

HB1497 HD1 SD1

Measure Title: RELATING TO LABOR.

Report Title: Labor; Professional Employer Organizations; Employers; Records

Description:

Requires employers to keep a record of the physical addresses of the employer and the North American Industry Classification System code applicable to the employer. Requires professional employer organizations to provide the physical address, North American Industry Classification System code, and number of covered employees of each client company to the DLIR. Requires client companies of a professional employer organization to report and update their physical address and North American Industry Classification System code. Takes effect on 1/7/2059. (SD1)

Companion:

Package: None

Current Referral: JDL, CPN

Introducer(s): NAKASHIMA



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
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April 1, 2015

To: The Honorable Rosalyn H. Baker, Chair,
The Honorable Brian T. Taniguchi, Vice Chair, and
Members of the Senate Committee on Commerce and Consumer Protection

Date: Wednesday, April 1, 2015
Time: 9:30 a.m.
Place: Conference Room 229, State Capitol

From: Elaine N. Young, Acting Director
Department of Labor and Industrial Relations (DLIR)

**RE: HB1497HD1 RELATING TO LABOR, PROFESSIONAL EMPLOYER
ORGANIZATIONS, EMPLOYERS, RECORDS**

I. OVERVIEW OF PROPOSED LEGISLATION

HB1497HD1 proposes to amend section 371-11, Hawaii Revised Statutes (HRS) to allow the DLIR to require employers to make, keep, and preserve records of the business name, physical location address, North American Industry Classification System (NAICS) business activity code, and number of employees employed by the employer. The bill also proposes to require Professional Employer Organizations (PEOs) to provide their client company information including physical location addresses, NAICS codes, and the number of employees of each client company to the DLIR by amending section 373L-2, HRS.

The department strongly supports this proposal.

The department's federal funding levels are in jeopardy of being lowered because the Bureau of Labor Statistics (BLS) ties funding to the number of employing units reported and more and more employers, both national and local, are not responding to surveys unless they are mandated.

The additional information will also greatly improve the data that R&S provides to other state agencies including the Legislature, the Council on Revenues, the Department of Business, Economic Development and Tourism (DBEDT), the

Economic Research Organization at the University of Hawaii (UHERO), and the Hawaii Tourism Authority (HTA) for economic studies and workforce development and planning.

II. CURRENT LAW

Section 371-11, HRS currently allows the DLIR's Research and Statistics Office (R&S) to investigate and gather data regarding wages, hours, and other related employment information. However, the current law is limited in that it does not provide for the collection of the employer's physical location, NAICS classification code, and the number of employees. Similarly, section 373L-2 also does not require PEOs to report who their client companies are, their location, NAICS codes, and the number of employees employed at these individual client companies.

III. COMMENTS ON THE HOUSE BILL

This legislation will allow the DLIR to gather information necessary for preparing accurate industrial and geographical summaries of economic conditions within Hawaii. These data are important input to funding formulas for many of our State's programs and agencies that rely on federal funding, including the Unemployment Insurance Division, which needs an accounting of employers and employees in Hawaii.

The Department of Transportation Statewide Transportation Planning Office uses this data for updating travel demand forecasting models to develop land transportation plans for all islands in the State. The plans utilize the employer and employment data to quantify land use activity and trip purposes correlated to the amount of employment in specific areas.

This legislation will also greatly improve the Quarterly Census of Employment and Wages (QCEW) program conducted by R&S, which is a near census of monthly employment and quarterly wage information by industry at the State and county levels. Moreover, this proposal, if enacted, would provide much needed information to track growth and decline in employment for the State, employment distribution by County, employment by industry, and assess major shifts in employment and wage levels as a result of various economic activities.

