

4123-17-15

Professional employer organization (PEO) agreements.

(A) This rule is promulgated pursuant to Chapter 4125 of the Ohio Revised Code.

- (1) "Professional employer organization" or "PEO" means a sole proprietor, partnership, association, limited liability company, or corporation that enters into an agreement with one or more client employers for the purpose of coemploying all or part of the client employer's workforce at the client employer's work site. "Professional employer organization" or "PEO" does not include a temporary service agency.
- (2) "Client employer" means a sole proprietor, partnership, association, limited liability company, or corporation that enters into a PEO agreement and is assigned shared employees by the PEO. "Client employer" does not mean an employer who is a noncomplying employer as defined in rule 4123-14-01 of the Administrative Code.
- (3) "Coemploy" means the sharing of the responsibilities and liabilities of being an employer.
- (4) "Shared employee" means an individual intended to be assigned to a client employer on a permanent basis, not as a temporary supplement to the client employer's workforce, who is coemployed by a professional employer organization and a client employer pursuant to a professional employer organization agreement.
- (5) "Temporary service agency" means an employer which is in the business of employing individuals for the purpose of utilizing the services of the individuals for a temporary period of time.
- (6) "PEO agreement" means a written contract to coemploy employees between a professional employer organization and a client employer with a duration of not less than twelve months. The agreement is intended to be, or is, ongoing rather than temporary in nature.

(B) A PEO must perform the following functions:

- (1) Provide written notice to each shared employee it assigns to a client employer of the relationship between and the responsibilities of the PEO and the client employer;
- (2) Assume responsibility for payment of wages, related taxes and workers' compensation premiums for shared employees as established within the PEO agreement. The responsibility of making the payment is not contingent on receipt of payment from client;
- (3) Be responsible for maintaining both adequate and required employment-related records for employees, and for reporting such information as may be required

by appropriate governmental agencies:

- (4) Comply with applicable state laws regarding workers' compensation insurance coverage.
- (5) Maintain complete records, separately listing the payroll and claims of its client employers for each payroll reporting period. The payroll shall be kept in a manner that clearly identifies the appropriate manual classifications assigned to each client employer to which the payroll should be reported and the amount of premiums paid. Claims shall be separately identified according to the client employer.
- (6) Maintain workers' compensation coverage, pay all workers' compensation premiums and manage all workers' compensation claims, filings, and related procedures associated with a shared employee in compliance with Chapters 4121. and 4123. of the Revised Code, except that when shared employees include family farm officers, ordained ministers, sole proprietors, partners, individuals incorporated as a corporation, or corporate officers of the client employer, payroll reports shall include the entire amount of payroll associated with those persons;
- (7) When the payroll of family farm officers, ordained ministers, sole proprietors, partners, individuals incorporated as a corporation or corporate officers of a client employer is reported under the PEO's policy, it will not be subject to the payroll reporting limitations pursuant to rules 4123-17-07 and 4123-17-30 of the Administrative Code if the PEO reports wages for the client employer under the PEO policy.
- (8) Within fourteen days after receiving notice from the bureau of workers' compensation that a refund or rebate will be applied to workers' compensation premiums, provide a copy of that notice to any client employer to whom that notice is relevant.

(C) Where a client employer enters into a PEO agreement:

- (1) Each client employer must establish and maintain an individual account with the bureau.
- (2) The PEO shall be considered the succeeding employer, solely for purpose of workers' compensation experience, and shall be subject to rule 4123-17-02 of the Administrative Code, basic or manual rate, whereby all or part of the experience of the client employer is transferred to the PEO policy for rate making purposes.
- (3) If the PEO agreement between a PEO and a client employer is terminated, or if the PEO declares bankruptcy or ceases operation in Ohio, the PEO must notify the bureau and each client associated with that PEO within fourteen

days from the effective date of termination and identify on the UA-3, AC-18 and AC-19 forms the portion of the experience of the PEO related to the client employer shall be transferred to the client employer.

- (D) A PEO shall notify the bureau within thirty days when entering into or changing the type of PEO agreement using the UA-3 PEO notification form. The PEO shall complete the form in its entirety and indicate if the claims and payroll will be reported under the PEO's policy or the client employer's policy and also listing the manual classifications for the client employer if payroll is to be reported under the PEO policy. If the bureau is not notified within the thirty days, the bureau will recognize the PEO agreement on the date the bureau receives the UA-3 form and the client employer shall be responsible for reporting payroll and claims under the client employer's individual policy until the recognized effective date of the agreement.
- (E) A PEO which enters into a PEO agreement with a noncomplying employer or a PEO which fails to comply with this rule shall not be considered the employer for workers' compensation purposes. In these instances the payroll of the shared employees shall be reported by the client employer under its workers' compensation risk number for workers' compensation premium and claims purposes, unless prohibited by Federal law. Claims that are filed by the client employer's shared employees shall be charged to the experience of the client employer.
- (F) The bureau will not recognize a PEO agreement between a PEO and an out of state client employer where the employees of the out of state client employer does not meet the jurisdictional requirements to receive Ohio workers' compensation benefits as provided in section 4123.54 of the Revised Code.
- (G) The PEO shall register with the bureau not later than thirty days after the effective date of Chapter 4125. of the Revised Code or not later than thirty days after the formation of a PEO, whichever date occurs later. A PEO operating in this state shall register annually with the administrator of the bureau of workers' compensation on forms provided by the administrator.
- (1) The PEO shall submit an initial registration fee in the amount of one hundred dollars and a renewal fee of twenty five dollars for each PEO policy to the bureau on or prior to December 31st of each year. An increase of the fee for any year shall not exceed thirty percent.
- (2) The PEO shall submit to the bureau all information as required in section 4125.05 of the Revised Code when registering with the bureau:
- (a) A list of each of the professional employer organization's client employers current as of the date of registration for purposes of initial registration or current as of the date of annual registration renewal, or within fourteen days of adding or releasing a client, that includes the client

