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RULE PROPOSALS

**LABOR AND WORKFORCE DEVELOPMENT
INCOME SECURITY**

44 N.J.R. 1951(a)

Proposed Amendments: *N.J.A.C. 12:16-24.1, 24.2, 24.4, and 24.5*

Proposed New Rules: *N.J.A.C. 12:16-24.5, 24.6, 24.7, 24.8, and 24.9*

[Click here to view Interested Persons Statement](#)

Employee Leasing Companies

Authorized By: Harold J. Wirths, Commissioner, Department of Labor and Workforce Development.

Authority: *N.J.S.A. 34:8-67*, specifically, 34:8-78 and P.L. 2011 c. 118.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2012-096.

A **public hearing** on the proposed amendments and new rules will be held on the following date at the following location:

Tuesday, August 7, 2012
10:00 A.M. to 12:00 Noon
New Jersey Department of Labor and Workforce Development
John Fitch Plaza
2nd Floor, Large Conference Room
Trenton, New Jersey

Please call the Office of Legal and Regulatory Services at (609) 292-2789 if you wish to be included on the list of speakers.

Submit written comments by September 14, 2012 to:

David Fish, Regulatory Officer
Office of Legal and Regulatory Services
P.O. Box 110, 13th Floor

Trenton, New Jersey 08625-0110
Fax: (609) 292-8246

The agency proposal follows:

Summary

The Department is proposing amendments and new rules within N.J.A.C. 12:16-24 in order to implement P.L. 2011, c. 118, which amended *N.J.S.A. 34:8-67* et seq., an act concerning employee leasing companies. In pertinent part, P.L. 2011, c. 118, requires the Department to: (1) establish a limited registration and renewal process for certain out-of-State employee leasing companies; (2) permit two or more employee leasing companies that are majority owned by the same parent company, entity, or person to register as an employee leasing company group; (3) require, as a condition to registration, the submission of a financial statement showing that a registrant has positive working capital, rather than showing that it has a minimum net worth of \$ 100,000, as had been required prior to P.L. 2001, c. 118; (4) establish an approval process for assurance organizations, independent and qualified entities which certify for registration the qualifications of an employee leasing company or employee leasing company group; and (5) accept certifications for registration of employee leasing companies or employee leasing company groups that are submitted to the Department by approved assurance organizations.

The proposed amendments to *N.J.A.C. 12:16-24.1* would, in setting forth the application and scope of the subchapter, acknowledge the existence of out-of-State employee leasing companies, employee leasing company groups, and assurance organizations.

The proposed amendments to *N.J.A.C. 12:16-24.2* would add definitions for the following terms: "assurance organization," "employee leasing company group," "financial statement," and "out-of-State employee leasing company."

The proposed amendments to *N.J.A.C. 12:16-24.4* would make the statutorily required changes to the financial security requirements imposed by the Department on employee leasing companies; most notably, permitting employee leasing companies to register with proof of positive working capital, computed as current assets minus current liabilities, rather than requiring that an employee leasing company establish that it has a minimum net worth of \$ 100,000.

Proposed new *N.J.A.C. 12:16-24.5* would permit an employee leasing company group to satisfy the registration and financial reporting requirements of the subchapter on a combined or consolidated basis.

Proposed new *N.J.A.C. 12:16-24.6* would establish a limited registration process for out-of-State employee leasing companies, as that term is defined at *N.J.A.C. 12:16-24.2*.

Proposed new *N.J.A.C. 12:16-24.7* would describe the role played by an approved assurance organization in the employee leasing company registration and financial reporting process.

Proposed new *N.J.A.C. 12:16-24.8* would set forth the process whereby an assurance organization applies to the Commissioner for a certificate of approval.

Proposed new *N.J.A.C. 12:16-24.9* would address how an assurance organization goes about appealing the rejection of its application for a certificate of approval.

