

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Representative Hawkins**

A Bill

HOUSE BILL 2062

For An Act To Be Entitled

8 "AN ACT TO AMEND ARK. CODE ANN. §23-64-211 TO PROVIDE THAT
9 PARTNERS IN AN INSURANCE FIRM WHO ARE INACTIVE AND ARE
10 PARTNERS SOLELY FOR INVESTMENT PURPOSES ARE NOT REQUIRED
11 TO QUALIFY FOR A LICENSE; TO REGULATE PREMIUM RATES AND
12 RENEWABILITY OF COVERAGE FOR HEALTH INSURANCE SOLD TO
13 SMALL GROUPS; TO REGULATE EMPLOYEE LEASING AGENCIES; AND
14 FOR OTHER PURPOSES."

15

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

17

18 SECTION 1. Ark. Code Ann. §23-64-211 is hereby amended by adding a new
19 subsection to read as follows:

20 "(e) The provisions of (a) and (b) of this section shall not apply to
21 those partners who are partners in the firm for investment purposes only and
22 who do not act for the firm or take any other active role in the operations of
23 the firm."

24

25 SECTION 2. Chapter 86 of Title 23 of the Arkansas Code is hereby
26 amended by inserting an additional subchapter to read as follows:

27 "23-86-201. Purpose.

28 The intent of this subchapter is to promote the availability of health
29 insurance coverage to small employers, to prevent abusive rating practices, to
30 require disclosure of rating practices to purchasers, to establish rules for
31 continuity of coverage for employers and covered individuals, and to improve
32 the efficiency and fairness of the small group health insurance marketplace.

33

34 23-86-202. Definitions.

35 (A) 'Small employer' means any person, firm, corporation, partnership

1 or association actively engaged in business who, on at least fifty percent
2 (50%) of its working days during the preceding year, employed no more than
3 twenty-five (25) eligible employees. In determining the number of eligible
4 employees, companies which are affiliated companies or which are eligible to
5 file a combined tax return for purposes of state taxation shall be considered
6 one employer.

7 (B) 'Carrier' means any person who provides health insurance in this
8 state. For the purposes of this subchapter, carrier includes a licensed
9 insurance company, a prepaid hospital or medical service plan, a health
10 maintenance organization, a multiple employer welfare arrangement or any other
11 person providing a plan of health insurance subject to state insurance
12 regulation.

13 (C) 'Health benefit plan' or 'Plan' means any hospital or medical
14 expense incurred policy or certificate, hospital or medical service plan
15 contract, or health maintenance organization subscriber contract. Health
16 benefit plan does not include accident-only, credit, dental or disability
17 income insurance; coverage issued as a supplement to liability insurance;
18 worker's compensation or similar insurance; or automobile medical-payment
19 insurance.

20 (D) 'Small employer carrier' means any carrier which offers health
21 benefit plans covering the employees of a small employer.

22 (E) 'Case characteristics' means demographic or other relevant
23 characteristics of a small employer, as determined by a small employer
24 carrier, which are considered by the carrier in the determination of premium
25 rates for the small employer. Claim experience, health status and duration of
26 coverage since issue are not case characteristics for the purposes of this
27 subchapter.

28 (F) 'Commissioner' means the commissioner of insurance.

29 (G) 'Department' means the Department of Insurance.

30 (H) 'Base premium rate' means, for each class of business as to a
31 rating period, the lowest premium rate charged or which could have been
32 charged under a rating system for that class of business, by the small
33 employer carrier to small employers with similar case characteristics for
34 health benefit plans with the same or similar coverage.

35 (I) 'New business premium rate' means for each class of business as to

1 a rating period, the premium rate charged or offered by the small employer
2 carrier to small employers with similar case characteristics for newly issued
3 health benefit plans with the same or similar coverage.

4 (J) 'Index rate' means, for each class of business for small employers
5 with similar case characteristics the arithmetic average of the applicable
6 base premium rate and the corresponding highest premium rate.

7 (K) 'Class of business' means all or a distinct grouping of small
8 employers as shown on the records of the small employer carrier.

