

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 5, 1990 to July 10, 1991

Chapters 1 - 590

THE GENERAL EFFECTIVE DATE FOR
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J.S. McCarthy Company
Augusta, Maine
1991

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

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ONE HUNDRED AND FIFTEENTH LEGISLATURE

1991

water utility as defined in Title 35-A, section 6101 in writing of their failure to do so, the consumer-owned water utility may assume the rights of municipal officers under Title 30-A, section 3428, except that it may not assess a special tax under Title 30-A, section 3428, subsection 4, paragraph B.

6. Effect on other law. Nothing in this section may be construed to limit in any way any private and special or other law granting a water utility or municipality greater controls for protecting its public water source than those set forth in this section.

See title page for effective date.

CHAPTER 468

H.P. 704 - L.D. 1008

An Act to Require that Employee Leasing Companies Register with the State and to Amend the Employment Security Law

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 24-A MRSA §2375 is enacted to read:

§2375. Workers' compensation insurance; registration of employee leasing companies

A corporation, partnership, sole proprietorship or other business entity that provides staff, personnel or employees to be employed in this State to other businesses pursuant to a lease arrangement or agreement must, before becoming eligible to be issued a policy of workers' compensation insurance, register with the superintendent pursuant to Title 32, chapter 125. Employee leasing companies are subject to rules applicable to workers' compensation insurance as adopted by the superintendent and to penalties as defined in Title 32, section 14058.

Sec. 2. 26 MRSA §1043, sub-§§6-A and 8-A are enacted to read:

6-A. Client company. "Client company" means a person, association, partnership, corporation or other entity that leases employees from an employee leasing company pursuant to contract.

8-A. Employee leasing company. "Employee leasing company" means a business entity that engages in the business of leasing employees to client companies without the client company severing an employer-employee relationship with the employees for services performed for the client company.

Sec. 3. 26 MRSA §1221-A is enacted to read:

§1221-A. Employee leasing companies

1. Joint and several liability. Unless an employee leasing company complies with subsection 5 in a timely manner, a client company is jointly and severally liable for any unpaid contributions, interest and penalties due under this chapter from the employee leasing company for wages paid to employees leased to the client company.

2. Liability for contributions. Notwithstanding any other provisions of this chapter, during the term of the employee leasing arrangement, an employee leasing company is liable for the payment of contributions, penalties and interest on wages paid to employees leased to a client company, except compensation paid to sole proprietors or partners in the client company.

3. Reporting requirements. The employee leasing company shall report and pay all contributions under its state employer identification number, using its contribution rate. The employee leasing company shall keep separate records and submit separate quarterly wage reports for each of its client companies to the bureau.

4. Administration of benefits. The employee leasing company is responsible for administration of claims for unemployment insurance benefits for the employees leased to each client company.

5. Surety bond securities. The following apply to the posting of a surety bond or depositing of securities.

A. To relieve client companies from the joint and several liability imposed under subsection 1, an employee leasing company may post and maintain a surety bond issued by a corporate surety authorized to do business in the State in the amount of \$100,000 to ensure prompt payment of the contributions, interest and penalties for which the employee leasing company is liable under this section. After 3 consecutive years throughout which the employee leasing company has paid in a timely manner all contributions due, the bond must be reduced to \$35,000 and remain at this amount as long as the employee leasing company continues to report and pay in a timely manner all contributions due. If an employee leasing company has paid in a timely manner all contributions due for 3 consecutive years upon the effective date of this subsection, its initial bond must be \$35,000 and remain at this amount as long as the employee leasing company continues to report and pay in a timely manner all contributions due.

B. In lieu of a surety bond, the employee leasing company may deposit securities with marketable value equivalent to the amount required for a surety bond in a depository designated by the commissioner. The commissioner may sell these securities for an amount sufficient to pay any contributions that the employee leasing company fails to promptly pay when due.

6. Limitation on application. This section does not apply to private employment agencies that provide their

employees to employers on a temporary help basis, if the private employment agencies are liable as employers for the payment of contributions on wages paid to those temporary employees.

7. Client company ceasing to pay wages. Whenever a client company does not pay wages for a period of 12 consecutive calendar quarters following the latest calendar quarter in which it paid wages, the commissioner shall terminate the client company's account and experience rating record. If the client company subsequently becomes subject to this section after its account and experience rating record have been terminated, the client company is deemed a new employer for the purposes of this chapter and shall pay contributions at the average contribution rate as defined in section 1221, subsection 4, paragraph A.

