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RH/CL

P.L.2017, CHAPTER 233, *approved September 13, 2017*
Senate, No. 2512 (*Fourth Reprint*)

1 AN ACT concerning ¹**[the provision of workers' compensation**
2 **insurance under]**¹ employee leasing agreements and amending
3 P.L.2001, c.260 ¹and P.L.2011, c.118¹.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

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

10 2. a. Every employee leasing agreement shall provide that the
11 employee leasing company:

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

20 (2) Assumes responsibility for the payment of wages to each
21 covered employee without regard to payments by the client company
22 to the employee leasing company, except that the provisions of this
23 paragraph shall not affect the client company's obligations with respect
24 to the payment of wages to covered employees;

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

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

32 (5) Has given written notice of the relationship between the
33 employee leasing company and the client company to each covered
34 employee it assigns to perform services at the client company's work
35 site;

36 (6) Shall, except for newly established business entities, hire its
37 initial employee complement from among employees of the client
38 company at the time of execution of the employee leasing agreement
39 at comparable terms and conditions of employment as are in existence

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 January 9, 2017.

²Senate floor amendments adopted May 25, 2017.

³Senate floor amendments adopted June 22, 2017.

⁴Senate floor amendments adopted June 26, 2017.

1 at the client company at the time of execution of the employee leasing
2 agreement and as designated by the client company. Throughout the
3 term of the employee leasing agreement the covered employees shall
4 be considered employees of the employee leasing company and the
5 client company and upon the termination of the employee leasing
6 agreement, the covered employees shall be considered employees of
7 the client company;

8 (7) Continue to honor and abide by existing collective bargaining
9 agreements applicable to covered employees. The client company
10 shall also continue to honor and abide by all collective bargaining
11 agreements applicable to covered employees. Every employee leasing
12 company which enters into a contract with a client company, which
13 has a collective bargaining representative for the covered employees,
14 shall require that client company to enter into an agreement with the
15 employee leasing company containing the following language:

16 "The client company shall continue to honor and abide by the
17 terms of any applicable collective bargaining agreements, and upon
18 expiration thereof, any obligations of the client company to bargain in
19 good faith in connection with such collective bargaining agreements
20 shall not be affected in any manner by the employee leasing
21 agreement."

22 (8) Shall provide workers' compensation insurance for their
23 covered employees, unless the client company, in agreement with the
24 employee leasing company ¹[at the inception of the employee leasing
25 agreement,] ¹ elects to assume the responsibility of providing the
26 workers' compensation insurance coverage for those employees ¹in an
27 arrangement with an employee leasing company, and the employee
28 leasing company provides notice of the election and proof of coverage
29 to the department within 30 days of the election or once forms or
30 procedures are decided by the department¹.

31 ³[²A workers' compensation insurer shall notify the commissioner,
32 the employee leasing company, and client company, in writing via
33 certified mail to their respective legal mailing addresses, no later than
34 30 days prior to any lapse, non-renewal, or cancellation for any reason
35 of workers' compensation coverage which was bound or secured in the
36 client's name to provide coverage for the covered employees.]

37 A client company that assumes the responsibility to provide
38 workers compensation insurance required by an employee leasing
39 agreement, shall provide a copy of the agreement to the insurance
40 carrier licensed in the State ⁴of ⁴New Jersey that issues the policy for
41 the covered employees prior to the issuance of the policy or upon
42 entering an employee leasing agreement as appropriate ⁴[prior to
43 policy issuance]⁴. The agreement shall contain a legal mailing
44 address for the employee leasing company and the client company
45 shall be obligated to update that address should it change over the
46 policy period.

