

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title XXI. Labor and Industries (Ch. 149-154)
Chapter 149. Labor and Industries (Refs & Annos)

M.G.L.A. 149 § 197

§ 197. Rights and responsibilities under professional
employer agreement; notice; termination

Effective: August 10, 2018

Currentness

(a) Except as specifically provided in sections 192 to 203, inclusive, and in the professional employer agreement pursuant to this section, or under any subsequent written agreement or amendment, in each PEO relationship: (i) the client shall be entitled to exercise all rights, and shall be obligated to perform all duties and responsibilities, otherwise applicable to an employer in an employment relationship; (ii) the PEO shall be entitled to exercise only those rights, and obligated to perform only those duties and responsibilities, specifically required pursuant to sections 192 to 203, inclusive, or those set forth in the professional employer agreement; provided, however, that the rights, duties and obligations of the PEO with respect to any covered employee shall be limited to those arising pursuant to the professional employer agreement and those required pursuant to this chapter during the term of the PEO relationship with such covered employee; and (iii) unless otherwise expressly agreed to by the PEO and the client in a professional employer agreement, the client retains the exclusive right to direct and control the covered employees as is necessary to conduct the client's business, to discharge any of the client's fiduciary responsibilities or to comply with any licensure requirements applicable to the client or to the covered employees.

(b) Except as specifically provided in sections 192 to 203, inclusive, the PEO relationship between the client and the PEO, the relationship between the PEO and each covered employee and the relationship between the client and each covered employee shall be governed by the professional employer agreement.

Each professional employer agreement shall include: (i) the allocation of rights, duties and obligations as described in subsection (a); (ii) the extent that the PEO has assumed responsibility in the professional employer agreement to (A) pay such wages to covered employees, (B) withhold, collect, report and remit payroll-related and unemployment taxes; and (C) make payments for

employee benefits for covered employees; and (iii) a statement that the PEO shall have a right to hire and terminate a covered employee as may be necessary to fulfill the PEO's responsibilities pursuant to sections 192 to 203, inclusive, the professional employer agreement or as actually delegated by the client; provided, however, that the client shall have a right to hire, discipline and terminate a covered employee.

(c) Upon initiation of the PEO relationship: (i) the PEO shall provide the client a notice; (ii) the client shall post said notice in a conspicuous place at the client's worksite; and (iii) depending on the customary way that the client communicates with its employees, the client shall provide a hard copy or an electronic copy of the notice to the employees. The notice shall contain: (A) notice of the general nature of the co-employment relationship between and among the professional employer organization, the client and such covered employees, including the rights, responsibilities and duties that the PEO and the client have with respect to the covered employees; (B) the name and telephone number of the department; (C) the name and telephone number of the PEO; (D) disclosure if the benefit plan is self-funded or is not fully insured; (E) the name of the workers' compensation carrier and the policy number; (F) whether the PEO or the client maintains the workers' compensation policy and performs safety inspections at the workplace; (G) a phone number or contact to report injuries and hazardous worksite conditions; and (H) a multilingual tagline on the notice provided by the department in languages required under clause (iii) of subsection (d) of section 62A of chapter 151A that includes the name and telephone number of the department and states that the notice contains important information that should be translated.

(d) Upon termination, and in accordance with applicable federal and state law, the PEO shall provide covered employees with written notice of the termination of the PEO relationship. The notice may be provided electronically if that is the customary manner in which the client and the PEO communicate with the covered employee.

(e) Except to the extent otherwise expressly provided by the applicable professional employer agreement: (i) a client shall be solely responsible for the quality, adequacy or safety of the goods or service produced or sold in the client's business; (ii) a client shall be solely responsible for directing, supervising, training and controlling the work of the covered employees with respect to the business activities of the client and solely responsible for the acts, errors or omissions of the covered employees with regard to such activities; (iii) a client shall be solely responsible for the payment of any wages to covered employees and to make payments for employee benefits for covered employees; (iv) a client shall be solely responsible for safety, risk and hazard control at the worksite and compliance with related state and federal laws; (v) upon termination of the PEO relationship, the client shall be solely responsible for providing employees with information regarding the handling of claims and benefits; (vi) a client shall not be liable for the acts, errors

or omissions of a PEO, or of any covered employee of the client and a PEO, when such covered employee is acting under the express direction and control of the PEO; (vii) a PEO shall not be liable for the acts, errors or omissions of a client, or of any covered employee of the client, when such covered employee is acting under the express direction and control of the client; (viii) nothing in this subsection shall serve to limit any contractual liability or obligation specifically provided in the written professional employer agreement; (ix) a covered employee shall not be, solely as the result of being a covered employee of a PEO, an employee of the PEO for purposes of general liability insurance, fidelity bonds, surety bonds, employer's liability that is not covered by workers' compensation or liquor liability insurance carried by the PEO unless the covered employees are included by specific reference in the professional employer agreement and applicable prearranged employment contract, insurance contract or bond; (x) nothing in this section shall in any way limit the liabilities and obligations of any PEO or client to covered employees as required by this chapter; (xi) the client shall be solely responsible for notifying the PEO of all covered employees; provided, however, that where the client has failed to notify the PEO, the client will be deemed to be the sole employer of the employee; and (xii) the client shall retain all records in compliance with state and federal law including, but not limited to, section 52C of chapter 149, section 15 of chapter 151 and 29 CFR Part 516; provided, however, that if an obligation under this clause is allocated to a PEO under the professional service agreement, the PEO shall disclose to a covered employee, upon request, the documents retained under this clause as required by state and federal law.

Credits

Added by St.2018, c. 228, § 22, eff. Aug. 10, 2018.

M.G.L.A. 149 § 197, MA ST 149 § 197

Current through Chapter 46, except Chapter 41 of the 2019 1st Annual Session

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