OHIO LEGISLATIVE SERVICE COMMISSION

www.lsc.ohio.gov

Office of Research and Drafting

Legislative Budget Office

S.B. 201
133rd General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Dolan

Kelly Bomba, Attorney

SUMMARY

- Creates alternate employer organizations (AEOs), which are substantially similar to professional employer organizations (PEOs), and regulates AEOs in a very similar manner as PEOs.
- Requires an AEO to report federal taxes under the client employer's tax identification number (the PEO Law requires the use of the PEO's tax identification number).
- Requires an AEO to maintain workers' compensation coverage under its workers' compensation policy for all worksite employees associated with the client employer (the PEO Law allows a client employer to cover some of the worksite employees under its workers' compensation policy under certain circumstances).
- Specifies requirements for an AEO to satisfy to register with the Administrator of Workers' Compensation that are similar to the requirements a PEO must satisfy, except an AEO must maintain positive working capital at initial or annual registration.
- Requires an AEO to provide a bond or letter of credit in an amount determined by the Administrator to be adequate to meet the AEO's financial obligations under the Workers' Compensation Law, which must be at least $1 million, regardless of whether a deficit in working capital exists.
- Creates criminal penalties for failing to register.
- Specifies duties of AEOs and their client employers and specifies which one is the employer of record for certain tax incentives and other programs, similar to PEOs under current law.
- Does not allow AEOs to register multiple entities and operate them together (the PEO Law specifically allows this for PEOs under certain circumstances).
- Does not allow an assurance organization to act on behalf of an AEO (the PEO Law specifically allows this for PEOs).

TABLE OF CONTENTS

DETAILED ANALYSIS

Alternative employer organizations

The bill creates alternate employer organizations (AEOs). AEOs are substantially similar to professional employer organizations (PEOs), which are governed by current law.[1] A PEO or AEO is a business entity that enters into an agreement with one or more client employers to share the responsibilities and liabilities of being an employer (including, with respect to an AEO, providing human resource management services). A "client employer" is the business entity that enters into the agreement with an AEO or PEO to share employer responsibility and liability with the AEO or PEO.[2]

[1] R.C. Chapter 4125.

[2] R.C. 4133.01 and R.C. 4125.01, not in the bill.

Differences between a PEO and an AEO

Under the bill, an AEO is not, and cannot be considered to be, a PEO, and cannot hold itself out as a PEO.[3] AEOs are regulated in a very similar manner as PEOs, but under the bill differ from continuing law PEOs with respect to requirements in the way they report federal tax payments and the way they are permitted to provide workers' compensation coverage for shared employees. Additionally, the manner in which the entities register with the Administrator of Workers' Compensation, and the requirements for registration, vary slightly. The following table summarizes how continuing law PEOs and AEOs created under the bill differ.

Professional employer organization (R.C. Chapter 4125)	Alternate employer organization (R.C. Chapter 4133)
Taxes and workers' compensation coverage	
The law requires a PEO to pay wages and taxes associated with a shared employee and report federal taxes under the PEO's tax identification number *(R.C. 4125.03(A) and O.A.C. 4123-17-15(D)(2))*.	The bill requires an AEO to process and pay wages and state and federal taxes associated with a worksite employee, irrespective of payments made by the client employer, and to report federal taxes under the client employer's tax identification number. The bill requires the client employer to be listed as the employer on a worksite employee's W-2, but both the AEO and client employer remain jointly and severally liable for payment of the wages and taxes. *(R.C. 4133.03(A), (B), (C), and (K))*. See **COMMENT** below.
No provision.	If a client employer fails to transmit payment sufficient to cover payment of all wages and employer-paid taxes to the AEO, the bill requires the AEO to keep a record of the nonpayment or under payment and a record the AEO nonetheless paid the wages and taxes owed *(R.C. 4133.03(C))*.
The law requires a PEO to maintain workers' compensation coverage for all employees reported under the PEO's tax identification number, except that a PEO may enter into an agreement in which a client employer insures shared employees under the client employer's policy if both of the following apply: ▪ The client employer's payroll is wholly reported under the PEO's tax identification	On entering an AEO agreement with a client employer, the bill requires an AEO to maintain workers' compensation coverage under its workers' compensation policy for all worksite employees associated with the client employer *(R.C. 4133.03(D))*.

