

CHAPTER 125

EMPLOYEE LEASING COMPANIES

§14051. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1991, c. 468, §4 (NEW).]

1. Client company. "Client company" means a person, association, partnership, corporation or other entity that leases employees from an employee leasing company pursuant to contract. [PL 1991, c. 468, §4 (NEW).]

1-A. Commissioner. "Commissioner" means the Commissioner of Labor. [PL 1995, c. 618, §18 (NEW).]

2. Controlling person. "Controlling person" means:

A. A person or entity that owns a 5% or greater interest in an employee leasing company or possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an employee leasing company through ownership of voting securities, by contract or otherwise, and is actively involved in the day-to-day management of the company; or [PL 1991, c. 468, §4 (NEW).]

B. A natural person employed, appointed or authorized by an employee leasing company to enter into a contractual relationship with a client company on behalf of the employee leasing company. [PL 1991, c. 468, §4 (NEW).]
[PL 1991, c. 468, §4 (NEW).]

3. Employee leasing company. "Employee leasing company" means a sole proprietorship, partnership, corporation or other form of business entity, a substantial portion of the business of which consists of leasing employees to one or more client companies under contractual arrangements that are characterized by the following.

A. Employment responsibilities are carried out by the employee leasing company or are shared by the employee leasing company and the client company. [PL 1991, c. 468, §4 (NEW).]

B. Direction and control of employees provided by the employee leasing company are handled by the employee leasing company or are shared by the employee leasing company and the client company. "Direction and control" includes the right of the employee leasing company to hire and fire employees. [PL 1991, c. 468, §4 (NEW).]

C. The leasing arrangement is long term and does not include arrangements to provide temporary help services. "Temporary help services" means a service whereby an organization hires its own employees and assigns them to a 3rd party to support or supplement the 3rd party's work force in work situations such as employee absences, temporary skill shortages, seasonal work load conditions and special assignments and projects. [PL 1991, c. 468, §4 (NEW).]

D. The leasing arrangement does not include providing labor dispute workers. "Labor dispute worker" means a worker who is furnished to an entity to replace workers involved in strikes, lockouts or other labor activities. [PL 1991, c. 468, §4 (NEW).]
[PL 1991, c. 468, §4 (NEW).]

4. Registrant. "Registrant" means an employee leasing company that registers under this chapter. [PL 1991, c. 468, §4 (NEW).]

5. Superintendent. "Superintendent" means the Superintendent of Consumer Credit Protection.

[PL 2013, c. 257, §1 (AMD).]

SECTION HISTORY

PL 1991, c. 468, §4 (NEW). PL 1995, c. 618, §18 (AMD). PL 2013, c. 257, §1 (AMD).

§14052. Registration required

An employee leasing company may not engage in business from offices in this State or enter into any contractual relationship with a client company for the purpose of providing employees for business conducted by the client company in this State unless the employee leasing company is registered under this chapter. An employee leasing company or person may not use the name or title "staff leasing company," "employee leasing company," "registered staff leasing company," or "staff leasing services company" or otherwise represent that it is registered under this chapter unless the entity or person is registered under this chapter. [PL 1995, c. 618, §19 (AMD).]

SECTION HISTORY

PL 1991, c. 468, §4 (NEW). PL 1995, c. 618, §19 (AMD).

§14053. Registration process requirements

1. Statement. Except as otherwise provided in this section, each employee leasing company required to be registered under section 14052 shall provide the superintendent with information required by the superintendent on forms that the superintendent specifies. The superintendent may require registration through the nationwide mortgage licensing system and registry as defined in Title 9-A, section 13-102, subsection 8. The superintendent is authorized to participate in the nationwide mortgage licensing system and registry.

