
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, created a new chapter on professional
3 employment organizations that provided a general excise tax
4 exemption to business entities the department of taxation
5 determined as qualified professional employer organizations.

6 The legislature further finds that Act 129, Session Laws of
7 Hawaii 2010, established a new professional employer
8 organizations chapter that required registration with the
9 department of labor and industrial relations to ensure
10 compliance with federal and state labor laws. The legislature
11 notes that the two separately established statutes, while
12 intended to operate interdependently for the mutual benefit and
13 common public purposes of the department of labor and industrial
14 relations and the department of taxation, could be implemented
15 more effectively by clarifying any existing incompatible and
16 ambiguous language.

17 The purpose of this Act is to clarify professional employer
18 organization responsibilities, including meeting the statutory



1 requirements of chapter 373L, Hawaii Revised Statutes, and the
2 nexus between the registration of professional employer
3 organizations and qualification for the state general excise tax
4 exemption.

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

8 "§373L- Registration required. No person within the
9 purview of this chapter shall use the terms "professional
10 employer organization", or "PEO", or other similar name unless
11 the person is registered and in compliance with this chapter and
12 the rules of the director.

13 §373L- Professional employer agreements; notification to
14 covered employees; notification to department. During the term
15 of the agreement between a professional employer organization
16 and its client company, the professional employer organization
17 shall be deemed the employer for all assigned employees as
18 defined in section 373L-1. As the employer of the assigned
19 employees, the professional employer organization, not the
20 client company, shall be solely responsible for complying with
21 all statutory provisions relating to the unemployment insurance,
22 workers' compensation, temporary disability insurance, and



1 prepaid health care programs with respect to the assigned
2 employees.

3 §373L- 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- Fees. No applicant shall be allowed to register
12 pursuant to this chapter unless the appropriate fees have been
13 paid. Effective July 1, 2013, the director shall collect fees
14 pursuant to this chapter as follows:

15	<u>(1) Registration fee</u>	<u>\$500</u>
16	<u>(2) Biennial renewal fee</u>	<u>\$750</u>
17	<u>(3) Restoration fee</u>	<u>\$1500</u>

18 until such time as the director amends the fees by rulemaking
19 pursuant to chapter 91. The fees shall be deposited into the
20 state general fund."

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



1 "§237-24.75 **Additional exemptions.** In addition to the
2 amounts exempt under section 237-24, this chapter shall not
3 apply to:

4 (1) Amounts received as a beverage container deposit
5 collected under chapter 342G, part VIII;

6 (2) Amounts received by the operator of the Hawaii
7 convention center for reimbursement of costs or
8 advances made pursuant to a contract with the Hawaii
9 tourism authority under section 201B-7[+]; and[+]

10 +[+] (3) Amounts received[+] by a professional [~~employment~~]
11 employer organization that is registered with the
12 department of labor and industrial relations pursuant
13 to chapter 373L, from a client company equal to
14 amounts that are disbursed by the professional
15 [~~employment~~] employer organization for employee wages,
16 salaries, payroll taxes, insurance premiums, and
17 benefits, including retirement, vacation, sick leave,
18 health benefits, and similar employment benefits with
19 respect to assigned employees at a client company;
20 provided that this exemption shall not apply to
21 amounts received by a professional [~~employment~~]
22 employer organization [~~upon failure of the~~



1 ~~professional employment organization to collect,~~
2 ~~account for, and pay over any income tax withholding~~
3 ~~for assigned employees or any federal or state taxes~~
4 ~~for which the professional employment organization is~~
5 ~~responsible.]~~ after:

6 (A) Notification from the department of labor and
7 industrial relations that the professional
8 employer organization has not fulfilled or
9 maintained the registration requirements under
10 Chapter 373L; or

11 (B) A determination by the department that the
12 professional employer organization has failed to
13 pay any tax withholding for assigned employees or
14 any federal or state taxes for which the
15 professional employer organization is
16 responsible.

17 As used in this paragraph, [~~"professional employment~~
18 ~~organization",~~] "professional employer organization",
19 "client company", and "assigned employee" shall have
20 the meanings provided in section [373K-1.] 373L-1."

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



1 1. By adding two new definitions to be appropriately
2 inserted and to read:

3 "Assigned employee" means an employee of the professional
4 employer organization who is assigned to perform services at the
5 worksite of a client company.

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

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

11 "Client company" means any person [who enters into a
12 professional employer agreement with a professional employer
13 organization.] that enters into a professional employer
14 agreement with a professional employer organization and is
15 assigned employees to its worksite by the professional employer
16 organization under that agreement.

17 "Professional employer agreement" means a written contract
18 by and between a client company and a professional employer
19 organization that provides for the following:

20 (1) [~~The co-employment of covered employees; and~~]
21 Assignment of employees to the worksite of the client
22 company;



1 (2) ~~[The allocation of employer rights and obligations~~
2 ~~between]~~ Description of duties and responsibilities of
3 the client company and the professional employer
4 organization with respect to the ~~[covered]~~ assigned
5 employees~~[-]; and~~

6 (3) Clarification of the professional employer
7 organization as the employer of the assigned employees
8 for purposes of complying with all statutory
9 provisions relating to the unemployment insurance,
10 workers' compensation, temporary disability insurance,
11 and prepaid health care programs with respect to the
12 assigned employees.

