

**SENATE . . . . . No. 1003**

---

**The Commonwealth of Massachusetts**

PRESENTED BY:

***Michael J. Rodrigues***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the recognition and registration of Professional Employer Organization operating in the Commonwealth of Massachusetts.

PETITION OF:

NAME:

*Michael J. Rodrigues*

DISTRICT/ADDRESS:

*First Bristol and Plymouth*

**SENATE . . . . . No. 1003**

By Mr. Rodrigues, a petition (accompanied by bill, Senate, No. 1003) of Michael J. Rodrigues for legislation relative to the recognition and registration of Professional Employer Organization operating in the Commonwealth of Massachusetts. Labor and Workforce Development.

**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 Organization 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:*

1 Section 1. The Legislature hereby finds:

2 (a) That Professional Employer Organizations operating in this State should be properly  
3 recognized and regulated by the Massachusetts Department of Labor of this Commonwealth, as  
4 provided in this Act.

5 Section 2. As used in this section the following words shall, unless the context clearly  
6 requires otherwise, have the following meanings:-

7 “Client” means any Person who enters into a Professional Employer Agreement with a  
8 PEO.

9 “Co-employer” means either a PEO or a Client.

10           “Co-employment Relationship” means a relationship which is intended to be an ongoing  
11 relationship rather than a temporary or project specific one, wherein the rights, duties, and  
12 obligations of an employer which arise out of an employment relationship have been  
13 allocated between Co-employers pursuant to a Professional Employer Agreement and this Act.  
14 In such a co-employment relationship:

15           (1) The PEO is entitled to enforce only such employer rights, and is subject to only those  
16 obligations specifically allocated to the PEO by the Professional Employer

17           Agreement or this Act;

18           (2) The Client is entitled to enforce those rights, and obligated to provide and perform  
19 those employer obligations allocated to such Client by the Professional Employer

20           Agreement and this Act; and

21           (3) an employer not specifically allocated to the PEO by the Professional Employer

22           Agreement or this Act.

23           “Covered Employee” means an individual having a Co-employment Relationship with a

24           PEO and a Client who meets all of the following criteria: (i) the individual has received

25 written notice of co-employment with the PEO, and (ii) the individual’s Co-employment

26 Relationship is pursuant to a Professional Employer Agreement subject to this Act. Individuals

27 who are officers, directors, shareholders, partners, and managers of the Client will be Covered

28 Employees, except to the extent the PEO and the Client have expressly agreed in the Professional

29 Employer Agreement that such individuals would not be Covered Employees, provided such

30 individuals meet the criteria of this paragraph and act as operational managers or perform  
31 day-to-day operational services for the Client.

32 “Department” means the Department of Labor of the Commonwealth of Massachusetts.

33 “Director” means the Director of the Department of Labor.

34 “PEO Group” means two or more PEOs that are majority owned or commonly controlled  
35 by the same entity, parent, or controlling person(s).

36 “Person” means any individual, partnership, corporation, limited liability company,  
37 association, or any other form of legally recognized entity.

38 “Professional Employer Agreement” means a written contract by and between a Client  
39 and a

40 PEO that provides:

41 (1) for the Co-employment of Covered Employees;

42 (2) for the allocation of employer rights and obligations between the Client and the

43 (3) PEO with respect to the Covered Employees; and that the PEO and the Client assume  
44 the responsibilities required by this Act.

45 “Professional Employer Organization” or “PEO” means any Person engaged in the  
46 business of providing Professional Employer Services. A Person engaged in the business of  
47 providing Professional Employer Services shall be subject to registration and regulation under  
48 this Act regardless of its use of the term or conducting business as a “professional employer

49 organization,” “PEO,” “staff leasing company,” “registered staff leasing company,”  
50 “employee leasing company,” “administrative employer,” or any other name.

