

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.