
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, codified as chapter 373K, Hawaii Revised
3 Statutes, created a new chapter on professional employment
4 organizations that provided a general excise tax exemption to
5 business entities that the department of taxation determined as
6 qualified professional employer organizations.

7 The legislature further finds that Act 129, Session Laws of
8 Hawaii 2010, codified as chapter 373L, Hawaii Revised Statutes,
9 established a new professional employer organizations chapter
10 that required registration with the department of labor and
11 industrial relations to ensure compliance with federal and state
12 labor laws. The legislature notes that the two separately
13 established statutes, while intended to operate interdependently
14 for the mutual benefit and common public purposes of the
15 department of labor and industrial relations and the department
16 of taxation, could be implemented more effectively by clarifying
17 any existing incompatible and ambiguous language.

18 The purpose of this Act is to clarify:



- 1 (1) Professional employer organization responsibilities,
2 including meeting the statutory requirements of
3 chapter 373L, Hawaii Revised Statutes; and
- 4 (2) The nexus between the registration of professional
5 employer organizations and qualification for the state
6 general excise tax exemption.

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

10 "§373L-A Registration required. No person within the
11 purview of this chapter shall use the terms "professional
12 employer organization", or "PEO", or other similar name unless
13 the person is registered and in compliance with this chapter and
14 the rules adopted pursuant to this chapter.

15 §373L-B Professional employer agreements; notification to
16 covered employees; notification to department. During the term
17 of the agreement between a professional employer organization
18 and its client company, the professional employer organization
19 shall be deemed the employer for all assigned employees as
20 defined in section 373L-1. As the employer of the assigned
21 employees, the professional employer organization, not the
22 client company, shall be solely responsible for complying with



1 all laws relating to unemployment insurance, workers'
2 compensation, temporary disability insurance, and prepaid health
3 care programs with respect to the assigned employees.

4 §373L-C Payroll cost exemption. At the end of each
5 calendar year, the department shall provide the names, date of
6 registration, and contact information of all professional
7 employer organizations that have successfully complied with the
8 requirements of this chapter to the department of taxation. The
9 exemption provided under section 237-24.75(3) shall only apply
10 to professional employer organizations that fulfill and maintain
11 the registration requirements under this chapter.

12 §373L-D Fees. (a) The director shall establish fees and
13 requirements for registration, renewal, and restoration of
14 registration for professional employer organizations by rule
15 pursuant to chapter 91.

16 (b) No applicant shall be allowed to register pursuant to
17 this chapter unless the appropriate fees have been paid.

18 (c) Effective July 1, 2013, the director shall collect
19 fees pursuant to this chapter as follows:

- 20 (1) Registration fee \$ 500
- 21 (2) Biennial renewal fee \$ 750
- 22 (3) Restoration fee \$1500

1 until such time as the director amends the fees by rulemaking
2 pursuant to chapter 91.

3 (d) The fees collected pursuant to this section shall be
4 deposited into the state general fund."

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

7 "**§237-24.75 Additional exemptions.** In addition to the
8 amounts exempt under section 237-24, this chapter shall not
9 apply to:

- 10 (1) Amounts received as a beverage container deposit
- 11 collected under chapter 342G, part VIII;
- 12 (2) Amounts received by the operator of the Hawaii
- 13 convention center for reimbursement of costs or
- 14 advances made pursuant to a contract with the Hawaii
- 15 tourism authority under section 201B-7[+]; and[+]
- 16 [+](3) Amounts received[+] by a professional [~~employment~~]
- 17 employer organization that is registered with the
- 18 department of labor and industrial relations pursuant
- 19 to chapter 373L, from a client company equal to
- 20 amounts that are disbursed by the professional
- 21 [~~employment~~] employer organization for employee wages,
- 22 salaries, payroll taxes, insurance premiums, and



1 benefits, including retirement, vacation, sick leave,
2 health benefits, and similar employment benefits with
3 respect to assigned employees at a client company;
4 provided that this exemption shall not apply to
5 amounts received by a professional [employment]
6 employer organization [upon failure of the
7 professional employment organization to collect,
8 account for, and pay over any income tax withholding
9 for assigned employees or any federal or state taxes
10 for which the professional employment organization is
11 responsible.] after:

- 12 (A) Notification from the department of labor and
13 industrial relations that the professional
14 employer organization has not fulfilled or
15 maintained the registration requirements under
16 this chapter; or
- 17 (B) A determination by the department that the
18 professional employer organization has failed to
19 pay any tax withholding for assigned employees or
20 any federal or state taxes for which the
21 professional employer organization is
22 responsible.



1 As used in this paragraph, [~~"professional employment~~
2 ~~organization",~~] "professional employer organization",
3 "client company", and "assigned employee" shall have
4 the meanings provided in section [~~373K-1.~~] 373L-1."

