

**PROFESSIONAL EMPLOYER LICENSING AMENDMENTS**

1999 GENERAL SESSION

STATE OF UTAH

**Sponsor: John L. Valentine**

AN ACT RELATING TO OCCUPATIONS AND PROFESSIONS; AMENDING AND RENAMING THE EMPLOYEE LEASING COMPANY LICENSING ACT; ADJUSTING THE LICENSURE REQUIREMENTS; REDEFINING EMPLOYEE LEASING COMPANY AS PROFESSIONAL EMPLOYER ORGANIZATION; EXPANDING THE DEFINITION OF UNPROFESSIONAL CONDUCT; AND MAKING TECHNICAL CHANGES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**34A-2-103 (Effective 07/01/99)**, as last amended by Chapter 277, Laws of Utah 1998

**34A-2-103 (Superseded 07/01/99)**, as last amended by Chapter 201 and renumbered and amended by Chapter 375, Laws of Utah 1997

**34A-2-105**, as last amended by Chapter 93 and renumbered and amended by Chapter 375, Laws of Utah 1997

**58-59-101**, as enacted by Chapter 140, Laws of Utah 1993

**58-59-102**, as last amended by Chapter 201, Laws of Utah 1997

**58-59-201**, as last amended by Chapters 12 and 247, Laws of Utah 1994

**58-59-301**, as last amended by Chapter 247, Laws of Utah 1994

**58-59-302**, as last amended by Chapters 201 and 375, Laws of Utah 1997

**58-59-305**, as repealed and reenacted by Chapter 247, Laws of Utah 1994

**58-59-306**, as last amended by Chapter 201, Laws of Utah 1997

**58-59-307**, as repealed and reenacted by Chapter 247, Laws of Utah 1994

**58-59-308**, as renumbered and amended by Chapter 247, Laws of Utah 1994

**58-59-402**, as enacted by Chapter 201, Laws of Utah 1997

**58-59-501**, as last amended by Chapter 375, Laws of Utah 1997

**58-59-502**, as last amended by Chapter 201, Laws of Utah 1997

**58-59-503**, as enacted by Chapter 247, Laws of Utah 1994

**63-55-258**, as last amended by Chapter 227, Laws of Utah 1998

*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **34A-2-103 (Effective 07/01/99)** is amended to read:

**34A-2-103 (Effective 07/01/99). Employers enumerated and defined -- Regularly employed -- Statutory employers.**

(1) (a) The state, and each county, city, town, and school district in the state are considered employers under this chapter and Chapter 3, Utah Occupational Disease Act.

(b) For the purposes of the exclusive remedy in this chapter and Chapter 3, Utah Occupational Disease Act prescribed in Sections 34A-2-105 and 34A-3-102, the state is considered to be a single employer and includes any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality of the state.

(2) Except as provided in Subsection (4), each person, including each public utility and each independent contractor, who regularly employs one or more workers or operatives in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written, is considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act. As used in this Subsection (2):

(a) "Independent contractor" means any person engaged in the performance of any work for another who, while so engaged, is:

(i) independent of the employer in all that pertains to the execution of the work;

(ii) not subject to the routine rule or control of the employer;

(iii) engaged only in the performance of a definite job or piece of work; and

(iv) subordinate to the employer only in effecting a result in accordance with the employer's design.

(b) "Regularly" includes all employments in the usual course of the trade, business, profession, or occupation of the employer, whether continuous throughout the year or for only a portion of the year.

(3) (a) The client company in an employee leasing arrangement under Title 58, Chapter 59, [~~Employee Leasing Company~~] Professional Employer Organization Licensing Act, is considered the

employer of leased employees and shall secure workers' compensation benefits for them by complying with Subsection 34A-2-201(1)(a) or (b) and commission rules.

(b) Insurance carriers may underwrite workers' compensation secured in accordance with Subsection (3)(a) showing the leasing company as the named insured and each client company as an additional insured by means of individual endorsements.

(c) Endorsements shall be filed with the division as directed by commission rule.

(d) The division shall promptly inform the Division of Occupation and Professional Licensing within the Department of Commerce if the division has reason to believe that an employee leasing company is not in compliance with Subsection 34A-2-201(1)(a) or (b) and commission rules.

(4) A domestic employer who does not employ one employee or more than one employee at least 40 hours per week is not considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act.

