

**WORKERS' COMPENSATION  
KRS342.615**

**KRS342.615 Registration of employee leasing companies - Coverage requirements for lessees - Status of temporary help service**

- (1) As used in this section:
  - (a) "Employee leasing company" or "lessor" means an entity that grants a written lease to a lessee pursuant to an employee leasing arrangement;
  - (b) "Lessee" means an employer that obtains all or part of its workforce from another entity through an employee leasing arrangement;
  - (c) "Leased employee" means a person performing services for a lessee under an employee leasing arrangement;
  - (d) "Employee leasing arrangement" means an arrangement under contract or otherwise whereby the lessee leases all or some of its workers from an employee leasing company. Employee leasing arrangements include, but are not limited to, full-service employee leasing arrangements, long-term temporary arrangements, and any other arrangement which involves the allocation of employment responsibilities among two (2) or more entities. For purposes of this section, "employee leasing arrangement" does not include arrangements to provide temporary workers;
  - (e) "Temporary worker" means a worker who is furnished to an entity to substitute for a permanent employee on leave or to meet seasonal or short-term workload conditions for a finite period of time; and
  - (f) "Temporary help service" means a service whereby an organization hires its own employees and assigns those employees to clients for finite periods of time to support or supplement the client's workforce in special work situations, including employee absences, temporary skill shortages, and seasonal workloads.
- (2) A corporation, partnership, sole proprietorship, or other business entity which acts as an employee leasing company shall register with the commissioner in the manner as prescribed by administrative regulations.
- (3) Any lessor of employees whose workers' compensation insurance has been terminated within the past five (5) years in any jurisdiction due to a determination that an employee leasing arrangement was being utilized to avoid premiums, taxes, or assessments otherwise payable by lessees shall be ineligible to register with the commissioner or to remain registered, if previously registered.
- (4) A lessee shall fulfill its statutory responsibility to secure benefits for leased employees under this chapter by purchasing and maintaining a standard workers' compensation policy approved by the commissioner of the Department of Insurance. A lessee may fulfill that responsibility by contracting with an employee leasing company to purchase and maintain the required insurance policy. In either event, it shall be the responsibility of the lessee to maintain in its files at all times the certificate of insurance, or a copy thereof, evidencing the existence of the required insurance. The exposure and experience of the lessee shall be used in determining the premium for the policy and shall include coverage for all leased employees.
- (5) A temporary help service shall be deemed the employer of a temporary worker and shall be subject to the provisions of this chapter.

(Enact. Acts 1996 (1st Ex. Sess.), ch. 1, § 36, effective December 12, 1996; 2010, ch. 24, § 1836, effective July 15, 2010.)

**Legislative Research Commission Note.** (12/12/96). In codifying this statute, the phrase "employer leasing company" defined in subsection (1)(a) of the statute has been changed to read "employee leasing company" as being a manifest clerical or typographical error under KRS 7.136(1)(h). It is clear both from the terms of this definition itself as well as from the fact that "employee leasing company," not "employer leasing company," is used within this range of statutes that the word "employer" should be "employee" in this phrase.

**Kentucky Law Journal.** Baugh, Worker's Compensation: Temporary Employees and the Exclusiveness-of-Remedy Provisions, 86 Ky. L.J. 1 (1997-98).

## **803 KAR 25:230. Employee leasing.**

RELATES TO: KRS 342.615

STATUTORY AUTHORITY: KRS 342.260, 342.615

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 requires the executive director to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 342. KRS 342.615 requires the executive director to promulgate an administrative regulation to establish the manner of registration for an employee leasing company with the executive director. This administrative regulation establishes the manner in which an employee leasing company shall register with the executive director.

### **Section 1. Registration.**

(1) To be eligible to conduct business in Kentucky, a corporation, partnership, sole proprietorship, or other business entity which provides staff, personnel or an employee to be employed in this state to a business pursuant to a lease arrangement or agreement shall register with the executive director in the manner established in this section of the administrative regulation. The registration shall:

(a) Be on form EL-1, Employee Leasing Company Registration Form;

(b) Be filed with the Division of Security and Compliance, Kentucky Office of Workers' Claims; and

(c) Include:

1. The name of the lessor;

2. The address of the principal place of business of the lessor and the address of each office it maintains within this state;

3. The lessor's taxpayer or employer identification number;

4. A list by jurisdiction of each name that the lessor has operated under in the preceding five (5) years including an alternative name, name of a predecessor and, if known, name of successor business entity;