9 (1) A distinct grouping may only be established by the small employer
10 carrier on the basis that the applicable health benefit plans:

11 (a) Are marketed and sold through individuals and organizations which
12 are not participating in the marketing or sale of other distinct groupings of
13 small employers for such small employer carrier;

14 (b) Have been acquired from another small employer carrier as a
15 distinct grouping of plans;

16 (c) Are provided through an association with membership of not less
17 than two (2) or more small employers which has been formed for purposes other
18 than obtaining insurance; or

19 (d) Are in a class of business that meets the requirements for
20 exception to the restrictions related to premium rates provided in
21 subparagraph (A) (1) (a) of §23-86-204 of this subchapter.

22 (2) A small employer carrier may establish no more than two (2)
23 additional groupings under each of the subparagraphs in subdivision (1) of
24 this subsection on the basis of underwriting criteria which are expected to
25 produce substantial variation in the health care costs.

26 (3) The commissioner may approve the establishment of additional
27 distinct groupings upon application to the commissioner and a finding by the
28 commissioner that such action would enhance the efficiency and fairness of the
29 small employer insurance marketplace.

30 (L) 'Actuarial certification' means a written statement by a member of
31 the American Academy of Actuaries or other individuals acceptable to the
32 commissioner that a small employer carrier is in compliance with the
33 provisions of §23-86-204 of this subchapter based upon the person's
34 examination, including a review of the appropriate records and of the
35 actuarial assumptions and methods utilized by the carrier in establishing

1 premium rates for applicable health benefit plans.

2 (M) 'Rating period' means the calendar period for which premium rates
3 established by a small employer carrier are assumed to be in effect, as
4 determined by the small employer carrier.

5

6 23-86-203. Health Insurance Plans Subject to this Subchapter.

7 (A) Except as provided in subsection (B) of this section, the
8 provisions of this subchapter apply to any health benefit plan which provided
9 coverage to one or more employees of a small employer.

10 (B) The provisions of this subchapter shall not apply to individual
11 health insurance policies which are subject to policy form and premium rate
12 approval as provided in Ark. Code Ann. §23-79-109 and §§23-85-101, et seq.

13

14 23-86-204. Restrictions Relating to Premium Rates.

15 (A) Premium rates for health benefit plans subject to this subchapter
16 shall be subject to the following provisions:

17 (1) The index rate for a rating period for any class of business shall
18 not exceed the index rate for any other class of business by more than twenty
19 percent (20%). This subdivision shall not apply to a class of business if all
20 of the following apply:

21 (a) The class of business is one for which the carrier does not reject,
22 and never has rejected, small employers included within the definition of
23 employers eligible for the class of business or otherwise eligible employees
24 and dependents who enroll on a timely basis, based upon their claim experience
25 or health status;

26 (b) The carrier does not involuntarily transfer, and never has
27 involuntarily transferred, a health benefit plan into or out of the class of
28 business; and

29 (c) The class of business is currently available for purchase.

30 (2) For a class of business, the premium rates charged during a rating
31 period to small employers with similar case characteristics for the same or
32 similar coverage, or the rates which could be charged to such employers under
33 the rating system for that class of business, shall not vary from the index
34 rate by more than twenty-five percent (25%) of the index rate.

35 (3) The percentage increase in the premium rate charged to a small

1 employer for a new rating period may not exceed the sum of the following:

2 (a) The percentage change in the new business premium rate measured
3 from the first day of the prior rating period to the first day of the new
4 rating period. In the case of a class of business for which the small
5 employer carrier is not issuing new policies, the carrier shall use the
6 percentage change in the base premium rate; and

7 (b) An adjustment, not to exceed fifteen percent (15%) annually and
8 adjusted pro rata for rating periods of less than one year, due to the claim
9 experience, health status or duration of coverage of the employees or
10 dependents of the small employer as determined from the carrier's rate manual
11 for the class of business; and

12 (c) Any adjustment due to change in coverage or change in the case
13 characteristics of the small employer as determined from the carrier's rate
14 manual for the class of business.

15 (4) In the case of health benefit plans issued prior to the effective
16 date of this subchapter, a premium rate for a rating period may exceed the
17 ranges described in subsection (A) (1) or (2) of this section for a period of
18 five (5) years following the effective date of this subchapter. In such case,
19 the percentage increase in the premium rate charged to a small employer in
20 such a class of business for a new rating period may not exceed the sum of the
21 following:

22 (a) The percentage change in the new business premium rate measured
23 from the first day of the prior rating period to the first day of the new
24 rating period. In the case of a class of business for which the small
25 employer carrier is not issuing new policies, the carrier shall use the
26 percentage change in the base premium rate; and

27 (b) Any adjustment due to change in coverage or change in the case
28 characteristics of the small employer as determined from the carrier's rate
29 manual for the class of business.

