

336.234 Limitations on professional employer agreements -- Covered employees deemed employees of clients for tax credits or economic incentives -- Use of professional employer organization services not to impact company status in business with state or political subdivisions.

- (1) Nothing in any professional employer agreement, or in KRS 336.230 to 336.250, shall:
 - (a) Affect, modify, or amend any collective bargaining agreement, or the rights or obligations of any covered employee, client, or professional employer organization, covered by the federal Railway Labor Act or the National Labor Relations Act;
 - (b) Affect, modify, or amend any contractual relationship or restrictive covenant between a covered employee and any client in effect at the time a professional employer agreement becomes effective or any contractual relationship or restrictive covenant that is entered into subsequently between a client and a covered employee. A professional employer organization shall have no responsibility in connection with, or arising out of, any existing or new contractual relationship or restrictive covenant between the covered employee and client unless the professional employer organization has specifically agreed otherwise in writing;
 - (c) Diminish, abolish, or remove rights of covered employees to a client or obligations of the client to a covered employee existing prior to the effective date of the professional employer agreement;
 - (d) Create any new or additional enforceable right of a covered employee against a professional employer organization that is not specifically provided by the professional employer agreement or KRS 336.230 to 336.250;
 - (e) Affect, modify, or amend any state, local, or federal licensing, registration, or certification requirement applicable to any client or covered employee. A covered employee who must be licensed, registered, or certified according to statute or regulation is deemed solely an employee of the client for purposes of any such license, registration, or certification requirement. A professional employer organization shall not be deemed to engage in any occupation, trade, profession, or other activity that is subject to licensing, registration, or certification requirements, or is otherwise regulated by a governmental entity, solely by entering into and maintaining a co-employment relationship with a covered employee who is subject to the requirements or regulations. A client shall have the sole right of direction and control of the professional or licensed activities of a covered employee and of the client's business. Covered employees and clients shall remain subject to regulation by the regulatory agency responsible for licensing, registration, or certification of the covered employees or clients; or
 - (f) Include language in a professional employer agreement or be construed in KRS 336.230 to 336.250 to abrogate any constitutional, statutory, or common law cause of action of persons not a party to the professional employer agreement.

- (2) For purposes of determining tax credits or other economic incentives provided by the Commonwealth based on employment, covered employees shall be deemed employees solely of the client. A client shall be entitled to the benefit of any tax credit, economic incentive, or other benefit arising as the result of the employment of a covered employee of the client. Notwithstanding that the professional employer organization is the federal form W-2 wage and tax statement reporting employer, the client shall continue to qualify for the tax credit, economic incentive, or benefit. If the grant or amount of any incentive is based on the number of employees, then each client shall be treated as employing only those covered employees that are co-employed by each client. Covered employees working for other clients of the professional employer organization shall not be counted. Each professional employer organization shall provide, upon request by a client or any state agency responsible for administration of any tax credit, economic incentive, or benefit, information reasonably required to support any request, claim, application, or any other action by a client seeking the tax credit, economic incentive, or benefit, including wage information, and locations and duties of covered employees.
- (3) With respect to a bid, contract, purchase order, or agreement entered into with the Commonwealth or any political subdivision of the Commonwealth, a client company's status or certification as a small, minority-owned, disadvantaged, or woman-owned business enterprise or as a historically underutilized business shall not be affected because the client company has entered into an agreement with or uses the services of a professional employer organization.

Effective: July 14, 2022

History: Created 2022 Ky. Acts ch. 50, sec. 3, effective July 14, 2022.