(5) (a) As used in this Subsection (5):

(i) (A) "agricultural employer" means a person who employs agricultural labor as defined in Subsections 35A-4-206(1) and (2) and does not include employment as provided in Subsection 35A-4-206(3);

(B) notwithstanding Subsection (5)(a)(i)(A), only for purposes of determining who is a member of the employer's immediate family under Subsection (5)(a)(ii), if the agricultural employer is a corporation, partnership, or other business entity, "agricultural employer" means an officer, director, or partner of the business entity;

(ii) "employer's immediate family" means:

(A) an agricultural employer's:

(I) spouse;

(II) grandparent;

(III) parent;

(IV) sibling;

(V) child;

(VI) grandchild;

(VII) nephew; or

(VIII) niece;

(B) a spouse of any person provided in Subsection (4)(a)(ii)(A)(II) through (VIII); or

(C) an individual who is similar to those listed in Subsections (4)(a)(ii)(A) or (B) as defined by rules of the commission; and

(iii) "non-immediate family" means a person who is not a member of the employer's immediate family.

(b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an agricultural employer is not considered an employer of a member of the employer's immediate family.

(c) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an agricultural employer is not considered an employer of a non-immediate family employee if:

(i) for the previous calendar year the agricultural employer's total annual payroll for all non-immediate family employees was less than \$8,000; or

(ii) (A) for the previous calendar year the agricultural employer's total annual payroll for all non-immediate family employees was equal to or greater than \$8,000 but less than \$50,000; and

(B) the agricultural employer maintains insurance that covers job-related injuries of the employer's nonimmediate family employees in at least the following amounts:

(I) \$300,000 liability insurance, as defined in Section 31A-1-301; and

(II) \$5,000 for medical, hospital, and surgical benefits as described in Subsection 31A-1-301(50)(a)(ii).

(d) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an agricultural employer is considered an employer of a non-immediate family employee if:

(i) for the previous calendar year the agricultural employer's total annual payroll for all non-immediate family employees is equal to or greater than \$50,000; or

(ii) (A) for the previous year the agricultural employer's total payroll for non-immediate family employees was equal to or exceeds \$8,000 but is less than \$50,000; and

(B) the agricultural employer fails to maintain the insurance required under Subsection

(5)(c)(ii).

(6) An employer of agricultural laborers or domestic servants who is not considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act, may come under this chapter and Chapter 3, Utah Occupational Disease Act, by complying with:

- (a) this chapter and Chapter 3, Utah Occupational Disease Act; and
- (b) the rules of the commission.

(7) (a) If any person who is an employer procures any work to be done wholly or in part for the employer by a contractor over whose work the employer retains supervision or control, and this work is a part or process in the trade or business of the employer, the contractor, all persons employed by the contractor, all subcontractors under the contractor, and all persons employed by any of these subcontractors, are considered employees of the original employer for the purposes of this chapter and Chapter 3, Utah Occupational Disease Act.

(b) Any person who is engaged in constructing, improving, repairing, or remodelling a residence that the person owns or is in the process of acquiring as the person's personal residence may not be considered an employee or employer solely by operation of Subsection (7)(a).

(c) A partner in a partnership or an owner of a sole proprietorship may not be considered an employee under Subsection (7)(a) if the employer who procures work to be done by the partnership or sole proprietorship obtains and relies on either:

(i) a valid certification of the partnership's or sole proprietorship's compliance with Section 34A-2-201 indicating that the partnership or sole proprietorship secured the payment of workers' compensation benefits pursuant to Section 34A-2-201; or

(ii) if a partnership or sole proprietorship with no employees other than a partner of the partnership or owner of the sole proprietorship, a workers' compensation policy issued by an insurer pursuant to Subsection 31A-21-104(8) stating that:

(A) the partnership or sole proprietorship is customarily engaged in an independently established trade, occupation, profession, or business; and

(B) the partner or owner personally waives the partner's or owner's entitlement to the benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the partnership or

sole proprietorship.

(d) A director or officer of a corporation may not be considered an employee under Subsection (7)(a) if the director or officer is excluded from coverage under Subsection 34A-2-104(4).

(e) A contractor or subcontractor is not an employee of the employer under Subsection (7)(a), if the employer who procures work to be done by the contractor or subcontractor obtains and relies on either:

(i) a valid certification of the contractor's or subcontractor's compliance with Section 34A-2-201; or

(ii) if a partnership, corporation, or sole proprietorship with no employees other than a partner of the partnership, officer of the corporation, or owner of the sole proprietorship, a workers' compensation policy issued by an insurer pursuant to Subsection 31A-21-104(8) stating that:

(A) the partnership, corporation, or sole proprietorship is customarily engaged in an independently established trade, occupation, profession, or business; and

(B) the partner, corporate officer, or owner personally waives the partner's, corporate officer's, or owner's entitlement to the benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the partnership's, corporation's, or sole proprietorship's enterprise under a contract of hire for services.

Section 2. Section **34A-2-103 (Superseded 07/01/99)** is amended to read:

**34A-2-103 (Superseded 07/01/99). Employers enumerated and defined -- Regularly employed -- Statutory employers.**

(1) (a) The state, and each county, city, town, and school district in the state are considered employers under this chapter and Chapter 3, Utah Occupational Disease Act.