employer's name, address, federal tax identification number, and bureau of workers' compensation risk number;

(b) The name or names under which the professional employer organization conducts business;

(c) The address of the professional employer organization's principal place of business and the address of each office it maintains in this state;

(d) The professional employer organization's taxpayer or employer identification number;

(e) A list of each state in which the professional employer organization has operated in the preceding five years, and the name, corresponding with each state, under which the professional employer organization operated in each state, including any alternative names, names of predecessors, and if known, successor business entities.

(H) Except to the extent necessary for the administrator to administer the statutory duties of the administrator and for employees of the state to perform their official duties, all records, reports, client lists, and other information obtained from a PEO under paragraph (G) of this rule are confidential and shall be considered trade secrets and shall not be published or open to public inspection. "Trade secret" has the same meaning as in section 1333.61 of the Revised Code.

(I) When an employer contacts the bureau of workers' compensation to determine whether a particular professional employer organization is registered, if the administrator has denied or revoked that professional employer organization's registration or rescinded its status as a coemployer, and if all administrative appeals are not yet exhausted when the employer inquires, the appropriate bureau personnel shall inform the inquiring employer of the denial, revocation, or rescission and the fact that the professional employer organization has the right to appeal the administrator's decision.

(J) Except as permitted in paragraph (K) of this rule, a PEO shall provide security in the form of a bond or letter of credit assignable to the bureau not to exceed an amount equal to the workers' compensation premiums and assessments incurred for the two most recent payroll reporting periods pursuant to paragraph (A) of rule 4123-17-14 of the Administrative Code, prior to any discounts or dividends.

(1) The amount of security required for each PEO policy shall be evaluated annually.

(2) The security shall be provided to the bureau annually on or prior to the 31st day of December.

(3) The administrator shall determine the amount of security for a PEO policy that

has not paid premiums and assessments in the two most recent payroll periods.

(4) A PEO may appeal the amount of the security required pursuant to this section in accordance with section 4123.291 of the Revised Code.

(K) As an alternative to providing security in the form of a bond or letter of credit, the administrator shall permit a PEO to make advance payments of premiums and assessments to the bureau or to submit proof of being certified by either a nationally recognized organization approved by the administrator that certifies PEOs or by a government entity approved by the administrator.

(1) A PEO electing to make advance payments of premiums and assessments shall make such payments by utilizing the bureau's online payment system. The PEO electing to make advance payments of premiums and assessments shall report the estimated payroll and pay the premiums for the month by the fifth day of that month.

(2) A PEO electing to make advance payments of premiums and assessments who fails to report payroll and pay premiums timely pursuant to paragraph (K)(1) of this rule shall provide to the bureau security in the form of a bond or letter of credit and may not be permitted to utilize the advance payment option for a minimum of the remainder of the policy year. Subsequent failure to report payroll and pay premiums timely utilizing the advance payment option may result in forfeiture of this option and require a posting of bond or letter of credit.

(3) A PEO the administrator has recognized as being certified by a nationally recognized organization or government entity must notify the bureau within fourteen days of losing that certification.

(L) The Administrator may deny registration or revoke the registration of a PEO and rescind its status as a coemployer upon finding that the PEO has done any of the following:

(1) Obtained or attempted to obtain registration through misrepresentation, misstatement of a material fact, or fraud;

(2) Misappropriated any funds of the client employer;

(3) Used fraudulent or coercive practices to obtain or retain business or demonstrated financial irresponsibility;

(4) Failed to appear, without reasonable cause or excuse, in response to a subpoena lawfully issued by the administrator;

(5) Failed to comply with the requirements in accordance with this rule.

- (M) The administrator's decision to deny or revoke a PEO's registration or to rescind its status as a coemployer is stayed pending the exhaustion of all administrative appeals by the PEO.
- (N) Upon revocation of the registration of a PEO, each client employer associated with that PEO shall file payroll reports and pay workers' compensation premiums directly to the administrator on its own behalf at a rate determined by the administrator based solely on the claims experience of the client employer.

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