

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 SENATE BILL 636

By: Montgomery

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5
6 AS INTRODUCED

7 An Act relating to the Oklahoma Professional Employer
8 Organization Recognition and Registration Act;
9 amending 40 O.S. 2021, Sections 600.2, 600.4, and
10 600.6, which relate to registration and tax
11 requirements; modifying definitions; authorizing
12 owner to certify certain financial statements,
13 payment of payroll taxes, and other employer
14 payments; updating statutory references; updating
15 statutory language; and providing an effective date.

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

17 SECTION 1. AMENDATORY 40 O.S. 2021, Section 600.2, is
18 amended to read as follows:

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

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

22 3. "Coemployment relationship" means:

23 a. as between coemployers, a relationship whereby the
24 rights, duties and obligations of an employer which
25 arise out of an employment relationship have been

1 allocated between coemployers pursuant to a
2 professional employer agreement and the Oklahoma
3 Professional Employer Organization Recognition and
4 Registration Act, and which is intended to be an
5 ongoing relationship, rather than a temporary or
6 ~~project-specific~~ project-specific relationship, and

7 b. as between each PEO and a covered employee as to which
8 a professional employer agreement applies, an
9 employment relationship whereby:

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

16 (2) such covered employee is entitled to enforce
17 against such PEO those duties and obligations
18 allocated to the PEO by the professional employer
19 agreement and the Oklahoma Professional Employer
20 Organization Recognition and Registration Act¹,
21 and

22 c. as between each client and a covered employee to which
23 a professional employer agreement applies and
24 employment relationship whereby:
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1 (1) such client is entitled to enforce those rights,
2 and obligated to provide and perform those
3 employer obligations allocated to such client by
4 the professional employer agreement and the
5 Oklahoma Professional Employer Organization
6 Recognition and Registration Act and whereby such
7 client is responsible for any employer right or
8 obligation not otherwise allocated by the
9 professional employer agreement of the Oklahoma
10 Professional Employer Organization Recognition
11 and Registration Act, and

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

22 4. "Commissioner" means the Insurance Commissioner of ~~the State~~
23 ~~of Oklahoma~~ this state;

1 5. "~~Covered Employee~~ employee" means an individual having a
2 coemployment relationship with a PEO and a client who have entered
3 into a professional employer agreement with respect to such person,
4 and shall include the client's officers, directors, shareholders,
5 partners and managers to the extent such persons act as operational
6 managers or perform services for the client;

7 6. "Department" means the ~~Department of Insurance~~ Department of
8 ~~the State of Oklahoma~~ this state;

9 7. "Owner" means:

10 a. any individual who operates a professional employer
11 organization as a sole proprietorship,

12 b. any individual who owns a majority of the issued and
13 outstanding shares of stock in the case of a
14 corporation, units in the case of a limited liability
15 entity, or partnership/association interest in the
16 case of a partnership/association,

17 c. in the case of a business entity where no single
18 individual owns a majority of the issued and
19 outstanding shares of stock, units, or
20 partnership/association interest, any individual who
21 owns as many shares of issued and outstanding shares
22 of stock, units, or partnership/association interest
23 as any other owner, or

1 d. the president, chairperson of the board, managing
2 member, or general partner of the professional
3 employer organization;

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

7 ~~8.~~ 9. "Professional employer agreement" means a written
8 contract by and between a client and a PEO under which the PEO and
9 the client agree to establish a coemployment relationship and which
10 satisfies the requirements of subsection C of Section ~~7 of this act~~
11 600.7 of this title;

12 ~~9.~~ 10. "Professional ~~Employer Organization~~ employer
13 organization" or PEO means any person engaged in the business of
14 providing professional employer services. A person engaged in the
15 business of providing professional employer services shall be
16 subject to registration under the Oklahoma Professional Employer
17 Organization Recognition and Registration Act regardless of its use
18 of the term "professional employer organization", "PEO", "staff
19 leasing company", "registered staff leasing company", "employee
20 leasing company", or any other name;

