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HOUSE . . . . . No. 4350

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act relative to the recognition and registration of professional employer organizations operating in the Commonwealth of Massachusetts.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1: Chapter 149 of the general laws is hereby amended by adding at the end thereof the following sections:

Section 1.– Definitions

For purposes of this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:

(a) “Client” means any person who enters into a professional employer agreement with a professional employer organization.

(b) “Covered Employee” means an individual employed in a PEO relationship with--a PEO and a client where the individual’s PEO relationship is under a professional employer agreement subject to this act. Individuals who are officers, directors, shareholders, partners, and managers of the client will be covered employees, except to the extent the professional employer organization and the client have expressly agreed in the professional employer agreement that

13 such individuals would not be covered employees, provided such individuals meet the criteria of
14 this paragraph and act as operational managers or perform day-to-day operational services for the
15 client.

16 (c) “Department” means the department of labor standards.

17 (d) “Director” means the director of the department of labor standards.

18 (e) “Employment Agency,” as defined by chapter 140, section 46A of the general laws,
19 means any person who conducts in whole or in part an agency for the purpose of procuring or
20 attempting to procure permanent or temporary help or employment or engagements, or for the
21 registration of persons seeking such help, employment or engagement, or for giving information
22 as to where and of whom such help, employment or engagement may be procured, where a fee is
23 exacted or attempted to be collected for such service; provided, however, that except with respect
24 to the inspection authority of the commissioner under section 46Q, the term “employment
25 agency” shall not include a firm none of whose fees or charges are paid either directly or
26 indirectly by any applicant for employment, unless such firm is engaged in providing domestic
27 employees, nor shall such definition apply to any person conducting a business which consists of
28 employing individuals directly for the purpose of furnishing part time or temporary help to others
29 or to any person conducting a business which consists solely of providing employers or
30 prospective employers, by electronic means, biographical information, background and
31 experience of applicants for temporary employment, help or engagement.

32 (f) “PEO Group” means two or more professional employer organizations that are
33 majority owned or commonly controlled by the same entity, parent, or controlling person(s).

34 (g) “Person” means any individual, partnership, corporation, limited liability company,
35 association, or any other form of legally recognized entity.

36 (h) “Professional Employer Agreement” means a written contract by and between a client
37 and a professional employer organization that:

38 (1) provides for the PEO relationship of covered employees;

39 (2) allocates employer rights and obligations between the client and the professional
40 employer organization with respect to the covered employees;

41 (3) allocates the responsibilities required by this act between the professional employer
42 organization and the client ; and

43 (4) shall not affect, modify or amend any employee rights under federal, state, local or
44 municipal law and in no way abrogate obligations of the client or the PEO to covered employees
45 under such laws.

46 (i) “Professional Employer Organization” or “PEO” means any person engaged in the
47 business of providing professional employer services. A person engaged in the business of
48 providing professional employer services shall be subject to registration and regulation under this
49 act regardless of its use of the term or conducting business as a “professional employer
50 organization,” “PEO,” “staff leasing company,” “registered staff leasing company,” “employee
51 leasing company,” “administrative employer,” or any other name provided that the following
52 shall not be deemed to be professional employer organizations or to be providing of professional
53 employment services for purposes of this act:

54 (1) Arrangements wherein a person, whose principal business activity is not entering into
55 professional employer arrangements and which does not hold itself out as a PEO, shares
56 employees with a commonly owned company within the meaning of section 414(b) and (c) of
57 the Internal Revenue Code of 1986, as amended;

58 (2) Independent contractor arrangements as defined by Section 148 of this chapter; or

59 (3) Services provided by an Employment Agency or Staffing Agency

60 (j) "PEO Relationship" means a co-employment relationship, where all the rights, duties,
61 and obligations of an employer which arise out of an employment relationship have been
62 allocated between the PEO and the client pursuant to a professional employer agreement
63 consistent with this act, provided however, that a staffing agency and an employment agency are
64 not a PEO. In a PEO relationship:

65 (1) the professional employer organization is entitled to enforce only such employer
66 rights and is subject to only those obligations allocated in the professional employment
67 agreement or as specifically required by this act;

68 (2) the client is entitled to enforce those rights, and obligated to provide and perform
69 those employer obligations allocated to the client by the written professional employer
70 agreement consistent with this act; and

71 (3) the client is entitled to enforce any right and obligated to perform any obligation of an
72 employer not specifically allocated to the PEO or this act.

