

ARKANSAS REGISTER

Transmittal Sheet



W. J. "Bill" McCuen
Secretary of State
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Name of Agency ARKANSAS INSURANCE DEPARTMENT

Department REGUL DIVISION

Contact Person DONALD K. SWITZER

Statutory Authority for Promulgating Rules ARK. CODE ANN. §§ 23-92-301, et seq.; Acts

Intended Effective Date 652 and 901 of 1993; 547 of Act 901, '93 amending 523-63-309; 523-61-108; 6 and §§ 25-15+201, et seq. Date _____

- Emergency Legal Notice Published
- 20 Days After Filing Final Date for Public Comment
- Other Filed With Legislative Council
- Reviewed by Legislative Council

* EMERGENCY Adopted by State Agency
* COMPLIANCE DATE

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with Act 434 of 1967 As Amended

* See Reg Section 3

Donald K. Switzer
Signature

Assistant Commissioner
Title
by Jean Langford, Chief Counsel
Date 8-23-93

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SECRETARY OF STATE
LITTLE ROCK, ARKANSAS
BY W. J. "BILL" MCCUEN

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EMERGENCY
RULE AND REGULATION 58
EMPLOYEE LEASING FIRMS AND EMPLOYEE LEASING GROUPS

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27 SECTION 1. AUTHORITY

28 This Rule and Regulation is promulgated and adopted by the Insurance
29 Commissioner for the State of Arkansas ("Commissioner") pursuant to the
30 authority vested in the Commissioner by Section 3 of Act 1143 of 1991,
31 codified as Arkansas Code Annotated §§ 23-92-301, et seq., by Acts 652 and
32 1155 of 1993, by Section 47 of Act 901 of 1993, amending Arkansas Code
33 Annotated §§ 23-63-309, and by Arkansas Code Annotated §§ 23-61-108 and
34 25-15-201, et seq.

35 SECTION 2. PURPOSE

36 The purpose of this Rule and Regulation is to establish minimum standards
37 for licensing of employee leasing firms and employee leasing firms and
38 and to establish minimum standards which employee leasing firms and
39 employee leasing firm groups must meet in conducting business in the
40 State.

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 ARKANSAS

1 SECTION 3. EFFECTIVE DATE: EMERGENCY

2 Pursuant to the Commissioner's authority under the emergency
3 provisions of Ark. Code Ann. §25-15-204 (b), it is hereby declared that
4 the immediate adoption of this Rule is necessary to implement and clarify
5 the provisions of Act 1143 of 1991, Act 652 of 1993, and Act 1155 of 1993.
6 Emergency adoption of this Rule is necessary to prevent any lapse or
7 further lapse in Department operations and regulatory enforcement, or
8 further delay in licensure of employee leasing firms under these laws; and
9 thus to avoid any imminent peril to the health, safety and welfare of the
10 residents of this State.

11 Therefore, the compliance date of this emergency Rule and Regulation
12 is September 1, 1993. It shall be effective as actual notice upon
13 delivery to affected employee leasing firms or firm groups on and after
14 August 20, 1993; and effective as constructive notice as to employee
15 leasing firms or firm groups and all others upon filing with the Arkansas
16 Secretary of State and the Arkansas State Library on or before August 23,
17 1993.

18 All employee leasing firms and employee leasing firm groups currently
19 doing business in this State shall obtain a license and otherwise comply
20 with the provisions of this Rule and Regulation within sixty (60) days of
21 the September 1, 1993 compliance date. All other persons proposing to
22 conduct an employee leasing firm business must be licensed pursuant to
23 Section 3 of Act 1143 of 1991 and this Regulation prior to the conduct of
24 such business with this State while this emergency Rule is in effect.

25 This emergency Rule and Regulation shall expire one hundred and
26 twenty (120) days from its effective date unless the Commissioner
27 effectuates a permanent rule and regulation after notice and a public
28 hearing, prior to such date of expiring or adoption of another emergency
29 rule.

30 SECTION 4. DEFINITIONS

31 A. "Commissioner" shall mean the Insurance Commissioner for the
32 State of Arkansas.

33 B. "Person" shall mean an individual, an association, a company, a
34 firm, a partnership or a corporation.

35 C. "Client" shall mean a person who obtains all or part of its work
36 force or human labor or services from another person through an employee
37 leasing arrangement.

