

RULE AND REGULATION 58
EMPLOYEE LEASING FIRMS AND EMPLOYEE LEASING GROUPS

Table of Contents

Section 1.	Authority
Section 2.	Purpose
Section 3.	Effective Date
Section 4.	Definitions
Section 5.	Exemptions
Section 6.	License Required
Section 7.	Application for Initial License
Section 8.	Financial Assurances
Section 9.	Action Against Bond or Securities
Section 10.	Rejection of Application for License
Section 11.	Renewal of License
Section 12.	Fees for License
Section 13.	Suspension or Revocation of License
Section 14.	Deceptive Practices
Section 15.	Responsibilities of Licensees
Section 16.	Penalties
Section 17.	Posting of Licenses
Section 18.	License Not Assignable
Section 19.	Effect of Other Law
Section 20.	Proprietary Information
Section 21.	Interpretation
Section 22.	Severability

SECTION 1. AUTHORITY

This Rule and Regulation is promulgated and adopted by the Insurance Commissioner for the State of Arkansas ("Commissioner") pursuant to the authority vested in the Commissioner by Section 3 of Act 1143 of 1991, codified as Arkansas Code Annotated §§23-92-301, et seq., by Acts 652 and 1155 of 1993, by Section 47 of Act 901 of 1993, amending Arkansas Code Annotated §§23-63-309, and by Arkansas Code Annotated §§23-61-108 and 25-15-201, et seq.

SECTION 2. PURPOSE

The purpose of this Rule and Regulation is to establish procedures for licensing of employee leasing firms and employee leasing firm groups and to establish minimum standards which employee leasing firms and employee leasing firm groups must meet in conducting business in this State.

SECTION 3. EFFECTIVE DATE: DECEMBER 31, 1998

Pursuant to the Commissioner's authority under Ark. Code Ann. §23-61-108, §§25-15-201, et seq., as amended by Act 1106 of 1993, Act 652 of 1993, Act 901 of 1993, and other applicable laws and rules, the effective date of this Rule and Regulation is December 31, 1998, upon filing with the Arkansas Secretary of State and the Arkansas State Library.

SECTION 4. DEFINITIONS

- A. "Commissioner" shall mean the Insurance Commissioner for the State of Arkansas.
- B. "Person" shall mean an individual, an association, a company, a firm, a partnership or a corporation.
- C. "Client" shall mean a person who obtains all or part of its work force or human labor or services from another person through an employee leasing arrangement.
- D. "Employee Leasing Firm" shall mean any person engaged in providing services of employees pursuant to one or more employee leasing arrangements.
- E. "Employee Leasing Firm Group" shall mean at least two (2), but no more than five (5) corporate employee leasing firms each of which are majority owned by the same controlling person, or ultimate parent.
- F. "Controlling Person" shall mean:
- 1) An officer or director of a corporation seeking to offer employee leasing services, a shareholder holding ten (10) percent or more of the voting stock of a corporation seeking to offer employee leasing services, or a partner of a partnership seeking to offer employee leasing services; or
 - 2) An individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of a company seeking to offer employee leasing services through the ownership of voting securities, by contract or otherwise.
- G. "Employee Leasing Arrangement" shall mean an arrangement or agreement, under written contract or otherwise, whereby:
- 1) an employee leasing firm assigns or purports to assign human beings, or the labor or services of human beings, to clients, for whom the human beings either do perform or are expected to perform such labor or services;
 - 2) the arrangement is intended to be, or is, on-going rather than temporary in nature; and
 - 3) common law employment rights and responsibilities relative to the "assigned" human being, including the employer's right of direction and control of the "employee" as to the method and manner of doing the work, are shared by the employee leasing firm and the client.

Although it is not always necessarily true, it is generally true that in an "employee leasing arrangement" the initial source of the workforce that is to be leased or assigned to the "client" is the existing workforce of the client.

