

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1314 Session of 1999

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THOMAS, YOUNGBLOOD, RAMOS AND LESCOVITZ, APRIL 15, 1999

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
NOVEMBER 16, 1999

AN ACT

1 Regulating the leasing of employees; providing for licensing of
2 professional employer organizations, for unemployment and
3 workers' compensation for leased employees, for
4 responsibilities of professional employer organizations and
5 for criminal penalties and remedies; and imposing powers and
6 duties upon the Department of Labor and Industry.

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8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Short title.

11 This act shall be known and may be cited as the Professional
12 Employer Organization Act.

13 Section 2. Legislative intent.

14 The General Assembly finds and declares that it is necessary
15 to do all of the following:

16 (1) Safeguard the rights of employees participating in a
17 professional employer arrangement.

18 (2) Preserve the rights of employees with regard to
19 unemployment compensation and workers' compensation.

20 (3) Protect the interest of the Commonwealth in the
21 financial security of the unemployment compensation and
22 workers' compensation systems.

23 (4) Recognize the professional employer organization as
24 an employer.

25 (5) Preserve the integrity of the collective bargaining
26 process by prohibiting the use of professional employer
27 arrangements to interfere with the right of any employee or
28 worker to organize and/or freely choose unions or
29 associations which may represent them for the purpose of
30 collective bargaining.

1 Section 3. Definitions.

2 The following words and phrases when used in this act shall
3 have the meanings given to them in this section unless the
4 context clearly indicates otherwise:

5 "Application." An application for a license under this act.

6 "Client." A person that enters into a professional employer
7 arrangement with a professional employer organization.

8 "Department." The Department of Labor and Industry of the
9 Commonwealth.

10 "Gross payroll." Remuneration paid by a professional
11 employer organization, during the four completed calendar
12 quarters immediately preceding the filing of an application for
13 a license, to employees assigned to clients to perform services
14 covered by section 4(a).

15 "Inside director." For a professional employer organization
16 organized as a corporation, an individual who is both a director
17 of the corporation and any of the following:

18 (1) An employee or agent of or consultant to the
19 corporation.

20 (2) An individual who is involved in the daily
21 management of the corporation.

22 (3) A spouse, parent or child of an individual listed in
23 paragraph (1) or (2).

24 "License." A new license or renewal license. A new license
25 shall include a license for which a renewal application is filed
26 late.

27 "Person." An individual, partnership, corporation, company,
28 firm, association, organization, joint venture, limited
29 liability company or any type of business entity.

30 "Professional employer arrangement." An arrangement between

1 a professional employer organization and a client under which
2 the professional employer organization agrees to hire one or
3 more members of the client's work force and agrees to assign one
4 or more of those individuals to that client to perform services
5 for the client on a long-term, ongoing basis. The term includes,
6 but is not limited to: subsequent long-term, ongoing assignments
7 to a client by a professional employer organization of
8 individuals not previously employed by the client; long-term,
9 ongoing assignments to a client, that is a newly formed
10 business, by a professional employer organization of individuals
11 to constitute that client's work force, or distinct portion of
12 that client's work force; and long-term, ongoing assignments to
13 a client by the professional employer organization of
14 individuals to constitute that client's work force, or distinct
15 portion of that work force, at a newly instituted facility. The
16 term does not include any of the following:

17 (1) An arrangement in which a person that does not make
18 its services as a professional employer organization
19 available to the public and whose principal business activity
20 is not entering into professional employer arrangements
21 shares employees with a commonly owned company within the
22 meaning of section 414(b) and (c) of the Internal Revenue
23 Code of 1986 (Public Law 99-514, 26 U.S.C. § 414(b) and (c)).

24 (2) A temporary help arrangement in which a person
25 assigns one or more employees to another person, to support
26 or supplement the other person's work force in special,
27 temporary work situations, such as employee absences, skill
28 shortages, seasonal workloads and special assignments.

29 (3) A vendor arrangement in which:

30 (i) a person provides a product or service to

1 another person;

2 (ii) the person providing the product or service is
3 fully responsible for it; and

4 (iii) providing the product or service to the other
5 person, rather than assigning one or more employees to
6 the other person to constitute some or all of the other
7 person's work force, is the purpose of the arrangement.

8 "Professional employer organization." A person that enters
9 into a professional employer arrangement with a client. The term
10 includes an applicant for a license.

11 "Responsible person." An individual who:

12 (1) is the proprietor of a sole proprietorship;

13 (2) is a general partner in a partnership;

14 (3) is a shareholder who owns at least 15% of the voting
15 shares of a corporation or who is an inside director or
16 officer; or

17 (4) has the authority to establish and direct the
18 policies or management of the organization.

19 "Secretary." The Secretary of Labor and Industry of the
20 Commonwealth.

21 "Study period." The period from January 1, 2001, through
22 December 31, 2003.

23 "Tax Reform Code." The act of March 4, 1971 (P.L.6, No.2),
24 known as the Tax Reform Code of 1971.

