
A BILL FOR AN ACT

RELATING TO PROFESSIONAL EMPLOYER ORGANIZATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that Act 225, Session
2 Laws of Hawaii 2007, established a new chapter on professional
3 employment organizations that provided a general excise tax
4 exemption on amounts a client company paid to a professional
5 employment organization.

6 The legislature further finds that Act 129, Session Laws of
7 Hawaii 2010, established a new chapter in the Hawaii Revised
8 Statutes on professional employer organizations. The
9 legislature notes that the proper term for this type of business
10 entity is professional employer organization, as established in
11 Act 129. The legislature also notes that two chapters relating
12 to professional employer organizations are unnecessary.

13 Act 129 established registration requirements for
14 professional employer organizations. Although these
15 requirements went into effect on July 1, 2011, additional
16 operational provisions are needed to enable the department of
17 labor and industrial relations to fully implement Act 129.

18 The purpose of this Act is to:



- 1 (1) Eliminate duplicative provisions relating to
2 professional employer organizations by repealing
3 chapter 373K, Hawaii Revised Statutes, and incorporate
4 the existing general excise tax exemption into chapter
5 373L, Hawaii Revised Statutes; and
- 6 (2) Facilitate the implementation of the professional
7 employer organization law as established by Act 129,
8 Session Laws of Hawaii 2010.

9 SECTION 2. Chapter 373L, Hawaii Revised Statutes, is
10 amended by adding ten new sections to be appropriately
11 designated and to read as follows:

12 **"§373L-A Professional employer organization special fund.**

13 There is established in the state treasury a special fund to be
14 known as the professional employer organization special fund to
15 be administered by the department to implement and operate the
16 registration of professional employer organizations established
17 by this chapter. Moneys collected as fees or fines under
18 sections 373L-B, 373L-C, 373L-D, and 373L-G shall be deposited
19 in the fund. Interest earned from the balance of the fund shall
20 become a part of the fund. Moneys in the fund may be expended
21 for personnel and operating expenses and staff training.



1 §373L-B Notice of judgments, penalties. (a) Each
2 registered professional employer organization shall provide
3 written notice within thirty days to the department of any
4 judgment, award, or disciplinary sanction imposed against the
5 organization for violating a statutory provision in an
6 enforcement action brought by a state or federal regulatory
7 agency. An organization shall also give notice of such
8 determinations made in other jurisdictions.

9 In addition to any other penalties provided by law, the
10 failure of a professional employer organization to comply with
11 this subsection is a violation punishable by a fine established
12 by the director pursuant to section 373L-E. Any action taken to
13 impose or collect the fine provided for in this subsection shall
14 not be considered a criminal action.

15 (b) Each professional employer organization shall file
16 with the department the organization's current mailing and
17 business address. It shall be the professional employer
18 organization's duty to provide written notice to the department
19 of any change of address within thirty days of the change.
20 Failure of the professional employer organization to provide the
21 notice shall absolve the department or director from any duty to



1 provide notice of any matter required by law to be provided to
2 the professional employer organization.

3 **§373L-C Denial, suspension, revocation, or denial of**
4 **renewal of registration.** In addition to any other actions
5 authorized by law, the director may deny, suspend, revoke, fine,
6 or deny renewal of registration of any professional employer
7 organization when a professional employer organization,
8 including its controlling persons:

- 9 (1) Fails to meet the requirements for registration as
10 provided in this chapter;
- 11 (2) Fails to satisfy a civil fine, penalty, or restitution
12 order arising out of any administrative or enforcement
13 action brought by any governmental agency for conduct
14 involving fraud or dishonest dealing;
- 15 (3) Has had an order or judgment entered against it in the
16 past ten years in any criminal, administrative, or
17 enforcement action for conduct involving fraud or
18 dishonest dealing, or for any violation of any state's
19 laws or rules;
- 20 (4) Fails to post a bond in accordance with this chapter;



1	<u>0 - 100 covered employees</u>	<u>\$1,500</u>
2	<u>101 - 250 covered employees</u>	<u>\$3,000</u>
3	<u>251 - 499 covered employees</u>	<u>\$4,500</u>
4	<u>500 or more covered employees</u>	<u>\$6,000</u>
5	<u>(4) Restoration fee</u>	<u>\$500</u>

6 until such time as the director of labor and industrial
7 relations amends such fees by rulemaking in accordance with
8 chapter 91. The fees to be established by the director may
9 include but shall not be limited to an application fee, initial
10 registration fee, biennial renewal fee, restoration fee, and
11 other reasonable and necessary fees related to the department's
12 administrative costs. Unless otherwise provided by law, the
13 fees shall be deposited into the professional employer
14 organization special fund. The number of covered employees for
15 purposes of this section shall be calculated based on the number
16 of employees reported on a professional employer organization's
17 fourth quarter form UC-B6: Quarterly Wage, Contribution and
18 Employment and Training Assessment Report filed with the
19 department for the preceding year.

