
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 penalties 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 action
6 brought by any state or federal regulatory agency.

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

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



1 §373L-C Denial, suspension, revocation, denial of renewal
2 of registration, or penalty. In addition to any other actions
3 authorized by law, the director may deny, suspend, revoke, or
4 deny renewal of registration of any professional employer
5 organization or impose a penalty when the professional employer
6 organization, including its controlling persons:

7 (1) Fails to meet the requirements for registration as
8 provided in this chapter;

9 (2) Fails to satisfy a civil fine, penalty, or restitution
10 order arising out of any administrative or enforcement
11 action brought by any governmental agency for conduct
12 involving fraud or dishonest dealing;

13 (3) Has had an order or judgment entered against it in the
14 past ten years in any criminal, administrative, or
15 enforcement action for conduct involving fraud or
16 dishonest dealing, or for any violation of any state's
17 laws or rules;

18 (4) Fails to post a bond in accordance with this chapter;

19 (5) Makes any false statement, representation, or
20 certification in any document or record required to be
21 maintained under this chapter;



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 penalties;

5 (3) Inspecting and auditing the books and records of the
6 professional employer organization or registrant; and

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

1 professional employer organization shall be liable for a penalty
2 in an amount:

3 (1) Not less than \$1,000; or

4 (2) \$500 for every day during which the failure continues;

5 whichever sum is greater. The director may, however, in the
6 director's discretion, for good cause shown, remit all or any
7 part of the penalty in excess of \$1,000 to the professional
8 employer organization; provided that the professional employer
9 organization complies with this chapter, rules adopted pursuant
10 to chapter 91, and final orders of the director.

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

21 §373L-H Hearings. Unless otherwise provided by law, in
22 every case in which the director refuses to issue, renew,



1 restore, or reinstate a registration, or proposes to impose a
2 penalty on a professional employer organization, the proceeding
3 shall be conducted in accordance with chapter 91 by the director
4 or an appointed hearings officer.

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

18 §373L-I Judicial review by circuit court. Any
19 professional employer organization aggrieved by a final decision
20 and order of the director in a contested case, as defined in
21 chapter 91, is entitled to judicial review thereof by the
22 circuit court of the circuit in which the professional employer



1 organization's principal place of business is located. The
2 review shall be as provided by chapter 91.

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

12 (b) The general excise tax exemption under section
13 237-24.75 shall not apply to the professional employer
14 organization if:

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

21 (2) The professional employer organization fails to pay
22 any tax withholding for covered employees or any



1 federal or state taxes for which the professional
2 employer organization is responsible."

3 SECTION 3. Section 209E-2, Hawaii Revised Statutes, is
4 amended by amending the definition of "leased employee" to read
5 as follows:

6 ""Leased employee" means an employee under a professional
7 [employment] employer organization arrangement who is assigned
8 to a particular client company on a substantially full-time
9 basis for at least one year."

10 SECTION 4. Section 237-24.75, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§237-24.75 Additional exemptions.** In addition to the
13 amounts exempt under section 237-24, this chapter shall not
14 apply to:

- 15 (1) Amounts received as a beverage container deposit
- 16 collected under chapter 342G, part VIII;
- 17 (2) Amounts received by the operator of the Hawaii
- 18 convention center for reimbursement of costs or
- 19 advances made pursuant to a contract with the Hawaii
- 20 tourism authority under section 201B-7[+]; and[+]
- 21 [+] (3) Amounts received[+] by a professional [employment]
- 22 employer organization from a client company equal to

1 amounts that are disbursed by the professional
2 [~~employment~~] employer organization for employee wages,
3 salaries, payroll taxes, insurance premiums, and
4 benefits, including retirement, vacation, sick leave,
5 health benefits, and similar employment benefits with
6 respect to [~~assigned~~] covered employees at a client
7 company; provided that this exemption shall not apply
8 to a professional [~~employment~~] employer organization
9 upon failure of the professional [~~employment~~] employer
10 organization to collect, account for, and pay over any
11 income tax withholding for [~~assigned~~] covered
12 employees or any federal or state taxes for which the
13 professional [~~employment~~] employer organization is
14 responsible. As used in this paragraph,
15 [~~"professional employment organization",~~]
16 "professional employer organization, "client company",
17 and [~~"assigned employee"~~] "covered employee" shall
18 have the meanings provided in section [~~373K-1.~~]
19 373L-1."

20 SECTION 5. Section 373L-1, Hawaii Revised Statutes, is
21 amended as follows:



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

3 "Assurance organization" means an independent entity
4 approved by the director to provide accreditation and financial
5 assurance services for professional employer organizations.

6 "Controlling person" means any individual, firm,
7 association, or corporation that directly or indirectly has the
8 power to direct or cause to be directed, the management,
9 control, or activities of the professional employer
10 organization.

11 "Department" means the department of labor and industrial
12 relations."

