
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 or letter of
3 credit from an accredited financial institution equivalent to
4 the required bond amount of:

- 5 (1) \$250,000 for professional employer organizations with
6 an annual payroll of \$150,000,001 or higher;
7 (2) \$50,000 for professional employer organizations with
8 an annual payroll between \$25,000,001 and
9 \$150,000,000; and
10 (3) \$10,000 for professional employer organizations with
11 an annual payroll between \$0 and \$25,000,000.

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



1 (b) The bond required by this section shall be issued by a
2 surety or federally insured lending institution authorized to do
3 business in the State to indemnify a client company who may
4 suffer loss as a result of nonperformance by a professional
5 employer organization.

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

9 (1) The debts were incurred while the bond was in effect;
10 and

11 (2) The director notifies the surety or insurer, as the
12 case may be, of any claims within ninety days of
13 discovery of any claims.

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

17 (e) Failure to have in effect a current bond or letter of
18 credit shall result in automatic forfeiture of registration
19 pursuant to this chapter and shall require the professional
20 employer organization to immediately cease doing business in the
21 State. A professional employer organization whose registration



1 is forfeited shall apply as a new applicant for registration in
2 order to resume business in the State.

3 373K-H Compliance. Professional employer organizations
4 that are in compliance with this chapter shall not be
5 responsible for administrative or other violations of law
6 arising out of the duties and responsibilities of worksite
7 employers to worksite employees as defined in section 373K-1."

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

11 ""Leased employee" means [~~an~~] a worksite employee under a
12 professional [~~employment organization arrangement~~] employer
13 agreement or co-employment arrangement who is assigned to a
14 particular client company [~~on a substantially full time basis~~
15 ~~for at least one year.~~] as defined under chapter 373K."

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

18 "**§237-24.75 Additional exemptions.** In addition to the
19 amounts exempt under section 237-24, this chapter shall not
20 apply to:

- 21 (1) Amounts received as a beverage container deposit
22 collected under chapter 342G, part VIII;



1 (2) Amounts received by the operator of the Hawaii
2 convention center for reimbursement of costs or
3 advances made pursuant to a contract with the Hawaii
4 tourism authority under section 201B-7[+]; and[+
5 +] (3) Amounts received[+] by a professional [~~employment~~]
6 employer organization from a client company equal to
7 amounts that are disbursed by the professional
8 [~~employment~~] employer organization for employee wages,
9 salaries, payroll taxes, insurance premiums, and
10 benefits, including retirement, vacation, sick leave,
11 health benefits, and similar employment benefits with
12 respect to [~~assigned~~] worksite employees at a client
13 company; provided that this exemption shall not apply
14 to a professional [~~employment~~] employer organization
15 [~~upon failure of the professional employment~~
16 ~~organization to collect, account for, and pay over any~~
17 ~~income tax withholding for assigned employees or any~~
18 ~~federal or state taxes for which the professional~~
19 ~~employment organization is responsible.~~] if:
20 (A) By or through any contract between a client
21 company and the professional employer
22 organization, or otherwise, employees are

1 excluded from any employee rights or employee
2 benefits required by law to be provided to
3 worksite employees of the client company by the
4 professional employer organization;

5 (B) The professional employer organization fails to
6 pay any tax withholding for worksite employees or
7 any federal or state taxes for which the
8 professional employer organization is
9 responsible;

10 (C) The professional employer organization fails to
11 properly register with the director of labor and
12 industrial relations or pay any fees required by
13 chapter 373K; or

14 (D) The professional employer organization is not in
15 compliance with chapter 373K and the director of
16 labor and industrial relations has notified the
17 department of taxation in writing of such
18 noncompliance.

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



1 employee" shall have the meanings provided in section
2 373K-1."

3 SECTION 5. Chapter 373K, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By amending its title to read:

6 "PROFESSIONAL [~~EMPLOYMENT~~] EMPLOYER ORGANIZATIONS"

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

8 "~~[+]§373K-1[+]~~ **Definitions.** As used in this chapter,
9 unless the context otherwise requires:

10 "Administrative employer" means a professional employer
11 organization pursuant to a professional employer agreement to
12 which is contractually responsible for various financial and
13 administrative duties of a client company, including human
14 resources administration, payroll and payroll taxes, workers'
15 compensation, temporary disability coverage, state unemployment,
16 and prepaid health care coverage of worksite employees.