Furthermore, the growth of PEOs in the State affects the quality of the data compiled and reported by R&S. Without the detailed company data from PEOs, all client companies and their employees are coded and reported under the PEO, not by company and not under the company's major business activity and location. If an employer does not provide a breakout by client or worksite, then their employment and wages will be consolidated under their primary location and business activity. The result is the data will over report on Oahu and under report on the neighbor islands because the majority of headquarters/main offices for

multi-county employers tend to be on Oahu.

For example, if a client company is in the Construction Industry and utilizes a PEO, their employees are reported as employees of the PEO and these employees are coded under the Professional and Business Services industry and not in Construction. In addition, the geographic location is reported as the location of the PEO and not the client company, which tends to under count employment on the neighbor islands.

Both the Department of Taxation (DoTax) and the DLIR's Unemployment Insurance Division (UI) processing system and quarterly report form (Form UC-B6, Quarterly Wage, Contribution and Employment and Training Assessment Report) do not require and therefore are not designed to collect client or worksite level employment and wages. R&S would collect the client and worksite level employment and wages on the BLS Multiple Worksite Report (MWR) Form which has been designed for this purpose. The MWR may be submitted by mail and for employers with 50 or more clients or worksites, an electronic medium reporting option is available. Employers may also report via an Internet secure website. To ease the reporting burden for large employers, these same options would apply to an employer with multiple worksites, for example, a restaurant chain with 20 locations, or a PEO with 20 clients in different locations in different industries.

The NAICS code assignments will be verified by qualified R&S research statisticians who are trained by BLS on coding and surveying employers. The initial code is self-reported by the employer on their business registration form and is then verified on a regular basis by R&S which is one of the deliverables under the DLIR's Cooperative Agreement with BLS.

Amending these sections of the HRS and mandating the collection of the employer's physical location, NAICS classification code, and the number of employees and for PEOs to report who their client companies are, their location, NAICS codes, and the number of employees employed at these individual client companies will greatly improve the data that R&S provides to other state agencies including the Legislature, the Council on Revenues, the Department of Business, Economic Development and Tourism (DBEDT), the Economic Research Organization at the University of Hawaii (UHERO), and the Hawaii Tourism Authority (HTA) for economic studies and workforce development and planning.

Currently 25 other states mandate collection of this type of information from employers and businesses in their states.

R&S adheres to the BLS' privacy procedures so all data collected by R&S are kept confidential and are used for statistical research purposes only. Information on individual employers or PEO client companies will never be re-disclosed.



March 30, 2015

The Honorable Rosalyn H. Baker, Chair
The Honorable Brian T. Taniguchi, Vice Chair
Committee on Commerce and Consumer Protection
State Capitol
Honolulu, Hawaii 96813

Subject: House Bill 1497, April 1, 2015, 9:30 am

Dear Senators Baker and Taniguchi:

My name is Barron Guss, President and second-generation owner of ALTRES, Inc., a 45-year old Hawaii company and Hawaii's original and oldest Professional Employer Organization (PEO).

I am writing you today in opposition to HB 1497 SD1. Although I support the concept of data collection for the purposes of assisting the Department of Labor to meet its obligations under the Bureau of Labor and Statistics requirements, I cannot support the methods by which it plans to collect it.

In the State's testimony, their reasoning for including PEOs in HB1497 is that PEOs aggregate the information from their client companies into one single report. This creates a gap in the data as a PEO may have as many as 200 distinct industries and 1,000 employers reporting through its Employer Identification Number, yet the employment data is reported distinctly as a PEO – Professional Employer Organization. I agree with the intent of HB 1497, and understand the problem.

As this bill has passed through the House and Senate, it has prompted dialogue between the interested parties, which has led to adjustments. Unfortunately, these modifications do not address the central issue of getting the accurate data to the DOL in a timely manner. Furthermore, the current version under SD1 creates legal uncertainty for all parties in a PEO relationship, including the State.

The original proposed language of HB1497 had adjustments to section "371-11 Research and Statistics" to accommodate the collection of the data from employers. The proposed language went on to make adjustments to Section 373L-2, Hawaii Revised Statutes, to place data collection requirements onto the PEO.