20 **§373L-E Responsibilities and duties of the director.** The
21 general duties and powers of the director shall include but not
22 be limited to:

1 (1) Adopting, amending, and repealing rules in accordance
2 with chapter 91 to issue, deny, condition, renew, or
3 deny renewal of registrations;

4 (2) Establishing fees and fines;

5 (3) Inspecting and auditing the books and records of the
6 registrant; and

7 (4) Doing all things necessary to carry out the functions,
8 powers, and duties of the chapter.

9 **§373L-F Professional employer agreements.** The agreement
10 between a professional employer organization and its client
11 company shall state that the professional employer organization
12 shall be deemed the employer for purposes of unemployment
13 insurance, workers' compensation, temporary disability
14 insurance, and prepaid health care coverage.

15 The professional employer organization shall provide
16 written notice of the relationship between the professional
17 employer organization and the client company to each covered
18 employee of the client company.

19 **§373L-G Failure to comply; penalty; injunction.** (a) If a
20 professional employer organization fails to comply with this
21 chapter or any rule or final order of the director, the
22 professional employer organization shall be liable for a penalty



1 of not less than \$1,000 or of \$500 for every day during which
2 such failure continues, whichever sum is greater, to be
3 recovered in an action brought by the director in the name of
4 the State, and the amount so collected shall be paid into the
5 professional employer organization special fund. The director
6 may, however, in the director's discretion, for good cause
7 shown, remit all or any part of the penalty in excess of \$1,000
8 to the professional employer organization; provided that the
9 professional employer organization complies with this chapter,
10 rule, and order of the director.

11 (b) If a professional employer organization fails to
12 comply with this chapter for a period of thirty consecutive
13 days, the professional employer organization may be enjoined, by
14 the circuit court of the circuit in which the professional
15 employer organization's principal place of business is located,
16 from carrying on business anywhere in the State so long as the
17 noncompliance continues, and such action for injunction shall be
18 prosecuted by the attorney general or any county attorney if so
19 requested by the director.

20 **§373L-H Hearings.** Unless otherwise provided by law, in
21 every case in which the director refuses to issue, renew,
22 restore, or reinstate a license, or proposes to fine a



1 professional employer organization, the proceeding shall be
2 conducted in accordance with chapter 91 by the director or an
3 appointed hearings officer.

4 In all proceedings before it, the director or hearings
5 officer shall have the same powers respecting administering
6 oaths, compelling the attendance of witnesses and the production
7 of documentary evidence, and examining witnesses, as are
8 possessed by circuit courts. In case of disobedience by any
9 person of any order of the director or hearings officer, or of
10 any subpoena issued by the director or hearings officer, or the
11 refusal of any witness to testify to any matter that the person
12 may be questioned lawfully, any circuit judge, on application by
13 the director or hearings officer, shall compel obedience as in
14 the case of disobedience of the requirements of a subpoena
15 issued by a circuit court, or a refusal to testify therein.

16 **§373L-I Judicial review by circuit court.** Any
17 professional employer organization aggrieved by a final decision
18 and order of the director in a contested case, as defined in
19 chapter 91, is entitled to judicial review thereof by the
20 circuit court of the circuit in which the professional employer
21 organization's principal place of business is located. The
22 review shall be as provided by chapter 91.



1 §373L-J Payroll cost exemption. (a) Amounts received by
2 a professional employer organization from a client company in
3 amounts equal to and that are disbursed by the professional
4 employer organization for employee wages, salaries, payroll
5 taxes, insurance premiums, and benefits, including retirement,
6 vacation, sick leave, health benefits, and similar employment
7 benefits with respect to covered employees at a client company
8 shall not be subject to the general excise tax as provided by
9 section 237-24.75.

10 (b) The general excise tax exemption under section
11 237-24.75 shall not apply to the professional employer
12 organization if:

13 (1) By or through any contract between the client company
14 and any professional employer organization, or
15 otherwise, employees are excluded from any employee
16 rights or employee benefits required by law to be
17 provided to employees of the client company by the
18 client company; or

19 (2) The professional employer organization fails to pay
20 any tax withholding for covered employees or any
21 federal or state taxes for which the professional
22 employment organization is responsible."



