

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 53rd Legislature (2012)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2446

By: Quinn of the House

and

Brinkley of the Senate

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10 COMMITTEE SUBSTITUTE

11 An Act relating to labor; amending 40 O.S. 2011,
12 Section 600.4, which relates to renewal of
13 registration by professional employer organizations;
14 providing for late-registration renewal fee;
15 authorizing Insurance Commissioner to take certain
16 actions on certain registrations; requiring certain
17 findings by Commissioner; providing civil penalties
18 for certain violations; authorizing Commissioner to
19 issue certain orders or file for injunctive relief;
20 providing for codification; and providing an
21 effective date.

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

23 SECTION 1. AMENDATORY 40 O.S. 2011, Section 600.4, is
24 amended to read as follows:

 Section 600.4 A. Registration required. Except as otherwise
provided in the Oklahoma Professional Employer Organization

1 Recognition and Registration Act, no person shall, unless the person
2 is registered as a PEO or PEO Group under the Oklahoma Professional
3 Employer Organization Recognition and Registration Act, provide,
4 advertise, or otherwise hold itself out as providing professional
5 employer services in this state.

6 B. Registration information.

7 1. Each PEO or PEO Group required to be registered under the
8 Oklahoma Professional Employer Organization Recognition and
9 Registration Act shall provide the Insurance Commissioner with
10 information required by the Commissioner on forms prescribed by the
11 Commissioner. Pursuant to paragraph 2 of this subsection, a PEO or
12 PEO Group may use a qualified assurance organization as approved by
13 the Commissioner to provide services related to the registration of
14 the PEO or PEO Group. A PEO or PEO Group may authorize an assurance
15 organization to act on behalf of the PEO or PEO Group in complying
16 with the registration requirements set forth in the Oklahoma
17 Professional Employer Organization Recognition and Registration Act,
18 including, but not limited to, electronic filings of information and
19 payment of registration fees. At a minimum, PEOs, PEO Groups or an
20 approved assurance organization acting on behalf of the PEO or PEO
21 Group, shall provide the following information:

22 a. the name or names under which the PEO or PEO Group
23 conducts business,

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- 1 b. the address of the principal place of business of the
2 PEO or PEO Group and the address of each office it
3 maintains in this state,
4 c. the PEO's or PEO Group's taxpayer or employer
5 identification number,
6 d. a list by jurisdiction of each name under which the
7 PEO or PEO Group has operated in the preceding five
8 (5) years, including any alternative names, names of
9 predecessors and, if known, successor business
10 entities,
11 e. a statement of ownership, which shall include the name
12 and evidence of the business experience of any person
13 that, individually or acting in concert with one or
14 more other persons, owns or controls, directly or
15 indirectly, twenty-five percent (25%) or more of the
16 equity interests of the PEO or PEO Group,
17 f. a statement of management, which shall include the
18 name and evidence of the business experience of any
19 person who serves as president, chief executive
20 officer, or otherwise has the authority to act as
21 senior executive officer of the PEO or PEO Group, and
22 g. a financial statement setting forth the financial
23 condition of the PEO or PEO Group, as of a date not
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1 earlier than one hundred eighty (180) days prior to
2 the date submitted to the Commissioner, prepared in
3 accordance with generally accepted accounting
4 principles, and audited or reviewed by an independent
5 certified public accountant licensed to practice in
6 the jurisdiction in which such accountant is located.
7 A PEO Group may submit combined or consolidated
8 audited or reviewed financial statements to meet the
9 requirements of this section.

10 2. The financial statement required by subparagraph g of
11 paragraph 1 of this subsection may be dated as of a date that is not
12 earlier than three hundred sixty-five (365) days before the date on
13 which the application is submitted in the event the PEO or PEO Group
14 provides the following:

- 15 a. evidence that is acceptable to the Commissioner that
16 it is licensed or registered in good standing in
17 another state with equal or greater requirements than
18 the requirements of the Oklahoma Professional Employer
19 Organization Recognition and Registration Act,
20 b. quarterly financial statements of management for each
21 calendar quarter as of the most recent audit that
22 demonstrate continuing financial operations acceptable
23 to the Commissioner, and

1 c. the certification of an independent Certified Public
2 Accountant that as of the end of the most recent
3 calendar quarter, the PEO or PEO Group has paid all of
4 its state and federal payroll taxes, health and
5 workers' compensation premiums, and contributions to
6 employee retirement plans in a timely and appropriate
7 manner.

