

## PLEASE READ

---

The official text of New Jersey Statutes can be found through the home page of the New Jersey Legislature <http://www.njleg.state.nj.us/>

New Jersey Statutes Annotated (N.J.S.A.), published by Thomson West, provides the official annotated statutes for New Jersey.

The statutes in PDF form provided on this website by the Division of Consumer Affairs are unofficial courtesy copies, which may differ from the official text. Although every effort is made to ensure that the text of the courtesy copies is identical to the official version, if any discrepancies exist between the text on this website and the official version, the official version will govern.

# **Employment and Personnel Services Law**

## **Table of Contents**

---

34:8-43. Definitions.....	2
34:8-44. Disclosure statement; hearing after denial of registration, license; notification of change in disclosure statement.....	5
34:8-45. Applicability of act; licensure or registration required for court action.....	5
34:8-45.1. Registration as Health Care Service Firm; terms defined.....	6
34:8-45.1a. Memorandum of understanding. ....	7
34:8-45.1b. Report to Governor, Legislature. ....	7
34:8-45.1c. Rules, regulations.....	7
34:8-45.2. Rules, regulations. ....	7
34:8-46. Cases where act not applicable .....	8
34:8-47. Application for employment agency license .....	9
34:8-48. Application for agent's license; cancellation of license; issuance of new license; conditional license .....	10
34:8-49. Posting of bond as surety; suit on bond; revocation of license.....	11
34:8-50. Annual fees .....	11
34:8-51. Requirements .....	12
34:8-52. Violations .....	14
34:8-53. Refusal or revocation; suspension; renewal.....	15
34:8-54. Powers of director .....	15
34:8-55. Investigation .....	15
34:8-56. Service of notice or subpoena .....	16
34:8-57. Order from Superior Court .....	16
34:8-58. Injunction; other court actions.....	16
34:8-59. Action authorized after finding of violation .....	17
34:8-60. Penalties for violation of cease and desist order .....	17
34:8-61. Additional penalties.....	18
34:8-62. Director to recover attorneys' fees and costs .....	18
34:8-63. Certificate of indebtedness to clerk .....	18
34:8-64. Registration of consulting firm; revocation; suspension.....	18
34:8-65. Registration of career consulting or outplacement organization; fee; bond; explanation of product or services; cancellation of contract; complaint.....	19
34:8-66. Registration of prepaid computer job matching service or job listing service; annual fee; bond; contract; refund conditions; violations .....	23

---

34:8-67. Definitions relative to employee leasing companies..... 26

34:8-68. Provisions of leasing agreements. .... 27

34:8-68.1. Responsibilities of client company. .... 29

34:8-69. Relationship between leasing company, client company. .... 30

34:8-70. Registration of leasing company. .... 30

34:8-71. Registration, annual reporting..... 31

34:8-72. Co-employment of covered employees. .... 33

34:8-73. Actions upon entry, dissolution of leasing agreement..... 33

34:8-74. Calculation of unemployment benefit experience. .... 34

34:8-75. Inapplicability to temporary help service firms, unit operating as cooperative. .... 34

34:8-76. Noncompliance, rescinding of registration. .... 35

34:8-77. Compliance with C.17:22A-1 et seq..... 36

34:8-78. Rules, regulations. .... 36

34:8-79. Information provided to patients receiving home care services regulated by Division of Consumer Affairs..... 36

**34:8-43. Definitions**

As used in this act:

"Accepting employment" means that a job seeker has entered into an agreement with an employer which includes:

- (1) The terms and conditions of employment;
- (2) The salary or wages and any benefits to be paid to the job seeker as compensation for employment; and
- (3) The date, time and place employment will commence.

"A career consulting or outplacement organization" means any person, required to be registered under section 24 of this act, providing or rendering services, with or without related products, in connection with advice, instruction, analysis, recommendation or assistance concerning past, present, or future employment or compensation for an individual's time, labor or effort.

"Agent" means any individual who performs any function or activity for or on behalf of any person, the purpose of which is to provide services or products to individuals seeking employment, career guidance or counseling, or employment related services or products.

"Applicant" means any person applying for licensing or registration under this act.

"Attorney General" means the Attorney General of this State or a designee.

"Baby sitter" means and includes any individual under 16 years of age, other than a registered nurse or a licensed nurse, entrusted temporarily with the care of children during the absence of their parents, guardians, or individuals standing in loco parentis to them. This definition shall not include persons regularly employed by agencies, or institutions operated by or under the control or supervision of this State, or any of its political subdivisions, nor any child care facilities operated for the care of children when the facilities are similarly controlled or supervised.

"Booking agency" means any person who procures, offers, promises, or attempts to procure employment for performing artists, or athletes, not under the jurisdiction of the Athletic Control Board, and who collects a fee for providing those services.

"Bureau" means the Bureau of Employment and Personnel Services in the Division of Consumer Affairs within the Department of Law and Public Safety created pursuant to section 2 of this act.

"Career counseling service" means any business that, through its agents or otherwise, procures or represents itself as procuring employment or employment assistance or advertises in any manner the following services for a fee: career counseling; vocational guidance; aptitude, achievement or vocational testing; executive consulting; personnel consulting; career management, evaluation, or planning; the development of resumes and other promotional materials relating to the preparation for employment; or referral services relating to employment or employment qualifications. A career counseling service shall be licensed as an employment agency pursuant to the provisions of this act. A career counseling service shall not include career consulting or outplacement organizations required to be registered under section 24 of this act.

"Chief" means the Chief of the Bureau of Employment and Personnel Services.

"Consulting firm" means any person required to be registered under section 23 of this act that:

- (1) Identifies, appraises, refers or recommends individuals to be considered for employment by the employer; and
- (2) Is compensated for services solely by payments from the employer and is not, in any instance, compensated, directly or indirectly, by an individual who is identified, appraised, referred or recommended.

"Director" means the Director of the Division of Consumer Affairs in the Department of Law and Public Safety, or his designee.

"Employer" means a person seeking to obtain individuals to perform services, tasks, or labor for which a salary, wage, or other compensation or benefits are to be paid.

"Employment agency" means any person who, for a fee, charge or commission:

- (1) Procures or obtains, or offers, promises or attempts to procure, obtain, or assist in procuring or obtaining employment for a job seeker or employees for an employer; or
- (2) Supplies job seekers to employers seeking employees on a part-time or temporary assignment basis who has not filed notification with the Attorney General pursuant to the provisions of section 1 of P.L.1981, c.1 (C.56:8-1.1); or
- (3) Procures, obtains, offers, promises or attempts to procure or obtain employment or engagements for actors, actresses, performing artists, vocalists, musicians or models; or
- (4) Acts as a placement firm, career counseling service, or resume service; or
- (5) Acts as a nurses' registry.

The director shall have the authority to determine, from time to time, that a particular employment agency or career-related service or product, not otherwise expressly subject to the provisions of this act, is subject to whichever requirements of this act he deems appropriate.

"Fee, charge or commission" means any payment of money, or promise to pay money to a person in consideration for performance of any service for which licensure or registration is required by this act, or the excess of money received by a person furnishing employment or job seekers over what he has paid for transportation, transfer of baggage or lodging for a job seeker. "Fee, charge or commission" shall also include the difference between the amount of money received by any person who either furnishes job seekers or performers for any entertainment, exhibition or performance, or who furnishes baby sitters for any occasion, and the amount paid by the person to the job seekers, performers or baby sitters.

"Job listing service" means any person required to be registered under section 25 of this act who, by advertisement or other means, offers to provide job seekers with a list of employers, a list of job openings or a similar publication, or prepares resumes or lists of applicants for distribution to potential employers, where a fee or other valuable consideration is exacted or attempted to be collected, either directly or indirectly.

"Job seeker" means any individual seeking employment, career guidance or counseling or employment related services or products.

"Job seeker contingent liability" means a provision in an agreement between an employment agency and a job seeker whereby the job seeker may become liable, in whole or in part, to pay a fee, charge or commission of any amount, directly or indirectly, on account of any service rendered by the

"Just cause for voluntary termination of employment by a job seeker" means and includes, but is not limited to, cases in which material misrepresentations of the terms or conditions of employment have been relied upon by a job seeker who would not have accepted the employment if the grounds for termination were known before acceptance of the employment.

"License" means a license issued by the director to any person to:

- (1) Carry on the business of an employment agency; and
- (2) Perform, as an agent of the agency, any of the functions related to the operation of the agency.

"Performing artist" means a model, musical, theatrical or other entertainment performer employed or engaged individually or in a group.

"Person" means any natural person or legal representative, partnership, corporation, company, trust, business entity or association, and any agent, employee, salesperson, partner, officer, director, member, stockholder, associate, trustee or cestuis que trustent thereof.

"Prepaid computer job matching service" means any person required to be registered under section 25 of this act who is engaged in the business of matching job seekers with employment opportunities, pursuant to an arrangement under which the job seeker is required to pay a fee in advance of, or contemporaneously with, the supplying of the matching, but which does not otherwise involve services for the procurement of employment by the person conducting the service.

"Primary location" means an address used for 90 or more calendar days by a person for the conduct of an activity regulated under this act.

"Principal owner" means any person who, directly or indirectly, holds a beneficial interest or ownership in an applicant or who has the ability to control an applicant.

"Temporary employment" means employment in which the duration is fixed as some definite agreed period of time or by the occurrence of some specified event, either of which shall be clearly stated to all parties at the time of referral to the employment.

"Temporary help service firm" means any person who operates a business which consists of employing individuals directly or indirectly for the purpose of assigning the employed individuals to assist the firm's customers in the handling of the customers' temporary, excess or special work loads, and who, in addition to the payment of wages or salaries to the employed individuals, pays federal social security taxes and State and federal unemployment insurance; carries worker's compensation insurance as required by State law; and sustains responsibility for the actions of the employed individuals while they render services to the firm's customers. A temporary help service firm is required to comply with the provisions of P.L.1960, c.39 (C.56:8-1 et seq.).

L.1989, c.331, s.1.

