STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

SENATE BILL 368 By: Sparks

AS INTRODUCED

An Act relating to labor; amending Section 1, Chapter 221, O.S.L. 2014, Section 2, Chapter 221, O.S.L. 2014, and 40 O.S. 2011, Section 600.8, as amended by Section 3, Chapter 221, O.S.L. 2014 (40 O.S. Supp. 2014, Sections 1-209.2, 3-120 and 600.8), which relate to professional employer definitions, professional employer organizations, and unemployment compensation contributions; modifying references; modifying language; clarifying liability for compensation of certain employees; and providing an effective date.

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

SECTION 1. AMENDATORY Section 1, Chapter 221, O.S.L. 2014 (40 O.S. Supp. 2014, Section 1-209.2), is amended to read as follows:

Section 1-209.2. 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~~ this title.

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

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

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

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

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.

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

SECTION 2. AMENDATORY Section 2, Chapter 221, O.S.L. 2014 (40 O.S. Supp. 2014, Section 3-120), is amended to read as follows:

Section 3-120. A. Each Professional Employer Organization, or PEO, shall file all reports and pay all contributions required by the Employment Security Act of 1980 and the Rules of the Oklahoma Employment Security Commission under one of the following two options. The PEO may choose the option ~~it will~~ for its report and to pay. ~~All PEOs~~ Every PEO that ~~do~~ does not exercise their option within the compliance date in subsections C and D of this section shall be assigned to option 1 below. All current client accounts and client accounts set up or acquired after the election shall be reported and paid according to the option elected by the PEO or the option assigned to the PEO if no election is made. The two options are as follows:

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

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

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

b. a PEO choosing this option shall assist the Commission in the process of the separation and identification of

the contribution history, the benefit experience history, and the payroll of each of its clients, and the Commission shall transfer that experience to the client account,

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

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

B. Within thirty (30) days after the end of each calendar quarter, each PEO shall file a list of all its clients setting out the federal employer identification number, the name, the client's contact information and the current registration certificate of the PEO issued pursuant to Section 600.4 of ~~Title 40 of the Oklahoma Statutes~~ this title. The client list shall be filed in a format prescribed by the Oklahoma Employment Security Commission. Materials submitted pursuant to this section shall be deemed records submitted pursuant to the Oklahoma Professional Employer Organization Recognition and Registration Act and shall be treated as confidential and subject to the provisions of subsection C of

Section 600.6 ~~of Title 40 of the Oklahoma Statutes~~ and Section 4-508 of ~~Title 40 of the Oklahoma Statutes~~ this title.

C. Any PEO with a current employer tax account with the Oklahoma Employment Security Commission as of ~~the effective date of this act~~ November 1, 2014, shall comply with the provisions of this section no later than January 1, 2015.

D. Any PEO that does not have a current employer tax account with the Oklahoma Employment Security Commission as of ~~the effective date of this act~~ November 1, 2014, shall comply with the provisions of this section upon becoming liable for contributions under the Employment Security Act of 1980.

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

SECTION 3. AMENDATORY 40 O.S. 2011, Section 600.8, as amended by Section 3, Chapter 221, O.S.L. 2014 (40 O.S. Supp. 2014, Section 600.8), is amended to read as follows:

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

B. The PEO shall report and pay all required contributions to the unemployment compensation fund in accordance with the methods set out in Section ~~2~~ 3-120 of this ~~act~~ title.

SECTION 4. This act shall become effective November 1, 2015.

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