

Chapter 4125: PROFESSIONAL EMPLOYER ORGANIZATIONS

4125.01 Definitions.

As used in this chapter:

(A) "Assurance organization" means an independent and qualified entity approved by the administrator of workers' compensation to certify the qualifications of a professional employer organization or professional employer organization reporting entity.

(B) "Client employer" means a sole proprietor, partnership, association, limited liability company, or corporation that enters into a professional employer organization agreement and is assigned shared employees by the professional employer organization.

(C) "Coemploy" means the sharing of the responsibilities and liabilities of being an employer.

(D) "Professional employer organization" means a sole proprietor, partnership, association, limited liability company, or corporation that enters into an agreement with one or more client employers for the purpose of coemploying all or part of the client employer's workforce at the client employer's work site.

(E) "Professional employer organization agreement" means a written contract to coemploy employees between a professional employer organization and a client employer with a duration of not less than twelve months in accordance with the requirements of this chapter.

(F) "Professional employer organization reporting entity" means two or more professional employer organizations that are majority owned or commonly controlled by the same entity, parent, or controlling person and that satisfy reporting entity control rules as defined by the financial accounting standards board and under generally accepted accounting principles.

(G) "Shared employee" means an individual intended to be assigned to a client employer on a permanent basis, not as a temporary supplement to the client employer's workforce, who is coemployed by a professional employer organization and a client employer pursuant to a professional employer organization agreement.

(H) "Trade secret" has the same meaning as in section [1333.61](#) of the Revised Code.

(I) "Working capital" means the excess of current assets over current liabilities as determined by generally accepted accounting principles.

Amended by 129th General Assembly File No. 179, SB 139, §1, eff. 3/22/2013.

Effective Date: 11-05-2004

4125.02 Administrator of Bureau of Workers' Compensation to enforce chapter.

The administrator of workers' compensation shall adopt rules in accordance with Chapter 119. of the Revised Code to administer and enforce this chapter, including rules to administer and enforce division (B) of section [4125.03](#) of the Revised Code.

The administrator may adopt rules for the acceptance of electronic filings in accordance with Chapter 1306. of the Revised Code for applications, documents, reports, and other filings required by this chapter.

The administrator may allow an independent assurance organization to act on behalf of a professional employer organization or professional employer organization reporting entity in complying with this chapter and any rules adopted under it. The assurance organization shall be approved by the administrator before acting on behalf of the professional employer organization or the professional employer organization reporting entity and shall abide by all standards and procedures established by the administrator for that approval. The administrator may permit a professional employer organization or professional employer organization reporting entity to authorize an assurance organization approved by the administrator to act on behalf of the professional employer organization or professional employer organization reporting entity, and the administrator shall specify certain provisions of this chapter that may be satisfied by an assurance organization acting with that authority. The rules shall also stipulate that the use of an assurance organization by a professional employer organization to comply with this chapter is not required and is strictly voluntary.

Amended by 129th General Assembly File No.179, SB 139, §1, eff. 3/22/2013.

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4125.03 Duties of organization regarding shared employee - right of control.

(A) The professional employer organization with whom a shared employee is coemployed shall do all of the following:

(1) Pay wages associated with a shared employee pursuant to the terms and conditions of compensation in the professional employer organization agreement between the professional employer organization and the client employer;

(2) Pay all related payroll taxes associated with a shared employee independent of the terms and conditions contained in the professional employer organization agreement between the professional employer organization and the client employer;

(3) Maintain workers' compensation coverage, pay all workers' compensation premiums and manage all workers' compensation claims, filings, and related procedures associated with a shared employee in compliance with Chapters 4121. and 4123. of the Revised Code, except that when shared employees include family farm officers, ordained ministers, or corporate officers of the client employer, payroll reports shall include the entire amount of payroll associated with those persons;

(4) Provide written notice to each shared employee it assigns to perform services to a client employer of the relationship between and the responsibilities of the professional employer organization and the client employer;

(5) Maintain complete records separately listing the manual classifications of each client employer and the payroll reported to each manual classification for each client employer for each payroll reporting period during the time period covered in the professional employer organization agreement;

(6) Maintain a record of workers' compensation claims for each client employer;

(7) Make periodic reports, as determined by the administrator of workers' compensation, of client employers and total workforce to the administrator;

(8) Report individual client employer payroll, claims, and classification data under a separate and unique subaccount to the administrator;

(9) Within fourteen days after receiving notice from the bureau of workers' compensation that a refund or rebate will be applied to workers' compensation premiums, provide a copy of that notice to any client employer to whom that notice is relevant.