73 (k) “Professional Employer Services” shall mean the service of entering into PEO
74 relationships under this act in which all or a majority of the employees providing services to a
75 client or to a division or work unit of the client are covered employees.

76 (l) “Registrant” means a PEO registered under this act.

77 (m) “Staffing Agency” as defined by section 159C of this chapter means an individual,
78 company, corporation or partnership that procures or provides temporary or part-time
79 employment to a person who then works under the supervision or direction of a work site
80 employer.

81 (n) “Wages” are as defined by, and shall be paid in accordance with section 148 of this
82 chapter and any minimum wage and overtime requirements as provided for in chapter 151.

83 Section 2. - Rights, Duties, and Obligations Unaffected by this Act.

84 (a)Nothing contained in this act or in any professional employer agreement shall affect,
85 modify or amend any collective bargaining agreement, or the rights or obligations of any client,
86 PEO, or covered employee under the federal National Labor Relations Act, the Federal Railway
87 Labor Act, chapter 150A or 150E of the general laws, or any other applicable federal or state
88 law.

89 (b)Collective bargaining, should it commence after an agreement is entered into between
90 a PEO and a client, shall be conducted as required by federal and state law.

91 (c)Nothing in this act or in any professional employer agreement shall:

92 (1) Diminish, abolish or remove rights of covered employees to a client or obligations of
93 such client to a covered employee existing prior to the effective date of the professional
94 employer agreement under federal or state law;

95 (2) Affect, modify, or amend any contractual relationship or restrictive covenant between
96 a covered employee and any client in effect at the time a professional employer agreement
97 becomes effective. Nor shall it prohibit or amend any contractual relationship or restrictive
98 covenant that is entered into subsequently between a client and a covered employee. A PEO shall
99 have no responsibility or liability in connection with, or arising out of, any such existing or new
100 contractual relationship or restrictive covenant unless the PEO has specifically agreed otherwise
101 in writing; or

102 (3) Affect, modify or amend any employee rights under federal, state, local or municipal
103 law.

104 Section 3 - Regulated professions.

105 (a) Nothing contained in this act or any professional employer agreement shall affect,
106 modify or amend any federal, state, or local licensing, registration, or certification requirement
107 applicable to any client or covered employee.

108 (b) A covered employee who must be licensed, registered, or certified according to law or
109 regulation is deemed solely an employee of the client for purposes of any such license,
110 registration, or certification requirement.

111 (c) A PEO shall not be deemed to engage in any occupation, trade, profession, or other
112 activity that is subject to licensing, registration, or certification requirements, or is otherwise

113 regulated by a government agency solely by entering into and maintaining a PEO relationship
114 with a covered employee who is subject to such requirements or regulation.

115 (d) A client shall have the sole right of direction and control of the professional or
116 licensed activities of covered employees and of the client's business. Covered employees and
117 clients shall remain subject to regulation by the regulatory or governmental entity responsible for
118 licensing, registration, or certification of such covered employees or clients.

119 Section 4 - Tax credits; economic incentives.

120 (a) For purposes of the determination of tax credits and other economic incentives
121 provided by the state or other government entity and based on employment, covered employees
122 shall be deemed solely the client's employees. A client shall be entitled to the benefit of any tax
123 credit, economic incentive, or other benefit arising as the result of the employment of covered
124 employees of such client. Notwithstanding that the PEO is the W-2 reporting employer, the client
125 shall continue to qualify for the benefit, incentive or credit. If the grant or amount of any benefit,
126 incentive, or credit is based on number of employees, then each client shall be treated as
127 employing only those covered employees involved in a PEO relationship by such client. Covered
128 employees working for other clients of the PEO shall not be counted. Each PEO will provide,
129 upon request by a client or by a state agency or department, employment information reasonably
130 required by any agency or department of this state responsible for administration of any tax
131 credit or economic incentive and necessary to support any request, claim, application, or other
132 action by a client seeking any tax credit or economic incentive.

133 (b) With respect to a bid, contract, purchase order, or agreement entered into with the
134 state or a political subdivision of the state, a client company's status or certification under federal

135 or state law as a small, minority-owned, disadvantaged, woman-owned business, or other
136 underutilized class of enterprise is not affected because the client company has entered into a
137 PEO relationship.

