



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2007 Assembly Bill 760

**Assembly Substitute
Amendment 1 and Senate
Amendment 1**

Memo published: March 13, 2008

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For purposes of unemployment insurance, *current law* defines a professional employer organization (PEO) as any person who contracts to provide the nontemporary, ongoing employee workforce of more than one client under a written leasing contract, the majority of whose clients are not under the same ownership, management, or control as the person other than through the terms of the contract, and who meets all of the following qualifications:

- Has the right to hire and terminate the employees who perform services for the client and to reassign the employees to other clients.
- Sets the rate of pay of the employees, whether or not through negotiations and whether or not the responsibility to set the rate of pay is shared with the client.
- Has the obligation to and pays the employees from its own accounts.
- Has a general right of direction and control over the employees, including corporate officers, which right may be shared with the client to the degree necessary to allow the client to conduct its business, meet any fiduciary responsibility, or comply with any applicable regulatory or statutory requirements.
- Assumes responsibility for the unemployment insurance coverage of the employees, files all required reports, pays all required contributions or reimbursements due on the wages of the employees, and otherwise complies with all of the provisions of this chapter that are applicable to employers on behalf of the client.
- Has the obligation to establish, fund, and administer employee benefit plans for the employees.
- Provides notice of the employee leasing arrangement to the employees.

Generally, *2007 Assembly Bill 760* provides for the registration and regulation of PEOs. Under the bill:

- No person may offer or provide professional employer services unless the person first registers with the Department of Regulation and Licensing (DRL). The bill specifies registration and renewal procedures for PEOs.
- Subject to certain exceptions, a PEO must maintain working capital or similar bond commitments of at least \$100,000 to secure wages payable by the PEO.

Additionally, the bill specifies certain rights, duties, and obligations of PEOs and PEO clients with regard to insurance, licensing, and tax credits and economic development incentives.

Assembly Substitute Amendment 1

Registration

Assembly Substitute Amendment 1 specifies that a PEO must register with 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.
- 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 substitute amendment states that a PEO operating in Wisconsin on the effective date of the substitute amendment must register with DRL within 180 days of the effective date of the substitute amendment. 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 the effective date of the substitute amendment. A PEO that is not operating in Wisconsin on the effective date of the substitute amendment 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.

The substitute amendment also describes renewal registration for PEOs. Under the substitute amendment, 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 substitute amendment 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 substitute amendment authorizes the department 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.

Financial Capability

Generally, the substitute amendment requires a PEO to demonstrate its financial capability through either:

- Working capital of not less than \$100,000. Under certain conditions, the substitute amendment 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 substitute amendment 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 substitute amendment 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 the substitute amendment, 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 substitute amendment 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, the substitute amendment provides that nothing in the substitute amendment 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 substitute amendment 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.

Comparison to Assembly Bill 760

Compared to Assembly Bill 760, Assembly Substitute Amendment 1 does not contain references to registration fees or renewal fees and does not authorize a .5 PR position for DRL. Additionally, as described above, the substitute amendment includes certain requirements for PEOs that provide life insurance, health care, or disability income benefits for its employees performing services for a client.

Senate Amendment 1

Senate Amendment 1 inserts references to registration fees and renewal fees and authorizes a .5 PR position for DRL.

Legislative History

Representative Newcomer offered Assembly Substitute Amendment 1 to 2007 Assembly Bill 760 on February 28, 2008.

The Assembly adopted Assembly Substitute Amendment 1 and passed Assembly Bill 760 on February 28, 2008.

Senator Wirsch offered Senate Amendment 1 to 2007 Assembly Bill 760 on March 11, 2008.

The Senate adopted Senate Amendment 1 on a voice vote and concurred in Assembly Bill 760, as amended, on March 11, 2008, by a vote of Ayes, 31; Noes, 2.

The Assembly concurred in Senate Amendment 1 on March 11, 2008.

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