

By: Hunter

H.B. No. 2763

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of professional employer services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Chapter 91, Labor Code, is amended to read as follows:

CHAPTER 91. PROFESSIONAL EMPLOYER ORGANIZATIONS [~~STAFF LEASING SERVICES~~]

SECTION 2. Section 91.001, Labor Code, is amended by amending Subdivisions (1), (2-a), (3), (7), (11), (14), (15), (16), and (17) and adding Subdivisions (3-a), (3-b), and (7-a) to read as follows:

(1) "Applicant" means a person [~~business entity~~] applying for a license or the renewal of a license under this chapter.

(2-a) "Assurance organization" means an independent entity approved by the commission that:

(A) provides a national program of accreditation and financial assurance for professional employer organizations [~~staff leasing services companies~~];

(B) has documented qualifications, standards, and procedures acceptable to the department; and

(C) agrees to provide information, compliance monitoring services, and financial assurance useful to the department in accomplishing the provisions of this chapter.

1 (3) "Client [~~company~~]" means any [a] person who enters
2 into a professional employer services agreement [~~that contracts~~]
3 with a license holder [~~and is assigned employees by the license~~
4 ~~holder under that contract~~].

5 (3-a) "Co-employer" means a professional employer
6 organization or a client.

7 (3-b) "Co-employment relationship" means a
8 contractual relationship between a client and a professional
9 employer organization that involves the sharing of employment
10 responsibilities with or allocation of employment responsibilities
11 to covered employees in accordance with the professional employer
12 services agreement and this chapter.

13 (7) "Controlling person" means an individual who:

14 (A) possesses direct or indirect control of 25
15 percent or more of the voting securities of a business entity
16 [~~corporation~~] that offers or proposes to offer professional
17 employer [~~staff leasing~~] services;

18 (B) possesses the authority to set policy and
19 direct management of a business entity [~~company~~] that offers or
20 proposes to offer professional employer [~~staff leasing~~] services;

21 (C) is employed, appointed, or authorized by a
22 business entity [~~company~~] that offers or proposes to offer
23 professional employer [~~staff leasing~~] services to enter into a
24 professional employer services agreement [~~contract~~] with a client
25 [~~company~~] on behalf of the business entity [~~company~~]; or

26 (D) a person who is an officer or director of a
27 corporation or a general partner of a partnership that offers or

1 proposes to offer professional employer [~~staff leasing~~] services.

2 (7-a) "Covered employee" means an individual having a
3 co-employment relationship with a professional employer
4 organization and a client.

5 (11) "License holder" means a person licensed under
6 this chapter to provide professional employer [~~staff leasing~~]
7 services.

8 (14) "Professional employer services" means the
9 services provided through co-employment relationships in which all
10 or a majority of the employees providing services to a client or to
11 a division or work unit of a client are covered employees. ["Staff
12 ~~leasing services" means an arrangement by which employees of a~~
13 ~~license holder are assigned to work at a client company and in which~~
14 ~~employment responsibilities are in fact shared by the license~~
15 ~~holder and the client company, the employee's assignment is~~
16 ~~intended to be of a long-term or continuing nature, rather than~~
17 ~~temporary or seasonal in nature, and a majority of the work force at~~
18 ~~a client company worksite or a specialized group within that work~~
19 ~~force consists of assigned employees of the license holder. The~~
20 ~~term includes professional employer organization services.]~~ The
21 term does not include:

- 22 (A) temporary help;
- 23 (B) an independent contractor;
- 24 (C) the provision of services that otherwise meet
25 the definition of "professional employer [~~staff leasing~~]
26 services" by one person solely to other persons who are related to
27 the service provider by common ownership; or

1 (D) a temporary common worker employer as defined
2 by Chapter 92.

3 (15) "Professional employer organization" [~~"Staff~~
4 ~~leasing services company"~~] means a business entity that offers
5 professional employer [~~staff leasing~~] services. [~~The term includes~~
6 ~~a professional employer organization.~~]

7 (16) "Temporary help" means an arrangement by which an
8 organization hires its own employees and assigns them to a company
9 [~~client~~] to support or supplement the company's [~~client's~~] work
10 force in a special work situation, including:

- 11 (A) an employee absence;
- 12 (B) a temporary skill shortage;
- 13 (C) a seasonal workload; or
- 14 (D) a special assignment or project.

15 (17) "Wages" means:
16 (A) compensation for labor or services rendered
17 by a covered [~~an assigned~~] employee, whether computed on a time,
18 task, piece, or other basis; and

19 (B) vacation pay, holiday pay, sick leave pay,
20 parental leave pay, severance pay, bonuses, commissions, stock
21 option grants, or deferred compensation owed to a covered [~~an~~
22 ~~assigned~~] employee under a written agreement.