17 "Assigned employee" means an employee under a professional
18 [~~employment organization arrangement~~] employer agreement whose
19 work is performed in the State. The term does not include an
20 employee hired to support or supplement a client company's
21 workforce as temporary staffing or help[+] services. "Assigned
22 employee" has the same meaning as the term "leased employee" as



1 defined in section 414(n) (with respect to employee leasing) of
2 the Internal Revenue Code of 1986, as amended.

3 "Client company" means a person that contracts with a
4 professional [~~employment~~] employer organization and is assigned
5 employees by the professional [~~employment~~] employer organization
6 under that contract.

7 "Co-employment" means an arrangement by which employees of
8 a professional employer organization are assigned to work at the
9 client company's work site and the assigned employee's
10 assignment is intended to be of a long-term or continuing
11 nature, rather than temporary staffing or help services, and the
12 rights, duties, and obligations of an employer that arise out of
13 an employment relationship are allocated between the client
14 company, which is the worksite employer, and the professional
15 employer organization, which is the administrative employer.

16 "Director" means the director of labor and industrial
17 relations.

18 "Person" means a natural or legal person.

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

22 (1) The co-employment of worksite 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 worksite
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 [~~a~~
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 "Worksite employee" means an individual who has a co-
22 employment relationship with a professional employer



1 organization and a client company and who is an assigned
2 employee of the client company.

3 "Worksite employer" means the client company, pursuant to a
4 professional employer agreement, that retains workplace
5 management and supervisory control and responsibility of the
6 worksite employees including compliance with labor or employment
7 laws, collective bargaining rights, anti-discrimination
8 provisions, or other laws with respect to the protection and
9 rights of employees under the Hawaii Employment Relations Act
10 and the Employment Practices laws of chapters 377 and 378."

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

13 "~~[§]373K-2[§]~~ **Professional ~~[employment]~~ employer**
14 **organization; employee rights; payroll cost exemption.** (a)
15 Where any client company uses the services of assigned employees
16 and co-employs assigned employees with a professional
17 ~~[employment]~~ employer organization, the client company and the
18 professional ~~[employment]~~ employer organization, with respect to
19 the assigned employees, shall not be exempt from the
20 requirements of any federal, state, or county law, including
21 labor or employment laws, collective bargaining rights, anti-
22 discrimination provisions, or other laws with respect to the



1 protection and rights of employees, including chapters 377 and
2 378, that would apply to the assigned employees if the assigned
3 employees were employees of the client company alone, and were
4 not co-employees of the professional [~~employment~~] employer
5 organization.

6 These employee rights shall not be abrogated by any
7 contract or agreement between the client company and the
8 professional [~~employment~~] employer organization, or the
9 professional [~~employment~~] employer organization and the assigned
10 employee, which contains terms or conditions that could not be
11 lawfully contained in a contract or agreement directly between
12 the client company and the assigned employee in which no
13 professional [~~employment~~] employer organization is involved.

14 [~~Notwithstanding any statute, local ordinance, executive order,~~
15 ~~rule, or regulation to the contrary, where the laws, rights, and~~
16 ~~protections referred to in this section define or require a~~
17 ~~determination of the "employer", the employer shall be deemed to~~
18 ~~be the client company and not the professional employment~~
19 ~~organization. The department of labor and industrial relations~~
20 ~~shall notify the department of taxation in writing of any~~
21 ~~violation of this subsection.]~~



1 (b) The client company shall be deemed to have satisfied
2 its obligations with respect to any assigned employee under any
3 applicable law, including, without limitation, workers'
4 compensation laws including chapter 386, employee insurance
5 coverage laws including chapters 383, 385, 392, and 393, and tax
6 withholding and reporting laws, if and to the extent that those
7 obligations are satisfied by the professional [~~employment~~]
8 employer organization acting in its capacity as co-employer of
9 such assigned employee.