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

7 1. By adding two new definitions to be appropriately
8 inserted and to read:

9 "Assigned employee" means an employee of the professional
10 employer organization who is assigned to perform services at the
11 worksite of a client company.

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

14 2. By amending the definitions of "client company",
15 "professional employer agreement", and "professional employer
16 organization" to read:

17 "Client company" means any person [who] that enters into a
18 professional employer agreement with a professional employer
19 organization[-] and is assigned employees to its worksite by the
20 professional employer organization under that agreement.



1 "Professional employer agreement" means a written contract
2 by and between a client company and a professional employer
3 organization that provides for the following:

4 (1) ~~[The co-employment of covered employees; and]~~
5 Assignment of employees to the worksite of the client
6 company;

7 (2) ~~[The allocation of employer rights and obligations~~
8 ~~between]~~ Description of duties and responsibilities of
9 the client company and the professional employer
10 organization with respect to the ~~[covered]~~ assigned
11 employees[-]; and

12 (3) Clarification of the professional employer
13 organization as the employer of the assigned employees
14 for purposes of complying with all statutory
15 provisions relating to the unemployment insurance,
16 workers' compensation, temporary disability insurance,
17 and prepaid health care programs with respect to the
18 assigned employees.

19 "Professional employer organization" or "organization"
20 means ~~[any person that is a party to a professional employer~~
21 ~~agreement with a client company regardless of whether the person~~
22 ~~uses the term or conducts business expressly as a "professional~~



1 ~~employer organization", "PEO", "staff leasing company",~~
2 ~~"registered staff leasing company", "employee leasing company",~~
3 ~~"administrative employer", or any other similar name.] a~~
4 business entity that assigns employees to the worksites of its
5 client companies on a long-term, rather than temporary or
6 project-specific basis. The term does not include temporary
7 help services or other similar arrangements."

8 3. By deleting the definitions of "co-employment" and
9 "covered employee".

10 [~~"Co-employment" means a relationship that is intended to~~
11 ~~be an ongoing relationship rather than a temporary or project-~~
12 ~~specific one, wherein the rights, duties, and obligations of an~~
13 ~~employer that arise out of an employment relationship have been~~
14 ~~allocated between the client company and the professional~~
15 ~~employer organization pursuant to a professional employer~~
16 ~~agreement and this chapter.~~

17 ~~"Covered employee" means an individual having a co-~~
18 ~~employment relationship with a professional employer~~
19 ~~organization and a client company who meets all of the following~~
20 ~~criteria:~~



- 1 ~~(1) The individual has received written notice of co-~~
- 2 ~~employment with the professional employer~~
- 3 ~~organization; and~~
- 4 ~~(2) The individual's co-employment relationship is~~
- 5 ~~pursuant to a professional employer agreement subject~~
- 6 ~~to this chapter. Individuals who are officers,~~
- 7 ~~directors, shareholders, partners, and managers of the~~
- 8 ~~client company shall be covered employees to the~~
- 9 ~~extent that the professional employer organization and~~
- 10 ~~the client company have expressly agreed in the~~
- 11 ~~professional employer agreement that the individuals~~
- 12 ~~shall be covered employees; provided that the~~
- 13 ~~individuals meet the criteria of this definition and~~
- 14 ~~act as operational managers or perform day-to-day~~
- 15 ~~operational services for the client company."]~~

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

18 "~~[§373L-2]~~ **Registration required.** (a) Every
 19 professional employer organization shall register with the
 20 director by providing all of the information required by this
 21 section and by rules adopted by the director pursuant to chapter
 22 91 prior to entering into any professional employer agreement



1 with any client company in this State. Registration shall not
2 be approved unless all of the applicable provisions of this
3 chapter have been met to the satisfaction of the department.

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

6 (1) The name or names under which the professional
7 employer organization conducts or will conduct
8 business;

9 (2) The address of the principal place of business of the
10 professional employer organization and the address of
11 each office that the professional employer
12 organization maintains in this State;

13 (3) The professional employer organization's general
14 excise tax number;

15 (4) A copy of the certificate of authority to transact
16 business in this State issued by the director of
17 commerce and consumer affairs pursuant to title 23 or
18 title 23A, if applicable;

19 (5) A list, organized by jurisdiction, of each name under
20 which the professional employer organization has
21 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.~~] The name, address, and phone number of
10 the financial institution utilized by the professional
11 employer organization for payroll purposes that
12 operates and maintains branches in the State;
- 13 (13) The name of each client company that is party to a
14 professional employer agreement with a professional
15 employer organization to the department on a form
16 approved by the department within twenty-one business
17 days of the initiation of the agreement and within
18 twenty-one business days of the termination of the
19 agreement; and
- 20 (14) A copy of the Internal Revenue Service Form W-3,
21 Transmittal of Wage and Tax Statements, filed with the



1 federal government, which shall be used for obtaining
2 a bond pursuant to section 373L-3.

