

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1069 Session of
2011

INTRODUCED BY BROWNE, PIPPY, RAFFERTY, McILHINNEY, TOMLINSON,
FOLMER, BREWSTER, FARNESE, STACK AND BLAKE, MAY 16, 2011

REFERRED TO LABOR AND INDUSTRY, MAY 16, 2011

AN ACT

1 Providing for the registration and regulation of professional
2 employer organizations and for powers and duties of the
3 Department of Labor and Industry; and imposing penalties.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 CHAPTER 1

7 PRELIMINARY PROVISIONS

8 Section 101. Short title.

9 This act shall be known and may be cited as the Professional
10 Employer Organization Registration and Recognition Act.

11 Section 102. Definitions.

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

15 "Administrative fee." The fee charged to a client by a
16 professional employer organization for professional employer
17 services. The administrative fee shall not be deemed to include
18 any amount of a fee by the professional employer organization

1 that is for wages and salaries, benefits, workers' compensation,
2 payroll taxes, withholding or other assessment paid by the
3 professional employer organization to or on behalf of covered
4 employees under the professional employer agreement.

5 "Client." Any person who enters into a professional employer
6 agreement with a professional employer organization.

7 "Coemployer." A professional employer organization or
8 client.

9 "Coemployment relationship." A relationship which is
10 intended to be an ongoing relationship rather than a temporary
11 or project specific one, wherein the rights, duties and
12 obligations of an employer which arise out of an employment
13 relationship have been allocated between coemployers pursuant to
14 a professional employer agreement and this act.

15 "Controlling person." A person that owns, directly or
16 indirectly, 10% or more of the equity interest in a professional
17 employer organization.

18 "Covered employee." An individual coemployed by a
19 professional employer organization and a client who meets the
20 following criteria:

21 (1) The individual has received written notice of co-
22 employment with the professional employer organization.

23 (2) The individual's coemployment relationship is
24 pursuant to a professional employer agreement subject to this
25 act.

26 Subject to section 504, individuals who are officers, directors,
27 shareholders, partners and managers of the client and who are
28 operational managers or perform day-to-day operational services
29 for the client are covered employees only to the extent that the
30 client and the professional employer organization expressly

1 agree in the professional employer agreement.

2 "Department." The Department of Labor and Industry of the
3 Commonwealth.

4 "Direct hire employee." An individual who is an employee of
5 either the client or the PEO within the meaning of the act of
6 June 2, 1915 (P.L.736, No.338), known as the Workers'
7 Compensation Act, and who is not a covered employee.

8 "Insurer." A legal entity authorized or licensed to transact
9 insurance business in accordance with the laws of this
10 Commonwealth.

11 "Licensed producer." An individual or business entity that
12 is licensed as an insurance producer by the Insurance Department
13 in accordance with the provisions of Article VI-A of the act of
14 May 17, 1921 (P.L.789, No.285), known as The Insurance
15 Department Act of 1921.

16 "Master policy basis." An agreement under which a single
17 workers' compensation policy issued to the professional employer
18 organization provides coverage for more than one client and may
19 provide coverage to the professional employer organization with
20 respect to its direct hire employees. Two or more clients that
21 are insured under the same policy solely because they are under
22 common ownership are considered a single client for purposes of
23 this definition.

24 "Multiple coordinated policy basis." An agreement under
25 which a separate workers' compensation policy is issued to the
26 professional employer organization on behalf of each client or
27 group of affiliated clients with payment obligations and certain
28 policy communications related to such workers' compensation
29 policy coordinated through the professional employer
30 organization.

1 "PEO group." Two or more professional employer organizations
2 that are majority owned or commonly controlled by the same
3 entity, parent or controlling person.

4 "Person." Any individual, partnership, corporation, limited
5 liability company, association or any other form of legally
6 recognized entity.

7 "Professional employer agreement." A contract by and between
8 a client and a professional employer organization that provides:

9 (1) for the coemployment of covered employees;

10 (2) for the allocation of employer rights and
11 obligations between the client and the professional employer
12 organization with respect to the covered employees; and

13 (3) that the professional employer organization and the
14 client assume the responsibilities required by this act.

15 "Professional employer organization" or "PEO." Any person
16 engaged in the business of providing professional employer
17 services.

18 "Professional employer services." The business of entering
19 into coemployment relationships under this act.

20 "Registrant." A professional employer organization
21 registered under this act.

22 "Secretary." The Secretary of Labor and Industry of the
23 Commonwealth.

24 "Temporary help services." Services consisting of a person:

25 (1) recruiting and hiring its own employees;

26 (2) finding other organizations that need the services
27 of those employees;

28 (3) assigning those employees to perform work at or
29 services for the other organizations to support or supplement
30 the other organizations' work forces, or to provide

1 assistance in special work situations, including, but not
2 limited to, employee absences, skill shortages, seasonal
3 workloads or to perform special assignments or projects; and

4 (4) customarily attempting to reassign the employees to
5 other organizations when they finish each assignment.

6 Section 103. Scope.

7 A person engaged in the business of providing professional
8 employer services shall be subject to registration and
9 regulation under this act regardless of its use of the term or
10 conducting business as a professional employer organization,
11 PEO, staff leasing company, registered staff leasing company,
12 employee leasing company, administrative employer or any other
13 name. The following shall not be deemed to be professional
14 employer organizations or the providing of professional
15 employment services for purposes of this act:

16 (1) Arrangements wherein a person, whose principal
17 business activity is not entering into professional employer
18 arrangements and which does not hold itself out as a PEO,
19 shares employees with a commonly owned company within the
20 meaning of section 414(b) and (c) of the Internal Revenue
21 Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

22 (2) Independent contractor arrangements.

23 (3) Providing temporary help services.

