

PROFESSIONAL EMPLOYER ORGANIZATION
Administrative Rules of the Texas Department of Licensing and Regulation
16 Texas Administrative Code, Chapter 72

TABLE OF CONTENTS

72.1.	Authority	1
72.10.	Definitions	1
72.20.	License Requirements--Full License.....	1
72.21.	License Renewal Requirements--Full License	2
72.22.	License Requirements--Limited License	2
72.23.	License Renewal Requirements--Limited License.....	3
72.24.	Approval of Assurance Organization	4
72.25.	Use of Assurance Organization by Applicant or License Holder.....	5
72.40.	Proof of Positive Working Capital.....	6
72.70.	Responsibilities of Licensee--General	7
72.71.	Responsibility of Licensee--Records	8
72.73.	Self-funded Health Benefit Plans	9
72.80.	Fees	9
72.90.	Sanctions--Administrative Sanctions/Penalties.....	10
72.91.	Enforcement Authority	10
72.100.	Electronic Filing and Compliance.....	10

72.1. Authority. (Effective November 19, 1993, 18 TexReg 8197; amended effective April 15, 1998, 23 TexReg 3678; amended effective April 1, 2004, 29 TexReg 3173; amended effective January 1, 2010, 34 TexReg 9430)

This chapter is promulgated under the authority of the Texas Labor Code, Chapter 91 and Texas Occupations Code, Chapter 51.

72.10. Definitions. (Effective November 19, 1993, 18 TexReg 8197; amended effective April 15, 1998, 23 TexReg 3678; amended effective April 1, 2004, 29 TexReg 3173; amended effective January 1, 2010, 34 TexReg 9430; amended effective December 31, 2011, 36 TexReg 8819; amended effective January 1, 2014, 38 TexReg 9512)

The following words and terms, as used in this chapter and Texas Labor Code, Chapter 91, have the following meanings, unless the context clearly indicates otherwise.

- (1) **Department**--Texas Department of Licensing and Regulation.
- (2) **Offering to Perform**--Making a written or oral proposal, contracting in writing or orally to perform professional employer services, or advertising in any form through any medium that a person or business entity is a professional employer organization, or that implies in any way that a person or business entity is available to enter into a professional employer services agreement.
- (3) **PEO**--Professional Employer Organization.
- (4) **Person**--Any individual, partnership, corporation, or any other business entity.
- (5) **The Code**--The Texas Labor Code, Chapter 91.

72.20. License Requirements--Full License. (Effective November 19, 1993, 18 TexReg 8197; amended effective April 15, 1998, 23 TexReg 3678; amended effective April 1, 2004, 29 TexReg 3173; amended effective January 1, 2010, 34 TexReg 9430; amended effective December 31, 2011, 36 TexReg 8819; amended effective January 1, 2014, 38 TexReg 9512)

- (a) Any person who performs or offers to perform PEO services as defined by the Code, must be licensed with the department.
- (b) To obtain an original PEO license, a person must provide the department with all of the following required information, on forms prescribed by the executive director:
 - (1) a completed registration form, including any applicable attachments or application forms;
 - (2) a completed personal information form from each controlling person as defined in Texas Labor Code §91.001(7);
 - (3) fingerprint cards for the applicant and any controlling persons;
 - (4) a completed criminal history questionnaire, as applicable;
 - (5) documentation from the Texas Secretary of State recognizing the person's authority to do business in this state;
 - (6) proof of positive working capital as described under §72.40; and
 - (7) the required fees.
- (c) Each individual applicant and all controlling persons must pass a background investigation that includes:
 - (1) A comparison of the person's fingerprints by appropriate state or federal law enforcement agencies with fingerprints on file; and
 - (2) A criminal history check with appropriate state and federal law enforcement agencies.

- (d) Falsification of a required document by the applicant is grounds for denial and/or revocation of license.
- (e) Falsification of documentation provided by a controlling person disqualifies that person from serving as a controlling person.

