

No. 2012-102

AN ACT

HB 1055

Providing for professional employer organizations.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

CHAPTER 1
PRELIMINARY PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the Professional Employer Organization Act.

Section 102. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Administrative fee." The fee charged to a client by a professional employer organization for professional employer services. The administrative fee shall not be deemed to include any amount of a fee by the professional employer organization that is for wages and salaries, benefits, workers' compensation, payroll taxes, withholding or other assessment paid by the professional employer organization to or on behalf of covered employees under the professional employer agreement.

"Client." Any person who enters into a professional employer agreement with a professional employer organization.

"Coemployer." A professional employer organization or client.

"Coemployment relationship." A relationship which is intended to be an ongoing relationship rather than a temporary or project specific one, wherein the rights, duties and obligations of an employer which arise out of an employment relationship have been allocated between coemployers pursuant to a professional employer agreement and this act.

"Controlling person." A person that owns, directly or indirectly, 10% or more of the equity interest in a professional employer organization.

"Covered employee." An individual coemployed by a professional employer organization and a client who meets the following criteria:

(1) The individual has received written notice of coemployment with the professional employer organization.

(2) The individual's coemployment relationship is pursuant to a professional employer agreement subject to this act.

Subject to section 304, individuals who are officers, directors, shareholders, partners and managers of the client and who are operational managers or perform day-to-day operational services for the client are covered employees only to the extent that the client and the professional employer organization expressly agree in the professional employer agreement.

"Department." The Department of Labor and Industry of the Commonwealth.

"Direct hire employee." An individual who is an employee of either the client or the PEO within the meaning of the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act, and who is not a covered employee.

"Insurer." A legal entity authorized or licensed to transact insurance business in accordance with the laws of this Commonwealth.

"Licensed producer." An individual or business entity that is licensed as an insurance producer by the Insurance Department in accordance with the provisions of Article VI-A of the act of May 17, 1921 (P.L.789, No.285), known as The Insurance Department Act of 1921.

"Master policy basis." An agreement under which a single workers' compensation policy issued to the professional employer organization provides coverage for more than one client and may provide coverage to the professional employer organization with respect to its direct hire employees. Two or more clients that are insured under the same policy solely because they are under common ownership are considered a single client for purposes of this definition.

"Multiple coordinated policy basis." An agreement under which a separate workers' compensation policy is issued to the professional employer organization on behalf of each client or group of affiliated clients with payment obligations and certain policy communications related to such workers' compensation policy coordinated through the professional employer organization.

"PEO group." Two or more professional employer organizations that are majority owned or commonly controlled by the same entity, parent or controlling person.

"Person." Any individual, partnership, corporation, limited liability company, association or any other form of legally recognized entity.

"Professional employer agreement." A contract by and between a client and a professional employer organization that provides:

- (1) for the coemployment of covered employees;
- (2) for the allocation of employer rights and obligations between the client and the professional employer organization with respect to the covered employees; and
- (3) that the professional employer organization and the client assume the responsibilities required by this act.

"Professional employer organization" or "PEO." Any person engaged in the business of providing professional employer services.

"Professional employer services." The business of entering into coemployment relationships under this act.

"Temporary help services." Services consisting of a person:

- (1) recruiting and hiring its own employees;
- (2) finding other organizations that need the services of those employees;
- (3) assigning those employees to perform work at or services for the other organizations to support or supplement the other organizations' work forces, or to provide assistance in special work situations, including,

but not limited to, employee absences, skill shortages, seasonal workloads or to perform special assignments or projects; and

(4) customarily attempting to reassign the employees to other organizations when they finish each assignment.

Section 103. Scope.