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

19 (d) The general excise tax exemption under section
20 237-24.75 shall not apply to the professional [~~employment~~]
21 employer organization if:



- 1 (1) By or through any contract between the client company
- 2 and ~~[any]~~ the professional ~~[employment]~~ employer
- 3 organization, or otherwise, employees are excluded
- 4 from any employee rights or employee benefits required
- 5 by law to be provided to worksite employees of the
- 6 client company by the ~~[client company; or]~~
- 7 professional employer organization;
- 8 (2) The professional ~~[employment]~~ employer organization
- 9 fails to pay any tax withholding for ~~[assigned]~~
- 10 worksite employees or any federal or state taxes for
- 11 which the professional ~~[employment]~~ employer
- 12 organization is responsible~~[+]~~;
- 13 (3) The professional employer organization fails to
- 14 properly register with the director of labor and
- 15 industrial relations or pay any fees required by this
- 16 chapter; or
- 17 (4) The professional employer organization is not in
- 18 compliance with this chapter and the director of labor
- 19 and industrial relations has notified the director of
- 20 taxation in writing of such noncompliance."

21 SECTION 7. Section 383-66, Hawaii Revised Statutes, is

22 amended to read as follows:



1 "**§383-66 Contribution rates, how determined.** (a) The
 2 department, for the nine-month period April 1, 1941, to December
 3 31, 1941, and for each calendar year thereafter, except as
 4 otherwise provided in this part, shall classify employers in
 5 accordance with their actual experience in the payment of
 6 contributions and with respect to benefits charged against their
 7 accounts with a view to fixing the contribution rates to reflect
 8 this experience. The department shall determine the
 9 contribution rate of each employer in accordance with the
 10 following requirements:

11 (1) The standard rate of contributions payable by each
 12 employer for any calendar year through 1984 shall be
 13 three per cent. For calendar years 1985 and
 14 thereafter, the standard rate of contributions payable
 15 by each employer shall be five and four-tenths per
 16 cent;

17 (2) No employer's rate for the calendar year 1942 and for
 18 any calendar year thereafter shall be other than the
 19 maximum rate unless and until the employer's account
 20 has been chargeable with benefits throughout the
 21 thirty-six consecutive calendar month period ending on
 22 December 31 of the preceding calendar year, except



1 that, for the calendar year 1956 and for each calendar
2 year thereafter, an employer who has not been subject
3 to the law for a sufficient period to meet this
4 requirement may qualify for a rate other than the
5 maximum rate if the employer's account has been
6 chargeable throughout a lesser period but in no event
7 less than the twelve consecutive calendar month period
8 ending on December 31 of the preceding calendar year.
9 For the calendar years 1985 through 1991, the
10 contribution rate for a new or newly covered employer
11 shall be the sum of the employer's basic contribution
12 rate of three and six-tenths per cent and the fund
13 solvency contribution rate determined for that year
14 pursuant to section 383-68(a), until the employer's
15 account has been chargeable with benefits throughout
16 the twelve consecutive calendar month period ending on
17 December 31 of the preceding calendar year; except
18 that no employer's contribution rate shall be greater
19 than five and four-tenths per cent and no employer
20 with a negative reserve ratio shall have a
21 contribution rate less than the employer's basic
22 contribution rate. For calendar years 1992 and



1 thereafter, the contribution rate for a new or newly
2 covered employer shall be the contribution rate
3 assigned to any employer with .0000 reserve ratio,
4 until the employer's account has been chargeable with
5 benefits throughout the twelve consecutive calendar
6 month period ending on December 31 of the preceding
7 calendar year;

- 8 (3) Any amount credited to this State under section 903 of
9 the Social Security Act, as amended, which has been
10 appropriated for expenses of administration, whether
11 or not withdrawn from the trust fund, shall be
12 excluded from the fund for the purposes of this
13 paragraph. Any advance that may be made to this State
14 under section 1201 of the Social Security Act, whether
15 or not withdrawn from this trust fund, shall be
16 excluded from the fund for the purposes of this
17 paragraph. No employer's rate shall be reduced in any
18 amount that is not allowable as an additional credit,
19 against the tax levied by the federal Unemployment Tax
20 Act pursuant to section 3302(b) of the federal
21 Internal Revenue Code or pursuant to any other federal
22 statute, successor to section 3302(b), which provides



1 for the additional credit now provided for in section
2 3302(b);

