

1                                   A bill to be entitled  
 2           An act relating to employer contributions; amending s.  
 3           443.1216, F.S.; reducing the initial rate that certain  
 4           client companies of employee leasing companies must  
 5           pay under specified circumstances; amending s.  
 6           443.131, F.S.; requiring the tax collection service  
 7           provider to adjust the initial employer contribution  
 8           rate under certain circumstances; providing an  
 9           effective date.

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 11   Be It Enacted by the Legislature of the State of Florida:

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 13           Section 1. Paragraph (a) of subsection (1) of section  
 14   443.1216, Florida Statutes, is amended to read:

15           443.1216   Employment.—Employment, as defined in s. 443.036,  
 16   is subject to this chapter under the following conditions:

17           (1)(a) The employment subject to this chapter includes a  
 18   service performed, including a service performed in interstate  
 19   commerce, by:

- 20           1. An officer of a corporation.
- 21           2. An individual who, under the usual common-law rules  
 22   applicable in determining the employer-employee relationship, is  
 23   an employee. However, whenever a client, as defined in s.  
 24   443.036(18), which would otherwise be designated as an employing  
 25   unit has contracted with an employee leasing company to supply

26 | it with workers, those workers are considered employees of the  
27 | employee leasing company. An employee leasing company may lease  
28 | corporate officers of the client to the client and other workers  
29 | to the client, except as prohibited by regulations of the  
30 | Internal Revenue Service. Employees of an employee leasing  
31 | company must be reported under the employee leasing company's  
32 | tax identification number and contribution rate for work  
33 | performed for the employee leasing company.

34 |       a. However, except for the internal employees of an  
35 | employee leasing company, each employee leasing company may make  
36 | a separate one-time election to report and pay contributions  
37 | under the tax identification number and contribution rate for  
38 | each client of the employee leasing company. Under the client  
39 | method, an employee leasing company choosing this option must  
40 | assign leased employees to the client company that is leasing  
41 | the employees. The client method is solely a method to report  
42 | and pay unemployment contributions, and, whichever method is  
43 | chosen, such election may not impact any other aspect of state  
44 | law. An employee leasing company that elects the client method  
45 | must pay contributions at the rates assigned to each client  
46 | company.

47 |       (I) The election applies to all of the employee leasing  
48 | company's current and future clients.

49 |       (II) The employee leasing company must notify the  
50 | Department of Revenue of its election by July 1, 2012, and such

51 election applies to reports and contributions for the first  
52 quarter of the following calendar year. The notification must  
53 include:

54 (A) A list of each client company and the unemployment  
55 account number or, if one has not yet been issued, the federal  
56 employment identification number, as established by the employee  
57 leasing company upon the election to file by client method;

58 (B) A list of each client company's current and previous  
59 employees and their respective social security numbers for the  
60 prior 3 state fiscal years or, if the client company has not  
61 been a client for the prior 3 state fiscal years, such portion  
62 of the prior 3 state fiscal years that the client company has  
63 been a client must be supplied;

64 (C) The wage data and benefit charges associated with each  
65 client company for the prior 3 state fiscal years or, if the  
66 client company has not been a client for the prior 3 state  
67 fiscal years, such portion of the prior 3 state fiscal years  
68 that the client company has been a client must be supplied. If  
69 the client company's employment record is chargeable with  
70 benefits for less than 8 calendar quarters while being a client  
71 of the employee leasing company, the client company must pay  
72 contributions at the initial rate of 2.7 percent. For tax rates  
73 effective on or after January 1, 2021, if the client company's  
74 employment record is chargeable with benefits for less than 8  
75 calendar quarters while being a client of the employee leasing

76 company, the client company must pay contributions at the  
77 initial rate of 1.0 percent. However, the tax collection service  
78 provider may not adjust the initial rate for any year in which  
79 the balance in the Unemployment Compensation Trust Fund requires  
80 the computation of a positive adjustment factor under s.  
81 443.131(3)(e)2.a.(III); and

82 (D) The wage data and benefit charges for the prior 3  
83 state fiscal years that cannot be associated with a client  
84 company must be reported and charged to the employee leasing  
85 company.

86 (III) Subsequent to choosing the client method, the  
87 employee leasing company may not change its reporting method.

88 (IV) The employee leasing company shall file a Florida  
89 Department of Revenue Employer's Quarterly Report for each  
90 client company by approved electronic means, and pay all  
91 contributions by approved electronic means.

92 (V) For the purposes of calculating experience rates when  
93 the client method is chosen, each client's own benefit charges  
94 and wage data experience while with the employee leasing company  
95 determines each client's tax rate where the client has been a  
96 client of the employee leasing company for at least 8 calendar  
97 quarters before the election. The client company shall continue  
98 to report the nonleased employees under its tax rate.

99 (VI) The election is binding on each client of the  
100 employee leasing company for as long as a written agreement is

101 in effect between the client and the employee leasing company  
102 pursuant to s. 468.525(3)(a). If the relationship between the  
103 employee leasing company and the client terminates, the client  
104 retains the wage and benefit history experienced under the  
105 employee leasing company.

106 (VII) Notwithstanding which election method the employee  
107 leasing company chooses, the applicable client company is an  
108 employing unit for purposes of s. 443.071. The employee leasing  
109 company or any of its officers or agents are liable for any  
110 violation of s. 443.071 engaged in by such persons or entities.  
111 The applicable client company or any of its officers or agents  
112 are liable for any violation of s. 443.071 engaged in by such  
113 persons or entities. The employee leasing company or its  
114 applicable client company is not liable for any violation of s.  
115 443.071 engaged in by the other party or by the other party's  
116 officers or agents.

