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DIRECTOR

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STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
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February 24, 2012

To: The Honorable David Y. Ige, Chair,
The Honorable Michelle N. Kidani, Vice Chair, and
Members of the Senate Committee on Ways and Means

Date: Friday, February 24, 2012
Time: 9:00 a.m.
Place: Conference Room 211, State Capitol

From: Dwight Y. Takamine, Director
Department of Labor and Industrial Relations (DLIR)

RE: SB2424 SD1 RELATING TO PROFESSIONAL EMPLOYER ORGANIZATIONS

DLIR and the Department of Commerce and Consumer Affairs (DCCA) have been working together closely to both implement the current law in a meaningful way and to develop recommendations for the legislature's deliberations on this measure. In short, the departments agree that developing a special fund to help defray the costs of implementing the registration of PEO's and a more moderate approach to regulation as provided for in the SD1 is prudent at this time.

Overall, the department is supportive of the measure. The SD1 combines two separate chapters in the Hawaii Revised Statutes (HRS) relating to professional employer organizations. The department's biggest concern with the current draft of the proposal is the inability of the department to support the three (3) .5 positions provided with the fees established in the measure. At this time, it is difficult for the department to forecast the workload required by this measure and the three (3) .5 positions may not be sufficient to carry out the purposes of this new chapter, especially considering that the measure creates a new hearings process. Moreover, the department notes that usually a new special fund is "seeded" with a general fund appropriation to help establish the positions and operations to be funded by a special fund.

DLIR offers the following comments and recommendations for your consideration in regards to the current proposal:

- Pg. 2, Ln 17: delete “fines” and insert “penalties”.
- Pg. 3, Ln 6: delete “enforcement”, insert “any” before state, and delete “An organization... other jurisdictions” on lines 7-8 for the sake of clarity.
- As written, section 373L-B(a) allows the Director to set a fine by rule for failure to give notice of judgment. However, since no such similar language is placed in section 373L-B(b), it would appear that a penalty cannot be assessed for failure to file a current mailing and business address. If this is the intent, then, change "fine" to "penalty" on line 11 of page 3, and consider setting a penalty amount since this would be the only "violation" for which the department must set a penalty. See section 373L-G, which sets a penalty for any violation of the chapter.
- except for changing "fine" to "penalty" on line 11 of page 3, the department has no other recommendations for this section.
- Pg. 4, Ln 3 strike “or” and on Ln 4 insert “or penalty” after “renewal of registration.” to accurately describe the contents of 373L-C. In addition, “fine” on Pg. 4 Ln 5 should be replaced by “penalty”.
- 373L-D Fees and expenses (Pg. 5 Ln 14 – Pg. 6 Ln 19): Since there are no "expenses" set forth, delete that word in the title of the section. Having all PEOs pay an initial \$2,500 registration fee and then a graduated scale does not make sense, especially in light of the fact that if just the graduated fee schedule was adopted the department would not have enough revenue to pay for the positions in the proposal. Moreover, the measure provides for hearings, which will from time to time put an additional burden on the department. We suggest striking the initial fee and adjusting the sliding scale as follows:
 - 0-100 employees \$2,000
 - 101-250 \$5,000
 - 251-499 \$7,500
 - 500+ \$15,000
- Pg. 6, Ln 12 strike “Unless otherwise provided by law,”
- In addition, since the fees will be due on June 30, the number of covered employees should be counted according to the employees reported on the PEO’s first quarter form UC-B6 and the three quarters

preceding the first quarter, otherwise, the data will be 6 months old.

- Pg. 7, Ln 4 strike “fines” and insert “penalties”.
- Pg. 7, Ln 6 insert “Professional Employer Organization or” before registrant.
- Sections 373L-G and -H can be confusing as to which process to use where a penalty is assessed. For clarity, the department suggests that “to be recovered... special fund” on Pg. 8, Lines 3-5 be deleted and add “final” between “and” and “order” on Ln 10. This way, all penalty assessments will go through the administrative hearing process.
- 373L-H – Replace “fine” with “penalty” on line 22 of page 8. Under this chapter the director is in charge of both the investigatory and adjudicatory functions, which is not appropriate – there needs to be a separation of these functions.
- For clarity, delete “company” on Pg. 14, Ln 13 – “client company” has its own definition and is confusing as used here.
- 373L-2 - For consistency, delete “as regards all employees of the professional employer organization” in section 373L-2(b)(10) (Pg16, Lines 19-20) to be consistent with (8) and (9).
- 373L-2 – the language in (d) has ambiguous portions, appears to be too broad in scope, appears unnecessary given the definition of “assurance organization, and requires rulemaking for authorization that can easily be accomplished in statute.” Suggested language, to replace current proposal, beginning at page 18 line 15 through page 19 line 8: (Ramseyer format is used here only to show the differences between the current proposal (SD1) and the department's proposal; this wording of subsection (d) is all new amendments to the law.)

The director may provide for the acceptance of electronic filings ~~and other assurance by an independent and qualified assurance organization~~ professional employer organization. ~~approved by the director that provides satisfactory assurance of compliance acceptable to the director similar to or in lieu of the requirements of this chapter or rules adopted pursuant to it.~~ Such rules shall permit ~~a~~ A professional employer organization ~~to~~ may authorize an assurance organization ~~approved by the director~~ to act on the professional employer organization's behalf in complying with the registration requirements of this chapter, including

electronic filings of information and payment of registration fees. Use of an approved assurance organization shall be optional for a ~~registrant~~ professional employer organization. Nothing in this subsection shall limit or change the director's authority to register or terminate registration of a professional employer organization or to investigate or enforce any provision of this chapter."