[3] R.C. 4133.03(J).

Professional employer organization (R.C. Chapter 4125)	Alternate employer organization (R.C. Chapter 4133)
number for federal tax purposes; ▪ The client employer's payroll is wholly reported under the client employer's policy number for worker's compensation purposes *(O.A.C. 4123-17-15(D)(2) and (7)).*	
Registration with the Administrator of Workers' Compensation	
As a condition of registering or renewing a registration, the law requires a PEO with a deficit in its working capital to provide a bond, irrevocable letter of credit, or securities with a minimum market value in an amount sufficient to cover the deficit. Additionally, the Administrator, with advice and consent of the Bureau of Workers' Compensation (BWC) Board of Directors, may adopt rules to require a PEO to provide security in the form of a bond or letter of credit assignable to BWC not to exceed an amount equal to the premiums and assessments incurred for the most recent policy year, before any discounts or dividends, to meet the PEO's financial obligations under the Workers' Compensation Law. *(R.C. 4125.05(B)(8) and (D)(1) and 4125.051)*.	The bill requires an AEO to maintain positive working capital at initial or annual registration, as reflected in the required financial statements submitted to BWC. As a condition of registering or renewing a registration, the bill requires an AEO to provide a bond or letter of credit in an amount determined by the Administrator to be adequate to meet the AEO's financial obligations under the Workers' Compensation Law, which must be at least $1 million (regardless of whether a deficit in working capital exists). *(R.C. 4133.07(B)(8) and (D)(1) and 4133.08)*.
The law allows two or more PEOs that are majority owned or commonly controlled by the same entity to register and operate as a single entity referred to as a professional employer organization reporting entity, provided the PEOs satisfy rules defined by the Financial Accounting Standards Board and generally accepted accounting *principles (R.C. 4125.01(F), 4125.02, and 4125.05(A))*.	The bill does not appear to allow AEOs to register multiple entities and operate them together *(R.C. 4133.07(A))*.
The law allows a PEO or PEO reporting entity to have an assurance organization act on its behalf in complying with the law *(R.C. 4125.01(A) and 4125.02))*.	The bill is silent as to whether an assurance organization may act on behalf of an AEO.
The law specifies that a PEO agreement must have a duration of not less than 12 month *(R.C. 4125.01(E)).*	No provision.

Similarities between a PEO and an AEO

As discussed above, AEOs under the bill are substantially the same as continuing law PEOs. The following analysis, as applicable to AEOs under the bill, is the same as continuing law governing PEOs unless otherwise noted.

Enforcement

The bill requires the Administrator to adopt rules in accordance with Ohio's Administrative Procedure Act[4] to administer and enforce the AEO Law. The bill allows the Administrator to adopt rules for the acceptance of electronic filings in accordance with the Uniform Electronic Transactions Act[5] for applications, documents, reports, and other filings required by the AEO Law.[6]

Additionally, the bill requires the Administrator to maintain a list of AEOs registered under the bill that is readily available to the public by electronic or other means.[7]

Duties of an AEO

The bill requires an AEO with whom a worksite employee is employed to perform specified duties. A "worksite employee" is an individual assigned to a client employer on a permanent basis, not as a temporary supplement to the client employer's workforce, and who is employed by both an AEO and a client employer pursuant to an AEO agreement (the written agreement between a client employer and an AEO to provide human resource management services and to share employer responsibilities and liabilities).[8] The PEO Law refers to these employees as "shared employees."[9]

The bill requires an AEO to do all of the following:

1. Process and pay all wages and applicable state and federal payroll taxes associated with the worksite employee, irrespective of payments made by the client employer, pursuant to the terms and conditions of compensation in the AEO agreement;
2. Pay all related payroll taxes associated with a worksite employee independent of the terms and conditions contained in the AEO agreement;
3. Maintain workers' compensation coverage, pay all workers' compensation premiums, and manage all workers' compensation claims, filings, and related procedures associated with a worksite employee in compliance with the Workers' Compensation Law,[10] except that when worksite employees include family farm officers, ordained

[4] R.C. Chapter 119.