72.21. License Renewal Requirements--Full License. *(New rule effective January 1, 2010, 34 TexReg 9430; amended effective December 31, 2011, 36 TexReg 8819; amended effective January 1, 2014, 38 TexReg 9512)*

- (a) In order for a PEO to continue operating in this state, a license must be renewed annually.
- (b) Non-receipt of a license renewal notice from the department does not exempt a person from any requirements of this chapter.
- (c) To renew a PEO license, a person must provide the department with all of the following required information, on forms prescribed by the executive director:
 - (1) a completed registration form, including any applicable attachments or application forms;
 - (2) a completed personal information form from each controlling person as defined in Texas Labor Code §91.001(7), or a form indicating there has been no change in the personal information form since the previous license application or renewal from each controlling person;
 - (3) fingerprint cards for any new controlling persons;
 - (4) a completed criminal history questionnaire, as applicable;
 - (5) proof of positive working capital as described under §72.40; and
 - (6) the required fees.
- (d) Each individual applicant and all controlling persons of the PEO must submit to a background investigation as described in §72.20(c) each year at the time of renewal.
- (e) Falsification of a required document by the applicant is grounds for denial and/or revocation of license.
- (f) Falsification of documentation provided by a controlling person disqualifies that person from serving as a controlling person.
- (g) The department may refuse to renew a registration if the applicant or a controlling person of the applicant has violated Texas Labor Code, Chapter 91, this chapter, or a rule or an order issued by the commission or executive director.

72.22. License Requirements--Limited License. *(New rule effective January 1, 2010, 34 TexReg 9430; amended effective December 31, 2011, 36 TexReg 8819; amended effective January 1, 2014, 38 TexReg 9512)*

- (a) To qualify for a limited license, a person at all times must:
 - (1) employ less than 50 covered employees in this state at any one time;
 - (2) not provide covered employees to clients that are based or domiciled in the state;
 - (3) not maintain an office in this state; and
 - (4) not solicit clients located or domiciled in this state.
- (b) A person applying for a limited license must provide the department with all of the following required

information, on forms prescribed by the executive director:

- (1) a completed registration form, including any applicable attachments or application forms;
 - (2) a completed personal information form from each controlling person as defined in Texas Labor Code §91.001(7);
 - (3) a completed criminal history questionnaire, as applicable;
 - (4) proof of current licensure as a PEO, in good standing, if licensed in another state;
 - (5) documentation from the Texas Secretary of State recognizing the person's authority to do business in this state;
 - (6) proof of positive working capital as described under §72.40; and
 - (7) the required fees.
- (c) Falsification of a required document by the applicant is grounds for denial and/or revocation of license.
- (d) Falsification of documentation provided by a controlling person disqualifies that person from serving as a controlling person.
- (e) After the person obtains the limited license, the person must continue to meet all of the requirements under subsection (a) in order to retain the limited license. Failure to continue meeting the requirements will result in loss of the limited license.

72.23. License Renewal Requirements--Limited License. *(New rule effective January 1, 2010, 34 TexReg 9430; amended effective December 31, 2011, 36 TexReg 8819; amended effective January 1, 2014, 38 TexReg 9512)*

- (a) In order for a limited license PEO to continue operating in this state, a limited license must be renewed annually.
- (b) Non-receipt of a limited license renewal notice from the department does not exempt a person from any requirements of this chapter.
- (c) To continue qualification for a limited license, a person at all times while licensed must:
- (1) employ less than 50 covered employees in this state at any one time;
 - (2) not provide covered employees to clients that are based or domiciled in the state;
 - (3) not maintain an office in this state; and
 - (4) not solicit clients located or domiciled in this state.
- (d) To renew a limited license, a person must provide the department with all of the following required information, on forms prescribed by the executive director:
- (1) a completed registration form, including any applicable attachments or application forms;
 - (2) a completed personal information form from each controlling person as defined in Texas Labor Code §91.001(7), or a form indicating there has been no change in the personal information form since the previous license application or renewal from each controlling person;
 - (3) a completed criminal history questionnaire, as applicable;

- (4) proof of current licensure as a PEO, in good standing, if licensed in another state;
 - (5) proof of positive working capital as described under §72.40; and
 - (6) the required fees.
- (e) Falsification of a required document by the applicant is grounds for denial of the application and/or revocation of a license.
 - (f) Falsification of documentation provided by a controlling person disqualifies that person from serving as a controlling person.
 - (g) The person must continue to meet all of the requirements under subsection (a) in order to retain the limited license. Failure to continue meeting the requirements will result in loss of the limited license.

