
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, enacted as chapter 373K, Hawaii Revised
3 Statutes, provides for a general excise tax exemption on amounts
4 a client company pays to a professional employment organization
5 for employee wages and benefits.

6 The legislature further finds that Act 129, Session Laws of
7 Hawaii 2010, enacted as chapter 373L, Hawaii Revised Statutes,
8 established registration, audit, and bonding requirements for
9 professional employer organizations. Since these requirements
10 went into effect on July 1, 2011, most local small professional
11 employer organizations have been unable to comply with Act 129's
12 surety bond requirements because of the capital and cost
13 requirements. Consequently, these professional employer
14 organizations have incurred or are faced with prohibitive audit
15 fee costs, which when passed on to clients, make small local
16 businesses less competitive with much larger or mainland based
17 companies. Act 129 also contains inconsistent definitions of
18 co-employment arrangements making application of the law



1 confusing and unenforceable, has an inconsistent impact on
2 locally-owned professional employer organizations as compared to
3 mainland-owned or much larger payroll service bureaus, and makes
4 it difficult for small professional employer organizations
5 without large financial resources to obtain sufficient bonding
6 from insurance companies and banks.

7 The legislature further finds that professional employer
8 organizations, like most employers, are already regulated by
9 civil and criminal laws and are subject to department of labor
10 and industrial relations penalties for failure to comply with
11 payroll and labor laws. Additional regulatory enforcement of
12 professional employer organizations by the department of labor
13 and industrial relations needs to be simplified.

14 Finally, the legislature finds that professional employer
15 organizations should be allowed to become successor employers of
16 client companies.

17 The purpose of this Act is to make regulation of
18 professional employer organizations more consistent by:

- 19 (1) Repealing chapter 373L, Hawaii Revised Statutes;
20 (2) Amending chapter 373K, Hawaii Revised Statutes, to
21 clarify the statutory responsibilities allocated



1 between a client company and a professional employer
2 organization;

3 (3) Enabling the director of labor and industrial
4 relations to notify the department of taxation when
5 professional employer organizations violate chapter
6 373K, Hawaii Revised Statutes, and are, consequently,
7 ineligible for the general excise tax exemption under
8 section 237-24.75, Hawaii Revised Statutes;

9 (4) Amending the definition of "leased employee" for
10 purposes of enterprise zone coverage to conform to the
11 terminology of chapter 373K, Hawaii Revised Statutes;
12 and

13 (5) Allowing professional employer organizations the
14 option to be successor employers to client companies
15 and to transfer the experience records of client
16 companies.

17 SECTION 2. Chapter 373K, Hawaii Revised Statutes, is
18 amended by adding seven new sections to be appropriately
19 designated and to read as follows:

20 "§373K-A Registration required. (a) Every professional
21 employer organization shall register with the director by
22 providing all of the information required by this section and by



1 rules adopted by the director pursuant to chapter 91 prior to
2 entering into any professional employer agreement with any
3 client company in this State.

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

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

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

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

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

19 (c) Failure to register or maintain registration shall
20 constitute a professional employer organization's noncompliance
21 with this chapter and shall result in notification to the
22 department of taxation that the professional employer



1 organization shall not be eligible for the tax exemption under
2 section 237-24.75.

3 (d) The director shall establish fees and requirements for
4 the registration and maintenance of registration by professional
5 employer organizations by rules adopted pursuant to chapter 91.

6 **§373K-B Fees.** Effective July 1, 2014, the director shall
7 collect fees for registration pursuant to this chapter as
8 follows:

9 (1) A registration fee of \$250; and

10 (2) A biennial renewal fee of \$500

11 until such time as the director establishes fees on a sliding
12 fee scale basis based on a professional employer organization's
13 annual payroll and other requirements for registration and
14 maintenance of registration in accordance with section 373K-
15 A(d).

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

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



- 1 (2) Notifying the department of taxation in writing of any
2 violation of this chapter or the denial, suspension,
3 revocation, or denial of renewal of registration of a
4 professional employer organization under this chapter
5 and the resulting loss of the general excise tax
6 exemption as provided by section 237-24.75; and
7 (3) Doing all things necessary to carry out the functions,
8 powers, and duties established by this chapter.

