

## Part 4 Enforcement

### **31A-40-401 Prohibited acts.**

- (1) A person may not:
- (a) offer or provide a professional employer service if the person is not licensed under this chapter;
  - (b) use one of the following names if the person is not licensed under this chapter:
    - (i) "administrative employer";
    - (ii) "employee leasing";
    - (iii) "PEO";
    - (iv) "professional employer organization";
    - (v) "staff leasing"; or
    - (vi) other name that represents the provision of a professional employer service;
  - (c) knowingly provide false or fraudulent information to the commissioner:
    - (i) in conjunction with an application to be licensed or to renew a license under this chapter; or
    - (ii) in a report required under this chapter;
  - (d) knowingly make a material misrepresentation to the commissioner or other governmental agency;
  - (e) fail to make a filing with a state agency that is required by this chapter or the professional employer agreement within 30 days of the day on which the filing is due;
  - (f) fail to make a payment to a state agency that is required by this chapter or the professional employer agreement within 30 days of the day on which the payment is due;
  - (g)
    - (i) offer a covered employee a self-funded medical plan unless the self-funded medical plan is maintained for the sole benefit of covered employees;
    - (ii) misrepresent that a self-funded medical plan it offers is other than self-funded; or
    - (iii) offer to a covered employee a self-funded or partially self-funded medical plan without delivering to a plan participant a summary plan description that accurately describes the terms of the plan, including disclosure that the plan is self-funded or partially self-funded;
  - (h) subject to Subsection (2), divert to another purpose or use other than as designated funds paid by a client to the professional employer organization and designated for:
    - (i) compensation of a covered employee;
    - (ii) a benefit of a covered employee;
    - (iii) a payroll-related tax;
    - (iv) an unemployment insurance contribution;
    - (v) withholding of compensation for a covered employee;
    - (vi) a workers' compensation premium; or
    - (vii) another assessment paid by a professional employer organization to or on behalf of a covered employee under a professional employer agreement;
  - (i) provide a covered employee to a client under a provision, term, or condition that is not contained in a professional employer arrangement between the professional employer organization and client;
  - (j) engage in a willful, fraudulent, or deceitful act that:
    - (i) is by a professional employer organization, caused by a professional employer organization, or at a professional employer organization's direction; and
    - (ii) causes material injury to a client or covered employee;

- (k) fail to comply with a federal law or state law, to the extent state law is not preempted by federal law, regarding an employee benefit offered to an employee; or
  - (l) willfully or recklessly violate this chapter or an order or rule issued by the commissioner under this chapter.
- (2) If a client defaults on a professional employer agreement or otherwise fails to pay a professional employer organization, the professional employer organization is not in violation of this section if the professional employer organization allocates the deficient payment to the portions of an invoice.

Enacted by Chapter 318, 2008 General Session

**31A-40-402 Disciplinary action.**

- (1) Notwithstanding Section 31A-2-308, in accordance with this section the commissioner may take action against a person if the commissioner finds that the person:
- (a) is violating or has violated Section 31A-40-401; or
  - (b)
    - (i) is a:
      - (A) professional employer organization licensed under this chapter; or
      - (B) controlling person of a professional employer organization licensed under this chapter; and
    - (ii) is convicted of a crime that relates to:
      - (A) the operation of a professional employer organization;
      - (B) fraud or deceit; or
      - (C) the ability of the professional employer organization or a controlling person of the professional employer organization to operate a professional employer organization.
- (2) After notice and an opportunity for a hearing in accordance with Title 63G, Chapter 4, Administrative Procedures Act, if the commissioner makes a finding described in Subsection (1), the commissioner may:
- (a) deny an application for a license;
  - (b) revoke, restrict, or refuse to renew a license;
  - (c) place a licensee on probation for the period and subject to conditions specified by the commissioner;
  - (d) impose an administrative penalty in an amount not to exceed \$2,500 for each violation; or
  - (e) issue a cease and desist order.

Enacted by Chapter 318, 2008 General Session