**34:8-44. Disclosure statement; hearing after denial of registration, license; notification of change in disclosure statement**

In addition to any other procedure, condition or information required by this act:

a. Every applicant shall file a disclosure statement with the chief stating whether or not the applicant has been convicted of any crime, which for the purposes of this act shall mean a violation of any of the following provisions of the "New Jersey Code of Criminal Justice," Title 2C of the New Jersey Statutes as amended and supplemented, or the equivalent under the laws of any other jurisdiction:

(1) Any crime of the first degree;

(2) Any crime which is a second or third degree crime and is a violation of chapter 20 or 21 of Title 2C of the New Jersey Statutes; or

(3) Any other crime which is a violation of N.J.S.2C:5-1, 2C:5-2, 2C:11-2 through 2C:11-4, 2C:12-1, 2C:12-3, 2C:13-1, 2C:14-2, 2C:15-1, subsection a. or b. of 2C:17-1, subsection a. or b. of 2C:17-2, 2C:18-2, 2C:20-1, 2C:20-2, 2C:20-4, 2C:20-5, 2C:20-7, 2C:20-9, 2C:21-2 through 2C:21-4, 2C:21-6, 2C:21-7, 2C:21-12, 2C:21-14, 2C:21-15, or 2C:21-19, chapter 27 or 28 of Title 2C of the New Jersey Statutes, N.J.S.2C:30-2, 2C:30-3, 2C:35-5, 2C:35-10, or 2C:37-1 through 2C:37-4.

b. Each disclosure statement may be reviewed and used by the director as grounds for denying licensure or registration, except that in cases in which the provisions of P.L.1968, c.282 (C.2A:168A-1 et seq.) apply, the director shall comply with the requirements of that act.

c. An applicant who is denied licensure or registration pursuant to this section shall, upon a written request transmitted to the director within 30 calendar days of the denial, be afforded an opportunity for a hearing in the manner provided for contested cases pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

d. An applicant shall have the continuing duty to provide any assistance or information requested by the director, and to cooperate in any inquiry, investigation, or hearing conducted by the director.

e. If any of the information required to be included in the disclosure statement changes, or if any additional information should be added after the filing of the statement, the applicant shall provide that information to the chief, in writing, within 30 calendar days of the change or addition.

L.1989, c.331, s.3.

**34:8-45. Applicability of act; licensure or registration required for court action**

a. The provisions of this act shall apply to any person engaging in any of the activities regulated by this act including persons whose residence or principal place of business is located outside of this State.

b. A person shall not bring or maintain an action in any court of this State for the collection of a fee, charge or commission for the performance of any of the activities regulated by this act without alleging and proving licensure or registration, as appropriate, at the time the alleged cause of action arose.

L.1989, c.331, s.4.

**34:8-45.1. Registration as Health Care Service Firm; terms defined.**

a. Notwithstanding any other law or regulation to the contrary, an employment agency required to be licensed pursuant to P.L.1989, c.331 (C.34:8-43 et al.), or any other firm, company, business, agency, or other entity that is not a home health care agency licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) or a hospice licensed pursuant to P.L.1997, c.78 (C.26:2H-79 et seq.), which employs, places, arranges for the placement of, or in any way refers, an individual to provide companion services, health care services, or personal care services in the personal residence of a person with a disability or who is age 60 or older, regardless of the title by which the provider of the services is known, shall be registered as a Health Care Service Firm and shall be subject to the rules and regulations governing Health Care Service Firms adopted by the Division of Consumer Affairs in the Department of Law and Public Safety. The Division of Consumer Affairs is authorized to enforce the health care service firm registration requirement, and the provisions of P.L.1989, c.331 (C.34:8-43 et al.), upon any person whose operations are subject to this section, whether the operations include the direct employment of individuals, the use of an Internet website or application, or any other process or business model.

As used in this section:

“Companion services” means non-medical, basic supervision and socialization services which do not include assistance with activities of daily living, and which are provided in the individual’s home. Companion services may include the performance of household chores.

“Health care services” means any services rendered for the purpose of maintaining or restoring an individual’s physical or mental health or any health-related services, and for which a license or certification is required as a pre-condition to the rendering of such services.

“Personal care services” means services performed by licensed or certified personnel for the purpose of assisting an individual with activities of daily living that may involve physical contact. Services include, but are not limited to, bathing, toileting, transferring, dressing, grooming, and assistance with ambulation, exercise, or other aspects of personal hygiene.

b. (Deleted by amendment, P.L.2014, c.29)

c. As a condition of being registered under P.L.1989, c.331 (C.34:8-43 et al.), a health care service firm shall obtain within 12 months of registration accreditation from an accrediting body that is recognized by the Commissioner of Human Services as an accrediting body for homemaker agencies participating in the Medicaid program, as set forth at N.J.A.C.10:60-1.2. For purposes of accreditation pursuant to this subsection, the accrediting body shall apply the standards set forth in N.J.A.C.13:37-14.1 et seq. and N.J.A.C.13:45B-13.1 et seq., as applicable.

d. As a condition of registration under P.L.1989, c.331 (C.34:8-43 et al.), every health care service firm shall submit to the director an audit the third calendar year after registration and every third year thereafter. The audit shall be conducted by a certified public accountant licensed by the State of New Jersey and shall encompass an examination of the subject firm’s financial records, financial statements, the general management of its operations, and its internal control systems. The audit shall include an audit report with an unqualified opinion and shall be accompanied by any management letters prepared by the auditor in connection with the audit commenting on the internal controls or management practices of the health care service firm. The audit shall be divided into two components: compliance and financial. The compliance component of the audit shall evaluate the firm’s compliance with relevant laws and regulations governing health care service firms. The financial component shall include an audit of the financial statements and accompanying



notes, as specified in the Statements on Auditing Standards issued by the American Institute of Certified Public Accountants.

e. In addition to any other penalty provided by law, a person shall be liable for a penalty of \$500 per day for each day that the person continues to operate a firm without registering as required under this section. The penalty shall be collected by the Director of the Division of Consumer Affairs in a summary proceeding in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

L.2002, c.126, s.1; amended 2014, c.29, s.1; 2019, c.48, s.1.

#### **34:8-45.1a. Memorandum of understanding.**

The Director of the Division of Consumer Affairs in the Department of Law and Public Safety shall enter into a memorandum of understanding with an accrediting body chosen by the director through appropriate procurement processes authorized to accredit a health care service firm pursuant to subsection c. of section 1 of P.L.2002, c.126 (C.34:8-45.1). The memorandum of understanding shall establish the standards for accreditation and for reporting the results of audits performed pursuant to subsection d. of section 1 of P.L.2002, c.126 to the Division.

L.2014, c.29, s.2.

#### **34:8-45.1b. Report to Governor, Legislature.**

No more than three years after the enactment of P.L.2014, c.29, the Director of the Division of Consumer Affairs shall submit a written report to the Governor and to the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), providing a comprehensive review and analysis on the effectiveness of the licensure, accreditation, and audit provisions of P.L.2014, c.29 and recommendations for any additional resources necessary to make such provisions more effective.

L.2014, c.29, s.3.

#### **34:8-45.1c. Rules, regulations.**

The Director of the Division of Consumer Affairs in the Department of Law and Public Safety, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations necessary to effectuate the purposes of this act.

L.2014, c.29, s.4.

#### **34:8-45.2. Rules, regulations.**

The Director of the Division of Consumer Affairs in the Department of Law and Public Safety shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations necessary to effectuate the purposes of this act.

L.2002,c.126,s.2.

**34:8-46. Cases where act not applicable**

The provisions of this act shall not apply to:

- a. A teachers' registry conducted by an association of certified teachers, whose membership is not less than 10 certified teachers, incorporated as a nonprofit organization under the laws of New Jersey, and operated under the supervision of a teacher recognized and approved as a certified teacher by the Department of Education of this State, or by the duly established authority of the state in which the employment is procured, which registry procures positions only for certified teachers who are recognized and approved as certified teachers by the Department of Education of this State;
- b. Any State, federal, municipal or charitable agency which does not charge fees;
- c. Any department or bureau which is maintained by persons for the purpose of securing help for themselves and does not charge fees to job seekers. The exemption from the provisions of this act provided by this subsection shall not be construed to exempt associations or organizations of employers from the requirement to procure the licenses or registration otherwise required under this act;
- d. The procuring of employment by any labor union for any of its members in any job coming under the jurisdiction of the union; provided, that no fee is charged any member for being furnished employment or information where employment may be procured;
- e. Any nurses' registry operated by any association of registered nurses, whose membership is not less than 10 registered nurses, duly incorporated as a nonprofit organization under the laws of New Jersey, and operated under the supervision of a registered nurse authorized to practice in the State of New Jersey; except that no nurses' registry shall furnish help or employment to anyone other than a registered nurse, a practical nurse licensed by the State, or a person, other than a baby sitter, who is approved by the registered nurse in charge of the nurses' registry and is sent by the agency to an employer to assist nonprofessionally in the care of the sick or ailing;
- f. Any association of farmers which:
  - (1) Is duly incorporated on a nonprofit basis, under the laws of New Jersey;
  - (2) Is certified to the director by the Secretary of Agriculture of New Jersey as being an association of bona fide farmers of New Jersey;
  - (3) Does not furnish job seekers to employers other than members of their association; and
  - (4) Does not charge fees to any job seeker for being furnished employment or information where employment may be procured.
- g. Any person who furnishes farmers with field or harvest workers to be employed on a seasonal basis, and charges no fee either directly or indirectly to any worker, if the wages of the workers are paid directly to the workers by the farmers who employ them.

The exemptions established in this subsection and subsection f. of this section shall not apply to any person who induces or attempts to induce a person working under contract with an employer to leave the employment in which he is working under that contract before the contract is completed or the worker is no longer responsible for its completion;

- h. Any temporary help service firm which does not:

- (1) Charge a fee or liquidated charge to any individual employed by the firm or in connection with employment by the firm;
- (2) Prevent or inhibit, by contract, any of the individuals it employs from becoming employed by any other person;
- (3) Knowingly send individuals it employs to, or knowingly continue to render services to, any plant or office where a strike or lockout is in progress for the purpose of replacing individuals who are striking or who are locked out. Any person conducting a temporary help service firm which knowingly sends its employed individuals to, or knowingly continues to render services to, a plant or office where a strike or lockout is in progress for the purpose of replacing those individuals who are striking or who are locked out or, directly or indirectly counsels, aids or abets that action shall be liable to a penalty of \$1,000 upon each occurrence. The penalty shall be sued for, and received by and in the name of the Attorney General and shall be collected and enforced by summary proceedings pursuant to "the penalty enforcement law" (N.J.S.2A:58-1 et seq.).