9 **§373K-D Professional employer agreements; notification to**
10 **department.** (a) During the term of an agreement between a
11 professional employer organization and a client company, the
12 professional employer organization shall be deemed the employer
13 for purposes of disbursing unemployment insurance, workers'
14 compensation, temporary disability insurance, and prepaid health
15 care coverage for assigned employees.

16 (b) A professional employer organization shall provide
17 written notice to the department of labor and industrial
18 relations, on a form provided by the department, of the
19 relationships between the professional employer organization and
20 its client companies within thirty business days of the
21 initiation of the relationship and within thirty business days
22 of the termination of the relationship. The notice provided by



1 a professional employer organization, including the names of the
2 client companies and information that may identify the client
3 companies, shall be confidential and not subject to disclosure
4 under chapter 92F.

5 (c) The director, to the extent practicable, may accept
6 electronic filings in conformance with chapter 489E, including
7 applications, documents, reports, and other filings required
8 under this chapter. The director may also provide for the
9 acceptance of electronic filings by professional employer
10 organizations. Nothing in this subsection shall limit or change
11 the director's authority to register or terminate registration
12 of a professional employer organization or to investigate or
13 enforce any provision of this chapter.

14 **§373K-E Hearings.** (a) Unless otherwise provided by law,
15 every case in which the director denies, suspends, revokes, or
16 denies renewal of a professional employer organization's
17 registration shall be subject to administrative appeal and
18 hearing in accordance with chapter 91, except as otherwise
19 provided by this section. Administrative hearings held pursuant
20 to this section may be conducted by the director or an appointed
21 hearings officer.



1 (b) In all proceedings pursuant to this section, the
2 director or hearings officer shall have the same powers
3 regarding administering oaths, compelling the attendance of
4 witnesses, the production of documentary evidence, and examining
5 witnesses as are possessed by the circuit courts. In the case
6 of noncompliance by any person of any subpoena or order issued
7 by the director or hearings officer, or the refusal of any
8 witness to testify to any matter on which the witness may be
9 questioned lawfully, the circuit court in the county in which
10 the person subject to the subpoena or order resides, upon
11 application by the director or hearings officer, may enforce
12 obedience to a subpoena or order in the same manner as a
13 subpoena issued by the clerk of the circuit court.

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

21 **373K-G Bond required.** (a) No professional employer
22 organization shall enter into a professional employment



1 agreement with a client company in the State unless the
2 professional employer organization posts a bond in the amount
3 of:

4 (1) \$250,000 for professional employer organizations with
5 an annual payroll of \$150,000,001 or higher;

6 (2) \$50,000 for professional employer organizations with
7 an annual payroll between \$25,000,001 and
8 \$150,000,000; and

9 (3) \$10,000 for professional employer organizations with
10 an annual payroll between \$0 and \$25,000,000.

11 The bond shall be a performance or financial guaranty type bond
12 naming the director as the obligee, which may be canceled only
13 if the professional employer organization gives sixty days prior
14 written notice to the surety or if the surety gives thirty days
15 prior written notice to the director of cancellation of the
16 bond. The requirements of this section shall be satisfied by a
17 single bond. If a professional employer organization has more
18 than one branch location, the bond shall cover all locations.

19 (b) The bond required by this section shall be issued by a
20 surety or federally insured lending institution authorized to do
21 business in the State to indemnify a client company who may



1 suffer loss as a result of nonperformance by a professional
2 employer organization.

3 (c) Upon cancellation or expiration of the bond, the
4 surety or insurer shall remain liable for any claims against the
5 bond for a period of six months; provided that:

6 (1) The debts were incurred while the bond was in effect;
7 and

8 (2) The director notifies the surety or insurer, as the
9 case may be, of any claims within ninety days of
10 discovery of any claims.

11 (d) The surety or insurer is not required to release any
12 moneys or collateral to the professional employer organization
13 during the six months after cancellation of the bond.

14 (e) Failure to have in effect a current bond shall result
15 in automatic forfeiture of registration pursuant to this chapter
16 and shall require the professional employer organization to
17 immediately cease doing business in the State. A professional
18 employer organization whose registration is forfeited shall
19 apply as a new applicant for registration in order to resume
20 business in the State."



