

CHAPTER 1**(SB 10)**

AN ACT relating to registration of professional employer organizations and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 336.236 is amended to read as follows:

- (1) A person engaged in providing professional employer services pursuant to a co-employment relationship in which all or a majority of the employees of a client are covered employees shall be registered under KRS 336.230 to 336.250 *no later than July 15, 2024. After July 15, 2024*, a person who is not registered under KRS 336.230 to 336.250 shall not offer or provide professional employer services in this Commonwealth and shall not use the names professional employer organization, PEO, staff leasing company, employee leasing company, administrative employer, or any other name or title representing professional employer services.
- (2) Each applicant for registration under KRS 336.230 to 336.250 shall provide the Department of Workers' Claims with the following:
 - (a) The name or names under which the professional employer organization conducts business;
 - (b) The address of the principal place of business of the professional employer organization and the address of each office it maintains in this Commonwealth;
 - (c) The professional employer organization's taxpayer identification number or federal and state employer identification number;
 - (d) A list, by jurisdiction, of each name under which the professional employer organization has operated in the preceding five (5) years, including any alternative names, names of predecessors, and, if known, successor business entities;
 - (e) A statement of ownership, which shall include the name and evidence of the business experience of any person that, individually or acting in concert with one (1) or more other persons, owns or controls, directly or indirectly, twenty-five percent (25%) or more of the equity interest in the professional employer organization; and
 - (f)
 1. A financial statement setting forth the financial condition of the professional employer organization or professional employer organization group.
 2. At the time of the initial application for a new registration, the applicant shall submit the most recent audit of the applicant, which shall not be older than thirteen (13) months. Thereafter, a professional employer organization or professional employer organization group shall file a succeeding audit on an annual basis within one hundred eighty (180) days after the end of the fiscal year.
 3. An applicant may apply for an extension with the Department of Workers' Claims, but any extension request shall be accompanied by a letter from the auditors stating the reasons for the delay and the anticipated date for completion of the audit.
 4. The financial statement shall be prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant licensed to practice in the jurisdiction in which the accountant is located, and shall be without qualification as to the going concern status of the professional employer organization.
 5. A professional employer organization group may submit combined or consolidated audited financial statements to meet the requirements of this paragraph.
 6. A professional employer organization that has not had sufficient operating history to have audited financial statements based on at least twelve (12) months of operating history shall meet the requirements in KRS 336.240 and present financial statements reviewed by a certified public accountant.
- (3) Each professional employer organization operating within this Commonwealth as of July 14, 2022, shall complete its initial registration no later than *July 15, 2024*~~[one hundred eighty (180) days after July 14, 2022]~~. The initial registration shall be valid until~~[one hundred eighty (180) days from]~~ the end of the professional employer organization's first fiscal year that is more than one (1) fiscal year after *July 15, 2024*~~[July 14, 2022]~~.

- (4) Each professional employer organization not operating within this Commonwealth as of July 14, 2022, shall complete its initial registration prior to initiating operations within this Commonwealth. If a professional employer organization not operating within this Commonwealth becomes aware that an existing client that is not based in this Commonwealth had employees and operations in this Commonwealth, the professional employer organization shall either decline to provide professional employer services for those employees or notify the Department of Workers' Claims within five (5) business days of its knowledge of this fact and file a limited registration application or file a full business registration if there are more than fifty (50) covered employees. The Department of Workers' Claims may issue an interim operating permit for the period the registration applications are pending if the professional employer organization is currently registered or licensed by another state and the Department of Workers' Claims determines it to be in the best interests of the potential covered employees.
- (5) Within one hundred eighty (180) days after the end of the fiscal year, a registrant shall renew its registration by notifying the Department of Workers' Claims of any changes in the information provided in the registrant's most recent registration or renewal. A registrant's existing registration shall remain in effect during the pendency of a renewal application.
- (6) Professional employer organizations in a professional employer organization group may satisfy the reporting and financial requirements of KRS 336.230 to 336.250 on a combined or consolidated basis provided that each member of the professional employer organization group guarantees the financial capacity obligations under KRS 336.230 to 336.250 of each other member of the professional employer organization group. In the case of a professional employer organization group that submits a combined or consolidated audited financial statement that includes entities that are not professional employer organizations or that are not in the professional employer organization group, the controlling entity of the professional employer organization group under the consolidated or combined statement shall guarantee the obligations of the professional employer organizations in the professional employer organization group.
- (7)
 - (a) A professional employer organization is eligible for a limited registration under KRS 336.230 to 336.250 if the professional employer organization:
 1. Submits a properly executed request for limited registration on a form provided by the Department of Workers' Claims;
 2. Is domiciled outside this Commonwealth and is licensed or registered as a professional employer organization in another state;
 3. Does not maintain an office in this Commonwealth or directly solicit clients located or domiciled within this Commonwealth; or
 4. Does not have more than fifty (50) covered employees domiciled or employed in this Commonwealth on any given day.
 - (b) A limited registration is valid for one (1) year and may be renewed.
 - (c) A professional employer organization seeking limited registration under this subsection shall provide the Department of Workers' Claims with information and documentation necessary to show that the professional employer organization qualifies for a limited registration.
 - (d) KRS 336.240 does not apply to applicants for limited registration.
- (8) The Department of Workers' Claims shall maintain a list of professional employer organizations registered pursuant to KRS 336.230 to 336.250 that is readily available to the public by electronic or other means.
- (9) The Department of Workers' Claims shall to the extent practical permit by administrative regulation the acceptance of electronic filings, including applications, documents, reports, and other filings required under KRS 336.230 to 336.250. The Department of Workers' Claims may provide for the acceptance of electronic filings and other assurance by an independent and qualified assurance organization approved by the secretary that provides satisfactory assurance of compliance acceptable to the Department of Workers' Claims consistent with or in lieu of the requirements of this section and KRS 336.240, and other requirements of KRS 336.230 to 336.250. The secretary shall permit a professional employer organization to authorize an approved assurance organization to act on behalf of the professional employer organization in complying with the registration requirements of KRS 336.230 to 336.250, including electronic filings of information and payment of registration fees. Use of an approved assurance organization shall be optional for a registrant. Nothing in this subsection shall limit or change the Department of Workers' Claims' authority to register or terminate