47 In the event that a policy issued to a client company is cancelled
48 pursuant to R.S.34:15-81, the insurance carrier licensed in the State of

1 New Jersey that issues the policy shall provide the employee leasing
2 company copies of all notices required to be issued to the client
3 company pursuant to R.S.34:15-81 with at least 10 days' notice by
4 regular mail at the address set forth in the employee leasing agreement,
5 as updated.³

6 Notwithstanding the provisions of this paragraph (8), if the client
7 company, having elected to assume the responsibility of providing the
8 workers' compensation insurance coverage for covered employees in
9 an arrangement with an employee leasing company, fails to provide
10 workers' compensation insurance coverage as required by law during
11 the period of the agreement, then the employee leasing company shall
12 provide workers' compensation insurance for the covered employees
13 under the employee leasing agreement.²

14 b. Every employee leasing agreement shall ¹**[provide that]**
15 allocate responsibility between¹ the employee leasing company and
16 the client company ¹**[shall each retain a]** regarding the¹ right of
17 direction and control over management of safety, risk and hazard
18 control at the work site or sites affecting each covered employee
19 including:

20 (1) Responsibility for performing safety inspections of client
21 company equipment and premises;

22 (2) Responsibility for the promulgation and administration of
23 employment and safety policies; and

24 (3) Responsibility for the management of workers' compensation
25 claims, the filings thereof, and procedures related thereto¹**[, unless the**
26 client company elects to assume the responsibility of providing
27 workers' compensation insurance pursuant to paragraph (8) of
28 subsection a. of this section, in which case the client company shall
29 have sole responsibility for the management of workers' compensation
30 claims, and all related filings and procedures]¹.

31 c. Nothing in this section or **[this act]** any other section of
32 P.L.2001, c.260 (C.34:8-67 et seq.) shall alter the rights or obligations
33 of client companies, employee leasing companies or covered
34 employees under the National Labor Relations Act, 29 U.S.C. s.151 et
35 seq.

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

45 (2) Nothing in P.L.2001, c.260 (C.34:8-67 et seq.) or in any
46 employee leasing agreement shall affect, modify, or amend any
47 contractual relationship or restrictive covenant between a covered
48 employee and any client company in effect at the time an employee

1 leasing agreement becomes effective; nor shall it prohibit or amend
2 any contractual relationship or restrictive covenant that is entered into
3 subsequently between a client company and a covered employee. An
4 employee leasing company shall have no responsibility or liability in
5 connection with, or arising out of, any such existing or new contractual
6 relationship or restrictive covenant unless the employee leasing
7 company has specifically agreed otherwise in writing.

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

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

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

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

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

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

40 (cf: P.L.2011, c.118, s.2)

41

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

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

1 client company, **[and]** for the acts, errors or omissions of covered
2 employees with regard to those activities, and for accurately
3 reporting wages to the employee leasing company.

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

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

21 (cf: P.L.2011, c.118, s.6)¹

22
23 ¹3. Section 4 of P.L. 2001 c. 260 (C.34:8-70) is amended to read
24 as follows:

25 4. a. An employee leasing company shall register with the
26 commissioner and provide a list of its client companies with
27 covered employees in this State, both upon the initial registration of
28 the employee leasing company, and thereafter, annually by January
29 31st, listing all client companies as of the immediately preceding
30 December 31st. The list shall include the following information
31 with regard to each client company:

32 (1) Client company's name;

33 (2) Client company's physical location address;

34 (3) Description of client company's economic activity;

35 (4) Client company's state tax identification number;

36 (5) Percent of client company's workforce being leased;

37 (6) Effective date and duration of employee leasing agreement;

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

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

44 (b) The employee leasing company shall be required to notify
45 the Department of Labor and Workforce Development on an annual
46 basis of any material changes in the standard form of agreement
47 which relate to the requirements set forth in section 2 of **[this act]**
48 P.L.2001, c.260 (C.34:8-68), and when any particular client

1 company has agreed to terms which deviate from the standard form
2 of agreement;

3 (8) Proof of written disclosure to client companies upon the
4 signing of an employee leasing agreement, as required in section 8
5 of **【this act】** P.L.2001, c.260 (C.34:8-74);

6 (9) Proof of current workers' compensation coverage, which
7 may be in the form of a letter from the insurance carrier, and which
8 shall include the name of the carrier, date of commencement of
9 coverage under the policy, term of the coverage, and verification of
10 premiums paid, except that, if the employee leasing company has
11 entered into an employee leasing agreement with a client company
12 who elects to maintain its own workers' compensation insurance,
13 the client company shall provide that proof to the commissioner;
14 and

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

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

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

30 c. All records, reports and other information obtained from
31 employee leasing companies under **【this act】** P.L.2001,
32 c.260 (C.34:8-67 et seq.), except to the extent necessary for the
33 proper administration by the department of **【this】** that act and all
34 applicable labor laws, shall be confidential and shall not be
35 published or open to public inspection other than to public
36 employees in the performance of their public duties.

