

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1055 Session of
2011

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WATSON, WHITE AND YOUNGBLOOD, MARCH 14, 2011

AS REPORTED FROM COMMITTEE ON LABOR AND INDUSTRY, HOUSE OF
REPRESENTATIVES, AS AMENDED, APRIL 12, 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:

CHAPTER 1

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

1 professional employer organization for professional employer
2 services. The administrative fee shall not be deemed to include
3 any amount of a fee by the professional employer organization
4 that is for wages and salaries, benefits, workers' compensation,
5 payroll taxes, withholding or other assessment paid by the
6 professional employer organization to or on behalf of covered
7 employees under the professional employer agreement.

8 "Client." Any person who enters into a professional employer
9 agreement with a professional employer organization.

10 "Coemployer." A professional employer organization or
11 client.

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

18 "Controlling person." A person that owns, directly or
19 indirectly, 10% or more of the equity interest in a professional
20 employer organization.

21 "Covered employee." An individual coemployed by a
22 professional employer organization and a client who meets the
23 following criteria:

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

26 (2) The individual's coemployment relationship is
27 pursuant to a professional employer agreement subject to this
28 act.

29 Subject to section 504, individuals who are officers, directors,
30 shareholders, partners and managers of the client and who are

1 operational managers or perform day-to-day operational services
2 for the client are covered employees only to the extent that the
3 client and the professional employer organization expressly
4 agree in the professional employer agreement.

5 "Department." The Department of Labor and Industry of the
6 Commonwealth.

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

11 "Insurer." A legal entity authorized or licensed to transact
12 insurance business in accordance with the laws of this
13 Commonwealth.

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

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

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

1 policy communications related to such workers' compensation
2 policy coordinated through the professional employer
3 organization.

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

7 "Person." Any individual, partnership, corporation, limited
8 liability company, association or any other form of legally
9 recognized entity.

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

12 (1) for the coemployment of covered employees;

13 (2) for the allocation of employer rights and obligations
14 between the client and the professional employer organization
15 with respect to the covered employees; and

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

18 "Professional employer organization" or "PEO." Any person
19 engaged in the business of providing professional employer
20 services.

21 "Professional employer services." The business of entering
22 into coemployment relationships under this act.

23 "Registrant." A professional employer organization
24 registered under this act.

25 "Secretary." The Secretary of Labor and Industry of the
26 Commonwealth.

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

28 (1) recruiting and hiring its own employees;

29 (2) finding other organizations that need the services
30 of those employees;

1 (3) assigning those employees to perform work at or
2 services for the other organizations to support or supplement
3 the other organizations' work forces, or to provide
4 assistance in special work situations, including, but not
5 limited to, employee absences, skill shortages, seasonal
6 workloads or to perform special assignments or projects; and
7 (4) customarily attempting to reassign the employees to
8 other organizations when they finish each assignment.

9 Section 103. Scope.

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

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

25 (2) Independent contractor arrangements.

26 (3) Providing temporary help services.

27 Section 104. Construction.

28 (a) Collective bargaining agreements.--Nothing contained in
29 this act or in any professional employer agreement shall affect,
30 modify or amend any existing collective bargaining agreement,

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

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

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

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

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

30 (4) Create any right or cause of action not otherwise

1 existing in law except as specifically set forth in the
2 professional employer agreement or this act.

3 (c) Licensing.--Nothing contained in this act or any
4 professional employer agreement shall affect, modify or amend
5 any Federal, State or local licensing, registration or
6 certification requirement applicable to any client or covered
7 employee. The following apply:

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

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

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

26 (d) Tax credits and other incentives.--For purposes of
27 determination of tax credits and other economic incentives
28 provided by the Commonwealth or other government entity and
29 based on employment, covered employees shall be deemed employees
30 solely of the client. A client shall be entitled to the benefit

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

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

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

1 CHAPTER 3

2 REGISTRATION

3 Section 301. Registration.

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

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

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

14 (2) The address of the principal place of business of
15 the PEO or the PEO group members and the address of each
16 office maintained in this Commonwealth.

17 (3) The taxpayer or employer identification number of
18 the PEO or the PEO group members.

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

23 (5) A statement of ownership, which shall include the
24 name and evidence of the business experience of any
25 controlling person.

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

1 (7) A financial statement that sets forth the financial
2 condition of the PEO or PEO group and meets the following
3 requirements:

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

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

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

26 (8) The provisions of the professional employer
27 agreements in use or that will be used by the PEO or PEO
28 group in this Commonwealth.