38 D. "Employee Leasing Firm" shall mean any person engaged in
39 providing services of employees pursuant to one or more employee leasing
40 arrangements.

41 E. "Employee Leasing Firm Group" shall mean at least two (2), but
42 no more than five (5) corporate employee leasing firms each of which are
43 majority owned by the same controlling person, or ultimate parent.

44 F. "Controlling Person" shall mean:

45 1) An officer or director of a corporation seeking to offer
46 employee leasing services, a shareholder holding ten (10)
47 percent or more of the voting stock of a corporation
48 seeking to offer employee leasing services, or a partner of
49 a partnership seeking to offer employee leasing services;
50 or

1 2) An individual who possesses, directly or indirectly, the
2 power to direct or cause the direction of the management or
3 policies of a company seeking to offer employee leasing
4 services through the ownership of voting securities, by
5 contract or otherwise.

6 G. "Employee Leasing Arrangement" shall mean an arrangement or
7 agreement, under written contract or otherwise, whereby:

- 8 1) an employee leasing firm assigns or purports to assign
9 human beings, or the labor or services of human beings, to
10 clients, for whom the human beings either do perform or are
11 expected to perform such labor or services;
12 2) the arrangement is entered to be, or is, on-going rather
13 than temporary in nature; and
14 3) common law employment rights and responsibilities relative
15 to the "assigned" human being, including the employer's
16 right of direction and control of the "employee" as to the
17 method and manner of doing the work, are shared by the
18 employee leasing firm and the client.

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

32 H. "Temporary Employee" shall mean a person employed either through
33 another person or directly by an employer to support or supplement the
34 existing work force in special situations such as employee absences, and
35 temporary skill shortages, seasonal workloads, and special assignments and
36 projects with the expectation that the person's position will be
37 terminated upon the completion of the task or function. Contracting for
38 services to be performed by temporary employees shall not be considered
39 the making of employee leasing arrangements. In administering this Rule
40 and Regulation there shall be a rebuttable presumption that when: (i) the
41 putative temporary employment has continued beyond the "special situation"
42 which served as its genesis or reason for being; or (ii) the employment of
43 the "temporary employee" with the employer or client has continued or is
44 anticipated to continue for a period in excess of twelve (12) months, such
45 are not "temporary" employment relationships.

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

1 SECTION 5. EXEMPTIONS

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

8 SECTION 6. LICENSE REQUIRED

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

14 SECTION 7. APPLICATION FOR INITIAL LICENSE

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

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

- 20 1) If an individual, the applicant shall be a resident of this
21 State and shall have reached the age of majority.
- 22 2) If a partnership, the applicant shall state the names and
23 home addresses of all partners and indicate whether each
24 partner is a general or a limited partner. The applicant
25 shall include a copy of the Partnership Agreement, or an
26 affidavit signed by all partners to the effect that no
27 written partnership agreement exists. If a limited
28 partnership, the partnership must also produce and file a
29 certified copy of its "Certificate of Limited Partnership"
30 obtained through the procedure at Ark. Code §4-43-201, et
31 seq.
- 32 3) If a corporation, the applicant shall state the names and
33 home addresses of all officers, directors, and of the legal
34 or equitable owners of ten percent (10%) or more of any
35 class of the stock of the corporation. The applicant shall
36 include a certified copy of its Articles of Incorporation
37 filed with the Secretary of State and proof that its most
38 recent annual corporate franchise tax has been paid to the
39 Secretary of State.
- 40 4) The applicant shall state the address of its principal
41 place of business in this State and the address(es) of any
42 other office(s) within this State through which the
43 applicant intends to conduct business as an employee
44 leasing firm.
- 45 5) The applicant shall include a current list of clients with
46 whom the applicant has, if any, employee leasing
47 arrangements.

