company and the
24 client company shall be one of co-employment, whereby the
25 employee leasing company, having accepted the responsibilities set
26 forth in section 2 of **[this act]** P.L.2001, c.260 (C.34:8-68), may
27 submit reports to the department and make contributions to the
28 Unemployment Compensation and State Disability Benefits Funds
29 in the manner prescribed in section 7 of **[this act]** P.L.2001, c.260
30 (C.34:8-73), on behalf of those covered employees covered by the
31 employee leasing agreement. In addition, the provisions of
32 R.S.34:15-8, regarding the exclusivity of the remedy under the
33 workers' compensation law for personal injuries to, or for the death
34 of, employees by accident arising out of and in the course of their
35 employment, shall apply to the employee leasing company and the
36 client company, and their employees.

37 c. The employee leasing company shall file reports prescribed
38 under the "unemployment compensation law," R.S.43:21-1 et seq.
39 on behalf of its covered employees **[using the State tax**
40 **identification number of the employee leasing company]** as set
41 forth in section 3 of P.L. , c. (C.)(pending before the
42 Legislature as this bill).

43 (cf: P.L. 2011, c.118, s.5)

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.

1 2. Section 7 of P.L.2001, c.260 (C.34:8-73) is amended to read
2 as follows:

3 7. a. Upon entering into the employee leasing agreement:

4 (1) If the employee leasing company acquires the client
5 company's total workforce, the employee leasing company shall
6 report wages and pay contributions pursuant to **the** "unemployment
7 compensation law," R.S.43:21-1 et seq., based on the benefit
8 experience assigned to the employee leasing company under
9 R.S.43:21-7. The benefit experience of the client company shall not
10 be transferred to the leasing company and shall not be used in the
11 calculation of the employee leasing company's future contribution
12 rates] section 3 of P.L. , c. (C.)(pending before the
13 Legislature as this bill).

14 (2) If the employee leasing company acquires less than all of the
15 client company's total workforce, the employee leasing company
16 shall report wages and pay contributions pursuant to **the**
17 "unemployment compensation law," R.S.43:21-1 et seq. for that
18 portion of the workforce acquired based on the benefit experience
19 assigned to the employee leasing company under R.S.43:21-7. The
20 benefit experience associated with that portion of the client
21 company's workforce acquired by the employee leasing company
22 shall not be transferred to the employee leasing company and shall
23 not be used in the calculation of the employee leasing company's
24 future contribution rates. The client company shall continue to
25 report wages and pay contributions for the workforce not acquired
26 by the employee leasing company using the client company's
27 contribution rate] section 3 of P.L. , c. (C.)(pending before
28 the Legislature as this bill) with respect to that portion of the
29 workforce so acquired.

30 b. Upon dissolution of the employee leasing agreement:

31 (1) If, under the dissolved employee leasing agreement, the
32 employee leasing company elected to use the Entity Level
33 Reporting Method under subsection b. of section 3 of P.L. ,c. (C.)
34 (pending before the Legislature as this bill) to report and pay all
35 required contributions to the unemployment compensation fund as
36 required under R.S.43:21-7, and the client company had leased all
37 or a portion of its total workforce, and if, at the time of
38 dissolution, the client company had leased those employees for at
39 least two full calendar years, the client company shall be assigned
40 the rate of a new employer under R.S.43:21-7 until it is eligible for
41 a rate based on benefit experience pursuant to that section or enters
42 into another employee leasing agreement] the employee leasing
43 company shall, at the time of dissolution, provide the department
44 with the data necessary to calculate the benefit experience of the
45 client company for purposes of determining the client company's
46 separate benefit experience.

1 (2) If, under the dissolved employee leasing agreement, the
2 **【**client company had leased its total workforce, and if, at the time of
3 the dissolution, the client company had leased those employees for
4 less than two full calendar years, the employee leasing company at
5 the time of dissolution shall provide the Department of Labor with
6 the data necessary to calculate the benefit experience of the client
7 company for the duration of the employee leasing agreement. That
8 benefit experience shall then be added to the client company's
9 benefit experience which was established prior to entering the
10 employee leasing agreement. Both the client company and the
11 employee leasing company shall continue to use the rate of the
12 employee leasing company for the period from the date of the
13 dissolution of the employee leasing agreement until the following
14 **July 1】** employee leasing company elected to use the Client Level
15 Reporting Method under subsection c. of section 3 of P.L. ,c. (C.)
16 (pending before the Legislature as this bill), to report and pay all
17 required contributions to the unemployment compensation fund as
18 required under R.S. 43:21-7, and the client company had leased all
19 or a portion its total workforce, the department shall compute its
20 benefit experience in accordance with subparagraph (f) of paragraph
21 (3) of subsection c. of section 3 of P.L. , c. (C.) (pending
22 before the Legislature as this bill)