37 d. The department shall establish a limited registration and
38 renewal process and appropriate forms for an employee leasing
39 company that (1) is not domiciled in this State; (2) is licensed or
40 registered as an employee leasing company or professional
41 employer organization in another state; (3) does not maintain an
42 office in this State or directly solicit client companies located or
43 domiciled in this State; and (4) is not responsible for more than 50
44 covered employees employed in this State on the date of
45 registration or renewal. If during the term of a limited registration
46 an employee leasing company becomes responsible for more than
47 50 covered employees, the employee leasing company shall re-
48 register with the department pursuant to subsection a. of this section

1 within 30 days of the end of the quarter in which the employee
2 leasing company became responsible for more than 50 covered
3 employees, but shall not be charged any additional registration fee,
4 if a registration fee is required. An employee leasing company
5 requesting a limited registration pursuant to this subsection shall
6 provide the department with a list of client companies and the
7 number of covered employees at each of those companies and such
8 other information as the department shall prescribe. Any employee
9 leasing company receiving a limited registration from the
10 department shall not be required to comply with the provisions of
11 subsections a. and b. of section 5 of P.L.2001, c.260 (C.34:8-71).

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

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

33 (cf: P.L.2011, c.118, s.3)¹

34

35 ¹**[2.] 4.**¹ Section 6 of P.L.2001, c.260 (C.34:8-72) is amended
36 to read as follows:

37 6. a. An employee leasing company registered under **[this act]**
38 P.L.2001, c.260 (C.34:8-67 et seq.) and the respective client
39 companies with which it has entered into employee leasing
40 agreements shall be the co-employers of their covered employees
41 for the payment of wages and other employment benefits due,
42 including the obligation under the workers' compensation law,
43 R.S.34:15-1 et seq., to maintain insurance coverage for covered
44 employees for personal injuries to, or for the death of, those
45 employees by accident arising out of and in the course of
46 employment through policies issued by an insurance carrier licensed
47 in the State of New Jersey. Such policies shall state the name of the
48 employee leasing company as the labor contractor for each client
49 company, by name, unless the client company elects to assume the

1 responsibility of providing the workers' compensation insurance
2 coverage for the employees pursuant to section 2 of P.L.2001,
3 c.260 (C.34:8-68).

4 b. For purposes of P.L.2001, c.260 (C.34:8-67 et seq.), the
5 agreement between the employee leasing company and the client
6 company shall be one of co-employment, whereby the employee
7 leasing company, having accepted the responsibilities set forth in
8 section 2 of P.L.2001, c.260 (C.34:8-68), may submit reports to the
9 department and make contributions to the Unemployment
10 Compensation and State Disability Benefits Funds in the manner
11 prescribed in section 7 of P.L.2001, c.260 (C.34:8-73), on behalf of
12 those covered employees covered by the employee leasing
13 agreement. In addition, the provisions of R.S.34:15-8, regarding the
14 exclusivity of the remedy under the workers' compensation law for
15 personal injuries to, or for the death of, employees by accident
16 arising out of and in the course of their employment, shall apply to
17 the employee leasing company and the client company, and their
18 employees, regardless of which party provides workers'
19 compensation insurance coverage.

20 c. The employee leasing company shall file reports prescribed
21 under the "unemployment compensation law," R.S.43:21-1 et seq.
22 on behalf of its covered employees as set forth in section 3 of
23 P.L.2013, c.225 (C.43:21-7.8).
24 (cf: P.L.2013, c.225, s.1)

25
26 ¹**[3.]** 5.¹ This act shall take effect immediately³, except that
27 insurance carriers licensed in the State of New Jersey shall have up
28 to 180 days following enactment to comply with the provisions of
29 paragraph (8) of subsection a. of section 2 of P.L.2001, c.260
30 (C.34:8-68)³.

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34
35

Concerns employee leasing agreements.

SENATE, No. 2512

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED SEPTEMBER 12, 2016

Sponsored by:

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

SYNOPSIS

Concerns workers' compensation coverage under employee leasing agreements.

CURRENT VERSION OF TEXT

As introduced.