138 Section 5. - PEO registration requirements.

139 (a) Except as otherwise provided in this act, no person shall provide, advertise, or
140 otherwise hold itself out as providing Professional Employer Services in this state, unless such
141 person is registered under this act.

142 (b) Each applicant for registration under this act shall provide the department the
143 following information:

144 (1) The name or names under which the PEO conducts business or will conduct business;

145 (2) The address of the principal place of business of the PEO and the address of each
146 office it maintains or will maintain in this state;

147 (3) The PEO's taxpayer or employer identification number;

148 (4) A list by jurisdiction of each name under which the PEO has operated in the
149 preceding 5 years, including any alternative names, names of predecessors and, if known,
150 successor business entities;

151 (5) A statement of ownership, which shall include the name and evidence of the business
152 experience of any person that, individually or acting in concert with one or more other persons,
153 owns or controls or will own or control, (if known or reasonably known at the time of
154 registration) directly or indirectly, twenty-five percent or more of the equity interests of the PEO;

155 (6) A statement of management, which shall include the name and evidence of the
156 business experience of any person who serves or will serve as president, chief executive officer,
157 or otherwise has the authority to act as senior executive officer of the PEO; and

158 (7) A financial statement setting forth the financial condition of the PEO or PEO Group.
159 At the time of application for a new license, the applicant shall submit the most recent audit of
160 the applicant, which may not be older than 13 months. Thereafter, a PEO or PEO Group shall file
161 on an annual basis, within 180 days after the end of the PEO's or PEO Group's fiscal year, a
162 succeeding audit. An applicant may apply for an extension with the department but any such
163 request must be accompanied by a letter from the auditors stating the reasons for the delay and
164 the anticipated audit completion date. The financial statement shall be prepared in accordance
165 with generally accepted accounting principles, and audited by an independent certified public
166 accountant licensed to practice in the jurisdiction in which such accountant is located, and shall
167 be without qualification as to the going concern status of the PEO. A PEO Group or a PEO that
168 is part of an organizational structure where it is majority owned or commonly controlled by an
169 entity, parent or controlling person may submit combined or consolidated audited financial
170 statements to meet the requirements of this section. A PEO that has not had sufficient operating
171 history to have audited financials based upon at least 12 months of operating history must meet
172 the financial capacity requirements below and in subsections (l) and (m) and must present
173 financial statements reviewed by a certified public accountant; and

174 (8) a list of clients including client name, physical address, telephone number and federal
175 identification number.

176 (c) Initial Registration:

177 (1) Each PEO operating within this state as of the effective date of this act shall complete
178 its initial registration not later than 180 days after the effective date of this act. Initial registration
179 shall be valid until 60 days after the end of the PEO's first fiscal year end that is more than one
180 year after the effective date of this act.

181 (2) Each PEO not operating within this state as of the effective date of this act shall
182 complete its initial registration prior to initiating operations within this state. In the event a PEO
183 not registered in this state becomes aware that an existing client not based in this state has
184 employees and operations in this state, the PEO must either decline to provide PEO services for
185 those employees or notify the department within five business days of its knowledge of this fact
186 and file a limited registration application under paragraph (f) below or a full business registration
187 if there are more than 15 covered employees. The department may issue a 60 day interim
188 operating permit for the period the registration applications are pending if (a) the PEO is
189 currently registered or licensed by another state and (b) the department determines it to be in the
190 best interests of the potential covered employees.

191 (d) Within 180 days after the end of a registrant's fiscal year, the registrant shall renew its
192 registration by notifying the department of any changes in the information provided in the
193 registrant's most recent registration or renewal. A registrant's existing registration shall remain
194 in effect during the pendency of a renewal application.

195 (e) PEOs in a PEO Group may satisfy the reporting and financial requirements of this
196 registration law on a combined or consolidated basis provided that each member of the PEO
197 Group guarantees the financial capacity obligations under this act of each other member of the
198 PEO Group. In the case of a PEO Group that submits a combined or consolidated audited

199 financial statement, including entities that are not PEOs or that are not in the PEO Group, the
200 controlling entity of the PEO Group under the consolidated or combined statement must
201 guarantee the obligations of the PEOs in the PEO Group.