23 SECTION 3. Chapter 91, Labor Code, is amended by adding
24 Sections 91.0015 and 91.0016 to read as follows:

25 Sec. 91.0015. CO-EMPLOYMENT RELATIONSHIP. (a) A
26 co-employment relationship is intended to be an ongoing
27 relationship rather than a temporary or specific one, in which the

1 rights, duties, and obligations of an employer that arise out of an
2 employment relationship are allocated between co-employers under a
3 professional employer services agreement. Co-employment is not a
4 joint employment arrangement.

5 (b) In a co-employment relationship:

6 (1) the professional employer organization may
7 enforce only those employer rights and is subject to only those
8 obligations specifically allocated to the professional employer
9 organization by the professional employer services agreement or
10 this chapter;

11 (2) the client may enforce any right and is obligated
12 to perform those employer obligations allocated to the client by
13 the professional employer services agreement or this chapter; and

14 (3) the client may enforce any right and is obligated
15 to perform any obligation of an employer not specifically allocated
16 to the professional employer organization by the professional
17 employer services agreement or this chapter.

18 Sec. 91.0016. COVERED EMPLOYEE. (a) A covered employee
19 must meet all the following criteria:

20 (1) the individual must receive written notice of the
21 co-employment relationship with the professional employer
22 organization; and

23 (2) the individual's co-employment relationship must
24 be under a professional employer services agreement subject to this
25 chapter.

26 (b) An individual who is an officer, director, shareholder,
27 partner, or manager of the client is a covered employee, except to

1 the extent the professional employer organization and the client
2 expressly agree in the professional employer services agreement
3 that the individual is not a covered employee, if the individual
4 meets the criteria of this section and acts as an operational
5 manager or performs day-to-day operational services for the client.

6 SECTION 4. Sections 91.002(b) and (c), Labor Code, are
7 amended to read as follows:

8 (b) Each person who offers professional employer [~~staff~~
9 ~~leasing~~] services is subject to this chapter and the rules adopted
10 by the commission.

11 (c) Notwithstanding any other provision of this chapter,
12 nothing in this chapter preempts the existing statutory or
13 rulemaking authority of any other state agency or entity to
14 regulate professional employer [~~staff leasing~~] services in a manner
15 consistent with the statutory authority of that state agency or
16 entity.

17 SECTION 5. Section 91.003(a), Labor Code, is amended to
18 read as follows:

19 (a) Each state agency that in performing duties under other
20 law affects the regulation of professional employer [~~staff leasing~~]
21 services shall cooperate with the department and other state
22 agencies as necessary to implement and enforce this chapter.

23 SECTION 6. Sections 91.004, 91.005, 91.006, and 91.007,
24 Labor Code, are amended to read as follows:

25 Sec. 91.004. EFFECT OF OTHER LAW ON CLIENTS AND EMPLOYEES.

26 (a) This chapter does not exempt a client of a license holder, or
27 any covered [~~assigned~~] employee, from any other license

1 requirements imposed under local, state, or federal law.

2 (b) A covered [~~An~~] employee who is licensed, registered, or
3 certified under law [~~and who is assigned to a client company~~] is
4 considered to be an employee of the client [~~company~~] for the purpose
5 of that license, registration, or certification.

6 (c) A license holder is not engaged in the unauthorized
7 practice of an occupation, trade, or profession that is licensed,
8 certified, or otherwise regulated by a governmental entity solely
9 by entering into a professional employer services [~~staff leasing~~]
10 agreement with a client [~~company~~] and covered [~~assigned~~] employees.

11 Sec. 91.005. APPLICATION OF CERTAIN PROCUREMENT LAWS. With
12 respect to a bid, contract, purchase order, or agreement entered
13 into with the state or a political subdivision of the state, a
14 client's [~~client company's~~] status or certification as a small,
15 minority-owned, disadvantaged, or woman-owned business enterprise
16 or as a historically underutilized business is not affected because
17 the client [~~company~~] has entered into a professional employer
18 services [~~an~~] agreement with a license holder or uses the services
19 of a license holder.

20 Sec. 91.006. WORKERS' COMPENSATION COVERAGE. (a) A
21 certificate of insurance coverage showing that either a license
22 holder or a client maintains a policy of workers' compensation
23 insurance constitutes proof of workers' compensation insurance
24 coverage for the license holder and the client [~~company~~] with
25 respect to all covered employees of the license holder and
26 [~~assigned to~~] the client [~~company~~]. The state and a political
27 subdivision of the state shall accept a certificate of insurance

1 coverage described by this section as proof of workers'
2 compensation coverage under Chapter 406.

3 (b) For a client [~~company~~] that has employees who are not
4 covered [~~assigned~~] employees under a professional employer [~~staff~~
5 ~~leasing~~] services agreement, the state or a political subdivision
6 of the state may require the client [~~company~~] to furnish separate
7 proof of workers' compensation insurance coverage for those
8 employees.