The superintendent shall, at a minimum, require employee leasing companies to provide the following information:

- A. The name or names under which the registrant conducts business; [PL 1991, c. 468, §4 (NEW).]
- B. The address of the principal place of business of the employee leasing company and the address of each office it maintains in this State; [PL 1991, c. 468, §4 (NEW).]
- C. The employee leasing company's taxpayer or employer identification number; [PL 1991, c. 468, §4 (NEW).]
- D. A list by jurisdiction of each name under which the employee leasing company has operated in the preceding 5 years, including any alternative names, names of predecessors and, if known, successor business entities; [PL 1991, c. 468, §4 (NEW).]
- E. A list of all persons or entities that own a 5% or greater interest in the employee leasing company at the time of application and a list of persons who formerly owned a 5% or greater interest in the employee leasing company or its predecessors in the preceding 5 years; and [PL 1995, c. 618, §20 (AMD).]
- F. A list of the cancellations or nonrenewals of workers' compensation insurance issued to the employee leasing company or its predecessors in the preceding 5 years. The list must include the policy or certificate numbers, names of insurers or other providers of coverage, dates of cancellation and reasons for cancellation. If coverage has not been canceled or has been renewed, the registration must include a sworn affidavit signed by the chief executive officer of the employee leasing company attesting to that fact. [PL 1991, c. 468, §4 (NEW).]

[PL 2021, c. 245, Pt. D, §27 (AMD).]

1-A. Registration process authorized. In all cases, whether registration is through the nationwide mortgage licensing system and registry as defined in Title 9-A, section 13-102, subsection 8 or

otherwise, the superintendent may establish, by rule, requirements for registration, including but not limited to:

A. Background checks for:

- (1) Criminal history through fingerprint or other databases;
- (2) Civil or administrative records;
- (3) Credit history; or
- (4) Any other information determined necessary by the nationwide mortgage licensing system and registry; [PL 2021, c. 245, Pt. D, §27 (NEW).]

B. The payment of fees to apply for or renew registrations, except that the fee for an initial application may not exceed \$1,000 and for a renewal may not exceed \$500. If registration is through the nationwide mortgage licensing system and registry, an applicant must also pay a nationwide mortgage licensing system and registry processing fee in an amount to be determined by the administrators of the nationwide mortgage licensing system and registry. Renewal applications received after the due date are subject to an additional fee of \$100; [PL 2021, c. 245, Pt. D, §27 (NEW).]

C. The setting or resetting as necessary of any renewal or reporting dates; and [PL 2021, c. 245, Pt. D, §27 (NEW).]

D. Other requirements for application for, amendment of or revocation of a registration or any other such activities as the superintendent considers necessary. [PL 2021, c. 245, Pt. D, §27 (NEW).]

Fees provided for by this chapter are appropriated for the use of the Bureau of Consumer Credit Protection. Any balance of these funds does not lapse but must be carried forward to be expended for the same purpose in the following year.

[PL 2021, c. 245, Pt. D, §27 (NEW).]

2. Renewal.

[PL 2021, c. 245, Pt. D, §27 (RP).]

3. List. The superintendent shall maintain a list of employee leasing companies registered under this chapter.

[PL 1997, c. 29, §1 (AMD).]

4. Forms. The superintendent may prescribe forms necessary to promote the efficient administration of this section.

[PL 1997, c. 29, §1 (AMD).]

5. Existing companies.

[PL 1995, c. 618, §20 (RP).]

Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2021, c. 245, Pt. D, §27 (NEW).]

SECTION HISTORY

PL 1991, c. 468, §4 (NEW). PL 1995, c. 618, §20 (AMD). PL 1997, c. 29, §1 (AMD). PL 2021, c. 245, Pt. D, §27 (AMD).

§14054. Fees

(REPEALED)

SECTION HISTORY

PL 1991, c. 468, §4 (NEW). PL 2013, c. 257, §2 (AMD). PL 2021, c. 245, Pt. D, §28 (RP).

§14055. Insurance; unemployment insurance; benefit plans

1. Benefits. The following provisions govern the provision of benefits by employee leasing companies to their employees.

A. A registered employee leasing company qualifies as an "other group" within the meaning of Title 24-A, sections 2612-A and 2808 for purposes of procurement of group life and health insurance with respect to employees leased to a client company. A registered employee leasing company qualifies as an eligible group within the meaning of Title 24-A, section 2884 for purchase of group legal services insurance. Any employee welfare plan or benefit, other than workers' compensation insurance, provided to employees leased to a client company on less than a fully insured basis may be provided only subject to and in accordance with Title 24-A, chapter 81. [PL 1995, c. 618, §21 (RPR).]

