

By: Williams

S.B. No. 1286

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of professional employer services;
authorizing fees.

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

1 department in accomplishing the provisions of this chapter.

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

6 (3-a) "Coemployer" means a professional employer
7 organization or a client that is a party to a coemployment
8 relationship.

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

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

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

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

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

1 (D) a person who is an officer or director of a
2 corporation or a general partner of a partnership that offers or
3 proposes to offer professional employer [~~staff leasing~~] services.

4 (7-a) "Covered employee" means an individual having a
5 coemployment relationship with a professional employer
6 organization and a client.

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

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

- 24 (A) temporary help;
- 25 (B) an independent contractor;
- 26 (C) the provision of services that otherwise meet
- 27 the definition of "professional employer [~~staff leasing~~]

1 services" by one person solely to other persons who are related to
2 the service provider by common ownership; or

3 (D) a temporary common worker employer as defined
4 by Chapter 92.

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

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

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

17 (17) "Wages" means:

18 (A) compensation for labor or services rendered
19 by a covered [~~an assigned~~] employee, whether computed on a time,
20 task, piece, or other basis; and

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

25 SECTION 3. Subchapter A, Chapter 91, Labor Code, is amended
26 by adding Sections 91.0011 and 91.0012 to read as follows:

27 Sec. 91.0011. COEMPLOYMENT RELATIONSHIP. (a) A

1 coemployment relationship is intended to be an ongoing
2 relationship, rather than a temporary or specific one, in which the
3 rights, duties, and obligations of an employer that arise out of an
4 employment relationship are allocated between coemployers under a
5 professional employer services agreement. Coemployment is not a
6 joint employment arrangement.

7 (b) In a coemployment relationship:

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

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

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

20 Sec. 91.0012. COVERED EMPLOYEE. (a) A covered employee
21 must meet all the following criteria:

22 (1) the individual must receive written notice of the
23 coemployment relationship with the professional employer
24 organization; and

25 (2) the individual's coemployment relationship must be
26 under a professional employer services agreement subject to this
27 chapter.

1 (b) An individual who is an executive employee, as described
2 by Section 406.097, of the client is a covered employee, except to
3 the extent the professional employer organization and the client
4 expressly agree in the professional employer services agreement
5 that the individual is not a covered employee, if the individual
6 meets the criteria of this section and acts as an operational
7 manager or performs day-to-day operational services for the client.

8 SECTION 4. Subsections (b) and (c), Section 91.002, Labor
9 Code, are amended to read as follows:

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

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

19 SECTION 5. Subsection (a), Section 91.003, Labor Code, is
20 amended to read as follows:

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

25 SECTION 6. Sections 91.004, 91.005, 91.006, 91.007, 91.011,
26 and 91.012, Labor Code, are amended to read as follows:

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

1 (a) This chapter does not exempt a client of a license holder, or
2 any covered [~~assigned~~] employee, from any other license
3 requirements imposed under local, state, or federal law.

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

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

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

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

1 license holder and [~~assigned to~~] the client [~~company~~]. The state
2 and a political subdivision of the state shall accept a certificate
3 of insurance coverage or other evidence of coverage described by
4 this section as proof of workers' compensation coverage under
5 Chapter 406.

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

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

- 15 (1) Chapter 101;
- 16 (2) the federal National Labor Relations Act (29
17 U.S.C. Section 151 et seq.);
- 18 (3) the federal Railway Labor Act (45 U.S.C. Section
19 151 et seq.); or
- 20 (4) any other law governing labor relations.

21 Sec. 91.011. LICENSE REQUIRED. A person may not engage in
22 or offer professional employer [~~staff leasing~~] services in this
23 state unless the person 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 7. Subsections (a) and (c), Section 91.014, Labor
6 Code, are 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 8. Subsection (a), Section 91.015, Labor Code, is
23 amended to 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 9. Subsection (a), Section 91.017, Labor Code, is
2 amended to 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 10. Subsections (e) and (f), Section 91.018, Labor
8 Code, are 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 11. Subsections (a), (b), and (c), Section 91.019,
26 Labor Code, 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 12. 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 13. Subsection (b), Section 91.021, Labor Code, is
14 amended to 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 14. Subchapter C, Chapter 91, Labor Code, is
24 amended to read as follows:

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

27 Sec. 91.031. AGREEMENT; NOTICE. (a) A license holder

1 shall establish the terms of a professional employer [~~staff~~
2 ~~leasing~~] services agreement by a written contract between the
3 license holder and the client [~~company~~].