25 "Unemployment Compensation Law." The act of December 5, 1936
26 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment
27 Compensation Law.

28 "Workers' Compensation Act." The act of June 2, 1915
29 (P.L.736, No.338), known as the Workers' Compensation Act.

30 Section 4. License required.

1 (a) Unlicensed operation prohibited.--A professional
2 employer organization may not engage in a professional employer
3 arrangement without a license if an employee is assigned to the
4 client to do any of the following:

5 (1) Perform services in this Commonwealth for the
6 client. This paragraph does not include services which are
7 isolated, transitory or incidental to services performed
8 outside this Commonwealth.

9 (2) Perform services for which the client's base of
10 operations is located in this Commonwealth.

11 (b) Term of license.--Except as otherwise prescribed by the
12 department, a license shall be valid for two years unless
13 revoked.

14 (c) Transfer or assignment prohibited.--A license is a
15 privilege that is not transferable or assignable.

16 Section 5. Application for license.

17 An application for a license must include all information and
18 documentation required by the department, including information
19 on the professional employer organization's ownership,
20 operations in other states, and past and present compliance with
21 applicable laws. The application must be made in the manner
22 prescribed by the department.

23 Section 6. Tax clearance.

24 (a) Waiver of confidentiality.--An application constitutes a
25 waiver of confidentiality with respect to the department for tax
26 information in the possession of the Department of Revenue or
27 the Office of Attorney General, regardless of the source and a
28 consent to the providing of the information to the department.

29 (b) Review.--Upon receipt of an application, the Department
30 of Revenue and the Office of Attorney General shall provide

1 information regarding the professional employer organization's
2 tax status to the department.

3 Section 7. Fees; issuance, denial and revocation of license.

4 (a) Issuance.--The department may issue a license to a
5 professional employer organization only if there is compliance
6 with all of the following:

7 (1) The professional employer organization must pay to
8 the department a nonrefundable fee in accordance with the
9 following:

10 (i) If the professional employer organization has a
11 gross payroll of less than \$250,000, a new license fee of
12 \$125 or a renewal license fee of \$62.50.

13 (ii) If the professional employer organization has a
14 gross payroll of not less than \$250,000 and not more than
15 \$500,000, a new license fee of \$225 or a renewal license
16 fee of \$112.50.

17 (iii) If the professional employer organization has
18 a gross payroll of more than \$500,000 but not more than
19 \$1,000,000, a new license fee of \$337.50 or a renewal
20 license fee of \$168.75.

21 (iv) If the professional employer organization has a
22 gross payroll of more than \$1,000,000 but not more than
23 \$2,500,000, a new license fee of \$475 or a renewal
24 license fee of \$237.50.

25 (v) If the professional employer organization has a
26 gross payroll of more than \$2,500,000 but not more than
27 \$5,000,000, a new license fee of \$612.50 or a renewal
28 license fee of \$306.25.

29 (vi) If the professional employer organization has a
30 gross payroll of more than \$5,000,000 but not more than

1 \$7,500,000, a new license fee of \$750 or a renewal
2 license fee of \$375.

3 (vii) If the professional employer organization has
4 a gross payroll of more than \$7,500,000 but not more than
5 \$10,000,000, a new license fee of \$887.50 or a renewal
6 license fee of \$443.75.

7 (viii) If the professional employer organization has
8 a gross payroll of more than \$10,000,000, a new license
9 fee of \$1,000 or a renewal license fee of \$500.

10 (2) The professional employer organization must provide
11 proof, in a manner satisfactory to the department, of
12 workers' compensation insurance coverage for existing clients
13 under section 10.

14 (3) The application and all required documents must be
15 complete and accurate and meet the requirements of this act.

16 (4) The professional employer organization must meet all
17 requirements of sections 5 and 6 and this subsection.

18 (5) All fees must be paid, all reports filed and all
19 penalties paid or subject to a deferred payment plan approved
20 by the department.

21 (6) All tax returns due to the Commonwealth must be
22 filed.

23 (7) All taxes, interest and penalties owed to the
24 Commonwealth must be:

25 (i) paid;

26 (ii) subject to a deferred payment plan approved by
27 the department; or

28 (iii) under appeal unless the applicable statute
29 requires the payment of taxes while an appeal is pending.

30 (b) Denial or revocation.--The department may deny an

1 application for a license or revoke a license for good cause
2 associated with the legislative intent of this act or if the
3 professional employer organization or a responsible person does
4 any of the following:

5 (1) Violates this act or a regulation or order under
6 this act.

7 (2) Fails to provide a written response to a written
8 inquiry from the department within 30 days from the date of
9 receipt of the inquiry.

10 (3) Makes a misrepresentation of material fact or fails
11 to disclose a material fact in any application, document or
12 communication under this act.

13 (4) Obtains or attempts to obtain a license by fraud or
14 bribery.