This exclusion shall apply to temporary help service firms operated by any person who also operates an employment agency as long as the businesses are independently operated as prescribed by rules and regulations promulgated by the Attorney General;

- i. Any news periodical which contains listings of or classified advertisements for jobs, positions, employers, or job seekers where the periodical also contains news stories of general interest, articles or essays of opinion, features and other advertising and which is offered to the general public for sale at a nominal fee;
- j. Any nonprofit educational, religious or charitable institution which provides career counseling, job placement or other employment-related services, skills evaluation, skills analysis, or testing for vocational ability in order to develop a vocational profile to counsel individuals and recommend placement opportunities as part of the fulfillment of its educational, religious or charitable purpose;
- k. Any copying, printing, duplicating or resume preparation service which in no instance charges a fee, directly or indirectly, for providing any employment-related service other than copying, printing, duplicating or assisting in arranging the layout of a resume.

L.1989, c.331, s.5.

#### **34:8-47. Application for employment agency license**

- a. An application for an employment agency license required by this act shall be made in writing to the chief in the form prescribed by the director. The application shall state the complete address, including street and number, of the building and place where the agency is to be conducted and shall enumerate the types of services which the applicant intends to provide. The applicant shall furnish any additional information as may be required by the director for the purpose of investigating the character and responsibility of the applicant and its principal owners or its officers and directors.
- b. The chief shall act upon any application for a license within 30 days after receiving it, except that the director may extend the maximum time for acting upon an application to 60 days for the purpose of allowing an applicant to submit additional information or if a hearing on an application is required.

- c. The director shall provide for the issuance of, and shall prescribe the form for, the licenses to be issued pursuant to this act.
  - d. An employment agency license shall not be transferred by the licensee to another person or amended without the written consent of the director and the payment of the fee prescribed by this act.
  - e. All licenses shall expire on January 1 of the year following their issuance.
- L.1989, c.331, s.6.

**34:8-48. Application for agent's license; cancellation of license; issuance of new license; conditional license**

- a. An application for an agent's license shall state the name and address of the applicant and any other name used by the applicant in the last six years, the name of the holder of the employment agency license by whom the applicant expects to be employed, and any other information concerning the applicant required by the chief to assist in the determination of the applicant's qualifications to provide the services for which the applicant would be licensed.
- b. An agent's license shall not be issued until the holder of the employment agency license named in the application confirms to the chief in writing that the applicant is or will be employed by the employment agency. A license issued to an agent of an employment agency shall not authorize employment by any other employment agency.
- c. An applicant for an agent's license under this act shall, by means of whatever written examination is required by the director, reasonably satisfy the chief that the applicant:
  - (1) Has knowledge of the provisions of this act and applicable rules and regulations which is sufficient to ensure that the applicant is able to comply with the applicable laws and regulations; and
  - (2) Has knowledge of and experience in the fields of employment specified in the application which is sufficient to ensure that the applicant is able to render adequate and efficient service to job seekers.
- d. An applicant for an agent's license shall furnish information which will reasonably satisfy the chief that the applicant has sufficient knowledge of employment opportunities, career guidance or counseling, or employment-related services or products which the applicant intends to provide to job seekers.
- e. Upon the termination of the employment of the holder of an agent's license, the holder of the employment agency license by whom the holder of the agent's license has been employed shall promptly notify the chief of the termination of employment. The agent's license shall thereupon be canceled and the agent entitled to the issuance of a new license for the unexpired term of the old license without payment of an additional fee upon the written request of the agent, and the holder of the employment agency license who is to be named in the new license as the new employer, except that the director may refuse to issue the new license for any good cause shown within the provisions of this act.
- f. For the purpose of enabling individuals to secure experience and knowledge necessary to qualify them as an agent, the director may waive any of the requirements of this section which the director

deems proper and issue a conditional license authorizing the holder to perform functions requiring a license, when acting under the direct supervision of a duly qualified licensed agent. The conditional license shall remain in effect for not more than one year.

g. The director shall provide for the issuance of, and shall prescribe the form for, the licenses authorized to be issued pursuant to this act.

h. The director may require licenses to be posted and identification cards to be carried.

i. All licenses shall expire on January 1 of the year following their issuance.

L.1989, c.331, s.7.

#### **34:8-49. Posting of bond as surety; suit on bond; revocation of license**

a. Before an employment agency license is issued, the applicant shall post with the director a bond in the amount of \$10,000, with a duly authorized surety company as surety, to be approved by the director.

b. The bond shall be retained by the chief until 90 days after either the expiration or revocation of the employment agency license, as appropriate.

c. The bond shall be payable to the State of New Jersey and upon the condition that the person applying for the license will comply with this act and will pay all damages occasioned to any person by reason of any misrepresentative, deceptive, or misleading act or practice, or any unlawful act or omission of any licensed person, agents, or employees, while acting within the scope of employment, made, committed or omitted in the business conducted under the license, or caused by any violation of this act in carrying on the business for which the license is granted.

d. In case of a breach of the condition of any bond, application may be made to the director by the person injured by the breach for leave to sue upon the bond, which shall be granted by the director if it is proven that the condition of the bond has been breached and that the person has been injured. The person obtaining leave to sue shall be furnished with a certified copy of the bond and shall be authorized to institute suit on the bond in the person's name for the recovery of damages sustained by the breach.

e. If at any time, in the opinion of the director, the surety on any bond shall become irresponsible, the person holding the license shall, upon notice from the director, give a new bond, subject to the provisions of this section. The failure to give a new bond within 10 days after notice, at the direction of the director, shall operate as revocation of the license, and the license shall be returned to the director.

L.1989, c.331, s.8.

#### **34:8-50. Annual fees**

Any license issued in accordance with this act shall be issued upon an annual basis. The fees therefor shall be nonrefundable and shall be charged as follows:

a. Employment agency license.....\$250

b. Agent's license.....\$25

c. Transfer of agent's license.....\$10

L.1989, c.331, s.9.

**34:8-51. Requirements**

a. Every employment agency shall:

(1) Keep and make available to the chief, or a designee, during regular business hours, records containing information regarding services provided, products sold to job seekers or employers, and fees charged or collected, and other information required by rules and regulations to enable the chief to determine the status of compliance with the provisions of this act;

(2) Require all job seekers applying for positions of trust or work with private families to furnish the agency with names and addresses of individuals available as character references, and shall communicate, orally or in writing, with at least one of the individuals given by the job seeker as a character reference. If the job seeker has not furnished the name of any individuals available as character references, or if no favorable statement has been received from a character reference, the agency shall so advise the prospective employer to whom the job seeker is referred. This information shall be written upon the referral slip given by the agency to the job seeker to present to the prospective employer. The written result of the verification to determine the character and responsibility of any job seeker shall be kept on file in the agency subject to examination by the chief. If the employer voluntarily waives, in writing, a verification of references, the licensed agency shall not be required to make the verification;

(3) Give to each job seeker a copy of every writing the job seeker has signed, the form of which complies with P.L.1980, c.125 (C.56:12-1 et seq.).

(4) Furnish to each job seeker, who is sent to a prospective employer for an interview concerning the job seeker's qualifications or future employment in a job for which no order has been given to the agency, a card or paper containing the names of the job seeker and prospective employer, the address of the prospective employer and any other particulars the agency may determine are necessary. In each case, there shall be printed in bold-faced type on the card or paper the following:

"This card of introduction is given to.....(name of job seeker) with the understanding that there is no obligation to this employment agency for any fee until, as a result of the services rendered by this agency,..... (name of job seeker) is employed in a job with respect to which the agency received a bona fide order from an employer..... (name of job seeker) has agreed to pay the fee under the foregoing conditions if the fee is not paid by an employer."

(5) Post in the agency in the places that the chief, or a designee, directs, an abstract of this act and the rules and regulations promulgated by the director. The chief shall provide the abstracts and charge for the printing of these abstracts.

b. In addition to the requirements set forth in subsection a., each employment agency which charges or may charge the job seeker a fee shall:

(1) File with the chief, for the chief's approval, a schedule of fees proposed to be charged for any service rendered or product sold to job seekers and adhere to the schedule in charging for

these services or products. The chief shall not approve the fee schedule unless the chief is satisfied that the fee schedule is on a form which makes the schedule reasonably understandable by job seekers and that the fee schedule is in compliance with all other provisions of this section. The schedule of fees may thereafter be changed or supplemented, by filing an amended or supplemental schedule with the bureau. The changes shall not become effective until approval has been granted by the chief and the amended or supplemental fee schedule has been posted for not less than seven days in a conspicuous manner in the office of the agency. It shall be unlawful for any employment agency to charge, demand, collect or receive a greater fee for any service rendered or product sold to a job seeker than is specified in the most recent schedule filed with the bureau;

(2) Post the schedule of fees in a conspicuous manner in the office of the agency using forms provided by the chief;

(3) Compute fees paid by a job seeker seeking employment on the basis of permanent employment, unless the employment is temporary employment. Where temporary employment merges into permanent employment, or where a job seeker accepts permanent employment within 30 days after the termination of temporary employment, the permanent employment may be considered the result of the references to the temporary position and the fee may be based on the permanent employment with due credit given for the payment made for the temporary employment;

(4) Not charge to a job seeker who obtains employment and who is discharged without cause or who voluntarily terminates employment for just cause more than 1% of the scheduled fee for each day worked. For purposes of this paragraph, the employment agency shall repay to any job seeker so discharged or terminated any excess of the maximum fee in accordance with the fee schedule, allowing three days' time to determine that the termination was not due to any fault on the part of the job seeker. The employment agency may, however, by separate written agreement between the employment agency and the job seeker, retain the fee or any part of the fee which has been paid for the job from which the job seeker has been discharged without cause or terminated, if the agency furnishes the job seeker with another job and allows due credit for the retained payment;

(5) Not charge a job seeker who either fails to report for duty after accepting employment or voluntarily terminates employment without just cause within 30 days more than 30% of the scheduled fee;

(6) Obtain a bona fide order for employment prior to collecting any fee from a job seeker or sending out a job seeker to any place of employment. Except as may be otherwise provided in rules and regulations, no charge or advance fee of any kind shall be charged, demanded, collected, or received by the agency from a job seeker seeking employment until employment has been obtained by or through the efforts of the agency;

(7) Give to every job seeker from whom a fee is received, at the time payment is received, a receipt which shall state the name of the job seeker, the name and address of the employment agency and its agent, the date and amount of the fee and the purpose for which it was paid; and

(8) Furnish each job seeker, who is sent to a prospective employer, with a card or similar paper containing the nature of the prospective employment, the names of the job seeker and prospective employer, and the address of the employer.

L.1989, c.331, s.10.