[5] R.C. Chapter 1306.

[6] R.C. 4133.02, with conforming changes in R.C. 4121.12, 4121.121, and 4123.341.

[7] R.C. 4133.07(K).

[8] R.C. 4133.01.

[9] R.C. 4125.01, not in the bill.

[10] R.C. Chapters 4121 and 4123.

ministers, or corporate officers of the client employer, payroll reports must include the entire amount of payroll associated with those persons;

4. Provide written notice to each worksite employee it assigns to perform services to a client employer of the relationship between and the responsibilities of the AEO and the client employer;
5. Maintain complete records separately listing the manual classifications of each client employer and the payroll reported to each manual classification for each client employer for each payroll reporting period during the time period covered in the AEO agreement;
6. Maintain a record of workers' compensation claims for each client employer;
7. Make periodic reports, as determined by the Administrator, of client employers and total workforce to the Administrator;
8. Report individual client employer payroll, claims, and classification data under a separate and unique subaccount to the Administrator;
9. Within 14 days after receiving notice from BWC that a refund or rebate will be applied to workers' compensation premiums, provide a copy of that notice to any client employer to whom that notice is relevant.[11]

The bill requires an AEO with whom a worksite employee is employed to provide a list of all of the following information to the client employer on the written request of the client employer:

1. All workers' compensation claims, premiums, and payroll associated with that client employer;
2. Compensation and benefits paid and reserves established for each workers' compensation claim;
3. Any other information available to the AEO from BWC regarding that client employer.

An AEO must provide the information in writing to the requesting client employer within 45 days after receiving the written request from the client employer. For purposes of this requirement, an AEO is considered to have provided the required information to the client employer when the information is received by the U.S. Postal Service or when the information is personally delivered, in writing, directly to the client employer.[12]

Direction and control over worksite employees

Unless otherwise agreed to in the AEO agreement, the AEO with whom a worksite employee is employed has a right of direction and control over each worksite employee assigned to a client employer's location. However, a client employer retains sufficient direction and control over a worksite employee as is necessary to do any of the following:

[11] R.C. 4133.03(A) and 4133.07(D)(3), with conforming changes in R.C. 4123.26 and 4123.35.

[12] R.C. 4133.03(E) and (F).

1. Conduct the client employer's business, including training and supervising worksite employees;
2. Ensure the quality, adequacy, and safety of the goods or services produced or sold in the client employer's business;
3. Discharge any fiduciary responsibility that the client employer may have;
4. Comply with any applicable licensure, regulatory, or statutory requirement of the client employer.

Unless otherwise agreed to in the AEO agreement, liability for acts, errors, and omissions are determined as follows:

1. An AEO is not liable for the acts, errors, and omissions of a client employer or a worksite employee when those acts, errors, and omissions occur under the client employer's direction and control;
2. A client employer is not liable for the acts, errors, and omissions of an AEO or a worksite employee when those acts, errors, and omissions occur under the AEO's direction and control.

The requirements regarding direction and control do not limit any liability or obligation specifically agreed to in the AEO agreement.[13]

Under the bill, a worksite employee under an AEO agreement is not, solely as a result of being a worksite employee, an employee of the AEO for purposes of general liability insurance, fidelity bonds, surety bonds, employer liability not otherwise covered by the Workers' Compensation Law, or liquor liability insurance carried by the AEO, unless the AEO agreement and applicable prearranged employment contract, insurance contract, or bond specifically states otherwise.[14]

Employer status under the Workers' Compensation Law

When a client employer enters into an AEO agreement, the AEO is the employer of record and the succeeding employer for the purposes of determining a workers' compensation experience rating pursuant to the Workers' Compensation Law. Under the bill, the exclusive remedy for a worksite employee to recover for injuries, diseases, or death incurred in the course of and arising out of the employment relationship against either the AEO or the client employer are those benefits provided under that Law.[15]

The bill prohibits multiple, unrelated AEOs from combining together for purposes of obtaining workers' compensation coverage or for forming any type of self-insurance arrangement available under the AEO Law.[16]

---

[13] R.C. 4133.03(G), (H), and (I).

