

§ 60-13A-1. Short title

This act may be cited as the “Employee Leasing Act”.

§ 60-13A-2. Definitions

As used in the Employee Leasing Act:

- A. “applicant” means a person applying for registration as an employee leasing contractor;
- B. “client” means a person who obtains workers through an employee leasing arrangement;
- C. “department” means the regulation and licensing department;
- D. “employee leasing arrangement” means any arrangement in which a client contracts with an employee leasing contractor for the contractor to provide leased workers to the client; provided, “employee leasing arrangements” does not include temporary workers;
- E. “employee leasing contractor” means any person who provides leased workers to a client in New Mexico through an employee leasing arrangement;
- F. “leased worker” means a worker provided to a client through an employee leasing arrangement; provided that if a worker works and should be classified in any construction class or in any oil and gas well service or drilling class pursuant to provisions of or regulations adopted under the New Mexico Insurance Code, the worker shall be presumed to be a leased worker and the employee leasing contractor that provides the worker shall comply with the provisions of the Employee Leasing Act;
- G. “person” means an individual or any other legal entity;
- H. “temporary services employer” means an employing unit that contracts with clients or customers to provide workers to perform services for the client or customer and performs all of the following functions:
 - (1) negotiates with clients or customers for such matters as time, place, type of work, working conditions, quality and price of the services;
 - (2) determines assignments of workers, even though workers retain the right to refuse specific assignments;
 - (3) retains the authority to reassign or refuse to reassign a worker to other clients or customers when a worker is determined unacceptable by a specific client or customer;

- (4) assigns the worker to perform services for a client or customer;
- (5) sets the rate of pay for the worker, whether or not through negotiation; and
- (6) pays the worker directly; and

I. "temporary worker" means a worker employed or provided by a temporary services employer to support or supplement another's work force in special work situations, such as employee absences, temporary skill shortages, temporary provision of specialized professional skills, seasonal workloads and special temporary assignments, including the production of motion pictures, television programs and other commercial media projects; provided that if a worker who is employed or provided by a temporary services employer works and should be classified in any construction class or in any oil and gas well service or drilling class pursuant to provisions of or regulations adopted under the New Mexico Insurance Code, the worker shall be presumed to be a temporary worker and the temporary services employer that provides the worker shall comply with the provisions of the Employee Leasing Act.

§ 60-13A-3. Registration as an employee leasing contractor required as condition to do business in the state

- A. No person shall do business in the state as an employee leasing contractor unless the person is registered with the department.
- B. Registration shall be renewed annually. The renewal date shall be the first day of the month one year after the month in which the initial registration occurred.
- C. Applications for initial registration and renewals of registration shall be made on forms supplied by the department and shall contain the information required by Section 6 of the Employee Leasing Act. The department may by regulation require additional information for initial registration and renewal of registration.
- D. Upon initial registration an employee leasing contractor shall pay a fee to the department of one thousand dollars (\$1,000). On the annual renewal date the employee leasing contractor shall pay an annual renewal fee of one thousand dollars (\$1,000).
- E. Neither the initial registration fee nor the renewal fee is refundable.
- F. If a registered employee leasing contractor does not submit a completed renewal application within thirty days after the annual renewal date, the department shall mail a notice to the contractor by certified mail, return receipt requested, which notice shall inform the contractor that unless the renewal fee is paid within thirty days of the receipt of the notice by the contractor, together with a delinquency charge of five hundred dollars (\$500), the contractor's registration shall be canceled. The department shall cancel the registration of any contractor who does not comply with the requirements for payment of a renewal fee and a delinquency charge.

§ 60-13A-4. Licensure requirements for certain employee leasing contractors

An existing employee leasing contractor domiciled in New Mexico as of September 30, 1993 shall be issued an employee leasing contractor's license upon application.

§ 60-13A-5. Compliance with and applicability of workers' compensation laws.

A. Every employee leasing contractor shall comply with the provisions of [Section 52-1-4 NMSA 1978](#), and that compliance shall be a condition precedent to initial registration. Failure to maintain compliance with the cited law shall result in the immediate revocation of any registration or license held by the noncomplying employee leasing contractor in addition to any other sanctions that may be imposed under applicable laws or regulations.

B. Workers' compensation insurance or self-insurance applicable to leased workers shall cover the employee leasing contractor and the client as co-insureds. Workers' compensation insurance applicable to leased employees may be provided in any manner authorized by and in compliance with regulations of the superintendent of insurance issued pursuant to [Section 59A-2-9.1 NMSA 1978](#).

C. The employee leasing contractor and the client shall be deemed co-employers of leased workers for purposes of the Workers' Compensation Act [[52-1-1 NMSA 1978](#)]. The Workers' Compensation Act shall constitute leased workers' exclusive remedy against both the employee leasing contractor and the client if the conditions of [Section 52-1-9 NMSA 1978](#) are satisfied.