9 Sec. 91.007. APPLICATION OF LABOR RELATIONS LAWS. This
10 chapter does not relieve a client [~~company~~] of a right, obligation,
11 or duty under:

12 (1) Chapter 101;

13 (2) the federal National Labor Relations Act (29
14 U.S.C. Section 151 et seq.);

15 (3) the federal Railway Labor Act (45 U.S.C. Section
16 151 et seq.); or

17 (4) any other law governing labor relations.

18 SECTION 7. Sections 91.011 and 91.012, Labor Code, are
19 amended to read as follows:

20 Sec. 91.011. LICENSE REQUIRED. A person may not engage in
21 or offer professional employer [~~staff leasing~~] services in this
22 state unless the person is employed, appointed, or authorized by a
23 company that holds a license issued under this chapter.

24 Sec. 91.012. GENERAL LICENSE REQUIREMENTS. To be qualified
25 to serve as a controlling person of a license holder under this
26 chapter, that person must be at least 18 years of age and have
27 educational, managerial, or business experience relevant to:

1 (1) operation of a business entity offering
2 professional employer [~~staff leasing~~] services; or

3 (2) service as a controlling person of a professional
4 employer organization [~~staff leasing services company~~].

5 SECTION 8. Sections 91.014(a) and (c), Labor Code, are
6 amended to read as follows:

7 (a) An applicant for an original or renewal license must
8 demonstrate positive working capital in the following amounts:

9 (1) \$50,000 if the applicant employs fewer than 250
10 covered [~~assigned~~] employees;

11 (2) \$75,000 if the applicant employs at least 250 but
12 not more than 750 covered [~~assigned~~] employees; and

13 (3) \$100,000 if the applicant employs more than 750
14 covered [~~assigned~~] employees.

15 (c) Information submitted to or maintained by the
16 department is subject to Chapter 552, Government Code, other than
17 information related to:

18 (1) identification of clients [~~client companies~~];

19 (2) working capital;

20 (3) financial statements; or

21 (4) federal tax returns.

22 SECTION 9. Section 91.015(a), Labor Code, is amended to
23 read as follows:

24 (a) To receive a professional employer organization [~~staff~~
25 ~~leasing services company~~] original license, a person shall file
26 with the department a written application accompanied by the
27 application fee.

1 SECTION 10. Section 91.017(a), Labor Code, is amended to
2 read as follows:

3 (a) Each applicant for an original or renewal professional
4 employer organization [~~staff leasing services company~~] license
5 shall pay to the department before the issuance of the license or
6 license renewal a fee set by the commission by rule.

7 SECTION 11. Sections 91.018(e) and (f), Labor Code, are
8 amended to read as follows:

9 (e) A license holder offering professional employer [~~staff~~
10 ~~leasing~~] services in more than one state may advertise in this state
11 using the name of its parent company or under a trade name,
12 trademark, or service mark. The trade name, trademark, service
13 mark, or parent company name must be listed on the license in
14 addition to the licensed name used by the license holder in this
15 state.

16 (f) Each written proposal provided to a prospective client
17 [~~company~~] and each contract between a license holder and a client
18 [~~company~~] or covered [~~assigned~~] employee shall clearly identify the
19 name of the license holder. A proposal or contract may also
20 identify the trade name, trademark, service mark, or parent company
21 name of the license holder. A license holder may use written
22 materials including forms, benefit information, letterhead, and
23 business cards that bear only the trade name, trademark, service
24 mark, or parent company name of the license holder.

25 SECTION 12. Sections 91.019(a), (b), and (c), Labor Code,
26 are amended to read as follows:

27 (a) The commission by rule shall provide for the issuance of

1 a limited license to a person who seeks to offer limited
2 professional employer [~~staff leasing~~] services in this state.

3 (b) For purposes of this section, a professional employer
4 organization [~~staff leasing services company~~] is considered to be
5 offering limited professional employer [~~staff leasing~~] services if
6 the professional employer organization [~~staff leasing services~~
7 ~~company~~]:

8 (1) employs fewer than 50 covered [~~assigned~~] employees
9 in this state at any one time;

10 (2) does not provide covered [~~assigned~~] employees to a
11 client [~~company~~] based or domiciled in this state; and

12 (3) does not maintain an office in this state or
13 solicit clients [~~client companies~~] located or domiciled in this
14 state.

15 (c) A professional employer organization [~~staff leasing~~
16 ~~services company~~] that offers limited professional employer [~~staff~~
17 ~~leasing~~] services shall complete the application forms and pay the
18 fees for a limited license as prescribed by the department. A
19 limited license is valid for one year from the date of issuance and
20 may be renewed annually on submission of a renewal application and
21 payment of the required fees.