3 (c) Registration under this section shall expire on
4 [~~December 31~~] June 30 of each [~~odd-numbered~~] even-numbered year.
5 Before [~~December 31~~] June 30 of each [~~odd-numbered~~] even-
6 numbered year, the director or the director's authorized
7 delegate shall mail a renewal application for registration to
8 the address on record of the registrant. In connection with
9 renewal of registration, a professional employer organization
10 shall provide all of the information required by subsection (b).
11 Failure to renew a registration shall result in termination of
12 that registration. A professional employer organization whose
13 registration has been terminated pursuant to this section shall
14 be required to pay a restoration fee.

15 (d) Notwithstanding that a registration under this section
16 has not expired, a professional employer organization shall
17 submit to the department a copy of the Internal Revenue Service
18 Form W-3, Transmittal of Wage and Tax Statements, filed with the
19 federal government on an annual basis no later than June 30 of
20 each year. If the amount of the total payroll has changed to an
21 amount that requires a different bond amount than posted with



1 the department, the professional employer organization shall
2 obtain a new bond to satisfy the requirements of section 373L-3.

3 ~~[(d) The director shall establish fees and requirements~~
4 ~~for registration, maintenance of registration, renewal, and~~
5 ~~restoration of registration for professional employer~~
6 ~~organizations by rule pursuant to chapter 91.]"~~

7 SECTION 6. Section 373L-3, Hawaii Revised Statutes, is
8 amended by amending subsections (a) and (b) to read as follows:

9 "(a) No professional employer organization shall enter
10 into a professional employment agreement with a client company
11 in the State unless the professional employer organization posts
12 a surety bond [~~in the amount of \$250,000, which is a performance~~
13 ~~or financial guaranty type bond naming the], or a letter of~~
14 credit equivalent to the required bond amount, that is based on
15 the previous year's certified total payroll of the professional
16 employer organization. The total payroll of the professional
17 employer organization shall be the amount reported on the
18 Internal Revenue Service Form W-3, Transmittal of Wage and Tax
19 Statements, filed with the federal government in the year in
20 which the bond or its letter of credit equivalent is to become
21 effective. The bond or its letter of credit equivalent required
22 under this section shall be on a sliding scale as follows:



1 (1) For professional employer organizations with a total
2 payroll up to and including \$25,000,000, a bond or its
3 letter of credit equivalent of \$25,000;

4 (2) For professional employer organizations with a total
5 payroll of \$25,000,001 to \$150,000,000, a bond or its
6 letter of credit equivalent of \$75,000; and

7 (3) For professional employer organizations with a total
8 payroll of \$150,000,001 and higher, a bond or its
9 letter of credit equivalent of \$250,000.

10 The director shall be named as the obligee and [which] the bond
11 or its letter of credit equivalent may be canceled only if the
12 professional employer organization gives sixty days prior
13 written notice to the surety or if the surety gives thirty days
14 prior written notice to the director of cancellation of the
15 bond[-] or its letter of credit equivalent. The requirements of
16 this section shall be satisfied by a single bond[-] or its
17 letter of credit equivalent. If a professional employer
18 organization has more than one branch location, the bond or its
19 letter of credit equivalent shall cover all locations.

20 (b) The bond or its letter of credit equivalent required
21 by this section shall be issued by a surety or federally insured
22 lending institution authorized to do business in the State to



1 indemnify a client company who may suffer loss as a result of
2 nonperformance by a professional employer organization."

3 SECTION 7. Chapter 373K, Hawaii Revised Statutes, is
4 repealed.

5 SECTION 8. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun before its effective date.

8 SECTION 9. In codifying the new sections added by section
9 2 of this Act, the revisor of statutes shall substitute
10 appropriate section numbers for the letters used in designating
11 the new sections in this Act.

12 SECTION 10. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 11. This Act shall take effect on July 1, 2050.



Report Title:

Professional Employer Organizations; Registration; Fees; Bond

Description:

Repeals chapter 373K, Hawaii Revised Statutes. Clarifies professional employer organization responsibilities with respect to meeting the statutory requirements of the repealed chapter 373K, Hawaii Revised Statutes, and the nexus between the registration of professional employer organizations and qualification for the state general excise tax exemption. Requires professional employer organizations to obtain a bond, or a letter of credit equivalent to the required bond amount, on a sliding scale that is based on total payroll amount. Effective 07/01/2050. (SD2)

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