



General Assembly

**Amendment**

February Session, 2008

LCO No. 5257

**\*HB0511305257HDO\***

Offered by:

REP. AMANN, 118<sup>th</sup> Dist.

REP. RYAN, 139<sup>th</sup> Dist.

SEN. PRAGUE, 19<sup>th</sup> Dist.

REP. AMAN, 14<sup>th</sup> Dist.

To: Subst. House Bill No. 5113

File No. 195

Cal. No. 100

**"AN ACT CONCERNING PROFESSIONAL EMPLOYER ORGANIZATIONS."**

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1 Strike everything after the enacting clause and substitute the  
2 following in lieu thereof:

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

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

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

13 inclusive, of this act;

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

21 (4) "Department" means the Labor Department;

22 (5) "Commissioner" means the Labor Commissioner;

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

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

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

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

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

40 (A) Arrangements in which a person, other than a person whose  
41 principal business activity is entering into professional employer

42 arrangements, shares employees with a commonly-owned company  
43 within the meaning of Sections 414(b) and (c) of the Internal Revenue  
44 Code of 1986, or any subsequent corresponding internal revenue code  
45 of the United States, as from time to time amended;

46 (B) Independent contractor arrangements in which a person  
47 assumes responsibility for the product produced or service performed  
48 by such person or such person's agents and retains and exercises  
49 primary direction and control over the work performed by the  
50 individuals whose services are supplied under such arrangements; or

51 (C) Temporary help services;

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

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

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

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

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

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

72 (2) A professional employer organization or professional employer  
73 organization group shall not be deemed to engage in any occupation,  
74 trade, profession or other activity that is subject to licensing,  
75 registration or certification requirements or is otherwise regulated by a  
76 governmental entity solely by entering into and maintaining a  
77 coemployment relationship.

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

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

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

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

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

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

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

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

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

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

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

125 (B) If an applicant has not had sufficient operating history to have  
126 audited financial statements based on at least twelve months of  
127 operating history, the applicant shall submit a financial statement that  
128 sets forth the financial condition of the professional employer  
129 organization and is prepared pursuant to generally accepted  
130 accounting principles by an independent certified public accountant  
131 licensed to do business in the state who attests that (i) it is the  
132 applicant's most recent financial statement, (ii) he reviewed the  
133 financial statement within six months of the registration, (iii) the

134 applicant is not delinquent in the payment of state or federal taxes, and  
135 (iv) the applicant meets the financial capacity requirements of section 4  
136 of this act.

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

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

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

155 (c) A registered professional employer organization may apply for  
156 renewal of its registration annually by submitting to the commissioner,  
157 not later than one hundred eighty days after the end of the  
158 professional employer organization's or professional employer  
159 organization group's fiscal year, (1) an audit for the preceding fiscal  
160 year, and (2) notice of any changes in the information provided in such  
161 registrant's immediately preceding application for initial registration  
162 or renewal. An applicant may apply for an extension with the  
163 department, but any such request shall be accompanied by a letter  
164 from the auditor stating the reasons for the delay and the anticipated  
165 audit completion date. The financial statement shall be prepared in

166 accordance with generally accepted accounting principles and audited  
167 by an independent certified public accountant licensed to practice in  
168 the jurisdiction in which such accountant is located, and shall be  
169 without qualification as to any increase in going concern status of the  
170 professional employer organization.

171 (d) Professional employer organizations in a professional employer  
172 organization group may satisfy the reporting and financial  
173 requirements of this section and section 4 of this act on a combined or  
174 consolidated basis provided each member of the professional  
175 employer organization group guarantees the obligations under  
176 sections 2 to 6, inclusive, of this act of each other member of the  
177 professional employer organization group. In the case of a professional  
178 employer organization group that submits a combined or consolidated  
179 audited financial statement, including entities that are not professional  
180 employer organizations or that are not in the professional employer  
181 organization group, the controlling entity of the professional employer  
182 organization group under the consolidated or combined statement  
183 shall guarantee the obligations of the professional employer  
184 organization in the professional employer organization group. Each  
185 professional employer organization or professional employer  
186 organization group shall notify the commissioner of the name and  
187 address of such controlling entity.

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

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

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

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

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

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

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

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

218 (h) The registrant shall notify the commissioner of the address of the  
219 principal place of business of the registrant and the address of each  
220 office it maintains or proposes to maintain in this state.

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

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

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

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

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

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

257 Sec. 5. (NEW) (*Effective January 1, 2009*) (a) Except as specifically  
258 provided in sections 2 to 6, inclusive, of this act, the allocation of  
259 rights, duties and obligations of a professional employer organization

260 and a client shall be determined by the professional employer  
261 agreement.

262 (b) Each professional employer agreement shall:

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

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

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

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

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

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

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

290 direction and control of the client; and

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

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

306 (1) Wilfully violates any provision of sections 2 to 5, inclusive, of  
307 this act;

308 (2) Is convicted of a crime that relates to (A) the operation of a  
309 professional employer organization or professional employer  
310 organization group, (B) fraud or deceit, or (C) the ability of the  
311 professional employer organization or professional employer  
312 organization group or a controlling person of a professional employer  
313 organization or professional employer organization group to operate a  
314 professional employer organization or professional employer  
315 organization group;

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

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

319 (5) Uses fraudulent or coercive practices to obtain or retain business

320 or demonstrates gross financial irresponsibility.

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

326 (1) Deny any applications for registration;

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

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

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

334 (5) Issue a cease and desist order.

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

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

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

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

361 Sec. 8. (NEW) (*Effective from passage*) On or before July 1, 2009, the  
362 commissioner may adopt regulations, in accordance with chapter 54 of  
363 the general statutes, to implement and administer sections 1 to 7,  
364 inclusive, of this act, which shall include, but not be limited to:

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

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

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

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

375 Sec. 9. (NEW) (*Effective July 1, 2008*) (a) There is established a joint  
376 enforcement commission on employee misclassification. The  
377 commission shall consist of the Labor Commissioner, the  
378 Commissioner of Revenue Services, the chairperson of the Workers'

379 Compensation Commission, the Attorney General and the Chief State's  
380 Attorney, or their designees.

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

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

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2008</i>	New section
Sec. 2	<i>January 1, 2009</i>	New section
Sec. 3	<i>January 1, 2009</i>	New section
Sec. 4	<i>January 1, 2009</i>	New section
Sec. 5	<i>January 1, 2009</i>	New section
Sec. 6	<i>January 1, 2009</i>	New section
Sec. 7	<i>July 1, 2008</i>	New section
Sec. 8	<i>from passage</i>	New section
Sec. 9	<i>July 1, 2008</i>	New section