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FIRST ENGROSSMENT

Sixty-first
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1362

Introduced by

Representatives Grande, Kasper, Ruby

Senators Klein, J. Lee, Triplett

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 52-04-24 of the North Dakota Century Code is amended and reenacted as follows:

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

1. If a staffing service exclusively provides temporary staffing services, the staffing service is considered to be the employee's employer and the staffing service shall pay unemployment insurance taxes at the staffing service's unemployment insurance tax rate. If a staffing service provides temporary and long-term employee staffing services, the staffing service is subject to the reporting and tax requirements associated with the type of employee provided to the client company.
2. For the purposes of long-term employee staffing services provided by a staffing service, the staffing service shall:
   a. Report quarterly the wages of all employees furnished to each client company and pay taxes on those wages at the client company's unemployment insurance tax rate, except as otherwise provided under subsection 3.
   b. Maintain complete and separate records of the wages paid to employees furnished to each of the client companies. Claims for benefits must be separately identified by the staffing service for each client company.
   c. Notify the agency of each client company's name and unemployment insurance account number and the date the staffing service began providing services to the client company. The staffing service shall provide the agency with the information required under this subdivision upon entering an

agreement with a client company, but no later than fifteen days from the effective date of the written agreement.

d. Supply the agency with a copy of the agreement between the staffing service and the client company.

e. Notify the agency upon termination of any agreement with a client company, but no later than fifteen days from the effective date of the termination.

f. Share employer responsibilities with the client company, including retention of the authority to hire, terminate, discipline, and reassign employees. If the contractual agreement between the staffing service and a client company is terminated, the employees become the sole employees of the client company.

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

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

(1) The staffing service:

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

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

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

(2) If the reduction under paragraph 1 exceeds five hundred dollars, at the written request of the staffing service, the agency may make a written

determination that it is appropriate to allow the staffing service to use the staffing service's unemployment insurance tax rate. <u>The agency shall respond to a request under this paragraph within fifteen days of receiving all required information.</u>

b. The staffing service includes in its contract with the client company a requirement that if the client company's unemployment insurance tax rate is higher than the staffing service's tax rate, the client will arrange to make payment to the agency, pursuant to subsection 4 of section 52-04-06, in the amount necessary to cause the client company's unemployment insurance tax rate should it be recomputed to be determined by the agency to be equivalent to the staffing service's unemployment insurance tax rate. Before the agency makes an authorization under this subdivision, the agency actually must receive payment of the amount required to cause the determination that the client company has complied with this subdivision.

c. The staffing service demonstrates to the agency that the staffing service has entered an agreement with a client company that has an unemployment insurance tax rate that is, at the time of execution of the contract, equal to or lower than the staffing service's tax rate.

4. If a staffing service enters a contract with a client company that has an unemployment insurance tax rate that is lower than the staffing service's tax rate, the agency shall determine the following year's tax rate for the staffing service by calculating a blended reserve ratio using the proportion of that client company's total wages paid for up to the previous six years to the total wages paid for up to the previous six years for all of that staffing service's client companies whose furnished workers are considered the staffing service's employees for unemployment insurance tax purposes pursuant to subsection 3.

5. Both a staffing service and client company are considered employers for the purposes of this title. Both parties to a contract between a staffing service and a client company are jointly liable for delinquent unemployment insurance taxes, and the agency may seek to collect such delinquent taxes, and any penalties and interest due, from either party. <u>The agency shall send notices of rate</u>

determinations annually to the staffing service. This chapter does not modify or impair any other provisions of the contract between the staffing service and the client company not relating to the requirements of this subsection concerning liability for payment of taxes on the wages paid to workers furnished by the staffing service to the client company, and the means of determining the tax rate to be applied to those wages. Any report that relates to the Federal Unemployment Tax Act [68A Stat. 439; 26 U.S.C. 3301 et seq.] which is required to be submitted to the federal internal revenue service regarding a staffing service must be submitted with the employer identification number of the staffing service.

6. The agency shall determine whether a person is a staffing service. If the agency determines a person is a staffing service, the agency may further determine if the person is a temporary staffing service. The agency's determination must be issued in writing, and within fifteen days of the date of issuance of that determination, a person aggrieved by that determination may appeal that determination. The appeal must be heard in the same manner and with the same possible results as all other administrative appeals under this title. In making a determination under this subsection, the agency may consider:

    a. The number of client companies with which the staffing service has contracts;
    b. The length of time the staffing service has been in existence;
    c. The extent to which the staffing service extends services to the general public;
    d. The degree to which the client company and the staffing services are separate and unrelated business entities;
    e. The repetition of officers and managers between the client company and staffing service;
    f. The scope of services provided by the staffing service;
    g. The relationship between the staffing service and the client company's workers;
    h. The written agreement between the staffing service and the client company; and
    i. Any other factor determined relevant by the agency.

7. The agency may require information from any staffing service, including a list of current client company accounts, staffing assignments, and wage information. A client company shall provide any information requested by the agency regarding any staffing service.