(b) For the purposes of the exclusive remedy in this chapter and Chapter 3, Utah Occupational Disease Act prescribed in Sections 34A-2-105 and 34A-3-102, the state is considered to be a single employer and includes any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality of the state.

(2) Except as provided in Subsection (4), each person, including each public utility and each

independent contractor, who regularly employs one or more workers or operatives in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written, is considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act. As used in Subsection (2):

(a) "Regularly" includes all employments in the usual course of the trade, business, profession, or occupation of the employer, whether continuous throughout the year or for only a portion of the year.

(b) "Independent contractor" means any person engaged in the performance of any work for another who, while so engaged, is independent of the employer in all that pertains to the execution of the work, is not subject to the routine rule or control of the employer, is engaged only in the performance of a definite job or piece of work, and is subordinate to the employer only in effecting a result in accordance with the employer's design.

(3) (a) The client company in an employee leasing arrangement under Title 58, Chapter 59, [~~Employee Leasing Company~~] Professional Employer Organization Licensing Act, is considered the employer of leased employees and shall secure workers' compensation benefits for them by complying with Subsection 34A-2-201(1)(a) or (b) and commission rules.

(b) Insurance carriers may underwrite workers' compensation secured in accordance with Subsection (3)(a) showing the leasing company as the named insured and each client company as an additional insured by means of individual endorsements.

(c) Endorsements shall be filed with the division as directed by commission rule.

(d) The division shall promptly inform the Division of Occupation and Professional Licensing within the Department of Commerce if the division has reason to believe that an employee leasing company is not in compliance with Subsection 34A-2-201(1)(a) or (b) and commission rules.

(4) (a) An agricultural employer is not considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act, if:

(i) (A) the employer's employees are all members of the employer's immediate family; and

(B) the employer has a proprietary interest in the farm where they work; or

(ii) the employer employed five or fewer persons other than immediate family members for

40 hours or more per week per employee for 13 consecutive weeks during any part of the preceding 12 months.

(b) A domestic employer who does not employ one employee or more than one employee at least 40 hours per week is not considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act.

(5) An employer of agricultural laborers or domestic servants who is not considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act, may come under this chapter and Chapter 3, Utah Occupational Disease Act, by complying with this chapter and Chapter 3, Utah Occupational Disease Act, and the rules of the commission.

(6) (a) If any person who is an employer procures any work to be done wholly or in part for the employer by a contractor over whose work the employer retains supervision or control, and this work is a part or process in the trade or business of the employer, the contractor, all persons employed by the contractor, all subcontractors under the contractor, and all persons employed by any of these subcontractors, are considered employees of the original employer for the purposes of this chapter and Chapter 3, Utah Occupational Disease Act.

(b) Any person who is engaged in constructing, improving, repairing, or remodelling a residence that the person owns or is in the process of acquiring as the person's personal residence may not be considered an employee or employer solely by operation of Subsection (6)(a).

(c) A partner in a partnership or an owner of a sole proprietorship may not be considered an employee under Subsection (6)(a) if the employer who procures work to be done by the partnership or sole proprietorship obtains and relies on either:

(i) a valid certification of the partnership's or sole proprietorship's compliance with Section 34A-2-201 indicating that the partnership or sole proprietorship secured the payment of workers' compensation benefits pursuant to Section 34A-2-201; or

(ii) if a partnership or sole proprietorship with no employees other than a partner of the partnership or owner of the sole proprietorship, a workers' compensation policy issued by an insurer pursuant to Subsection 31A-21-104(8) stating that:

(A) the partnership or sole proprietorship is customarily engaged in an independently



established trade, occupation, profession, or business; and

(B) the partner or owner personally waives the partner's or owner's entitlement to the benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the partnership or sole proprietorship.

(d) A director or officer of a corporation may not be considered an employee under Subsection (6)(a) if the director or officer is excluded from coverage under Subsection 34A-2-104(4).

(e) A contractor or subcontractor is not an employee of the employer under Subsection (6)(a), if the employer who procures work to be done by the contractor or subcontractor obtains and relies on either:

(i) a valid certification of the contractor's or subcontractor's compliance with Section 34A-2-201; or

(ii) if a partnership, corporation, or sole proprietorship with no employees other than a partner of the partnership, officer of the corporation, or owner of the sole proprietorship, a workers' compensation policy issued by an insurer pursuant to Subsection 31A-21-104(8) stating that:

(A) the partnership, corporation, or sole proprietorship is customarily engaged in an independently established trade, occupation, profession, or business; and

(B) the partner, corporate officer, or owner personally waives the partner's, corporate officer's, or owner's entitlement to the benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the partnership's, corporation's, or sole proprietorship's enterprise under a contract of hire for services.

