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SENATE BILL 5195

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State of Washington

60th Legislature

2007 Regular Session

By Senators Kohl-Welles and Keiser

Read first time 01/12/2007. Referred to Committee on Labor, Commerce, Research & Development.

1 AN ACT Relating to defining employment and reporting requirements  
2 for third party payers, temporary staffing services companies, service  
3 referral agencies, and common paymasters; amending RCW 50.04.245 and  
4 50.24.170; adding a new section to chapter 50.12 RCW; adding new  
5 sections to chapter 50.04 RCW; creating a new section; and providing an  
6 effective date.

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

8 NEW SECTION. **Sec. 1.** A new section is added to chapter 50.12 RCW  
9 to read as follows:

10 (1) Third party payers as defined in section 2 of this act may not  
11 establish joint accounts under RCW 50.24.170.

12 (2) A third party payer must:

13 (a) Register with the department as provided in RCW 50.12.070;

14 (b) Provide the department with the names, addresses, and  
15 employment security account numbers of its client companies employing  
16 Washington state employees at the time of registration and at other  
17 times when requested by the department, and provide the names and  
18 addresses of its client companies not employing Washington state

1 employees at the time of registration and at other times when requested  
2 by the department;

3 (c) Notify the department within thirty days each time it adds or  
4 terminates a client company;

5 (d) Provide a power of attorney or confidential information  
6 authorization completed by the client company as required by the  
7 department for each client company, authorizing it to act on behalf of  
8 the client company for unemployment insurance purposes;

9 (e) File separate quarterly wage and contribution reports with the  
10 department for each client company, using the employer account number  
11 and experience rate assigned to each client company; and

12 (f) Maintain accurate payroll records for each client company and  
13 make these records available in Washington state for review or  
14 inspection upon request of the department.

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 50.04 RCW  
16 to read as follows:

17 (1) Personal services performed for, or for the benefit of, a  
18 client under an agreement with a third party payer is employment for  
19 the client company. The client is considered both the employer as  
20 defined in RCW 50.04.080 and the employing unit as defined in RCW  
21 50.04.090.

22 (2) For the purposes of this section:

23 (a)(i) "Third party payer" means an individual or business entity  
24 that enters into an agreement with one or more clients to provide  
25 professional employer services, human resource functions, or other  
26 payroll administration services that may or may not establish a  
27 coemployment relationship. "Professional employer services" means the  
28 service of entering into a coemployment relationship in which at least  
29 a majority of the employees providing services to a client or to a  
30 division or work unit of a client are covered employment as defined in  
31 RCW 50.04.100. A "coemployment relationship" means an ongoing  
32 relationship where the rights, duties, and obligations of an employer  
33 in an employment relationship are allocated between coemployers under  
34 a professional employer agreement and state law. "Professional  
35 employer agreement" means a written contract between a client and a  
36 professional employer organization that provides for: (A) The

1 coemployment of covered employees; and (B) the allocation of employer  
2 rights and obligations between the client and the professional employer  
3 organization with respect to the covered employees.

4 (ii) "Third party payer" includes entities defined in this  
5 subsection that use the title "professional employer organization,"  
6 "PEO," "staff leasing company," "registered staff leasing company,"  
7 "employee leasing company," "administrative employer," "employer  
8 representative," or any other name.

9 (iii) "Third party payer" does not include temporary staffing  
10 services companies or services referral agencies as defined in RCW  
11 50.04.245, or labor organizations.

12 (b) "Client" means an individual or entity that enters into a  
13 professional employer agreement with a third party payer for  
14 professional employer services, human resource functions, or other  
15 payroll administration services.

16 (3) A third party payer is not considered a successor employer  
17 under RCW 50.29.062. Each client retains its experience rate as  
18 determined by RCW 50.29.020 and 50.29.021. The experience rate of a  
19 third party payer is determined solely on its own unemployment  
20 experience with its own nonclient company employees.

