

By the Committee on Regulated Industries; and Senator Atwater

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1 A bill to be entitled

2 An act relating to employee leasing companies; providing a
3 short title; amending s. 443.036, F.S.; redefining the
4 term "employee leasing company" for purposes of the
5 Unemployment Compensation Law; amending s. 443.1216, F.S.;
6 requiring an employee leasing company to submit a report
7 regarding client establishment and each establishment of
8 the employee leasing company to the Labor Market
9 Statistics Center of the Agency for Workforce Innovation;
10 providing requirements for the reports; providing
11 rulemaking authority for the agency; providing
12 definitions; amending s. 468.525, F.S.; requiring that
13 each employee leasing company at all times maintain a
14 workers' compensation policy; requiring that each
15 contractual arrangement between an employee leasing
16 company and a client company where the client company is
17 to furnish workers' compensation provide to the employee
18 leasing company evidence of valid workers' compensation
19 coverage; requiring that certain specified conditions be
20 included in the contractual arrangement between an
21 employee leasing company and its client companies;
22 amending s. 468.529, F.S.; requiring an employee leasing
23 company to notify its employees if the employee leasing
24 company terminates its agreement with a client company;
25 providing effective dates for the cancellation of workers'
26 compensation coverage; requiring an employee leasing
27 company or its client companies to secure workers'
28 compensation coverage from an insurance company authorized
29 in this state; requiring the employee leasing company to

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30 offer to the client company an opportunity to receive
31 certain records related to the loss experience of the
32 workers' compensation insurance within a specified time
33 after termination of an employee leasing agreement;
34 providing that an employee leasing company and its client
35 companies are considered an employer for the purposes of
36 the workers' compensation law; reenacting s. 626.112(1),
37 F.S., relating to the licensing of insurance agents,
38 insurance adjusters, and customer representatives, to
39 incorporate the amendment to s. 468.525, F.S., in a
40 reference thereto; providing an effective date.

41
42 Be It Enacted by the Legislature of the State of Florida:

43
44 Section 1. This act may be cited as the "Accurate
45 Employment Statistics Enhancement Act."

46 Section 2. Subsection (18) of section 443.036, Florida
47 Statutes, is amended to read:

48 443.036 Definitions.--As used in this chapter, the term:
49 (18) "Employee leasing company" means an employing unit
50 that has a valid and active license under chapter 468 and that
51 maintains the records required by s. 443.171(5) and, in addition,
52 produces quarterly reports as specified in s. 443.1216 concerning
53 the clients of the employee leasing company and the internal
54 staff of the employee leasing company ~~maintains a listing of the~~
55 ~~clients of the employee leasing company and of the employees,~~
56 ~~including their social security numbers, who have been assigned~~
57 ~~to work at each client company job site. Further, each client~~
58 ~~company job site must be identified by industry, products or~~

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59 ~~services, and address. The client list must be provided to the~~
60 ~~tax collection service provider by June 30 and by December 31 of~~
61 ~~each year. As used in this subsection, the term "client" means a~~
62 ~~party who has contracted with an employee leasing company to~~
63 ~~provide a worker, or workers, to perform services for the client.~~
64 ~~Leased employees include employees subsequently placed on the~~
65 ~~payroll of the employee leasing company on behalf of the client.~~
66 An employee leasing company must notify the tax collection
67 service provider within 30 days after the initiation or
68 termination of the company's relationship with any client company
69 under chapter 468.

70 Section 3. Paragraph (a) of subsection (1) of section
71 443.1216, Florida Statutes, is amended to read:

72 443.1216 Employment.--Employment, as defined in s. 443.036,
73 is subject to this chapter under the following conditions:

74 (1) (a) The employment subject to this chapter includes a
75 service performed, including a service performed in interstate
76 commerce, by:

77 1. An officer of a corporation.

78 2. An individual who, under the usual common-law rules
79 applicable in determining the employer-employee relationship, is
80 an employee. However, whenever a client, as defined in s.
81 443.036(18), which would otherwise be designated as an employing
82 unit has contracted with an employee leasing company to supply it
83 with workers, those workers are considered employees of the
84 employee leasing company. An employee leasing company may lease
85 corporate officers of the client to the client and other workers
86 to the client, except as prohibited by regulations of the
87 Internal Revenue Service. Employees of an employee leasing

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88 company must be reported under the employee leasing company's tax
89 identification number and contribution rate for work performed
90 for the employee leasing company.

