

HOUSE BILL NO. 1362

Introduced by

Representatives Grande, Kasper, Ruby

Senators Klein, J. Lee, Triplett

1 A BILL for an Act to amend and reenact sections 52-04-10 and 52-04-24 of the North Dakota
2 Century Code, relating to unemployment compensation rates for staffing services.

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

4 **SECTION 1. AMENDMENT.** Section 52-04-10 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **52-04-10. Contributions for ensuing year - Notification - Review.** The bureau shall
7 promptly make a determination and notify each employer of the employer's rate of contributions
8 as determined for each ensuing year by the end of the first full week of December, but not later
9 than December tenth, of the preceding year. The rate of contributions must be computed
10 pursuant to the provisions of this chapter. The determination becomes conclusive and binding
11 ~~upon the employer~~ unless, within fifteen calendar days after the mailing of the notice thereof to
12 the employer's last-known address, or in the absence of the mailing, within fifteen calendar
13 days after the delivery of such notice, the employer files a written appeal of the determination.
14 However, no employer shall have standing, in any proceeding involving the employer's rate of
15 contributions or contribution liability, to contest the chargeability to the employer's account of
16 any benefits paid in accordance with a determination, redetermination, or decision pursuant to
17 the provisions of chapter 52-06, except upon the ground that the services on the basis of which
18 such benefits were found to be chargeable did not constitute services performed in employment
19 for the employer and only in the event that the employer was not a party to such determination,
20 redetermination, or decision or to any other administrative proceeding in which the character of
21 these services was determined. For purposes of this section, an employer was not a party to
22 any such proceeding if notice of the determination, redetermination, or decision and the
23 employer's right to appeal the determination, redetermination, or decision was not mailed or

1 personally delivered to the employer. The determination may be redetermined by the bureau if
2 the bureau finds that the employer committed fraud.

3 **SECTION 2. AMENDMENT.** Section 52-04-24 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **52-04-24. Staffing services - Payment of unemployment insurance taxes.**

- 6 1. If a staffing service exclusively provides temporary staffing services, the staffing
7 service is considered to be the employee's employer and the staffing service shall
8 pay unemployment insurance taxes at the staffing service's unemployment
9 insurance tax rate. If a staffing service provides temporary and long-term
10 employee staffing services, the staffing service is subject to the reporting and tax
11 requirements associated with the type of employee provided to the client company.
- 12 2. For the purposes of long-term employee staffing services provided by a staffing
13 service, the staffing service shall:
- 14 a. Report quarterly the wages of all employees furnished to each client company
15 and pay taxes on those wages at the client company's unemployment
16 insurance tax rate, except as otherwise provided under subsection 3.
 - 17 b. Maintain complete and separate records of the wages paid to employees
18 furnished to each of the client companies. Claims for benefits must be
19 separately identified by the staffing service for each client company.
 - 20 c. Notify the agency of each client company's name and unemployment
21 insurance account number and the date the staffing service began providing
22 services to the client company. The staffing service shall provide the agency
23 with the information required under this subdivision upon entering an
24 agreement with a client company, but no later than fifteen days from the
25 effective date of the written agreement.
 - 26 d. Supply the agency with a copy of the agreement between the staffing service
27 and the client company.
 - 28 e. Notify the agency upon termination of any agreement with a client company,
29 but no later than fifteen days from the effective date of the termination.
 - 30 f. Share employer responsibilities with the client company, including retention of
31 the authority to hire, terminate, discipline, and reassign employees. If the

1 contractual agreement between the staffing service and a client company is
2 terminated, the employees become the sole employees of the client company.

3 3. For the purposes of long-term employee staffing services provided by a staffing
4 service, upon authorization of the agency, the staffing service may be considered
5 to be the employee's employer and the staffing service shall pay unemployment
6 insurance taxes at the staffing service's unemployment insurance tax rate. The
7 agency may not make an authorization under this subsection unless one of the
8 following requirements is met:

9 a. In the case of a client company unemployment insurance tax rate that is
10 higher than the staffing services tax rate:

11 (1) The staffing service:

12 (a) Calculates the difference between the staffing service's tax rate
13 and the client company's tax rate;

14 (b) Applies the difference to the wages to be earned by the
15 employees furnished to the client company in the following
16 completed calendar quarter; and

17 (c) Notifies the agency that such application would, if the staffing
18 service's tax rate were applied to those same wages, cause a
19 reduction in the tax due on those wages which does not exceed
20 five hundred dollars.