8. Penalties. An employee leasing company that violates this section is subject to the penalties in and other provisions of Title 32, section 14058, subsections 1 to 3.

Sec. 4. 32 MRSA c. 125 is enacted to read:

CHAPTER 125

EMPLOYEE LEASING COMPANIES

§14051. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Client company. "Client company" means a person, association, partnership, corporation or other entity that leases employees from an employee leasing company pursuant to contract.

2. Controlling person. "Controlling person" means:

A. A person or entity that owns a 5% or greater interest in an employee leasing company or possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an employee leasing company through ownership of voting securities, by contract or otherwise, and is actively involved in the day-to-day management of the company; or

B. A natural person employed, appointed or authorized by an employee leasing company to enter into a contractual relationship with a client company on behalf of the employee leasing company.

3. Employee leasing company. "Employee leasing company" means a sole proprietorship, partnership, corporation or other form of business entity, a substantial portion of the business of which consists of leasing employees to one or more client companies under contractual arrangements that are characterized by the following.

A. Employment responsibilities are carried out by the employee leasing company or are shared by the employee leasing company and the client company.

B. Direction and control of employees provided by the employee leasing company are handled by the employee leasing company or are shared by the employee leasing company and the client company. "Direction and control" includes the right of the employee leasing company to hire and fire employees.

C. The leasing arrangement is long term and does not include arrangements to provide temporary help services. "Temporary help services" means a service whereby an organization hires its own employees and assigns them to a 3rd party to support or supplement the 3rd party's work force in work situations such as employee absences, temporary skill shortages, seasonal work load conditions and special assignments and projects.

D. The leasing arrangement does not include providing labor dispute workers. "Labor dispute worker" means a worker who is furnished to an entity to replace workers involved in strikes, lockouts or other labor activities.

4. Registrant. "Registrant" means an employee leasing company that registers under this chapter.

5. Superintendent. "Superintendent" means the Superintendent of Insurance.

§14052. Registration required

An employee leasing company may not engage in business from offices in this State or enter into any contractual relationship with a client company for the purpose of providing employees for business conducted by the client company in this State unless the employee leasing company is registered under this chapter.

§14053. Registration process

1. Statement. Except as otherwise provided in this section, each employee leasing company required to be registered under section 14052 shall provide the superintendent with information required by the superintendent on forms that the superintendent specifies. At a minimum, employee leasing companies shall provide the following information:

A. The name or names under which the registrant conducts business;

B. The address of the principal place of business of the employee leasing company and the address of each office it maintains in this State;

C. The employee leasing company's taxpayer or employer identification number;

D. A list by jurisdiction of each name under which the employee leasing company has operated in the preceding 5 years, including any alternative names, names of predecessors and, if known, successor business entities;

E. A list of all persons or entities that own a 5% or greater interest in the employee leasing company at the time of application and a list of persons who formerly owned a 5% or greater interest in the employee leasing company, or its predecessors in the preceding 5 years; and

F. A list of the cancellations or nonrenewals of workers' compensation insurance issued to the employee leasing company or its predecessors in the preceding 5 years. The list must include the policy or certificate numbers, names of insurers or other providers of coverage, dates of cancellation and reasons for cancellation. If coverage has not been canceled or has been renewed, the registration must include a sworn affidavit signed by the chief executive officer of the employee leasing company attesting to that fact.

2. Renewal. Prior to January 31st of each year or any other time fixed by the superintendent, each registrant shall renew its registration by notifying the superintendent of any changes in the information previously provided pursuant to this section.

3. List. The superintendent shall maintain a list of employee leasing companies registered under this chapter.

4. Forms. The superintendent may prescribe forms necessary to promote the efficient administration of this section.

5. Existing companies. Any employee leasing company doing business in this State prior to the effective date of this section shall register with the superintendent within 30 days of the effective date of this section.

§14054. Fees

1. Amount. The following are the registration fees under this chapter.

A. Upon filing a registration statement under section 14053, subsection 1, each employee leasing company shall pay an initial registration fee of \$500.

B. Upon renewing its registration statement under section 14053, subsection 2, each employee leasing company shall pay an annual renewal fee of \$100.

2. Treatment of fees. All fees must be paid to the Treasurer of State and credited to the Insurance Regulatory Fund pursuant to Title 24-A, section 604.

