



**Am. Sub. H.B. 183**

125th General Assembly

(As Passed by the House)

**Reps. Daniels, Allen, C. Evans, Seitz, Setzer, Raga, Ujvagi, Young, McGregor, Barrett, Carano, Cates, Chandler, Cirelli, Clancy, DeBose, Domenick, Jolivet, Niehaus, Olman, T. Patton, Schaffer, Schlichter, Schmidt, Webster, Yates**

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**BILL SUMMARY**

- Requires all professional employer organizations operating in Ohio (employers that specialize in "leasing" employees to other employers) to register with the Administrator of Workers' Compensation.
- Imposes various requirements on the operation of professional employer organizations including that they comply with workers' compensation laws.

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**CONTENT AND OPERATION**

**Professional employer organizations**

Under the bill, a professional employer organization (hereafter "PEO") is a business entity that enters into an agreement with one or more client employers for the purpose of "coemploying" all or part of the client employer's workforce at the client employer's worksite. (Sec. 4125.01.) The bill requires a PEO with whom a shared employee is co-employed to do all of the following:

(1) Pay wages associated with a shared employee pursuant to the terms and conditions of compensation in the professional employer organization agreement between the PEO and the client employer;

(2) Pay all related payroll taxes associated with a shared employee independent of the terms and conditions contained in the professional employer organization agreement between the PEO and the client employer;

(3) Maintain workers' compensation coverage, pay all workers' compensation premiums and manage all workers' compensation claims, filings,

and related procedures associated with a shared employee in compliance with workers' compensation laws, except that when shared employees include family farm officers, ordained ministers, or corporate officers of the client employer, payroll reports must include the entire amount of payroll associated with those persons;

(4) Provide written notice to each shared employee it assigns to perform services to a client employer of the relationship between and the responsibilities of the PEO and the client employer;

(5) Maintain complete records separately listing the manual classifications of each client employer and the payroll reported to each manual classification for each client employer for each payroll reporting period during the time period covered in the professional employer organization agreement;

(6) Maintain a record of workers' compensation claims for each client employer. (Sec. 4125.03(A).)

### **Direction and control over shared employees**

Under the bill, the PEO with whom a shared employee is co-employed has a right of direction and control over each shared employee assigned to a client employer's location, however, a client employer may retain sufficient direction and control over a shared employee as is necessary to conduct the client employer's business and to discharge any fiduciary responsibility that it may have, or to comply with applicable licensure, regulatory, or statutory requirements of the client employer. (Sec. 4125.03(B) and (C).)

The bill specifies that when a client employer enters into a professional employer organization agreement with a PEO, the PEO is the employer of record and the succeeding employer for the purposes of determining a workers' compensation experience rating. Also, the bill reiterates that, in accordance with the Ohio Constitution and workers' compensation laws, the exclusive remedy for a shared employee to recover for injuries, diseases, or death incurred in the course of and arising out of the employment relationship against either the PEO or the client employer are those benefits provided under applicable workers' compensation laws. (Sec. 4125.04.)

### **Registration**

The bill requires a PEO operating in Ohio to register with the Administrator of the Bureau of Workers' Compensation on forms provided by the Administrator not later than 30 days after the effective date of the bill or not later than 30 days after the formation of a PEO, whichever occurs later. Following initial

registration, each PEO must renew its registration with the Administrator on an annual basis. Initial registration and registration renewal must include all of the following information:

(1) A list of each of the PEO's client employers current as of the date of registration for purposes of initial registration or current as of the date of annual registration renewal, or within 14 days of adding or releasing a client that includes the client employer's name, address, federal tax identification number, and Bureau of Workers' Compensation risk number;

(2) A fee as determined by the Administrator;

(3) Any other information required by the Administrator. (Sec. 4125.05(A) and (B).)

The bill allows the Administrator, with the advice and consent of the Workers' Compensation Oversight Commission to adopt rules to require PEOs to provide security in the form of a bond or letter of credit assignable to the Ohio Bureau of Workers' Compensation not to exceed an amount equal to the premiums incurred for the two most recent payroll periods, prior to any discounts or dividends, to meet the financial obligations pursuant to workers' compensation laws. A PEO may appeal the amount of security required under workers' compensation law concerning employer appeals of certain decisions (Secs. 4125.05(C) and 4123.291). However, a PEO that qualifies for self-insurance or a retrospective rating under workers' compensation laws, must abide by different financial disclosure and security requirements specified under the workers' compensation laws. (Sec. 4125.05(C) and (D).) In general, existing law requires a self insuring employer to have a sufficient bond rating and demonstrate that if it sustains a catastrophic or severe workers' compensation loss, the employer has the ability to maintain its financial viability and to cover all costs. (O.A.C. 4123-17-42, R.C. 4123.35 (not in bill).)

