

TITLE 44
LABOR

CHAPTER 24
IDAHO PROFESSIONAL EMPLOYER

44-2401. SHORT TITLE. This act shall be known and may be cited as the "Idaho Professional Employer Recognition Act."

[44-2401, added 1994, ch. 129, sec. 1, p. 287.]

44-2402. PURPOSE. The legislature recognizes the increased popularity of professional employer services to small Idaho businesses and, therefore, deems it necessary in the interest of public health, safety and welfare to recognize such business enterprises, set forth certain definitions, and provide statutory guidelines.

[44-2402, added 1994, ch. 129, sec. 1, p. 287.]

44-2403. DEFINITIONS. As used in this chapter:

(1) "Administration fee" means those charges made by the professional employer to the client over and above the cost of taxes, premiums, wages, state and federal withholdings or licensing procedures.

(2) "Assigned worker" is a person with an employment relationship with both the professional employer and the client.

(3) "Client" means a person who obtains its work force from another person through a professional employer arrangement.

(4) "Person" means an individual, an association, a company, a firm, a partnership or a corporation.

(5) "Professional employer arrangement" means an arrangement, under contract or otherwise, whereby:

(a) A professional employer assigns workers to perform services for a client;

(b) The arrangement is intended to be, or is, on-going rather than temporary in nature; and

(c) Employer responsibilities are in fact shared by the professional employer and the client for assigned workers.

(d) For the purposes of this chapter, a professional employer arrangement shall not include:

(i) Temporary employees;

(ii) Arrangements wherein a person, whose principal business activity is not entering into professional employer arrangements, shares employees with a commonly owned company within the meaning of section 414(b) and (c) of the Internal Revenue Code of 1986, as amended, and which does not hold itself out as a professional employer;

(iii) Arrangements for which a person assumes full responsibility for the product or service performed by such person or his agents and retains and exercises, both legally and in fact, a complete right of direction and control over the individuals whose services are supplied under such contractual arrangements, and such person and his agents perform a specified function for the client which is separate and divisible from the primary business or operations of the client.

(6) "Professional employer" means any person engaged in providing the services of employees pursuant to one (1) or more professional employer arrangements or any person that represents itself to the public as providing services pursuant to a professional employer arrangement.

(7) "Temporary employee" means a worker employed by an organization which hires its own employees and assigns them to a third party to support or supplement the third party's work force in work situations such as employee absences, temporary skill shortages, seasonal workload conditions, and special assignments and projects.

[44-2403, added 1994, ch. 129, sec. 1, p. 287.]

44-2404. EXEMPTIONS. This chapter shall not apply to labor organizations or to any political subdivision of the state, the United States, and any programs or agencies thereof. A professional employer arrangement shall have no effect on existing collective bargaining agreements.

[44-2404, added 1994, ch. 129, sec. 1, p. 288.]

44-2405. MINIMUM STANDARDS. (1) Each professional employer shall, as a condition to being recognized by this chapter, agree to the following standards:

(a) Have a written contract between the client and the professional employer setting forth the responsibilities and duties of each party. The contract shall disclose to the client the services to be rendered, the respective rights and obligations of the parties, and provide that the professional employer:

(i) Reserves a right of direction and control over workers assigned to the client's location. However, the client may retain such sufficient direction and control over the assigned workers as is necessary to conduct the client's business and without which the client would be unable to conduct its business, discharge any fiduciary responsibility which it may have, or comply with any applicable licensure, regulatory or statutory requirement of the client;

(ii) Assume responsibility for the withholding and remittance of payroll-related taxes and employee benefits from its own accounts, as long as the contract between the client and professional employer remains in force;

(iii) Retain authority to hire, terminate, discipline, and reassign assigned workers. However, the client, if it accepts the responsibility for its action, may have the right to accept or cancel the arrangement of any assigned worker.

(b) Give written notice of the general nature of the relationship between the professional employer and the client to the workers assigned to the client and the public at large. Such notice may be posted in a visible and conspicuous manner at the client's work site.

(2) It is anticipated that under this chapter professional employers will, from time to time, receive from client companies, moneys which represent assigned workers' wages, withholdings, taxes, and benefit plan payments. Each professional employer shall keep in force, in the state of Idaho, a separate bank account or accounts for the purpose of keeping such money separate from the professional employer's operating funds. Assigned

workers' wages, withholdings, taxes, and benefit plan payments shall be promptly paid from such trust accounts.

(3) A professional employer shall be considered an employer for purposes of withholding state income tax pursuant to section [63-3035](#), Idaho Code, to the same extent as the professional employer is an employer for withholding federal income taxes pursuant to the Internal Revenue Code. As long as the professional employer's contract with the client remains in force, the professional employer shall have a right to and shall perform the following responsibilities:

(a) Pay wages and collect, report and pay employment taxes from its trust accounts;

(b) Pay unemployment taxes as required in Idaho state unemployment laws, [chapter 13, title 72](#), Idaho Code;

(c) Work with the client in securing and providing worker's compensation coverage for all of its assigned workers.

(4) A recognized professional employer shall be deemed the employer for the purposes of sponsoring and maintaining benefit and welfare plans for its assigned workers.

(5) Subject to any contrary provisions of the contract between the client and the professional employer, the professional employer arrangement that exists between a professional employer and its clients shall be interpreted for the purposes of sales tax on services, insurance and bonding as follows:

(a) A professional employer shall not be liable for the acts, errors or omissions of a client or of any assigned worker acting under the direction and control of a client. A client shall not be liable for the acts, errors or omissions of a professional employer or of any assigned worker of a professional employer acting under the direction and control of the professional employer. Nothing herein shall limit any contractual liability between the professional employer and the client, nor shall this subsection in any way limit the liabilities of any professional employer or client as defined elsewhere in this chapter;

(b) Workers assigned or contracted to a client by a professional employer are not deemed employees of the professional employer for purposes of general liability insurance, automobile insurance, fidelity bonds, surety bonds, employer's liability which is not covered by worker's compensation, or liquor liability insurance carried by the professional employer unless the employees are included by specific reference in the applicable employment arrangement contract, insurance contract or bond;

(c) If Idaho enacts a tax on services similar to the sales tax, the administration fee will be the amount which is taxed.

(6) The sale of professional employer arrangements in conformance with the provisions of this chapter shall not constitute the sale of insurance within the meaning of applicable Idaho law.

[44-2405, added 1994, ch. 129, sec. 1, p. 288.]

44-2406. OTHER LAW. Nothing in this chapter exempts a client of a professional employer company nor a worker assigned to a client by a professional employer from any other state, local or federal license or registration requirement. Any individual who must be licensed, registered or certified according to law and who is an assigned worker is deemed an employee of the client for purposes of the license, registration or certification.

Except to the extent provided otherwise in the contract with a client, a professional employer is not liable for the general debts, obligations, loss of profits, business goodwill or other consequential special or incidental damages of a client with which it has entered into a professional employer arrangement.

[44-2406, added 1994, ch. 129, sec. 1, p. 290.]

44-2407. SEVERABILITY. If any provisions of this chapter, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are severable.

[44-2407, added 1994, ch. 129, sec. 1, p. 290.]