- DLIR suggests revising the language in 373L-3 (b) as follows: (Ramseyer formatting used in this subsection shows changes from the existing law, not from the current proposal (SD1).)

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

- Since bonds may be issued by sureties only under this proposal, delete "or insurer" on page 21 lines 15 and 19 and on page 22 line 1.
- The department notes that the director is an obligee on the bond in 373L-3 (g).

TESTIMONY BY KALBERT K. YOUNG
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON
SENATE BILL NO. 2424, S.D. 1

February 24, 2012

RELATING TO PROFESSIONAL EMPLOYER ORGANIZATIONS

Senate Bill No. 2424, S.D. 1, establishes a Professional Employer Organization Special Fund into which shall be deposited the funds from applications, registrations, and penalties from professional employer organizations which will be used by the Department of Labor and Industrial Relations to administer and enforce the provisions of Chapter 373L, Hawaii Revised Statutes. The bill further establishes three .50 positions and appropriates \$177,500 in special funds for FY 13 to administer the program.

While the Department of Budget and Finance does not take any position on the policy of the professional employer organization program, as a matter of general policy, the department does not support the creation of special funds which do not meet the requirements of Section 37-52.3, Hawaii Revised Statutes. Special or revolving funds should: 1) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program; 2) provide an appropriate means of financing for the program or activity; and 3) demonstrate the capacity to be financially self-sustaining. In regards to Senate Bill No. 2424, S.D. 1, it is difficult to determine whether the special fund will be self-sustaining. In

addition, the bill does not address or appropriate general funds to allow the Department of Labor and Industrial Relations to expend funds for personal salaries and other operating costs necessary to start-up the registration of professional employer organizations.

I encourage the Legislature to scrutinize the fiscal and operational plan for this program to ensure that it does conform to the requirements of Section 37-52.3, Hawaii Revised Statutes.



National Association
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February 23, 2012

The Honorable David Y. Ige, Chair
The Honorable Michelle N. Kidani, Vice Chair
Senate Committee on Ways and Means
State Capitol
415 Beretania Street
Honolulu, HI 96813

Dear Senators Ige and Kidani,

On behalf of the National Association of Professional Employer Organizations (NAPEO),¹ I am writing to provide comments on SB 2424 (SD 1), a measure that would amend Chapter 373L, Hawaii Revised Statutes, which requires professional employer organizations (PEOs) to register with the State of Hawaii. As initially indicated in NAPEO's February 6, 2012 comment letter (attached), concerns remain with provisions several key provisions including the fee and bonding sections, and this letter addresses those concerns in detail. Additionally, language is proposed that would ensure the benefits of workers' compensation exclusive remedy are extended to both small businesses and PEOs. NAPEO has a long-standing history of ensuring that PEO statutory frameworks include the proper tools and remedies to ensure compliance with regulatory requirements and in general terms the proposed amendments to the PEO statute accomplish these goals.

By way of background, Professional Employer Organizations are businesses that partner with existing small businesses to enable them to cost-effectively outsource the management of human resources, employee benefits, payroll, and workers' compensation so that PEO clients can focus on their core competencies to maintain and grow their bottom lines. By forming an employment relationship with these small businesses and their employees, PEOs are able to offer enhanced access to employee benefits.

Unfortunately, SB 2424 (SD 1) includes several provisions that NAPEO cannot support and could have a devastating impact on the PEO industry in the state. Most notably, the renewal fees

1. The National Association of Professional Employer Organizations (NAPEO) is the national trade association of the professional employer organization (PEO) industry, representing a membership that generates more than 90% of the industry's total PEO gross revenues.

in section 1 and the bond requirement provisions included within Section 6 of SB 2424 (SD 1) far exceed what should be reasonably required. NAPEO has long supported generating adequate registration fees to cover the administration of a PEO registration program. In most states, and certainly those with a similar PEO market penetration as Hawaii, regulators have found that the PEO registration program can be handled utilizing .5 FTE. Under section 7 of SB 2424 SD 1), it is proposed that three (3) .5 FTE positions be created to manage the program. Accordingly, NAPEO urges that the anticipated staff allocation and corresponding fees be reduced by one-third.

NAPEO suggests that amendments to section 373L-F in section 2 of SB 2424 (SB 1) which addresses professional employer agreements should be clarified to ensure small businesses that engaged PEOs have the benefit of workers compensation exclusive remedy. Suggested language is provided below.

373L-F Professional employer agreements. The agreement between a professional employer organization and its client company shall state that the professional employer organization shall be deemed the employer for purposes of unemployment insurance, workers' compensation (and the exclusive remedies of Chapter 386 shall apply to both the client and the professional employer organization with respect to workers compensation coverage secured by the professional employer organization), temporary disability insurance, and prepaid health care coverage.

NAPEO strongly urges the inclusion this clarification in SB 2424 (SD 1) to ensure small businesses in Hawaii are not disadvantaged.

