

CHAPTER 300-2-7 REQUIREMENTS FOR EMPLOYEES AND EMPLOYERS

300-2-7-.01	Identification of Employees	300-2-7-.09	Repealed
300-2-7-.02	Repealed	300-2-7-.10	Repealed
300-2-7-.03	Repealed	300-2-7-.11	Repealed
300-2-7-.04	Repealed	300-2-7-.12	Limited Liability Companies
300-2-7-.05	Repealed	300-2-7-.13	Independent Contractors
300-2-7-.06	Notices Required From Employers Furnishing Separation Information	300-2-7-.14	Registration Of Job Opening With State Employment Service
300-2-7-.07	Employee Leasing Companies	300-2-7-.15	Display of Posters For Information of Employees
300-2-7-.08	Repealed		

300-2-7-.01 Identification of Employees. Amended.

(1) Each employer shall ascertain the correct social security number of each such individual employed by such employer.

(2) Each individual shall report to every employer for whom he is engaged in employment the individual's social security number and the individual's name exactly as shown on the account number card issued to the individual by the Social Security Administration. Each such employee who has not secured an account number shall file an application for an account number on Form SS-5, "Application for Social Security Number". The application shall be filed on or before the seventh day after the date on which the employee first performs employment for wages; except, the application shall be filed on or before the date the employee leaves the employer or employment, if such date precedes such seventh day.

(3) If the employee fails to comply with this requirement, the employer shall execute a Form SS-5, "Application for Social Security Account Number", giving all the information required thereon which is known or ascertainable by the employer. The completed Form SS-5 shall be mailed to the nearest field office of the Social Security Administration.

(4) The employer, when forwarding completed Form SS-5 to the Social Security Administration, shall request notice of the number assigned to the employee.

(5) When for any reason an employee's name is changed, the employer shall require the employee to complete Form OANN-7003, "Employees Request for Change in Records". Completed Form OANN-7003 shall be mailed to the nearest field office of the Social Security Administration.

(6) The employer shall report each employee's social security number in making any report required by the Georgia Department of Labor.

Authority O.C.G.A. Secs. 34-8-70, 34-8-78, 34-8-113.

300-2-7-.02 Repealed.

300-2-7-.03 Repealed.

300-2-7-.03 Repealed.

300-2-7-.04 Repealed.

300-2-7-.05 Repealed.

300-2-7-.06 Notices Required From Employers Furnishing Separation Information. Amended.

(1) Employers are required to complete Form DOL-800, "Separation Notice", for each worker separated regardless of the reason for separation (except when mass separation Form DOL-402 and Form DOL-402A notices are filed).

(a) The "Separation Notice" must be completed, signed by the employer or authorized agent, dated and delivered to the separated employee on the last day of work in accordance with printed instructions on the Form DOL-800.

(b) If the employee is no longer available at the time employment ceases, the notice shall be mailed to the last known address of the employee within three (3) days of the date that the separation occurred or became known to the employer.

(c) A copy of Form DOL-800, properly executed by the former employer as required by Georgia law, shall be presented to the Georgia Department of Labor local office by any individual filing a claim for unemployment insurance.

(2) The employer, if it is the most recent employer as defined by OCGA Section 34-8-43, may receive a Form DOL-1199FF or DOL- 403FF, "Notice of Claim Filed and Request for Separation Information".

(a) If the Form DOL-800 was presented, the employer may respond and provide separation information on Form DOL-1199FF or Form DOL-403FF if they wish to do so. This shall constitute a timely response to the claim.

(b) If the Form DOL-800 was not presented, in order to be considered a timely response to the claim, the employer must respond to the claimant's statement on the Form DOL-403FF or Form DOL- 1199FF in the manner prescribed herein and in accordance with the instructions printed on the Form 403FF or Form DOL-1199FF.

(3) Form DOL-800 or Form DOL-403FF or Form DOL-1199FF must be signed and otherwise complete for the employer's account to be considered as a timely response to the claim.

Authority O.C.G.A. Secs. 34-8-70, 34-8-78, 34-8-122, 34-8-123, 34-8-157.

300-2-7-.07 Employee Leasing Companies.

(1) An employee leasing company (or professional employer organization) as that term is defined in O.C.G.A. Section 34-8-32 shall not be considered a succeeding employer under the provisions of O.C.G.A. Section 34-8-153 and O.C.G.A. Section 34-8-155 with respect to its clients or customers and shall not acquire the unemployment experience history of its clients or customers. The applicable rate of an employee leasing company shall be determined solely on its own unemployment experience after it became an employee leasing company, subject to the provisions of O.C.G.A. Section 34-8-153.

