

## CHAPTER 77

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**LABOR AND INDUSTRY**

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**HOUSE BILL 97-1172**

BY REPRESENTATIVES Schauer, Kaufman, Reeser, Schwarz, Anderson, Taylor, T. Williams, and Young;  
also SENATORS Wattenberg and Blickensderfer.

**AN ACT**

CONCERNING THE TREATMENT OF EMPLOYEE LEASING COMPANIES UNDER THE "COLORADO EMPLOYMENT SECURITY ACT", AND, IN CONNECTION THEREWITH, DESCRIBING CERTAIN REPORTING REQUIREMENTS FOR EMPLOYEE LEASING COMPANIES.

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

**SECTION 1. Legislative declaration.** (1) The general assembly hereby finds, determines, and declares that:

(a) The employee leasing industry provides a valuable service to Colorado businesses.

(b) The industry has matured since its inception and therefore existing law must be amended to conform with industry practices.

(c) The rights and responsibilities of employee leasing companies must be clearly defined.

(d) Employee leasing companies help businesses by assisting them in compliance with the increased number of laws and regulations applicable to Colorado employers.

(e) Common law recognizes that two entities may both legitimately be the employer in either a co-employer or employing unit relationship. The recognition of this relationship should be based on the nature of the relationship as supported by a written contract between an employee leasing company and a work-site employer.

(f) Employee leasing companies shall be the co-employer or the employing unit for all employees covered under an employee leasing company contract, and employee leasing companies may aggregate all employees under the individual contracts if

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

allowed under Colorado law.

(2) The general assembly therefore finds, determines, and declares that the purpose of this act is to recognize the valuable service of employee leasing companies and the services they provide to the citizens of Colorado by:

(a) Recognizing employee leasing companies as the co-employer or employing unit for purposes of Colorado law effective on the date an employee leasing company establishes itself in Colorado;

(b) Ensuring high quality human resource services; and

(c) Recognizing employee leasing companies as the legal co-employer or employing unit for all employees covered under an employee leasing company contract.

**SECTION 2.** 8-70-114 (2), (3), and (4), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended, and the said 8-70-114 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**8-70-114. Employing unit - definition.** (2) (a) For purposes of this section: ~~"employee leasing company" means an employee leasing company or a business management company.~~

(I) "EMPLOYEE LEASING COMPANY" MEANS ANY PERSON, BUSINESS, OR OTHER ENTITY THAT PROVIDES SERVICES TO A WORK-SITE EMPLOYER, AS DEFINED IN SUBPARAGRAPH (III) OF THIS PARAGRAPH (a), PURSUANT TO AN EMPLOYEE LEASING COMPANY CONTRACT, AS DEFINED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (a).

(II) "EMPLOYEE LEASING COMPANY CONTRACT" MEANS ANY WRITTEN STAFF LEASING CONTRACT, EXTENDED EMPLOYEE STAFFING OR SUPPLY CONTRACT, OR OTHER CONTRACT UNDER WHICH AN EMPLOYEE LEASING COMPANY PROCURES OR RECEIVES FROM A WORK-SITE EMPLOYER SPECIFIED CO-EMPLOYER RESPONSIBILITIES FOR SPECIFIED EMPLOYEES, DESIGNATING ITSELF AS EMPLOYER OF SUCH EMPLOYEES, AND RETAINING THE RIGHT OF DIRECTION AND CONTROL OF SUCH EMPLOYEES WITH REGARD TO THOSE EMPLOYER RESPONSIBILITIES, INCLUDING THE RIGHTS AND RESPONSIBILITIES SET FORTH IN PARAGRAPH (b) OF THIS SUBSECTION (2). AN EMPLOYEE LEASING COMPANY MAY HAVE OTHER RESPONSIBILITIES PURSUANT TO AN EMPLOYEE LEASING COMPANY CONTRACT, INCLUDING PROVISION OF PROFESSIONAL GUIDANCE WITH REGARD TO EMPLOYMENT MATTERS.

(III) "WORK-SITE EMPLOYER" MEANS ANY PERSON, BUSINESS, OR OTHER ENTITY THAT PROCURES THE SERVICES OF AN EMPLOYEE LEASING COMPANY UNDER AN EMPLOYEE LEASING COMPANY CONTRACT AND OTHERWISE RETAINS DIRECTION AND CONTROL OF THE EMPLOYEES SPECIFIED IN THE CONTRACT REGARDING RESPONSIBILITIES NOT SPECIFIED IN THE CONTRACT PERTAINING TO THE BUSINESS OF THE WORK-SITE EMPLOYER.