Regarding the proposed bonding requirement in Section 6 of SB 2424, NAPEO submits that the current \$250,000 statutory requirement is strong standard and should be maintained. Requiring such a significant bond of \$1,000,000 could cause significant market disruption. First, the bonding approach is inequitable. A PEO that has 100 covered employees would be required to secure a bond of \$250,000 while a PEO with 101 covered employees would be required to secure a bond of \$1,000,000. Second, the availability and affordability of this level of bonding could very likely result in PEOs not being able to secure the required amount. In that scenario, the result would be the loss by many workers of access to valuable employee benefits as well as the loss to small businesses of the important human resource and compliance expertise of a PEO.

In discussions with the legislature in 2010 about SB 1062, which created the regulatory framework for PEOs, NAPEO pointed out that a \$250,000 bond requirement would be the highest requirement for PEOs of any state in the country. That fact remains true today.

It was also noted during those discussions that in addition to the amount of a bond, the bonds in and of themselves represent a tremendous level of protection and assurance of a PEO's financial capacity because of the extreme diligence of those entities issuing the bonds. The importance of this reality should not be overlooked. Regulators in other states have found that regulatory requirements coupled with a reasonable bond level provides for sound oversight of the PEO industry.

Furthermore, Section 6(g) as proposed would allow the director or “any person claiming (emphasis added) to have sustained damage” to bring action against the bond. Clearly, someone who has received final adjudication from a court for damages should have recourse against the bond. However, using the standard of “claiming to have sustained damages” is far too low and would likely result in the inability of a PEO to obtain a bond – of any amount. Suggested language is provided below.

(g) The director, or any person who has received final adjudication from a court of damages claiming to have sustained damage resulting from noncompliance of a professional employer organization with this chapter, may file bring an action on the bond to recover the damage there from. The director may deposit with a court of competent jurisdiction all or any part of the sum of the bond."

NAPEO urges that the bonding level be kept at the levels required under Section 373L, Hawaii Revised Statutes and the above clarification be adopted.

It is my understanding that the Employers Services Assurance Corporation (ESAC) will be providing comments requesting clarification of the bonding provision as well as the provision that would enable the director to approve an assurance organization to provide certification and financial assurance for qualified PEOs and PEO Groups who elect to use an assurance organization as an alternative means of satisfying Hawaii’s PEO requirements.

NAPEO strongly supports the inclusion of ESAC’s recommendations in SB 2424 (SD 1).

NAPEO firmly believes that the statutory requirements enacted by the legislature in 2010 provide an appropriate framework for PEOs operating in the state. However, NAPEO stands ready to engage in discussions with you on the efficacy of those existing requirements. The current statute will help protect consumers, achieve greater efficiencies at the state regulatory level, and lead to a more robust, competitive, and compliant PEO industry in the state of Hawaii. We urge you to carefully consider this legislation. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Tucker". The signature is fluid and cursive, with a long horizontal stroke at the end.

Tim Tucker
Vice President, Government Affairs



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February 6, 2012

The Honorable Rosalyn H. Baker, Chair
The Honorable Brian T. Taniguchi, Vice Chair
Committee on Commerce and Consumer Protection
State Capitol
415 Beretania Street
Honolulu, HI 96813

Dear Senators Baker and Taniguchi,

On behalf of the National Association of Professional Employer Organizations (NAPEO),¹ I am writing to provide comments on SB 2424, a measure that would amend Chapter 373L, Hawaii Revised Statutes, which requires professional employer organizations (PEOs) to register with the State of Hawaii. NAPEO has concerns with provisions addressing key definitions and the bonding requirement, and this letter addresses those concerns in detail. At the outset, let me acknowledge that NAPEO generally supports the penalty provisions in the proposed legislation. NAPEO has a long-standing history of ensuring that PEO statutory frameworks include the proper tools and remedies to ensure compliance with regulatory requirements.

By way of background, Professional Employer Organizations are businesses that partner with existing small businesses to enable them to cost-effectively outsource the management of human resources, employee benefits, payroll, and workers' compensation so that PEO clients can focus on their core competencies to maintain and grow their bottom lines. By forming an employment relationship with these small businesses and their employees, PEOs are able to offer enhanced access to employee benefits.

To date, 38 states across the country regulate the PEO industry through licensing and/or registration programs to provide a level of transparency to consumers and the state agencies that regulate aspects of the PEO employment relationship. Chapter 373L, Hawaii Revised Statutes, provides for a similar regulatory framework for the industry, and once implemented will

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significantly benefit small businesses and workers in PEO arrangements, as well as those state agencies that have responsibility for administering employer-based statutes and regulations.

Unfortunately, SB 2424 includes several provisions that NAPEO cannot support and could have a devastating impact on the PEO industry in the state. Most notably, the bonding provisions included within Section 5 of SB 2424 would increase the bonding requirement from \$250,000 for most PEOs to an amount equal to 5 percent of the prior year's total wages, benefits, workers' compensation premiums, and unemployment compensation contributions. The availability and affordability of this level of bonding could very likely result in PEOs not being able to secure the required amount. In that scenario, the result would be the loss by many workers of access to valuable employee benefits as well as the loss to small businesses of the important human resource and compliance expertise of a PEO.

In discussions with the legislature in 2010 about SB 1062, which created the regulatory framework for PEOs, NAPEO pointed out that a \$250,000 bond requirement would be the highest requirement for PEOs of any state in the country. That fact remains true today. Attached is a chart identifying the bonding requirements for PEOs in various states.

It was also noted during those discussions that in addition to the amount of a bond, the bonds in and of themselves represent a tremendous level of protection and assurance of a PEO's financial capacity because of the extreme diligence of those entities issuing the bonds. The importance of this reality should not be overlooked. Regulators in other states have found that regulatory requirements coupled with a reasonable bond level provides for sound oversight of the PEO industry.