S2512 MADDEN

2

1 AN ACT concerning the provision of workers' compensation
2 insurance under employee leasing agreements and amending
3 P.L.2001, c.260.

4

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

7

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

10 2. a. Every employee leasing agreement shall provide that the
11 employee leasing company:

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

20 (2) Assumes responsibility for the payment of wages to each
21 covered employee without regard to payments by the client
22 company to the employee leasing company, except that the
23 provisions of this paragraph shall not affect the client company's
24 obligations with respect to the payment of wages to covered
25 employees;

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

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

33 (5) Has given written notice of the relationship between the
34 employee leasing company and the client company to each covered
35 employee it assigns to perform services at the client company's
36 work site;

37 (6) Shall, except for newly established business entities, hire its
38 initial employee complement from among employees of the client
39 company at the time of execution of the employee leasing
40 agreement at comparable terms and conditions of employment as
41 are in existence at the client company at the time of execution of the
42 employee leasing agreement and as designated by the client
43 company. Throughout the term of the employee leasing agreement
44 the covered employees shall be considered employees of the

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.

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1 employee leasing company and the client company and upon the
2 termination of the employee leasing agreement, the covered
3 employees shall be considered employees of the client company;

4 (7) Continue to honor and abide by existing collective
5 bargaining agreements applicable to covered employees. The client
6 company shall also continue to honor and abide by all collective
7 bargaining agreements applicable to covered employees. Every
8 employee leasing company which enters into a contract with a client
9 company, which has a collective bargaining representative for the
10 covered employees, shall require that client company to enter into
11 an agreement with the employee leasing company containing the
12 following language:

13 "The client company shall continue to honor and abide by the
14 terms of any applicable collective bargaining agreements, and upon
15 expiration thereof, any obligations of the client company to bargain
16 in good faith in connection with such collective bargaining
17 agreements shall not be affected in any manner by the employee
18 leasing agreement."

19 (8) Shall provide workers' compensation insurance for their
20 covered employees, unless the client company, in agreement with
21 the employee leasing company at the inception of the employee
22 leasing agreement, elects to assume the responsibility of providing
23 the workers' compensation insurance coverage for those employees.

24 b. Every employee leasing agreement shall provide that the
25 employee leasing company and the client company shall each retain
26 a right of direction and control over management of safety, risk and
27 hazard control at the work site or sites affecting each covered
28 employee including:

29 (1) Responsibility for performing safety inspections of client
30 company equipment and premises;

31 (2) Responsibility for the promulgation and administration of
32 employment and safety policies; and

33 (3) Responsibility for the management of workers'
34 compensation claims, the filings thereof, and procedures related
35 thereto, unless the client company elects to assume the
36 responsibility of providing workers' compensation insurance
37 pursuant to paragraph (8) of subsection a. of this section, in which
38 case the client company shall have sole responsibility for the
39 management of workers' compensation claims, and all related
40 filings and procedures.

41 c. Nothing in this section or **[this act]** any other section of
42 P.L.2001, c.260 (C.34:8-67 et seq.) shall alter the rights or
43 obligations of client companies, employee leasing companies or
44 covered employees under the National Labor Relations Act, 29
45 U.S.C. s.151 et seq.

46 d. (1) Nothing in P.L.2001, c.260 (C.34:8-67 et seq.) or in any
47 employee leasing agreement shall diminish, abolish or remove any
48 obligations of covered employees to a client company or any

1 obligations of any client company to a covered employee existing
2 prior to the effective date of an employee leasing agreement, or
3 create any new or additional enforceable right of a covered
4 employee against an employee leasing company that is not
5 specifically provided by the appropriate employee leasing
6 agreement or P.L.2001, c.260 (C.34:8-67 et seq.).

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

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

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

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

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

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

47 g. Any benefit that a client company is required to provide to
48 covered employees that is provided to covered employees by an

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1 employee leasing company through an employee leasing agreement
2 shall be credited against the client company's obligation to fulfill
3 the requirement.

