

CHAPTER 88**(HB 394)**

AN ACT relating to professional employer organizations.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 336.236 is amended to read as follows:

- (1) A person engaged in providing professional employer services pursuant to a co-employment relationship in which all or a majority of the employees of a client are covered employees shall be registered under KRS 336.230 to 336.250 no later than July 15, 2024. After July 15, 2024, a person who is not registered under KRS 336.230 to 336.250 shall not offer or provide professional employer services in this Commonwealth and shall not use the names professional employer organization, PEO, staff leasing company, employee leasing company, administrative employer, or any other name or title representing professional employer services.
- (2) Each applicant for registration under KRS 336.230 to 336.250 shall provide the Department of Workers' Claims with the following:
 - (a) The name or names under which the professional employer organization conducts business;
 - (b) The address of the principal place of business of the professional employer organization and the address of each office it maintains in this Commonwealth;
 - (c) The professional employer organization's taxpayer identification number or federal and state employer identification number;
 - (d) A list, by jurisdiction, of each name under which the professional employer organization has operated in the preceding five (5) years, including any alternative names, names of predecessors, and, if known, successor business entities;
 - (e) A statement of ownership, which shall include the name and evidence of the business experience of any person that, individually or acting in concert with one (1) or more other persons, owns or controls, directly or indirectly, twenty-five percent (25%) or more of the equity interest in the professional employer organization; and
 - (f)
 1. A financial statement setting forth the financial condition of the professional employer organization or professional employer organization group.
 2. At the time of the initial application for a new registration, the applicant shall submit the most recent audit of the applicant, which shall not be older than thirteen (13) months. Thereafter, a professional employer organization or professional employer organization group shall file a succeeding audit on an annual basis within one hundred eighty (180) days after the end of the fiscal year.
 3. An applicant may apply for an extension with the Department of Workers' Claims, but any extension request shall be accompanied by a letter from the auditors stating the reasons for the delay and the anticipated date for completion of the audit.
 4. The financial statement shall be prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant licensed to practice in the jurisdiction in which the accountant is located, and shall be without qualification as to the going concern status of the professional employer organization.
 5. A professional employer organization group may submit combined or consolidated audited financial statements to meet the requirements of this paragraph.
 6. A professional employer organization that has not had sufficient operating history to have audited financial statements based on at least twelve (12) months of operating history shall meet the requirements in KRS 336.240 and present financial statements reviewed by a certified public accountant.
 7. *A professional employer organization shall meet the requirements of this paragraph if the financial statement submitted by the professional employer organization with its initial*

registration is without qualification as to the going concern status of the professional employer organization. If the professional employer organization has not had sufficient operating history as set forth in subparagraph 6. of this paragraph, the professional employer organization shall meet the requirements of Section 3 of this Act in order to satisfy the requirements of this paragraph.

- (3) Each professional employer organization operating within this Commonwealth as of July 14, 2022, shall complete its initial registration no later than July 15, 2024. The initial registration shall be valid until the end of the professional employer organization's first fiscal year that is more than one (1) fiscal year after July 15, 2024. ***This subsection shall apply to any professional employer organization that completed its initial registration at any time prior to July 15, 2024.***
- (4) Each professional employer organization not operating within this Commonwealth as of July 14, 2022, shall complete its initial registration prior to initiating operations within this Commonwealth. If a professional employer organization not operating within this Commonwealth becomes aware that an existing client that is not based in this Commonwealth had employees and operations in this Commonwealth, the professional employer organization shall either decline to provide professional employer services for those employees or notify the Department of Workers' Claims within five (5) business days of its knowledge of this fact and file a limited registration application or file a full business registration if there are more than fifty (50) covered employees. The Department of Workers' Claims may issue an interim operating permit for the period the registration applications are pending if the professional employer organization is currently registered or licensed by another state and the Department of Workers' Claims determines it to be in the best interests of the potential covered employees.
- (5) ***Except as provided within subsection (3) of this section,*** within one hundred eighty (180) days after the end of the fiscal year, a registrant shall renew its registration by notifying the Department of Workers' Claims of any changes in the information provided in the registrant's most recent registration or renewal. ***Each renewal registration shall contain a financial statement demonstrating the registrant has met the requirements of Section 3 of this Act.*** A registrant's existing registration shall remain in effect during the pendency of a renewal application.
- (6) Professional employer organizations in a professional employer organization group may satisfy the reporting and financial requirements of KRS 336.230 to 336.250 on a combined or consolidated basis provided that each member of the professional employer organization group guarantees the financial capacity obligations under KRS 336.230 to 336.250 of each other member of the professional employer organization group. In the case of a professional employer organization group that submits a combined or consolidated audited financial statement that includes entities that are not professional employer organizations or that are not in the professional employer organization group, the controlling entity of the professional employer organization group under the consolidated or combined statement shall guarantee the obligations of the professional employer organizations in the professional employer organization group.
- (7)
 - (a) A professional employer organization is eligible for a limited registration under KRS 336.230 to 336.250 if the professional employer organization:
 1. Submits a properly executed request for limited registration on a form provided by the Department of Workers' Claims;
 2. Is domiciled outside this Commonwealth and is licensed or registered as a professional employer organization in another state;
 3. Does not maintain an office in this Commonwealth or directly solicit clients located or domiciled within this Commonwealth; or
 4. Does not have more than fifty (50) covered employees domiciled or employed in this Commonwealth on any given day.
 - (b) A limited registration is valid for one (1) year and may be renewed.
 - (c) A professional employer organization seeking limited registration under this subsection shall provide the Department of Workers' Claims with information and documentation necessary to show that the professional employer organization qualifies for a limited registration.
 - (d) KRS 336.240 does not apply to applicants for limited registration.