21 ~~10.~~ 11. "Professional employer services" means the service of
22 entering into coemployment relationships under the Oklahoma
23 Professional Employer Organization Recognition and Registration Act,
24 in which, except in isolated instances, all or a majority of the

1 employees providing services to a client or to a division or work
2 unit of a client are covered employees;

3 ~~11.~~ 12. "Registrant" means a PEO registered under the Oklahoma
4 Professional Employer Organization Recognition and Registration Act;
5 and

6 ~~12.~~ 13. "Temporary help services" means a service whereby a
7 person hires workers and assigns them to a person for a temporary
8 time period or nonpermanent basis to support or supplement the other
9 person's workforce in special work situations such as, but not
10 limited to, employee absences, temporary skill shortages, seasonal
11 workloads, and special assignments and projects. Temporary help
12 services shall not be deemed professional employer services.

13 SECTION 2. AMENDATORY 40 O.S. 2021, Section 600.4, is
14 amended to read as follows:

15 Section 600.4. A. Registration required. Except as otherwise
16 provided in the Oklahoma Professional Employer Organization
17 Recognition and Registration Act, no person shall, unless the person
18 is registered as a PEO or PEO Group under the Oklahoma Professional
19 Employer Organization Recognition and Registration Act, provide,
20 advertise, or otherwise hold itself out as providing professional
21 employer services in this state.

22 B. Registration information.

23 1. Each PEO or PEO Group required to be registered under the
24 Oklahoma Professional Employer Organization Recognition and

1 Registration Act shall provide the Insurance Commissioner with
2 information required by the Commissioner on forms prescribed by the
3 Commissioner. Pursuant to paragraph 2 of this subsection, a PEO or
4 PEO Group may use a qualified assurance organization as approved by
5 the Commissioner to provide services related to the registration of
6 the PEO or PEO Group. A PEO or PEO Group may authorize an assurance
7 organization to act on behalf of the PEO or PEO Group in complying
8 with the registration requirements set forth in the Oklahoma
9 Professional Employer Organization Recognition and Registration Act,
10 including, but not limited to, electronic filings of information and
11 payment of registration fees. At a minimum, PEOs, PEO Groups or an
12 approved assurance organization acting on behalf of the PEO or PEO
13 Group, shall provide the following information:

- 14 a. the name or names under which the PEO or PEO Group
15 conducts business,
- 16 b. the address of the principal place of business of the
17 PEO or PEO Group and the address of each office it
18 maintains in this state,
- 19 c. the PEO's or PEO Group's taxpayer or employer
20 identification number,
- 21 d. a list by jurisdiction of each name under which the
22 PEO or PEO Group has operated in the preceding five
23 (5) years, including any alternative names, names of
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1 predecessors and, if known, successor business
2 entities,

3 e. a statement of ownership, which shall include the name
4 and evidence of the business experience of any person
5 that, individually or acting in concert with one or
6 more other persons, owns or controls, directly or
7 indirectly, twenty-five percent (25%) or more of the
8 equity interests of the PEO or PEO Group,

9 f. a statement of management, which shall include the
10 name and evidence of the business experience of any
11 person who serves as president, chief executive
12 officer, or otherwise has the authority to act as
13 senior executive officer of the PEO or PEO Group, and

14 g. a financial statement setting forth the financial
15 condition of the PEO or PEO Group, as of a date not
16 earlier than one hundred eighty (180) days prior to
17 the date submitted to the Commissioner, prepared in
18 accordance with generally accepted accounting
19 principles, and certified by an owner or audited or
20 reviewed by an independent certified public accountant
21 licensed to practice in the jurisdiction in which such
22 accountant is located. A PEO Group may submit
23 combined or consolidated audited or reviewed financial
24 statements to meet the requirements of this section.

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

- 6 a. evidence that is acceptable to the Commissioner that
7 it is licensed or registered in good standing in
8 another state with equal or greater requirements than
9 the requirements of the Oklahoma Professional Employer
10 Organization Recognition and Registration Act,
- 11 b. quarterly financial statements of management for each
12 calendar quarter as of the most recent audit that
13 demonstrate continuing financial operations acceptable
14 to the Commissioner, and
- 15 c. the certification of an owner or an independent
16 ~~Certified Public Accountant~~ certified public
17 accountant that as of the end of the most recent
18 calendar quarter, the PEO or PEO Group has paid all of
19 its state and federal payroll taxes, health and
20 workers' compensation premiums, and contributions to
21 employee retirement plans in a timely and appropriate
22 manner.