A person engaged in the business of providing professional employer services shall be subject to this act regardless of its use of the term or conducting business as a professional employer organization, PEO, staff leasing company, registered staff leasing company, employee leasing company, administrative employer or any other name. The following shall not be deemed to be professional employer organizations or the providing of professional employment services for purposes of this act:

(1) Arrangements wherein a person, whose principal business activity is not entering into professional employer arrangements and which does not hold itself out as a PEO, shares employees with a commonly owned company within the meaning of section 414(b) and (c) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

(2) Independent contractor arrangements.

(3) Providing temporary help services.

Section 104. Construction.

(a) Collective bargaining agreements.—Nothing contained in this act or in any professional employer agreement shall affect, modify or amend any existing collective bargaining agreement, specifically limit or affect any future collective bargaining agreement, or affect, modify or amend any rights or obligations of any client, PEO or covered employee under the National Labor Relations Act (49 Stat. 449, 29 U.S.C. § 151 et seq.), the Railway Labor Act (Public Law 69-257, 44 Stat. 577) or the act of June 1, 1937 (P.L.1168, No.294), known as the Pennsylvania Labor Relations Act. For purposes of determining the number of workers for existing and prospective collective bargaining agreements, each client shall be treated as employing its direct hire employees and only those covered employees coemployed by the client.

(b) Employment arrangements.—Nothing in this act or in any professional employer agreement shall:

(1) Diminish, abolish or remove rights of covered employees of a client or obligations of such client to a covered employee existing prior to the effective date of the professional employer agreement.

(2) Affect, modify or amend any contractual relationship or restrictive covenant between a covered employee and any client in effect at the time a professional employer agreement becomes effective, nor shall it prohibit or amend any contractual relationship or restrictive covenant that is entered into subsequently between a client and a covered employee. A PEO shall have no responsibility or liability in connection with or arising out of any existing or new contractual relationship or restrictive covenant unless the PEO has specifically agreed otherwise in writing.

(3) Eliminate any right otherwise existing in law, except as provided in this act.

(4) Create any right or cause of action not otherwise existing in law except as specifically set forth in the professional employer agreement or this act.

(c) Licensing.—Nothing contained in this act or any professional employer agreement shall affect, modify or amend any Federal, State or local licensing, registration or certification requirement applicable to any client or covered employee. The following apply:

(1) A covered employee who must be licensed, registered or certified according to law or regulation is deemed solely an employee of the client for purposes of the license, registration or certification requirement.

(2) A PEO shall not be deemed to engage in any occupation, trade, profession or other activity that is subject to licensing, registration or certification requirements, or is otherwise regulated by a governmental entity, solely by entering into and maintaining a coemployment relationship with a covered employee who is subject to such requirements or regulation.

(3) A client shall have the sole right of direction and control of the professional or licensed activities of covered employees and of the client's business. Covered employees and clients shall remain subject to regulation by the regulatory or governmental entity responsible for licensing, registration or certification of the covered employees or clients.

(d) Tax credits and other incentives.—For purposes of determination of tax credits and other economic incentives provided by the Commonwealth or other government entity and based on employment, covered employees shall be deemed employees solely of the client. A client shall be entitled to the benefit of any tax credit, economic incentive or other benefit arising as the result of the employment of covered employees of the client. If the grant or amount of any incentive is based on the number of employees, then each client shall be treated as employing its direct hire employees and those covered employees coemployed by the client. Covered employees working for other clients of the PEO shall not be counted. Each PEO will provide, upon request by a client or an agency or department of the Commonwealth, employment information reasonably required by any agency or department of the Commonwealth responsible for administration of a tax credit or economic incentive and necessary to support any request, claim, application or other action by a client seeking the tax credit or economic incentive.

(e) Disadvantaged business.—With respect to a bid, contract, purchase order or agreement entered into with the Commonwealth or a political subdivision of the Commonwealth, a client company's status or certification as a small, minority-owned, disadvantaged or woman-owned business enterprise or as a historically underutilized business is not affected because the client company has entered into an agreement with a PEO or uses the services of a PEO.

