PROPOSED RULES – PEOs

For release 9/7/07

WAC 192-300-180 Joint accounts. ((Relates to)) RCW 50.24.170.
(1) Any two or more employers may form joint accounts (consolidate) for the purposes of reporting and dealing with the ((unemployment insurance division of the)) department.

(2) Joint accounts must be acceptable to the department and cannot:
   (((i))) (a) Impair any obligation by these employers to the ((unemployment insurance division)) department;
   (((ii))) (b) Interfere with the payment of benefits to ((workers)) claimants;
   (((iii))) (c) ((Result in any administrative inconvenience to the division)) Increase administrative costs to the department; or
   (((iv))) (d) Allow an employer to receive an experience rate to which it was not entitled.

(3) Joint accounts must provide for the maintenance of all records ((necessary under the Employment Security Act)) required under title 50 RCW.

(4) Joint accounts may not be formed until the department has approved in writing the consolidation plan ((of consolidation, in writing)).

(5) A joint account may not be established for a third-party payer under RCW 50.04.xxx (ESSB 5373, sec. 15), a common paymaster under RCW 50.04.xxx (ESSB 5373, sec. 16), or a professional employer organization under RCW 50.04.xxx (ESSB 5373, sec. 8) A joint account should never be confused with a common paymaster. A common paymaster is an independent third party who contracts with, and represents, two or more employers; and who files a combined tax report for those employers. Common paymaster does not meet the department’s definition of a joint account. We do not allow this type of reporting.

NEW SECTION. WAC 192-300-200 What is a professional employer organization (PEO)? [stat. eff. 7/22/07]

A “professional employer organization,” as further defined in RCW 50.04.xxx(1) (ESSB 5373, sec. 8), is a person or entity that enters into an agreement with one or more client employers to provide professional employer services in a coemployment relationship. The professional employer services may include human resource functions, risk management, payroll administration services, or unemployment insurance. Both the professional employer organization and the client employer are considered coemployers.

A “professional employer organization” includes entities that use the term “staff leasing company,” “permanent leasing company,” “registered staff leasing company,” “employee leasing company,” or “administrative employer” and provide professional employer services to client employers. It does not include independent contractors.
under RCW 50.04.140, temporary staffing services companies and services referral agencies under RCW 50.04.245, third-party payers under RCW 50.04.xxx (ESSB 5373, sec. 15), labor organizations, or common paymasters or common pay agents under RCW 50.04.xxx (ESSB 5373, sec. 16).

NEW SECTION. WAC 192-300-210 What requirements apply to professional employer organizations and client employers? [stat. eff. 7/22/07]

(1) Both professional employer organizations and client employers must comply with all applicable state laws. Professional employment agreements may not allocate rights and obligations between professional employer organizations and client employers other than in compliance with state law.

(2) Professional employer organizations must file a master business application with the state. They must register with the department under RCW 50.12.070 and obtain an employer reference number issued by the department (employment security number). This applies to professional employer organizations that have their own employees in this state and to professional employer organizations that have client employers who do business or have employees in this state.

(3) Professional employer organizations must ensure that their client employers are registered with the department under RCW 50.12.070. Professional employer organizations may only file papers to register the client employer if they also have filed with the department a power of attorney form signed by an authorized representative of the client employer.

(4) In order to represent a client employer to the department, a professional employer organization must file with the department a power of attorney in a form acceptable to the department. The signed power of attorney form may be sent by fax or in other electronic form acceptable to the department. The department will send a letter to the client employer confirming that the professional employer organization is authorized to represent it to the department.

(5) (a) Professional employer organizations shall provide the department with the following information for client employers: Names, addresses, unified business identifier numbers, employment security numbers, names and social security numbers of corporate officers, owners (if not a corporation or limited liability company), or limited liability company members, effective date the relationship between the professional employer organization and client employer began, and a business location in Washington state where payroll and business records for the client employer will be made available for review or inspection when requested by the department.

Information is due:

(i) By September 1, 2007, for all then existing client employers;
(ii) Within thirty days for any client employer registering with the department for the first time; and
(iii) Within thirty days whenever the professional employer organization adds a client employer.

(b) Professional employer organizations shall notify the department within thirty days of the termination of a relationship with a client employer. The notice shall include the name, address, unified business identifier number, employment security number, effective date, and contact information for the client employer.

(c) The department shall provide forms for the information required in this subsection. The department may require the professional employer organization to submit the information in an electronic format.

(6) Professional employer organizations shall maintain accurate payroll records for each client employer and make them available for review and inspection at a business location in Washington state when requested by the department. The location may vary for different client employers. Appropriate department facilities may be used for this purpose with the consent of the department. The department may require client employers or professional employer organizations to produce other business and financial records at an in-state location in the same manner it requires other employers to do so.