(b) Notwithstanding the provisions of subsection (1) of this section, an employee leasing company shall be considered an employing unit OR THE CO-EMPLOYER of a ~~client company's workers~~ WORK-SITE EMPLOYER'S EMPLOYEES if, ~~it retains the right~~

~~to perform~~ PURSUANT TO AN EMPLOYEE LEASING COMPANY CONTRACT WITH THE WORK-SITE EMPLOYER, IT HAS the following ~~functions~~ RIGHTS AND RESPONSIBILITIES:

(I) ~~Set the workers' rate of pay~~ THE EMPLOYEE LEASING COMPANY, AS THE EMPLOYING UNIT OR THE CO-EMPLOYER, ASSIGNS EMPLOYEES TO THE WORK-SITE EMPLOYER'S LOCATIONS;

(II) ~~Pay the workers from its own account or accounts; and~~ THE EMPLOYEE LEASING COMPANY, AS THE EMPLOYING UNIT OR CO-EMPLOYER, RETAINS THE RIGHT TO SET THE EMPLOYEES' RATE OF PAY;

(III) ~~Hire and terminate the workers after consultation with the client company.~~ THE EMPLOYEE LEASING COMPANY, AS THE EMPLOYING UNIT OR CO-EMPLOYER, RETAINS THE RIGHT TO PAY THE EMPLOYEE FROM ITS OWN ACCOUNT OR ACCOUNTS;

(IV) THE EMPLOYEE LEASING COMPANY, AS THE EMPLOYING UNIT OR CO-EMPLOYER, RETAINS THE RIGHT TO DIRECT AND CONTROL THE EMPLOYEES AND SUCH RIGHTS AND RESPONSIBILITIES MAY BE SHARED AS SPECIFIED IN THE EMPLOYEE LEASING COMPANY CONTRACT;

(V) THE EMPLOYEE LEASING COMPANY, AS THE EMPLOYING UNIT OR CO-EMPLOYER, HAS THE RIGHT TO DISCHARGE, REASSIGN, OR HIRE EMPLOYEES TO PERFORM SERVICES FOR THE WORK-SITE EMPLOYER AND THE EMPLOYEE LEASING COMPANY;

(VI) THE EMPLOYEE LEASING COMPANY, AS THE EMPLOYING UNIT OR CO-EMPLOYER, HAS THE RESPONSIBILITY FOR PAYMENT OF WAGES TO THE WORKERS PURSUANT TO THE EMPLOYEE LEASING COMPANY CONTRACT. THE EMPLOYEE LEASING COMPANY, AS THE EMPLOYING UNIT OR CO-EMPLOYER, HAS RESPONSIBILITY FOR REPORTING, WITHHOLDING, AND PAYING ANY APPLICABLE TAXES WITH RESPECT TO THE EMPLOYEE'S WAGES OR PAYMENT OF SPONSORED EMPLOYEE BENEFIT PLANS PURSUANT TO THE EMPLOYEE LEASING COMPANY CONTRACT;

(VII) 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;

(VIII) AN EMPLOYEE LEASING COMPANY AS THE EMPLOYING UNIT OR CO-EMPLOYER MAY AGGREGATE ALL EMPLOYEES FOR THE PURPOSE OF SPONSORING AND ADMINISTERING WORKERS' COMPENSATION PLANS PURSUANT TO ARTICLE 44 OF TITLE 8, EMPLOYEE PENSION BENEFIT PLANS, AND PROVISION OF BENEFITS PURSUANT TO SUCH PLANS. NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY, ANY WORKERS' COMPENSATION INSURANCE CARRIER MAY ISSUE AN INSURANCE POLICY THAT INSURES EITHER THE EMPLOYEE LEASING COMPANY OR THE WORK-SITE EMPLOYER AS THE EMPLOYER PURSUANT TO THE "WORKERS' COMPENSATION ACT OF COLORADO", ARTICLES 40 TO 47 OF THIS TITLE;

(IX) THE EMPLOYEE LEASING COMPANY RETAINS THE RIGHT TO PROVIDE FOR THE WELFARE AND BENEFIT OF THE EMPLOYEES THROUGH SUCH PROGRAMS AS PROFESSIONAL GUIDANCE INCLUDING, BUT NOT LIMITED TO, EMPLOYMENT TRAINING, SAFETY, AND COMPLIANCE MATTERS;