22 SECTION 13. Section 91.020, Labor Code, is amended to read
23 as follows:

24 Sec. 91.020. GROUNDS FOR DISCIPLINARY ACTION. The
25 department may take disciplinary action against a license holder on
26 any of the following grounds:

27 (1) engaging in professional employer [~~staff leasing~~]

1 services or offering to engage in the provision of professional
2 employer [~~staff leasing~~] services without a license;

3 (2) transferring or attempting to transfer a license
4 issued under this chapter;

5 (3) violating this chapter or any order or rule issued
6 by the executive director or commission under this chapter;

7 (4) failing after the 31st day after the date on which
8 a felony conviction of a controlling person is final to notify the
9 department in writing of the conviction;

10 (5) failing to cooperate with an investigation,
11 examination, or audit of the license holder's records conducted by
12 the license holder's insurance company or the insurance company's
13 designee, as allowed by the insurance contract or as authorized by
14 law by the Texas Department of Insurance;

15 (6) failing after the 31st day after the effective
16 date of a change in ownership, principal business address, or the
17 address of accounts and records to notify the department and the
18 Texas Department of Insurance of the change;

19 (7) failing to correct any tax filings or payment
20 deficiencies within a reasonable time as determined by the
21 executive director;

22 (8) refusing, after reasonable notice, to meet
23 reasonable health and safety requirements within the license
24 holder's control and made known to the license holder by a federal
25 or state agency;

26 (9) being delinquent in the payment of the license
27 holder's insurance premiums other than those subject to a

1 legitimate dispute;

2 (10) being delinquent in the payment of any employee
3 benefit plan premiums or contributions other than those subject to
4 a legitimate dispute;

5 (11) knowingly making a material misrepresentation to
6 an insurance company or to the department or other governmental
7 agency;

8 (12) failing to maintain the working capital required
9 under Section 91.014; or

10 (13) using professional employer [~~staff-leasing~~
11 services to avert or avoid an existing collective bargaining
12 agreement.

13 SECTION 14. Section 91.021(b), Labor Code, is amended to
14 read as follows:

15 (b) A professional employer organization [~~staff-leasing~~
16 ~~services company~~] may authorize an assurance organization that is
17 qualified and approved by the commission to act on its behalf in
18 complying with the licensing requirements of this chapter,
19 including the electronic filing of information and the payment of
20 application and licensing fees. Use of an assurance organization
21 is optional and is not mandatory for a professional employer
22 organization [~~staff-leasing services company~~].

23 SECTION 15. The heading to Subchapter C, Chapter 91, Labor
24 Code, is amended to read as follows:

25 SUBCHAPTER C. PROFESSIONAL EMPLOYER SERVICES [~~STAFF LEASING~~
26 ~~SERVICES~~] AGREEMENT

27 SECTION 16. Sections 91.031 and 91.032, Labor Code, are

1 amended to read as follows:

2 Sec. 91.031. AGREEMENT; NOTICE. (a) A license holder
3 shall establish the terms of a professional employer [~~staff~~
4 ~~leasing~~] services agreement by a written contract between the
5 license holder and the client [~~company~~].

6 (b) The license holder shall give written notice of the
7 agreement as it affects covered [~~assigned~~] employees to each
8 covered employee of the license holder and [~~assigned to~~] a client
9 [~~company worksite~~].

10 (c) The written notice required by Subsection (b) must be
11 given to each covered [~~assigned~~] employee not later than the first
12 payday after the date on which that individual becomes a covered [~~an~~
13 ~~assigned~~] employee.

14 Sec. 91.032. CONTRACT REQUIREMENTS. (a) A professional
15 employer services agreement [~~contract~~] between a license holder and
16 a client [~~company~~] must provide that the license holder:

17 (1) shares, as provided by Subsection (b), with the
18 client [~~company~~] the right of direction and control over covered
19 employees [~~assigned to a client's worksites~~];

20 (2) assumes responsibility for the payment of wages to
21 the covered [~~assigned~~] employees without regard to payments by the
22 client to the license holder;

23 (3) assumes responsibility for the payment of payroll
24 taxes and collection of taxes from payroll on covered [~~assigned~~]
25 employees;

26 (4) shares, as provided by Subsection (b), with the
27 client [~~company~~] the right to hire, fire, discipline, and reassign

1 the covered [~~assigned~~] employees; and

2 (5) shares, as provided by Subsection (b), with the
3 client [~~company~~] the right of direction and control over the
4 adoption of employment and safety policies and the management of
5 workers' compensation claims, claim filings, and related
6 procedures.