The term "employee leasing arrangement" is to be liberally construed so as to include any and all of such arrangements meeting the criteria herein above set forth, by whatever term known, by which the right to utilize the labor or services of human beings in a productive capacity is assigned or transferred from one person or entity to another. The employer's right of direction and control of the "employee" is deemed to be "shared" by the employee leasing firm and the client whenever: (i) the arrangement, agreement or contract between the client and the employee leasing firm expressly so states; or (ii) a substantive analysis of the client's manufacturing, service or business process reveals that, in fact, the client, or someone acting on his behalf and in his interest, exercises some degree of control over the "employees" as to the method and manner of the work performed.

- H. "Temporary Employee" shall mean a person employed either through another person or directly by an employer to support or supplement the existing work force in special situations such as employee

absences, and temporary skill shortages, seasonal workloads, and special assignments and projects with the expectation that the person's position will be terminated upon the completion of the task or function. Again, although it is not always true, it is generally true that the initial source of the workforce leased or assigned to a client to fill a "temporary" position is the temporary leasing agency or company and not the client. A particular relationship between a leasing entity, the worker providing the services, and the client employer will be deemed to be "temporary" when the position or job (not necessarily the worker or series of workers) is genuinely anticipated to exist only so long as the special situation or project continues. The relationship between these entities or persons shall not be considered "temporary" when the position or job is a regular, ongoing part of the employer's regular manufacturing or service process - regardless of how many different workers may be supplied by a third party over time to fill that job or position. Contracting for services to be performed by temporary employees shall not be considered the making of employee leasing arrangements. In administering this Rule and Regulation there shall be a rebuttable presumption that when: (i) the putative temporary employment has continued beyond the "special situation" which served as its genesis or reason for being; or (ii) the majority of the workers or employees providing services to a particular client during the course of any calendar year at any particular work site or job site are, in fact, provided to the employer by a third party or parties and are not considered or treated as regular full time "employees" by the client, such are not "temporary" employment relationships, but, rather, are "employee leasing arrangements."

I. "Independent Contractor" shall mean a person who, exercising an independent employment or engaging in an independent business enterprise, contracts with another person to do a piece of work according to the person's own methods, and without being subject to the other person's control, except as to the result of the work. Contracting for services to be performed by independent contractors shall not be considered the making of employee leasing arrangements.

SECTION 5. EXEMPTIONS

This Rule and Regulation shall not apply to a labor organization or to any political subdivision of this State or the United States or to any programs or agencies thereof. Further, this Rule and Regulation shall not apply to "temporary" employment relationships as herein defined, nor to contracts between employers and "independent contractors" as herein above defined.

SECTION 6. LICENSE REQUIRED

Any person who shall engage in the business of or act as an employee leasing firm or employee leasing firm group without first procuring a license, or who otherwise violates the provisions of Section 3 of Act 1143 of 1991 or of this Rule and Regulation may be penalized as provided in Section 16 of this Rule and Regulation.

SECTION 7. APPLICATION FOR INITIAL LICENSE

Every applicant for an initial employee leasing firm or employee leasing firm group license shall file with the Commissioner a completed application on a form prescribed and furnished by the Commissioner

A. **RESIDENT EMPLOYEE LEASING FIRMS.** Applicants for license as a resident employee leasing firm shall meet the following minimum standards:

- 1) If an individual, the applicant shall be a resident of this State and shall have reached the age of majority.
- 2) If a partnership, the applicant shall state the names and home addresses of all partners and indicate whether each partner is a general or a limited partner. The applicant shall include a copy of the Partnership Agreement, or an affidavit signed by all partners to the effect that no written partnership

agreement exists. If a limited partnership, the partnership must also produce and file a certified copy of its "Certificate of Limited Partnership" obtained through the procedure at Ark. Code §4-43-201, et seq.

3) If a corporation, the applicant shall state the names and home addresses of all officers, directors, and of the legal or equitable owners of ten percent (10%) or more of any class of the stock of the corporation. The applicant shall include a certified copy of its Articles of Incorporation filed with the Secretary of State of Arkansas and proof that its most recent annual corporate franchise tax has been paid to the Secretary of State of Arkansas.

4) The applicant shall state the address of its principal place of business in this State and the address(es) of any other office(s) within this State through which the applicant intends to conduct business as an employee leasing firm.

5) The applicant shall include a current list of Arkansas clients with whom the applicant has, if any, employee leasing arrangements.

