

**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)
      - (l) 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