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~~] a covered employee under a
5 professional [~~employment organization arrangement~~] employer
6 agreement or co-employment arrangement who is assigned to a
7 particular client company [~~on a substantially full-time basis~~
8 ~~for at least one year.~~] as defined under chapter 373K."

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 ~~[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.]~~ if:

13 (A) By or through any contract between a client
14 company and the 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 covered employees of the client company by the
19 professional employer organization;

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 employer organization is
2 responsible;
- 3 (C) The professional employer organization fails to
4 properly register with the director of labor and
5 industrial relations or pay any fees required by
6 chapter 373K; or
- 7 (D) The professional employer organization is not in
8 compliance with chapter 373K and the director of
9 labor and industrial relations has notified the
10 department of taxation in writing of such
11 noncompliance.

12 As used in this paragraph, [~~"professional employment~~
13 ~~organization",~~] "professional employer organization",
14 "client company", and [~~"assigned employee"~~] "covered
15 employee" shall have the meanings provided in section
16 373K-1."

17 SECTION 5. Chapter 373K, Hawaii Revised Statutes, is
18 amended as follows:

19 1. By amending its title to read:

20 **"PROFESSIONAL [~~EMPLOYMENT~~] EMPLOYER ORGANIZATIONS"**

21 2. By amending section 373K-1, to read:



1 "~~§~~373K-1~~§~~ **Definitions.** As used in this chapter,
2 unless the context otherwise requires:

3 "Assigned employee" means an employee under a professional
4 ~~[employment-organization-arrangement]~~ employer agreement whose
5 work is performed in the State. The term does not include an
6 employee hired to support or supplement a client company's
7 workforce as temporary staffing or help[-] services. "Assigned
8 employee" has the same meaning as the term "leased employee" as
9 defined in section 414(n) (with respect to employee leasing) of
10 the Internal Revenue Code of 1986, as amended.

11 "Client company" means a person that contracts with a
12 professional ~~[employment]~~ employer organization and is assigned
13 employees by the professional ~~[employment]~~ employer organization
14 under that contract.

15 "Co-employment" means an arrangement by which employees of
16 a professional employer organization are assigned to work at the
17 client company's work site and the assigned employee's
18 assignment is intended to be of a long-term or continuing
19 nature, rather than temporary staffing or help services, and the
20 rights, duties, and obligations of an employer that arise out of
21 an employment relationship are allocated between the client



1 company, which is the work site employer, and the professional
2 employer organization, which is the offsite employer of record.

3 "Covered employee" means an individual who has a co-
4 employment relationship with a professional employer
5 organization and a client company and who is an assigned
6 employee of the client company.

7 "Director" means the director of labor and industrial
8 relations.

9 "Offsite employer of record" means a professional employer
10 organization pursuant to a professional employer agreement to
11 which is contractually assigned the financial and administrative
12 duties of a client company, including human resources
13 administration, payroll and payroll taxes, workers' compensation
14 and temporary disability coverage, state unemployment, and
15 prepaid health care coverage of co-employees pursuant to a
16 professional employer agreement.

17 "Person" means a natural or legal person.

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

21 (1) The co-employment of covered employees; and



1 (2) The allocation of employer rights and obligations
2 between the client company and the professional
3 employer organization with respect to the covered
4 employees.

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

15 "Professional [~~employment~~] employer organization services"
16 means an arrangement by which co-employees of a professional
17 [~~employment~~] employer organization are assigned to work at the
18 client company and the assigned employee's assignment is
19 intended to be of a long-term or continuing nature, rather than
20 temporary. The term does not include temporary help.

21 "Temporary help" means an arrangement by which [~~an~~
22 ~~organization]~~ a person hires [~~its]~~ a person's own employees and



1 assigns them to a client company to support or supplement the
2 client's workforce in a special situation, including:

- 3 (1) An employee absence;
- 4 (2) A temporary skill shortage;
- 5 (3) A seasonal workload; or
- 6 (4) A special assignment or project.

