

AMENDED IN SENATE JULY 1, 2010

AMENDED IN SENATE JUNE 21, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2570

Introduced by Assembly Member Ma

February 19, 2010

An act to add Section 606.6 to the Unemployment Insurance Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2570, as amended, Ma. Unemployment insurance: professional employer organizations.

Existing law requires that the determination of the employer-employee relationship be made pursuant to common-law principles, with specified exceptions. Existing law provides that when an individual or entity contracts to supply an employee to perform services for a customer or client and is a leasing employer or a temporary services employer, as defined, the individual or entity is the employer of the employee who performs the services.

This bill would, on and after January 1, 2012, for purposes of all unemployment insurance laws of this state, provide that a professional *services employer* organization, as defined, shall be deemed to be an employing unit for covered employees under a professional employer agreement, as defined. This bill would require the Employment Development Department to administer the provisions of the bill, as specified. This bill would impose various requirements on professional services organizations and clients, and would also provide for an assessment, fines, and disciplinary actions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 606.6 is added to the Unemployment
2 Insurance Code, to read:
3 606.6. (a) For purposes of all unemployment insurance laws
4 of this state only, a PEO shall be deemed to be an employing unit
5 for employees covered under a professional services agreement
6 for purposes of reporting and remitting taxes required under this
7 part and all related provisions.
8 (b) For purposes of this section the following definitions shall
9 apply:
10 (1) "Client employer" means any employer who enters into a
11 professional employer agreement with a professional employer
12 organization.
13 (2) "Covered employee" means an employee who performs
14 services for a client employer who is covered by a professional
15 employer agreement.
16 (3) "Master account" means the department account of the PEO
17 to which personal income tax, unemployment insurance, and
18 employment training tax remittances are applied for both direct
19 and all covered employees of a PEO, and upon which personal
20 income tax, unemployment insurance, employment training tax,
21 and disability insurance reports are based.
22 (4) "PEO" means a person or entity or professional employer
23 organization that enters into a professional employer agreement
24 with one or more client employers to provide professional
25 employee services. A PEO includes entities described as a "staff
26 leasing companies," "permanent staff leasing companies,"
27 "registered staff leasing companies," "employee leasing
28 companies," and "administrative employees," if the entity provides
29 professional employer services to a client employer, as defined in
30 paragraph (7).
31 (5) "PEO UI-ETT subaccount" means an account linked to a
32 PEO master account to which unemployment insurance and
33 employment training tax wage information is reported and
34 remittances are paid by a PEO for its client employers to the state,

1 and upon which the client employee’s experience rating is
2 calculated.

3 (6) “Professional employer agreement” means a written contract
4 between a client employer and a professional employer
5 organization that provides for professional employer services. In
6 a professional employer agreement, the PEO shall, except for
7 newly established client employers, hire its initial covered
8 employee complement from among employees of the client
9 employer at the time of execution of the professional employer
10 agreement.

11 (7) “Professional employer services” means services provided
12 by the professional employer organization to the client employer
13 and covered employees, which may include, but are not limited
14 to, human resource functions, risk management services, payroll
15 services, ~~or other employee benefit services, including sponsorship~~
16 ~~of health benefit plans, workers compensation plans as defined~~
17 ~~under Rule 4 of Section V of the California Workers Compensation~~
18 ~~Experience Rating Plan-1995, cafeteria plans, and retirement plans.~~
19 *services, or other employee benefit services, including health*
20 *benefit plans, securing the payment of workers compensation as*
21 *required under Section 3700 for covered employees, cafeteria*
22 *plans, and retirement plans.*

23 (8) “Registrant” means a PEO registered under this section.

24 (9) The following are not classified as professional employer
25 organizations or covered employees:

26 (A) Independent contractors.

27 (B) Temporary services employers.

28 (C) Leasing employers as defined in subdivision (b) of Section
29 606.5.

30 (D) Labor organizations.

31 (E) Third-party insurers.