6) The applicant shall provide such other information which the Commissioner deems necessary to show that the applicant or the controlling persons thereof is/are of good moral character, business integrity and financial responsibility.

B. NON-RESIDENT EMPLOYEE LEASING FIRMS. The Commissioner may license as a non-resident employee leasing firm an individual, partnership or corporation which is domiciled in another state but which, nonetheless, maintains or plans to maintain a "substantial presence" within this State. All of such non-resident applicants must otherwise be qualified under Section 3 of Act 1143 of 1991 and this Rule and Regulation. An employee leasing firm shall be deemed to have a "substantial presence" within this State so as to require licensure if: (i) it maintains any office or business location within this State; (ii) it undertakes any marketing efforts in this State, or (iii) it has one hundred (100) or more "employees" who are domiciled within this State.

Each non-resident employee leasing firm applying for licensure shall file an appointment, on a form provided, of the Commissioner and his successors in office as its attorney to receive service of legal process issued against it in this State.

If any non-resident employee leasing firm has a substantial presence within this State but has not complied with the requirements of Section 3 of Act 1143 of 1991 and this Rule and Regulation, the penalty provisions of Section 16 hereof shall apply and may be enforced by the Commissioner.

C. "RESTRICTED" LICENSURE AND LICENSES BY RECIPROCITY.

1) **Restricted License.** Any non-resident employee leasing firm or employee leasing firm group which has any presence within this State not rising to the level of "substantial presence" as herein above set forth shall, nonetheless, apply for a "Restricted License"; provided, however, that if such non-resident employee leasing firm or employee leasing group is licensed as a resident or domestic leasing firm or group under the laws of another state, if such laws of such other state are, in the reasonable opinion of the Commissioner, deemed substantially similar to the laws of this State with respect to costs and, also, the determination of "substantial presence," such applicant shall be subject to each of the requirements of Section 3 of Act 1143 of 1991 and this Rule and Regulation except for the financial assurances required by: (i) Section 8 of this Rule and Regulation, and (ii) Ark. Code Ann. §23-92-307 as enacted by Section 3 of Act 1143 of 1991.

2) **Reciprocal Licenses.** Any employee leasing firm licensed as a resident employee leasing firm or employee leasing firm group under the laws of another State shall, if such laws be deemed by the Commissioner to be substantially similar to those of this State and if under the laws of the State of the firm's state of resident licensure a similar privilege is granted to such firms whose resident licensure is within this State, be entitled to the issuance of a "Non-Resident Reciprocal License" upon completing application and appointment of the Commissioner as agent for service of process issued within this State.

Such firms shall be subject to all of the provisions of Section 3 of Act 1143 of 1991 and this Rule and Regulation.

D. **EMPLOYEE LEASING FIRM GROUPS.** The Commissioner may, in his reasonable discretion, issue a single resident or non-resident license to any employee leasing firm group comprised of at least two but not more than five employee leasing firms that are corporations if each of same is owned and controlled by the same ultimate controlling person. An employee leasing group may, on behalf of each of its members, satisfy the reporting and financial assurance requirements of Section 3 of Act 1143 of 1991 on a consolidated basis. The ultimate controlling person shall complete the application and shall include a copy of the Articles of Incorporation for each employee leasing firm within the group. Further, the information required in Subdivision (A)(2) and (A)(3) of this Section shall be included as to the controlling person if such is a partnership or corporation. The applicant shall also include a guarantee, on a form approved by the Commissioner, executed by each employee leasing firm within the group guaranteeing payment of all financial obligations with respect to wages, employment taxes and employee benefits of each other member within the group.

Each employee leasing firm group shall be subject to a single license fee as required by Arkansas Code Annotated §23-93-309 and by Section 12 hereof. Multiple or "duplicate" copies of the license may be made available to the individual corporate employee leasing firms for a reasonable administrative charge to be set by the Commissioner.