7 "Temporary staffing or help services" means an arrangement
8 by which a person recruits and hires the person's own employees
9 and:

- 10 (1) Finds other organizations that need the services of
11 those employees;
- 12 (2) Assigns those employees to perform work or services
13 for other organizations to support or supplement the
14 other organizations' workforces or to provide
15 assistance in special work situations, including
16 employee absences, skill shortages, seasonal
17 workloads, or special assignments or projects; and
- 18 (3) Customarily attempts to reassign the employees to
19 successive placements with other organizations at the
20 end of each assignment.

21 "Work site employer" means the client company, pursuant to
22 a professional employer agreement, that retains workplace



1 management and supervisory control and responsibility of the co-
2 employees including compliance with labor or employment laws,
3 collective bargaining rights, anti-discrimination provisions, or
4 other laws with respect to the protection and rights of
5 employees and also compliance with chapters 377 and 378."

6 SECTION 6. Section 373K-2, Hawaii Revised Statutes, is
7 amended to read as follows:

8 " ~~[f]~~§373K-2~~[f]~~ Professional ~~[employment]~~ employer
9 organization; employee rights; payroll cost exemption. (a)

10 Where any client company uses the services of assigned employees
11 and co-employs assigned employees with a professional
12 ~~[employment]~~ employer organization, the client company and the
13 professional ~~[employment]~~ employer organization, with respect to
14 the assigned employees, shall not be exempt from the
15 requirements of any federal, state, or county law, including
16 labor or employment laws, collective bargaining rights, anti-
17 discrimination provisions, or other laws with respect to the
18 protection and rights of employees, including chapters 377 and
19 378, that would apply to the assigned employees if the assigned
20 employees were employees of the client company alone, and were
21 not co-employees of the professional ~~[employment]~~ employer
22 organization.



1 These employee rights shall not be abrogated by any
2 contract or agreement between the client company and the
3 professional [~~employment~~] employer organization, or the
4 professional [~~employment~~] employer organization and the assigned
5 employee, which contains terms or conditions that could not be
6 lawfully contained in a contract or agreement directly between
7 the client company and the assigned employee in which no
8 professional [~~employment~~] employer organization is involved.
9 [~~Notwithstanding any statute, local ordinance, executive order,~~
10 ~~rule, or regulation to the contrary, where the laws, rights, and~~
11 ~~protections referred to in this section define or require a~~
12 ~~determination of the "employer", the employer shall be deemed to~~
13 ~~be the client company and not the professional employment~~
14 ~~organization. The department of labor and industrial relations~~
15 ~~shall notify the department of taxation in writing of any~~
16 ~~violation of this subsection.]~~

17 (b) The client company shall be deemed to have satisfied
18 its obligations with respect to any assigned employee under any
19 applicable law, including, without limitation, workers'
20 compensation laws including chapter 386, employee insurance
21 coverage laws including chapters 383, 385, 392, and 393, and tax
22 withholding and reporting laws, if and to the extent that those



1 obligations are satisfied by the professional [~~employment~~]
2 employer organization acting in its capacity as co-employer of
3 such assigned employee.

4 (c) Amounts received by a professional [~~employment~~]
5 employer organization from a client company in amounts equal to
6 and that are disbursed by the professional [~~employment~~] employer
7 organization for employee wages, salaries, payroll taxes,
8 insurance premiums, and benefits, including retirement,
9 vacation, sick leave, health benefits, and similar employment
10 benefits with respect to assigned employees at a client company
11 shall not be subject to the general excise tax as provided by
12 section 237-24.75.

13 (d) The general excise tax exemption under section
14 237-24.75 shall not apply to the professional [~~employment~~]
15 employer organization if:

16 (1) By or through any contract between the client company
17 and [~~any~~] the professional [~~employment~~] employer
18 organization, or otherwise, employees are excluded
19 from any employee rights or employee benefits required
20 by law to be provided to covered employees of the
21 client company by the [~~client company; or~~]
22 professional employer organization;



- 1 (2) The professional [~~employment~~] employer organization
2 fails to pay any tax withholding for [~~assigned~~]
3 covered employees or any federal or state taxes for
4 which the professional [~~employment~~] employer
5 organization is responsible[~~-~~];
- 6 (3) The professional employer organization fails to
7 properly register with the director of labor and
8 industrial relations or pay any fees required by this
9 chapter; or
- 10 (4) The professional employer organization is not in
11 compliance with this chapter and the director of labor
12 and industrial relations has notified the director of
13 taxation in writing of such noncompliance."