202 (f) A PEO that is part of an organizational structure where it is majority owned or
203 commonly controlled by an entity, parent or controlling person may submit a combined or
204 consolidated audited financial statement provided the controlling entity under the consolidated or
205 combined statement guarantees the obligations of the PEO.

206 (g) Limited Registration:

207 (1) A PEO is eligible for a limited registration under this act if the PEO:

208 (i) Submits a properly executed request for limited registration on a form provided by the
209 department;

210 (ii) Does not maintain an office in this state or directly solicit clients located or domiciled
211 within this state; and

212 (iii) Does not have more than 15 covered employees employed or domiciled in this state
213 at any time.

214 (2) A limited registration is valid for one year and may be renewed if the requirements of
215 paragraph 1 are met.

216 (3) A PEO seeking limited registration under this section shall provide the department
217 with information and documentation that the department determines is necessary to show that the
218 PEO qualifies for a limited registration

219 (4) The department, in its discretion, may permit a reduced fee for a limited registration.

220 (5) A PEO that has submitted a limited registration form shall comply with all the
221 obligations under this act.

222 (h) The department shall maintain a list of PEOs registered under section 196 that is
223 readily available to the public by electronic or other means.

224 (i) The department may prescribe forms necessary to promote the efficient administration
225 of this section.

226 (j) The department shall to the extent practical permit the acceptance of electronic filings
227 in conformance with the Uniform Electronic Transactions Act, including applications,
228 documents, reports, and other filings required by this act. The department may provide for the
229 acceptance of electronic filings and other assurance by an independent and qualified assurance
230 organization approved by the director that provides satisfactory assurance of compliance
231 acceptable to the department consistent with or in lieu of the requirements of subsections (b)-(h)
232 and subsection (l), and other requirements of this act or the rules promulgated pursuant to it. The
233 director shall permit a PEO to authorize such an approved assurance organization to act on the
234 PEO's behalf in complying with the registration requirements of this act, including electronic
235 filings of information and payment of registration fees. Use of such an approved assurance
236 organization shall be optional and not mandatory for a registrant. Nothing in this subsection shall
237 limit or change the department's authority to register or terminate registration of a professional
238 employer organization or to investigate or enforce any provision of this act.

239 (k) All records, reports, and other information obtained from a PEO for the purposes of
240 Section 197 of this act, except to the extent necessary for the department's proper administration

241 of this act, shall be confidential and shall not be published or open to public inspection other than
242 to public employees in the performance of their public duties or otherwise in accordance with
243 federal or state law.

244 (l)(1) Upon filing an initial registration statement under this act, a PEO shall pay an initial
245 registration fee.

246 (2) Upon each annual renewal of a registration statement filed under this section, a PEO
247 shall pay a renewal fee.

248 (3) The department shall determine by rule any fee to be charged for a group registration.

249 (4) Each PEO seeking limited registration under the terms of subsection (f) if approved
250 by the director shall pay a reduced fee upon initial application for limited registration and upon
251 each annual renewal of such limited registration.

252 (5) A PEO seeking registration pursuant to subsection (i) shall pay an initial and annual
253 fee.

254 (6) No fee charged pursuant to this section shall exceed the amount reasonably necessary
255 for the administration of this act.

256 (m) Except as provided by subsection (f) and (i), each PEO or collectively each PEO
257 Group shall maintain:

258 (1) Positive working capital, as defined by generally accepted accounting principles, at
259 registration as reflected in the financial statements submitted to the department with the initial
260 registration and each annual renewal; and

261 (2) Each PEO shall maintain a surety bond in the amount of $250,000, proof of which
262 will be submitted at the time of registration. The surety bond required shall be in a form
263 acceptable to the Director and maintained while the license remains in effect or any obligations
264 or liabilities of the registrant remain outstanding.

265 (n) A PEO or PEO Group that does not have positive working capital may provide a
266 bond, irrevocable letter of credit, or securities with a minimum market value equaling the
267 deficiency plus $250,000. Such bond is to be held by a depository designated by the department,
268 securing payment by the PEO of all taxes, wages, benefits or other entitlement due to or with
269 respect to covered employees, if the PEO does not make such payments when due.