8 3. For purposes of the Oklahoma Professional Employer
9 Organization Recognition and Registration Act, "assurance
10 organization" means an independent entity approved by the
11 Commissioner to certify the qualifications of a PEO or PEO Group for
12 registration under this section and Section 600.6 of this title and
13 any related requirements and procedures. To be considered for
14 approval as an independent and qualified assurance organization, the
15 assurance organization shall submit a written request for approval
16 to the Commissioner. The written request shall include, but not be
17 limited to, the following:

18 a. evidence that the assurance organization is
19 independent and has an established national program
20 for the accreditation and financial assurance of PEOs
21 and PEO Groups based on requirements similar to the
22 requirements of the Oklahoma Professional Employer
23 Organization Recognition and Registration Act, and any
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1 rules promulgated for the implementation of the
2 Oklahoma Professional Employer Organization
3 Recognition and Registration Act,

4 b. evidence that the assurance organization has
5 documented qualifications, standards, procedures, and
6 financial assurance acceptable to the Commissioner and
7 is licensed or otherwise approved by one or more
8 states to certify the qualifications of PEOs or PEO
9 Groups,

10 c. an agreement to provide information, compliance
11 monitoring services, and a level of financial
12 assurance as deemed acceptable by the Commissioner,

13 d. an agreement to provide the Commissioner with an
14 application that has been executed by each PEO or PEO
15 Group requesting alternative registration under this
16 section and Section 600.6 of this title and related
17 requirements and procedures in a form approved by the
18 Commissioner. The application shall:

19 (1) authorize the assurance organization to share
20 with the Commissioner any application and
21 compliance reporting information required under
22 the Oklahoma Professional Employer Organization
23 Recognition and Registration Act that has been
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1 provided to the assurance organization by the PEO
2 or PEO Group,

3 (2) authorize the Commissioner to accept information
4 shared by the assurance organization for
5 registration or renewal of registration of the
6 PEO or PEO Group as if the information was
7 provided directly to the Commissioner by the PEO
8 or PEO Group,

9 (3) provide the certification of the PEO or PEO Group
10 that the information provided by the assurance
11 organization to the Commissioner is true and
12 complete and that the PEO or PEO Group is in full
13 and complete compliance with all requirements of
14 the Oklahoma Professional Employer Organization
15 Recognition and Registration Act, and

16 (4) provide the certification of the assurance
17 organization that the PEO or PEO Group is in
18 compliance with the standards and procedures of
19 the assurance organization which are similar to
20 the requirements of the Oklahoma Professional
21 Employer Organization Recognition and
22 Registration Act and is qualified for
23 registration or renewal of registration under the
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Oklahoma Professional Employer Organization
Recognition and Registration Act,

- e. an agreement to provide written notice to the Commissioner within two (2) business days of determination by the assurance organization of the failure of a PEO or PEO Group to meet the qualifications for registration under the Oklahoma Professional Employer Organization Recognition and Registration Act or determination by the assurance organization of the failure of the PEO or PEO Group to meet the qualifications for accreditation or certification by the assurance organization, and
- f. an agreement to share with the Commissioner in a timely manner the information and supporting documentation provided to the assurance organization by the PEO or PEO Group similar to the information and documentation required for registration or renewal of registration under the Oklahoma Professional Employer Organization Recognition and Registration Act.

C. Initial registration.

- 1. Each PEO or PEO Group operating within this state as of November 1, 2002, shall complete its initial registration not later

1 than one hundred eighty (180) days after the end of the PEO's or PEO
2 Group's first fiscal year ending after November 1, 2002.

3 2. Each PEO or PEO Group not operating within this state as of
4 November 1, 2002, shall complete its initial registration prior to
5 commencement of operations within this state. A registration is
6 valid for a term of one (1) year.

7 D. Renewal. 1. A registration expires one (1) year following
8 the registration unless it is renewed pursuant to this subsection.
9 Before expiration of the registration, a registrant may renew the
10 registration for an additional one-year term if the registrant:

11 ~~1. Remains~~

12 a. remains in good standing and otherwise is entitled to
13 be registered pursuant to the Oklahoma Professional
14 Employer Organization Recognition and Registration
15 Act~~,~~

16 ~~2. Files~~

17 b. files with the Commissioner a renewal application on a
18 form prescribed by the Commissioner~~,~~ and

19 ~~3. Pays~~

20 c. pays to the Commissioner a renewal fee as provided for
21 in Section 600.5 of this title.

22 2. A registration shall be considered late thirty (30) days
23 after the renewal date. Any registration received more than thirty

1 (30) days after the renewal date shall be accompanied by a late
2 registration fee of Five Hundred Dollars (\$500.00).

3 E. Group registration. Any two or more PEOs held under common
4 control of any other person or persons acting in concert may be
5 registered as a PEO Group. A PEO Group may satisfy any reporting
6 and financial requirements of this registration law on a
7 consolidated basis.