15 (5) Was sentenced for a Federal or State offense
16 involving dishonesty or fraud or for an offense under the Tax
17 Reform Code, the Unemployment Compensation Law, section 305
18 of the Workers' Compensation Act or this act.

19 (6) Defaults on a deferred payment plan under subsection
20 (a)(5) or (7).

21 (c) Additional criteria for denial of license application.--

22 (1) In addition to criteria delineated in subsection
23 (b), the department may deny an application for a license if:

24 (i) The professional employer organization owes
25 taxes, interest or penalties to any state.

26 (ii) A responsible person is or was a responsible
27 person in another professional employer organization and
28 the other professional employer organization owes taxes,
29 interest or penalties to any state.

30 (2) Paragraph (1) shall not apply to taxes that are:

1 (i) subject to a deferred payment plan approved by
2 the taxing agency; or

3 (ii) subject to a timely administrative or judicial
4 appeal, unless the applicable statute requires the
5 payment of taxes while an appeal is pending.

6 (d) Subsequent information.--The department may revoke a
7 license based on information which would have been a basis to
8 deny the application if the department had known the information
9 at the time the license was issued.

10 (e) Termination of professional employer arrangements.--

11 (1) A professional employer organization that ceases to
12 be licensed shall do all of the following:

13 (i) Terminate professional employer arrangements
14 within 45 days.

15 (ii) Provide written notice to clients within five
16 business days that it is no longer licensed.

17 (2) The professional employer organization shall
18 immediately provide proof to the department of the notice to
19 clients required by paragraph (1)(ii). Absent such proof, the
20 department may notify the clients that the professional
21 employer organization is no longer licensed.

22 (3) During the 45 days specified in paragraph (1), the
23 professional employer organization:

24 (i) shall notify clients of the requirements of
25 section 305(a)(1) of the Workers' Compensation Act and
26 assist clients in obtaining replacement workers'
27 compensation insurance coverage;

28 (ii) shall assist clients in obtaining replacement
29 benefit plans, if any;

30 (iii) shall notify each employee that the employee

1 is being terminated from employment with the professional
2 employer organization; and

3 (iv) may not commence professional employer
4 arrangements with new clients.

5 (4) The 45 days and five business days specified in
6 paragraph (1) shall be calculated as prescribed by the
7 department.

8 (f) Limitation.--If the department denies an application or
9 revokes a license under subsection (b), the organization may not
10 reapply for a license for one year. The one-year period shall be
11 calculated as prescribed by the department.

12 Section 8. Determinations and appeals.

13 (a) Determinations.--

14 (1) A determination denying an application, revoking a
15 license or charging a penalty, and any decision on an appeal,
16 must be sent by certified mail to the professional employer
17 organization at the address designated in the application and
18 must designate the effective date of the determination.

19 (2) The department shall grant or deny a completed
20 application for a new license within 90 days after it is
21 filed, except that the department may withhold a
22 determination until the requirements of section 7(a)(1) and
23 (2) are met.

24 (b) Appeals.--If a professional employer organization has an
25 application for a license denied or a license revoked, or is
26 charged a penalty, the organization may appeal the determination
27 to the secretary. The appeal must specifically set forth its
28 factual and legal arguments on which it is based. Arguments not
29 contained in the appeal shall be waived. The appeal must be
30 filed within 30 days after the date of the determination or the

1 department's action shall be final.

2 (c) Supersedeas.--An appeal of a determination by the
3 department denying an application for a renewal license under
4 section 7(b) or (c), revoking a license, or charging a penalty
5 shall operate as a supersedeas while the appeal under subsection
6 (b) is pending. The effective date of a denial, revocation or
7 penalty subject to this subsection shall not be prior to the
8 expiration of the appeal period under subsection (b).

9 (d) Burden of proof.--

10 (1) Except as set forth in paragraph (2), in an appeal
11 of a license denial or revocation, the burden of proof shall
12 be on the professional employer organization.

13 (2) In an appeal of a license denial or revocation under
14 section 7(b), the burden of proof shall be on the department.

15 (3) In an appeal of a determination by the department
16 charging a penalty under section 12(c), the burden of proof
17 shall be on the department.

18 (e) Administrative agency law.--Proceedings under this
19 section are subject to 2 Pa.C.S. Ch. 5 Subch. A (relating to
20 practice and procedure of Commonwealth agencies) and Ch. 7
21 Subch. A (relating to judicial review of Commonwealth agency
22 action).

23 Section 9. Unemployment compensation.

24 (a) Employer.--For purposes of the Unemployment Compensation
25 Law.--

26 (1) Except as otherwise provided in this section, the
27 professional employer organization shall be the employer of
28 employees assigned to the client.

29 (2) The client shall be the employer of employees
30 assigned to it by the professional employer organization if

1 any of the following conditions exist:

2 (i) The professional employer organization is not
3 licensed as required by this act.