The proposed amendments to *N.J.A.C. 12:16-24.5* (recodified as *N.J.A.C. 12:16-24.10*) would implement the statutorily required changes to the provisions regarding payroll tax certification by employee leasing companies. Specifically, P.L. 2011, c. 118, states that an employee leasing company need only certify that payroll taxes have been paid for "covered employees in New Jersey." It also changes from "10 days" to "10 business days," the period of time from the mailing of a notice of delinquency that an employee leasing company has to file its quarterly payroll tax certification before the Commissioner notifies the employee leasing company's client companies of the delinquency.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements pursuant to *N.J.A.C. 1:30-3.3(a)5*.

Social Impact

The proposed amendments and new rules would have a positive social impact in that they would establish a regulatory framework for the registration of employee leasing company groups and out-of-State employee leasing companies, as well as for the approval of assurance organizations. They would also reflect the amendments to *N.J.S.A. 34:8-67*

et seq., made by P.L. 2011, c. 118, thereby ensuring consistency between the law and rules and eliminating any confusion which may have otherwise resulted.

Economic Impact

The proposed amendments and new rules would lessen the economic impact upon many employee leasing companies associated with ensuring compliance with the law and rules by: (1) permitting employee leasing company groups to register collectively (2) establishing a limited registration process for out-of-State employee leasing companies; and (3) permitting assurance organizations to submit registration forms and ensure compliance with financial security requirements on behalf of employee leasing companies.

Federal Standards Statement

The proposed amendments and new rules do not exceed standards or requirements imposed by Federal law as there are currently no Federal standards or requirements applicable to the subject matter of this rulemaking. As a result, a Federal standards analysis is not required.

Jobs Impact

The Department does not anticipate that the proposed amendments and new rules would result in either the generation or loss of jobs.

Agriculture Industry Impact

The proposed amendments and new rules would have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The proposed amendments and new rules would impose reporting, recordkeeping, and compliance requirements on employee leasing companies and assurance organizations, which may include small businesses, as that term is defined within the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. Specifically, the proposed amendments and new rules would establish the manner in which employee leasing [page=1952] company groups and out-of-State employee leasing companies must comply with the registration and financial reporting requirements. The proposed amendments and new rules would also make statutorily mandated changes to the manner in which all employee leasing companies (not just employee leasing company groups and out-of-State employee leasing companies) satisfy the financial reporting requirements. Each of the proposed amendments and new rules that pertain to registration and financial reporting by employee leasing companies, employee leasing company groups, and out-of-State employee leasing companies is required by statute and is intended to lessen the burden on the regulated community.

As to the new requirement that assurance organizations obtain approval from the Commissioner before ensuring compliance with financial security requirements, submitting registration forms and submitting quarterly payroll tax certifications on behalf of employee leasing companies, that approval process is also mandated by statute and is intended to lessen the regulatory burden on the employee leasing company clients of assurance organizations; which is to say, the proposed amendments and new rules would acknowledge the right of assurance organizations to do business in New Jersey, thereby allowing them to perform certain reporting, recordkeeping, and compliance functions on behalf of employee leasing companies. Assurance organizations themselves would also obviously benefit from the advent of a regulatory process that acknowledges their role in the registration and financial reporting process for employee leasing companies. Finally, although P.L. 2011, c. 118 permits the Department to impose a fee of up to \$ 500.00 for every initial employee leasing company registration application and subsequent annual financial reporting, in an effort to minimize the impact of the rules on all affected businesses, including small businesses, the Department through the proposed amendments and new rules would impose no registration or financial reporting fee on employee leasing companies, nor would it impose an application fee on assurance organizations that are applying for certificates of approval.

Housing Affordability Impact Analysis

The proposed amendments and new rules would not evoke a change in the average costs associated with housing. The basis for this finding is that the proposed amendments and new rules pertain to the registration of employee leasing companies. The proposed amendments and new rules do not pertain to housing.

