

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

HOUSE BILL HB2267

By: Plunk

AS INTRODUCED

An Act relating to labor; providing short title; creating the Oklahoma Professional Employer Organization Recognition Act; stating findings and determinations; defining terms; providing for exemptions; specifying nonexempt provisions; specifying requirements for being a Professional Employer Organization (PEO); requiring the PEO be the employer of its coemployees for certain purposes; providing for certain workers' compensation coverage; providing for certain employee benefits; providing that certain agreements not be considered the sale of insurance; providing for certain unemployment compensation insurance; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 600.1 of Title 40, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Professional Employer Organization Recognition Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 600.2 of Title 40, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Legislature hereby finds, determines, and declares that:

1. Professional employer organizations provide a valuable service to commerce and the citizens of this state;
2. The rights and responsibilities of professional employer organizations must be clearly defined;

3. This act recognizes that a professional employer organization and its client may both be an employer of the same employee. To the extent not in conflict with this act, in a professional employer organization coemployment arrangement, the primary recognition of this relationship shall be based on the nature of the relationship as defined by a written contract between a professional employer organization and a client; and

4. Professional employer organizations shall be a coemployer and an employing unit for all worksite employees covered by a written professional employer agreement.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 600.3 of Title 40, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Professional Employer Organization Recognition Act:

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

2. "Client" means a person who contracts with a professional employer organization to obtain professional employer services from another person through a professional employer agreement;

3. "Professional employer agreement" means a written professional employer services contract whereby:

- a. a professional employer organization agrees to coemploy a majority of the employees providing service at a client worksite,
- b. the agreement is intended to be ongoing rather than temporary in nature, and
- c. employer responsibilities for worksite employees, including those of hiring, firing and disciplining are allocated by and between the professional employer organization and the client;

4. "Professional employer organization" or "PEO" means any person that enters into a professional employer agreement with a client or clients to coemploy all or a majority of that client's or those clients' existing workforce at a client worksite. In determining whether the professional employer organization employs a majority of the employees at a client worksite, any employees employed under the agreement after the initial placement of client employees on the payroll of the PEO shall be included; and

5. "Coemployee" or "worksite employee" means a person having an employment relationship with both the professional employer organization and the client. The officers, directors, shareholders, or partners of the client may be considered coemployees or worksite employees of the PEO if they are earning wages and are acting as operational managers or performing services for the client.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 600.4 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. A professional employer agreement shall have no effect on existing collective bargaining agreements. Notwithstanding any statements to the contrary, nothing in this act shall alter the rights or obligations of clients, professional employer organizations, or any coemployee under the National Labor Relations Act.

B. Nothing in this act exempts a client of a professional employer organization, or a coemployee, from any state, local, or federal license or registration requirement.

1. Any individual who must be licensed, registered, or certified according to law and who is a coemployee of a PEO and a client is deemed an employee of the client for purposes of any such license, registration, or certification; and

2. A professional employer organization does not engage in an occupation, trade, or profession that is licensed, certified, or otherwise regulated by a governmental entity solely by entering into a professional employer agreement with a client company or a coemployee.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 600.5 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. Each professional employer organization, as a condition to being recognized by this act, shall meet the following requirements:

1. Have a written professional employer agreement between the client and the professional employer organization setting forth the responsibilities and duties of each party. The professional employer agreement shall:

- a. contain a description of the type of services to be rendered by the professional employer organization and the respective rights and obligations of the parties, and
- b. provide that the professional employer organization:
 - (1) reserves a right of direction and control over its coemployees working at the client worksite. However, such right may be subject to the ability of the client to maintain such direction and control over the worksite employees as is necessary to conduct the business of the client and without which the client would be unable to conduct its business, discharge any fiduciary responsibility which it may have, or comply with any applicable licensure,
 - (2) assumes responsibility for the withholding and remittance of payroll-related taxes and employee benefits for coemployees from its own accounts,

as long as the contract between the client and professional employer organization remains in force, and

(3) retains authority to hire, terminate, and discipline worksite employees; and

2. Provide written notice of the general nature of the relationship between the professional employer organization and the client to those workers of the client that are coemployed by the professional employer organization.

B. A professional employer organization shall be considered an employer of its coemployees for purposes of state law.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 600.6 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. Both the client and the professional employer organization shall be considered the employer for the purpose of coverage under the workers' compensation laws of this state.

B. Both the professional employer organization and its client shall be entitled to protection of Oklahoma's exclusive remedy provision of the workers' compensation laws of this state irrespective of which entity secures and provides workers' compensation coverage.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 600.7 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. A professional employer organization shall be deemed for purposes of state law an employer for purposes of sponsoring and welfare benefit plans for its coemployees.

B. Nothing in this section shall preclude a client from including its coemployees in any welfare benefit plan sponsored by the client or any affiliated company.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 600.8 of Title 40, unless there is created a duplication in numbering, reads as follows:

The sale of professional employer services and negotiation of professional employer agreements by a PEO in conformance with the provisions of this act shall not constitute the sale of insurance within the meaning of the applicable law of this state.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 600.9 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. During the term of a professional employer agreement, a professional employer organization is liable, in accordance with the provisions of Title 40 of the Oklahoma Statutes, for the payment of contributions, penalties, and interest on wages paid to coemployees.

B. The professional employer organization shall report and pay all contributions under its state employer account number, using its contribution rate.

C. A PEO entering a professional employer agreement with a client during the course of a taxable year shall be credited for purposes of unemployment insurance under Title 40 of the Oklahoma Statutes for amounts already paid by the client for any employee coemployed by the PEO.

SECTION 10. This act shall become effective November 1, 2002.

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