13 2. By amending the definitions of "client company",
14 "professional employer organization", and "temporary help
15 services" to read:

16 ~~"Client company" means any person [who enters into a~~
17 ~~professional employer agreement with a professional employer~~
18 ~~organization.]~~ that contracts with a professional employer
19 organization and is assigned employees by the professional
20 employer organization under that contract.

21 "Professional employer organization" or "organization"
22 means ~~[any person that is a party to a professional employer~~

1 ~~agreement with a client company regardless of whether the person~~
2 ~~uses the term or conducts business expressly as a "professional~~
3 ~~employer organization", "PEO", "staff leasing company",~~
4 ~~"registered staff leasing company", "employee leasing company",~~
5 ~~"administrative employer", or any other similar name.] a~~
6 business entity that offers to co-employ employees that are
7 assigned to the worksites of its client companies.

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

- 10 ~~(1) Finds other organizations that need the services of~~
11 ~~those employees;~~
- 12 ~~(2) Assigns those employees to perform work or services~~
13 ~~for other organizations to support or supplement the~~
14 ~~other organizations' workforces or to provide~~
15 ~~assistance in special work situations, including~~
16 ~~employee absences, skill shortages, seasonal~~
17 ~~workloads, or special assignments or projects; and~~
- 18 ~~(3) Customarily attempts to reassign the employees to~~
19 ~~successive placements with other organizations at the~~
20 ~~end of each assignment.]~~



1 an organization hires its own employees and assigns them to a
2 client to support or supplement the client's workforce in a
3 special situation, including:

- 4 (1) An employee absence;
- 5 (2) A temporary skill shortage;
- 6 (3) A seasonal workload; or
- 7 (4) A special assignment or project."

8 SECTION 6. Section 373L-2, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "~~§~~373L-2 ~~§~~ Registration required. (a) Every
11 professional employer organization shall register with the
12 director by providing all of the information required by this
13 section and by rules adopted by the director pursuant to chapter
14 91 prior to entering into any professional employer agreement
15 with any client company in this State.

16 (b) Registration information required by this section
17 shall include:

- 18 (1) The name or names under which the professional
19 employer organization conducts or will conduct
20 business;
- 21 (2) The address of the principal place of business of the
22 professional employer organization and the address of



- 1 each office that the professional employer
2 organization maintains in this State;
- 3 (3) The professional employer organization's general
4 excise tax number;
- 5 (4) A copy of the certificate of authority to transact
6 business in this State issued by the director of
7 commerce and consumer affairs pursuant to title 23 or
8 title 23A, if applicable;
- 9 (5) A list, organized by jurisdiction, of each name under
10 which the professional employer organization has
11 operated in the preceding five years, including any
12 alternative names; names of predecessors; and, if
13 known, names of successor business entities;
- 14 (6) A statement of ownership, which shall include the name
15 of each person who, individually or acting in concert
16 with any other person or persons, owns or controls,
17 directly or indirectly, twenty-five per cent or more
18 of the equity interests of the professional employer
19 organization;
- 20 (7) A statement of management, which shall include the
21 name of any person who serves as president or chief
22 executive officer or who otherwise has the authority



- 1 to act as a senior executive officer of the
2 professional employer organization;
- 3 (8) Proof of valid workers' compensation coverage in
4 compliance with all laws of this State;
- 5 (9) Proof of compliance with the Hawaii temporary
6 disability insurance law;
- 7 (10) Proof of compliance with the Hawaii prepaid health
8 care act [~~as regards all employees of the professional~~
9 ~~employer organization~~];
- 10 (11) Proof of compliance with the Hawaii employment
11 security law, including payment of any applicable
12 employer liability pursuant to chapter 383; [~~and~~]
- 13 (12) A financial statement prepared in accordance with
14 generally accepted accounting principles, audited by
15 an independent certified public accountant licensed to
16 practice in the State, and without qualification as to
17 the going concern status of the professional employer
18 organization[-]; and
- 19 (13) The name, address, and phone number of the financial
20 institution utilized by the professional employer
21 organization for payroll purposes that operates and
22 maintains branches in the State.



1 (c) Registration under this section shall expire on
2 ~~[December 31]~~ June 30 of each ~~[odd-numbered]~~ even-numbered year.
3 Before ~~[December 31]~~ June 30 of each ~~[odd-numbered]~~ even-
4 numbered year, the director or the director's authorized
5 delegate shall mail a renewal application for registration to
6 the address on record of the registrant. In connection with
7 renewal of registration, a professional employer organization
8 shall provide all of the information required by subsection (b).
9 Failure to renew a registration shall result in forfeiture of
10 that registration. Registrations that have been forfeited may
11 be restored within one year of the forfeiture date upon payment
12 of renewal and restoration fees. Failure to restore a forfeited
13 registration within one year shall result in the automatic
14 termination of the registration. Registrations that have been
15 terminated pursuant to this section shall be required to reapply
16 for a new registration as a new applicant.

