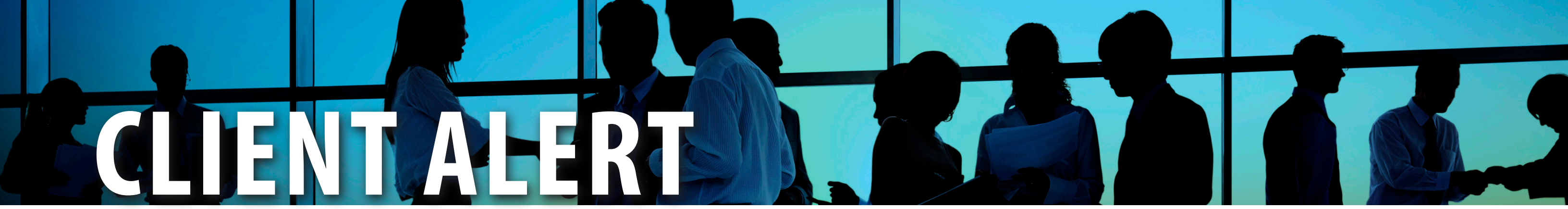

Ohio Governor Signs "Alternate Employer Organization" Legislation

By Terrence O'Donnell

SB 201 Codifies Minute Men's Innovation on Traditional PEOs

On December 18, 2020, Ohio Governor Mike DeWine signed Senate Bill 201 into law, which establishes a first-of-its-kind in the nation, new HR services entity called an Alternate Employer Organization ("AEO"). The new law takes effect March 24, 2021.

Sponsored by Senator Matt Dolan (R-Chagrin Falls) and championed by Representative Tom Patton (R-Strongsville), the bill codifies a model pioneered by Ohio self-insured Professional Employer Organization ("PEO") **Minute Men Select** headquartered in Cleveland.

Bottom Line: SB 201 permits a PEO to file its client-employer payroll taxes *on the tax identification number of the client-employer* (as opposed to the PEO itself). Entities choosing this option will no longer be known as PEOs, but rather AEOs—and similarly licensed by the Ohio Bureau of Workers Compensation. Like PEOs, the AEO retains liability for the payment of taxes and wages as a co-employer and is eligible to self-insure for purposes of Ohio workers' compensation.

Background: Numerous Ohio businesses supported SB 201, favoring a choice to gain a heightened level of transparency with respect to their tax liabilities. When a company enters into a PEO relationship, both the PEO and the client-employer accept liability for tax obligations. While the PEO model has proven popular, some challenges have been experienced with respect to federal payroll tax obligations given that the PEO (through the use of its own EIN) serves as the party responsible for interfacing with and reporting to the IRS, and receiving communication back.

Some PEO customers expressed a preference to be notified directly by the IRS should any issue arise with the payment of taxes (i.e., late payment, underpayment, overpayment). SB 201's solution is to create the AEO, reporting payroll under the client-employer's tax identification number, ensuring that the IRS immediately alerts the individual company (rather than the PEO) should any tax concerns arise.

Similarly, some employees of companies that utilize a PEO report challenges from time to time. For example, in seeking a home or car loan, they might report the name of their client-employer to the lender, who struggles to confirm the borrower's income due to use of the PEO tax identification number.

Bill Analysis: Under the new law, the AEO (like a PEO) takes responsibility for the following:

- Processing payroll
- Paying all wages (not contingent on receipt of payment from the client-employer)
- Paying all applicable state and federal payroll tax (not contingent on receipt of payment from the client-employer)
- Maintaining workers compensation coverage

To ensure the AEO remains jointly and severally responsible for taxes and wages (despite filing taxes under the client-employer's EIN), the bill contains the following safeguards:

- An AEO is liable under state law for payment of wages and taxes. (A non-compliant AEO can lose its state license to operate). R.C. 4133.03(C).
- The contract between the AEO and the client-employer must include a provision that the AEO remains jointly and severally liable for all applicable taxes. R.C. 4133.03(K).
- An AEO is required to keep a record any time a client-employer fails to transmit payment to the AEO in an amount sufficient to cover wages and taxes—and a record that the AEO nonetheless paid both. The Ohio Bureau of Workers' Compensation can audit the AEO to ensure compliance and revoke licensure if unpaid. R.C. 4133.03(C).
- AEOs may not sponsor a group health plan but may "assist a client employer in procuring a health benefit plan as a broker or otherwise." R.C. 4133.07(M)(1).
- The same company may not own and operate both a PEO and an AEO, but rather must choose between one or the other and file all of its Ohio client-employer taxes in the same manner. R.C. 4133.07(K).

The Ohio Bureau of Workers Compensation is expected to adopt rules to implement the legislation and recognize Alternate Employer Organizations.

ABOUT THE AUTHOR

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