

1 ENGROSSED SENATE AMENDMENT
TO

2 ENGROSSED HOUSE
3 BILL NO. 2914

By: Brumbaugh of the House

and

Newberry of the Senate

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8 An Act relating to labor; defining terms; making
9 certain entities coemployers; making Professional
10 Employer Organization a third-party administrator for
11 failure to register; providing for reporting and
12 experience history; providing options for filing
13 reports; requiring Professional Employer
14 Organizations to file certain information; amending
15 40 O.S. 2011, Section 600.8, which relates to the
16 Oklahoma Professional Employer Organization
17 Recognition and Registration Act; modifying
18 unemployment compensation contributions; providing
19 for codification; and providing an effective date.

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AUTHOR: Add the following House Coauthor: Walker

AMENDMENT NO. 1. Page 1, strike the title, enacting clause and
entire bill and insert

"An Act relating to labor; defining terms; making
certain entities coemployers; making Professional
Employer Organization a third-party administrator for
failure to register; providing for reporting and
experience history; providing options for filing
reports; requiring Professional Employer
Organizations to file certain information; amending
40 O.S. 2011, Section 600.8, which relates to the
Oklahoma Professional Employer Organization
Recognition and Registration Act; modifying
unemployment compensation contributions; providing
for codification; and providing an effective date."

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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 1-209.2 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. 1. A "Professional Employer Organization" or "PEO" is an organization that is subject to the Oklahoma Professional Employer Organization Recognition and Registration Act and which meets the definition set out in paragraph 9 of Section 600.2 of Title 40 of the Oklahoma Statutes.

2. "Client" shall have the same meaning as provided by paragraph 1 of Section 600.2 of Title 40 of the Oklahoma Statutes.

3. "Coemployer" shall have the same meaning as provided by paragraph 2 of Section 600.2 of Title 40 of the Oklahoma Statutes.

4. "Coemployment relationship" shall have the same meaning as provided by paragraph 3 of Section 600.2 of Title 40 of the Oklahoma Statutes.

5. "Covered employee" shall have the same meaning as provided by paragraph 5 of Section 600.2 of Title 40 of the Oklahoma Statutes.

B. For purposes of the Employment Security Act of 1980, the PEO and its client shall be considered coemployers of the covered employees that are under the direction and control of the client.

1 C. If a PEO fails to become or remain registered under the
2 Oklahoma Professional Employer Organization Recognition and
3 Registration Act, the entity shall be considered a third-party
4 administrator of the client account. As a third-party
5 administrator, a power of attorney will be required to obtain
6 information from the client's account.

7 SECTION 2. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 3-120 of Title 40, unless there
9 is created a duplication in numbering, reads as follows:

10 A. Each Professional Employer Organization, or PEO, shall file
11 all reports and pay all contributions required by the Employment
12 Security Act of 1980 and the Rules of the Oklahoma Employment
13 Security Commission under one of the following two options. The PEO
14 may choose the option it will report and pay. All PEOs that do not
15 exercise their option within the compliance date in subsections C
16 and D of this section shall be assigned to option 1 below. All
17 current client accounts and client accounts set up or acquired after
18 the election shall be reported and paid according to the option
19 elected by the PEO or the option assigned to the PEO if no election
20 is made. The two options are as follows:

21 1. The PEO shall file quarterly tax returns to report the wages
22 of all covered employees of all its clients and pay all
23 contributions due on those wages under one account of the PEO; or
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1 2. The PEO shall file quarterly tax returns to report the wages
2 of all covered employees under the direction and control of each
3 client and pay all contributions due on those wages under the
4 account assigned to that client by the Oklahoma Employment Security
5 Commission; provided:

- 6 a. a PEO choosing this option shall notify the Oklahoma
7 Employment Security Commission in writing,
- 8 b. a PEO choosing this option shall assist the Commission
9 in the process of the separation and identification of
10 the contribution history, the benefit experience
11 history, and the payroll of each of its clients, and
12 the Commission shall transfer that experience to the
13 client account,
- 14 c. the Commission shall determine the contribution rate
15 of each client account separately based upon the
16 client's contribution history, benefit experience
17 history and actual payroll, and
- 18 d. if there is not sufficient experience in the client
19 account after the transfer of experience to establish
20 a contribution rate, the account will be assigned the
21 minimum contribution rate pursuant to Section 3-110 of
22 Title 40 of the Oklahoma Statutes.

23 B. Within thirty (30) days after the end of each calendar
24 quarter, each PEO shall file a list of all its clients setting out

1 the federal employer identification number, the name, the client's
2 contact information and the current registration certificate of the
3 PEO issued pursuant to Section 600.4 of Title 40 of the Oklahoma
4 Statutes. The client list shall be filed in a format prescribed by
5 the Oklahoma Employment Security Commission. Materials submitted
6 pursuant to this section shall be deemed records submitted pursuant
7 to the Oklahoma Professional Employer Organization Recognition and
8 Registration Act and shall be treated as confidential and subject to
9 the provisions of subsection C of Section 600.6 of Title 40 of the
10 Oklahoma Statutes and Section 4-508 of Title 40 of the Oklahoma
11 Statutes.

12 C. Any PEO with a current employer tax account with the
13 Oklahoma Employment Security Commission as of the effective date of
14 this act shall comply with the provisions of this section no later
15 than January 1, 2015.

16 D. Any PEO that does not have a current employer tax account
17 with the Oklahoma Employment Security Commission as of the effective
18 date of this act shall comply with the provisions of this section
19 upon becoming liable for contributions under the Employment Security
20 Act of 1980.

21 E. After the initial election or assignment of the option
22 provided for in subsection A of this section, a PEO shall be
23 permitted to change its election one time only. The change of
24 election shall be made by the PEO in writing. The election shall

1 become effective in the calendar year following the date the
2 Commission approves the election of the PEO. If the Commission
3 approves a change of election, all contribution history, benefit
4 experience history and payroll of each client shall be transferred
5 to the pooled account, if the option in paragraph 1 of subsection A
6 of this section is chosen, or the individual client accounts, if the
7 option in paragraph 2 of subsection A of this section is chosen.

8 SECTION 3. AMENDATORY 40 O.S. 2011, Section 600.8, is
9 amended to read as follows:

10 Section 600.8 A. For purposes of the Employment Security Act
11 of 1980, covered employees of a PEO are considered ~~solely the~~
12 ~~employees of the PEO, which shall be liable in accordance with the~~
13 ~~provisions of such act for the payment of contributions, penalties,~~
14 ~~and interest on wages paid by the PEO to its covered employees~~
15 during the term of the applicable professional employer agreement.

16 B. The PEO shall report and pay all required contributions to
17 the unemployment compensation fund ~~using the state employer account~~
18 ~~number and the contribution rate of the PEO~~ in accordance with the
19 methods set out in Section 2 of this act.

20 SECTION 4. This act shall become effective November 1, 2014."
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