72.24. Approval of Assurance Organization. *(New rule effective September 1, 2010, 35 TexReg 7784)*

- (a) An applicant or license holder may enter into an agreement with a commission-approved assurance organization to act on behalf of an applicant or license holder in accomplishing the provisions of this chapter and the Code.
- (b) The authorization of an assurance organization to act on its behalf does not relieve an applicant or license holder from the applicant or license holder's ultimate responsibility to comply with each of its obligations pursuant to this chapter and the Code.
- (c) An assurance organization desiring to become approved by the commission shall submit to the department:
 - (1) a letter requesting approval by the commission;
 - (2) evidence that the assurance organization meets the qualifications set forth in Texas Labor Code, §91.001(2-a); and
 - (3) an explanation of how the assurance organization will certify each of the criteria and obligations required of applicants and license holders in this chapter and the Code.
- (d) No later than 30 days after the assurance organization submits all of the required information to the department, the department shall notify the assurance organization in writing whether or not the assurance organization has been approved.
- (e) If the department recommends not approving the assurance organization, it shall detail the deficiencies in the writing referenced in §72.24(d). The assurance organization may correct the deficiencies.
- (f) The assurance organization's approval shall remain in effect until such time as either the department, after written notice, terminates the approval, or until such time as the assurance organization, after written notice, withdraws or terminates its status as a commission-approved assurance organization.
- (g) For so long as the assurance organization is approved, the assurance organization shall notify the department annually, in writing, on the anniversary of its approval date, whether any of its standards of accreditation have changed during the previous year.
- (h) The department shall make available to the public a current list of all commission-approved assurance organizations.
- (i) The department shall notify the assurance organization in writing if the department becomes aware of information which indicates that the assurance organization is failing to adequately monitor or provide compliance assistance as intended by the Code and this chapter. The department shall include such deficiencies in its written notification.

- (j) The assurance organization shall respond to the department within 30 days of its receipt of the notification in §72.24(h), and both shall attempt to resolve the matters of concern. If the matters are not resolved within a reasonable time, the department may elect to recommend that the assurance organization's approval be terminated.
- (k) If the assurance organization desires to withdraw or terminate its status as an approved assurance organization in Texas, it shall give the department not less than 60 days written notification of said intent, and shall agree to cooperate with the department and any license holders or applicants that have an agreement with the assurance organization in the termination process.
- (l) In all matters concerning the relationship between the commission and either a commission-approved assurance organization, or an assurance organization desiring to become approved, including disputed matters, the decision of the executive director shall be binding on all parties.

72.25. Use of Assurance Organization by Applicant or License Holder. *(New rule effective September 1, 2010, 35 TexReg 7784; amended effective January 1, 2014, 38 TexReg 9512)*

