



## Ohio Revised Code

### Section 4133.03 Alternate employer organization duties.

Effective: September 28, 2021

Legislation: House Bill 75

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(A) The alternate employer organization with whom a worksite employee is employed shall do all of the following:

- (1) Process and pay all wages and applicable state and federal payroll taxes associated with the worksite employee, irrespective of payments made by the client employer, pursuant to the terms and conditions of compensation in the alternate employer organization agreement between the alternate employer organization and the client employer;
- (2) Pay all related payroll taxes associated with a worksite employee independent of the terms and conditions contained in the alternate employer organization agreement between the alternate employer organization and the client employer;
- (3) Maintain workers' compensation coverage, pay all workers' compensation premiums, and manage all workers' compensation claims, filings, and related procedures associated with a worksite employee in compliance with Chapters 4121. and 4123. of the Revised Code, except that when worksite employees include family farm officers, ordained ministers, or corporate officers of the client employer, payroll reports shall include the entire amount of payroll associated with those persons;
- (4) Annually provide written notice to each worksite employee it assigns to perform services to a client employer of the relationship between and the responsibilities of the alternate employer organization and the client employer;
- (5) Maintain complete records separately listing the manual classifications of each client employer and the payroll reported to each manual classification for each client employer for each payroll reporting period during the time period covered in the alternate employer organization agreement;
- (6) Maintain a record of workers' compensation claims for each client employer;



- (7) Make periodic reports, as determined by the administrator of workers' compensation, of client employers and total workforce to the administrator;
  - (8) Report individual client employer payroll, claims, and classification data under a separate and unique subaccount to the administrator;
  - (9) Within fourteen days after receiving notice from the bureau of workers' compensation that a refund or rebate will be applied to workers' compensation premiums, provide a copy of that notice to any client employer to whom that notice is relevant;
  - (10) Annually certify to the administrator that all client employer federal payroll taxes have been timely and appropriately paid, and on request of the administrator, provide proof of payment.
- (B) In any alternate employer organization agreement between an alternate employer organization and a client employer, the client employer shall be listed as the employer on the W-2 forms of the worksite employees, but the alternate employer organization remains jointly and severally liable for all applicable local, state, and federal withholding and employer-paid taxes with respect to the worksite employees.
- (C) An alternate employer organization shall file federal payroll taxes entirely under the tax identification number of the client employer, but shall remain jointly and severally liable for all wages and payroll taxes associated with worksite employees. In addition, if any of the alternate employer organization's clients fail to transmit payment to the alternate employer organization sufficient to cover payment of all wages and employer-paid taxes, the alternate employer organization shall keep a record of the nonpayment or underpayment and a record that the alternate employer organization nonetheless paid the wages and taxes owed.
- (D) An alternate employer organization may not provide partial or split workers' compensation coverage for worksite employees in which the client employer provides that coverage for some, but not all, of the client employer's worksite employees. On entering into an alternate employer organization agreement, all worksite employees shall be covered under the workers' compensation policy of the alternate employer organization.



(E) The alternate employer organization with whom a worksite employee is employed shall provide a list of all of the following information to the client employer on the written request of the client employer:

(1) All workers' compensation claims, premiums, and payroll associated with that client employer;

(2) Compensation and benefits paid and reserves established for each claim listed under division (E)(1) of this section;

(3) Any other information available to the alternate employer organization from the bureau of workers' compensation regarding that client employer.

(F)(1) An alternate employer organization shall provide the information required under division (E) of this section in writing to the requesting client employer within forty-five days after receiving a written request from the client employer.

(2) For purposes of division (F) of this section, an alternate employer organization has provided the required information to the client employer when the information is received by the United States postal service or when the information is personally delivered, in writing, directly to the client employer.

(G) Except as provided in section 4133.11 of the Revised Code and unless otherwise agreed to in the alternate employer organization agreement, the alternate employer organization with whom a worksite employee is employed has a right of direction and control over each worksite employee assigned to a client employer's location. However, a client employer shall retain sufficient direction and control over a worksite employee as is necessary to do any of the following:

(1) Conduct the client employer's business, including training and supervising worksite employees;

(2) Ensure the quality, adequacy, and safety of the goods or services produced or sold in the client employer's business;



(3) Discharge any fiduciary responsibility that the client employer may have;

(4) Comply with any applicable licensure, regulatory, or statutory requirement of the client employer.

(H) Unless otherwise agreed to in the alternate employer organization agreement, liability for acts, errors, and omissions shall be determined as follows:

(1) An alternate employer organization shall not be liable for the acts, errors, and omissions of a client employer or a worksite employee when those acts, errors, and omissions occur under the direction and control of the client employer.

(2) A client employer shall not be liable for the acts, errors, and omissions of an alternate employer organization or a worksite employee when those acts, errors, and omissions occur under the direction and control of the alternate employer organization.

(I) Nothing in divisions (G) and (H) of this section shall be construed to limit any liability or obligation specifically agreed to in the alternate employer organization agreement.

(J) An alternate employer organization is not, and shall not be considered, a professional employer organization, as defined in section 4125.01 of the Revised Code. Beginning on and after January 1, 2022, an alternate employer organization may not hold itself out, advertise, or otherwise identify itself in any way as a professional employer organization.

(K) In an alternate employer organization agreement, both the client employer and alternate employer organization are jointly and severally liable for the payment of employee wages and taxes. The alternate employer organization and client employer share in the employer responsibilities and liabilities with respect to a worksite employee, pursuant to the alternate employer organization agreement.

(L) The use of a client employer's tax identification number for federal payroll tax purposes as required under division (C) of this section shall not be construed to absolve the alternate employer organization of any responsibilities or liabilities applicable to an alternate employer organization,



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including those under federal law.