

Professional Employer Organization Registration Act

The following is a basic overview of Utah Code Ann. Title 58, Chapter 59, Professional Employer Organization Registration Act, administered by the Division of Occupational and Professional Licensing (DOPL). This is neither a comprehensive analysis of the Act nor a description of all exceptions or other details of the Act. For more detailed information regarding the Act, please review the statute or contact the Office of Legislative Research and General Counsel.

GENERAL DESCRIPTION

A PEO generally provides services such as payroll, human resource compliance, risk management, and benefits administration to a client through a coemployment relationship. For example, a PEO hires a client's employees and then leases back the employees to the client. The PEO and client sign a professional services agreement that allocates and shares employer responsibilities between the PEO and the client. A PEO includes a "staff leasing company," "registered staff leasing company," or "employee leasing company."

KEY LEGISLATIVE HISTORY

1993: "Employee Leasing Company Licensing Act" enacted, previous registration act repealed.

1994, 1997, 2002:

Miscellaneous changes made including changes to:

- definitions
- references to basic licensing act
- financial responsibility, filing requirements, and confidentiality
- licensing requirements and exemptions
- employees and licensing laws
- standards for health benefit plans
- refusal to renew a license
- court intervention
- unlawful/unprofessional conduct.

1999: Terminology changed to professional employer organization and miscellaneous changes made including changes to:

- definitions
- licensing requirements and exemptions
- financial requirements
- role of the board
- court intervention
- unprofessional/unlawful conduct.

2002: Sunset date extended for 5 years.

2003: Changed to a registration act including making changes to:

- definitions
- registration process
- information required to be filed
- issues related to financial requirements, contractual relations, and allocation of rights, duties, and obligations
- unlawful conduct.

1996, 2000, 2005: Technical changes.

KEY DEFINITIONS

Professional employer organization or PEO: an organization that:

- holds itself out as a PEO
- co-employs an employee with another person
- receives consideration for providing professional employer services
- expects consideration for providing professional employer services.

Professional employer services: entering into coemployment relationships in which all or a majority of the employees providing services to a client or a division or work unit of a client are covered employees.

Coemployment relationship:

- relates to the rights, duties, and obligations which arise out of the employment relationship which is intended to be an ongoing rather than a temporary or project specific relationship
- as to those rights enforceable by an employee under state law, covered employees may enforce against the PEO those rights allocated to the PEO or shared by the PEO and the client under the professional employer agreement and the Act
- as to all other rights, duties, and obligations enforceable by an employee under state law, covered

employees may enforce them against the client.

BASIC REGISTRATION REQUIREMENTS

A person must register to engage in practice as a PEO, except if exempt. *How:* To register a person:

- submits an application to DOPL
- pays a fee (\$2,010 as of 1/13/06).

Group registration: Two or more PEOs under common control may register as a professional employer organization group.

Term: One-year cycle with registrations expiring September 30.

KEY FILING REQUIREMENTS

A PEO shall annually file with DOPL:

- the name or names under which the PEO conducts business
- the address of the principal place of business of the PEO and each office it maintains in the state
- the PEO's taxpayer or employer identification number
- a list by jurisdiction of each name under which the PEO has operated in the preceding 5 years including predecessors or successor business entities
- a statement of ownership, including the name of all individuals that, individually or acting in concert with others, owns or controls, directly or indirectly, 10% or more of the equity interests of the PEO
- a statement of management, including the name of all officers and any person who has the authority to act as a senior executive officer of the PEO.

A PEO domiciled outside of Utah that employs less than 50 employees employed or domiciled in Utah is not required to file the last two items.

EXAMPLE OF A FINANCIAL REQUIREMENT

- At least quarterly, a PEO shall have an independent CPA, licensed in the jurisdiction in which the PEO is domiciled, review the PEO's records and prepare a statement indicating whether all federal, state, and local withholding taxes, unemployment taxes, FICA taxes, workers' compensation premiums, and employee benefit plan premiums have been paid.
- The PEO must provide the statement to a client upon request from the client.