30 (B) Nothing in this section is intended to affect the use by a small
31 employer carrier of legitimate rating factors other than claim experience,
32 health status or duration of coverage in the determination of premium rates.
33 Small employer carriers shall apply rating factors, including case
34 characteristics, consistently with respect to all small employers in a class
35 of business.

1 (C) A small employer carrier shall not involuntarily transfer a small
2 employer into or out of a class of business. A small employer carrier shall
3 not offer to transfer a small employer into or out of a class of business
4 unless such offer is made to transfer all small employers in the class of
5 business without regard to case characteristics, claim experience, health
6 status or duration since issue.

7

8 23-86-205. Provisions on Renewability of Coverage.

9 (A) Except as provided in subsection (B) of this section, a health
10 benefit plan subject to this subchapter shall be renewable to all eligible
11 employees and dependents at the option of the small employer, except for the
12 following reasons:

13 (1) Nonpayment of required premiums;

14 (2) Fraud or misrepresentation of the small employer; or with respect
15 to coverage of an insured individual, fraud or misrepresentation by the
16 insured individual or such individual's representative;

17 (3) Noncompliance with plan provisions;

18 (4) The number of individuals covered under the plan is less than the
19 number or percentage of eligible individuals required by percentage
20 requirements under the plan; or

21 (5) The small employer is no longer actively engaged in the business in
22 which it was engaged on the effective date of the plan.

23 (B) A small employer carrier may cease to renew all plans under a class
24 of business. The carrier shall provide notice to all affected health benefit
25 plans and to the commissioner in each state in which an affected insured
26 individual is known to reside at least ninety (90) days prior to termination
27 of coverage. Any carrier which exercises its right to cease to renew all
28 plans in a class of business shall not:

29 (1) Establish a new class of business for a period of five (5) years
30 after the nonrenewal of the plans without prior approval of the commissioner;
31 or

32 (2) Transfer or otherwise provide coverage to any of the employers from
33 the nonrenewed class of business unless the carrier offers to transfer or
34 provide coverage to all affected employers and eligible employees and
35 dependents without regard to case characteristics, claim experience, health

1 status or duration of coverage.

2

3 23-86-206. Disclosure of Rating Practices and Renewability Provisions.

4 Each small employer carrier shall make reasonable disclosure in solicitation
5 and sales materials provided to small employers of the following:

6 (A) The extent to which premium rates for specific small employers are
7 established or adjusted due to the claim experience, health status or duration
8 of coverage of the small employer's employees or their dependents;

9 (B) The provisions concerning the carrier's right to change premium
10 rates and the factors, including case characteristics, which affect changes in
11 premium rates;

12 (C) A description of the class of business in which the small employer
13 is or will be included, including the applicable grouping of plans; and

14 (D) The provisions relating to renewability of coverage.

15

16 23-86-207. Maintenance of Records.

17 (A) Each small employer carrier shall maintain at its principal place
18 of business a complete and detailed description of its rating practices and
19 renewal underwriting practices, including information and documentation which
20 demonstrate that its rating methods and practices are based upon commonly
21 accepted actuarial assumptions and are in accordance with sound actuarial
22 principles.

23 (B) Each small employer carrier shall file each March 1 with the
24 commissioner an actuarial certification that the carrier is in compliance with
25 this section and that the rating methods of the carrier are actuarially sound.
26 A copy of such certification shall be retained by the carrier at its
27 principal place of business.

28 (C) A small employer carrier shall make the information and
29 documentation described in subsection (A) of this section available to the
30 commissioner upon request. The information shall be considered proprietary
31 and trade secret information and shall not be subject to disclosure by the
32 commissioner to persons outside of the department except as agreed to by the
33 carrier or as ordered by a court of competent jurisdiction.

34

35 23-86-208. Discretion of the Commissioner.