§ 60-13A-6. Registration application; contents

A. An application for registration as an employee leasing contractor shall be signed by an individual for the applicant and verified by him under oath before a notary public. It shall contain:

- (1) the applicant's full name, the title of his position with the employee leasing contractor and a statement that he is authorized to act on behalf of the employee leasing contractor in connection with the application;
- (2) the business name, if any, of the applicant;
- (3) the applicant's legal entity status;
- (4) if the applicant is an individual, his age, date and place of birth and social security number;
- (5) the applicant's state and federal tax identification numbers and employer identification number;
- (6) the current residence street or location address of the principal office of the applicant and a current mailing address, if different from the residency address;

(7) a signature by:

(a) an individual sole proprietor if the applicant is a proprietorship;

(b) each of the general partners if the applicant is a partnership; or

(c) a corporate officer having authority to make the application if the applicant is a corporation;

(8) for a corporate applicant, the name and residence street address of the corporation's agent for the service of process; and

(9) proof of compliance with Section 5 of the Employee Leasing Act.

B. Any changes in information required to be included in the application for registration as an employee leasing contractor shall be reported to the department by the contractor within thirty days of the date the change occurs. Failure by the contractor to comply with this requirement constitutes cause for the department to cancel the contractor's registration.

§ 60-13A-7. Surety requirements for employee leasing contractors

A. An employee leasing contractor domiciled and registered in New Mexico as of September 30, 1993 shall file and maintain with the department a surety bond in the amount of twenty-five thousand dollars (\$25,000) issued by an insurance company authorized to do business in this state. An employee leasing contractor domiciled and registered in New Mexico after September 30, 1993 shall file and maintain with the department a surety bond in the amount of one hundred thousand dollars (\$100,000) issued by an insurance company authorized to do business in this state. Interest accrued on such liquid securities shall be paid to the employee leasing contractor providing the liquid security. The bond shall be conditioned upon the prompt payment of wages for which the employee leasing contractor becomes liable. The employee leasing contractor's liability for these wages shall terminate six months after the employee leasing contractor terminates his employee leasing business.

B. In lieu of the surety bond required under Subsection A of this section, the employee leasing contractor may deposit with a depository designated by the department liquid securities with a market value equal to the amount required for a surety bond. The deposit contract shall authorize the department to liquidate the securities to the extent necessary to pay any obligations that the employee leasing contractor fails to pay promptly when due.

§ 60-13A-8. Department to adopt regulations to implement act

The department shall adopt regulations to implement the provisions of the Employee Leasing Act.

§ 60-13A-9. Agreement required

§ 60-13A-10. Employment contributions; benefits; tax withholding.

An employee leasing contractor shall provide any benefits required by law to be provided employees by employers. The contractor shall provide to the department proof of any required insurance benefits prior to registration or renewal of registration.

The employment relationship between the client and the leased workers shall be established by written agreement between the employee leasing contractor and the client. Written notice of the employment relationship and of compliance with the requirements of [Section 52-1-4 NMSA 1978](#) shall be given by the contractor to each leased worker.

§ 60-13A-11. Revocation of registration; disciplinary proceedings

A. In accordance with the procedures contained in the Uniform Licensing Act, the department may revoke the registration of any employee leasing contractor upon grounds that the contractor:

- (1) is guilty of fraud, deception or misrepresentation in procuring registration under the Employee Leasing Act;
- (2) has willfully or negligently violated any provision of the Employee Leasing Act or any of the rules or regulations of the department pursuant to that act; or
- (3) has not maintained the surety bond or complied with the deposit requirements pursuant to Section 7 of the Employee Leasing Act.

B. Disciplinary proceedings may be instituted by sworn complaint of any person and shall conform with the provisions of the Uniform Licensing Act.

C. An employee leasing contractor whose registration has been revoked may reapply for registration after a period of two years from the date the revocation is effective.

§ 60-13A-12. Criminal penalty

Any person doing business in this state as an employee leasing contractor without being registered as required under the Employee Leasing Act is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of [Section 31-19-1 NMSA 1978](#).

§ 60-13A-13. Civil penalties and remedies

A. Any employee leasing contractor who violates any provision of the Employee Leasing Act may be fined by the department for the violation in the amount of one thousand dollars (\$1,000) and, if it is a continuing violation, the department may impose a fine of one thousand dollars (\$1,000) for each day during which the violation continues.

B. The department may bring an action in a court of competent jurisdiction to enjoin any person from violating any provisions of the Employee Leasing Act.

C. A client, a leased employee or other person who suffers damages proximately caused by the failure of an employee leasing contractor to comply with the Employee Leasing Act may bring an action in any court of competent jurisdiction to recover the damages incurred.

D. If a person is determined to have violated the provisions of the Employee Leasing Act by the department or a court of competent jurisdiction, that person shall be liable for the expenses incurred by the department in investigating and enforcing the provisions of that act and also for reasonable attorneys' fees and costs incurred by the department in a court action.

§ 60-13A-14. Disclosure to clients required

An employee leasing contractor shall disclose to a client the services to be rendered by the contractor, the costs of those services and a description of the respective rights and obligations of the parties prior to entering into an employee leasing arrangement with the client.