117 (VIII) If an employee leasing company fails to select the  
118 client method of reporting not later than July 1, 2012, the  
119 entity is required to report under the employee leasing  
120 company's tax identification number and contribution rate.

121 (IX) After an employee leasing company is licensed  
122 pursuant to part XI of chapter 468, each newly licensed entity  
123 has 30 days after the date the license is granted to notify the  
124 tax collection service provider in writing of their selection of  
125 the client method. A newly licensed employee leasing company

126 that fails to timely select reporting pursuant to the client  
 127 method of reporting must report under the employee leasing  
 128 company's tax identification number and contribution rate.

129 (X) Irrespective of the election, each transfer of trade  
 130 or business, including workforce, or a portion thereof, between  
 131 employee leasing companies is subject to the provisions of s.  
 132 443.131(3)(g) if, at the time of the transfer, there is common  
 133 ownership, management, or control between the entities.

134 b. In addition to any other report required to be filed by  
 135 law, an employee leasing company shall submit a report to the  
 136 Labor Market Statistics Center within the Department of Economic  
 137 Opportunity which includes each client establishment and each  
 138 establishment of the leasing company, or as otherwise directed  
 139 by the department. The report must include the following  
 140 information for each establishment:

141 (I) The trade or establishment name;

142 (II) The former reemployment assistance account number, if  
 143 available;

144 (III) The former federal employer's identification number,  
 145 if available;

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

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

150 (VI) The address of the physical location;

151 (VII) The number of full-time and part-time employees who  
152 worked during, or received pay that was subject to reemployment  
153 assistance taxes for, the pay period including the 12th of the  
154 month for each month of the quarter;

155 (VIII) The total wages subject to reemployment assistance  
156 taxes paid during the calendar quarter;

157 (IX) An internal identification code to uniquely identify  
158 each establishment of each client;

159 (X) The month and year that the client entered into the  
160 contract for services; and

161 (XI) The month and year that the client terminated the  
162 contract for services.

163 c. The report must be submitted electronically or in a  
164 manner otherwise prescribed by the Department of Economic  
165 Opportunity in the format specified by the Bureau of Labor  
166 Statistics of the United States Department of Labor for its  
167 Multiple Worksite Report for Professional Employer  
168 Organizations. The report must be provided quarterly to the  
169 Labor Market Statistics Center within the department, or as  
170 otherwise directed by the department, and must be filed by the  
171 last day of the month immediately after the end of the calendar  
172 quarter. The information required in sub-sub-subparagraphs b.(X)  
173 and (XI) need be provided only in the quarter in which the  
174 contract to which it relates was entered into or terminated. The  
175 sum of the employment data and the sum of the wage data in this

176 | report must match the employment and wages reported in the  
177 | reemployment assistance quarterly tax and wage report.

178 |       d. The department shall adopt rules as necessary to  
179 | administer this subparagraph, and may administer, collect,  
180 | enforce, and waive the penalty imposed by s. 443.141(1)(b) for  
181 | the report required by this subparagraph.

182 |       e. For the purposes of this subparagraph, the term  
183 | "establishment" means any location where business is conducted  
184 | or where services or industrial operations are performed.

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

188 |       a. As an agent-driver or commission-driver engaged in  
189 | distributing meat products, vegetable products, fruit products,  
190 | bakery products, beverages other than milk, or laundry or  
191 | drycleaning services for his or her principal.

192 |       b. As a traveling or city salesperson engaged on a full-  
193 | time basis in the solicitation on behalf of, and the  
194 | transmission to, his or her principal of orders from  
195 | wholesalers, retailers, contractors, or operators of hotels,  
196 | restaurants, or other similar establishments for merchandise for  
197 | resale or supplies for use in the business operations. This sub-  
198 | subparagraph does not apply to an agent-driver or a commission-  
199 | driver and does not apply to sideline sales activities performed  
200 | on behalf of a person other than the salesperson's principal.



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

203 a. The contract of service contemplates that substantially  
 204 all of the services are to be performed personally by the  
 205 individual;

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

209 c. The services are not in the nature of a single  
 210 transaction that is not part of a continuing relationship with  
 211 the person for whom the services are performed.

212 Section 2. Paragraph (a) of subsection (2) of section  
 213 443.131, Florida Statutes, is amended to read:

214 443.131 Contributions.—

215 (2) CONTRIBUTION RATES.—Each employer must pay  
 216 contributions equal to the following percentages of wages paid  
 217 by him or her for employment:

218 (a) *Initial rate*.—Each employer whose employment record is  
 219 chargeable with benefits for less than 8 calendar quarters shall  
 220 pay contributions at the initial rate of 2.7 percent. For tax  
 221 rates effective on or after January 1, 2021, the tax collection  
 222 service provider shall adjust the initial rate to 1.0 percent  
 223 for each employer whose employment record is chargeable with  
 224 benefits for less than 8 calendar quarters. However, the tax  
 225 collection service provider may not adjust the initial rate for

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226 | any year in which the balance in the Unemployment Compensation  
227 | Trust Fund requires the computation of a positive adjustment  
228 | factor under sub-sub-subparagraph (3)(e)2.a.(III).

229 |       Section 3. This act shall take effect July 1, 2020.