24 Section 104. Construction.

25 (a) Collective bargaining agreements.--Nothing contained in
26 this act or in any professional employer agreement shall affect,
27 modify or amend any existing collective bargaining agreement,
28 specifically limit or affect any future collective bargaining
29 agreement, or affect, modify or amend any rights or obligations
30 of any client, PEO or covered employee under the National Labor

1 Relations Act (49 Stat. 449, 29 U.S.C. § 151 et seq.), the
2 Railway Labor Act (Public Law 69-257, 44 Stat. 577) or the act
3 of June 1, 1937 (P.L.1168, No.294), known as the Pennsylvania
4 Labor Relations Act. For purposes of determining the number of
5 workers for existing and prospective collective bargaining
6 agreements, each client shall be treated as employing its direct
7 hire employees and only those covered employees coemployed by
8 the client.

9 (b) Employment arrangements.--Nothing in this act or in any
10 professional employer agreement shall:

11 (1) Diminish, abolish or remove rights of covered
12 employees of a client or obligations of such client to a
13 covered employee existing prior to the effective date of the
14 professional employer agreement.

15 (2) Affect, modify or amend any contractual relationship
16 or restrictive covenant between a covered employee and any
17 client in effect at the time a professional employer
18 agreement becomes effective, nor shall it prohibit or amend
19 any contractual relationship or restrictive covenant that is
20 entered into subsequently between a client and a covered
21 employee. A PEO shall have no responsibility or liability in
22 connection with, or arising out of, any existing or new
23 contractual relationship or restrictive covenant unless the
24 PEO has specifically agreed otherwise in writing.

25 (3) Eliminate any right otherwise existing in law,
26 except as provided in this act.

27 (4) Create any right or cause of action not otherwise
28 existing in law except as specifically set forth in the
29 professional employer agreement or this act.

30 (c) Licensing.--Nothing contained in this act or any

professional employer agreement shall affect, modify or amend any Federal, State or local licensing, registration or certification requirement applicable to any client or covered employee. The following apply:

(1) A covered employee who must be licensed, registered or certified according to law or regulation is deemed solely an employee of the client for purposes of the license, registration or certification requirement.

(2) A PEO shall not be deemed to engage in any occupation, trade, profession or other activity that is subject to licensing, registration or certification requirements, or is otherwise regulated by a governmental entity, solely by entering into and maintaining a coemployment relationship with a covered employee who is subject to such requirements or regulation.

(3) A client shall have the sole right of direction and control of the professional or licensed activities of covered employees and of the client's business. Covered employees and clients shall remain subject to regulation by the regulatory or governmental entity responsible for licensing, registration or certification of the covered employees or clients.

(d) Tax credits and other incentives.--For purposes of determination of tax credits and other economic incentives provided by the Commonwealth or other government entity and based on employment, covered employees shall be deemed employees solely of the client. A client shall be entitled to the benefit of any tax credit, economic incentive or other benefit arising as the result of the employment of covered employees of the client. If the grant or amount of any incentive is based on the

1 number of employees, then each client shall be treated as
2 employing its direct hire employees and those covered employees
3 coemployed by the client. Covered employees working for other
4 clients of the PEO shall not be counted. Each PEO will provide,
5 upon request by a client or an agency or department of the
6 Commonwealth, employment information reasonably required by any
7 agency or department of the Commonwealth responsible for
8 administration of a tax credit or economic incentive and
9 necessary to support any request, claim, application or other
10 action by a client seeking the tax credit or economic incentive.

11 (e) Disadvantaged business.--With respect to a bid,
12 contract, purchase order or agreement entered into with the
13 Commonwealth or a political subdivision of the Commonwealth, a
14 client company's status or certification as a small, minority-
15 owned, disadvantaged or woman-owned business enterprise or as a
16 historically underutilized business is not affected because the
17 client company has entered into an agreement with a PEO or uses
18 the services of a PEO.

19 (f) Other entity as employer.--Nothing in this act shall be
20 construed to designate any entity other than the client as the
21 employer of any employee performing services for or on its
22 behalf while employed directly or indirectly by a PEO for any
23 purposes other than those specifically designated in this act.
24 Persons performing services for or on behalf of a client shall
25 be deemed to be employees of the client for all purposes other
26 than those specifically designated in this act where persons may
27 be considered employees of a PEO.

28 CHAPTER 3

29 REGISTRATION

30 Section 301. Registration.

1 (a) Registration requirements.--The department shall
2 register a PEO or PEO group only if the PEO or the PEO group
3 meets all requirements of this act. A PEO seeking limited
4 registration pursuant to subsection (e) shall provide the
5 department with information and documentation necessary to show
6 that the PEO qualifies for limited registration.

7 (b) Registration information.--An application for
8 registration shall include the following information:

9 (1) The name or names under which the PEO or the PEO
10 group members conduct business and the legal name.

11 (2) The address of the principal place of business of
12 the PEO or the PEO group members and the address of each
13 office maintained in this Commonwealth.

14 (3) The taxpayer or employer identification number of
15 the PEO or the PEO group members.

16 (4) A list by state of each name under which the PEO or
17 the PEO group members has operated in the preceding five
18 years, including any alternative names, names of predecessors
19 and, if known, successor business entities.

20 (5) A statement of ownership, which shall include the
21 name and evidence of the business experience of any
22 controlling person.

23 (6) A statement of management, which shall include the
24 name and evidence of the business experience of any person
25 who serves as president, chief executive officer or otherwise
26 has the authority to act as senior executive officer of the
27 PEO or PEO group member.

28 (7) A financial statement that sets forth the financial
29 condition of the PEO or PEO group and meets the following
30 requirements:

1 (i) The financial statement shall be prepared in
2 accordance with generally accepted accounting principles.

3 (ii) The financial statement shall be audited by an
4 independent certified public accountant licensed to
5 practice in the jurisdiction in which the accountant is
6 located and shall be without qualification as to the
7 going concern status of the PEO. A PEO or PEO group may
8 submit a combined or consolidated audited financial
9 statement to meet the requirements of this subparagraph.

