

44-1707. Co-employment relationships; covered employees; duties of client and employer organization; state, county, municipality and political subdivisions. (a) No person shall knowingly enter into a co-employment relationship in which less than a majority of the employees of the client in this state are covered employees, or in which less than half of the payroll of the client in this state is attributable to covered employees.

(b) Except as otherwise provided in K.S.A. 2016 Supp. 44-1701 through 44-1711, and amendments thereto, or in the professional employer agreement, in each co-employment relationship:

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

(2) the professional employer organization shall be entitled to exercise only those rights and obligated to perform only those duties and responsibilities specifically required by the provisions of K.S.A. 2016 Supp. 44-1701 through 44-1711, and amendments thereto, or in the professional employer agreement. The rights, duties and obligations of the professional employer organization as co-employer with respect to any covered employee shall be limited to those arising pursuant to the professional employer agreement or as required by the provisions of K.S.A. 2016 Supp. 44-1701 through 44-1711, and amendments thereto, during the term of co-employment by the professional employer organization of such covered employee; and

(3) the client retains the exclusive right to direct and control the covered employees as is necessary to conduct the client's business, to discharge any of the client's fiduciary responsibilities or to comply with any licensure requirements applicable to the client or to the covered employees.

(c) Except as otherwise provided in K.S.A. 2016 Supp. 44-1701 through 44-1711, and amendments thereto, the co-employment relationship between the client and the professional employer organization, and between each co-employer and each covered employee, shall be governed by the professional employer agreement. Each professional employer agreement shall include the following:

(1) The allocation of rights, duties and obligations as described in this section;

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

(3) that, in addition to the client's right to hire, discipline and terminate a covered employee, the professional employer organization shall have a right to hire, discipline and terminate a covered employee only as may be necessary to fulfill the professional employer organization's responsibilities under the provisions of K.S.A. 2016 Supp. 44-1701 through 44-1711, and amendments thereto, or the professional employer agreement.

(d) For purposes of this section, wages do not include any obligation between a client and a covered employee for payments beyond, or in addition to, the covered employee's salary, draw or regular rate of pay, such as bonuses, commissions, severance pay, deferred compensation, profit sharing or vacation, sick or other paid time off pay, unless the professional employer organization has expressly agreed to assume liability for such payments in the professional employer agreement.

(e) With respect to each professional employer agreement entered into by a professional employer organization, such professional employer organization shall provide written notice to each covered employee affected by such agreement. The professional employer organization shall provide and the client is required to post the following notices in a conspicuous place at the client's worksite:

(1) Notice of the general nature of the co-employment relationship between and among the professional employer organization, the client and such covered employees; and

(2) any notices required by the state relating to unemployment compensation and minimum wages.

(f) Except as otherwise provided in the professional employer agreement:

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

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

(3) a client shall not be liable for the acts, errors or omissions of a professional employer organization, or of any covered employee of the client and a professional employer organization when such covered employee is acting under the express direction and control of the professional employer organization;

(4) nothing in this subsection shall limit any contractual liability or obligation specifically provided in a professional employer agreement;

(5) a covered employee is not, solely as the result of being a covered employee of a professional employer organization, an employee of the professional employer organization for purposes of general liability insurance, fidelity bonds, surety bonds, employer's liability which is not covered by workers' compensation or any other liability insurance carried by the professional employer organization unless the covered employee is included for such purposes by specific reference in the professional employer agreement and in any applicable prearranged employment contract, insurance contract or bond;

(6) a professional employer organization shall not sell, solicit or negotiate insurance on behalf of a client, covered employee or other employee of a client except through a person or entity licensed to do so pursuant to state law;

(7) a professional employer organization shall sponsor health and workers' compensation plans for its covered employees only on a fully insured basis from an insurance carrier admitted to do business in this state, and if any such health or workers' compensation policies are canceled or non-renewed, the professional employer organization shall so notify all clients affected within seven days that such clients no longer have health or workers' compensation insurance, as applicable on such client's employees;

(8) for purposes of this state or any county, municipality or other political subdivision thereof:

(A) Covered employees whose services are subject to sales tax shall be deemed the employees of the client for purposes of collecting and levying sales tax on the services performed by the covered employee, and nothing in the provisions of K.S.A. 2016 Supp. 44-1701 through 44-1711, and amendments thereto, shall be construed to relieve a client of any sales tax liability with respect to such client's goods or services;

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

(C) any tax assessed or assessment or mandated expenditure on a per capita or per employee basis shall be assessed against the client for covered employees and against the professional employer organization for its employees who are not covered employees co-employed with a client, and any benefits or monetary consideration that meets the requirements of mandates imposed on a client and that are received by covered employees through the professional employer organization either through payroll or through benefit plans sponsored by the professional employer organization shall be credited against the client's obligation to fulfill such mandates; and

(D) in the case of a tax or an assessment imposed or calculated upon the basis of total payroll, the professional employer organization shall be eligible to apply any small business allowance or exemption available to the client for the covered employees for the purpose of computing the tax.

History: L. 2012, ch. 142, § 7; Jan. 1, 2014.