Section 3. Section **34A-2-105** is amended to read:

**34A-2-105. Exclusive remedy against employer, or officer, agent, or employee -- Employee leasing arrangements.**

(1) The right to recover compensation pursuant to this chapter for injuries sustained by an employee, whether resulting in death or not, shall be the exclusive remedy against the employer and shall be the exclusive remedy against any officer, agent, or employee of the employer and the liabilities of the employer imposed by this chapter shall be in place of any and all other civil liability

whatsoever, at common law or otherwise, to the employee or to the employee's spouse, widow, children, parents, dependents, next of kin, heirs, personal representatives, guardian, or any other person whomsoever, on account of any accident or injury or death, in any way contracted, sustained, aggravated, or incurred by the employee in the course of or because of or arising out of the employee's employment, and no action at law may be maintained against an employer or against any officer, agent, or employee of the employer based upon any accident, injury, or death of an employee. Nothing in this section, however, shall prevent an employee, or the employee's dependents, from filing a claim for compensation in those cases in accordance with Chapter 3, Utah Occupational Disease Act.

(2) The exclusive remedy provisions of this section apply to both the client company and the employee leasing company in an employee leasing arrangement under Title 58, Chapter 59, ~~[Employee Leasing Company]~~ Professional Employer Organization Licensing Act.

(3) (a) For purposes of this section:

(i) "Temporary employee" means an individual who for temporary work assignment is:

(A) an employee of a temporary staffing company; or

(B) registered by or otherwise associated with a temporary staffing company.

(ii) "Temporary staffing company" means a company that engages in the assignment of individuals as temporary full-time or part-time employees to fill assignments with a finite ending date to another independent entity.

(b) If the temporary staffing company secures the payment of workers' compensation in accordance with Section 35A-3-201 for all temporary employees of the temporary staffing company, the exclusive remedy provisions of this section apply to both the temporary staffing company and the client company and its employees and provide the temporary staffing company the same protection that a client company and its employees has under this section for the acts of any of the temporary staffing company's temporary employees on assignment at the client company worksite.

Section 4. Section **58-59-101** is amended to read:

**58-59-101. Short title.**

This chapter is known as the "~~[Employee Leasing Company]~~ Professional Employer

Organization Licensing Act."

Section 5. Section **58-59-102** is amended to read:

**58-59-102. Definitions.**

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Adjusted net worth" means stockholder's equity determined in accordance with generally accepted accounting principles, increased by the amount of obligations subordinated to claims of general creditors with a remaining term to maturity in excess of three years, and mandatory redeemable preferred stock with a remaining term to redemption in excess of three years.

~~[(1)]~~ (2) "Board" means the ~~[Employee Leasing Company]~~ Professional Employer Organization Board created in Section 58-59-201.

~~[(2)]~~ (3) "Client company" means a person or entity that leases any or all of its ~~[permanent]~~ regular employees from ~~[an employee leasing company]~~ a professional employer organization.

~~[(3)]~~ "Employee leasing company" or "leasing company" means ~~an individual or business that, under an agreement between the client company and the leasing company and for a fee:]~~

~~[(a)]~~ places all or substantially all of the regular, full-time employees of the client company on the leasing company's payroll;]

~~[(b)]~~ leases the employees to the client company on an ongoing basis with no restriction or limitation on the duration of employment; and]

~~[(c)]~~ receives funds from a client company or leasing company employees from which the leasing company is obligated to pay taxes, insurance, or benefits on behalf of the employees.]

(4) "Employment agreement" means the written agreement between ~~[an employee leasing company]~~ a professional employer organization and each of its employees who are employed for the purpose of being leased as ~~[permanent]~~ regular employees to client companies.

(5) "Engage in practice as ~~[an employee leasing company]~~ a professional employer organization" means to hold oneself out as ~~[an employee leasing company]~~ a professional employer organization, to lease an employee to another person, ~~[and]~~ or to receive any consideration for providing employee leasing services or to expect payment of any consideration for providing employee leasing services.

(6) (a) "Financial responsibility" means a demonstration of a current and expected future condition of financial solvency evidencing a reasonable expectation to the board that an applicant or licensee can successfully engage in business as ~~[an employee leasing company]~~ a professional employer organization without jeopardizing:

(i) the interests of the employees of the ~~[leasing company]~~ professional employer organization who are leased to a client company;

(ii) the interests of the client company; and

(iii) the interests of the public.

(b) Financial responsibility may be determined by an evaluation of the total history concerning the licensee or applicant for licensure, including past, present, and expected condition and record of financial solvency and business conduct.

(7) "Lease agreement" means the written agreement between ~~[an employee leasing company]~~ a professional employer organization and a client company in accordance with which the ~~[leasing company]~~ professional employer organization leases employees to the client company and the client company leases individuals from the ~~[leasing company]~~ professional employer organization.