14 SECTION 7. Section 383-66, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§383-66 Contribution rates, how determined.** (a) The
17 department, for the nine-month period April 1, 1941, to December
18 31, 1941, and for each calendar year thereafter, except as
19 otherwise provided in this part, shall classify employers in
20 accordance with their actual experience in the payment of
21 contributions and with respect to benefits charged against their
22 accounts with a view to fixing the contribution rates to reflect



1 this experience. The department shall determine the
2 contribution rate of each employer in accordance with the
3 following requirements:

4 (1) The standard rate of contributions payable by each
5 employer for any calendar year through 1984 shall be
6 three per cent. For calendar years 1985 and
7 thereafter, the standard rate of contributions payable
8 by each employer shall be five and four-tenths per
9 cent;

10 (2) No employer's rate for the calendar year 1942 and for
11 any calendar year thereafter shall be other than the
12 maximum rate unless and until the employer's account
13 has been chargeable with benefits throughout the
14 thirty-six consecutive calendar month period ending on
15 December 31 of the preceding calendar year, except
16 that, for the calendar year 1956 and for each calendar
17 year thereafter, an employer who has not been subject
18 to the law for a sufficient period to meet this
19 requirement may qualify for a rate other than the
20 maximum rate if the employer's account has been
21 chargeable throughout a lesser period but in no event
22 less than the twelve consecutive calendar month period



1 ending on December 31 of the preceding calendar year.
2 For the calendar years 1985 through 1991, the
3 contribution rate for a new or newly covered employer
4 shall be the sum of the employer's basic contribution
5 rate of three and six-tenths per cent and the fund
6 solvency contribution rate determined for that year
7 pursuant to section 383-68(a), until the employer's
8 account has been chargeable with benefits throughout
9 the twelve consecutive calendar month period ending on
10 December 31 of the preceding calendar year; except
11 that no employer's contribution rate shall be greater
12 than five and four-tenths per cent and no employer
13 with a negative reserve ratio shall have a
14 contribution rate less than the employer's basic
15 contribution rate. For calendar years 1992 and
16 thereafter, the contribution rate for a new or newly
17 covered employer shall be the contribution rate
18 assigned to any employer with .0000 reserve ratio,
19 until the employer's account has been chargeable with
20 benefits throughout the twelve consecutive calendar
21 month period ending on December 31 of the preceding
22 calendar year;



- 1 (3) Any amount credited to this State under section 903 of
2 the Social Security Act, as amended, which has been
3 appropriated for expenses of administration, whether
4 or not withdrawn from the trust fund, shall be
5 excluded from the fund for the purposes of this
6 paragraph. Any advance that may be made to this State
7 under section 1201 of the Social Security Act, whether
8 or not withdrawn from this trust fund, shall be
9 excluded from the fund for the purposes of this
10 paragraph. No employer's rate shall be reduced in any
11 amount that is not allowable as an additional credit,
12 against the tax levied by the federal Unemployment Tax
13 Act pursuant to section 3302(b) of the federal
14 Internal Revenue Code or pursuant to any other federal
15 statute, successor to section 3302(b), which provides
16 for the additional credit now provided for in section
17 3302(b);
- 18 (4) If, when any classification of employers is to be made
19 (which may be after the commencement of the period for
20 which the classification is to be made), the
21 department finds that any employer has failed to file
22 any report required in connection therewith or has



1 filed a report that the department finds incorrect or
2 insufficient, the department shall notify the employer
3 thereof by mail addressed to the employer's last known
4 address. Unless the employer files the report or a
5 corrected or sufficient report, as the case may be,
6 within fifteen days after the mailing of the notice,
7 the maximum rate of contributions shall be payable by
8 the employer for the period for which the contribution
9 rate is to be fixed. Effective January 1, 1987, the
10 director, for excusable failure, may redetermine the
11 assignment of the maximum contribution rate in
12 accordance with this section, provided the employer
13 files all reports as required by the department and
14 submits a written request for redetermination before
15 December 31 of the year for which the contribution
16 rate is to be fixed;

