



EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

June 25, 2013

GOV. MSG. NO. 1277

The Honorable Donna Mercado Kim,
President
and Members of the Senate
Twenty-Seventh State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

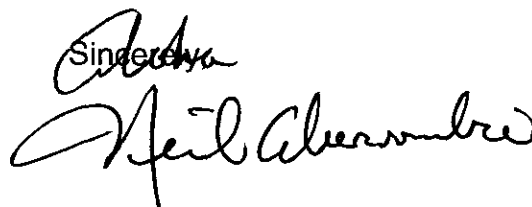
The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Seventh State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kim, Speaker Souki, and Members of the Legislature:

This is to inform you that on June 25, 2013, the following bill was signed into law:

HB144 HD2 SD2 CD1

RELATING TO PROFESSIONAL EMPLOYER
ORGANIZATIONS
ACT 174 (13)

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

Approved by the Governor

on JUN 25 2013

HOUSE OF REPRESENTATIVES
TWENTY-SEVENTH LEGISLATURE, 2013
STATE OF HAWAII

ACT 174

H.B. NO. 144
H.D. 2
S.D. 2
C.D. 1

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, codified as chapter 373K, Hawaii Revised
3 Statutes, created a new chapter on professional employment
4 organizations that provided a general excise tax exemption to
5 business entities that the department of taxation determined as
6 qualified professional employer organizations.
- 7 The legislature further finds that Act 129, Session Laws of
8 Hawaii 2010, codified as chapter 373L, Hawaii Revised Statutes,
9 established a new professional employer organizations chapter
10 that required registration with the department of labor and
11 industrial relations to ensure compliance with federal and state
12 labor laws. The legislature notes that the two separately
13 established statutes, while intended to operate interdependently
14 for the mutual benefit and common public purposes of the
15 department of labor and industrial relations and the department
16 of taxation, could be implemented more effectively by clarifying
17 any existing incompatible and ambiguous language.
- 18 The purpose of this Act is to clarify:

HB144 CD1 HMS 2013-3648



- 1 (1) Professional employer organization responsibilities,
2 including meeting the statutory requirements of
3 chapter 373L, Hawaii Revised Statutes; and
4 (2) The nexus between the registration of professional
5 employer organizations and qualification for the state
6 general excise tax exemption.

7 SECTION 2. Chapter 373L, Hawaii Revised Statutes, is
8 amended by adding four new sections to be appropriately
9 designated and to read as follows:

10 "§373L-A Registration required. No person within the
11 purview of this chapter shall use the terms "professional
12 employer organization", or "PEO", or other similar name unless
13 the person is registered and in compliance with this chapter and
14 the rules adopted pursuant to this chapter.

15 §373L-B Responsibility of professional employer
16 organizations. During the term of the agreement between a
17 professional employer organization and its client company, the
18 professional employer organization shall be deemed the employer
19 for all covered employees for purposes of complying with all
20 laws relating to unemployment insurance, workers' compensation,
21 temporary disability insurance, and prepaid health care coverage



1 and the professional employer organization shall provide written
2 notification to each covered employee of this responsibility.

3 §373L-C Payroll cost exemption. At the end of each
4 calendar year, the department shall provide the names, date of
5 registration, and contact information of all professional
6 employer organizations that have successfully complied with the
7 requirements of this chapter to the department of taxation. The
8 exemption provided under section 237-24.75(3) shall only apply
9 to professional employer organizations that fulfill and maintain
10 the registration requirements under this chapter.

11 §373L-D Fees. (a) No applicant shall be allowed to
12 register pursuant to this chapter unless the appropriate fees
13 have been paid.

14 (b) Effective July 1, 2013, the director shall collect
15 fees in the following amounts:

16	<u>(1) Registration fee</u>	<u>\$ 500</u>
17	<u>(2) Biennial renewal fee</u>	<u>\$ 750</u>
18	<u>(3) Restoration fee</u>	<u>\$1,500</u>

19 until such time as the director amends the fees by rulemaking
20 pursuant to chapter 91.

21 (c) The fees collected pursuant to this section shall be
22 deposited into the state general fund."