(8) (a) "Professional employer organization," "employee leasing company," or "leasing company" means a person who by contract, or otherwise, agrees to employ a majority of a client's workforce where employer responsibilities for those employees are in fact allocated between or shared by the professional employer organization and the client.

(b) The employer responsibilities are considered to be allocated between or shared by the professional employer organization and the client whenever the agreement between the client and the professional employer organization expressly provides for such allocation or sharing or whenever a factual analysis of the client's business reveals such allocation or sharing.

(c) The term "professional employer organization arrangement" shall be liberally construed so as to include any and all arrangements meeting the criteria for professional employer organizations regardless of the term used.

(d) The following arrangements are not professional employer organization arrangements for purposes of this chapter:

(i) arrangements wherein a person, whose principal business activity is not entering into professional employer organization arrangements, shares employees with a commonly owned company within the meaning of Sections 414(b) and (c) of the Internal Revenue Code of 1986, as amended, and which does not hold itself out as a professional employer organization;

(ii) arrangements by which a person assumes responsibility for the product produced or service performed by that person or his agents and retains and exercises primary direction and control over the work performed by the individuals whose services are supplied under the arrangements;

(iii) a temporary help arrangement, whereby an organization hires its own employees and assigns them to a client to support or supplement the client's workforce in special work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects; provided, however, that the temporary help arrangement excludes arrangements where the majority of the client's work force has been assigned by a temporary help organization for a period of more than 12 consecutive months; and

(iv) any person otherwise subject to licensure under this chapter if, during any fiscal year of the person, the total gross wages paid to employees employed by the person in this state during such period under one or more professional employer organization arrangements do not exceed 5% of the total gross wages paid to all employees employed by the person during the same period, and provided

further, that the person does not advertise or hold itself out to the public as providing arrangements denominated as "professional employer" or "employee leasing" in this state.

~~[(8)]~~ (9) "Regular employee" means an individual who is an employee of ~~[an employee leasing company]~~ a professional employer organization for the purpose of being placed by the ~~[employee leasing company]~~ professional employer organization as a regular full-time or regular part-time employee of a client company.

~~[(9)]~~ (10) "Represent oneself as ~~[an employee leasing company]~~ a professional employer organization" means to hold oneself out by any means as ~~[an employee leasing company]~~ a professional employer organization.

~~[(10)]~~ (11) "Temporary employee," as may be further defined by rule, means an individual

who is an employee of, registered for temporary assignment by, or otherwise associated with a temporary help company that engages in the assignment of individuals as temporary full-time or part-time personnel to fill assignments with a finite ending date to another independent entity.

[(11)] (12) "Temporary help company," as may be further defined by rule, means a person or entity that provides temporary employees to fill assignments with a finite ending date to another independent entity in special, unusual, seasonal, or temporary skill shortage situations.

(13) "Total adjusted liabilities" means total liabilities as stated in an audited financial statement less obligations subordinated to claims of general creditors with a remaining term to maturity in excess of three years.

[(12)] (14) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-59-501.

[(13)] (15) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-59-502.

Section 6. Section **58-59-201** is amended to read:

**58-59-201. Board.**

(1) There is created [~~an Employee Leasing Company~~] the Professional Employer Organization Board consisting of:

(a) three members who are owners or officers of separate licensed [~~employee leasing companies~~] professional employer organizations within [~~the~~] this state;

(b) one member who is an owner or officer of a client company; and

(c) one member from the general public.

(2) The board shall be appointed and serve in accordance with Section 58-1-201.

(3) (a) The duties and responsibilities of the board shall be in accordance with Sections 58-1-201 through 58-1-203.

(b) The board shall designate one of its members on a permanent or rotating basis to:

(i) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and

(ii) advise the division in its investigation of these complaints.

(c) A board member who has, under Subsection (3)(b), reviewed a complaint or advised in its investigation is disqualified from participating with the board when the board serves as a

presiding officer in an adjudicative proceeding concerning the complaint.

Section 7. Section **58-59-301** is amended to read:

**58-59-301. License required -- License issuance.**

(1) A license is required to engage in practice as ~~[an employee leasing company]~~ a professional employer organization, except as specifically provided in Section 58-1-307 or 58-59-305.

(2) The division shall issue to persons qualified under the provision of this chapter a license as ~~[an employee leasing company]~~ a professional employer organization.