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

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

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

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

24 C. "RESTRICTED" LICENSURE AND LICENSES BY RECIPROCITY.

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

39 2) Reciprocal Licenses. Any employee leasing firm licensed as
40 a resident employee leasing firm or employee leasing firm group under the
41 laws of another State shall, if such laws be deemed by the Commissioner to
42 be substantially similar to those of this State and if under the laws of
43 the State of the firm's state of resident licensure a similar privilege is
44 granted to such firms whose resident licensure is within this State, be
45 entitled to the issuance of a "Non-Resident Reciprocal License" upon
46 completing application and appointment of the Commissioner as agent for
47 service of process issued within this State. Such firms shall be subject
48 to all of the provisions of Section 3 of Act 1143 of 1991 and this Rule
49 and Regulation.

50 D. EMPLOYEE LEASING FIRM GROUPS. The Commissioner may, in his
51 reasonable discretion, issue a single resident or non-resident license to
52 any employee leasing firm group comprised of at least two but not more
53 than five employee leasing firms that are corporations if each of same is

1 owned and controlled by the same ultimate controlling person. An employee
2 leasing group may, on behalf of each of its members, satisfy the reporting
3 and financial assurance requirements of Section 3 of Act 1143 of 1991 on a
4 consolidated basis. The ultimate controlling person shall complete the
5 application and shall include a copy of the Articles of Incorporation for
6 each employee leasing firm within the group. Further, the information
7 required in Subdivision (A)(2) and (A)(3) of this Section shall be
8 included as to the controlling person if such is a partnership or
9 corporation. The applicant shall also include a guarantee, on a form
10 approved by the Commissioner, executed by each employee leasing firm
11 within the group guaranteeing payment of all financial obligations with
12 respect to wages, employment taxes and employee benefits of each other
13 member within the group.

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

19 E. Notice of Licensure. Upon the issuance or renewal of any
20 employee leasing firm or employee leasing group license, the Commissioner
21 shall immediately notify:

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

29 SECTION 8. FINANCIAL ASSURANCES

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

36 1) The applicant may post a surety bond issued by an unaffiliated
37 corporate surety authorized to do business in this State in an amount not
38 less than Fifty Thousand Dollars (\$50,000), the terms and conditions of
39 which shall be approved by the Commissioner. The bond shall:

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

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

49 2) In lieu of posting a surety bond, the applicant may deposit cash
50 or an irrevocable letter of credit (in a form approved by the
51 Commissioner) from a National Banking Association not affiliated with

1 applicant and approved by the Commissioner in the sum of Fifty Thousand
2 Dollars (\$50,000); further, the applicant may make deposit of securities
3 with a market value as determined by the Commissioner of not less than
4 Fifty thousand Dollars (\$50,000) and make additional deposits of
5 securities as may be required to maintain such market value. The
6 applicant shall assign said securities to the Commissioner on a form
7 approved by the Commissioner and execute such other documents in
8 connection with the deposit as the Commissioner shall prescribe.

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

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

16 b) The audited financial statement shall show a true minimum
17 net worth for the applicant, subject to concurrence by the
18 Commissioner, of not less than One Hundred Thousand Dollars
19 (\$100,000).

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

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

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

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

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

49 C. Any licensee providing any type of financial assurance as set
50 forth in Subsections (A) or (B) above who fails to maintain the financial
51 assurance in the prescribed amount and with the degree of fiscal integrity
52 and reliability reasonably satisfactory to the Commissioner shall not be
53 renewed, or in the alternative, if the deficiencies become known to the

1 Commissioner during the term of the license, the licensee shall, within
2 thirty (30) days of receipt of notice, provide financial assurances as set
3 out in Subsection (A) of this Section, or be subject to the penalties set
4 out in Sections 9(C) and 16 of this Rule and Regulation.

5 SECTION 9 ACTION AGAINST BOND OR SECURITIES

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

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

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

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

22 1) Notify the licensee by certified mail to pay the judgment
23 within thirty (30) days of receipt of the notice; and

24 2) pay from the cash deposit or draw upon a letter of credit
25 or sell at public or private sale an amount of securities
26 sufficient to pay the judgment, if the judgment is not paid
27 by the licensee within the thirty (30) day period.

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

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

46 SECTION 10. REJECTION OF APPLICATION FOR LICENSE

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

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

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

29 SECTION 11. RENEWAL OF LICENSE

30 A. Any license issued hereunder shall remain in force, unless
31 revoked, for one (1) year from the date of issue of license.

