

Legislative Analysis



WORKER'S COMPENSATION LIABILITY FOR OUTSOURCED WORKERS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4544 (H-3) as referred to second committee
Sponsor: Rep. Brandt Iden

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4545 (H-3) as referred to second committee
Sponsor: Rep. Jim Lilly

1st Committee: Commerce and Tourism
2nd Committee: Ways and Means
Complete to 8-14-19

SUMMARY:

House Bills 4544 and 4545 would respectively amend the Worker's Disability Compensation Act and the Michigan Professional Employer Organization Regulatory Act to require professional employer agreements signed between outsourcing firms and their clients to clearly delineate which one is liable for paying out worker's compensation for the employees of the professional employer organization (PEO).

House Bill 4545 would amend the Michigan Professional Employer Organization Regulatory Act to require that, beginning on the bill's effective date, all professional employer agreements signed between PEOs and their clients must allocate to one party or the other the responsibility to assume primary liability for paying worker's compensation to the workers outsourced in the agreement. Whichever party gets primary liability would have to provide proof to the Worker's Compensation Agency, in a manner determined by the agency, that it has assumed primary liability. This provision would not be construed in a way that affects the responsibilities of the client and the PEO under the act.

The bill is tie-barred to HB 4544, which means that it cannot take effect unless HB 4544 is also enacted.

MCL 338.3737

House Bill 4544 would amend the Worker's Disability Compensation Act to state that both of the following apply to a coemployer that assumed primary liability for worker's compensation under a professional employer agreement:

- For purposes of section 131, which defines "employee" and "employer" for purposes of generally limiting an injured employee's remedy against an employer to the recovery of benefits under the act, a covered employee's employer would include both the PEO and the client. This would not apply, however, to a coemployer that has not secured the payment of compensation required by the act.
- Claims submitted under the act by covered employees for compensation or other benefits would be the liability of the carrier of the coemployer that assumed primary

liability for compensation and benefits under the professional employer agreement or, if the coemployer were self-insured, the liability of that coemployer. If, however, a covered employee were injured and the coemployer with primary liability had not secured the payment of compensation, then the claim submitted by the covered employee would be the liability of the other coemployer's carrier or, if the other coemployer were self-insured, of the other coemployer.

The bill would use the definitions of "client," "coemployer," "covered employee," "PEO," and "professional employer agreement" that are found in the Michigan Professional Employer Organization Regulatory Act.¹

Proposed MCL 418.123

Each bill would take effect 90 days after it is enacted.

FISCAL IMPACT:

House Bills 4544 and 4545 would not have a fiscal impact on the Department of Licensing and Regulatory Affairs (LARA) or any other unit of state or local government.

POSITIONS:

A representative of the National Association of Professional Employer Organizations testified in support of the bills. (5-16-19)

Human Capital, LLC, indicated support for the bills. (5-16-19)

A representative of the Michigan Association of Justice testified in opposition to the bills. (5-16-19)

The Department of Licensing and Regulatory Affairs indicated opposition to the bills as introduced. (6-6-19)

Legislative Analyst: Nick Kelly
Fiscal Analyst: Marcus Coffin

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

¹ <http://www.legislature.mi.gov/documents/mcl/pdf/mcl-338-3723.pdf>