(B) The professional employer organization with whom a shared employee is coemployed shall provide a list of all of the following information to the client employer upon the written request of the client employer:

(1) All workers' compensation claims, premiums, and payroll associated with that client employer;

(2) Compensation and benefits paid and reserves established for each claim listed under division (B)(1) of this section;

(3) Any other information available to the professional employer organization from the bureau of workers' compensation regarding that client employer.

(C)

(1) A professional employer organization shall provide the information required under division (B) of this section in writing to the requesting client employer within forty-five days after receiving a written request from the client employer.

(2) For purposes of division (C) of this section, a professional employer organization has provided the required information to the client employer when the information is received by the United States postal service or when the information is personally delivered, in writing, directly to the client employer.

(D) Except as provided in section [4125.08](#) of the Revised Code and unless otherwise agreed to in the professional employer organization agreement, the professional employer organization with whom a shared employee is coemployed has a right of direction and control over each shared employee assigned to a client employer's location. However, a client employer shall retain sufficient direction and control over a shared employee as is necessary to do any of the following:

(1) Conduct the client employer's business, including training and supervising shared employees;

(2) Ensure the quality, adequacy, and safety of the goods or services produced or sold in the client employer's business;

(3) Discharge any fiduciary responsibility that the client employer may have;

(4) Comply with any applicable licensure, regulatory, or statutory requirement of the client employer.

(E) Unless otherwise agreed to in the professional employer organization agreement, liability for acts, errors, and omissions shall be determined as follows:

(1) A professional employer organization shall not be liable for the acts, errors, and omissions of a client employer or a shared employee when those acts, errors, and omissions occur under the direction and control of the client employer.

(2) A client employer shall not be liable for the acts, errors, and omissions of a professional employer organization or a shared employee when those acts, errors, and omissions occur under the direction and control of the professional employer organization.

(F) Nothing in divisions (D) and (E) of this section shall be construed to limit any liability or obligation specifically agreed to in the professional employer organization agreement.

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4125.04 Organization is employer of record - workers' compensation as exclusive remedy.

(A) When a client employer enters into a professional employer organization agreement with a professional employer organization, the professional employer organization is the employer of record and the succeeding employer for the purposes of determining a workers' compensation experience rating pursuant to Chapter 4123. of the Revised Code.

(B) Pursuant to Section 35 of Article II, Ohio Constitution, and section [4123.74](#) of the Revised Code, the exclusive remedy for a shared employee to recover for injuries, diseases, or death incurred in the course of and arising out of the employment relationship against either the professional employer organization or the client employer are those benefits provided under Chapters 4121. and 4123. of the Revised Code.

Effective Date: 11-05-2004

4125.041 Status as shared employee for purposes of insurance, bonds, and employer liability.

A shared employee under a professional employer organization agreement shall not, solely as a result of being a shared employee, be considered an employee of the professional employer organization for purposes of general liability insurance, fidelity bonds, surety bonds, employer liability not otherwise covered by Chapters 4121. and 4123. of the Revised Code, or liquor liability insurance carried by the professional employer organization, unless the professional employer organization agreement and applicable prearranged employment contract, insurance contract, or bond specifically states otherwise.

Added by 129th General Assembly File No.179, SB 139, §1, eff. 3/22/2013.

4125.042 Determination of tax credit and other economic incentives.

(A) For purposes of determining tax credits and other economic incentives that are provided by this state or any political subdivision and based on employment, shared employees under a professional employer organization agreement shall be considered employees solely of the client employer.

(1) A client employer shall be entitled to the benefit of any tax credit, economic incentive, or similar benefit arising as the result of the client employer's employment of shared employees. If the grant or amount of any tax credit, economic incentive, or other benefit is based on number of employees, each client employer shall be treated as employing only those shared employees coemployed by the client employer. Shared employees working for other client employers of the professional employer organization shall not be counted as employees for that purpose.

