NEBRASKA ADMINISTRATIVE CODE

TITLE 230 - NEBRASKA DEPARTMENT OF LABOR

CHAPTER 3 - REGULATIONS FOR THE PROFESSIONAL EMPLOYER ORGANIZATION REGISTRATION ACT

**001. General.**

This chapter is adopted pursuant to *Neb. Rev. Stat.* § § 48-2701 to 48-2711 (Reissue 2010), the Professional Employer Organization Registration Act, as enacted in LB 579 (Laws 2010). Legislative authority for these regulations is more specifically found in §§ 48-2704(10) and 48-2711(4). A copy of these regulations will be kept on file in the offices of the Commissioner of Labor, Nebraska Department of Labor, 550 South 16th Street, Lincoln, Nebraska.

**002. Definitions.**

For purposes of these regulations, the following definitions apply:

A. "Act" refers to the Professional Employer Organization Registration Act, sections 48-2701 to 48-2711 of the Revised Statutes of Nebraska;

B. "Assurance Organization" means an entity that is authorized by a professional employer organization or professional employer organization group to act on its behalf in complying with the registration and registration renewal requirements of the Act, including the electronic filing of applications and other information, as well as the payment of application and registration fees;

C. "Commission" means the act of committing, doing, performing or perpetrating an action that is prohibited by law, statute or federal or state regulation;

D. "Department" means the Nebraska Department of Labor;

E. "Person" means any individual, partnership, corporation, limited liability company, association, or any other form of legally recognized entity;

F. "Professional employer organization" means an organization as defined in section 48-2702 (11) of the Act;

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G. "Prohibited" means that which is contrary to any law, statute or federal or state regulation;

H. "Professional employer organization group" means an organization as defined in section 48-2702 (12) of the Act;

I. "Registrant" means a professional employer organization registered under the Act;

J. "Working capital" means current assets less current liabilities, as defined by generally accepted accounting principles.

**003. Registration.**

A. Registration Required to Provide Services as a Professional Employer Organization or Professional Employer Organization Group.

1. A person engaged in the business of providing professional employer services pursuant to co-employment relationships in which all or a majority of the employees of a client are covered employees shall be registered under the Act.

2. A person who is not registered under the Act shall not offer or provide professional employer services in this state and shall not use the names PEO, professional employer organization, staff leasing company, employee leasing company, administrative employer, or any other name or title representing professional employer services.

B. Date When Registrations Are Due.

1. Each professional employer organization operating within this state as of January 1, 2012, shall complete its initial registration not later than one hundred eighty days after January 1, 2012. Such initial registration shall be valid until one hundred eighty days from the end of the professional employer organization's first fiscal year that is more than one year after January 1, 2012.

2. Each professional employer organization not operating within this state as of January 1, 2012, shall complete its initial registration prior to initiating operations within this state.

C. Unregistered PEOs. If a professional employer organization not registered in this state becomes aware that an existing client not based in this state has employees and operations in this state, the professional employer organization shall either:

1. Decline to provide professional employer services for those employees; or

2. Notify the Department within five business days of its knowledge of this fact and file a limited registration application under this section or a full registration if there are more than fifty covered employees.



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D. Interim Operating Permit. The Department may issue an interim operating permit for the period that a registration application is pending, if the professional employer organization:

1. Is currently registered or licensed by another state; and

2. The Department determines it to be in the best interests of the potential covered employees to issue an interim operating permit to such professional employer organization.

E. Registration Application: Required Information. Each applicant for registration under the Act shall provide the Department with the following information:

1. The name or names under which the professional employer organization conducts business;

2. The address of the principal place of business of the professional employer organization and the address of each office it maintains in this state;

3. The professional employer organization's taxpayer or employer identification number;

4. A list by jurisdiction of each name under which the professional employer organization has operated in the preceding five years, including any alternative names, names of predecessors and, if known, successor business entities;

5. A statement of ownership, which shall include the name and evidence of the business experience of any person that, individually or acting in concert with one or more other persons, owns or controls, directly or indirectly, twenty-five percent or more of the equity interest of the professional employer organization;

6. A statement of management, which shall include the name and evidence of the business experience of any individual who serves as president or chief executive officer or otherwise has the authority to act as senior executive officer of the professional employer organization; and

7. A financial statement setting forth the financial condition of the professional employer organization or professional employer organization group, as provided in Section 004 below.

F. Renewal of Registration. Within one hundred eighty days after the end of a registrant's fiscal year, a registrant shall renew its registration by notifying the Department of any changes in the information provided in such registrant's most recent registration or renewal. A registrant's existing registration shall remain in effect during the pendency of a renewal application.