- 17 (5) For the purpose of sections 383-63 to 383-69, if after
18 December 31, 1939, any employing unit in any manner
19 succeeds to or acquires the organization, trade, or
20 business, or substantially all the assets thereof
21 (whether or not the successor or acquiring unit was an
22 "employing unit", as that term is defined in section



1 383-1 prior to the acquisition), or after
2 December 31, 1988 and prior to December 31, 1992,
3 acquires a clearly identifiable and segregable portion
4 of the organization, trade, or business of another
5 that at the time of the acquisition was an employer
6 subject to this chapter, and the successor continues
7 or resumes the organization, trade, or business and
8 continues to employ all or nearly all of the
9 predecessor's employees, or the successor continues or
10 resumes the clearly identifiable and segregable
11 portion of the organization, trade, or business and
12 continues to employ all or nearly all of the employees
13 of the clearly identifiable and segregable portion, or
14 after July 1, 2013, a professional employer
15 organization contracts with a client company for the
16 co-employment of assigned employees as defined in
17 chapter 373K, an application may be made for transfer
18 of the predecessor's experience record. If the
19 predecessor employer has submitted all information and
20 reports required by the department including amended
21 quarterly wage reports identifying the employees
22 transferred or retained and executed and filed with



1 the department before December 31 of the calendar year
2 following the calendar year in which the acquisition
3 occurred on a form approved by the department a waiver
4 relinquishing the rights to all or the clearly
5 identifiable and segregable portion of the
6 predecessor's prior experience record with respect to
7 its separate account, actual contribution payment, and
8 benefit chargeability experience, annual payrolls and
9 other data for the purpose of obtaining a reduced
10 rate, and requesting the department to permit the
11 experience record to inure to the benefit of the
12 successor employing unit upon request of the successor
13 employing unit, the experience record for rate
14 computation purposes of the predecessor shall
15 thereupon be deemed the experience record of the
16 successor and the experience record shall be
17 transferred by the department to the successor
18 employing unit and shall become the separate account
19 of the employing unit as of the date of the
20 acquisition. Benefits chargeable to the predecessor
21 employer or successor employer in case of an
22 acquisition of a clearly identifiable and segregable



1 portion of the organization, trade, or business, after
2 the date of acquisition on account of employment prior
3 to the date of the acquisition shall be charged to the
4 separate account of the successor employing unit. In
5 case of an acquisition of a clearly identifiable and
6 segregable portion of the organization, trade, or
7 business, the experience record that inures to the
8 benefit of the successor employer shall be determined
9 as follows:

10 (A) Wages, as used in section 383-61, attributable to
11 the clearly identifiable and segregable portion
12 shall be for the period beginning with the most
13 recent three consecutive calendar years
14 immediately preceding the determination of rates
15 under sections 383-63 to 383-69 and through the
16 date of acquisition; and

17 (B) Reserve balance attributable to the clearly
18 identifiable and segregable portion shall be the
19 amount determined by dividing the wages, as used
20 in section 383-61, of the clearly identifiable
21 and segregable portion in the three calendar
22 years (or that lesser period as the clearly



1 identifiable and segregable portion may have been
2 in operation) immediately preceding the
3 computation date of the rating period prior to
4 which the acquisition occurred by the total
5 taxable payrolls of the predecessor for the
6 three-year period (or that lesser period as the
7 clearly identifiable and segregable portion may
8 have been in operation) and multiplying the
9 quotient by the reserve balance of the
10 predecessor employer calculated as of the
11 acquisition date;

12 provided the waiver or waivers required herein are
13 filed with the department within sixty days after the
14 date of acquisition, the successor employing unit,
15 unless already an employer subject to this chapter,
16 shall be subject from the date of acquisition to the
17 rate of contribution of the predecessor or of two or
18 more predecessors if they have the same contribution
19 rate. If there are two or more predecessors having
20 different contribution rates, the successor shall be
21 subject to the rate prescribed for new or newly
22 covered employers under paragraph (2) until the next



