

Document No. 4624
DEPARTMENT OF CONSUMER AFFAIRS
 CHAPTER 28
 Statutory Authority: 1976 Code Section 40-68-20

28-1000. Professional Employer Organizations

Synopsis:

The department proposes to amend and modify Regulation 28-1000. The purposes of these proposed amendments are to revise and edit regulatory language to conform to current statutory requirements and to delete obsolete provisions. South Carolina Code Section 40-68-20 authorizes the department to promulgate regulations necessary to effectuate the purposes of the chapter.

Notice of Drafting for the proposed regulations was published in the *State Register* on August 28, 2015. Comments were solicited for consideration in drafting the proposed regulation.

Instructions:

Replace Regulation 28-1000. (Revisions) as printed below.

Text:

28-1000. Professional Employer Organizations.

A. Definitions.

(1) "Biennium" means the two-year licensing cycle which ends on September 30 of every odd-numbered year.

(2) "Co-employer" means either a professional employer organization or a client company, as defined in Section 40-68-10 (2) and (10).

B. Application Procedure; Application Form; Fees; Denial of Application; Request for Hearing.

(1) Applicants for licensure as a professional employer organization or as a controlling person shall file a completed application on forms provided by the Department. An application is complete when all items on the application have been fully answered, all required documentation has been submitted and the applicable fees as specified in Section 40-68-30 have been paid.

(2) An applicant must cure all deficiencies in its application as noted by the Department within 30 days from the date of the letter notifying the applicant of the deficiency or the application will be denied as incomplete. Applicants who have not cured all deficiencies within 30 days of the notification will be required to re-file with the Department a new application accompanied by a non-refundable application fee.

(3) Any entity applying for licensure as a professional employer organization or professional employer organization group, must be validly organized in the State of South Carolina, or otherwise appropriately registered as a foreign entity with the South Carolina Secretary of State.

(4) The burden of showing qualification for licensure shall be on the applicant.

(5) If the department determines that an applicant is not qualified for licensure, it shall notify the applicant in writing, citing the specific reason for that determination. Any person aggrieved by the decision shall be entitled to a contested case hearing before the Administrative Law Court in accordance with the court's rules of procedure.

C. License Renewal Procedures; Inactive License Renewal.

In the event any licensee fails to renew the license, the license shall automatically become delinquent. A license delinquent 30 days or less may be returned to active status by the payment of the biennial license renewal fee and a delinquent fee of five hundred dollars.

D. Assessment on Gross South Carolina Payroll.

Licensees who do not submit assessment fees to the department by the assessment due date must pay the assessment fee and a late penalty fee of one hundred fifty dollars for every thirty days or portion thereof it is

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late. If it is late more than sixty days, the licensee may be subject to disciplinary action as set forth in Section 40-68-160 (C).

E. The Documentation Submitted to Demonstrate Net Worth.

(1) The documentation submitted to establish net worth must be prepared by an independent Certified Public Accountant licensed to practice public accounting as of the date of the accountant's report and must be in the format of independently audited accrual basis financial statements, as determined by generally accepted accounting principles, for the two (2) most recent annual accounting periods preceding the date of application, except that if the most recent accounting period ends within 180 days of the date of application, the current year's financial statement shall be submitted within 180 days of the end of the accounting period.

(2) The following additional documents must be submitted for a determination and verification of the amount of net worth of a professional employer organization or a professional employer organization group:

(a) Verification that federal, state, and local payroll taxes (including unemployment compensation taxes/insurance) have been paid on a timely basis as required by regulations of each taxing authority;

(b) Verification that all health insurance, life insurance, worker's compensation insurance premiums and any other employee benefits accruing either to employees or their dependents have been and are being paid on a timely basis to the proper payees as required by contract, law, or other obligatory documents.

(3) Any documentation submitted to the department to verify the amount of net worth or the payment of payroll taxes and other obligations shall be prepared as of a date not earlier than six months or 180 days before the date of application. Information supplied regarding net worth is proprietary and confidential and is exempt from disclosure to third parties.

(4) At the time of an application for an initial license by 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, the applicant must meet the net worth requirements of S.C. Code Ann. Section 40-68-40(E) and present a business plan and pro forma financial statements reviewed by a certified public accountant. Thereafter, such applicant shall present, within 180 days after the end of its fiscal year, audited financial statements.