NAPEO urges that the bonding level be kept at the levels required under Section 373L, Hawaii Revised Statutes.

NAPEO is concerned with the changes proposed in Section 3 of SB 2424. Specifically, the definitions of "Client Company" and "Professional Employer Organization" would be amended and in doing so would become inconsistent with how the PEO business model is structured. PEOs do not "assign" employees to client companies but rather co-employ existing workforces.

NAPEO urges that the definition found in Section 373L, Hawaii Revised Statutes not be amended.

It is my understanding that the Employers Services Assurance Corporation (ESAC) will be providing comment requesting the inclusion of a provision that would enable the director to approve an assurance organization to provide certification and financial assurance for qualified PEOs and PEO Groups who elect to use an assurance organization as an alternative means of satisfying Hawaii's PEO requirements. That proposed authority is found in NAPEO's Model PEO Act and has been approved or is pending approval in more than 20 states.

NAPEO strongly supports the inclusion of the assurance organization provision in SB 2424.

NAPEO firmly believes that the statutory requirements enacted by the legislature in 2010 provide an appropriate framework for PEOs operating in the state. However, NAPEO stands ready to engage in discussions with you on the efficacy of those existing requirements. The current statute will help protect consumers, achieve greater efficiencies at the state regulatory level, and lead to a more robust, competitive, and compliant PEO industry in the state of Hawaii. We urge you to carefully consider this legislation. Thank you for your consideration.

Sincerely,

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Tim Tucker
Vice President, Government Affairs



State	Bonding Requirements	Financial Reporting Requirements
Alabama	<p>The director shall determine, by rule, the financial requirements for a registrant or renewal of registration. The rule may require the submission of securities or guarantees securing the payment of all unemployment taxes and workers' compensation claims payments due to or with respect to covered employees and may require that the security or assets to secure such payments be maintained by a financial institution located in the State of Alabama. The director may accept net worth based upon audited financial statements in whole or in part for the financial requirements. The financial requirements shall not exceed \$100,000. Section 5(b) of Act.</p>	<p>Audited or reviewed financial statements are required.</p>
Arkansas	<p>A PEO must maintain either (a) minimum net worth of \$100,000 based on audited financial statements submitted annually to the state, or (b) post a surety bond (or equivalent) in the amount of at least \$50,000 in accordance with the requirements of the statute and commission rule, and conditioned upon the PEO management staying in compliance with state requirements. (Statute 23-92-408).</p> <p>Action can be taken on the Bond either by the state or by any private party aggrieved by the PEO. (Statute 23-02-408(c)).</p> <p>Unemployment Security Bond. In order to relieve the Client of joint liability for SUI taxes, the PEO must post a second bond in accordance with ESD policy (Statute 11-10-717(e)(2)(A)). PEO Policy, Arkansas Employment Security Department: http://www.accessarkansas.org/esd/ForEmployer/A_EmployeeLeasing.htm</p>	<p>To register as a PEO: A financial statement setting forth the financial condition of the PEO, as of a date not earlier than one hundred eighty (180) days before the date the financial state is submitted to the commissioner. The financial statement shall be prepared in accordance with generally accepted accounting principles, and unless the PEO provides financial assurance as set forth in Ark. Code Ann. §23-92-408(a)(2), the financial state shall be audited by an independent certified public accountant licensed to practice in Arkansas or the state domicile of the PEO.</p> <p>Ongoing Requirements: Quarterly. CPA certification that all state payroll taxes have been timely paid is due 45 days after the end of each quarter (Statute 23-92-408(b), Insurance Reg. 58.15.B).</p> <p>Annual - audited financial reports by an outside CPA and a list of names and addresses of each Client are required with each license renewal. (Statute 23-92-408(a)).</p>

State	Bonding Requirements	Financial Reporting Requirements
Arizona	Registered PEO must maintain either a minimum net worth of at least \$100,000 or a bond, an irrevocable letter of credit or securities that have a minimum market value of \$100,000. (does not apply to PEOs that file a limited registration under section 23-567) (AZ Rev Stats 23-569)	<p>For registration, a PEO must provide a financial statement that sets forth the financial conditions of the professional employer organization, that is prepared with generally accepted accounting principles and that is compiled, reviewed or audited by an independent certified public accountant. The financial statement shall be dated no earlier than 180 days before the date on which the financial statement is filed with the secretary of state. A professional employer organization may submit compiled, reviewed or audited financial statements. A PEO must also provide a statement by a certified professional accountant that the applicant is current with obligations that relate to payroll, payroll-related taxes, and workers' compensation insurance premiums for covered employees and employee benefits for the previous four calendar quarters.</p> <p>A PEO must provide notice of all new clients and terminated clients to its workers' compensation insurance carrier and the workers compensation commission. AZ Rev Stats 23-901.8</p>
California	For workers' compensation self-insurance, a bond of 125% of the private insurer's estimated future liability but not less than \$200,000 must be posted.	