4 (ii) All of the following apply:

5 (A) The professional employer organization is
6 owned or controlled by or owns or controls the
7 client, either directly or indirectly, by legally
8 enforceable means or otherwise, or the professional
9 employer organization and the client are owned or
10 controlled, either directly or indirectly, by legally
11 enforceable means or otherwise, by the same person or
12 persons.

13 (B) All of the professional employer
14 organization's clients are covered by clause (A) or
15 the professional employer organization does not make
16 its services as a professional employer organization
17 available to the public.

18 (iii) The professional employer organization fails
19 to comply with the requirements of subsection (b) with
20 respect to a client.

21 (b) Quarterly reports.--

22 (1) If a professional employer organization is the
23 employer of employees assigned to the client for purposes of
24 the Unemployment Compensation Law, the Employer's Quarterly
25 Report of Wages Paid to Each Employee, Form UC-2A, filed
26 under the Unemployment Compensation Law shall include, in
27 addition to information normally required, the following
28 information and other information required by the department:

29 (i) For each client, the report shall contain all of
30 the following information:

1 (A) Name.
2 (B) Federal employer identification number.
3 (C) Pennsylvania unemployment compensation
4 account number.

5 (ii) The names, Social Security account numbers,
6 wages, credit weeks and other data of employees assigned
7 to clients shall be listed separately for each client.

8 (iii) For calendar quarters in the study period, the
9 report shall indicate, for each client, whether the
10 client is covered by subsection (g)(9) and whether the
11 client paid wages prior to the study period. If this
12 information is unknown to the professional employer
13 organization, the client shall provide this information
14 at the request of the professional employer organization;
15 and the professional employer organization shall include
16 in the report the information provided by the client.

17 (2) Except as set forth in paragraph (3), information
18 provided to the department by a professional employer
19 organization under this subsection shall be confidential to
20 the same extent as other unemployment compensation
21 information.

22 (3) The information in a quarterly report shall be made
23 available to an approved workers' compensation insurance
24 rating organization upon request, for use as authorized by
25 law, under confidentiality restrictions established by the
26 department.

27 (c) Limitations.--

28 (1) Notwithstanding section 4(1)(6) of the Unemployment
29 Compensation Law, services performed by an employee assigned
30 to a client by a professional employer organization shall not

1 constitute employment for purposes of the Unemployment
2 Compensation Law if:

3 (i) the employee is the client;

4 (ii) the employee is a general partner in the
5 client; or

6 (iii) the services would not constitute employment
7 if performed in the employ of the client.

8 (2) Notwithstanding section 4(x)(6) of the Unemployment
9 Compensation Law, remuneration paid by a professional
10 employer organization to an employee assigned to a client
11 shall not constitute wages for purposes of the Unemployment
12 Compensation Law if:

13 (i) the employee is the client;

14 (ii) the employee is a general partner in the
15 client; or

16 (iii) the remuneration would not constitute wages if
17 the client was the employer of the employee for purposes
18 of the Unemployment Compensation Law and paid the
19 remuneration.

20 (3) If an employee assigned to a client is a corporate
21 officer of the client, the employee's eligibility for
22 benefits under section 402(h) of the Unemployment
23 Compensation Law shall be determined by the employee's
24 relationship to the client.

25 (d) Client liability.--If the professional employer
26 organization is the employer of employees assigned to a client
27 for purposes of the Unemployment Compensation Law and does not
28 pay unemployment compensation contributions, interest or
29 penalties in full and when due on wages paid to employees
30 assigned to the client, the client shall also be liable for the

1 unpaid, past due contributions, interest and penalties and be
2 subject to all enforcement and collection provisions of the
3 Unemployment Compensation Law. This subsection shall not apply
4 to liability under subsection (e)(4).

5 (e) Determinations and liability.--

6 (1) For each client of a professional employer
7 organization, the department shall determine all of the
8 following:

9 (i) The amount of contributions payable by the
10 professional employer organization on wages paid by it
11 during the study period to employees assigned to the
12 client. For purposes of this subparagraph, the
13 professional employer organization's contribution rate
14 shall be established without regard to section 301(a)(2)
15 of the Unemployment Compensation Law.

16 (ii) The amount of contributions that would have
17 been payable by the client on wages paid by the
18 professional employer organization during the study
19 period to employees assigned to the client if the client
20 had been the employer of the employees for purposes of
21 the Unemployment Compensation Law and paid the wages. A
22 determination under this subparagraph shall be made in
23 the following manner:

24 (A) The department shall establish a
25 contribution rate for the client in accordance with
26 paragraph (2) for each year in the study period
27 during which the professional employer organization
28 paid wages to employees assigned to the client.

29 (B) The contribution rates established under
30 clause (A) shall be multiplied by the amount of wages

1 paid by the professional employer organization during
2 each year of the study period, respectively, to
3 employees assigned to the client, to the extent the
4 wages would be taxable under section 4(x)(1) of the
5 Unemployment Compensation Law if the client had been
6 the employer of the employees for purposes of the
7 Unemployment Compensation Law and paid the wages.