registration of a professional employer organization or to investigate or enforce any provision of KRS 336.230 to 336.250.

- (10) All records, reports, and other information obtained from a professional employer organization under KRS 336.230 to 336.250, except to the extent necessary for the proper administration of KRS 336.230 to 336.250 by the Department of Workers' Claims, shall be confidential and shall not be published or open to public inspection other than to public employees in the performance of their public duties.
- (11) The Department of Workers' Claims may promulgate administrative regulations and prescribe forms necessary to promote the efficient administration of this section.

➔Section 2. KRS 336.248 is amended to read as follows:

For the purposes of KRS Chapter 341:

- (1) ***Except as provided in subsection (2) of this section***, covered employees of a registered professional employer organization shall be considered employees of the professional employer organization, which shall be responsible for the payment of contributions, penalties, and interest on wages paid by the professional employer organization to its covered employees during the term of the applicable professional employer agreement;
- (2) ***Beginning on the effective date of this Act and continuing through December 31, 2024, the professional employer organization shall report and pay all required contributions to the unemployment insurance fund using the state employer identification number and contribution rate of the client. After January 1, 2025, the professional employer organization shall report and pay all required contributions to the unemployment insurance fund using the state employer identification number and the contribution rate of the professional employer organization; and***
- (3) Upon the termination of a contract between a professional employer organization and a client or the failure of a professional employer organization to submit reports or make tax payments as required by KRS 336.230 to 336.250, the client shall be treated as a new employer without a previous experience record unless that client is otherwise eligible for an experience rating.

➔Section 3. KRS 336.250 is amended to read as follows:

- (1) A person shall not knowingly:
 - (a) ***After July 15, 2024***, offer or provide professional employer services or use the names professional employer organization, PEO, staff leasing, employee leasing, administrative employer, or other title representing professional employer services without first becoming registered under KRS 336.230 to 336.250; or
 - (b) Provide false or fraudulent information to the Department of Workers' Claims in conjunction with any registration, renewal, or in any report required under KRS 336.230 to 336.250.
- (2) Action may be taken by the Department of Workers' Claims against:
 - (a) Any person for violation of subsection (1) of this section;
 - (b) A professional employer organization or the controlling person of a professional employer organization upon the conviction of a professional employer organization or the controlling person of a professional employer organization of a crime that relates to the operation of the professional employer organization or the ability of the registrant or the controlling person of the registrant to operate the professional employer organization;
 - (c) A professional employer organization or the controlling person of a professional employer organization for knowingly making a material misrepresentation to the Department of Workers' Claims or any other state agency; or
 - (d) A professional employer organization or the controlling person of a professional employer organization for a willful violation of KRS 336.230 to 336.250 or any order or administrative regulation issued by the Department of Workers' Claims under KRS 336.230 to 336.250.
- (3) Upon finding that a professional employer organization or the controlling person of a professional employer organization has violated any provision of KRS 336.230 to 336.250, the Department of Workers' Claims may:
 - (a) Deny an application for a registration;

- (b) Revoke, restrict, or refuse a registration;
- (c) Impose a civil penalty not to exceed one thousand dollars (\$1,000) for each violation;
- (d) Place a registration on probation and subject to conditions specified by the Department of Workers' Claims; or
- (e) Issue a cease and desist order.

➔Section 4. The amendments to KRS 336.230 to 336.250 in this Act, including to Section 1 of this Act, shall not impact or change any other provision or requirement established in 2022 Ky. Acts ch. 50 that was not specifically amended in this Act.

➔Section 5. For the period beginning July 14, 2022, and continuing until the effective date of this Act, the Education and Labor Cabinet shall not require reporting or payment of required contributions to the unemployment insurance fund using the state employer identification number and contribution rate of the professional employer organization or take enforcement action against the professional employer organization pursuant to KRS 336.250 regarding professional employer organization contributions related to KRS 336.248(2).

➔Section 6. Whereas the proper treatment of all professional employer organizations in the Commonwealth by the Department of Worker' Claims is of critical importance, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Signed by Governor January 6, 2023.