**34:8-52. Violations**

It shall be a violation of the provisions of this act for any person to:

- a. Open, conduct, or maintain, either directly or indirectly, an employment agency or perform any of the functions of an employment agency without first obtaining a valid employment agency license from the director and complying with all requirements of this act regarding agents' licenses for the agents of the agency. A license shall not authorize the furnishing of help or employment or the furnishing of information where help or employment may be procured in the capacity of baby sitters. A license shall not authorize activities of any person other than the individual person or persons holding the license, except that a corporation may be the holder of an employment agency license. A license shall not authorize activities at any place other than the place designated in the license except upon issuance of a special permit by the director. A licensee may engage in activities requiring registration under sections 23, 24 and 25 of this act if it complies with the requirements of those sections.
- b. Conduct business, or any phase thereof, in any room or place where:
  - (1) An individual sleeps or conducts his or her household affairs, unless the business premises have separate ingress and egress from the residential premises;
  - (2) Premises are rented or leased on an hourly, daily, weekly, or other transient basis except as otherwise provided by regulation;
- c. Charge or accept payment of any fees which are greater than those shown by any schedule of fees which is required to be filed with the chief and posted in the agency;
- d. Accept and receive any gift as, or in lieu of, a fee;
- e. Divide or offer to divide fees, directly or indirectly, with prospective or actual employers or any agent, employee, or representative;
- f. Accept payment of a fee or attempt to collect any fee for a service rendered or product sold where employment has not been accepted, except that the requirements of this subsection shall not apply to any career counseling service if that service receives no prepayment for services or products and provides services or products strictly on an hourly basis, with no financial obligation required of the job seeker beyond the hourly fee for the services or products rendered;
- g. Falsely state or imply to a job seeker that the person is seeking to obtain individuals to perform services, tasks or labor for which salary, wages, or other compensation is to be paid;
- h. Send or cause to be sent any individual to any place used for unlawful purposes;
- i. Place or assist in placing an individual under 18 years of age into employment which is in violation of the laws of this State;
- j. Induce or compel any individual to enter the agency, for any purpose, by the use of force or by taking forcible possession of the individual's property;
- k. Publish or cause to be published any deceptive or misleading notice or advertisement. All advertisements of any agency by any means, including, but not limited to, cards, circulars or signs, or in newspapers and other publications, and all letterheads, receipts and blanks, shall contain the name and address of the agency;



- l. Make a deceptive or misleading representation to a job seeker or employer, or enter into any contract with any job seeker or employer or induce or attempt to induce any job seeker or employer to make any agreement, the provisions of which contract or agreement, if fulfilled, violate this act;
- m. Require that a job seeker enter into a contract with the agency or any specific lender for the purpose of fulfilling a financial obligation to the employment agency;
- n. Demand, charge, collect, or receive a fee unless in accordance with the terms of a written contract or agreement with a job seeker;
- o. Engage in any act or practice in violation of P.L.1960, c.39 (C.56:8-1 et seq.) and regulations promulgated thereunder.

L.1989, c.331, s.11.

### **34:8-53. Refusal or revocation; suspension; renewal**

The director may refuse to issue, and may revoke, any license for failure to comply with, or violation of, the provisions of this act or for any other good cause shown, within the meaning and purpose of this act. A refusal or revocation shall not be made except upon reasonable notice to, and opportunity to be heard by, the applicant or licensee. The director may, if he finds it to be in the public interest, suspend a license for any period of time that he determines to be proper or assess a penalty in lieu of suspension, or both, and may issue a new license, notwithstanding the revocation of a prior license, provided that he finds the applicant to have become entitled to the new license.

L.1989, c.331, s.12.

### **34:8-54. Powers of director**

To accomplish the objectives and carry out the duties prescribed by this act, the director may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, promulgate rules and regulations, and prescribe forms as may be necessary.

L.1989, c.331, s.13.

### **34:8-55. Investigation**

Whenever it appears to the director that a person has engaged in, is engaging in, or is about to engage in, any practice declared to be unlawful by this act, or whenever the director believes it to be in the public interest that an investigation should be made to ascertain whether a person has engaged in, is engaging in, or is about to engage in, any unlawful practice, the director may:

- a. Require the person to file, on forms prescribed by him, a written statement or report, under oath or otherwise, concerning the facts and circumstances regarding the practice which is under investigation;
- b. Examine under oath any person in connection with the practice under investigation;
- c. Examine any record, book, document, account, contract, or paper as he deems necessary; and

d. Pursuant to an order of the Superior Court, impound any record, book, document, account, contract, or paper that is produced in accordance with this act, and retain it until the completion of all proceedings in connection with the materials produced.

L.1989, c.331, s.14.

#### **34:8-56. Service of notice or subpoena**

Service by the director of any notice requiring a person to file a statement or report, or of a subpoena upon the person, shall be made personally within this State, but if this cannot be done, substituted service may be made in the following manner:

- a. Personal service outside this State;
- b. The mailing by registered or certified mail to the last known place of business or residence inside or outside the State of the person;
- c. As to any person other than an individual, in accordance with the Rules Governing the Courts of the State of New Jersey pertaining to service of process, provided, however, that service shall be made by the director; or
- d. Any service as the Superior Court may direct in lieu of personal service within the State.

L.1989, c.331, s.15.

#### **34:8-57. Order from Superior Court**

If a person fails or refuses to file any statement or report requested by the director, or obey any subpoena issued by the director, the director may seek and obtain an order from the Superior Court:

- a. Adjudging the person in contempt of court;
- b. Granting injunctive relief, without notice, restraining any and all acts and practices for which a license is required in the provisions of this act;
- c. Directing the payment of reasonable attorneys' fees and costs of the investigation and suit; and
- d. Granting any other relief as may be required, until the person files the statement or report, or obeys the subpoena.

L.1989, c.331, s.16.

#### **34:8-58. Injunction; other court actions**

a. Whenever it appears to the director that a person has engaged in, is engaging in, or is about to engage in, any practice which is a violation of the provisions of this act, the director may seek and obtain in a summary action in the Superior Court an injunction prohibiting the person from continuing the practices or engaging therein or doing any acts in furtherance thereof.

b. In addition to any other remedy, the court may: enjoin an individual from managing or owning any business organization within this State, and from serving as an officer, director, trustee, member

of any executive board or similar governing body, principal, manager, stockholder owning 10% or more of the aggregate outstanding capital stock of all classes of any corporation doing business in this State; vacate or annul the charter of a corporation created by or under the laws of this State; revoke the certificate of authority to do business in this State of a foreign corporation; and revoke any licenses issued pursuant to law to the person whenever the charter, authority, or license have been or may be used to engage in or to further unlawful practices. The court may grant any relief as may be necessary to prevent the use or employment by a person of any unlawful practices, or which may be necessary to restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any practices declared to be unlawful.

L.1989, c.331, s.17.

#### **34:8-59. Action authorized after finding of violation**

Whenever it appears to the director that a person has engaged in, is engaging in, or is about to engage in, any practice which is a violation of the provisions of this act, the director may hold hearings on the violation and upon finding the violation to have been committed, may enter an order:

- a. Directing the person to cease and desist or refrain from committing the practice in the future;
- b. Directing the person to restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any unlawful practice;
- c. Assessing reasonable attorneys' fees and costs of investigation and suit;
- d. Assessing a penalty in the amount authorized by the provisions of section 19 of this act, which the director deems proper under the circumstances; and
- e. Directing the person to reimburse the job seeker for transportation expenses if no employment of the kind applied for exists at the place to which the job seeker is sent and the person did not have a bona fide order, either oral or written, from the prospective employer.

L.1989, c.331, s.18.

#### **34:8-60. Penalties for violation of cease and desist order**

Whenever it appears to the director that a person against whom a cease and desist order has been entered has violated the order, the director may bring a summary proceeding in the Superior Court based upon the violation. A person found to have violated a cease and desist order shall be liable for civil penalties in the amount of not less than \$1,000 or more than \$25,000 for each violation of the order, together with reasonable attorneys' fees and cost of investigation and suit. If any person fails to pay a civil penalty imposed by the court for violation of a cease and desist order, the court imposing the penalty is authorized, upon application of the director, to grant any relief which may be obtained under any statute or court rule governing the collection and enforcement of penalties.

L.1989, c.331, s.19.

**34:8-61. Additional penalties**

In addition to any other penalty provided by law, a person who violates any of the provisions of this act shall be liable for a penalty of not more than \$2,000 for the first offense and not more than \$5,000 for the second and each subsequent offense.

L.1989, c.331, s.20.

**34:8-62. Director to recover attorneys' fees and costs**

In any action or proceeding brought under this act the director may recover reasonable attorneys' fees and costs of investigation and suit.

L.1989, c.331, s.21.

**34:8-63. Certificate of indebtedness to clerk**

Upon the failure of a person to comply within 10 days after service of any order of the director directing payment of penalties, costs, attorneys' fees, reimbursement, or restoration of moneys or property, the director may issue a certificate to the clerk of the Superior Court that the person is indebted to the State for these payments. A copy of the certificate shall be served upon the person against whom the order was entered. The clerk shall immediately enter upon his record of docketed judgments the name of the person so indebted, a designation of the statutes under which the payments are imposed, the amount of each payment imposed, and a listing of property ordered restored, and the date of the certification. The entry shall have the same force and effect as the entry of the docketed judgment in the Superior Court. The entry, however, shall be without prejudice to the right of appeal to the Appellate Division of the Superior Court from the final order of the director.

L.1989, c.331, s.22.

