

Part 3 Licensing Requirements

31A-40-301 Licensing required.

- (1) Except as otherwise provided in this chapter, a person may not engage in the following before the day on which the person is licensed under this chapter:
 - (a) providing a professional employer service in this state;
 - (b) advertising that the person provides a professional employer service in this state; or
 - (c) holding itself out as providing a professional employer service in this state.
- (2) A person described in Subsection (1) is subject to this chapter regardless of whether the person uses one of the following terms with or without the term "registered" or "licensed":
 - (a) "administrative employer";
 - (b) "employee leasing company";
 - (c) "professional employer organization";
 - (d) "PEO";
 - (e) "staff leasing company"; or
 - (f) another name.

Enacted by Chapter 318, 2008 General Session

31A-40-302 Licensing process.

- (1) To apply for an initial or renewal license under this chapter, a person shall:
 - (a)
 - (i) submit an application with the commissioner on a form and in a manner the commissioner shall determine by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
 - (ii) pay a license fee determined in accordance with Section 31A-3-103 that is not refunded if the application:
 - (A) is denied;
 - (B) does not comply with Section 31A-40-303; or
 - (C) if incomplete, is never completed by the person filing the application; or
 - (b) comply with Section 31A-40-303.
- (2) In the application described in Subsection (1)(a), the person shall provide:
 - (a) any name under which the professional employer organization will engage in a professional employer service;
 - (b) the address of the principal place of business of the professional employer organization;
 - (c) the address of each location the professional employer organization maintains in this state;
 - (d) the professional employer organization's federal taxpayer or employer identification number;
 - (e) the following information by jurisdiction of each name under which the professional employer organization operated in the five years preceding the day on which the person submits the application:
 - (i) the name;
 - (ii) an alternative name, if any;
 - (iii) a name of a predecessor; and
 - (iv) if known, a successor business entity;
 - (f) a statement of ownership that includes the name and evidence of the business experience of a person that, individually or acting in concert with one or more other persons, owns or

- controls, directly or indirectly, 10% or more of the equity interests of the professional employer organization;
 - (g) a statement of management that includes the name and evidence of the business experience of an individual who:
 - (i) serves as president of the professional employer organization;
 - (ii) serves as chief executive officer of the professional employer organization; or
 - (iii) may act as a senior executive officer of the professional employer organization; and
 - (h) a financial statement that:
 - (i) sets forth the financial condition of:
 - (A) the professional employer organization; or
 - (B) a professional employer organization group in which the professional employer organization is a member;
 - (ii) states whether or not the professional employer organization complies with Section 31A-40-205; and
 - (iii) complies with Section 31A-40-305.
- (3) A professional employer organization shall renew its license by no later than October 1 of each year.

Amended by Chapter 10, 2010 General Session

31A-40-303 Licensed through an assurance organization.

- (1)
 - (a) A person may comply with Section 31A-40-302 by:
 - (i) filing with the commissioner:
 - (A) a certification that an assurance organization certifies the qualifications of the professional employer organization;
 - (B) the information required by Subsections 31A-40-302(2)(a) through (d) and 31A-40-302(2)(h); and
 - (C) any changes to the information required by Subsection (1)(a)(i)(B) within 30 days of the day on which the information changes; and
 - (ii) paying a license fee determined in accordance with Section 31A-3-103.
 - (b) A professional employer organization that meets the requirements of Section 31A-40-302 by complying with this section is not required to:
 - (i) renew its license until the day on which the assurance organization no longer certifies the qualifications of the professional employer organization;
 - (ii) provide the information in Subsections 31A-40-302(2)(e) through (g); or
 - (iii) comply with Section 31A-40-205.
 - (c) If a professional employer organization that meets the requirements of Section 31A-40-302 by complying with this section receives a new or renewed certification by the assurance organization, the professional employer organization shall file with the commissioner a new certification within 30 days from the day on which the professional employer organization receives the new or renewed certification from the assurance organization.
- (d)
 - (i) If a professional employer organization authorizes an assurance organization to act on behalf of the professional employer organization for purposes of licensure under this section, the commissioner shall accept the assurance organization's filing of the information required by Subsection (1)(a) or (1)(c) if the information otherwise complies with this section and commission rules.