EXAMPLES OF OTHER PROVISIONS

Examples of other issues addressed in the Act include:

- labor relations and collective bargaining
- licensing, registration, or certification of covered employees
- bids, contracts, purchase orders, or agreements with the state or a political subdivision
- insurance issues such as coverage of employees and that a PEO is not engaged in the sale of insurance by offering, marketing, selling, administering, or providing PEO services or employee benefit plans for covered employees
- tax issues such as collection when covered employees provide services that are subject to sales taxes and that PEO fees to a client that are not pass-through amounts paid for wages, taxes, withholding, or benefits are not subject to sales or excise taxes
- the importance of and requirements for a professional employer agreement
- the coemployment relationship
- retirement/welfare benefit plans
- use of a third-party administrator
- health benefit plans not fully insured by an authorized insurer
- securing workers' compensation benefits for covered employees
- coverage under the state's Employment Security Act

- no state guarantee or waiver of any right, claim, or defense by the state registering/regulating PEOs.

UNLAWFUL CONDUCT

Unlawful conduct includes:

- engaging in practice as a PEO without a registration
- offering an employee a self-funded medical program, unless the program is for the sole benefit of participating coemployees
- misrepresenting that any self-funded medical program it offers is other than self-funded
- offering to its employees any self-funded or partially self-funded medical plan without delivering to each plan participant a summary plan description that describes terms of the plan, including disclosure that the plan is self-funded or partially self-funded
- diversion of funds paid by a client to the PEO designated as payment for payroll or any related payroll taxes or employee benefits or insurance, to any other purpose or use other than designated
- providing coemployees to a client under any provision, term, or condition that is not contained in a clearly written agreement between the PEO and client
- any willful, fraudulent, or deceitful act by a PEO, caused by a PEO, or at a PEO's direction, that causes material injury to a client or coemployee of a client
- upon collecting cleared funds from the client, failing to pay in a timely manner any federal or state income tax withholding, FICA, unemployment tax, employee insurance benefit premium, workers' compensation premium, or other obligation due and payable directly as a result of engaging in business as a PEO
- failing to comply with federal law regarding any employee benefit offered to an employee.

PENALTY FOR UNLAWFUL CONDUCT

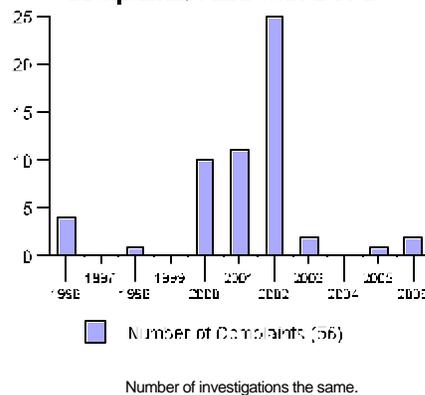
- A violation of the first five items is a third degree felony.
- A violation of items six through nine is a class A misdemeanor.
- Any person who has engaged in unlawful conduct may be assessed

the costs for the investigations, disciplinary proceedings, court proceedings, or other actions to enforce the Act.

UTAH STATISTICS

As of June 2006 there are 75 PEOs registered with DOPL. DOPL reports 17 new applications annually.

Complaints Filed with DOPL



Types of complaints:

- unauthorized practice(22)
- financial responsibility(5)
- incompetence/negligence(3)
- other criminal conduct(3)
- ethical standards(1)
- discipline in other jurisdiction (1)
- division of funds(1)
- fraudulent billing(1)
- discipline(2)
- other(6)
- unknown(2)

Resolution of complaints:

- administrative sanctions(11)
- administrative hearings(9)
- unfounded(9)
- no jurisdiction(6)
- voluntary compliance(5)
- consolidation to another case(4)
- verbal warning(4)
- lack of evidence(3)
- letter of concern(2)
- declined by prosecutor(1)
- intelligence filed(1)

Source: DOPL email June 1, 2006

OTHER STATES

PEOs operate in all 50 states, with at least 29 states having either a registration or licensing act and 2 states having recognition statutes. Other states have legislative references to the PEO or employee leasing industry but do not have comprehensive registration or licensing requirements. State

unemployment, workers' compensation, or other statutes may have PEO specific references. Colorado and Rhode Island have certification requirements with regard to benefits or taxes.

Source: NAPEO 2006