**34:8-64. Registration of consulting firm; revocation; suspension**

- a. Every consulting firm operating within this State shall, within 60 days following the effective date of this act and annually thereafter, register in writing with the chief on a form prescribed by regulation.
- b. Each registration form shall state the firm's name, and any fictitious or trade name used in its operation, each primary location, including street and street number of the building and place where its business is to be conducted, and the names and residence addresses of its principal owners or officers.
- c. The director shall establish by rule and collect an annual fee from firm registrants, which shall not be more than the fee paid by employment agencies, to be used to the extent necessary to defray expenses incurred by the bureau in the performance of its duties under this section.
- d. In addition to any act or practice in violation of P.L.1960, c.39 (C.56:8-1 et seq.), it shall be a violation of this act for any registrant or its agent to:

- (1) Make, or cause to be made, publish or cause to be published, any false, misleading, or deceptive advertisement or representation concerning the services or products that the registrant provides to job seekers.
- (2) Disseminate information to a job seeker knowing or recklessly disregarding information that:
  - (a) The job does not exist or the job seeker is not qualified for the job;
  - (b) The job has been described or advertised by or on behalf of the registered firm in a false, misleading, or deceptive manner;
  - (c) The registrant has not confirmed the availability of the job at the time of dissemination of the information; or
  - (d) The registrant has not obtained written or oral permission to list the job from the employer or an authorized agent of the employer.
- e. The director may refuse to issue, and may revoke, any registration for failure to comply with, or violation of, the provisions of this section or for any other good cause shown, within the meaning and purpose of this section. A refusal or revocation shall not be made except upon reasonable notice to, and opportunity to be heard by, the applicant or registrant.
- f. The director, instead of revoking a registration, may suspend the registration for a period of time determined to be proper, or assess a penalty in lieu of suspension, or both, and may issue a new registration notwithstanding the revocation of a prior registration, provided that the applicant is found to have become entitled to the new registration.
- g. A registered consulting firm shall be permitted to provide temporary help services in the course of its business.
- h. A registered firm may engage in activities requiring registration under sections 24 and 25 of this act if it complies with the requirements of those sections.
- i. Any person who fails to comply with the provisions of this section or rules and regulations promulgated by the director shall be subject to the provisions of sections 14 through 22 of this act.

L.1989, c.331, s.23.

**34:8-65. Registration of career consulting or outplacement organization; fee; bond; explanation of product or services; cancellation of contract; complaint**

- a. Every career consulting or outplacement organization operating within this State shall, within 60 days following the effective date of this act and annually thereafter, register in writing with the chief on a form prescribed by regulation.
- b. Each registration form shall state the organization's name, and any fictitious or trade name used in its operation, each primary location, including street and street number of the building and place where its business is to be conducted, and the names and residence addresses of its principal owners or officers.

c. In addition to registering pursuant to this section, each career consulting or outplacement organization shall notify the chief, in writing, whenever it utilizes any location, including mobile units, other than its primary location for services rendered to job seekers.

d. Every agent, duly authorized and empowered by the owner of the registered organization to solicit business or otherwise act as an agent of the registered organization, shall, within 60 days following the effective date of this act and annually thereafter, register, in writing, with the chief on a form prescribed by regulation.

e. The director shall establish by rule and collect an annual fee from organization and agent registrants, which shall not be more than that paid by employment agencies or agents, to be used to the extent necessary to defray all expenses incurred by the bureau in the performance of its duties under this section.

f. Each registered organization shall, at the time of its initial registration with the director and annually thereafter, post a bond in the amount of \$10,000 with a duly authorized surety company as surety, to be approved by the director. The bond shall be retained by the chief until 90 days after either the expiration or revocation of the registration. The director shall promulgate rules and regulations setting forth the terms and conditions of this bond and supply the prospective registrant firm with an approved form.

g. Every career consulting or outplacement organization registered under this section shall provide each prospective job seeker desiring its services or products with a written explanation of each service or product which it provides or makes available to job seekers and the price for each service or product which shall be made available to the job seeker at the time of the signing of any contract for services or products.

h. Any job seeker who signs a contract with any registered organization shall have the right to cancel the contract within three calendar days of the time of its signing and, upon the return of any materials provided to the job seeker by the registered organization, shall be entitled to receive a full refund of any fee, charge, or commission paid by the job seeker.

i. Not more than one-third of any fee, charge or commission shall be collected by the registered organization for its services or products more than 60 days in advance of the date on which the registrant provides its services or products as stated in its contract.

j. Every registered organization shall respond, in writing, within nine calendar days of receipt of any written complaint by a job seeker, stating the registered organization's position with respect to the complaint. Copies of a job seeker's complaint and the response shall be kept in a separate file by the registered organization for a period of one year after the date of the resolution of the complaint, or two years after the date of the complaint, whichever is later.

k. If a demand for refund is denied by a registered organization and if the denial is found to have been in bad faith or if the registered organization fails to respond to a demand for a refund, a court in an action instituted by the job seeker shall award damages to the job seeker in an amount not to exceed \$200 in addition to actual damages sustained by the job seeker, together with reasonable attorneys' fees, filing fees, and reasonable costs of suit. If the registered organization refuses or is unable to pay the amount awarded by the court, the award may be satisfied out of the registered organization's bond.

l. A registered organization shall not:

- (1) Negotiate a job seeker's compensation and demand or receive a percentage therefrom as a fee, charge, or commission unless the percentage fee, charge, or commission has been disclosed to and accepted by the job seeker in the contract;
- (2) Contract with employers on behalf of a job seeker; or
- (3) Solicit job openings from employers or otherwise act as an intermediary for job seekers.

m. Every contract for career consulting or outplacement organizations shall be in writing. A copy of the contract shall be given to the job seeker at the time the job seeker signs the contract. The contract shall contain all of the following:

- (1) The name, address, and telephone number of the organization and the name of the organization's agent.
- (2) The name and address of the individual signing the contract and the job seeker to whom the services are to be provided.
- (3) A description of the services or products to be provided; a statement of when those services or products are to be provided and by which organizations, if other than the contracting organization; the term of the contract; and refund provisions, as applicable, if the described services or products are not provided according to the contract.
- (4) The amount of the fee to be charged to or collected from the job seeker receiving the services or products or from any other individual, and the date or dates when that fee is required to be paid.
- (5) The following statements, in at least 10-point bold-faced type:

"No verbal or written promise or guarantee of any job or employment is made or implied under the terms of this contract.

This organization is registered with the Bureau of Employment and Personnel Services of the State of New Jersey, (current address of the bureau). Inquiries concerning your contract may be sent to this address."

- (6) The following statement, in at least 10-point bold-faced type:

**"YOUR RIGHT TO CANCEL**

You may cancel this contract for services or products, without any penalty or obligation, if notice of cancellation is given, in writing, within three calendar days after you have signed this contract.

To cancel this contract, just mail or deliver a signed and dated copy of the following cancellation notice or any other written notice of cancellation, or send a telegram containing a notice of cancellation, to (name of registrant) at (address of its place of business), not later than midnight of the third calendar day after you signed this contract.

**CANCELLATION NOTICE**

I hereby cancel this contract.

Dated:.....

Job seeker's Signature .....

Job seeker's Name (print).....

Address....."

The requirement that the contract include this statement regarding the right to cancel shall not apply when time is of the essence and the services or products must be performed or provided within three calendar days of the date that the contract is entered into pursuant to the request of the job seeker, if the job seeker furnishes the registered organization with a separate dated and signed personal statement in the job seeker's own handwriting, describing the situation requiring the immediate provision of services or products and expressly acknowledging and waiving the right to cancel the contract within three calendar days.

(7) Any further information specified in regulations adopted by the director.

n. The requirements of this section shall not apply to any person who receives no prepayment for services or products from a job seeker and who:

(1) Provides services or products strictly on an hourly basis, with no financial obligation required of the job seeker beyond the hourly fee for services or products rendered; or

(2) Provides outplacement services exclusively as part of a job seeker's benefit or severance package with a current or former employer.

o. Newspaper advertising pertaining to services offered or provided in this State by career consulting or outplacement organizations appearing within or adjacent to help-wanted advertising shall contain the phrase "not an employment agency" in a clear, conspicuous, and prominent manner.

p. In addition to any act or practice in violation of P.L.1960, c.39 (C.56:8-1 et seq.), it shall be a violation of this act for any registrant or its agent to:

(1) Make, or cause to be made, publish or cause to be published, any false, misleading, or deceptive advertisement or representations concerning the services or products that the registrant provides to job seekers.

(2) Disseminate information to a job seeker knowing or recklessly disregarding information that:

(a) The job does not exist or the job seeker is not qualified for the job;

(b) The job has been described or advertised by or on behalf of the registered organization in a false, misleading, or deceptive manner;

(c) The registrant has not confirmed the availability of the job at the time of dissemination of the information; or

(d) The registrant has not obtained written or oral permission to list the job from the employer or any authorized agent of the employer.

q. The director may refuse to issue, and may revoke, any registration for any failure to comply with, or violation of, the provisions of this section or for any other good cause shown, within the meaning and purpose of this section. A refusal or revocation shall not be made except upon reasonable notice to, and opportunity to be heard by, the applicant or registrant. The director, instead of



revoking any registration, may suspend the registration for a period of time as shall be determined to be appropriate, or assess a penalty in lieu of suspension, or both, and may issue a new registration notwithstanding the revocation of a prior registration provided that the applicant is found to have become entitled to the new registration.

r. A registered organization may engage in activities requiring registration under sections 23 and 25 of this act if it complies with the requirements of those sections.

s. Any person who fails to comply with the provisions of this section or rules and regulations promulgated by the director shall be subject to sections 14 through 22 of this act.

L.1989, c.331, s.24.

**34:8-66. Registration of prepaid computer job matching service or job listing service; annual fee; bond; contract; refund conditions; violations**

a. Every prepaid computer job matching service or job listing service operating or providing services or products within this State shall, within 60 days following the effective date of this act and annually thereafter, register, in writing, with the chief on a form prescribed by regulation.

b. Each registration form shall state the service's name and fictitious or trade name used in its operation, each primary location, including street and street number of the building and place where its business is to be conducted, and the names and residence addresses of its principal owners or officers.

c. In addition to registering pursuant to this section, a prepaid computer matching service or job listing service shall notify the bureau in writing whenever it utilizes any location, including mobile units, other than its primary location for the provision of services or products to job seekers.

d. Every agent, duly authorized and empowered by the owner of the registered service to solicit business or otherwise act as an agent of the registered service, shall, within 60 days following the effective date of this act and annually thereafter, register, in writing, with the chief on a form prescribed by regulation.

e. The director shall establish by rule and collect an annual fee from service and agent registrants, which shall not be more than that paid by employment agencies or agents, to be used to the extent necessary to defray all expenses incurred by the bureau in the performance of its duties under this section.

f. Each service applicant shall at the time of its initial registration with the director and annually thereafter, post a bond in the amount of \$10,000 with a duly authorized surety company as surety, to be approved by the director. The bond shall be retained by the chief until 90 days after either the expiration or revocation of the registration. The director shall promulgate rules and regulations setting forth the terms and conditions of this bond and supply the service applicant firm with an approved form.

g. Prior to the acceptance of a fee from a job seeker, a registered service shall provide the job seeker with a written contract which shall include the following:

- (1) The name of the registered service and the address and telephone number of each primary or other location of the registered service providing the listing to the job seeker.

