



Substitute House Bill No. 5113

Public Act No. 08-105

AN ACT CONCERNING PROFESSIONAL EMPLOYER ORGANIZATIONS AND EMPLOYEE MISCLASSIFICATION.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective October 1, 2008*) As used in this section and sections 2 to 6, inclusive, of this act:

(1) "Client" means any person who, as an employer, enters into a professional employer agreement with a professional employer organization;

(2) "Coemployment relationship" means an ongoing relationship, rather than a temporary or project-specific relationship, in which the rights, duties and obligations of an employer are allocated between a professional employer organization and a client pursuant to a professional employer agreement as provided in sections 2 to 6, inclusive, of this act;

(3) "Covered employee" means an individual who (A) is an employee of a client that has a coemployment relationship with a professional employer organization, (B) has received written notice of the coemployment, and (C) has received a written summary of the obligations and responsibilities of the client and the professional employer organization pursuant to the professional employer

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agreement;

(4) "Department" means the Labor Department;

(5) "Commissioner" means the Labor Commissioner;

(6) "Professional employer organization group" means two or more professional employer organizations that are majority-owned or commonly controlled by the same entity, parent entity or controlling persons;

(7) "Professional employer agreement" means a written contract by and between a client and a professional employer organization;

(8) "Person" means any individual, partnership, corporation, limited liability company, association or other legal entity;

(9) "Temporary help service" has the same meaning as provided in section 31-129 of the general statutes;

(10) "Professional employer organization" means any person engaged in the business of providing professional employer services, regardless of whether such person uses the term or conducts business as a professional employer organization, staff leasing company, registered staff leasing company, employee leasing company, administrative employer or any other name. Professional employer organization does not include:

(A) Arrangements in which a person, other than a person whose principal business activity is entering into professional employer arrangements, shares employees with a commonly-owned company within the meaning of Sections 414(b) and (c) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended;

(B) Independent contractor arrangements in which a person

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assumes responsibility for the product produced or service performed by such person or such person's agents and retains and exercises primary direction and control over the work performed by the individuals whose services are supplied under such arrangements; or

(C) Temporary help services;

(11) "Professional employer services" means entering into coemployment relationships in which all or a majority of the employees providing services to a client or to a division or work unit of a client are covered employees; and

(12) "Registrant" means a professional employer organization registered under section 3 of this act.

Sec. 2. (NEW) (*Effective January 1, 2009*) (a) Nothing in this section or sections 3 to 6, inclusive, of this act or in any professional employer agreement shall:

(1) Diminish existing rights between covered employees and a client existing prior to the effective date of the professional employer agreement; or

(2) Create any new or additional enforceable right of a covered employee against a professional employer organization that is not specifically provided by the professional employer agreement or in this section or sections 3 to 6, inclusive, of this act.

(b) (1) A covered employee who is required to be licensed, registered or certified under any provision of the general statutes shall be deemed to be solely an employee of the client for purposes of any such license, registration or certification requirement.

(2) A professional employer organization or professional employer organization group shall not be deemed to engage in any occupation,

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trade, profession or other activity that is subject to licensing, registration or certification requirements or is otherwise regulated by a governmental entity solely by entering into and maintaining a coemployment relationship.

(c) For purposes of determination of tax credits and other economic incentives provided by this state or other governmental entity and based on employment, covered employees of the client shall be deemed employees solely of the client.

(d) A client company's status or certification as a small, minority-owned, disadvantaged or woman-owned business enterprise or as a historically underutilized business shall not be affected by the client company entering into an agreement with a professional employer organization or using the services of a professional employer organization.

Sec. 3. (NEW) (*Effective January 1, 2009*) (a) Subject to the provisions of subsection (e) of this section, no person shall provide, advertise or otherwise hold itself out as providing professional employer services in this state unless such person is registered as a professional employer organization. Any person seeking initial registration as a professional employer organization shall apply to the Labor Commissioner on a form prescribed by the commissioner. Such application shall include:

(1) The name or names under which the applicant will conduct business and, if applicable, under which the applicant conducted business prior to the date of application;

(2) The address of the principal place of business of the applicant and the address of each office it maintains or will maintain in this state;

(3) The applicant's federal and state taxpayer and employer identification number;

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(4) A list by jurisdiction of any name under which the applicant operated in the five years preceding the date of application, including any alternative names, names of predecessors, the name of the immediate successor business entity and, if known, any other successor business entities;

(5) A statement of ownership, that includes the name and evidence of the business experience of any person that, individually or acting in concert with one or more other persons, owns or controls or will control, directly or indirectly, twenty-five per cent or more of the equity interest of the applicant;

(6) A statement of management that includes the name and evidence of the business experience of any person who serves or will serve as president, chief executive officer or otherwise has or will have the authority to act as senior executive officer of the applicant; and

(7) A financial statement setting forth the financial condition of the applicant in accordance with this subdivision.