State	Bonding Requirements	Financial Reporting Requirements
Florida	<p>For PEO licensing, no across-the-board bonding requirements. Net Worth (Total Tangible Assets minus Total Liabilities). Every application must show a tangible accounting net worth of \$50,000 or more or, if not, it must provide guaranties, letters of credit, or other security acceptable to BELC to offset any deficiency. Guaranties are not acceptable unless the guarantor can show sufficient financial strength to satisfy BELC. (Statute 468.525(3), Regulation 61G7-6.006). Working Capital (Current Assets minus Current Liabilities). The PEO must also maintain positive working capital including adequate reserves for all taxes and insurance, including plans of self-insurance or partial self-insurance for claims incurred but not paid and for claims incurred but not reported. (Statute 468.525(3)).</p>	<p>468.525 (e) Each employee leasing company or employee leasing company group shall submit annual financial statements audited by an independent certified public accountant, with the application and within 120 days after the end of each fiscal year, in a manner and time prescribed by the board, provided however, that any employee leasing company or employee leasing company group with gross Florida payroll of less than \$2.5 million during any fiscal year may submit financial statements reviewed by an independent certified public accountant for that year.</p> <p>3. Annual Report. Submit to BELC an Annual Report postmarked no later than April 30 (120 days after the end of the year) for companies using a December 31 fiscal year end. For Florida payrolls of more than \$2,500,000, the financial report must be audited, otherwise they must be reviewed, and must show the minimum required working capital (see Regulations 61G7-5.0031, 0032, & 0033). Also, part of the annual reporting requirement is a "Workers' Compensation Liability Statement" (see Statute 468.525(3)(e) and Regulations 10.0011 & 0012).</p>
Georgia	<p>For Unemployment Insurance, the PEO must post a \$10,000 bond, or, if taxable annual payroll exceeds \$370,370, then 2.70% of taxable annual payroll. The bonding company must be licensed in Georgia and the bond must be renewed annually, with the principal amount adjusted for the size of taxable payroll. In the alternative, the statute provides for posting a cash deposit with the Commissioner, which will draw interest. (Statute 34-7-6(d), 34-8-172, Reg. 300-2-7-07(2)). Also, the principal amount of the bond can be reduced to \$5,000 if (a) the PEO has accumulated 2 quarters of SUI experience rating in Georgia, (b) it has positive reserve, and (c) it submits a monthly prepayment of SUI contributions (Reg. 300-2-7-07(3)).</p>	

State	Bonding Requirements	Financial Reporting Requirements
Idaho	If the Client or PEO is a government contractor and the contract is for \$1000 or more, then the PEO must execute a surety bond to cover the SUI liability. (Statute 72-1349(6)).	
Indiana	For licensing, the PEO must have \$50,000 net worth or provide a bond, letter of credit, or equivalent securities in that amount.	For registration, a PEO provide a financial statement which: sets forth the financial condition of the PEO applicant as of a date not earlier than 180 days before the date the financial statement is submitted to the department, is prepared in accordance with generally accepted accounting principles and is reviewed by an independent certified accountant licensed to practice in the jurisdiction in which the accountant is located.
Kansas	Not required for employers using the “contributing method.” See Section V of the Employer Handbook at: http://www.hr.state.ks.us/ui/html/handbook.pdf For non-profit organizations and similarly situated entities, a bond is required. Also, some deposit requirements could be levied against employers who have been late in making payments to the state.	
Louisiana	Not mandatory, however, the Client and PEO are jointly & severally liable for SUI contributions and must file wage reports separately for each Client unless it posts a surety bond for \$100,000 “to ensure prompt payment of contributions, interest, and penalties for which the PEO is or may become liable. After three years the bond shall be adjusted in accordance with rules promulgated by the Department of Labor.” (Statute 23:1763(3) and (4)). The bond document will be provided by the Department of Labor.	
Maine	None. But see Licensing Overview, paragraph on Payroll Processors. A substantial bond is required for payroll processors unless exempt.	

State	Bonding Requirements	Financial Reporting Requirements
Minnesota	<p>If the PEO “provides 50% or more of your [the Client’s] workers, you are liable for payment of all unemployment tax, penalties, interest, and collection costs that become due from wages paid on the contract unless the employee leasing firm provides a bond to guarantee the payments.” From the Employment Security Handbook, page 4 (cf. Statute 268.065(2)): http://www.uimn.org/tax/forms/handbook.pdf Statute 268.065(2): “A person whose work force consists of 50 percent or more of workers provided by employee leasing firms, is jointly and severally liable for the unpaid amounts that are due under this chapter or section 116L.20 on the wages paid on the contract with the employee leasing firm. ‘Employee leasing firm’ means an employer that provides its employees to other persons without severing its employer-employee relationship with the worker for the services performed for the lessee.”</p>	
Mississippi	Not for MESC, although there is a tax bond requirement.	