23 3. For purposes of the Oklahoma Professional Employer
24 Organization Recognition and Registration Act, "assurance
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1 organization" means an independent entity approved by the
2 Commissioner to certify the qualifications of a PEO or PEO Group for
3 registration under this section and Section 600.6 of this title and
4 any related requirements and procedures. To be considered for
5 approval as an independent and qualified assurance organization, the
6 assurance organization shall submit a written request for approval
7 to the Commissioner. The written request shall include, but not be
8 limited to, the following:

- 9 a. evidence that the assurance organization is
10 independent and has an established national program
11 for the accreditation and financial assurance of PEOs
12 and PEO Groups based on requirements similar to the
13 requirements of the Oklahoma Professional Employer
14 Organization Recognition and Registration Act, and any
15 rules promulgated for the implementation of the
16 Oklahoma Professional Employer Organization
17 Recognition and Registration Act,
18 b. evidence that the assurance organization has
19 documented qualifications, standards, procedures, and
20 financial assurance acceptable to the Commissioner and
21 is licensed or otherwise approved by one or more
22 states to certify the qualifications of PEOs or PEO
23 Groups,

1 c. an agreement to provide information, compliance
2 monitoring services, and a level of financial
3 assurance as deemed acceptable by the Commissioner,
4 d. an agreement to provide the Commissioner with an
5 application that has been executed by each PEO or PEO
6 Group requesting alternative registration under this
7 section and Section 600.6 of this title and related
8 requirements and procedures in a form approved by the
9 Commissioner. The application shall:

10 (1) authorize the assurance organization to share
11 with the Commissioner any application and
12 compliance reporting information required under
13 the Oklahoma Professional Employer Organization
14 Recognition and Registration Act that has been
15 provided to the assurance organization by the PEO
16 or PEO Group,

17 (2) authorize the Commissioner to accept information
18 shared by the assurance organization for
19 registration or renewal of registration of the
20 PEO or PEO Group as if the information was
21 provided directly to the Commissioner by the PEO
22 or PEO Group,

23 (3) provide the certification of the PEO or PEO Group
24 that the information provided by the assurance
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1 organization to the Commissioner is true and
2 complete and that the PEO or PEO Group is in full
3 and complete compliance with all requirements of
4 the Oklahoma Professional Employer Organization
5 Recognition and Registration Act, and

6 (4) provide the certification of the assurance
7 organization that the PEO or PEO Group is in
8 compliance with the standards and procedures of
9 the assurance organization which are similar to
10 the requirements of the Oklahoma Professional
11 Employer Organization Recognition and
12 Registration Act and is qualified for
13 registration or renewal of registration under the
14 Oklahoma Professional Employer Organization
15 Recognition and Registration Act,

16 e. an agreement to provide written notice to the
17 Commissioner within two (2) business days of
18 determination by the assurance organization of the
19 failure of a PEO or PEO Group to meet the
20 qualifications for registration under the Oklahoma
21 Professional Employer Organization Recognition and
22 Registration Act or determination by the assurance
23 organization of the failure of the PEO or PEO Group to
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1 meet the qualifications for accreditation or
2 certification by the assurance organization, and
3 f. an agreement to share with the Commissioner in a
4 timely manner the information and supporting
5 documentation provided to the assurance organization
6 by the PEO or PEO Group similar to the information and
7 documentation required for registration or renewal of
8 registration under the Oklahoma Professional Employer
9 Organization Recognition and Registration Act.

