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Amendments to the Texas PEO Regulations Effective 1/1/2014

Effective Date of Changes:

The revisions to the TDLR's regulations governing the PEO licensing statute went into effect as of January 1, 2014.

Why the Changes?

The changes to the regulations follow up on the recent amendments and modernization of the Texas PEO statute. The changes to the regulations mainly bring the regulations in line with the updated Texas PEO statute.

Key Changes

- Update the regulations to use "Professional Employer Organization" as the preferred description, rather than staff leasing.
- Employees covered under the PEO arrangement are now called "Covered Employees" rather than assigned employees as under the old statutory language. This is better term, as the PEO does not typically play a role in locating and assigning employees to a client.
- 72.70(b) updates the notices which must be given by the PEO to the Covered Employees. The required notice now includes: general nature of the PEO arrangement; how to contact the TDLR; that the client is solely responsible for the payment of certain kinds of compensation, such as bonuses. The rule explicitly permits the electronic signing of the notice.
- The required notice to the covered employees must include notice that the client is solely obligated for compensation owed under any written contract solely between the client and the covered employee. This notice is important, as it supports the PEO in defending against potentially large bonus or commission plan claims by covered employees.
- 72.70(c) now expressly permits the PEO to process payments for compensation for which it has not contracted to pay. This should enable the PEO to clearly have the ability to process bonus checks, without losing the argument that only the Client is responsible for funding and administering the bonus.

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- The updated regulation now specifically requires that the employee notices must be kept for not less than two years after the end of employment.
- Like the amended statute, the revised regulations acknowledge that a PEO may offer a self funded health plan.

Action Items

1. Review existing employee agreement or employee notice forms.
2. Update employee notice language to cover all of the requirements listed in 16 TAC 72.70(b).
3. Reevaluate business processes related to payment of bonus checks, etc on behalf of clients. Make sure that proper notice is given to the covered employees that bonuses, etc are solely the responsibility of the client and that the PEO is not responsible for funding the payment or administering the bonus plan, etc.