- (ii) Notwithstanding Subsection (1)(d)(i), if the assurance organization fails to make a required filing under this section, the commissioner may not accept, not renew, or terminate the professional employer organization's license.
- (2) The commissioner shall designate one or more assurance organizations by rule:
- (a) consistent with this section;
 - (b) made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
 - (c) that requires that an assurance organization designated by the commissioner be licensed by one or more states other than Utah to certify the qualifications of a professional employer organization.
- (3) The qualifications certified by an assurance organization designated by the commissioner shall include at a minimum that a professional employer organization:
- (a) ensure that each controlling person of the professional employer organization:
 - (i) be competent to manage a professional employer organization;
 - (ii) be responsible in the controlling person's finances; and
 - (iii) not have a history of or be engaged in unlawful activities;
 - (b) has a history that is verifiable that the professional employer organization:
 - (i) complies with regulatory requirements; and
 - (ii) engages in financially responsible conduct;
 - (c) has or is able to obtain audited financial statements;
 - (d) has an adjusted net worth equal to or in excess of the greater of:
 - (i) \$100,000; or
 - (ii) 5% of total adjusted liabilities;
 - (e) has liquid assets that are sufficient to pay short-term liabilities as demonstrated by a ratio determined by dividing current assets by current liabilities or a similar formula;
 - (f) has on its books adequate financial reserves for all local, state, and federal self-insurance and any insurance policy or plan in which the final cost of coverage is affected by claim losses;
 - (g) operates in conformity with all applicable laws and regulations including those laws and regulations in addition to this chapter;
 - (h) does not engage in deceptive trade practices or misrepresentations of an employer's obligation or liability;
 - (i) has a written professional employer agreement with each client;
 - (j) has or is willing to obtain a written acknowledgment, as part of an existing form or separately, from each covered employee stating that the covered employee understands and accepts the nature, terms, and conditions of the coemployment relationship;
 - (k) establishes and maintains a coemployment relationship by assuming key employer attributes with respect to covered employees as demonstrated by the professional employer agreement and employment forms, policies, and procedures;
 - (l) provides all covered employees with a written copy of the professional employer organization's employment policies and procedures;
 - (m) ensures that all covered employees are covered in a regulatory compliant manner by workers' compensation insurance;
 - (n) does not knowingly use the coemployment relationship to assist a client to evade or avoid the client's obligations under:
 - (i) the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq.;
 - (ii) the federal Railway Labor Act, 45 U.S.C. Sec. 151 et seq.; or
 - (iii) any collective bargaining agreement;
 - (o) except through a licensed insurance agent, does not:
 - (i) represent or imply that it can sell insurance;

- (ii) attempt to sell insurance; or
- (iii) sell insurance;
- (p) markets and provides, or is willing to market and provide professional employer service under a separate and distinct trade name from any affiliated professional employer organization that is not certified by the assurance organization;
- (q) does not allow any person not certified by the assurance organization to use the professional employer organization's trade name in the sale or delivery of the professional employer organization's professional employer service;
- (r) does not guarantee, participate in, transfer between, or otherwise share liabilities with any other professional employer organization that is not certified by the assurance organization:
 - (i) in the employment of covered employees; or
 - (ii) in any employee benefit or insurance policy or plan that is not fully insured and fully funded; and
- (s) has the ability to provide a regulatory agency or insurance carrier upon request with:
 - (i) a client's name, address, and federal tax identification number;
 - (ii) payroll data by:
 - (A) client;
 - (B)
 - (I) client SIC Code of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; or
 - (II) client classification under the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; and
 - (C) workers' compensation classification;
 - (iii) the names of covered employees by:
 - (A) the worksite of a client; and
 - (B) workers' compensation classification; and
 - (iv) workers' compensation certificates of insurance.
- (4) This section does not modify the commissioner's authority or responsibility to accept, renew, or terminate a license.

Amended by Chapter 340, 2011 General Session

31A-40-304 Small operation license.

- (1) A professional employer organization may obtain a small operation license under this chapter if the professional employer organization:
 - (a) files an application for a small operation license with the commissioner:
 - (i) on a form and in a manner the commissioner shall determine by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
 - (ii) that includes the information and documentation the commissioner determines is necessary to show that the professional employer organization qualifies for a small operation license;
 - (b) pays a small operation license fee determined in accordance with Section 31A-3-103, that is not refunded if the application:
 - (i) is denied; or
 - (ii) if incomplete, is never completed by the person filing the application;
 - (c) is domiciled outside of this state;
 - (d) is licensed or registered as a professional employer organization in another state;
 - (e) does not maintain an office in this state or directly solicit a client that:
 - (i) is domiciled in this state; or

- (ii) maintains a location within this state;
 - (f) does not have at any time more than 50 covered employees employed or domiciled in this state; and
 - (g) is not owned or directed by another professional employer organization operating in the state.
- (2)
- (a) A small operation license is valid for one year.
 - (b) A professional employer organization may annually renew a small operation license.
- (3) A professional employer organization with a small operation license under this chapter is not subject to Section 31A-40-205.