17 (d) The director shall ~~[establish fees and requirements~~
18 ~~for registration, maintenance of registration, renewal, and~~
19 ~~restoration of registration for professional employer~~
20 ~~organizations by rule pursuant to chapter 91.]~~ to the extent
21 practicable permit the acceptance of electronic filings in
22 conformance with chapter 489E, including applications,



1 documents, reports, and other filings required under this
2 chapter. The director may provide for the acceptance of
3 electronic filings by a professional employer organization. A
4 professional employer organization may authorize an assurance
5 organization to act on the professional employer organization's
6 behalf in complying with the registration requirements of this
7 chapter, including electronic filings of information and payment
8 of registration fees. Use of an approved assurance organization
9 shall be optional for a professional employer organization.
10 Nothing in this subsection shall limit or change the director's
11 authority to register or terminate registration of a
12 professional employer organization or to investigate or enforce
13 any provision of this chapter."

14 SECTION 7. Section 373L-3, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "[~~§~~373L-3~~]~~ **Bond required.** (a) No professional
17 employer organization shall enter into a professional employment
18 agreement with a client company in the State unless the
19 professional employer organization posts a bond [~~in the amount~~
20 ~~of \$250,000, which is a performance or financial guaranty type~~
21 ~~bond naming the director as the obligee and which may be~~
22 ~~canceled only if the professional employer organization gives~~



1 ~~sixty days prior written notice to the surety or if the surety~~
2 ~~gives thirty days prior written notice to the director of~~
3 ~~cancellation of the bond. The requirements of this section~~
4 ~~shall be satisfied by a single bond. If a professional employer~~
5 ~~organization has more than one branch location, the bond shall~~
6 ~~cover all locations.] as follows:~~

- 7 (1) Professional employer organizations consisting of
8 fewer than one hundred full-time or part-time
9 employees shall post a minimum of \$250,000; and
- 10 (2) All other professional employer organizations shall
11 post a bond in an amount equal to:
- 12 (A) One per cent of the organization's prior year's
13 total wages, benefits, workers' compensation
14 premiums, and unemployment compensation
15 contributions; or
- 16 (B) \$1,000,000;
17 whichever is less; provided that the amount of the
18 bond shall be no less than \$500,000.

19 (b) Any bond posted pursuant to this section shall be a
20 performance or financial guaranty type bond naming the director
21 as the obligee and may be canceled only if the professional
22 employer organization gives sixty days prior written notice to



1 the surety and if the surety gives thirty days prior written
2 notice to the director of cancellation of the bond. If a
3 professional employer organization has more than one branch
4 location in the State, the bond shall cover all locations. The
5 requirements of this section shall be satisfied by a single
6 bond. The bond required by this section shall be issued by [a]
7 an A-rated surety [~~or federally insured lending institution~~]
8 authorized to do business in the State to indemnify [a] the
9 State, client [~~company~~] companies, and covered employees who may
10 suffer loss as a result of nonperformance by a professional
11 employer organization.

12 (c) In lieu of the requirements of subsections (a) and
13 (b), a professional employer organization that is a member of an
14 assurance organization may post a bond through the assurance
15 organization; provided that coverage shall consist of a bond of
16 at least \$1,000,000 issued by an A-rated surety company plus a
17 \$10,000,000 excess bond providing umbrella coverage for the
18 benefit of the State, client companies, and client company
19 employees.

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



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

3 (2) The director notifies the surety [~~or insurer~~], as the
4 case may be, of any claims within ninety days of
5 discovery of any claims.

6 [~~(d)~~] (e) The surety [~~or insurer~~] is not required to
7 release any moneys or collateral to the professional employer
8 organization during the six months after cancellation of the
9 bond.

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

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



1 SECTION 8. Chapter 373K, Hawaii Revised Statutes, is
2 repealed.

3 SECTION 9. The director of labor and industrial relations
4 may establish three .5 full-time permanent additional positions,
5 subject to chapters 76 and 89, Hawaii Revised Statutes, to carry
6 out the purposes of chapter 373L, Hawaii Revised Statutes. The
7 positions may include a disability compensation enforcement
8 specialist IV, auditor IV, and office assistant IV.

9 SECTION 10. There is appropriated out of the professional
10 employer organization special fund the sum of \$ or so
11 much thereof as may be necessary for fiscal year 2012-2013 for
12 the department of labor and industrial relations to carry out
13 the purposes of this Act, including the hiring of necessary
14 staff.

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

17 SECTION 11. This Act does not affect rights and duties
18 that matured, penalties that were incurred, and proceedings that
19 were begun before its effective date.

20 SECTION 12. In codifying the new sections added by section
21 2 of this Act, the revisor of statutes shall substitute



1 appropriate section numbers for the letters used in designating
2 the new sections in this Act.

3 SECTION 13. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 14. This Act shall take effect on July 1, 2050;
6 provided that section 10 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 organization special fund. Repeals chapter 373K, HRS, but moves the general excise tax exemption provisions to chapter 373L, HRS. Appropriates funds to the department of labor and industrial relations. Effective 07/01/2050. (SD2)

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