[14] R.C. 4133.05.

[15] R.C. 4133.04, with a conforming change in R.C. 4123.01.

[16] R.C. 4133.07(J).

AEOs and Ohio's Unemployment Compensation Law

The bill requires the Director of Job and Family Services (who administers Ohio's Unemployment Compensation Law) to adopt rules applicable to AEOs that are consistent with the requirements the Director adopted for PEO reporting of quarterly wages and contributions for shared employees for purposes of the Unemployment Compensation Law.

Under continuing law, the rules as applicable to PEOs must recognize the PEO as the employer of record of shared employees, however each shared employee of a single client employer must be reported under a separate and unique subaccount of the PEO to reflect the experience of the shared employees of that client employer. The Director is required to use a subaccount solely to determine experience rates for that individual subaccount on an annual basis and must recognize a PEO as the employer of record associated with each subaccount. The Director must combine the rate experience that existed on a client employer's account before entering into a PEO agreement with the experience accumulated as a PEO subaccount. The combined experience remains with the client account on termination of the PEO agreement. A PEO is required to provide a power of attorney or other evidence, which may be included as part of a PEO agreement, completed by each client employer of the PEO, authorizing the PEO to act on behalf of the client employer in accordance with the requirements of the Unemployment Compensation Law.[17]

Determining tax credits and other economic incentives

For purposes of determining tax credits and other economic incentives that are provided by Ohio or any political subdivision and based on employment, worksite employees under an AEO agreement are considered employees solely of the client employer.

A client employer is entitled to the benefit of any tax credit, economic incentive, or similar benefit arising as the result of the client employer's employment of worksite employees. If the grant or amount of any tax credit, economic incentive, or other benefit is based on number of employees, each client employer is treated as employing only those worksite employees employed by the client employer. Worksite employees working for other client employers of the AEO are not counted as employees for that purpose.

On request by a client employer or a state agency or department, an AEO must provide employment information reasonably required by the agency or department responsible for administration of the tax credit or economic incentive and necessary to support any request, claim, application, or other action by a client employer seeking the tax credit or economic incentive.

Worksite employees whose services are subject to sales tax are considered the employees of the client employer for purposes of collecting and levying sales tax on the services performed by the worksite employee. The bill specifies that it does not relieve a client employer or AEO of any sales tax liability with respect to its goods or services.

[17] R.C. 4141.24 (K) and (L).

Any tax assessed on a per capita or per employee basis is assessed against the client employer for worksite employees and against the AEO for AEO employees who are not worksite employees. For purposes of computing any tax that is imposed or calculated on the basis of total payroll, the AEO is eligible to use any small business allowance or exemption based solely on AEO employees who are not worksite employees with any client employer. A client employer's eligibility for the allowance or exemption is based solely on the client employer's employee payroll, including any worksite employees employed by the client employer.[18]

For purposes of a bid, contract, purchase order, or agreement entered into with the state or any political subdivision, a client employer's status or certification as a small, minority-owned, disadvantaged, or women-owned business enterprise or as a historically underutilized business is not affected as a result of the client employer entering into an AEO agreement or using the services of an AEO.[19]

Registration as an AEO

The bill requires an AEO operating in Ohio not later than 30 days after its formation to register with the Administrator on forms provided by the Administrator. The bill requires an AEO to register annually following initial registration on or before December 31 of each year.

Whoever recklessly violates the bill's registration requirement is guilty of a minor misdemeanor. Whoever knowingly violates the registration requirement is guilty of a second degree misdemeanor.[20]

Initial registration and each annual registration renewal are required to include all of the following:

1. A list of each of the AEO's client employers current as of the registration date for purposes of initial registration or current as of the date of annual renewal, or within 14 days of adding or releasing a client, that includes the client employer's name, address, federal tax identification number, and BWC risk number;
2. A fee as determined by the Administrator that may not exceed the cost of administration of the initial or renewal registration process;
3. The name or names under which the AEO conducts business;
4. The address of the AEO's principal place of business and the address of each office it maintains in Ohio;
5. The AEO's taxpayer or employer identification number;
6. A list of each state in which the AEO has operated in the preceding five years, and the name, corresponding with each state, under which the AEO operated in each state,

[18] R.C. 4133.06.