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G. Limited Registration.

1. A professional employer organization is eligible for a limited registration under the Act if such professional employer organization:

   a. Submits a properly executed request for limited registration on a form provided by the Department;

   b. Is domiciled outside this state and is licensed or registered as a professional employer organization in another state;

   c. Does not maintain an office in this state or directly solicit clients located or domiciled within this state; and

   d. Does not have more than fifty covered employees employed or domiciled in this state on any given day.

2. A limited registration is valid for one year and may be renewed.

3. A professional employer organization seeking limited registration under this section shall provide the Department with information and documentation necessary to show that the professional employer organization qualifies for a limited registration.

4. Applicants for limited registration are not required to comply with the financial responsibility requirements set forth in section 48-2705 of the Act and in section 006 of these regulations.

**004. Financial Statement.**

The financial statement provided by the professional employer organization or professional employer organization group ("the applicant"), as part of the registration process, shall consist of the following:

A. At the time of initial registration, the applicant shall submit the most recent audited financial statement of the applicant. "Most recent," as used herein, means an audited financial statement whose date of issuance is not more than thirteen months from the time of submission.

B. After the initial registration process has been successfully completed, the applicant shall submit an audited financial statement on an annual basis. "Annual," as used herein, means within one hundred eighty (180) days after the end of the professional employer organization's fiscal year.

C. An applicant may apply with the Department for an extension of time for submission of the audited financial statement, but any such request shall be accompanied by a letter from the auditor stating the reasons for the delay and the anticipated completion date of the audited financial statement.



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D. The financial statement shall be prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant licensed to practice in the jurisdiction in which such accountant is located.

E. The audited financial statement shall be issued without qualification as to the going concern status of the professional employer organization.

F. A professional employer organization group may submit combined or consolidated financial statements to meet the requirements of this section.

G. 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 shall meet the financial responsibility requirements of section 48-2705 of the Act, and present financial statements that have been reviewed by a certified public accountant.

**005. Combined or Consolidated Financial Statements.**

A. Professional employer organizations in a professional employer organization group may satisfy any reporting and financial requirements of the Act on a combined or consolidated basis if each member of the organization group guarantees the financial capacity obligations under the Act of each other member of the organization group.

B. If a professional employer organization group submits a combined or consolidated audited financial statement that includes entities that are not professional employer organizations or are not in the professional employer organization group, the controlling entity of the organization group under the consolidated or combined statement need only guarantee the obligations of the professional employer organizations in the professional employer organization group.

**006. Financial Responsibility Requirements.**

A. Except as provided in subsections (7) and (10) of section 48-2704 of the Act, and in sections 003(G) and 009 of these regulations, each professional employer organization or professional employer organization group shall provide the Department with evidence of one of the following:

1. If the positive working capital of the professional employer organization is **at least** one hundred thousand dollars, proof of such positive working capital, as reflected in the financial statements submitted to the Department, as provided in section 004 of these regulations, with the initial registration and with each annual renewal; or

2. If the positive working capital of the professional employer organization is **less than** one hundred thousand dollars, the professional employer organization shall submit a bond, certificate of deposit, escrow account, or irrevocable letter of credit in an amount of not less than one hundred thousand dollars, at the time of initial registration, and shall submit proof, at the time of each annual renewal, that


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the bond, certificate of deposit, escrow account, or irrevocable letter of credit remains in effect.

B. If the financing statement submitted to the Department, in accordance with section 004 of these regulations, indicates that the professional employer organization has a deficit in working capital, the professional employer organization shall submit a bond, certificate of deposit, escrow account, or irrevocable letter of credit, in an amount that is not less than one hundred thousand dollars, **plus** an amount that is sufficient to cover that deficit.

C. Enforcement of Financial Commitment.

1. Proof of the commitment to meet the financial responsibility requirements described in subsection (A) of this section shall be in a form approved by the Department, and shall be held in a depository designated by the Department, and shall secure the payment by the professional employer organization or professional employer organization group of any wages, salaries, employee benefits, worker's compensation insurance premiums, payroll taxes, unemployment insurance contributions, or other amounts that are payable to or with respect to an employee performing services for a client if the professional employer organization or professional employer organization group does not make those payments when due.

2. Proof of the commitment to meet the financial responsibility requirements described in subsections (A) and (B) of this section shall be established in favor of or be made payable to the Department, for the benefit of the state and of any employee to whom or with respect to whom the professional employer organization or professional employer organization group does not make a payment described in this subsection when due.