1 SECTION 3. Section 237-24.75, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§237-24.75 Additional exemptions.** In addition to the
4 amounts exempt under section 237-24, this chapter shall not
5 apply to:

6 (1) Amounts received as a beverage container deposit
7 collected under chapter 342G, part VIII;

8 (2) Amounts received by the operator of the Hawaii
9 convention center for reimbursement of costs or
10 advances made pursuant to a contract with the Hawaii
11 tourism authority under section 201B-7[+]; and[+]

12 [+](3) Amounts received[+] by a professional [~~employment~~]
13 employer organization from a client company equal to
14 amounts that are disbursed by the professional
15 [~~employment~~] employer organization for employee wages,
16 salaries, payroll taxes, insurance premiums, and
17 benefits, including retirement, vacation, sick leave,
18 health benefits, and similar employment benefits with
19 respect to [~~assigned~~] covered employees at a client
20 company; provided that this exemption shall not apply
21 to a professional [~~employment~~] employer organization
22 upon failure of the professional [~~employment~~] employer



1 organization to collect, account for, and pay over any
2 income tax withholding for [~~assigned~~] covered
3 employees or any federal or state taxes for which the
4 professional [~~employment~~] employer organization is
5 responsible. As used in this paragraph,
6 [~~"professional employment organization",~~]
7 "professional employer organization, "client company",
8 and [~~"assigned employee"~~] "covered employee" shall
9 have the meanings provided in section [~~373K-1.~~]
10 373L-1."

11 SECTION 4. Section 373L-1, Hawaii Revised Statutes, is
12 amended as follows:

13 1. By adding three new definitions to be appropriately
14 inserted and to read:

15 "Assurance organization" means an independent entity
16 approved by the director to provide accreditation and financial
17 assurance services for professional employer organizations.

18 "Controlling person" means any individual, firm,
19 association, or corporation that directly or indirectly has the
20 power to direct or cause to be directed, the management,
21 control, or activities of the professional employer
22 organization.



1 "Department" means the department of labor and industrial
2 relations."

3 2. By amending the definitions of "client company",
4 "professional employer organization", and "temporary help
5 services" to read:

6 "'Client company" means any person [~~who enters into a~~
7 ~~professional employer agreement with a professional employer~~
8 ~~organization.~~] that contracts with a professional employer
9 organization and is assigned employees by the professional
10 employer organization under that contract.

11 "Professional employer organization" or "organization"
12 means [~~any person that is a party to a professional employer~~
13 ~~agreement with a client company regardless of whether the person~~
14 ~~uses the term or conducts business expressly as a "professional~~
15 ~~employer organization", "PEO", "staff leasing company",~~
16 ~~"registered staff leasing company", "employee leasing company",~~
17 ~~"administrative employer", or any other similar name.] a
18 business entity that offers to co-employ employees that are
19 assigned to the worksites of its client companies.~~

20 "Temporary help [~~services~~]" means an arrangement by which
21 [~~a person recruits and hires the person's own employees and:~~



- 1 ~~(1) Finds other organizations that need the services of~~
- 2 ~~those employees;~~
- 3 ~~(2) Assigns those employees to perform work or services~~
- 4 ~~for other organizations to support or supplement the~~
- 5 ~~other organizations' workforces or to provide~~
- 6 ~~assistance in special work situations, including~~
- 7 ~~employee absences, skill shortages, seasonal~~
- 8 ~~workloads, or special assignments or projects; and~~
- 9 ~~(3) Customarily attempts to reassign the employees to~~
- 10 ~~successive placements with other organizations at the~~
- 11 ~~end of each assignment.]~~

12 an organization hires its own employees and assigns them to a
 13 client company to support or supplement the client's workforce
 14 in a special situation, including:

- 15 (1) An employee absence;
- 16 (2) A temporary skill shortage;
- 17 (3) A seasonal workload; or
- 18 (4) A special assignment or project."

19 SECTION 5. Section 373L-2, Hawaii Revised Statutes, is
 20 amended to read as follows:

21 "**[+]§373L-2 [{}]** **Registration required.** (a) Every
 22 professional employer organization shall register with the



1 director by providing all of the information required by this
2 section and by rules adopted by the director pursuant to chapter
3 91 prior to entering into any professional employer agreement
4 with any client company in this State.

