



GOV. MSG. NO. **587**

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

May 21, 2010

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on May 21, 2010, the following bill was signed into law:

SB1062 SD1 HD1 CD1

A BILL FOR AN ACT
RELATING TO PROFESSIONAL EMPLOYER
ORGANIZATIONS.
ACT 129 (10)

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

1 "Covered employee" means an individual having a
2 co-employment relationship with a professional employer
3 organization and a client company who meets all of the following
4 criteria:

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

20 "Director" means the director of labor and industrial
21 relations.

22 "Person" means a natural or legal person.



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 (2) The allocation of employer rights and obligations
6 between the client company and the professional
7 employer organization with respect to the covered
8 employees.

9 "Professional employer organization" means any person that
10 is a party to a professional employer agreement with a client
11 company regardless of whether the person uses the term or
12 conducts business expressly as a "professional employer
13 organization", "PEO", "staff leasing company", "registered staff
14 leasing company", "employee leasing company", "administrative
15 employer", or any other similar name.

16 "Temporary help services" means an arrangement by which a
17 person recruits and hires the person's own employees and:

- 18 (1) Finds other organizations that need the services of
19 those employees;
20 (2) Assigns those employees to perform work or services
21 for other organizations to support or supplement the
22 other organizations' workforces or to provide



1 assistance in special work situations, including
2 employee absences, skill shortages, seasonal
3 workloads, or special assignments or projects; and

4 (3) Customarily attempts to reassign the employees to
5 successive placements with other organizations at the
6 end of each assignment.

7 § -2 **Registration required.** (a) Every professional
8 employer organization shall register with the director by
9 providing all of the information required by this section and by
10 rules adopted by the director pursuant to chapter 91 prior to
11 entering into any professional employer agreement with any
12 client company in this state.

13 (b) Registration information required by this section
14 shall include:

15 (1) The name or names under which the professional
16 employer organization conducts or will conduct
17 business;

18 (2) The address of the principal place of business of the
19 professional employer organization and the address of
20 each office that the professional employer
21 organization maintains in this state;



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



- 1 (8) Proof of valid workers' compensation coverage in
2 compliance with all laws of this state;
- 3 (9) Proof of compliance with the Hawaii temporary
4 disability insurance law;
- 5 (10) Proof of compliance with the Hawaii prepaid health
6 care act as regards all employees of the professional
7 employer organization;
- 8 (11) Proof of compliance with the Hawaii employment
9 security law, including payment of any applicable
10 employer liability pursuant to chapter 383; and
- 11 (12) A financial statement prepared in accordance with
12 generally accepted accounting principles, audited by
13 an independent certified public accountant licensed to
14 practice in the state, and without qualification as to
15 the going concern status of the professional employer
16 organization.
- 17 (c) Registration under this section shall expire on
18 December 31 of each odd-numbered year. Before December 31 of
19 each odd-numbered year, the director or the director's
20 authorized delegate shall mail a renewal application for
21 registration to the address on record of the registrant. In
22 connection with renewal of registration, a professional employer



1 organization shall provide all of the information required by
2 subsection (b).

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

7 § -3 **Bond required.** (a) No professional employer
8 organization shall enter into a professional employment
9 agreement with a client company in the state unless the
10 professional employer organization posts a bond in the amount of
11 \$250,000, which is a performance or financial guaranty type bond
12 naming the director as the obligee and which may be canceled
13 only if the professional employer organization gives sixty days
14 prior written notice to the surety or if the surety gives thirty
15 days prior written notice to the director of cancellation of the
16 bond. The requirements of this section shall be satisfied by a
17 single bond. If a professional employer organization has more
18 than one branch location, the bond shall cover all locations.

19 (b) The bond required by this section shall be issued by a
20 surety or federally insured lending institution authorized to do
21 business in the state to indemnify a client company who may



1 suffer loss as a result of nonperformance by a professional
2 employer organization.

3 (c) Upon cancellation or expiration of the bond, the
4 surety or insurer shall remain liable for any claims against the
5 bond for a period of six months; provided that:

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

8 (2) The director notifies the surety or insurer, as the
9 case may be, of any claims within ninety days of
10 discovery of any claims.

11 (d) The surety or insurer is not required to release any
12 moneys or collateral to the professional employer organization
13 during the six months after cancellation of the bond.

14 (e) Failure to have in effect a current bond shall result
15 in automatic forfeiture of registration pursuant to this chapter
16 and shall require the professional employer organization to
17 immediately cease doing business in the state. A professional
18 employer organization whose registration is forfeited shall
19 apply as a new applicant for registration in order to resume
20 business in the state.

21 § -4 Exemptions. A person who engages only in the
22 following activities shall not be deemed a professional employer



1 organization for purposes of this chapter and shall be exempt
2 from the requirements of this chapter:

3 (1) Arrangements wherein a person, whose principal
4 business activity is not entering into professional
5 employer arrangements and who does not hold the
6 person's self out as a professional employer
7 organization, shares employees with a commonly-owned
8 company within the meaning of Sections 414(b) and (c)
9 of the Internal Revenue Code;

10 (2) Independent contractor arrangements by which a person
11 assumes responsibility for the product produced or
12 service performed by the person or the person's agents
13 and retains and exercises primary direction and
14 control over the work performed by the individuals
15 whose services are supplied under those arrangements;
16 or

17 (3) The providing of temporary help services.

18 § -5 **Rules.** The director shall adopt rules pursuant to
19 chapter 91 that the director deems necessary for the effective
20 administration and enforcement of this chapter."



1 SECTION 2. This Act shall take effect upon its approval;
2 provided that the registration requirements of section 1 of this
3 Act shall take effect on July 1, 2011.

4

APPROVED this 21 day of MAY, 2010



GOVERNOR OF THE STATE OF HAWAII