EMLOYEE LEASING**


Although employee leasing, or contract staffing, has existed in the United States since the last century, its modern version, which has quickly developed into a billion-dollar industry, had its inception with the 1982 Tax Equity and Fiscal Responsibility Act (TEFRA). This legislation provided congressional recognition of employee leasing and entrepreneurs in the field have done the rest. In its most common form this practice involves an employer's discharging his work force, having them hired by a leasing firm, and then leasing them back. Often there is little change in the workplace, but pay and benefits, hiring and firing and other aspects of personnel administration are taken care of by the leasing firm (lessor). This article provides a look inside employee leasing by using as examples three employers who sought respectively, a personal tax-sheltered retirement plan, better medical benefits, and benefits for employees of a struggling new company. For each, leasing was the solution. Contract prices of leasing firms are also discussed. One, Contract Staffing of America of Tustin, California, charges between 133 and 142 percent of payroll, including a markup of seven percent. Some of the hazards of leasing are mentioned as well, and a checklist is provided to help employers avoid them.


In employee leasing, the leasing firm assumes virtually all aspects of personnel administration including payroll, bookkeeping, personnel problems, hiring, firing, workers' compensation, and unemployment claims. It does this through a field supervisor, who becomes the liaison between the subscriber and the employees, who are officially employees of the leasing firm (lessor). Because the leasing company has many more employees than any of the companies it services it can afford a better benefits package. After some initial apprehension, employees realize this and are pleased with the arrangement. Other advantages to them are: 1) the chance to change jobs while remaining employed, 2) the possibility of being assured of a job in a new town when a spouse is transferred, and 3) ease in dealing with an employer (subscriber) since that is done through the lessee's field representative. Although employers also gain from a leasing arrangement, entering one may be an emotional hurdle as they may fear loss of control and loyalty of their "former" employees.


This article starts by suggesting that employee leasing has a special appeal for smaller companies. Most that use the practice have fewer than 100 workers. Employee leasing began in California after the passage of TEFRA. But it is spreading, and Ohio is now number two in the number of leasing organizations. Leasing has existed for some time in special fields

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such as trucking, security and nursing. It has been likened to purchasing
the services of the personnel department of a large employer. There can
be legal problems with leasing and it is important that a true employer-
employee situation exists in a leasing firm. That is, leasing firms should
exercise not only the more routine personnel functions but should have a
definite supervisory structure, close relations with employees, training pro-
grams and so on. The crux of possible difficulties is who is controlling or
has the right to control employers. A joint-employer situation may jeop-
dardize advantages a subscriber hopes to obtain.

Fierman, Jaclyn. "Employees learn to love being leased out." Fortune
Some recent statistics on the employee leasing industry are presented in
this article. For example, it now has annual revenues of $1 billion and
comprises about 270 firms employing 75,000 workers. In addition, the
tax break that leasing may provide employers is discussed. If the leasing
firm deposits 7.5% of its employees' wages in pension funds for them, the
client who benefits from their work (subscriber) may be able to design
lucrative personal tax shelters. A third of the firms, however, do not provide
this "safe harbor." Their subscribers are apparently satisfied at simply being
freed from the paperwork involved in personnel administration. Similar
articles are "The Boom in Worker Leasing" by Eric Gelman and Richard
Sandza (Newsweek, May 14, 1984. p. 53) and "Some Firms Find Leasing
Staff, Like Leasing Autos, Pays Dividends" by Debra Ann Hatten (Chris-

"Worker leasing: what is it and how does it work?" Employee Relations
Memo (Federated Employers of the Bay Area, 582 Market St., San
This summary of employee leasing includes IRS Announcement 84-74,
"Guidelines on Employee Leasing Provisions of TEFRA." In addition,
besides a general description of leasing, a discussion of employee and
employer attitudes toward it is presented. Although many employers favor
it, others are concerned about the possible disadvantages. These include
loss of control over employees, excessive costs for hiring in high turnover
establishments, and liability as a joint-employer in employment-related suits
involving discrimination, wages and the like. Although some small em-
ployers took advantage of the provisions of TEFRA to avoid paying into
pension funds for employees, the Deficit Reduction Act of 1984, is no total
solution to the difficulties and responsibilities of employee relations.

Jansonius, John V. "Use and misuse of employee leasing." Labor Law
Journal (Commerce Clearing House, Inc., 4025 W. Peterson Ave.,
Although the author does note the advantages of employee leasing, his main
focus is on the practice within the framework of labor law. Three situations
are considered. First, that in which an employer leases workers to avoid
the necessity of dealing with unions. When such a case is litigated the result
depends on whether the lessor and employer (subscriber) are found to be
joint employers. If so, the employer may be compelled to bargain despite
the leased status of the employees. The second situation is that in which a
unionized company is considering a switch to a leasing arrangement. Here
the author analyzes the company's obligation to bargain and suggests that
the intent of the employer and the provisions of the agreement are key
points. Finally, in the third situation, liability for illegal discrimination,
the author explains that a joint employer finding may make both lessor and
subscriber liable. Numerous case examples as well as other references are
cited.