- (8) The Department of Workers' Claims shall maintain a list of professional employer organizations registered pursuant to KRS 336.230 to 336.250 that is readily available to the public by electronic or other means.
- (9) The Department of Workers' Claims shall to the extent practical permit by administrative regulation the acceptance of electronic filings, including applications, documents, reports, and other filings required under KRS 336.230 to 336.250. The Department of Workers' Claims may provide for the acceptance of electronic filings and other assurance by an independent and qualified assurance organization approved by the secretary that provides satisfactory assurance of compliance acceptable to the Department of Workers' Claims consistent with or in lieu of the requirements of this section and KRS 336.240, and other requirements of KRS 336.230 to 336.250. The secretary shall permit a professional employer organization to authorize an approved assurance organization to act on behalf of the professional employer organization in complying with the registration requirements of KRS 336.230 to 336.250, including electronic filings of information and payment of registration fees. Use of an approved assurance organization shall be optional for a registrant. Nothing in this subsection shall limit or change the Department of Workers' Claims' authority to register or terminate registration of a professional employer organization or to investigate or enforce any provision of KRS 336.230 to 336.250.
- (10) All records, reports, and other information obtained from a professional employer organization under KRS 336.230 to 336.250, except to the extent necessary for the proper administration of KRS 336.230 to 336.250 by the Department of Workers' Claims, shall be confidential and shall not be published or open to public inspection other than to public employees in the performance of their public duties.
- (11) The Department of Workers' Claims may promulgate administrative regulations and prescribe forms necessary to promote the efficient administration of this section.

➔Section 2. KRS 336.238 is amended to read as follows:

- (1) Upon filing an initial registration statement pursuant to KRS 336.230 to 336.250, a professional employer organization *or professional employer organization group* shall pay an initial registration fee not to exceed five hundred dollars (\$500) to the Department of Workers' Claims.
- (2) Upon each annual renewal of a registration statement filed under KRS 336.230 to 336.250, a professional employer organization *or professional employer organization group* shall pay a renewal fee not to exceed two hundred fifty dollars (\$250) to the Department of Workers' Claims.
- (3) Each professional employer organization *or professional employer organization group* seeking limited registration under KRS 336.236 shall pay a fee in the amount not to exceed two hundred fifty dollars (\$250) to the Department of Workers' Claims upon initial application for the limited registration and upon each annual renewal of limited registration.

➔Section 3. KRS 336.240 is amended to read as follows:

Except as provided in KRS 336.236, each professional employer organization or collectively each professional employer organization group shall either:

- (1) Maintain positive working capital as indicated by current assets minus current liabilities and defined by generally accepted accounting principles at registration as reflected in the financial statements submitted to the Department of Workers' Claims with the initial registration *or with each annual renewal registration*; or
- (2) Provide a bond, irrevocable letter of credit, or securities with a minimum market value equaling the deficiency plus one hundred thousand dollars (\$100,000) to the Department of Workers' Claims if the professional employer organization or professional employer organization group does not have positive working capital. The bond shall be held by a depository designated by the Department of Workers' Claims, securing payment by the professional employer organization of all taxes, wages, benefits, or other entitlement due to or with respect to covered employees should the professional employer organization fail to make payments when due.