10 (iii) The financial statement shall cover the PEO or
11 PEO group's most recent fiscal year. If a financial
12 statement for the most recent fiscal year is not
13 available at the time the application is filed, the
14 department may grant the PEO or PEO group an extension of
15 time to submit the financial statement, allow the PEO or
16 PEO group to submit the immediately preceding financial
17 statement or, if the PEO or PEO group does not have
18 sufficient operating history to have a financial
19 statement for a complete fiscal year, allow the PEO or
20 PEO group to submit a financial statement for a shorter
21 period of time that is reviewed by a certified public
22 accountant.

23 (8) The provisions of the professional employer
24 agreements in use or that will be used by the PEO or PEO
25 group in this Commonwealth.

26 (9) A complete list of current clients with covered
27 employees who perform services within this Commonwealth at
28 the time of registration.

29 (10) Evidence of current workers' compensation insurance
30 policies issued to or through the PEO insuring covered

employees located in this Commonwealth.

(11) Designation of a registered agent for acceptance of service of process in this Commonwealth.

(12) All additional information required by the department to demonstrate that the PEO or PEO group meets the requirements for the applicable registration.

(c) Timely application and duration of registration.--

(1) An initial registration, if granted by the department, shall be effective through the end of the calendar year following the year in which the application for registration is filed with the department. All other registrations shall be effective for 12 months from the effective date indicated by the department.

(i) Each PEO or PEO group operating within this Commonwealth as of the effective date of this act shall file its application for initial registration no later than 30 days after the effective date of this act.

(ii) Each PEO not operating within this Commonwealth as of the effective date of this act shall receive its initial registration prior to commencement of operations within this Commonwealth.

(2) A PEO or PEO group that will continue its operations beyond the termination of its initial registration or its most recent renewal registration shall file an application to renew its registration with the department no later than 90 days before the end of the current registration. If a timely application for renewal is filed, the current registration shall remain effective until the department grants or denies the application for renewal.

(d) PEO group registration.--PEOs in a PEO group may satisfy

1 the application, reporting and financial requirements of this
2 act on a combined or consolidated basis, provided that each
3 member of the PEO group guarantees the obligations under this
4 act of each other member of the PEO group. In the case of a PEO
5 group that submits a combined or consolidated audited financial
6 statement, including entities that are not PEOs or that are not
7 in the PEO group, a controlling person of the PEO group under
8 the consolidated or combined statement must guarantee the
9 obligations of the PEOs in the PEO group.

10 (e) Limited registration.--

11 (1) A PEO or PEO group is eligible for a limited
12 registration under this act if the PEO or PEO group meets the
13 following:

14 (i) Is domiciled outside this Commonwealth and is
15 licensed or registered as a PEO or PEO group in another
16 jurisdiction having PEO registration or licensing
17 requirements, including those related to financial
18 capability as set forth in section 303, that, in the
19 estimation of the department, are at least as stringent
20 as those set forth in this act.

21 (ii) Does not maintain an office in this
22 Commonwealth.

23 (iii) Does not directly solicit clients with covered
24 employees who may perform services within this
25 Commonwealth.

26 (iv) Does not have more than 50 covered employees
27 who may perform services in this Commonwealth on any
28 given day.

29 (2) Section 303 shall not apply to applicants for
30 limited registration.

1 (f) List.--The department shall maintain a list of PEOs and
2 PEO groups registered under this act that is readily available
3 to the public by electronic or other means.

4 (g) Forms.--Applications for registration shall be made in
5 the manner prescribed by the department. The department may
6 prescribe forms necessary to promote the efficient
7 administration of this section.

8 (h) Electronic filing and compliance.--The department may to
9 the extent practical provide for the acceptance of electronic
10 filings in conformance with the act of December 16, 1999
11 (P.L.971, No.69), known as the Electronic Transactions Act,
12 including applications, documents, reports and other filings
13 required by this act. The department may provide for the
14 acceptance of electronic filings and other assurance from an
15 independent and qualified assurance organization approved by the
16 department that provides satisfactory assurance of compliance
17 acceptable to the department in lieu of the requirements of this
18 section and section 303 and other requirements of this act or
19 the rules promulgated pursuant to this act. If the department
20 provides for the acceptance of electronic filings under this
21 section, a PEO or PEO group may authorize an assurance
22 organization, approved by the department, to act on the PEO's or
23 PEO group's behalf in complying with the registration
24 requirements of this act, including electronic filings of
25 information and payment of registration fees. Nothing in this
26 subsection shall limit or change the department's authority to
27 register or terminate registration of a PEO or PEO group or to
28 investigate or enforce any provision of this act.

29 (i) Record confidentiality.--All financial statements, any
30 person's personal identifying information, employer

1 identification numbers, a Federal employment identification
2 number, provisions of the professional employer agreements and
3 client lists obtained by the department from a PEO or PEO group
4 under this act shall not be public records under the act of
5 February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.
6 The department shall make available such personal identifying
7 information, employer identification numbers, a Federal
8 employment identification number, provisions of the professional
9 employer agreements and client lists obtained by the department
10 from a PEO or PEO group under this act to a rating organization
11 licensed pursuant to section 712(a) of the act of June 2, 1915
12 (P.L.736, No.338), known as the Workers' Compensation Act, as
13 required to comply with that rating organization's statutory
14 obligations. Information obtained under this subsection shall
15 only be used by the rating organization to comply with those
16 statutory duties either prescribed under the Workers'
17 Compensation Act or required by the Insurance Department
18 pursuant to its statutory authority under the act of May 17,
19 1921 (P.L.789, No.285), known as The Insurance Department Act of
20 1921, or the act of May 17, 1921 (P.L.682, No.284), known as The
21 Insurance Company Law of 1921, and shall not be considered
22 public records under the Right-to-Know Law.

23 (j) Appeals.--

24 (1) If the department denies an application for
25 registration or revokes a registration under section 701, the
26 PEO or PEO group may appeal the department's determination to
27 the secretary. The appeal must be received by the department
28 within 30 days after the date of the determination.

29 (2) An appeal of a determination by the department
30 denying an application for a renewal registration or revoking

1 a registration shall operate as a supersedeas while the
2 appeal is pending. The effective date of a denial or
3 revocation subject to this subsection shall not be prior to
4 the expiration of the appeal period under paragraph (1).

