SUBJECT: Required notice to an employee of a staff leasing services company

COMMITTEE: Economic Development — favorable, without amendment

VOTE: 7 ayes — Ritter, B. Cook, Anchia, Deshotel, Kolkhorst, McCall, Seaman

0 nays

WITNESSES: For — Rick Levy, Texas AFL-CIO; (*Registered, but did not testify*: Richard Landry, PACE International Union Region 6 Council)

Against — Garry Bradford, Texas Leadership Council of the National Association of Professional Employer Organizations (NAPEO); Timothy Tucker, NAPEO; (*Registered, but did not testify*: James S. Childress, NAPEO - Texas Leadership Council; Curtis Fuelberg, Texas Council of Professional Employers)

On — William H. Kuntz, Texas Department of Licensing and Regulation; Steve Riley, Texas Workforce Commission

BACKGROUND: Labor Code, sec. 91.001 defines "staff leasing services" as an arrangement by which employees of a licensed organization are assigned to work at a client company and in which the license holder and the client company share employment responsibilities. Such employees ordinarily perform long-term or continuing assignments, rather than temporary or seasonal work, and employees of the license holder normally constitute a majority of the workforce, or a specialized group within that workforce, at the client company's worksite. The term includes professional employer organization services but does not include temporary help or independent contractors. An "assigned employee" is one who works under a staff leasing services arrangement.

Under sec. 91.044, a licensed staff leasing services company is considered to be the employer of an assigned employee for unemployment compensation purposes, including the payment of unemployment taxes.

Labor Code, sec. 207.045 governs the conditions under which an employee who left work voluntarily might be disqualified from receiving unemployment benefits. An assigned employee of a staff leasing services

company is considered to have left work voluntarily without good cause if the staff leasing services company gave written notice to the employee to contact the staff leasing services company on termination of an assignment at a client company, and the employee did not contact the staff leasing services company regarding continued employment.

DIGEST:

HB 1939 would amend Labor Code, sec. 207.045(i) to state that an assigned employee of a staff leasing services company would be considered to have left work without good cause if, following the conclusion of the employee's last assignment at the client company, the staff leasing services company gave written notice and instructions to the employee to contact the staff leasing services company for a new assignment, and the employee did not contact the staff leasing services company regarding continued employment.

The bill specifies the exact nature of the notice and instructions that the staff leasing services company would be required to provide the employee. The text of the notice would inform the employee that he or she was an employee of the staff leasing services company and would remain so following the conclusion of an assignment at a client company. It would direct the employee, by the end of the next business day following the end of an assignment, to report his or her availability for continued employment by calling the staff leasing services company's toll-free Employee Assignment Number and speaking personally to a placement representative.

The bill would require that the notice be a separate document set out conspicuously from accompanying written materials, such as in bold-faced, capitalized, or underlined type. It would require that the assigned employee sign and receive a copy of the notice.

The bill would take effect September 1, 2005, and would apply only to a claim for unemployment compensation benefits filed on or after the effective date.

SUPPORTERS SAY:

Many people who work for staff leasing companies are not aware that they are employees of these companies rather than the client companies to which they report for duty each day. As a result, following the conclusion of an assignment by a client company, some employees of staff leasing companies mistakenly believe that they have been terminated by the client company and incorrectly identify the client company as their last employer

when seeking unemployment benefits. The notification requirements in this bill would make it clear to assigned employees that they were employees of staff leasing companies and must contact their employer if they wished to be considered for future assignments. This would help employees from forfeiting accidentally their unemployment insurance eligibility.

There is a need for this bill. Statistics show that over a one-year period nearly 25 percent of people who filed an initial unemployment insurance claim with Texas Workforce Commission (TWC) against one of the eleven of the largest staff leasing companies in Texas were confused about who their last employer was. There is a difference between staff leasing companies and temporary employment service companies. Employees of temporary employment service companies have more clarity about who they work for. This bill simply gives further clarity to employees of staff leasing companies.

OPPONENTS SAY:

This bill could be interpreted to mean that a staff leasing company would be required to deliver the notice to the employee after the conclusion of every assignment at a client company, rather than up front during the initial orientation process for new hires. This would create an administrative nightmare for staff leasing companies, which often do business with hundreds of clients and employ thousands of workers. It would be impossible to deliver the notice to each employee at the time his or her temporary assignment ended, even if the client promptly informed the staff leasing company at the conclusion of each assignment. The bill should be clarified to state that the employee should sign and receive the required notice at the beginning of his or her employment with the staff leasing company.

This bill is unnecessary. Staff leasing companies meet with new workers at least five times at the beginning of the work relationship to discuss benefits and human resources issues. There is no need to require this additional notice. A better way to eliminate confusion among staff leasing company employees filing for unemployment benefits would be to include a question on TWC's unemployment form asking if the applicant for unemployment benefits worked for a staff leasing company.

NOTES:

SB 1229 by Fraser, which contains similar provisions about notification requirements for staff leasing companies regarding their employees, was scheduled for public hearing before the Senate Business and Commerce Committee on April 12.