7 (b) Notwithstanding any other provision of this chapter, a
8 client [~~company~~] retains sole responsibility for:

9 (1) the direction and control of covered [~~assigned~~]
10 employees as necessary to conduct the client's [~~client company's~~]
11 business, discharge any applicable fiduciary duty, or comply with
12 any licensure, regulatory, or statutory requirement;

13 (2) goods and services produced by the client
14 [~~company~~]; and

15 (3) the acts, errors, and omissions of covered
16 [~~assigned~~] employees committed within the scope of the client's
17 [~~client company's~~] business.

18 (c) Notwithstanding Subsection (a)(2), a client [~~company~~]
19 is solely obligated to pay any wages for which:

20 (1) obligation to pay is created by an agreement,
21 contract, plan, or policy between the client [~~company~~] and the
22 covered [~~assigned~~] employee; and

23 (2) the professional employer organization [~~staff~~
24 ~~leasing services company~~] has not contracted to pay.

25 (d) Each professional employer organization [~~staff leasing~~
26 ~~services company~~] shall disclose the requirements of Subsection (c)
27 in writing to each covered [~~assigned~~] employee.

1 SECTION 17. Section 91.041, Labor Code, is amended by
2 amending Subsections (a) and (b) and adding Subsections (a-1),
3 (a-2), (a-3), and (a-4) to read as follows:

4 (a) A client and license holder are each considered an
5 employer under the laws of this state for purposes of sponsoring
6 retirement and welfare benefit plans for covered employees. [~~A~~
7 ~~license holder may sponsor and maintain employee benefit plans for~~
8 ~~the benefit of assigned employees. A client company may include~~
9 ~~assigned employees in any benefit plan sponsored by the client~~
10 ~~company.~~]

11 (a-1) A license holder may sponsor a single welfare benefit
12 plan under which eligible covered employees of one or more clients
13 may elect to participate.

14 (a-2) A fully insured welfare benefit plan offered to the
15 covered employees of a license holder and provided by an insurance
16 company authorized to provide that insurance in this state shall be
17 treated for purposes of state law as a single welfare benefit plan.

18 (a-3) If a professional employer organization offers to its
19 covered employees any health benefit plan that is not fully insured
20 by an authorized insurer, the plan must:

21 (1) use a third-party administrator licensed to do
22 business in this state;

23 (2) hold all plan assets, including participant
24 contributions, in a trust account consistent with the requirements
25 of Section 403 of the federal Employee Retirement Income Security
26 Act of 1974 (29 U.S.C. Section 1103);

27 (3) provide sound reserves for the plan as determined

1 using generally accepted actuarial standards of practice and
2 consistent with the prudence and loyalty standards of care for
3 fiduciaries under the federal Employee Retirement Income Security
4 Act of 1974 (29 U.S.C. Section 1001 et seq.); and

5 (4) provide written notice to each covered employee
6 participating in the health benefit plan that the plan is
7 self-funded or is not fully insured.

8 (a-4) The requirements imposed on license holders in
9 Subsection (a-3) are in addition to any other statutory or
10 regulatory requirement imposed on employers in this state offering
11 self-funded health benefit plans in this state, including those
12 prescribed by the Insurance Code.

13 (b) With respect to any insurance or benefit plan provided
14 by a license holder for the benefit of its assigned employees, a
15 license holder shall disclose the following information to the
16 department, each client [~~company~~], and its covered [~~assigned~~]
17 employees:

- 18 (1) the type of coverage;
- 19 (2) the identity of each insurer for each type of
20 coverage;
- 21 (3) the amount of benefits provided for each type of
22 coverage and to whom or in whose behalf benefits are to be paid;
- 23 (4) the policy limits on each insurance policy; and
- 24 (5) whether the coverage is fully insured, partially
25 insured, or fully self-funded.

26 SECTION 18. Section 91.042, Labor Code, is amended by
27 amending Subsections (a), (b), (c), (d), and (e) and adding

1 Subsections (a-1) and (a-2) to read as follows:

2 (a) A license holder or client may elect to obtain workers'
3 compensation insurance coverage for covered [~~the license holder's~~
4 ~~assigned~~] employees through an insurance company as defined under
5 Section 401.011(28) or through self-insurance as provided under
6 Chapter 407.

7 (a-1) The client and the professional employer organization
8 shall specify in the professional employer services agreement
9 whether the parties have elected to obtain workers' compensation
10 insurance coverage for the covered employees and shall specify
11 which party must maintain the policy for that coverage.

12 (a-2) If the client elects to maintain workers'
13 compensation insurance for the covered employees under the client's
14 policy, the client shall pay workers' compensation insurance
15 premiums for the covered employees based on the experience rating
16 of the client.

17 (b) If a license holder maintains workers' compensation
18 insurance for covered employees, the license holder shall pay
19 workers' compensation insurance premiums for the covered employees
20 based on the experience rating of the client [~~company~~] for the first
21 two years the covered employees are covered under the professional
22 employer organization's policy [~~client company has a contract with~~
23 ~~the license holder~~] and as further provided by rule by the Texas
24 Department of Insurance.

