
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 legislature finds that Act 225, Session
2 Laws of Hawaii 2007, established a new chapter on professional
3 employment organizations that provided a general excise tax
4 exemption on amounts a client company paid to a professional
5 employment organization.

6 The legislature further finds that Act 129, Session Laws of
7 Hawaii 2010, established a new chapter in the Hawaii Revised
8 Statutes on professional employer organizations. The
9 legislature notes that the proper term for this type of business
10 entity is professional employer organization, as established in
11 Act 129. The legislature also notes that two chapters relating
12 to professional employer organizations are unnecessary.

13 Act 129 established registration requirements for
14 professional employer organizations. Although these
15 requirements went into effect on July 1, 2011, additional
16 operational provisions are needed to enable the department of
17 labor and industrial relations to fully implement Act 129.



1 The purpose of this Act is to:

- 2 (1) Eliminate duplicative provisions relating to
3 professional employer organizations by repealing
4 chapter 373K, Hawaii Revised Statutes, and incorporate
5 the existing general excise tax exemption into chapter
6 373L, Hawaii Revised Statutes; and
- 7 (2) Facilitate the implementation of the professional
8 employer organization law as established by Act 129,
9 Session Laws of Hawaii 2010.

10 SECTION 2. Chapter 373L, Hawaii Revised Statutes, is
11 amended by adding ten new sections to be appropriately
12 designated and to read as follows:

13 **"§373L-A Professional employer organization special fund.**

14 There is established in the state treasury a special fund to be
15 known as the professional employer organization special fund to
16 be administered by the department to implement and operate the
17 registration of professional employer organizations established
18 by this chapter. Moneys collected as fees or penalties under
19 sections 373L-B, 373L-C, 373L-D, and 373L-G shall be deposited
20 in the fund. Interest earned from the balance of the fund shall
21 become a part of the fund. Moneys in the fund may be expended
22 for personnel and operating expenses and staff training.



1 §373L-B Notice of judgments, penalties. (a) Each
2 registered professional employer organization shall provide
3 written notice within thirty days to the department of any
4 judgment, award, or disciplinary sanction imposed against the
5 organization for violating a statutory provision in an action
6 brought by any state or federal regulatory agency.

7 In addition to any other penalties provided by law, the
8 failure of a professional employer organization to comply with
9 this subsection is a violation punishable by a penalty
10 established by the director pursuant to section 373L-E. Any
11 action taken to impose or collect the penalty provided for in
12 this subsection shall not be considered a criminal action.

13 (b) Each professional employer organization shall file
14 with the department the organization's current mailing and
15 business address. It shall be the professional employer
16 organization's duty to provide written notice to the department
17 of any change of address within thirty days of the change.
18 Failure of the professional employer organization to provide the
19 notice shall absolve the department or director from any duty to
20 provide notice of any matter required by law to be provided to
21 the professional employer organization.



1 §373L-C Denial, suspension, revocation, denial of renewal
2 of registration, or penalty. In addition to any other actions
3 authorized by law, the director may deny, suspend, revoke, or
4 deny renewal of registration of any professional employer
5 organization or impose a penalty when the professional employer
6 organization, including its controlling persons:

- 7 (1) Fails to meet the requirements for registration as
8 provided in this chapter;
- 9 (2) Fails to satisfy a civil fine, penalty, or restitution
10 order arising out of any administrative or enforcement
11 action brought by any governmental agency for conduct
12 involving fraud or dishonest dealing;
- 13 (3) Has had an order or judgment entered against it in the
14 past ten years in any criminal, administrative, or
15 enforcement action for conduct involving fraud or
16 dishonest dealing, or for any violation of any state's
17 laws or rules;
- 18 (4) Fails to post a bond in accordance with this chapter;
- 19 (5) Makes any false statement, representation, or
20 certification in any document or record required to be
21 maintained under this chapter;



- 1 (6) Fails to keep, maintain, and disclose, upon request of
 2 the department, the books and records required to be
 3 maintained under this chapter for inspection or audit
 4 for the period of time designated by the director;
- 5 (7) Fails to timely pay wages, withholding taxes, or any
 6 other payments pursuant to the professional employer
 7 agreement; or
- 8 (8) Otherwise violates this chapter, or any rule adopted or
 9 final order of the director issued pursuant to this
 10 chapter.

