



MURIEL BOWSER
MAYOR

9/8/2020

The Honorable Phil Mendelson, Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, NW, Suite 504
Washington, DC 20004

Dear Chairman Mendelson:

Today, I am transmitting to the Council of the District of Columbia for its consideration and enactment, the "Professional Employer Organization Registration Act of 2020" (Bill). The purpose of the Bill is to require professional employer organizations to register with the Department of Insurance, Securities and Banking and to grant the Commissioner authority to collect registration fees from these organizations, as well as impose fines, and suspend and revoke their certificates of registration. In addition, the legislation would treat fully-insured health benefit plans offered by PEOs to covered employees as a single employer benefit plan.

A professional employer organization (PEO) is a firm that typically provides certain professional services to small and medium sized businesses (SMBs). PEOs enter into a contractual co-employment agreement with a client organization to provide services, which can include human resource consulting, safety and risk mitigation services, payroll processing, employer payroll tax filing, workers' compensation insurance, health benefits, retirement vehicles (401(k)), regulatory compliance assistance, workforce management technology, and training and development. Through co-employment, the PEO becomes the employer of record for tax purposes.

This bill is the product of significant collaboration between my administration and relevant stakeholders in the PEO industry to provide for a reasonable regulatory infrastructure that retains the industry's ability to provide the services that their clients want and need. Accordingly, I urge the Council to act favorably and expeditiously on the proposed Bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Muriel Bowser".

Muriel Bowser

Enclosures


Chairman Phil Mendelson
at the request of the Mayor

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To require professional employer organizations that offer health insurance in the District to register with the Department of Insurance, Securities, and Banking; and to authorize the Mayor to collect registration fees, impose fines, and suspend and revoke certificates of registration.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,
That this act may be cited as the “Professional Employer Organization Registration Act of 2020”.

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) “Client” means a person that enters into a PEO agreement with a PEO.

(2) “Co-employment relationship” means a relationship that is intended to be an ongoing relationship rather than a temporary or project-specific relationship, where the rights, duties, and obligations of an employer which arise out of an employment relationship have been allocated between a PEO and a client pursuant to a PEO agreement.

(3) “Covered employee” means an employee of a client of a PEO whose employment responsibilities are shared between the client and the PEO pursuant to a professional employer agreement, if:

34 (A) The employee has been issued a written notice of co-
35 employment with the PEO; and

36 (B) The employee's co-employment relationship has been
37 established pursuant to a professional employer agreement that includes the provision of
38 health insurance through a health benefit plan.

39 (4) "Health benefit plan" means an accident and health insurance policy or
40 certificate, hospital and medical services corporation contract, health maintenance
41 organization subscriber contract, plan provided by a multiple employer welfare
42 arrangement, or plan provided by another benefit arrangement. The term "health benefit
43 plan" does not include accident only, credit, or disability insurance; coverage of Medicare
44 services or federal employee health plans pursuant to contracts with the United States
45 government; Medicare supplement or long-term care insurance; dental only or vision
46 only insurance; specified disease insurance; hospital confinement indemnity coverage;
47 limited benefit health coverage; coverage issued as a supplement to liability insurance;
48 insurance arising out of a workers' compensation or similar law; automobile medical
49 payment insurance; medical expense and loss of income benefits; or insurance under
50 which benefits are payable with or without regard to fault and that is statutorily required
51 to be contained in any liability insurance policy or equivalent self-insurance.

52 (5) "PEO" means a professional employer organization.

53 (6) "PEO agreement" means a professional employer organization
54 agreement.

55 (7) "PEO group" means 2 or more PEOs the majority interests of which
56 are owned or commonly controlled by the same entity, parent, or controlling persons.

57 (8) "Person" means an individual or entity, including a partnership,
58 corporation, limited liability company, and association.

59 (9) "Professional employer organization" means a person engaged in the
60 business of providing professional employer services to a client with one or more covered
61 employees in the District. The term "professional employer organization" shall not
62 include:

63 (A) An arrangement in which a person whose principal business
64 activity is not entering into professional employer arrangements and who does not hold
65 itself out as a PEO shares employees with a commonly owned company within the
66 meaning of section 414(b) and (c) of the Internal Revenue Code of 1986, effective
67 September 2, 1974 (88 Stat. 925; 26 U.S.C. 414(b) and (c));

68 (B) An independent contractor arrangement by which a person
69 assumes responsibility for the product produced or service performed by such person or
70 its agents and retains and exercises primary direction and control over the work
71 performed by the individuals whose services are supplied under such an arrangement; or

72 (C) A temporary help services organization.