29 (9) A complete list of current clients with covered
30 employees who perform services within this Commonwealth at

1 the time of registration.

2 (10) Evidence of current workers' compensation insurance
3 policies issued to or through the PEO insuring covered
4 employees located in this Commonwealth.

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

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

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

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

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

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

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

1 shall remain effective until the department grants or denies
2 the application for renewal.

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

13 (e) Limited registration.--

14 (1) A PEO or PEO group is eligible for a limited
15 registration under this act if the PEO or PEO group meets the
16 following:

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

24 (ii) Does not maintain an office in this
25 Commonwealth.

26 (iii) Does not directly solicit clients with covered
27 employees who may perform services within this
28 Commonwealth.

29 (iv) Does not have more than 50 covered employees
30 who may perform services in this Commonwealth on any

1 given day.

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

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

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

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

1 investigate or enforce any provision of this act.

2 (i) Record confidentiality.--All financial statements, any
3 person's personal identifying information, employer
4 identification numbers, a Federal employment identification
5 number, provisions of the professional employer agreements and
6 client lists obtained by the department from a PEO or PEO group
7 under this act shall not be public records under the act of
8 February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.
9 The department shall make available such personal identifying
10 information, employer identification numbers, a Federal
11 employment identification number, provisions of the professional
12 employer agreements and client lists obtained by the department
13 from a PEO or PEO group under this act to a rating organization
14 licensed pursuant to section 712(a) of the act of June 2, 1915
15 (P.L.736, No.338), known as the Workers' Compensation Act, as
16 required to comply with that rating organization's statutory
17 obligations. Information obtained under this subsection shall
18 only be used by the rating organization to comply with those
19 statutory duties either prescribed under the Workers'
20 Compensation Act or required by the Insurance Department
21 pursuant to its statutory authority under the act of May 17,
22 1921 (P.L.789, No.285), known as The Insurance Department Act of
23 1921, or the act of May 17, 1921 (P.L.682, No.284), known as The
24 Insurance Company Law of 1921, and shall not be considered
25 public records under the Right-to-Know Law.

26 (j) Appeals.--

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

1 within 30 days after the date of the determination.

2 (2) An appeal of a determination by the department
3 denying an application for a renewal registration or revoking
4 a registration shall operate as a supersedeas while the
5 appeal is pending. The effective date of a denial or
6 revocation subject to this subsection shall not be prior to
7 the expiration of the appeal period under paragraph (1).

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

12 Section 302. Fees.

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

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

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

18 (3) Renewal registration, \$250.

19 (4) Limited registration, \$250.

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

28 Section 303. Financial capability.

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

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

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

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

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

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

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

29 (2) An instrument held under a trust agreement
30 prescribed by the department and maintained to secure payment

1 as set forth in subsection (a) (2). The following shall apply:

2 (i) The deposit shall consist of cash, bonds or
3 other evidence of indebtedness issued, assumed or
4 guaranteed by the United States of America or by an
5 agency or instrumentality of the United States;
6 investments in common funds or regulated investment
7 companies which invest primarily in Federal Government or
8 State government agency obligations; or bonds or other
9 security issued by the Commonwealth and backed by the
10 Commonwealth's full faith and credit.

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

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

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

30 (ii) The registrant shall replace the letter of

1 credit with a new letter of credit issued by a bank with
2 an acceptable credit rating or with another acceptable
3 form of security if a bank's rating falls below the
4 acceptable rating after the letter of credit is issued.
5 If the letter of credit is not replaced within 60 days,
6 the department shall be entitled to draw on the letter of
7 credit and will deposit the proceeds to secure payment as
8 set forth in subsection (a) (2).

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

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

23 CHAPTER 5

24 PEO DUTIES AND AGREEMENTS

25 Section 501. Duties and contractual relationship.

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

29 Specifically:

30 (1) The client shall be entitled to exercise all rights,

1 and shall be obligated to perform all duties and
2 responsibilities, otherwise applicable to an employer in an
3 employment relationship.

