

# WEST VIRGINIA CODE: §33-46A-8

## §33-46A-8. Enforcement; penalties.

(a) No person may offer or provide professional employer services or use the names PEO, Professional Employer Organization, staff leasing, employee leasing, administrative employer or other title representing professional employer services without holding a license issued under the provisions of this article.

(b) The commissioner shall deny, suspend or revoke the license of a PEO if he or she finds that the PEO:

(1) Is in an unsound financial condition;

(2) Is using methods or practices in the conduct of its business that render its transaction of business in this state hazardous or injurious to its client-employers or the public; or

(3) Has failed to pay a judgment rendered against it in this state within sixty days after the judgment has become final.

(c) The commissioner may, after notice and opportunity for a hearing in accordance with the provisions of article two, chapter thirty-three of this code, deny, suspend or revoke the license of a PEO if the commissioner finds that the PEO:

(1) Has violated any lawful rule or order of the commissioner or any provision of the laws of this state;

(2) Has refused to be examined or to produce its accounts, records and files for examination, or if any person responsible for the conduct of affairs of the PEO has refused to give information with respect to its affairs, or has refused to perform any other legal obligation as to an examination, when required by the commissioner. For purposes of this section, persons responsible for the conduct of affairs of the PEO include, but are not limited to, members of the board of directors, board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership, association or limited liability company; any shareholder or member holding directly or indirectly ten percent or more of the voting stock, voting securities or voting interest of the administrator; and any other person who exercises control or influence over the affairs of the PEO;

(3) Has, without just cause, refused to pay proper claims or perform services arising under its contracts or has, without just cause, caused covered employees to accept less than the amount due them or caused covered employees to employ attorneys or bring suit against the PEO to secure full payment or settlement of their claims;

(4) At any time fails to meet any qualification for which issuance of the license could have

been refused;

(5) Has been convicted of, or has entered a plea of guilty or no contest to, a felony without regard to whether the adjudication was withheld; or

(6) Is under suspension or revocation in another state.

(d) Every PEO licensed under this article is under a continuing duty to notify the commissioner within ten days of any of the events set forth in subdivisions (5) and (6) of subsection (c) or subdivision (3) of subsection (b) of this section.

(e) The commissioner may, in his or her discretion and without advance notice or hearing, immediately suspend the license of a PEO if the commissioner finds that one or more of the following circumstances exist:

(1) The PEO is insolvent or impaired;

(2) A proceeding for receivership, conservatorship, rehabilitation or other delinquency proceeding regarding the PEO has been commenced in any state; or

(3) The financial condition or business practices of the PEO otherwise pose an imminent threat to the public health, safety or welfare of the residents of this state.

(f) If the commissioner finds that one or more grounds exist for the suspension or revocation of a license issued under this article, the commissioner may, in lieu of suspension or revocation, order the PEO to pay to the State of West Virginia a penalty in a sum not exceeding \$10,000; upon the failure of the PEO to pay the penalty within thirty days after notice of the penalty, the commissioner may revoke or suspend the license of the PEO.

(g) When a license has been revoked or suspended or renewal of the license refused, the commissioner may reissue, terminate the suspension or renew the license when he or she is satisfied that the conditions causing the revocation, suspension or refusal to renew have ceased to exist and are unlikely to recur.