5 (3) Proceedings under this section are subject to 2
6 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of
7 Commonwealth agencies) and Ch. 7 Subch. A (relating to
8 judicial review of Commonwealth agency action).

9 Section 302. Fees.

10 (a) Fees.--Except as provided in subsection (b), the
11 department shall charge the following fees for applications
12 under this act:

13 (1) Initial PEO registration, \$500.

14 (2) Initial PEO group registration, \$750.

15 (3) Renewal registration, \$250.

16 (4) Limited registration, \$250.

17 (b) Amended fees.--No less than 60 days after publishing
18 notice of an intent to revise fees in the Pennsylvania Bulletin,
19 the department may revise the fees to be charged under
20 subsection (a) or establish additional fees. Fees as revised or
21 established by the department shall not exceed amounts
22 reasonably necessary for the administration of this act. The
23 department shall retain the application fees for the purposes of
24 administering this act.

25 Section 303. Financial capability.

26 (a) Working capital.--Except as provided in section 301(e),
27 each registrant shall maintain either:

28 (1) positive working capital at registration or renewal
29 as reflected in the financial statements provided under
30 section 301(b)(7); or

1 (2) if the registrant does not meet the requirement in
2 paragraph (1), the registrant shall provide one or more of
3 the instruments set forth in subsection (b) with a minimum
4 aggregate value sufficient to establish positive working
5 capital plus \$100,000. The instruments shall secure payment
6 by the registrant of all taxes, wages, benefits or other
7 entitlements due to or with respect to covered employees if
8 the registrant fails to make payment when due.

9 (b) Instruments.--The following instruments may be
10 maintained to comply with subsection (a) (2):

11 (1) A surety bond on a form prescribed by the department
12 issued by an insurer authorized to transact surety business
13 in this Commonwealth by the Insurance Department. The
14 following shall apply:

15 (i) The surety company shall possess a current A.M.
16 Best Rating of B+ or better or a Standard and Poor's
17 rating of claims paying ability of A or better.

18 (ii) The PEO shall replace the bond with a new bond
19 issued by a surety company with an acceptable rating or
20 with another instrument under this subsection if the
21 surety company's rating falls below the acceptable rating
22 after the bond is issued. If the bond is not replaced
23 within 60 days, the department may draw on the surety
24 bond and deposit the proceeds with the State Treasurer to
25 secure payment as set forth in subsection (a) (2).

26 (2) An instrument held under a trust agreement
27 prescribed by the department and maintained to secure payment
28 as set forth in subsection (a) (2). The following shall apply:

29 (i) The deposit shall consist of cash, bonds or
30 other evidence of indebtedness issued, assumed or

1 guaranteed by the United States of America or by an
2 agency or instrumentality of the United States;
3 investments in common funds or regulated investment
4 companies which invest primarily in Federal Government or
5 State government agency obligations; or bonds or other
6 security issued by the Commonwealth and backed by the
7 Commonwealth's full faith and credit.

8 (ii) The securities shall be held in a Commonwealth
9 chartered bank and trust company or trust company as
10 defined in section 102 of the act of November 30, 1965
11 (P.L.847, No.356), known as the Banking Code of 1965, or
12 a federally chartered bank or foreign bank with a branch
13 office and trust powers in this Commonwealth.

14 (3) An irrevocable letter of credit using provisions
15 required by the department issued by and payable at a branch
16 office of a commercial bank located in the United States. The
17 letter of credit shall state that the terms of the letter of
18 credit automatically renew annually unless the letter of
19 credit is specifically nonrenewed by the issuing bank 60 days
20 or more prior to the anniversary date of its issuance. The
21 following shall apply:

22 (i) At the time of issuance of the letter of credit,
23 the issuing bank or its holding company shall have a B/C
24 or better rating or 2.5 or better score by Thomson
25 BankWatch, or the issuing bank shall have a CD rating of
26 BBB or better by Standard & Poor's Corporation.

27 (ii) The registrant shall replace the letter of
28 credit with a new letter of credit issued by a bank with
29 an acceptable credit rating or with another acceptable
30 form of security if a bank's rating falls below the

1 acceptable rating after the letter of credit is issued.
2 If the letter of credit is not replaced within 60 days,
3 the department shall be entitled to draw on the letter of
4 credit and will deposit the proceeds to secure payment as
5 set forth in subsection (a)(2).

6 (iii) The registrant shall execute a trust agreement
7 on a form prescribed by the department with a
8 Commonwealth chartered bank and trust company or trust
9 company as defined in section 102 of the Banking Code of
10 1965 or a federally chartered bank or foreign bank with a
11 branch office and trust powers in this Commonwealth. The
12 trust agreement must accommodate proceeds from a letter
13 of credit drawn on by the department.

14 (c) Certification.--Within 60 days after the end of each
15 calendar quarter, a registrant shall submit to the department a
16 certification by a senior manager that all applicable Federal,
17 State and local taxes and required insurance premiums have been
18 paid for all covered employees in this Commonwealth on a timely
19 basis for that quarter.

20 CHAPTER 5

21 PEO DUTIES AND AGREEMENTS

22 Section 501. Duties and contractual relationship.

23 (a) Allocation of rights, duties and obligations.--Except as
24 specifically provided in this act, nothing in this act shall be
25 deemed to affect or alter any provision of Pennsylvania law.
26 Specifically:

27 (1) The client shall be entitled to exercise all rights,
28 and shall be obligated to perform all duties and
29 responsibilities, otherwise applicable to an employer in an
30 employment relationship.

1 (2) The PEO shall be entitled to exercise only those
2 rights, and obligated to perform only those duties and
3 responsibilities, specifically required by this act or set
4 forth in the professional employer agreement. The rights,
5 duties and obligations of the PEO as coemployer with respect
6 to any covered employee shall be limited to those arising
7 pursuant to the professional employer agreement and this act
8 during the term of coemployment by the PEO of the covered
9 employee.