8 (C) The sum of the calculations for each year
9 under clause (B) shall constitute the amount
10 determined for the client under this subparagraph.

11 (2) The department shall establish a contribution rate
12 for a client for purposes of paragraph (1)(ii) in accordance
13 with the following:

14 (i) The contribution rate shall be determined
15 pursuant to the provisions of the Unemployment
16 Compensation Law applicable to the client.

17 (ii) The client's record of unemployment
18 compensation experience shall be modified as follows:

19 (A) Contributions paid by the client shall
20 include contributions which would have been payable
21 by the client on wages paid by the professional
22 employer organization during the study period to
23 employees assigned to the client if the client had
24 been the employer of the employees for purposes of
25 the Unemployment Compensation Law and paid the wages.

26 (B) Wages paid by the client shall include wages
27 paid by the professional employer organization during
28 the study period to employees assigned to the client.
29 The wages paid by the professional employer
30 organization shall be considered taxable wages paid

1 by the client to the extent they would be taxable
2 under section 4(x)(1) of the Unemployment
3 Compensation Law if the client had been the employer
4 of the employees for purposes of the Unemployment
5 Compensation Law and paid the wages.

6 (C) The client's benefit charges shall include
7 benefit charges based on wages paid by the
8 professional employer organization during the study
9 period to employees assigned to the client.

10 (3) The determinations required under paragraphs (1) and
11 (2) shall be made after the study period has ended.

12 (4) For each professional employer organization, the
13 department shall calculate the sum of the amounts determined
14 under paragraph (1)(i) and the sum of the amounts determined
15 under paragraph (1)(ii). If the sum of the amounts determined
16 under paragraph (1)(ii) exceeds the sum of the amounts
17 determined under paragraph (1)(i), the professional employer
18 organization shall be liable to pay into the Unemployment
19 Compensation Fund the difference between the sums to the
20 extent the difference exceeds \$1,500. The professional
21 employer organization's liability under this paragraph shall
22 be a liability for contributions for purposes of the
23 Unemployment Compensation Law in accordance with all of the
24 following:

25 (i) It shall be a liability in addition to any other
26 liability under the Unemployment Compensation Law.

27 (ii) It shall be assessed, subject to reassessment,
28 and due as provided in section 304 of the Unemployment
29 Compensation Law.

30 (iii) It shall be subject to all enforcement and

collection provisions of the Unemployment Compensation Law.

(iv) For purposes of sections 301.1(c)(1) and 309.2 of the Unemployment Compensation Law, it shall be a liability for contributions with respect to wages paid in the last calendar quarter of the study period.

(v) It shall not be a liability for contributions for purposes of section 301.1(b) of the Unemployment Compensation Law.

(f) Financial impact study.--

(1) The department shall study the following to evaluate the financial impact of professional employer arrangements on the Unemployment Compensation Fund for the study period:

(i) Employers that cease to pay wages, in whole or in part, and enter into professional employer arrangements under which the professional employer organization pays wages during the study period to employees assigned to them as clients, including the reserve account balances of such employers and the diversion of benefit charges to the State adjustment factor.

(ii) The effect of professional employer arrangements on contributions payable by former clients, and clients who become the employer of employees assigned to them by professional employer organizations for purposes of the Unemployment Compensation Law, on wages paid during the study period, including the effect of the arrangement on such a client's eligibility for a calculated contribution rate and the effect of excluding the employment experience attributable to the period of

1 the arrangement, or attributable to the period for which
2 the professional employer organization was the employer
3 for purposes of the Unemployment Compensation Law, from
4 the calculation of such a client's contribution rate.

5 (iii) Professional employer organizations that cease
6 to pay wages during the study period, including the
7 reserve account balances of such organizations, the
8 diversion of benefit charges to the State adjustment
9 factor and unpaid unemployment compensation liabilities.

10 (iv) Situations where a professional employer
11 organization ceases to pay wages during the study period
12 to employees assigned to a client because the
13 professional employer arrangement is terminated, but
14 continues to pay wages to employees assigned to other
15 clients; where the client does not enter into a new
16 professional employer arrangement; and where the client
17 does not pay wages after the arrangement is terminated.

18 Data to be studied under this subparagraph includes that
19 portion of the professional employer organization's
20 reserve account balance attributable to the client,
21 calculated as though the client had been the employer of
22 employees assigned to it by the professional employer
23 organization for purposes of the Unemployment
24 Compensation Law and benefit charges attributable to the
25 client.

26 (2) After the study period has ended, the department
27 shall submit a final report on the findings of the study to
28 the Governor and the General Assembly, including information
29 about the determinations made under subsection (e). A report
30 under this paragraph shall not contain information identified

1 with a named client or professional employer organization.

2 (g) Applicability.--

3 (1) Subsection (a) shall apply to services for which
4 wages are paid from January 1, 2001, through December 31,
5 2004.