(f) Other entity as employer.—Nothing in this act shall be construed to designate any entity other than the client as the employer of any employee performing services for or on its behalf while employed directly or indirectly by a PEO for any purposes other than those specifically designated in this act. Persons performing services for or on behalf of a client shall be deemed

to be employees of the client for all purposes other than those specifically designated in this act where persons may be considered employees of a PEO.

CHAPTER 3 PEO DUTIES AND AGREEMENTS

Section 301. Duties and contractual relationship.

(a) Allocation of rights, duties and obligations.—Except as specifically provided in this act, nothing in this act shall be deemed to affect or alter any provision of Pennsylvania law. Specifically:

(1) 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.

(2) The PEO shall be entitled to exercise only those rights, and obligated to perform only those duties and responsibilities, specifically required by this act or set forth in the professional employer agreement. The rights, duties and obligations of the PEO as coemployer with respect to any covered employee shall be limited to those arising pursuant to the professional employer agreement and this act during the term of coemployment by the PEO of the covered employee.

(3) Unless otherwise expressly agreed by the PEO 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 client's fiduciary responsibilities or to comply with any licensure requirements applicable to the client or to the covered employees.

(b) Contractual relationship.—Except as provided by law, the employment relationship between the client and the PEO and between each coemployer and each covered employee shall be governed by the professional employer agreement. The PEO shall ensure that each professional employer agreement is reduced to writing and signed by both the client and the PEO, and each professional employer agreement shall provide:

(1) The allocation of rights, duties and obligations as described in subsection (a).

(2) That the PEO shall have responsibility to pay wages to covered employees; to withhold, collect, report and remit payroll-related taxes and may remit unemployment taxes in accordance with section 304; and, to the extent the PEO has assumed responsibility in the professional employer agreement, to make payments for employee benefits for covered employees. As used in this paragraph, the term "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 PEO has expressly agreed to assume liability for these payments in the professional employer agreement.

(3) Nothing in this act or in a professional employer agreement shall relieve a client from compliance with the Commonwealth's wage and

labor laws, including the act of May 13, 1915 (P.L.286, No.177), known as the Child Labor Law, the act of August 15, 1961 (P.L.987, No.442), known as the Pennsylvania Prevailing Wage Act, the act of July 14, 1961 (P.L.637, No.329), known as the Wage Payment and Collection Law, and the act of January 17, 1968 (P.L.11, No.5), known as The Minimum Wage Act of 1968. If the client is a health care facility as defined in section 2 of the act of October 9, 2008 (P.L.1376, No.102), known as the Prohibition of Excessive Overtime in Health Care Act, the client shall comply with that act. No professional employer organization shall knowingly engage in or assist in the violation of the statutes referenced in this paragraph.

(4) That the PEO shall have a right to hire, discipline and terminate a covered employee as may be necessary to fulfill the PEO's responsibilities under this act and the professional employer agreement. The client shall have a right to hire, discipline and terminate a covered employee.

(5) The PEO or the client has the responsibility to provide workers' compensation coverage for covered employees, in compliance with section 303, which responsibility shall be specifically allocated in the professional employer agreement to either the client or the PEO in accordance with section 303(a).

(c) Notice to terminate.—With respect to each professional employer agreement entered into by the PEO, the PEO shall provide the procedures by which the client or PEO may terminate the professional employer agreement, including any fees or costs payable upon termination, and except¹ as otherwise expressly provided or required by law, all services provided by the PEO to the client shall cease immediately as of the effective date of the termination.

(d) Notice to covered employees and clients.—

(1) With respect to each professional employer agreement entered into by a PEO, the PEO shall provide written notice to each covered employee affected by the agreement of the general nature of the employment relationship between and among the PEO, the client and the covered employee.

(2) If the PEO is providing benefits to covered employees pursuant to a PEO sponsored welfare benefit plan, the PEO shall provide specific notice to the client as to services provided by the PEO concerning those benefits. These responsibilities include those related to administration, which includes Consolidated Omnibus Budget Reconciliation Act (COBRA) administration, plan administration, enrollment and renewal services pursuant to their professional employer agreement. The notice may be contained in the professional employer agreement or in a separate notice.

