



Ohio Legislative Service Commission

Final Analysis

Nicholas A. Keller

Sub. S.B. 139

129th General Assembly
(As Passed by the General Assembly)

Sens. Hughes, Schaffer, Seitz, Patton, Bacon, Beagle, Daniels, Faber, Hite, Jones, Niehaus, Obhof, Tavares

Reps. R. Adams, Anielski, Antonio, Baker, Beck, Blessing, Bubp, Buchy, Carney, Combs, Damschroder, Duffey, Garland, Gonzales, Goodwin, Grossman, C. Hagan, Hall, Henne, Hottinger, Letson, Mallory, McClain, Milkovich, Murray, O'Brien, Pelanda, Ruhl, Scherer, Slesnick, Stebelton, Stinziano, Uecker, Young, Yuko

Effective date: March 22, 2013; certain provisions effective April 1, 2013

ACT SUMMARY

- Allows multiple professional employer organizations (PEO) to register together as one entity, referred to as a "PEO reporting entity," in lieu of registering individually as under current law.
- Requires a PEO or a PEO reporting entity to submit the PEO or PEO reporting entity's most recent audited or reviewed financial statement when initially registering or renewing registration.
- Requires a PEO or a PEO reporting entity to have positive working capital at initial or annual registration, and if the PEO or PEO reporting entity does not have positive working capital, requires the PEO or PEO reporting entity to satisfy additional security and reporting requirements over the registration period.
- Allows a PEO to submit the financial statements of a PEO reporting entity, and vice versa, if the PEO or PEO reporting entity is a subsidiary of, or is related to, a variable interest entity.
- Requires the Bureau of Workers' Compensation to deny initial or annual registration to an applicant or PEO reporting entity that does not meet the requirements of the act.

- Prohibits multiple, unrelated PEOs or multiple, unrelated PEO reporting entities from coming together for purposes of obtaining workers' compensation coverage or for forming any type of self-insurance arrangement available under the PEO Law.
- Allows the Administrator of Workers' Compensation to issue a limited registration to a PEO or PEO reporting entity if the PEO or PEO reporting entity provides specified information.
- Authorizes the Administrator to allow an independent assurance organization to act on behalf of a PEO or PEO reporting entity in complying with the PEO Law and any rules adopted under it.
- Requires a PEO to report any transfer of employees between related PEO entities or PEO reporting entities to the Administrator.
- Requires a PEO or PEO reporting entity to include client payroll and claim information regarding the transferred employees and a notice of all workers' compensation claims that have been reported to the PEO or PEO reporting entity.
- Requires every PEO and PEO reporting entity to file a report with the Tax Commissioner that includes specified information about the client employers of the PEO or PEO reporting entity.
- Requires every PEO and PEO reporting entity to update the report sent to the Tax Commissioner on a calendar quarter basis.
- Prohibits a shared employee under a PEO agreement, solely as a result of being a shared employee, from being considered an employee of the PEO for purposes of general liability insurance, fidelity bonds, surety bonds, employer liability not otherwise covered by Ohio's Workers' Compensation Law, or liquor liability insurance carried by the PEO unless otherwise specified in the PEO agreement and the financial document.
- Designates, for tax credits and other economic incentive programs, when a shared employee is considered an employee of the client employer or the PEO.
- Requires the Director of Job and Family Services to adopt rules applicable to PEOs and PEO reporting entities to address the method in which a PEO or PEO reporting entity reports quarterly wages and contributions to the Director for shared employees.
- Requires the rules adopted by the Director to recognize a PEO or PEO reporting entity as the employer of record of the shared employees of the PEO or PEO

reporting entity for reporting purposes and to require each shared employee of a single client employer be reported as a separate and unique subaccount of the PEO or PEO reporting entity.

