

1 EDUCATION AND LABOR CABINET

2 Office of Unemployment Insurance

3 (New Administrative Regulation)

4 787 KAR 1:370. Professional Employer Organizations.

5 RELATES TO: Professional Employer Organizations reporting and contribution obligations.

6 STATUTORY AUTHORITY: KRS 341.115, 336.248, 336.232

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary
8 to promulgate administrative regulations for the proper administration of KRS Chapter 341. KRS
9 336.248 requires professional employer organizations to make certain reports and contributions to
10 the unemployment insurance fund. This administrative regulation provides the procedures to file
11 client unemployment insurance wage and premium reports; the procedures to complete the
12 “Professional Employer Organization Application for Unemployment Insurance Employer
13 Reserve Account” form; the procedures to add or delete clients; the effect of successorship; and
14 the procedures to change the professional employer organization’s contribution election.

15 Section 1. Definitions

16 (1) The term “client” is defined by KRS 336.232(1).

17 (2) The term “covered employee” is defined by KRS 336.232(4).

18 (3) The term “professional employer organization” is defined by KRS 336.232(8).

19 Section 2. Professional Employer Organization reporting requirements

20 (1) A professional employer organization (hereafter “PEO”) shall keep separate records and
21 submit separate state unemployment insurance wage and premium reports to the Office of

1 Unemployment Insurance (OUI) using the Unemployment Insurance Self-Service Web
2 Portal located at <https://kewes.ky.gov>, with payments to report the covered employees of
3 each client by using the client's state employer account number as provided for in
4 subsection (2) and using the:

5 a) Assigned tax rate of the PEO, per KRS 336.248 (1)(a); or

6 b) Assigned tax rate of the client, as that term is defined in KRS 336.232(1), per
7 KRS 336.248(1)(b).

8 (2) (a) For each PEO having one (1) or more covered employees with a client in this state,
9 such PEO shall file an electronic application titled, UI-1P, Professional Employer
10 Organization Application for Unemployment Insurance Employer Reserve Account,
11 using the Unemployment Insurance Self-Service Web Portal located at
12 <https://kewes.ky.gov> to apply for an account number; the application shall include:

13 A. The federal identification number of the professional employer organization,
14 along with the name, address and phone number of the professional employer
15 organization;

16 B. The name, physical address and phone number of each client in a format as
17 prescribed by the Office of Unemployment Insurance;

18 C. The name of the client's owner, partners, corporate officers, limited liability
19 company members and managers, if board managed, or general partners;

20 D. The federal identification number of the client;

21 E. A brief description of the client's major business activity; and

22 F. Any other information which may be required by the Office of Unemployment
23 Insurance.

1 (b) The PEO shall notify the Office of Unemployment Insurance (OUI) in writing of any
2 additions or deletions of clients during the quarter in which such changes occur. Written
3 notifications shall be submitted to the OUI via the methods listed at <https://kewes.ky.gov> .

4 (c) In cases where the PEO has not been subject to the provisions set forth in KRS
5 336.248, the professional employer organization shall be assigned the new employer
6 premium rate based upon the reserve ratio of the PEO's industrial classification.

7 Section 3. Effect of successorship

8 A PEO shall not be considered a successor employer to any client and shall not acquire
9 the experience history of any client with whom there is not any common ownership,
10 management or control. The client, upon terminating its relationship with the PEO, shall
11 not be considered a successor employer to the PEO and shall not acquire any portion of
12 the experience history of the aggregate reserve account of the PEO with whom there is
13 not any common ownership, management or control. For purposes of this regulation, the
14 existence of a professional employer agreement, without other evidence of common
15 control, shall not constitute common ownership, management or control.

16 Section 4. Change of contribution election

17 KRS 336.248(5) permits a PEO to change its contribution election under KRS 336.248
18 (1)(a) or KRS 336.248(1)(b) only once. The change of contribution election shall be
19 submitted in writing via the methods listed at <https://kewes.ky.gov>.