32 B. At least thirty (30) days prior to the expiration of its
33 license, the licensee shall submit an application for renewal of license
34 on a form and with such supplemental material as may be prescribed by the
35 Commissioner. Late renewal applications may possibly not be processed
36 prior to the expiration of the licensee's current license, thereby
37 resulting in a time period of unlicensed activity. Those engaged in such
38 unlicensed activity shall be subject to the penalties set out in Section
39 16 of this Rule and Regulation.

40 C. An application for renewal of license shall be rejected by the
41 Commissioner, or his authorized representative, upon any ground set out in
42 Subsection (A) of Section 10. The rejected applicant shall have the
43 procedures of Subsection (B) of Section 10 available to review the
44 rejection.

45 SECTION 12. FEES AND LICENSES

46 A. The nonrefundable fees for initial and renewal licenses of
47 resident, nonresident, and reciprocal employee leasing firms or employee
48 leasing firm groups shall be Five Hundred Dollars (\$500).

1 B. The nonrefundable fee for initial and renewal licenses of
2 restricted non-resident employee leasing firms or employee leasing groups
3 shall be Fifty Dollars (\$50).

4 C. Duplicate copies of employee leasing firm or group licenses
5 shall be Ten Dollars (\$10).

6 SECTION 13. SUSPENSION OR REVOCATION OF LICENSE

7 A. In addition to imposition of the penalties set out in Section 16
8 of this Rule and Regulation, the Commissioner may suspend for up to twelve
9 (12) months, or may revoke or refuse to renew any license issued
10 hereunder, if, after notice to the licensee of the charges against it and
11 after hearing the Commissioner finds any one or more of the following
12 causes exist:

- 13 1) Any cause for which issuance of the license could have been
14 refused had it then existed and been known to the
15 Commissioner;
- 16 2) Violation of or noncompliance with any applicable provision
17 of Section 3 of Act 1143 of 1991, such provisions of titles
18 11 and 23 of the Arkansas Code which may be applicable, or
19 of this Rule and Regulation or of any order of the
20 Commissioner;
- 21 3) Obtaining or attempting to obtain any license through
22 misrepresentation or fraud;
- 23 4) Conviction of the licensee, a controlling person, or any
24 person with material management and policy-making authority
25 with the licensee, of a felony;
- 26 5) If in the conduct of business under the license, the
27 licensee violates the provisions of Section 14 or Section
28 15 of this Rule and Regulation; or
- 29 6) Failure to provide a complete and truthful written response
30 to a written inquiry from the Commissioner or his
31 authorized representative within thirty (30) days after
32 receipt of the inquiry.

33 B. The license of a partnership or corporate employee leasing firm
34 or employee leasing firm group may be suspended, revoked, or not renewed
35 for any of the causes set out in Subsection (A) of this Section if such
36 cause relates to any individual designated in the license or who otherwise
37 exercises management or policy-making authority for the partnership or
38 corporation.

39 C. Upon suspension or revocation of license, the Commissioner shall
40 immediately notify:

- 41 1) The licensee, by mail addressed to the licensee at its
42 address last of record with the Commissioner, who may
43 appeal the decision of the Commissioner, which appeal shall
44 proceed as provided in Arkansas Code Annotated § 23-61-307;
- 45 2) Each client of the licensee, either by mail or by
46 publication of notice in a newspaper with state-wide
47 circulation;
- 48 3) The Employment Security Department of the State of
49 Arkansas;
- 50 4) The Office of the Attorney General of the State of
51 Arkansas;

- 1 5) The Arkansas Workers' Compensation Commission; and
2 6) The Secretary of State for the State of Arkansas.