- (2) Acknowledgement of receipt of the registered service's fee schedule.
- (3) A description of the service or product to be performed or product to be provided by the registered service, including significant conditions, restrictions, and limitations where applicable.
- (4) A description of the job seeker's specifications for the employment opportunity, including, but not limited to, the following:
  - (a) Type of job.
  - (b) Interests of job seeker.
  - (c) Qualifications of job seeker.
  - (d) Salary, benefits, and other conditions of employment.
  - (e) Location of job.
- (5) The contract expiration date, which shall not be later than 90 days from the date of execution of the contract.
- (6) A clause setting forth the right to a full refund of the fee paid in advance.
- (7) The signature of the registered service's agent.
- (8) The following statement, printed on the face of the contract in type no smaller than 10-point bold-faced type:

"This service is registered with the Bureau of Employment and Personnel Services of the State of New Jersey, (current address of bureau). Inquiries concerning your contract may be sent to this address."

- (9) At the bottom of the contract a notice to the effect that the contract is the property of the job seeker and shall not be taken from the job seeker.
- h. Every contract or receipt shall be made and numbered consecutively in original and duplicate, both to be signed by the job seeker and the service's agent. The original shall be given to the job seeker and the duplicate shall be kept on file at the service's primary location.
- i. The form of contract proposed to be used by a registrant to effect compliance with this section shall be filed with the bureau prior to use. Any modification of a form previously filed with the bureau, including a change in the name or a primary location of the registered service, shall also be filed prior to use.
- j. A registered service shall refund in full the advance fee paid by a job seeker if the service does not, within five calendar days after execution of the contract, supply at least three employment opportunities then available to the job seeker and meeting the specifications of the contract. A registered service will be deemed to have supplied information meeting the specifications of the job seeker if the information supplied meets the contract specifications with reference to:
- (1) Name of employer and type of job;
  - (2) Interests of job seeker;

- (3) Qualifications of job seeker;
- (4) Salary, benefits, and other conditions of employment;
- (5) Location of job; and
- (6) Any other specification expressly set forth in the contract.

A demand for the return of the fee shall be made by or on behalf of the job seeker within 10 calendar days following the expiration of the five-day period referred to above by delivery or by registered or certified mail to the address of the office or location set forth in the contract.

k. A registered service shall refund any amount in excess of a \$25 service charge to the job seeker if the job seeker does not obtain a job, provided that the job seeker demands a return of that part of the fee within 10 calendar days after the expiration of the contract.

l. If employment, once obtained, lasts less than 90 days, the fee paid shall be refunded as specified in subsection b. of section 10 of this act.

m. Each contract shall also contain refund provisions, approved by the bureau, which shall, unless different language is approved in writing by the bureau prior to use, read as follows:

"RIGHT TO REFUND

If within five calendar days after payment of any advance fee, the registrant has not supplied the job seeker with at least three available employment opportunities meeting the specifications of the contract as to (1) name of the employer and type of job; (2) interest of job seeker; (3) qualifications of job seeker; (4) salary, benefits, and other conditions of employment; (5) location of job; and (6) any other specification expressly set forth in the contract, the full amount of the fee paid shall be refunded to the job seeker within 10 calendar days after the expiration of the five-day period."

If the job seeker does not obtain a job through the services of the registered service, any amount paid in fees in excess of a \$25 service charge shall be refunded to the job seeker, upon demand by the job seeker made within 10 calendar days of the expiration of the contract.

n. Every registered service shall respond, in writing, within nine calendar days of receipt of any written complaint by a job seeker, stating the registered service's position with respect to that complaint. A copy of a job seeker's complaint and the response shall be kept in a separate file by the registered service for a period of one year after the date of the resolution of the complaint, or two years after the date of the complaint, whichever is later.

o. If a demand for refund is denied by a registered service, and if the denial is found to have been in bad faith or if the registered service fails to respond to a demand for a refund, a court in an action instituted by the job seeker shall award damages to the job seeker in an amount not to exceed \$200.00 in addition to actual damages sustained by the job seeker, together with reasonable attorneys' fees, filing fees, and reasonable costs of suit. If the registered service refuses or is unable to pay the amount awarded by the court, the award may be satisfied out of the registered service's bond.

p. In addition to any act or practice in violation of P.L.1960, c.39 (C.56:8-1 et seq.), it shall be a violation of this act for any registrant or its agent to:

(1) Make, or cause to be made, publish or cause to be published, any false, misleading, or deceptive advertisement or representations concerning the services or products that the registrant provides to job seekers; or

(2) Disseminate information to a job seeker knowing or recklessly disregarding information that:

(a) The job does not exist or the job seeker is not qualified for the job;

(b) The job has been described or advertised by or on behalf of the registered service in a false, misleading, or deceptive manner;

(c) The registrant has not confirmed the availability of the job at the time of dissemination of the information; or

(d) The registrant has not obtained written or oral permission to list the job from the employer or an authorized agent of the employer.

q. The director may refuse to issue, and may revoke, any registration for any failure to comply with, or any violation of, the provisions of this section or for any other good cause shown, within the meaning and purpose of this section. A refusal shall not be made except upon reasonable notice to, and opportunity to be heard by, the applicant or registrant as the case may be. The director instead of revoking any registration may suspend the registration for a period of time as determined to be proper, or assess a penalty in lieu of suspension, or both; and may issue a new registration notwithstanding the revocation of a prior registration provided that the applicant is found to have become entitled to the new registration.

r. Any person who fails to comply with the provisions of this section or rules and regulations promulgated by the director shall be subject to the provisions of sections 14 through 22 of this act.

L.1989, c.331, s.25.

### **34:8-67. Definitions relative to employee leasing companies.**

For the purposes of this act:

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

"Client company" means a sole proprietorship, partnership, corporation or other business entity, which enters into an employee leasing agreement and is assigned employees by the employee leasing company.

"Commissioner" means the Commissioner of Labor and Workforce Development.

"Covered employee" means an individual co-employed by an employee leasing company and a client company pursuant to an employee leasing agreement.

"Department" means the Department of Labor and Workforce Development.

"Employee leasing agreement" or "professional employer agreement" means an arrangement, under written contract, whereby:

- (1) An employee leasing company and a client company co-employ covered employees; and
- (2) The arrangement is intended to be, or is, ongoing rather than temporary in nature, and not aimed at temporarily supplementing the client company's work force.

"Employee leasing company" or "professional employer organization" means a sole proprietorship, partnership, corporation or other business entity, which devotes a substantial portion of its business to providing the services of employees pursuant to one or more employee leasing agreements and provides services of a nature customarily understood to be employer responsibilities including, but not limited to, those responsibilities provided in section 2 of this act.

L.2001, c.260, s.1; amended 2011, c.118, s.1.

### **34:8-68. Provisions of leasing agreements.**

a. Every employee leasing agreement shall provide that the employee leasing company:

- (1) Reserves a right of direction and control over each covered employee assigned to the client company's location. However, a client company may retain sufficient direction and control over the covered employee as is necessary to conduct the client company's business and without which the client company would be unable to conduct its business, discharge any fiduciary responsibility that it may have, or comply with any applicable licensure, regulatory or statutory requirement of the client company;
- (2) Assumes responsibility for the payment of wages to each covered employee without regard to payments by the client company to the employee leasing company, except that the provisions of this paragraph shall not affect the client company's obligations with respect to the payment of wages to covered employees;
- (3) Assumes responsibility for the payment of payroll taxes and collection of taxes from payroll on each covered employee;
- (4) Retains authority to hire, terminate, discipline, and reassign each covered employee. However, no covered employee shall be reassigned to another client company without that covered employee's consent and the client company may have the right to accept or cancel the assignment of any covered employee;
- (5) Has given written notice of the relationship between the employee leasing company and the client company to each covered employee it assigns to perform services at the client company's work site;
- (6) Shall, except for newly established business entities, hire its initial employee complement from among employees of the client company at the time of execution of the employee leasing agreement at comparable terms and conditions of employment as are in existence at the client company at the time of execution of the employee leasing agreement and as designated by the client company. Throughout the term of the employee leasing agreement the covered employees shall be considered employees of the employee leasing company and the client company and upon the termination of the employee leasing agreement, the covered employees shall be considered employees of the client company;
- (7) Continue to honor and abide by existing collective bargaining agreements applicable to covered employees. The client company shall also continue to honor and abide by all collective

bargaining agreements applicable to covered employees. Every employee leasing company which enters into a contract with a client company, which has a collective bargaining representative for the covered employees, shall require that client company to enter into an agreement with the employee leasing company containing the following language:

"The client company shall continue to honor and abide by the terms of any applicable collective bargaining agreements, and upon expiration thereof, any obligations of the client company to bargain in good faith in connection with such collective bargaining agreements shall not be affected in any manner by the employee leasing agreement."

(8) Shall provide workers' compensation insurance for their covered employees.

b. Every employee leasing agreement shall provide that the employee leasing company and the client company shall each retain a right of direction and control over management of safety, risk and hazard control at the work site or sites affecting each covered employee including:

(1) Responsibility for performing safety inspections of client company equipment and premises;

(2) Responsibility for the promulgation and administration of employment and safety policies; and

(3) Responsibility for the management of workers' compensation claims, the filings thereof, and procedures related thereto.

c. Nothing in this section or this act shall alter the rights or obligations of client companies, employee leasing companies or covered employees under the National Labor Relations Act, 29 U.S.C. s.151 et seq.

d. (1) Nothing in P.L.2001, c.260 (C.34:8-67 et seq.) or in any employee leasing agreement shall diminish, abolish or remove any obligations of covered employees to a client company or any obligations of any client company to a covered employee existing prior to the effective date of an employee leasing agreement, or create any new or additional enforceable right of a covered employee against an employee leasing company that is not specifically provided by the appropriate employee leasing agreement or P.L.2001, c.260 (C.34:8-67 et seq.).

(2) Nothing in P.L.2001, c.260 (C.34:8-67 et seq.) or in any employee leasing agreement shall affect, modify, or amend any contractual relationship or restrictive covenant between a covered employee and any client company in effect at the time an employee leasing agreement becomes effective; nor shall it prohibit or amend any contractual relationship or restrictive covenant that is entered into subsequently between a client company and a covered employee. An employee leasing company shall have no responsibility or liability in connection with, or arising out of, any such existing or new contractual relationship or restrictive covenant unless the employee leasing company has specifically agreed otherwise in writing.

e. (1) Nothing in P.L.2001, c.260 (C.34:8-67 et seq.) or in any employee leasing agreement shall affect, modify or amend any state or local registration or certification requirement applicable to any client company or covered employee.