(X) THE EMPLOYEE LEASING COMPANY, AS THE EMPLOYING UNIT OR CO-EMPLOYER, HAS THE RESPONSIBILITY FOR ADDRESSING EMPLOYEE COMPLAINTS, CLAIMS, OR REQUESTS RELATED TO EMPLOYMENT, EXCEPT AS OTHERWISE PROVIDED PURSUANT TO AN EXISTING COLLECTIVE BARGAINING AGREEMENT; EXCEPT THAT SOME OR ALL OF THE RIGHTS AND RESPONSIBILITIES DESCRIBED IN THIS SUBPARAGRAPH (X) MAY BE SHARED WITH THE WORK-SITE EMPLOYER;

(XI) THE EMPLOYEE LEASING COMPANY, AS THE EMPLOYING UNIT OR CO-EMPLOYER, INTENDS TO RETAIN THE RIGHT TO MAINTAIN THE EMPLOYMENT RELATIONSHIP BETWEEN THE EMPLOYEE LEASING COMPANY AND ITS EMPLOYEES ON A LONG TERM, AND NOT TEMPORARY, BASIS;

(XII) THE EMPLOYEES OF THE EMPLOYEE LEASING COMPANY KNOW OF AND CONSENT TO CO-EMPLOYMENT BY THE EMPLOYEE LEASING COMPANY;

(XIII) THE EMPLOYEE LEASING COMPANY MAINTAINS EMPLOYEE RECORDS RELATING TO EMPLOYEES OF THE EMPLOYEE LEASING COMPANY; AND

(XIV) EXCEPT AS OTHERWISE PROVIDED IN THE EMPLOYEE LEASING COMPANY CONTRACT, THE WORK-SITE EMPLOYER HAS THE RESPONSIBILITY FOR THOSE POLICIES AND PROCEDURES RELATED TO THE ACTUAL CONDUCT OF THE WORK THAT LEADS TO THE WORK-SITE EMPLOYER'S CONDUCT OF ITS BUSINESS AND THE PRODUCTION OF ITS GOODS OR SERVICES.

~~(c) For the purposes of this section, an employee leasing company shall be defined as any employing unit which, for a fee, places a client company's workers onto its payroll and assigns them to the client company for at least six consecutive months.~~

(d) If an employee leasing company does not meet the requirements of this subsection (2), the ~~client company~~ WORK-SITE EMPLOYER shall be considered the employing unit.

(e) Each employee leasing company shall maintain and have open for inspection by the department of labor and employment a listing of its ~~client companies~~ WORK-SITE EMPLOYERS and their ~~respective workers~~ COLLECTIVE EMPLOYEES and shall maintain the records and reports as required by the "Colorado Employment Security Act", as described in articles 70 to 82 of this title.

(3) (a) The status of an employee leasing company as the employing unit OR A CO-EMPLOYER of a ~~client company's workers~~ WORK-SITE EMPLOYER'S EMPLOYEES shall be revoked by the division if such employee leasing company fails to file the required reports or pay the taxes due under the provisions of articles 70 to 82 of this title. The effective date of any such revocation shall be the first day of the quarter for which the reports and taxes are due. In the event of such a revocation, the ~~client company~~ WORK-SITE EMPLOYER shall become liable for the reports and taxes due.

(b) The provisions of paragraph (a) of this subsection (3) shall apply if any portion of an employing unit's business activity can be characterized as an employee leasing company, as defined in subsection (2) of this section.

(c) The provisions of paragraph (a) of this subsection (3) shall not apply if an

employee leasing company acts as an agent for a ~~client company~~ WORK-SITE EMPLOYER pursuant to the provisions of subsection (1) of this section, files the required reports, and pays the taxes due under an account established for the ~~client company~~ WORK-SITE EMPLOYER.

(d) The provisions of paragraph (a) of this subsection (3) shall not apply to any temporary help contracting firm, as defined in section 8-73-105.5. However, if any portion of such firm's business activity can be characterized as an employee leasing company, as defined in subsection (2) of this section, that portion of the firm's business shall be subject to the provisions of this subsection (3).

(4) An employee leasing company shall not report wages for any ~~client company~~ WORK-SITE EMPLOYER that would not otherwise be subject to articles 70 to 82 of this title.