11 **§373L-D Fees.** No applicant shall be allowed to register
 12 pursuant to this chapter unless the appropriate fees have been
 13 paid. Effective July 1, 2012, the director shall collect fees
 14 pursuant to this chapter as follows:

- 15 (1) Application fee \$
- 16 (2) Biennial renewal fee based on the average annual count
 17 of covered employees as follows:
- 18 0 - 100 covered employees \$
- 19 101 - 250 covered employees \$
- 20 251 - 499 covered employees \$
- 21 500 or more covered employees \$
- 22 (3) Restoration fee \$



1 until such time as the director amends the fees by rulemaking in
2 accordance with chapter 91. The fees to be established by the
3 director may include but shall not be limited to an application
4 fee, biennial renewal fee, restoration fee, and other reasonable
5 and necessary fees related to the department's administrative
6 costs. The fees shall be deposited into the professional
7 employer organization special fund established under section
8 373L-A. The number of covered employees for purposes of this
9 section shall be calculated based on the average number of
10 employees reported on a professional employer organization's
11 form UC-B6 (Quarterly Wage, Contribution and Employment and
12 Training Assessment Report) filed with the department for the
13 first quarter of the taxable year, as well as the three quarters
14 preceding the first quarter.

15 **§373L-E Responsibilities and duties of the director.** The
16 general duties and powers of the director shall include but not
17 be limited to:

18 (1) Adopting, amending, and repealing rules in accordance
19 with chapter 91 to issue, deny, condition, renew, or
20 deny renewal of registrations;

21 (2) Establishing fees and penalties;



- 1 (3) Inspecting and auditing the books and records of the
2 professional employer organization; and
3 (4) Doing all things necessary to carry out the functions,
4 powers, and duties of this chapter.

5 **§373L-F Professional employer agreements.** The agreement
6 between a professional employer organization and its client
7 company shall state that the professional employer organization
8 shall be deemed the employer for purposes of unemployment
9 insurance, workers' compensation, temporary disability
10 insurance, and prepaid health care coverage.

11 The professional employer organization shall provide
12 written notice of the relationship between the professional
13 employer organization and the client company to each covered
14 employee of the client company.

15 **§373L-G Failure to comply; penalty; injunction.** (a) If a
16 professional employer organization fails to comply with this
17 chapter or any rule or final order of the director, the
18 professional employer organization shall be liable for a penalty
19 in an amount:

- 20 (1) Not less than \$1,000; or
21 (2) \$500 for every day during which the failure continues;



1 whichever sum is greater. The director may, however, in the
2 director's discretion, for good cause shown, remit all or any
3 part of the penalty in excess of \$1,000 to the professional
4 employer organization; provided that the professional employer
5 organization complies with this chapter, rules adopted pursuant
6 to chapter 91, and final orders of the director.

7 (b) If a professional employer organization fails to
8 comply with this chapter, a rule, or an order for a period of
9 thirty consecutive days, the professional employer organization
10 may be enjoined, by the circuit court of the circuit in which
11 the professional employer organization's principal place of
12 business is located, from carrying on business anywhere in the
13 State so long as the noncompliance continues. An action for an
14 injunction under this subsection shall be prosecuted by the
15 attorney general or any county attorney if so requested by the
16 director.

17 §373L-H Hearings. Unless otherwise provided by law, in
18 every case in which the director refuses to issue, renew,
19 restore, or reinstate a registration, or proposes to impose a
20 penalty on a professional employer organization, the proceeding
21 shall be conducted in accordance with chapter 91 by the director
22 or an appointed hearings officer.