1 determination of rates under sections 383-63 to
2 383-69, at which time the experience records of the
3 predecessors and successor shall be combined and shall
4 be deemed to be the experience record of a single
5 employing unit and the successor's rate shall
6 thereupon be determined upon the basis of the combined
7 experience. If the successor at the time of the
8 transfer is an employer subject to this chapter, the
9 rate of contribution to which the successor is then
10 subject shall remain the same until the next
11 determination of rates under sections 383-63 to
12 383-69, at which time the experience records of the
13 predecessor and successor shall be combined and shall
14 be deemed to be the experience record of a single
15 employing unit and the successor's rate shall
16 thereupon be determined upon the basis of the combined
17 experience. For the purpose of determination of rates
18 under sections 383-63 to 383-69 of all successor
19 employing units, waivers as required herein, if not
20 previously filed as hereinabove provided, shall be
21 filed with the department not later than March 1 of
22 the year for which the rate is determined; provided



1 that no waiver shall be accepted by the department for
2 filing unless the employing unit executing the waiver
3 has filed all reports and paid all contributions
4 required by this chapter;

5 (6) The department may prescribe rules for the
6 establishment, maintenance, and dissolution of joint
7 accounts by two or more employers, and, in accordance
8 with the rules and upon application by two or more
9 employers to establish such an account, or to merge
10 their several individual accounts in a joint account,
11 shall maintain the joint account as if it constituted
12 a single employer's account. The rules shall be
13 consistent with the federal requirements for
14 additional credit allowance in section 3303 of the
15 federal Internal Revenue Code and consistent with this
16 chapter;

17 (7) Whenever there is an amendment to this chapter which,
18 if immediately effective, would change an employer's
19 rate of contributions, the rate of the employer shall
20 be changed in accordance with the amendment and the
21 new rate shall apply for the remainder of the calendar
22 year beginning with the calendar quarter immediately



1 following the effective date of the amendment
2 providing for the change, unless otherwise provided by
3 the amendment;

4 (8) For the purposes of this section, "contribution rate"
5 shall mean the basic contribution rate as defined in
6 section 383-68 when applied to calendar year 1978 or
7 any calendar year thereafter; and

8 (9) For the purposes of this section, the terms "employing
9 unit", "employer", "predecessor", and "successor"
10 shall include both the singular and the plural of each
11 term. Nothing in this section shall prevent two or
12 more successor employing units, which each succeed to
13 or acquire a clearly identifiable and segregable
14 portion of a predecessor employing unit, from gaining
15 the benefit of the clearly identifiable and segregable
16 portion of the predecessor's experience record;

17 provided that the terms of this section are complied with,
18 nothing herein shall bar a predecessor employer from waiving the
19 rights to all or the clearly identifiable and segregable portion
20 of the predecessor's prior experience record in favor of a
21 successor employer where the successor acquired a clearly
22 identifiable and segregable portion of the predecessor's



1 organization, trade, or business after December 31, 1988 and
2 prior to December 31, 1992.

3 (b) Notwithstanding any other provision of this chapter,
4 the following shall apply regarding assignment of rates and
5 transfers of experience:

6 (1) If an employing unit transfers its organization,
7 trade, or business, or a portion thereof, to another
8 employing unit, or contracts with a professional
9 employer organization for the co-employment of covered
10 employees as defined in chapter 373K, and, at the time
11 of the transfer, or contract with a professional
12 employer organization, there is substantially common
13 ownership, management, [~~e~~] control, or co-employment
14 of the two employing units, both employing units shall
15 file a notification of the transfer with the
16 department on a form approved by the department within
17 thirty days after the date of the transfer. The
18 department shall transfer the experience records
19 attributable to the transferred organization, trade,
20 or business to the employing unit to whom the
21 organization, trade, or business is transferred. The
22 rates of both employing units shall be recalculated



1 and made effective beginning with the calendar year
2 immediately following the date of the transfer of the
3 organization, trade, or business;

4 (2) If a person is not an employing unit as defined in
5 section 383-1 at the time it acquires the
6 organization, trade, or business of another employing
7 unit, both the person and the employing unit shall
8 file a notification of the acquisition with the
9 department on a form approved by the department within
10 thirty days after the date of the acquisition. If the
11 department determines at the time of the acquisition
12 or thereafter, based on objective factors that may
13 include:

14 (A) The cost of acquiring the organization, trade, or
15 business;

16 (B) Whether the person continued the activity of the
17 acquired organization, trade, or business;