10 (3) Unless otherwise expressly agreed by the PEO and the
11 client in a professional employer agreement, the client
12 retains the exclusive right to direct and control the covered
13 employees as is necessary to conduct the client's business,
14 to discharge any of client's fiduciary responsibilities or to
15 comply with any licensure requirements applicable to the
16 client or to the covered employees.

17 (b) Contractual relationship.--Except as provided by law,
18 the coemployment relationship between the client and the PEO,
19 and between each coemployer and each covered employee, shall be
20 governed by the professional employer agreement. The PEO shall
21 ensure that each professional employer agreement is reduced to
22 writing and signed by both the client and the PEO and each
23 professional employer agreement shall provide:

24 (1) The allocation of rights, duties and obligations as
25 described in subsection (a).

26 (2) That the PEO shall have responsibility to pay wages
27 to covered employees; to withhold, collect, report and remit
28 payroll-related taxes and may remit unemployment taxes in
29 accordance with section 504; and, to the extent the PEO has
30 assumed responsibility in the professional employer

1 agreement, to make payments for employee benefits for covered
2 employees. As used in this paragraph, the term "wages" does
3 not include any obligation between a client and a covered
4 employee for payments beyond or in addition to the covered
5 employee's salary, draw or regular rate of pay, such as
6 bonuses, commissions, severance pay, deferred compensation,
7 profit sharing or vacation, sick or other paid time off pay,
8 unless the PEO has expressly agreed to assume liability for
9 these payments in the professional employer agreement.

10 (3) Nothing in this act or in a professional employer
11 agreement shall relieve a client from compliance with the
12 Commonwealth's wage and labor laws, including the act of May
13 13, 1915 (P.L.286, No.177), known as the Child Labor Law, the
14 act of August 15, 1961 (P.L.987, No.442), known as the
15 Pennsylvania Prevailing Wage Act, the act of July 14, 1961
16 (P.L.637, No.329), known as the Wage Payment and Collection
17 Law, and the act of January 17, 1968 (P.L.11, No.5), known as
18 The Minimum Wage Act of 1968. If the client is a health care
19 facility as defined in section 2 of the act of October 9,
20 2008 (P.L.1376, No.102), known as the Prohibition of
21 Excessive Overtime in Health Care Act, the client shall
22 comply with that act. No professional employer organization
23 shall knowingly engage in or assist in the violation of the
24 statutes referenced in this paragraph.

25 (4) That the PEO shall have a right to hire, discipline
26 and terminate a covered employee as may be necessary to
27 fulfill the PEO's responsibilities under this act and the
28 professional employer agreement. The client shall have a
29 right to hire, discipline and terminate a covered employee.

30 (5) The PEO or client has the responsibility to provide

workers' compensation coverage for covered employees, in compliance with section 503, which responsibility shall be specifically allocated in the professional employer agreement to either the client or the PEO in accordance with section 503(a).

(c) Notice to terminate.--With respect to each professional employer agreement entered into by the PEO, the PEO shall provide the procedures by which the client or PEO may terminate the professional employer agreement, including any fees or costs payable upon termination, and that except as otherwise expressly provided or required by law, all services provided by the PEO to the client shall cease immediately as of the effective date of the termination.

(d) Notice to covered employees and clients.--

(1) With respect to each professional employer agreement entered into by a PEO, the PEO shall provide written notice to each covered employee affected by the agreement of the general nature of the coemployment relationship between and among the PEO, the client and the covered employee.

(2) If the PEO is providing benefits to covered employees pursuant to a PEO sponsored welfare benefit plan, the PEO shall provide specific notice to the client as to services provided by the PEO concerning those benefits. These responsibilities include those related to administration, which includes Consolidated Omnibus Budget Reconciliation Act (COBRA) administration, plan administration, enrollment and renewal services pursuant to their professional employer agreement. The notice may be contained in the professional employer agreement or in a separate notice.

(e) Specific responsibilities.--Except to the extent

1 otherwise expressly provided by the applicable professional
2 employer agreement:

3 (1) A client shall be solely responsible for the
4 quality, adequacy or safety of the goods or services produced
5 or sold in client's business.

6 (2) A client shall be solely responsible for directing,
7 supervising, training and controlling the work of the covered
8 employees with respect to the business activities of the
9 client and solely responsible for the acts, errors or
10 omissions of the covered employees with regard to these
11 activities.

12 (3) A client shall not be liable for the acts, errors or
13 omissions of a PEO or of any covered employee of the client
14 and a PEO when the covered employee is acting under the
15 express direction and control of the PEO.

16 (4) A PEO shall not be liable for the acts, errors or
17 omissions of a client or of any covered employee of the
18 client when the covered employee is acting under the express
19 direction and control of the client.

20 (5) Nothing in this subsection shall serve to limit any
21 contractual liability or obligation specifically provided in
22 the written professional employer agreement.

23 (6) A covered employee is not, solely as the result of
24 being a covered employee of a PEO, an employee of the PEO for
25 purposes of general liability insurance, fidelity bonds,
26 surety bonds, employer's liability which is not covered by
27 workers' compensation or liquor liability insurance carried
28 by the PEO unless the covered employee is included by
29 specific reference in the professional employer agreement and
30 applicable prearranged employment contract, insurance

1 contract or bond.

2 (f) Professional employer services not insurance.--A PEO
3 under this act is not engaged in the sale of insurance or in
4 acting as a third party administrator by offering, marketing,
5 selling, administering or providing professional employer
6 services which include services and employee benefit plans for
7 covered employees.

8 (g) Taxation.--

9 (1) Covered employees whose services are subject to
10 sales tax shall be deemed the employees of the client for
11 purposes of collecting and levying sales tax on the services
12 performed by the covered employee. Nothing contained in this
13 act shall relieve a client of any sales tax liability with
14 respect to its goods or services.

15 (2) Any tax upon professional employer services or any
16 business license or other fee which is based upon gross
17 receipts shall be limited to the administrative fee of the
18 PEO.

19 (3) Any tax assessed on a per capita or per employee
20 basis shall be assessed against the client for covered
21 employees and against the PEO for its employees who are not
22 covered employees coemployed with a client.