State	Bonding Requirements	Financial Reporting Requirements
Missouri	<p>The PEO must post a bond, which protects the Client from joint and several liability related to reporting and paying SUI. Bond size is “equivalent to the contributions or payments in lieu of contributions for which the lessor employing unit was liable in the last calendar year in which he or she accrued contributions or payments in lieu of contributions, or \$100,000, whichever amount is the greater, to ensure prompt payment of contributions or payments in lieu of contributions, interest, penalties, and surcharges for which the lessor employing unit may be, or becomes, liable pursuant to this law.” Acceptable substitutes are marketable securities, a letter of credit, or a certificate of deposit. (Statute 288-032.2(3), Reg. 8-10-4.160(2) to (8) and 4.170). Note: although the statute uses language that requires the PEO to obtain a bond (see Statute 288-032.2(4)), the Division of Employment Security appears to hold the position that if a bond is not obtained, the consequence is joint & several liability, and the requirement to file a separate tax return for each Client. The PEO is advised to obtain a bond, although if it has a very few employees in Missouri, it may be cost-effective to forego a bond, although the PEO should contact the state agency first.</p>	
Montana	<p>None for Restricted License. For full license, the PEO must maintain tangible accounting net worth of at least \$50,000, evidenced by a financial statement and a compilation report by an independent CPA. Various rules apply to acceptable documentation of net worth (Statute 39-8-202(6)). The PEO must also maintain positive working capital. Financial documentation may not be older than 6 months (Statute 39-8-202(7)). Bond. The net worth requirement can be met through a surety bond, letter of credit, or marketable securities, or guarantee acceptable to the department. (Statute 39-8-202(6)).</p>	<p>Resident or nonresident license applicants must show a tangible accounting net worth of at least \$50,000. In meeting the requirement, the PEO may provide a security deposit in the amount of \$50,000. Contact the Department for acceptable securities.</p> <p>Quarterly. Within 90 days of the end of each calendar quarter, the PEO must submit information certified by an independent CPA stating that all payroll-related taxes for the quarter have been paid. (Statute 39-8-207(2)(b))</p>
Nevada	None.	

State	Bonding Requirements	Financial Reporting Requirements
New Hampshire	<p>For PEO registration, in addition to showing net worth of \$100,000 or more, the PEO is required to post a bond (or equivalent) for a face amount of \$100,000 to ensure coverage of wages and benefits. See Statute 277-B:6,II http://www.gencourt.state.nh.us/rsa/html/XXIII/277-B/277-B-6.htm The state Regulators are very reluctant to waive bond requirements, regardless of how few co-employees are present in the state.</p> <p>Not automatic, although may be required if the PEO fails to pay SUI or other taxes or fees. The amount of the bond or security will be set by the Commission based on obligations assumed. (Statute 277-B:17,II). But see Bonding Requirements section of the PEO License.</p>	<p>A financial statement prepared by an independent certified public accountant in accordance with generally accepted account principles within six (6) months prior to the date of application which statement will show a minimum net worth of \$100,000.</p> <p>Quarterly. SUI Report of total payroll by SIC Code and Client, and including a certification by CPA stating all state and federal taxes have been timely paid. SUI must be paid monthly.</p>
New Jersey	<p>PEO initial registration and annual report must include a reviewed financial statement prepared by a CPA showing (1) minimum net worth of \$100,000, or (2) bond or deposited security requirement of \$75,000. (Statute 34:8-71(b)).</p>	<p>Quarterly certifications that all taxes are paid, signed by a CPA, due within 60 days after the end of each quarter. (Statute 34:8-71(c)).</p>
New Mexico	<p>For PEO registration, an \$100,000 Surety Bond issued by an insurance company authorized to do business in New Mexico, or liquid securities may be deposited with the Department</p>	

State	Bonding Requirements	Financial Reporting Requirements
New York	<p>To Register, the PEO must show Net Worth of at least \$75,000 through an audited or reviewed financial statement. Failing that, the PEO must post a bond or provide other security of \$75,000 or more (Labor 31-921.1).</p> <p>None for SUI.</p>	<p>A reviewed or audited financial statement of the PEO's most recent fiscal year:</p> <ul style="list-style-type: none"> ❖ The statement must have been prepared within 180 days prior to the submission by an independent certified public accountant (CPA) using generally accepted accounting principles (GAAP) and must show a minimum net worth of \$75,000. ❖ The statement must be accompanied by a cover letter, signed by the CPA, certifying (1) the statement fairly represents the financial position of the firm in accordance with GAAP and (2) there is reasonable assurance that the firm has timely paid all applicable federal and state payroll taxes on all New York employees (for example: office, worksite, etc.) for that fiscal year and explaining the basis for these certifications ❖ A PEO Group may submit combined or consolidated audited or reviewed financial statements. ❖ Where the Group or the Group's parent submit a combined or consolidated statement, supplemental consolidated or combined schedules covering each professional employer organization registered under the group must be included. ❖ If a bond or security is to be submitted in place of financial statements, email, or call NY DOL for submission information. <p>Within 60 days of the end of each quarter, the PEO must submit a statement, signed by an independent CPA, certifying that there is reasonable assurance that the firm has paid all applicable federal and state taxes on all New York employees for that quarter and explaining the basis for this certification.</p>
North Carolina	<p>Surety Bond required in favor of the state of North Carolina for \$100,000 for PEO registration. (Statute 58-89-50).</p>	
North Dakota	<p>Requires submission of a \$100,000 surety bond to the Secretary of State by a PEO seeking a license and that does not have a minimum working capital of \$100,000</p>	

State	Bonding Requirements	Financial Reporting Requirements
Ohio	For workers' compensation, the administrator of the Bureau of Workers' Compensation (BWC) determines the amount of the bond or letter of credit to be filed with the BWC.	
Oklahoma	<p>PEO minimum net worth must be \$50,000 as reflected in the financial statements provided at registration. In place of the net worth requirement, a \$50,000 bond can be posted or securities can be deposited with the state. (Statute 40-600.6). The application and form of the bond must comply with official specifications as set forth in the rule. It must be renewed annually by March 1. See Reg. 240:10-5-4,:</p> <p>In order to relieve the Client of joint & several liability for paying the SUTA withholdings, the PEO must post a bond in the amount of last year's contributions or \$100,000, whichever is greater. Statute 40-1-209A(D):</p>	Quarterly. Payroll Tax Payments. The PEO must submit within 90 days after the end of each quarter a statement by an independent CPA that all state payroll taxes for covered employees located in Oklahoma have been paid on a timely basis for the quarter. (Statute 40-600.6(B)).
Rhode Island	For PEO registration, a PEO that has held a Tax Certificate for 2 years or less must post a \$50,000 bond annually with a surety in order to insure that all withholding and other taxes due to the state are paid. Special Bond forms are provided by the Division of Tax, available upon request. In the alternative, a certificate from a qualified assurance organization acceptable to the state will be accepted. Call the Division of Taxation to obtain forms and background.	

