

LEGISLATURE OF NEBRASKA  
ONE HUNDRED EIGHTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1227**

Introduced by Ballard, 21.

Read first time January 16, 2024

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to the Professional Employer Organization
- 2 Registration Act; to amend section 48-2706, Reissue Revised Statutes
- 3 of Nebraska; to change provisions relating to health benefit plans
- 4 offered by professional employer organizations as prescribed; and to
- 5 repeal the original section.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-2706, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 48-2706 (1) No person shall knowingly enter into a co-employment  
4 relationship in which less than a majority of the employees of the client  
5 in this state are covered employees or in which less than one-half of the  
6 payroll of the client in this state is attributable to covered employees.

7 (2) Except as specifically provided in the Professional Employer  
8 Organization Registration Act or in the professional employer agreement,  
9 in each co-employment relationship:

10 (a) The client shall be entitled to exercise all rights and shall be  
11 obligated to perform all duties and responsibilities otherwise applicable  
12 to an employer in an employment relationship;

13 (b) The professional employer organization shall be entitled to  
14 exercise only those rights and obligated to perform only those duties and  
15 responsibilities specifically required by the act or in the professional  
16 employer agreement. The rights, duties, and obligations of the  
17 professional employer organization as co-employer with respect to any  
18 covered employee shall be limited to those arising pursuant to the  
19 professional employer agreement and the act during the term of co-  
20 employment by the professional employer organization of such covered  
21 employee; and

22 (c) Unless otherwise expressly agreed by the professional employer  
23 organization and the client in a professional employer agreement, the  
24 client retains the exclusive right to direct and control the covered  
25 employees as is necessary to conduct the client's business, to discharge  
26 any of the client's fiduciary responsibilities, or to comply with any  
27 licensure requirements applicable to the client or to the covered  
28 employees.

29 (3) Except as specifically provided in the Professional Employer  
30 Organization Registration Act, the co-employment relationship between the  
31 client and the professional employer organization, and between each co-

1 employer and each covered employee, shall be governed by the professional  
2 employer agreement. Each professional employer agreement shall include  
3 the following:

4 (a) The allocation of rights, duties, and obligations as described  
5 in this section;

6 (b) A provision that the professional employer organization shall  
7 have responsibility to pay wages to covered employees; to withhold,  
8 collect, report, and remit payroll-related and unemployment taxes; and,  
9 to the extent the professional employer organization has assumed  
10 responsibility in the professional employer agreement, to make payments  
11 for employee benefits for covered employees. For purposes of this  
12 section, wages does not include any obligation between a client and a  
13 covered employee for payments beyond or in addition to the covered  
14 employee's salary, draw, or regular rate of pay, such as bonuses,  
15 commissions, severance pay, deferred compensation, profit sharing, or  
16 vacation, sick, or other paid time off pay, unless the professional  
17 employer organization has expressly agreed to assume liability for such  
18 payments in the professional employer agreement;

19 (c) A provision that the professional employer organization shall  
20 have a right to hire, discipline, and terminate a covered employee as may  
21 be necessary to fulfill the professional employer organization's  
22 responsibilities under the act and the professional employer agreement.  
23 The client shall have a right to hire, discipline, and terminate a  
24 covered employee; and

25 (d) A provision that the responsibility to obtain workers'  
26 compensation coverage for covered employees and for other employees of  
27 the client from an insurer licensed to do business in this state and  
28 otherwise in compliance with all applicable requirements shall be  
29 specified in the professional employer agreement in accordance with  
30 section 48-2709. The client shall not be relieved of its obligations  
31 under the Nebraska Workers' Compensation Act to provide workers'

1 compensation coverage in the event that the professional employer  
2 organization fails to obtain workers' compensation insurance for which it  
3 has assumed responsibility.

4 (4) With respect to each professional employer agreement entered  
5 into by a professional employer organization, such professional employer  
6 organization shall provide written notice to each covered employee  
7 affected by such agreement. The professional employer organization shall  
8 provide, and the client shall post in a conspicuous place at the client's  
9 worksite, the following:

10 (a) Notice of the general nature of the co-employment relationship  
11 between and among the professional employer organization, the client, and  
12 any covered employees; and

13 (b) Any notice required by the state relating to unemployment  
14 compensation and the minimum wage.