D. **Notice of Licensure.** Upon the issuance or renewal of any employee leasing firm or employee leasing group license, the Commissioner shall immediately notify:

- 1) The licensee;
- 2) The Employment Security Department of the State of Arkansas;
- 3) The Arkansas Workers Compensation Commission;
- 4) The Plan Administrator or Plan Administrators of the Workers Compensation Insurance Plan; and
- 5) The Secretary of State for the State of Arkansas.

SECTION 8. FINANCIAL ASSURANCES

A. In addition to the requirements of Section 7 of this Rule and Regulation, every applicant for licensure as a resident or non-resident employee leasing firm or employee leasing firm group (other than for "restricted" licensure as set out above) shall, as a condition of eligibility for such license, provide financial assurances under one or more of the methods set out herein.

1) The applicant may post a surety bond issued by an unaffiliated corporate surety authorized to do business in this State in an amount not less than One Hundred Thousand Dollars (\$100,000), the terms and conditions of which shall be approved by the Commissioner. The bond shall:

a) be conditioned that the licensee, and any person as an agent of the licensee, will not violate the provisions of Section 3 of Act 1143 of 1991, of this Rule and Regulation, of any orders lawfully issued by the Commissioner or fail to pay any wages due under any contract made by the licensee in the conduct of its business under its license; and

b) secure the performance of the licensee's responsibility to its leased employees for payment of wages.

2) In lieu of posting a surety bond, the applicant may deposit cash or an irrevocable letter of credit (in a form approved by the Commissioner) from a National Banking Association not affiliated with applicant and approved by the Commissioner in the sum of One Hundred Thousand Dollars (\$100,000); further, the applicant may make deposit of securities with a market value as determined by the Commissioner of not less than One Hundred Thousand Dollars (\$100,000) and make additional deposits of securities as may be required to maintain such market value. The applicant shall assign said securities

to the Commissioner on a form approved by the Commissioner and execute such other documents in connection with the deposit as the Commissioner shall prescribe.

3) In lieu of posting a surety bond or depositing cash, cash equivalent or securities, the applicant may file with the Commissioner an audited financial statement prepared in accordance with generally accepted accounting principles by an independent certified public accountant.

a) The audited financial statement shall be prepared as of a date within six (6) months prior to the date of application.

b) The audited financial statement shall show a true minimum net worth for the applicant, subject to concurrence by the Commissioner, of not less than One Hundred Thousand Dollars (\$100,000).

c) During the term of its license, the licensee shall continue to file with the Commissioner an interim financial statement on a calendar semi-annual basis, prepared by a certified public accountant in accordance with generally accepted accounting principles as of a date within three (3) months prior to the end of the filing period. These interim financial statements (which need not be audited) shall show a true minimum net worth as set out above and shall be received by the Commissioner within fifteen (15) days of the end of the semi-annual period.

B. In addition to the requirements of Section 7 of this Rule and Regulation, every applicant for a Reciprocal License shall as a condition of eligibility file or deposit with the Commissioner such "substantially similar" financial assurances as required by the applicant's state of domicile. If such financial assurances include the filing of a financial statement and if the applicant has chosen to comply in that fashion, such statement shall be an audited financial statement prepared in accordance with generally accepted accounting principles by an independent certified public accountant.

1) The financial statement shall be prepared as of a date within six (6) months prior to the date of the application.

2) The financial statement shall show a true minimum net worth for the applicant of not less than the sum required by the laws of the applicant's state of domicile.

3) During the term of its license, the licensee shall continue to file with the Commissioner audited financial statements on an annual basis and with its annual application for renewal, prepared as of a date within six (6) months prior to the end of the filing period.

C. Any licensee providing any type of financial assurance as set forth in Subsections (A) or (B) above who fails to maintain the financial assurance in the prescribed amount and with the degree of fiscal integrity and reliability reasonably satisfactory to the Commissioner shall not be renewed, or in the alternative, if the deficiencies become known to the Commissioner during the term of the license, the licensee shall, within thirty (30) days of receipt of notice, provide financial assurances as set out in Subsection (A) of this Section, or be subject to the penalties set out in Sections 9(C) and 16 of this Rule and Regulation.