1 In all proceedings before it, the director or hearings
2 officer shall have the same powers respecting administering
3 oaths, compelling the attendance of witnesses and the production
4 of documentary evidence, and examining witnesses, as are
5 possessed by circuit courts. In case of disobedience by any
6 person of any order of the director or hearings officer, or of
7 any subpoena issued by the director or hearings officer, or the
8 refusal of any witness to testify to any matter on which the
9 person may be questioned lawfully, any circuit court judge, on
10 application by the director or hearings officer, shall compel
11 obedience as in the case of disobedience of the requirements of
12 a subpoena issued by a circuit court or a refusal to testify
13 therein.

14 §373L-I Judicial review by circuit court. Any
15 professional employer organization aggrieved by a final decision
16 and order of the director in a contested case, as defined in
17 chapter 91, is entitled to judicial review thereof by the
18 circuit court of the circuit in which the professional employer
19 organization's principal place of business is located. The
20 review shall be as provided by chapter 91.

21 §373L-J Payroll cost exemption. (a) Amounts received by
22 a professional employer organization from a client company in



1 amounts equal to and that are disbursed by the professional
2 employer organization for employee wages, salaries, payroll
3 taxes, insurance premiums, and benefits, including retirement,
4 vacation, sick leave, health benefits, and similar employment
5 benefits with respect to covered employees at a client company
6 shall not be subject to the general excise tax as provided by
7 section 237-24.75.

8 (b) The general excise tax exemption under section
9 237-24.75 shall not apply to the professional employer
10 organization if:

11 (1) By or through any contract between the client company
12 and any professional employer organization, or
13 otherwise, employees are excluded from any employee
14 rights or employee benefits required by law to be
15 provided to employees of the client company by the
16 client company; or

17 (2) The professional employer organization fails to pay
18 any tax withholding for covered employees or any
19 federal or state taxes for which the professional
20 employer organization is responsible."



1 SECTION 3. Section 209E-2, Hawaii Revised Statutes, is
2 amended by amending the definition of "leased employee" to read
3 as follows:

4 "Leased employee" means an employee under a professional
5 [~~employment~~] employer organization arrangement, or other
6 employee leasing arrangement, who is assigned to a particular
7 client company on a substantially full-time basis for at least
8 one year."

9 SECTION 4. Section 237-24.75, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "§237-24.75 **Additional exemptions.** In addition to the
12 amounts exempt under section 237-24, this chapter shall not
13 apply to:

- 14 (1) Amounts received as a beverage container deposit
- 15 collected under chapter 342G, part VIII;
- 16 (2) Amounts received by the operator of the Hawaii
- 17 convention center for reimbursement of costs or
- 18 advances made pursuant to a contract with the Hawaii
- 19 tourism authority under section 201B-7[+]; and[+]
- 20 [+](3) Amounts received[+] by a professional [~~employment~~]
- 21 employer organization from a client company equal to
- 22 amounts that are disbursed by the professional



1 ~~[employment]~~ employer organization for employee wages,
2 salaries, payroll taxes, insurance premiums, and
3 benefits, including retirement, vacation, sick leave,
4 health benefits, and similar employment benefits with
5 respect to ~~[assigned]~~ covered employees at a client
6 company; provided that this exemption shall not apply
7 to a professional ~~[employment]~~ employer organization
8 if: ~~[upon failure of the professional employment~~
9 ~~organization to collect, account for, and pay over any~~
10 ~~income tax withholding for assigned employees or any~~
11 ~~federal or state taxes for which the professional~~
12 ~~employment organization is responsible.]~~

13 (A) By or through any contract between a client
14 company and any professional employer
15 organization, or otherwise, employees are
16 excluded from any employee rights or employee
17 benefits required by law to be provided to
18 employees of the client company by the client
19 company; or

20 (B) The professional employer organization fails to
21 pay any tax withholding for covered employees or
22 any federal or state taxes for which the



1 professional employment organization is
2 responsible.

3 As used in this paragraph, [~~"professional employment~~
4 ~~organization",~~] "professional employer organization,
5 "client company", and [~~"assigned-employee"] "covered~~
6 employee" shall have the meanings provided in section
7 [~~373K-1.~~] 373L-1."

