

# Texas Provisions: Professional Employer Organizations

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# Texas Process: Professional Employer Organizations

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## Overview

- Statutory Provisions
  - ✓ Chapter 91, Texas Labor Code 2013 Overhaul
  - ✓ Texas Unemployment Compensation Act
  - ✓ Texas House Bill 3150
- PEO Regulation and Oversight
- PEOs and Unemployment Insurance in Texas
- Resources
- Questions



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## Statutory Provisions – Chapter 91, Texas Labor Code

- In 2013, the 83<sup>rd</sup> Texas Legislature, through SB 1286 overhauled the provisions of the principal governing statutes related to staff leasing companies.
- The overhaul updated 15-year-old law that no longer reflected the current business model of the PEO industry.
- Changes included nomenclature (staff leasing to PEO); clarification of covered employees and the co-employment nature of the PEO-client relationship; and health benefits and workers' compensation coverage provisions.



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## Statutory Provisions – Texas Unemployment Compensation Act

- The Texas Unemployment Compensation Act contains two provisions related to PEOs:
  - ✓ Defines PEOs, through reference, as entities that provide services through co-employment relationships in which all or a majority of the employees providing services to a client or to a division or work unit of a client are covered employees.
  - ✓ Mandates report-back requirements for covered employees of a PEO for purposes of UI eligibility.
- State Unemployment Tax Act coverage provisions are found in section 91.044 of the Texas Labor Code



## Statutory Provisions – PEO Covered Employee Report Back

### **Sec. 207.045.            Voluntarily Leaving Work**

i) A covered employee of a professional employer organization is considered to have left the covered employee's last work without good cause if the professional employer organization demonstrates that:

(1) at the time the employee's assignment to a client concluded, the professional employer organization, or the client acting on the professional employer organization's behalf, gave written notice and written instructions to the covered employee to contact the professional employer organization for a new assignment; and

(2) the covered employee did not contact the professional employer organization regarding reassignment or continued employment; provided that the covered employee may show that good cause existed for the covered employee's failure to contact the professional employer organization.

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## Statutory Provisions – Texas House Bill 3150

- In 2015, the Texas Legislature, through HB 3150, amended the PEO provisions of Texas Labor Code Chapter 91 to:
  - ✓ Allow a PEO to use its client's tax contribution towards the State's \$9,000 taxable wage amount;
  - ✓ Cover any other wages paid by another PEO to the employee in the same calendar year; and
  - ✓ Include a severability clause should the Department of Labor raise an issue with regard to Federal UC law.



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## Statutory Provisions – Texas House Bill 3150

- TWC currently has no data regarding the fiscal impact of HB 3150:
  - ✓ The bill was effective for wages paid beginning January 1, 2016 and;
  - ✓ The impact will likely be seen starting in the 2<sup>nd</sup> quarter since TWC would have collected on the \$9,000 wage base in the first quarter, whether from the client or the PEO.



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## PEO Regulation and Oversight

- PEOs operating in Texas must be licensed by the Texas Department of Licensing and Regulation (TDLR).
- TDLR provides oversight, administration, and enforcement of PEO licensing requirements and adopts administrative rules with regard to the operation of PEOs in Texas (16 Texas Administrative Code, Chapter 72).
- TDLR also provides a PEO license search function for potential clients and the general public.





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## PEOs and Unemployment Insurance in Texas

- With regard to SUTA coverage and the taxable wage base, PEOs in Texas may now use their client's tax contributions as well as wages paid by another PEO toward the State's \$9,000 UI wage base.
  - ✓ This was previously prohibited under State law since PEOs were not recognized as a successor entity.
- Texas is one of the 32 states which have some type of temporary worker/PEO covered employee reporting requirement.
  - ✓ Under Texas law, the PEO had to have given the covered employee written notice and instructions to contact the PEO for a new assignment in order for the worker to be disqualified if the worker, without good cause, failed to contact the PEO for reassignment.



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## PEOs and Unemployment Insurance in Texas

- Some common UI eligibility issues seen in Texas regarding the report-back requirement:
  - ✓ Temporary help firms operating as unlicensed PEOs
  - ✓ Employees of *bona fide* temporary help firms whose assignments don't coincide with statutory definitions of temporary work
  - ✓ Unclear written notice and reporting instructions



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## Resources

- Texas Labor Code

[Chapter 91 – Professional Employer Organizations](#)

[§91.044, Texas Labor Code – Unemployment Taxes \(SUTA Coverage\)](#)

[§207.045\(i\) Texas Labor Code – Reporting Requirements](#)

- TDLR Administrative Rules

[16 Texas Administrative Code, Chapter 72 – Professional Employer Organizations](#)

- [TDLR Professional Employer Organization Internet Site](#)



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## Questions



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