25 (c) For workers' compensation insurance purposes, a license
26 holder and the license holder's client [~~company~~] shall be
27 coemployers. If either a license holder or a client elects to

1 obtain workers' compensation insurance for covered employees, the
2 client [~~company~~] and the license holder are subject to Sections
3 406.034 and 408.001.

4 (d) If a license holder or a client does not elect to obtain
5 workers' compensation insurance for covered employees, both the
6 license holder and the client [~~company~~] are subject to Sections
7 406.004 and 406.033.

8 (e) After the expiration of the two-year period under
9 Subsection (b), if the client elects to obtain [~~company obtains a~~
10 ~~new~~] workers' compensation insurance for covered employees through
11 a policy maintained by the client, or if the professional employer
12 services agreement is terminated and the client elects to maintain
13 workers' compensation coverage for employees previously covered by
14 the former professional employer organization's policy through a
15 policy maintained by the client or a third party, including a policy
16 maintained by a successor professional employer organization
17 [~~policy in the company's own name or adds the company's former~~
18 ~~assigned workers to an existing policy~~], the premium for the
19 workers' compensation insurance coverage for the client [~~policy of~~
20 ~~the company~~] shall be based on the lower of:

21 (1) the experience modifier of the client [~~company~~]
22 before being covered under the professional employer
23 organization's policy [~~entering into the staff leasing~~
24 ~~arrangement~~]; or

25 (2) the experience modifier of the license holder at
26 the time the client's coverage under the professional employer
27 organization's policy is [~~staff leasing arrangement~~] terminated.

1 SECTION 19. Sections 91.044, 91.046, 91.048, 91.050, and
2 91.061, Labor Code, are amended to read as follows:

3 Sec. 91.044. UNEMPLOYMENT TAXES; PAYROLL. (a) A license
4 holder is the employer of a covered [~~an assigned~~] employee for
5 purposes of Subtitle A, Title 4, and, except for wages subject to
6 Section 91.032(c), for purposes of Chapter 61. In addition to any
7 other reports required to be filed by law, a license holder shall
8 report quarterly to the Texas Workforce Commission on a form
9 prescribed by the Texas Workforce Commission the name, address,
10 telephone number, federal income tax identification number, and
11 classification code as described in the "Standard Industrial
12 Classification Manual" published by the United States Office of
13 Management and Budget of each client [~~company~~].

14 (b) For purposes of Subtitle A, Title 4, in the event of the
15 termination of a contract between a license holder and a client
16 [~~company~~] or the failure by a professional employer organization
17 [~~staff leasing entity~~] to submit reports or make tax payments as
18 required by that subtitle, the contracting client [~~company~~] shall
19 be treated as a new employer without a previous experience record
20 unless that client [~~company~~] is otherwise eligible for an
21 experience rating.

22 Sec. 91.046. CONTRACTUAL DUTIES. Each license holder is
23 responsible for the license holder's contractual duties and
24 responsibilities to manage, maintain, collect, and make timely
25 payments for:

- 26 (1) insurance premiums;
27 (2) benefit and welfare plans;

1 (3) other employee withholding; and
2 (4) any other expressed responsibility within the
3 scope of the professional employer services agreement [~~contract~~]
4 for fulfilling the duties imposed under this section and Sections
5 91.032, 91.047, and 91.048.

6 Sec. 91.048. REQUIRED INFORMATION. Each license holder
7 shall:

8 (1) maintain adequate books and records regarding the
9 license holder's duties and responsibilities;

10 (2) maintain and make available at all times to the
11 executive director the following information, which shall be
12 treated as proprietary and confidential and is exempt from
13 disclosure to persons other than other governmental agencies having
14 a reasonable, legitimate purpose for obtaining the information:

15 (A) the correct name, address, and telephone
16 number of each client [~~company~~];

17 (B) each professional employer services
18 agreement with a client [~~company contract~~]; and

19 (C) a listing by classification code as described
20 in the "Standard Industrial Classification Manual" published by the
21 United States Office of Management and Budget, of each client
22 [~~company~~];

23 (3) notify the department of any addition or deletion
24 of a controlling person as listed on the license application or
25 renewal form by providing the name of the person not later than the
26 45th day after the date on which the person is added or deleted as a
27 controlling person; and

1 (4) provide a biographical history to the department
2 in connection with the addition of a new controlling person.

3 Sec. 91.050. TAX CREDITS AND OTHER INCENTIVES. (a) For the
4 purpose of determining tax credits, grants, and other economic
5 incentives provided by this state or other governmental entities
6 that are based on employment, covered [~~assigned~~] employees are
7 considered employees of the client and the client is solely
8 entitled to the benefit of any tax credit, economic incentive, or
9 other benefit arising from the employment of covered [~~assigned~~]
10 employees of the client. This subsection applies even if the
11 professional employer organization [~~staff-leasing services~~
12 ~~company~~] is the reporting employer for federal income tax
13 purposes.