8 SECTION 5. Section 373L-1, Hawaii Revised Statutes, is
9 amended as follows:

10 1. By adding three new definitions to be appropriately
11 inserted and to read:

12 "Assurance organization" means an independent entity
13 approved by the director to provide accreditation and financial
14 assurance services for professional employer organizations.

15 "Controlling person" means any individual, firm,
16 association, or corporation that directly or indirectly has the
17 power to direct or cause to be directed, the management,
18 control, or activities of the professional employer
19 organization.

20 "Department" means the department of labor and industrial
21 relations."



1 2. By amending the definitions of "client company",
2 "professional employer organization", and "temporary help
3 services" to read:

4 "Client company" means any person [~~who enters into a~~
5 ~~professional employer agreement with a professional employer~~
6 ~~organization.~~] that contracts with a professional employer
7 organization and is assigned employees by the professional
8 employer organization under that contract.

9 "Professional employer organization" or "organization"
10 means [~~any person that is a party to a professional employer~~
11 ~~agreement with a client company regardless of whether the person~~
12 ~~uses the term or conducts business expressly as a "professional~~
13 ~~employer organization", "PEO", "staff leasing company",~~
14 ~~"registered staff leasing company", "employee leasing company",~~
15 ~~"administrative employer", or any other similar name.] a
16 business entity that offers employees that are assigned to the
17 worksites of its client companies.~~

18 "Temporary help [~~services~~]" means an arrangement by which
19 [~~a person recruits and hires the person's own employees and:~~

20 (1) ~~Finds other organizations that need the services of~~
21 ~~those employees;~~



1 ~~(2) Assigns those employees to perform work or services~~
2 ~~for other organizations to support or supplement the~~
3 ~~other organizations' workforces or to provide~~
4 ~~assistance in special work situations, including~~
5 ~~employee absences, skill shortages, seasonal~~
6 ~~workloads, or special assignments or projects; and~~
7 ~~(3) Customarily attempts to reassign the employees to~~
8 ~~successive placements with other organizations at the~~
9 ~~end of each assignment.]~~

10 an organization hires its own employees and assigns them to a
11 client to support or supplement the client's workforce in a
12 special situation, including:

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

17 SECTION 6. Section 373L-2, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "~~[+]§373L-2[+]~~ **Registration required.** (a) Every
20 professional employer organization shall register with the
21 director by providing all of the information required by this
22 section and by rules adopted by the director pursuant to chapter



1 91 prior to entering into any professional employer agreement
2 with any client company in this State.

3 (b) Registration information required by this section
4 shall include:

5 (1) The name or names under which the professional
6 employer organization conducts or will conduct
7 business;

8 (2) The address of the principal place of business of the
9 professional employer organization and the address of
10 each office that the professional employer
11 organization maintains in this State;

12 (3) The professional employer organization's general
13 excise tax number;

14 (4) A copy of the certificate of authority to transact
15 business in this State issued by the director of
16 commerce and consumer affairs pursuant to title 23 or
17 title 23A, if applicable;

18 (5) A list, organized by jurisdiction, of each name under
19 which the professional employer organization has
20 operated in the preceding five years, including any
21 alternative names; names of predecessors; and, if
22 known, names of successor business entities;



- 1 (6) A statement of ownership, which shall include the name
2 of each person who, individually or acting in concert
3 with any other person or persons, owns or controls,
4 directly or indirectly, twenty-five per cent or more
5 of the equity interests of the professional employer
6 organization;
- 7 (7) A statement of management, which shall include the
8 name of any person who serves as president or chief
9 executive officer or who otherwise has the authority
10 to act as a senior executive officer of the
11 professional employer organization;
- 12 (8) Proof of valid workers' compensation coverage in
13 compliance with all laws of this State;
- 14 (9) Proof of compliance with the Hawaii temporary
15 disability insurance law;
- 16 (10) Proof of compliance with the Hawaii prepaid health
17 care act [~~as regards all employees of the professional~~
18 ~~employer organization~~];
- 19 (11) Proof of compliance with the Hawaii employment
20 security law, including payment of any applicable
21 employer liability pursuant to chapter 383; [and]