1 (A) The commissioner may suspend all or any part of §23-86-204 as to
2 the premium rates applicable to one or more small employers for one or more
3 rating periods upon a filing by the small employer carrier and a finding by
4 the commissioner that either the suspension is reasonable in light of the
5 financial condition of the carrier or that the suspension would enhance the
6 efficiency and fairness of the marketplace for small employer health
7 insurance.

8 (B) The commissioner may suspend all or any part of §23-86-205 as to
9 renewability of coverage upon a filing by the small employer carrier and a
10 finding by the commissioner that either the suspension is reasonable in light
11 of the financial condition of the carrier or that the suspension would enhance
12 the efficiency and fairness of the market place for small employer health
13 insurance.

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16 23-86-209. *Effective Date.*

17 The provisions of this subchapter shall apply to each health benefit
18 plan for a small employer that is delivered, issued for delivery, renewed, or
19 continued in this State after the effective date of this subchapter. For
20 purposes of this section, the date a plan is continued is the first rating
21 period which commences after January 1, 1992. The provisions of this
22 subchapter shall become effective on January 1, 1992."

23

24 SECTION 3. Chapter 92 of Title 23 of the Arkansas Code is hereby
25 amended by inserting an additional subchapter 3 to read as follows:

26 "23-92-301. *Short Title.*

27 This subchapter shall be known and may be cited as the 'Arkansas
28 Employee Leasing Act'.

29

30 23-92-302. *Definitions.*

31 As used in this subchapter, unless the context otherwise requires:

32 (1) 'Commissioner' means the Insurance Commissioner of the State of
33 Arkansas;

34 (2) 'Employee leasing arrangement' means an arrangement, under contract
35 or otherwise, whereby one person (the 'employee leasing firm') assigns

1 employees to perform services for another person (the 'recipient' or
2 'client') whereby:

3 (a) the arrangement is intended to be, or is, on-going rather
4 than temporary in nature, and

5 (b) employer responsibilities, including the right of direction and
6 control of the employees, are shared by the employee leasing firm and the
7 recipient.

8 The term 'employee leasing arrangement' shall not include services performed
9 by 'temporary employees' or by persons determined to be independent
10 contractors with respect to the recipient.

11 (3) 'Employee leasing firm' means any person engaged in providing the
12 services of employees pursuant to one or more employee leasing arrangements;

13 (4) 'Temporary employee' means a person employed either through another
14 person or directly by an employer to support or supplement the existing work
15 force in special situations such as employee absences, temporary skill
16 shortages, seasonal workloads, and special assignments and projects with the
17 expectation that the worker's position will be terminated upon the completion
18 of the task or function.

19

20 23-92-303. Commissioner - Powers and duties.

21 The commissioner shall have authority to prescribe such rules and
22 regulations for the conduct of the business of employee leasing firms as may
23 be deemed necessary to carry out the provisions of this subchapter. These
24 rules shall have the force and effect of law and shall be enforced by the
25 commissioner in the same manner as the provisions of this subchapter.
26 Adoption of rules and regulations pursuant to this subsection shall be carried
27 out in compliance with the Arkansas Administrative Procedures Act, §§25-15-
28 201, et seq.

29

30 23-92-304. Exemptions.

31 The provisions of this subchapter do not apply to:

32 (a) A labor organization; or

33 (b) Any political subdivision of this state or the United States, and
34 any program or agency thereof.

35

1 23-92-305. License - Penalties.

2 (a) (1) No person shall engage in the business of or act as any class of
3 employee leasing firm unless he first obtains a license from the commissioner.

4 (2) Two or more, but not more than five, employee leasing firms that are
5 corporations which are majority owned by the same ultimate parent, entity or
6 persons may be licensed as an employee leasing firm group. An employee
7 leasing firm group may satisfy the reporting and financial assurance
8 requirements of this act on a consolidated basis. As a condition of licensing
9 as an employee leasing firm group, each company that is a member of the group
10 shall guarantee payment of all financial obligations with respect to wages,
11 employment taxes and employee benefits of each other member of the group. For
12 the purposes of this Act, unless otherwise stated, the term 'employee leasing
13 firm' shall also mean and refer to an 'employee leasing firm group'.

