
HOUSE BILL 3060

State of Washington 59th Legislature 2006 Regular Session

By Representatives Grant and Condotta

Read first time 01/18/2006. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to professional employer organizations; adding a
2 new chapter to Title 18 RCW; and providing an effective date.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The legislature finds that:

5 (1) Professional employer organizations provide a valuable service
6 to commerce and the citizens of this state by increasing the
7 opportunities of employers to develop cost-effective methods of
8 satisfying their personnel requirements and providing employees with
9 access to certain employment benefits which might otherwise not be
10 available to them;

11 (2) Professional employer organizations operating in this state
12 should be properly recognized; and

13 (3) Any allocation of the employer duties and responsibilities
14 pursuant to this chapter shall preserve all rights to which covered
15 employees would be entitled under a traditional employment
16 relationship.

17 NEW SECTION. **Sec. 2.** As used in this chapter:

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

9 (2) "Client" means any person who enters into a professional
10 employer agreement with a professional employer organization.

11 (3) "Coemployer" means either a professional employer organization
12 or a client.

13 (4) "Coemployment relationship" means a relationship which is
14 intended to be an ongoing relationship rather than a temporary or
15 project-specific one, wherein the rights, duties, and obligations of an
16 employer which arise out of an employment relationship have been
17 allocated between coemployers pursuant to a professional employer
18 agreement and this chapter. In such a coemployment relationship:

19 (a) The professional employer organization is entitled to enforce
20 only such employer rights and is subject to only those obligations
21 specifically allocated to the professional employer organization by the
22 professional employer agreement or this chapter;

23 (b) The client is entitled to enforce those rights and obligated to
24 provide and perform those employer obligations allocated to such client
25 by the professional employer agreement and this chapter; and

26 (c) The client is entitled to enforce any right and obligated to
27 perform any obligation of an employer not specifically allocated to the
28 professional employer organization by the professional employer
29 agreement or this chapter.

30 (5) "Covered employee" means an individual having a coemployment
31 relationship with a professional employer organization and a client who
32 meets all of the following criteria: (a) The individual has received
33 written notice of coemployment with the professional employer
34 organization, and (b) the individual's coemployment relationship is
35 pursuant to a professional employer agreement subject to this chapter.
36 Individuals who are officers, directors, shareholders, partners, and
37 managers of the client are covered employees to the extent the
38 professional employer organization and the client have expressly agreed

1 in the professional employer agreement that such individuals would be
2 covered employees and provided such individuals meet the criteria of
3 this subsection and act as operational managers or perform day-to-day
4 operational services for the client.

5 (6) "Person" means any individual, partnership, corporation,
6 limited liability company, association, or any other form of legally
7 recognized entity.

8 (7) "Professional employer agreement" means a written contract by
9 and between a client and a professional employer organization that
10 provides:

11 (a) For the coemployment of covered employees;

12 (b) For the allocation of employer rights and obligations between
13 the client and the professional employer organization with respect to
14 the covered employees; and

15 (c) That the professional employer organization and the client
16 assume the responsibilities required by this chapter.

17 (8) "Professional employer organization" means any person engaged
18 in the business of providing professional employer services. A person
19 engaged in the business of providing professional employer services is
20 subject to this chapter regardless of its use of the term or conducting
21 business as a "professional employer organization," "PEO," "staff
22 leasing company," "registered staff leasing company," "employee leasing
23 company," "administrative employer," or any other name.

24 The following shall not be deemed to be professional employer
25 organizations or the providing of professional employer services for
26 purposes of this chapter:

27 (a) Arrangements wherein a person, whose principal business
28 activity is not entering into professional employer arrangements and
29 which does not hold itself out as a professional employer organization,
30 shares employees with a commonly owned company within the meaning of
31 section 414(b) and (c) of the Internal Revenue Code of 1986, as
32 amended;

33 (b) Independent contractor arrangements by which a person assumes
34 responsibility for the product produced or service performed by such
35 person or his or her agents and retains and exercises primary direction
36 and control over the work performed by the individuals whose services
37 are supplied under such arrangements; or

38 (c) Providing temporary help services.

1 (9) "Professional employer services" means the service of entering
2 into coemployment relationships under this chapter in which all or a
3 majority of the employees providing services to a client or to a
4 division or work unit of a client are covered employees.