Smart Growth Development Impact Analysis

The proposed amendments and new rules would not evoke a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the proposed amendments and new rules pertain to the registration of employee leasing companies. The proposed amendments and new rules do not pertain to housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 24. EMPLOYEE LEASING COMPANIES

12:16-24.1 Application and scope

(a) The rules in this subchapter set forth the requirements and methodology by which an employee leasing company, also known as a professional employer organization (["]PEO["]), shall register with the Commissioner of **the Department of Labor and Workforce Development**, pursuant to P.L. 2001, c. 260, **as amended, N.J.S.A. 34:8-67 et seq. The rules in this subchapter also set forth the requirements and methodology by which an assurance organization shall obtain approval from the Commissioner of the Department of Labor and Workforce Development, pursuant to P.L. 2001, c. 260, as amended, N.J.S.A. 34:8-67 et seq.**

(b) The provisions of this subchapter apply to all employee leasing companies, **employee leasing company groups, out-of-State employee leasing companies and assurance organizations** [as defined in *N.J.A.C. 12:16-24.2*].

12:16-24.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Assurance organization" means an independent and qualified entity approved by the Commissioner pursuant to N.J.A.C. 12:16-24.8 to certify the qualifications of an employee leasing company or employee leasing company group for registration under P.L. 2001, c. 260 (N.J.S.A. 34:8-67 et seq.)

...

"Employee leasing company group" means two or more employee leasing companies that are majority owned by the same ultimate parent company, entity or person.

"Financial statement" means a financial statement prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant.

"Out-of-State employee leasing company" means an employee leasing company that:

- 1. Is not domiciled in New Jersey;**
- 2. Is licensed or registered as an employee leasing company in a state other than New Jersey;**
- 3. Does not maintain an office in New Jersey or directly solicit client companies located or domiciled in New Jersey; and**
- 4. Is not responsible for more than 50 covered employees employed in New Jersey on the date of registration or renewal.**

12:16-24.4 Financial security requirements

(a) An employee leasing company or professional employer organization shall submit a [reviewed] financial statement to the Commissioner or his or her designee with the initial registration [and also with each annual registration] on or before the dates detailed in *N.J.A.C. 12:16-24.3(a)3* [and (c)] **and, following initial registration, shall submit a financial statement to the Commissioner or his or her designee on an annual basis in the manner set forth within (a)2, 3, 4, and 5 below.**

[1. Each reviewed financial statement shall incorporate a certification that it was prepared by an independent certified public accountant in accordance with generally accepted accounting principles within six months prior to the date of the initial or the annual registration or with a certification by the independent certified public accountant in accordance with generally accepted accounting principles stating that it is the most recent financial statement and that they have reviewed the financial statement within six months prior to the date of the initial or the annual registration and certify that there have been no adverse effects negatively impacting the minimum net worth of \$ 100,000.

2. Each reviewed financial statement shall demonstrate that the employee leasing company or professional employer organization has a minimum net worth of \$ 100,000.

(b) An employee leasing company or professional employer organization, which is not in compliance with (a) above, shall file with the Commissioner or his or her designee a security bond or deposit of securities with a current market value of \$ 75,000 on or before the dates detailed in *N.J.A.C. 12:16-24.3(a)2* and 3.]

1. Every initial registration shall be accompanied by a financial statement prepared within 13 months of the application, which statement shall show a positive working capital, computed as current assets minus current liabilities.

2. Following initial registration, an employee leasing company shall file with the Commissioner or his or her designee on an annual basis, within 180 days of the end of the employee leasing company's fiscal year, a current financial statement, which statement shall show a positive working capital, computed as current assets minus current liabilities.

3. The financial statement filed under either (a)1 or 2 above shall be without qualification as to the going concern status of the employee leasing company.

4. Regarding the filing requirement under (a)2 above, an employee leasing company may request that the Commissioner or his or her designee grant an extension of the filing deadline, which request shall be accompanied by a letter from the employee leasing company's [page=1953] independent certified public accountant stating the reasons for the request and the anticipated date of the completion of the financial statement.

5. The Commissioner or his or her designee may for good cause shown grant a request for extension filed under (a)4 above.

(b) An employee leasing company or professional employer organization that, upon initial registration or, as required under (a)2 above, on an annual basis, fails to establish that it has a positive working capital, shall provide to the Commissioner or his or her designee a bond, irrevocable letter of credit, or securities with a minimum market value equaling the amount necessary to achieve a positive working capital plus up to \$ 100,000, such additional amount to be determined by the Commissioner or his or her designee on a case-by-case basis.