14 (b) If a grant or the amount of any incentive described by
15 Subsection (a) is based on the number of employees, each client
16 shall be treated as employing only those [~~assigned~~] employees
17 co-employed by the client. Covered [~~Assigned~~] employees working
18 for other clients of the professional employer organization [~~staff~~
19 ~~leasing services company~~] may not be included in the computation.

20 (c) Each professional employer organization [~~staff-leasing~~
21 ~~services company~~] shall provide, on the request of a client or an
22 agency of this state, employment information reasonably required by
23 the state agency responsible for the administration of any tax
24 credit or economic incentive described by Subsection (a) and
25 necessary to support a request, claim, application, or other action
26 by a client seeking the tax credit or economic incentive.

27 Sec. 91.061. PROHIBITED ACTS. A person may not:

1 (1) engage in or offer professional employer [~~staff~~
2 ~~leasing~~] services without holding a license under this chapter as a
3 professional employer organization [~~staff leasing services~~
4 ~~company~~];

5 (2) use the name or title "professional employer
6 organization," [~~"staff leasing company,"~~] "employee leasing
7 company," "licensed professional employer organization,"
8 "professional employer organization services company,"
9 "professional employer organization company," [~~"licensed staff~~
10 ~~leasing company," "staff leasing services company," "professional~~
11 ~~employer organization,~~] or "administrative employer" or otherwise
12 represent that the entity is licensed under this chapter unless the
13 entity holds a license issued under this chapter;

14 (3) represent as the person's own the license of
15 another person or represent that a person is licensed if the person
16 does not hold a license;

17 (4) give materially false or forged evidence to the
18 department in connection with obtaining or renewing a license or in
19 connection with disciplinary proceedings under this chapter; or

20 (5) use or attempt to use a license that has expired or
21 been revoked.

22 SECTION 20. Section 92.012, Labor Code, is amended to read
23 as follows:

24 Sec. 92.012. EXEMPTIONS FROM LICENSING REQUIREMENT. This
25 chapter does not apply to:

26 (1) a temporary skilled labor agency;

27 (2) a professional employer organization [~~staff~~

1 ~~leasing services company~~];

2 (3) an employment counselor;

3 (4) a talent agency;

4 (5) a labor union hiring hall;

5 (6) a temporary common worker employer that does not
6 operate a labor hall;

7 (7) a labor bureau or employment office operated by a
8 person for the sole purpose of employing an individual for the
9 person's own use; or

10 (8) an employment service or labor training program
11 provided by a governmental entity.

12 SECTION 21. Section 201.030, Labor Code, is amended to read
13 as follows:

14 Sec. 201.030. PROFESSIONAL EMPLOYER ORGANIZATION [~~STAFF~~
15 ~~LEASING SERVICES COMPANY~~]. For the purposes of this subtitle,
16 "professional employer organization" [~~"staff leasing services~~
17 ~~company"~~] has the meaning assigned by Section 91.001.

18 SECTION 22. Section 207.045(i), Labor Code, is amended to
19 read as follows:

20 (i) A covered [~~An assigned~~] employee of a professional
21 employer organization [~~staff leasing services company~~] is
22 considered to have left the covered [~~assigned~~] employee's last work
23 without good cause if the professional employer organization [~~staff~~
24 ~~leasing services company~~] demonstrates that:

25 (1) at the time the employee's assignment to a client
26 [~~company~~] concluded, the professional employer organization [~~staff~~
27 ~~leasing services company~~], or the client [~~company~~] acting on the

1 professional employer organization's [~~staff leasing services~~
2 ~~company's~~] behalf, gave written notice and written instructions to
3 the covered [~~assigned~~] employee to contact the professional
4 employer organization [~~staff leasing services company~~] for a new
5 assignment; and

6 (2) the covered [~~assigned~~] employee did not contact
7 the professional employer organization [~~staff leasing services~~
8 ~~company~~] regarding reassignment or continued employment; provided
9 that the covered [~~assigned~~] employee may show that good cause
10 existed for the covered [~~assigned~~] employee's failure to contact
11 the professional employer organization [~~staff leasing services~~
12 ~~company~~].