23 (4) In the case of tax imposed or calculated upon the
24 basis of total payroll, the PEO shall be eligible to apply
25 any small business allowance or exemption available to the
26 client for the covered employees for purpose of computing the
27 tax.

28 Section 502. Benefit plans.

29 (a) Retirement and welfare benefit plans.--A client and a
30 PEO shall each be deemed an employer for purposes of sponsoring

1 retirement and welfare benefit plans for its covered employees.

2 (b) Construction.--A fully insured welfare benefit plan
3 offered to the covered employees of a single PEO shall be
4 considered for purposes of Commonwealth law and regulation to be
5 a single employer welfare benefit plan and shall not be
6 considered a multiple employer welfare arrangement.

7 (c) Insurance Company Law.--For purposes of section 621.2 of
8 the act of May 17, 1921 (P.L.682, No.284), known as The
9 Insurance Company Law of 1921, a PEO shall be considered the
10 employer of all of its covered employees, and all covered
11 employees of one or more clients participating in a health
12 benefit plan sponsored by a single PEO shall be considered
13 employees of the PEO.

14 (d) Plans not fully insured.--If a PEO offers to its covered
15 employees any health benefit plan which is not fully insured by
16 an insurer, the plan shall:

17 (1) Utilize a third-party administrator licensed to do
18 business in this Commonwealth.

19 (2) Hold all plan assets, including participant
20 contributions, in a trust account.

21 (3) Provide sound reserves as determined by an actuary
22 using generally accepted actuarial standards of practice.

23 (4) Provide written notice to each covered employee
24 participating in the benefit plan that the plan is self-
25 insured or is not fully insured.

26 Section 503. Workers' compensation.

27 (a) Requirement for coverage of covered employees.--

28 (1) Both the PEO and the client shall be an employer of
29 covered employees assigned to the client for purposes of this
30 act and the act of June 2, 1915 (P.L.736, No.338), known as

1 the Workers' Compensation Act.

2 (2) The responsibility to provide workers' compensation
3 coverage for the covered employees shall be specifically
4 allocated in the professional employer agreement to either
5 the client or the PEO.

6 (3) When the responsibility to provide workers'
7 compensation coverage is specifically allocated in the
8 professional employer agreement to the PEO, the PEO must
9 elect to provide coverage for all covered employees assigned
10 to that client pursuant to subsection (b) (3), (4) or (5).

11 (4) When the responsibility to provide workers'
12 compensation coverage is specifically allocated in the
13 professional employer agreement to the client, the client
14 must provide coverage pursuant to subsection (b) (1) or (2).

15 (b) Methods of coverage.--A client and a registered PEO that
16 have entered into a professional employer agreement may meet
17 their statutory obligation under the Workers' Compensation Act
18 for coverage as employers for the covered employees by any of
19 the following:

20 (1) The client obtaining a standard workers'
21 compensation policy from an insurer authorized to provide
22 workers' compensation coverage covering the client's covered
23 employees. Separate experience modification, risk
24 classifications, merit rating adjustments, construction
25 classification premium adjustments or certified safety
26 committee program credits shall be applied to the exposures
27 of the client covered by a policy obtained under this
28 paragraph based on the client's entire Pennsylvania
29 operations notwithstanding coverage provided under additional
30 professional employer agreements pursuant to paragraphs (3),

1 (4) and (5) .

2 (2) The client being approved by the department to self-
3 insure or group self-insure its workers' compensation
4 obligations for the client's covered employees.

5 (3) The PEO purchasing workers' compensation insurance
6 on a multiple coordinated policy basis from an insurer
7 authorized to provide workers' compensation coverage to the
8 PEO and to the client with respect to the covered employees
9 assigned to the client. Each policy written on a multiple
10 coordinated policy basis shall be issued to the PEO as
11 primary named insured and must identify both the PEO and the
12 client as insureds. The following apply:

13 (i) Separate experience data must be reported to the
14 licensed rating organization for workers' compensation
15 insurance for each multiple coordinated policy in a
16 format complying with requirements of the approved
17 statistical plan for workers' compensation coverage.

18 (ii) Risk classifications shall be assigned to each
19 client based on the totality of that client's
20 Pennsylvania operations regardless of whether workers
21 engaged therein are provided under one or more
22 professional employer agreements or are direct hire
23 employees of the client.

24 (iii) If applicable, separate experience
25 modification, merit rating adjustments, construction
26 classification premium adjustment or certified safety
27 committee program credits shall be applied to the
28 exposures of each client covered by a multiple
29 coordinated policy based on the client's entire
30 Pennsylvania operations whether coverage is being

1 provided for the client's exposures under the client's
2 own policy or on a master policy basis or multiple
3 coordinated policy basis under one or more professional
4 employer agreements, or some combination thereof.

5 (iv) Policies written in accordance with this
6 paragraph by the same insurer with the PEO as named
7 insured may be combinable for premium discount and other
8 purposes including a retrospective rating program or any
9 other approved pricing program. Such programs may be
10 based on the combined total standard premium and losses
11 of all such policies issued to the PEO as the primary
12 named insured.

13 (v) Nothing in this paragraph shall prohibit a
14 professional employer organization from participating in
15 a large deductible program, retrospective rating program
16 or any other rating program approved for and written
17 under a workers' compensation policy offered by an
18 insurer. Further, nothing in this paragraph shall
19 restrict an insurer from collecting workers' compensation
20 premium based on the totality of the exposure under these
21 multiple coordinated policies and applying rates and
22 discounts consistent with those approved for the insurer
23 pursuant to the rating program.

24 (4) The PEO being duly qualified and approved by the
25 department to self-insure its workers' compensation
26 obligations, including direct employees and covered
27 employees.