32 (c) For purposes of the unemployment insurance laws of this
33 state, on and after January 1, 2012, a PEO shall register with the
34 department and report and remit taxes due to the state accordance
35 with the following requirements:

36 (1) The department shall create a new PEO UI-ETT subaccount
37 upon the effective date of a new professional employer agreement
38 with a client employer. The department shall transfer the client
39 employer’s existing unemployment insurance rate and reserve
40 account to the PEO UI-ETT subaccount upon its creation. A client

1 employer's experience shall continue to accrue to the PEO UI-ETT
2 subaccount during the duration of the professional employer
3 agreement based solely on the covered employees of each client
4 employer. To the extent that a client employer qualifies as a new
5 employer under this part, the client employer's new employer
6 status and experience rating shall not be altered due to the initiation
7 of a professional employer agreement and the creation of the PEO
8 UI-ETT subaccount. Upon the effective date of the professional
9 employer agreement, the PEO shall become solely liable for
10 reporting and remitting taxes to the PEO UI-EIT subaccount until
11 a professional employer agreement terminates or the registration
12 of a PEO is terminated by the department. The client employer
13 shall remain liable for any accrued but unpaid taxes prior to the
14 effective date of a professional employer agreement. The creation
15 or dissolution of a PEO UI-EIT subaccount shall not restart the
16 calculation of taxes for covered employees that are based on
17 calendar year wage totals.

18 (2) A PEO shall remit to the PEO master account any amounts
19 required to be remitted by law to the master account by the PEO
20 for personal income tax and unemployment insurance to the PEO's
21 direct, nonclient and indirect, client employees, if any. When
22 determining the frequency of the deposits, the aggregate amount
23 of personal income tax withholdings for the PEO's direct, nonclient
24 and indirect, client employees shall be combined.

25 (3) As required by law, a PEO shall file one DE-6 form for
26 unemployment insurance and employment training tax that is
27 related to the PEO's direct, nonclient and indirect, client
28 employees, if any. The department shall assign information and
29 deposit amounts attributable for the PEOs direct nonclient
30 employees to the PEO master account and assign information and
31 deposit amounts attributable to the PEOs indirect client employees
32 to the PEOs subaccounts. Each PEO subaccount shall reflect the
33 unemployment insurance experience rate and reserve account
34 balance of each PEO client.

35 (4) Upon termination of a client company, the PEO shall provide
36 the department with a notice of termination of the client company
37 that shall include the effective date of the termination of the
38 professional employer agreement.

1 (d) Nothing in this chapter shall preclude the department from
2 pursuing enforcement actions related to pending notices of violation
3 initiated against a person or entity prior to January 1, 2012.

4 (e) On and after June 1, 2012, no person or entity shall operate
5 as a PEO or advertise or otherwise hold itself out as being a
6 professional employer organization in the State of California unless
7 that person or entity is registered with the department. On and after
8 June 1, 2012, a PEO that operates without a being registered shall
9 be subject a civil penalty of one hundred dollars (\$100) per day,
10 not to exceed a maximum of ten thousand dollars (\$10,000).

11 Each applicant for registration shall annually provide information
12 as required by the department to administer this section, including,
13 but not limited to, both of the following:

14 (1) Evidence of a surety bond issued by a corporate surety entity
15 authorized to do business in California, an irrevocable letter of
16 credit, a certificate of deposit, or other securities in an amount
17 equivalent to any of the following:

18 (A) Twenty-five percent of unemployment insurance and
19 disability insurance tax contributions or payments in lieu of
20 contributions for which the PEO was liable in California in the
21 last calendar year in which it accrued contributions or payments
22 in lieu of contributions for those PEOs with more than 2,500
23 covered employees.

24 (B) Twenty percent of unemployment insurance and disability
25 insurance tax contributions or payments in lieu of contributions
26 for which the PEO was liable in California in the last calendar year
27 in which it accrued contributions or payments in lieu of
28 contributions for those PEOs with fewer than 2,500 and more than
29 1,500 covered employees.

30 (C) Fifteen percent of unemployment insurance and disability
31 insurance tax contributions or payments in lieu of contributions
32 for which the PEO was liable in California in the last calendar year
33 in which it accrued contributions or payments in lieu of
34 contributions for those PEOs with fewer than 1,500 covered
35 employees.

36 (D) In the event of a startup or new PEO in the State of
37 California, an applicant shall post a security of one hundred
38 thousand dollars (\$100,000) or an estimate of 25 percent of
39 unemployment insurance and disability insurance tax contributions
40 or payments in lieu of contributions for which the PEO estimates

1 it will be liable for in California in the coming year, whichever is
2 greater.

3 (2) An annual assessment of ~~two thousand dollars (\$2,000)~~ set
4 by the department in order to pay for the entire costs of enforcing
5 and administering the program, as well as issuing the necessary
6 registration. This assessment shall be made on a DE-6 form during
7 the quarter in which the application for registration is made to fund
8 department activities arising out of this section.