4 (cf: P.L.2011, c.118, s.2)

5

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

8 6. a. An employee leasing company registered under **[this act]**
9 P.L.2001, c.260 (C.34:8-67 et seq.) and the respective client
10 companies with which it has entered into employee leasing
11 agreements shall be the co-employers of their covered employees
12 for the payment of wages and other employment benefits due,
13 including the obligation under the workers' compensation law,
14 R.S.34:15-1 et seq., to maintain insurance coverage for covered
15 employees for personal injuries to, or for the death of, those
16 employees by accident arising out of and in the course of
17 employment through policies issued by an insurance carrier licensed
18 in the State of New Jersey. Such policies shall state the name of the
19 employee leasing company as the labor contractor for each client
20 company, by name, unless the client company elects to assume the
21 responsibility of providing the workers' compensation insurance
22 coverage for the employees pursuant to section 2 of P.L.2001, c.260
23 (C.34:8-68).

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

40 c. The employee leasing company shall file reports prescribed
41 under the "unemployment compensation law," R.S.43:21-1 et seq.
42 on behalf of its covered employees as set forth in section 3 of
43 P.L.2013, c.225 (C.43:21-7.8).

44 (cf: P.L.2013, c.225, s.1)

45

46 3. This act shall take effect immediately.

STATEMENT

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This bill provides that, under an employee leasing agreement, a client company may, in agreement with the employee leasing company at the inception of the employee leasing agreement, elect to assume the responsibility of providing the workers' compensation insurance coverage for its employees.

The bill further provides that if the client company elects to assume the responsibility of providing workers' compensation insurance, the client company shall have sole responsibility for the management of workers' compensation claims, and all related filings and procedures.

Finally, the bill reaffirms that the exclusivity of the workers' compensation remedies applies to both the employee leasing company and the client firm, regardless of which party provides the workers' compensation insurance coverage.

Current law requires that the employee leasing company provide workers' compensation insurance and be responsible for the management of workers' compensation claims.

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 2512

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 9, 2017

The Senate Labor Committee reports favorably, and with committee amendments, Senate Bill, No. 2512.

As amended by the committee, the bill provides that, under an employee leasing agreement, a client company may, in agreement with the employee leasing company, elect to assume the responsibility of providing the workers' compensation insurance coverage for its employees.

The bill further provides that if the client company elects to assume the responsibility of providing workers' compensation insurance, the client company shall have sole responsibility for the management of workers' compensation claims, and all related filings and procedures, including providing proof of workers' compensation coverage to the Commissioner of Labor and Workforce Development.

The bill requires that if a client company elects to maintain their 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, name of the carrier and policy number.

The bill makes a client company responsible for accurately reporting wages to the employee leasing company.

Finally, the bill reaffirms that the exclusivity of the workers' compensation remedies applies to both the employee leasing company and the client firm, regardless of which party provides the workers' compensation insurance coverage.

Current law requires that the employee leasing company provide workers' compensation insurance and be responsible for the management of workers' compensation claims.

COMMITTEE AMENDMENTS:

The amendments adopted by the committee:

1. Remove the bill's previous requirement that a client company may not assume responsibility for workers' compensation coverage unless that is agreed to at the inception of the employee leasing agreement.

2. Change the current law so that every employee leasing agreement allocates responsibility between the employee leasing

company and the client company, rather than provides that both retain rights and responsibilities regarding health and safety issues and workers' compensation, and remove the bill's amendment to the law which stated that a client company has the option of taking sole responsibility for management of workers' compensation.

3. Make a client company responsible for accurately reporting wages to the employee leasing company.

4. Shift the responsibility of providing proof of workers' compensation coverage for all leased employees from the employee leasing company to the client company if the client company agrees to maintain workers compensation coverage.

5. Require that if an employee leasing company enters into an employee leasing agreement with a client who elects to maintain their 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, name of the carrier and policy number.

STATEMENT TO
[First Reprint]
SENATE, No. 2512

with Senate Floor Amendments
(Proposed by Senator MADDEN)

ADOPTED: MAY 25, 2017

These Senate amendments provide, with respect to workers' compensation coverage in connection with employee leasing agreements, that:

1. If there is any lapse, non-renewal, or cancellation of workers' compensation coverage which was bound or secured in the client's name to provide coverage for the covered employees, the workers' compensation insurer is required to notify the Commissioner of Labor and Workforce Development, the employee leasing company, and the client company, in writing via certified mail, no later than 30 days prior to the lapse, non-renewal, or cancellation; and
2. If the client company elects to assume the responsibility of providing the workers' compensation insurance coverage for covered employees in an arrangement with an employee leasing company, but fails to provide the required workers' compensation insurance coverage during the period of the agreement, then the employee leasing company is required to provide workers' compensation insurance for the covered employees under the employee leasing agreement.