51 (1) The following shall not be deemed to be Professional Employer Organizations or the  
52 providing of Professional Employment Services for purposes of this Act:

53 (A) Arrangements wherein a Person, whose principal business activity is not entering into  
54 Professional Employer Arrangements and which does not hold itself out as a PEO, shares  
55 employees with a commonly owned company within the meaning of section

56 414(b) and (c) of the Internal Revenue Code of 1986, as amended;

57 (B) Independent contractor arrangements by which a Person assumes responsibility for  
58 the product produced or service performed by such person or his agents and retains and exercises  
59 primary direction and control over the work performed by the individuals whose services are  
60 supplied under such arrangements; or

61 (C) Services provided by Employment Agency or Temporary staffing agency

62 “Professional Employer Services” shall mean the service of entering into Co-employment  
63 Relationships under this Act in which all or a majority of the employees providing services to a  
64 Client or to a division or work unit of Client are Covered Employees.

65 “Registrant” means a PEO registered under this Act.

66 “Employment Agency” or “Temporary staffing agency” as defined by M.G.L. Ch. 140  
67 sec. 46A means any person who conducts in whole or in part an agency for the purpose of  
68 procuring or attempting to procure permanent or temporary help or employment or engagements,  
69 or for the registration of persons seeking such help, employment or engagement, or for giving

70 information as to where and of whom such help, employment or engagement may be procured,  
71 where a fee is exacted or attempted to be collected for such service; provided, however, that  
72 except with respect to the inspection authority of the commissioner under section forty-six Q, the  
73 term “employment agency” shall not include a firm none of whose fees or charges are paid either  
74 directly or indirectly by any applicant for employment, unless such firm is engaged in providing  
75 domestic employees, nor shall such definition apply to any person conducting a business which  
76 consists of employing individuals directly for the purpose of furnishing part time or temporary  
77 help to others or to any person conducting a business which consists solely of providing  
78 employers or prospective employers, by electronic means, biographical information, background  
79 and experience of applicants for temporary employment, help or engagement.

80           Section 3. (a) Nothing contained in this Act or in any Professional Employer Agreement  
81 shall affect, modify or amend any collective bargaining agreement, or the rights or obligations of  
82 any Client, PEO, or Covered Employee under the federal National Labor Relations Act, the  
83 federal Railway Labor Act or M.G.L. Ch. 150A.

84           (b) Nothing in this Act or in any Professional Employer Agreement shall

85           (1) Diminish, abolish or remove rights of Covered Employees to a Client or obligations  
86 of such Client to a Covered Employee existing prior to the effective date of the Professional  
87 Employer Agreement.

88           (2) Affect, modify, or amend any contractual relationship or restrictive covenant between  
89 a Covered Employee and any Client in effect at the time a Professional Employer Agreement  
90 becomes effective. Nor shall it prohibit or amend any contractual relationship or restrictive  
91 covenant that is entered into subsequently between a Client and a Covered Employee. A PEO

92 shall have no responsibility or liability in connection with, or arising out of, any such existing or  
93 new contractual relationship or restrictive covenant unless the PEO has specifically agreed  
94 otherwise in writing.

95 (3) Create any new or additional enforceable right of a Covered Employee against a PEO  
96 that is not specifically provided by the Professional Employer Agreement or this Act.

97 (c) Nothing contained in this Act or any Professional Employer Agreement shall affect,  
98 modify or amend any state, local, or federal licensing, registration, or certification requirement  
99 applicable to any Client or Covered Employee.

100 (1) A Covered Employee who must be licensed, registered, or certified according to law  
101 or regulation is deemed solely an employee of the Client for purposes of any such license,  
102 registration, or certification requirement.

103 (2) A PEO shall not be deemed to engage in any occupation, trade, profession, or other  
104 activity that is subject to licensing, registration, or certification requirements, or is otherwise  
105 regulated by a governmental entity solely by entering into and maintaining a Co-employment  
106 Relationship with a Covered Employee who is subject to such requirements or regulation.

