

1 ENGROSSED SENATE
2 BILL NO. 196

By: Rader of the Senate

3 and

4 Boatman of the House

5
6 [Oklahoma Professional Employer Organization
7 Recognition and Registration Act - registration and
8 tax requirements - financial statements and payment
9 of payroll taxes - effective date]

10 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

11 SECTION 1. AMENDATORY 40 O.S. 2011, Section 600.2, is
12 amended to read as follows:

13 Section 600.2. 1. "Client" means any person who enters into a
14 coemployment relationship as a coemployer with a professional
15 employer organization (PEO);

16 2. "Coemployer" means either a PEO or a client;

17 3. "Coemployment relationship" means:

18 a. as between coemployers, a relationship whereby the
19 rights, duties and obligations of an employer which
20 arise out of an employment relationship have been
21 allocated between coemployers pursuant to a
22 professional employer agreement and the Oklahoma
23 Professional Employer Organization Recognition and
24 Registration Act, and which is intended to be an

1 ongoing relationship, rather than a temporary or
2 ~~project specific~~ project-specific relationship, and

3 b. as between each PEO and a covered employee as to which
4 a professional employer agreement applies, an
5 employment relationship whereby:

6 (1) such PEO is entitled to enforce those rights, and
7 obligated to perform those duties and
8 obligations, allocated to such PEO by the
9 professional employer agreement and the Oklahoma
10 Professional Employer Organization Recognition
11 and Registration Act, and

12 (2) such covered employee is entitled to enforce
13 against such PEO those duties and obligations
14 allocated to the PEO by the professional employer
15 agreement and the Oklahoma Professional Employer
16 Organization Recognition and Registration Act;

17 c. as between each client and a covered employee to which
18 a professional employer agreement applies and
19 employment relationship whereby:

20 (1) such client is entitled to enforce those rights,
21 and obligated to provide and perform those
22 employer obligations allocated to such client by
23 the professional employer agreement and the
24 Oklahoma Professional Employer Organization

1 Recognition and Registration Act and whereby such
2 client is responsible for any employer right or
3 obligation not otherwise allocated by the
4 professional employer agreement of the Oklahoma
5 Professional Employer Organization Recognition
6 and Registration Act, and

7 (2) such covered employee is entitled to enforce
8 against such client those duties and obligations
9 allocated to the client by the professional
10 employer agreement and the Oklahoma Professional
11 Employer Organization Recognition and
12 Registration Act and any other duties and
13 obligations of an employer not otherwise
14 allocated by the professional employer agreement
15 or the Oklahoma Professional Employer
16 Organization Recognition and Registration Act;

17 4. "Commissioner" means the Insurance Commissioner of the State
18 of Oklahoma;

19 5. "Covered Employee" means an individual having a coemployment
20 relationship with a PEO and a client who have entered into a
21 professional employer agreement with respect to such person, and
22 shall include the client's officers, directors, shareholders,
23 partners and managers to the extent such persons act as operational
24 managers or perform services for the client;

1 6. "Department" means the Department of Insurance of the State
2 of Oklahoma;

3 7. "Person" means any individual, partnership, corporation,
4 limited liability company, association, or any other form of legally
5 recognized entity;

6 8. "Professional employer agreement" means a written contract
7 by and between a client and a PEO under which the PEO and the client
8 agree to establish a coemployment relationship and which satisfies
9 the requirements of subsection C of Section ~~7 of this act~~ 600.7 of
10 this title;

11 9. "Professional Employer Organization" or PEO means any person
12 engaged in the business of providing professional employer services.
13 A person engaged in the business of providing professional employer
14 services shall be subject to registration under the Oklahoma
15 Professional Employer Organization Recognition and Registration Act
16 regardless of its use of the term "professional employer
17 organization", "PEO", "staff leasing company", "registered staff
18 leasing company", "employee leasing company", or any other name;

19 10. "Professional employer services" means the service of
20 entering into coemployment relationships under the Oklahoma
21 Professional Employer Organization Recognition and Registration Act,
22 in which, except in isolated instances, all or a majority of the
23 employees providing services to a client or to a division or work
24 unit of client are covered employees;

1 11. "Qualified attorney" means an attorney licensed to practice
2 in the jurisdiction in which such attorney is located who is
3 competent based on the attorney's education, training and experience
4 in matters requiring a statement, registration or certification for
5 a Professional Employer Organization (PEO) involving federal and
6 State of Oklahoma income tax withholding payment requirements,
7 payment of employer-sponsored health insurance premiums, payment of
8 State of Oklahoma unemployment and workers' compensation insurance
9 premiums, payment of financial contributions to employee retirement
10 plans and review or preparation of financial statements prepared in
11 accordance with generally accepted accounting principles;

12 12. "Registrant" means a PEO registered under the Oklahoma
13 Professional Employer Organization Recognition and Registration Act;
14 and

15 ~~12.~~ 13. "Temporary help services" means a service whereby a
16 person hires workers and assigns them to a person for a temporary
17 time period or nonpermanent basis to support or supplement the other
18 person's workforce in special work situations such as, but not
19 limited to, employee absences, temporary skill shortages, seasonal
20 workloads, and special assignments and projects. Temporary help
21 services shall not be deemed professional employer services.

