

31A-40-204 Rights and obligations unaffected -- Licensed, registered, or certified occupations or professions.

- (1) This chapter does not and a professional employer agreement may not affect, modify, or amend a:
 - (a) collective bargaining agreement; or
 - (b) right or obligation of a client, professional employer organization, or covered employee under:
 - (i) the federal National Labor Relations Act, 29 U.S.C. Sec. 151 et seq.;
 - (ii) the federal Railway Labor Act, 45 U.S.C. Sec. 151 et seq.; or
 - (iii) a state law similar to a federal law described in this Subsection (1)(b).
- (2)
 - (a) A professional employer agreement may not:
 - (i) diminish, abolish, or remove a right of a covered employee to a client or an obligation of the client to a covered employee that exists on or before the day on which the professional employer agreement takes effect;
 - (ii) affect, modify, or amend a contractual relationship or restrictive covenant between a covered employee and a client in effect on the day on which the professional employer agreement takes effect; or
 - (iii) prohibit or amend a contractual relationship or restrictive covenant that is entered into between a covered employee and a client after the day on which the professional employer agreement takes effect.
 - (b) A professional employer organization is not responsible or liable in connection with, or arising out of, a contractual relationship or restrictive covenant described in Subsection (2)(a) unless the professional employer organization specifically agrees to be responsible in writing.
- (3) This chapter does not and a professional employer agreement may not create an enforceable right of a covered employee against a professional employer organization that is not specifically provided by the professional employer agreement or this chapter.
- (4)
 - (a) Except as provided in this Subsection (4), this chapter does not and a professional employer agreement may not affect, modify, or amend a state, local, or federal license, registration, or certification requirement applicable to a client or a covered employee.
 - (b) If a covered employee is required by federal or state law to be licensed, registered, or certified, the covered employee is considered to be solely an employee of the client for purposes of the license, registration, or certification requirement.
 - (c) A professional employer organization is not considered to engage in an activity that is subject to licensing, registration, or certification by a local, state, or federal government or is regulated by a local, state, or federal government solely by entering into or maintaining a coemployment relationship with a covered employee who is:
 - (i) subject to licensing, registration, or certification; or
 - (ii) regulated by the local, state, or federal government.
 - (d) A client has the sole right to direct or control a professional, licensed, registered, or certified activity of:
 - (i) a covered employee; and
 - (ii) the client's business.
 - (e) Notwithstanding this chapter, a covered employee and client remain subject to regulation by the local, state, or federal government responsible for licensing, registration, or certification of the covered employee or client.

Enacted by Chapter 318, 2008 General Session