1 (12) A financial statement prepared in accordance with
2 generally accepted accounting principles, audited by
3 an independent certified public accountant licensed to
4 practice in the State, and without qualification as to
5 the going concern status of the professional employer
6 organization[-]; and

7 (13) The name, address, and phone number of the financial
8 institution utilized by the professional employer
9 organization for payroll purposes that operates and
10 maintains branches in the State.

11 (c) Registration under this section shall expire on
12 [~~December 31~~] June 30 of each [~~odd-numbered~~] even-numbered year.
13 Before [~~December 31~~] June 30 of each [~~odd-numbered~~] even-
14 numbered year, the director or the director's authorized
15 delegate shall mail a renewal application for registration to
16 the address on record of the registrant. In connection with
17 renewal of registration, a professional employer organization
18 shall provide all of the information required by subsection (b).
19 Failure to renew a registration shall result in forfeiture of
20 that registration. Registrations that have been forfeited may
21 be restored within one year of the forfeiture date upon payment
22 of renewal and restoration fees. Failure to restore a forfeited



1 registration within one year shall result in the automatic
2 termination of the registration. Registrations that have been
3 terminated pursuant to this section shall be required to reapply
4 for a new registration as a new applicant.

5 (d) The director shall [~~establish fees and requirements~~
6 ~~for registration, maintenance of registration, renewal, and~~
7 ~~restoration of registration for professional employer~~
8 ~~organizations by rule pursuant to chapter 91.] to the extent
9 practicable permit the acceptance of electronic filings in
10 conformance with chapter 489E, including applications,
11 documents, reports, and other filings required under this
12 chapter. The director may provide for the acceptance of
13 electronic filings by a professional employer organization. A
14 professional employer organization may authorize an assurance
15 organization to act on the professional employer organization's
16 behalf in complying with the registration requirements of this
17 chapter, including electronic filings of information and payment
18 of registration fees. Use of an approved assurance organization
19 shall be optional for a professional employer organization.
20 Nothing in this subsection shall limit or change the director's
21 authority to register or terminate registration of a~~



1 professional employer organization or to investigate or enforce
2 any provision of this chapter."

3 SECTION 7. Section 373L-3, Hawaii Revised Statutes, is
4 amended to read as follows:

5 " ~~[+]§373L-3[+]~~ **Bond required.** (a) No professional
6 employer organization shall enter into a professional employment
7 agreement with a client company in the State unless the
8 professional employer organization posts a bond ~~[in the amount~~
9 ~~of \$250,000, which is a performance or financial guaranty type~~
10 ~~bond naming the director as the obligee and which may be~~
11 ~~canceled only if the professional employer organization gives~~
12 ~~sixty days prior written notice to the surety or if the surety~~
13 ~~gives thirty days prior written notice to the director of~~
14 ~~cancellation of the bond. The requirements of this section~~
15 ~~shall be satisfied by a single bond. If a professional employer~~
16 ~~organization has more than one branch location, the bond shall~~
17 ~~cover all locations.]~~ as follows:

- 18 (1) Professional employer organizations consisting of
19 fewer than one hundred full-time or part-time
20 employees shall post a minimum of \$250,000; and
21 (2) All other professional employer organizations shall
22 post a bond in an amount equal to:



1 (A) One per cent of the organization's prior year's
2 total wages, benefits, workers' compensation
3 premiums, and unemployment compensation
4 contributions; or

5 (B) \$1,000,000;
6 whichever is less; provided that the amount of the
7 bond shall be no less than \$500,000.