Under this legislation, the DOL has two bifurcated channels from which they propose to collect data. The first is directly from non-PEO employers via a manual mailing system with telephonic follow up, and the second is directly from PEOs on behalf of the employers who report under it, with no clear method to obtain the desired client-level data via the PEO. Recently, it has been communicated that they plan to use exactly the same paper reporting system for PEOs.

Since the process for data collection is going to be the same for PEO and non-POE employers, shouldn't the law mirror what will be the practice? It would be more practical to simply place a reporting requirement for the NAICS information under Section 371-11, "Research and Statistics" for all employers, regardless of the use of a PEO. The legislation could read:

"§371-11 Research and statistics; employers to keep certain records.
The department of labor and industrial relations:

- (3) In addition, every employer, regardless of whether they contract with a Professional Employer Organization or not, shall keep a record of the physical addresses of the employer and the North American Industry Classification System code applicable to the employer.

Adopting the above requirement under 371-11 would eliminate the need for any further modification to the law and would end any further discussion regarding this bill

SD1

Assuming that the above solution will not be adopted, I will address the current problems that SD1 creates. Under the current draft of SD1, the DOL has inserted a new requirement entitled "373L-Responsibility of Client Company." The drafters feel that they can eliminate some of the unintended consequences of their previous modifications to 373L by calling out client-level responsibilities as proposed below:

"§373L- Responsibility of client company. Upon entering into a professional employer agreement, the client company shall provide to the professional employer organization its physical address and North American Industry Classification System code and shall report any changes to the professional employer organization on a quarterly basis."

As you will note in 373L-B below, the PEOs have responsibilities under the agreement which are essentially limited to unemployment insurance, worker's compensation, temporary disability insurance and prepaid healthcare insurance. Since the current law does not call out for the client level responsibilities, it can be assumed under the law that the balance of responsibilities must then fall to the client company.

§373L-B Professional employer agreements; notification to covered employees; notification to department. During the term of the agreement between a professional employer organization and its client company, the professional employer organization shall be deemed the employer for all assigned employees as defined in section 373L-1. As the employer of the assigned employees, the professional employer organization, not the client company, shall be solely responsible for complying with all statutory provisions relating to the unemployment

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insurance, workers' compensation, temporary disability insurance, and prepaid health care programs with respect to the assigned employees.

If the language of client level responsibilities in SD1 is to be adopted, and the description of their responsibilities is limited to the reporting of the NAICS code to the PEO, then where will responsibility lie for areas not assigned under the law? The implications are far-reaching and unimaginable, and the law, as drafted, will not provide guidance.

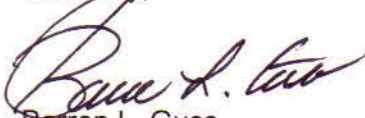
With the preceding in mind, I offer the following modification to the proposed language in SD1 which provides the DOL the "teeth" they desire to collect data, yet provides clarification for the roles and responsibilities of each party within the PEO Agreement as provided within the law.

373L- Responsibility of client company. Upon entering into a professional employer agreement, the client company shall provide to the professional employer organization its physical address and North American Industry Classification System code and shall report any changes to the professional employer organization on a quarterly basis. While in a professional employer agreement, the client company shall be responsible for the supervision and control of the workplace, and liability to the covered employees, relating to or arising from all applicable laws, rules, or ordinances, including all employment-related laws that are, were, or would be, applicable to the client company without regard to the professional employer agreement, and the Professional Employer Organization shall be responsible for compliance with and liability arising only from those laws set forth in section 373L-6.

In closing, we support the collection of this important data for the State's economic purposes, but do not feel that including the PEO in this process is the best method for collection. Furthermore, if there is no getting around the idea of the PEO being placed in the middle, then let's not create a new law with unintended consequences.

Thank you for your time.

Sincerely,



Barron L. Guss
President and CEO