

ACT 225

H.B. NO. 317

A Bill for an Act Relating to Professional Employment Organizations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to eliminate duplicative taxation and thereby allow Hawaii businesses to increase efficiency and cost savings by contracting to have their payroll and payroll-related functions performed by a professional employment organization. Since the contracting company makes general excise tax payments on the funds used for payroll, it is appropriate to exempt the contracted professional employment organization from further taxation on the same payroll moneys. The general excise tax would still apply to the fee paid to the professional employment organization for performing the contracted payroll services. Hawaii's businesses have not been able to take advantage of the rapidly growing mainland trend of using professional employment organizations because the taxes on payroll pass-through moneys can be substantially more than the fee for those services.

This tax exemption has precedent in Hawaii law. For example, there is a similar exemption for the funds that hotel management companies receive from the hotel they manage, in reimbursement for performing payroll and related functions.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER PROFESSIONAL EMPLOYMENT ORGANIZATIONS

§ -1 Definitions. As used in this chapter, unless the context otherwise requires:

“Assigned employee” means an employee under a professional employment organization arrangement whose work is performed in the state. The term does not include an employee hired to support or supplement a client company’s work force as temporary help. “Assigned employee” has the same meaning as the term “leased employee” as defined in section 414(n) (with respect to employee leasing) of the Internal Revenue Code of 1986, as amended.

“Client company” means a person that contracts with a professional employment organization and is assigned employees by the professional employment organization under that contract.

“Professional employment organization” means a business entity that offers to co-employ employees that are assigned to the work sites of its client companies.

“Professional employment organization services” means an arrangement by which co-employees of a professional employment organization are assigned to work at the client company and the assigned employee’s assignment is intended to be of a long-term or continuing nature, rather than temporary. The term does not include temporary help.

“Temporary help” means an arrangement by which an organization hires its own employees and assigns them to a client company to support or supplement the client’s work force in a special situation, including:

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

§ -2 Professional employment organization; employee rights; payroll cost exemption. (a) Where any client company uses the services of assigned employees and co-employs assigned employees with a professional employment organization, the client company and the professional employment organization, with respect to the assigned employees, shall not be exempt from the requirements of any federal, state, or county law, including labor or employment laws, collective bargaining rights, anti-discrimination provisions, or other laws with respect to the protection and rights of employees, including chapters 377 and 378, that would apply to the assigned employees if the assigned employees were employees of the client company alone, and were not co-employees of the professional employment organization.

These employee rights shall not be abrogated by any contract or agreement between the client company and the professional employment organization, or the professional employment organization and the assigned employee, which contains terms or conditions that could not be lawfully contained in a contract or agreement directly between the client company and the assigned employee in which no professional employment organization is involved. Notwithstanding any statute, local ordinance, executive order, rule, or regulation to the contrary, where the laws, rights, and protections referred to in this section define or require a determination of the “employer”, the employer shall be deemed to be the client company and not the professional employment organization. The department of labor and industrial relations shall notify the department of taxation in writing of any violation of this subsection.

(b) The client company shall be deemed to have satisfied its obligations with respect to any assigned employee under any applicable law, including, without

limitation, workers' compensation laws including chapter 386, employee insurance coverage laws including chapters 383, 385, 392, and 393, and tax withholding and reporting laws, if and to the extent that those obligations are satisfied by the professional employment organization acting in its capacity as co-employer of such assigned employee.

(c) Amounts received by a professional employment organization from a client company in amounts equal to and that are disbursed by the professional employment organization for employee wages, salaries, payroll taxes, insurance premiums, and benefits, including retirement, vacation, sick leave, health benefits, and similar employment benefits with respect to assigned employees at a client company shall not be subject to the general excise tax as provided by section 237-24.75.

(d) The general excise tax exemption under section 237-24.75 shall not apply to the professional employment organization if:

- (1) By or through any contract between the client company and any professional employment organization, or otherwise, employees are excluded from any employee rights or employee benefits required by law to be provided to employees of the client company by the client company; or
- (2) The professional employment organization fails to pay any tax withholding for assigned employees or any federal or state taxes for which the professional employment organization is responsible."

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

“[F]§237-24.75[H] **Additional exemptions.** In addition to the amounts exempt under section 237-24, this chapter shall not apply to amounts received [as]:

- (1) As a beverage container deposit collected under chapter 342G, part VIII[-]; and
- (2) By a professional employment organization from a client company equal to amounts that are disbursed by the professional employment organization for employee wages, salaries, payroll taxes, insurance premiums, and benefits, including retirement, vacation, sick leave, health benefits, and similar employment benefits with respect to assigned employees at a client company; provided that this exemption shall not apply to a professional employment organization upon failure of the professional employment organization to collect, account for, and pay over any income tax withholding for assigned employees or any federal or state taxes for which the professional employment organization is responsible. As used in this paragraph, “professional employment organization”, “client company”, and “assigned employee” shall have the meanings provided in section -1.”

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

SECTION 5. This Act shall take effect on July 1, 2007; provided that section 3 shall apply to gross income or gross proceeds received after June 30, 2007.

(Approved June 28, 2007.)