STATEMENT TO
[Second Reprint]
SENATE, No. 2512

with Senate Floor Amendments
(Proposed by Senator MADDEN)

ADOPTED: JUNE 22, 2017

These Senate amendments:

1. Remove the requirement that a workers' compensation insurer must notify the commissioner, the employee leasing company, and client company, in writing via certified mail to their respective legal mailing addresses, no later than 30 days prior to any lapse, non-renewal, or cancellation for any reason of workers' compensation coverage which was bound or secured in the client's name to provide coverage for the covered employees;

2. Provide that a client company that assumes the responsibility to provide workers compensation insurance is required to provide a copy of the employee leasing agreement to the insurance carrier prior to the issuance of the policy or upon entering an employee leasing agreement as appropriate prior to policy issuance, with a legal mailing address for the employee leasing company and the client company, and is obligated to update that address as needed during the policy period;

3. Provide that, if the policy issued to a client company is cancelled pursuant to R.S.34:15-81, the insurance carrier is required to 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; and

4. Provide insurance carriers up to 180 days following enactment to comply with certain provisions of the bill regarding notification.

STATEMENT TO
[Third Reprint]
SENATE No. 2512

with Senate Floor Amendments
(Proposed by Senator MADDEN)

ADOPTED: JUNE 26, 2017

These amendments provide that a client company that assumes the responsibility to provide workers compensation insurance required by an employee leasing agreement may provide a copy of the agreement to the insurance carrier that issues the policy upon entering the employee leasing agreement and is not required to provide the copy prior to policy issuance.

ASSEMBLY, No. 4446

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED JANUARY 10, 2017

Sponsored by:

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

SYNOPSIS

Concerns workers' compensation coverage under employee leasing agreements.

CURRENT VERSION OF TEXT

As introduced.



A4446 QUIJANO

2

1 AN ACT concerning the provision of workers' compensation
2 insurance under employee leasing agreements and amending
3 P.L.2001, c.260.

4

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

7

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

10 2. a. Every employee leasing agreement shall provide that the
11 employee leasing company:

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

20 (2) Assumes responsibility for the payment of wages to each
21 covered employee without regard to payments by the client
22 company to the employee leasing company, except that the
23 provisions of this paragraph shall not affect the client company's
24 obligations with respect to the payment of wages to covered
25 employees;

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

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

33 (5) Has given written notice of the relationship between the
34 employee leasing company and the client company to each covered
35 employee it assigns to perform services at the client company's
36 work site;

37 (6) Shall, except for newly established business entities, hire its
38 initial employee complement from among employees of the client
39 company at the time of execution of the employee leasing
40 agreement at comparable terms and conditions of employment as
41 are in existence at the client company at the time of execution of the
42 employee leasing agreement and as designated by the client
43 company. Throughout the term of the employee leasing agreement
44 the covered employees shall be considered employees of the
45 employee leasing company and the client company and upon the

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 termination of the employee leasing agreement, the covered
2 employees shall be considered employees of the client company;

3 (7) Continue to honor and abide by existing collective
4 bargaining agreements applicable to covered employees. The client
5 company shall also continue to honor and abide by all collective
6 bargaining agreements applicable to covered employees. Every
7 employee leasing company which enters into a contract with a client
8 company, which has a collective bargaining representative for the
9 covered employees, shall require that client company to enter into
10 an agreement with the employee leasing company containing the
11 following language:

12 "The client company shall continue to honor and abide by the
13 terms of any applicable collective bargaining agreements, and upon
14 expiration thereof, any obligations of the client company to bargain
15 in good faith in connection with such collective bargaining
16 agreements shall not be affected in any manner by the employee
17 leasing agreement."

18 (8) Shall provide workers' compensation insurance for their
19 covered employees, unless the client company, in agreement with
20 the employee leasing company at the inception of the employee
21 leasing agreement, elects to assume the responsibility of providing
22 the workers' compensation insurance coverage for those employees.