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

3 "§237-24.75 Additional exemptions. In addition to the
4 amounts exempt under section 237-24, this chapter shall not
5 apply to:

- 6 (1) Amounts received as a beverage container deposit
7 collected under chapter 342G, part VIII;
- 8 (2) Amounts received by the operator of the Hawaii
9 convention center for reimbursement of costs or
10 advances made pursuant to a contract with the Hawaii
11 tourism authority under section 201B-7[+]; and[+]
- 12 +] (3) Amounts received[+] by a professional [~~employment~~]
13 employer organization that is registered with the
14 department of labor and industrial relations pursuant
15 to chapter 373L, from a client company equal to
16 amounts that are disbursed by the professional
17 [~~employment~~] employer organization for employee wages,
18 salaries, payroll taxes, insurance premiums, and
19 benefits, including retirement, vacation, sick leave,
20 health benefits, and similar employment benefits with
21 respect to [~~assigned~~] covered employees at a client
22 company; provided that this exemption shall not apply



1 to amounts received by a professional [employment]
2 employer organization [upon failure of the
3 professional employment organization to collect,
4 account for, and pay over any income tax withholding
5 for assigned employees or any federal or state taxes
6 for which the professional employment organization is
7 responsible.] after:

- 8 (A) Notification from the department of labor and
9 industrial relations that the professional
10 employer organization has not fulfilled or
11 maintained the registration requirements under
12 this chapter; or
- 13 (B) A determination by the department that the
14 professional employer organization has failed to
15 pay any tax withholding for covered employees or
16 any federal or state taxes for which the
17 professional employer organization is
18 responsible.

19 As used in this paragraph, [~~"professional employment~~
20 ~~organization",~~] "professional employer organization",
21 "client company", and [~~"assigned employee"~~] "covered



1 employee" shall have the meanings provided in section
2 [~~373K-1.~~] 373L-1."

3 SECTION 4. Section 373L-1, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By adding a new definition to be appropriately inserted
6 and to read:

7 "Department" means the department of labor and industrial
8 relations."

9 2. By amending the definitions of "client company",
10 "covered employee", "professional employer agreement", and
11 "professional employer organization" to read:

12 "Client company" means any person [who] that enters into a
13 professional employer agreement with a professional employer
14 organization[.] and has covered employees.

15 "Covered employee" means an individual [having a co-
16 employment relationship with a professional employer
17 organization and a client company who meets all of the following
18 criteria:

19 (1) The individual has received written notice of co-
20 employment with the professional employer
21 organization; and



1 ~~(2) The individual's co-employment relationship is~~
2 ~~pursuant to a professional employer agreement subject~~
3 ~~to this chapter. Individuals who are officers,~~
4 ~~directors, shareholders, partners, and managers of the~~
5 ~~client company shall be covered employees to the~~
6 ~~extent that the professional employer organization and~~
7 ~~the client company have expressly agreed in the~~
8 ~~professional employer agreement that the individuals~~
9 ~~shall be covered employees; provided that the~~
10 ~~individuals meet the criteria of this definition and~~
11 ~~act as operational managers or perform day-to-day~~
12 ~~operational services for the client company.]~~

13 who performs services for a client company pursuant to a
14 professional employer agreement.

15 "Professional employer agreement" means a written contract
16 by and between a client company and a professional employer
17 organization that [~~provides for the following~~]:

- 18 (1) [~~The co-employment of covered employees; and~~] Provides
19 for covered employees to the client company;
- 20 (2) [~~The allocation of employer rights and obligations~~
21 ~~between~~] Describes the duties and responsibilities of
22 the client company and the professional employer



1 organization with respect to the covered employees[-];

2 and

3 (3) Includes a declaration by the professional employer
4 organization of the professional employer
5 organization's responsibilities under section 373L-B.

6 "Professional employer organization" means any person that
7 is a party to a professional employer agreement with a client
8 company [~~regardless of whether the person uses the term or~~
9 ~~conducts business expressly as a "professional employer~~
10 ~~organization", "PEO", "staff leasing company", "registered staff~~
11 ~~leasing company", "employee leasing company", "administrative~~
12 ~~employer", or any other similar name.] and whose covered
13 employees perform services on a long-term, rather than temporary
14 or project-specific basis. The term does not include temporary
15 help services, staff leasing, or other similar arrangements."~~

16 3. By deleting the definition of "co-employment".

17 [~~"Co-employment" means a relationship that is intended to~~
18 ~~be an ongoing relationship rather than a temporary or project-~~
19 ~~specific one, wherein the rights, duties, and obligations of an~~
20 ~~employer that arise out of an employment relationship have been~~
21 ~~allocated between the client company and the professional~~



1 ~~employer organization pursuant to a professional employer~~
2 ~~agreement and this chapter."]~~

3 SECTION 5. Section 373L-2, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[~~f~~]**§373L-2**[~~+~~] **Registration required.** (a) Every
6 professional employer organization shall register with the
7 director by providing all of the information required by this
8 section and by rules adopted by the director pursuant to chapter
9 91 prior to entering into any professional employer agreement
10 with any client company in this State. Registration shall not
11 be approved unless all of the applicable provisions of this
12 chapter have been met to the satisfaction of the department.