1.-2. (No change.)

3. The Commissioner or his or her designee may also require the bond, [or deposit of] **irrevocable letter of credit**, or securities described in (b) above if he or she finds that the employee leasing company or professional employer organization has had its license or registration suspended, denied, or limited in any other jurisdiction; or that there have been instances in which the employee leasing company has not paid covered employees' wages or benefits when due, or failed to make timely payment of any Federal or State payroll taxes or unemployment and/or disability contributions when due, or for other good cause.

4. An employee leasing company or professional employer organization [which] **that** has had its security reduced to satisfy any unemployment and/or disability taxes, interest, penalties, and/or assessments or any wages, benefits, or other entitlement due a covered employee, and has not had its registration rescinded, shall file with the Commissioner or his or her designee an additional [security] bond, [or deposit of] **irrevocable letter of credit, or securities**, which when combined with any unused portion of the prior [security] bond, [or] **irrevocable letter of credit, or securities** will [equal] **have** a current market value [of \$ 75,000] **equaling the amount necessary to achieve a positive working capital plus up to \$ 100,000, such additional amount to be determined by the Commissioner or his or her designee.** Such additional **bond, irrevocable letter of credit, or securities** must be received no later than 60 days after the notification of sale of such securities as set forth in (b)2 above.

5. (No change.)

12:16-24.5 Employee leasing company groups

(a) **An employee leasing company group may satisfy the registration requirements of *N.J.A.C. 12:16-24.3* and the financial reporting requirements of *N.J.A.C. 12:16-24.4* on a combined or consolidated basis, provided that the employee leasing company group demonstrates positive working capital pursuant to *N.J.A.C. 12:16-24.4(a)*.**

(b) **In the event that an employee leasing company group is unable to demonstrate positive working capital pursuant to *N.J.A.C. 12:16-24.4(a)*, then each employee leasing company in the employee leasing company group shall, for that registration year, be required to register separately under *N.J.A.C. 12:16-24.3* and separately satisfy the financial reporting requirements of *N.J.A.C. 12:16-24.4*.**

(c) **The provisions of *N.J.A.C. 12:16-24.4(b)* shall not apply to an employee leasing company group.**

(d) **Each employee leasing company covered under an employee leasing company group registration shall guarantee the financial capacity obligations of each other employee leasing company covered under the employee leasing company group registration.**

12:16-24.6 Out-of-State employee leasing companies

(a) **An out-of-State employee leasing company shall register on an initial and annual basis with the Commissioner or his or her designee using a form that shall, pursuant to N.J.S.A. 34:8-70d, elicit limited information from the registrant, such as information establishing that the registrant meets the definition of "out-of-State employee leasing company" as well as a list of client companies and the number of covered employees at each of those companies. The registration form for out-of-State employee leasing companies is available on the Department website at: <http://lwd.dol.state.nj.us/labor/employer/ea/empinfo/Emplleasing.html> or may be requested by contacting the Department directly, by calling the Department's hotline at (609) 633-6400.**

(b) **An out-of-State employee leasing company shall request the registration form from the Commissioner or his or her designee within 30 days from the first day of employment or co-employment in this State.**

(c) **The initial registration form shall be completed and returned to the Commissioner or his or her designee within 30 days from the date of mailing. If the registration form is completed on the Department's website, it shall be submitted within 60 days of the date of the first employment or co-employment in this State.**

(d) **The annual registration form shall be completed and returned to the Commissioner or his or her designee on or before January 31 of each calendar year.**

(e) **An out-of-State employee leasing company shall not be required to comply with the financial reporting requirements of *N.J.A.C. 12:16-24.4*.**

(f) **If, during the term of a limited registration under this section, an out-of-State employee leasing company becomes responsible for more than 50 covered employees, the out-of-State employee leasing company shall within 30 days of the end of the quarter in which the out-of State employee leasing company became responsible for**

more than 50 covered employees, re-register with the Commissioner or his or her designee as an employee leasing company under *N.J.A.C. 12:16-24.3*.