State	Bonding Requirements	Financial Reporting Requirements
South Carolina	If the PEO, upon licensing or renewal, cannot establish a net worth of \$50,000 or more, then it must post a \$50,000 bond, or guaranty by a credit-worthy entity acceptable to the state, or a letter of credit. (Statute 40-68-40(E)).	Provide independently audited accrual basis financial statements, as determined by generally accepted accounting principles, for the two (2) most recent annual accounting periods preceding the date of application, except that if the most recent accounting period ends within 180 days of the date of application, the current year's financial statement shall be submitted within 180 days of the end of the accounting period. The financial statements shall include statement of income and retained earnings, balance sheet, statement of changes in financial position (cash flows), and applicable footnotes. The financial statements are to reflect positive working capital and positive tangible net worth. The following items may be used to cover any deficit in net worth revealed by the most current financial statements in an amount sufficient to cover the deficiency: infusion of capital, an acceptable bank letter of credit, mortgages, a promissory note supported by collateral, or a guarantee where the guarantor can satisfy the Department of Consumer Affairs that the guarantor has sufficient assets to satisfy the obligation of the guarantee. In lieu of audited financial statements, a special report known as "Independent Auditor's Report on Agreed Upon Procedures" may be submitted to demonstrate worth.
South Dakota	For self-insurance for workers' compensation, bonding is required for self-insurers in the amount equal to the greater of (1) \$250,000, (2) twice the amount of compensation & medical claims paid by the employer during the preceding year, or (3) an amount designated by the employer as a reserve for workers compensation & medical claims.	
Tennessee	The PEO must demonstrate an accounting net worth of at least either (i) \$25,000 or (ii) \$20 per co-employee found anywhere (not just Tennessee) (\$50,000 maximum), whichever is greater. (See Statute 62-43-108(b)(3)).	Quarterly Report. The PEO must produce within 90 days of the end of the quarter a statement from a CPA or outside accountant stating that all payroll withholding taxes have been timely paid.

State	Bonding Requirements	Financial Reporting Requirements
Texas	No bond is required, but Net Worth requirements must be met at licensing or renewal: For 0 to 249 employees: \$50,000 Net Worth minimum. For 250 to 750 employees: \$75,000 Net Worth minimum. For 750 or more employees: \$100,000 Net Worth minimum. A bond, letter of credit, guarantee, or other form of security can be substituted if Net Worth is insufficient.	
Utah	For unemployment insurance, not automatic, but may be required. (Regulation R994-202-103(9) and R994-308-104)	Quarterly Reports. A PEO shall have an independent CPA licensed in the PEO's domicile prepare a statement indicating whether all federal, state, and local withholding taxes, unemployment taxes, FICA taxes, workers' compensation premiums, and employee benefit plan premiums have been paid. (Statute 58-59-306(4)).
Vermont	Yes, for the initial license, the PEO must post a bond or letter of credit for \$100,000. License renewals must be for 5% of the prior year's total Vermont wages, benefits, workers' compensation premiums or awards or unemployment compensation contributions, but not less than \$100,000 (Rule 3E). The PEO shall not require that the Client contribute to the payment of the securities or bond to fulfill this requirement (Rule 3E1).	
West Virginia	For workers' compensation in February 2005, the state enacted legislation to abolish the monopolistic state workers' compensation fund, and authorized the state to issue a bond to finance the workers' compensation liability and transfer the whole system to a mutual insurance company that will begin competing with private insurers in 2008. It is expected that this reform will reduce premiums.	

State	Bonding Requirements	Financial Reporting Requirements
Wyoming	<p>For unemployment insurance, possibly required for foreign business entities with \$10,000 or more monthly payroll earned in Wyoming and the owners of the business either do not live in Wyoming or have lived in the state less than one year at the time business operations started in Wyoming. See: http://wydoe.state.wy.us/doe.asp?ID=464</p> <p>For workers' compensation, When more than three-fourths of the owners of the employer are not domiciled in Wyoming for 12 or more months, the Division may require a Surety Bond of between \$5,000 and \$50,000, or equivalent security. The Division may also require a Performance Bond of \$1,000 (Statute 27-14-301 et seq.).</p>	

EMPLOYER SERVICES
ASSURANCE CORPORATION

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Sent February 23, 2012 via Email to WAMTestimony@capitol.hawaii.gov
and via US Mail to:

The Honorable David Y. Ige, Chair
The Honorable Michelle N. Kidani, Vice Chair
Committee on Ways and Means
Hawaii's Twenty-Sixth Legislature
Regular Session of 2012
State Capitol
415 Beretania Street
Honolulu, HI 96813

Re: Testimony of Employer Services Assurance Corporation concerning the
Committee on Ways and Means February 24, 2012 hearing on SB 2424 relating to
Professional Employer Organizations

Dear Senators Ige and Kidani,

On behalf of the Employer Services Assurance Corporation ("E·S·A·C"), the only national accrediting entity and assurance organization for Professional Employer Organizations ("PEOs"), we once again appreciate the opportunity to provide testimony with respect to amendments you are considering to Chapter 373L, Hawaii Revised Statutes ("HI's PEO law").