5 (10) "Temporary help services" means services consisting of a
6 person:

7 (a) Recruiting and hiring its own employees;

8 (b) Finding other organizations that need the services of those
9 employees;

10 (c) Assigning those employees to perform work at or services for
11 the other organizations to support or supplement the other
12 organizations' work forces, or to provide assistance in special work
13 situations such as, but not limited to, employee absences, skill
14 shortages, seasonal workloads, or to perform special assignments or
15 projects; and

16 (d) Customarily attempting to reassign the employees to other
17 organizations when they finish each assignment.

18 NEW SECTION. **Sec. 3.** (1) Nothing contained in this chapter or in
19 any professional employer agreement shall affect, modify, or amend any
20 collective bargaining agreement, or the rights or obligations of any
21 client, professional employer organization, or covered employee under
22 the federal national labor relations act or the federal railway labor
23 act.

24 (2) Nothing in this chapter or in any professional employer
25 agreement shall:

26 (a) Diminish, abolish, or remove rights of covered employees to a
27 client or obligations of such client to a covered employee existing
28 prior to the effective date of the professional employer agreement;

29 (b) Affect, modify, or amend any contractual relationship or
30 restrictive covenant between a covered employee and any client in
31 effect at the time a professional employer agreement becomes effective.
32 Nor shall it prohibit or amend any contractual relationship or
33 restrictive covenant that is entered into subsequently between a client
34 and a covered employee. A professional employer organization shall
35 have no responsibility or liability in connection with, or arising out
36 of, any such existing or new contractual relationship or restrictive

1 covenant unless the professional employer organization has specifically
2 agreed otherwise in writing;

3 (c) Create any new or additional enforceable right of a covered
4 employee against a professional employer organization that is not
5 specifically provided by the professional employer agreement or this
6 chapter.

7 (3) Nothing contained in this chapter or any professional employer
8 agreement shall affect, modify, or amend any state, local, or federal
9 licensing, registration, or certification requirement applicable to any
10 client or covered employee.

11 (a) A covered employee who must be licensed, registered, or
12 certified according to law or regulation is deemed solely an employee
13 of the client for purposes of any such license, registration, or
14 certification requirement.

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

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

27 (4) For purposes of determination of tax credits and other economic
28 incentives provided by this state or other government entity and based
29 on employment, covered employees shall be deemed employees solely of
30 the client. A client shall be entitled to the benefit of any tax
31 credit, economic incentive, or other benefit arising as the result of
32 the employment of covered employees of such client. If the grant or
33 amount of any such incentives is based on number of employees, then
34 each client shall be treated as employing only those covered employees
35 coemployed by the client. Covered employees working for other clients
36 of the professional employer organization shall not be counted. Each
37 professional employer organization shall provide, upon request by a
38 client or an agency or department of this state, employment information

1 reasonably required by any agency or department of this state
2 responsible for administration of any such tax credit or economic
3 incentive and necessary to support any request, claim, application, or
4 other action by a client seeking any such tax credit or economic
5 incentive.

6 (5) With respect to a bid, contract, purchase order, or agreement
7 entered into with the state or a political subdivision of the state, a
8 client company's status or certification as a small, minority-owned, or
9 woman-owned business enterprise or as a historically underutilized
10 business is not affected because the client company has entered into an
11 agreement with a professional employer organization or uses the
12 services of a professional employer organization.

13 NEW SECTION. **Sec. 4.** (1) Except as specifically provided in this
14 chapter or in the professional employer agreement, in each coemployment
15 relationship:

16 (a) The client shall be entitled to exercise all rights, and shall
17 be obligated to perform all duties and responsibilities, otherwise
18 applicable to an employer in an employment relationship;

19 (b) The professional employer organization shall be entitled to
20 exercise only those rights, and obligated to perform only those duties
21 and responsibilities, specifically required by this chapter or set
22 forth in the professional employer agreement. The rights, duties, and
23 obligations of the professional employer organization as coemployer
24 with respect to any covered employee shall be limited to those arising
25 pursuant to the professional employer agreement and this chapter during
26 the term of coemployment by the professional employer organization of
27 such covered employee; and

28 (c) Unless otherwise expressly agreed by the professional employer
29 organization and the client in a professional employer agreement, the
30 client retains the exclusive right to direct and control the covered
31 employees as is necessary to conduct the client's business, to
32 discharge any of the client's fiduciary responsibilities, or to comply
33 with any licensure requirements applicable to the client or to the
34 covered employees.