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

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

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

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

29 (2) That the PEO shall have responsibility to pay wages
30 to covered employees; to withhold, collect, report and remit

1 payroll-related taxes and may remit unemployment taxes in
2 accordance with section 504; and, to the extent the PEO has
3 assumed responsibility in the professional employer
4 agreement, to make payments for employee benefits for covered
5 employees. As used in this paragraph, the term "wages" does
6 not include any obligation between a client and a covered
7 employee for payments beyond or in addition to the covered
8 employee's salary, draw or regular rate of pay, such as
9 bonuses, commissions, severance pay, deferred compensation,
10 profit sharing or vacation, sick or other paid time off pay,
11 unless the PEO has expressly agreed to assume liability for
12 these payments in the professional employer agreement.

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

28 (4) That the PEO shall have a right to hire, discipline
29 and terminate a covered employee as may be necessary to
30 fulfill the PEO's responsibilities under this act and the

1 professional employer agreement. The client shall have a
2 right to hire, discipline and terminate a covered employee.

3 (5) The PEO or the client has the responsibility to
4 provide workers' compensation coverage for covered employees,
5 in compliance with section 503, which responsibility shall be
6 specifically allocated in the professional employer agreement
7 to either the client or the PEO in accordance with section
8 503(a).

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

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

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

23 (2) If the PEO is providing benefits to covered
24 employees pursuant to a PEO sponsored welfare benefit plan,
25 the PEO shall provide specific notice to the client as to
26 services provided by the PEO concerning those benefits. These
27 responsibilities include those related to administration,
28 which includes Consolidated Omnibus Budget Reconciliation Act
29 (COBRA) administration, plan administration, enrollment and
30 renewal services pursuant to their professional employer

1 agreement. The notice may be contained in the professional
2 employer agreement or in a separate notice.

3 (e) Specific responsibilities.--Except to the extent
4 otherwise expressly provided by the applicable professional
5 employer agreement:

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

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

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

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

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

26 (6) A covered employee is not, solely as the result of
27 being a covered employee of a PEO, an employee of the PEO for
28 purposes of general liability insurance, fidelity bonds,
29 surety bonds, employer's liability which is not covered by
30 workers' compensation or liquor liability insurance carried

1 by the PEO unless the covered employee is included by
2 specific reference in the professional employer agreement and
3 applicable prearranged employment contract, insurance
4 contract or bond.

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

11 (g) Taxation.--

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

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

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

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

1 Section 502. Benefit plans.

2 (a) Retirement and welfare benefit plans.--A client and a
3 PEO shall each be deemed an employer for purposes of sponsoring
4 retirement and welfare benefit plans for its covered employees.

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

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

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

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

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

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

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

29 Section 503. Workers' compensation.

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

1 (1) Both the PEO and the client shall be an employer of
2 covered employees assigned to the client for purposes of this
3 act and the act of June 2, 1915 (P.L.736, No.338), known as
4 the Workers' Compensation Act.

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

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

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

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

23 (1) The client obtaining a standard workers'
24 compensation policy from an insurer authorized to provide
25 workers' compensation coverage covering the client's covered
26 employees. Separate experience modification, risk
27 classifications, merit rating adjustments, construction
28 classification premium adjustments or certified safety
29 committee program credits shall be applied to the exposures
30 of the client covered by a policy obtained under this

1 paragraph based on the client's entire Pennsylvania
2 operations notwithstanding coverage provided under additional
3 professional employer agreements pursuant to paragraphs (3),
4 (4) and (5).

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

8 (3) The PEO purchasing workers' compensation insurance
9 on a multiple coordinated policy basis from an insurer
10 authorized to provide workers' compensation coverage to the
11 PEO and to the client with respect to the covered employees
12 assigned to the client. Each policy written on a multiple
13 coordinated policy basis shall be issued to the PEO as the
14 primary named insured and must identify both the PEO and the
15 client as insureds. At the written request of the client, a
16 professional employer organization shall make available
17 evidence of workers' compensation coverage, loss history and
18 total wages paid for covered employees of the client. The
19 following apply:

20 (i) Separate experience data must be reported to the
21 licensed rating organization for workers' compensation
22 insurance for each multiple coordinated policy in a
23 format complying with requirements of the approved
24 statistical plan for workers' compensation coverage.

25 (ii) Risk classifications shall be assigned to each
26 client based on the totality of that client's
27 Pennsylvania operations regardless of whether workers
28 engaged therein are provided under one or more
29 professional employer agreements or are direct hire
30 employees of the client.

1 (iii) If applicable, separate experience
2 modification, merit rating adjustments, construction
3 classification premium adjustment or certified safety
4 committee program credits shall be applied to the
5 exposures of each client covered by a multiple
6 coordinated policy based on the client's entire
7 Pennsylvania operations whether coverage is being
8 provided for the client's exposures under the client's
9 own policy or on a master policy basis or multiple
10 coordinated policy basis under one or more professional
11 employer agreements, or some combination thereof.

