

ESSB 5373 - H AMD 561

By Representative Condotta

WITHDRAWN 4/6/2007

1 On page 13, beginning on line 10, strike all of sections 8
2 through 11 and insert the following:

3 "NEW SECTION. Sec. 8. A new section is added to chapter 50.04
4 RCW to read as follows:

5 For the purposes of this title:

6 (1) "Professional employer organization" means a person or
7 entity that enters into an agreement with one or more operating
8 employers to provide professional employer services. The
9 "professional employer organization" has the primary responsibility
10 for all payment to the department of contributions, penalties, and
11 interest owed to the department under this chapter. "Professional
12 employer organization" includes entities that use the term "staff
13 leasing company," "permanent leasing company," "registered staff
14 leasing company," "employee leasing company," "administrative
15 employer," or any other name, when they provide professional
16 employer services to operating employers. The following are not
17 classified as professional employer organizations: Independent
18 contractors in RCW 50.04.140; temporary staffing services companies
19 and services referral agencies as defined in RCW 50.04.245; third-
20 party payers as defined in section 15 of this act; or labor
21 organizations.

22 (2) "Coemployer" means either a professional employer
23 organization or an operating employer that has entered into a
24 professional employer agreement.

25 (3) "Covered employee" means an individual performing services
26 for an operating employer that constitutes employment under this
27 title.

28 (4) "Operating employer" means any employer who enters into a
29 professional employer agreement with a professional employer
30 organization.

1 (5) "Professional employer services" means services provided by
2 the professional employer organization to the operating employer,
3 which include, but are not limited to, human resource functions,
4 risk management, or payroll administration services, in a
5 coemployment relationship.

6 (6) "Coemployment relationship" means a relationship that is
7 intended to be ongoing rather than temporary or project-specific,
8 where the rights, duties, and obligations of an employer in an
9 employment relationship are allocated between coemployers pursuant
10 to a professional employer agreement and state law. A coemployment
11 relationship exists only if a majority of the employees performing
12 services to an operating employer, or to a division or work unit of
13 an operating employer, are covered employees. In determining the
14 allocation of rights and obligations in a coemployment
15 relationship:

16 (a) The professional employer organization has only those
17 employer rights and is subject only to those obligations
18 specifically allocated to it by the professional employer agreement
19 or state law;

20 (b) The operating employer has those rights and obligations
21 allocated to it by the professional employer agreement or state
22 law, as well as any other right or obligation of an employer that
23 is not specifically allocated by the professional employer
24 agreement or state law.

25 (7) "Professional employer agreement" means a written contract
26 between an operating employer and a professional employer
27 organization that provides for: (a) The coemployment of covered
28 employees; and (b) the allocation of employer rights and
29 obligations between the operating employer and the professional
30 employer organization with respect to the covered employees.

31 NEW SECTION. **Sec. 9.** A new section is added to chapter 50.12
32 RCW to read as follows:

33 (1) A professional employer organization must register with the
34 department and ensure that its operating employers are registered
35 with the department as provided in RCW 50.12.070.

36 (2) By September 1, 2007, the professional employer
37 organization shall provide the department with:

1 (a) The names, addresses, unified business identifier numbers,
2 and employment security account numbers of all its existing
3 operating employers who do business or have covered employees in
4 Washington state. This requirement applies whether or not the
5 operating employer currently has covered employees performing
6 services in Washington state;

7 (b) The names and social security numbers of corporate
8 officers, owners, or limited liability company members of operating
9 employers; and

10 (c) The business location in Washington state where payroll
11 records of its operating employers will be made available for
12 review or inspection upon request of the department.

13 (3) For operating employers registering for the first time as
14 required in RCW 50.12.070, the professional employer organization
15 must:

16 (a) Provide the names, addresses, unified business identifier
17 numbers, and employment security account numbers of the operating
18 employers who do business or have covered employees in Washington
19 state. This requirement applies whether or not the operating
20 employer currently has covered employees performing services in
21 Washington state;

22 (b) Provide the names and social security numbers of corporate
23 officers, owners, or limited liability company members of the
24 operating employers; and

25 (c) Provide the business location in Washington state where
26 payroll records of its operating employers will be made available
27 for review or inspection at the time of registration or upon
28 request of the department.

29 (4) The professional employer organization must notify the
30 department within thirty days each time it adds or terminates a
31 relationship with an operating employer. Notification must take
32 place on forms provided by the department. The notification must
33 include the name, employment security account number, unified
34 business identifier number, and address of the operating employer,
35 as well as the effective date the relationship began or terminated.

36 (5) The professional employer organization must provide a power
37 of attorney, confidential information authorization, or other
38 evidence, completed by each operating employer as required by the

1 department, authorizing it to act on behalf of the operating
2 employer for unemployment insurance purposes.

3 (6) The professional employer organization must file quarterly
4 wage and contribution reports with the department. The
5 professional employer organization may file either a single
6 electronic report containing separate and distinct information for
7 each operating employer and using the employer account number and
8 tax rate assigned to each operating employer by the department, or
9 separate paper reports for each operating employer.

10 (7) The professional employer organization must maintain
11 accurate payroll records for each operating employer and make these
12 records available for review or inspection upon request of the
13 department at the location provided by the professional employer
14 organization.

15 NEW SECTION. **Sec. 10.** A new section is added to chapter 50.29
16 RCW to read as follows:

17 For purposes of this title, each operating employer of a
18 professional employer organization is assigned its individual
19 contribution rate based on its own experience.

20 NEW SECTION. **Sec. 11.** A new section is added to chapter 50.24
21 RCW to read as follows:

22 (1) The operating employer of a professional employer
23 organization is liable for the payment of any taxes, interest, or
24 penalties due.

25 (2) The professional employer organization may collect and pay
26 taxes due to the department for unemployment insurance coverage
27 from its operating employers in accordance with its professional
28 employer agreement. If such payments have been made to the
29 professional employer organization by the operating employer, the
30 department shall first attempt to collect the contributions due
31 from the professional employer organization.

32 (3) To collect any contributions, penalties, or interest due to
33 the department from the professional employer organization, the
34 department must follow the procedures contained in chapter 50.24
35 RCW. If the amount of contributions, interest, or penalties
36 assessed by the commissioner pursuant to chapter 50.24 RCW is not
37 paid by the professional employer organization within ten days and

1 cannot be obtained from any bond that has been secured for this
2 purpose, then the commissioner may follow the collection procedures
3 in chapter 50.24 RCW. After the ten-day period and attempts to
4 collect from a bond obtained by the professional employer
5 organization for this purpose, if the professional employer
6 organization has not been paid the total amount owing, the
7 commissioner may also pursue the operating employer to collect what
8 is owed using the procedures contained in chapter 50.24 RCW."

EFFECT: Specifies that "professional employer organizations" have the primary responsibility for payments of contributions, penalties, and interest.

Authorizes the Employment Security Department to follow its usual collection procedures only if the amount of contributions assessed cannot be obtained from a bond secured for the purpose of paying such contributions.

Changes references to "client employer" to "operating employer."