(2) Upon request by a client employer or an agency or department of this state, a professional employer organization shall provide employment information reasonably required by the agency or department responsible for administration of the tax credit or economic incentive and necessary to support any request, claim, application, or other action by a client employer seeking the tax credit or economic incentive.

(B) Shared employees whose services are subject to sales tax shall be considered the employees of the client employer for purposes of collecting and levying sales tax on the services performed by the shared employee. Nothing contained in this chapter shall relieve a client employer or professional employer organization of any sales tax liability with respect to its goods or services.

(C) Any tax assessed on a per capita or per employee basis shall be assessed against the client employer for shared employees and against the professional employer organization for employees of the professional employer organization who are not shared employees coemployed with a client employer.

(D) For purposes of computing any tax that is imposed or calculated upon the basis of total payroll, the professional employer organization shall be eligible to use any small business allowance or exemption based solely on the employees of the professional employer organization who are not shared employees with any client employer. The eligibility of a client employer for the allowance or exemption shall be based solely upon the payroll of the employees of the client employer, including any shared employees coemployed by the client employer.

Added by 129th General Assembly File No.179, SB 139, §1, eff. 3/22/2013.

4125.05 Registration with administrator - security - confidentiality - fee.

(A) Not later than thirty days after November 5, 2004, or not later than thirty days after the formation of a professional employer organization, whichever date occurs later, a professional employer organization operating in this state shall register with the administrator of workers' compensation on forms provided by the administrator. Following initial registration, each professional employer organization shall register with the administrator annually on or before the thirty-first day of December. Commonly owned or controlled applicants may register as a professional employer organization reporting entity or register individually. Registration as a part of a professional employer organization reporting entity shall not disqualify an individual professional employer organization from participating in a group-rated plan under division (A)(4) of section [4123.29](#) of the Revised Code.

(B) Initial registration and each annual registration renewal shall include all of the following:

(1) A list of each of the professional employer organization's client employers current as of the date of registration for purposes of initial registration or current as of the date of annual registration renewal, or within fourteen days of adding or releasing a client, that includes the client employer's name, address, federal tax identification number, and bureau of workers' compensation risk number;

(2) A fee as determined by the administrator;

(3) The name or names under which the professional employer organization conducts business;

(4) The address of the professional employer organization's principal place of business and the address of each office it maintains in this state;

(5) The professional employer organization's taxpayer or employer identification number;

(6) A list of each state in which the professional employer organization has operated in the preceding five years, and the name, corresponding with each state, under which the professional employer organization operated in each state, including any alternative names, names of predecessors, and if known, successor business entities;

(7) The most recent financial statement prepared and audited pursuant to division (B) of section [4125.051](#) of the Revised Code;

(8) If there is any deficit in the working capital required under division (A) of section [4125.051](#) of the Revised Code, a bond, irrevocable letter of credit, or securities with a minimum market value in an amount sufficient to cover the deficit in accordance with the requirements of that section;

(9) An attestation of the accuracy of the data submissions from the chief executive officer of the professional employer organization.

(C) Upon terms and for periods that the administrator considers appropriate, the administrator may issue a limited registration to a professional employer organization or professional employer organization reporting entity that provides all of the following items:

(1) A properly executed request for limited registration on a form provided by the administrator;

(2) All information and materials required for registration in divisions (B)(1) to (6) of this section;

(3) Information and documentation necessary to show that the professional employer organization or professional employer organization reporting entity satisfies all of the following criteria:

(a) It is domiciled outside of this state.

(b) It is licensed or registered as a professional employer organization in another state.

(c) It does not maintain an office in this state.

(d) It does not participate in direct solicitations for client employers located or domiciled in this state.

(e) It has fifty or fewer shared employees employed or domiciled in this state on any given day.