(e) Specific responsibilities.—Except to the extent otherwise expressly provided by the applicable professional employer agreement:

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

¹"and that except" in enrolled bill.

(2) A client shall be solely responsible for directing, supervising, training and controlling the work of the covered employees with respect to the business activities of the client and solely responsible for the acts, errors or omissions of the covered employees with regard to these activities.

(3) A client shall not be liable for the acts, errors or omissions of a PEO or of any covered employee of the client and a PEO when the covered employee is acting under the express direction and control of the PEO.

(4) A PEO shall not be liable for the acts, errors or omissions of a client or of any covered employee of the client when the covered employee is acting under the express direction and control of the client.

(5) Nothing in this subsection shall serve to limit any contractual liability or obligation specifically provided in the written professional employer agreement.

(6) A covered employee is not, solely as the result of being a covered employee of a PEO, an employee of the PEO 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 PEO unless the covered employee is included by specific reference in the professional employer agreement and applicable prearranged employment contract, insurance contract or bond.

(f) Professional employer services not insurance.—A PEO under this act is not engaged in the sale of insurance or in acting as a third party administrator by offering, marketing, selling, administering or providing professional employer services which include services and employee benefit plans for covered employees.

(g) Taxation.—

(1) 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 this act shall relieve a client of any sales tax liability with respect to its goods or services.

(2) Any tax upon professional employer services or any business license or other fee which is based upon gross receipts shall be limited to the administrative fee of the PEO.

(3) Any tax assessed on a per capita or per employee basis shall be assessed against the client for covered employees and against the PEO for its employees who are not covered employees coemployed with a client.

(4) In the case of tax imposed or calculated upon the basis of total payroll, the PEO shall be eligible to apply any small business allowance or exemption available to the client for the covered employees for purpose of computing the tax.

Section 302. Benefit plans.

(a) Retirement and welfare benefit plans.—A client and a PEO shall each be deemed an employer for purposes of sponsoring retirement and welfare benefit plans for its covered employees.

(b) Construction.—A fully insured welfare benefit plan offered to the covered employees of a single PEO shall be considered for purposes of

Commonwealth law and regulation to be a single employer welfare benefit plan and shall not be considered a multiple employer welfare arrangement.

(c) Insurance Company Law.—For purposes of section 621.2 of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, a PEO shall be considered the employer of all of its covered employees, and all covered employees of one or more clients participating in a health benefit plan sponsored by a single PEO shall be considered employees of the PEO.

(d) Plans not fully insured.—If a PEO offers to its covered employees any health benefit plan which is not fully insured by an insurer, the plan shall:

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

(2) Hold all plan assets, including participant contributions, in a trust account.

(3) Provide sound reserves as determined by an actuary using generally accepted actuarial standards of practice.

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

Section 303. Workers' compensation.

(a) Requirement for coverage of covered employees.—

(1) Both the PEO and the client shall be an employer of covered employees assigned to the client for purposes of this act and the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act.

(2) The responsibility to provide workers' compensation coverage for the covered employees shall be specifically allocated in the professional employer agreement to either the client or the PEO.

(3) When the responsibility to provide workers' compensation coverage is specifically allocated in the professional employer agreement to the PEO, the PEO must elect to provide coverage for all covered employees assigned to that client pursuant to subsection (b)(3), (4) or (5).

(4) When the responsibility to provide workers' compensation coverage is specifically allocated in the professional employer agreement to the client, the client must provide coverage pursuant to subsection (b)(1) or (2).