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.~~] The name, address, and phone number of
17 the financial institution utilized by the professional
18 employer organization for payroll purposes that
19 operates and maintains branches in the State;
- 20 (13) The name of each client company that is party to a
21 professional employer agreement with a professional
22 employer organization which shall be provided to the



1 department on a form approved by the department within
2 twenty-one business days of the initiation of the
3 agreement and within twenty-one business days of the
4 termination of the agreement; and

5 (14) A copy of the Internal Revenue Service Form W-3,
6 Transmittal of Wage and Tax Statements, that was most
7 recently filed with the federal government, and which
8 shall be used for obtaining a bond or irrevocable
9 letter of credit pursuant to section 373L-3.

10 (c) Registration under this section shall expire on
11 [~~December 31~~] June 30 of each [~~odd-numbered~~] even-numbered year.
12 Before [~~December 31~~] June 30 of each [~~odd-numbered~~] even-
13 numbered year, the director or the director's authorized
14 delegate shall mail a renewal application for registration to
15 the address on record of the registrant. In connection with
16 renewal of registration, a professional employer organization
17 shall provide all of the information required by subsection (b).
18 Failure to renew a registration shall result in termination of
19 that registration. A professional employer organization whose
20 registration has been terminated pursuant to this section shall
21 be required to pay the restoration fee.

1 (d) Notwithstanding that a registration under this section
2 has not expired, a professional employer organization shall
3 submit annually, no later than June 30 of each year, to the
4 department a copy of the Internal Revenue Service Form W-3,
5 Transmittal of Wage and Tax Statements, that was most recently
6 filed with the federal government. If the amount of the total
7 payroll has changed to an amount that requires a different bond
8 or irrevocable letter of credit amount than posted with the
9 department, the professional employer organization shall obtain
10 a new bond or irrevocable letter of credit to satisfy the
11 requirements of section 373L-3.

12 ~~[(d) The director shall establish fees and requirements~~
13 ~~for registration, maintenance of registration, renewal, and~~
14 ~~restoration of registration for professional employer~~
15 ~~organizations by rule pursuant to chapter 91.]"~~

16 SECTION 6. Section 373L-3, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) No professional employer organization shall enter
19 into a professional employment agreement with a client company
20 in the State unless the professional employer organization posts
21 a surety bond ~~[in the amount of \$250,000, which is a performance~~
22 ~~or financial guaranty type bond naming the], or an irrevocable~~



1 letter of credit equivalent to the required bond amount, that is
2 based on the previous year's total payroll of the professional
3 employer organization. The total payroll of the professional
4 employer organization shall be the amount reported on the
5 Internal Revenue Service Form W-3, Transmittal of Wage and Tax
6 Statements, that was most recently filed with the federal
7 government in the year in which the bond or irrevocable letter
8 of credit is to become effective. The bond or its irrevocable
9 letter of credit equivalent required under this section shall be
10 on a sliding scale as follows:

- 11 (1) For professional employer organizations with a total
12 payroll up to and including \$25,000,000, a bond or its
13 irrevocable letter of credit equivalent of \$25,000;
14 (2) For professional employer organizations with a total
15 payroll of \$25,000,001 to \$150,000,000, a bond or its
16 irrevocable letter of credit equivalent of \$75,000;
17 and
18 (3) For professional employer organizations with a total
19 payroll of \$150,000,001 and higher, a bond or its
20 irrevocable letter of credit equivalent of \$250,000.

21 If the professional employer organization posts a bond, the
22 director shall be named as the obligee and ~~which~~ the bond may



1 be canceled only if the professional employer organization gives
2 sixty days prior written notice to the surety and the director
3 or if the surety gives thirty days prior written notice to the
4 director of cancellation of the bond. If the professional
5 employer organization furnishes an irrevocable letter of credit
6 approved by the director, the director shall be named as the
7 beneficiary, and the irrevocable letter of credit shall be
8 issued by a bank, savings bank, or other depository financial
9 institution insured by a federal depository insurance agency and
10 authorized to do business in the State. The requirements of
11 this section shall be satisfied by a single bond[-] or its
12 irrevocable letter of credit equivalent. If a professional
13 employer organization has more than one branch location, the
14 bond or its irrevocable letter of credit equivalent shall cover
15 all locations."

16 SECTION 7. Chapter 373K, Hawaii Revised Statutes, is
17 repealed.

18 SECTION 8. There is appropriated out of the general
19 revenues of the State of Hawaii the sum of \$13,000 or so much
20 thereof as may be necessary for fiscal year 2013-2014 and the
21 same sum or so much thereof as may be necessary for fiscal year



1 2014-2015 to be expended by the department of labor and
2 industrial relations to carry out the purposes of this Act.

3 SECTION 9. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun before its effective date.

6 SECTION 10. In codifying the new sections added by section
7 2 of this Act, the revisor of statutes shall substitute
8 appropriate section numbers for the letters used in designating
9 the new sections in this Act.

10 SECTION 11. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 12. This Act shall take effect on July 1, 2013.

APPROVED this 25 day of JUN, 2013



GOVERNOR OF THE STATE OF HAWAII