23 (3) **【**If, under the dissolved employee leasing agreement, the
24 client company had leased less than its total workforce from the
25 employee leasing company, and if, at the time of dissolution, the
26 client company had leased those covered employees for at least two
27 full calendar years, the benefit experience associated with that
28 portion of the client company's workforce which had been leased
29 from the employee leasing company shall not be transferred to the
30 client company and shall not be used in the calculation of the client
31 company's future contribution rates.**】** (Deleted by amendment, P.L.,
32 c. (C.) (pending before the Legislature as this bill)

33 (4) **【**If, under the dissolved employee leasing agreement, the
34 client company had leased less than its total workforce from the
35 employee leasing company, and if, at the time of dissolution, the
36 client company had leased those covered employees for less than
37 two full calendar years, the leasing company shall provide the
38 department with the data necessary to calculate the benefit
39 experience associated with that portion of the client's workforce
40 which had been leased from the employee leasing company. The
41 department shall combine that benefit experience with the client
42 company's existing benefit experience. Both the client company
43 and the employee leasing company shall continue to use their own
44 rates for the period from the date of the dissolution until the
45 following July 1.**】** (Deleted by amendment, P.L. , c. (C.)
46 (pending before the Legislature as this bill)

1 (5) **【If, immediately upon dissolution of the employee leasing**
2 **agreement, the client company enters into a subsequent employee**
3 **leasing agreement regarding those covered employees with another**
4 **employee leasing company, the payroll relative to the client**
5 **company shall be reported and paid at the rate assigned the second**
6 **employee leasing company】** (Deleted by amendment, P.L. , c. C.
7 (pending before the Legislature as this bill)
8 (cf: P.L.2001, c.260, s.7)

9
10 3. (New section) a. For purposes of the “unemployment
11 compensation law,” R.S.43:21-1 et seq., a covered employee is an
12 employee of the employee leasing company. An employee leasing
13 company is responsible for the payment of contributions,
14 surcharges, penalties, and interest assessed under the
15 “unemployment compensation law,” R.S.43:21-1 et seq. on wages
16 paid by the employee leasing company to the covered employees
17 during the term of the employee leasing agreement. An employee
18 leasing company shall use the Client Level Reporting Method to
19 report and pay all required contributions to the unemployment
20 compensation fund as required by R.S.43:21-7, unless the employee
21 leasing company elects the Entity Level Reporting Method under
22 subsection b. of this section. An employee leasing company that
23 initially elects the Entity Level Reporting Method under subsection
24 b. may subsequently elect the Client Level Reporting Method under
25 subsection c. of this section. An employee leasing company that
26 does not elect to use the Entity Level Reporting Method under
27 subsection b. of this section may not thereafter elect to use the
28 Entity Level Reporting Method. An employee leasing company and
29 its related entities shall use the same reporting method for all
30 clients.

31 b. An employee leasing company may elect to use the Entity
32 Level Reporting Method, which uses the State employer account
33 number and contribution rate of the employee leasing company to
34 report and pay all required contributions to the unemployment
35 compensation fund as required by R.S.43:21-7. An employee
36 leasing company shall make that election in writing on forms
37 prescribed by the department and make the election not later than:
38 July 1, 2014, if the employee leasing company is doing business in
39 New Jersey for reporting effective January 1, 2015; or the first date
40 the employee leasing company is liable to make contributions under
41 the “unemployment compensation law,” R.S.43:21-1 et seq., for at
42 least one covered employee, if the employee leasing company
43 begins doing business in New Jersey after July 1, 2014. An
44 employee leasing company that does not make an election under
45 this subsection b. shall use the Client Level Reporting Method
46 pursuant to subsection c. of this section. The following provisions
47 apply to an employee leasing company that elects to use the Entity
48 Level Reporting Method:

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

6 (2) The employee leasing company is subject to the provisions
7 of R.S. 43:21-7(c)(7)(D) irrespective of whether there is common
8 ownership, beginning on the effective date of the employee leasing
9 agreement;

10 (3) Whenever the employee leasing company enters into an
11 employee leasing agreement with a client company, the employee
12 leasing company shall notify the department not later than 15 days
13 after the end of the quarter in which the employee leasing
14 agreement became effective; and

15 (4) The employee leasing company shall notify the department
16 in writing on forms prescribed by the department not later than 15
17 days after the date of the following:

18 (a) The employee leasing company and a client company
19 terminate an employee leasing agreement; or

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

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

28 c. (1) The Client Level Reporting Method uses the state
29 employer account number and contribution rate of the client
30 company to report and pay all required contributions to the
31 unemployment compensation fund as required by R.S. 43:21-7.

32 (2) An employee leasing company which uses the Entity Level
33 Reporting Method may subsequently elect the Client Level
34 Reporting Method, subject to the following requirements:

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

39 (b) The election shall be made in a written notice on a form
40 prescribed by the department; and

41 (c) The election shall be effective on January 1 of the calendar
42 year immediately following the year in which the department
43 receives the notice of election.