13 SECTION 23. Section 151.057, Tax Code, is amended to read as
14 follows:

15 Sec. 151.057. SERVICES BY EMPLOYEES. The following
16 services are not taxable under this chapter:

17 (1) a service performed by an employee for his
18 employer in the regular course of business, within the scope of the
19 employee's duties, and for which the employee is paid his regular
20 wages or salary;

21 (2) a service performed by an employee of a temporary
22 employment service as defined by Section 93.001, Labor Code, for an
23 employer to supplement the employer's existing work force on a
24 temporary basis, when the service is normally performed by the
25 employer's own employees, the employer provides all supplies and
26 equipment necessary, and the help is under the direct or general
27 supervision of the employer to whom the help is furnished; or

1 (3) a service performed by covered [~~assigned~~]
2 employees of a professional employer organization [~~staff leasing~~
3 ~~company~~], either licensed under Chapter 91, Labor Code, or exempt
4 from the licensing requirements of that chapter, for a client
5 [~~company~~] under a written contract that provides for shared
6 employment responsibilities between the professional employer
7 organization [~~staff leasing company~~] and the client [~~company~~] for
8 the covered [~~assigned~~] employees, most of whom must have been
9 previously employed by the client [~~company~~]. The comptroller shall
10 prescribe by rule the minimum percentage of covered [~~assigned~~]
11 employees that must have been previously employed by the client
12 [~~company~~], the minimum time period the covered [~~assigned~~] employees
13 must have been employed by the client [~~company~~] prior to the
14 commencement of its contract, and such other criteria as the
15 comptroller may deem necessary to properly implement this section.

16 SECTION 24. Section 171.0001(15), Tax Code, is amended to
17 read as follows:

18 (15) "Professional employer organization" [~~"Staff~~
19 ~~leasing services company"~~] means:

20 (A) a business entity that offers professional
21 employer [~~staff leasing~~] services, as that term is defined by
22 Section 91.001, Labor Code; or

23 (B) a temporary employment service, as that term
24 is defined by Section 93.001, Labor Code.

25 SECTION 25. Section 171.101(b), Tax Code, is amended to
26 read as follows:

27 (b) Notwithstanding Subsection (a)(1)(B)(ii), a

1 professional employer organization [~~staff leasing services~~
2 ~~company~~] may subtract only compensation as determined under Section
3 171.1013.

4 SECTION 26. Section 171.1011(k), Tax Code, is amended to
5 read as follows:

6 (k) A taxable entity that is a professional employer
7 organization [~~staff leasing services company~~] shall exclude from
8 its total revenue payments received from a client [~~company~~] for
9 wages, payroll taxes on those wages, employee benefits, and
10 workers' compensation benefits for the covered [~~assigned~~]
11 employees of the client [~~company~~].

12 SECTION 27. Sections 171.1013(d) and (e), Tax Code, are
13 amended to read as follows:

14 (d) A taxable entity that is a professional employer
15 organization [~~staff leasing services company~~]:

16 (1) may not include as wages or cash compensation
17 payments described by Section 171.1011(k); and

18 (2) shall determine compensation as provided by this
19 section only for the taxable entity's own employees that are not
20 covered [~~assigned~~] employees.

21 (e) Subject to the other provisions of this section, in
22 determining compensation, a taxable entity that is a client
23 [~~company~~] that contracts with a professional employer organization
24 [~~staff leasing services company~~] for covered [~~assigned~~] employees:

25 (1) shall include payments made to the professional
26 employer organization [~~staff leasing services company~~] for wages
27 and benefits for the covered [~~assigned~~] employees as if the covered

1 ~~[assigned]~~ employees were actual employees of the entity;

2 (2) may not include an administrative fee charged by
3 the professional employer organization ~~[staff leasing services~~
4 ~~company]~~ for the provision of the covered ~~[assigned]~~ employees; and

5 (3) may not include any other amount in relation to the
6 covered ~~[assigned]~~ employees, including payroll taxes.

7 SECTION 28. Section 171.2125, Tax Code, is amended to read
8 as follows:

9 Sec. 171.2125. CALCULATING COST OF GOODS OR COMPENSATION IN
10 PROFESSIONAL EMPLOYER SERVICES ~~[STAFF LEASING]~~ ARRANGEMENTS. In
11 calculating cost of goods sold or compensation, a taxable entity
12 that is a client ~~[company]~~ of a professional employer organization
13 ~~[staff leasing services company]~~ shall rely on information provided
14 by the professional employer organization ~~[staff leasing services~~
15 ~~company]~~ on a form promulgated by the comptroller or an invoice.

16 SECTION 29. The following laws are repealed:

17 (1) Section 91.001(2), Labor Code; and

18 (2) Section 91.043, Labor Code.

19 SECTION 30. (a) Not later than January 1, 2014, the Texas
20 Commission of Licensing and Regulation shall adopt any rules
21 necessary to administer Chapter 91, Labor Code, as amended by this
22 Act.

23 (b) The changes in law made by this Act apply only to a
24 professional employer services agreement entered into on or after
25 the effective date of this Act. An agreement entered into before
26 the effective date of this Act is governed by the law in effect on
27 the date the agreement is entered into, and the former law is

1 continued in effect for that purpose.

2 SECTION 31. This Act takes effect September 1, 2013.