18 (C) How long the organization, trade, or business was
19 continued; or

20 (D) Whether a substantial number of new employees
21 were hired for performance of duties unrelated to
22 the organization, trade, or business activity



1 conducted prior to the acquisition, that the
2 acquisition was solely or primarily for the
3 purpose of obtaining a lower rate of
4 contribution, the person shall not be assigned
5 the lower rate and shall be assigned the
6 contribution rate for a new or newly covered
7 employer pursuant to subsection (a)(2) instead;

8 (3) An employing unit or person who is not an employing
9 unit shall be subject to penalties under paragraph (4)
10 or (5) if the employing unit or person who is not an
11 employing unit:

12 (A) Knowingly violates or attempts to violate this
13 subsection or any other provision of this chapter
14 related to determining the assignment of a
15 contribution rate;

16 (B) Makes any false statement or representation or
17 fails to disclose a material fact to the
18 department in connection with the transfer or
19 acquisition of an organization, trade, or
20 business; or



- 1 (C) Knowingly advises another employing unit or
2 person in a way that results in a violation or
3 attempted violation of this subsection;
- 4 (4) If the person is an employing unit:
- 5 (A) The employing unit shall be subject to the
6 highest rate assignable under this chapter for
7 the calendar year during which the violation or
8 attempted violation occurred and for the
9 consecutive three calendar years immediately
10 following; or
- 11 (B) If the employing unit is already at the highest
12 rate or if the amount of increase in the
13 employing unit's rate would be less than two per
14 cent for the calendar year during which the
15 violation or attempted violation occurred, a
16 penalty equal to contributions of two per cent of
17 taxable wages shall be imposed for the calendar
18 year during which the violation or attempted
19 violation occurred and the consecutive three
20 calendar years immediately following. Any
21 penalty amount collected in excess of the maximum
22 contributions payable at the highest rate shall



1 be deposited in the special unemployment
2 insurance administration fund in accordance with
3 section 383-127;

4 (5) If the person is not an employing unit, the person
5 shall be subject to a penalty of not more than \$5,000.

6 The penalty shall be deposited in the special
7 unemployment insurance administration fund in
8 accordance with section 383-127;

9 (6) For purposes of this subsection, the following
10 definitions shall apply:

11 (A) "Knowingly" means having actual knowledge of or
12 acting with deliberate ignorance or reckless
13 disregard for the requirements or prohibition
14 involved;

15 (B) "Violates or attempts to violate" includes but is
16 not limited to intent to evade,
17 misrepresentation, or wilful nondisclosure;

18 (C) "Person" shall have the same meaning as defined
19 in section 7701(a)(1) of the Internal Revenue
20 Code of 1986, as amended; and

21 (D) "Organization, trade, or business" shall include
22 the employer's workforce;



- 1 (7) In addition to the civil penalties imposed by
2 paragraphs (4) and (5), any violation of this section
3 may be prosecuted under sections 383-142 and 383-143.
4 No existing civil or criminal remedy for any wrongful
5 action that is a violation of any statute or any rule
6 of the department or the ordinance of any county shall
7 be excluded or impaired by this section;
- 8 (8) The department shall establish procedures to identify
9 the transfer or acquisition of an employing unit for
10 the purposes of this section; and
- 11 (9) This section shall be interpreted and applied in a
12 manner to meet the minimum requirements contained in
13 any guidance or regulations issued by the United
14 States Department of Labor."

15 SECTION 8. Chapter 373L, Hawaii Revised Statutes, is
16 repealed.

17 SECTION 9. In codifying the new sections added by section
18 2 of this Act, the revisor of statutes shall substitute
19 appropriate section numbers for the letters used in designating
20 the new sections in this Act.

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



1 SECTION 11. This Act shall take effect on July 1, 2112.



Report Title:

Professional Employer Organizations; Registration; Fees

Description:

Repeals chapter 373L; adds definitions and registration and fee requirements to professional employer organization (PEO) law; requires notice to DOTAX of PEO violations for general excise tax exemption purposes; allows PEOs to be successor employers to client companies; establishes a sliding scale bond requirement for PEOs based upon annual payrolls. Effective July 1, 2112.
(HB144 HD2)

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