- (a) The department shall accept an approved assurance organization's written certification as evidence that an applicant or license holder has met and continues to meet the criteria and obligations set forth in this chapter and the Code. The department retains the right to independently verify any information or certification provided by the assurance organization, including the ability to verify information contained in the assurance organization's databases.
- (b) An applicant or licensee wishing to utilize the services of an assurance organization shall execute, and the assurance organization shall submit to the department, together with any fees, the appropriate application form prescribed by the executive director which includes a certification by the assurance organization that the license holder or applicant is in compliance with the assurance organization's standards which meet the requirements of the Code and the rules and a certification by the licensee or applicant that the applicant is in full compliance with all requirements of the Code and the rules, together with the license holder or applicant's authorization for the department to accept information provided by the assurance organization on behalf of the applicant or licensee.
- (c) Two or more applicants or license holders using the services of an approved assurance organization and desiring to apply or renew as a group, may do so provided that the applicants or license holders apply or renew on a form prescribed by the executive director and demonstrate that they have at least two of the following criteria in common:
 - (1) financial statement;
 - (2) controlling person;
 - (3) insurance coverage; or
 - (4) ownership.
- (d) Though qualified applicants may apply as a group, the department will issue licenses only to qualified applicants having unique federal employment identification numbers.
- (e) An approved assurance organization shall notify the department in writing no later than 10 days after it receives a complaint, or becomes aware of information indicating that an applicant or license holder utilizing its services is not in compliance with its obligations under this chapter or the Code. The notification shall include the originals or a certified copy of all such information in the assurance organization's possession.
- (f) An approved assurance organization shall notify the department in writing no later than 10 days after the assurance organization has made a determination that an accredited PEO has violated any of the standards

of accreditation of the assurance organization.

- (g) Should the department elect to take action against any bond made available to it by an assurance organization because of a license holder or applicant's violation of this chapter or the Code as determined by the department, the department shall provide the assurance organization thirty (30) days written notice prior to taking action against the bond. This notification requirement shall neither affect the department's enforcement procedures nor affect the department's ability to take appropriate disciplinary action against a licensee or applicant.

72.40. Proof of Positive Working Capital. *(New rule effective January 1, 2010, 34 TexReg 9430; amended effective December 31, 2011, 36 TexReg 8819)*

- (a) A person applying for an original license or a renewal license must demonstrate the person's positive working capital according to the schedule set out in Texas Labor Code §91.014(a). Positive Working Capital must be demonstrated by the financial statement of the applicant that:
 - (1) is prepared in accordance with generally accepted accounting principles;
 - (2) is audited by an independent certified public accountant, and is without qualification as to the going concern status of the applicant;
 - (3) reflects positive working capital on a date not earlier than 15 months before the date of the application; and
 - (4) is based on adequate reserves for taxes, insurance, and incurred claims that are not paid.
- (b) An applicant that has not had sufficient operating history to have audited financial statements based on at least 12 months of operations must meet the financial capacity requirements required by the schedule in Texas Labor Code §91.014(a) and must provide the department with financial statements that have been reviewed by a certified public accountant.
- (c) An applicant may satisfy any deficiencies in the working capital requirement as set forth in subsection (a) or (b), with one or more of the following:
 - (1) A guaranty with the most recent audited financial statement of the guarantor, demonstrating positive working capital according to the schedule set out in Texas Labor Code §91.014(a);
 - (2) A surety bond that:
 - (A) is issued by a surety authorized to do business in the State of Texas;
 - (B) conforms to the Texas Insurance Code;
 - (C) is on a department-approved form;
 - (D) is payable to the executive director on behalf of persons who are injured because of a licensee's violation of Texas Labor Code, Chapter 91 or this chapter; and
 - (E) states that the surety will provide the department 60 days prior written notice of its intent to cancel the bond;
 - (3) An original letter of credit that:
 - (A) is irrevocable;
 - (B) is issued by a qualified financial institution which is financially responsible in the amount of the letter of credit;

