

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1247

Short Title: Professional Employer Organizations.

(Public)

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Sponsors: Representative Cansler.

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Referred to: Small Business.

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April 15, 1999

A BILL TO BE ENTITLED

AN ACT RECOGNIZING PROFESSIONAL EMPLOYER ORGANIZATIONS AND  
ESTABLISHING MINIMUM STANDARDS FOR SUCH ORGANIZATIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 95 of the General Statutes is amended by adding a new  
Article to read:

**“ARTICLE 5C.**

**"PROFESSIONAL EMPLOYER ORGANIZATIONS.**

**"§ 95-47.60. Definitions.**

The following definitions apply in this Article:

- (1) Administrative fee. – A fee charged a client by a professional employer organization that is above the fees charged and applied to mandatory state and federal taxes, wages for assigned workers, and premiums and contributions for benefits provided to assigned workers.
- (2) Assigned worker. – A person who has an employment relationship with both a professional employer organization and a client.
- (3) Client. – A person who contracts with a professional employer organization to obtain employment services through a professional employer arrangement.

- 1           (4) Person. – An individual, corporation, partnership, firm, association, or  
2 other entity.
- 3           (5) Professional employer arrangement. – An arrangement where a  
4 professional employer organization assigns workers to perform services  
5 for a client on an ongoing basis and the professional employer  
6 organization and client share the responsibilities for the assigned  
7 workers. The term shall not include:
- 8           a. An arrangement where a person, whose principal business  
9 activity does not include entering into professional employer  
10 arrangements, shares employees with a commonly owned  
11 company, as defined in the Internal Revenue Code, and does not  
12 hold himself or herself out as a professional employer  
13 organization.
- 14           b. An arrangement in which a person assumes full responsibility for  
15 the product or service performed by him or her or his or her  
16 agents and retains and exercises direction and control over any  
17 person whose services are supplied under the arrangement and,  
18 the person or his or her agents perform a specified function for  
19 the client that is separate and divisible from the client's primary  
20 business.
- 21           c. A temporary help arrangement wherein an organization hires its  
22 own employees and deploys them to a client to support or  
23 supplement the client's employees.
- 24           d. Any person otherwise subject to the provisions of this Article if,  
25 during any fiscal year, the total gross wages paid to his or her  
26 employees in this State pursuant to a professional employer  
27 arrangement do not exceed five percent (5%) of the total gross  
28 wages paid to all employees employed by the person in this State  
29 during the fiscal year under all arrangements described in this  
30 subsection and the person does not advertise or hold himself or  
31 herself out as providing professional employer arrangements.
- 32           (6) Professional employer organization. – Any person who provides  
33 employee services pursuant to a professional employer arrangement or  
34 who represents himself or herself as providing services pursuant to a  
35 professional employer arrangement.
- 36           (7) Temporary employee. – A worker employed by an organization that  
37 hires its own employees and deploys them to a client to support or  
38 supplement the client's full-time workforce.

39 **"§ 95-47.61. Exemptions.**

- 40           (a) The provisions of this Article shall not apply to:
- 41           (1) Labor organizations as defined by the National Labor Relations Act.
- 42           (2) Any program or agency of the United States or this State.
- 43           (3) Any arrangement or person described in G.S. 95-47.60(5)a. through d.

1           (4) The terms of any existing collective bargaining agreement.

2           (b) Notwithstanding the provisions of this section, a client who is a party to a  
3 collective bargaining agreement shall not be prohibited from contracting with a  
4 professional employer organization if the union consents to the contract.

5 **"§ 95-47.62. Minimum standards.**

6           (a) Each professional employer organization in this State shall:

7           (1) Execute a written contract with clients of the professional employer  
8 organization describing each party's responsibilities and duties,  
9 including the type of services that shall be rendered by the professional  
10 employer organization. The contract shall also provide that the  
11 professional employer organization: (i) reserves the right to direct and  
12 control the workers assigned to the client, but the client shall maintain  
13 such direction and control as is necessary to conduct the client's  
14 business; (ii) assumes responsibility for withholding and remitting  
15 payroll-related taxes and employee benefits from its accounts for the  
16 duration of the contract; and (iii) retains the authority to hire, terminate,  
17 discipline, and reassign workers that have been assigned to the client.

18           (2) Provide assigned workers written notice of the nature of the relationship  
19 between the professional employer organization and the client.