107 (3) A Client shall have the sole right of direction and control of the professional or  
108 licensed activities of Covered Employees and of the Client's business. Such Covered Employees  
109 and Clients shall remain subject to regulation by the regulatory or governmental entity  
110 responsible for licensing, registration, or certification of such Covered Employees or Clients.

111 (d) For purposes of determination of tax credits and other economic incentives provided  
112 by this State or other government entity and based on employment, Covered Employees shall be

113 deemed employees solely of the Client. A Client shall be entitled to the benefit of any tax credit,  
114 economic incentive, or other benefit arising as the result of the employment of Covered  
115 Employees of such Client. Notwithstanding that the PEO is the W-2 reporting employer, the  
116 Client shall continue to qualify for such benefit, incentive or credit. If the grant or amount of any  
117 such incentive is based on number of employees, then each Client shall be treated as employing  
118 only those Covered Employees co- employed by the Client. Covered Employees working for  
119 other clients of the PEO shall not be counted. Each PEO will provide, upon request by a Client or  
120 an agency or department of this State, employment information reasonably required by any  
121 agency or department of this State responsible for administration of any such tax credit or  
122 economic incentive and necessary to support any request, claim, application, or other action by a  
123 Client seeking any such tax credit or economic incentive.

124 (e) With respect to a bid, contract, purchase order, or agreement entered into with the  
125 state or a political subdivision of the state, a Client company's status or certification as a small,  
126 minority-owned, disadvantaged, or woman-owned business enterprise or as a historically  
127 underutilized business is not affected because the Client company has entered into an agreement  
128 with a PEO or uses the services of a PEO.

129 Section 4. (a) Except as otherwise provided in this Act, no Person shall provide,  
130 advertise, or otherwise hold itself out as providing Professional Employer Services in this  
131 State, unless such Person is registered under this Act.

132 (b) Each applicant for registration under this Act, shall provide the Department of Labor  
133 the following information:

134 (1) The name or names under which the PEO conducts business;



135 (2) The address of the principal place of business of the PEO and the address of each  
136 office it maintains in this State;

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

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

141 (5) A statement of ownership, which shall include the name and evidence of the  
142 business experience of any Person that, individually or acting in concert with one or more other  
143 Persons, owns or controls, directly or indirectly, twenty-five percent or more of the equity  
144 interests of the PEO;

145 (6) A statement of management, which shall include the name and evidence of the  
146 business experience of any Person who serves as president, chief executive officer, or otherwise  
147 has the authority to act as senior executive officer of the PEO; and

148 (7) A financial statement setting forth the financial condition of the PEO or PEO Group.  
149 At the time of application for a new license, the applicant shall submit the most recent audit of  
150 the applicant, which may not be older than 13 months. Thereafter, a PEO or PEO group shall file  
151 on an annual basis, within 180 days after the end of the PEO's or PEO group's fiscal year, a  
152 succeeding audit. An applicant may apply for an extension with the Department of Labor but  
153 any such request must be accompanied by a letter from the auditors stating the reasons for the  
154 delay and the anticipated audit completion date.

155           The financial statement shall be prepared in accordance with generally accepted  
156   accounting principles (GAAP), and audited by an independent certified public accountant  
157   licensed to practice in the jurisdiction in which such accountant is located, and shall be without  
158   qualification as to the going concern status of the PEO. A PEO group may submit combined or  
159   consolidated audited financial statements to meet the requirements of this section. A PEO that  
160   has not had sufficient operating history to have audited financials based upon at least twelve (12)  
161   months of operating history must meet the financial capacity requirements below and present  
162   financial statements reviewed by a certified public accountant.

163           (c) Initial Registration:

164           (1) Each PEO operating within this State as of the effective date of this Act shall  
165   complete its initial registration not later than 180 days after the effective date of this Act. Such  
166   initial registration shall be valid until 180 days from the end of the PEO's first fiscal year end  
167   that is more than one year after the effective date of this Act.

