

**"CHAPTER 373L
PROFESSIONAL EMPLOYER ORGANIZATIONS**

Section

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" **§373L-1 Definitions.** Whenever used in this chapter, unless the context otherwise requires:

"Client company" means any person that enters into a professional employer agreement with a professional employer organization and has covered employees.

"Covered employee" means an individual who performs services for a client company pursuant to a professional employer agreement.

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

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

"Person" means a natural or legal person.

"Professional employer agreement" means a written contract by and between a client company and a professional employer organization that:

- (1) Provides for covered employees to the client company;
- (2) Describes the duties and responsibilities of the client company and the professional employer organization with respect to the covered employees; and
- (3) Includes a declaration by the professional employer organization of the professional employer organization's responsibilities under section 373L-6.

"Professional employer organization" means any person that is a party to a professional employer agreement with a client company and whose covered employees perform services on a long-term, rather than temporary or project-specific basis. The term does not include temporary help services, staff leasing, or other similar arrangements.

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

- (1) Finds other organizations that need the services of those employees;
- (2) Assigns those employees to perform work or services for other organizations to support or supplement the other organizations' workforces or to provide assistance in special work situations, including employee absences, skill shortages, seasonal workloads, or special assignments or projects; and
- (3) Customarily attempts to reassign the employees to successive placements with other organizations at the end of each assignment. [L 2010, c 129, pt of §1; am L 2013, c 174, §4]

" **[§373L-1.5 Names; registration of person required.]** No person within the purview of this chapter shall use the terms

"professional employer organization", or "PEO", or other similar name unless the person is registered and in compliance with this chapter and the rules adopted pursuant to this chapter. [L 2013, c 174, pt of §2]

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

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

- (1) The name or names under which the professional employer organization conducts or will conduct business;
- (2) The address of the principal place of business of the professional employer organization and the address of each office that the professional employer organization maintains in this State;
- (3) The professional employer organization's general excise tax number;
- (4) A copy of the certificate of authority to transact business in this State issued by the director of commerce and consumer affairs pursuant to title 23 or title 23A, if applicable;
- (5) A list, organized by jurisdiction, of each name under which the professional employer organization has operated in the preceding five years, including any alternative names; names of predecessors; and, if known, names of successor business entities;
- (6) A statement of ownership, which shall include the name of each person who, individually or acting in concert with any other person or persons, owns or controls, directly or indirectly, twenty-five per cent or more of the equity interests of the professional employer organization;
- (7) A statement of management, which shall include the name of any person who serves as president or chief executive officer or who otherwise has the authority to act as a senior executive officer of the professional employer organization;
- (8) Proof of valid workers' compensation coverage in compliance with all laws of this State;

- (9) Proof of compliance with the Hawaii temporary disability insurance law;
- (10) Proof of compliance with the Hawaii prepaid health care act;
- (11) Proof of compliance with the Hawaii employment security law, including payment of any applicable employer liability pursuant to chapter 383;
- (12) The name, address, and phone number of the financial institution utilized by the professional employer organization for payroll purposes that operates and maintains branches in the State;
- (13) The name of each client company that is party to a professional employer agreement with a professional employer organization which shall be provided to the department on a form approved by the department within twenty-one business days of the initiation of the agreement and within twenty-one business days of the termination of the agreement; and
- (14) A copy of the Internal Revenue Service Form W-3, Transmittal of Wage and Tax Statements, that was most recently filed with the federal government, and which shall be used for obtaining a bond or irrevocable letter of credit pursuant to section 373L-3.

(c) Registration under this section shall expire on June 30 of each even-numbered year. Before June 30 of each even-numbered year, the director or the director's authorized delegate shall mail a renewal application for registration to the address on record of the registrant. In connection with renewal of registration, a professional employer organization shall provide all of the information required by subsection (b). Failure to renew a registration shall result in termination of that registration. A professional employer organization whose registration has been terminated pursuant to this section shall be required to pay the restoration fee.