14 (b) (1) Any person who shall engage in the business of or act as an
15 employee leasing firm without first procuring a license or otherwise violates
16 the provisions of this subchapter or any rules or regulations promulgated by
17 the commissioner pursuant to this subchapter shall be liable for a civil
18 penalty for each such offense of not less than two hundred and fifty dollars
19 (\$250) nor more than five thousand dollars (\$5,000).

20 (2) In addition to the penalties described in subdivision (b) (1) of
21 this section, the commissioner shall have the statutory power to enjoin or
22 restrain by bringing an action in the circuit or chancery court of Pulaski
23 County against any person who engages in the business of or acts as an
24 employee leasing firm without having first procured a license for so engaging
25 or acting.

26
27 23-92-306. License - Application.

28 Every applicant for an initial employee leasing firm license and every
29 applicant for a renewal license shall file with the commissioner a completed
30 application on a form prescribed and furnished by the commissioner.

31
32 23-92-307. Employee leasing firm license - Financial Assurances required.

33 (a) Every application for issuance or renewal of a license as a class or
34 classes of employee leasing firm pursuant to the provisions of this subchapter
35 shall be accompanied by a surety bond issued by a corporate surety in the

1 amount of fifty thousand dollars (\$50,000).

2 (1) The terms and conditions of the bond shall be approved by the
3 commissioner.

4 (2) The bond shall be conditioned that the licensee and each member,
5 employee, shareholder, commissioner, or officer of a person, firm,
6 partnership, corporation or association operating as agent of the licensee
7 will not violate the provisions of this subchapter or violate rules,
8 regulations, or orders lawfully promulgated by the commissioner pursuant to
9 this subchapter or fail to pay any wages due under any contract made by the
10 licensee in the conduct of its business subject to this subchapter.

11 (3) The bond shall secure the performance of a employee leasing firm's
12 responsibilities to its leased employees for payment of wages.

13 (4) The bond required by this section shall be a surety bond issued by a
14 corporate surety authorized to do business in the State of Arkansas. In lieu
15 of the surety bond, the employee leasing firm may deposit in a depository
16 designated by the commissioner securities with marketable value equivalent to
17 the amount required for a surety bond. The securities so deposited shall
18 include authorization to the commissioner to sell any such securities in an
19 amount sufficient to pay any amounts secured by the bond or securities.

20 (b)(1) If any person shall be aggrieved by the misconduct of any
21 licensee, that person may maintain an action in his own name upon the bond of
22 the employee leasing firm in any court of competent jurisdiction or in the
23 Circuit Court of Pulaski County.

24 (2) All claims shall be assignable, and the assignee shall be entitled to
25 the same remedies upon the bond of the licensee as the person aggrieved would
26 have been entitled to if the claim had not been assigned.

27 (3) Any claim so assigned may be enforced in the name of the assignee.
28 Any remedies given by this section shall not be exclusive of any other remedy
29 which would otherwise exist.

30 (c) Action on the bond required by this section may be maintained by the
31 commissioner in the name of the state in any court of competent jurisdiction,
32 or in the Circuit Court of Pulaski County, for the benefit of any person or
33 persons aggrieved by the misconduct of the licensee.

34 (d) If any licensee fails to file a new bond with the commissioner
35 within thirty (30) days after notice of cancellation by the surety of the bond

1 required by this section, the license issued to the principal under the bond
2 is suspended until such time as a new surety bond is filed with and approved
3 by the commissioner. A person whose license is suspended pursuant to this
4 section shall not carry on the business of an employee leasing firm during the
5 period of the suspension.

6 (e) In lieu of the bond requirement otherwise set forth in Section 6(a)
7 above, an employee leasing firm may provide a financial statement prepared by
8 an independent certified public accountant in accordance with generally
9 accepted accounting principles as of a date within the six (6) months prior to
10 the date of application or renewal, which statement shows a minimum net worth
11 of at least one hundred thousand dollars (\$100,000);

12 (f) In addition to the bond requirement otherwise set forth in Arkansas
13 Code §23-92-307(a)(1), or alternatively, the financial assurance requirement
14 set forth in Arkansas Code §23-92-307(e) above, an employee leasing firm shall
15 submit to the commissioner within sixty (60) days at the end of each calendar
16 quarter, the last day of which the employee leasing firm was subject to the
17 provisions of this act, a certification by an independent certified public
18 accountant to the effect that for such quarter all applicable payroll taxes
19 otherwise due have been paid on a timely basis.