(2) A covered employee who is required to be licensed, registered, or certified pursuant to any State law or regulation shall be considered solely an employee of the client company for purposes of that license, registration, or certification requirement.

(3) An employee leasing company shall not be deemed to engage in any occupation, trade, profession, or other activity that is subject to licensing, registration, or certification requirements, or is otherwise regulated by a governmental entity, solely by entering into an employee leasing agreement with a client company who is subject to those requirements or regulations.

(4) A client company shall have the sole right of direction and control of the professional or licensed activities of covered employees and the client company's business. Those covered employees and client companies shall remain subject to regulation by the regulatory or governmental entity responsible for licensing, registration, or certification of those covered employees or client companies.

f. A client company's certification as a small, minority-owned, disadvantaged, woman-owned business enterprise or an historically underutilized business for the purposes of any bid, contract, purchase order, or agreement entered into with the State or a political subdivision of the State, shall not be affected because the client company has entered into an employee leasing agreement with an employee leasing company.

g. Any benefit that a client company is required to provide to covered employees that is provided to covered employees by an employee leasing company through an employee leasing agreement shall be credited against the client company's obligation to fulfill the requirement.

L.2001, c.260, s.2; amended 2011, c.118, s.2.

#### **34:8-68.1. Responsibilities of client company.**

a. Except to the extent otherwise expressly provided by an applicable employee leasing agreement, a client company shall be solely responsible for the quality, adequacy or safety of the goods or services produced or sold in the client company's business, for directing, supervising, training and controlling the work of the covered employees with respect to the business activities of the client company, and for the acts, errors or omissions of covered employees with regard to those activities.

b. Except to the extent otherwise expressly provided by an applicable employee leasing agreement, a client company shall not be liable for the acts, errors or omissions of an employee leasing company, or of any covered employee when the covered employee is acting under the express direction and control of the employee leasing company, and an employee leasing company shall not be liable for the acts, errors, or omissions of a client company or of any covered employee when the covered employee is acting under the express direction and control of the client company.

c. Except to the extent otherwise expressly provided by an applicable employee leasing agreement or other employment contract, insurance contract or bond, a covered employee shall not be considered, solely as the result of being a covered employee, an employee of the employee leasing company for purposes of general liability insurance, fidelity bonds, surety bonds, employer's liability which is not covered by workers' compensation, or other liability insurance carried by the employee leasing company.

L.2011, c.118, s.6.



**34:8-69. Relationship between leasing company, client company.**

The employee leasing company and the client company shall not be owned or controlled by the same interests or be a part of a "controlled group of corporations" as that term is defined in section 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1563

L.2001,c.260,s.3.

**34:8-70. Registration of leasing company.**

a. An employee leasing company shall register with the commissioner and provide a list of its client companies with covered employees in this State, both upon the initial registration of the employee leasing company, and thereafter, annually by January 31st, listing all client companies as of the immediately preceding December 31st. The list shall include the following information with regard to each client company:

- (1) Client company's name;
- (2) Client company's physical location address;
- (3) Description of client company's economic activity;
- (4) Client company's state tax identification number;
- (5) Percent of client company's workforce being leased;
- (6) Effective date and duration of employee leasing agreement;
- (7) A copy of the standard form of agreement entered into between the employee leasing company and the client company;
  - (a) The standard form of agreement shall be accompanied by a certified list of all client companies with covered employees in this State contracting with the employee leasing company for its services.
  - (b) The employee leasing company shall be required to notify the Department of Labor and Workforce Development on an annual basis of any material changes in the standard form of agreement which relate to the requirements set forth in section 2 of this act, and when any particular client company has agreed to terms which deviate from the standard form of agreement;
- (8) Proof of written disclosure to client companies upon the signing of an employee leasing agreement, as required in section 8 of this act;
- (9) Proof of current workers' compensation coverage, which may be in the form of a letter from the insurance carrier, and which shall include the name of the carrier, date of commencement of coverage under the policy, term of the coverage, and verification of premiums paid; and
- (10) Confirmation that all leased employees are covered by workers' compensation insurance.

b. Employee leasing companies shall also report to the department, on a quarterly basis, wage information regarding each covered employee as required by law, rule or regulation.



c. All records, reports and other information obtained from employee leasing companies under this act, except to the extent necessary for the proper administration by the department of this act and all applicable labor laws, shall be confidential and shall not be published or open to public inspection other than to public employees in the performance of their public duties.

d. The department shall establish a limited registration and renewal process and appropriate forms for an employee leasing company that (1) is not domiciled in this State; (2) is licensed or registered as an employee leasing company or professional employer organization in another state; (3) does not maintain an office in this State or directly solicit client companies located or domiciled in this State; and (4) is not responsible for more than 50 covered employees employed in this State on the date of registration or renewal. If during the term of a limited registration an employee leasing company becomes responsible for more than 50 covered employees, the employee leasing company shall re-register with the department pursuant to subsection a. of this section within 30 days of the end of the quarter in which the employee leasing company became responsible for more than 50 covered employees, but shall not be charged any additional registration fee, if a registration fee is required. An employee leasing company requesting a limited registration pursuant to this subsection shall provide the department with a list of client companies and the number of covered employees at each of those companies and such other information as the department shall prescribe. Any employee leasing company receiving a limited registration from the department shall not be required to comply with the provisions of subsections a. and b. of section 5 of P.L.2001, c.260 (C.34:8-71).

e. Two or more employee leasing companies that are majority owned by the same ultimate parent company, entity or person may register as an employee leasing company group, and may satisfy the registration requirements imposed pursuant to this section and the financial reporting required pursuant to section 5 of P.L.2001, c.260 (C.34:8-71), and any other filing requirements authorized by the department, on a combined or consolidated basis, provided that the employee leasing company group demonstrates positive working capital pursuant to section 5 of P.L.2001, c.260 (C.34:8-71). 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.

f. The department may require that every initial application and subsequent annual reporting submitted pursuant to this section shall be accompanied by a fee of up to \$500. If such a fee is required, every initial application and subsequent annual reporting submitted by an employee leasing company group pursuant to subsection e. of this section shall be accompanied by a fee of the required amount for each employee leasing company included in the employee leasing company group.

L.2001, c.260, s.4; amended 2011, c.118, s.3.

### **34:8-71. Registration, annual reporting.**

a. (1) Every initial registration and subsequent annual reporting shall be accompanied by a financial statement prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant, which statement shall show a positive working capital, computed as current assets minus current liabilities. The financial statement shall be without qualification as to the going concern status of the employee leasing company.

(2) At the time of an application for an initial registration an employee leasing company shall submit to the department an audited financial statement prepared within 13 months of the application. Thereafter, an employee leasing company shall file with the department on an annual basis, within 180 days of the end of the employee leasing company's fiscal year, a current audited financial statement. An employee leasing company may request the department for an extension for this filing, which shall be accompanied by a letter from the employee leasing company's independent certified public accountant stating the reasons for the requested extension and the anticipated date of the completion of the audited financial statement.

b. (1) An employee leasing company that does not have a positive working capital may provide to the department, in lieu thereof, 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 designee. The securities so deposited shall include authorizations to the commissioner, or his designee, to sell those securities in an amount sufficient to pay any taxes, wages, benefits or other entitlement due a covered employee, if the employee leasing company does not make those payments when due. The provisions of this paragraph shall not apply to an employee leasing company group registered pursuant to subsection e. of section 4 of P.L.2001, c.260 (C.34:8-70).

(2) The commissioner, or his designee, may also require that bond or deposit if the commissioner finds that the leasing company 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 compensation contributions when due, or for other good cause.

(3) Any bond or securities deposited under this subsection shall not be included for the purpose of the calculation of positive working capital required by subsection a. of this section.

c. An employee leasing company shall submit to the commissioner, or his designee, within 60 days after the end of each calendar quarter, a certification by an independent certified public accountant that all applicable federal and state payroll taxes for covered employees in this State have been paid on a timely basis for that quarter. If the commissioner or his designee does not receive that certification within the 60-day period, the department shall notify the employee leasing company within five business days of the expiration of the 60-day period. If that certification is not received within 10 business days following the notification by the department, the department shall notify the client companies listed on the employee leasing company's annual report required pursuant to section 4 of this act that the certification was not received.

d. Two or more employee leasing companies that are majority owned by the same ultimate parent company, entity or person may comply with the provisions of this section pursuant to subsection e. of section 4 of P.L.2001, c.260 (C.34:8-70).

e. The department may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) rules and regulations to permit, to the extent authorized pursuant to the "Uniform Electronic Transactions Act," P.L.2001, c.116 (C.12A:12-1 et seq.), employee leasing companies to electronically file applications, documents, reports and other filings required by P.L.2001, c.260 (C.34:8-67 et seq.). The department may also adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules to provide for the acceptance of electronic filings and other assurance by an assurance organization that provides satisfactory assurance of compliance acceptable to the department consistent with or in lieu of the

requirements of section 4 of P.L.2001, c.260 (C.34:8-70) and of this section and other requirements of P.L.2001, c.260 (C.34:8-67 et seq.) or the rules promulgated pursuant to it. The rules may permit an employee leasing company or an employee leasing company group to authorize an assurance organization to act on behalf of an employee leasing company or an employee leasing company group in complying with P.L.2001, c.260 (C.34:8-67 et seq.) and any rules and regulations adopted pursuant thereto, including electronic filings of information and payment of fees that may be required. The rules and regulations adopted pursuant to this subsection may include, but need not be limited to, an identification of those other provisions of P.L.2001, c.260 (C.34:8-67 et seq.) that may be complied with through an independent assurance organization. Use of an approved assurance organization shall be optional and not mandatory for an employee leasing company or an employee leasing company group. Nothing in this subsection shall limit or change the department's authority to register or rescind the registration of an employee leasing company or to investigate or enforce any provision of P.L.2001, c.260 (C.34:8-67 et seq.).

L.2001, c.260, s.5; amended 2011, c.118, s.4.