➔Section 4. KRS 336.248 is amended to read as follows:

For the purposes of KRS Chapter 341:

- (1) *The professional employer organization shall submit all required wage reports and pay all required contributions to the Office of Unemployment Insurance under KRS Chapter 341 using one (1) of the following:*

- (a) *The professional employer organization shall file quarterly unemployment wage and tax reports to report the wages of all covered employees and pay all contributions, penalties, and interest on wages paid by the professional employer organization to its covered employees during the term of the applicable professional employer agreement under the reserve account of the professional employer organization; or*
- (b) *The professional employer organization shall file quarterly unemployment wage and tax reports to report the wages of all covered employees and shall pay all contributions, penalties, and interest on wages paid by the professional employer organization to its covered employees during the term of the applicable professional employer agreement under the reserve or reimbursing account of the client. If the professional employer chooses this option:*
1. *The professional employer organization shall notify the Office of Unemployment Insurance in writing;*
 2. *The professional employer organization shall assist the Office of Unemployment Insurance in the process of the separation and identification of the contribution history, benefit experience history, and payroll of each of its clients, and the Office of Unemployment Insurance shall transfer the benefit experience history to the client account;*
 3. *The Office of Unemployment Insurance shall determine the contribution rate of each client account separately based upon the client's contribution history, benefit experience history, and actual payroll. If:*
 - a. *There is not sufficient benefit experience history in the client account to establish a tax rate, the account will be assigned a tax rate pursuant to KRS 341.270(1); or*
 - b. *The client has benefit experience history from a previous account, that benefit experience history shall be used in calculating an earned tax rate pursuant to the provisions of KRS 341.270(4). The benefit experience history shall be transferred to the account assigned to that client as co-employer of the professional employer organization. If taxable wages were reported by the client in a previous account within the calendar year that the professional employer organization and the client enter into a professional employer agreement, the professional employer organization shall be given credit for the taxable wages reported by the client on each employee in the previous account; and*
 4. *The professional employer organization shall produce all documentation and information necessary for the Office of Unemployment Insurance to create the client account within sixty (60) days of filing a notice under this paragraph. If the information needed by the Office of Unemployment Insurance is not produced within the sixty (60) day period, the professional employer organization shall revert to reporting under subsection (1)(a) of this section~~Except as provided in subsection (2) of this section, covered employees of a registered professional employer organization shall be considered employees of the professional employer organization, which shall be responsible for the payment of contributions, penalties, and interest on wages paid by the professional employer organization to its covered employees during the term of the applicable professional employer agreement~~;*
- (2) Beginning on January 6, 2023, and continuing through December 31, 2024, the professional employer organization shall **submit all required wage reports**~~report~~ and pay all required contributions to the **Office of Unemployment Insurance**~~unemployment insurance fund~~ using the state employer identification number and contribution rate of the client. After January 1, 2025, the professional employer organization shall report and pay all required contributions to the unemployment insurance fund **in accordance with the provisions of subsection (1) of this section**;
- (3) *Any professional employer organization with an existing employer reserve account with the Office of Unemployment Insurance as of the effective date of this Act shall comply with the provisions of this section no later than January 1, 2025;*
- (4) *Any professional employer organization that does not have a current employer reserve account with the Office of Unemployment Insurance as of the effective date of this Act shall be liable for contributions under KRS Chapter 341 pursuant to this section;*

- (5) *After choosing one of the elections provided for under subsection (1) of this section, a professional employer organization shall be permitted to change its contribution election only once. The change of contribution election shall be made by the professional employer organization in writing. The change of contribution election shall become effective in the calendar year following the date the Office of Unemployment Insurance approves the professional employer organization's change of contribution option. If the Office of Unemployment Insurance approves a change of contribution election, all contribution history, benefit experience history, and payroll of each client shall be transferred to the:*
- (a) *Professional employer organization account, if the election of subsection (1)(a) of this section is chosen; or*
 - (b) *Individual client accounts, if the election in subsection (1)(b) of this section is chosen;*
- (6) *Notwithstanding subsection (1) of this section, any client of a professional employer organization that is eligible for and has made an election to use the contribution method under KRS 341.275 shall continue using this method, regardless of whether the professional employer organization elected the option in subsection (1)(a) of this section; and*
- (7) ~~Using the state employer identification number and the contribution rate of the professional employer organization; and~~
- ~~(3)~~ Upon the termination of a contract between a professional employer organization and a client or the failure of a professional employer organization to submit reports or make tax payments as required by KRS 336.230 to 336.250, the client shall be treated as a new employer without a previous experience record unless that client is otherwise eligible for an experience rating.

Signed by Governor March 24, 2023.