3. The professional employer organization or professional employer organization group shall file with the Department any agreement, instrument, or other document that is necessary to enforce the commitment to meet the financial responsibility requirements described in subsections (A) and (B) of this section against the professional employer organization or professional employer organization group, against any relevant third party, or both.

**007. Records and Forms under the Act.**

A. The Department shall maintain a list of professional employer organizations registered under the Act that is readily available to the public by electronic or other means.

B. All records, reports, and other information obtained from a professional employer organization or professional employer organization group under the Act, except to the extent necessary for the proper administration of the Act by the Department, shall be confidential and shall not be published or open to public inspection other than to public employees in the performance of their public duties.



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**008. Electronic Filing and Compliance.**

A. The Department shall permit the acceptance of electronic filings, including applications, documents, reports, and other filings required by the Department, by professional employer organizations, professional employer organization groups, and Assurance Organizations.

B. Electronic filings made pursuant to this section shall be done in conformance with the Uniform Electronic Transactions Act, *Neb. Rev. Stat.* §§ 86-612 to 86-643.

**009. Assurance Organizations.**

A. The Department shall permit a professional employer organization or a professional employer organization group to authorize an Assurance Organization that is approved by the Department to act on the professional employer organization's or professional employer organization group's behalf in providing satisfactory assurance of compliance acceptable to the Department consistent with or in the lieu of the requirements of sections 48-2704 and 48-2705 of the Act, including electronic filings of information and payment of registration fees.

B. Use of an Assurance Organization is optional and not mandatory for a registrant.

C. Authorization by the Department of an assurance organization to act on the professional employer organization's or employer organization group's behalf, in complying with the registration requirements of the Act, or for any other reason, shall not limit or change the Department's authority to register or terminate registration of a professional employer organization or employer organization group, or to investigate or enforce any provision of the Act.

**010. Fees.**

A. Fees imposed pursuant to this section shall be paid to the Department and thereafter remitted to the State Treasurer for credit to the Professional Employer Organization Cash Fund, administered by the Department for the implementation of the Act.

B. Any money in the Professional Employer Organization Cash Fund that is available for investment shall be invested by the state investment officer in accordance with the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

C. Fees for registrations shall be as follows:

1. For initial registration, the fee shall be two thousand five hundred dollars ($2.500.00);

2. For an annual renewal of registration, one thousand five hundred dollars ($1,500.00);

3. For an initial limited registration, one thousand dollars ($1,000.00);



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**011. Prohibited Acts and Disciplinary Action.**

A. A person shall not knowingly:

1. Offer or provide professional employer services in this state or use the names PEO, professional employer organization, staff leasing, employee leasing, administrative employer, or other title representing professional employer services unless such person is registered under the Act;

2. Provide false or fraudulent information to the Department in conjunction with any registration, renewal, or report required under the Act; or

3. Enter into a co-employment relationship in which less than a majority of the employees of the client in this state are covered employees or in which less than one-half of the payroll of the client in this state is attributable to covered employees.

B. Any person violating section 48-2711(1) of the Act, or subsection (A) of this section, is guilty of a Class I misdemeanor.

C. The Department is authorized by the Act to take disciplinary action against the following:

1. A person offering professional employer services, in violation of section 48-2711 (1) of the Act, and subsection (A) of this section;

2. A professional employer organization or a controlling person of such employer organization, upon the conviction of an employer organization or controlling person thereof, of a crime that relates to:

a. The operation of the professional employer organization; or

b. The ability of a registrant or a controlling person of a registrant to operate a professional employer organization;

3. A professional employer organization or a controlling person of such employer organization for knowingly making a material misrepresentation to an insurer, an insurance producer, the Department, or other governmental agency; or

4. A professional employer organization or a controlling person of such employer organization for a willful violation of the Act or any order or regulation issued by the Department under the Act.

D. Disciplinary actions may be taken by the Department against those described in section 48-2711 (1) and (2) of the Act, and in subsections (A) and (C) of this section:

1. After notice, an opportunity for hearing, a hearing (if requested by the respondent), upon a finding of the commission of a prohibited act or a violation of this section of the regulations, and subject to any appeal required;



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2. Disciplinary actions may include one or more of the following:

   a. Denial of an application for registration;

   b. Revocation or restriction of, or refusal to renew, a registration;

   c. Imposition of an administrative penalty, in an amount not to exceed one thousand dollars ($1,000.00) for each material violation;

   d. Placement of the registrant on an administrative probation, for such period and subject to such conditions as the Department specifies; or

   e. Issuance of a cease and desist order.

E. A decision by the Department to take disciplinary action, as described in section 48-2711 of the Act, or this section of these regulations, may be appealed in accordance with the Administrative Procedure Act.

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