Section 8. Section **58-59-302** is amended to read:

**58-59-302. Qualifications for licensure.**

Each applicant for licensure as ~~[an employee leasing company]~~ a professional employer organization shall:

- (1) submit an application in a form prescribed by the division;
- (2) pay a fee as determined by the department under Section 63-38-3.2;
- (3) provide documentation that the applicant is properly registered with:
  - (a) the Division of Corporations and Commercial Code;
  - (b) the Division of Workforce Information and Payment Services in the Department of Workforce Services, for the purposes of Title 35A, Chapter 4, Employment Security Act;
  - (c) the State Tax Commission;
  - (d) the Internal Revenue Service; and
  - (e) any other agency identified by rule that is determined by the division and the board as necessary for a person engaged in practice as ~~[an employee leasing company]~~ a professional employer organization;
- (4) provide documentation satisfactory to the division and the board that employees leased by the ~~[employee leasing company]~~ professional employer organization to any client company are covered by workers' compensation insurance pursuant to Section 34A-2-103;
- (5) provide evidence to the division and the board of financial responsibility, as this evidence is prescribed by rule;

(6) [~~in the case of an employee leasing company that is commencing or reentering business as an employee leasing company,~~] submit to the division [~~and the board~~] a certified audit performed by an independent certified public accountant showing at least an adjusted net worth of \$50,000 [net worth as starting capital] or 5% of total adjusted liabilities, whichever is greater;

(7) provide evidence satisfactory to the division [~~and the board~~] of the financial responsibility of any self-funded or partially self-funded insurance plan as defined by rule[;] which meets the following requirements:

(a) the self-funded or partially self-funded plan has purchased adequate excess loss insurance to prevent material adverse impact on the financial condition of the professional employer organization;

(b) the plan uses a third-party administrator licensed by the state in which the third-party administrator is domiciled;

(c) the self-funded nature of the self-funded or partially self-funded plan is disclosed to each eligible employee; and

(d) all self-funded or partially self-funded plan assets, including participant contributions, are held in a trust account;

(8) provide, for a criminal background check by the division, the name of:

(a) any person who has control of or a controlling interest in, as defined in Section 16-10a-102, the [~~leasing company~~] professional employer organization;

(b) any officer or director of the [~~leasing company~~] professional employer organization; and

(c) any responsible manager of the [~~leasing company~~] professional employer organization or other person if the manager or person has signatory authority over fiduciary funds;

(9) provide evidence satisfactory to the division [~~and the board~~] that the responsible managers of the [~~leasing company~~] professional employer organization have education and experience in the conduct of business that demonstrate a reasonable expectation that the [~~company~~] professional employer organization will be managed with the skill and expertise necessary to protect the interests of its employees, client companies, and the public; and

(10) provide evidence that the applicant is of good moral character.



Section 9. Section **58-59-305** is amended to read:

**58-59-305. Exemptions from licensure.**

In addition to the exemptions from licensure in Section 58-1-307[;] the following are exempt from licensure under this chapter:

(1) related companies under common ownership that are not individually considered [~~employee leasing companies~~] professional employer organizations under this chapter [~~may, without being licensed in accordance with this chapter;~~] which combine employees of one commonly owned company with employees of another commonly owned company on either a temporary or regular basis[-]; and

(2) a professional employer organization, which is not domiciled in this state, and which employs less than 25 employees working within this state.

Section 10. Section **58-59-306** is amended to read:

**58-59-306. Financial responsibility.**

(1) To maintain a license in good standing, [~~an employee leasing company~~] a professional employer organization shall demonstrate financial responsibility.

(2) Financial responsibility shall be demonstrated on:

(a) a quarterly basis by providing the division [~~and the board~~] with:

(i) evidence from an independent certified public accountant, in a form prescribed by the division, that all federal, state, and local withholding taxes, unemployment taxes, FICA taxes, workers' compensation premiums, and employee benefit plan premiums have been paid; and

(ii) any other relevant information the division [~~or board~~] considers appropriate; and

(b) an annual basis by providing the division [~~and the board~~] with:

(i) [~~a~~] an audited financial statement prepared in a form prescribed by the division by an independent certified public accountant that includes a review of the payment of all federal, state, and local withholding taxes, unemployment taxes, FICA taxes, workers' compensation premiums, and employee benefit plan premiums; and

(ii) any other relevant information the division [~~or board~~] considers appropriate.

[~~(3) (a) In addition to quarterly evidence or an annual financial statement required under~~

Subsection (2), the division and board may request a licensee to submit a certified audit performed by an independent certified public accountant if:]

~~[(i) a licensee fails to submit quarterly evidence or a financial statement as required by Subsection (2);]~~

~~[(ii) the division and board have reason to believe that the evidence or financial statement submitted by a licensee under Subsection (2):]~~

~~[(A) is incomplete or misleading; or]~~

~~[(B) contains evidence of:]~~

~~[(F) a material financial irregularity; or]~~

~~[(H) the failure of the licensee to fully and timely pay a tax or premium identified in Subsection (2) for which it is obligated to pay; or]~~

~~[(iii) the division or board receives information from a state or federal agency or other person of:]~~

~~[(A) a material financial irregularity; or]~~

~~[(B) the failure of the licensee to fully and timely pay a tax or premium identified in Subsection (2) for which it is obligated to pay.]~~

