
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 six 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 and other
12 requirements for registration and maintenance of registration in
13 accordance with section 373K-A(d).

14 **§373K-C Responsibilities and duties of the director.** The
15 general duties and powers of the director shall include but not
16 be limited to:

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

20 (2) Notifying the department of taxation in writing of any
21 violation of this chapter or the denial, suspension,
22 revocation, or denial of renewal of registration of a



1 professional employer organization under this chapter
2 and the resulting loss of the general excise tax
3 exemption as provided by section 237-24.75; and
4 (3) Doing all things necessary to carry out the functions,
5 powers, and duties established by this chapter.

6 **§373K-D Professional employer agreements; notification to**
7 **department.** (a) During the term of an agreement between a
8 professional employer organization and a client company, the
9 professional employer organization shall be deemed the employer
10 for purposes of disbursing unemployment insurance, workers'
11 compensation, temporary disability insurance, and prepaid health
12 care coverage for assigned employees.

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



1 companies, shall be confidential and not subject to disclosure
2 under chapter 92F.

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

12 **§373K-E Hearings.** (a) Unless otherwise provided by law,
13 every case in which the director denies, suspends, revokes, or
14 denies renewal of a professional employer organization's
15 registration shall be subject to administrative appeal and
16 hearing in accordance with chapter 91, except as otherwise
17 provided by this section. Administrative hearings held pursuant
18 to this section may be conducted by the director or an appointed
19 hearings officer.

20 (b) In all proceedings pursuant to this section, the
21 director or hearings officer shall have the same powers
22 regarding administering oaths, compelling the attendance of



1 witnesses, the production of documentary evidence, and examining
2 witnesses as are possessed by the circuit courts. In the case
3 of noncompliance by any person of any subpoena or order issued
4 by the director or hearings officer, or the refusal of any
5 witness to testify to any matter on which the witness may be
6 questioned lawfully, the circuit court in the county in which
7 the person subject to the subpoena or order resides, upon
8 application by the director or hearings officer, may enforce
9 obedience to a subpoena or order in the same manner as a
10 subpoena issued by the clerk of the circuit court.

11 **§373K-F Judicial review by circuit court.** Any
12 professional employer organization aggrieved by a final decision
13 and order of the director or hearings officer in a contested
14 case, as defined in chapter 91, shall be entitled to judicial
15 review thereof by the circuit court of the circuit in which the
16 professional employer organization's principal place of business
17 is located as provided by chapter 91."

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

21 "Leased employee" means [æ] a covered employee under a
22 professional [employment organization arrangement] employer



1 agreement or co-employment arrangement who is assigned to a
2 particular client company [~~on a substantially full-time basis~~
3 ~~for at least one year.~~] as defined under chapter 373K."

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

6 "**§237-24.75 Additional exemptions.** In addition to the
7 amounts exempt under section 237-24, this chapter shall not
8 apply to:

- 9 (1) Amounts received as a beverage container deposit
10 collected under chapter 342G, part VIII;
- 11 (2) Amounts received by the operator of the Hawaii
12 convention center for reimbursement of costs or
13 advances made pursuant to a contract with the Hawaii
14 tourism authority under section 201B-7[+]; and[+
15 +](3) Amounts received[+] by a professional [~~employment~~]
16 employer organization from a client company equal to
17 amounts that are disbursed by the professional
18 [~~employment~~] employer organization for employee wages,
19 salaries, payroll taxes, insurance premiums, and
20 benefits, including retirement, vacation, sick leave,
21 health benefits, and similar employment benefits with
22 respect to [~~assigned~~] covered employees at a client



1 company; provided that this exemption shall not apply
2 to a professional [~~employment~~] employer organization
3 ~~[upon failure of the professional employment~~
4 ~~organization to collect, account for, and pay over any~~
5 ~~income tax withholding for assigned employees or any~~
6 ~~federal or state taxes for which the professional~~
7 ~~employment organization is responsible.]~~ if:

8 (A) By or through any contract between a client
9 company and the professional employer
10 organization, or otherwise, employees are
11 excluded from any employee rights or employee
12 benefits required by law to be provided to
13 covered employees of the client company by the
14 professional employer organization;

15 (B) The professional employer organization fails to
16 pay any tax withholding for covered employees or
17 any federal or state taxes for which the
18 professional employer organization is
19 responsible;

20 (C) The professional employer organization fails to
21 properly register with the director of labor and



1 industrial relations or pay any fees required by
 2 chapter 373K; or
 3 (D) The professional employer organization is not in
 4 compliance with chapter 373K and the director of
 5 labor and industrial relations has notified the
 6 department of taxation in writing of such
 7 noncompliance.