3 (4) If, when any classification of employers is to be made
4 (which may be after the commencement of the period for
5 which the classification is to be made), the
6 department finds that any employer has failed to file
7 any report required in connection therewith or has
8 filed a report that the department finds incorrect or
9 insufficient, the department shall notify the employer
10 thereof by mail addressed to the employer's last known
11 address. Unless the employer files the report or a
12 corrected or sufficient report, as the case may be,
13 within fifteen days after the mailing of the notice,
14 the maximum rate of contributions shall be payable by
15 the employer for the period for which the contribution
16 rate is to be fixed. Effective January 1, 1987, the
17 director, for excusable failure, may redetermine the
18 assignment of the maximum contribution rate in
19 accordance with this section, provided the employer
20 files all reports as required by the department and
21 submits a written request for redetermination before



1 December 31 of the year for which the contribution
2 rate is to be fixed;

3 (5) For the purpose of sections 383-63 to 383-69, if after
4 December 31, 1939, any employing unit in any manner
5 succeeds to or acquires the organization, trade, or
6 business, or substantially all the assets thereof
7 (whether or not the successor or acquiring unit was an
8 "employing unit", as that term is defined in section
9 383-1 prior to the acquisition), or after
10 December 31, 1988 and prior to December 31, 1992,
11 acquires a clearly identifiable and segregable portion
12 of the organization, trade, or business of another
13 that at the time of the acquisition was an employer
14 subject to this chapter, and the successor continues
15 or resumes the organization, trade, or business and
16 continues to employ all or nearly all of the
17 predecessor's employees, or the successor continues or
18 resumes the clearly identifiable and segregable
19 portion of the organization, trade, or business and
20 continues to employ all or nearly all of the employees
21 of the clearly identifiable and segregable portion, or
22 after July 1, 2013, a professional employer



1 organization contracts with a client company for the
2 co-employment of assigned employees as defined in
3 chapter 373K, an application may be made for transfer
4 of the predecessor's experience record. If the
5 predecessor employer has submitted all information and
6 reports required by the department including amended
7 quarterly wage reports identifying the employees
8 transferred or retained and executed and filed with
9 the department before December 31 of the calendar year
10 following the calendar year in which the acquisition
11 occurred on a form approved by the department a waiver
12 relinquishing the rights to all or the clearly
13 identifiable and segregable portion of the
14 predecessor's prior experience record with respect to
15 its separate account, actual contribution payment, and
16 benefit chargeability experience, annual payrolls and
17 other data for the purpose of obtaining a reduced
18 rate, and requesting the department to permit the
19 experience record to inure to the benefit of the
20 successor employing unit upon request of the successor
21 employing unit, the experience record for rate
22 computation purposes of the predecessor shall



1 thereupon be deemed the experience record of the
2 successor and the experience record shall be
3 transferred by the department to the successor
4 employing unit and shall become the separate account
5 of the employing unit as of the date of the
6 acquisition. Benefits chargeable to the predecessor
7 employer or successor employer in case of an
8 acquisition of a clearly identifiable and segregable
9 portion of the organization, trade, or business, after
10 the date of acquisition on account of employment prior
11 to the date of the acquisition shall be charged to the
12 separate account of the successor employing unit. In
13 case of an acquisition of a clearly identifiable and
14 segregable portion of the organization, trade, or
15 business, the experience record that inures to the
16 benefit of the successor employer shall be determined
17 as follows:

- 18 (A) Wages, as used in section 383-61, attributable to
19 the clearly identifiable and segregable portion
20 shall be for the period beginning with the most
21 recent three consecutive calendar years
22 immediately preceding the determination of rates



1 under sections 383-63 to 383-69 and through the
2 date of acquisition; and
3 (B) Reserve balance attributable to the clearly
4 identifiable and segregable portion shall be the
5 amount determined by dividing the wages, as used
6 in section 383-61, of the clearly identifiable
7 and segregable portion in the three calendar
8 years (or that lesser period as the clearly
9 identifiable and segregable portion may have been
10 in operation) immediately preceding the
11 computation date of the rating period prior to
12 which the acquisition occurred by the total
13 taxable payrolls of the predecessor for the
14 three-year period (or that lesser period as the
15 clearly identifiable and segregable portion may
16 have been in operation) and multiplying the
17 quotient by the reserve balance of the
18 predecessor employer calculated as of the
19 acquisition date;
20 provided the waiver or waivers required herein are
21 filed with the department within sixty days after the
22 date of acquisition, the successor employing unit,

