

Professional Employer Organization Registration; Senate Sub. for HB 2077

Senate Sub. for HB 2077 creates the Professional Employer Organization (PEO) Act. A person or business that enters into an ongoing co-employment relationship with an employer-client is defined as a PEO. Prior to providing professional employee-related services for client businesses, a PEO shall register with the Commissioner of Insurance (Commissioner) by providing the following applicant information:

- Names by which the PEO conducts business;
- Principal address and the address of any field office in the state;
- Taxpayer or employer identification number;
- A list, by jurisdiction, of each name under which the PEO has operated in the preceding five years;
- A statement of ownership from owners with 15.0 percent or more equity in the business;
- A statement of management, including the names and business experience of senior executive officers; and
- A financial statement, which would include the latest annual audit and evidence of:
 - Positive working capital; or
 - If there is insufficient working capital, the submission of a bond, an irrevocable letter of credit, or securities with a minimum market value which would be equal to positive working capital plus \$100,000. Such a bond would be held by a depository designated by the Commissioner.

PEOs already doing business in the state shall register within 60 days after the bill's enactment date. Each PEO is required to renew its annual registration within 60 days after the end of its fiscal year. If a PEO discovers a client has covered employees in Kansas, the PEO either may decline to provide services or notify the Commissioner within five business days after the discovery and file for a limited registration or a full registration if there were more than 50 covered employees. An annual, limited registration is applicable to a PEO that:

- Is located outside Kansas and registered as a PEO in another state;
- Does not have a presence in Kansas or directly solicits clients in the state; and
- Does not have more than 50 covered employees in any one day.

A professional employer group, composed of two or more PEOs owned or controlled by the same person, may register on behalf of its members, provided each PEO has the ability to guarantee its financial capacity obligations.

The Kansas Insurance Department maintains a list of registered PEOs that is available to the public. An initial application fee may not exceed \$1,000. Fees for renewal or limited registration, either for initial or renewal applications, may not exceed \$500. Moneys collected from fees and penalties are deposited in the newly created Professional Employer Organization Fee Fund. The fund is under the control of the Commissioner for administration of the bill.

Under the PEO Act, an employer may not knowingly enter into a co-employment relationship that either covers less than a majority of the employer's in-state employees or in which less than half of the employer's Kansas payroll is attributable to covered employees. A PEO provides written notice of the professional employer arrangement to each covered employee. Neither the bill nor any professional employer agreement affects:

- Collective bargaining agreements;
- The rights of covered employees;
- The contractual relationship between a covered employee and any client;
- The creation of new enforceable rights for a covered employee against a PEO;
- Any licensing, registration, or certification requirement of the employer-client or the covered employee;
- An employer-client's designation as woman, minority-owned, veteran, service-disabled veteran, or small business enterprise; and
- An employer-client's eligibility for state or local economic development or incentive programs.

The PEO and the employer-client are responsible for sponsoring retirement and employee welfare benefit plans. A professional employer agreement may require the PEO to make payments for covered employees' benefits. A professional employer agreement between a PEO and its employer-client includes:

- The allocation of rights, duties, and obligations;
- The PEO's responsibility to pay the wages of covered employees, along with payroll-related withholding and unemployment taxes; and
- The PEO's right to hire, discipline, or terminate a covered employee.

Unless a professional employer agreement specified differently, the relationship between an employer and a PEO may:

- Allocate rights, duties, and obligations between the employer-client and the PEO;
- Assign to the PEO the responsibility to pay wages for covered employees, withhold and remit funds for taxes, and pay for benefits;
- Assign to the PEO the right to exercise employment decisions over covered personnel;
- Assign to the employer-client the responsibility for the employees' production of goods and services. The employer-client is not liable for an employee when that person is acting under the direction and control of the PEO;
- Classify a covered employee to not be an employee of the PEO for liability or workers compensation purposes;
- Prohibit a PEO from selling insurance on behalf of an employer-client, but it sponsors health and workers compensation plans for its covered employees from an insurance carrier admitted to do business in Kansas (if such policies are canceled or non-renewed, the PEO must notify affected clients within seven days);
- With regard to any gross receipts tax imposed upon a PEO, exclude gross income derived from professional employer services performed for an employer-client; and
- Assign to the employer-client the responsibility for collecting sales tax and paying any tax imposed on a per-employee basis.

If it is determined in a civil hearing by the Commissioner that a person or PEO violated the bill or promulgated rules and regulations, the result may be:

- Denial of application for registration;
- Revocation of, restriction of, or refusal to renew a registration;
- A civil fine not to exceed \$10,000 per violation;
- Probation; or
- A Cease and Desist Order issued by the Commissioner.

The Commissioner is required to adopt rules and regulations to implement the provisions of the PEO Act.