§ 922. General requirements and provisions. 1. A professional employer organization shall meet the following standards:

(a) Have a written professional employer agreement between the client and the professional employer organization setting forth the responsibilities and duties of each party. The professional employer agreement shall contain a description of the type of services to be rendered by the professional employer organization and the respective rights and obligations of the parties and the professional employer agreement shall also provide that the professional employer organization:

(i) reserves a right of direction and control over the worksite employees. However, the client shall maintain such direction and control over the worksite employees as is necessary to conduct the client's business and without which the client would be unable to conduct its business, discharge any fiduciary responsibility which it may have, or comply with any applicable licensure;

(ii) assumes responsibility for the withholding and remittance of payroll-related taxes and employee benefits for worksite employees and for which the professional employer organization has contractually assumed responsibility from its own accounts, as long as the professional employer agreement between the client and professional employer organization remains in force; and

(iii) retains authority to hire, terminate and discipline the worksite employees.

(b) Provide written notice of the general nature of the relationship between the professional employer organization and the client to the worksite employees located at the client worksite.

2. A professional employer organization shall be considered an employer for the purposes of withholding state income tax of the worksite employees pursuant to section six hundred seventy-one of the tax law.

3. As long as the professional employer organization's professional employer agreement with a client remains in force, the professional employer organization shall have a right to and shall assume the following responsibilities:

(a) pay wages and collect, report and remit employment taxes of its worksite employees from its own accounts;

(b) pay unemployment insurance as required by the unemployment insurance law;

(c) secure and provide required workers' compensation coverage for its worksite employees either in its own name or in its client's name.

4. Both the client and the professional employer organization shall be considered the employer for the purpose of coverage under the workers' compensation law and both the professional employer organization and its client shall be entitled to protection of the exclusive remedy provision of the workers' compensation law irrespective of which entity secures and provides such workers' compensation coverage.

5. A registered professional employer organization shall be deemed for purposes of state law an employer for purposes of sponsoring welfare benefit plans for its worksite employees. Worksite employees participating in that professional employer organization's fully insured welfare benefit plan or plans shall be considered employees participating in a single employer welfare benefit plan or plans. A fully insured welfare benefit plan or plans offered by a registered professional employer organization to its employees and/or worksite employees shall not be considered for purposes of state law a multiple employer welfare arrangement.

6. Subject to any contrary provisions contained in the written professional employer agreement between the client and the professional employer organization, the professional employer arrangement that exists between a professional employer organization and its client or clients shall be interpreted for the purposes of insurance and bonding as follows:

(a) Nothing in this section shall serve to limit any contractual liability, as may be expressly agreed upon, between the professional employer organization and the client, nor shall this section in any way limit the liabilities of any professional employer organization or client as defined elsewhere in this article; and

(b) Worksite employees are not automatically deemed pursuant to this

section to be employees of the professional employer organization for purposes of general liability, insurance, automobile insurance, fidelity bonds, surety bonds, employer's liability which is not covered by workers' compensation, or liquor liability insurance carried by the professional employer organization unless the worksite employees are included by specific reference in the professional employer agreement and applicable prearranged employment contract, insurance contract or bond.

7. The sale of professional employer services in conformance with the provisions of this article shall not constitute the sale of insurance for purposes of the insurance law. However, no professional employer organization shall function or hold itself out as an insurer, insurance broker or insurance agent unless appropriately licensed by this state.

8. Worksite employees whose services are subject to sales tax shall be deemed the employees of the client for purposes of collecting and levying sales tax on the services performed by the worksite employee.