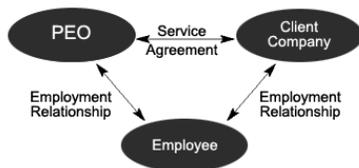


Professional Employer Organization Registration Act



The following provides a basic overview of Utah Code Ann. Title 58, Chapter 59, Professional Employer Organization Registration Act (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 professional employer organization (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."

Legislative History

The Legislature has changed the Act's requirements between registration and licensure. In 1993, the Legislature enacted the "Employee Leasing Company Licensing Act" and repealed the previous registration act. In 1999, the Legislature changed the terminology to "professional employer organization" while maintaining licensure requirements. In 2003, the Legislature changed the Act back to a registration act. In 2007, the Legislature allowed a PEO to register by being certified by an assurance organization.

The Act has had an active legislative history. After the Act's enactment in 1993, the Legislature substantively modified

the Act in 1994, 1997, 1999, 2002. The Legislature made only technical changes in 1996, 2000, 2005.

In 2007, the Legislature modified definitions; allowed for alternative registration; provided for the designation of assurance organizations; and addressed required filings, insurance, taxes and fees, and employment related economic incentives and procurement.

The Act is no longer subject to sunset review. Legislative activities under "sunset" reviews include extending the repeal date for the Act five years in 2002 and the removing the Act from sunset review in 2007.

Key Definitions

Definitions are key to application of the Act.

Examples include:

Professional employer organization -- 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 that 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.

Assurance organization -- an entity:

- designated by rule by DOPL
- licensed by a state other than Utah to certify the qualifications of a PEO
- that at a minimum imposes on a PEO certain specified requirements.

Currently a Registration Act

There two methods to register.

A person must register to engage in practice as a PEO, unless exempt.

Basic requirements: To register a person pays a fee and either:

- applies to DOPL; or
- shows certification by an assurance organization.

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.

Information required to be filed differs depending on method of registration:

A PEO not certified by an assurance organization 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 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.

A PEO certified by an assurance organization is only required to file:

- 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.

Other Requirements The Act imposes financial

requirements. For example, 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 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
- 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 The Act specifies that certain conduct is "unlawful"

including:

- 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 to pay for payroll or related payroll taxes, employee benefits or insurance, to any other purpose or use other than as 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
- a 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.

The penalties for unlawful conduct include:

- 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.