(2) An employee leasing company shall post a surety bond in the amount of the greater of \$10,000.00 or two and seven-tenths percent (2.7%) of its taxable payroll for the four (4) calendar quarters ending June 30th immediately preceding the effective date of the bond to meet the requirements of O.C.G.A. Section 34-8-172. Such surety bond must be issued by an organization currently licensed and authorized to issue such bond in the State of Georgia and renewed on an annual basis in an adjusted amount as deemed appropriate. The bond shall cover a minimum of one full calendar year and shall also cover the remainder of the calendar year in which it is issued. The bond may not include a cancellation clause. In lieu of such bond, an employee leasing company may deposit with the Commissioner a cash deposit, irrevocable letter of credit or equivalent financial securities acceptable to the Commissioner. The cash deposit shall be a comparable amount as described above. Any deposit of money shall be retained by the Commissioner in an escrow account. Securities shall be in an amount equal to the greater of \$10,000.00 or two and seven-tenths percent (2.7%) of the taxable payroll for the four (4) calendar quarters ending June 30th immediately preceding the effective date of the election. At the sole discretion of the Commissioner, an adjustment in the amount of the bond, cash deposit, irrevocable letter of credit or securities may be required upon sixty (60) days prior written notice.

(3) Notwithstanding the foregoing, an employee leasing company may post a surety bond, irrevocable letter of credit or cash deposit in the amount of \$5,000.00 and thereby comply with the provisions of this rule if all of the following conditions are met:

(a) The employee leasing company must have been a positive reserve employer as that term is used in O.C.G.A. Section 34-8-155 for at least four (4) consecutive quarters during the last twelve (12) quarters immediately preceding the effective date of the bond;

(b) The employee leasing company has not failed during the last twelve (12) quarters immediately preceding the effective date of the bond to file timely all required tax and wage reports, including all such reports of all predecessor employers; and

(c) The employee leasing company submits timely prepayments of unemployment contributions to the department monthly attributable to the applicable portion of the employee leasing company's taxable wage base of the employee leasing company's payroll for each calendar month just completed. This payment is due on the fifteenth (15th) of each month.

(4) The failure of the employee leasing company to submit the prepayment or to attach the supporting data as described herein shall subject the employer to a denial of the privilege to prepay and enjoy the lower bond rate. Should any employee leasing company so fail to submit prepayments and be notified by the Commissioner of the revocation of the privilege, all future employment on behalf of the employee leasing company's clients shall be under that client's name and separate DOL account number.

(5) Any employee leasing company which fails to obtain, or to keep in full force and effect the

applicable surety bond, irrevocable letter of credit, cash deposit or acceptable securities must report all employment of its clients under the client's name and DOL account number, provided, however, the department shall notify any such client in writing of this eventuality. No employer who is a client of an employee leasing company shall be liable for unemployment contributions for employment previously reported by an employee leasing company until such notification has been received by that employer. Such employer will be liable for contributions only for the period of employment which occurs after the notice has been received. An employee leasing company which elects to treat its clients' employees as its own employees must post the bond required by O.C.G.A. Section 34-8-172. An employee leasing company which is unable to obtain a bond automatically elects to treat each client's employees as the client's employees and not employees of the employee leasing company. An employee leasing company cannot do both, i.e., it cannot add certain clients' employees to its own payroll but not include others simply to take advantage of lower unemployment tax rates. A wilful violation of this rule may result in termination of the employee leasing company's privilege to make such election. In the event of such termination of election, under the provisions of these rules, no successorship will occur, therefore a new taxable wage base for the particular calendar year will apply at the time of the termination of election.

(6) If an employee leasing company is new in Georgia and has no previous employment history, the amount of the initial bond, irrevocable letter of credit, cash deposit or securities shall be \$10,000.00 for the first calendar year. Once the employee leasing company has been in business over six (6) months, the amount for the next calendar year's bond, cash deposit or securities may be computed based upon a pro rata estimate of its taxable wages for the four (4) calendar quarters ending June 30th immediately preceding the effective date of the bond. Any surety bond in effect will cease to be in force and effect as of the expiration date of such bond, provided all applicable unemployment contributions which cover this time period have been paid.