(b) Methods of coverage.—A client and a registered PEO that have entered into a professional employer agreement may meet their statutory obligation under the Workers' Compensation Act for coverage as employers for the covered employees by any of the following:

(1) The client obtaining a standard workers' compensation policy from an insurer authorized to provide workers' compensation coverage covering the client's covered employees. Separate experience modification, risk classifications, merit rating adjustments, construction classification premium adjustments or certified safety committee program credits shall be applied to the exposures of the client covered by a policy obtained under this paragraph based on the client's entire Pennsylvania operations notwithstanding coverage provided under additional professional employer agreements pursuant to paragraphs (3), (4) and (5).

(2) The client being approved by the department to self-insure or group self-insure its workers' compensation obligations for the client's covered employees.

(3) The PEO purchasing workers' compensation insurance on a multiple coordinated policy basis from an insurer authorized to provide workers' compensation coverage to the PEO and to the client with respect to the covered employees assigned to the client. Each policy written on a multiple coordinated policy basis shall be issued to the PEO as the primary named insured and must identify both the PEO and the client as insureds. At the written request of the client, a professional employer organization shall make available evidence of workers' compensation coverage, loss history and total wages paid for covered employees of the client. The following apply:

(i) Separate experience data must be reported to the licensed rating organization for workers' compensation insurance for each multiple coordinated policy in a format complying with requirements of the approved statistical plan for workers' compensation coverage.

(ii) Risk classifications shall be assigned to each client based on the totality of that client's Pennsylvania operations regardless of whether workers engaged therein are provided under one or more professional employer agreements or are direct hire employees of the client.

(iii) If applicable, separate experience modification, merit rating adjustments, construction classification premium adjustment or certified safety committee program credits shall be applied to the exposures of each client covered by a multiple coordinated policy based on the client's entire Pennsylvania operations whether coverage is being provided for the client's exposures under the client's own policy or on a master policy basis or multiple coordinated policy basis under one or more professional employer agreements, or some combination thereof.

(iv) Policies written in accordance with this paragraph by the same insurer with the PEO as named insured may be combinable for premium discount and other purposes including a retrospective rating program or any other approved pricing program. Such programs may be based on the combined total standard premium and losses of all such policies issued to the PEO as the primary named insured.

(v) Nothing in this paragraph shall prohibit a professional employer organization from participating in a large deductible program, retrospective rating program or any other rating program approved for and written under a workers' compensation policy offered by an insurer. Further, nothing in this paragraph shall restrict an insurer from collecting workers' compensation premiums based on the totality of the exposure under these multiple coordinated policies and applying rates and discounts consistent with those approved for the insurer pursuant to the rating program.

(4) The PEO being duly qualified and approved by the department to self-insure its workers' compensation obligations, including direct employees and covered employees.

(5) The PEO purchasing workers' compensation insurance on a master policy basis from an insurer authorized to provide workers' compensation coverage. The insurer or licensed producer shall provide a certificate of insurance evidencing workers' compensation coverage to each client and to the PEO with respect to the covered employees of that client. The following apply:

(i) When coverage is provided under a master policy, the insurer must report separate experience data to the licensed rating organization for workers' compensation insurance for each client insured within any master policy in a format complying with the requirements of the approved statistical plan for workers' compensation coverage.

(ii) Risk classifications shall be assigned to each client based on the totality of that client's Pennsylvania operations regardless of whether workers engaged therein are provided under one or more professional employer agreements or are direct hire employees of the client.

(iii) If applicable, separate experience modification, merit rating adjustments, construction classification premium adjustments or certified safety committee program credits shall be applied to the exposures of each client covered by a master policy based on the client's entire Pennsylvania operations whether coverage is being provided for the client's exposures under the client's own policy or on a master policy basis or multiple coordinated policy basis under one or more professional employer agreements, or some combination thereof.

(iv) Nothing in this paragraph shall prohibit a professional employer organization from participating in a large deductible program, retrospective rating program or any other rating program approved for and written under a workers' compensation policy offered by an insurer. Further, nothing in this paragraph shall restrict an insurer from collecting workers' compensation premiums based on the totality of the exposure under the master policy and applying rates and discounts consistent with those approved for the insurer pursuant to the rating program.