(7) Professional employer organizations shall file quarterly tax and wage reports for client employers they represent in a format specified by the department. Reports shall contain separate and distinct information for each client employer, regardless of the format used. Professional employer organizations may file a single electronic report for multiple client employers, separate paper or electronic reports for individual client employers, or a combination of electronic and paper filing.

(8) The department may provide an electronic system for filing quarterly tax and wage reports which allows a professional employer organization to make payments when filing for multiple client employers with a single payment for those employers.

(9) If the professional employer organization files separate quarterly tax and wage reports for individual client employers, it shall make separate payments for each employer.

NEW SECTION. WAC 192-300-220 What unemployment taxes apply to professional employer organizations and client employers? [EMERGENCY RULE, eff. 11/1/07] [stat. eff. 1/1/08]

(1) Effective January 1, 2008, each professional employer organization and each client employer shall be assigned an individual tax rate based on its own experience.

(2) (a) This subsection applies to professional employer organizations and client employers which have a coemployment relationship as of January 1, 2008.
(b) The tax rate for professional employer organizations and client employers shall be determined on the basis that the client employer transferred from the professional employer organization effective January 1, 2008.

(c) The client employer’s tax rate shall remain unchanged for the remainder of the rate year in which the transfer occurred.

(d) Beginning on January 1 of the year after the transfer, the client employer’s tax rate for each rate year shall be based on a combination of:
   (i) The client employer’s experience with payrolls and benefits; and
   (ii) The experience assigned to the professional employer organization which is attributable to the client employer, based on the percentage of employees transferred as of January 1, 2008, regardless of the date the client employer joined the professional employer organization.

   (d) (i) The professional employer organization’s tax rate on any payroll retained by the professional employer organization shall remain unchanged for the remainder of the year in which the transfer occurs.

   (ii) Beginning on January 1 of the year after the transfer, the professional employer organization’s tax rate for each rate year shall be based on its experience with payrolls and benefits as of the regular computation date for that rate year excluding the experience that has been attributed to client employers.

Comment: Under this system, the PEO and client employer would both have the PEO rate in 2008. After that, the experience of the percentage of employees who went from the PEO to the particular client employer would transfer. Here is an example for 2009, assuming that 2% of employees transferred from the PEO to the client employer as of Jan. 1, 2008:

   Client employer:
   - Its own 2008 experience
   - 2% of PEO 2007 experience
   - 2% of PEO 2006 experience
   - 2% of PEO 2005 experience

   PEO:
   - Its own 2008 experience
   - Remainder of PEO 2007 experience
   - Remainder of PEO 2006 experience
   - Remainder of PEO 2005 experience

NEW SECTION. WAC 192-300-230 What enforcement, penalties, and collection procedures apply to professional employer organizations and client employers? [stat. eff. 7/22/07 and 1/1/08]

(1) A professional employer organization may collect and make payments on behalf of a client employer, but the client employer remains liable for the payments of any taxes, interest, or penalties due.
(2) Unless the professional employer organization has already notified the department that it has not received payments from the client employer, the department shall first attempt to collect any payments due from the professional employer organization and shall not attempt to collect from the client employer until at least ten days from the date payment was due. Collection procedures shall follow the requirements of chapter 50.24 RCW.

(3) A professional employer organization may elect to provide a bond to cover payments due. Any bond for this purpose shall be filed with the department, shall be in a form satisfactory to the commissioner, and shall be in an amount not less than the amount of contributions due in the highest quarter of the preceding calendar year. A bond does not relieve the professional employer organization or its client employers of ultimate liability for payments due.

(4) In case of error by a professional employer organization in which reports are incomplete, inaccurate, or late, or if the professional employer organization makes a single payment that does not match the amount due for multiple employers, the department will initially apply any penalty and interest charges for all amounts due against the professional employer organization, regardless of whether the professional employer organization has employees in Washington. However, the client employer ultimately remains liable for any taxes, penalties, or interest due.

All client employers of a professional employer organization may be subject to the tax rate for delinquent taxpayers if a delinquency under WAC 192-320-035 cannot be assigned to a specific client employer.

(5) If a professional employer organization reports employees of a client employer as its own employees, a first violation will be considered an incorrect report for the professional employer organization and an untimely report for the client employer under RCW 50.12.220(2). A second violation will be considered knowing misrepresentation under RCW 50.12.220(3). A third violation will be considered grounds for revocation of the authority of a professional employer organization to act on behalf of its client employers.

(6) The department may revoke the authority of a professional employer organization to act on behalf of its client employers if the professional employer organization substantially fails to comply with the provisions of RCW 50.12.xxx (ESSB 5373, sec. 9). An order to revoke the authority of a professional employer organization shall be considered an appealable order comparable to an order and notice of assessment under RCW 50.32.030.