SECTION 9 ACTION AGAINST BOND OR SECURITIES

A. If any person shall be aggrieved by the misconduct of any licensee, that person may maintain an action in his own name upon the bond of the licensee (if there be one) in any court of competent jurisdiction or in the Circuit Court of Pulaski County, Arkansas. Such an action shall not be exclusive of any other remedy available to the aggrieved person. Alternatively, the Commissioner may maintain such an action in the name of the State for the benefit of the aggrieved person.

1) The aggrieved person may assign the claim, and the assignee shall be entitled to any remedies available to the aggrieved person.

2) An assigned claim may be enforced in the name of the assignee.

B. If any person obtains an unsuperseded judgment in its favor against a licensee maintaining a deposit of securities, cash, or cash equivalent, and the licensee does not promptly pay the judgment, the Commissioner shall upon receipt of a certified copy of the final judgment:

- 1) Notify the licensee by certified mail to pay the judgment within thirty (30) days of receipt of the notice; and
- 2) pay from the cash deposit or draw upon a letter of credit or sell at public or private sale an amount of securities sufficient to pay the judgment, if the judgment is not paid by the licensee within the thirty (30) day period.

C. A licensee shall have thirty (30) days after receiving notice of cancellation of its bond or notice that the cash, letter of credit or securities have been drawn upon, to replace or supplement its bond, cash, letter of credit or sold securities. Failure of the licensee to so replace shall result in summary suspension of its license, which suspension shall continue until replacement of the bond or sold securities. A licensee so suspended shall not carry on the business of an employee leasing firm while suspended.

D. When any licensee, regardless of the form of Financial Assurance provided, does not promptly pay an unsuperseded judgment against it, the Commissioner shall provide to the licensee, a notice in writing requiring that the licensee, within thirty (30) days of receipt of notice, shall either pay the judgment in full or post supersedeas satisfactory to the Court issuing the judgment. Failure of the licensee to pay or post shall result in summary suspension of its license, which suspension shall continue until the judgment is reversed, superseded or paid. A licensee so suspended shall not carry on the business of an employee leasing firm while suspended.

SECTION 10. REJECTION OF APPLICATION FOR LICENSE

A. The Commissioner, or his authorized representative, shall reject an application for license:

- 1) where the application is not fully completed, properly executed or is otherwise deficient on its face;
- 2) where documents required to supplement the application are not included in the application packet;
- 3) where any fee required by Section 12 is not submitted or is incorrectly submitted with the application packet;
- 4) where the applicant has had an employee leasing firm or employee leasing firm group license revoked in this or any other state, unless such revocation has subsequently been rescinded or otherwise suspended and the problems remedied to the reasonable satisfaction of the Commissioner;
- 5) where the applicant, or any person named in the application, has made a material misrepresentation in the application; or
- 6) upon finding that any person named in the application, any controlling person, or any person in a management or policy-making position with any applicant, is not of good moral character, business integrity or financial responsibility, or that there is good and sufficient reason within the meaning and purpose of this Rule and Regulation or of Section 3 of Act 1143 of 1991 to reject the application.

B. The Commissioner or his authorized representative shall furnish the applicant with a written statement of the reason(s) for rejecting or revoking the application. The applicant may request a hearing before the Commissioner within thirty (30) days of receipt of the written statement. The hearing and further appeal shall proceed as provided in Arkansas Code Annotated §§23-61-301, et. seq.

SECTION 11. RENEWAL OF LICENSE

- A. Any license issued hereunder shall remain in force, unless revoked, for one (1) year from the date of issue of license.
- B. At least thirty (30) days prior to the expiration of its license, the licensee shall submit an application for renewal of license on a form and with such supplemental material as may be prescribed by the Commissioner. Late renewal applications may possibly not be processed prior to the expiration of the licensee's current license, thereby resulting in a time period of unlicensed activity. Those engaged in such unlicensed activity shall be subject to the penalties set out in Section 16 of this Rule and Regulation.
- C. An application for renewal of license shall be rejected by the Commissioner, or his authorized representative, upon any ground set out in Subsection (A) of Section 10. The rejected applicant shall have the procedures of Subsection (B) of Section 10 available to review the rejection.

