WEST VIRGINIA CODE: §33-46A-4

§33-46A-4. Licensing requirements.

(a) Except as otherwise provided in this article, no person may provide, advertise or otherwise hold himself herself or itself out as providing professional employer services to client-employers in this state, unless licensed under this article.

(b) Every PEO operating within this state as of the effective date of this article must obtain a license under this article no later than July 30, 2009.

(c) Each applicant for licensure under this article shall provide the commissioner with the following information:

(1) The name or names under which the PEO conducts business;

(2) The address of the principal place of business of the PEO and the address of each office it maintains in this state;

(3) The PEO's taxpayer or employer identification number;

(4) A list by jurisdiction of each name under which the PEO 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 who, 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 interests of the PEO;

(6) A statement of management, which shall include the name and evidence of the business experience of any person who serves as president, chief executive officer or otherwise has the authority to act as senior executive officer of the PEO; and

(7) The PEO's most recent audited financial statement setting forth the financial condition of the PEO or PEO Group, which may not be older than thirteen months. 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 the accountant is located, and shall be without qualification as to the going concern status of the PEO.

(d) An applicant may apply to the commissioner for an extension of time for filing its financial statement. A request for an extension must be accompanied by a letter from an independent certified public accountant licensed to practice in the jurisdiction in which the accountant is located, stating the reasons for the delay and the anticipated completion date

WV Legislature

of the financial statement.

(e) A PEO who has not had sufficient operating history to have an audited financial statement based upon at least twelve months of operating history must meet the financial capacity requirements set forth in subsection (h) of this section, and present financial statements reviewed by an independent certified public accountant licensed to practice in the jurisdiction in which the accountant is located.

(f) PEOs in a PEO group may satisfy the reporting and financial requirements of this licensing law on a combined or consolidated basis provided that each member of the PEO Group guarantees the obligations under this article of each other member of the PEO Group. In the case of a PEO Group that submits a combined or consolidated audited financial statement including entities that are not PEOs or that are not in the PEO Group, the controlling entity of the PEO Group under the consolidated or combined statement must guarantee the obligations of the PEOs in the PEO Group.

(g) Within one hundred eighty days after the end of a licensee's fiscal year, the licensee shall apply for renewal of its license by submitting its most recent audited financial statement meeting the same requirements as for initial licensure, together with any changes in the information required for initial licensure, all as set forth by subsection (c) of this section.

(h) Except for limited licenses granted in accordance with the provisions of subsection (i) of this section, each PEO shall maintain a minimum of $100,000 in working capital, as defined by generally accepted accounting principles and as reflected in the financial statements submitted to the commissioner with the application for an initial or renewal license. As an alternative, each PEO may provide a bond, irrevocable letter of credit, or securities with a minimum market value of $100,000 to the commissioner; such bond shall be held by a depository designated by the commissioner, securing payment by the PEO of all taxes, wages, benefits or other entitlement due to or with respect to covered employees if the PEO does not make such payments when due. For any PEO whose annual financial statements do not indicate positive working capital, the amount of the bond shall be $100,000 plus an amount sufficient to cover the deficit in working capital.

(i) Upon such terms and for such periods as he or she deems appropriate, the commissioner may grant a PEO a limited license. Application for such a license must be submitted on forms prescribed by the commissioner and must demonstrate at a minimum that the applicant:

(1) Is licensed or registered as a PEO in another state under terms that are substantially similar to the requirements of this article;

(2) Does not maintain an office in this state or directly solicit client-employers located within this state; and

(3) Does not have more than fifty covered employees employed in this state on any given day.

WV Legislature

(j) Except where it is otherwise specially provided, the commissioner shall assess PEOs the following fees: For filing an application pursuant to subsection (b) or (c) of this section and an application to renew a license pursuant to subsection (g) of this section, $200; and for receiving and filing annual reports, $100.

WV Legislature