270 Section 6. - Allocation of responsibilities.

271 (a) Except as specifically provided in this act and in the professional employer agreement
272 required under this act, or under any subsequent written agreement or amendment, in each PEO
273 relationship:

274 (1) The client shall be entitled to exercise all rights, and shall be obligated to perform all
275 duties and responsibilities, otherwise applicable to an employer in an employment relationship;
276 and

277 (2) The PEO shall be entitled to exercise only those rights, and obligated to perform only
278 those duties and responsibilities, specifically required by this act, set forth in the professional
279 employer agreement,. The rights, duties, and obligations of the PEO with respect to any covered
280 employee shall be limited to those arising pursuant to the professional employer agreement and
281 this act during the term of the PEO relationship with such covered employee.

282 (3) Unless otherwise expressly agreed by the PEO and the client in a professional
283 employer agreement, the client retains the exclusive right to direct and control the covered
284 employees as is necessary to conduct the client's business, to discharge any of the client's
285 fiduciary responsibilities, or to comply with any licensure requirements applicable to the client or
286 to the covered employees.

287 (b) Except as specifically provided in this act, the PEO relationship between the client
288 and the PEO, and between the PEO and each covered employee, and the client and each covered
289 employee shall be governed by the professional employer agreement. Each professional
290 employer agreement shall include the following:

291 (1) The allocation of rights, duties, and obligations as described in subsection (a).

292 (2) Where and to the extent the PEO has assumed responsibility in the professional
293 employer agreement, the PEO shall have responsibility to pay such wages to covered employees;
294 to withhold, collect, report and remit payroll-related and unemployment taxes; and to make
295 payments for employee benefits for covered employees.

296 (3) That the PEO shall have a right to hire and terminate a covered employee as may be
297 necessary to fulfill the PEO's responsibilities under this act, the professional employer
298 agreement, or as actually delegated by the client. The client shall have a right to hire, discipline,
299 and terminate a covered employee.

300 (c) Upon initiation of the PEO relationship, the professional employer organization shall
301 provide and the client is required to post a notice in a conspicuous place at the client's worksite
302 and depending on the customary way that the client communicates with its employees, either

303 provide a hard copy or an electronic copy of this notice that shall contain the following
304 information:

305 (1) Notice of the general nature of the co-employment relationship between and among
306 the professional employer organization, the client and such covered employees, including the
307 rights, responsibilities and duties that the PEO and the client have with respect to the covered
308 employees;

309 (2) the name and telephone number of the department;

310 (3) the name and telephone number for the PEO;

311 (4) disclosure if the benefit plan is self-funded or is not fully insured;

312 (5) the name of the Workers' Compensation carrier and the policy number; whether the
313 PEO or the client maintains the WC policy and performs workplace safety inspections at the
314 workplace; and a phone number or contact to report injuries and hazardous worksite conditions;
315 and

316 (6) include a multilingual tagline on the notice provided by the department in languages
317 required under subsection (d)(iii) of section 62A of chapter 151A that includes the name and
318 telephone number of the department and states that the notice contains important information
319 that should be translated.

320 (d) Upon termination, and in accordance with applicable federal law and Massachusetts
321 General Laws, the PEO shall provide covered employees with written notice of the termination
322 of the PEO relationship. The notice can be provided electronically.

323 (e) Except to the extent otherwise expressly provided by the applicable professional
324 employer agreement:

325 (1) A client shall be solely responsible for the quality, adequacy, or safety of the goods or
326 service produced or sold in the client's business.

327 (2) A client shall be solely responsible for directing, supervising, training, and controlling
328 the work of the covered employees with respect to the business activities of the client and solely
329 responsible for the acts, errors, or omissions of the covered employees with regard to such
330 activities

331 (3) A client shall be solely responsible for the payment of any wages to covered
332 employees and to make payments for employee benefits for covered employees.

333 (4) A client shall be solely responsible for safety, risk and hazard control at the worksite
334 and compliance with related state and federal laws.

335 (5) Upon termination of the PEO relationship, the client shall be solely responsible for
336 providing employees with information regarding the handling of claims and benefits.

337 (6) A client shall not be liable for the acts, errors, or omissions of a PEO, or of any
338 covered employee of the client and a PEO, when such covered employee is acting under the
339 express direction and control of the PEO.

340 (7) A PEO shall not be liable for the acts, errors, or omissions of a client or of any
341 covered employee of the client when such covered employee is acting under the express
342 direction and control of the client.