22 SECTION 2. AMENDATORY 40 O.S. 2011, Section 600.4, as
23 amended by Section 1, Chapter 238, O.S.L. 2012 (40 O.S. Supp. 2020,
24 Section 600.4), is amended to read as follows:

1 Section 600.4. A. Registration required. Except as otherwise
2 provided in the Oklahoma Professional Employer Organization
3 Recognition and Registration Act, no person shall, unless the person
4 is registered as a PEO or PEO Group under the Oklahoma Professional
5 Employer Organization Recognition and Registration Act, provide,
6 advertise, or otherwise hold itself out as providing professional
7 employer services in this state.

8 B. Registration information.

9 1. Each PEO or PEO Group required to be registered under the
10 Oklahoma Professional Employer Organization Recognition and
11 Registration Act shall provide the Insurance Commissioner with
12 information required by the Commissioner on forms prescribed by the
13 Commissioner. Pursuant to paragraph 2 of this subsection, a PEO or
14 PEO Group may use a qualified assurance organization as approved by
15 the Commissioner to provide services related to the registration of
16 the PEO or PEO Group. A PEO or PEO Group may authorize an assurance
17 organization to act on behalf of the PEO or PEO Group in complying
18 with the registration requirements set forth in the Oklahoma
19 Professional Employer Organization Recognition and Registration Act,
20 including, but not limited to, electronic filings of information and
21 payment of registration fees. At a minimum, PEOs, PEO Groups or an
22 approved assurance organization acting on behalf of the PEO or PEO
23 Group shall provide the following information:
24

- 1 a. the name or names under which the PEO or PEO Group
2 conducts business,
- 3 b. the address of the principal place of business of the
4 PEO or PEO Group and the address of each office it
5 maintains in this state,
- 6 c. the PEO's or PEO Group's taxpayer or employer
7 identification number,
- 8 d. a list by jurisdiction of each name under which the
9 PEO or PEO Group has operated in the preceding five
10 (5) years, including any alternative names, names of
11 predecessors and, if known, successor business
12 entities,
- 13 e. a statement of ownership, which shall include the name
14 and evidence of the business experience of any person
15 that, individually or acting in concert with one or
16 more other persons, owns or controls, directly or
17 indirectly, twenty-five percent (25%) or more of the
18 equity interests of the PEO or PEO Group,
- 19 f. a statement of management, which shall include the
20 name and evidence of the business experience of any
21 person who serves as president, chief executive
22 officer, or otherwise has the authority to act as
23 senior executive officer of the PEO or PEO Group, and
24

1 g. a financial statement setting forth the financial
2 condition of the PEO or PEO Group, as of a date not
3 earlier than one hundred eighty (180) days prior to
4 the date submitted to the Commissioner, prepared in
5 accordance with generally accepted accounting
6 principles, and certified by a qualified attorney or
7 audited or reviewed by an independent certified public
8 accountant licensed to practice in the jurisdiction in
9 which such accountant is located. A PEO Group may
10 submit combined or consolidated audited or reviewed
11 financial statements to meet the requirements of this
12 section.

13 2. The financial statement required by subparagraph g of
14 paragraph 1 of this subsection may be dated as of a date that is not
15 earlier than three hundred sixty-five (365) days before the date on
16 which the application is submitted in the event the PEO or PEO Group
17 provides the following:

- 18 a. evidence that is acceptable to the Commissioner that
19 it is licensed or registered in good standing in
20 another state with equal or greater requirements than
21 the requirements of the Oklahoma Professional Employer
22 Organization Recognition and Registration Act,
23 b. quarterly financial statements of management for each
24 calendar quarter as of the most recent audit that

1 demonstrate continuing financial operations acceptable
2 to the Commissioner, and

3 c. the certification of a qualified attorney or an
4 independent Certified Public Accountant that as of the
5 end of the most recent calendar quarter, the PEO or
6 PEO Group has paid all of its state and federal
7 payroll taxes, health and workers' compensation
8 premiums, and contributions to employee retirement
9 plans in a timely and appropriate manner.

