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**TITLE 646 DEPARTMENT OF WORKFORCE
DEVELOPMENT**

Proposed Rule
LSA Document #03-317

DIGEST

Adds 646 IAC 3-1-12 concerning the wage reporting requirements pertaining to professional employer organizations. Adds 646 IAC 3-1-13 concerning the respective liabilities of a professional employer organization and its client company for unemployment insurance contributions. Adds 646 IAC 3-4-11 concerning the definition of a professional employer organization with respect to qualifying as an employer. Amends 646 IAC 3-5-1 concerning corporate officers and directors. Effective 30 days after filing with the secretary of state.

646 IAC 3-1-12
646 IAC 3-1-13

646 IAC 3-4-11
646 IAC 3-5-1

SECTION 1. 646 IAC 3-1-12 IS ADDED TO READ AS FOLLOWS:

646 IAC 3-1-12 Initial and wage reporting requirements for professional employer organizations; separate location accounts; notice of termination

Authority: IC 22-4-18-1

Affected: IC 22-4-10-6

Sec. 12. (a) Each professional employer organization, under 646 IAC 3-4-11, that enters into a written agreement to provide services to a business entity during any calendar quarter shall submit to the department no later than the due date for the quarterly unemployment contribution report relating to that quarter, a report identifying the following:

- (1) The name of the business entity to which services are provided.**
- (2) The location of the business entity's operations.**
- (3) The unemployment insurance account number of the business entity (if any).**
- (4) The effective date of the written agreement to provide services.**

(b) For each separate client, the professional employer organization must obtain a location code to identify the employees related to that business entity's place of operation.

(c) The professional employer organization must include the respective client location codes with every quarterly wage or contribution report, or both, submitted to the department.

(d) A professional employer organization shall provide the department with written notification via registered mail of the termination of a written agreement to provide services to a business entity within ten (10) business days of such termination. (*Department of Workforce Development; 646 IAC 3-1-12*)

SECTION 2. 646 IAC 3-1-13 IS ADDED TO READ AS FOLLOWS:

646 IAC 3-1-13 Responsibility of professional employer organization to pay unemployment contributions; resumption of liability by client business entity upon termination of agreement between professional employer organization and client

Authority: IC 22-4-18-1

Affected: IC 22-4-32-21

Sec. 13. (a) For the duration of the agreement between a professional employer organization and a client business entity under 646 IAC 3-4-11, the professional employer organization, as the employer of the employees whom it engages to perform services for the client, is responsible for the payment of all unemployment contributions related to said employees for which it is liable under IC 22-4, this article, or any other state or federal laws or regulations relating to unemployment insurance that are applicable to employers on behalf of the client.

(b) Upon termination of the agreement between a professional employer organization and a client business entity under 646 IAC 3-4-11 and proper written notice to the department, the professional employer organization must promptly pay its outstanding liability, including contributions, interest, and penalties, that have accrued on payroll amounts paid by the professional employer organization to employees that it formerly engaged to perform services for the client business entity, up to the date of the termination of said agreement. The professional employer organization will remain responsible for contributions, interest, and penalties that may accrue after the date of the termination if it does not promptly pay its outstanding liability and properly notify the department in writing of such termination.

(c) The department shall maintain the employer account of the client business entity for a period of five (5) full calendar years after the beginning of the agreement with the professional employer organization. If the agreement between the professional employer organization and the client business entity terminates prior to the end of the five (5) year period, the client shall resume responsibility for all subsequent liability as the employer of its employees as of the date of the termination. The client business entity will revert to its previous employer account number and merit rate. If the agreement between the professional employer organization and the client business entity terminates after the five (5) year period has passed, the client business entity will assume a new employer account number and new employer merit rate. *(Department of Workforce Development; 646 IAC 3-1-13)*

SECTION 3. 646 IAC 3-4-11 IS ADDED TO READ AS FOLLOWS:

646 IAC 3-4-11 “Professional employer organization” defined

Authority: IC 22-4-18-1

Affected: IC 22-4-7-1

Sec. 11. “Professional employer organization” means any entity that contracts to provide the nontemporary, ongoing employee workforce of a client under a written agreement and that under contract and in fact:

- (1) has a right to hire and terminate the employees who perform services for the client;
- (2) sets the rate of pay of the employees, whether or not through negotiations;
- (3) has the obligation to and pays the employees from its own accounts;
- (4) has a general right of direction and control over the employees, including corporate officers, which right may be shared with the client to the degree necessary to allow the client to:
 - (A) conduct its business;
 - (B) meet any fiduciary responsibility; or
 - (C) comply with any applicable statutory or regulatory requirements;
- (5) with respect to all employees to whom it pays wages pursuant to an agreement with a client business entity:
 - (A) assumes responsibility for the unemployment insurance coverage;
 - (B) files all required reports;
 - (C) pays all required contributions or reimbursements for which it is liable; and
 - (D) otherwise complies with IC 22-4, this article, or any other state or federal laws or regulations relating to unemployment insurance that are applicable to employers on behalf of the client; and
- (6) provides written notice of the agreement between the professional employer organization and the client to the employees.

(Department of Workforce Development; 646 IAC 3-4-11)

SECTION 4. 646 IAC 3-5-1 IS AMENDED TO READ AS FOLLOWS:

646 IAC 3-5-1 Corporate officers and directors

Authority: IC 22-4-18-1

Affected: IC 22-4-8-1

Sec. 1. (a) An officer of a corporation who receives remuneration for his **or her** services as a corporate officer from a corporation is in employment during the entire term of his **or her** office, and such remuneration shall be considered as wages.

(b) A director of a corporation, as such, is not considered in employment, and fees paid for attendance at meetings of such board of directors shall not be deemed wages.

(c) A member of a board of directors is in employment, however, if he **or she** performs services for remuneration for the corporation other than those required by attendance at, and participation in, the meetings of the board of directors.

(d) The remuneration considered wages in subsection (a) shall be deemed wages paid by a professional employer organization, and the corporate officer of a client business entity shall be deemed the employee of the professional employer organization, in the event the services performed as a corporate officer are subject to a written agreement between the professional employer organization and the client business entity as provided in 646 IAC 3-4-11. (*Department of Workforce Development; Reg 301; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 880; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 36; filed Jul 22, 1953, 11:00 a.m.: Rules and Regs. 1954, p. 38; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 159; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1916; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) *NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-4-1) to the Department of Workforce Development (646 IAC 3-5-1) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 28, 2004 at 10:00 a.m., at the Indiana Government Center-South, 10 North Senate Avenue, Room 301-A, Indianapolis, Indiana the Department of Workforce Development will hold a public hearing on proposed rules pertaining to professional employer organizations and their responsibilities as employers under the unemployment insurance program laws. Copies of these rules are now on file at the Indiana Government Center-South, 10 North Senate Avenue, SE 105 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Alan Degner
Commissioner
Department of Workforce Development