21 (2) If the reduction under paragraph 1 exceeds five hundred dollars, at the
22 written request of the staffing service, the agency may make a written
23 determination that it is appropriate to allow the staffing service to use
24 the staffing service's unemployment insurance tax rate. The agency
25 shall respond to a request under this paragraph within fifteen days of
26 receiving the request.

27 b. The staffing service includes in its contract with the client company a
28 requirement that if the client company's unemployment insurance tax rate is
29 higher than the staffing service's tax rate, the client will arrange to make
30 payment to the agency, pursuant to subsection 4 of section 52-04-06, in the
31 amount necessary to cause the client company's unemployment insurance

- 1 tax rate should it be recomputed to be determined by the agency to be
2 equivalent to the staffing service's unemployment insurance tax rate. Before
3 the agency makes an authorization under this subdivision, the agency actually
4 must receive payment of the amount required to cause the determination that
5 the client company has complied with this subdivision.
- 6 c. The staffing service demonstrates to the agency that the staffing service has
7 entered an agreement with a client company that has an unemployment
8 insurance tax rate that is, at the time of execution of the contract, equal to or
9 lower than the staffing service's tax rate.
- 10 4. If a staffing service enters a contract with a client company that has an
11 unemployment insurance tax rate that is lower than the staffing service's tax rate,
12 the agency shall determine the following year's tax rate for the staffing service by
13 calculating a blended reserve ratio using the proportion of that client company's
14 total wages paid for up to the previous six years to the total wages paid for up to
15 the previous six years for all of that staffing service's client companies whose
16 furnished workers are considered the staffing service's employees for
17 unemployment insurance tax purposes pursuant to subsection 3 and for all of the
18 employees of the staffing service.
- 19 5. Both a staffing service and client company are considered employers for the
20 purposes of this title. Both parties to a contract between a staffing service and a
21 client company are jointly liable for delinquent unemployment insurance taxes, and
22 the agency may seek to collect such delinquent taxes, and any penalties and
23 interest due, from either party. The agency shall send notices of rate
24 determinations annually to the staffing service and each client company. This
25 chapter does not modify or impair any other provisions of the contract between the
26 staffing service and the client company not relating to the requirements of this
27 subsection concerning liability for payment of taxes on the wages paid to workers
28 furnished by the staffing service to the client company, and the means of
29 determining the tax rate to be applied to those wages. Any report required to be
30 submitted to the federal internal revenue service regarding a staffing service must

- 1 be submitted with the employer identification number of the staffing service, and
2 may not include the employer identification number of the client companies.
- 3 6. The agency shall determine whether a person is a staffing service. If the agency
4 determines a person is a staffing service, the agency may further determine if the
5 person is a temporary staffing service. The agency's determination must be issued
6 in writing, and within fifteen days of the date of issuance of that determination, a
7 person aggrieved by that determination may appeal that determination. The
8 appeal must be heard in the same manner and with the same possible results as
9 all other administrative appeals under this title. In making a determination under
10 this subsection, the agency may consider:
- 11 a. The number of client companies with which the staffing service has contracts;
12 b. The length of time the staffing service has been in existence;
13 c. The extent to which the staffing service extends services to the general public;
14 d. The degree to which the client company and the staffing services are
15 separate and unrelated business entities;
16 e. The repetition of officers and managers between the client company and
17 staffing service;
18 f. The scope of services provided by the staffing service;
19 g. The relationship between the staffing service and the client company's
20 workers;
21 h. The written agreement between the staffing service and the client company;
22 and
23 i. Any other factor determined relevant by the agency.
- 24 7. The agency may require information from any staffing service, including a list of
25 current client company accounts, staffing assignments, and wage information. A
26 client company shall provide any information requested by the agency regarding
27 any staffing service.