5. A list of each person or entity who owns a five (5) percent or greater interest in the employee leasing business at the time of application and a list of each person or entity who formerly owned a five (5) percent or greater interest in the employee leasing company or a predecessor, successor, or alter ego in the preceding five (5) years;

6.a. If coverage has been cancelled or nonrenewed, a list of each cancellation or nonrenewal of workers' compensation insurance which has been issued to the lessor or a predecessor in the preceding five (5) years. The list shall include the:

i) Policy or certificate number;

ii) Name of insurer or other provider of coverage;

iii) Rate of cancellation; and

iv) Reason for cancellation; or

b. If coverage has not been cancelled or nonrenewed, a sworn affidavit signed by the chief executive officer of the lessor attesting to that fact.

7. The name of the carrier of the current workers' compensation insurance, its policy number, policy period, and the name of the insured as it appears on the policy; and

8. A signed certification that states that the:

a. Person signing is the duly authorized agent for the employee leasing company;

b. Information contained in the registration form is true; and

c. Applicant shall:

(i). Notify the executive director of a change in the information provided in the registration; and

(ii). Provide information regarding workers' compensation coverage of a leased employee within ninety (90) days of approval on Form EL-2.

(2) A person filing a registration statement pursuant to this section shall immediately notify the executive director as to a change in the information provided pursuant to this section.

(3) The executive director shall maintain a list of those lessors who are satisfactorily registered with the executive director.

(4) A lessor which was doing business in this state prior to effective date of this administrative regulation shall register with the executive director within thirty (30) days of the effective date of this administrative regulation

## **Section 2. Lessee Information Form.**

An employee leasing company shall file a Lessee Information Form, Form EL-2, for each Kentucky lessee for whom the company or a related entity provides the workers' compensation insurance coverage. The form shall:

- (1) Be:
  - (a) Filed within ninety (90) days of the initial registration of the employee leasing company;
  - (b) Updated every six (6) months; and
  - (c) Considered filed upon receipt of the form at the Division of Security and Compliance, Kentucky Office of Workers' Claims; and
- (2) Include the:
  - (a) Name of the employee leasing company and the lessee;
  - (b) Address of the principal place of business of the lessor and the address of each office it maintains within this state;
  - (c) Lessor's taxpayer or employer identification number;
  - (d) Effective date of the workers' compensation coverage, the policy number, and the name of the issuer of the policy; and
  - (e) Termination of coverage date.

## **Section 3. Advertising Prohibition.**

An organization registered under KRS 342.615 shall not reference the registration orally or in an advertisement, marketing material, or publication.

## **Section 4. Coverage.**

If the employee leasing company applies for coverage under the provisions of KRS 342.615(4), it shall maintain and furnish to the insurer sufficient information to permit the calculation of an experience modification factor for each lessee. The information shall include:

- (1) The lessee's corporate name;
- (2) The lessee's taxpayer or employer identification number;
- (3) The lessee's risk identification number;
- (4) A listing of the leased employees associated with each lessee, the applicable classification code and payroll;
- (5) Claims information grouped by lessee; and
- (6) Other information necessary to permit the calculation of an experience modification factor for each lessee.

## **Section 5. Experience Modification Factor Following Termination.**

(1) If the employee leasing arrangement with the lessee is terminated and the experience of the lessee is commingled with that of another client on the lessor's master policy, the experience of the lessee shall be developed and reported by the insurer for use in development of an experience modification for the lessee.

(2) The employee leasing company shall notify the insurer thirty (30) days prior to the effective date of termination or immediately upon notification of cancellation by the lessee of an employee leasing arrangement with a lessee in order to allow sufficient time to calculate an experience modification factor for the lessee.

## **Section 6. Incorporation by Reference.**

- (1) The following material is incorporated by reference:
  - (a) EL-1, "Employee Leasing Company Registration Form" (April 1, 1997 edition), Office of Workers' Claims; and
  - (b) EL-2, "Lessee Information Form" (April 1, 1997 edition), Office of Workers' Claims.
- (2) The material may be inspected, copied, or obtained at the Office of Workers' Claims, Monday through Friday, 9 a.m. to 4 p.m., at the following locations:
  - (a) Frankfort - Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601;
  - (b) Paducah - 220 B North 8th Street, Paducah, Kentucky 42001; and
  - (c) Pikeville - 107 Coal Hollow Road, Pikeville, Kentucky 41501. (23 Ky.R. 4026; Am. 24 Ky.R. 363; eff. 7-17-97; TAm eff. 8-9-2007.)