(D)

(1) The administrator, with the advice and consent of the bureau of workers' compensation board of directors, shall adopt rules in accordance with Chapter 119. of the Revised Code to require, in addition to the requirement under division (B)(8) of this section and except as otherwise specified in division (D)(2) of this section, a professional employer organization to provide security in the form of a bond or letter of credit assignable to the Ohio bureau of workers' compensation not to exceed an amount equal to the premiums and assessments incurred for the two most recent payroll periods, prior to any discounts or dividends, to meet the financial obligations of the professional employer organization pursuant to this chapter and Chapters 4121. and 4123. of the Revised Code.

(2) As an alternative to providing security in the form of a bond or letter of credit under division (D)(1) of this section, the administrator shall permit a professional employer organization to make periodic payments of prospective premiums and assessments to the bureau .

(3) A professional employer organization may appeal the amount of the security required pursuant to rules adopted under division (D)(1) of this section in accordance with section [4123.291](#) of the Revised Code.

(E) Notwithstanding division (D) of this section, a professional employer organization that qualifies for self-insurance or retrospective rating under section [4123.29](#) or [4123.35](#) of the Revised Code shall abide by the financial disclosure and security requirements pursuant to those sections and the rules adopted under those sections in place of the requirements specified in division (D) of this section or specified in rules adopted pursuant to that division.

(F) Except to the extent necessary for the administrator to administer the statutory duties of the administrator and for employees of the state to perform their official duties, all records, reports, client lists, and other information obtained from a professional employer organization and professional employer organization reporting entity under divisions (A), (B), and (C) of this section are confidential and shall be considered trade secrets and shall not be published or open to public inspection.

(G) The list described in division (B)(1) of this section shall be considered a trade secret.

(H) The administrator shall establish the fee described in division (B)(2) of this section in an amount that does not exceed the cost of the administration of the initial and renewal registration process.

(I) A financial statement required under division (B)(7) of this section for initial registration shall be the most recent financial statement of the professional employer organization or professional employer organization reporting entity of which the professional employer organization is a member and shall not be older than thirteen months. For each registration renewal, the professional employer organization shall file the required financial statement within one hundred eighty days after the end of the professional employer organization's or professional employer organization reporting entity's fiscal year. A professional employer organization may apply to the administrator for an extension beyond that time if the professional employer organization

provides the administrator with a letter from the professional employer organization's auditor stating the reason for delay and the anticipated completion date.

(J) Multiple, unrelated professional employer organizations shall not combine together for purposes of obtaining workers' compensation coverage or for forming any type of self-insurance arrangement available under this chapter. Multiple, unrelated professional employer organization reporting entities shall not combine together for purposes of obtaining workers' compensation coverage or for forming any type of self-insurance arrangement available under this chapter.

(K) The administrator shall maintain a list of professional employer organizations and professional employer organization reporting entities registered under this section that is readily available to the public by electronic or other means.

Amended by 129th General Assembly File No. 179, SB 139, §1, eff. 4/1/2013.

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4125.051 Working capital requirements.

(A) A professional employer organization, or a professional employer organization reporting entity of which the professional employer organization is a member, shall maintain positive working capital at initial or annual registration, as reflected in the financial statements submitted to the bureau. If a deficit in working capital is reflected in the financial statements submitted to the bureau, the professional employer organization or the professional employer organization reporting entity shall do both of the following for that registration period:

(1) Obtain a bond, irrevocable letter of credit, or securities with a minimum market value in an amount sufficient to cover the deficit in working capital;

(2) Submit to the administrator of workers' compensation a quarterly financial statement for each calendar quarter during which there is a deficit in working capital, accompanied by an attestation of the chief executive officer of the professional employer organization that all wages, taxes, workers' compensation premiums, and employee benefits have been paid by the professional employer organization or members of the professional employer organization reporting entity.

The bond, letter of credit, or securities required under division (A)(1) of this section shall be held by a depository designated by the administrator and shall secure payment by the professional employer organization or professional employer organization reporting entity of all taxes, wages, benefits, or other entitlements due or otherwise pertaining to shared employees, if the professional employer organization or professional employer organization reporting entity does not make those payments when due.

(B) A professional employer organization, or a professional employer organization reporting entity of which the professional employer organization is a member, shall prepare financial statements in accordance with generally accepted accounting principles and submit them for registration and registration renewal under section [4125.05](#) of the Revised Code.