343 (8) Nothing in this subsection shall serve to limit any contractual liability or obligation
344 specifically provided in the written professional employer agreement.

345 (9) A covered employee is not, solely as the result of being a covered employee of a
346 PEO, an employee of the PEO for purposes of general liability insurance, fidelity bonds, surety
347 bonds, employer's liability which is not covered by workers' compensation, or liquor liability
348 insurance carried by the PEO unless the covered employees are included by specific reference in
349 the professional employer agreement and applicable prearranged employment contract, insurance
350 contract or bond.

351 (10) Nothing in this section shall in any way limit the liabilities and obligations of any
352 PEO or client to covered employees as defined elsewhere in this act.

353 (11) The Client shall be solely responsible for notifying the PEO of all covered
354 employees. Where the client has failed to notify the PEO, the client will be deemed to be the
355 sole employer of the employee.

356 (f) With regard to all obligations, rights and responsibilities allocated to the PEO under
357 the professional employment agreement, any written amendments to the professional
358 employment agreement and under this act:

359 (1) The PEO shall retain all records in compliance with state and federal law, including,
360 but not limited to section 52C, section 15 of chapter 151 and title 29 of the code of federal
361 regulations part 516: and

362 (2) The PEO shall be required to disclose to a covered employee upon request the
363 documents retained in paragraph (f)(1) as required by state and federal law, including, but not
364 limited to section 52C, section 10(a)(5) of chapter 150E, 29 U.S.C. section 158(a)(5).

365 Section 7. - Application of taxes.

366 (a) For purposes of this state or any county, municipality or other political subdivision
367 thereof:

368 (1) Covered employees whose services are subject to sales tax shall be deemed the
369 employees of the client for purposes of collecting and levying sales tax on the services
370 performed by the covered employee. Nothing contained in this act shall relieve a client of any
371 sales tax liability with respect to its goods or services.

372 (2) Any tax or assessment imposed upon professional employer services or any business
373 license or other fee which is based upon "gross receipts" shall allow a deduction from the gross
374 income or receipts of the business derived from performing professional employer services that
375 is equal to that portion of the fee charged to a client that represents the actual cost of wages and
376 salaries, benefits, workers' compensation, payroll taxes, withholding, or other assessments paid
377 to or on behalf of a covered employee by the professional employer organization under a
378 professional employer agreement.

379 (3) Any tax assessed or assessment or mandated expenditure on a per capita or per
380 employee basis shall be assessed against the client for covered employees and against the PEO
381 for its employees who are not covered employees involved in a PEO relationship with a client.
382 Benefits or monetary consideration that meet the requirements of mandates imposed on a client
383 and that are received by covered employees through the PEO either through payroll or through

384 benefit plans sponsored by the PEO shall be credited against the client's obligation to fulfill such
385 mandates

386 (4) In the case of a tax or an assessment imposed or calculated upon the basis of total
387 payroll, the PEO shall be eligible to apply any small business allowance or exemption available
388 to the client for the covered employees for purpose of computing the tax.

389 Section 8. - Benefits.

390 (a) A client or a registered PEO shall each be deemed an employer under the laws of this
391 state for purposes of sponsoring welfare benefit plans for its covered employees.

392 (b) A fully-insured welfare benefit plan offered to the covered employees of a single PEO
393 shall be treated for purposes of state law as a single employer welfare benefit plan.

394 (c) For purposes of chapter 176J of the general laws, as amended by chapter 35 of the
395 acts of 2013, a PEO shall be considered the employer of all of its covered employees and all
396 covered employees of one or more clients participating in a health benefit plan sponsored by a
397 single PEO shall be considered employees of that PEO.

398 (d) If a PEO offers to its covered employees any health benefit plan which is not fully-
399 insured by an authorized insurer, the plan shall:

400 (1) Utilize a third-party administrator licensed to do business in this state;

401 (2) Hold all plan assets, including participant contributions, in a trust account consistent
402 with the requirements of section 403 of the Employee Retirement Income Security Act of 1974
403 ("ERISA");

404 (3) Provide sound reserves for such plan as determined using generally accepted actuarial
405 standards of practice and consistent with the prudence and loyalty standards of care for ERISA
406 fiduciaries; and

407 (e) A PEO under this act is not engaged in the sale of insurance or in acting as a third
408 party administrator by offering, marketing, selling, administering or providing professional
409 employer services which include services and employee benefit plans for covered employees.