12 (iv) Policies written in accordance with this
13 paragraph by the same insurer with the PEO as named
14 insured may be combinable for premium discount and other
15 purposes including a retrospective rating program or any
16 other approved pricing program. Such programs may be
17 based on the combined total standard premium and losses
18 of all such policies issued to the PEO as the primary
19 named insured.

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

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

5 (5) The PEO purchasing workers' compensation insurance
6 on a master policy basis from an insurer authorized to
7 provide workers' compensation coverage. The insurer or
8 licensed producer shall provide a certificate of insurance
9 evidencing workers' compensation coverage to each client and
10 to the PEO with respect to the covered employees of that
11 client. The following apply:

12 (i) When coverage is provided under a master policy,
13 the insurer must report separate experience data to the
14 licensed rating organization for workers' compensation
15 insurance for each client insured within any master
16 policy in a format complying with the requirements of the
17 approved statistical plan for workers' compensation
18 coverage.

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

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

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

6 (iv) Nothing in this paragraph shall prohibit a
7 professional employer organization from participating in
8 a large deductible program, retrospective rating program
9 or any other rating program approved for and written
10 under a workers' compensation policy offered by an
11 insurer. Further, nothing in this paragraph shall
12 restrict an insurer from collecting workers' compensation
13 premium based on the totality of the exposure under the
14 master policy and applying rates and discounts consistent
15 with those approved for the insurer pursuant to the
16 rating program.

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

25 (d) Client obligation.--

26 (1) A client retains the statutory obligation to provide
27 workers' compensation coverage for employees that are not
28 covered employees pursuant to the professional employer
29 agreement. Nothing in this paragraph shall preclude a client
30 from purchasing a workers' compensation policy insuring both

1 its covered employees and its direct hire employees.

2 (2) If a client's insurer or the client, if self-
3 insured, has issued coverage for direct hire employees, and
4 an injured employee is entitled to workers' compensation
5 benefits but there is a dispute as to whether the employee is
6 a direct hire employee of the client or a covered employee of
7 the PEO, the client's insurer or the client, if self-insured,
8 shall pay the benefits, subject to reimbursement of claims
9 costs and loss adjustment expenses by the PEO's insurer OR ←
10 THE PEO, IF SELF-INSURED, if it is determined that the
11 claimant is a covered employee of the PEO.

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

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

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

29 (1) If coverage is provided under a policy issued to the
30 PEO for covered employees of the PEO, the PEO shall give

1 clear and conspicuous written notice to the client that:

2 (i) The client of the PEO has a continuing
3 obligation to provide coverage under the Workers'
4 Compensation Act for any direct hire employees of the
5 client who are not covered employees and not otherwise
6 covered under a policy described in this section.

7 (ii) While coverage provided under a policy issued
8 to the PEO is in force, the PEO will be responsible for
9 paying all premium obligations, including any audit
10 adjustments and policyholder assessments, and will be
11 entitled to any premium refunds. The written notice to
12 the client shall further explain that although the PEO
13 will charge the client amounts that reflect or include
14 the cost of coverage, these charges are not considered
15 insurance premium obligations of the client. If there is
16 a policy deductible, the written notice to the client
17 shall further explain that the PEO is responsible for
18 reimbursing the insurer for the deductible and may not
19 seek recovery from the client.

20 (2) The written notice to the client shall explicitly
21 state that:

22 (i) If the professional employer organization
23 terminates the professional employment agreement with the
24 client, termination of workers' compensation coverage by
25 the insurer shall be effective the sooner of:

26 (A) Sixty days after notice of intent to
27 terminate workers' compensation coverage by the
28 insurer has been given by the professional employer
29 organization to the client.

30 (B) Fifteen days after notice of intent to

1 terminate workers' compensation coverage by the
2 insurer for nonpayment has been given by the
3 professional employer organization to the client.

4 (C) The date on which workers' compensation
5 coverage for the covered employees is transferred to
6 the client's workers' compensation policy or other
7 coverage.

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

12 (iii) The client shall pay for all workers'
13 compensation coverage provided by the insurer, including
14 reasonable administrative expenses, subsequent to the
15 termination of the professional employer agreement by the
16 professional employer organization.

