

2017 Regular Session

HOUSE BILL NO. 463

BY REPRESENTATIVE CHAD BROWN

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

INSURANCE: Provides with respect to professional employer organizations

1 AN ACT

2 To amend and reenact R.S. 22:1745(B) and 1746(A)(4) and R.S. 23:1761(introductory
3 paragraph), (2), and (3) and 1763(B)(1) and to enact R.S. 22:1745(C) and (D) and
4 R.S. 23:1763(C) and (D), relative to professional employer organizations; to provide
5 for regulation of welfare benefit plans offered by professional employer
6 organizations to employees; to provide for definitions; to provide for allocation of
7 tax credits and economic incentives when applicable; and to provide for related
8 matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 22:1745(B) and 1746(A)(4) are hereby amended and reenacted and
11 R.S. 22:1745(C) and (D) are hereby enacted to read as follows:

12 §1745. Employee benefit plans

13 * * *

14 ~~B.(1) At least ten days before the initiation of coverage under any policy of~~
15 ~~insurance issued in connection with an employee health benefit plan, the PEO shall~~
16 ~~submit the policy to the department for its review and authorization for issuance in~~
17 ~~this state.~~

18 ~~(2) If a client participates in such a health benefit plan the client shall submit~~
19 ~~an application for coverage on forms provided by an insurer authorized to transact~~
20 ~~business in this state, and the client's employees shall be considered as a separate~~

1 ~~group for purposes of eligibility, rating, and coverage.~~ A fully-insured welfare
2 benefit plan offered to the covered employees of a single PEO shall be treated as a
3 single employer welfare benefit plan.

4 C. A PEO shall be considered the employer of all of its covered employees
5 and all covered employees of one or more clients participating in a health benefit
6 plan sponsored by a single PEO shall be considered employees of that PEO.

7 D. If a PEO offers to its covered employees any health benefit plan which
8 is not fully-insured by an authorized insurer, the plan shall:

9 (1) Utilize a third-party administrator licensed to do business in this state.

10 (2) Hold all plan assets, including participant contributions, in a trust account
11 consistent with the requirements of Section 403 of the Employee Retirement Income
12 Security Act of 1974 (ERISA).

13 (3) Provide sound reserves for such plans as determined using generally
14 accepted actuarial standards of practice and consistent with the prudence and loyalty
15 standards of care for ERISA fiduciaries.

16 (4) Provide written notice to each covered employee participating in the
17 benefit plan that the plan is self-funded or is not fully insured.

18 §1746. Workers' compensation insurance

19 A. If the PEO service agreement provides for the procurement and
20 maintenance of state or federal workers' compensation insurance, covering the
21 liability of the client, the insurance covering such liability shall be placed with an
22 insurer authorized to transact business in this state and such coverage shall include
23 a plan of multiple coordinated policies in place. Each plan shall comply with the
24 following requirements:

25 * * *

26 (4) Each ~~individual client~~ policy shall apply the rates, rules, classifications,
27 rating plans, and audit procedures approved by the commissioner of insurance as
28 provided in R.S. 22:1451, et seq. The experience modification factor shall be
29 calculated using the experience of the client, which factor shall survive termination

1 of the PEO contract, and shall, upon termination of the professional services
2 agreement, be reported separately by the insurer in accordance with the applicable
3 rating plan.

4 * * *

5 Section 2. R.S. 23:1761(introductory paragraph), (2), and (3) and 1763(B)(1) are
6 hereby amended and reenacted and 1763(C) and (D) are hereby enacted to read as follows:

7 §1761. Definitions

8 As used in this Chapter, the following terms ~~shall~~ have the meanings
9 hereinafter ascribed to them:

10 * * *

11 (2) (a) "Covered employee" means a person having a co-employment
12 relationship with both a PEO and the PEO's client ~~pursuant to an executed PEO~~
13 ~~service agreement~~ who meets the following criteria:

14 (i) The individual has received written notice of co-employment with the
15 PEO.

16 (ii) The individual's co-employment relationship is pursuant to a professional
17 employer agreement subject to this Part.

18 (b) Individuals who are officers, directors, shareholders, partners, and
19 managers of the client will be covered employees, except to the extent the PEO and
20 the client have expressly agreed in the professional employer agreement that such
21 individuals would not be covered employees and act as operational managers or
22 perform day-to-day operational services for the client.

23 (3) "Co-employment relationship" means ~~an employment relationship~~
24 ~~whereby both the client and the PEO have an employer/employee relationship with~~
25 ~~the covered employee and the direction and control of the covered employee is~~
26 ~~shared by or allocated between the client and the PEO pursuant to a PEO service~~
27 ~~agreement~~ a relationship which is intended to be an ongoing relationship, rather than
28 a temporary or project specific one, in which the rights, duties, and obligations of an
29 employer which arise out of an employment relationship have been allocated

1 between co-employers pursuant to a professional employer agreement and this Part.