B. The Superintendent of Insurance shall adopt rules governing the provision of workers' compensation insurance as required by Title 39-A, chapter 9 for workers provided by an employee leasing company to any client company. These rules must be consistent with subsection 2 and reflect consideration of the needs and operational efficiencies of employee leasing companies and the costs to the workers' compensation system. If either the employee leasing company or the client company has secured the payment of compensation in conformity with former Title 39, chapter 1 or Title 39-A, chapter 9, the immunity from liability described in that chapter extends to and is binding on the client company, the employee leasing company, all employees leased to any client company and any other employees of the employee leasing company or the client company. An employee leasing company is not responsible for securing the payment of compensation in conformity with Title 39-A nor deprived of the defenses listed in Title 39-A, section 103 with respect to those persons for whom the provision of benefits is not required under Title 39-A in the absence of an employee leasing arrangement. [PL 2013, c. 257, §3 (AMD).]

[PL 2013, c. 257, §3 (AMD).]

2. Workers' compensation. Workers' compensation insurance for employees leased to client companies is subject to the following.

A. Under rules adopted pursuant to subsection 1, paragraph B, the Superintendent of Insurance may provide a determination of the circumstances and conditions, if any, under which an employee leasing company may be the policyholder of a workers' compensation insurance policy providing coverage to employees leased to client companies. Additionally or alternatively, the Superintendent of Insurance may require by rule that:

(1) The employee leasing company purchase separate policies through the Maine Employers' Mutual Insurance Company, established pursuant to Title 24-A, section 3703, for client companies subject to Title 39-A; and

(2) The policies be assigned to one servicing carrier and, to the extent practical, administered on a unified basis. The Superintendent of Insurance also may provide by rule that the employee leasing company or the President of the Maine Employers' Mutual Insurance Company request from the Superintendent of Insurance a waiver of a rule adopted pursuant to this subparagraph if it is impractical for one servicing carrier to service all the client companies of an employee leasing company. [PL 2013, c. 257, §4 (AMD).]

B. When workers' compensation coverage is provided by means of insurance maintained by the employee leasing company through the residual market mechanism, the rules may further provide for the application of experience modification factors, premium surcharges and deductibles consistent with Title 24-A, section 2386. To the extent that a workers' compensation insurance policy is issued to an employee leasing company, experience modification factors applicable to a company that becomes a client company of the employee leasing company after the effective date of this section are calculated by using the client company's experience modification factor:

- (1) Throughout the term of the employee leasing arrangement; or
- (2) For no more than the first 3 years of the employee leasing arrangement if the requirements of the rules adopted by the superintendent are met. [RR 1999, c. 1, §47 (COR).]

C. Each employee leasing company that carries workers' compensation insurance for its leased employees shall maintain and make available to its workers' compensation carrier information required by rules adopted by the superintendent pursuant to this chapter. An employee leasing company shall promptly notify its workers' compensation insurance carrier and the residual market manager of the termination of the employee leasing company's relationship with any client company for which it provides workers' compensation insurance. [PL 1991, c. 468, §4 (NEW).] [PL 2013, c. 257, §4 (AMD).]

3. Unemployment insurance. An employee leasing company's responsibility for unemployment insurance is governed by Title 26, section 1221-A and as follows.

A. During the term of the leasing arrangement, the employee leasing company is responsible for payment of unemployment contributions, penalties and interest due pursuant to Title 26, chapter 13 on wages paid to employees leased to client companies, except for compensation paid to sole proprietors of or partners in the client company. [PL 1991, c. 468, §4 (NEW); PL 1991, c. 468, §6 (AFF).]

B. The employee leasing company shall report all unemployment contributions due under its state employer identification number, using its contribution rate. The employee leasing company shall keep separate records and submit separate quarterly wage reports to the Bureau of Unemployment Compensation for each of its client companies. [PL 1995, c. 560, Pt. G, §18 (AMD).] [PL 1995, c. 560, Pt. G, §18 (AMD).]

