

ENGROSSED LEGISLATIVE BILL 293

Introduced by Ballard, 21.

A BILL FOR AN ACT relating to the Professional Employer Organization Registration Act; to amend section 48-2708, Reissue Revised Statutes of Nebraska, and section 48-2706, Revised Statutes Cumulative Supplement, 2024; to change provisions relating to health benefit plans and employee welfare benefit plans; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 48-2706, Revised Statutes Cumulative Supplement, 2024, is amended to read:

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

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

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

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

(c) Unless otherwise expressly agreed by the professional employer

organization and the client in a professional employer agreement, the client retains the exclusive right to direct and control the covered employees as is necessary to conduct the client's business, to discharge any of the client's fiduciary responsibilities, or to comply with any licensure requirements applicable to the client or to the covered employees.

(3) Except as specifically provided in the Professional Employer Organization Registration Act, the co-employment relationship between the client and the professional employer organization, and between each co-employer and each covered employee, shall be governed by the professional employer agreement. Each professional employer agreement shall include the following:

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

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

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

(d) A provision that the responsibility to obtain workers' compensation coverage for covered employees and for other employees of the client from an

insurer licensed to do business in this state and otherwise in compliance with all applicable requirements shall be specified in the professional employer agreement in accordance with section 48-2709. The client shall not be relieved of its obligations under the Nebraska Workers' Compensation Act to provide workers' compensation coverage in the event that the professional employer organization fails to obtain workers' compensation insurance for which it has assumed responsibility.

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

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

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

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

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

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

(c) A client shall not be liable for the acts, errors, or omissions of a professional employer organization or of any covered employee of the client and a professional employer organization when such covered employee is acting under

the express direction and control of the professional employer organization;

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

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

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

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

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

(b) Any tax or assessment imposed upon professional employer services or any business license or other fee which is based upon gross receipts shall allow a deduction from the gross income or receipts of the business derived from performing professional employer services that is equal to that portion of the fee charged to a client that represents the actual cost of wages and salaries, benefits, workers' compensation, payroll taxes, withholding, or other assessments paid to or on behalf of a covered employee by the professional

employer organization under a professional employer agreement;

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

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

(8)(a) Any health benefit plan offered by a professional employer organization to its covered employees shall:

(i) Be fully insured by an authorized insurer; or

(ii) Be self-funded and:

(A) Utilize a third-party administrator licensed to conduct business in this state;

(B) Hold all plan assets, including participant contributions, in a trust account consistent with section 403 of the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. 1103, as such section existed on January 1, 2025;

(C) Provide sound reserves for such health benefit plan as determined using generally accepted actuarial standards of practice and consistent with the prudence and loyalty standards of care for fiduciaries under the federal Employee Retirement Income Security Act of 1974, as such act existed on January 1, 2025;

(D) Provide written notice to each covered employee participating in such health benefit plan that the health benefit plan is self-funded or is not fully

insured; and

(E) File a report that contains all of the information required by subdivision (b) of this subsection with the department on a quarterly basis and within ninety days after the last day of the fiscal year of such health benefit plan.

(b) The report described in subdivision (a)(ii)(E) of this subsection shall include all of the following information relating to the health benefit plan from the most recent fiscal year:

(i) A financial statement;

(ii) A statement from a qualified actuary that the rates charged and any reserves, both incurred and incurred but not reported, are sufficient to pay claims and associated expenses;

(iii) Confirmation of a stop-loss insurance policy that provides coverage in excess of the health benefit plan's retention of one hundred twenty-five percent of the health benefit plan's expected health claims costs as determined on an aggregate basis listing the professional employer organization as a named insured. A policy issued to satisfy the requirements of this subdivision (8)(b)

(iii) shall be evidenced in a binder or policy by an insurer licensed to transact the business of insurance in this state and contain a provision that the coverage shall not be terminated by the insurer unless the professional employer organization and the Commissioner of Labor receive a written notice of termination from the insurer at least thirty days before the effective date of the termination; and

(iv) A certificate of compliance that certifies that the health benefit plan has been conducted in accordance with relevant laws of this state that relate to professional employer organizations.

(c)(i) The department may hold a compliance hearing for any professional employer organization if:

(A) The department provides written notice thirty days prior to such hearing; and

(B) Such professional employer organization provides a self-funded health

benefit plan and fails to comply with subdivision (a)(ii) of this subsection.

(ii) The hearing described in subdivision (c)(i) of this subsection shall be conducted by the department and provide the professional employer organization with the opportunity to be heard by the department.

(iii) Within thirty days after the hearing described in subdivision (c)(ii) of this subsection of a professional employer organization, the department may issue an order that requires such professional employer organization to comply with the health benefit plan requirements in this subsection. Any professional employer organization that is issued an order under this subdivision (c)(iii) shall comply with such order within thirty days after receiving such order.

(iv) The department shall revoke the registration under the Professional Employer Organization Registration Act of any professional employer organization that does not comply with an order issued under subdivision (c)(iii) of this subsection. Such revocation shall occur within thirty days after the final day for the professional employer organization to comply with such order.

Sec. 2. Section 48-2708, Reissue Revised Statutes of Nebraska, is amended to read:

48-2708 (1) A client and a professional employer organization shall each be deemed an employer under the laws of this state for purposes of sponsoring retirement and employee welfare benefit plans for its covered employees.

(2) An employee welfare benefit plan that includes a health benefit plan offered to the covered employees of a single professional employer organization shall be for purposes of state law a single employee welfare benefit plan and shall not be considered a multiple employer welfare arrangement, as defined in section 44-7603, and shall be exempt from the registration requirements of the Multiple Employer Welfare Arrangement Act.

(3) For purposes of the Small Employer Health Insurance Availability Act, a professional employer organization shall be considered the employer of all of its covered employees and all covered employees of any client participating in

a health benefit plan sponsored by a single professional employer organization shall be considered employees of the professional employer organization. Subject to any eligibility requirements imposed by the plan or policy, the insurer shall accept and insure all employees of the client and all beneficiaries of those employees.

Sec. 3. Original section 48-2708, Reissue Revised Statutes of Nebraska, and section 48-2706, Revised Statutes Cumulative Supplement, 2024, are repealed.

PRESIDENT OF THE LEGISLATURE

*THIS IS TO CERTIFY that the within LB 293 was passed by the One Hundred Ninth
Legislature of Nebraska at its First Session on the day
of 20.....*

CLERK OF THE LEGISLATURE

Approved:

..... 20....., o'clockM.

GOVERNOR