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

13 SECTION 5. Chapter 373K, Hawaii Revised Statutes, is
 14 amended as follows:

15 1. By amending its title to read:

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

17 2. By amending section 373K-1, Hawaii Revised Statutes,
 18 to read:

19 "~~§~~**373K-1**~~§~~ **Definitions.** As used in this chapter,
 20 unless the context otherwise requires:

21 "Assigned employee" means an employee under a professional
 22 ~~[employment organization arrangement]~~ employer agreement whose



1 work is performed in the State. The term does not include an
2 employee hired to support or supplement a client company's
3 workforce as temporary staffing or help[-] services. "Assigned
4 employee" has the same meaning as the term "leased employee" as
5 defined in section 414(n) (with respect to employee leasing) of
6 the Internal Revenue Code of 1986, as amended.

7 "Client company" means a person that contracts with a
8 professional [~~employment~~] employer organization and is assigned
9 employees by the professional [~~employment~~] employer organization
10 under that contract.

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

20 "Covered employee" means an individual who has a co-
21 employment relationship with a professional employer



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

3 "Director" means the director of labor and industrial
4 relations.

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

13 "Person" means a natural or legal person.

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

- 17 (1) The co-employment of covered employees; and
18 (2) The allocation of employer rights and obligations
19 between the client company and the professional
20 employer organization with respect to the covered
21 employees.



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

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

17 "Temporary help" means an arrangement by which [~~an~~
18 ~~organization~~] a person hires [~~its~~] a person's own employees and
19 assigns them to a client company to support or supplement the
20 client's workforce in a special situation, including:

- 21 (1) An employee absence;
- 22 (2) A temporary skill shortage;



1 (3) A seasonal workload; or

2 (4) A special assignment or project.

3 "Temporary staffing or help services" means an arrangement
4 by which a person recruits and hires the person's own employees
5 and:

6 (1) Finds other organizations that need the services of
7 those employees;

8 (2) Assigns those employees to perform work or services
9 for other organizations to support or supplement the
10 other organizations' workforces or to provide
11 assistance in special work situations, including
12 employee absences, skill shortages, seasonal
13 workloads, or special assignments or projects; and

14 (3) Customarily attempts to reassign the employees to
15 successive placements with other organizations at the
16 end of each assignment.

17 "Work site employer" means the client company, pursuant to
18 a professional employer agreement, that retains workplace
19 management and supervisory control and responsibility of the co-
20 employees including compliance with labor or employment laws,
21 collective bargaining rights, anti-discrimination provisions, or



1 other laws with respect to the protection and rights of
2 employees and also compliance with chapters 377 and 378."

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

5 " ~~[+]§373K-2[+]~~ **Professional ~~[employment]~~ employer**
6 **organization; employee rights; payroll cost exemption.** (a)

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

20 These employee rights shall not be abrogated by any
21 contract or agreement between the client company and the
22 professional ~~[employment]~~ employer organization, or the



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

14 (b) The client company shall be deemed to have satisfied
15 its obligations with respect to any assigned employee under any
16 applicable law, including, without limitation, workers'
17 compensation laws including chapter 386, employee insurance
18 coverage laws including chapters 383, 385, 392, and 393, and tax
19 withholding and reporting laws, if and to the extent that those
20 obligations are satisfied by the professional [~~employment~~]
21 employer organization acting in its capacity as co-employer of
22 such assigned employee.



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

10 (d) The general excise tax exemption under section
11 237-24.75 shall not apply to the professional [~~employment~~]
12 employer organization if:

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

20 (2) The professional [~~employment~~] employer organization
21 fails to pay any tax withholding for [~~assigned~~]
22 covered employees or any federal or state taxes for



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

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

13 "**§383-66 Contribution rates, how determined.** (a) The
14 department, for the nine-month period April 1, 1941, to December
15 31, 1941, and for each calendar year thereafter, except as
16 otherwise provided in this part, shall classify employers in
17 accordance with their actual experience in the payment of
18 contributions and with respect to benefits charged against their
19 accounts with a view to fixing the contribution rates to reflect
20 this experience. The department shall determine the
21 contribution rate of each employer in accordance with the
22 following requirements:



- 1 (1) The standard rate of contributions payable by each
2 employer for any calendar year through 1984 shall be
3 three per cent. For calendar years 1985 and
4 thereafter, the standard rate of contributions payable
5 by each employer shall be five and four-tenths per
6 cent;
- 7 (2) No employer's rate for the calendar year 1942 and for
8 any calendar year thereafter shall be other than the
9 maximum rate unless and until the employer's account
10 has been chargeable with benefits throughout the
11 thirty-six consecutive calendar month period ending on
12 December 31 of the preceding calendar year, except
13 that, for the calendar year 1956 and for each calendar
14 year thereafter, an employer who has not been subject
15 to the law for a sufficient period to meet this
16 requirement may qualify for a rate other than the
17 maximum rate if the employer's account has been
18 chargeable throughout a lesser period but in no event
19 less than the twelve consecutive calendar month period
20 ending on December 31 of the preceding calendar year.
21 For the calendar years 1985 through 1991, the
22 contribution rate for a new or newly covered employer