20

21 23-92-308. Investigation of applicant by commissioner.

22 An application for a license shall be rejected by the commissioner if it
23 is found that any person named in the license application is not of good moral
24 character, business integrity, or financial responsibility or there is a good
25 and sufficient reason within the meaning and purpose of this subchapter for
26 rejecting the application.

27

28 23-92-309. License Fees.

29 An applicant shall pay as an annual fee for a license a sum to be
30 established by the commissioner, but not to exceed five thousand dollars
31 (\$5,000) per year.

32

33 23-92-310. Restricted out of state Certificate and Reciprocity.

34 The commissioner by regulation may prescribe rules allowing employee
35 leasing firms domiciled in other states to obtain a restricted license for

1 limited operations within the state and to grant licenses by reciprocity.

2

3 23-92-311. Renewal of license.

4 Every license issued pursuant to this subchapter shall remain in force
5 for one (1) year from the date of issue, unless the license has been revoked
6 pursuant to the provisions of this subchapter. The commissioner shall
7 prescribe regulations setting forth the procedures for renewal of the license.

8

9 23-92-312. Issuance, refusal, suspension, or revocation of license -
10 Grounds.

11 (a) The commissioner shall issue a license as an employee leasing firm
12 to any person who qualifies for the license under the terms of this
13 subchapter.

14 (b) The commissioner may, in addition, refuse to issue a license to any
15 person or may suspend or revoke the license of any employee leasing firm or
16 impose administrative fines as provided for in §23-92-305, when the
17 commissioner finds that licensee or applicant has violated any of the
18 provisions of this subchapter, the rules and regulations or other orders
19 lawfully promulgated by the commissioner, the conditions of financial
20 assurances required by §23-92-307, has engaged in a fraudulent, deceptive, or
21 dishonest practice; or, for good and sufficient cause, finds the licensee or
22 applicant unfit to be an employee leasing firm within the meaning of this
23 subchapter or of any of the rules and regulations or orders lawfully
24 promulgated by the commissioner.

25

26 23-92-313. Refusal, suspension, or revocation of license - Notice and
27 hearing.

28 The commissioner may not refuse to issue a license or suspend or revoke a
29 license unless it furnishes the person, employee leasing firm with a written
30 statement of the charges against him and affords him an opportunity to be
31 heard on the charges.

32

33 23-92-314. Deceptive practices.

34 The commissioner may prescribe, by regulation, those acts or omissions
35 which shall be deemed to constitute deceptive practices under this Act.

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23-92-315. Licensed Employee Leasing Firms.

A licensed employee leasing firm shall be deemed an employer of its leased employees and shall perform the following employer responsibilities in conformity with all applicable federal and state laws and regulations:

(a) Pay wages and collect, report and pay employment taxes from its own accounts;

(b) Pay unemployment taxes as required by Title 11, Chapter 10 of the Arkansas Code;

(c) Ensure that all of its employees are covered by worker's compensation insurance provided in conformance with the laws of this state. Such coverage may be provided through a policy or plan maintained by either the employee leasing firm or the client, provided however, for purposes of risks insured pursuant to Act 561 of 1991, known as the Arkansas Workers' Compensation Plan, the Insurance Commissioner is authorized to promulgate such rules and regulations as he deems necessary to assure that workers' compensation coverage is available to employees providing services for a client;

(d) Be entitled and entitle the client, together as joint employers, to the exclusivity of the remedy set forth in Arkansas Code §11-9-105, under both the workers compensation and employers liability provisions of a workers compensation policy or plan that either party has secured within the meaning of Arkansas Code §11-9-105.;

(e) Not be vicariously liable for the liabilities of the client, whether contractual or otherwise; provided that the client shall not be vicariously liable for the liabilities of the employee leasing firm, whether contractual or otherwise. Nothing herein shall limit any direct contractual liability or any joint liability between the client and the employee leasing firm.

(f) Sponsor and maintain employee benefit and welfare plans for its leased employees, provided that such plans, if limited to the employees of the employee leasing firm, shall not be deemed to be multiple employer plans or trusts within the meaning of applicable law. Nothing herein shall require an employee leasing firm to provide comparable benefits to employees located at different worksites."