(A) Except as provided in subparagraph (B) of this subdivision, a professional employer organization or professional employer organization group that conducted business prior to January 1, 2009, shall submit the most recent audit of the professional employer organization or professional employer organization group that was conducted no earlier than thirteen months prior to the date of application.

(B) If an applicant has not had sufficient operating history to have audited financial statements based on at least twelve months of operating history, the applicant shall submit a financial statement that sets forth the financial condition of the professional employer organization and is prepared pursuant to generally accepted accounting principles by an independent certified public accountant

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licensed to do business in the state who attests that (i) it is the applicant's most recent financial statement, (ii) he reviewed the financial statement within six months of the registration, (iii) the applicant is not delinquent in the payment of state or federal taxes, and (iv) the applicant meets the financial capacity requirements of section 4 of this act.

(C) All information obtained from a professional employer organization or professional employer organization group under this subdivision shall be subject to disclosure in accordance with the provisions of chapter 14 of the general statutes.

(b) (1) Each professional employer organization operating within this state on January 1, 2009, shall submit its initial registration not later than March 1, 2009. Such initial registration shall be valid until one hundred eighty days after the professional employer organization's first completed fiscal year that is more than one year after March 1, 2009. Each professional employer organization or professional employer organization group shall file with the commissioner the beginning and ending date of each professional employer organization or professional employer organization group's fiscal year and notify and file with the commissioner any change to the beginning and ending date of such fiscal year.

(2) Each professional employer organization not operating within this state as of January 1, 2009, shall complete its initial registration prior to commencement of operations within this state.

(c) A registered professional employer organization may apply for renewal of its registration annually by submitting to the commissioner, not later than one hundred eighty days after the end of the professional employer organization's or professional employer organization group's fiscal year, (1) an audit for the preceding fiscal year, and (2) notice of any changes in the information provided in such

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registrant's immediately preceding application for initial registration or renewal. An applicant may apply for an extension with the department, but any such request shall be accompanied by a letter from the auditor stating the reasons for the delay and the anticipated audit completion date. The financial statement shall be prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant licensed to practice in the jurisdiction in which such accountant is located, and shall be without qualification as to any increase in going concern status of the professional employer organization.

(d) Professional employer organizations in a professional employer organization group may satisfy the reporting and financial requirements of this section and section 4 of this act on a combined or consolidated basis provided each member of the professional employer organization group guarantees the obligations under sections 2 to 6, inclusive, of this act of each other member of the professional employer organization group. In the case of a professional employer organization group that submits a combined or consolidated audited financial statement, including entities that are not professional employer organizations or that are not in the professional employer organization group, the controlling entity of the professional employer organization group under the consolidated or combined statement shall guarantee the obligations of the professional employer organization in the professional employer organization group. Each professional employer organization or professional employer organization group shall notify the commissioner of the name and address of such controlling entity.

(e) (1) The commissioner may issue a professional employer organization a limited registration if such professional employer organization provides evidence, on a form prescribed by the commissioner, that it:

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(A) Is domiciled outside this state and is licensed or registered as a professional employer organization in another state;

(B) Does not maintain an office in this state or directly solicit clients located or domiciled within this state; and

(C) Does not have more than fifty covered employees employed or domiciled in this state at any particular time;

(2) A limited registration shall be valid for one year and shall be renewed annually at the completion of the registrant's fiscal year. Each professional employer organization or professional employer organization group shall pay a limited registration fee, established by the commissioner when the registration is filed or renewed, not to exceed one thousand dollars and a renewal fee shall not exceed one thousand dollars;

(3) If a professional employer organization or professional employer organization group seeks to file a limited registration with the commissioner, the professional employer organization or professional organization group shall provide the commissioner with sufficient information and documentation that the professional employer organization or professional employer organization group qualifies for a limited registration.