- Includes requirements to determine a client employer's unemployment compensation experience.
- Requires a PEO or PEO reporting entity to provide a power of attorney or other evidence completed by each client employer of the PEO or PEO reporting entity authorizing the PEO or PEO reporting entity to act on behalf of the client employer in accordance with the requirements of the Unemployment Compensation Law.
- States that a client employer may retain sufficient direction and control over a shared employee as is necessary to ensure the quality, adequacy, and safety of the goods or services produced or sold in the client employer's business in addition to the reasons a client employer retains direction and control listed in continuing law.
- Makes a PEO not liable for the acts, errors, and omissions of a client employer or a shared employee when those acts, errors, and omissions occur under the direction and control of the client employer.
- Makes a client employer not liable for the acts, errors, and omissions of a PEO or a shared employee when those acts, errors, and omissions occur under the direction and control of the PEO.
- Prohibits the PEO Law or a PEO agreement from interfering with contractual and other obligations.

TABLE OF CONTENTS

Introduction	4
PEO registration.....	5
Financial status information requirements under the act.....	5
Prohibition against unrelated PEOs joining together.....	7
Limited registration.....	7
Confidentiality and trade secrets	8
Representation.....	8
List of registrants.....	9
Continuing law registration requirements.....	9
Reports to the Administrator and the Tax Commissioner	10
Employer of record.....	12
Tax credits assessments and other economic incentives	12
Unemployment compensation	13
Duties and liabilities of PEOs and client employers.....	14
Professional or licensed activities.....	16

CONTENT AND OPERATION

Introduction

Under continuing law, a "professional employer organization" (PEO) is a sole proprietor, partnership, association, limited liability company, or corporation that enters into an agreement with one or more client employers for the purpose of coemploying (sharing of the responsibilities and liabilities of being an employer) all or part of the client employer's workforce at the client employer's work site. A "client employer" is a sole proprietor, partnership, association, limited liability company, or corporation that enters into a PEO agreement, which is a written contract to coemploy employees between a PEO and a client employer with a duration of not less than 12 months in accordance with the requirements of the PEO Law, and is assigned shared employees by the PEO.¹ Under the PEO Law, a PEO must register with the Administrator of Workers' Compensation to operate in Ohio. Whoever fails to comply with this requirement is guilty of a minor misdemeanor, unless the PEO knowingly violates this requirement, in which case the PEO is guilty of a second degree misdemeanor.² Continuing law specifies requirements for registration and reasons for which the Administrator may deny or revoke a registration.

Beginning April 1, 2013, the act allows multiple PEOs to register as one entity. A "PEO reporting entity" (PEORE) is two or more PEOs that are majority owned or commonly controlled by the same entity, parent, or controlling person and that satisfy reporting entity control requirements as defined by the Financial Accounting Standards Board and under the Generally Accepted Accounting Principles (GAAP).³ The act does not amend the section of law that permits the Administrator to deny or revoke a registration. It appears, then, that if an individual PEO that is a member of a registered PEORE commits any of the actions specified in continuing law that could result in the PEO registration being denied or revoked, it is the individual PEO that loses the registration, not the PEORE as a whole.⁴

¹ R.C. 4125.01(B) to (E).

² R.C. 4125.05(A) and R.C. 4125.99, not in the act.

³ R.C. 4125.01(F) and 4125.05 and Section 3.

⁴ See R.C. 4125.06, not in the act.

PEO registration

Financial status information requirements under the act

Beginning April 1, 2013, a PEO under the act cannot submit proof of being certified by either a nationally recognized organization that certifies PEOs or by a government entity approved by the Administrator to satisfy the security requirement specified in continuing law.⁵ Under the act, beginning April 1, 2013, in addition to the security and the information required in (1) to (6) under "**Continuing law registration requirements**" below, to register in Ohio a PEO also must submit the most recent financial statement prepared and audited in accordance with the act's requirements and, if there is any deficit in the working capital (current assets minus current liabilities) required under the act as described below, a bond, irrevocable letter of credit, or securities with a minimum market value in an amount sufficient to cover the deficit.⁶ A PEO must also submit an attestation of the accuracy of the data submissions from the chief executive officer of the PEO. Commonly owned or controlled applicants may register as a PEORE or may register individually. The act specifies that registration as a PEORE does not disqualify an individual PEO from participating in a group-rated workers' compensation plan.⁷