6 (2) Subject to paragraph (1), subsection (a)(2)(iii)
7 shall apply to wages paid and services for which wages are
8 paid during the earliest calendar quarter for which the
9 professional employer organization fails to comply with
10 subsection (b) and subsequent calendar quarters.

11 (3) Subsection (b) shall apply to calendar quarters
12 after December 31, 2000.

13 (4) Subsection (c)(1) shall apply to services performed
14 after the effective date of subsection (c).

15 (5) Subsection (c)(2) shall apply to remuneration for
16 services performed after the effective date of subsection
17 (c).

18 (6) Subsection (c)(3) shall apply to weeks of
19 unemployment commencing after the effective date of
20 subsection (c).

21 (7) Subsection (d) shall apply to contributions,
22 interest and penalties on wages paid after December 31, 2000.

23 (8) Subsections (e) and (f) shall not apply to a
24 professional employer organization to the extent the
25 organization is not the employer of employees assigned to
26 clients for purposes of the Unemployment Compensation Law.

27 (9) Subsections (e) and (f)(1)(i), (ii) and (iv) shall
28 not apply to a client if any of the following exist:

29 (i) A professional employer organization paid wages
30 prior to the study period to employees assigned to the

1 client.

2 (ii) In the first calendar year in which the
3 professional employer organization paid wages to
4 employees assigned to the client, the client paid wages
5 prior to payment of wages by the professional employer
6 organization and the client has not filed unemployment
7 compensation reports with respect to the wages it paid.

8 (h) Definitions.--Subject to section 3 and unless the
9 context clearly indicates otherwise, words and phrases used in
10 this section shall have the meanings given to them in the
11 Unemployment Compensation Law.

12 Section 10. Workers' compensation.

13 (a) Rights and duties.--Except as otherwise provided in this
14 section, for purposes of the Workers' Compensation Act, the
15 professional employer organization shall be an employer of
16 employees assigned to the client; and all of the following
17 provisions shall be applicable:

18 (1) The professional employer organization shall
19 maintain workers' compensation insurance coverage for
20 employees assigned to the client, and if coverage is so
21 provided, the client shall be deemed to have met its
22 obligation under section 305 of the Workers' Compensation Act
23 for those employees. The professional employer organization
24 shall provide the client with a certificate of insurance
25 evidencing workers' compensation coverage annually and name
26 the client as a certificate holder.

27 (2) The professional employer organization shall pay
28 workers' compensation benefits in full and when due to
29 employees assigned to the client.

30 (3) Workers' compensation premiums for a professional

1 employer organization shall be based upon rules filed by an
2 approved rating organization under the Workers' Compensation
3 Act and rates approved by the Insurance Department.

4 (4) Workers' compensation insurance shall be obtained
5 from an insurance carrier licensed to write workers'
6 compensation insurance policies in this Commonwealth.

7 (5) The professional employer organization and the
8 client shall be jointly entitled to the exclusive remedy
9 provisions of section 303 of the Workers' Compensation Act.

10 (6) If the professional employer organization does not
11 meet its obligations and duties as an employer under the
12 Workers' Compensation Act, the client shall also be liable
13 for all the obligations and duties of an employer under the
14 Workers' Compensation Act and also for unpaid, past due
15 workers' compensation benefits owed to employees assigned to
16 the client by the professional employer organization. The
17 amount of benefits the employee may collect in the aggregate
18 may not exceed the amount of benefits which are unpaid and
19 past due.

20 (7) Notice to the client or the professional employer
21 organization of an injury shall constitute notice to both
22 under Article III of the Workers' Compensation Act.

23 (b) Client.--The client shall be the employer of employees
24 assigned to it for purposes of the Workers' Compensation Act and
25 the professional employer organization may not use the exclusive
26 remedy provisions of section 303 of the Workers' Compensation
27 Act if any of the following paragraphs apply:

28 (1) The professional employer organization is not
29 licensed as required by this act.

30 (2) All of the following subparagraphs apply:

1 (i) The professional employer organization is owned
2 or controlled by or owns or controls the client, either
3 directly or indirectly, by legally enforceable means or
4 otherwise, or the professional employer organization and
5 the client are owned or controlled, either directly or
6 indirectly, by legally enforceable means or otherwise, by
7 the same person or persons.

8 (ii) All of the professional employer organization's
9 clients are covered by subparagraph (i) or the
10 professional employer organization does not make its
11 services as a professional employer organization
12 available to the public.

13 (c) Applicability.--This section shall apply to injuries
14 suffered on or after the effective date of this section.

15 (d) Definitions.--Subject to section 3 and unless the
16 context clearly indicates otherwise, words and phrases used in
17 this section shall have the meanings given to them in the
18 Workers' Compensation Act.

19 Section 11. Other responsibilities.

20 (a) Taxes.--The professional employer organization shall
21 timely pay all payroll-related taxes and payroll withholding
22 taxes, on wages paid, to the Commonwealth and its political
23 subdivisions with respect to employees assigned to the client
24 and shall timely file all corresponding tax reports. The client
25 shall timely pay the taxes and timely file the reports if the
26 client is the employer of the employees for purposes of the
27 taxing statute.