8 (b) Any bond posted pursuant to this section shall be a
9 performance or financial guaranty type bond naming the director
10 as the obligee and may be canceled only if the professional
11 employer organization gives sixty days prior written notice to
12 the surety and if the surety gives thirty days prior written
13 notice to the director of cancellation of the bond. If a
14 professional employer organization has more than one branch
15 location in the State, the bond shall cover all locations. The
16 requirements of this section shall be satisfied by a single
17 bond. The bond required by this section shall be issued by [a]
18 an A-rated surety [~~or federally insured lending institution~~]
19 authorized to do business in the State to indemnify [a] the
20 State, client [~~company~~] companies, and covered employees who may
21 suffer loss as a result of nonperformance by a professional
22 employer organization.



1 (c) In lieu of the requirements of subsections (a) and
2 (b), a professional employer organization that is a member of an
3 assurance organization may post a bond through the assurance
4 organization; provided that coverage shall consist of a bond of
5 at least \$1,000,000 issued by an A-rated surety company plus a
6 \$10,000,000 excess bond providing umbrella coverage for the
7 benefit of the State, client companies, and client company
8 employees.

9 [~~(e)~~] (d) Upon cancellation or expiration of the bond, the
10 surety [~~or insurer~~] shall remain liable for any claims against
11 the bond for a period of six months; provided that:

- 12 (1) The debts were incurred while the bond was in effect;
- 13 and
- 14 (2) The director notifies the surety [~~or insurer, as the~~
15 ~~ease may be,~~] of any claims within ninety days of
16 discovery of any claims.

17 [~~(d)~~] (e) The surety [~~or insurer~~] is not required to release
18 any moneys or collateral to the professional employer
19 organization during the six months after cancellation of the
20 bond.

21 [~~(e)~~] (f) Failure to have in effect a current bond shall
22 result in automatic forfeiture of registration pursuant to this

1 chapter and shall require the professional employer organization
2 to immediately cease doing business in the State. A
3 professional employer organization whose registration is
4 forfeited shall apply as a new applicant for registration in
5 order to resume business in the State.

6 (g) The director, or any person claiming to have sustained
7 damage resulting from noncompliance of a professional employer
8 organization with this chapter, may bring an action on the bond
9 to recover the damage therefrom. The director may deposit with
10 a court of competent jurisdiction all or any part of the sum of
11 the bond."

12 SECTION 8. Chapter 373K, Hawaii Revised Statutes, is
13 repealed.

14 SECTION 9. The director of labor and industrial relations
15 may establish three .5 full-time equivalent (FTE) permanent
16 additional positions, subject to chapters 76 and 89, Hawaii
17 Revised Statutes, to carry out the purposes of chapter 373L,
18 Hawaii Revised Statutes. The positions may include a disability
19 compensation enforcement specialist IV, auditor IV, and office
20 assistant IV.

21 SECTION 10. There is appropriated out of the professional
22 employer organization special fund the sum of \$ or so



1 much thereof as may be necessary for fiscal year 2012-2013 for
2 the department of labor and industrial relations to carry out
3 the purposes of this Act, including the hiring of necessary
4 staff.

5 The sum appropriated shall be expended by the department of
6 labor and industrial relations for the purposes of this Act.

7 SECTION 11. This Act does not affect rights and duties
8 that matured, penalties that were incurred, and proceedings that
9 were begun before its effective date.

10 SECTION 12. In codifying the new sections added by section
11 2 of this Act, the revisor of statutes shall substitute
12 appropriate section numbers for the letters used in designating
13 the new sections in this Act.

14 SECTION 13. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 14. This Act shall take effect on July 1, 2112.



Report Title:

Professional Employer Organizations; Fees and Expenses; Bond Requirements; Appropriation

Description:

Adds powers and duties to the director of labor and industrial relations regarding the registration and regulation of professional employer organizations. Authorizes various penalties for noncompliance; amends definitions and bond level requirements; and establishes the professional employer organization special fund. Repeals chapter 373K, HRS, but moves the general excise tax exemption provisions to chapter 373L, HRS. Appropriates funds to the department of labor and industrial relations. Effective July 1, 2012. (SB2424 HD1)

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