~~[(b) The division and the board may require that an audit requested under Subsection (3)(a) not be performed by an independent certified public accountant who has previously prepared quarterly evidence or an annual financial statement for the licensee.]~~

~~[(4) An independent certified public accountant shall submit documentation required under Subsections (2) and (3) directly to the division before reviewing the documentation with the licensee.]~~

Section 11. Section **58-59-307** is amended to read:

**58-59-307. Records and reports protected.**

Notwithstanding Title 63, Chapter 2, Government Records Access and Management Act, financial information submitted to the division ~~[or the board]~~ by or at the request and direction of an applicant or licensee for the purpose of supporting a representation of financial responsibility ~~[shall be]~~ is confidential ~~[and are]~~, is not for public inspection, and ~~[shall]~~ is not ~~[be]~~ subject to

discovery in civil or administrative proceedings.

Section 12. Section **58-59-308** is amended to read:

**58-59-308. No guarantee.**

By licensing and regulating [~~employee leasing companies~~] professional employer organizations under this chapter, the state:

(1) does not guarantee any right, claim, or defense of any [~~employee leasing company~~] professional employer organization, client company, regular employee, or other person;

(2) does not guarantee the financial responsibility or solvency of any [~~employee leasing company~~] professional employer organization; and

(3) does not waive any right, claim, or defense of immunity that it may have under Title 63, Chapter 30, Utah Governmental Immunity Act, or other law.

Section 13. Section **58-59-402** is amended to read:

**58-59-402. Court intervention.**

If a professional employer organization is operating without a license or the financial condition of a licensee [~~or unlicensed employee leasing company~~] is impaired to the extent of posing a significant threat to the public, the division may file a complaint in district court asking for:

(1) injunctive relief;

(2) the appointment of a receiver;

(3) the sale of the [~~licensee's~~] company to a third party;

(4) the liquidation of the [~~licensee's~~] company; and

(5) any other appropriate remedy.

Section 14. Section **58-59-501** is amended to read:

**58-59-501. Unlawful conduct.**

Unlawful conduct includes:

(1) engaging in practice as [~~an employee leasing company~~] a professional employer organization without a license;

(2) offering an employee a self-funded medical program, unless:

(a) the program provides its benefits under an employee benefit plan that complies with 29

U.S.C. Sec. 1143 et seq.; and

- (b) the program is maintained for the sole benefit of eligible plan participants;
- (3) misrepresenting that any self-funded medical program it offers is other than self-funded;
- (4) offering to its employees any self-funded or partially self-funded medical plan without delivering to each plan participant a summary plan description that accurately describes terms of the plan, including disclosure that the plan is self-funded or partially self-funded;
- (5) providing leased employees to any client company under any provision, term, or condition that is not contained in a clearly written agreement between the [~~leasing company~~] professional employer organization and client company;
- (6) any willful, fraudulent, or deceitful act by a licensee, caused by a licensee, or at a licensee's direction, that causes material injury to a client company or employee leased to a client company;
- (7) failing to maintain or ensure that client companies maintain in full force and effect required workers' compensation insurance on all leased employees in accordance with Utah law pursuant to Section 34A-2-103;
- (8) failing to pay in a timely manner any federal or state income tax withholding, FICA, unemployment tax, employee insurance benefit premium, workers' compensation premium, or other obligation due and payable directly as a result of engaging in business as an employee leasing company; and
- (9) failing to comply with federal law regarding any employee benefit offered to an employee.

Section 15. Section **58-59-502** is amended to read:

**58-59-502. Unprofessional conduct.**

Unprofessional conduct includes:

- (1) failing to establish, maintain, or demonstrate financial responsibility and management competence while licensed as [~~an employee leasing company~~] a professional employer organization;
- (2) failing to maintain proper registration with any agency for which registration is required as a condition of licensure under this chapter;

(3) failing to maintain current lease agreements and employment agreements in appropriate form and content as required under this chapter;

(4) failing to inform the division of a change in ownership, in the address of its owners or officers, or in its principal business address or change in any responsible manager of the professional employer organization who has signatory authority over company funds within ten days after the change;

(5) failing to maintain and make available, upon request, to the division and the licensee's workers' compensation insurance carrier:

(a) the name and federal identification number of each client company;

(b) the number and, if good cause is shown, the names of all covered employees provided to each client company; and

(c) the total eligible wages and workers' compensation premiums due to the carrier for the employees provided to each client company; [and]

(6) failing within 30 days to notify the division and the licensee's workers' compensation insurance carrier of the initiation or termination of a relationship with a client company[-];

(7) failing within ten days to notify the division of the failure to pay when due an amount exceeding \$5,000 of any of the following obligations: any federal or state income tax, withholding tax, FICA, unemployment tax, employee insurance benefit premium, or worker compensation premium; and

(8) any of the following events unless the licensee first obtains written approval from the division for that event:

(a) the sale or transfer of a majority of the employee leasing contracts of the licensee;

(b) the sale or transfer of a majority of the physical assets of the licensee;

(c) the sale or transfer of more than 25% of the ownership interest of a licensee by any means including the sale, transfer, or issuance of a member interest in a limited liability company, the sale, transfer, or issuance of a member interest in a partnership, the sale, transfer, or issuance of a ownership interest in a licensee in any other manner other than the sale or transfer of publicly traded shares of a corporation affected through a public exchange or market; and

(d) entering into one or more contracts, other than employee lease agreements with employee leasing clients, which commits the licensee to make future payments to any person or persons in amounts which in total exceed the equity of the business for payment of service provided to or for the licensee.