410 Section 9.- Workers' Compensation.

411 (a) Workers' compensation coverage shall be provided pursuant to section 14A of chapter
412 152 of the general laws and regulations promulgated under said chapter 152.

413 (b) PEOs and clients must comply with employer posting notices pursuant to sections 21,
414 22 and 30 of MA GL Chapter 152.

415 (c) To the extent the PEO has assumed responsibility in the professional employer
416 agreement, the PEO shall maintain responsibility for the management of workers' compensation
417 claims.

418 (d) The PEO agreement shall specify the allocation of responsibilities between the PEO
419 and the client for workplace safety, risk and hazard control including the responsibility for
420 performing workplace safety inspections of all premises where covered employees are employed.

421 (e) Where the PEO has workers compensation coverage and has executed an alternate
422 employer endorsement naming the client as an additional insured, both the client and the PEO
423 shall be considered the employer for purpose of coverage under and the exclusive remedy
424 provision of the Workers' Compensation Act.

425 (f) Where the client has workers compensation coverage and has executed an alternate
426 employer endorsement naming the PEO as an additional insured, both the client and the PEO
427 shall be considered the employer for the purpose of coverage under and the exclusive remedy
428 provision of the Workers' Compensation Act.

429 Section 10. - Unemployment Insurance.

430 (a) For purposes of chapter 51A of the general laws, covered employees of a registered
431 PEO are considered the employees of the client, and the PEO shall be responsible for the
432 payment of contributions, penalties, and interest on wages paid by the PEO to its covered
433 employees during the term of the applicable professional employer agreement.

434 (b) The PEO shall report and pay all required contributions to the unemployment
435 compensation fund using the state employer account number and the experience rate of the client
436 company pursuant to chapter 151A and the regulations promulgated under said chapter.

437 Section 11. - Employee count related laws and regulations

438 Except as otherwise provided in this chapter, for the purposes of federal, state, or local
439 laws relating to employee count, such as paid and unpaid leave, health and transportation
440 benefits, and protection under fair employment laws, the employee count shall include all of the
441 client company's employees, including the client's employees who are covered employees under
442 the PEO relationship between the client and the PEO.

443 Section 12. - Prohibited acts.

444 (a) A person may not knowingly and intentionally:

445 (1) Offer or provide professional employer services or use the names PEO, professional
446 employer organization, staff leasing, employee leasing, administrative employer, or other title
447 representing professional employer services without first becoming registered under this act;

448 (2) Provide false or fraudulent information to the department in conjunction with any
449 registration, renewal, or in any report required under this act;

450 (3) Enter into a PEO relationship and split a client workforce for the sole purpose of
451 avoiding compliance with federal, state or local or municipal laws; or

452 (4) Make a material misrepresentation to the department, to other governmental agencies
453 or to covered employees.

454 (b) Disciplinary action may be taken by the department for violation of the provisions of
455 this act including for:

456 (1) The conviction of a PEO or a controlling person of a PEO of a crime that relates to
457 the operation of a PEO or the ability of the licensee or a controlling person of a licensee to
458 operate a PEO;

459 (2) Knowingly making a material misrepresentation to the department, or other
460 governmental agency; or

461 (3) A willful violation of this act or any order or regulation issued by the department
462 under this act.

463 (c) Upon finding, after notice and opportunity for hearing, that a PEO, or a controlling
464 person of a PEO, or a person offering PEO services has violated one or more provisions of this
465 act and subject to any appeal, the director may:

466 (1) Deny an application for a license;

467 (2) Revoke, restrict, or refuse to renew a license;

468 (3) Impose an administrative penalty in an amount not to exceed $1,000 for each material
469 violation;

470 (4) Place the licensee on probation for the period and subject to conditions that the
471 department specifies; or

472 (5) Issue a cease and desist order.

473 SECTION 2. A PEO who fails to pay wages, to the extent the PEO has assumed
474 responsibility in the professional employer agreement or subsequent written agreement and as
475 required under this chapter, shall be subject to penalties under this chapter.

476 SECTION 3. The Office of the Attorney General shall promulgate regulations to
477 effectuate the purposes of this act.