13 "Professional employer organization" or "organization"
14 means ~~[any person that is a party to a professional employer~~
15 ~~agreement with a client company regardless of whether the person~~
16 ~~uses the term or conducts business expressly as a "professional~~
17 ~~employer organization", "PEO", "staff leasing company",~~
18 ~~"registered staff leasing company", "employee leasing company",~~
19 ~~"administrative employer", or any other similar name.] a~~
20 business entity that assigns employees to the worksites of its
21 client companies on a long-term, rather than temporary or



1 project-specific basis. The term does not include temporary
2 help services or other similar arrangements."

3 3. By repealing the definitions of "co-employment" and
4 "covered employee".

5 [~~"Co-employment" means a relationship that is intended to~~
6 ~~be an ongoing relationship rather than a temporary or project-~~
7 ~~specific one, wherein the rights, duties, and obligations of an~~
8 ~~employer that arise out of an employment relationship have been~~
9 ~~allocated between the client company and the professional~~
10 ~~employer organization pursuant to a professional employer~~
11 ~~agreement and this chapter.~~

12 ~~"Covered employee" means an individual having a co-~~
13 ~~employment relationship with a professional employer~~
14 ~~organization and a client company who meets all of the following~~
15 ~~criteria:~~

16 (1) ~~The individual has received written notice of co-~~
17 ~~employment with the professional employer~~
18 ~~organization; and~~

19 (2) ~~The individual's co-employment relationship is~~
20 ~~pursuant to a professional employer agreement subject~~
21 ~~to this chapter. Individuals who are officers,~~
22 ~~directors, shareholders, partners, and managers of the~~



1 ~~client company shall be covered employees to the~~
2 ~~extent that the professional employer organization and~~
3 ~~the client company have expressly agreed in the~~
4 ~~professional employer agreement that the individuals~~
5 ~~shall be covered employees; provided that the~~
6 ~~individuals meet the criteria of this definition and~~
7 ~~act as operational managers or perform day-to-day~~
8 ~~operational services for the client company."]~~

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

11 "[+]§373L-2[+] **Registration required.** (a) Every
12 professional employer organization shall register with the
13 director by providing all of the information required by this
14 section and by rules adopted by the director pursuant to chapter
15 91 prior to entering into any professional employer agreement
16 with any client company in this State. Registration shall not
17 be approved unless all of the applicable provisions of this
18 chapter have been met to the satisfaction of the department.

19 (b) Registration information required by this section
20 shall include:



- 1 (1) The name or names under which the professional
2 employer organization conducts or will conduct
3 business;
- 4 (2) The address of the principal place of business of the
5 professional employer organization and the address of
6 each office that the professional employer
7 organization maintains in this State;
- 8 (3) The professional employer organization's general
9 excise tax number;
- 10 (4) A copy of the certificate of authority to transact
11 business in this State issued by the director of
12 commerce and consumer affairs pursuant to title 23 or
13 title 23A, if applicable;
- 14 (5) A list, organized by jurisdiction, of each name under
15 which the professional employer organization has
16 operated in the preceding five years, including any
17 alternative names; names of predecessors; and, if
18 known, names of successor business entities;
- 19 (6) A statement of ownership, which shall include the name
20 of each person who, individually or acting in concert
21 with any other person or persons, owns or controls,
22 directly or indirectly, twenty-five per cent or more



1 of the equity interests of the professional employer
2 organization;

3 (7) A statement of management, which shall include the
4 name of any person who serves as president or chief
5 executive officer or who otherwise has the authority
6 to act as a senior executive officer of the
7 professional employer organization;

8 (8) Proof of valid workers' compensation coverage in
9 compliance with all laws of this State;

10 (9) Proof of compliance with the Hawaii temporary
11 disability insurance law;

12 (10) Proof of compliance with the Hawaii prepaid health
13 care act [~~as regards all employees of the professional~~
14 ~~employer organization~~];

15 (11) Proof of compliance with the Hawaii employment
16 security law, including payment of any applicable
17 employer liability pursuant to chapter 383; [and]

18 (12) [~~A financial statement prepared in accordance with~~
19 ~~generally accepted accounting principles, audited by~~
20 ~~an independent certified public accountant licensed to~~
21 ~~practice in the State, and without qualification as to~~
22 ~~the going concern status of the professional employer~~



1 ~~organization.]~~ The name, address, and phone number of
2 the financial institution utilized by the professional
3 employer organization for payroll purposes that
4 operates and maintains branches in the State; and
5 (13) The name of each client company that is party to a
6 professional employer agreement with a professional
7 employer organization to the department on a form
8 approved by the department within five business days
9 of the initiation of the agreement and within five
10 business days of the termination of the agreement.

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 termination of
20 that registration. Registrations that have been terminated
21 pursuant to this section shall be required to pay the
22 restoration fee.



1 (d) The director shall establish fees and requirements for
2 registration, [~~maintenance of registration,~~] renewal, and
3 restoration of registration for professional employer
4 organizations by rule pursuant to chapter 91."

5 SECTION 6. Chapter 373K, Hawaii Revised Statutes, is
6 repealed.

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

10 SECTION 8. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 9. This Act shall take effect upon its approval.



Report Title:

Professional Employer Organizations; Registration; Fees

Description:

Repeals chapter 373K, HRS, relating to professional employment organization. Clarifies the regulation of professional employer organizations, and the nexus between the registration of professional employer organizations and qualification for the general excise tax exemption. (HB144 HD1)

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