Section 16. Section **58-59-503** is amended to read:

**58-59-503. Penalty for unlawful conduct.**

(1) Any person who violates Subsections 58-59-501(1) through [~~(3)~~] (4) is guilty of a third degree felony.

(2) Any person who violates Subsections 58-59-501[~~(4)~~] (5) through (9) is guilty of a class A misdemeanor.

(3) Any person who has engaged in unlawful conduct may be assessed the costs associated with the investigations, disciplinary proceedings, court proceedings, or other actions to enforce the provisions of this act.

Section 17. Section **63-55-258** is amended to read:

**63-55-258. Repeal dates, Title 58.**

- (1) Title 58, Chapter 3a, Architects Licensing Act, is repealed July 1, 2003.
- (2) Title 58, Chapter 5a, Podiatric Physician Licensing Act, is repealed July 1, 2002.
- (3) Title 58, Chapter 9, Funeral Services Licensing Act, is repealed July 1, 2008.
- (4) Title 58, Chapter 13, Health Care Providers Immunity from Liability Act, is repealed July 1, 2006.
- (5) Title 58, Chapter 15, Health Facility Administrator Act, is repealed July 1, 2005.
- (6) Title 58, Chapter 16a, Utah Optometry Practice Act, is repealed July 1, 1999.
- (7) Title 58, Chapter 17a, Pharmacy Practice Act, is repealed July 1, 2006.
- (8) Title 58, Chapter 20a, Environmental Health Scientist Act, is repealed July 1, 2003.
- (9) Title 58, Chapter 22, Professional Engineers and Land Surveyors Licensing Act, is repealed July 1, 2005.
- (10) Title 58, Chapter 24a, Physical Therapist Practice Act, is repealed July 1, 2003.
- (11) Title 58, Chapter 26, Certified Public Accountant Licensing Act, is repealed July 1,

2002.

- (12) Title 58, Chapter 28, Veterinary Practice Act, is repealed July 1, 2004.
- (13) Title 58, Chapter 31, Nurse Practice Act, is repealed July 1, 2005.
- (14) Title 58, Chapter 37, Utah Controlled Substances Act, is repealed July 1, 2007.
- (15) Title 58, Chapter 37a, Utah Drug Paraphernalia Act, is repealed July 1, 2007.
- (16) Title 58, Chapter 37b, Imitation Controlled Substances Act, is repealed July 1, 2007.
- (17) Title 58, Chapter 40, Recreational Therapy Practice Act, is repealed July 1, 2005.
- (18) Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing Act, is repealed July 1, 1999.

- (19) Title 58, Chapter 42a, Occupational Therapy Practice Act, is repealed July 1, 2005.
- (20) Title 58, Chapter 44a, Nurse Midwife Practice Act, is repealed July 1, 2000.
- (21) Title 58, Chapter 46a, Hearing Instrument Specialist Licensing Act, is repealed July 1,

2003.

- (22) Title 58, Chapter 47b, Massage Practice Act, is repealed July 1, 2004.
- (23) Title 58, Chapter 49, Dietitian Certification Act, is repealed July 1, 2005.
- (24) Title 58, Chapter 53, Landscape Architects Licensing Act, is repealed July 1, 2008.
- (25) Title 58, Chapter 58, Preneed Funeral Arrangement Act, is repealed July 1, 2001.
- (26) Title 58, Chapter 59, [~~Employee Leasing Company~~] Professional Employer

Organization Licensing Act, is repealed July 1, 2002.

- (27) Title 58, Chapter 66, Utah Professional Boxing Regulation Act, is repealed July 1,

2005.

- (28) Title 58, Chapter 67, Utah Medical Practice Act, is repealed July 1, 2006.
- (29) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, is repealed July 1, 2006.
- (30) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act, is repealed July 1,

2006.

- (31) Title 58, Chapter 71, Naturopathic Physician Practice Act, is repealed July 1, 2006.
- (32) Title 58, Chapter 72, Acupuncture Licensing Act, is repealed July 1, 2002.
- (33) Title 58, Chapter 73, Chiropractic Physician Practice Act, is repealed July 1, 2006.