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

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

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

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

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

20 (3) assumes responsibility for the payment of payroll
21 taxes and collection of taxes from payroll on covered [~~assigned~~]
22 employees;

23 (4) shares, as provided by Subsection (b), with the
24 client [~~company~~] the right to hire, fire, discipline, and reassign
25 the covered [~~assigned~~] employees; and

26 (5) shares, as provided by Subsection (b), with the
27 client [~~company~~] the right of direction and control over the

1 adoption of employment and safety policies and the management of
2 workers' compensation claims, claim filings, and related
3 procedures.

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

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

10 (2) goods and services produced by the client
11 [~~company~~]; and

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

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

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

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

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

25 SECTION 15. Section 91.041, Labor Code, is amended by
26 amending Subsections (a) and (b) and adding Subsections (a-1) and
27 (a-2) to read as follows:

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

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

11 (a-2) A fully insured welfare benefit plan offered to the
12 covered employees of a license holder and provided by an insurance
13 company authorized to provide that insurance in this state or a
14 self-funded health benefit plan sponsored by a license holder as
15 provided by Section 91.0411 shall be treated for purposes of state
16 law as a single employer welfare benefit plan.

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

- 22 (1) the type of coverage;
- 23 (2) the identity of each insurer for each type of
24 coverage;
- 25 (3) the amount of benefits provided for each type of
26 coverage and to whom or in whose behalf benefits are to be paid;
- 27 (4) the policy limits on each insurance policy; and

1 (5) whether the coverage is fully insured, partially
2 insured, or fully self-funded.

3 SECTION 16. Subchapter D, Chapter 91, Labor Code, is
4 amended by adding Section 91.0411 to read as follows:

5 Sec. 91.0411. SELF-FUNDED HEALTH BENEFIT.

6 (a) Notwithstanding Section 91.001, in this section, "department"
7 means the Texas Department of Insurance.

8 (b) A license holder may sponsor benefits that are not fully
9 insured if the license holder meets the requirements of Subsection

10 (c) and is approved by the department.

11 (c) The department may, on notice and opportunity for all
12 interested persons to be heard, adopt rules and issue orders
13 reasonably necessary to augment and implement the regulation of
14 benefit plans sponsored by a license holder that are not fully
15 insured. The department may not adopt a rule that requires clients
16 or covered employees to be members of an association or group in the
17 same trade or industry. The rules must include all requirements
18 that must be met by the license holder and the plan, including:

19 (1) initial and final approval requirements;

20 (2) authority to prescribe forms and items to be
21 submitted to the department by the license holder;

22 (3) a fidelity bond;

23 (4) use of an independent actuary;

24 (5) use of a third-party administrator;

25 (6) authority for the department to examine an
26 application or a plan;

27 (7) the minimum number of clients and covered

1 employees covered by the plan;

2 (8) standards for those natural persons managing the
3 plan;

4 (9) the minimum amount of gross contributions;

5 (10) the minimum amount of written commitment, binder,
6 or policy for stop-loss insurance;

7 (11) the minimum amount of reserves; and

8 (12) a fee in an amount reasonable and necessary to
9 defray the costs of administering this section to be deposited to
10 the credit of the department's operating fund.

11 (d) Information submitted under this section is
12 confidential and not subject to public inspection.

13 (e) Each license holder under this section shall appoint the
14 commissioner of the department as its resident agent for purposes
15 of service of process. The fee for that service is \$50, payable at
16 the time of appointment.

17 (f) The department may examine the affairs of any plan and
18 shall have access to the records of the plan. The department may
19 examine under oath a manager or employee of the license holder in
20 connection with the plan.

21 (g) In addition to any requirement or remedy under a law,
22 the department may suspend, revoke, or limit the certificate of
23 authority of a plan if the department determines, after notice and
24 hearing, that the plan does not comply with this section. The
25 department may notify the attorney general of a violation of this
26 section, and the attorney general may apply to a district court in
27 Travis County for leave to file suit in the nature of quo warranto

1 or for injunctive relief or both.

2 (h) A plan under this section is subject to Chapters 404,
3 441, and 443, Insurance Code.

4 SECTION 17. Section 91.042, Labor Code, is amended by
5 amending Subsections (a) through (h) and adding Subsections (a-1)
6 and (a-2) to read as follows:

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

12 (a-1) The client and the professional employer organization
13 shall specify in the professional employer services agreement
14 whether the parties have elected to obtain workers' compensation
15 insurance coverage for the covered employees and shall specify
16 which party must maintain coverage. A copy of the professional
17 employer services agreement must be provided to the Texas
18 Department of Insurance on request. Information obtained by the
19 Texas Department of Insurance under this section is confidential
20 and not subject to disclosure under Chapter 552, Government Code.