§14055. Insurance; unemployment insurance; benefit plans

1. Benefits. The following provisions govern the provision of benefits by employee leasing companies to their employees.

A. Any employee welfare plan or benefit, other than workers' compensation insurance, provided by an employee leasing company to employees leased to a client company, whether the plan or benefit is supplied through insurance or self-funding, is a plan or benefit provided by the employee leasing company as employer to those employees for purposes of state laws applicable to employee benefits, including group insurance coverage under Title 24-A, chapters 31, 35 and 38.

B. The superintendent shall adopt rules governing the provision of workers' compensation insurance as required by Title 39, chapter 1 for workers provided by an employee leasing company to any client company. These rules must be consistent with subsection 2 and reflect consideration of the needs and operational efficiencies of employee leasing companies and the costs to the workers' compensation system. If either the employee leasing company or the client company has secured the payment of compensation in conformity with Title 39, chapter 1, the immunity from liability described in that chapter extends to and is binding on the client company, the employee leasing company, all employees leased to any client company and any other employees of the employee leasing company or the client company. An employee leasing company is not responsible for securing the payment of compensation in conformity with Title 39 nor deprived of the defenses listed in Title 39, section 3 with respect to those persons for whom the provision of benefits is not required under Title 39 in the absence of an employee leasing arrangement.

2. Workers' compensation. Workers' compensation insurance for employees leased to client companies is subject to the following.

A. Under rules adopted pursuant to subsection 1, paragraph B, the superintendent may provide a determination of the circumstances and conditions, if any, under which an employee leasing company may be the policyholder of a workers' compensation insurance policy providing coverage to employees leased to client companies. Additionally or alternatively, the superintendent may require by rule that:

(1) The employee leasing company purchase separate policies through the residual market mechanism, established pursuant to Title 24-A, section 2366, for client companies subject to Title 39; and

(2) The policies be assigned to one servicing carrier and, to the extent practical, administered on a unified basis. The superintendent also may provide by rule that the employee

leasing company or the residual market manager request from the superintendent a waiver of a rule adopted pursuant to this subparagraph if it is impractical for one servicing carrier to service all the client companies of an employee leasing company.

B. When workers' compensation coverage is provided by means of insurance maintained by the employee leasing company through the residual market mechanism, the rules may further provide for the application of experience modification factors, premium surcharges and deductibles consistent with Title 24-A, section 2366. To the extent that a workers' compensation insurance policy is issued to an employee leasing company, experience modification factors applicable to a company that becomes a client company of the employee leasing company after the effective date of this section are calculated by using the client company's experience modification factor:

(1) Throughout the term of the employee leasing arrangement; or

(2) For no more than the first 3 years of the employee leasing arrangement if the requirements of the rules adopted by the superintendent are met.

C. Each employee leasing company that carries workers' compensation insurance for its leased employees shall maintain and make available to its workers' compensation carrier information required by rules adopted by the superintendent pursuant to this chapter. An employee leasing company shall promptly notify its workers' compensation insurance carrier and the residual market manager of the termination of the employee leasing company's relationship with any client company for which it provides workers' compensation insurance.

3. Unemployment insurance. An employee leasing company's responsibility for unemployment insurance is governed by Title 26, section 1221-A and as follows.

A. During the term of the leasing arrangement, the employee leasing company is responsible for payment of unemployment contributions, penalties and interest due pursuant to Title 26, chapter 13 on wages paid to employees leased to client companies, except for compensation paid to sole proprietors or partners in the client company.

B. The employee leasing company shall report all unemployment contributions due under its state employer identification number, using its contribution rate. The employee leasing company shall keep separate records and submit separate quarterly wage reports to the Bureau of Employment Security for each of its client companies.

4. Other insurance. Employees leased to a client company by an employee leasing company remain the employees of the client company for purposes of general liability insurance, automobile insurance, fidelity bonds, surety bonds and employer's liability insurance carried by the client company. Employees leased to a client company by an employee leasing company are not deemed employees of the employee leasing company for purposes of general liability insurance, automobile insurance, fidelity bonds, surety bonds or employer's liability insurance carried by the employee leasing company unless the employees are included by specific reference in the applicable insurance contract or bond.

5. Disclosure. The employee leasing company shall disclose to client companies services to be rendered, including costs, and the respective rights and obligations of the parties prior to entering into or receiving a leasing arrangement. This disclosure must include a statement that the client company may take complaints to the Bureau of Insurance.