73 (10) "Professional employer organization agreement" means a written
74 contract between a client and a PEO that provides for the co-employment of covered
75 employees of the client and provides for the allocation of employer rights and obligations
76 between the client and the PEO with respect to the covered employees.

77 (11) "Professional employer services" means the service of entering into
78 co-employment relationships in which all or a majority of the employees employed by a
79 client or in a division or work unit of a client are covered employees.

- 80 (12) "Temporary help services organization" means a person that:
- 81 (A) Recruits and hires its own employees;
- 82 (B) Finds or is found by other organizations or businesses that
83 need temporary labor;
- 84 (C) Assigns its employees to perform work at or services for the
85 other organizations to support or supplement the other organizations' workforces, or to
86 provide assistance in special work situations including employee absences, skill
87 shortages, seasonal workloads, or special assignments or projects; and
- 88 (D) Customarily attempts to reassign its employees to other
89 organizations when they finish each assignment.

90 Sec. 3. PEO registration requirement.

91 (a) No PEO shall offer health insurance coverage to a covered employee in the
92 District under a health benefits plan without first obtaining a certificate of registration
93 from the Mayor; provided, that a PEO lawfully operating in the District on the effective
94 date of this act may operate in the District without a certificate of registration until 180
95 days after the effective date of this act.

96 (b) A PEO shall be subject to registration and regulation under this act regardless
97 of the terms used to describe its service offerings, such as "staff leasing company,"
98 "registered staff leasing company," "employee leasing company," "administrative
99 employer," or any other term.

100 (c) Each applicant for registration under this act shall provide the Mayor with:

- 101 (1) The name or names under which the PEO conducts business;
- 102 (2) The address of the principal place of business of the PEO and the

103 address of each office it maintains in the District;

104 (3) The PEO's taxpayer or employer identification number;

105 (4) A list by jurisdiction of each name under which the PEO has operated
106 in the preceding 5 years, including any alternative names, names of predecessors and, if
107 known, successor business entities;

108 (5) A statement of ownership, which shall include the name and evidence
109 of the business experience of any person that, individually or acting in concert with one
110 or more other persons, owns or controls, directly or indirectly, 25% or more of the
111 equity interests of the PEO;

112 (6) A statement of management, which shall include the name and
113 evidence of the business experience of any person who serves as president, chief
114 executive officer, or otherwise has the authority to act as senior executive officer of the
115 PEO;

116 (7) A financial statement setting forth the financial condition of the PEO
117 or PEO group; and

118 (8) The most recent audit of the applicant, which may not be older than 13
119 months.

120 (d) PEOs in a PEO group may satisfy the financial reporting requirements in
121 subsection (c)(7) of this section on a combined or consolidated basis.

122 (e) A PEO shall renew its registration annually on or before May 1 of each year.

123 (f) A PEO applying for an initial registration shall pay a non-refundable fee of
124 \$1,000. A PEO applying to renew its registration shall pay a non-refundable fee of \$500.

125 (g) A PEO that is subject to this act and fails to register shall be subject to
126 administrative action under the Unauthorized Entities Act of 2006, effective March 8,
127 2007 (D.C. Law 16-232; D.C. Official Code § 31-231 *et seq.*).

128 (i) All records, reports, and other information obtained from a PEO under this act
129 may be shared with the Department of Employment Services .Sec. 4.
130 Health insurance

131 (a) A fully-insured health benefit plan offered to the covered employees of a PEO
132 shall be considered a single employer health benefit plan.

133 (b) A health benefit plan offered to the covered employees of a PEO that is not
134 fully-insured shall be considered a multiple employer welfare arrangement and must
135 comply with the Health Insurance Portability and Accountability Federal Law
136 Conformity and No-Fault Motor Vehicle Insurance Act of 1998, effective April 13, 1999
137 (D.C. Law 12-209; D.C. Official Code § 31-3301.01 *et. seq.*).

138 (c) A PEO that sponsors a fully-insured health benefits plan for covered
139 employees of the PEO and is registered under this act shall not be deemed to be engaging
140 in the sale of insurance.