8 F. Electronic filing and compliance. A PEO, PEO Group or an
9 approved independent and qualified assurance organization as
10 provided for in subsection B of this section may electronically
11 submit filings in conformance with Sections 15-101 through 15-121 of
12 Title 12A of the Oklahoma Statutes. Electronically submitted
13 filings include, but are not limited to, applications, documents,
14 reports, and other filings required under the Oklahoma Uniform
15 Electronic Transactions Act.

16 G. De minimis exemption.

17 1. A PEO is exempt from the registration requirements payable
18 under the Oklahoma Professional Employer Organization Recognition
19 and Registration Act if such PEO:

- 20 a. submits a properly executed request for exemption on a
21 form provided by the Department,
22 b. is domiciled outside this state and is licensed or
23 registered as a professional employer organization in
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1 another state that has the same or greater
2 requirements as the Oklahoma Professional Employer
3 Organization Recognition and Registration Act,

4 c. does not maintain an office in this state or solicit
5 in any manner clients located or domiciled within this
6 state, and

7 d. does not have more than twenty-five covered employees
8 employed or domiciled in this state; ~~and.~~

9 2. An exemption of a professional employer organization from
10 the registration requirements under the Oklahoma Professional
11 Employer Organization Recognition and Registration Act shall be
12 valid for one (1) year, subject to renewal.

13 H. List. The Commissioner shall maintain a list of
14 professional employer organizations registered or exempted under the
15 Oklahoma Professional Employer Organization Recognition and
16 Registration Act and a list of approved assurance organizations.

17 I. Forms. The Commissioner may prescribe forms necessary to
18 promote the efficient administration of this section.

19 J. The Commissioner is authorized to promulgate reasonable
20 rules necessary for the administration and implementation of this
21 section.

22 K. ~~Nothing in this section shall limit or change the authority~~
23 ~~of the Commissioner to register or terminate registration of a PEO~~

1 ~~or PEO Group or to investigate or enforce any~~ The Commissioner may
2 reject an application for registration, renewal of registration, or
3 for an exemption from registration if the Commissioner finds that:

4 1. The application is not fully completed or properly executed;

5 2. Documents required to supplement the application are not
6 included in the application packet or are inadequate;

7 3. The registration fee is not submitted with the application;

8 4. The applicant or any person named in the application
9 misrepresents material in the application;

10 5. The applicant, or any of its officers, is determined by the
11 Commissioner to lack good moral character, business integrity, or
12 financial responsibility; or

13 6. The controlling person has violated a provision of the
14 Oklahoma Professional Employer Organization Recognition and
15 Registration Act.

16 SECTION 2. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 600.9 of Title 40, unless there
18 is created a duplication in numbering, reads as follows:

19 The Insurance Commissioner may, after notice and opportunity for
20 hearing, refuse to register any person, suspend or revoke the
21 registration of any professional employer organization, or impose
22 administrative fines as provided for in the Oklahoma Professional
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UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 Employer Organization Recognition and Registration Act if the
2 Commissioner finds:

3 1. That the registrant or applicant has violated any of the
4 provisions of this section, rules lawfully promulgated by the
5 Commissioner, or the conditions of financial assurances required by
6 this act;

7 2. That the registrant or applicant has engaged in a
8 fraudulent, deceptive, or dishonest practice; or

9 3. For good and sufficient cause, that the registrant or
10 applicant is unfit to be a professional employer organization within
11 the meaning of this act or of any of the rules lawfully promulgated
12 by the Commissioner.

13 SECTION 3. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 600.10 of Title 40, unless there
15 is created a duplication in numbering, reads as follows:

16 A. Any person who violates any of the provisions of the
17 Oklahoma Professional Employer Organization Recognition and
18 Registration Act or who violates any rules promulgated by the
19 Insurance Commissioner shall be liable for a civil penalty for each
20 offense of not less than Five Hundred Dollars (\$500.00) nor more
21 than Five Thousand Dollars (\$5,000.00) for each violation.

22 B. If the Commissioner has reason to believe or it appears that
23 any person or entity has violated or is threatening to violate this
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1 act, or any rule promulgated pursuant to this act, the Commissioner
2 may issue an ex parte cease and desist order, or may institute in
3 the District Court of Oklahoma County a civil suit for injunctive
4 relief to restrain the person from continuing the violation or
5 threat of violation.

6 SECTION 4. This act shall become effective November 1, 2012.

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8 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM AND
9 FINANCIAL SERVICES, dated 02/16/2012 - DO PASS, As Amended and
Coauthored.

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