

31A-40-202 Professional employer agreement -- Specific responsibilities.

- (1) Except as specifically provided in this chapter, a coemployment relationship between a client and a professional employer organization, and between each coemployer and a covered employee, is governed by a professional employer agreement.
- (2)
 - (a) As used in this Subsection (2), unless a professional employer organization expressly agrees to assume liability for the payment in a professional employer agreement, the term "compensation to a covered employee" does not include an obligation between a client and a covered employee for a payment beyond or in addition to the covered employee's salary, draw, or regular rate of pay, such as:
 - (i) a bonus;
 - (ii) a commission;
 - (iii) severance pay;
 - (iv) deferred compensation;
 - (v) profit sharing; or
 - (vi) pay for vacation, sick, or other paid time off.
 - (b) A professional employer agreement shall include the following:
 - (i) the allocation of a right or obligation consistent with Section 31A-40-201;
 - (ii) a requirement that the professional employer organization shall:
 - (A) pay compensation to a covered employee; and
 - (B) withhold, collect, report, and remit one or more of the following:
 - (I) a payroll-related tax; and
 - (II) an unemployment insurance contribution; and
 - (C) to the extent that the professional employer organization assumes responsibility in the professional employer agreement, make payments for an employee benefit of a covered employee;
 - (iii) that the professional employer organization has a right to hire, discipline, or terminate a covered employee to the extent necessary to fulfill the professional employer organization's obligations under the professional employer agreement and this chapter;
 - (iv) that the client has a right to hire, discipline, and terminate a covered employee; and
 - (v) the responsibility of the client or professional employer organization related to obtaining workers' compensation coverage for a covered employee in a manner consistent with Section 31A-40-209.
- (3) A professional employer organization shall provide written notice to a covered employee of the general nature of the coemployment relationship between and among the professional employer organization, the client, and the covered employee.
- (4)
 - (a) Except to the extent otherwise expressly provided by the professional employer agreement:
 - (i) a client is solely responsible for the quality, adequacy, or safety of a good or service produced or sold in the client's business;
 - (ii) a client is solely responsible for directing, supervising, training, and controlling the work of a covered employee with respect to:
 - (A) a business activity of the client;
 - (B) the discharge of a fiduciary responsibility of the client; or
 - (C) compliance with a licensure, registration, or certification requirement applicable to the client or to the covered employee;
 - (iii) a client is solely responsible for an act, error, or omission of a covered employee with regard to a circumstance described in Subsection (4)(a)(ii);

- (iv) a client is not liable for an act, error, or omission of:
 - (A) a professional employer organization; or
 - (B) a covered employee, if the covered employee is acting under the express direction and control of the professional employer organization; and
- (v) a professional employer organization is not liable for an act, error, or omission of:
 - (A) a client; or
 - (B) a covered employee, if the covered employee is acting under the express direction and control of the client.
- (b) This Subsection (4) may not be interpreted to limit a contractual liability or obligation specifically provided in a professional employer agreement.
- (c)
 - (i) Unless the conditions of Subsection (4)(c)(ii) are met, a covered employee is not, solely as the result of being a covered employee of a professional employer organization, an employee of the professional employer organization for purposes of one or more of the following carried by the professional employer organization:
 - (A) general liability insurance;
 - (B) a fidelity bond;
 - (C) a surety bond;
 - (D) an employer liability that is not covered by workers' compensation; or
 - (E) liquor liability insurance.
 - (ii) A covered employee is considered an employee of the professional employer organization for a purpose described in Subsection (4)(c)(i) if the covered employee is included by specific reference for that purpose in:
 - (A) the professional employer agreement; and
 - (B) a prearranged employment contract, insurance contract, or bond.

Enacted by Chapter 318, 2008 General Session