

By Senator Bean

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

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

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14 Section 1. Paragraph (a) of subsection (1) of section
15 443.1216, Florida Statutes, is amended to read:

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

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

21 1. An officer of a corporation.

22 2. An individual who, under the usual common-law rules
23 applicable in determining the employer-employee relationship, is
24 an employee. However, whenever a client, as defined in s.
25 443.036(18), which would otherwise be designated as an employing
26 unit has contracted with an employee leasing company to supply
27 it with workers, those workers are considered employees of the
28 employee leasing company. An employee leasing company may lease
29 corporate officers of the client to the client and other workers

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30 to the client, except as prohibited by regulations of the
31 Internal Revenue Service. Employees of an employee leasing
32 company must be reported under the employee leasing company's
33 tax identification number and contribution rate for work
34 performed for the employee leasing company.

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

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

50 (II) The employee leasing company must notify the
51 Department of Revenue of its election by July 1, 2012, and such
52 election applies to reports and contributions for the first
53 quarter of the following calendar year. The notification must
54 include:

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

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

65 (C) The wage data and benefit charges associated with each
66 client company for the prior 3 state fiscal years or, if the
67 client company has not been a client for the prior 3 state
68 fiscal years, such portion of the prior 3 state fiscal years
69 that the client company has been a client must be supplied. If
70 the client company's employment record is chargeable with
71 benefits for less than 8 calendar quarters while being a client
72 of the employee leasing company, the client company must pay
73 contributions at the initial rate of 2.7 percent. Beginning
74 January 1, 2021, if the client company's employment record is
75 chargeable with benefits for less than 8 calendar quarters while
76 being a client of the employee leasing company, the client
77 company must pay contributions at the initial rate of 1.0
78 percent; and

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

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

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

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

95 (VI) The election is binding on each client of the employee
96 leasing company for as long as a written agreement is in effect
97 between the client and the employee leasing company pursuant to
98 s. 468.525(3)(a). If the relationship between the employee
99 leasing company and the client terminates, the client retains
100 the wage and benefit history experienced under the employee
101 leasing company.

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

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

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117 (IX) After an employee leasing company is licensed pursuant
118 to part XI of chapter 468, each newly licensed entity has 30
119 days after the date the license is granted to notify the tax
120 collection service provider in writing of their selection of the
121 client method. A newly licensed employee leasing company that
122 fails to timely select reporting pursuant to the client method
123 of reporting must report under the employee leasing company's
124 tax identification number and contribution rate.

125 (X) Irrespective of the election, each transfer of trade or
126 business, including workforce, or a portion thereof, between
127 employee leasing companies is subject to the provisions of s.
128 443.131(3)(g) if, at the time of the transfer, there is common
129 ownership, management, or control between the entities.

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

137 (I) The trade or establishment name;

138 (II) The former reemployment assistance account number, if
139 available;

140 (III) The former federal employer's identification number,
141 if available;

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

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

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- 146 (VI) The address of the physical location;
- 147 (VII) The number of full-time and part-time employees who
148 worked during, or received pay that was subject to reemployment
149 assistance taxes for, the pay period including the 12th of the
150 month for each month of the quarter;
- 151 (VIII) The total wages subject to reemployment assistance
152 taxes paid during the calendar quarter;
- 153 (IX) An internal identification code to uniquely identify
154 each establishment of each client;
- 155 (X) The month and year that the client entered into the
156 contract for services; and
- 157 (XI) The month and year that the client terminated the
158 contract for services.
- 159 c. The report must be submitted electronically or in a
160 manner otherwise prescribed by the Department of Economic
161 Opportunity in the format specified by the Bureau of Labor
162 Statistics of the United States Department of Labor for its
163 Multiple Worksite Report for Professional Employer
164 Organizations. The report must be provided quarterly to the
165 Labor Market Statistics Center within the department, or as
166 otherwise directed by the department, and must be filed by the
167 last day of the month immediately after the end of the calendar
168 quarter. The information required in sub-sub-subparagraphs b. (X)
169 and (XI) need be provided only in the quarter in which the
170 contract to which it relates was entered into or terminated. The
171 sum of the employment data and the sum of the wage data in this
172 report must match the employment and wages reported in the
173 reemployment assistance quarterly tax and wage report.
- 174 d. The department shall adopt rules as necessary to

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175 administer this subparagraph, and may administer, collect,
176 enforce, and waive the penalty imposed by s. 443.141(1)(b) for
177 the report required by this subparagraph.

178 e. For the purposes of this subparagraph, the term
179 "establishment" means any location where business is conducted
180 or where services or industrial operations are performed.

181 3. An individual other than an individual who is an
182 employee under subparagraph 1. or subparagraph 2., who performs
183 services for remuneration for any person:

184 a. As an agent-driver or commission-driver engaged in
185 distributing meat products, vegetable products, fruit products,
186 bakery products, beverages other than milk, or laundry or
187 drycleaning services for his or her principal.

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

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

199 a. The contract of service contemplates that substantially
200 all of the services are to be performed personally by the
201 individual;

202 b. The individual does not have a substantial investment in
203 facilities used in connection with the services, other than

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204 facilities used for transportation; and

205 c. The services are not in the nature of a single
206 transaction that is not part of a continuing relationship with
207 the person for whom the services are performed.

208 Section 2. Paragraph (a) of subsection (2) of section
209 443.131, Florida Statutes, is amended to read:

210 443.131 Contributions.—

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

214 (a) *Initial rate*.—Each employer whose employment record is
215 chargeable with benefits for less than 8 calendar quarters shall
216 pay contributions at the initial rate of 2.7 percent. Beginning
217 January 1, 2021, the tax collection service provider shall
218 adjust the initial rate for each employer whose employment
219 record is chargeable with benefits for less than 8 calendar
220 quarters to 1.0 percent. However, the tax collection service
221 provider may not adjust the initial rate for any year in which
222 the balance in the Unemployment Compensation Trust Fund requires
223 the computation of a positive adjustment factor under sub-sub-
224 subparagraph (3)(e)2.a.(III).

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