Redeker, James R. and James O. Castagnera. "The legal nightmares of
employee leasing." Personnel Journal (A. C. Croft, Inc., Box 2440,
This article is an explanation of the legal problems that may be associated with employer leasing. Redeker and Castagnera first list and discuss the advantages and disadvantages of leasing. They point out that the Deficit Reduction Act of 1984 and new IRS rules will void leasing that is used solely to avoid compliance with pension regulations. The greater part of the article deals with labor law pitfalls, and here again the joint-employer situation is treated using several examples. In their conclusion, the authors suggest four precautions in leasing: 1) using an established company, 2) making certain that both companies' management responsibilities are explained in the contract, 3) leasing not only rank and file workers but also managers and having them exercise day-to-day control and, 4) using a company whose policy is to transfer rather than fire employees who are unsatisfactory with a particular subscriber.


This is a brief report on employee leasing within the framework of the Internal Revenue Code, TEFRA and the Deficit Reduction Act of 1984. Internal Revenue Code Section 414 (n), enacted in 1980, was designed to prevent employees from excluding "non key" workers from pension plans. Immediately afterwards, several methods, employee leasing included, were used to circumvent the regulation. Then TEFRA, in 1982, introduced IRC Sec. 414 (n) which stipulated that leased employees who have worked full time for a year and who meet two other criteria would be considered employees of the subscriber for pension purposes. The DRA, finally, altered the definition of leased employee, thereby tightening the rules further.


This short article describes IRS guidelines covering a company's being subject to the leased employee rules of IRC Sec. 414 (n). A leased employee who meets several criteria listed in TEFRA will be considered an employee of the subscriber despite a lease agreement. However, even if the criteria are not met and common-law tests for an employer-employee relationship are, the person will be treated as an employee of the subscriber. The Deficit Reduction Act of 1984 has amended the section to include this provision. A leasing organization (lessor) may exclude its employees from its pension plan but they will be used in determining whether it is discriminatory, meets minimum standards, and satisfies other requirements.


Broader in scope than its title implies, this article discusses not only Internal Revenue Code Section 414 (n) (5), the so-called "safe harbor" provision, but also employee leasing more generally. The former stipulates that Section 414 (n) does not apply to leased employees whose firms make pension contributions for them of at least 7.5% of their income as well as provide immediate vesting. The second part of the article treats in some detail the working of a leasing firm and consists in large part of comments of William B. Moreland, president of Contract Staffing of America, one of the largest of these companies. Highlights of this discussion include the cost of a leased employee (30%-37% over base pay at CSA), the advantages to both employees and their company of a leasing arrangement, and a description of CSA's benefits package. Although no disadvantages are mentioned, the importance of a leasing company's providing real benefits to its employees is addressed.

Concerned with the "safe harbor" provision, IRC Sec. 414 (n) (5), this article consists in the main of comments by Ira Cohen, director of the actuarial division of the Internal Revenue Service. In a brief explanation, he cautions that the safe harbor provision and the determination of who employs a worker depends on the interpretation of Sec. 414 (n). An employer, in other words, may not be able to avoid responsibilities toward leased workers, even if they have the safe harbor of a lessor-provided pension plan.


Mr. Murray suggests that while the employee leasing industry appears to be flourishing, it is in fact experiencing problems. As examples, he cites the March, 1984, bankruptcy of Paystaff, Inc., of Long Beach, California, a very large leasing company, as well as the interest the IRS and state agencies are taking in the industry. They apparently suspect attempts to violate tax law and are also trying to determine whether the companies are true employers. The industry is responding to the governmental interest by trying to control itself. Regardless of IRS rulings on pensions and taxes in leasing companies, the industry is expected to continue to flourish.


Dealing almost exclusively with the determination and implications of joint-employer status, this article suggests caution in entering and structuring employee leasing contracts. Mr. Radelet enumerates four factors used in determining joint-employer status, the most important of which is the degree to which the employer (subscriber) controls daily activities of the employee. Then, after discussing the ramifications of each in a general sense, it considers specific implications under the National Labor Relations Act and Title VII of the Civil Rights Act of 1964. (The former has to do with such rights as labor organizing; the latter with discrimination.) Finally, and very briefly, the workers' compensation picture is considered. In this area, perhaps surprisingly, a joint-employment situation actually shields the subscriber from liability.


Professor Barnard's article is aimed at smaller companies with technically sophisticated work environments. She suggests that two of their major problems are competing with larger firms in attractive benefit plans and keeping highly paid, technically-skilled employees in periods of low business activity. The solution for some companies is to lease the "engineers, systems analysts, computer programmers, science technicians, workers with computer-aided systems, and the like," that they need. Following her introduction and a rundown of the advantages of leasing she presents a brief guide to the effective use of leased employees. Her ideas are developed around three possible problem areas in leasing workers: 1) faulty analysis of personnel requirements, 2) choice of a less-than-satisfactory leasing firm, and 3) improper planning for the use of the leased people. Several of her suggestions are planning carefully using interim goals, using a timetable, and keeping open communication with both the leasing firm (lessor) and regular employees, who among other things need to know why leasing is being used.