

JAN 18 2013

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# A BILL FOR AN ACT

RELATING TO PROFESSIONAL EMPLOYER ORGANIZATIONS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that Act 225, Session  
2 Laws of Hawaii 2007, created a new chapter on professional  
3 employment organizations that provided a general excise tax  
4 exemption to business entities the department of taxation  
5 determined as qualified professional employer organizations.

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

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



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

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

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

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



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

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

11 §373L-D Fees. No applicant shall be allowed to register  
12 pursuant to this chapter unless the appropriate fees have been  
13 paid. Effective July 1, 2013, the director shall collect fees  
14 pursuant to this chapter as follows:

- 15 (1) Registration fee \$500
- 16 (2) Biennial renewal fee \$750
- 17 (3) Restoration fee \$1500

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

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



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

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

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

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



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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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





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

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

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

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



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



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

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

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

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

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

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

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



1 ~~organization.]~~ The name, address, and phone number of  
2 the financial institution utilized by the professional  
3 employer organization for payroll purposes that  
4 operates and maintains branches in the State; and

5 (13) The name of each client company that is party to a  
6 professional employer agreement with a professional  
7 employer organization to the department on a form  
8 approved by the department within five business days  
9 of the initiation of the agreement and within five  
10 business days of the termination of the agreement.

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



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

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

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

10 SECTION 8. In codifying the new sections added by section  
 11 2 of this Act, the revisor of statutes shall substitute  
 12 appropriate section numbers for the letters used in designating  
 13 the new sections in this Act.

14 SECTION 9. Statutory material to be repealed is bracketed  
 15 and stricken. New statutory material is underscored.

16 SECTION 10. This Act shall take effect upon its approval.

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INTRODUCED BY:

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# S.B. NO. 510

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**Report Title:**

Professional Employer Organizations; Registration; Fees

**Description:**

Repeals chapter 373L, Hawaii Revised Statutes. Clarifies professional employer organization responsibilities with respect to meeting the statutory requirements of the repealed chapter 373L, Hawaii Revised Statutes, and the nexus between the registration of professional employer organizations and qualification for the state general excise tax exemption.

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