23 b. Every employee leasing agreement shall provide that the
24 employee leasing company and the client company shall each retain
25 a right of direction and control over management of safety, risk and
26 hazard control at the work site or sites affecting each covered
27 employee including:

28 (1) Responsibility for performing safety inspections of client
29 company equipment and premises;

30 (2) Responsibility for the promulgation and administration of
31 employment and safety policies; and

32 (3) Responsibility for the management of workers'
33 compensation claims, the filings thereof, and procedures related
34 thereto, unless the client company elects to assume the
35 responsibility of providing workers' compensation insurance
36 pursuant to paragraph (8) of subsection a. of this section, in which
37 case the client company shall have sole responsibility for the
38 management of workers' compensation claims, and all related
39 filings and procedures.

40 c. Nothing in this section or **[this act]** any other section of
41 P.L.2001, c.260 (C.34:8-67 et seq.) shall alter the rights or
42 obligations of client companies, employee leasing companies or
43 covered employees under the National Labor Relations Act, 29
44 U.S.C. s.151 et seq.

45 d. (1) Nothing in P.L.2001, c.260 (C.34:8-67 et seq.) or in any
46 employee leasing agreement shall diminish, abolish or remove any
47 obligations of covered employees to a client company or any
48 obligations of any client company to a covered employee existing

1 prior to the effective date of an employee leasing agreement, or
2 create any new or additional enforceable right of a covered
3 employee against an employee leasing company that is not
4 specifically provided by the appropriate employee leasing
5 agreement or P.L.2001, c.260 (C.34:8-67 et seq.).

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

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

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

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

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

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

46 g. Any benefit that a client company is required to provide to
47 covered employees that is provided to covered employees by an
48 employee leasing company through an employee leasing agreement

1 shall be credited against the client company's obligation to fulfill
2 the requirement.

3 (cf: P.L.2011, c.118, s.2)

4

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

7 6. a. An employee leasing company registered under **[this act]**
8 P.L.2001, c.260 (C.34:8-67 et seq.) and the respective client
9 companies with which it has entered into employee leasing
10 agreements shall be the co-employers of their covered employees
11 for the payment of wages and other employment benefits due,
12 including the obligation under the workers' compensation law,
13 R.S.34:15-1 et seq., to maintain insurance coverage for covered
14 employees for personal injuries to, or for the death of, those
15 employees by accident arising out of and in the course of
16 employment through policies issued by an insurance carrier licensed
17 in the State of New Jersey. Such policies shall state the name of the
18 employee leasing company as the labor contractor for each client
19 company, by name, unless the client company elects to assume the
20 responsibility of providing the workers' compensation insurance
21 coverage for the employees pursuant to section 2 of P.L.2001, c.260
22 (C.34:8-68).

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

39 c. The employee leasing company shall file reports prescribed
40 under the "unemployment compensation law," R.S.43:21-1 et seq.
41 on behalf of its covered employees as set forth in section 3 of
42 P.L.2013, c.225 (C.43:21-7.8).

43 (cf: P.L.2013, c.225, s.1)

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45 3. This act shall take effect immediately.

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STATEMENT

This bill provides that, under an employee leasing agreement, a client company may, in agreement with the employee leasing company at the inception of the employee leasing agreement, elect to assume the responsibility of providing the workers' compensation insurance coverage for its employees.

The bill further provides that if the client company elects to assume the responsibility of providing workers' compensation insurance, the client company shall have sole responsibility for the management of workers' compensation claims, and all related filings and procedures.

Finally, the bill reaffirms that the exclusivity of the workers' compensation remedies applies to both the employee leasing company and the client firm, regardless of which party provides the workers' compensation insurance coverage.

Current law requires that the employee leasing company provide workers' compensation insurance and be responsible for the management of workers' compensation claims.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4446

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 5, 2017

The Assembly Labor Committee reports favorably and with committee amendments Assembly Bill No. 4446.

As amended by the committee, the bill provides that, under an employee leasing agreement, a client company may, in agreement with the employee leasing company, elect to assume the responsibility of providing the workers' compensation insurance coverage for its employees.

The bill further provides that if the client company elects to assume the responsibility of providing workers' compensation insurance, the client company shall have sole responsibility for the management of workers' compensation claims, and all related filings and procedures, including providing proof of workers' compensation coverage to the Commissioner of Labor and Workforce Development.