21 (a-2) If the client elects to maintain workers'
22 compensation insurance coverage for the covered employees under the
23 client's policy or other coverage, the client shall pay workers'
24 compensation insurance premiums for the covered employees based on
25 the experience rating of the client.

26 (b) If a license holder maintains workers' compensation
27 insurance coverage for covered employees, the license holder shall

1 pay workers' compensation insurance premiums for the covered
2 employees based on the experience rating of the client [~~company~~]
3 for the first two years the covered employees are covered under the
4 professional employer organization's policy [~~client company has a~~
5 ~~contract with the license holder~~] and as further provided by rule by
6 the Texas Department of Insurance.

7 (c) For workers' compensation insurance purposes, a license
8 holder and the license holder's client [~~company~~] shall be
9 coemployers. If either a license holder or a client elects to
10 obtain workers' compensation insurance coverage for covered
11 employees, the client [~~company~~] and the license holder are subject
12 to Sections 406.005, 406.034, [and] 408.001, and 411.032.

13 (d) If a license holder or a client does not elect to obtain
14 workers' compensation insurance coverage for covered employees,
15 both the license holder and the client [~~company~~] are subject to
16 Sections 406.004, 406.005, [and] 406.033, and 411.032.

17 (e) After the expiration of the two-year period under
18 Subsection (b), if the client elects to obtain [~~company obtains a~~
19 ~~new~~] workers' compensation insurance coverage for covered
20 employees through coverage maintained by the client, or if the
21 professional employer services agreement is terminated and the
22 client elects to maintain, through coverage maintained by the
23 client or through coverage maintained by a successor professional
24 employer organization, workers' compensation insurance coverage
25 for employees previously covered by the former professional
26 employer organization's policy [~~policy in the company's own name or~~
27 ~~adds the company's former assigned workers to an existing policy~~],

1 the premium for the workers' compensation insurance coverage for
2 the client [~~policy of the company~~] shall be based on the lower of:

3 (1) the experience modifier of the client [~~company~~]
4 before being covered under the professional employer
5 organization's coverage [~~entering into the staff leasing~~
6 ~~arrangement~~]; or

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

10 (f) On request, an insurer [~~the Texas Department of~~
11 ~~Insurance~~] shall provide the necessary computations to the
12 prospective workers' compensation insurer of the client [~~company~~]
13 to comply with Subsection (e).

14 (g) On the written request of a client [~~company~~], a license
15 holder that elects to provide workers' compensation insurance for
16 covered [~~assigned~~] employees shall provide to the client [~~company~~]
17 a list of:

18 (1) claims associated with that client [~~company~~] made
19 against the license holder's workers' compensation policy; and

20 (2) payments made and reserves established on each
21 claim.

22 (h) The license holder shall provide the information
23 described by Subsection (g) in writing from the license holder's
24 own records, if the license holder is a qualified self-insurer, or
25 from information the license holder received from the license
26 holder's workers' compensation insurance provider following the
27 license holder's request under Section 2051.151, Insurance Code,

1 not later than the 60th day after the date the license holder
2 receives the client's [~~client company's~~] written request. For
3 purposes of this subsection, information is considered to be
4 provided to the client [~~company~~] on the date the information is:

- 5 (1) received by the United States Postal Service; or
- 6 (2) personally delivered to the client [~~company~~].

7 SECTION 18. Sections 91.044, 91.046, 91.048, 91.050,
8 91.061, 92.012, and 201.030, Labor Code, are amended to read as
9 follows:

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

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

1 experience rating.

2 Sec. 91.046. CONTRACTUAL DUTIES. Each license holder is
3 responsible for the license holder's contractual duties and
4 responsibilities to manage, maintain, collect, and make timely
5 payments for:

6 (1) insurance premiums;

7 (2) benefit and welfare plans;

8 (3) other employee withholding; and

9 (4) any other expressed responsibility within the
10 scope of the professional employer services agreement [~~contract~~]
11 for fulfilling the duties imposed under this section and Sections
12 91.032, 91.047, and 91.048.