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

46 (a) Whenever the employee leasing company enters into an
47 employee leasing agreement with a client company, the employee
48 leasing company shall notify the department not later than 15 days

- 1 after the end of the quarter in which the employee leasing
2 agreement became effective;
- 3 (b) An employee leasing company reporting at the entity level
4 which elects client level reporting will immediately provide data to
5 the department to enable them to calculate the benefit experience
6 rate of each client company;
- 7 (c) If a client company is an employing unit on the date the
8 employee leasing agreement becomes effective, the client company
9 retains its experience balance, liabilities, and wage credits, and R.S.
10 43:21-7(c)(7) does not apply to the client company or to the
11 employee leasing company;
- 12 (d) If a client company is not an employing unit on the date the
13 employee leasing agreement becomes effective, the client company
14 immediately qualifies for an employer experience account under
15 R.S. 43:21-7 and is subject to section 1 of P.L.1992, c.202
16 (C.43:21-7.7) for purposes of establishing an initial contribution
17 rate;
- 18 (e) A client is associated with the employee leasing company's
19 employer experience account by means of the employee leasing
20 company's primary federal employer identification number (FEIN)
21 for purposes of liability under the "unemployment compensation
22 law," R.S.43:21-1 et seq. and federal certification; and
- 23 (f) Upon the dissolution of an employee leasing agreement, the
24 client company shall retain the experience balance, liabilities, and
25 wage credits for the client company's employing unit account; the
26 client company's federal employer identification number (FEIN)
27 shall become the primary FEIN on the employing unit's account;
28 and the employee leasing company's FEIN shall not be associated
29 with the client's company's employing unit account.
- 30 d. A client company that transfers between employee leasing
31 companies is not subject to R.S. 43:21-7(c)(7) whenever:
- 32 (1) The employee leasing companies are not commonly owned,
33 managed, or controlled; and
- 34 (2) Both employee leasing companies have elected to use the
35 Entity Level Reporting Method.
- 36 e. For the purposes of this section:
- 37 (1) The term "Client Level Reporting Method" has the meaning
38 set forth in subsection c. of this section;
- 39 (2) The term "Entity Level Reporting Method" has the meaning
40 set forth in subsection b. of this section; and
- 41 (3) The terms "client company," "covered employee,"
42 "employee leasing agreement" or "professional employer
43 agreement," and "employee leasing company" or "professional
44 employer organization" have the meanings set forth in section 1 of
45 P.L.2001, c.260 (C.34:8-67).
- 46
- 47 4. This act shall take effect immediately.

1 STATEMENT

2

3 This bill changes the manner in which unemployment insurance
4 (UI) taxes are determined for an employee leasing company (ELC),
5 by permitting an ELC to have the taxes determined on the basis of
6 either the experience rating of the ELC or of the ELC's client
7 companies.

8 Under the bill, an ELC may elect to use an "Entity Level
9 Reporting Method" if the ELC does so not later than July 1, 2014,
10 or the first date that the ELC is liable to pay UI taxes, if the ELC
11 begins doing business after July 1, 2014. It may subsequently elect
12 to change to a "Client Level Reporting Method." If the ELC does
13 elect the "Client Level Reporting Method," it is not permitted to
14 elect, or to return to, the "Entity Level Reporting Method."

15 Under current law, UI tax rates for an ELC are based exclusively
16 on the experience of the ELC, not its client companies.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4528

STATE OF NEW JERSEY

DATED: DECEMBER 16, 2013

The Assembly Labor Committee reports favorably Assembly bill No. 4528.

This bill changes the manner in which unemployment insurance (UI) taxes are determined for an employee leasing company (ELC), by permitting an ELC to have the taxes determined on the basis of the unemployment experience of either the ELC or of the ELC's client companies.

Under the bill, an ELC may elect to use an "Entity Level Reporting Method," that is, using its own experience, if the ELC does so not later than July 1, 2014, or the first date that the ELC is liable to pay UI taxes, if the ELC begins doing business after July 1, 2014. It may subsequently elect to change to a "Client Level Reporting Method," meaning it would use the experience of the ELC's client companies. If the ELC does elect the "Client Level Reporting Method," it is not permitted to elect, or to return to, the "Entity Level Reporting Method."

Under current law, UI tax rates for an ELC are based exclusively on the experience of the ELC, not its client companies.

STATEMENT TO
ASSEMBLY, No. 4528

with Assembly Floor Amendments
(Proposed by Assemblyman EGAN)

ADOPTED: JANUARY 6, 2014

These amendments extend from 15 days to 30 days the amount of time provided to an employee leasing company (ELC) to provide the Department of Labor and Workforce Development with various notifications. The amendments also require, for the first time, that the ELC provide certain data to the department.

The amendments further provide an ELC more flexibility in choosing whether its unemployment insurance (UI) taxes are determined on the basis of either the experience rating of the ELC or of the ELC's client companies. Under the amendments, an ELC shall use the Entity Level Reporting Method, unless it elects to use the Client Level Reporting Method, as those two respective methods are described in the bill. The amendments also revise the terms and conditions under which, and when, this election may be made. The amendments also permit an ELC that has elected to use the Client Level Reporting Method to “switch back” to the Entity Level Reporting Method, but only one time and only after written notification of, and approval by, the department.