WEST VIRGINIA CODE: §33-46A-2

§33-46A-2. Definitions.

(a) "Administrative fee" means the amount charged to a client-employer by a PEO for professional employer services. It does not include amounts paid by a client-employer to the PEO for wages and salaries, benefits, payroll taxes, withholding or assessments paid by the PEO to or on behalf of covered employees under the professional employer agreement.

(b) "Client-employer" means an employer who enters into a professional employer agreement with a PEO.

(c) "Covered employee" means a person employed by a client-employer for whom certain employer responsibilities are shared or allocated pursuant to a PEO agreement. Persons who are officers, directors, shareholders, partners and managers of the client-employer and who perform day-to-day operational services for the client-employer will be covered employees only to the extent expressly set forth in the professional employer agreement.

(d) "PEO group" means two or more PEOs that are majority owned or commonly controlled by the same entity, parent or controlling persons.

(e) "Person" means a natural person or a legal entity, including, without limitation, a sole proprietorship, firm, partnership, limited liability company, association, trust or corporation.

(f) "Professional employer agreement" means a written contract by and between a client-employer and a PEO under which a PEO contracts to provide professional employer services for an administrative fee.

(g) "Professional employer organization" or "PEO" means a person engaged in the business of providing professional employer services, regardless of its use of the term, or conducting business as a "staff leasing company," "registered staff leasing company," "employee leasing company," "administrative employer," or any other name. For purposes of this article, the following is not a PEO:

(1) A person who shares employees with a commonly-owned company within the meaning of section 414(b) and (c) of the Internal Revenue Code of 1986, as amended;

(2) A person who neither holds itself out as a PEO, nor enters into professional employer agreements as its principal business activity;

(3) An independent contractor who assumes responsibility for the product produced or service performed by a person or his or her agents and who retains and exercises primary direction and control over the work performed; or

(4) A person who provides temporary help services.

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(h) "Professional employer services" means functions that are:

(1) Allocated to a PEO in a PEO agreement;

(2) Customarily exercised by an employer with respect to its employees, including, but not limited to, hiring, firing and disciplining employees, paying wages, withholding and paying payroll taxes, maintaining employee benefit plans, and providing for mandatory workers' compensation coverage;

(3) Exercised with respect to a majority of the employees of a client-employer; and

(4) Intended to be of a continuing rather than a temporary or seasonal nature.

(j) "Worksite employees" means persons employed by a PEO and not by a client-employer.

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