

HB 1305

2021

1 A bill to be entitled

2 An act relating to workers' compensation insurance for
3 employee leasing companies; amending s. 440.10, F.S.;
4 specifying when a person is deemed an employee of an
5 employee leasing company for workers' compensation
6 insurance purposes under circumstances relating to the
7 company's employee leasing arrangement with a
8 subcontractor; amending s. 468.525, F.S.; providing
9 that if an employee leasing company's client company
10 is a subcontractor, workers' compensation insurance
11 requirements are not satisfied by the employee leasing
12 arrangement unless certain conditions are met;
13 amending s. 468.529, F.S.; requiring certain client
14 companies to maintain separate workers' compensation
15 insurance coverage unless certain conditions are met;
16 specifying when a person is deemed an employee of an
17 employee leasing company for workers' compensation
18 insurance proposes under certain circumstances;
19 providing construction; reenacting s. 468.532(1)(g),
20 F.S., relating to discipline, to incorporate the
21 amendment made to s. 468.529, F.S., in a reference
22 thereto; providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:
25

26 Section 1. Paragraph (d) of subsection (1) of section
 27 440.10, Florida Statutes, is amended to read:

28 440.10 Liability for compensation.—

29 (1)

30 (d)1. If a contractor becomes liable for the payment of
 31 compensation to the employees of a subcontractor who has failed
 32 to secure such payment in violation of s. 440.38, the contractor
 33 or other third-party payor shall be entitled to recover from the
 34 subcontractor all benefits paid or payable plus interest unless
 35 the contractor and subcontractor have agreed in writing that the
 36 contractor will provide coverage.

37 2. If a contractor or third-party payor becomes liable for
 38 the payment of compensation to the corporate officer of a
 39 subcontractor who is engaged in the construction industry and
 40 has elected to be exempt from ~~the provisions of~~ this chapter,
 41 but whose election is invalid, the contractor or third-party
 42 payor may recover from the claimant or corporation all benefits
 43 paid or payable plus interest, unless the contractor and the
 44 subcontractor have agreed in writing that the contractor will
 45 provide coverage.

46 3. If a subcontractor and an employee leasing company are
 47 operating pursuant to an arrangement for employee leasing as
 48 defined in s. 468.520(4) and workers' compensation insurance is
 49 provided by the employee leasing company to the leased
 50 employees, a person is deemed an employee of the employee

51 leasing company for purposes of workers' compensation insurance,
52 unless the subcontractor has secured additional workers'
53 compensation coverage applicable to the employee, upon the
54 earliest of the following:

55 a. The hiring of the person by the subcontractor.

56 b. The commencement of work by the person for the
57 subcontractor.

58 c. The hiring of the person directly by the employee
59 leasing company.

60 Section 2. Subsection (5) is added to section 468.525,
61 Florida Statutes, to read:

62 468.525 License requirements.—

63 (5) If the client company is a subcontractor, the
64 requirements of s. 440.10(1)(a) are not satisfied by the
65 employee leasing arrangement unless the subcontractor has
66 secured additional workers' compensation insurance for nonleased
67 employees or unless the contractual arrangement provides that a
68 person is deemed an employee of the employee leasing company for
69 purposes of workers' compensation coverage, upon the earliest of
70 the following:

71 (a) The hiring of the person by the client company.

72 (b) The commencement of work by the person for the client
73 company.

74 (c) The hiring of the person directly by the employee
75 leasing company.

76 Section 3. Subsection (1) of section 468.529, Florida
 77 Statutes, is amended, present subsections (4) and (5) of that
 78 section are redesignated as subsections (5) and (6),
 79 respectively, and a new subsection (4) is added to that section,
 80 to read:

81 468.529 Licensee's insurance; employment tax; benefit
 82 plans.—

83 (1) A licensed employee leasing company is the employer of
 84 the leased employees, except that this provision is not intended
 85 to affect the determination of any issue arising under Pub. L.
 86 No. 93-406, the Employee Retirement Income Security Act, as
 87 amended from time to time. An employee leasing company shall be
 88 responsible for timely payment of reemployment assistance taxes
 89 pursuant to chapter 443, and shall be responsible for providing
 90 workers' compensation coverage pursuant to chapter 440.

91 (a) However, a ~~ne~~ licensed employee leasing company may
 92 not shall sponsor a plan of self-insurance for health benefits,
 93 except as may be permitted by ~~the provisions of~~ the Florida
 94 Insurance Code or, if applicable, by Pub. L. No. 93-406, the
 95 Employee Retirement Income Security Act, as amended from time to
 96 time. For purposes of this section, the term a "plan of self-
 97 insurance" excludes ~~shall exclude~~ any arrangement where an
 98 admitted insurance carrier has issued a policy of insurance
 99 primarily responsible for the obligations of the health plan.

100 (b) This section does not modify the statutory obligation

101 of a client company to secure workers' compensation coverage as
102 required under s. 440.10 for direct employees whom the client
103 company does not lease pursuant to an employee leasing
104 arrangement. A client company that is engaged in the
105 construction industry and that is in an employee leasing
106 arrangement shall maintain separate workers' compensation
107 insurance coverage as required under this section and s. 440.10
108 unless the employee leasing company and its carrier agree to
109 provide such coverage directly to the client company, covering
110 all persons performing work for the client at all times, in full
111 compliance with s. 440.10.

112 (4) During the term of an employee leasing arrangement
113 with a subcontractor, if a subcontractor does not obtain
114 workers' compensation insurance for nonleased employees, a
115 person is deemed an employee of the employee leasing company for
116 purposes of workers' compensation insurance, upon the earliest
117 of the following:

118 (a) The hiring of such person by the client company.

119 (b) The commencement of work by such person for the client
120 company.

121 (c) The hiring of the person directly by the employee
122 leasing company.

123 Section 4. For the purpose of incorporating the amendment
124 made by this act to section 468.529, Florida Statutes, in a
125 reference thereto, paragraph (g) of subsection (1) of section

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126 | 468.532, Florida Statutes, is reenacted to read:

127 | 468.532 Discipline.—

128 | (1) The following constitute grounds for which
129 | disciplinary action against a licensee may be taken by the
130 | board:

131 | (g) Failing to maintain workers' compensation insurance as
132 | required in s. 468.529.

133 | Section 5. This act shall take effect July 1, 2021.