141 Sec. 5. Registration denial, suspension, revocation, and refusal to renew; civil
142 penalties.

143 (a) The Mayor may deny a registration to an applicant or suspend, revoke, or
144 refuse to renew a registration if the applicant:

145 (1) Violates the provisions of this act or any rule issued by the Mayor
146 under this act;

147 (2) Makes a material misstatement in the application for registration;

148 (3) Engages in fraudulent or dishonest practices; or
149 (4) Demonstrates incompetency or untrustworthiness to act as a PEO
150 under this act.

151 (b) Upon a finding by the Mayor of a violation of subsection (a) of this section,
152 the Mayor may impose a civil penalty not to exceed \$1,000 for each violation.

153 Sec. 6. Rules.

154 The Mayor, pursuant to Title I of the District of Columbia Administrative
155 Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code 2-501 *et*
156 *seq.*), may issue rules to implement the provisions of this act.

157 Sec. 7. Fiscal impact statement.

158 The Council adopts the fiscal impact statement of the Chief Financial Officer as
159 the fiscal impact statement required by section 4a of the General Legislative Procedures
160 Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-
161 301.47a).

162 Sec. 8. Effective date.

163 This act shall take effect following approval by the Mayor (or in the event of veto
164 by the Mayor, action by the Council to override the veto), a 30-day period of
165 Congressional review as provided in section 602(c)(1) of the District of Columbia Home
166 Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-206(c)(1)), and
167 publication in the District of Columbia Register.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL
KARL A. RACINE



Legal Counsel Division

MEMORANDUM

TO: Ronan Gulstone
Director
Office of Policy and Legislative Affairs

FROM: Brian K. Flowers
Deputy Attorney General
Legal Counsel Division

DATE: March 9, 2020

SUBJECT: Legal Sufficiency Certification of the "PEO Registration Act of 2020"

This is to Certify that this Office has reviewed the above-referenced legislation and has found it to be legally sufficient. If you have any questions regarding this certification, please do not hesitate to contact me at 724-5524.

A handwritten signature in cursive script, appearing to read "Brian K. Flowers", is written over a horizontal line.

Brian K. Flowers

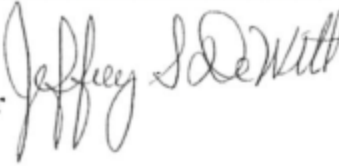
Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: April 15, 2020

SUBJECT: Fiscal Impact Statement – PEO Registration Act of 2020

REFERENCE: Draft Bill as provided to the Office of Revenue Analysis on March 9, 2020

Conclusion

Funds are sufficient in the fiscal year 2020 through fiscal year 2023 budget and financial plan to implement the bill.

Background

Professional Employer Organizations (PEO) provide management support to mostly small and medium sized businesses in the areas of human resources, benefits, payroll, tax administration, and regulatory compliance assistance. These organizations co-employ a client's employee through a client service agreement.

The bill requires a PEO doing business in the District to register with the Department of Insurance, Securities, and Banking (DISB). Through the registration process, a PEO must provide DISB with its operating locations in the District, any other operational names in any other jurisdictions, ownership characteristics, and a financial audit. The PEO must also pay a \$1,000 registration fee and a \$500 annual renewal fee.

The bill also ensures that a PEO, which provides business management tasks to multiple businesses simultaneously, can be viewed as a single employer when providing its employees a fully insured

The Honorable Phil Mendelson

FIS: "PEO Registration Act of 2020," Draft Bill as provided to the Office of Revenue Analysis on March 9, 2020

health benefit plan. If the plan provided by the PEO is not fully insured, it must comply with existing multiple employer welfare arrangements.¹

DISB can issue a \$1,000 civil penalty for any PEO violations of the registration requirements, health insurance provisions, or other rules issued to regulate PEOs in the District.

Financial Plan Impact

Funds are sufficient in the fiscal year 2020 through fiscal year 2023 budget and financial plan to implement the bill. According to the National Association of Professional Employer Organizations (NAPEO), there are at least 33 PEOs offering services in the District. Each of these organizations and any others who are not members of NAPEO, but operate in the District, must register with DISB and pay the applicable fees. DISB's Insurance Bureau can develop the registration process and register PEOs with its existing budgeted resources. If 33 organizations register with DISB, they will pay a combined \$33,000 in fiscal year 2021 and \$16,500 annually thereafter. These fees will be deposited into the District's Local Fund.

The Insurance Bureau can also absorb any enforcement activities within its existing budgeted resources.

¹ Health Insurance Marketplace Improvement Amendment Act of 2018, effective March 22, 2019 (D.C. Law 22-266; 66 DCR 1423).