(c) Employee coverage.—Direct hire employees of and covered employees assigned to a client shall all be collectively covered either by the State Workers' Insurance Fund or by insurers authorized to transact workers' compensation insurance in the voluntary market. Covered employees insured by the State Workers' Insurance Fund may only be covered pursuant to a policy issued to the client under subsection (b)(1) or on a multiple coordinated policy basis issued pursuant to subsection (b)(3).

(d) Client obligation.—

(1) A client retains the statutory obligation to provide workers' compensation coverage for employees that are not covered employees pursuant to the professional employer agreement. Nothing in this paragraph shall preclude a client from purchasing a workers' compensation policy insuring both its covered employees and its direct hire employees.

(2) If a client's insurer or the client, if self-insured, has issued coverage for direct hire employees and an injured employee is entitled to workers' compensation benefits but there is a dispute as to whether the employee is a direct hire employee of the client or a covered employee of the PEO, the client's insurer or the client, if self-insured, shall pay the benefits, subject to reimbursement of claims costs and loss adjustment expenses by the PEO's insurer or the PEO, if self-insured, if it is determined that the claimant is a covered employee of the PEO.

(3) If the client does not have coverage for direct hire employees, either through an insurer or by self-insurance, and an injured employee is entitled to workers' compensation benefits but there is a dispute as to whether the employee is a direct hire employee of the client or a covered employee of the PEO, the PEO's insurer or the PEO, if self-insured, shall pay the benefits, subject to reimbursement of claims costs and loss adjustment expenses by the client, if it is determined that the claimant is not a covered employee of the PEO.

(e) Policy issuance permitted.—Subject to subsection (b), and notwithstanding the provisions of section 653 of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, insurers may issue standard workers' compensation policies under subsection (b)(1), multiple coordinated policies under subsection (b)(3) or master policies under subsection (b)(5) covering fewer than all of a client's employees.

(f) Notice of coverage to the client.—

(1) If coverage is provided under a policy issued to the PEO for covered employees of the PEO, the PEO shall give clear and conspicuous written notice to the client that:

(i) The client of the PEO has a continuing obligation to provide coverage under the Workers' Compensation Act for any direct hire employees of the client who are not covered employees and not otherwise covered under a policy described in this section.

(ii) While coverage provided under a policy issued to the PEO is in force, the PEO will be responsible for paying all premium obligations, including any audit adjustments and policyholder assessments, and will be entitled to any premium refunds. The written notice to the client shall further explain that, although the PEO will charge the client amounts that reflect or include the cost of coverage, these charges are not considered insurance premium obligations of the client. If there is a policy deductible, the written notice to the client shall further explain that the PEO is responsible for reimbursing the insurer for the deductible and may not seek recovery from the client.

(2) The written notice to the client shall explicitly state that:

(i) If the professional employer organization terminates the professional employment agreement with the client, termination of workers' compensation coverage by the insurer shall be effective the sooner of:

(A) Sixty days after notice of intent to terminate workers' compensation coverage by the insurer has been given by the professional employer organization to the client.

(B) Fifteen days after notice of intent to terminate workers' compensation coverage by the insurer for nonpayment has been given by the professional employer organization to the client.

(C) The date on which workers' compensation coverage for the covered employees is transferred to the client's workers' compensation policy or other coverage.

(ii) The requirements under paragraph (1) shall continue to apply to workers' compensation coverage provided by the insurer after the notice is given pursuant to subparagraph (i).

(iii) The client shall pay for all workers' compensation coverage provided by the insurer, including reasonable administrative expenses, subsequent to the termination of the professional employer agreement by the professional employer organization.

(iv) If workers' compensation coverage is provided through a workers' compensation insurance policy issued to the professional employer organization on behalf of the client who has been given notice pursuant to subparagraph (i), the professional employer organization shall notify the affected insurer of the notice.