§14056. Exemption

Nothing in this chapter exempts a client company of an employee leasing company nor an employee leased to the client company by the employee leasing company from any other state, local or federal license or registration requirements. Any individual who must be licensed, registered or certified according to law and who is a leased employee is deemed an employee of the client company for purposes of the license, registration or certification. An employee leasing company is not liable for the general debts or obligations of a client company with which it has entered into an employee leasing arrangement, except for the payment of unemployment contributions as required in section 14055.

§14057. Advertising prohibition

An organization registered under this chapter may not directly or indirectly refer to that registration in any advertisements, marketing materials or publications.

§14058. Penalties

1. Injunction. The State may seek to enjoin any person or employee leasing company from violating this chapter.

2. Penalty. Any person or employee leasing company that violates this chapter is subject to a fine of \$100 per day for each violation. Any corporation, partnership, sole proprietorship or other form of business entity and any officer, director, general partner, agent, representative or employee of any of those types of business entities that knowingly uses or participates in any employee leasing agreement, arrangement or mechanism for the purpose of depriving one or more insurers of premiums or avoiding the calculation of the proper contribution rate for purposes of unemployment contributions commits a Class E crime.

3. Rebuttable presumption. When an employee leasing company leases employees to only one client company and its affiliates, there is a rebuttable presumption that the client company entered into an employee leasing arrangement to avoid the calculation of the proper contribution rate for payment of unemployment contributions.

4. Costs. Any costs incurred by the superintendent in investigating violations of or enforcing this chapter must be paid by the person or entity found to have violated this chapter.

Sec. 5. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

	1991-92	1992-93
PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF		
Bureau of Insurance		
All Other	\$10,000	\$10,000
Provides funds to cover the costs associated with rulemaking, forms development and printing and postage.		

Sec. 6. Retroactivity. Those parts of section 3 of this Act that enact the Maine Revised Statutes, Title 26, section 1221-A, subsections 1 to 3 and that part of section 4 of this Act that enacts Title 32, section 14055, subsection 3 apply retroactively to January 1, 1990.

See title page for effective date.

CHAPTER 469

H.P. 859 - L.D. 1225

An Act Relating to Ordinary Death Benefits under the Maine State Retirement System

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §17951, sub-§2, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

2. Qualifying member. "Qualifying member" means a member in service or a former member who is receiving a disability retirement benefit. Beginning July 1, 1993, for purposes of section 17953, subsection 1, "qualifying member" also means a member not in service. For purposes of section 17953, subsection 5-B, "qualifying member" also means a member not in service who has qualified for a service retirement benefit.

Sec. 2. 5 MRSA §17953, as amended by PL 1989, c. 658, §§2 to 4, is further amended to read:

§17953. Death before service retirement

~~If~~ Before July 1, 1993, if a qualifying member dies at any time before completing the age and service requirements for service retirement, the payment of ordinary death benefits is governed as follows. Beginning July 1, 1993, if a qualifying member dies before the member's service retirement benefit becomes effective, the payment of ordinary death benefits is governed as follows. In either case, the member's beneficiary may select only one of the death benefits.

1. Refund of contributions. The amount of the qualifying member's accumulated contributions ~~shall be~~ is paid:

A. ~~To his~~ the qualifying member's designated beneficiary, if any;

B. If the qualifying member is not survived by a designated beneficiary, to the first listed of the following relatives alive at the qualifying member's death:

- (1) Surviving spouse;
- (2) Child or children, regardless of age, sharing equally among themselves; or
- (3) The older parent; or

C. ~~To his~~ the qualifying member's estate.

2. Survivor benefits. Survivor benefits are governed as follows.

A. Instead of accepting the payment provided in subsection 1, the first listed of the following who are living at the death of the qualifying member may elect the benefits described in subsections 3 to ~~5-A~~ 5-B:

- (1) The designated beneficiary, if any; or
- (2) If no beneficiary is designated, the surviving spouse, the dependent child or dependent children, or the parent or parents.

B. If the surviving spouse elects a benefit under this ~~paragraph~~ subsection, the dependent child or dependent children are entitled to receive the benefit under subsection 4; ~~or,~~

C. A person entitled to receive benefits under this section may, before the beginning of benefit payments, elect to receive benefits under section 17852, subsection 4, paragraph A; under section 17852, sub-