

By Senator Brandes

24-01527-21

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1                   A bill to be entitled  
2           An act relating to workers' compensation insurance for  
3           employee leasing companies; amending s. 440.10, F.S.;  
4           specifying when a person is deemed an employee of an  
5           employee leasing company for workers' compensation  
6           insurance purposes under circumstances relating to the  
7           company's employee leasing arrangement with a  
8           subcontractor; amending s. 468.525, F.S.; providing  
9           that if an employee leasing company's client company  
10          is a subcontractor, workers' compensation insurance  
11          requirements are not satisfied by the employee leasing  
12          arrangement unless certain conditions are met;  
13          amending s. 468.529, F.S.; providing construction;  
14          requiring certain client companies to maintain  
15          separate workers' compensation insurance coverage  
16          unless certain conditions are met; specifying when a  
17          person is deemed an employee of an employee leasing  
18          company for workers' compensation insurance proposes  
19          under certain circumstances; reenacting s.  
20          468.532(1)(g), F.S., relating to discipline, to  
21          incorporate the amendment made to s. 468.529, F.S., in  
22          a reference thereto; providing an effective date.

23  
24 Be It Enacted by the Legislature of the State of Florida:

25  
26           Section 1. Paragraph (d) of subsection (1) of section  
27           440.10, Florida Statutes, is amended to read:

28           440.10 Liability for compensation.—

29           (1)

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30 (d)1. If a contractor becomes liable for the payment of  
31 compensation to the employees of a subcontractor who has failed  
32 to secure such payment in violation of s. 440.38, the contractor  
33 or other third-party payor shall be entitled to recover from the  
34 subcontractor all benefits paid or payable plus interest unless  
35 the contractor and subcontractor have agreed in writing that the  
36 contractor will provide coverage.

37 2. If a contractor or third-party payor becomes liable for  
38 the payment of compensation to the corporate officer of a  
39 subcontractor who is engaged in the construction industry and  
40 has elected to be exempt from ~~the provisions of~~ this chapter,  
41 but whose election is invalid, the contractor or third-party  
42 payor may recover from the claimant or corporation all benefits  
43 paid or payable plus interest, unless the contractor and the  
44 subcontractor have agreed in writing that the contractor will  
45 provide coverage.

46 3. If a subcontractor and an employee leasing company are  
47 operating pursuant to an arrangement for employee leasing as  
48 defined in s. 468.520(4) and workers' compensation insurance is  
49 provided by the employee leasing company to the leased  
50 employees, a person is deemed an employee of the employee  
51 leasing company for purposes of workers' compensation insurance,  
52 unless the subcontractor has secured additional workers'  
53 compensation coverage applicable to the employee, upon the  
54 earliest of the following:

55 a. The hiring of the person by the subcontractor.

56 b. The commencement of work by the person for the  
57 subcontractor.

58 c. The hiring of the person directly by the employee

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59 leasing company.

60 Section 2. Subsection (5) is added to section 468.525,  
61 Florida Statutes, to read:

62 468.525 License requirements.—

63 (5) If the client company is a subcontractor, the  
64 requirements of s. 440.10(1)(a) are not satisfied by the  
65 employee leasing arrangement unless the subcontractor has  
66 secured additional workers' compensation insurance for nonleased  
67 employees or unless the contractual arrangement provides that a  
68 person is deemed an employee of the employee leasing company for  
69 purposes of workers' compensation coverage, upon the earliest of  
70 the following:

71 (a) The hiring of the person by the client company.

72 (b) The commencement of work by the person for the client  
73 company.

74 (c) The hiring of the person directly by the employee  
75 leasing company.

76 Section 3. Present subsections (4) and (5) of section  
77 468.529, Florida Statutes, are redesignated as subsections (5)  
78 and (6), respectively, a new subsection (4) is added to that  
79 section, and subsection (1) of that section is amended, to read:

80 468.529 Licensee's insurance; employment tax; benefit  
81 plans.—

82 (1) A licensed employee leasing company is the employer of  
83 the leased employees, except that this provision is not intended  
84 to affect the determination of any issue arising under Pub. L.  
85 No. 93-406, the Employee Retirement Income Security Act, as  
86 amended from time to time. An employee leasing company shall be  
87 responsible for timely payment of reemployment assistance taxes

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88 pursuant to chapter 443, and shall be responsible for providing  
89 workers' compensation coverage pursuant to chapter 440.

90 (a) However, a ~~ne~~ licensed employee leasing company may not  
91 shall sponsor a plan of self-insurance for health benefits,  
92 except as may be permitted by ~~the provisions of~~ the Florida  
93 Insurance Code or, if applicable, by Pub. L. No. 93-406, the  
94 Employee Retirement Income Security Act, as amended from time to  
95 time. For purposes of this section, the term a "plan of self-  
96 insurance" excludes ~~shall exclude~~ any arrangement where an  
97 admitted insurance carrier has issued a policy of insurance  
98 primarily responsible for the obligations of the health plan.

99 (b) This section does not modify the statutory obligation  
100 of a client company to secure workers' compensation coverage as  
101 required under s. 440.10 for direct employees whom the client  
102 company does not lease pursuant to an employee leasing  
103 arrangement. A client company that is engaged in the  
104 construction industry and that is in an employee leasing  
105 arrangement shall maintain separate workers' compensation  
106 insurance coverage as required under this section and s. 440.10  
107 unless the employee leasing company and its carrier agree to  
108 provide such coverage directly to the client company, covering  
109 all persons performing work for the client at all times, in full  
110 compliance with s. 440.10.

111 (4) During the term of an employee leasing arrangement with  
112 a subcontractor, if a subcontractor does not obtain workers'  
113 compensation insurance for nonleased employees, a person is  
114 deemed an employee of the employee leasing company for purposes  
115 of workers' compensation insurance, upon the earliest of the  
116 following:

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- 117       (a) The hiring of such person by the client company.  
118       (b) The commencement of work by such person for the client  
119 company.  
120       (c) The hiring of the person directly by the employee  
121 leasing company.

122       Section 4. For the purpose of incorporating the amendment  
123 made by this act to section 468.529, Florida Statutes, in a  
124 reference thereto, paragraph (g) of subsection (1) of section  
125 468.532, Florida Statutes, is reenacted to read:

126       468.532 Discipline.—

127       (1) The following constitute grounds for which disciplinary  
128 action against a licensee may be taken by the board:

129       (g) Failing to maintain workers' compensation insurance as  
130 required in s. 468.529.

131       Section 5. This act shall take effect July 1, 2021.