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

4                               "CHAPTER

5                               PROFESSIONAL EMPLOYER ORGANIZATIONS

6           §   -1   Definitions.  Whenever used in this chapter, unless  
7   the context otherwise requires:

8           "Client company" means any person who enters into a  
9   professional employer agreement with a professional employer  
10   organization.

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



1 "Commissioner" means the insurance commissioner.

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

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

21 "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 commissioner by  
9 providing all of the information required by this section and by  
10 rules adopted by the commissioner pursuant to chapter 91 prior  
11 to 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 commissioner or the commissioner'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 commissioner 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 § -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 \$ , which is a performance or financial guaranty type bond  
12 naming the commissioner 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 commissioner of cancellation of  
16 the bond. The requirements of this section shall be satisfied  
17 by a single bond. If a professional employer organization has  
18 more than one branch location, the bond shall cover all  
19 locations.

20 (b) The bond required by this section shall be issued by a  
21 surety or federally insured lending institution authorized to do  
22 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 commissioner notifies the surety or insurer, as  
9 the 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 commissioner shall adopt rules pursuant  
19 to chapter 91 that the commissioner deems necessary for the  
20 effective administration and enforcement of this chapter."



1 SECTION 2. This Act shall take effect on July 1, 2020;  
2 provided that the registration requirements of section 1 of this  
3 Act shall take effect on July 1, 2020.



**Report Title:**

Professional Employer Organization

**Description:**

Requires professional employer organizations to register with the insurance commissioner. Specifies requirements for registration. Requires bond. Effective July 1, 2020. (SB1062 HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