A financial statement required for initial registration must be the most recent financial statement of the PEO or PEORE of which the PEO is a member and must not be older than 13 months. For each registration renewal, the PEO must file the required financial statement within 180 days after the end of the PEO's or PEORE's fiscal year. A PEO may apply to the Administrator for an extension beyond that time if the PEO provides the Administrator with a letter from the PEO's auditor stating the reason for delay and the anticipated completion date.⁸ A PEO, or a PEORE of which the PEO is a member, must prepare a financial statement for registration and registration renewal in accordance with GAAP.⁹

The financial statements must be audited by an independent certified public accountant authorized to practice in the jurisdiction in which that accountant is located. The auditor's report is prohibited from including either a qualification or disclaimer of opinion as to a PEO or PEORE's adherence to GAAP or a statement expressing

⁵ R.C. 4125.05(D)(2) and Section 3.

⁶ R.C. 4125.01(I), 4125.05(B)(7) and (8), and Section 3.

⁷ R.C. 4125.05(A) and (B)(9).

⁸ R.C. 4125.05(I).

⁹ R.C. 4125.051(B).

substantial doubt about the financial well-being of the PEO or PEORE. However, if a PEO does not have at least 12 months of operating history on which to base financial statements, the financial statement must be reviewed, rather than audited, by a certified public accountant.

If a PEO or PEORE is a subsidiary of, or is related to, a variable interest entity, the PEO may submit the financial statements of the PEORE or vice versa. A variable interest entity is an entity in which another entity or entities (referred to as the investor or investors) owns a controlling financial interest without voting rights. This type of relationship is used in determining whether or not two related entities must file consolidated financial statements.¹⁰

The act specifies that the Bureau of Workers' Compensation (BWC) must deny the initial or annual PEO registration of any applicant or PEORE that does not meet these requirements.¹¹

The act allows a PEORE, for purposes of satisfying the registration and registration renewal requirements, to submit a combined or consolidated financial statement that satisfies the act's requirements. If the combined or consolidated financial statement includes entities that are not PEOs or that are not in the PEORE, the controlling entity of the PEORE that is submitting the consolidated or combined financial statement must guarantee that the PEOs of the PEORE have satisfied the requirements for positive working capital as described below and must include supplemental combining schedules to guarantee that those requirements are satisfied by the PEO or PEORE.¹²

The act, beginning April 1, 2013, also requires a PEO, or a PEORE of which the PEO is a member, to maintain positive working capital at initial or annual registration. If a deficit in working capital exists at initial or annual registration, the PEO or the PEORE must do both of the following for that registration period:

- Obtain a bond, irrevocable letter of credit, or securities with a minimum market value in an amount sufficient to cover the deficit in working capital;

¹⁰ R.C. 4125.051(B) and Financial Accounting Standards Board, *FASB Interpretation No. 46*, Revised Dec. 2003.

¹¹ R.C. 4125.051(C).

¹² R.C. 4125.051(D).

- Submit to the Administrator a quarterly financial statement for each calendar quarter during which there is a deficit in working capital, accompanied by an attestation of the chief executive officer that all wages, taxes, workers' compensation premiums, and employee benefits have been paid by the PEO or members of the PEORE.