91 a. In addition to any other report required to be filed by
92 law, an employee leasing company shall submit a report that must
93 include every client establishment and each establishment of the
94 employee leasing company to the Labor Market Statistics Center of
95 the Agency for Workforce Innovation, or as otherwise directed by
96 the agency, which must include the following information for each
97 establishment:

98 (I) The trade or establishment name;

99 (II) The former unemployment compensation account number,
100 if available;

101 (III) The former federal employer identification number
102 (FEIN), if available;

103 (IV) The industry code recognized and published by the
104 United States Office of Management and Budget, if available;

105 (V) A description of the client's primary business activity
106 in order to verify or assign an industry code;

107 (VI) The physical location address;

108 (VII) The number of full-time and part-time employees who
109 worked during or received pay that was subject to unemployment
110 compensation taxes for the pay period, including the 12th of the
111 month for each month of the quarter;

112 (VIII) The total wages subject to unemployment compensation
113 taxes paid during the calendar quarter;

114 (IX) An internal identification code to uniquely identify
115 each establishment of each client;

116 (X) The month and year the client entered into contract;

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117 | and

118 | (XI) The month and year the client terminated the contract
119 | for services.

120 | b. The report shall be submitted electronically or in a
121 | manner otherwise prescribed by the agency in the format specified
122 | by the United States Bureau of Labor Statistics for its Multiple
123 | Worksite Report for Professional Employer Organizations. The
124 | report must be provided quarterly to the Labor Market Statistics
125 | Center of the Agency for Workforce Innovation, or as otherwise
126 | directed by the agency, and must be filed by the last day of the
127 | month immediately following the end of the calendar quarter. The
128 | information required in sub-sub-subparagraph a.(X) and (XI) need
129 | be provided only in the quarter in which the contract to which it
130 | relates was entered into or terminated. The sum of the employment
131 | data and the sum of the wage data on this report must match the
132 | employment and wages reported on the unemployment compensation
133 | quarterly tax and wage report.

134 | c. The Agency for Workforce Innovation may adopt rules to
135 | administer this subparagraph and shall administer, collect,
136 | enforce, and waive the penalty imposed by s. 443.141(1)(b) for
137 | the report required by this subparagraph.

138 | d. For the purposes of this subparagraph, the term
139 | "establishment" or "worksite" means any location where business
140 | is conducted or where services or industrial operations are
141 | performed.

142 | 3. An individual other than an individual who is an
143 | employee under subparagraph 1. or subparagraph 2., who performs
144 | services for remuneration for any person:

145 | a. As an agent-driver or commission-driver engaged in

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146 distributing meat products, vegetable products, fruit products,
147 bakery products, beverages other than milk, or laundry or
148 drycleaning services for his or her principal.

149 b. As a traveling or city salesperson engaged on a full-
150 time basis in the solicitation on behalf of, and the transmission
151 to, his or her principal of orders from wholesalers, retailers,
152 contractors, or operators of hotels, restaurants, or other
153 similar establishments for merchandise for resale or supplies for
154 use in their business operations. This sub-subparagraph does not
155 apply to an agent-driver or a commission-driver and does not
156 apply to sideline sales activities performed on behalf of a
157 person other than the salesperson's principal.

158 4. The services described in subparagraph 3. are employment
159 subject to this chapter only if:

160 a. The contract of service contemplates that substantially
161 all of the services are to be performed personally by the
162 individual;

163 b. The individual does not have a substantial investment in
164 facilities used in connection with the services, other than
165 facilities used for transportation; and

166 c. The services are not in the nature of a single
167 transaction that is not part of a continuing relationship with
168 the person for whom the services are performed.

169 Section 4. Paragraphs (h) and (i) are added to subsection
170 (3) of section 468.525, Florida Statutes, paragraph (f) of
171 subsection (4) of that section is amended, and paragraph (g) is
172 added to subsection (4) of that section, to read:

173 468.525 License requirements.--

174 (3) Each employee leasing company licensed by the

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175 department shall have a registered agent for service of process
176 in this state and at least one licensed controlling person. In
177 addition, each licensed employee leasing company shall comply
178 with the following requirements:

179 (h) Each employee leasing company shall, regardless of the
180 number of leased employees, at all times maintain a workers'
181 compensation policy acceptable under the laws of this state.

182 (i) An employee leasing company whose contract with a
183 client company provides for the client company to furnish
184 coverage under this part shall require the client company to
185 provide evidence of valid workers' compensation coverage to the
186 employee leasing company.

187 (4) The employee leasing company's contractual arrangements
188 with its client companies shall satisfy the following conditions,
189 whereby the leasing company:

190 (f) Gives ~~Has given~~ written notice of the relationship
191 between the employee leasing company and the client company to
192 each leased employee it assigns to perform services at the
193 client's worksite and gives written notice to all leased
194 employees as to whether the employee leasing company or the
195 client company is providing their workers' compensation coverage.

196 (g) Sets forth whether each leased employee will be covered
197 by a workers' compensation policy issued to the employee leasing
198 company or to the client company.

