

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 54th Legislature (2014)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 1870

By: Sparks of the Senate

and

O'Donnell and Echols of the
House

10 COMMITTEE SUBSTITUTE

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

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

24 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:

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

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

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

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

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

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

19 C. If a PEO fails to become or remain registered under the
20 Oklahoma Professional Employer Organization Recognition and
21 Registration Act, the entity shall be considered a third-party
22 administrator of the client account. As a third-party
23 administrator, a power of attorney will be required to obtain
24 information from the client's account.

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

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

15 1. The PEO shall file quarterly tax returns to report the wages
16 of all covered employees of all its clients and pay all
17 contributions due on those wages under one account of the PEO; or

18 2. The PEO shall file quarterly tax returns to report the wages
19 of all covered employees under the direction and control of each
20 client and pay all contributions due on those wages under the
21 account assigned to that client by the Oklahoma Employment Security
22 Commission, provided:

23 a. a PEO choosing this option shall notify the Oklahoma
24 Employment Security Commission in writing,

1 b. a PEO choosing this option shall assist the Commission
2 in the process of the separation and identification of
3 the contribution history, the benefit experience
4 history, and the payroll of each of its clients, and
5 the Commission shall transfer that experience to the
6 client account,

7 c. the Commission shall determine the contribution rate
8 of each client account separately based upon the
9 client's contribution history, benefit experience
10 history and actual payroll, and

11 d. if there is not sufficient experience in the client
12 account after the transfer of experience to establish
13 a contribution rate, the account will be assigned the
14 minimum contribution rate pursuant to Section 3-110 of
15 Title 40 of the Oklahoma Statutes.

16 B. Within thirty (30) days after the end of each calendar
17 quarter, each PEO shall file a list of all its clients setting out
18 the federal employer identification number, the name, the client's
19 contact information and the current registration certificate of the
20 PEO issued pursuant to Section 600.4 of Title 40 of the Oklahoma
21 Statutes. The client list shall be filed in a format prescribed by
22 the Oklahoma Employment Security Commission. Materials submitted
23 pursuant to this section shall be deemed records submitted pursuant
24 to the Oklahoma Professional Employer Organization Recognition and

1 Registration Act and shall be treated as confidential and subject to
2 the provisions of subsection C of Section 600.6 of Title 40 of the
3 Oklahoma Statutes and Section 4-508 of Title 40 of the Oklahoma
4 Statutes.

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

9 D. Any PEO that does not have a current employer tax account
10 with the Oklahoma Employment Security Commission as of the effective
11 date of this act shall comply with the provisions of this section
12 upon becoming liable for contributions under the Employment Security
13 Act of 1980.

14 E. After the initial election or assignment of the option
15 provided for in subsection A of this section, a PEO shall be
16 permitted to change its election one time only. The change of
17 election must be made by the PEO in writing. The election shall
18 become effective in the calendar year following the date the
19 Commission approves the election of the PEO. If the Commission
20 approves a change of election, all contribution history, benefit
21 experience history and payroll of each client shall be transferred
22 to the pooled account, if the option in paragraph 1 of subsection A
23 of this section is chosen, or the individual client accounts, if the
24 option in paragraph 2 of subsection A of this section is chosen.

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

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

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

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

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15 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT AND FINANCIAL
16 SERVICES, dated 04/07/2014 - DO PASS, As Amended and Coauthored.

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