[19] R.C. 4133.14.

[20] R.C. 4133.99.

including any alternative names, names of predecessors, and if known, successor business entities;

7. The most recent financial statement prepared and audited as required by the bill (see "**Financial statement**" below);
8. A bond or letter of credit as required by the bill (see "**Security requirement**," below);
9. An attestation of the accuracy of the data submissions from the chief executive officer, president, or other individual who serves as the controlling person of the AEO.[21]

The bill allows the Administrator to issue a limited registration to an AEO under terms and for periods that the Administrator considers appropriate if the AEO provides all of the following items:

1. A properly executed request for limited registration on a form provided by the Administrator;
2. All information and materials required for registration as discussed in (1) to (6) above;
3. Information and documentation necessary to show that the AEO satisfies all of the following criteria:
   a. It is domiciled outside of Ohio.
   b. It is licensed or registered as an AEO in another state.
   c. It does not maintain an office in Ohio.
   d. It does not participate in direct solicitations for client employers located or domiciled in Ohio.
   e. It has 50 or fewer worksite employees employed or domiciled in Ohio on any given day.[22]

Financial statement

The financial statement required for registration as discussed above for initial registration must be the most recent financial statement of the AEO and must not be older than 13 months. For each registration renewal, the AEO is required to file the required financial statement within 180 days after the end of the AEO's fiscal year. An AEO may apply to the Administrator for an extension beyond that time if the AEO provides the Administrator with a letter from the AEO's auditor stating the reason for delay and the anticipated completion date.[23]

[21] R.C. 4133.07(A), (B), and (H).

[22] R.C. 4133.07(C).

[23] R.C. 4133.07(I).

Security requirement

As noted in "**Differences between a PEO and an AEO**," above, the bill differs from the PEO Law with respect to an AEO's security requirement. The bill requires an AEO to provide security in the form of a bond or letter of credit assignable to BWC in an amount necessary to meet the financial obligations of the AEO under the bill and under the Workers' Compensation Law. The Administrator is required to determine the amount of the security requirement for each registrant that must be at least $1 million. An AEO may appeal the amount of the security determined by the Administrator in accordance with the continuing Workers' Compensation Law appeals process for determinations made by an adjudicating committee appointed by the Administrator.

Notwithstanding the bill's security requirement, the bill specifies that an AEO that qualifies for self-insurance or retrospective rating for purposes of the Workers' Compensation Law is required to abide by the financial disclosure and security requirements pursuant to the Workers' Compensation Law in place of the AEO Law security requirements.[24]

Trade secrets

Except to the extent necessary for the Administrator to comply with the Administrator's statutory duties, all records, reports, client lists, and other information obtained from an AEO for purposes of registration are considered confidential trade secrets. The bill prohibits the information from being published or open to public inspection. Additionally, the bill specifies that the list of each of the AEO's client employers is a trade secret as that term is defined under Ohio's Uniform Trade Secrets Act.[25]

Working capital requirement and financial statement audits

As noted under "**Differences between a PEO and an AEO**," and "**Security requirement**," above, the bill differs from the PEO Law with respect to an AEO's security requirement not being contingent on a deficit in working capital. The bill requires an AEO to maintain positive working capital at initial or annual registration, as reflected in the financial statements submitted to BWC. "Working capital" means the excess of current assets over current liabilities as determined by generally accepted accounting principles.[26]

Similar to the PEO Law, if an AEO has a deficit in working capital as reflected in the financial statements submitted to BWC, the AEO is required to submit to the Administrator a quarterly financial statement for each calendar quarter during which there is a deficit in working capital, accompanied by an attestation of the chief executive officer, president, or other individual who serves as the controlling person of the AEO that all wages, taxes, workers' compensation premiums, and employee benefits have been paid by the AEO. The bill requires the bond or letter of credit required by the bill (discussed in "**Security requirement**," above) to be held by a depository designated by the Administrator for the purpose of securing

[24] R.C. 4133.07(D) and (E), with a conforming change in R.C. 4123.291.