28 (5) The PEO purchasing workers' compensation insurance
29 on a master policy basis from an insurer authorized to
30 provide workers' compensation coverage. The insurer or

1 licensed producer shall provide a certificate of insurance
2 evidencing workers' compensation coverage to each client and
3 to the PEO with respect to the covered employees of that
4 client. The following apply:

5 (i) When coverage is provided under a master policy,
6 the insurer must report separate experience data to the
7 licensed rating organization for workers' compensation
8 insurance for each client insured within any master
9 policy in a format complying with the requirements of the
10 approved statistical plan for workers' compensation
11 coverage.

12 (ii) Risk classifications shall be assigned to each
13 client based on the totality of that client's
14 Pennsylvania operations regardless of whether workers
15 engaged therein are provided under one or more
16 professional employer agreements or are direct hire
17 employees of the client.

18 (iii) If applicable, separate experience
19 modification, merit rating adjustments, construction
20 classification premium adjustments or certified safety
21 committee program credits shall be applied to the
22 exposures of each client covered by a master policy based
23 on the client's entire Pennsylvania operations whether
24 coverage is being provided for the client's exposures
25 under the client's own policy or on a master policy basis
26 or multiple coordinated policy basis under one or more
27 professional employer agreements, or some combination
28 thereof.

29 (iv) Nothing in this paragraph shall prohibit a
30 professional employer organization from participating in

1 a large deductible program, retrospective rating program
2 or any other rating program approved for and written
3 under a workers' compensation policy offered by an
4 insurer. Further, nothing in this paragraph shall
5 restrict an insurer from collecting workers' compensation
6 premium based on the totality of the exposure under the
7 master policy and applying rates and discounts consistent
8 with those approved for the insurer pursuant to the
9 rating program.

10 (c) Employee coverage.--Direct hire employees of and covered
11 employees assigned to a client shall all be collectively covered
12 either by the State Workers' Insurance Fund or by insurers
13 authorized to transact workers' compensation insurance in the
14 voluntary market. Covered employees insured by the State
15 Workers' Insurance Fund may only be covered pursuant to a policy
16 issued to the client under subsection (b)(1) or on a multiple
17 coordinated policy basis issued pursuant to subsection (b)(3).

18 (d) Client obligation.--

19 (1) A client retains the statutory obligation to provide
20 workers' compensation coverage for employees that are not
21 covered employees pursuant to the professional employer
22 agreement. Nothing in this paragraph shall preclude a client
23 from purchasing a workers' compensation policy insuring both
24 its covered employees and its direct hire employees.

25 (2) If a client's insurer or the client, if self-
26 insured, has issued coverage for direct hire employees, and
27 an injured employee is entitled to workers' compensation
28 benefits but there is a dispute as to whether the employee is
29 a direct hire employee of the client or a covered employee of
30 the PEO, the client's insurer or the client, if self-insured,

1 shall pay the benefits, subject to reimbursement of claims
2 costs and loss adjustment expenses by the PEO's insurer if it
3 is determined that the claimant is a covered employee of the
4 PEO.

5 (3) If the client does not have coverage for direct hire
6 employees, either through an insurer or by self-insurance,
7 and an injured employee is entitled to workers' compensation
8 benefits but there is a dispute as to whether the employee is
9 a direct hire employee of the client or a covered employee of
10 the PEO, the PEO's insurer or the PEO, if self-insured, shall
11 pay the benefits, subject to reimbursement of claims costs
12 and loss adjustment expenses by the client, if it is
13 determined that the claimant is not a covered employee of the
14 PEO.

15 (e) Policy issuance permitted.--Subject to subsection (b),
16 and notwithstanding the provisions of section 653 of the act of
17 May 17, 1921 (P.L.682, No.284), known as The Insurance Company
18 Law of 1921, insurers may issue multiple coordinated policies
19 and master policies covering fewer than all of a client's
20 employees pursuant to subsection (b)(3) and (5).

21 (f) Notice of coverage to the client.--

22 (1) If coverage is provided under a policy issued to the
23 PEO for covered employees of the PEO, the PEO shall give
24 clear and conspicuous written notice to the client that:

25 (i) The client of the PEO has a continuing
26 obligation to provide coverage under the Workers'
27 Compensation Act for direct hire employees of the client
28 who are not covered employees and not otherwise covered
29 under a policy described in this section.

30 (ii) While coverage provided under a policy issued

1 to the PEO is in force, the PEO will be responsible for
2 paying all premium obligations, including any audit
3 adjustments and policyholder assessments, and will be
4 entitled to any premium refunds. The written notice to
5 the client shall further explain that although the PEO
6 will charge the client amounts that reflect or include
7 the cost of coverage, these charges are not considered
8 insurance premium obligations of the client. If there is
9 a policy deductible, the written notice to the client
10 shall further explain that the PEO is responsible for
11 reimbursing the insurer for the deductible and may not
12 seek recovery from the client.

13 (2) The written notice to the client shall explicitly
14 state that:

15 (i) If the professional employer organization
16 terminates the professional employment agreement with the
17 client, termination of workers' compensation coverage by
18 the insurer shall be effective the sooner of:

19 (A) Sixty days after notice of intent to
20 terminate workers' compensation coverage by the
21 insurer has been given by the professional employer
22 organization to the client.

23 (B) Fifteen days after notice of intent to
24 terminate workers' compensation coverage by the
25 insurer for nonpayment has been given by the
26 professional employer organization to the client.

27 (C) The date on which workers' compensation
28 coverage for the covered employees is transferred to
29 the client's workers' compensation policy or other
30 coverage.

1 (ii) The requirements under paragraph (1) shall
2 continue to apply to workers' compensation coverage
3 provided by the insurer after the notice is given
4 pursuant to subparagraph (i).

5 (iii) The client shall pay for all workers'
6 compensation coverage provided by the insurer, including
7 reasonable administrative expenses, subsequent to the
8 termination of the professional employer agreement by the
9 professional employer organization.

10 (iv) If workers' compensation coverage is provided
11 through a workers' compensation insurance policy issued
12 to the professional employer organization on behalf of
13 the client who has been given notice pursuant to
14 subparagraph (i), the professional employer organization
15 shall notify the affected insurer of the notice.