(f) The department shall maintain a list of professional employer organizations registered under this section.

(g) The commissioner shall charge a fee on application or renewal for registration as a professional employer organization, provided an initial registration fee shall not exceed one thousand five hundred dollars and a renewal fee shall not exceed one thousand dollars.

(h) The registrant shall notify the commissioner of the address of the principal place of business of the registrant and the address of each

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office it maintains or proposes to maintain in this state.

(i) The applicant or registrant shall notify the commissioner of any change of address for any location, as described in subsection (h) of this section no later than five working days after such change.

Sec. 4. (NEW) (*Effective January 1, 2009*) (a) Except as provided in subsection (b) of this section or section 3 of this act, each professional employer organization or, collectively, each professional employer organization group shall:

(1) Maintain a minimum of one hundred fifty thousand dollars in working capital, as defined by generally accepted accounting principles, as reflected in the financial statements submitted to the department with the initial registration and each annual renewal. A professional employer organization or professional employer organization group with less than one hundred fifty thousand dollars in working capital at renewal shall have one hundred eighty days to eliminate the deficiency. During such one hundred eighty days, the professional employer organization or professional employer organization group shall submit quarterly financial statements to the department accompanied by the attestation of the chief executive officer that all wages, taxes, workers' compensation premiums and employee benefits have been paid by the professional employer organization or members of the professional employer organization group; or

(2) Provide a bond, irrevocable letter of credit or securities with a minimum market value of one hundred fifty thousand dollars to the department. Such bond shall be held by a depository designated by the commissioner securing payment by the professional employer organization of all taxes, wages, benefits or other entitlement due to or with respect to covered employees, if the professional employer organization does not make such payments when due.

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(b) The commissioner may accept an affidavit or certification of a bonded, independent and qualified assurance organization approved by the commissioner to certify qualifications of a professional employer organization in lieu of the requirements of this section.

(c) The provisions of subsections (a) and (b) of this section shall not apply to a professional employer organization that has been issued a limited registration under subsection (e) of section 3 of this act.

Sec. 5. (NEW) (*Effective January 1, 2009*) (a) Except as specifically provided in sections 2 to 6, inclusive, of this act, the allocation of rights, duties and obligations of a professional employer organization and a client shall be determined by the professional employer agreement.

(b) Each professional employer agreement shall:

(1) Provide for the (A) allocation of employer rights and obligations between the clients and the professional employer organization with respect to the covered employees, and (B) professional employer organization and the client to assume the responsibilities required by sections 2 to 6, inclusive, of this act; and

(2) Require the professional employer organization (A) to pay wages to covered employees, (B) to withhold, collect, report and remit payroll-related and unemployment taxes, and (C) to the extent the professional employer organization has assumed responsibility in the professional employer agreement, to make payment for employee benefits for covered employees.

(c) Except as otherwise expressly provided in the applicable professional employer agreement:

(1) A client shall be solely responsible for the quality, adequacy or safety of the goods or services produced or sold in the client's business;

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(2) A client shall be solely responsible for directing, supervising, training and controlling the work of covered employees with respect to the business activities of the client and solely responsible for the acts, errors or omissions of covered employees with regard to such activities;

(3) A client shall not be liable for the acts, errors or omissions of a professional employer organization or of any covered employee of the client when such covered employee is acting under the express direction and control of the professional employer organization;

(4) A professional employer organization shall not be liable for the acts, errors or omissions of a client or of any covered employee of the client when such covered employee is acting under the express direction and control of the client; and

(5) A covered employee is not, solely as the result of being a covered employee of a professional employer organization, an employee of the professional employer organization for purposes of general liability insurance, fidelity bonds, surety bonds, employer's liability which is not covered by workers' compensation and employer's liability insurance carried by the professional employer organization unless the covered employee is included by specific reference in the professional employer agreement and applicable prearranged employment contract, insurance contract or bond.