17 (iv) If workers' compensation coverage is provided
18 through a workers' compensation insurance policy issued
19 to the professional employer organization on behalf of
20 the client who has been given notice pursuant to
21 subparagraph (i), the professional employer organization
22 shall notify the affected insurer of the notice.

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

26 (1) Notify the department that it has insured covered
27 employees assigned to a client for workers' compensation on a
28 multiple coordinated policy basis pursuant to subsection
29 (b) (3) or through self-insurance in accordance with
30 subsection (b) (4) or on a master policy basis pursuant to

1 subsection (b) (5) within 15 days after the effective date of
2 the professional employer agreement.

3 (2) Notify the department of any cancellation or
4 termination of a professional employer agreement under which
5 the PEO has assumed the obligation to provide workers'
6 compensation insurance for covered employees within ten days
7 following the date the notification of cancellation or
8 termination of the professional employer agreement is issued
9 to the client.

10 (3) Notify the department of any cancellation or
11 termination of workers' compensation coverage for covered
12 employees by the PEO's insurer, or any change in insurers for
13 covered employees, within ten days of the effective date of
14 cancellation, termination or change of insurers.

15 (h) Notice by insurer or licensed producer.--The insurer or
16 licensed producer of a workers' compensation policy sponsored by
17 a PEO for covered employees shall provide the department with
18 copies of all notices of coverage, cancellation or nonrenewal
19 related to that policy. The PEO shall notify the insurer or
20 licensed producer of the requirement under this subsection.

21 (i) Exclusive remedy.--

22 (1) The Workers' Compensation Act shall provide the
23 exclusive remedy for injuries suffered by direct hire and
24 covered employees in the course and scope of their employment
25 or coemployment with the PEO and client where the PEO or
26 client has secured workers' compensation insurance or self-
27 insured their workers' compensation obligations as required
28 by the Workers' Compensation Act, this act and the
29 professional employer agreement. Both the PEO and the client
30 shall be entitled to the exclusiveness of remedy under

1 section 303 of the Workers' Compensation Act regardless of
2 which provided such coverage.

3 (2) Nothing in this act may include within the coverage
4 of the Workers' Compensation Act individuals, services or
5 remuneration that are otherwise excluded from the Workers'
6 Compensation Act.

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

22 (k) Applicability.--This section shall apply to new and
23 renewal workers' compensation policies issued to professional
24 employer organizations on or after the effective date of this
25 act.

26 Section 504. Unemployment compensation insurance.

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

29 (1) A professional employer agreement under this act
30 shall constitute an arrangement included in section 4(j)(2.1)

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

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

4 (i) To affect the responsibilities of the client as
5 the employer of covered employees for purposes of the
6 Unemployment Compensation Law.

7 (ii) To affect the responsibility of the PEO to file
8 reports pursuant to section 315(a)(4) of the Unemployment
9 Compensation Law.

10 (iii) To preclude the applicability of section 4(j)
11 (2.1) or any other provisions of the Unemployment
12 Compensation Law to any arrangement or person not
13 governed by this act.

14 (b) Procedure.--

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

19 (2) An authorization, filing or payment under this
20 subsection shall be made in the manner prescribed by the
21 department.

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

25 CHAPTER 7

26 ENFORCEMENT

27 Section 701. Enforcement.

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

30 (1) Offers, provides, advertises or holds itself out as

1 providing professional employer services or uses the names
2 PEO, professional employer organization, staff leasing,
3 employee leasing, administrative employer or other title
4 representing professional employer services without first
5 becoming registered under this act.

6 (2) Knowingly and willingly misrepresents a material
7 fact or fails to disclose a material fact in conjunction with
8 any application, registration, renewal or in any report
9 required under this act.

10 (b) Inspection and disciplinary action.--

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

14 (2) The department may conduct audits, inspections and
15 investigations as necessary to administer and enforce this
16 act. The books and records of a PEO and a client shall be
17 available to the department for inspection and copying at
18 reasonable times. The department may examine an individual
19 under oath or affirmation and issue subpoenas to compel the
20 attendance of witnesses and the production of documents.

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

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

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

27 (iii) Knowingly misrepresents a material fact in
28 conjunction with any application, registration or renewal
29 or in any report required under this act.

30 (iv) Fails to disclose a material fact in

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

3 CHAPTER 21

4 MISCELLANEOUS PROVISIONS

5 Section 2101. Effective date.

6 This act shall take effect in 180 days.