The bond, letter of credit, or securities required above is in addition to the security required under continuing law and must be held by a depository designated by the Administrator and must secure payment by the PEO or PEORE of all taxes, wages, benefits, or other entitlements due or otherwise pertaining to shared employees, if the PEO or PEORE does not make those payments when due.¹³

PEOs in a PEORE may satisfy the act's financial requirements on a combined or consolidated basis provided that each member of the PEORE guarantees each other members' satisfaction of the requirements regarding positive working capital as described above.¹⁴

Prohibition against unrelated PEOs joining together

Beginning April 1, 2013, the act prohibits multiple, unrelated PEOs from combining together for purposes of obtaining workers' compensation coverage or for forming any type of self-insurance arrangement available under the PEO Law. Similarly, the act prohibits multiple, unrelated PEOREs from combining together for purposes of obtaining workers' compensation coverage or for forming any type of self-insurance arrangement available under the PEO Law.¹⁵

Limited registration

Beginning April 1, 2013, the act allows the Administrator, upon terms and for periods that the Administrator considers appropriate, to issue a limited registration to a PEO or PEORE that provides all of the following items:

- (1) A properly executed request for limited registration on a form provided by the Administrator;
- (2) All information and materials required for registration described in (1) to (6) under "**Continuing law registration requirements**" below;

¹³ R.C. 4125.05(D) and 4125.051(A).

¹⁴ R.C. 4125.051(D).

¹⁵ R.C. 4125.05(J) and Section 3.

(3) Information and documentation necessary to show that the PEO or PEORE satisfies the following criteria:

- It is domiciled outside of Ohio.
- It is licensed or registered as a PEO in another state.
- It does not maintain an office in Ohio.
- It does not participate in direct solicitations for client employers located or domiciled in Ohio.
- It has 50 or fewer shared employees employed or domiciled in Ohio on any given day.¹⁶

Confidentiality and trade secrets

Under continuing law, except to the extent necessary for the Administrator to administer the statutory duties of the Administrator and for employees of Ohio to perform their official duties, all records, reports, client lists, and other information obtained from a PEO for registration and registration renewal are confidential and must be considered trade secrets and not be published or open to public inspection. Beginning April 1, 2013, the act also makes the information received from a PEORE confidential and considers that information a trade secret (for both regular and limited registrations).¹⁷

Representation

Continuing law requires the Administrator to adopt rules in accordance with the Administrative Procedure Act to administer and enforce the PEO Law. Under the act, the Administrator may adopt rules for the acceptance of electronic filings in accordance with the Uniform Electronic Transactions Act¹⁸ for applications, documents, reports, and other filings required by the PEO Law.¹⁹

The act also authorizes the Administrator to allow an independent assurance organization to act on behalf of a PEO or PEORE in complying with the PEO Law and any rules adopted under it. The assurance organization must be approved by the

¹⁶ R.C. 4125.05(C) and Section 3.

¹⁷ R.C. 4125.05(F) and Section 3.

¹⁸ R.C. Chapter 1306.

¹⁹ R.C. 4125.02.

Administrator before acting and must abide by all standards and procedures adopted by the Administrator for that approval. The Administrator may permit a PEO or a PEORE to authorize an assurance organization approved by the Administrator to act on behalf of the PEO or PEORE, and the Administrator must specify certain provisions of the PEO Law that may be satisfied by an assurance organization acting with that authority. The act specifies that the use of an assurance organization is voluntary and defines an assurance organization to be an independent and qualified entity approved by the Administrator to certify the qualifications of a PEO or PEORE.²⁰

List of registrants

Beginning April 1, 2013, the act requires the Administrator to maintain a list of PEOs and PEOREs registered under the PEO Law that is made readily available to the public by electronic or other means.²¹

Continuing law registration requirements

Under continuing law, not later than 30 days after the formation of a PEO, a PEO operating in Ohio must register with the Administrator on forms provided by the Administrator. Following initial registration, each PEO must register with the Administrator annually on or before December 31. Initial registration and each annual registration renewal must include all of the following:

(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 BWC risk number;

(2) A fee as determined by the Administrator in accordance with continuing law requirements;

(3) The name or names under which the PEO conducts business;

(4) The address of the PEO's principal place of business and the address of each office it maintains in Ohio;

(5) The PEO's taxpayer or employer identification number;

²⁰ R.C. 4125.01(A) and 4125.02.

²¹ R.C. 4125.05(K) and Section 3.