- (C) does not require examination of the performance of the underlying transaction between the department and the licensee;
 - (D) is payable to the department on sight or within a reasonably brief period of time after presentation of all required documents; and
 - (E) does not include any condition that makes payment to the department contingent upon the consent of or other action by the licensee or other party; or
- (4) Another form of security acceptable to the executive director.
- (d) Any form of financial security used to satisfy a deficiency in applicant's positive working capital under subsection (a) or (b) that is issued or written for a specified term must be replaced or renewed in accordance with this chapter.
 - (e) Any form of financial security used to satisfy a deficiency in applicant's positive working capital under subsection (a) or (b) must be maintained by the licensee for the entire time the licensee continues to do business in this state.
 - (f) Any form of financial security used to satisfy a deficiency in applicant's positive working capital under subsection (a) or (b) must be kept in effect until the later of:
 - (1) two years after the licensee ceases to do business in this state;
 - (2) two years after the licensee's license expires; or
 - (3) the executive director receives satisfactory proof from the licensee and determines that the licensee has discharged or otherwise adequately met all its obligations under Texas Labor Code, Chapter 91 and this chapter.
 - (g) If any form of financial security under subsection (c) is canceled or lapses during the term of the licensee's license, the licensee may not continue operations after the effective date of the cancellation or lapse, unless and until the licensee files with the executive director a valid form of financial security that meets the requirements provided by Texas Labor Code, Chapter 91, and this chapter and that provides coverage after that date.
 - (h) Cancellation or lapse of the financial security under subsection (c) does not affect the licensee's liability before or after the effective date of the cancellation or lapse.

72.70. Responsibilities of Licensee--General. *(Effective November 19, 1993, 18 TexReg 8197; amended effective April 15, 1998, 23 TexReg 3678; amended effective April 1, 2004, 29 TexReg 3173; amended effective January 1, 2014, 38 TexReg 9512)*

- (a) Notices to Clients.
 - (1) A licensee must notify its clients of the name, mailing address, and telephone number of the department. The notice also must contain a statement that unresolved complaints concerning a licensee or questions concerning the regulation of PEO's may be addressed to the department.
 - (2) The notice required by this subsection must be made a part of all agreements between licensees and clients. The notification shall appear in a typeface no smaller than the body of the contract and shall be printed in bold face, all capital letters or contrasting color of ink to set it out from the surrounding written material.
- (b) Notices to Covered Employees.
 - (1) A licensee must provide written notice of a professional employer services agreement to each

covered employee that sets forth the general nature of the coemployment relationship, the name, mailing address, website www.tdlr.texas.gov, and telephone number of the department, and a statement that unresolved complaints concerning a licensee or questions concerning the regulation of PEO services may be addressed to the department.

- (2) A licensee must notify each covered employee that, pursuant to §91.032(c) of the Code, a client company is solely obligated to pay any wages for which:
 - (A) an obligation to pay is created by an agreement, contract, plan, or policy between the client company and the covered employee; and
 - (B) the PEO has not contracted to pay.
- (3) A licensee shall have each covered employee either sign a document or electronically acknowledge that the covered employee has received the notice required by §72.70(b)(1) and other notices set forth in this subsection. The signed document or electronic record must be kept on file for two years after employment is terminated. The signed document or electronic record may be included as part of the professional employer services agreement or other agreement with the covered employee or may be a separate document.
- (c) Notwithstanding subsection (b)(2), a PEO may process payments for wages that it has not contracted to pay at the request or direction of its clients.
- (d) A licensee must update the information provided to the department as part of the original or renewal license application within 45 days after any change to the information.

72.71. Responsibility of Licensee--Records. *(Effective November 19, 1993, 18 TexReg 8197; amended effective April 15, 1998, 23 TexReg 3678; amended effective April 1, 2004, 29 TexReg 3173; amended effective January 1, 2010, 34 TexReg 9430; amended effective January 1, 2014, 38 TexReg 9512)*

- (a) Upon notification, the licensee shall allow the executive director or his designee to audit records required by the Code and any records required by this chapter.
- (b) All licensees shall maintain the following documents for two (2) years following the termination of a professional employer services agreement:
 - (1) insurance coverage documents which may be required for filing with the Texas Department of Insurance, or insurance coverage documents which the licensee may be required to retain by the Texas Department of Insurance;
 - (2) all documents pertaining to insurance claims;
 - (3) workers compensation coverage documents;
 - (4) all documents pertaining to workers' compensation claims;
 - (5) professional employer services agreements between the license holder and client companies;
 - (6) employee tax records that may be required to be retained by or filed with the Texas Workforce Commission;
 - (7) employee tax records that may be required to be retained by or filed with the Internal Revenue Service; and
 - (8) employee tax records that may be required to be retained by or filed with the county or state.
- (c) This section does not require a licensee to obtain documents that it would not otherwise obtain in the course

of business and does not require a licensee to obtain documents from any other person or entity. This section requires licensees to maintain copies of documents actually received in the course of business or required to be maintained by the governmental entities listed in this section.