The financial statements shall be audited by an independent certified public accountant authorized to practice in the jurisdiction in which that accountant is located.

(1) The resulting report of the auditor shall not include either of the following:

(a) A qualification or disclaimer of opinion as to adherence to generally accepted accounting principles;

(b) A statement expressing substantial doubt about the ability of the professional employer organization or professional employer organization reporting entity to continue as a going concern.

(2) However, if a professional employer organization does not have at least twelve months of operating history on which to base financial statements, the financial statements shall be reviewed by a certified public accountant.

(3) Notwithstanding division (B)(1)(a) of this section, if a professional employer organization or professional employer organization reporting entity is a subsidiary or is related to a variable interest entity, the professional employer organization or professional employer organization reporting entity may submit financial statements of the professional employer organization or professional employer organization reporting entity.

(C) The bureau shall deny initial or annual registration to an applicant or professional employer organization reporting entity that does not meet the requirements of this section.

(D) Professional employer organizations in a professional employer organization reporting entity may satisfy the requirements of this section on a combined or consolidated basis provided that each member of the professional employer organization reporting entity guarantees each other members' satisfaction of the requirements under division (A) of this section.

For purposes of satisfying the registration and registration renewal requirements described in division (B)(7) of section [4125.05](#) of the Revised Code, a professional employer organization reporting entity may submit a combined or consolidated financial statement that satisfies the requirements of this section. If the combined or consolidated financial statement includes entities that are not professional employer organizations or that are not in the professional employer organization reporting entity, the controlling entity of the professional employer organization reporting entity that is submitting the consolidated or combined financial statement shall guarantee that the professional employer organizations of the professional employer organization reporting entity have satisfied the requirements under division (A) of this section and shall include supplemental combining schedules to guarantee that the requirements under division (A) of this section are satisfied by the professional employer organization or professional employer organization reporting entity.

Added by 129th General Assembly File No.179, SB 139, §1, eff. 4/1/2013.

4125.06 Denial or revocation of registration - stay of decision - procedure on revocation.

(A) In accordance with Chapter 119. of the Revised Code, the administrator of the bureau of workers' compensation may deny registration or revoke the registration of a professional employer organization and rescind its status as a coemployer upon a finding that the professional employer organization has done any of the following:

(1) Obtained or attempted to obtain registration through misrepresentation, misstatement of a material fact, or fraud;

(2) Misappropriated any funds of the client employer;

(3) Used fraudulent or coercive practices to obtain or retain business or demonstrated financial irresponsibility;

(4) Failed to appear, without reasonable cause or excuse, in response to a subpoena lawfully issued by the administrator;

(5) Failed to comply with the requirements of this chapter.

(B) The administrator's decision to deny or revoke a professional employer organization's registration or to rescind its status as a coemployer is stayed pending the exhaustion of all administrative appeals by the professional employer organization.

The administrator shall adopt rules that require that when an employer contacts the bureau of workers' compensation to determine whether a particular professional employer organization is registered, if the administrator has denied or revoked that professional employer organization's registration or rescinded its status as a coemployer, and if all administrative appeals are not yet exhausted when the employer inquires, the appropriate bureau personnel shall inform the inquiring employer of the denial, revocation, or rescission and the fact that the professional employer organization has the right to appeal the administrator's decision.

(C) Upon revocation of the registration of a professional employer organization, each client employer associated with that professional employer organization shall file payroll reports and pay workers' compensation premiums directly to the administrator on its own behalf at a rate determined by the administrator based solely on the claims experience of the client employer.

(D) Upon revocation of a professional employer organization's registration, each client employer associated with that professional employer organization shall file on its own behalf the appropriate documents or data with all state and federal agencies as required by law with respect to any shared employee the client employer and the professional employer organization shared.

Effective Date: 11-05-2004

4125.07 Workers' compensation lease termination notice; report regarding transfer of employees.

Not later than fourteen calendar days after the date on which a professional employer organization agreement is terminated, the professional employer organization is adjudged bankrupt, the professional employer organization ceases operations within the state of Ohio, or the registration of the professional employer organization is revoked, the professional employer organization shall submit to the administrator of workers' compensation and each client employer associated with that professional employer organization a completed workers' compensation lease termination notice form provided by the administrator. The completed form shall include all client payroll and claim information listed in a format specified by the administrator and notice of all workers' compensation claims that have been reported to the professional employer organization in accordance with its internal reporting policies.