28 (b) Report.--

29 (1) A professional employer organization shall file a
30 quarterly report with the department, by the last day of the

1 month immediately following the calendar quarter. The report
2 shall:

3 (i) identify all of the following:

4 (A) names and addresses of clients to whom
5 employees were assigned during the quarter;

6 (B) names and addresses of new clients with whom
7 professional employer arrangements commenced during
8 the quarter; and

9 (C) names and addresses of clients with whom
10 professional employer arrangements ended during the
11 quarter;

12 (ii) provide all of the following for each client:

13 (A) the client's Federal employer identification
14 number and Pennsylvania unemployment compensation
15 account number;

16 (B) the address of each worksite where employees
17 are assigned to the client, the number of assigned
18 employees at each worksite and the standard
19 industrial classification code for each worksite; and

20 (C) the name of the workers' compensation
21 insurance carrier insuring employees assigned to the
22 client and the workers' compensation policy number;

23 (iii) contain other information required by the
24 department; and

25 (iv) be made in the manner prescribed by the
26 department and shall be accompanied by proof, in a manner
27 satisfactory to the department, of workers' compensation
28 insurance coverage with respect to all new clients, as
29 required under section 10.

30 (2) The department shall not be required to disclose the

1 contents of the report except for purposes of this act or
2 other laws of this Commonwealth.

3 (c) Operation under other name.--A professional employer
4 organization may not conduct business in this Commonwealth under
5 any name other than that specified in its application without
6 the written consent of the department.

7 (d) Change in information.--A professional employer
8 organization shall notify the department in writing of a change
9 in the information contained in its application or other
10 document within 30 days after the change occurs.

11 (e) Notice to employees.--

12 (1) A professional employer organization shall provide
13 written information to employees assigned to clients as
14 required by the department, including the following:

15 (i) If the professional employer organization does
16 not meet all of its obligations and duties as an employer
17 under the Workers' Compensation Act, the client shall
18 also be liable for:

19 (A) all the obligations and duties of an
20 employer under the Workers' Compensation Act; and

21 (B) unpaid, past due workers' compensation
22 benefits under section 10(a)(6).

23 (ii) If the professional employer organization does
24 not pay wages in full and when due, the client shall also
25 be liable for unpaid, past due wages under section 13(b).

26 (iii) The name and address of the workers'
27 compensation insurance carrier insuring the employee.

28 (2) The information required under paragraph (1) shall
29 be provided to an employee at the time of hire and thereafter
30 at intervals not exceeding six months. An employee shall be

1 notified immediately of a change in the information.

2 (f) Notice to client.--Prior to commencing a professional
3 employer arrangement, a professional employer organization shall
4 provide all of the following information in writing to the
5 client:

6 (1) If the professional employer organization does not
7 meet all of its obligations and duties as an employer under
8 the Workers' Compensation Act, the client shall also be
9 liable for:

10 (i) all the obligations and duties of an employer
11 under the Workers' Compensation Act; and

12 (ii) unpaid, past due workers' compensation benefits
13 owed to employees assigned to the client under section
14 10(a)(6).

15 (2) The circumstances under which the client shall be
16 the employer for purposes of the Workers' Compensation Act
17 under section 10(b).

18 (3) If the professional employer organization does not
19 pay unemployment compensation contributions, interest and
20 penalties in full and when due on wages paid to employees
21 assigned to the client, the client shall also be liable for
22 the unpaid, past due contributions, interest and penalties
23 under section 9(d).

24 (4) The circumstances under which the client shall be
25 the employer for purposes of the Unemployment Compensation
26 Law under section 9(a)(2).

27 (5) If the professional employer organization does not
28 pay wages owed to employees assigned to the client in full
29 and when due, the client shall also be liable for the unpaid,
30 past due wages under section 13(b).

(G) NOTICE REGARDING ACT.--A PROFESSIONAL EMPLOYER ORGANIZATION SHALL POST AT A CONSPICUOUS LOCATION ON ITS PREMISES A PLACARD OR SIGN, IN A FORM APPROVED BY THE DEPARTMENT, CONTAINING THE FOLLOWING INFORMATION:

(1) A STATEMENT THAT THE ENTITY IS A PROFESSIONAL EMPLOYER ORGANIZATION UNDER THIS ACT.

(2) A SUMMARY OF THE KEY PROVISIONS OF THIS ACT, AS DETERMINED BY THE DEPARTMENT.

(3) THE TELEPHONE NUMBER OF THE APPROPRIATE OFFICE OF THE DEPARTMENT TO WHICH QUESTIONS CONCERNING THIS ACT AND ITS APPLICATION SHOULD BE DIRECTED.

Section 12. Criminal and civil penalties; injunctions.

(a) Operation without a license.--

(1) A professional employer organization that violates section 4(a) commits a misdemeanor of the third degree. Each day of proscribed conduct shall constitute a separate offense.

