

Substitute for SENATE BILL No. 121

By Committee on Commerce

3-15

AN ACT relating to professional employer organizations; establishing certain minimum standards applicable to all professional employer organizations operating in the state.

Be it enacted by the Legislature of the State of Kansas:

Section 1. This act shall be known as the professional employer organization act.

Sec. 2. Unless the context clearly requires otherwise, these terms are defined as follows:

(a) "Administrative fee" means those amounts charged by the professional employer organization to the client over and above amounts applied to the mandatory state and federal taxes, wages of assigned workers and amounts applied to premiums or contributions for benefits provided for assigned workers.

(b) "Assigned worker" means a person having an employment relationship with both the professional employer organization and the client.

(c) "Client" means a person who contracts with a professional employer organization to obtain employer services from another person through a professional employer arrangement.

(d) "Person" means an individual, an association, a company, a firm, a partnership, a corporation or any other form of legally recognized entity.

(e) "Professional employer arrangement" means an arrangement, under contract or whereby:

(1) A professional employer organization agrees to employ all or a majority of a client's workforce;

(2) the arrangement is intended to be, or is, ongoing rather than temporary in nature;

(3) employer responsibilities for workers under the arrangement are in fact shared by the professional employer organization and the client; and

(4) for the purposes of this act, a professional employer arrangement shall not include:

(A) Arrangements wherein a person, whose principal business activity is not entering into professional employer arrangements, shares employees with a commonly owned company within the meaning of section

1 414(b) and (c) of the federal internal revenue code of 1986, as amended,
2 and which does not hold itself out as a professional employer organization.

3 (B) Arrangements in which a person assumes full responsibility for
4 the product or service performed by such person or such person's agents
5 and retains and exercises, both legally and in fact, a right of direction and
6 control over the individuals whose services are supplied under such con-
7 tractual arrangements, and such person and such person's agents perform
8 a specified function for the client which is separate and divisible from the
9 primary business or operations of the client.

10 (C) Any person otherwise subject to this act if, during any fiscal year
11 of the person commencing after July 1, 2000, the person pays total gross
12 wages to employees employed by the person in the state under one or
13 more professional employer arrangements which do not exceed 5% of the
14 total gross wages paid to all employees employed by the person in the
15 state during the same fiscal year under all arrangements described in
16 paragraph (4) and that each person does not advertise or hold itself out
17 to the public as providing services as a professional employer organization.

18 (f) "Professional employer organization" means any person engaged
19 in providing the services of employees pursuant to one or more profes-
20 sional employer arrangements or any person that represents itself to the
21 public as providing services pursuant to a professional employer
22 arrangement.

23 Sec. 3. (a) Each professional employer organization shall have a writ-
24 ten contract between the client and the professional employer organiza-
25 tion setting forth the responsibilities and duties of each party. The con-
26 tract shall contain a description of the type of services to be rendered by
27 the professional employer organization and the respective rights and ob-
28 ligations of the parties.

29 (b) Each professional employer organization shall provide written no-
30 tice of the general nature of the relationship between the professional
31 employer organization and the client to the assigned workers located at
32 the client work site.

33 (c) A professional employer organization shall be considered an em-
34 ployer for the purposes of withholding state income tax of the assigned
35 workers pursuant to the Kansas income tax act. Commencing after De-
36 cember 31, 1999, the client shall be considered as the employer of an
37 assigned worker under the terms of the professional employer arrange-
38 ment between the client and the professional employer organization, for
39 purposes of: (1) subsection (d) of K.S.A. 79-32,154, subsection (d) of
40 K.S.A. 74-50,114, K.S.A. 79-32,160a or K.S.A. 2000 Supp. 74-50,131, and
41 amendments thereto; and (2) calculating the client's payroll factor under
42 K.S.A. 79-3283. The client shall provide to the department of revenue
43 the payroll information for assigned workers needed for purposes of ad-

1 ministering the above provisions.

2 (d) As long as the professional employer organization's contract with
3 the client remains in force, the professional employer organization shall
4 have a right to and shall assume the following responsibilities:

5 (1) Pay wages and collect, report and pay employment taxes of its
6 assigned workers from its own accounts;

7 (2) pay unemployment taxes as required by the employment security
8 law;

9 (3) secure and provide all required workers compensation coverage
10 for its assigned workers either in its own name or in its clients name.

11 (e) Both client and the professional employer organization shall be
12 considered the employer for the purpose of the workers compensation
13 act.

14 (f) Both the professional employer organization and its client shall be
15 entitled to protection of the exclusive remedy provision of the workers
16 compensation act irrespective of which entity secures and provides such
17 workers compensation coverage.

18 (g) A recognized professional employer organization shall be deemed
19 the employer for the purposes of sponsoring and maintaining benefit and
20 welfare plans for its assigned workers.

21 (h) Assigned workers shall be deemed employees of the client for
22 general liability purposes and for purposes of: Automobile insurance, fi-
23 delity bonds, surety bonds or employer's liability insurance other than
24 workers compensation insurance carried by the professional employer
25 organization unless the assigned workers are included by specific refer-
26 ence in the applicable prearranged employment contract, insurance con-
27 tract or bond.

28 (i) Except for the conduct of the professional employer organization,
29 a professional employer organization is not engaged in the unauthorized
30 practice of an occupation, trade, or profession that is licensed, certified
31 or otherwise regulated by a governmental entity solely by entering into a
32 professional employer arrangement with a client that is so licensed, cer-
33 tified or regulated.

34 Sec. 4. (a) Financing of unemployment insurance benefits for work-
35 ers assigned by a professional employer organization to a nonprofit or-
36 ganization or a unit of government shall be paid by the unit or organization
37 as provided by the employment security law. Unemployment insurance
38 benefits for workers assigned by a professional employer organization to
39 any client other than a nonprofit organization or governmental unit shall
40 be made in accordance with the provisions of this section.

41 (b) During the term of a professional employer organization agree-
42 ment, a professional employer organization is liable in accordance with
43 the provisions of employment security law, for the payment of contribu-

1 tions, penalties and interest on wages paid to employees assigned to a
2 client company. The professional employer organization shall report and
3 pay all contributions under its state employer account number, using the
4 applicable contribution rate.

5 (c) When a client ceases to pay wages, such client shall be subject to
6 termination of its employer account and experience rating records in the
7 same manner as any other employer, in accordance with the provisions
8 of employment security law. If a client which has ceased to pay wages
9 subsequently resumes paying wages, it will be assigned the appropriate
10 experience rate in accordance with the provisions of employment security
11 law.

12 Sec. 5. (a) Nothing in this act exempts a client of a professional em-
13 ployer organization, nor an assigned worker, from any other state, local
14 or federal license or registration requirement.

15 (b) Any individual who must be licensed, registered or certified ac-
16 cording to law and who is an assigned worker is deemed an employee of
17 the client for purposes of the license, registration or certification.

18 (c) Except for the conduct of the professional service organization, a
19 professional employer organization does not engage in an occupation,
20 trade or profession that is licensed, certified or otherwise regulated by a
21 governmental entity solely by entering into a professional employer ar-
22 rangement with a client company or an assigned worker.

23 Sec. 6. This act shall take effect and be in force from and after its
24 publication in the statute book.

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