2 In such a co-employment relationship:

3 (a) The PEO is entitled to enforce only such employer rights and is subject
4 to only those obligations specifically allocated to the PEO by the professional
5 employer agreement or this Part.

6 (b) The client is entitled to enforce those rights and obligated to provide and
7 perform those employer obligations allocated to such client by the professional
8 employer agreement and this Part.

9 (c) The client is entitled to enforce any right and obligated to perform any
10 obligation of an employer not specifically allocated to the PEO by the professional
11 employer agreement or this Part.

12 * * *

13 §1763. Rights and responsibilities

14 * * *

15 B.(1) A PEO shall be liable for state unemployment taxes for wages paid by
16 the PEO to covered employees but only for the duration of the PEO services
17 agreement applicable to such employees. The PEO shall collect federal and state
18 unemployment taxes. The PEO shall remit all collected federal unemployment taxes
19 to the United States Department of Treasury, Internal Revenue Service and shall
20 remit all collected state unemployment taxes to the Louisiana Workforce
21 Commission. ~~A PEO shall be required to provide a client with an invoice detailing
22 the services provided which shall include an itemization of the actual federal and
23 state unemployment taxes owed and paid on behalf of the covered employees, as
24 well as any amount the PEO charges for such service.~~

25 * * *

26 C. For purposes of determination of tax credits and other economic
27 incentives provided by this state or other government entity and based on
28 employment, covered employees shall be deemed employees solely of the client. A
29 client shall be entitled to the benefit of any tax credit, economic incentive, or other

1 benefit arising as the result of the employment of covered employees of such client.
 2 Notwithstanding that the PEO is the W-2 reporting employer, the client shall
 3 continue to qualify for such benefit, incentive, or credit. If the grant or amount of
 4 any such incentive is based on number of employees, then each client shall be treated
 5 as employing only those covered employees co-employed by the client. Covered
 6 employees working for other clients of the PEO shall not be counted. Each PEO will
 7 provide, upon request by a client or an agency or department of this state,
 8 employment information reasonably required by any agency or department of this
 9 state responsible for administration of any such tax credit or economic incentive and
 10 necessary to support any request, claim, application, or other action by a client
 11 seeking any such tax credit or economic incentive.

12 D. With respect to a bid, contract, purchase order, or agreement entered into
 13 with this state or a political subdivision of this state, a client company's status or
 14 certification as a small, minority-owned, disadvantaged, or woman-owned business
 15 enterprise or as a historically underutilized business is not affected because the client
 16 company has entered into an agreement with a PEO or uses the services of a PEO.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 463 Original

2017 Regular Session

Chad Brown

Abstract: Clarifies that a professional employer organization (PEO) sponsoring a health benefit plan shall be considered the employer of its employees and the employees of its clients participating in the plan. Further clarifies the definition of a "covered employee" and "co-employment relationship" between a PEO and a PEO's client.

Present law provides for regulation of professional employer organizations (PEOs) by the Department of Insurance.

Proposed law clarifies that a fully-insured welfare benefit plan offered to the covered employees of a single (PEO) shall be treated as a single employer welfare plan.

Proposed law further clarifies that a PEO that sponsors a health benefit plan shall be considered the employer of its covered employees and all covered employees of its clients participating in the plan.

Proposed law requires a PEO offering a health benefit plan which is not fully insured by an authorized insurer to utilize a third party administrator licensed to do business in Louisiana, and hold all plan assets in an ERISA-compliant trust.

Present law defines "covered employee".

Proposed law expands the definition of "covered employee" to include individuals who have received written notice of co-employment with the PEO pursuant to a professional employer agreement between the PEO and the client.

Present law defines "co-employment relationship".

Proposed law clarifies that the relationship must be an ongoing relationship, not a temporary one, and governed by professional employer agreement between the PEO and the client that sets forth the rights, duties, and obligations each employer.

Present law requires the PEO to provide a client with an invoice detailing services provided and federal and state unemployment taxes owed and paid on behalf of covered employees. Proposed law removes this requirement.

Proposed law provides that covered employees shall be deemed employees of the client for purposes of determination of tax credits and other economic incentives, even if the PEO is the W-2 reporting employer.

Proposed law clarifies that a client company's status or certification as a small, minority-owned, disadvantaged, or woman-owned business enterprise is not affected by entering into an agreement with a PEO.

(Amends R.S. 22:1745(B) and 1746(A)(4) and R.S. 23:1761(intro. para.), (2), and (3) and 1763(B)(1); Adds R.S. 22:1745(C) and (D) and R.S. 23:1763(C) and (D))