5 (b) Registration information required by this section
6 shall include:

- 7 (1) The name or names under which the professional
8 employer organization conducts or will conduct
9 business;
- 10 (2) The address of the principal place of business of the
11 professional employer organization and the address of
12 each office that the professional employer
13 organization maintains in this State;
- 14 (3) The professional employer organization's general
15 excise tax number;
- 16 (4) A copy of the certificate of authority to transact
17 business in this State issued by the director of
18 commerce and consumer affairs pursuant to title 23 or
19 title 23A, if applicable;
- 20 (5) A list, organized by jurisdiction, of each name under
21 which the professional employer organization has
22 operated in the preceding five years, including any



- 1 alternative names; names of predecessors; and, if
2 known, names of successor business entities;
- 3 (6) A statement of ownership, which shall include the name
4 of each person who, individually or acting in concert
5 with any other person or persons, owns or controls,
6 directly or indirectly, twenty-five per cent or more
7 of the equity interests of the professional employer
8 organization;
- 9 (7) A statement of management, which shall include the
10 name of any person who serves as president or chief
11 executive officer or who otherwise has the authority
12 to act as a senior executive officer of the
13 professional employer organization;
- 14 (8) Proof of valid workers' compensation coverage in
15 compliance with all laws of this State;
- 16 (9) Proof of compliance with the Hawaii temporary
17 disability insurance law;
- 18 (10) Proof of compliance with the Hawaii prepaid health
19 care act as regards all employees of the professional
20 employer organization;



- 1 (11) Proof of compliance with the Hawaii employment
2 security law, including payment of any applicable
3 employer liability pursuant to chapter 383; [~~and~~]
- 4 (12) A financial statement prepared in accordance with
5 generally accepted accounting principles, audited by
6 an independent certified public accountant licensed to
7 practice in the State, and without qualification as to
8 the going concern status of the professional employer
9 organization[~~-~~]; and
- 10 (13) The name, address, and phone number of the financial
11 institution utilized by the professional employer
12 organization for payroll purposes that operates and
13 maintains branches in the State.

14 (c) Registration under this section shall expire on
15 [~~December 31~~] June 30 of each [~~odd-numbered~~] even-numbered year.
16 Before [~~December 31~~] June 30 of each [~~odd-numbered~~] even-
17 numbered year, the director or the director's authorized
18 delegate shall mail a renewal application for registration to
19 the address on record of the registrant. In connection with
20 renewal of registration, a professional employer organization
21 shall provide all of the information required by subsection (b).
22 Failure to renew a registration shall result in forfeiture of



1 that registration. Registrations that have been forfeited may
2 be restored within one year of the forfeiture date upon payment
3 of renewal and restoration fees. Failure to restore a forfeited
4 registration within one year shall result in the automatic
5 termination of the registration. Registrations that have been
6 terminated pursuant to this section shall be required to reapply
7 for a new registration as a new applicant.

8 (d) The director shall [~~establish fees and requirements~~
9 ~~for registration, maintenance of registration, renewal, and~~
10 ~~restoration of registration for professional employer~~
11 ~~organizations by rule pursuant to chapter 91.] to the extent
12 practicable permit the acceptance of electronic filings in
13 conformance with chapter 489E, including applications,
14 documents, reports, and other filings required under this
15 chapter. The director may provide for the acceptance of
16 electronic filings and other assurance by an independent and
17 qualified assurance organization approved by the director that
18 provides satisfactory assurance of compliance acceptable to the
19 director similar to or in lieu of the requirements of this
20 chapter or rules adopted pursuant to it. Such rules shall
21 permit a professional employer organization to authorize an
22 assurance organization approved by the director to act on the~~



1 professional employer organization's behalf in complying with
2 the registration requirements of this chapter, including
3 electronic filings of information and payment of registration
4 fees. Use of an approved assurance organization shall be
5 optional for a registrant. Nothing in this subsection shall
6 limit or change the director's authority to register or
7 terminate registration of a professional employer organization
8 or to investigate or enforce any provision of this chapter."

9 SECTION 6. Section 373L-3, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "~~[+]§373L-3[+]~~ **Bond required.** (a) No professional
12 employer organization shall enter into a professional employment
13 agreement with a client company in the State unless the
14 professional employer organization posts a bond ~~[in the amount~~
15 ~~of \$250,000, which is a performance or financial guaranty type~~
16 ~~bond naming the director as the obligee and which may be~~
17 ~~cancelled only if the professional employer organization gives~~
18 ~~sixty days prior written notice to the surety or if the surety~~
19 ~~gives thirty days prior written notice to the director of~~
20 ~~cancellation of the bond. The requirements of this section~~
21 ~~shall be satisfied by a single bond. If a professional employer~~



1 ~~organization has more than one branch location, the bond shall~~
2 ~~cover all locations.]~~ as follows:

3 (1) Professional employer organizations consisting of
4 fewer than one hundred full-time or part-time
5 employees shall post a minimum of \$250,000;

6 (2) All other professional employer organizations shall
7 post a bond in an amount equal to one per cent of the
8 organization's prior year's total wages, benefits,
9 workers' compensation premiums, and unemployment
10 compensation contributions, or a bond in the amount of
11 \$1,000,000, whichever is less; provided that the
12 amount of the bond shall be no less than \$500,000.