(6) A list of each state in which the PEO has operated in the preceding five years, and the name, corresponding with each state, under which the PEO operated in each state, including any alternative names, names of predecessors, and if known, successor business entities.²²

Additionally, continuing law requires the Administrator, with the advice and consent of the BWC Board of Directors, to adopt rules in accordance with the Administrative Procedure Act to require, except as otherwise specified in continuing law, a PEO to provide security in the form of a bond or letter of credit assignable to BWC not to exceed an amount equal to the premiums and assessments incurred for the two most recent payroll periods, prior to any discounts or dividends, to meet the financial obligations of the PEO pursuant to Ohio's Workers' Compensation Law. As an alternative to providing security in the form of a bond or letter of credit, the Administrator must permit a PEO to make periodic payments of prospective premiums and assessments to BWC. A PEO may appeal the amount of the security required to the Administrator in accordance with procedures specified in continuing law.²³

Reports to the Administrator and the Tax Commissioner

Continuing law stipulates what a PEO's responsibilities are with regard to shared employees. The act adds periodic reports related to workers' compensation coverage to this list. Under the act, PEOs must make reports to the Administrator, on a basis determined by the Administrator, on client employers and total workforce. Also, PEOs must report individual client employer payroll, claims, and classification data, breaking the data into separate and unique subaccounts for each client employer.²⁴

The act requires a PEO to report any transfer of employees between related PEO entities or PEOREs to the Administrator within 14 calendar days after the date of the transfer on a form prescribed by the Administrator. The PEO or PEORE must include in the form all client payroll and claim information regarding the transferred employees listed in a format specified by the Administrator and a notice of all workers' compensation claims that have been reported to the PEO or PEORE in accordance with the internal reporting policies of the PEO or PEORE.²⁵

Additionally, the act requires every PEO and every PEORE to file a report with the Tax Commissioner within 30 days after commencing business in Ohio or within 30

²² R.C. 4125.05(A) and (B).

²³ R.C. 4123.291 and 4125.05(D).

²⁴ R.C. 4125.03(A).

²⁵ R.C. 4125.07.

days after the act's effective date, whichever is later, that includes all of the following information:

(1) The name, address, number the employer receives from the Secretary of State to do business in Ohio, if applicable, and federal employer identification number of each client employer of the PEO or PEORE;

(2) The date that each client employer became a client of the PEO or PEORE;

(3) The names and mailing addresses of the chief executive officer and the chief financial officer of each client employer for taxation of the client employer.²⁶

Beginning with the calendar quarter ending after a PEO or PEORE files the initial report required above, and every calendar quarter thereafter, the PEO or the PEORE must file an updated report with the Tax Commissioner. The PEO or PEORE must file the updated report not later than the last day of the month following the end of the calendar quarter and must include all of the following information in the report:

- If an entity became a client employer of the PEO or PEORE at any time during the calendar quarter, all of the information required under (1), (2), and (3) above for each new client employer;
- If an entity terminated the PEO agreement between the PEO or PEORE and the entity at any time during the calendar quarter, the information described in (1) above for that entity, the date during the calendar quarter that the entity ceased being a client of the PEO or PEORE, if applicable, or the date the entity ceased business operations in Ohio, if applicable;
- If the name or mailing address of the chief executive officer or the chief financial officer of a client employer has changed since the PEO or PEORE previously submitted the initial or a quarterly report under the act, the updated name or mailing address, or both, of the chief executive officer or the chief financial officer, as applicable;
- If none of the events described immediately above occurred during the calendar quarter, a statement of that fact.²⁷

²⁶ R.C. 5747.07(J)(1).

²⁷ R.C. 5747.07(J)(2).

Similar to failing to file a report under the Income Tax Law²⁸ pursuant to continuing law, under the act a PEO or PEORE is prohibited from knowingly failing to file any return or report required to be filed, or filing or knowingly causing to be filed any incomplete, false, or fraudulent return, report, or statement, or aiding or abetting another in the filing of any false or fraudulent return, report, or statement. Whoever violates this prohibition is guilty of a fifth degree felony.²⁹

Employer of record

Under continuing law, when a client employer enters into a PEO 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 pursuant to Ohio's Workers' Compensation Law.³⁰ The act identifies who is or is not the employer of record for a shared employer under additional specified circumstances.