(d) Notwithstanding that a registration under this section has not expired, a professional employer organization shall submit annually, no later than June 30 of each year, to the department a copy of the Internal Revenue Service Form W-3, Transmittal of Wage and Tax Statements, that was most recently filed with the federal government. If the amount of the total payroll has changed to an amount that requires a different bond or irrevocable letter of credit amount than posted with the department, the professional employer organization shall obtain a new bond or irrevocable letter of credit to satisfy the requirements of section 373L-3. [L 2010, c 129, pt of §1; am L 2013, c 174, §5]

" **§373L-3 Bond required.** (a) No professional employer organization shall enter into a professional employment agreement with a client company in the State unless the professional employer organization posts a surety bond, or an irrevocable letter of credit equivalent to the required bond amount, that is based on the previous year's total payroll of the professional employer organization. The total payroll of the professional employer organization shall be the amount reported on the Internal Revenue Service Form W-3, Transmittal of Wage and Tax Statements, that was most recently filed with the federal government in the year in which the bond or irrevocable letter of credit is to become effective. The bond or its irrevocable letter of credit equivalent required under this section shall be on a sliding scale as follows:

- (1) For professional employer organizations with a total payroll up to and including \$25,000,000, a bond or its irrevocable letter of credit equivalent of \$25,000;
- (2) For professional employer organizations with a total payroll of \$25,000,001 to \$150,000,000, a bond or its irrevocable letter of credit equivalent of \$75,000; and
- (3) For professional employer organizations with a total payroll of \$150,000,001 and higher, a bond or its irrevocable letter of credit equivalent of \$250,000.

If the professional employer organization posts a bond, the director shall be named as the obligee and the bond may be canceled only if the professional employer organization gives sixty days prior written notice to the surety and the director or if the surety gives thirty days prior written notice to the director of cancellation of the bond. If the professional employer organization furnishes an irrevocable letter of credit approved by the director, the director shall be named as the beneficiary, and the irrevocable letter of credit shall be issued by a bank, savings bank, or other depository financial institution insured by a federal depository insurance agency and authorized to do business in the State. The requirements of this section shall be satisfied by a single bond or its irrevocable letter of credit equivalent. If a professional employer organization has more than one branch location, the bond or its irrevocable letter of credit equivalent shall cover all locations.

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

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

- (1) The debts were incurred while the bond was in effect; and
- (2) The director notifies the surety or insurer, as the case may be, of any claims within ninety days of discovery of any claims.

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

(e) Failure to have in effect a current bond shall result in automatic forfeiture of registration pursuant to this chapter and shall require the professional employer organization to immediately cease doing business in the State. A professional employer organization whose registration is forfeited shall apply as a new applicant for registration in order to resume business in the State. [L 2010, c 129, pt of §1; am L 2013, c 174, §6]

" **[§373L-4] Exemptions.** A person who engages only in the following activities shall not be deemed a professional employer organization for purposes of this chapter and shall be exempt from the requirements of this chapter:

- (1) Arrangements wherein a person, whose principal business activity is not entering into professional employer arrangements and who does not hold the person's self out as a professional employer organization, shares employees with a commonly-owned company within the meaning of [section] 414(b) and (c) of the Internal Revenue Code;
- (2) Independent contractor arrangements by which a person assumes responsibility for the product produced or service performed by the person or the person's agents and retains and exercises primary direction and control over the work performed by the individuals whose services are supplied under those arrangements; or
- (3) The providing of temporary help services. [L 2010, c 129, pt of §1]

" **[§373L-5] Rules.** The director shall adopt rules pursuant to chapter 91 that the director deems necessary for the effective administration and enforcement of this chapter. [L 2010, c 129, pt of §1]

" **[\$373L-6] Responsibility of professional employer organizations.** During the term of the agreement between a professional employer organization and its client company, the professional employer organization shall be deemed the employer for all covered employees for purposes of complying with all laws relating to unemployment insurance, workers' compensation, temporary disability insurance, and prepaid health care coverage and the professional employer organization shall provide written notification to each covered employee of this responsibility. [L 2013, c 174, pt of §2]

" **[\$373L-7] Payroll cost exemption.** At the end of each calendar year, the department shall provide the names, date of registration, and contact information of all professional employer organizations that have successfully complied with the requirements of this chapter to the department of taxation. The exemption provided under section 237-24.75(3) shall only apply to professional employer organizations that fulfill and maintain the registration requirements under this chapter. [L 2013, c 174, pt of §2]

" **[\$373L-8] Fees.** (a) No applicant shall be allowed to register pursuant to this chapter unless the appropriate fees have been paid.

(b) Effective July 1, 2013, the director shall collect fees in the following amounts:

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| (1) Registration fee | \$ 500 |
| (2) Biennial renewal fee | \$ 750 |
| (3) Restoration fee | \$1,500 |

until such time as the director amends the fees by rulemaking pursuant to chapter 91.

(c) The fees collected pursuant to this section shall be deposited into the state general fund. [L 2013, c 174, pt of §2]