1 unless already an employer subject to this chapter,
2 shall be subject from the date of acquisition to the
3 rate of contribution of the predecessor or of two or
4 more predecessors if they have the same contribution
5 rate. If there are two or more predecessors having
6 different contribution rates, the successor shall be
7 subject to the rate prescribed for new or newly
8 covered employers under paragraph (2) until the next
9 determination of rates under sections 383-63 to
10 383-69, at which time the experience records of the
11 predecessors and successor shall be combined and shall
12 be deemed to be the experience record of a single
13 employing unit and the successor's rate shall
14 thereupon be determined upon the basis of the combined
15 experience. If the successor at the time of the
16 transfer is an employer subject to this chapter, the
17 rate of contribution to which the successor is then
18 subject shall remain the same until the next
19 determination of rates under sections 383-63 to
20 383-69, at which time the experience records of the
21 predecessor and successor shall be combined and shall
22 be deemed to be the experience record of a single



1 employing unit and the successor's rate shall
2 thereupon be determined upon the basis of the combined
3 experience. For the purpose of determination of rates
4 under sections 383-63 to 383-69 of all successor
5 employing units, waivers as required herein, if not
6 previously filed as hereinabove provided, shall be
7 filed with the department not later than March 1 of
8 the year for which the rate is determined; provided
9 that no waiver shall be accepted by the department for
10 filing unless the employing unit executing the waiver
11 has filed all reports and paid all contributions
12 required by this chapter;

- 13 (6) The department may prescribe rules for the
14 establishment, maintenance, and dissolution of joint
15 accounts by two or more employers, and, in accordance
16 with the rules and upon application by two or more
17 employers to establish such an account, or to merge
18 their several individual accounts in a joint account,
19 shall maintain the joint account as if it constituted
20 a single employer's account. The rules shall be
21 consistent with the federal requirements for
22 additional credit allowance in section 3303 of the



1 federal Internal Revenue Code and consistent with this
2 chapter;

3 (7) Whenever there is an amendment to this chapter which,
4 if immediately effective, would change an employer's
5 rate of contributions, the rate of the employer shall
6 be changed in accordance with the amendment and the
7 new rate shall apply for the remainder of the calendar
8 year beginning with the calendar quarter immediately
9 following the effective date of the amendment
10 providing for the change, unless otherwise provided by
11 the amendment;

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

16 (9) For the purposes of this section, the terms "employing
17 unit", "employer", "predecessor", and "successor"
18 shall include both the singular and the plural of each
19 term. Nothing in this section shall prevent two or
20 more successor employing units, which each succeed to
21 or acquire a clearly identifiable and segregable
22 portion of a predecessor employing unit, from gaining



1 the benefit of the clearly identifiable and segregable
2 portion of the predecessor's experience record;
3 provided that the terms of this section are complied with,
4 nothing herein shall bar a predecessor employer from waiving the
5 rights to all or the clearly identifiable and segregable portion
6 of the predecessor's prior experience record in favor of a
7 successor employer where the successor acquired a clearly
8 identifiable and segregable portion of the predecessor's
9 organization, trade, or business after December 31, 1988 and
10 prior to December 31, 1992.

11 (b) Notwithstanding any other provision of this chapter,
12 the following shall apply regarding assignment of rates and
13 transfers of experience:

14 (1) If an employing unit transfers its organization,
15 trade, or business, or a portion thereof, to another
16 employing unit, or contracts with a professional
17 employer organization for the co-employment of
18 worksite employees as defined in chapter 373K, and, at
19 the time of the transfer, or contract with a
20 professional employer organization, there is
21 substantially common ownership, management, [~~or~~]
22 control, or co-employment of the two employing units,



1 both employing units shall file a notification of the
2 transfer with the department on a form approved by the
3 department within thirty days after the date of the
4 transfer. The department shall transfer the
5 experience records attributable to the transferred
6 organization, trade, or business to the employing unit
7 to whom the organization, trade, or business is
8 transferred. The rates of both employing units shall
9 be recalculated and made effective beginning with the
10 calendar year immediately following the date of the
11 transfer of the organization, trade, or business;