13 (b) Any bond posted pursuant to this section shall be a
14 performance or financial guaranty type bond naming the director
15 as the obligee and may be canceled only if the professional
16 employer organization gives sixty days prior written notice to
17 the surety or if the surety gives thirty days prior written
18 notice to the director of cancellation of the bond. If a
19 professional employer organization has more than one branch
20 location, the bond shall cover all locations. The requirements
21 of this section shall be satisfied by a single bond. The bond
22 required by this section shall be issued by [a] an A-rated



1 surety or a federally insured lending institution authorized to
2 do business in the State to indemnify [a] the State, client
3 [company] companies, and covered employees who may suffer loss
4 as a result of nonperformance by a professional employer
5 organization.

6 (c) In lieu of the requirements of subsections (a) and
7 (b), a professional employer organization that is a member of an
8 assurance organization may post a bond through the assurance
9 organization; provided that coverage shall consist of a bond of
10 at least \$1,000,000 issued by an A-rated surety company plus a
11 \$10,000,000 excess bond providing umbrella coverage for the
12 benefit of the State, client companies, and client company
13 employees.

14 ~~[(e)]~~ (d) Upon cancellation or expiration of the bond, the
15 surety or insurer shall remain liable for any claims against the
16 bond for a period of six months; provided that:

17 (1) The debts were incurred while the bond was in effect;
18 and

19 (2) The director notifies the surety or insurer, as the
20 case may be, of any claims within ninety days of
21 discovery of any claims.



1 [~~(d)~~] (e) The surety or insurer is not required to release
2 any moneys or collateral to the professional employer
3 organization during the six months after cancellation of the
4 bond.

5 [~~(e)~~] (f) Failure to have in effect a current bond shall
6 result in automatic forfeiture of registration pursuant to this
7 chapter and shall require the professional employer organization
8 to immediately cease doing business in the State. A
9 professional employer organization whose registration is
10 forfeited shall apply as a new applicant for registration in
11 order to resume business in the State.

12 (g) The director, or any person claiming to have sustained
13 damage resulting from noncompliance of a professional employer
14 organization with this chapter, may bring an action on the bond
15 to recover the damage therefrom. The director may deposit with
16 a court of competent jurisdiction all or any part of the sum of
17 the bond."

18 SECTION 6. Chapter 373K, Hawaii Revised Statutes, is
19 repealed.

20 SECTION 7. The director of labor and industrial relations
21 may establish three .5 full-time permanent additional positions,
22 subject to chapters 76 and 89, Hawaii Revised Statutes, to carry



1 out the purposes of chapter 373L, Hawaii Revised Statutes. The
2 positions may include a disability compensation enforcement
3 specialist IV, auditor IV, and office assistant IV.

4 SECTION 8. There is appropriated out of the professional
5 employer organization special fund the sum of \$177,500 or so
6 much thereof as may be necessary for fiscal year 2012-2013 for
7 the department of labor and industrial relations to carry out
8 the purposes of this Act, including the hiring of necessary
9 staff.

10 The sum appropriated shall be expended by the department of
11 labor and industrial relations for the purposes of this Act.

12 SECTION 9. In codifying the new sections added by section
13 2 of this Act, the revisor of statutes shall substitute
14 appropriate section numbers for the letters used in designating
15 the new sections in this Act.

16 SECTION 10. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 11. This Act shall take effect on July 1, 2050;
19 provided that section 8 shall take effect on July 1, 2012.



Report Title:

Professional Employer Organizations; Fees and Expenses; Bond Requirements; Appropriation

Description:

Adds powers and duties to the director of labor and industrial relations regarding the registration and regulation of professional employer organizations. Authorizes various penalties for noncompliance; amends definitions and bond level requirements; establishes the professional employer special fund. Repeals chapter 373K, HRS, but moves the general excise tax provisions to chapter 373L, HRS. Appropriates funds to the department of labor and industrial relations. Effective 07/01/2050. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