Under the act, a shared employee under a PEO agreement must not, solely as a result of being a shared employee, be considered an employee of the PEO for purposes of general liability insurance, fidelity bonds, surety bonds, employer liability not otherwise covered by Ohio's Workers' Compensation Law, or liquor liability insurance carried by the PEO, unless the PEO agreement and applicable prearranged employment contract, insurance contract, or bond specifically states otherwise.³¹

Tax credits assessments and other economic incentives

Under the act, for purposes of determining tax credits and other economic incentives that are provided by Ohio or any political subdivision and based on employment, shared employees under a PEO agreement must be considered employees solely of the client employer. A client employer must be entitled to the benefit of any tax credit, economic incentive, or similar benefit arising as the result of the client employer's employment of shared employees. If the grant or amount of any tax credit, economic incentive, or other benefit is based on number of employees, the act requires each client employer be treated as employing only those shared employees coemployed by the client employer. The act prohibits any shared employees working for other client employers of the PEO from being counted as employees for that purpose. Upon request by a client employer or an Ohio agency or department, a PEO must provide employment information reasonably required by the agency or department responsible

²⁸ R.C. Chapter 5747.

²⁹ R.C. 5747.19 and 5747.99(A), not in the act.

³⁰ R.C. 4125.04(A), not in the act.

³¹ R.C. 4125.041.

for administration of the tax credit or economic incentive and necessary to support any request, claim, application, or other action by a client employer seeking the tax credit or economic incentive.³²

The act requires that shared employees whose services are subject to sales tax be considered the employees of the client employer for purposes of collecting and levying sales tax on the services performed by the shared employee. Nothing contained in the PEO Law relieves a client employer or a PEO of any sales tax liability with respect to its goods or services. Any tax assessed on a per capita or per employee basis must be assessed against the client employer for shared employees and against the PEO for employees of the PEO who are not shared employees coemployed with a client employer. For purposes of computing any tax that is imposed or calculated upon the basis of total payroll, the PEO must be eligible to use any small business allowance or exemption based solely on the PEO's employees who are not shared employees with any client employer. The client employer's eligibility for the allowance or exemption must be based solely upon the payroll of the client employer's employees, including any shared employees coemployed by the client employer.³³

For purposes of a bid, contract, purchase order, or agreement entered into with Ohio or any political subdivision, a client employer's status or certification as a small, minority-owned, disadvantaged, or woman-owned business enterprise or as a historically underutilized business must not be affected as a result of the client employer entering into a PEO agreement or using the services of a PEO.³⁴

Unemployment compensation

The act requires the Director of Job and Family Services to adopt rules applicable to PEOs and PEOREs to address the method in which a PEO or PEORE reports quarterly wages and contributions to the Director for shared employees. The rules must recognize a PEO or PEORE as the employer of record of the shared employees of the PEO or PEORE for reporting purposes; however, the rules must require that each shared employee of a single client employer be reported under a separate and unique subaccount of the PEO or PEORE to reflect the experience of the shared employees of that client employer. Additionally, any rule adopted also must include administrative

³² R.C. 4125.042(A).

³³ R.C. 4125.042(B) to (D).