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

10 SECTION 14. DECEPTIVE PRACTICES; PROHIBITED ACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

29 SECTION 15. RESPONSIBILITIES OF LICENSEES

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

- 33 1) Pay wages and collect, report and pay employment taxes from
34 its own accounts;
- 35 2) Pay unemployment taxes as required by Arkansas and Federal
36 law;
- 37 3) Ensure that all of its leased employees are covered by
38 workers' compensation insurance through a policy or plan
39 maintained by the employee leasing firm, employee leasing
40 firm group or the client; that each client be properly and
41 completely identified to the insurer and noted on the
42 policy of insurance, or be tendered its own policy of
43 insurance, and that all rules and filings of the insurer or
44 of the Workers Compensation Insurance Plan be followed so
45 as to insure that the premium collected and remitted is
46 commensurate with the workplace risk faced by the leased
47 employees;
- 48 4) If approved as a self-insurer by the Workers Compensation
49 Commission under the terms of Ark. Code Ann. § 11-9-404,
50 report all compensable injuries to the Arkansas Workers
51 Compensation Insurance Plan Administrator in such a manner

1 as to identify the "client" company for whom the injured
2 employee was performing the labor or services; if written
3 by either a voluntary writer of workers compensation
4 insurance or another workers compensation carrier under the
5 Workers Compensation Insurance Plan, all compensable
6 injuries shall be reported to the insurer and to the
7 Arkansas Workers Compensation Insurance Plan Administrator
8 in the same manner; such reporting shall be done on a
9 regular, periodic basis as shall be required by the
10 procedures of the said Plan Administrator;

- 11 5) Be entitled with the client as joint employer to
12 exclusivity of remedy under workers' compensation and
13 employers' liability provisions of a policy or plan that
14 either has secured; and
15 6) Sponsor and maintain employee benefit and welfare plans for
16 its leased employees.

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

- 19 1) Inform every employee in writing of the nature of the
20 "shared" employment relationship with the licensee;
21 2) Submit to the Commissioner, within sixty (60) days of the
22 end of each calendar quarter, a certification by an
23 independent certified public accountant that for such
24 quarter all applicable payroll taxes have been paid on a
25 timely basis;
26 3) Submit to the Commissioner, within thirty (30) days of the
27 end of each calendar year, a complete list of the names and
28 addresses of the licensee's clients;
29 4) Maintain and make available for the Commissioner's or his
30 authorized representative's inspection any and all records
31 concerning the licensee's conduct of business under its
32 license, which records shall be maintained for a period of
33 three (3) years after termination of the employment
34 relationship or employee leasing arrangement;
35 5) Notify the Commissioner in writing of a change, addition or
36 termination of a place of business or business address
37 within ten (10) days of such;
38 6) Notify the Commissioner in writing within twenty (20) days
39 of any changes among partners, directors, officers,
40 members, controlling persons, or any other individuals
41 designated in the license, or a change or movement of ten
42 percent (10%) or more in ownership; and
43 7) Within thirty (30) days of the addition or termination of a
44 client, provide in writing to its workers' compensation
45 insurance carrier, the Commissioner, the Arkansas Workers'
46 Compensation Commission, and the Arkansas Employment
47 Security Division, the name and address of such clients.

48 SECTION 16. PENALTIES

49 A. Any person violating any provisions of this Rule and Regulation
50 or any provisions of Section 3 of Act 1143 of 1991 shall, after notice and
51 hearing, be liable for a civil penalty of not less than Two Hundred Fifty

1 Dollars (\$250) nor more than Five Thousand Dollars (\$5,000) for each
2 violation, with each day of non-compliance constituting a separate
3 violation.

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

10 SECTION 17. POSTING OF LICENSES

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

17 SECTION 18. LICENSE NOT ASSIGNABLE

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

24 SECTION 19. EFFECT OF OTHER LAW

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

33 SECTION 20. PROPRIETARY INFORMATION

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

1 The Commissioner shall give notice in writing to any employee leasing firm
2 or employee leasing firm group whose client lists or other material which
3 the Commissioner deems to be "proprietary" are being sought under the
4 terms of Ark. Code Ann. § 25-19-101 et seq.

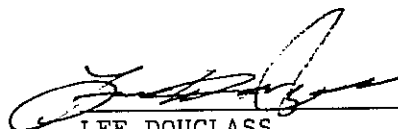
5 SECTION 21. INTERPRETATION

6 This Rule and Regulation is en pari materia with and shall be
7 construed in accordance with Acts 652, 901 and 1155 of 1993, Acts 561 and
8 1143 of 1991, Rule and Regulation 54, and Rule and Regulation 57.

9 SECTION 22. SEVERABILITY

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

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18



LEE DOUGLASS
INSURANCE COMMISSIONER

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8-23-93

DATE