(7) All employee leasing companies doing business in Georgia, regardless of whether an adequate bond, irrevocable letter of credit, cash deposit or securities are posted shall maintain and furnish to the department upon request the following records:

- (a) A current list of all clients or customers in Georgia by corporate name and by trade name;
- (b) A physical and mailing address, if different, for all such clients or customers;
- (c) A listing of previous DOL registrations by DOL account number for the clients or customers;
- (d) Separate books or records with respect to each client or customer must be maintained, showing, at a minimum, all evidence of wages and other compensation paid to, or on behalf of, the employees, records of hours and days worked and the location where the worker's services were performed;
- (e) Names, residence addresses, social security numbers, ownership interests in the employee leasing company, and positions of employment in the employee leasing company of all officers of the employee leasing company;
- (f) The federal employer identification number for all clients or customers; and
- (g) The employee leasing company must notify the department of any additions, deletions or corrections to the above-described information at least quarterly.

(8) If, after the employee leasing company makes the required deposit, the employee leasing company fails to comply with the Employment Security Law, the department will use the bond,

irrevocable letter of credit, cash deposit or securities (or proceeds from the sale of the same) to pay contributions, interest, and penalty due on the account. The department may then require a new deposit, or may require the employee leasing company to separately report all employment under its clients' names and account number and applicable tax rate of each client or customer.

(9) Interest earned on cash deposits will be paid into the same fund as other interest and penalties are paid as provided in O.C.G.A. Section 34-8-92.

(10) All information furnished to the department under this rule shall be treated as confidential information as provided in Code Section 34-8-121.

Authority O.C.G.A. Secs. 34-8-70, 34-8-78, 34-8-123, 34-8-172.

300-2-7-.08 Repealed.

300-2-7-.09 Repealed.

300-2-7-.10 Repealed.

300-2-7-.11 Repealed.

300-2-7-.12 Limited Liability Companies.

(1) Limited liability companies ("LLC") and other similar pass-through entities shall be treated the same as partnerships for purposes of unemployment contributions. If such entity can demonstrate to the satisfaction of the Commissioner that it is receiving some other type treatment for purposes of federal taxation, then the Commissioner shall consider that fact in determining whether remuneration paid constitutes taxable wages for purposes of the Employment Security Law. If an LLC is treated as a corporation for federal tax purposes, the LLC shall likewise be treated as a corporation for purposes of taxation under the Employment Security Law.

(2) If management of the LLC is vested in its members, those members who are actively involved in management shall be deemed jointly and severally liable for payment of unemployment contributions. If management of the LLC is vested in one or more appointed managers who are not members of the LLC, then all members of the LLC may nonetheless be deemed jointly and severally liable for payment of unemployment contributions, provided, however, any member who can demonstrate to the satisfaction of the Commissioner of Labor that the member has no legal authority or control over whether unemployment contributions are paid or employers' quarterly wage and tax reports are filed can be relieved of liability.

Authority O.C.G.A. Sec. 34-8-70.

300-2-7-.13 Independent Contractors.

(1) To prove independent contractor status, an employing unit must prove an individual who receives wages, as that term is defined in OCGA Section 34-8-49, meets the three-pronged test for exemption from the definition of "employment" as provided in OCGA Section 34-8-35, Paragraph (f). An individual who received more than 80% of his or her total income for personal services rendered from a single employing unit in the previous calendar year shall be conclusively presumed to be an employee of the employing unit for purposes of the Employment Security Law. The presumption can be overcome only upon a showing by said employing unit that the individual legitimately is in business for himself or herself and that income from other sources for personal services rendered now push the percentage of such income received from the employing unit by this individual to under 80% of the individual's total annual income for personal services rendered.

(2) In applying the third prong of the test specified in OCGA Section 34-8-35, paragraph (f), it shall not be sufficient that the individual simply holds a professional license. It must be proved the individual performs the professional services in question for clients, patients or customers other than the employing unit. Such services must be in the same occupation or line of work as the employing unit.

Authority O.C.G.A. Sec. 34-8-70.

300-2-7-.14 Registration Of Job Opening With State Employment Service.

Whenever an employer has work to offer a claimant such employer should communicate directly with the local office of the department where the claim was filed, furnishing full and complete information as to type of work, hours, rate of pay, etc.

Authority O.C.G.A. Sec. 34-8-70.

300-2-7-.15 Display of Posters For Information of Employees.

(1) Employers shall post and maintain in places readily accessible to their employees all printed statements, posters, etc., released and required by the Commissioner of Labor or the Georgia Department of Labor pertaining to the rights of employees under the Employment Security Law. A packet of required posters may be obtained by contacting the nearest local office of the Georgia Department of Labor.

(2) An employer who is not liable for unemployment insurance taxes under the Employment Security Law or who ceased to be liable for unemployment insurance taxes is not permitted to display such notices and must remove them if on display.

Authority O.C.G.A. Secs. 34-8-70, 34-8-190.