[25] R.C. 4133.07(F) and (G) and 4133.01(D), by reference to R.C. 1333.61, not in the bill.

[26] R.C. 4133.01(E).

payment by the AEO of all taxes, wages, benefits, or other entitlements due or otherwise pertaining to worksite employees, if the AEO does not make those payments when due.[27]

The bill requires the financial statements as discussed under "**Financial statement**," above to be prepared in accordance with generally accepted accounting principles. Additionally, the bill requires the financial statements to be audited by an independent alternate public accountant[28] authorized to practice in the jurisdiction in which that accountant is located. The bill prohibits the report of the auditor from containing either of the following:

1. A qualification or disclaimer of opinion as to adherence to generally accepted accounting principles;
2. A statement expressing substantial doubt about the ability of the AEO to continue as a going concern.

However, if an AEO does not have at least 12 months of operating history on which to base financial statements, the financial statements shall be reviewed by a certified public accountant.

Notwithstanding the bill's requirement that the report of the auditor adhere to generally accepted accounting principles, if an AEO is a subsidiary or is related to a variable interest entity, the bill allows the AEO or AEO entity (it is unclear what an AEO entity is under the bill) to submit the AEO's required financial statements.[29]

The bill requires the Administrator to deny initial or annual registration to an applicant that does not meet the bill's working capital or financial statement requirements.[30]

Denial or revocation of registration

The bill allows the Administrator, in accordance with Ohio's Administrative Procedure Act, to deny or revoke the registration of an AEO and rescind its status as an employer on a finding that the AEO has done any of the following:

1. Obtained or attempted to obtain registration through misrepresentation, misstatement of a material fact, or fraud;
2. Misappropriated any funds of the client employer;
3. Used fraudulent or coercive practices to obtain or retain business or demonstrated financial irresponsibility;
4. Failed to appear, without reasonable cause or excuse, in response to a subpoena lawfully issued by the Administrator;

[27] R.C. 4133.08(A).

[28] In an apparent drafting error, the bill refers to an "independent alternate public accountant" where it should refer to an "independent certified public accountant" (R.C. 4133.08(B)).

[29] R.C. 4133.08(B).

[30] R.C. 4133.08(C).

5. Failed to comply with the requirements of the AEO Law.

The bill requires the Administrator to revoke an AEO's registration for failure to pay workers' compensation premiums.[31]

The Administrator's decision to deny or revoke an AEO's registration or to rescind its status as an employer is stayed pending the exhaustion of all administrative appeals by the AEO. The bill requires the Administrator to adopt rules that require that when an employer contacts BWC to determine whether a particular AEO is registered, if the Administrator has denied or revoked that AEO's registration or rescinded its status as an employer, and if all administrative appeals are not yet exhausted when the employer inquires, the appropriate BWC personnel must inform the inquiring employer of the denial, revocation, or rescission and the fact that the AEO has the right to appeal the Administrator's decision.

On revocation of an AEO's registration, each client employer associated with that AEO is required to do both of the following:

1. File payroll reports and pay workers' compensation premiums directly to the Administrator on its own behalf at a rate determined by the Administrator based solely on the client employer's claims experience;
2. File on its own behalf the appropriate documents or data with all state and federal agencies as required by law with respect to any worksite employee the client employer and the AEO shared.[32]

Lease termination notice

Not later than 30 days after the date on which an AEO agreement is terminated, the AEO is adjudged bankrupt, the AEO ceases operations in Ohio, or the AEO's registration is revoked, the bill requires the AEO to submit to the Administrator and each client employer associated with that AEO a completed workers' compensation lease termination notice form provided by the Administrator. The completed form must include all client payroll and claim information listed in a format specified by the Administrator and notice of all workers' compensation claims that have been reported to the AEO in accordance with its internal reporting policies.