9 (3) A statement of ownership, which shall include the name and
10 evidence of business experience of any person that, individually,
11 or acting in concert with one or more other persons, owns or
12 controls, directly or indirectly, 5 percent or more of the equity
13 interests of the PEO. No person that has been convicted of a felony
14 related to the operation of a PEO or had the registration of a PEO
15 that he or she owned or controlled revoked, shall own or control,
16 directly or indirectly, a PEO doing business in this state.

17 (f) The PEO shall provide written notice to each covered
18 employee affected by the agreement of the general nature of the
19 relationship created by the agreement between the PEO, the client,
20 and the covered employee. This notice shall include the name of
21 the employer to be used for purposes of filing a claim for
22 unemployment insurance benefits. *This notice shall be provided*
23 *annually to all covered employees.*

24 (g) The department shall, to the extent practical, require
25 electronic filings in conformity with the Uniform Electronic
26 Transactions Act (UETA) (Title 2.5 (commencing with Section
27 1633.1) of Part 2 of Division 3 of the Civil Code), or other relevant
28 state laws for all required filings and tax remittances.

29 (h) No more than 14 days after the effective date of a new
30 professional employer agreement with a client employer, a
31 registered PEO shall notify the department of the name and
32 employer identification number (EIN) of the client employer and
33 the social security numbers for each California covered employee
34 covered under the professional employer agreement. Upon
35 notification, the department shall create a new subaccount of the
36 professional employer organization's department account and
37 transfer the existing experience rate and reserve balance to this
38 subaccount.

39 (i) No more than 14 days after the termination of a professional
40 employer agreement with a client employer or dissolution of a

1 PEO or revocation of a PEO's registration, a registered PEO shall
2 notify the department and provide the name and EIN of that client
3 employer or client employers in the event of a dissolution or
4 revocation, the effective date of termination, dissolution, or
5 revocation, if applicable, and the social security numbers for all
6 covered employees who had been subject to the professional
7 employer agreement on the effective date of termination,
8 dissolution, or revocation. Upon notification, the department shall
9 transfer the existing experience rate and reserve balance of the
10 former client employer and its former covered employees that were
11 previously reported under a unique subaccount of the PEO to the
12 former client employer's department account.

13 (j) If a professional employer organization fails to remit any tax
14 payments, including personal income tax, unemployment insurance,
15 or employment training tax payments that are due with respect to
16 wages actually paid to covered employees under the unemployment
17 insurance laws of this state, the director may issue a notice of
18 assessment in accordance with Sections 1126, 1127, and 1206.

19 (1) Upon issuance of a notice of assessment, the procedures
20 outlined in Sections 1222 to 1224, inclusive, shall apply. In the
21 event that a PEO fails to petition for reassessment or pay the
22 amount assessed in accordance with Sections 1222 to 1224,
23 inclusive, the department may require that the client companies
24 of the assessed PEO be treated as separate and individual
25 employing units of covered employees subject to the PEO's
26 professional employer agreements for purposes of the
27 unemployment insurance laws of this state and rescind the PEOs
28 registration to conduct business in the state. If clients become
29 individual employing units under paragraph (2), those clients shall
30 be liable for any unpaid tax liability directly attributable to its
31 individual employees and future tax liability in the course of its
32 status as an individual employing unit.

33 (2) In the event the department revokes the registration of a
34 PEO and begins to treat the PEO's former client employers as
35 individual employing units, the department shall attach the surety
36 bond required in subdivision (e) until that liability has been
37 remitted to the department or may use the surety bond to meet the
38 obligation of the PEO. Upon satisfaction of the liability, the
39 department shall release the bond or any unused portion.

- 1 (k) The director may promulgate all rules and regulations
- 2 necessary for the administration of this section. The regulations
- 3 may include provisions for revocation of the registration of a PEO
- 4 for failure to comply with the provisions of this section, provided
- 5 that, except for the requirements contained in subdivision (j), that
- 6 the regulations shall allow a PEO to cure the noncompliance within
- 7 30 days of receiving a notice from the department.
- 8 (l) All records, reports, and other information containing
- 9 proprietary information obtained from a PEO under this section,
- 10 or containing personal information such as the social security
- 11 numbers of covered employees, except to the extent necessary for
- 12 the proper administration of this section, shall be confidential and
- 13 shall not be published or open to public inspection other than to
- 14 public employees in the performance of their public duties.
- 15 (m) Except as specifically provided herein, nothing in this
- 16 section shall be deemed to affect or alter any other law in this state.
- 17 (n) This section shall become operative on January 1, 2012.