### **34:8-72. Co-employment of covered employees.**

a. An employee leasing company registered under this act and the respective client companies with which it has entered into employee leasing agreements shall be the co-employers of their covered employees for the payment of wages and other employment benefits due, including the obligation under the workers' compensation law, R.S.34:15-1 et seq., to maintain insurance coverage for covered employees for personal injuries to, or for the death of, those employees by accident arising out of and in the course of employment through policies issued by an insurance carrier licensed in the State of New Jersey. Such policies shall state the name of the employee leasing company as the labor contractor for each client company, by name.

b. For purposes of P.L.2001, c.260 (C.34:8-67 et seq.), the agreement between the employee leasing company and the client company shall be one of co-employment, whereby the employee leasing company, having accepted the responsibilities set forth in section 2 of P.L.2001, c.260 (C.34:8-68), may submit reports to the department and make contributions to the Unemployment Compensation and State Disability Benefits Funds in the manner prescribed in section 7 of P.L.2001, c.260 (C.34:8-73), on behalf of those covered employees covered by the employee leasing agreement. In addition, the provisions of R.S.34:15-8, regarding the exclusivity of the remedy under the workers' compensation law for personal injuries to, or for the death of, employees by accident arising out of and in the course of their employment, shall apply to the employee leasing company and the client company, and their employees.

c. The employee leasing company shall file reports prescribed under the "unemployment compensation law," R.S.43:21-1 et seq. on behalf of its covered employees as set forth in section 3 of P.L.2013, c.225 (C.43:21-7.8).

L.2001, c.260, s.6; amended 2011, c.118, s.5; 2013, c.225, s.1.

### **34:8-73. Actions upon entry, dissolution of leasing agreement.**

a. Upon entering into the employee leasing agreement:

(1) If the employee leasing company acquires the client company's total workforce, the employee leasing company shall report wages and pay contributions pursuant to section 3 of P.L.2013, c.225 (C.43:21-7.8).

(2) If the employee leasing company acquires less than all of the client company's total workforce, the employee leasing company shall report wages and pay contributions pursuant to section 3 of P.L.2013, c.225 (C.43:21-7.8) with respect to that portion of the workforce so acquired.

b. Upon dissolution of the employee leasing agreement:

(1) If, under the dissolved employee leasing agreement, the employee leasing company used the Entity Level Reporting Method under subsection b. of section 3 of P.L.2013, c.225 (C.43:21-7.8) to report and pay all required contributions to the unemployment compensation fund as required under R.S.43:21-7, and the client company had leased all or a portion of its total workforce, the employee leasing company shall, at the time of dissolution, provide the department with the data necessary to calculate the benefit experience of the client company for purposes of determining the client company's separate benefit experience.

(2) If, under the dissolved employee leasing agreement, the employee leasing company elected to use the Client Level Reporting Method under subsection c. of section 3 of P.L.2013, c.225 (C.43:21-7.8), to report and pay all required contributions to the unemployment compensation fund as required under R.S. 43:21-7, and the client company had leased all or a portion of its total workforce, the department shall compute its benefit experience in accordance with subparagraph (f) of paragraph (4) of subsection c. of section 3 of P.L.2013, c.225 (C.43:21-7.8).

(3) (Deleted by amendment, P.L.2013, c.225)

(4) (Deleted by amendment, P.L.2013, c.225)

(5) (Deleted by amendment, P.L.2013, c.225).

L.2001, c.260, s.7; amended 2013, c.225, s.2.

#### **34:8-74. Calculation of unemployment benefit experience.**

The employee leasing company shall provide to each client company, upon signing of an employee leasing agreement, written disclosure as to the method to be utilized for calculation of unemployment benefit experience contribution rates and temporary disability contribution rates upon both the inception and dissolution of the employee leasing relationship.

L.2001,c.260,s.8.

#### **34:8-75. Inapplicability to temporary help service firms, unit operating as cooperative.**

9. a. The provisions of this act shall not apply to temporary help service firms, as defined in section 1 of P.L.1989, c.331 (C.34:8-43), or farm labor crew leaders who are subject to P.L.1971, c.192 (C.34:8A-7 et seq.).

- b. The provisions of this act shall not apply to an employing unit operating as a cooperative subject to the provisions of Subchapter T of the federal Internal Revenue Code of 1986, 26 U.S.C.s.1381 et seq.
- c. Nothing in this act shall exempt either a client company or the covered employees leased to a client company from any applicable State, local, or federal licensing, registration or certification statutes and regulations.
- d. Any covered employee who must be licensed, registered or certified, according to law, shall be treated as a covered employee of the client company for the purposes of the license, registration or certification.
- e. The provisions of the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.) shall remain applicable in all respects to those client companies of the employee leasing company who participate in public construction contracts as set forth in that act.

L.2001,c.260,s.9; amended 2001,c.282,s.1.

### **34:8-76. Noncompliance, rescinding of registration.**

- a. If an employee leasing company fails to comply with any of the requirements set forth in this act, the department may rescind the registration of that employee leasing company, thereby also rescinding the employee leasing company's co-employer status for purposes of the act, but not relieving the employee leasing company or client company from liabilities accrued.
- b. If the department rescinds the registration of an employee leasing company, all client companies of the employee leasing company thereafter shall file reports and make contributions separately, as provided in R.S.43:21-1 et seq. The department shall calculate the respective unemployment benefit experience contribution rates and temporary disability contribution rates of the employee leasing company and client company, thereafter, as set forth in subsection b. of section 7 of this act, and the exclusive remedy provision of R.S.34:15-8 shall, as of the date upon which the department has rescinded the registration of the employee leasing company, no longer apply to the employee leasing company relative to personal injuries to, or the death of, any employee formerly covered by the employee leasing agreement, by accident arising out of and in the course of employment, as otherwise provided in the workers' compensation law.
- c. Notwithstanding any provisions of this act to the contrary, repeated and egregious violations by an employee leasing company of the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), the "unemployment compensation law," R.S.43:21-1 et seq., the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.), the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or other applicable State or federal tax laws, the "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.), the laws concerning the regulation of child labor, Chapter 2 of Title 34 of the Revised Statutes, the "Construction Safety Act," P.L.1962, c.45 (C.34:5-166 et seq.), the "Worker and Community Right to Know Act," P.L.1983, c.315 (C.34:5A-1 et seq.), the "Worker Health and Safety Act," P.L.1965, c.154 (C.34:6A-1 et seq.), the laws concerning the regulation of employment agencies, including P.L.1989, c.331 (C.34:8-43 et seq.), the laws concerning suppliers of labor, including P.L.1971, c.192 (C.34:8A-7 et seq.), the Seasonal Farm Labor Act, P.L.1945, c.71 (C.34:9A-1 et seq.), the "Construction Workers' Fringe Benefit Security Act," P.L.1987, c.150 (C.34:11A-1 et seq.), the "Family Leave Act," P.L.1989, c.261 (C.34:11B-1 et seq.), the laws concerning the regulation of labor unions, including chapter 12 of Title 34 of the Revised Statutes, the laws concerning the regulation of labor disputes in general, including P.L.1960, c.193

(C.34:13C-1 et seq.), the workers' compensation law, chapter 15 of Title 34 of the Revised Statutes, the "Conscientious Employee Protection Act," P.L.1986, c.105 (C.34:19-1 et seq.), "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.), the federal "Occupational Safety and Health Act," 29 U.S.C. s.651 et seq., the "Fair Labor Standards Act of 1938," 29 U.S.C. s.201 et seq., or the "National Labor Relations Act," 29 U.S.C. s.151 et seq., shall result in rescission of registration of an employee leasing company by the commissioner.

d. Whenever the department shall find cause to rescind the registration of an employee leasing company, it shall notify the registrant in writing of the reasons therefor, and provide the registrant with an opportunity for a hearing in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

e. Whenever the department rescinds a registration, it shall simultaneously notify the client companies listed on the annual report required pursuant to section 4 of this act of that action.

L.2001,c.260,s.10.

#### **34:8-77. Compliance with C.17:22A-1 et seq.**

Nothing in this act shall exempt an employee leasing company or any employee thereof from compliance with the provisions of P.L.1987, c.293 (C.17:22A-1 et seq.) if its activities fall within the scope of that act or any regulation promulgated pursuant to that act.

L.2001,c.260,s.11.

#### **34:8-78. Rules, regulations.**

The commissioner shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), promulgate those rules and regulations necessary to effectuate the purposes of this act.

L.2001,c.260,s.12.

#### **34:8-79. Information provided to patients receiving home care services regulated by Division of Consumer Affairs**

a. The Director of the Division of Consumer Affairs in the Department of Law and Public Safety, in consultation with the Commissioner of Health and Senior Services, shall require that, no later than the 180th day after the date of enactment of this act, each health care service firm regulated by the Division of Consumer Affairs shall provide the following information to each patient receiving home-based services from that firm, or to a person designated by the patient:

(1) the name and certification or licensure title, as applicable, of the homemaker-home health aide or other health care professional whose practice is regulated pursuant to Title 45 of the Revised Statutes, to be displayed on an identification tag as required by regulation of the New Jersey Board of Nursing, or as otherwise to be prescribed by regulation of the director for other health care professionals, that the homemaker-home health aide or other health care professional shall wear at all times while examining, observing or caring for the patient; and

(2) a copy of the most current edition of the consumer guide to homemaker-home health aides published by the New Jersey Board of Nursing.

b. The Director of the Division of Consumer Affairs in the Department of Law and Public Safety, in consultation with the Commissioner of Health and Senior Services, shall require that, no later than the 180th day after the date of enactment of this act, each health care service firm, employment agency or registry and temporary help service firm or personnel consultant regulated by the Division of Consumer Affairs shall provide the following information in writing to each consumer receiving home-based services, including, but not limited to, domestic, companion, sitter and live-in services, from a person who is employed by that firm, agency, registry or consultant and is not a certified homemaker-home health aide or other health care professional whose practice is regulated pursuant to Title 45 of the Revised Statutes, or to a person designated by the consumer:

(1) notification that the person is not a certified homemaker-home health aide or other health care professional whose practice is regulated pursuant to Title 45 of the Revised Statutes;

(2) any training received by that person which the firm, agency, registry or consultant deems relevant to the provision of those services that the person is assigned to provide to the consumer;

(3) proof that the person is a United States citizen or legally documented alien; and

(4) evidence of employment history verification or character references for that person.

c. The information provided pursuant to subsections a. and b. of this section shall be provided:

(1) in advance of the provision of services to the patient or consumer, as applicable, whenever possible; and

(2) otherwise upon the initial visit to the patient's or consumer's home of the person assigned to provide services to the patient or consumer.

d. Beginning on the first day of the 13th month after the date of enactment of this act, the identification tag required pursuant to subsection a. of this section shall include a photograph of the homemaker-home health aide or other health care professional.

e. The director, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations to effectuate the purposes of this section.

L.2002,c.81,s.2.