READ AND APPROVED:

Greg Higgins
Executive Director
Office of Unemployment Insurance
Labor Cabinet

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on December 21, 2024, at 1:00 PM. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Charles Wheatley, Deputy General Counsel, Education and Labor Cabinet, 500 Mero St., 3rd Floor, Frankfort, Kentucky, 502-782-0555, Charles.wheatley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

787 KAR 001:370

Contact Person: Charles Wheatley

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Email: Charles.wheatley@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This new administrative regulation provides the procedures for professional employer organizations (PEO) for the following: how to file client unemployment insurance wage and premium reports; how to complete the "Professional Employer Organization Application for Unemployment Insurance Employer Reserve Account" form; how to add or delete clients; effect of successorship; and how to change the PEO's contribution election.

(b) The necessity of this administrative regulation:

This new administrative regulation is necessary to carry out KRS 336.248.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 341.115(1) authorizes the secretary promulgate administrative regulations necessary or suitable for the proper administration of KRS Chapter 341.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This new administrative regulation provides application procedures for a professional employer organization to establish an employer account with unemployment insurance; provides instruction on how to file client unemployment insurance wage and premium reports; how to add or delete clients; effect of successorship; and how to change the PEOs contribution election consistent with the requirements of KRS 336.248.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

This is a new administrative regulation, and therefore, no response is required.

(b) The necessity of the amendment to this administrative regulation:

This is a new administrative regulation, and therefore, no response is required.

(c) How the amendment conforms to the content of the authorizing statutes:

This is a new administrative regulation, and therefore, no response is required.

(d) How the amendment will assist in the effective administration of the statutes:

This is a new administrative regulation, and therefore, no response is required.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This new administrative regulation affects all professional employer organizations operating in the Commonwealth, and all employers utilizing professional employer organizations.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

The new administrative regulation provides the procedures for professional employer organizations ("PEO") to: establish an employer reserve account to facilitate the reporting and contribution obligations to the unemployment insurance fund by the PEO on behalf of their clients; provides PEOs instruction on how to file client unemployment insurance wage and premium reports for their clients; procedures for PEOs to add or delete clients in relation to their unemployment insurance obligations; effect of successorship; and how to change the PEOs contribution election consistent with the requirements of KRS 336.248.

(b) In complying with this administrative regulation or amendment, how much will it

cost each of the entities identified in question (3):

There is no additional cost to the professional employer organizations to comply with this new administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

This administrative regulation allows the professional employer organizations to establish an employer reserve accounts to file reports and make contributions required by the Office of Unemployment Insurance on behalf of their clients, thus facilitating the professional employer organizations compliance with their statutory obligations under KRS 336.248.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The new regulation creates no new costs to implement.

(b) On a continuing basis: This new regulation creates no new costs on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Current state allocations and federal funding will be used for the ongoing implementation and enforcement of this new administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

An increase in fees or funding will not be necessary to implement this new administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This new administrative regulation does not establish or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not)

Tiering is not applied. All professional employer organizations are treated equally.

FISCAL IMPACT STATEMENT

787 KAR 001:370

Contact Person: Charles Wheatley

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Email: Charles.wheatley@ky.gov

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 336.248 and KRS 336.232

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:

This administrative regulation impacts Office of Unemployment Insurance (OUI) within the Kentucky Education and Labor Cabinet.

(a) Estimate the following for the first year:

Expenditures: This new administrative regulation will create no new expenditures for the first year.

Revenues: This new administrative regulation will create no new revenues.

Cost Savings: This new administrative regulation will create no cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

The OUI anticipates no new expenditures, revenues, or cost savings in subsequent years as a result of this new administrative regulation.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None

(a) Estimate the following for the first year:

Expenditures: None

Revenues: None

Cost Savings: None

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

The OUI anticipates no new expenditures, revenues, or cost savings in subsequent years as a result of this new administrative regulation.

(4) Identify additional regulated entities not listed in questions (2) or (3):

No additional regulated entities are affected by this new administrative regulation.

(a) Estimate the following for the first year:

Expenditures: None

Revenues: None

Cost Savings: None

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

The OUI anticipates no new expenditures, revenues, or cost savings in subsequent years as a result of this new administrative regulation.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

This new administrative regulation has no fiscal impact on the OUI.

(b) Methodology and resources used to determine the fiscal impact:

Because there is no fiscal impact related to this new administrative regulation, no methodology or resources were necessary to determine fiscal impact.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)

The new administrative regulation does not create an overall negative or adverse major impact on OUI.

(b) The methodology and resources used to reach this conclusion:

Because there is no fiscal impact related to this new administrative regulation, no methodology or resources were necessary to determine fiscal impact.