12 (2) If a person is not an employing unit as defined in
13 section 383-1 at the time it acquires the
14 organization, trade, or business of another employing
15 unit, both the person and the employing unit shall
16 file a notification of the acquisition with the
17 department on a form approved by the department within
18 thirty days after the date of the acquisition. If the
19 department determines at the time of the acquisition
20 or thereafter, based on objective factors that may
21 include:



- 1 (A) The cost of acquiring the organization, trade, or
- 2 business;
- 3 (B) Whether the person continued the activity of the
- 4 acquired organization, trade, or business;
- 5 (C) How long the organization, trade, or business was
- 6 continued; or
- 7 (D) Whether a substantial number of new employees
- 8 were hired for performance of duties unrelated to
- 9 the organization, trade, or business activity
- 10 conducted prior to the acquisition, that the
- 11 acquisition was solely or primarily for the
- 12 purpose of obtaining a lower rate of
- 13 contribution, the person shall not be assigned
- 14 the lower rate and shall be assigned the
- 15 contribution rate for a new or newly covered
- 16 employer pursuant to subsection (a) (2) instead;
- 17 (3) An employing unit or person who is not an employing
- 18 unit shall be subject to penalties under paragraph (4)
- 19 or (5) if the employing unit or person who is not an
- 20 employing unit:
- 21 (A) Knowingly violates or attempts to violate this
- 22 subsection or any other provision of this chapter



- 1 related to determining the assignment of a
2 contribution rate;
- 3 (B) Makes any false statement or representation or
4 fails to disclose a material fact to the
5 department in connection with the transfer or
6 acquisition of an organization, trade, or
7 business; or
- 8 (C) Knowingly advises another employing unit or
9 person in a way that results in a violation or
10 attempted violation of this subsection;
- 11 (4) If the person is an employing unit:
- 12 (A) The employing unit shall be subject to the
13 highest rate assignable under this chapter for
14 the calendar year during which the violation or
15 attempted violation occurred and for the
16 consecutive three calendar years immediately
17 following; or
- 18 (B) If the employing unit is already at the highest
19 rate or if the amount of increase in the
20 employing unit's rate would be less than two per
21 cent for the calendar year during which the
22 violation or attempted violation occurred, a



1 penalty equal to contributions of two per cent of
2 taxable wages shall be imposed for the calendar
3 year during which the violation or attempted
4 violation occurred and the consecutive three
5 calendar years immediately following. Any
6 penalty amount collected in excess of the maximum
7 contributions payable at the highest rate shall
8 be deposited in the special unemployment
9 insurance administration fund in accordance with
10 section 383-127;

11 (5) If the person is not an employing unit, the person
12 shall be subject to a penalty of not more than \$5,000.
13 The penalty shall be deposited in the special
14 unemployment insurance administration fund in
15 accordance with section 383-127;

16 (6) For purposes of this subsection, the following
17 definitions shall apply:

18 (A) "Knowingly" means having actual knowledge of or
19 acting with deliberate ignorance or reckless
20 disregard for the requirements or prohibition
21 involved;



- 1 (B) "Violates or attempts to violate" includes but is
2 not limited to intent to evade,
3 misrepresentation, or wilful nondisclosure;
- 4 (C) "Person" shall have the same meaning as defined
5 in section 7701(a)(1) of the Internal Revenue
6 Code of 1986, as amended; and
- 7 (D) "Organization, trade, or business" shall include
8 the employer's workforce;
- 9 (7) In addition to the civil penalties imposed by
10 paragraphs (4) and (5), any violation of this section
11 may be prosecuted under sections 383-142 and 383-143.
12 No existing civil or criminal remedy for any wrongful
13 action that is a violation of any statute or any rule
14 of the department or the ordinance of any county shall
15 be excluded or impaired by this section;
- 16 (8) The department shall establish procedures to identify
17 the transfer or acquisition of an employing unit for
18 the purposes of this section; and
- 19 (9) This section shall be interpreted and applied in a
20 manner to meet the minimum requirements contained in
21 any guidance or regulations issued by the United
22 States Department of Labor."



1 SECTION 8. Chapter 373L, Hawaii Revised Statutes, is
2 repealed.

3 SECTION 9. In codifying the new sections added by section
4 2 of this Act, the revisor of statutes shall substitute
5 appropriate section numbers for the letters used in designating
6 the new sections in this Act.

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

9 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.
(SB510 HD2)

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