(6) NOTHING IN THIS SECTION SHALL EXEMPT A WORK-SITE EMPLOYER OR ANY EMPLOYEE FROM ANY OTHER LICENSING REQUIREMENTS IMPOSED BY LOCAL, STATE, OR FEDERAL LAW. AN EMPLOYEE WHO IS LICENSED, REGISTERED, OR CERTIFIED BY A UNIT OF LOCAL, STATE, OR FEDERAL GOVERNMENT SHALL, FOR THE PURPOSES OF SUCH LICENSE, REGISTRATION, OR CERTIFICATION, BE CONSIDERED AN EMPLOYEE OF THE WORK-SITE EMPLOYER.

**SECTION 3.** 8-76-104 (6), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**8-76-104. Successor employer.** (6) No experience rate transfer provided by this section shall occur when a ~~client company's~~ WORK-SITE EMPLOYER'S account is made inactive as a result of its entering into ~~an agreement~~ A CONTRACT with an employee leasing company, as defined in section 8-70-114 (2), or when ~~an agreement~~ A CONTRACT between a ~~client company~~ WORK-SITE EMPLOYER and an employee leasing company is terminated.

**SECTION 4.** 10-16-105 (8) (a) (I) and (8) (a) (VII), Colorado Revised Statutes, 1994 Repl. Vol., are amended, and the said 10-16-105 (8) (a) is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBPARAGRAPHS, to read:

**10-16-105. Small group sickness and accident insurance - guaranteed issue - mandated provisions for basic and standard health benefit plans.** (8) (a) (I) The premium rate charged during a rating period to small employers shall be based on a single, same index rate, applicable to all small employers, adjusted for case characteristics and coverage; except that the index rate may be multiplied by a rate adjustment factor for each small employer group pursuant to subparagraphs (III) to (VII) of this paragraph (a) to calculate a different premium. The rate adjustment factor shall only be based on actual claims experience on the small employer carrier's plan, industry, and class of business; except that, for health benefit plans issued prior to July 1, 1994, the rate adjustment factor may also be based on duration of coverage since the original issue date and gender mix. FOR THE PURPOSES OF THIS SUBSECTION (8), SMALL EMPLOYER CARRIERS MAY PUT ALL THOSE SMALL EMPLOYERS THAT HAVE CONTRACTS WITH AN EMPLOYEE LEASING COMPANY, AS DEFINED IN SECTION 8-70-114 (2) (a) (I), INTO A SINGLE INDUSTRY CATEGORY CALLED "SMALL EMPLOYERS THAT HAVE EMPLOYEE LEASING COMPANY CONTRACTS". Small employer carriers shall

apply the rate adjustment factors uniformly with respect to all small employers.

(VII) For health benefit plans newly issued and all health benefit plans renewed on and after January 1, 1998, no rate adjustment factor shall be used, EXCEPT AS PROVIDED IN SUBPARAGRAPH (X) OF THIS PARAGRAPH (a).

(X) ON AND AFTER JANUARY 1, 1998, A SMALL EMPLOYER CARRIER MAY GIVE ALL THOSE SMALL EMPLOYERS WHO HAVE CONTRACTS WITH AN EMPLOYEE LEASING COMPANY A CLASS OF BUSINESS DISCOUNT IF:

(A) THE EMPLOYEE LEASING COMPANY IS SOLELY RESPONSIBLE FOR COLLECTING AND REMITTING PREMIUMS WITH RESPECT TO THE SMALL EMPLOYERS WITH WHOM IT HAS EMPLOYEE LEASING COMPANY CONTRACTS AND WHO OBTAIN COVERAGE THROUGH THE EMPLOYEE LEASING COMPANY;