SECTION 12. FEES AND LICENSES

- A. The nonrefundable fees for initial and renewal licenses of resident, nonresident, and reciprocal employee leasing firms or employee leasing firm groups shall be Five Hundred Dollars (\$500).
- B. The nonrefundable fee for initial and renewal licenses of restricted non-resident employee leasing firms or employee leasing groups shall be Fifty Dollars (\$50).
- C. Duplicate copies of employee leasing firm or group licenses shall be Ten Dollars (\$10).

SECTION 13. SUSPENSION OR REVOCATION OF LICENSE

- A. In addition to imposition of the penalties set out in Section 16 of this Rule and Regulation, the Commissioner may suspend for up to twelve (12) months, or may revoke or refuse to renew any license issued hereunder, if, after notice to the licensee of the charges against it and after hearing the Commissioner finds any one or more of the following causes exist:
- 1) Any cause for which issuance of the license could have been refused had it then existed and been known to the Commissioner;
 - 2) Violation of or noncompliance with any applicable provision of Section 3 of Act 1143 of 1991, such provisions of titles 11 and 23 of the Arkansas Code which may be applicable, or of this Rule and Regulation or of any order of the Commissioner;
 - 3) Violation of or noncompliance with requirements set forth by Arkansas Employment Security Division, Arkansas Workers' Compensation Commission or Arkansas Secretary of State's Office and upon request by any such entity for an administrative hearing by the Arkansas Insurance Department for determination of cause for revocation;
 - 4) Obtaining or attempting to obtain any license through misrepresentation or fraud;
 - 5) Conviction of the licensee, a controlling person, or any person with material management and policy-making authority with the licensee, of a felony;
 - 6) If in the conduct of business under the license, the licensee violates the provisions of Section 14 or Section 15 of this Rule and Regulation; or
 - 7) Failure to provide a complete and truthful written response to a written inquiry from the Commissioner or his authorized representative within thirty (30) days after receipt of the inquiry.
- B. The license of a partnership or corporate employee leasing firm or employee leasing firm group may be suspended, revoked, or not renewed for any of the causes set out in Subsection (A) of this Section

if such cause relates to any individual designated in the license or who otherwise exercises management or policy-making authority for the partnership or corporation.

- C. Upon suspension or revocation of license, the Commissioner shall immediately notify:
- 1) The licensee, by mail addressed to the licensee at its address last of record with the Commissioner, who may appeal the decision of the Commissioner, which appeal shall proceed as provided in Arkansas Code Annotated §23-61-307;
 - 2) Each client of the licensee, either by mail or by publication of notice in a newspaper with state-wide circulation;
 - 3) The Employment Security Department of the State of Arkansas;
 - 4) The Office of the Attorney General of the State of Arkansas;
 - 5) The Arkansas Workers' Compensation Commission; and
 - 6) The Secretary of State for the State of Arkansas.

D. The Commissioner shall not again issue any license provided for in this Rule and Regulation to any employee leasing firm or employee leasing firm group whose license has been revoked for a minimum period of one year. The Commissioner may upon conducting a reinstatement hearing at the request of the former licensee, reinstate the license only if the cause of the revocation has been corrected to the reasonable satisfaction of the Commissioner.

SECTION 14. DECEPTIVE PRACTICES; PROHIBITED ACTS

The following act and omissions are deemed to constitute deceptive practices and are prohibited acts of employee leasing firms and employee leasing groups:

A. Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison which misrepresents the benefits, advantages, conditions, or terms of any employee leasing arrangement; or the licensing status of the firm or group under this Rule and Regulation;

B. Making, publishing, disseminating, circulating, or placing before the public or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication or in the form of a notice, circular, pamphlet, letter, or poster or over any radio or television station or in any other way an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of employee leasing or with respect to any person in the conduct of its employee leasing business which is untrue, deceptive, or misleading;

C. Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or of any pamphlet, circular, article, or literature which is false or maliciously critical of or derogatory to the financial condition of any person and which is calculated to injure that person;

D. Entering into any agreement to commit or, by an concerted action, committing any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of employee leasing;

E. Filing with any supervisory or other public official or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public or causing, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public any false statement of financial condition of a person with intent to deceive;