(g) Notice to department.—If the professional employer agreement provides for the PEO to provide workers' compensation insurance for covered employees, the PEO shall:

(1) Notify the department that it has insured covered employees assigned to a client for workers' compensation on a multiple coordinated policy basis pursuant to subsection (b)(3) or through self-insurance in accordance with subsection (b)(4) or on a master policy basis pursuant to subsection (b)(5) within 15 days after the effective date of the professional employer agreement.

(2) Notify the department of any cancellation or termination of a professional employer agreement under which the PEO has assumed the obligation to provide workers' compensation insurance for covered employees within ten days following the date the notification of cancellation or termination of the professional employer agreement is issued to the client.

(3) Notify the department of any cancellation or termination of workers' compensation coverage for covered employees by the PEO's insurer, or any change in insurers for covered employees, within ten days of the effective date of cancellation, termination or change of insurers.

(h) Notice by insurer or licensed producer.—The insurer or licensed producer of a workers' compensation policy sponsored by a PEO for covered employees shall provide the department with copies of all notices of coverage, cancellation or nonrenewal related to that policy. The PEO shall notify the insurer or licensed producer of the requirement under this subsection.

(i) Exclusive remedy.—

(1) The Workers' Compensation Act shall provide the exclusive remedy for injuries suffered by direct hire and covered employees in the course and scope of their employment or coemployment with the PEO and client where the PEO or client has secured workers' compensation insurance or self-insured their workers' compensation obligations as

required by the Workers' Compensation Act, this act and the professional employer agreement. Both the PEO and the client shall be entitled to the exclusiveness of remedy under section 303 of the Workers' Compensation Act regardless of which provided such coverage.

(2) Nothing in this act may include within the coverage of the Workers' Compensation Act individuals, services or remuneration that are otherwise excluded from the Workers' Compensation Act.

(j) Record confidentiality.—Upon request, a PEO or PEO group shall make available personal identifying information, employer identification numbers, a Federal employment identification number, provisions of the professional employer agreements and client lists to a rating organization licensed under section 712(a) of the Workers' Compensation Act, as required to comply with the rating organization's statutory obligations. Information obtained under this subsection shall only be used by the rating organization to comply with those statutory duties either prescribed under the Workers' Compensation Act or as required by the act of May 17, 1921 (P.L.789, No.285), known as The Insurance Department Act of 1921, or the Insurance Company Law of 1921 and shall not be considered public records under the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

(k) Applicability.—This section shall apply to new and renewal workers' compensation policies issued to professional employer organizations on or after the effective date of this act.

Section 304. Unemployment compensation insurance.

(a) Employer.—Notwithstanding any other provision of this act, the following shall apply:

(1) A professional employer agreement under this act shall constitute an arrangement included in section 4(j)(2.1) of the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment Compensation Law.

(2) Nothing in this act shall be construed:

(i) To affect the responsibilities of the client as the employer of covered employees for purposes of the Unemployment Compensation Law.

(ii) To affect the responsibility of the PEO to file reports pursuant to section 315(a)(4) of the Unemployment Compensation Law.

(iii) To preclude the applicability of section 4(j)(2.1) or any other provisions of the Unemployment Compensation Law to any arrangement or person not governed by this act.

(b) Procedure.—

(1) A client may authorize a PEO to file employer reports pursuant to section 304 of the Unemployment Compensation Law and pay unemployment compensation contributions, interest and penalties on the client's behalf.

(2) An authorization, filing or payment under this subsection shall be made in the manner prescribed by the department.

(3) This subsection shall not be construed to allow multiple employer reports to be filed on a client's unemployment compensation account for a calendar quarter.

CHAPTER 21
MISCELLANEOUS PROVISIONS

Section 2101. Effective date.

This act shall take effect in 180 days.

APPROVED—The 5th day of July, A.D. 2012

TOM CORBETT