Enacted by Chapter 318, 2008 General Session

31A-40-305 Financial statements required for licensing.

- (1)
- (a) A person that files a financial statement with an application for an initial license under Section 31A-40-302 shall file the professional employer organization's most recent audit as of the day the application is filed, except that the financial statement may not be older than 10 months from the day on which the application is filed.
 - (b) A person that files a financial statement to renew a license shall file the most recent financial statement of the professional employer organization as of the day the application for renewal is filed with the commission.
 - (c)
 - (i) The person filing an application may apply for an extension with the commissioner if the request for an extension is accompanied by a letter from the person conducting the audit for the financial statement stating:
 - (A) the reason for the delay; and
 - (B) the anticipated date on which the audit will be completed.
 - (ii) If a person complies with Subsection (1)(c)(i), the commissioner may grant an extension up to 30 days from the day on which the financial statement is due under this section.
 - (d) A professional employer organization may file a combined or consolidated financial statement if:
 - (i) the professional employer organization is owned by or in common control with another person; and
 - (ii) the combined or consolidated financial statement clearly identifies the following of the professional employer organization:
 - (A) its working capital;
 - (B) its assets; and
 - (C) its liabilities.
- (2) A financial statement required by this chapter shall be:
- (a) prepared in accordance with generally accepted accounting principles;
 - (b) audited by an independent certified public accountant licensed to practice in the jurisdiction in which the person conducting the audit is located; and
 - (c) without qualification as to the going concern status of the professional employer organization.
- (3) Notwithstanding the other provisions of this section, the commissioner shall license a professional employer organization that does not have sufficient operating history to have an audited financial statement on the basis of at least 12 months if:
- (a) the professional employer organization complies with the other requirements for licensure, including Section 31A-40-205; and

- (b) the person filing the application for license files a financial statement that is reviewed by a certified public accountant.

Enacted by Chapter 318, 2008 General Session

31A-40-306 Professional employer organization group.

- (1) Subject to Subsection (2), a professional employer organization that is a member of a professional employer organization group may comply with Section 31A-40-205 or Sections 31A-40-302 through 31A-40-305 on a combined or consolidated basis if each member of the professional employer organization group guarantees the obligations under this chapter of each other member of the professional employer organization group.
- (2) The controlling entity of a professional employer organization group shall guarantee the obligations of a professional employer organization under this chapter if the professional employer organization group files a combined or consolidated audited financial statement that includes a person that is not:
 - (a) a professional employer organization; or
 - (b) a member of the professional employer organization group.

Enacted by Chapter 318, 2008 General Session

31A-40-307 Voluntary surrender of professional employer organization license.

- (1) When a professional employer organization wants to voluntarily surrender its professional employer organization license, the professional employer organization shall:
 - (a) notify in writing each coemployer regarding the impending loss of the following provided under the professional employer agreement:
 - (i) workers' compensation insurance coverage;
 - (ii) health care benefits, if a coemployers' employee welfare plan includes fully insured or partially insured health insurance benefits; and
 - (iii) any other insurance benefit provided to coemployers by the professional employer organization; and
 - (b) submit a letter of intent to voluntarily surrender the license to the commissioner:
 - (i) after providing the notice to coemployers under Subsection (1)(a); and
 - (ii) not less than 45 days before the day on which the professional employer organization surrenders its professional employer organization license.
- (2) The letter of intent to voluntarily surrender a professional employer organization license shall include the following:
 - (a) the reason the professional employer organization license is being surrendered;
 - (b) a discussion of each process or plan to handle the obligations to coemployers and employees;
 - (c) a list of coemployers as of the date of the letter;
 - (d) a copy of the notice sent to the coemployers under Subsection (1)(a);
 - (e) certification that the professional employer organization has notified the coemployers located in Utah of the professional employer organization's intent to cease doing business in Utah; and
 - (f) the signature of the professional employer organization's chief executive officer or controlling individual.

Enacted by Chapter 10, 2010 General Session

31A-40-308 Material changes.

A professional employer organization shall notify the commissioner within 30 days of a change in:

- (1) ownership;
- (2) an address or telephone number;
- (3) a contact person; or
- (4) business email address at which the commissioner may contact the professional employer organization.

Enacted by Chapter 284, 2011 General Session

31A-40-309 Applicability of other provisions of law.

A professional employer organization is subject to Sections 31A-23a-402 and 31A-23a-402.5.

Enacted by Chapter 169, 2012 General Session