F. Knowingly making any false entry of a material fact in any book, report, or statement of any person or knowingly omitting to make a true entry of any material fact pertaining to the business of the person in any book, report, or statement of that person;

G. Engaging in any act or omission which discriminates against any person on the basis of race, color, sex, age, religion, or national origin;

H. Permitting to be used or using, permitting to be filed or filing any name, trade name, fictitious name, or business identity which is the same as, similar to, or may be confused with the name, trade name, fictitious name, or business identity of an existing licensee, any governmental agency, or any nonprofit organization;

I. Using or permitting to be used in the marketing soliciting, selling, negotiating, or contracting of employee leasing arrangements the fact that any person has made financial assurances hereunder;

J. Engaging in any practice designed to conceal or obstruct or which has the effect of concealing or obstructing the determination by the Commissioner, by the Workers Compensation Commission, by any workers compensation insurer or by any workers compensation plan administrator of: (i) the identity and business location(s) of the client; (ii) the appropriate risk classification of the client company's business and the workplace exposure of the "shared" employees; (iii) that client's actual experience modifier; or (iv) the client's actual payroll for the leased or shared employees.

K. Entering into or maintaining any employee leasing arrangement by which fewer than all of the employees performing labor or services for the client are, in fact, leased to the client, as required by the mandate of Ark. Code §11-9-408(c), as amended by Act 796 of 1993, that there be no split coverages. This provision is not intended to prohibit issuance to clients of employee leasing firms or employee leasing firm groups of separate "if any" policies of workers compensation insurance designed to cover the client for the risks posed by possibly uninsured subcontractors.

L. Any other practice not specifically defined herein which the Commissioner, after notice and hearing, determines to be a deceptive practice.

SECTION 15. RESPONSIBILITIES OF LICENSEES

A. A licensed employee leasing firm or employee leasing firm group shall be deemed an employer of its leased employees and shall at a minimum perform the following employer responsibilities:

- 1) Pay wages and collect, report and pay employment taxes from its own accounts;
- 2) Pay unemployment taxes as required by Arkansas and Federal law;
- 3) Ensure that all of its leased employees are covered by workers' compensation insurance through a policy or plan maintained by the employee leasing firm, employee leasing firm group or the client; that each client be properly and completely identified to the insurer and noted on the policy of insurance, or be tendered its own policy of insurance, and that all rules and filings of the insurer or of the Workers Compensation Insurance Plan be followed so as to insure that the premium collected and remitted is commensurate with the workplace risk faced by the leased employees;

- 4) If approved as a self-insurer by the Workers Compensation Commission under the terms of Ark. Code Ann. §11-9-404, report all compensable injuries to the Arkansas Workers Compensation Insurance Plan Administrator in such a manner as to identify the "client" company for whom the injured employee was performing the labor or services; if written by either a voluntary writer of workers compensation insurance or another workers compensation carrier under the Workers Compensation Insurance Plan, all compensable injuries shall be reported to the insurer and to the Arkansas Workers

Compensation Insurance Plan Administrator in the same manner; such reporting shall be done on a regular, periodic basis as shall be required by the procedures of the said Plan Administrator;

5) Be entitled with the client as joint employer to exclusivity of remedy under workers' compensation and employers' liability provisions of a policy or plan that either has secured; and

6) Sponsor and maintain employee benefit and welfare plans for its leased employees.

B. A licensed employee leasing firm or employee leasing group shall also perform the following general responsibilities as a licensee:

1) Inform every employee in writing of the nature of the "shared" employment relationship with the licensee;

2) For licensees with a substantial presence (not applicable to licensees with a "restricted" license), submit to the Commissioner, within sixty (60) days of the end of each calendar quarter, a certification by an independent certified public accountant that for such quarter all applicable payroll taxes have been paid on a timely basis;

3) Submit to the Commissioner, within sixty (60) days of the end of each calendar quarter, a completed form "PC EL-QUARTERLY RPT" (applicable to all licensees);

4) Submit to the Commissioner, with the annual license renewal applicable, a complete list of the names and addresses of the licensee's clients;