168           (2) Each PEO not operating within this State as of the effective date of this Act shall  
169   complete its initial registration prior to initiating operations within this State. In the event, a PEO  
170   not registered in this state becomes aware that an existing client not based in this state has  
171   employees and operations in this state, the PEO must either decline to provide PEO services for  
172   those employees or notify the Department within five business days of its knowledge of this fact  
173   and file a limited registration application under (F) below or a full business registration if there  
174   are more than 50 covered employees. The Department may issue an interim operating permit for  
175   the period the registration applications are pending if a) the PEO is currently registered or

176 licensed by another state and b) the Department determines it to be in the best interests of the  
177 potential covered employees.

178 (d) Within 180 days after the end of a Registrant's fiscal year, such Registrant shall  
179 renew its registration by notifying the Department of Labor of any changes in the information  
180 provided in such Registrant's most recent registration or renewal. A Registrant's existing  
181 registration shall remain in effect during the pendency of a renewal application.

182 (e) PEOs in a PEO Group may satisfy the reporting and financial requirements of this  
183 registration law on a combined or consolidated basis provided that each member of the PEO  
184 Group guarantees the financial capacity obligations under this Act of each other member of the  
185 PEO Group. In the case of a PEO Group that submits a combined or consolidated audited  
186 financial statement including entities that are not PEOs or that are not in the PEO Group, the  
187 controlling entity of the PEO Group under the consolidated or combined statement must  
188 guarantee the obligations of the PEOs in the

189 PEO Group.

190 (f) Limited Registration:

191 (1) A PEO is eligible for a limited registration under this Act if such PEO:

192 (A) Submits a properly executed request for limited registration on a form provided  
193 by the Department of Labor;

194 (B) Is domiciled outside this State and is licensed or registered as a Professional

195 Employer Organization in another state;

196 (C) Does not maintain an office in this State or directly solicit Clients located or  
197 domiciled within this State; and

198 (D) Does not have more than 50 Covered Employees employed or domiciled in this State  
199 on any given day.

200 (2) A limited registration is valid for one year, and may be renewed.

201 (3) A PEO seeking limited registration under this Section shall provide the Department of  
202 Labor with information and documentation necessary to show that the PEO qualifies for a  
203 limited registration.

204 (4) Section 6 shall not apply to applicants for limited registration.

205 (g) The Department of Labor shall maintain a list of Professional Employer  
206 Organizations registered under this Act that is readily available to the public by electronic or  
207 other means.

208 (h) The Department of Labor may prescribe forms necessary to promote the efficient  
209 administration of this section.

210 (i) The Department of Labor shall to the extent practical permit the acceptance of  
211 electronic filings in conformance with the Uniform Electronic Transactions Act, including  
212 applications, documents, reports, and other filings required by this Act. The Department of  
213 Labor may provide for the acceptance of electronic filings and other assurance by an independent  
214 and qualified assurance organization approved by the Director that provides satisfactory  
215 assurance of compliance acceptable to the Department consistent with or in lieu of the  
216 requirements of Sections 4, 6, and other requirements of this Act or the rules promulgated

217 pursuant to it. The Director shall permit a PEO to authorize such an approved assurance  
218 organization to act on the PEO's behalf in complying with the registration requirements of this  
219 Act, including electronic filings of information and payment of registration fees. Use of such  
220 an approved assurance organization shall be optional and not mandatory for a Registrant.  
221 Nothing in this subsection shall limit or change the Department's authority to register or  
222 terminate registration of a professional employer organization or to investigate or enforce any  
223 provision of this Act.

224 (j) All records, reports and other information obtained from a PEO under this Act, except  
225 to the extent necessary for the proper administration of this Act by the Department of Labor,  
226 shall be confidential and shall not be published or open to public inspection other than to public  
227 employees in the performance of their public duties.

228 Section 5. (a) Upon filing an initial registration statement under this Act, a PEO shall pay  
229 an initial registration fee not to exceed \$500.