Sec. 6. (NEW) (*Effective January 1, 2009*) (a) An applicant for registration or a registered professional employer organization or controlling person of an applicant or a registered professional employer organization shall be subject to disciplinary action pursuant to subsection (b) of this section, if such applicant registrant or controlling person:

(1) Wilfully violates any provision of sections 2 to 5, inclusive, of

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this act;

(2) Is convicted of a crime that relates to (A) the operation of a professional employer organization or professional employer organization group, (B) fraud or deceit, or (C) the ability of the professional employer organization or professional employer organization group or a controlling person of a professional employer organization or professional employer organization group to operate a professional employer organization or professional employer organization group;

(3) Knowingly makes a material misrepresentation to the department or other governmental agency;

(4) Misappropriates any funds of a client employer; or

(5) Uses fraudulent or coercive practices to obtain or retain business or demonstrates gross financial irresponsibility.

(b) Upon finding, after notice and opportunity for hearing, that an applicant for registration or a registered professional employer organization or a controlling person of an applicant or registered professional employer organization violated one or more provisions of subsection (a) of this section, the commissioner may:

(1) Deny any applications for registration;

(2) Revoke, restrict or refuse to renew a registration;

(3) Impose an administrative penalty in an amount not to exceed one thousand dollars for each material violation;

(4) Place the professional employer organization or controlling person of a professional employer organization on probation for a period to be determined by the commissioner, subject to reasonable conditions specified by the commissioner; or

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(5) Issue a cease and desist order.

(c) In addition to the penalties provided in this section, any professional employer organization or professional employer organization group or officer or agent of a professional employer organization or professional employer organization group who violates any provision of sections 1 to 5, inclusive, of this act shall be liable to the Labor Department for a civil penalty of three hundred dollars for each violation.

(d) The Attorney General, upon complaint of the Labor Commissioner, shall institute a civil action to recover the penalties provided for under subsections (b) and (c) of this section. Any amount recovered shall be deposited in the General Fund and credited to the separate, nonlapsing appropriation to the Labor Department for other current expenses and may be used by the Labor Department to enforce the provisions of sections 2 to 6, inclusive, of this act.

(e) Any registration or renewal fees collected pursuant to section 3 of this act shall be deposited in the General Fund and credited to the separate, nonlapsing appropriation to the Labor Department for other current expenses and may be used by the Labor Department for administration costs for purposes of sections 2 to 6, inclusive, of this act.

Sec. 7. (NEW) (*Effective July 1, 2008*) Nothing in sections 1 to 6, inclusive, of this act shall operate to eliminate or diminish an employee protection or employer responsibility provided by title 31 of the general statutes or any regulation or policy adopted by the Labor Department pursuant thereto, or the Labor Department's ability to enforce those provisions.

Sec. 8. (NEW) (*Effective from passage*) On or before July 1, 2009, the commissioner may adopt regulations, in accordance with chapter 54 of

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the general statutes, to implement and administer sections 1 to 7, inclusive, of this act, which shall include, but not be limited to:

(1) Establishing guidelines for the electronic filing of applications, documents, reports and other filings by a bonded, independent and qualified assurance organization approved by the commissioner which may satisfy the filing requirements of sections 3 and 4 of this act;

(2) Establishing criteria for notice and written summaries to covered employees of the professional employer organization arrangement;

(3) Requiring specific notice as to whether all or only a part of a client's employees are covered employees; and

(4) Requiring notice of who is the controlling entity of a professional employer organization or professional employer organization group.

Sec. 9. (NEW) (*Effective July 1, 2008*) (a) There is established a joint enforcement commission on employee misclassification. The commission shall consist of the Labor Commissioner, the Commissioner of Revenue Services, the chairperson of the Workers' Compensation Commission, the Attorney General and the Chief State's Attorney, or their designees.

(b) The joint enforcement commission on employee misclassification shall meet not less than four times each year. The task force shall review the problem of employee misclassification by employers for the purposes of avoiding their obligations under state and federal labor, employment and tax laws. The commission shall coordinate the civil prosecution of violations of state and federal laws as a result of employee misclassification and shall report any suspected violation of state criminal statutes to the Chief State's Attorney or the State's Attorney serving the district in which the violation is alleged to have occurred.

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(c) On or before February 1, 2010, and annually thereafter, the commission shall report, in accordance with section 11-4a of the general statutes, to the Governor and the joint standing committee of the General Assembly having cognizance of matters relating to labor. The report shall summarize the commission's actions for the preceding calendar year and include any recommendations for administrative or legislative action.

Approved June 2, 2008