15 (5) Except to the extent otherwise expressly provided by the  
16 applicable professional employer agreement:

17 (a) A client shall be solely responsible for the quality, adequacy,  
18 or safety of the goods or services produced or sold in the client's  
19 business;

20 (b) A client shall be solely responsible for (i) directing,  
21 supervising, training, and controlling the work of the covered employees  
22 with respect to the business activities of the client or when such  
23 employees are otherwise acting under the express direction and control of  
24 the client and (ii) the acts, errors, or omissions of the covered  
25 employees with regard to such activities or when such employees are  
26 otherwise acting under the express direction and control of the client;

27 (c) A client shall not be liable for the acts, errors, or omissions  
28 of a professional employer organization or of any covered employee of the  
29 client and a professional employer organization when such covered  
30 employee is acting under the express direction and control of the  
31 professional employer organization;

1 (d) Nothing in this subsection shall limit any contractual liability  
2 or obligation specifically provided in a professional employer agreement;  
3 and

4 (e) A covered employee is not, solely as the result of being a  
5 covered employee of a professional employer organization, an employee of  
6 the professional employer organization for purposes of general liability  
7 insurance, fidelity bonds, surety bonds, employer's liability which is  
8 not covered by workers' compensation, or liquor liability insurance  
9 carried by the professional employer organization unless the covered  
10 employee is included for such purposes by specific reference in the  
11 professional employer agreement and in any applicable prearranged  
12 employment contract, insurance contract, or bond.

13 (6) When a professional employer organization obtains workers'  
14 compensation coverage for its clients that is written by an authorized  
15 insurer, it shall not be considered to be an insurer based on its  
16 provision of workers' compensation insurance coverage to a client, even  
17 if the professional employer organization charges the client a different  
18 amount than it is charged by the authorized insurer.

19 (7) For purposes of this state or any county, municipality, or other  
20 political subdivision thereof:

21 (a) Covered employees whose services are subject to sales tax shall  
22 be deemed the employees of the client for purposes of collecting and  
23 levying sales tax on the services performed by the covered employee.  
24 Nothing contained in the Professional Employer Organization Registration  
25 Act shall relieve a client of any sales tax liability with respect to its  
26 goods or services;

27 (b) Any tax or assessment imposed upon professional employer  
28 services or any business license or other fee which is based upon gross  
29 receipts shall allow a deduction from the gross income or receipts of the  
30 business derived from performing professional employer services that is  
31 equal to that portion of the fee charged to a client that represents the

1 actual cost of wages and salaries, benefits, workers' compensation,  
2 payroll taxes, withholding, or other assessments paid to or on behalf of  
3 a covered employee by the professional employer organization under a  
4 professional employer agreement;

5 (c) Any tax assessed or assessment or mandated expenditure on a per  
6 capita or per employee basis shall be assessed against the client for  
7 covered employees and against the professional employer organization for  
8 its employees who are not covered employees co-employed with a client.  
9 Any benefit or monetary consideration that meets the requirements of  
10 mandates imposed on a client and that is received by covered employees  
11 through the professional employer organization either through payroll or  
12 through benefit plans sponsored by the professional employer organization  
13 shall be credited against the client's obligation to fulfill such  
14 mandates; and

15 (d) In the case of a tax or an assessment imposed or calculated upon  
16 the basis of total payroll, the professional employer organization shall  
17 be eligible to apply any small business allowance or exemption available  
18 to the client for the covered employees for the purpose of computing the  
19 tax.

20 (8) A professional employer organization shall not offer its covered  
21 employees any health benefit plan ~~that~~ ~~which~~ is not:

22 (a) ~~Fully~~ ~~fully~~ insured by an authorized insurer; or -

23 (b) In compliance with the registration requirements of the Multiple  
24 Employer Welfare Arrangement Act and the federal Employee Retirement  
25 Income Security Act of 1974, as such act existed on January 1, 2024.

26 Sec. 2. Original section 48-2706, Reissue Revised Statutes of  
27 Nebraska, is repealed.