230 (b) Upon each annual renewal of a registration statement filed under this Act, a PEO shall  
231 pay a renewal fee not to exceed \$250.

232 (c) The Department of Labor shall determine by rule any fee to be charged for a Group  
233 Registration.

234 (d) Each PEO seeking limited registration under the terms of this subsection shall pay a  
235 fee in the amount not to exceed \$250 upon initial application for limited registration and upon  
236 each annual renewal of such limited registration.

237 (e) Electronic Filing and Compliance: A PEO seeking registration pursuant to Section  
238 4(I) shall pay an initial and annual fee not to exceed \$250.

239 (f) No fee charged pursuant to this Act shall exceed the amount reasonably necessary for  
240 the administration of this Act.

241 Section 6. (a) Except as provided by Section 4 (F) and (I) above, each PEO or  
242 collectively each PEO Group shall maintain either:

243 (1) Positive working capital (current assets minus current liabilities) as defined by  
244 Generally Accepted Accounting Principles at registration as reflected in the financial statements  
245 submitted to the Department of Labor with the initial registration and each annual renewal; or

246 (2) A PEO or PEO Group that does not have positive working capital may provide a  
247 bond, irrevocable letter of credit, or securities with a minimum market value equaling the  
248 deficiency plus \$100,000 to the Department of Labor. Such bond to be held by a depository  
249 designated by the Department of Labor, securing payment by the PEO of all taxes, wages,  
250 benefits or other entitlement due to or with respect to Covered Employees, if the PEO does not  
251 make such payments when due.

252 Section 7. (a) Except as specifically provided in this Act or in the Professional Employer  
253 Agreement, in each Co-employment Relationship:

254 (1) The Client shall be entitled to exercise all rights, and shall be obligated to perform all  
255 duties and responsibilities, otherwise applicable to an employer in an employment relationship;  
256 and

257 (2) The PEO shall be entitled to exercise only those rights, and obligated to perform only  
258 those duties and responsibilities, specifically required by this Act or set forth in the Professional  
259 Employer Agreement. The rights, duties, and obligations of the PEO as Co-employer with  
260 respect to any Covered Employee shall be limited to those arising pursuant to the Professional  
261 Employer Agreement and this Act during the term of co-employment by the PEO of such  
262 Covered Employee.

263 (3) Unless otherwise expressly agreed by the PEO and the Client in a Professional  
264 Employer Agreement, the Client retains the exclusive right to direct and control the Covered  
265 Employees as is necessary to conduct the Client's business, to discharge any of Client's fiduciary  
266 responsibilities, or to comply with any licensure requirements applicable to Client or to the  
267 Covered Employees.

268 (b) Except as specifically provided in this Act, the Co-employment Relationship between  
269 the Client and the PEO, and between each Co-employer and each Covered Employee, shall be  
270 governed by the Professional Employer Agreement. Each Professional Employer Agreement  
271 shall include the following:

272 (1) The allocation of rights, duties and obligations as described in paragraph (A) above

273 (2) That the PEO shall have responsibility to pay wages to Covered Employees; to  
274 withhold, collect, report and remit payroll-related and unemployment taxes; and, to the extent the  
275 PEO has assumed responsibility in the Professional Employer Agreement, to make payments for  
276 employee benefits for Covered Employees. As used in this section, the term "wages" does not  
277 include any obligation between a Client and a Covered Employee for payments beyond or in  
278 addition to the Covered Employee's salary, draw or regular rate of pay, such as bonuses,

279 commissions, severance pay, deferred compensation, profit sharing or vacation, sick or other  
280 paid time off pay, unless the PEO has expressly agreed to assume liability for such payments in  
281 the Professional Employer Agreement;

282 (3) That the PEO shall have a right to hire, discipline, and terminate a Covered  
283 Employee, as may be necessary to fulfill the PEO's responsibilities under this Act and the  
284 Professional Employer Agreement. The Client shall have a right to hire, discipline, and terminate  
285 a Covered Employee.