16 (g) Notice to department.--If the professional employer
17 agreement provides for the PEO to provide workers' compensation
18 insurance for covered employees, the PEO shall:

19 (1) Notify the department that it has insured covered
20 employees assigned to a client for workers' compensation on a
21 multiple coordinated policy basis pursuant to subsection
22 (b) (3) or through self-insurance in accordance with
23 subsection (b) (4) or on a master policy basis pursuant to
24 subsection (b) (5) within 15 days after the effective date of
25 the professional employer agreement.

26 (2) Notify the department of any cancellation or
27 termination of a professional employer agreement under which
28 the PEO has assumed the obligation to provide workers'
29 compensation insurance for covered employees within ten days
30 following the date the notification of cancellation or

1 termination of the professional employer agreement is issued
2 to the client.

3 (3) Notify the department of any cancellation or
4 termination of workers' compensation coverage for covered
5 employees by the PEO's insurer, or any change in insurers for
6 covered employees, within ten days of the effective date of
7 cancellation, termination or change of insurers.

8 (h) Notice by insurer or licensed producer.--The insurer or
9 licensed producer of a workers' compensation policy sponsored by
10 a PEO for covered employees shall provide the department with
11 copies of all notices of coverage, cancellation or nonrenewal
12 related to that policy. The PEO shall notify the insurer or
13 licensed producer of the requirement under this subsection.

14 (i) Exclusive remedy.--

15 (1) The Workers' Compensation Act shall provide the
16 exclusive remedy for injuries suffered by direct hire and
17 covered employees in the course and scope of their employment
18 or coemployment with the PEO and client where the PEO or
19 client has secured workers' compensation insurance or self-
20 insured their workers' compensation obligations as required
21 by the Workers' Compensation Act, this act and the
22 professional employer agreement. Both the PEO and the client
23 shall be entitled to the exclusiveness of remedy under
24 section 303 of the Workers' Compensation Act regardless of
25 which provided such coverage.

26 (2) Nothing in this act may include within the coverage
27 of the Workers' Compensation Act individuals, services or
28 remuneration that are otherwise excluded from the Workers'
29 Compensation Act.

30 (j) Cost.--The professional employer organization shall not

1 make any materially inaccurate, misleading or fraudulent
2 representations to the client regarding the cost of workers'
3 compensation coverage. If the professional employer organization
4 charges the client an itemized amount for workers' compensation
5 coverage, the professional employer organization shall provide
6 the client with an accurate and concise description of the basis
7 upon which it was calculated and the services that are included.
8 A professional employer organization shall not charge a client
9 an itemized amount for workers' compensation coverage that is
10 materially inconsistent with the actual amounts that the
11 professional employer organization is charged by the insurer,
12 given reasonably anticipated loss-sensitive charges, if
13 applicable, reasonable recognition of the professional employer
14 organization's costs and a margin for profit.

15 (k) Applicability.--This section shall apply to new and
16 renewal workers' compensation policies issued to professional
17 employer organizations on or after the effective date of this
18 act.

19 Section 504. Unemployment compensation insurance.

20 (a) Employer.--Notwithstanding any other provision of this
21 act, the following shall apply:

22 (1) A professional employer agreement under this act
23 shall constitute an arrangement included in section 4(j)(2.1)
24 of the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897,
25 No.1), known as the Unemployment Compensation Law.

26 (2) Nothing in this act shall be construed:

27 (i) To affect the responsibilities of the client as
28 the employer of covered employees for purposes of the
29 Unemployment Compensation Law.

30 (ii) To affect the responsibility of the PEO to file

1 reports pursuant to section 315(a)(4) of the Unemployment
2 Compensation Law.

3 (iii) To preclude the applicability of section 4(j)
4 (2.1) or any other provisions of the Unemployment
5 Compensation Law to any arrangement or person not
6 governed by this act.

7 (b) Procedure.--

8 (1) A client may authorize a PEO to file employer
9 reports pursuant to section 304 of the Unemployment
10 Compensation Law and pay unemployment compensation
11 contributions, interest and penalties on the client's behalf.

12 (2) An authorization, filing or payment under this
13 subsection shall be made in the manner prescribed by the
14 department.

15 (3) This subsection shall not be construed to allow
16 multiple employer reports to be filed on a client's
17 unemployment compensation account for a calendar quarter.

18 CHAPTER 7

19 ENFORCEMENT

20 Section 701. Enforcement.

21 (a) Prohibited acts.--A person commits a misdemeanor of the
22 third degree if that person:

23 (1) Offers, provides, advertises or holds itself out as
24 providing professional employer services or uses the names
25 PEO, professional employer organization, staff leasing,
26 employee leasing, administrative employer or other title
27 representing professional employer services without first
28 becoming registered under this act.

29 (2) Knowingly and willingly misrepresents a material
30 fact or fails to disclose a material fact in conjunction with

1 any application, registration, renewal or in any report
2 required under this act.

3 (b) Inspection and disciplinary action.--

4 (1) Upon petition of the department, a court of
5 competent jurisdiction may enjoin a PEO from taking action
6 under or violating this act.

7 (2) The department may conduct audits, inspections and
8 investigations as necessary to administer and enforce this
9 act. The books and records of a PEO and a client shall be
10 available to the department for inspection and copying at
11 reasonable times. The department may examine an individual
12 under oath or affirmation and issue subpoenas to compel the
13 attendance of witnesses and the production of documents.

14 (3) The department may revoke the registration of a PEO
15 or PEO group, or may impose an administrative penalty in an
16 amount not to exceed \$1,000 for each violation, or both, if
17 after notice and hearing, the PEO or PEO group:

18 (i) Knowingly violates any provision of this act.

19 (ii) Ceases to meet any requirement of this act.

20 (iii) Knowingly misrepresents a material fact in
21 conjunction with any application, registration or renewal
22 or in any report required under this act.

23 (iv) Fails to disclose a material fact in
24 conjunction with any application, registration or renewal
25 or in any report required under this act.

26 CHAPTER 21

27 MISCELLANEOUS PROVISIONS

28 Section 2101. Effective date.

29 This act shall take effect in 180 days.