10 3. For purposes of the Oklahoma Professional Employer
11 Organization Recognition and Registration Act, "assurance
12 organization" means an independent entity approved by the
13 Commissioner to certify the qualifications of a PEO or PEO Group for
14 registration under this section and Section 600.6 of this title and
15 any related requirements and procedures. To be considered for
16 approval as an independent and qualified assurance organization, the
17 assurance organization shall submit a written request for approval
18 to the Commissioner. The written request shall include, but not be
19 limited to, the following:

20 a. evidence that the assurance organization is
21 independent and has an established national program
22 for the accreditation and financial assurance of PEOs
23 and PEO Groups based on requirements similar to the
24 requirements of the Oklahoma Professional Employer

1 Organization Recognition and Registration Act, and any
2 rules promulgated for the implementation of the
3 Oklahoma Professional Employer Organization
4 Recognition and Registration Act,

5 b. evidence that the assurance organization has
6 documented qualifications, standards, procedures, and
7 financial assurance acceptable to the Commissioner and
8 is licensed or otherwise approved by one or more
9 states to certify the qualifications of PEOs or PEO
10 Groups,

11 c. an agreement to provide information, compliance
12 monitoring services, and a level of financial
13 assurance as deemed acceptable by the Commissioner,

14 d. an agreement to provide the Commissioner with an
15 application that has been executed by each PEO or PEO
16 Group requesting alternative registration under this
17 section and Section 600.6 of this title and related
18 requirements and procedures in a form approved by the
19 Commissioner. The application shall:

20 (1) authorize the assurance organization to share
21 with the Commissioner any application and
22 compliance reporting information required under
23 the Oklahoma Professional Employer Organization
24 Recognition and Registration Act that has been

1 provided to the assurance organization by the PEO
2 or PEO Group,

3 (2) authorize the Commissioner to accept information
4 shared by the assurance organization for
5 registration or renewal of registration of the
6 PEO or PEO Group as if the information was
7 provided directly to the Commissioner by the PEO
8 or PEO Group,

9 (3) provide the certification of the PEO or PEO Group
10 that the information provided by the assurance
11 organization to the Commissioner is true and
12 complete and that the PEO or PEO Group is in full
13 and complete compliance with all requirements of
14 the Oklahoma Professional Employer Organization
15 Recognition and Registration Act, and

16 (4) provide the certification of the assurance
17 organization that the PEO or PEO Group is in
18 compliance with the standards and procedures of
19 the assurance organization which are similar to
20 the requirements of the Oklahoma Professional
21 Employer Organization Recognition and
22 Registration Act and is qualified for
23 registration or renewal of registration under the
24

Oklahoma Professional Employer Organization
Recognition and Registration Act,

- e. an agreement to provide written notice to the Commissioner within two (2) business days of determination by the assurance organization of the failure of a PEO or PEO Group to meet the qualifications for registration under the Oklahoma Professional Employer Organization Recognition and Registration Act or determination by the assurance organization of the failure of the PEO or PEO Group to meet the qualifications for accreditation or certification by the assurance organization, and
- f. an agreement to share with the Commissioner in a timely manner the information and supporting documentation provided to the assurance organization by the PEO or PEO Group similar to the information and documentation required for registration or renewal of registration under the Oklahoma Professional Employer Organization Recognition and Registration Act.

C. Initial registration.

- 1. Each PEO or PEO Group operating within this state as of November 1, 2002, shall complete its initial registration not later than one hundred eighty (180) days after the end of the PEO's or PEO Group's first fiscal year ending after November 1, 2002.

1 2. Each PEO or PEO Group not operating within this state as of
2 November 1, 2002, shall complete its initial registration prior to
3 commencement of operations within this state. A registration is
4 valid for a term of one (1) year.

5 D. Renewal. 1. A registration expires one (1) year following
6 the registration unless it is renewed pursuant to this subsection.
7 Before expiration of the registration, a registrant may renew the
8 registration for an additional one-year term if the registrant:

9 a. remains in good standing and otherwise is entitled to
10 be registered pursuant to the Oklahoma Professional
11 Employer Organization Recognition and Registration
12 Act,

13 b. files with the Commissioner a renewal application on a
14 form prescribed by the Commissioner, and

15 c. pays to the Commissioner a renewal fee as provided for
16 in Section 600.5 of this title.

17 2. A registration shall be considered late thirty (30) days
18 after the renewal date. Any registration received more than thirty
19 (30) days after the renewal date shall be accompanied by a late
20 registration fee of Five Hundred Dollars (\$500.00).