286 (4) The responsibility to obtain workers' compensation coverage for Covered Employees,  
287 from a carrier licensed to do business in this State and otherwise in compliance with all  
288 applicable requirements, shall be specifically allocated to either the Client or the PEO in the  
289 Professional Employer Agreement.

290 (c) With respect to each Professional Employer Agreement entered into by a PEO, such  
291 PEO shall provide written notice to each Covered Employee affected by such agreement of the  
292 general nature of the Co-employment Relationship between and among the PEO, the Client, and  
293 such Covered Employee.

294 (d) Except to the extent otherwise expressly provided by the applicable Professional  
295 Employer Agreement:

296 (1) A Client shall be solely responsible for the quality, adequacy or safety of the goods or  
297 services produced or sold in Client's business.

298 (2) A Client shall be solely responsible for directing, supervising, training and controlling  
299 the work of the Covered Employees with respect to the business activities of the Client and



300 solely responsible for the acts, errors or omissions of the Covered Employees with regard  
301 to such activities.

302 (3) A Client shall not be liable for the acts, errors or omissions of a PEO, or of any  
303 Covered Employee of the Client and a PEO when such Covered Employee is acting under the  
304 express direction and control of the PEO.

305 (4) A PEO shall not be liable for the acts, errors, or omissions of a Client or of any  
306 Covered Employee of the Client when such Covered Employee is acting under the express  
307 direction and control of the Client.

308 (5) Nothing in this subsection shall serve to limit any contractual liability or obligation  
309 specifically provided in the written Professional Employer Agreement.

310 (6) A Covered Employee is not, solely as the result of being a Covered Employee of a  
311 PEO, an employee of the PEO for purposes of general liability insurance, fidelity bonds, surety  
312 bonds, employer's liability which is not covered by workers' compensation, or liquor liability  
313 insurance carried by the PEO unless the Covered Employees are included by specific reference  
314 in the Professional Employer Agreement and applicable prearranged employment contract,  
315 insurance contract or bond.

316 (e) A PEO under this Act is not engaged in the sale of insurance or in acting as a third  
317 party administrator (TPA) by offering, marketing, selling, administering or providing  
318 professional employer services which include services and employee benefit plans for Covered  
319 Employees.

320 (f) For purposes of this State or any county, municipality or other political subdivision  
321 thereof:

322 (1) Covered Employees whose services are subject to sales tax shall be deemed the  
323 employees of the Client for purposes of collecting and levying sales tax on the services  
324 performed by the Covered Employee. Nothing contained in this Act shall relieve a Client of any  
325 sales tax liability with respect to its goods or services.

326 (2) Any tax or assessment imposed upon Professional Employer Services or any  
327 business license or other fee which is based upon “gross receipts” shall allow a deduction from  
328 the gross income or receipts of the business derived from performing professional  
329 employer services that is equal to that portion of the fee charged to a Client that represents the  
330 actual cost of wages and salaries, benefits, worker’s compensation, payroll taxes, withholding, or  
331 other assessments paid to or on behalf of a covered employee by the professional employer  
332 organization under a professional employer agreement.

333 (3) Any tax assessed or assessment or mandated expenditure on a per capita or per  
334 employee basis shall be assessed against the Client for Covered Employees and against the  
335 Professional Employer Organization for its employees who are not Covered Employees co-  
336 employed with a client. Benefits or monetary consideration that meet the requirements of  
337 mandates imposed on a Client and that are received by Covered Employees through the PEO  
338 either through payroll or through benefit plans sponsored by the PEO shall be credited against  
339 the Client’s obligation to fulfill such mandates

340 (4) In the case of a tax or an assessment imposed or calculated upon the basis of total  
341 payroll, the Professional Employer Organization shall be eligible to apply any small business

342 allowance or exemption available to the Client for the Covered Employees for purpose of  
343 computing the tax.

