

By the Committee on Commerce and Tourism; and 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 revising 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.

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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. For tax rates
74 effective on or after January 1, 2021, if the client company's
75 employment record is chargeable with benefits for less than 8
76 calendar quarters while being a client of the employee leasing
77 company, the client company must pay contributions at the
78 initial rate of 1.0 percent. However, the tax collection service
79 provider may not adjust the initial rate for any year in which
80 the balance in the Unemployment Compensation Trust Fund requires
81 the computation of a positive adjustment factor under s.
82 443.131(3)(e)2.a.(III); and

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

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

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

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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 pursuant
122 to part XI of chapter 468, each newly licensed entity has 30
123 days after the date the license is granted to notify the tax
124 collection service provider in writing of their selection of the
125 client method. A newly licensed employee leasing company that
126 fails to timely select reporting pursuant to the client method
127 of reporting must report under the employee leasing company's
128 tax identification number and contribution rate.

129 (X) Irrespective of the election, each transfer of trade or
130 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;

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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 activity
149 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

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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 employment
202 subject to this chapter only if:

203 a. The contract of service contemplates that substantially

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204 all of the services are to be performed personally by the
205 individual;

206 b. The individual does not have a substantial investment in
207 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 for each employer
223 whose employment record is chargeable with benefits for less
224 than 8 calendar quarters to 1.0 percent. However, the tax
225 collection service provider may not adjust the initial rate for
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.