

BULLETIN 10-99

July 27, 1999

TO: ALL LICENSED EMPLOYEE LEASING FIRMS "PEO", ALL PEO TRADE ORGANIZATIONS, ALL OTHER INTERESTED PARTIES

FROM: ARKANSAS INSURANCE DEPARTMENT

SUBJECT: CHANGES TO REPORTING AND LICENSING REQUIREMENTS FOR EMPLOYEE LEASING FIRMS "PEO" UNDER ACT 881 OF 1999; DISCLOSURE REQUIREMENTS FOR "PEO" UNDER ACT 1501 OF 1999;

Arkansas Act 881 of 1999 made some important changes in the reporting and licensing requirements for PEOs. The following is a synopsis of those changes:

1. The requirement that the PEO submit to the commissioner within 60 days at the end of the calendar quarter, a certification by an independent certified public accountant to the effect that all applicable payroll taxes for that quarter have been paid on a timely basis has been deleted. In the last change to Rule and Regulation 58, **all** PEOs are now required to submit Form PC EL-QUARTERLY REPORT.
2. Annual renewal of licenses has been changed to July 1 annually for all PEOs. Since this Act does not go into effect until August 1, 1999, renewals for 1998 will be handled as they have been in the past. All renewals due in 2000, will be due on July 1, 2000.
3. There were some editorial changes to the statute that were not substantive changes.

Arkansas Act 1501 of 1999 prohibits the sale of insurance by an employee leasing firm or group except through a licensed resident or non-resident agent. In the past there have been some problems with PEOs soliciting business primarily on the representation that "We can get you workers' comp cheaper" or some similar proposal. This falls under the definition of "transacting insurance" and it may only be done by a licensed agent.

This act, for purposes of Arkansas Code Ann. §23-92-316 et al states:

"(b) For purposes of this subchapter, transacting insurance **shall** include any of the following actions by an employee leasing firm or its representatives:

1. Soliciting prospective clients based solely or primarily on representation of insurance cost advantages;
2. Advising a prospective client regarding insurance coverage;
3. Selling a policy of insurance to a client or employee.

- (c) For purposes of this subchapter, transacting insurance **shall not include** any of the following actions by an employee leasing firm or its representatives:
1. Soliciting prospective clients to enter into an employee leasing arrangement;
 2. Collecting information from a prospective client related to payroll, employee benefits, employment policies, workplace safety, and other employer responsibilities and operational experience;
 3. Evaluating collected information to ascertain the employee leasing firm's risk and cost associated with serving a prospective client's workforce;
 4. Informing a prospective client of the terms and conditions under which the employee leasing firm will enter into an employee leasing arrangement; or
 5. Performing employer responsibilities as required by Arkansas Code Ann. §23-92-315."

This act requires that all proposals to enter into an employee leasing arrangement with a prospective client contain the following notice printed in not less than 12-point bold type on the first page of the proposal:

“This proposal is intended to provide information about the general terms and conditions under which the above named firm will enter into an agreement to provide human resource outsourcing services. Information contained in this proposal does not constitute advice on legal, tax or insurance matters. For advice on such matters, you should consult with the appropriate licensed professional.”

In addition this act states that no employee leasing firm may evade or attempt to evade the provisions of this subchapter by purporting to be the sole employer of the employees it leases. **Nor may any employee leasing firm enter into an employee leasing arrangement without a written provision signed by the client that the client is responsible for ensuring with the assistance of a licensed insurance agent that any subcontractor of the client has workers' compensation coverage as required by law.**

Act 1152 of 1999 is an act to repeal the bingo tax and to tax admissions to bingo games and for other purposes. Employee leasing is mentioned with regard to certain provisions of this act, which do not apply to temporary or leased employees.

Copies of these acts are available on the Internet at <http://www.arkleg.state.ar.us/>. Select “**1999 Regular Session Acts** “. Enter the Act Number in the section “View Act”. Questions concerning this bulletin should be directed to Carol Stiffler, Senior Analyst, Property & Casualty Division, 501-371-2810 or by email carol.stiffler@mail.state.ar.us.