

28-1000. Professional Employer Organizations.

A. Definitions.

- (1) "Biennium" means the two-year licensing cycle which ends on September 30 of every odd-numbered year.
- (2) "Co-employer" means either a professional employer organization or a client company, as defined in Section 40-68-10 (2) and (10).
- (3) "Co-employment relationship" means a relationship which is intended to be an ongoing relationship rather than a temporary or project specific one, wherein the rights, duties, and obligations of an employer which arise out of an employment relationship have been allocated between co-employers pursuant to a professional employer agreement and the Professional Employer Organization Act, S.C. Code Ann. Section 40-68-10 et seq.
- (4) "Temporary help services" means services consisting of a person:
 - (a) recruiting and hiring its own employees;
 - (b) finding other organizations that need the services of those employees;
 - (c) assigning those employees to perform work at or services for the other organizations to support or supplement the other organizations' workforces, or to provide assistance in special work situations such as, but not limited to, employee absences, skill shortages, seasonal workloads, or to perform special assignments or projects; and
 - (d) customarily attempting to reassign the employees to other organizations when they finish each assignment.

B. Application Procedure; Application Form; Fees; Denial of Application; Request for Hearing.

- (1) Applicants for licensure as a professional employer organization or as a controlling person shall file a completed application on forms provided by the Department. An application is complete when all items on the application have been fully answered, all required documentation has been submitted and the applicable fees as specified in Section 40-68-30 have been paid.
- (2) An applicant must cure all deficiencies in its application as noted by the Department within 90 days from the date of the letter notifying the applicant of the deficiency or the application will be denied as incomplete. Applicants who have not cured all deficiencies within 90 days of the notification will be required to re-file with the Department a new application accompanied by a non-refundable application fee.
- (3) Any entity applying for licensure as a professional employer organization or professional employer organization group, must be validly organized in the State of South Carolina, or otherwise appropriately registered as a foreign entity with the South Carolina Secretary of State.
- (4) The burden of showing qualification for licensure shall be on the applicant.

(5) If the department determines that an applicant is not qualified for licensure, it shall notify the applicant in writing, citing the specific reason for that determination. Any person aggrieved by the decision shall be entitled to a contested case hearing before the Administrative Law Court provided the hearing is requested in writing no later than 30 days from the issuance of such determination pursuant S.C. Code Ann. Sections 1-23-310, 40-68-160 and Rule 11 of the Rules of Procedure for the Administrative Law Court.

C. License Renewal Procedures; Inactive License Renewal.

In the event any licensee fails to renew the license, the license shall automatically become delinquent. A license delinquent 30 days or less may be returned to active status by the payment of the biennial license renewal fee and a delinquent fee of five hundred dollars.

D. Assessment on Gross South Carolina Payroll.

(1) The department may assess each professional employer organization and each professional employer organization group a biennial assessment based upon the preceding calendar year's gross South Carolina payroll of the company or group. This assessment shall be made if the department determines that licensing fees are not sufficient to cover all costs for its program for licensing and regulation of professional employer organization services. The assessment shall be due on August 1 of every even-numbered year and shall become delinquent after August 31.

(2) In order to ensure compliance with the requirements of subsection (1), each licensee shall annually by April 1 submit copies of all South Carolina Department of Revenue "Fourth Quarter/Annual Reconciliation of Income Tax Withheld" forms WH-1606 for the preceding calendar year.

(3) Licensees who do not submit assessment fees to the department by the August 31 deadline must pay the assessment fee and a late penalty fee of one hundred fifty dollars for every thirty days or portion thereof it is late. If it is late more than sixty days, the licensee may be subject to disciplinary action as set forth in Section 40-68-160 (C).

E. The Documentation Submitted to Demonstrate Net Worth.

(1) The documentation submitted to establish net worth must be prepared by an independent Certified Public Accountant licensed to practice public accounting as of the date of the accountant's report and must be in the format of independently audited accrual basis financial statements, as determined by generally accepted accounting principles, for the two (2) most recent annual accounting periods preceding the date of application, except that if the most recent accounting period ends within 180 days of the date of application, the current year's financial statement shall be submitted within 180 days of the end of the accounting period.

(2) The following additional documents must be submitted for a determination and verification of the amount of net worth of a professional employer organization or a professional employer organization group:

- (a) Verification that federal, state, and local payroll taxes (including unemployment compensation taxes/insurance) have been paid on a timely basis as required by regulations of each taxing authority;
- (b) Verification that all health insurance, life insurance, worker's compensation insurance premiums and any other employee benefits accruing either to employees or their dependents have been and are being paid on a timely basis to the proper payees as required by contract, law, or other obligatory documents.

(3) Any documentation submitted to the department to verify the amount of net worth or the payment of payroll taxes and other obligations shall be prepared as of a date not earlier than six months or 180 days before the date of application. Information supplied regarding net worth is proprietary and confidential and is exempt from disclosure to third parties.

(4) The following items may be used to cover any deficit in net worth revealed by the most current financial statements in the amount sufficient to cover the deficiency: infusion of capital, an acceptable bank letter of credit, mortgages, bonds, a promissory note supported by collateral, or a guarantee where the guarantor can satisfy the department that the guarantor has sufficient assets to satisfy the obligation of the guarantee.