199 Section 5. Section 468.529, Florida Statutes, is amended to
200 read:

201 468.529 Licensee's insurance; employment tax; benefit
202 plans.--

203 (1) A licensed employee leasing company is the employer of

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204 the leased employees, except that this provision is not intended
205 to affect the determination of any issue arising under Pub. L.
206 No. 93-406, the Employee Retirement Income Security Act, as
207 amended from time to time. An employee leasing company is ~~shall~~
208 ~~be~~ responsible for timely payment of unemployment taxes pursuant
209 to chapter 443, and is ~~shall be~~ responsible for providing
210 workers' compensation coverage pursuant to this part and chapter
211 440. However, no licensed employee leasing company shall sponsor
212 a plan of self-insurance for health benefits, except as may be
213 permitted by the provisions of the Florida Insurance Code or, if
214 applicable, by Pub. L. No. 93-406, the Employee Retirement Income
215 Security Act, as amended from time to time. For purposes of this
216 section, a "plan of self-insurance" shall exclude any arrangement
217 where an admitted insurance carrier has issued a policy of
218 insurance primarily responsible for the obligations of the health
219 plan.

220 (2) An initial or renewal license may not be issued to any
221 employee leasing company unless the employee leasing company
222 first files with the board evidence of workers' compensation
223 coverage for all leased employees in this state. Each employee
224 leasing company shall maintain and make available to its workers'
225 compensation carrier the following information:

226 (a) The correct name and federal identification number of
227 each client company.

228 (b) A listing of all covered employees provided to each
229 client company, by classification code.

230 (c) The total eligible wages by classification code and the
231 premiums due to the carrier for the employees provided to each
232 client company.

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233 (3) A licensed employee leasing company shall within 30
234 days after initiation or termination of an employee leasing
235 agreement notify its workers' compensation insurance carrier, the
236 Division of Workers' Compensation of the Department of Financial
237 Services, and the state agency providing unemployment tax
238 collection services under contract with the Agency for Workforce
239 Innovation through an interagency agreement pursuant to s.
240 443.1316 of both the initiation or the termination of the
241 company's relationship with any client company.

242 (4) (a) If an employee leasing company terminates its
243 relationship with a client company, the employee leasing company
244 shall send notice of the termination by United States Postal
245 Service first-class mail to the last known address of each leased
246 employee who had been assigned to the terminated client company.
247 The notification must state the date that the employee leasing
248 company terminated its relationship with the client company.

249 (b) A leased employee who continues in the employment of a
250 terminated client company is not covered by the workers'
251 compensation policy of the employee leasing company after the
252 employee leasing company terminates its relationship with the
253 client company. Termination of the employee's workers'
254 compensation coverage is effective at the earliest of:

255 1. Five days after the employee leasing company mails a
256 notice of termination by United States Postal Service first-class
257 mail to the last known address of the leased employee;

258 2. Upon the leased employee receiving actual or
259 constructive notice that he or she is no longer an employee of
260 the employee leasing company; or

261 3. Receipt, with proof of delivery, by the leased employee,

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262 or receipt, with proof of delivery, at the leased employee's last
263 known address, of notice that the individual is no longer an
264 employee of the employee leasing company.

265 (c) If an employee leasing company continues its
266 relationship with a client company but terminates the employment
267 of, places on a leave of absence, or lays off a leased employee
268 who is assigned to the client company, the leased employee is not
269 covered by the workers' compensation policy of the employee
270 leasing company at the earliest of:

271 1. Five days after the employee leasing company mails a
272 notice, by United States Postal first-class mail to the last
273 known address of the leased employee, informing the leased
274 employee that he or she is no longer a leased employee of the
275 employee leasing company, is on leave of absence from the client
276 company or employee leasing company, or has been laid off from
277 the client company or employee leasing company; or

278 2. Upon the leased employee receiving actual or
279 constructive notice that he or she is no longer an employee of
280 the client company or employee leasing company, is on a leave of
281 absence from the client company or employee leasing company, or
282 has been laid off from the client company or employee leasing
283 company.

284 (d) Notwithstanding any actual or constructive notice
285 received by the leased employee that he or she is no longer a
286 leased employee of the leasing company and is no longer covered
287 by the employee leasing company's workers' compensation policy,
288 the requirements for notice to a leased employee under paragraph
289 (b) or paragraph (c) are deemed to be satisfied if a leased
290 employee:

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291 1. Negotiates a paycheck marked "final paycheck" which
292 clearly states or contains written notice that the leased
293 employee is no longer an employee of the employee leasing company
294 and is not covered by its workers' compensation policy;

295 2. Receives payment in cash or by paycheck which contains
296 no reference indicating that the payment is from the employee
297 leasing company; or

298 3. Is provided written notice by the client company or the
299 employee leasing company stating that the leased employee is no
300 longer an employee of the employee leasing company and is not
301 covered by the employee leasing company's workers' compensation
302 policy.