Having testified previously to the Committee on Commerce and Consumer Protection, we greatly appreciate the modifications recently made to SB 2424 to: (i) reduce some of the unnecessarily burdensome bonding requirements (at least with respect to PEOs accredited by an assurance organization); (ii) give the director of labor and industrial relations access to important additional compliance information; (iii) minimize the cost of administration; and (iv) provide more effective public protection.

More specifically, we thank you for adding authority to SB 2424, to enable the director to approve an assurance organization that would provide certification and financial assurance for qualified PEOs and PEO Groups who elect to use an assurance organization as an alternative means of satisfying Hawaii's PEO requirements.

While my previous testimony spoke to some of the value and protections ESAC's program affords which I will not restate today, certainly a part of the financial assurance ESAC provides is with respect to its bonds. Along with ESAC's certification of a PEO's compliance, early warning system and other compliance information and assurances, most states that have approved ESAC as an assurance organization have accepted ESAC's financial assurance, including its bonds in place for ESAC-accredited PEOs, in lieu of otherwise applicable state PEO bonding requirements. This has been done recognizing that the best regulatory protection is to require proven financial reporting and compliance monitoring, such as ESAC has used successfully since 1995, that will allow the agency to identify a developing problem before it happens so preemptive action can be taken to protect the public.

As an overview of our Financial Assurance Program, ESAC provides a \$1 million surety bond on each accredited PEO and a \$10 million bond to cover any claims in excess of the \$1 million specific bonds. All bonds are written by an A-rated surety company licensed in all states and are held in trust for the benefit of participating

clients, employees, agencies and insurers at [Regions Bank](#).

ESAC's surety underwriter must approve the bonding of each applicant PEO based on a bond application, indemnity agreement and audited financial statement before ESAC's accreditation committee and board consider accreditation approval. The surety underwriter also reviews the PEO's quarterly financial information and independent CPA verification of timely payment of key employer liabilities.

Although ESAC currently accredits over 130 PEO entities representing over \$40 billion in annual employee wages, it has never had a financial default of an accredited PEO or a claim against any surety bond. ESAC's standards and procedures have been carefully established based on over 17 years of accreditation experience to detect developing PEO financial problems and take corrective action before they occur. The surety's understanding and confidence in ESAC's standards and procedures are why the surety is willing to provide millions of dollars of bonding at an affordable cost to ESAC and its accredited PEOs.

In the unlikely event of a financial default by an accredited PEO, ESAC's claims committee composed of three independent directors and ESAC's general counsel, legal advisor and trustee would administer claims in accordance with the terms of the certificate provided by ESAC to each client of an accredited PEO (be they located in Hawaii or another state).

With those comments and overview of our bond program in mind, ESAC respectfully recommends:

- (1) Section 5 of SB 2424 be further amended, consistent with the recent amendments to Section 6, to clarify that an approved assurance organization may act on behalf of its PEO members in complying with the registration and bonding requirements of the chapter. {While there is presently a reference within the second sentence of subsection (d) to the "other assurance" which an assurance organization approved by the director may provide, the next sentence only speaks of the assurance organization acting on the PEO's behalf in complying with the registration requirements of the chapter, so this clarification is in order.}
- (2) Section 6 be further amended to provide that a PEO which is accredited by an approved assurance organization may satisfy the bonding requirements through the \$1,000,000 and \$10,000,000 excess bonds acquired on each accredited PEO's behalf through the assurance organization's surety underwriter in lieu of the requirements of Section 373L-3 Hawaii Revised Statutes. {Presently, the opening phrase of subsection (c) only addresses two subsections within this bonding section, as opposed to all of the Section, as it reads: "...in lieu of the requirements of subsections (a) and (b)...", so this change is also in order}.
- (3) Section 6 be further amended to clarify, that with respect to coverage under these assurance organization bonds, said coverage is "subject to the terms and conditions of the surety bonds issued under the assurance organization's client assurance program".

{The closing two lines of Section 6's subsection (c) states: "...for the benefit of the state..."; and then subsection (g) speaks of the director or any person having actions against the bond short of obtaining any final judgment. The existing ESAC bonds, presently in place principally for the benefit of the businesses and employees which contract with ESAC accredited PEOs, are written with the Employer Services Trust as obligee to cover specifically defined employer liabilities. These covered employer liabilities, include: the timely and proper payment of wages, state and federal payroll taxes, fully-insured insurance premiums paid in advance of each period of coverage (e.g. monthly, quarterly or annually), and contributions to defined employee retirement plans. ESAC's bonds are written in this manner pursuant to the surety underwriter's requirement for ESAC to have specific definitions of the various covered liabilities of accredited PEOs. This bond coverage is certainly beneficial to states, but the director is not a named obligee under these bonds}.

I hope you find this testimony helpful as you strive to create the best possible PEO law and regulatory structure for Hawaii. If you would like to discuss this further, I and the entire team at ESAC, will be happy to help.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Morgan". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Jay Morgan
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