A professional employer organization shall report any transfer of employees between related professional employer organization entities or professional employer organization reporting entities to the administrator within fourteen calendar days after the date of the transfer on a form prescribed by the administrator. The professional employer organization or professional employer organization reporting entity shall include in the form all client payroll and claim information regarding the transferred employees listed in a format specified by the administrator

and a notice of all workers' compensation claims that have been reported to the professional employer organization or professional employer organization reporting entity in accordance with the internal reporting policies of the professional employer organization or professional employer organization reporting entity.

Amended by 129th General Assembly File No.179, SB 139, §1, eff. 3/22/2013.

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4125.08 Professional license requirements unaffected - shared employee is employee of client employer.

Nothing in this chapter exempts a professional employer organization, client employer, or shared employee from any applicable federal, state, or local licensing, registration, or certification statutes or regulations. An individual required to obtain and maintain a license, registration, or certification under law and who is a shared employee of a professional employer organization and a client employer is an employee of the client employer for purposes of obtaining and maintaining the appropriate license, registration, or certification as required by law. A professional employer organization does not engage in any occupation, trade, or profession that requires a license, certification, or registration solely by entering into a professional employer agreement with a client employer or coemploying a shared employee.

A client employer shall have the sole right of direction and control of the professional or licensed activities of shared employees and of the client employer's business. The shared employees and client employers shall remain subject to regulation by the board, commission, or agency responsible for licensing, registration, or certification of the shared employees or client employers.

Amended by 129th General Assembly File No.179, SB 139, §1, eff. 3/22/2013.

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4125.09 Existing collective bargaining agreement unaffected.

Nothing contained in this chapter or in any professional employer organization agreement shall affect, modify, or amend any collective bargaining agreement that exists on the effective date of this section. Nothing in this chapter shall alter the rights or obligations of any client employer, professional employer organization, or shared employee under the "National Labor Relations Act," 49 Stat. 449, 29 U.S.C.A. 151 et seq., the "Railway Labor Act," 44 Stat. 577, 45 U.S.C.A. 151, or any other applicable federal or state law.

Effective Date: 11-05-2004

4125.10 Clarification of rights and liabilities of professional employer organizations and client employers.

Nothing contained in this chapter or in any professional employer organization agreement shall do any of the following:

(A) Diminish, abolish, or remove the rights and obligations of client employers and shared employees existing prior to the effective date of the professional employer organization agreement;

(B) Affect, modify, or amend any contractual relationship or restrictive covenant between a shared employee and any client employer in effect at the time a professional employer organization agreement becomes effective;

(C) Prohibit or amend any contractual relationship or restrictive covenant between a client employer and a shared employee that is entered into after the professional employer organization agreement becomes effective;

(D) Create any new or additional enforcement right of a shared employee against a professional employer organization that is not specifically provided by the professional employer organization agreement or this chapter.

A professional employer organization shall have no responsibility or liability in connection with, or arising out of, any contractual relationship or restrictive covenant between a client employer and a shared employee unless the professional employer organization has specifically agreed otherwise in writing.

Added by 129th General Assembly File No.179, SB 139, §1, eff. 3/22/2013.

4125.11 Effect on employer status in bids, contracts, etc.

For purposes of a bid, contract, purchase order, or agreement entered into with the state or any political subdivision, a client employer's status or certification as a small, minority-owned, disadvantaged, or woman-owned business enterprise or as a historically underutilized business shall not be affected as a result of the client employer entering into a professional employer organization agreement or using the services of a professional employer organization.

Added by 129th General Assembly File No.179, SB 139, §1, eff. 3/22/2013.

4125.99 Penalty.

Whoever violates division (A) of section [4125.05](#) of the Revised Code is guilty of a minor misdemeanor. Whoever knowingly violates division (A) of section [4125.05](#) of the Revised Code is guilty of a misdemeanor of the second degree.

Effective Date: 11-05-2004