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

20 (3) Any amount credited to this State under section 903 of
21 the Social Security Act, as amended, which has been
22 appropriated for expenses of administration, whether



1 or not withdrawn from the trust fund, shall be
2 excluded from the fund for the purposes of this
3 paragraph. Any advance that may be made to this State
4 under section 1201 of the Social Security Act, whether
5 or not withdrawn from this trust fund, shall be
6 excluded from the fund for the purposes of this
7 paragraph. No employer's rate shall be reduced in any
8 amount that is not allowable as an additional credit,
9 against the tax levied by the federal Unemployment Tax
10 Act pursuant to section 3302(b) of the federal
11 Internal Revenue Code or pursuant to any other federal
12 statute, successor to section 3302(b), which provides
13 for the additional credit now provided for in section
14 3302(b);

- 15 (4) If, when any classification of employers is to be made
16 (which may be after the commencement of the period for
17 which the classification is to be made), the
18 department finds that any employer has failed to file
19 any report required in connection therewith or has
20 filed a report that the department finds incorrect or
21 insufficient, the department shall notify the employer
22 thereof by mail addressed to the employer's last known



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

14 (5) For the purpose of sections 383-63 to 383-69, if after
15 December 31, 1939, any employing unit in any manner
16 succeeds to or acquires the organization, trade, or
17 business, or substantially all the assets thereof
18 (whether or not the successor or acquiring unit was an
19 "employing unit", as that term is defined in section
20 383-1 prior to the acquisition), or after
21 December 31, 1988 and prior to December 31, 1992,
22 acquires a clearly identifiable and segregable portion



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



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



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

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

14 (B) Reserve balance attributable to the clearly
15 identifiable and segregable portion shall be the
16 amount determined by dividing the wages, as used
17 in section 383-61, of the clearly identifiable
18 and segregable portion in the three calendar
19 years (or that lesser period as the clearly
20 identifiable and segregable portion may have been
21 in operation) immediately preceding the
22 computation date of the rating period prior to



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

9 provided the waiver or waivers required herein are
10 filed with the department within sixty days after the
11 date of acquisition, the successor employing unit,
12 unless already an employer subject to this chapter,
13 shall be subject from the date of acquisition to the
14 rate of contribution of the predecessor or of two or
15 more predecessors if they have the same contribution
16 rate. If there are two or more predecessors having
17 different contribution rates, the successor shall be
18 subject to the rate prescribed for new or newly
19 covered employers under paragraph (2) until the next
20 determination of rates under sections 383-63 to
21 383-69, at which time the experience records of the
22 predecessors and successor shall be combined and shall



1 be deemed to be the experience record of a single
2 employing unit and the successor's rate shall
3 thereupon be determined upon the basis of the combined
4 experience. If the successor at the time of the
5 transfer is an employer subject to this chapter, the
6 rate of contribution to which the successor is then
7 subject shall remain the same until the next
8 determination of rates under sections 383-63 to
9 383-69, at which time the experience records of the
10 predecessor and successor shall be combined and shall
11 be deemed to be the experience record of a single
12 employing unit and the successor's rate shall
13 thereupon be determined upon the basis of the combined
14 experience. For the purpose of determination of rates
15 under sections 383-63 to 383-69 of all successor
16 employing units, waivers as required herein, if not
17 previously filed as hereinabove provided, shall be
18 filed with the department not later than March 1 of
19 the year for which the rate is determined; provided
20 that no waiver shall be accepted by the department for
21 filing unless the employing unit executing the waiver



1 has filed all reports and paid all contributions
2 required by this chapter;

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

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



1 providing for the change, unless otherwise provided by
2 the amendment;

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

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

16 provided that the terms of this section are complied with,
17 nothing herein shall bar a predecessor employer from waiving the
18 rights to all or the clearly identifiable and segregable portion
19 of the predecessor's prior experience record in favor of a
20 successor employer where the successor acquired a clearly
21 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, ~~[or]~~ 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, 2013;
 2 provided that the registration requirements of section 2 of this
 3 Act shall take effect on July 1, 2014.

4

INTRODUCED BY:

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Linda Chizama

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H.B. NO. 1399

Report Title:

Professional Employer Organizations

Description:

Repeals HRS 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.

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