72.73. Self-funded Health Benefit Plans. *(New rule effective January 1, 2014, 38 TexReg 9512)*

A PEO that offers a self-funded health insurance plan shall deliver to the department the following, within 45 days of receiving approval from the Texas Department of Insurance:

- (1) a copy of the written approval to offer the plan from the Texas Department of Insurance; and
- (2) a copy of proof that the PEO has appointed the commissioner of the Texas Department of Insurance as its resident agent for purposes of service of process in this state.

72.80. Fees. *(Effective November 19, 1993, 18 TexReg 8197; amended effective February 23, 1995, 20 TexReg 962; amended effective April 15, 1998, 23 TexReg 3678; amended effective February 1, 2005, 30 TexReg 388; amended effective January 1, 2010, 34 TexReg 9430; amended effective January 1, 2014, 38 TexReg 9514)*

(a) Application Fees.

- (1) All application fees are non-refundable.
- (2) The application fee is a required fee that is separate from the required license fee.
- (3) The original application fee is \$150.
- (4) The renewal application fee is \$150.
- (5) The limited license original application fee is \$150.
- (6) The limited license renewal application fee is \$150.

(b) License Fees.

- (1) The license fee is a required fee that is separate from the required application fee.
- (2) The original license fee is:
 - (A) \$150 for 0 to 249 assigned employees;
 - (B) \$300 for 250 to 750 assigned employees; and,
 - (C) \$550 for more than 750 assigned employees.
- (3) The renewal license fee is:
 - (A) For 0 to 249 assigned employees, \$250 for licenses expiring before February 1, 2014; \$150 for licenses expiring on or after February 1, 2014;
 - (B) For 250 to 750 assigned employees, \$500 for licenses expiring before February 1, 2014; \$300 for licenses expiring on or after February 1, 2014; and,
 - (C) For more than 750 assigned employees, \$750 for licenses expiring before February 1, 2014; \$550 for licenses expiring on or after February 1, 2014.
- (4) The limited license original license fee is \$150.

- (5) The limited license renewal license fee is \$750 for licenses expiring before February 1, 2014; \$150 for licenses expiring on or after February 1, 2014.
- (c) Late renewal fees for licenses and limited licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).
- (d) Revised/Duplicate License/Certificate/Permit/Registration--\$25.

72.90. Sanctions--Administrative Sanctions/Penalties. *(Effective November 19, 1993, 18 TexReg 8197; amended effective April 15, 1998, 23 TexReg 3678; amended effective December 28, 2000, 25 TexReg 12686; amended effective April 1, 2004, 29 TexReg 3173; amended effective January 1, 2010, 34 TexReg 9430)*

If a person violates Texas Labor Code, Chapter 91, this chapter, or a rule, or order of the executive director or commission proceedings may be instituted to impose administrative sanctions, administrative penalties or both in accordance with Texas Labor Code, Chapter 91, Texas Occupations Code, Chapter 51, and any associated rules.

72.91. Enforcement Authority. *(New rule effective January 1, 2010, 34 TexReg 9430)*

The enforcement authority granted under Texas Occupations Code, Chapter 51, Texas Labor Code, Chapter 91, and any associated rules may be used to enforce Texas Labor Code, Chapter 91 and this chapter.

72.100. Electronic Filing and Compliance. *(New rule effective September 1, 2010, 35 TexReg 7784)*

- (a) On behalf of an applicant or licensee, an approved assurance organization may electronically file with the department any application, report, or other document required by the department, this chapter, or the Code.
- (b) All electronic filings made pursuant to this chapter and the Code shall be in a format prescribed by the executive director.