20           (3) For the duration of the contract with the client, pay wages and collect,  
21 report, and pay employment taxes for assigned workers from its  
22 accounts, pay unemployment taxes as required by the laws of this State,  
23 and secure any required workers' compensation coverage for assigned  
24 workers in its name or the client's name.

25           (b) A professional employer organization shall be considered an employer for  
26 purposes of withholding assigned workers' state income taxes and sponsoring and  
27 maintaining their benefits and welfare plans. Both a professional employer organization  
28 and client shall be considered the employer for purposes of coverage under the North  
29 Carolina Workers' Compensation Act, and both shall be entitled to the rights and  
30 remedies provided under that Act without regard to which of them secured and provided  
31 coverage for assigned workers under the Act.

32           (c) Subject to any contrary provisions contained in the contract between the  
33 professional employer organization and client, the professional employer arrangement  
34 shall be interpreted for purposes of insurance, bonding, and sales taxes on services as  
35 follows:

36           (1) A professional employer organization shall not be liable for the acts,  
37 errors, or omissions of a client or an assigned worker who is acting  
38 under the direction and control of a client. A client shall not be liable for  
39 the acts, errors, or omissions of a professional employer organization or  
40 an assigned worker who is acting under the direction and control of the  
41 professional employer organization. Nothing in this subdivision shall  
42 limit any liability by the professional employer organization or client  
43 that was expressly agreed upon in the contract between the professional

1           employer organization and client or is otherwise provided in this  
2           Article.

3           (2) Assigned workers shall not be deemed employees of the professional  
4           employer organization for purposes of general liability insurance,  
5           automobile insurance, fidelity bonds, surety bonds, employer's liability  
6           that is not covered by workers' compensation, or liquor liability  
7           insurance carried by the professional employer organization unless the  
8           assigned workers are expressly included in the applicable contract  
9           between the professional employer organization and client, insurance  
10           contract, or bond.

11           (3) If a tax on services similar to the State sales tax is enacted by the  
12           General Assembly, the administration fee, as defined in this Article,  
13           shall be the only revenue subject to the tax.

14           (d) The sale of professional employer services in accordance with the provisions  
15 of this Article shall not constitute the sale of insurance within the meaning of the laws of  
16 this State.

17 **"§ 95-47.63. Unemployment compensation insurance.**

18           (a) Unemployment insurance for workers assigned by a professional employer  
19 organization to a nonprofit organization, as defined by the laws of this State, shall be paid  
20 by the nonprofit organization; unemployment insurance for workers assigned to a  
21 governmental entity shall be paid by the governmental entity; and unemployment  
22 insurance for workers assigned to a client other than a nonprofit organization or  
23 governmental entity shall be paid in accordance with the provisions of this Article.

24           (b) During the time that a professional employer agreement is in effect, a  
25 professional employer organization shall be liable, in accordance with the laws of this  
26 State, for the payment of contributions, penalties, and interest on wages paid to assigned  
27 workers. A professional employer organization shall report and pay all contributions  
28 under its state employer account number and contribution rate.

29           (c) The provisions of this section shall not apply to a person who provides  
30 temporary employees to a client if the person is deemed the employer for the payment of  
31 contributions on wages paid to temporary workers.

32           (d) If a client ceases to pay wages to assigned workers, the client shall be subject  
33 to the termination of its employer account and experience rating records in the same  
34 manner as any other employer in accordance with the provisions of the laws of this State,  
35 but if the client subsequently becomes subject to the provisions of this Article because the  
36 client resumes paying wages, the client shall be assigned the appropriate experience rate.

37           (e) The provisions of this section, except as provided in subsection (a) of this  
38 section, shall not apply to nonprofit organizations and governmental entities.

39 **"§ 95-47.64. Effect of professional employer arrangements on laws regulating clients**  
40 **and assigned workers.**

41           Nothing in this Article shall exempt a client or an assigned worker from any other  
42 applicable federal, state, or local licensure or registration requirements. Any assigned  
43 worker or temporary employee who is required to be licensed, registered, or certified in

1 this State to perform certain services shall be deemed an employee of the client for  
2 purposes of the licensure, registration, or certification. A professional employer  
3 organization shall not be deemed to be engaged in an occupation, trade, or profession that  
4 is licensed, certified, or otherwise regulated by the State or a political subdivision of the  
5 State because the professional employer organization has entered into a professional  
6 employer arrangement.”

7           Section 2. This act is effective when it becomes law.