Under the bill, whoever violates these registration and security requirements is guilty of a minor misdemeanor (a fine of not more than \$100) and whoever "knowingly" violates the registration requirements is guilty of a second degree misdemeanor (incarceration for not more than 90 days or a fine of not more than \$750 or both). (Sec. 4125.99.)

### **Administrator of the Bureau of Workers' Compensation**

The Administrator must adopt rules in accordance with the Administrative Procedure Act to administer and enforce the bill. (Sec. 4123.02.) The bill allows the Administrator to deny or revoke the registration of a PEO and to rescind its

status as a co-employer upon reasonable belief that the PEO has done any of the following:

(1) Obtained or attempted to obtain registration through misrepresentation, misstatement, or fraud;

(2) Misappropriated or converted to its own, or improperly withheld, money required to be held in a fiduciary capacity in accordance with workers' compensation laws;

(3) Used fraudulent, coercive, or dishonest practices or demonstrated incompetence, untrustworthiness, or financial irresponsibility;

(4) Failed to appear, without reasonable cause or excuse, in response to a subpoena lawfully issued by the Administrator;

(5) Failed to comply with the requirements of the laws governing PEOs. (Sec. 4125.06(A).)

The bill requires that, upon revocation of the registration of a PEO, all client employers associated with that PEO must file payroll reports and pay workers' compensation premiums directly to the Administrator on each client employer's own behalf at a rate determined by the Administrator based solely on the claims experience of the client employer. Each client employer associated with that PEO also must file on its own behalf the appropriate documents or data with all state and federal agencies as required by law with respect to any shared employee the client employer and the PEO shared. (Sec. 4125.06(B) and (C).)

The bill specifies that, except to the extent necessary for the Administrator to administer the statutory duties of the Administrator and for employees of the state to perform their official duties, all records, reports, client lists, and other information obtained from a PEO with regard to registration are confidential and are not allowed to be published or open to public inspection. Whoever violates this confidentiality requirement is guilty of a minor misdemeanor (a fine of not more than \$100) and whoever "knowingly" violates this confidentiality requirement is guilty of a second degree misdemeanor (incarceration for not more than 90 days or a fine of not more than \$750 or both). (Secs. 4125.05(E) and 4125.99.)

### **Termination and bankruptcy**

Under the bill, not later than 14 calendar days after the date on which a professional employer organization agreement is terminated, the PEO is adjudged bankrupt, the PEO ceases operations within the state of Ohio, or the registration of the PEO is revoked, the PEO is required to submit to the Administrator and to

each client employer associated with that PEO a completed workers' compensation lease termination notice form provided by the Administrator. The completed form must include all client payroll and claim information listed in a format specified by the Administrator and notice of all workers' compensation claims that have been reported to the PEO in accordance with the organization's internal reporting policies. (Sec. 4125.07.)

### **Licensing, registration, and certification laws**

Under the bill, a PEO, client employer, and a shared employee must abide by any applicable federal, state, or local licensing, registration, or certification statutes or regulations. An individual required to obtain and maintain a license, registration, or certification under law and who is a shared employee of a PEO and a client employer is an employee of the client employer for purposes of obtaining and maintaining the appropriate license, registration, or certification as required by law. Under the bill, a PEO does not engage in any occupation, trade, or profession that requires a license, certification, or registration solely by entering into a professional employer agreement with a client employer or coemploying a shared employee. (Sec. 4125.08.)

### **Definitions**

In addition to the terms already discussed, the bill defines the following terms relative to PEOs:

"Client employer" means a sole proprietor, partnership, association, limited liability company, or corporation that enters into a professional employer organization agreement and is assigned shared employees by the PEO.

"Coemploy" means the sharing of the responsibilities and liabilities of being an employer.

"Professional employer organization agreement" means a written contract between a PEO and a client employer to coemploy employees for a duration of not less than 12 months in accordance with the requirements of the laws governing PEOs.

"Shared employee" means an individual intended to be assigned to a client employer on a permanent basis, not as a temporary supplement to the client employer's workforce, who is coemployed by a PEO and a client employer pursuant to a professional employer organization agreement. (Sec. 4125.01.)

The definition of "employer" under existing workers' compensation law also is specifically amended by the bill to include PEOs. (Sec. 4123.01(B)(2).)

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-13-03	p. 473
Reported, H. Commerce & Labor	10-15-03	p. 1123*
Passed House (96-0)	11-13-03	p. 1070*

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\* *These page numbers for the House Journal are correct.*