(5) At the time of an application for an initial license by a professional employer organization that has not had sufficient operating history to have audited financial statements based upon at least twelve months of operating history, the applicant must meet the net worth requirements of S.C. Code Ann. Section 40-68-40(E) and present a business plan and pro forma financial statements reviewed by a certified public accountant. Thereafter, such applicant shall present, within 180 days after the end of its fiscal year, audited financial statements.

F. Annual Audited Financial Statements

(1) All professional employer organizations or professional employer organization groups must submit annual audited financial statements to the department within 120 days of the licensee's fiscal year end. For purposes of this regulation, "submitted" means that the audited financial statement must be postmarked within 120 days of the end of the licensee's fiscal year.

(2) All audited financial statements must be prepared in accordance with generally accepted accounting principles (GAAP), and generally accepted auditing standards (GAAS) must be used.

G. Quarterly Financial Reporting and the Maintenance of Sufficient Working Capital

In order to be in compliance with the net worth requirements of Section 40-68-40(E), licensed professional employer organizations and professional employer organization groups are required to file a quarterly financial attestation with the department. This quarterly attestation report shall be executed by the chief financial officer, the chief executive officer, and a controlling person of the professional employer organization. Copies of the current quarter's balance sheet and income statement shall be

submitted with the quarterly financial attestation report. Quarterly financial statements are due to be submitted to the department within 75 days after the end of each quarter. Quarterly financial reports that are submitted late without prior approval from the department will be assessed a late reporting fee of one hundred fifty dollars for every thirty days or portion thereof they are late. If they are late more than sixty days, the licensee may be subject to a disciplinary action as set forth in Section 40-68-160 (C). The following attestations will be made in the quarterly report:

- (1) Health insurance, life insurance, worker's compensation insurance and their respective premiums and any other employee benefits have been paid to the proper payees;
- (2) Working capital is sufficient to meet the licensee's ongoing obligations;
- (3) Federal, state, and local payroll taxes have been paid as required by regulations of each taxing authority.

H. Restricted License.

- (1) The department may issue a restricted license to a nonresident professional employer organization or professional employer organization group for limited operation within this State under the conditions set forth in Section 40-68-90.
- (2) The biennial licensing fee for a restricted license shall be five hundred dollars for a professional employer organization and one thousand dollars for a professional employer organization group.
- (3) The holder of a restricted license shall provide to the department quarterly reports on a form developed by the department with information and documentation necessary to show that the holder continues to qualify for a restricted license.
- (4) When any condition for an issuance of a restricted license ceases to exist, the licensee shall apply within thirty days for a license pursuant to Sections 40-68-30, 40-68-40, 40-68- 50 and any other applicable provision of the professional Employer Organization Act and accompanying regulations or cease operations in the State.

I. Certification of Workers' Compensation Coverage.

Professional employer organization applicants or licensees must provide to the department a Certificate of Insurance for their workers' compensation coverage. This certificate must be issued by an insurance carrier licensed in South Carolina and must name the Department of Consumer Affairs as Certificate Holder and provide for thirty (30) days notice of cancellation.

J. Notices Required to be Posted.

(1) The license issued by the department must be posted in a conspicuous place in the licensee's principal place of business in this State.

(2) The licensee shall cause each client company to display, in a place that is in clear and unobstructed public view, a notice stating that the business operated at the location is in a co-employment relationship with the professional employer organization licensed and regulated by the department and that any questions or complaints regarding the professional employer organization should be directed to the department. The notice shall contain the Department's mailing address, web address and phone number. A copy of such notice shall be provided to the Department. A substantially similar notice shall be included in the contract between a licensee and a client company.

(3) The licensee shall cause each client company to post in each of its places of business in a conspicuous place that is in clear and unobstructed view of the assigned employees a notice stating, substantially, the following:

“We are operating under and subject to the Workers’ Compensation Act of South Carolina. In case of accidental injury or death to an employee, the injured employee, or someone acting on his or her behalf, shall notify immediately (insert the name of professional employer organization, including a contact address and telephone number). Failure to give immediate notice may be the cause of serious delay in the payment of compensation to you or your beneficiaries and may result in failure to receive any compensation benefits.”

K. Inspections; Investigations; Complaints.

(1) The department may conduct inspections or investigations as necessary to enforce the Professional Employer Organization Act, the accompanying regulations or an order of the administrator or the Administrative Law Court related to these provisions. In conducting such an inspection or investigation of a person, the department may enter the business premises of the person during reasonable business hours and may examine and copy records pertinent to the inspection or investigation.

(2) The department shall keep a file about each written complaint filed with the department against a professional employer organization that the department has authority to resolve.

L. Reporting of Change of Status Required; Effect on Licensees.

The Department shall develop forms for the reporting of changes in status of licensed companies and controlling persons. These forms shall specify the information required to be filed for all changes in the status, and the deadlines for filing such changes with the department. The department may charge a filing fee for each change not to exceed fifty dollars.