21 E. Group registration. Any two or more PEOs held under common
22 control of any other person or persons acting in concert may be
23 registered as a PEO Group. A PEO Group may satisfy any reporting
24

1 and financial requirements of this registration law on a
2 consolidated basis.

3 F. Electronic filing and compliance. A PEO, PEO Group or an
4 approved independent and qualified assurance organization as
5 provided for in subsection B of this section may electronically
6 submit filings in conformance with Sections 15-101 through 15-121 of
7 Title 12A of the Oklahoma Statutes. Electronically submitted
8 filings include, but are not limited to, applications, documents,
9 reports, and other filings required under the Oklahoma Uniform
10 Electronic Transactions Act.

11 G. De minimis exemption.

12 1. A PEO is exempt from the registration requirements payable
13 under the Oklahoma Professional Employer Organization Recognition
14 and Registration Act if such PEO:

- 15 a. submits a properly executed request for exemption on a
16 form provided by the Department,
- 17 b. is domiciled outside this state and is licensed or
18 registered as a professional employer organization in
19 another state that has the same or greater
20 requirements as the Oklahoma Professional Employer
21 Organization Recognition and Registration Act,
- 22 c. does not maintain an office in this state or solicit
23 in any manner clients located or domiciled within this
24 state, and

1 d. does not have more than twenty-five covered employees
2 employed or domiciled in this state.

3 2. An exemption of a professional employer organization from
4 the registration requirements under the Oklahoma Professional
5 Employer Organization Recognition and Registration Act shall be
6 valid for one (1) year, subject to renewal.

7 H. List. The Commissioner shall maintain a list of
8 professional employer organizations registered or exempted under the
9 Oklahoma Professional Employer Organization Recognition and
10 Registration Act and a list of approved assurance organizations.

11 I. Forms. The Commissioner may prescribe forms necessary to
12 promote the efficient administration of this section.

13 J. The Commissioner is authorized to promulgate reasonable
14 rules necessary for the administration and implementation of this
15 section.

16 K. The Commissioner may reject an application for registration,
17 renewal of registration, or for an exemption from registration if
18 the Commissioner finds that:

19 1. The application is not fully completed or properly executed;

20 2. Documents required to supplement the application are not
21 included in the application packet or are inadequate;

22 3. The registration fee is not submitted with the application;

23 4. The applicant or any person named in the application
24 misrepresents material in the application;

1 5. The applicant, or any of its officers, is determined by the
2 Commissioner to lack good moral character, business integrity, or
3 financial responsibility; or

4 6. The controlling person has violated a provision of the
5 Oklahoma Professional Employer Organization Recognition and
6 Registration Act.

7 SECTION 3. AMENDATORY 40 O.S. 2011, Section 600.6, is
8 amended to read as follows:

9 Section 600.6. A. Net worth and bonding. Each PEO shall
10 maintain either:

11 1. A minimum net worth of Fifty Thousand Dollars (\$50,000.00),
12 as reflected in the financial statements submitted to the
13 Commissioner with the initial registration and each annual renewal;
14 or

15 2. A bond or securities with a minimum market value of Fifty
16 Thousand Dollars (\$50,000.00), held by a depository designated by
17 the Commissioner, securing payment by the PEO of all taxes, wages,
18 benefits or other entitlement due to or with respect to a covered
19 employee, if the PEO does not make such payments when due. Any bond
20 or securities deposited under this subsection shall not be included
21 for the purpose of calculation of the minimum net worth required by
22 this subsection.

23 B. Payroll tax payments. A PEO shall submit to the
24 Commissioner, within ninety (90) days after the end of each calendar

1 quarter, a statement by a qualified attorney or an independent
2 certified public accountant that all applicable state payroll taxes
3 for covered employees located in this state have been paid on a
4 timely basis for that quarter.

5 C. Record confidentiality. All records, reports and other
6 information obtained from a PEO under the Oklahoma Professional
7 Employer Organization Recognition and Registration Act, except to
8 the extent necessary for the proper administration of the Oklahoma
9 Professional Employer Organization Recognition and Registration Act
10 by the Department, shall be confidential and shall not be published
11 or open to public inspection other than to public employees in the
12 performance of their public duties.

13 SECTION 4. This act shall become effective November 1, 2021.

14 Passed the Senate the 11th day of March, 2021.

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Presiding Officer of the Senate

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18 Passed the House of Representatives the ____ day of _____,

19 2021.

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Presiding Officer of the House
of Representatives

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