

ACT 129

S.B. NO. 1062

A Bill for an Act Relating to Professional Employer Organizations.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
PROFESSIONAL EMPLOYER ORGANIZATIONS**

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

“Client company” means any person who enters into a professional employer agreement with a professional employer organization.

“Co-employment” means a relationship that is intended to be an ongoing relationship rather than a temporary or project-specific one, wherein the rights, duties, and obligations of an employer that arise out of an employment relationship have been allocated between the client company and the professional employer organization pursuant to a professional employer agreement and this chapter.

“Covered employee” means an individual having a co-employment relationship with a professional employer organization and a client company who meets all of the following criteria:

- (1) The individual has received written notice of co-employment with the professional employer organization; and
- (2) The individual’s co-employment relationship is pursuant to a professional employer agreement subject to this chapter. Individuals who are officers, directors, shareholders, partners, and managers of the client company shall be covered employees to the extent that the professional employer organization and the client company have expressly agreed in the professional employer agreement that the individuals shall be covered employees; provided that the individuals meet the criteria of this definition and act as operational managers or perform day-to-day operational services for the client company.

“Director” means the director of labor and industrial relations.

“Person” means a natural or legal person.

“Professional employer agreement” means a written contract by and between a client company and a professional employer organization that provides for the following:

- (1) The co-employment of covered employees; and
- (2) The allocation of employer rights and obligations between the client company and the professional employer organization with respect to the covered employees.

“Professional employer organization” means any person that is a party to a professional employer agreement with a client company regardless of whether the person uses the term or conducts business expressly as a “professional employer organization”, “PEO”, “staff leasing company”, “registered staff leasing company”, “employee leasing company”, “administrative employer”, or any other similar name.

“Temporary help services” means an arrangement by which a person recruits and hires the person’s own employees and:

- (1) Finds other organizations that need the services of those employees;
- (2) Assigns those employees to perform work or services for other organizations to support or supplement the other organizations’ workforces or to provide assistance in special work situations, including employee absences, skill shortages, seasonal workloads, or special assignments or projects; and
- (3) Customarily attempts to reassign the employees to successive placements with other organizations at the end of each assignment.

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

- (b) Registration information required by this section shall include:
 - (1) The name or names under which the professional employer organization conducts or will conduct business;
 - (2) The address of the principal place of business of the professional employer organization and the address of each office that the professional employer organization maintains in this state;
 - (3) The professional employer organization’s general excise tax number;
 - (4) A copy of the certificate of authority to transact business in this state issued by the director of commerce and consumer affairs pursuant to title 23 or title 23A, if applicable;
 - (5) A list, organized by jurisdiction, of each name under which the professional employer organization has operated in the preceding five years, including any alternative names; names of predecessors; and, if known, names of successor business entities;
 - (6) A statement of ownership, which shall include the name of each person who, individually or acting in concert with any other person or persons, owns or controls, directly or indirectly, twenty-five per cent or more of the equity interests of the professional employer organization;
 - (7) A statement of management, which shall include the name of any person who serves as president or chief executive officer or who otherwise has the authority to act as a senior executive officer of the professional employer organization;

- (8) Proof of valid workers' compensation coverage in compliance with all laws of this state;
- (9) Proof of compliance with the Hawaii temporary disability insurance law;
- (10) Proof of compliance with the Hawaii prepaid health care act as regards all employees of the professional employer organization;
- (11) Proof of compliance with the Hawaii employment security law, including payment of any applicable employer liability pursuant to chapter 383; and
- (12) A financial statement prepared in accordance with generally accepted accounting principles, audited by an independent certified public accountant licensed to practice in the state, and without qualification as to the going concern status of the professional employer organization.

(c) Registration under this section shall expire on December 31 of each odd-numbered year. Before December 31 of each odd-numbered year, the director or the director's authorized delegate shall mail a renewal application for registration to the address on record of the registrant. In connection with renewal of registration, a professional employer organization shall provide all of the information required by subsection (b).

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

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

(b) The bond required by this section shall be issued by a surety or federally insured lending institution authorized to do business in the state to indemnify a client company who may suffer loss as a result of nonperformance by a professional employer organization.

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

- (1) The debts were incurred while the bond was in effect; and
- (2) The director notifies the surety or insurer, as the case may be, of any claims within ninety days of discovery of any claims.

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

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

§ -4 Exemptions. A person who engages only in the following activities shall not be deemed a professional employer organization for purposes of this chapter and shall be exempt from the requirements of this chapter:

- (1) Arrangements wherein a person, whose principal business activity is not entering into professional employer arrangements and who does not hold the person's self out as a professional employer organization, shares employees with a commonly-owned company within the meaning of Sections 414(b) and (c) of the Internal Revenue Code;
- (2) Independent contractor arrangements by which a person assumes responsibility for the product produced or service performed by the person or the person's agents and retains and exercises primary direction and control over the work performed by the individuals whose services are supplied under those arrangements; or
- (3) The providing of temporary help services.

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

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

(Approved May 21, 2010.)