³⁴ R.C. 4125.11.

requirements that permit a PEO or a PEORE to transmit any reporting and payment data required under the act collectively as a single filing with the Director.³⁵

The act requires the Director to use a subaccount solely to determine experience rates for that individual subaccount on an annual basis and must recognize a PEO or PEORE as the employer of record associated with each subaccount. The Director must combine the rate experience that existed on a client employer's account prior to entering into a PEO agreement with the experience accumulated as a subaccount of the PEO or PEORE. The combined experience must remain with the client account upon termination of the PEO agreement.³⁶

Also, under the act, a PEO or PEORE must provide a power of attorney or other evidence, which evidence may be included as part of a PEO agreement, completed by each client employer of the PEO or PEORE, authorizing the PEO or PEORE to act on behalf of the client employer in accordance with the requirements of the Unemployment Compensation Law.³⁷

Duties and liabilities of PEOs and client employers

Under the act, a PEO retains its right of direction and control over a shared employee as under continuing law except with regard to professional or licensed activities as discussed under "**Professional or licensed activities**" below and unless otherwise agreed to in the PEO agreement. In addition to the control over a shared employee a client employer retains under continuing law, the act allows a client employer to retain sufficient direction and control over a shared employee as is necessary to ensure the quality, adequacy, and safety of the goods or services produced or sold in the client employer's business.³⁸

Additionally, under the act, unless otherwise agreed to in the PEO agreement, liability for acts, errors, and omissions must be determined as follows:

- A PEO is not liable for the acts, errors, and omissions of a client employer or a shared employee when those acts, errors, and omissions occur under the direction and control of the client employer.

³⁵ R.C. 4141.24(K)(1) and (4).

³⁶ R.C. 4141.24(K)(2).

³⁷ R.C. 4141.24(K)(3).

³⁸ R.C. 4125.03(D).

- A client employer is not liable for the acts, errors, and omissions of a PEO or a shared employee when those acts, errors, and omissions occur under the direction and control of the PEO.

Nothing in the provisions of the act that distribute liability and responsibility between a PEO or a client employer are to be construed to limit any liability or obligation specifically agreed to in the PEO agreement.³⁹ The act also prevents anything contained in the PEO Law or in any PEO agreement from doing any of the following:

(1) Diminishing, abolishing, or removing the rights and obligations of client employers and shared employees existing prior to the effective date of the PEO agreement;

(2) Affecting, modifying, or amending any contractual relationship or restrictive covenant between a shared employee and any client employer in effect at the time a PEO agreement becomes effective;

(3) Prohibiting or amending any contractual relationship or restrictive covenant between a client employer and a shared employee that is entered into after the PEO agreement becomes effective;

(4) Creating any new or additional enforcement right of a shared employee against a PEO that is not specifically provided by the PEO agreement or the PEO Law.

Under the act, a PEO has no responsibility or liability in connection with, or arising out of, any contractual relationship or restrictive covenant between a client employer and a shared employee unless the PEO has specifically agreed otherwise in writing.⁴⁰

The act requires the PEO with whom a shared employee is coemployed to provide a list of all of the following information to the client employer upon the written request of the client employer within 45 days after receiving that request:

(1) All workers' compensation claims, premiums, and payroll associated with that client employer;

(2) Compensation and benefits paid and reserves established for each workers' compensation claim listed;

³⁹ R.C. 4125.03(E) and (F).

⁴⁰ R.C. 4125.10.

(3) Any other information available to the PEO from the BWC regarding that client employer.

The PEO has effectively provided the information required when the information is received by the United States Postal Service, or when the information is personally delivered directly in writing to the client employer.⁴¹

Professional or licensed activities

Continuing law states that nothing in the PEO Law exempts a PEO, client employer, or shared employee from 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. 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.

The act further states that a client employer has the sole right of direction and control of the professional or licensed activities of shared employees and of the client employer's business. The shared employees and client employers remain subject to regulation by the board, commission, or agency responsible for licensing, registration, or certification of the shared employees or client employers.⁴²

HISTORY

ACTION	DATE
Introduced	03-31-11
Reported, S. Insurance, Commerce & Labor	11-16-11
Passed Senate (27-4)	11-30-11
Reported, H. Commerce, Labor and Technology	11-15-12
Passed House (92-0)	12-11-12
Senate concurred in House amendments (29-4)	12-12-12

12-SB139-129/ejs

⁴¹ R.C. 4125.03(B) and (C).

⁴² R.C. 4125.08.