35 (2) Except as specifically provided in this chapter, the
36 coemployment relationship between the client and the professional

1 employer organization, and between each coemployer and each covered
2 employee, shall be governed by the professional employer agreement.
3 Each professional employer agreement shall include the following:

4 (a) The allocation of rights, duties, and obligations as described
5 in subsection (1) of this section;

6 (b) That the professional employer organization shall have
7 responsibility to pay wages to covered employees; to withhold, collect,
8 report, and remit payroll-related and unemployment taxes; and, to the
9 extent the professional employer organization has assumed
10 responsibility in the professional employer agreement, to make payments
11 for employee benefits for covered employees. As used in this section,
12 the term "wages" does not include any obligation between a client and
13 a covered employee for payments beyond or in addition to the covered
14 employee's salary, draw, or regular rate of pay, such as bonuses,
15 commissions, severance pay, deferred compensation, profit sharing, or
16 vacation, sick, or other paid time-off pay, unless the professional
17 employer organization has expressly agreed to assume liability for such
18 payments in the professional employer agreement;

19 (c) That the professional employer organization shall have a right
20 to hire, discipline, and terminate a covered employee, as may be
21 necessary to fulfill the professional employer organization's
22 responsibilities under this chapter and the professional employer
23 agreement. The client shall have a right to hire, discipline, and
24 terminate a covered employee.

25 (3) With respect to each professional employer agreement entered
26 into by a professional employer organization, such professional
27 employer organization shall provide written notice to each covered
28 employee affected by such agreement of the general nature of the
29 coemployment relationship between and among the professional employer
30 organization, the client, and such covered employee.

31 (4) Except to the extent otherwise expressly provided by the
32 applicable professional employer agreement:

33 (a) A client shall be solely responsible for the quality, adequacy,
34 or safety of the goods or services produced or sold in the client's
35 business.

36 (b) A client shall be solely responsible for directing,
37 supervising, training, and controlling the work of the covered

1 employees with respect to the business activities of the client and
2 solely responsible for the acts, errors, or omissions of the covered
3 employees with regard to such activities.

4 (c) A client shall not be liable for the acts, errors, or omissions
5 of a professional employer organization or of any covered employee of
6 the client and a professional employer organization when such covered
7 employee is acting under the express direction and control of the
8 professional employer organization.

9 (d) A professional employer organization shall not be liable for
10 the acts, errors, or omissions of a client or of any covered employee
11 of the client when such covered employee is acting under the express
12 direction and control of the client.

13 (e) Nothing in this subsection shall serve to limit any contractual
14 liability or obligation specifically provided in the written
15 professional employer agreement.

16 (f) A covered employee is not, solely as the result of being a
17 covered employee of a professional employer organization, an employee
18 of the professional employer organization for purposes of general
19 liability insurance, fidelity bonds, surety bonds, employer's liability
20 which is not covered by liability insurance carried by the professional
21 employer organization unless the covered employees are included by
22 specific reference in the professional employer agreement and
23 applicable prearranged employment contract, insurance contract, or
24 bond.

25 (5) A professional employer organization under this chapter is not
26 engaged in the sale of insurance or in acting as a third-party
27 administrator by offering, marketing, selling, administering, or
28 providing professional employer services which include services and
29 employee benefit plans for covered employees.

30 (6)(a) Covered employees whose services are subject to sales tax
31 shall be deemed the employees of the client for purposes of collecting
32 and levying sales tax on the services performed by the covered
33 employee. Nothing contained in this chapter shall relieve a client of
34 any sales tax liability with respect to its goods or services.

35 (b) Any tax upon professional employer services or any business
36 license or other fee, including but not limited to chapter 82.04 RCW,
37 which is based upon gross receipts shall be limited to the
38 administrative fee of the professional employer organization.

1 (c) Any tax assessed on a per capita or per employee basis shall be
2 assessed against the client for covered employees and against the
3 professional employer organization for its employees who are not
4 covered employees coemployed with a client.

5 (d) In the case of tax imposed or calculated upon the basis of
6 total payroll, the professional employer organization shall be eligible
7 to apply any small business allowance or exemption available to the
8 client for the covered employees for the purpose of computing the tax.

9 NEW SECTION. **Sec. 5.** If any provision of this act or its
10 application to any person or circumstance is held invalid, the
11 remainder of the act or the application of the provision to other
12 persons or circumstances is not affected.

13 NEW SECTION. **Sec. 6.** This act takes effect July 1, 2006.

14 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act constitute
15 a new chapter in Title 18 RCW.

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