12:16-24.7 Assurance organizations

(a) An assurance organization approved by the Commissioner or his or her designee pursuant to *N.J.A.C. 12:16-24.8* may submit initial and annual registration forms to the Commissioner or his or her designee on behalf of an employee leasing company, employee leasing company group, or out-of-State employee leasing company under *N.J.A.C. 12:16-24.3, 24.5, or 24.6*, respectively.

(b) An assurance organization approved by the Commissioner or his or her designee pursuant to *N.J.A.C. 12:16-24.8* may on behalf of an employee leasing company or employee leasing company group ensure compliance with the financial security requirements set forth in *N.J.A.C. 12:16-24.4*.

(c) An assurance organization approved by the Commissioner or his or her designee pursuant to *N.J.A.C. 12:16-24.8* may on behalf of an employee leasing company submit to the Commissioner or his or her designee the quarterly payroll tax certification of an independent certified public accountant under *N.J.A.C. 12:16-24.10*.

12:16-24.8 Assurance organizations--approval

(a) No assurance organization shall perform any of the functions authorized under *N.J.A.C. 12:16-24.7*, unless it has first obtained a certificate of approval issued by the Commissioner or his or her designee under this section.

(b) An assurance organization that seeks a certificate of approval under this section shall apply to the Commissioner or his or her designee. For this purpose, the Commissioner or his or her designee shall prepare a "New Jersey Department of Labor and Workforce Development Application for an Assurance Organization Certificate of Approval." This form shall be available on the Department website at: <http://lwd.dol.state.nj.us/labor/employer/ea/empinfo/Emplleasing.html> or may be requested by contacting the Department directly, by calling the Department's hotline at (609) 633-6400.

(c) As part of its application to the Commissioner or his or her designee, an assurance organization shall provide all required information and documents requested in the Application for an Assurance Organization Certificate of Approval.

1. The information and documents requested in the application shall include identifying information, such as the name of the organization, the organization address, the telephone number of the organization, the address of the organization's principal place of business if different than its listed address, and the names of the principals in the organization.

2. The information and documents requested in the application shall also include that which is being elicited by the Commissioner or [page=1954] his or her designee in order to satisfy the Commissioner or his or her designee that the organization is qualified to certify the qualifications of an employee leasing company or employee leasing company group and that the organization is independent of the control or influence of any employee leasing company or employee leasing company group.

(d) An applicant shall fully and accurately complete all parts of the Application for an Assurance Organization Certificate of Approval. Failure to provide a complete application shall result in rejection without prejudice.

(e) An approved assurance organization shall apply on an annual basis to the Commissioner or his or her designee for renewal of the certificate of approval.

(f) The annual approval renewal form shall be available at the website address or using the same telephone number listed in (b) above and shall be completed and returned to the Commissioner or his or her designee on or before January 31 of each calendar year.

12:16-24.9 Assurance organizations--appeals

The Commissioner or his or her designee shall notify the assurance organization in writing of the reason for rejecting an application for certificate of approval, which notice shall advise of the right to request a hearing using the procedures set forth at N.J.A.C. 12:16-22.

12:16-[24.5]**24.10** Payroll tax certification

(a) An employee leasing company or professional employer organization shall provide the Commissioner or his or her designee, within 60 days after the end of each calendar quarter, a certification by an independent certified public accountant on a form prescribed by the Commissioner or his or her designee that all applicable Federal and State payroll taxes **for covered employees in New Jersey** have been paid on a timely basis.

(b) (No change.)

(c) The Commissioner or his or her designee shall notify the client companies reported on the most recent registration form if an employee leasing company or professional employer organization fails to file its quarterly payroll tax certification within 10 **business** days of the mailing of the notice of delinquency in accordance with *N.J.S.A. 34:8-71*.

Recodify existing *N.J.A.C. 12:16-24.6* through *24.11* as **12:16-24.11 through 12:16-24.16**.