21 **Sec. 3.** RCW 50.04.245 and 1995 c 120 s 1 are each amended to read  
22 as follows:

23 (1) Subject to the other provisions of this title, personal  
24 services performed for, or for the benefit of, a third party pursuant  
25 to a contract with a temporary staffing services (~~(agency, employee~~  
26 ~~leasing agency)) company, services referral agency, or other entity  
27 (~~(shall be deemed to be)) not defined as a third party payer in section~~  
28 2 of this act, constitutes employment for the temporary staffing  
29 services (~~(agency, employee leasing agency)) company, services referral~~  
30 agency, or other entity when the agency is responsible, under contract  
31 or in fact, for the payment of wages in remuneration for the services  
32 performed.~~

33 (2) The temporary staffing services company, services referral  
34 agency, or other such entity is considered an employer as defined in  
35 RCW 50.04.080.

36 (3) For the purposes of this section:

1 (a) "Temporary staffing services ((agency)) company" means an  
2 individual or entity (~~((that is engaged in the business of furnishing~~  
3 ~~individuals to perform services on a part time or temporary basis for~~  
4 ~~a third party))~~ other than a third party payer as defined in section 2  
5 of this act, that engages in: Recruiting and hiring its own employees;  
6 finding other organizations that need the services of those employees;  
7 and assigning those employees on a temporary basis to perform work at  
8 or services for a client to support or supplement the client's work  
9 forces, or to provide assistance in special work situations, such as  
10 employee absences, skill shortages, and seasonal workloads, or to  
11 perform special assignments or projects, all under the direction and  
12 supervision of the client. "Temporary staffing services" does not  
13 include permanent employee leasing or permanent employee placement  
14 services.

15 (b) (~~("Employee leasing agency" means an individual or entity that~~  
16 ~~for a fee places the employees of a client onto its payroll and leases~~  
17 ~~such employees back to the client.~~

18 (c)) "Services referral agency" means an individual or entity  
19 other than a third party payer as defined in section 2 of this act that  
20 is engaged in the business of offering the services of an individual to  
21 perform specific tasks for a third party.

22 NEW SECTION. Sec. 4. A new section is added to chapter 50.04 RCW  
23 to read as follows:

24 (1) A common pay agent or common paymaster is not an employer as  
25 defined in RCW 50.04.080 or an employing unit as defined in RCW  
26 50.04.090.

27 (2) For the purposes of this section:

28 (a) A common pay agent is an independent third party who contracts  
29 with and represents two or more employers and who files a combined tax  
30 report for those employers.

31 (b) A common paymaster is two or more employers in which one of the  
32 employers is designated to disburse wages to concurrently employed  
33 individuals of any of the related companies.

34 **Sec. 5.** RCW 50.24.170 and 1945 c 35 s 105 are each amended to read  
35 as follows:

36 (1) The commissioner shall prescribe regulations for the

1 establishment, maintenance, and dissolution of joint accounts by two or  
2 more employers, and shall, in accordance with such regulations and upon  
3 application by two or more employers to establish such account, or to  
4 merge their several individual accounts in a joint account, maintain  
5 such joint account as if it constituted a single employer's account.

6 (2) Joint accounts may not be established for individuals or  
7 entities described under section 2 or 4 of this act.

8 NEW SECTION. **Sec. 6.** If any part of this act is found to be in  
9 conflict with federal requirements that are a prescribed condition to  
10 the allocation of federal funds to the state or the eligibility of  
11 employers in this state for federal unemployment tax credits, the  
12 conflicting part of this act is inoperative solely to the extent of the  
13 conflict, and the finding or determination does not affect the  
14 operation of the remainder of this act. Rules adopted under this act  
15 must meet federal requirements that are a necessary condition to the  
16 receipt of federal funds by the state or the granting of federal  
17 unemployment tax credits to employers in this state.

18 NEW SECTION. **Sec. 7.** If any provision of this act or its  
19 application to any person or circumstance is held invalid, the  
20 remainder of the act or the application of the provision to other  
21 persons or circumstances is not affected.

22 NEW SECTION. **Sec. 8.** This act takes effect January 1, 2008.

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