(2) A person, other than a professional employer organization, that knowingly authorizes, implements, administers, supervises or participates in a professional employer arrangement for which a license is required, on behalf of an unlicensed professional employer organization, commits a misdemeanor of the third degree. Each day of proscribed conduct shall constitute a separate offense.

(b) Misrepresentation or nondisclosure.--

(1) A professional employer organization that makes a misrepresentation of material fact or fails to disclose a material fact in an application or other document or communication under this act commits a misdemeanor of the third degree.

1 (2) A person, other than a professional employer
2 organization, that knowingly makes a representation of
3 material fact or fails to disclose a material fact in an
4 application or other document or communication under this act
5 commits a misdemeanor of the third degree.

6 (c) Violations.--A professional employer organization that
7 violates this act shall be subject to a civil penalty of not
8 more than \$1,000 per day for each violation.

9 (d) Injunction.--Upon petition by the department, a court of
10 competent jurisdiction may enjoin a professional employer
11 organization from violating this act.

12 Section 13. Wages.

13 (a) Professional employer organization.--The professional
14 employer organization shall be liable to pay wages owed to
15 employees assigned to the client in full and when due.

16 (b) Client.--If the professional employer organization does
17 not pay wages owed to employees under subsection (a), the client
18 shall also be liable for the unpaid, past due wages.

19 (c) Collection of wages.--Unpaid, past due wages owed to an
20 employee may be collected from the professional employer
21 organization under subsection (a), the client under subsection
22 (b), or both. The amount of wages the employee may collect in
23 the aggregate may not exceed the unpaid amount. It shall not be
24 necessary to pursue or exhaust legal remedies against one before
25 pursuing legal remedies against the other.

26 (d) Rights and liabilities.--Rights and liabilities under
27 this section shall exist in addition to other legal rights and
28 liabilities with respect to wages.

29 (e) Applicability.--This section shall apply to wages which
30 become due on or after the effective date of this section.

1 (f) Definition.--As used in this section, the term "wages"
2 has the meaning given in section 2.1 of the act of July 14, 1961
3 (P.L.637, No.329), known as the Wage Payment and Collection Law.
4 Section 14. Department.

5 (a) Regulations.--The department shall promulgate
6 regulations to implement and administer this act. Within six
7 months from the effective date of this section, the department
8 shall submit notice of proposed rulemaking on these regulations
9 to the Independent Regulatory Review Commission, the appropriate
10 standing committees of each chamber of the General Assembly, and
11 the Legislative Reference Bureau.

12 (b) Guidelines.--The department shall adopt guidelines,
13 including guidelines regarding information on applications,
14 required documents, reports, appeals and the issuance of
15 licenses. The guidelines shall remain in effect until the
16 earlier of:

17 (1) the effective date of the regulations promulgated
18 under subsection (a); or

19 (2) 18 months from the effective date of this section.

20 (c) General enforcement.--The department may conduct audits,
21 inspections and investigations as necessary to administer and
22 enforce this act. The books and records of a professional
23 employer organization and a client shall be available to the
24 department for inspection and copying at reasonable times. The
25 department may examine any individual under oath or affirmation
26 and issue subpoenas to compel the attendance of witnesses and
27 the production of documents.

28 Section 15. Other laws.

29 This act does not exempt a client or a professional employer
30 organization from other Federal, State or local law. Rights,

1 responsibilities and liabilities conferred and imposed by this
2 act shall exist in addition to rights, responsibilities and
3 liabilities which otherwise exist, except where the result would
4 be inconsistent with this act.

5 Section 16. Collective bargaining protections.

6 (a) Interference prohibited.--Professional employer
7 arrangements shall not be established or otherwise utilized, in
8 whole or in part, to interfere with the right of any employee or
9 worker to organize and/or freely choose unions or associations
10 which represent them for the purpose of collective bargaining.

11 (b) Assignment prohibited.--A professional employer
12 organization shall not assign or reassign leased employees for
13 the purpose, in whole or in part, of interfering with the terms
14 and conditions of any existing collective bargaining agreement
15 or any effort on the part of any employee or worker to organize
16 and/or freely choose unions or associations which does or may
17 represent them for the purpose of collective bargaining.

18 Section 17. Applicability.

19 Unless this act provides for specific applicability, the
20 department may, by regulation, specify the applicability of any
21 provision of this act.

22 Section 18. Effective date.

23 This act shall take effect as follows:

24 (1) The following provisions shall take effect on
25 January 1, 2001:

26 (i) Section 4(a).

27 (ii) Section 9(a), (b), (d), (e) and (f).

28 (iii) Section 11(a), (b) and (f)(3) and (4).

29 (2) The following provisions shall take effect in 60
30 days:

1 (i) Section 9(c).
2 (ii) Section 10.
3 (iii) Section 11(e) and (f)(1), (2) and (5).
4 (iv) Section 13.
5 (3) The remainder of this act shall take effect
6 immediately.