4. Other insurance. Employees leased to a client company by an employee leasing company remain the employees of the client company for purposes of general liability insurance, automobile insurance, fidelity bonds, surety bonds and employer's liability insurance carried by the client company. Employees leased to a client company by an employee leasing company are not deemed employees of the employee leasing company for purposes of general liability insurance, automobile insurance, fidelity bonds, surety bonds or employer's liability insurance carried by the employee leasing company unless the employees are included by specific reference in the applicable insurance contract or bond. [PL 1991, c. 468, §4 (NEW).]

5. Disclosure. The employee leasing company shall disclose to client companies services to be rendered, including costs, and the respective rights and obligations of the parties prior to entering into or receiving a leasing arrangement. This disclosure must include a statement that the client company may take complaints to the Bureau of Consumer Credit Protection. [PL 2013, c. 257, §5 (AMD).]

SECTION HISTORY

PL 1991, c. 468, §4 (NEW). PL 1991, c. 468, §6 (AFF). PL 1991, c. 885, §§E42,43 (AMD). PL 1991, c. 885, §E47 (AFF). PL 1995, c. 560, §G18 (AMD). PL 1995, c. 618, §§21,22 (AMD). PL 1997, c. 29, §2 (AMD). RR 1999, c. 1, §47 (COR). PL 2013, c. 257, §§3-5 (AMD).

§14056. Exemption

Nothing in this chapter exempts a client company of an employee leasing company nor an employee leased to the client company by the employee leasing company from any other state, local or federal license or registration requirements. Any individual who must be licensed, registered or certified according to law and who is a leased employee is deemed an employee of the client company for purposes of the license, registration or certification. An employee leasing company is not liable for the general debts or obligations of a client company with which it has entered into an employee leasing

arrangement, except for the payment of unemployment contributions as required in section 14055. [PL 1991, c. 468, §4 (NEW).]

SECTION HISTORY

PL 1991, c. 468, §4 (NEW).

§14057. Advertising prohibition

An organization registered under this chapter may not directly or indirectly refer to that registration in any advertisements, marketing materials or publications. [PL 1991, c. 468, §4 (NEW).]

SECTION HISTORY

PL 1991, c. 468, §4 (NEW).

§14058. Penalties

1. Injunction. The State may seek to enjoin any person or employee leasing company from violating this chapter.

[PL 1991, c. 468, §4 (NEW).]

2. Penalty. The following penalties apply to violations of this chapter.

A. A person or employee leasing company that violates this chapter is subject to a fine of \$100 per day for each violation. [PL 2003, c. 452, Pt. R, §10 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

B. A corporation, partnership, sole proprietorship or other form of business entity and an officer, director, general partner, agent, representative or employee of any of those types of business entities that knowingly uses or participates in any employee leasing agreement, arrangement or mechanism for the purpose of depriving one or more insurers of premiums or avoiding the calculation of the proper contribution rate for purposes of unemployment contributions commits a Class E crime. [PL 2003, c. 452, Pt. R, §10 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

[PL 2003, c. 452, Pt. R, §10 (RPR); PL 2003, c. 452, Pt. X, §2 (AFF).]

3. Rebuttable presumption. When an employee leasing company leases employees to only one client company and its affiliates, there is a rebuttable presumption that the client company entered into an employee leasing arrangement to avoid the calculation of the proper contribution rate for payment of unemployment contributions.

[PL 1991, c. 468, §4 (NEW).]

4. Costs. Any costs incurred by the superintendent in investigating violations of or enforcing this chapter must be paid by the person or entity found to have violated this chapter.

[PL 1991, c. 468, §4 (NEW).]

SECTION HISTORY

PL 1991, c. 468, §4 (NEW). PL 2003, c. 452, §R10 (AMD). PL 2003, c. 452, §X2 (AFF).

§14059. Rules

The superintendent may adopt rules to administer the provisions of this chapter for the protection of client companies, including rules regarding the ability of the Bureau of Consumer Credit Protection to receive and respond to complaints. Rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A. [PL 2013, c. 257, §6 (NEW).]

SECTION HISTORY

PL 2013, c. 257, §6 (NEW).

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