



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2007 Wisconsin Act 189
[2007 Assembly Bill 760]

**Professional Employer
Organizations**

Generally, *2007 Wisconsin Act 189* provides for the registration and regulation of Professional Employer Organizations (PEOs). For purposes of the Act:

“Professional employer organization” means a person that is engaged in the business of entering into written contracts for the provision of the nontemporary, ongoing employee workforce of a client and providing services under those contracts and that under those contracts has the obligation to pay the employees providing services for those clients from its own accounts, regardless of whether the person uses the term “professional employer organization,” “PEO,” “staff leasing company,” “registered staff leasing company,” “employee leasing company,” or “administrative employer,” or uses any other name, as part of the person’s business name or to describe the person’s business.

The Act provides the following:

Registration

Act 189 specifies that a PEO must register with the Department of Regulation and Licensing (DRL) in order to provide professional employer services in the state. Generally, an applicant must provide all of the following information when applying for registration:

- The name or names under which the applicant conducts business.
- The address of the principal office of the applicant and each office the applicant maintains in the state.
- A list, by jurisdiction, of each name under which the applicant has operated in the five years prior to the date of application.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.state.wi.us/>.

- A statement of ownership, including the name and business experience of each person who owns or controls 25% or more of the ownership interest of the applicant.
- A statement of management, including the name and business experience of each person who serves as president or chief executive officer of the applicant or who otherwise has authority to act as the senior executive officer of the applicant.
- An independently audited financial statement, issued not more than 13 months prior to application, which sets forth the financial condition of the applicant. The statement shall be without qualification as to the status of the applicant as a going concern.

The Act states that a PEO operating in Wisconsin on July 1, 2009, must register with DRL within 180 days of that date. The initial registration for an existing PEO is valid until 180 days after the end of the first fiscal year of the PEO that ends more than one year after July 1, 2009. A PEO that is not operating in Wisconsin on July 1, 2009, must register prior to operating in the state. Initial registration for a new PEO is valid until 180 days after the end of the fiscal year of the PEO that ends after the date of initial registration.

Wisconsin Act 189 also describes renewal registration for PEOs. Under the Act, renewal registration is valid for one year after the date of renewal. Renewal registration must occur no later than 180 days after the end of the PEO's fiscal year. In order to renew its registration, the PEO must update its financial statement and to notify DRL of changes to the information required at registration.

For certain PEOs, the Act permits registration as a limited registrant. Limited registrants are not required to comply with the financial capability provisions described below. In order to register as a limited registrant, a PEO satisfy all of the following:

- The PEO must be domiciled outside Wisconsin.
- The PEO must be registered or licensed as a PEO in another state.
- The PEO may not maintain an office in Wisconsin or directly solicit clients in the state.
- The PEO may not have more than 50 employees performing services for clients in Wisconsin on any given day.

Additionally, the Act authorizes DRL to promulgate rules relating to the electronic registration of PEOs as well as rules relating to alternative registration of PEOs via assurance of the PEO's qualifications by a bonded, independent, and qualified assurance organization that has been approved by DRL. The Act also directs DRL to determine fees for the registration and renewal registration of PEOs.

Financial Capability

Generally, 2007 Wisconsin Act 189 requires a PEO to demonstrate its financial capability through either:

- Working capital of not less than \$100,000. Under certain conditions, the Act permits DRL to issue a registration contingent on the PEO meeting the working capital requirement within 180 days of the issuance of the contingent registration.

- A bond, certificate of deposit, escrow account, or irrevocable letter of credit of not less than \$100,000. If a PEO's financial statements indicate a deficit of working capital, the amount of the bond, certificate of deposit, escrow account, or irrevocable letter of credit must be not less than \$100,000 plus the amount of the deficit.

Rights, Duties, and Obligations

The Act provides that a PEO that offers, markets, sells, administers, or provides professional employer services that include the provision of employee benefit plans for the employees of the PEO performing services for a client is not engaged in the business or sale of insurance or in the business of an employee benefit plan administrator. The Act requires this provision to be liberally construed to permit PEO's to provide employee benefit plans without being considered to be engaged in the business or sale of insurance or in the business of an employee benefit plan administrator.

Under Wisconsin Act 189, if a PEO provides life insurance, health care, or disability income benefits for its employees performing services for a client, the PEO must fully insure payment of those benefits by having in force a plan or policy of insurance issued by an insurer authorized to do business in this state and the insurer, subject to any eligibility requirements imposed by the plan or policy, must accept and insure all employees of the PEO performing services for a client and all beneficiaries of those employees.

For purposes of the insurance laws governing small employer health insurance, the Act provides that an insurer that contracts with a PEO that has more than 50 employees performing services for one or more clients is not a small employer insurer with respect to the contract between the insurer and the PEO, that a PEO that provides health care benefits for more than 50 employees performing services for one or more clients is not a small employer, and that a client of such a PEO is not a small employer if the employees of the PEO performing services for the client are offered health care benefits under a health benefit plan sponsored by the PEO.

In addition, Wisconsin Act 189 provides that nothing in the Act or in a contract for the provision of the nontemporary, ongoing workforce of a client may be construed to affect or impair any federal, state, or local licensing, registration, or certification requirement that is applicable to a client or to an employee of the PEO who is performing services for a client.

Finally, the Act provides that, for purposes of tax credits, economic development incentives, and other benefits that arise out of the employment of employees, the client is entitled to those credits, incentives, and other benefits that arise out of the employment of an employee of a PEO who is performing services for the client

Position Authorization

2007 Wisconsin Act 189 authorizes a .5 PR position for DRL.

Effective Date: 2007 Wisconsin Act 189 takes effect July 1, 2009, except the treatment of nonstatutory provisions related to rule-making and fee determination takes effect on April 11, 2008.

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SG:jb;wu