

Draft Statement of Estimated Regulatory Cost
Reports Required of Employee Leasing Companies
Rule 60BB-2.025, F.A.C.
October 9, 2009

1. Introduction

Employee leasing companies assign employees to client companies and allocate the direction and control over the leased employees between the leasing company and the client. Employee leasing companies are responsible for paying wages to the leased employees, collecting and paying payroll taxes, and managing safety, risk, and hazard control.

The Labor Market Statistics Center of the Agency for Workforce Innovation (“the Agency”) produces the official labor statistics for the State of Florida, including information about the labor force, employment, unemployment rates; employment, wages, and job projections by industry and occupation; and Census data. These data are used by workforce, economic development, and education and training professionals for program planning, business recruitment, career development, and economic analysis.

Section 443.1216, Florida Statutes (“F.S.”) specifically authorizes the Agency to adopt rules necessary to administer employee leasing company reporting requirements. The Agency's rules governing required reports are found in Rule 60BB-2.025, Florida Administrative Code (“F.A.C.”).

In 2009, the Legislature amended Section 443.1216, F.S. to require employee leasing companies to submit quarterly reports to the Agency that include each employee leasing company and client company establishment, and to provide information for each establishment including the trade or establishment name and physical location, the industry code, each client company's primary business activity, the number of employees whose pay was subject to unemployment compensation (UC) taxes, the total wages subject to unemployment compensation taxes, and the dates the client contracts were entered into or terminated during the applicable quarter. These changes require the Agency to make conforming changes to Rule 60BB-2.025, F.A.C.

2. Summary of Proposed Rule

The changes in the proposed rule fall into the following categories:

- a. Conforming sections of Rule 60BB-2.025, F.A.C. to statutory amendments made by Legislature in 2009 to Section 443.1216, F.S., entitled “Accurate Employment Statistics Enhancement Act.”
- b. Incorporating the reporting format required by the Bureau of Labor Statistics of the United States Department of Labor for its Multiple Worksite Report for Professional Employer Organizations.

3. Florida Administrative Code and SERCs

Chapter 120.54, F.S., sets out the procedures to be followed by the state regulatory agencies in the preparation, scheduling, development, public notice, and adoption of rules. The regulatory agency is expected (and required, under certain conditions) to produce a Statement of Estimated Regulatory Cost, or SERC. The purpose of a SERC is to collect and present information on the potential costs that may be imposed upon individuals, firms, or activities that are affected by a particular rule. In Section 120.541, F.S., the Legislature has identified and described the types of information a SERC must include. Rulemaking agencies are required by statute to collect information on the number of people and businesses that may be affected by a proposed rule, costs to the regulated people, firms or activities, and costs to state, county, local, or other governments. The statute also directs regulatory agencies to consider any low-cost alternative proposals that may be submitted, and to include an explanation of why the alternative was or was not accepted.

Section 120.541, F.S., provides that anyone potentially affected by the proposed rule or revision may, within 21 days of public announcement and notification of a rule, submit a lower cost regulatory alternative to the proposed rule. The Agency must then either adopt the lower cost proposal, or show why the low cost proposal was not adopted.

In Sections 120.541(2)(a) through (f), F.S., the Legislature has mandated that SERCs shall provide the following information. The requirements as they appear in the statute are cited below, with a discussion of the data and information relied upon for the good faith estimates and analysis of the regulatory costs.

4. A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.

a. General description of the types of individuals likely to be affected by the rule.

The proposed amendment applies to all employee leasing companies that conduct business in Florida.

b. A good faith estimate of the number of individuals and entities likely to be required to comply with the rule.

Agency records indicate that employee leasing companies currently hold 523 active unemployment compensation tax accounts (“UC accounts”). The proposed rule amendment is not expected to change the number of individuals or entities likely to be required to comply with the rule.

5. A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state and local revenues.

a. A good faith estimate of the cost to the Agency of implementing and enforcing the proposed rule.

The agency will upgrade a position to handle the additional workload created by the legislation. That upgrade will be federally funded, so rule changes will have no impact on the state general revenue.

b. A good faith estimate of the cost to any other state and local government entities of implementing and enforcing the proposed rule.

No other state or local government entities implement or enforce the proposed rule. The Agency does not anticipate any direct or indirect additional cost to other state and local government entities as a result of the rule amendment.

c. Any anticipated effect on state and local revenues.

It is not expected that the proposed changes will result in any increase or decrease in the amount of wages subject to unemployment compensation taxes, and thus should have no impact on state or local revenues.

6. A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. As used in this paragraph, “transactional costs” are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, and the cost of monitoring and reporting.

The proposed rule changes increase the frequency of reporting from biannual to quarterly and amend the information that must be reported. Employee leasing companies with 30 or more client companies will be required to file the report electronically with the United States Bureau of Labor Statistics. The cost of submitting electronic reports will vary depending on the existing capabilities of each employee leasing company. The Agency believes that the following factors will impact costs:

- a. Whether an employee leasing company currently has the capability to file electronic reports;
- b. The cost to design, program, and test an electronic data system;
- c. The cost to contract out the services to a private vendor to develop the technical design, and perform the necessary programming and testing; and
- d. For those employee leasing companies that already use an outside vendor for reporting, the cost to develop a system to submit these reports.

Employee leasing companies with less than 30 client companies may file the required report by submitting a completed paper form to the Agency. The U.S. Bureau of Labor Statistics estimates that it takes one hour to complete the form. This should result in minimal cost to those employee leasing companies that file paper reports.

7. An analysis of the impact on small business as defined by s.288.703, and an analysis of the impact on small counties and small cities as defined by s.120.52.

a. An analysis of the impact on small business.

In accordance with Section 120.54(3)(b)2.a, F.S., the Agency is required to consider the impact of its rules on small business [defined in Section 288.703, F.S. as “... an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business

Administration 8(a) certification] and small counties [defined in Section 120.54(3)(b)2a, F.S., as "...any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census."] Whenever practicable, an agency shall tier its rules to reduce disproportionate impacts on small businesses, small cities or small counties to avoid regulating businesses, small counties or small cities that do not contribute significantly to the problem the rule is designed to address.

The Agency does not collect data on the net worth of employee leasing companies licensed or registered to conduct business in Florida. However, the Agency has evaluated the most recent employee leasing company data it has collected, and estimates that approximately 367 of the 523 employee leasing company UC accounts report 200 or fewer workers. Based on this information, the Agency estimates that many of the affected employee leasing companies are small businesses.

The current rule requires employee leasing companies to submit biannual reports containing the name of each client company, the address of each job site where leased employees work, the name and social security number of each leased employee, the total number of clients during the reporting period, and the total number of employees leased during the reporting period.

The Agency estimates that the proposed rule amendment may increase operating costs of small businesses in two ways. Because the reporting frequency has increased from semiannual to quarterly, there will be additional costs associated with reporting. Additionally, if an employee leasing company files the quarterly reports electronically, it may incur a broad range of costs depending on its current IT capabilities.

b. An analysis of the impact on small counties and small cities.

The proposed rule changes are not expected to impact municipalities and counties.

8. Any additional information that the agency determines may be useful.

None.

9. In the statement or revised statement, whichever applies, a description of any good faith written proposal submitted under paragraph (1)(a) and either a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

At the writing of this SERC, no lower cost regulatory alternative has been submitted.