

Fifty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2298

Introduced by

Senators J. Lee, Fischer, Grindberg

Representatives Koppelman, Wieland

1 A BILL for an Act to to amend and reenact section 65-01-08 of the North Dakota Century Code,
2 relating to workers' compensation coverage of staffing services.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 65-01-08 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **65-01-08. Contributing employer ~~or~~ and staffing service relieved from liability for**
7 **injury to employee.**

- 8 1. If a local or out-of-state employer secured the payment of compensation to that
9 employer's employees by contributing premiums to the fund, the employee, and
10 the parents in the case of a minor employee, or the representatives or
11 beneficiaries of either, do not have a claim for relief against the contributing
12 employer or against any agent, servant, or other employee of the employer for
13 damages for personal injuries, but shall look solely to the fund for compensation.
- 14 2. If a client company contracts with a staffing service for an employee's services, the
15 client company and the staffing service are immune from any claim for relief by
16 that employee or by another employee of the client company or staffing service, to
17 the same extent granted under this title to contributing employers if the client
18 company or staffing service secured the payment of compensation in accordance
19 with this title. ~~The~~ Although an account must include the name of the staffing
20 service, the employee is considered an employee of the client company and
21 staffing service for purposes of application of immunity for injuries incurred by or
22 caused by that employee.
- 23 3. For purposes of this section:

1 a. "Client company" means a person that contracts to receive services within the
2 course of that person's usual business from ~~an employee of~~ a staffing service
3 or that contracts to lease any or all of that person's employees from a staffing
4 service.

5 b. "Staffing service" means an employer in the business of providing the
6 employer's employees to persons to perform services within the course of that
7 person's usual businesses. The term includes professional employer
8 organizations' staff leasing companies, employee leasing organizations, and
9 temporary staffing companies. The term "staffing service" must be broadly
10 construed to encompass entities that offer services provided by a professional
11 employer organization, staff leasing company, employee leasing organization,
12 or temporary staffing company regardless of the term used.

13 (1) Within the meaning of staffing service as used in this section,
14 "temporary staffing," or "temporary staffing service" means an
15 arrangement by which an employer hires its own employees and
16 assigns the employees to a client company to support or supplement
17 the client company's workforce in a special work situation including:

18 (a) An employee absence;

19 (b) A temporary skill shortage;

20 (c) A seasonal workload; or

21 (d) A special assignment or project with a targeted end date.

22 (2) The term does not include arrangements in which the majority of the
23 client company's workforce has been assigned by a temporary staffing
24 service for a period of more than twelve consecutive months.

25 4. A staffing service that provides only temporary staffing services is the employee's
26 employer. The temporary staffing service shall maintain a workers' compensation
27 account in the temporary staffing service's name and report the wages for those
28 workers annually to the bureau. All other staffing services shall:

29 a. Report annually the payroll detail for each North Dakota client company.

- b. Maintain complete and separate records of the payroll of the staffing service's client companies. Claims must be separately identified by the staffing service for each client company.
 - c. Share employer responsibilities with the client company, including retention of the authority to hire, terminate, discipline, and reassign employees. If the contractual agreement between a staffing service and a client company is terminated, the employees become the sole employees of the client company.
 - d. Notify the bureau of the client company's name, workers' compensation account number, and the date the staffing service began providing services to the client company. The staffing service shall provide this information upon entering an agreement with a client company, but no later than fifteen days from the effective date of the written agreement.
 - e. Supply the bureau with a copy of the agreement between the staffing service and client company.
 - f. Notify the bureau upon termination of any agreement with a client company, but no later than fifteen days from the effective date of termination.
 - g. Notify the staffing service's client companies of an "uninsured" status for failure to pay workers' compensation premiums within fifteen days of notice by the bureau.
 5. A staffing service that provides both temporary and long-term employees is subject to the reporting requirements associated with the type of employee provided to the client company.
 6.
 - a. The bureau shall maintain all employer data for each client company requiring coverage under this title. If a client company enters an agreement with a staffing service, the bureau shall generate a master billing for the staffing service detailing the staffing service's client companies.
 - b. Rate classifications for employees provided by a staffing service must be those which would apply as if the work were performed by the employees of the client company. A client company is eligible for bureau safety discount and dividend programs. If a client company enters an agreement with a

1 staffing service, the client company shall retain the client company's
2 experience rate, if applicable.

3 c. Both a staffing service and client company under this section are considered
4 employers for purposes of section 65-04-26.1. A staffing service that
5 provides employees to a client company that has been determined to be
6 uninsured or ineligible for coverage under sections 65-04-27.1 and 65-04-33
7 may not secure workers' compensation coverage for those employees.

8 7. a. The bureau shall determine whether an entity is a staffing service. If the
9 bureau determines an entity is a staffing service, the bureau may further
10 determine if the entity is a temporary staffing service. In rendering either
11 determination, the bureau may issue a decision under section 65-04-32. If
12 the bureau determines an entity is not a staffing service, the client company
13 shall maintain a workers' compensation account and pay the premium for
14 coverage of the employees.

15 b. The factors the bureau may consider in determining whether an entity is a
16 staffing service include the number of client companies handled by the
17 staffing service, the length of time the staffing service has been in existence,
18 the extent to which the staffing service extends services to the general public,
19 the degree to which the client company and staffing service are separate and
20 unrelated business entities, the repetition of officers or managers between the
21 client company and staffing service, and the extent to which a client company
22 has an ownership or other interest in the staffing service. The bureau also
23 may consider the scope of the services provided by the staffing service, the
24 relationship between the staffing service and the client company's workers,
25 the written agreement between the staffing service and the client company,
26 and any other factor deemed relevant by the bureau.

27 c. The bureau may require information from any staffing service, including a list
28 of current client company accounts, staffing assignments, payroll information,
29 and rate classification information. A client company shall provide any
30 information requested by the bureau regarding any staffing service.

- 1 8. The bureau may adopt rules consistent with this section which further define client
2 company and staffing service and which provide a procedure by which the bureau
3 may determine whether an entity meets these definitions.