The bill provides that if a client company 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, name of the carrier and policy number.

The bill also provides notification procedures for lapses, non-renewals, or cancellations of workers' compensation coverage.

The bill makes a client company responsible for accurately reporting wages to the employee leasing company.

The bill provides that the employee leasing company is required to provide workers' compensation insurance coverage for covered employees under an employee leasing agreement if the client company elects to assume the responsibility of providing that coverage, but fails to provide the coverage during the period of the agreement.

Finally, the bill reaffirms that the exclusivity of the workers' compensation remedies applies to both the employee leasing company and the client firm, regardless of which party provides the workers' compensation insurance coverage.

Current law requires that the employee leasing company provide workers' compensation insurance and be responsible for the management of workers' compensation claims.

As amended by the committee, this bill is identical to Senate Bill No. 2512(2R).

COMMITTEE AMENDMENTS:

The committee amended the bill to:

1. Remove the bill's previous requirement that a client company may not assume responsibility for workers' compensation coverage unless that is agreed to at the inception of the employee leasing agreement.

2. Change the current law so that every employee leasing agreement allocates responsibility between the employee leasing company and the client company, rather than provides that both retain rights and responsibilities regarding health and safety issues and workers' compensation, and remove the bill's amendment to the law which stated that a client company has the option of taking sole responsibility for management of workers' compensation.

3. Make a client company responsible for accurately reporting wages to the employee leasing company.

4. Shift the responsibility of providing proof of workers' compensation coverage for all leased employees from the employee leasing company to the client company if the client company agrees to maintain workers compensation coverage.

5. Require that if an employee leasing company enters into an employee leasing agreement with a client 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, name of the carrier and policy number.

6. Provide notification procedures for lapses, non-renewals, or cancellations of workers' compensation coverage.

7. Provide that, if the client company elects to assume the responsibility of providing the workers' compensation insurance coverage for covered employees in an arrangement with an employee leasing company, but fails to provide the required workers' compensation insurance coverage during the period of the agreement, then the employee leasing company is required to provide workers' compensation insurance for the covered employees under the employee leasing agreement.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 4446

with Assembly Floor Amendments
(Proposed by Assemblywoman QUIJANO)

ADOPTED: JUNE 29, 2017

These Assembly amendments:

1. Remove the requirement that a workers' compensation insurer must notify the commissioner, the employee leasing company, and client company, in writing via certified mail to their respective legal mailing addresses, no later than 30 days prior to any lapse, non-renewal, or cancellation for any reason of workers' compensation coverage which was bound or secured in the client's name to provide coverage for the covered employees;

2. Provide that a client company that assumes the responsibility to provide workers compensation insurance is required to provide a copy of the employee leasing agreement to the insurance carrier prior to the issuance of the policy or upon entering an employee leasing agreement as appropriate prior to policy issuance, with a legal mailing address for the employee leasing company and the client company, and is obligated to update that address as needed during the policy period;

3. Provide that, if the policy issued to a client company is cancelled pursuant to R.S.34:15-81, the insurance carrier is required to 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; and

4. Provide insurance carriers up to 180 days following enactment to comply with certain provisions of the bill regarding notification.

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BILLS SIGNED:

S-2512/A-4446 (Madden, Beach/Quijano) - Concerns employee leasing agreements

S-2563/A-4163 (Weinberg, T. Kean/Vainieri Huttle, Lampitt, O'Scanlon, McKnight) - Clarifies DCA rulemaking authority over free-standing residential health care facilities, and prohibits eviction of residents from such facilities, except for good cause

A-1661/S-3217 (Schaer, Danielsen, Dancer, Sumter/Cunningham) - Expands eligibility of inmates for medical parole and requires inmate's enrollment in Medicaid under certain circumstances

ACS for A-2511/SCS for S-2211 (Eustace/Turner) - Requires life insurers to use federal death master file to identify potential matches

A-3433/S-2527 (Greenwald, Jones, Singleton, Webber/Diegnan) - "Uniform Fiduciary Access to Digital Assets Act"; authorizes executor, agent, guardian, or trustee, under certain circumstances, to manage electronic records of decedent, principal, incapacitated person, or trust creator

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