If an AEO that is a self-insuring employer for purposes of the Workers' Compensation Law is required to submit a lease termination notice form, not later than 30 calendar days after the lease termination the bill requires the AEO to submit all of the following to the Administrator for any years necessary for the Administrator to develop a state fund experience modification factor for each client employer involved in the lease termination:

1. The payroll of each client employer involved in the lease termination, organized by manual classification and year;

[31] R.C. 4123.32.

[32] R.C. 4133.09.

2. The medical and indemnity costs of each client employer involved in the lease termination, organized by claim;

3. Any other information the Administrator may require to develop a state fund experience modification factor for each client employer involved.

The Administrator may require an AEO to submit the above information at additional times after the initial submission if the Administrator determines that the information is necessary for the Administrator to develop a state fund experience modification factor. The bill allows the Administrator to revoke or refuse to renew an AEO's status as a self-insuring employer if the AEO fails to provide the information requested by the Administrator. The bill requires the Administrator to use this information to develop a state fund experience modification factor for each client employer involved. Before entering into an AEO agreement with a client employer, the bill requires an AEO to disclose in writing to the client employer these reporting requirements that apply to the AEO and that the Administrator must develop a state fund experience modification factor for each client employer involved in a lease termination with an AEO that is a self-insuring employer.

The bill requires an AEO to report any transfer of employees between related AEO entities to the Administrator within 14 calendar days after the transfer date on a form prescribed by the Administrator. The AEO must include in the form all client payroll and claim information regarding the transferred employees listed in a format specified by the Administrator and a notice of all workers' compensation claims that have been reported to the AEO in accordance with the AEO's internal reporting policies.[33]

Occupational licensing laws

The bill specifies that nothing in the AEO Law exempts an AEO, client employer, or worksite employee from any applicable federal, state, or local licensing, registration, or certification statutes or regulations. An individual who is required to obtain and maintain a license, registration, or certification under law and who is a worksite employee is an employee of the client employer for purposes of obtaining and maintaining the appropriate license, registration, or certification as required by law. The bill specifies that an AEO does not engage in any occupation, trade, or profession that requires a license, certification, or registration solely by entering into an AEO agreement with a client employer or employing a worksite employee.

Under the bill, a client employer has the sole right of direction and control of the professional or licensed activities of worksite employees and of the client employer's business. The worksite employees and client employers remain subject to regulation by the board, commission, or agency responsible for licensing, registration, or certification of the worksite employees or client employers.[34]

[33] R.C. 4133.10.

[34] R.C. 4133.11, with a conforming change in R.C. 4740.131.

Collective bargaining agreements

Nothing contained in the AEO Law or in the AEO agreement may affect, modify, or amend any collective bargaining agreement that exists on the bill's effective date. Additionally, nothing in the AEO Law alters the rights or obligations of any client employer, AEO, or worksite employee under the National Labor Relations Act,[35] the Railway Labor Act,[36] or any other applicable federal or state law.[37]

Other limitations on the AEO Law and AEO agreements

The bill specifies that nothing in the AEO Law or any AEO agreement may do any of the following:

1. Diminish, abolish, or remove the rights and obligations of client employers and worksite employees existing before the effective date of the AEO agreement;
2. Affect, modify, or amend any contractual relationship or restrictive covenant between a worksite employee and any client employer in effect at the time an AEO agreement becomes effective;
3. Prohibit or amend any contractual relationship or restrictive covenant between a client employer and a worksite employee that is entered into after the AEO agreement becomes effective;
4. Create any new or additional enforcement right of a worksite employee against an AEO that is not specifically provided by the AEO agreement or the AEO Law.

Under the bill, an AEO has no responsibility or liability in connection with, or arising out of, any contractual relationship or restrictive covenant between a client employer and a worksite employee unless the AEO has specifically agreed otherwise in writing.[38]

Reports to the Tax Commissioner

Additionally, the bill requires every AEO to file a report with the Tax Commissioner within 30 days after commencing business in Ohio that includes all of the following information:

1. The name, address, number the employer receives from the Secretary of State to do business in Ohio, if applicable, and federal employer identification number of each client employer of the AEO;
2. The date that each client employer became a client of the AEO;
3. The names and mailing addresses of the chief executive officer and the chief financial officer of each client employer for taxation of the client employer.

