

1 HOUSE BILL 153

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

3 INTRODUCED BY

4 Kelly K. Fajardo

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9  
10 AN ACT

11 RELATING TO REGULATORY FUNCTIONS; TRANSFERRING THE EMPLOYEE  
12 LEASING REGISTRATION DUTIES OF THE REGULATION AND LICENSING  
13 DEPARTMENT TO THE WORKFORCE SOLUTIONS DEPARTMENT; MAKING AN  
14 APPROPRIATION.

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 60-13A-1 NMSA 1978 (being Laws 1993,  
18 Chapter 162, Section 1) is amended to read:

19 "60-13A-1. SHORT TITLE.--~~[This act]~~ Chapter 60, Article  
20 13A NMSA 1978 may be cited as the "Employee Leasing Act"."

21 SECTION 2. Section 60-13A-2 NMSA 1978 (being Laws 1993,  
22 Chapter 162, Section 2, as amended) is amended to read:

23 "60-13A-2. DEFINITIONS.--As used in the Employee Leasing  
24 Act:

25 A. "applicant" means a person applying for

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1 registration as an employee leasing contractor;

2 B. "client" means a person who obtains workers  
3 through an employee leasing arrangement;

4 C. "department" means the [~~regulation and~~  
5 ~~licensing~~] workforce solutions department;

6 D. "employee leasing arrangement" means any  
7 arrangement in which a client contracts with an employee  
8 leasing contractor for the contractor to provide leased workers  
9 to the client; provided that "employee leasing arrangements"  
10 does not include temporary workers;

11 E. "employee leasing contractor" means any person  
12 who provides leased workers to a client in New Mexico through  
13 an employee leasing arrangement;

14 F. "leased worker" means a worker provided to a  
15 client through an employee leasing arrangement; provided that  
16 if a worker works and should be classified in any construction  
17 class or in any oil and gas well service or drilling class  
18 pursuant to provisions of or regulations adopted under the New  
19 Mexico Insurance Code, the worker shall be presumed to be a  
20 leased worker and the employee leasing contractor that provides  
21 the worker shall comply with the provisions of the Employee  
22 Leasing Act;

23 G. "person" means an individual or any other legal  
24 entity;

25 H. "temporary services employer" means an employing

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1 unit that contracts with clients or customers to provide  
2 workers to perform services for the client or customer and  
3 performs all of the following functions:

4 (1) negotiates with clients or customers for  
5 such matters as time, place, type of work, working conditions,  
6 quality and price of the services;

7 (2) determines assignments of workers, even  
8 though workers retain the right to refuse specific assignments;

9 (3) retains the authority to reassign or  
10 refuse to reassign a worker to other clients or customers when  
11 a worker is determined unacceptable by a specific client or  
12 customer;

13 (4) assigns the worker to perform services for  
14 a client or customer;

15 (5) sets the rate of pay for the worker,  
16 whether or not through negotiation; and

17 (6) pays the worker directly; and

18 I. "temporary worker" means a worker employed or  
19 provided by a temporary services employer to support or  
20 supplement another's [~~work force~~] workforce in special work  
21 situations, such as employee absences, temporary skill  
22 shortages, temporary provision of specialized professional  
23 skills, seasonal workloads and special temporary assignments,  
24 including the production of motion pictures, television  
25 programs and other commercial media projects; provided that if

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1 a worker who is employed or provided by a temporary services  
2 employer works and should be classified in any construction  
3 class or in any oil and gas well service or drilling class  
4 pursuant to provisions of or regulations adopted under the New  
5 Mexico Insurance Code, the worker shall be presumed to be a  
6 temporary worker and the temporary services employer that  
7 provides the worker shall comply with the provisions of the  
8 Employee Leasing Act."

9 SECTION 3. Section 60-13A-3 NMSA 1978 (being Laws 1993,  
10 Chapter 162, Section 3) is amended to read:

11 "60-13A-3. REGISTRATION AS AN EMPLOYEE LEASING CONTRACTOR  
12 REQUIRED AS CONDITION TO DO BUSINESS IN THE STATE.--

13 A. No person shall do business in the state as an  
14 employee leasing contractor unless the person is registered  
15 with the department.

16 B. Registration shall be renewed annually. The  
17 renewal date shall be the first day of the month one year after  
18 the month in which the initial registration occurred.

19 C. Applications for initial registration and  
20 renewals of registration shall be made on forms supplied by the  
21 department and shall contain the information required by  
22 Section [~~6 of the Employee Leasing Act~~] 60-13A-6 NMSA 1978.

23 The department may by regulation require additional information  
24 for initial registration and renewal of registration.

25 D. Upon initial registration, an employee leasing

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1 contractor shall pay a fee to the department of one thousand  
2 dollars (\$1,000). On the annual renewal date, the employee  
3 leasing contractor shall pay an annual renewal fee of one  
4 thousand dollars (\$1,000).

5 E. Neither the initial registration fee nor the  
6 renewal fee is refundable.

7 F. If a registered employee leasing contractor does  
8 not submit a completed renewal application within thirty days  
9 after the annual renewal date, the department shall mail a  
10 notice to the contractor by certified mail, return receipt  
11 requested, which notice shall inform the contractor that unless  
12 the renewal fee is paid within thirty days of the receipt of  
13 the notice by the contractor, together with a delinquency  
14 charge of five hundred dollars (\$500), the contractor's  
15 registration shall be canceled. The department shall cancel  
16 the registration of any contractor who does not comply with the  
17 requirements for payment of a renewal fee and a delinquency  
18 charge.

19 G. The department may retain no more than fifteen  
20 percent of fees collected pursuant to the Employee Leasing Act  
21 for the purpose of administering the provisions of that act."

22 SECTION 4. TEMPORARY PROVISION.--

23 A. On July 1, 2018, all functions, appropriations,  
24 money, files, records and other property of the regulation and  
25 licensing department relating to the implementation of the

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1 Employee Leasing Act are transferred to the workforce solutions  
2 department.

3 B. On July 1, 2018, contractual obligations of the  
4 regulation and licensing department pertaining to the  
5 implementation of the Employee Leasing Act shall be binding on  
6 the workforce solutions department.

7 C. On July 1, 2018, all references in the law to  
8 the regulation and licensing department pertaining to the  
9 implementation of the Employee Leasing Act shall be deemed to  
10 be references to the workforce solutions department.

11 SECTION 5. EFFECTIVE DATE.--The effective date of the  
12 provisions of this act is July 1, 2018.