13 Sec. 91.048. REQUIRED INFORMATION. Each license holder
14 shall:

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

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

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

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

26 (C) a listing by classification code as described
27 in the "Standard Industrial Classification Manual" published by the

1 United States Office of Management and Budget, of each client
2 [~~company~~];

3 (3) notify the department of any addition or deletion
4 of a controlling person as listed on the license application or
5 renewal form by providing the name of the person not later than the
6 45th day after the date on which the person is added or deleted as a
7 controlling person; and

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

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

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

27 (c) Each professional employer organization [~~staff-leasing~~

1 ~~services company~~] shall provide, on the request of a client or an
2 agency of this state, employment information reasonably required by
3 the state agency responsible for the administration of any tax
4 credit or economic incentive described by Subsection (a) and
5 necessary to support a request, claim, application, or other action
6 by a client seeking the tax credit or economic incentive.

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

8 (1) engage in or offer professional employer [~~staff~~
9 ~~leasing~~] services without holding a license under this chapter as a
10 professional employer organization [~~staff leasing services~~
11 ~~company~~];

12 (2) use the name, [~~or~~] title, or designation
13 "professional employer organization," "PEO," "staff leasing
14 company," "employee leasing company," "licensed professional
15 employer organization," "professional employer organization
16 services company," "professional employer organization company,"
17 [~~"licensed staff leasing company," "staff leasing services~~
18 ~~company," "professional employer organization,"~~] or
19 "administrative employer" or otherwise represent that the entity is
20 licensed under this chapter unless the entity holds a license
21 issued under this chapter;

22 (3) represent as the person's own the license of
23 another person or represent that a person is licensed if the person
24 does not hold a license;

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

1 (5) use or attempt to use a license that has expired or
2 been revoked.

3 Sec. 92.012. EXEMPTIONS FROM LICENSING REQUIREMENT. This
4 chapter does not apply to:

5 (1) a temporary skilled labor agency;

6 (2) a professional employer organization [~~staff~~
7 ~~leasing services company~~];

8 (3) an employment counselor;

9 (4) a talent agency;

10 (5) a labor union hiring hall;

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

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

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

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

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

24 (i) A covered [~~An assigned~~] employee of a professional
25 employer organization [~~staff leasing services company~~] is
26 considered to have left the covered [~~assigned~~] employee's last work
27 without good cause if the professional employer organization [~~staff~~

1 ~~leasing services company~~] demonstrates that:

2 (1) at the time the employee's assignment to a client
3 [~~company~~] concluded, the professional employer organization [~~staff~~
4 ~~leasing services company~~], or the client [~~company~~] acting on the
5 professional employer organization's [~~staff leasing services~~
6 ~~company's~~] behalf, gave written notice and written instructions to
7 the covered [~~assigned~~] employee to contact the professional
8 employer organization [~~staff leasing services company~~] for a new
9 assignment; and

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

17 SECTION 20. The heading to Section 415.011, Labor Code, is
18 amended to read as follows:

19 Sec. 415.011. NOTICE OF PROFESSIONAL EMPLOYER ORGANIZATION
20 [~~STAFF LEASING SERVICES COMPANY~~] WORKERS' COMPENSATION CLAIM AND
21 PAYMENT INFORMATION; ADMINISTRATIVE VIOLATION.

22 SECTION 21. Section 415.011, Labor Code, is amended by
23 amending Subsections (a) and (c) and adding Subsection (a-1) to
24 read as follows:

25 (a) In this section, "license holder" has the meaning
26 assigned by Section 91.001.

27 (a-1) Except as provided by Subsection (c), a [~~staff leasing~~

1 ~~services company~~] license holder commits a violation if the license
2 holder fails to provide the information required by Sections
3 91.042(g) and (h).

4 (c) A [~~staff leasing services company~~] license holder does
5 not commit an administrative violation under this section if the
6 license holder requested the information required by Sections
7 91.042(g) and (h) from the license holder's workers' compensation
8 insurance provider and the provider does not provide the
9 information to the license holder within the required time. A
10 license holder shall notify the Texas Department of Insurance of a
11 provider's failure to comply with the requirements of Section
12 2051.151, Insurance Code.

13 SECTION 22. 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 23. Subdivision (15), Section 171.0001, Tax Code,
17 is amended to 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 24. Subsection (b), Section 171.101, Tax Code, is
26 amended to 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 25. Subsection (k), Section 171.1011, Tax Code, is
5 amended to 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 26. Subsections (d) and (e), Section 171.1013, Tax
13 Code, are 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 27. 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 28. The following laws are repealed:

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

18 (2) Section 91.043, Labor Code.

19 SECTION 29. (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 30. This Act takes effect September 1, 2013.