

CHAPTER 250

LABOR AND INDUSTRY

SENATE BILL 09-258

BY SENATOR(S) Veiga;
also REPRESENTATIVE(S) Scanlan.

AN ACT

CONCERNING REQUIRED ACTS OF EMPLOYEE LEASING COMPANIES BY THE DEPARTMENT OF LABOR AND EMPLOYMENT PURSUANT TO THE "COLORADO EMPLOYMENT SECURITY ACT".

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. The introductory portion to 8-70-114 (2) (b) and 8-70-114 (2) (b) (VII) and (2) (g) (III) (A), Colorado Revised Statutes, are amended to read:

8-70-114. Employing unit - definitions - rules - employee leasing company certification fund. (2) (b) Notwithstanding ~~the provisions of~~ subsection (1) of this section, an employee leasing company shall be considered an employing unit or the coemployer of a work-site employer's employees if, pursuant to an employee leasing company contract with the work-site employer, it has the following rights and responsibilities:

(VII) (A) Each employee leasing company shall pay wages and collect, report, and pay all payroll-related taxes from its own accounts for all covered employees. Each employee leasing company shall ~~pay~~ BE RESPONSIBLE FOR THE PAYMENT OF unemployment compensation insurance taxes and provide, maintain, and secure all records and documents required of work-site employers under the unemployment insurance laws of this state for covered employees. ~~For unemployment reporting purposes,~~

(B) NO LATER THAN THE END OF THE CALENDAR QUARTER IMMEDIATELY FOLLOWING THE EFFECTIVE DATE OF THIS SUBPARAGRAPH (VII), AS AMENDED, each employee leasing company ~~is the only employing unit for covered employees and~~ SHALL NOTIFY THE DIVISION OF UNEMPLOYMENT INSURANCE AS TO WHETHER THE EMPLOYEE LEASING COMPANY ELECTS TO REPORT AND PAY UNEMPLOYMENT INSURANCE TAXES AS THE EMPLOYING UNIT UNDER ITS OWN UNEMPLOYMENT

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

ACCOUNTS AND TAX RATES OR WHETHER IT ELECTS TO REPORT UNEMPLOYMENT TAXES ATTRIBUTABLE TO COVERED EMPLOYEES UNDER THE RESPECTIVE UNEMPLOYMENT ACCOUNTS AND TAX RATES FOR EACH WORK-SITE EMPLOYER. UNDER EITHER ELECTION, THE EMPLOYEE LEASING COMPANY shall have the responsibility for unemployment compensation insurance as required of an employer pursuant to the "Colorado Employment Security Act", articles 70 to 82 of this title. IF THE EMPLOYEE LEASING COMPANY FAILS TO MAKE AN ELECTION, THE EMPLOYEE LEASING COMPANY SHALL REPORT UNEMPLOYMENT TAXES ATTRIBUTABLE TO COVERED EMPLOYEES UNDER THE RESPECTIVE UNEMPLOYMENT ACCOUNTS AND TAX RATES FOR EACH WORK-SITE EMPLOYER.

(C) THE ELECTION MADE IN SUB-SUBPARAGRAPH (B) OF THIS SUBPARAGRAPH (VII) SHALL BE BINDING ON ALL EMPLOYERS AND THE EMPLOYING UNIT'S RELATED ENTERPRISES, SUBSIDIARIES, OR OTHER ENTITIES THAT SHARE COMMON OWNERSHIP MANAGEMENT OR CONTROL WITH THE EMPLOYEE LEASING COMPANY. EMPLOYEE LEASING COMPANIES ELECTING TO REPORT AND PAY UNEMPLOYMENT INSURANCE AS THE EMPLOYING UNIT UNDER ITS OWN UNEMPLOYMENT ACCOUNTS AND TAX RATES FOLLOWING THE EFFECTIVE DATE OF THIS SUBPARAGRAPH (VII), AS AMENDED, ARE PERMITTED TO CHANGE THE ELECTION ONE TIME AFTER THE INITIAL ELECTION TO REPORT UNEMPLOYMENT TAXES ATTRIBUTABLE TO COVERED EMPLOYEES UNDER THE RESPECTIVE UNEMPLOYMENT ACCOUNTS OF EACH WORK-SITE EMPLOYER BY NOTIFYING THE DIVISION NO LATER THAN THE END OF THE CURRENT CALENDAR QUARTER. AN EMPLOYEE LEASING COMPANY'S ELECTION TO PAY UNEMPLOYMENT TAXES UNDER THE RESPECTIVE UNEMPLOYMENT ACCOUNTS AND TAX RATES OF THE WORK-SITE EMPLOYER IS FINAL AND MAY NOT BE REVERSED.

(g) (III) Each employee leasing company shall annually certify and provide evidence to the department that it meets one of the following criteria to provide securitization of unemployment taxes:

(A) Execute and file a surety bond or deposit with the division money or a letter of credit equivalent to fifty percent of the average annual amount of unemployment tax assessed within the previous calendar year FOR ALL COVERED EMPLOYEES REGARDLESS OF THE ELECTION MADE PURSUANT TO SUBPARAGRAPH (VII) OF PARAGRAPH (b) OF THIS SUBSECTION (2). For a new employee leasing company, the initial bond amount will be the standard tax rate multiplied by fifty percent of the estimated projected taxable payroll for the current calendar year as estimated by the employee leasing company.

SECTION 2. Act subject to petition - effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 5, 2009, if adjournment sine die is on May 6, 2009); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: May 14, 2009