10 C. Initial registration.

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

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

19 D. Renewal.

20 1. A registration expires one (1) year following the
21 registration unless it is renewed pursuant to this subsection.
22 Before expiration of the registration, a registrant may renew the
23 registration for an additional one-year term if the registrant:
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- 1 a. remains in good standing and otherwise is entitled to
2 be registered pursuant to the Oklahoma Professional
3 Employer Organization Recognition and Registration
4 Act,
5 b. files with the Commissioner a renewal application on a
6 form prescribed by the Commissioner, and
7 c. pays to the Commissioner a renewal fee as provided for
8 in Section 600.5 of this title.

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

13 E. Group registration. Any two or more PEOs held under common
14 control of any other person or persons acting in concert may be
15 registered as a PEO Group. A PEO Group may satisfy any reporting
16 and financial requirements of this registration law on a
17 consolidated basis.

18 F. Electronic filing and compliance. A PEO, PEO Group or an
19 approved independent and qualified assurance organization as
20 provided for in subsection B of this section may electronically
21 submit filings in conformance with Sections 15-101 through 15-121 of
22 Title 12A of the Oklahoma Statutes. Electronically submitted
23 filings include, but are not limited to, applications, documents,
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1 reports, and other filings required under the Oklahoma Uniform
2 Electronic Transactions Act.

3 G. De minimis exemption.

4 1. A PEO is exempt from the registration requirements payable
5 under the Oklahoma Professional Employer Organization Recognition
6 and Registration Act if such PEO:

- 7 a. submits a properly executed request for exemption on a
8 form provided by the Insurance Department,
9 b. is domiciled outside this state and is licensed or
10 registered as a professional employer organization in
11 another state that has the same or greater
12 requirements as the Oklahoma Professional Employer
13 Organization Recognition and Registration Act,
14 c. does not maintain an office in this state or solicit
15 in any manner clients located or domiciled within this
16 state, and
17 d. does not have more than twenty-five covered employees
18 employed or domiciled in this state.

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

23 H. List. The Commissioner shall maintain a list of
24 professional employer organizations registered or exempted under the
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1 Oklahoma Professional Employer Organization Recognition and
2 Registration Act and a list of approved assurance organizations.

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

5 J. The Commissioner is authorized to promulgate reasonable
6 rules necessary for the administration and implementation of this
7 section.

8 K. The Commissioner may reject an application for registration,
9 renewal of registration, or for an exemption from registration if
10 the Commissioner finds that:

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

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

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

15 4. The applicant or any person named in the application
16 misrepresents material in the application;

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

20 6. The controlling person has violated a provision of the
21 Oklahoma Professional Employer Organization Recognition and
22 Registration Act.

23 SECTION 3. AMENDATORY 40 O.S. 2021, Section 600.6, is
24 amended to read as follows:

1 Section 600.6. A. Net worth and bonding. Each PEO shall
2 maintain either:

3 1. A minimum net worth of Fifty Thousand Dollars (\$50,000.00),
4 as reflected in the financial statements submitted to the Insurance
5 Commissioner with the initial registration and each annual renewal;
6 or

7 2. A bond or securities with a minimum market value of Fifty
8 Thousand Dollars (\$50,000.00), held by a depository designated by
9 the Commissioner, securing payment by the PEO of all taxes, wages,
10 benefits or other entitlement due to or with respect to a covered
11 employee, if the PEO does not make such payments when due. Any bond
12 or securities deposited under this subsection shall not be included
13 for the purpose of calculation of the minimum net worth required by
14 this subsection.

15 B. Payroll tax payments. A PEO shall submit to the
16 Commissioner, within ninety (90) days after the end of each calendar
17 quarter, a statement by an owner or an independent certified public
18 accountant that all applicable state payroll taxes for covered
19 employees located in this state have been paid on a timely basis for
20 that quarter.

21 C. Record confidentiality. All records, reports and other
22 information obtained from a PEO under the Oklahoma Professional
23 Employer Organization Recognition and Registration Act, except to
24 the extent necessary for the proper administration of the Oklahoma

1 Professional Employer Organization Recognition and Registration Act
2 by the Insurance Department, shall be confidential and shall not be
3 published or open to public inspection other than to public
4 employees in the performance of their public duties.

5 SECTION 4. This act shall become effective November 1, 2023.

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