

Karin Brownlee, Secretary

Sam Brownback, Governor

To: House Committee on Commerce and Labor

From: Kathie Sparks, Deputy Secretary
Kansas Department of Labor

RE: SB 413 – Professional Employer Organization (PEO) Act

Good Morning Chairman Brown and Committee Members, thank you for allowing me to appear as an opponent of SB 413. The major concerns the Department has with SB 413 and the reasons for those concerns are as follows:

- Page 1 lines 13-34. This section establishes a "co-employment relationship" which by agreement would determine all PEO obligations even when they are the responsibility of the employer (client). The employer (client) could under the terms of the agreement transfer all responsibility for taxes, benefits and wage payments to the PEO. However, say the PEO doesn't pay the taxes, purchase the benefits, i.e. insurance, or pay the wages. Who does the employee or government come to for the payments? The other side of this would be the PEO is the responsible party but the employer (client) does not pay the PEO for the taxes, wages, or benefits but the employer (client) has waived his responsibility in the agreement.

Employment security law is premised on the fact that employment for unemployment purposes, is based upon the concept of control or the right to control whether that control is actually exercised or not; therefore, for purposes of UI and Workers Compensation we would come against both the employer and the PEO.

- Page 9, lines 33-37. This section states that 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 employee; which is in direct conflict with the bullet above. So which is it? I believe this bill would set up a built in conflict.
- Page 9, line 5. This establishes a flat fee, bond or letter of credit of only \$100,000 no matter the size of the covered payroll. The amount should be based on the covered payroll especially since the bill states, page 9 lines 8-12, "Such bond shall be held by a depository designated by the secretary securing payment by the professional employer organization of all taxes, wages, benefits or other entitlement due to or with respect to covered employees, **if the professional employer organization does not make such payments when due.** The \$100,000 in most cases not cover even one payroll period.
- Page 8, lines 8-16. This establishes an initial application fee of \$1,000, disregarding again the size of the covered payroll of the PEO and renewal application fee not to exceed \$500. This fee is to operate the program for the state. First, the initial application fee and the renewal fee should be based on a sliding scale and again based

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on the covered payroll would be our recommendation. Currently in Kansas, we have been told that there are twelve operating PEO's and \$12,000 would not begin to cover our cost to operate this program. In addition, it does not seem appropriate to charge a PEO with a covered annual payroll of only \$500,000 the same as a PEO with \$125.0 million covered payroll.

I'm happy to stand for any question.