5) Maintain and make available for the Commissioner's or his authorized representative's inspection any and all records concerning the licensee's conduct of business under its license, which records shall be maintained for a period of three (3) years after termination of the employment relationship or employee leasing arrangement;

6) Notify the Commissioner in writing of a change, addition or termination of a place of business or business address within ten (10) days of such;

7) Notify the Commissioner in writing within twenty (20) days of any changes among partners, directors, officers, members, controlling persons, or any other individuals designated in the license, or a change or movement of ten percent (10%) or more in ownership; and

8) Within ten (10) days of the end of each month provide a list of all additions or terminations of clients during the previous calendar month, provide in writing to its workers' compensation insurance carrier, the Commissioner, the Arkansas Workers' Compensation Commission, and the Arkansas Employment Security Division, the name and address of such clients.

SECTION 16. PENALTIES

A. Any person violating any provisions of this Rule and Regulation or any provisions of Section 3 of Act 1143 of 1991 shall, after notice and hearing, be liable for a civil penalty of not less than Two Hundred Fifty Dollars (\$250) nor more than Five Thousand Dollars (\$5,000) for each violation, with each day of non-compliance constituting a separate violation.

B. The Commissioner shall have the power to bring an action in the Chancery Court of Pulaski County to enjoin or restrain any person from engaging in the business of or action as an employee leasing firm or employee leasing firm group who has not procured a license or who is otherwise in violation of Section 3 of Act 1143 of 1991 or this Rule and Regulation.

SECTION 17. POSTING OF LICENSES

Each license issued under this Rule and Regulation must be posted in a conspicuous place in the principal place of business of the licensee in this State. Each licensee shall display, in a place that is in clear and unobstructed public view, a notice stating that the business operated at the location is licensed and regulated by the Commissioner and that any questions or complaints should be directed to the Commissioner.

SECTION 18. LICENSE NOT ASSIGNABLE

A licensee may not conduct business under any name other than that specified in the license. A license issued under this Rule and Regulation is not assignable. A licensee may not conduct business under any fictitious or assumed name without prior written authorization from the Commissioner. A licensee may not conduct business under more than one name unless it has obtained a separate license for each name.

SECTION 19. EFFECT OF OTHER LAW

Act 1143 of 1991 and this Rule and Regulation do not exempt a client of a licensee, or any assigned employee, from any other license or regulatory requirements imposed under local, state, or federal law. An employee who is licensed, registered, or certified under law and who is assigned to a client company is considered to be an employee of the client company for the purpose of that license, registration, or certification, but otherwise remains the shared employee of the licensee and client as provided by Act 1143 of 1991 and this Rule and Regulation.

SECTION 20. PROPRIETARY INFORMATION

Under the terms of Section 3 of Act 1143 of 1991 employee leasing firms and employee leasing firm groups are required to file with the Commissioner certain documents, including but not necessarily limited to client lists, the disclosure of which would give advantage to competitors. The Commissioner shall not consider such "proprietary" material to be subject to mandatory disclosure under the Freedom of Information Act [Ark. Code Ann. §§25-19-101 et seq., particularly Ark. Code Ann. §25-19-105(b)(9)(A)], but if the Commissioner be challenged as to the confidentiality or disclosure of any such records and if litigation or any other proceedings be instituted to compel disclosure, the total expense of such proceedings shall be borne by the employee leasing firm or employee leasing firm group whose "proprietary" material is being sought. The Commissioner shall give notice in writing to any employee leasing firm or employee leasing firm group whose client lists or other material which the Commissioner deems to be "proprietary" are being sought under the terms of Ark. Code Ann. §25-19-101 et seq.

SECTION 21. INTERPRETATION

This Rule and Regulation is *en pari materia* with and shall be construed in accordance with Acts 652, 901 and 1155 of 1993, Acts 561 and 1143 of 1991, Rule and Regulation 54, and Rule and Regulation 57.

SECTION 22. SEVERABILITY

If any provision of this Rule and Regulation, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of this Rule and Regulation which can be given effect without the invalid provision or application, and to that end the provisions of this Rule and Regulation are severable.

(signed by Commissioner Pickens)

Mike Pickens
Insurance Commissioner

November 10, 1998

Date