303 (5) An employee leasing agreement must state whether the
304 responsibility to obtain workers' compensation insurance coverage
305 for leased employees as required under chapter 440 is allocated
306 to the employee leasing company, the client company, or both. The
307 responsibility to obtain workers' compensation coverage for
308 leased employees shall be by way of a master policy issued in the
309 name of the employee leasing company, a multiple coordinated
310 policy issued to the employee leasing company, a policy issued to
311 the client company, or any other policy acceptable under the laws
312 of this state.

313 (6) Within 15 days after termination of an employee leasing
314 agreement, the employee leasing company shall provide the client
315 company an opportunity to receive records regarding the loss
316 experience of the workers' compensation insurance during the
317 course of the employee leasing agreement.

318 (7) The client company and the employee leasing company
319 shall be considered the employer of leased employees for purposes

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320 of coverage under chapter 440 regardless of whether the client or
321 employee leasing company is supplying workers' compensation
322 coverage. Subject to any limitation set forth in chapter 440 or
323 s. 627.192(7), s. 440.11(2) applies to the employee leasing
324 company, the client company, and all other persons set forth in
325 s. 440.11(2) if workers' compensation coverage is secured for
326 leased employees by the client company or the employee leasing
327 company.

328 ~~(8)(4)~~ An initial or renewal license may not be issued to
329 any employee leasing company unless the employee leasing company
330 first provides evidence to the board, as required by board rule,
331 that the employee leasing company has paid all of the employee
332 leasing company's obligations for payroll, payroll-related taxes,
333 workers' compensation insurance, and employee benefits. All
334 disputed amounts must be disclosed in the application.

335 ~~(9)(5)~~ The provisions of this section are subject to
336 verification by department or board audit.

337 Section 6. For the purpose of incorporating the amendment
338 made by this act to section 468.525, Florida Statutes, in a
339 reference thereto, subsection (1) of section 626.112, Florida
340 Statutes, is reenacted to read:

341 626.112 License and appointment required; agents, customer
342 representatives, adjusters, insurance agencies, service
343 representatives, managing general agents.--

344 (1)(a) No person may be, act as, or advertise or hold
345 himself or herself out to be an insurance agent, insurance
346 adjuster, or customer representative unless he or she is
347 currently licensed by the department and appointed by an
348 appropriate appointing entity or person.

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349 (b) Except as provided in subsection (6) or in applicable
350 department rules, and in addition to other conduct described in
351 this chapter with respect to particular types of agents, a
352 license as an insurance agent, service representative, customer
353 representative, or limited customer representative is required in
354 order to engage in the solicitation of insurance. For purposes of
355 this requirement, as applicable to any of the license types
356 described in this section, the solicitation of insurance is the
357 attempt to persuade any person to purchase an insurance product
358 by:

359 1. Describing the benefits or terms of insurance coverage,
360 including premiums or rates of return;

361 2. Distributing an invitation to contract to prospective
362 purchasers;

363 3. Making general or specific recommendations as to
364 insurance products;

365 4. Completing orders or applications for insurance
366 products;

367 5. Comparing insurance products, advising as to insurance
368 matters, or interpreting policies or coverages; or

369 6. Offering or attempting to negotiate on behalf of another
370 person a viatical settlement contract as defined in s. 626.9911.

371
372 However, an employee leasing company licensed pursuant to chapter
373 468 which is seeking to enter into a contract with an employer
374 that identifies products and services offered to employees may
375 deliver proposals for the purchase of employee leasing services
376 to prospective clients of the employee leasing company setting
377 forth the terms and conditions of doing business; classify

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378 employees as permitted by s. 468.529; collect information from
379 prospective clients and other sources as necessary to perform due
380 diligence on the prospective client and to prepare a proposal for
381 services; provide and receive enrollment forms, plans, and other
382 documents; and discuss or explain in general terms the
383 conditions, limitations, options, or exclusions of insurance
384 benefit plans available to the client or employees of the
385 employee leasing company were the client to contract with the
386 employee leasing company. Any advertising materials or other
387 documents describing specific insurance coverages must identify
388 and be from a licensed insurer or its licensed agent or a
389 licensed and appointed agent employed by the employee leasing
390 company. The employee leasing company may not advise or inform
391 the prospective business client or individual employees of
392 specific coverage provisions, exclusions, or limitations of
393 particular plans. As to clients for which the employee leasing
394 company is providing services pursuant to s. 468.525(4), the
395 employee leasing company may engage in activities permitted by
396 ss. 626.7315, 626.7845, and 626.8305, subject to the restrictions
397 specified in those sections. If a prospective client requests
398 more specific information concerning the insurance provided by
399 the employee leasing company, the employee leasing company must
400 refer the prospective business client to the insurer or its
401 licensed agent or to a licensed and appointed agent employed by
402 the employee leasing company.

403 Section 7. This act shall take effect October 1, 2008.