344 Section 8. (a) A Client and a registered PEO shall each be deemed an employer under the  
345 laws of this State for purposes of sponsoring retirement and welfare benefit plans for its Covered  
346 Employees.

347 (b) A fully-insured welfare benefit plan offered to the Covered Employees of a single  
348 PEO shall be treated for purposes of state law as a single employer welfare benefit plan.

349 (c) For purposes of Chapter 35 of the Acts of 2013, as amended M.G.L. Ch. 176J, a PEO  
350 shall be considered the employer of all of its Covered Employees and all Covered Employees of  
351 one or more Clients participating in a health benefit plan sponsored by a single PEO shall be  
352 considered employees of that PEO.

353 (d) If a PEO offers to its Covered Employees any health benefit plan which is not fully-  
354 insured by an authorized insurer, the plan shall:

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

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

359 (3) Provide sound reserves for such plan as determined using generally accepted actuarial  
360 standards of practice and consistent with the prudence and loyalty standards of care for

361 ERISA fiduciaries; and

362 (4) Provide written notice to each Covered Employee participating in the benefit plan that  
363 the plan is self-funded or is not fully-insured.

364 Section 9. (a) The responsibility to obtain workers' compensation coverage for Covered  
365 Employees shall be specifically allocated in the Professional Employer Agreement to  
366 either the Client or the PEO.

367 (b) Workers' compensation coverage shall be provided pursuant to M.G.L. Ch. 152 sec.  
368 14A and 211 CMR 111.

369 (c) Both Client and the PEO shall be considered the employer for purpose of coverage  
370 under the Workers' Compensation Act. The protection of the exclusive remedy provision of the  
371 Workers' Compensation Act shall apply to the PEO, the Client, and to all Covered Employees  
372 and other employees of the Client irrespective of which Co-employer obtains such workers'  
373 compensation coverage.

374 Section 10. (a) For purposes of M.G.L. Ch. 151A, Covered Employees of a registered  
375 PEO are considered the employees of the PEO, which shall be responsible for the payment of  
376 contributions, penalties, and interest on wages paid by the PEO to its

377 Covered Employees during the term of the applicable Professional Employer Agreement.

378 (b) The PEO shall report and pay all required contributions to the unemployment  
379 compensation fund using the state employer account number and the experience rate of the client  
380 company pursuant to 30 CMR 5.07 through 5.13.

381 Section 11. (a) PEO Services – A person may not knowingly:

382 (1) Offer or provide Professional Employer Services or use the names PEO, Professional  
383 Employer Organization, staff leasing, employee leasing, administrative employer or other title  
384 representing Professional Employer Services without first becoming registered under this Act.

385 (2) May not knowingly provide false or fraudulent information to the Department of  
386 Labor in conjunction with any registration, renewal, or in any report required under this Act.

387 (b) Disciplinary action may be taken by the Department of Labor for violation of  
388 (A)(1)(a) or (b) above or for:

389 (1) The conviction of a professional employer organization or a controlling person of a  
390 PEO of a crime that relates to the operation of a PEO or the ability of the licensee or a  
391 controlling person of a licensee to operate a PEO;

392 (2) Knowingly making a material misrepresentation to the Department, or other  
393 governmental agency; or

394 (3) A willful violation this Act or any order or regulation issued by the Department under  
395 this Act.

396 (c) Upon finding, after notice and opportunity for hearing, that a PEO, or a controlling  
397 person of a PEO, or a person offering PEO services has violated one or more provisions of this  
398 section and subject to any appeal, the Director may:

399 (1) Deny an application for a license;

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

401           (3) Impose an administrative penalty in an amount not to exceed one thousand dollars for  
402 each material violation;

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

405           (5) Issue a cease and desist.

406           Section 12. The provisions of this Act are severable. If any provision of this Act or  
407 application thereof to any person or circumstance, is held invalid, such invalidity shall not  
408 affect other provisions or applications of this Act which can be given effect without the invalid  
409 provision or application.

410           Section 13. This act shall be effective 60 days upon passage.