(B) THE SMALL EMPLOYER CARRIER PROVIDING COVERAGE THROUGH THE EMPLOYEE LEASING COMPANY GUARANTEES THE ISSUANCE OF SUCH COVERAGE TO EVERY WORK-SITE EMPLOYER WITH WHOM THE LEASING COMPANY HAS A CONTRACT AND TO THEIR ELIGIBLE EMPLOYEES. THE WORK-SITE EMPLOYER AND ITS ELIGIBLE EMPLOYEES SHALL HAVE THE RIGHT TO SUCH COVERAGE WITHIN THE FIRST SIXTY DAYS AFTER THE EFFECTIVE DATE OF THE EMPLOYEE LEASING COMPANY CONTRACT. AFTER THE EXPIRATION OF THAT SIXTY-DAY PERIOD, A WORK-SITE EMPLOYER WHO DECLINES COVERAGE WITHIN THE FIRST SIXTY DAYS OF THE EFFECTIVE DATE OF ENTERING INTO AN EMPLOYEE LEASING COMPANY CONTRACT BECAUSE SUCH WORK-SITE EMPLOYER HAS OBTAINED OR INTENDS TO OBTAIN COVERAGE FROM ANOTHER SOURCE SHALL NOT SUBSEQUENTLY BE ISSUED COVERAGE THROUGH THE EMPLOYEE LEASING COMPANY FOR A MINIMUM OF FIVE YEARS. AFTER THE EXPIRATION OF THAT SIXTY-DAY PERIOD A WORK-SITE EMPLOYER WHO DECLINES COVERAGE WITHIN THE FIRST SIXTY DAYS OF THE EFFECTIVE DATE OF ENTERING INTO AN EMPLOYEE LEASING COMPANY CONTRACT BECAUSE SUCH WORK-SITE EMPLOYER HAS NOT OFFERED AND OPTS TO CONTINUE NOT TO OFFER AND CONTRIBUTE TO COVERAGE FOR THE WORK-SITE EMPLOYER'S EMPLOYEES SHALL SUBSEQUENTLY BE ISSUED COVERAGE THROUGH THE EMPLOYEE LEASING COMPANY ONLY IF THE WORK-SITE EMPLOYER HAS NOT OFFERED COVERAGE TO THE WORK-SITE EMPLOYER'S EMPLOYEES FROM ANOTHER SOURCE FOR THE LESSER OF EITHER THE LAST TWO YEARS OR SINCE THE INCEPTION OF THE WORK-SITE EMPLOYER'S BUSINESS. A WORK-SITE EMPLOYER WHO OPTS FOR COVERAGE UNDER THE PLAN OFFERED BY THE EMPLOYEE LEASING COMPANY AND LATER DROPS THAT COVERAGE SHALL NOT BE ISSUED COVERAGE THROUGH THE EMPLOYEE LEASING COMPANY FOR AT LEAST FIVE YEARS.

(C) BOTH THE EMPLOYEE LEASING COMPANY AND THE CARRIER PROVIDING A HEALTH BENEFIT PLAN THROUGH THE EMPLOYEE LEASING COMPANY SHALL MAINTAIN A RECORD OF THE REASONS A WORK-SITE EMPLOYER CITES FOR DECLINING COVERAGE AT THE TIME OF THE INITIAL OFFERING OF SUCH COVERAGE.

(D) PRIOR TO PROVIDING COVERAGE TO THE SMALL EMPLOYERS WHO HAVE CONTRACTS WITH AN EMPLOYEE LEASING COMPANY, THE EMPLOYEE LEASING COMPANY SUBMITS AND ANNUALLY RESUBMITS TO THE COMMISSIONER FOR REVIEW AND APPROVAL SUFFICIENT DOCUMENTATION TO SHOW THAT THE EMPLOYEE LEASING COMPANY MEETS THE DEFINITION OF AN EMPLOYEE LEASING COMPANY PURSUANT TO SECTION 8-70-114, C.R.S.; AND

(E) THE CLASS OF BUSINESS DISCOUNT IS BASED SOLELY ON SAVINGS RELATED TO MARKETING COSTS AND THE COSTS OF COLLECTING PREMIUMS.

(XI) NOTHING IN SUBPARAGRAPH (X) OF THIS PARAGRAPH (a) SHALL BE CONSTRUED TO EXEMPT EMPLOYEE LEASING COMPANIES, CARRIERS, OR ANY OTHER ENTITY FROM THE REQUIREMENTS OF ARTICLE 18 OF TITLE 6, C.R.S., CONCERNING HEALTH CARE COOPERATIVES. NOTHING IN SUBPARAGRAPH (X) OF THIS PARAGRAPH (a) SHALL BE CONSTRUED TO EXEMPT A CARRIER THAT PROVIDES COVERAGE TO THE EMPLOYEES OF A SMALL EMPLOYER, INCLUDING THOSE SMALL EMPLOYERS THAT MAY HAVE CONTRACTED FOR SERVICES WITH AN EMPLOYEE LEASING COMPANY, FROM THE SMALL GROUP PROVISIONS OF TITLE 10, C.R.S.

(XII) ALL HEALTH COVERAGE PLANS SPONSORED BY OR MARKETED THROUGH AN EMPLOYEE LEASING COMPANY SHALL BE FULLY INSURED PLANS.

**SECTION 5. Effective date - applicability.** This act shall take effect upon passage and shall apply to contracts in effect on and after that date and acts occurring on or after said date.

**SECTION 6. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 8, 1997