F. Quarterly Financial Reporting and the Maintenance of Sufficient Working Capital.

In order to be in compliance with the net worth requirements of Section 40-68-40(E), licensed professional employer organizations and professional employer organization groups are required to file a quarterly financial attestation with the department. This quarterly attestation report shall be executed by the chief financial officer, the chief executive officer, and a controlling person of the professional employer organization. Copies of the current quarter's balance sheet and income statement shall be submitted with the quarterly financial attestation report. Quarterly financial statements are due to be submitted to the department within 75 days after the end of each quarter. Quarterly financial reports that are submitted late without prior approval from the department will be assessed a late reporting fee of one hundred fifty dollars for every thirty days or portion thereof they are late. If they are late more than sixty days, the licensee may be subject to a disciplinary action as set forth in Section 40-68-160 (C). The following attestations will be made in the quarterly report:

(1) Health insurance, life insurance, worker's compensation insurance and their respective premiums and any other employee benefits have been paid to the proper payees;

(2) Working capital is sufficient to meet the licensee's ongoing obligations;

(3) Federal, state, and local payroll taxes have been paid as required by regulations of each taxing authority.

G. Restricted License.

(1) The holder of a restricted license shall provide to the department quarterly reports on a form developed by the department with information and documentation necessary to show that the holder continues to qualify for a restricted license.

(2) When any condition for an issuance of a restricted license ceases to exist, the licensee shall apply within thirty days for a license pursuant to Sections 40-68-30, 40-68-40, 40-68-50 and any other applicable provision of the professional Employer Organization Act and accompanying regulations or cease operations in the State.

H. Certification of Workers' Compensation Coverage.

Professional employer organizations must maintain workers' compensation coverage issued by an insurance carrier licensed in South Carolina. The certificate must name the Department of Consumer Affairs as Certificate Holder and provide for thirty (30) days' notice of cancellation to the Department.

I. Notices Required to be Posted.

The licensee shall cause each client company to display, in a place that is in clear and unobstructed public view, a notice stating that the business operated at the location is in a co-employer relationship with the professional employer organization licensed and regulated by the department and that any questions or complaints regarding the professional employer organization should be directed to the department. The notice shall contain the Department's mailing address, web address and phone number. A copy of such notice shall be provided to the Department. A substantially similar notice shall be included in the contract between a licensee and a client company.

J. Inspections; Investigations; Complaints.

The department may conduct inspections or investigations as necessary to ascertain compliance with and to enforce the provisions of the Professional Employer Organization Act, accompanying regulations or an order of the administrator or the Administrative Law Court related to these provisions. The department may investigate or examine the business of the licensee and examine the books, accounts, records, and files of the licensee or other person relating to the examination or matter under investigation. The records must be available for examination to the administrator or his designee upon request. In conducting such an inspection or investigation of a person, the department may enter the business premises of the person during reasonable business hours.

K. Reporting of Change of Status Required; Effect on Licensees.

Licensed companies and controlling persons shall report to the Department upon the occurrence of any event delineated in the Act. The Department shall specify the information required to be filed for all changes in the status, and the deadlines for filing such changes with the department.

Fiscal Impact Statement:

The Department of Consumer Affairs estimates the costs incurred by the State in complying with the proposed regulation will be approximately \$0.

Statement of Rationale:

The South Carolina Professional Employer Organizations Act specifically provides for the Department to promulgate regulations necessary to effectuate the purposes of the Code and these changes are being made to conform regulations to current statutory law.

Document No. 4696
STATE BOARD OF EDUCATION
 CHAPTER 43
 Statutory Authority: 1976 Code Section 59-29-190

43-258.1. Advanced Placement.

Synopsis:

State Board of Education Regulation 43-258.1 governs the requirements for advanced placement (AP) courses, students, and educators in South Carolina. Amendments to Regulation 43-258.1 will update the teacher special endorsement requirement to allow more flexibility.

Notice of Drafting for the proposed amendments to the regulation was published in the *State Register* on August 26, 2016.

Instructions:

Section IV below replaces the Section IV that is currently in law.