[35] 29 United States Code (U.S.C.) 151 *et seq.*

[36] 45 U.S.C. 151.

[37] R.C. 4133.12.

[38] R.C. 4133.13.

Beginning with the calendar quarter ending after an AEO files the initial report required above, and every calendar quarter thereafter, the AEO must file an updated report with the Tax Commissioner. The AEO must file the updated report not later than the last day of the month following the end of the calendar quarter and must include all of the following information in the report:

- If an entity became a client employer of an AEO at any time during the calendar quarter, all of the information required under (1), (2), and (3) above for each new client employer;
- If an entity terminated the AEO agreement between the AEO and the entity at any time during the calendar quarter, the information described in (1) above for that entity, the date during the calendar quarter that the entity ceased being a client of the AEO, if applicable, or the date the entity ceased business operations in Ohio, if applicable;
- If the name or mailing address of the chief executive officer or the chief financial officer of a client employer has changed since the AEO previously submitted the initial or a quarterly report under the bill, the updated name or mailing address, or both, of the chief executive officer or the chief financial officer, as applicable;
- If none of the events described immediately above occurred during the calendar quarter, a statement of that fact.[39]

Similar to failing to file a report under the Income Tax Law[40] pursuant to continuing law, under the bill an AEO is prohibited from knowingly failing to file any return or report required to be filed, or filing or knowingly causing to be filed any incomplete, false, or fraudulent return, report, or statement, or aiding or abetting another in the filing of any false or fraudulent return, report, or statement. Whoever violates this prohibition is guilty of a fifth degree felony.[41]

Other tax provisions

The bill excludes from the definition of "gross receipts" for purpose of the Commercial Activity Tax Law,[42] property, money, and other amounts received by an AEO from a client employer in excess of the administrative fee charged by the AEO to the client employer.[43]

The bill provides that the compensation, including guaranteed payments, paid to a pass-through entity investor by an AEO hired by the pass-through entity is considered business income, and therefore is eligible for the business income deduction and 3% flat tax on business income, provided that the investor holds at least a 20% interest in the pass-through entity.[44]

---

[39] R.C. 5747.07(J).

[40] R.C. Chapter 5747.

[41] R.C. 5747.19 and 5747.99(A), not in the bill.

[42] R.C. Chapter 5751.

[43] R.C. 5751.01(F)(2)(x).

[44] R.C. 5733.40.

COMMENT

Federal payroll taxes are governed solely by federal law. Therefore, the bill's requirements with respect the filing of and liability for federal payroll taxes may not be enforceable.

Moreover, federal law specifies three circumstances where a third party (such as a PEO or AEO) may file employment taxes for a client employer and share in the liability for those taxes:

1. The third party is a certified professional employer organization (CPEO) under federal law;[45]
2. The third party is an agent designated under federal law;[46]
3. The third party is a payor designated under federal law.[47]

Under all of the above circumstances, federal law requires that the third party use its own tax identification number when filing federal payroll taxes for a client employer, not the client employer's number.[48]

The three circumstances described above appear to be the only circumstances under federal law in which a third party is liable for a client employer's federal payroll taxes. Because an AEO under the bill would not be filing in accordance with those circumstances, an AEO may not be liable for the taxes under federal law. However, the bill creates AEO liability for a client employer's federal payroll taxes under state law.[49] That liability would be enforceable in state courts.

HISTORY

Action	Date
Introduced	09-18-19

S0201-I-133/ar

[45] 26 U.S.C. 3511 and 7705.

[46] 26 Code of Federal Regulations (C.F.R.) 31.3504-1.

[47] 26 C.F.R. 31.3504-2.

[48] Internal Revenue Service, *CPEO Customers – What You Need to Know*, https://www.irs.gov/tax-professionals/cpeo-customers-what-you-need-to-know; Internal Revenue Service, *Third Party Payer Arrangements – Section 3504 Agents*, https://www.irs.gov/government-entities/federal-state-local-governments/third-party-payer-arrangements-section-3504-agents; 26 C.F.R. 31.3504-2(d)(1).

[49] R.C. 4133.03(B).