

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title XXI. Labor and Industries (Ch. 149-154)
Chapter 149. Labor and Industries (Refs & Annos)

M.G.L.A. 149 § 196

§ 196. Registration required for professional employer services; information provided with application; interim operating permit; renewal; reporting and financial requirements; combined or consolidated financial statements; forms, filings and fees; positive working capital and surety bonds

Effective: August 10, 2018
Currentness

(a) Except as otherwise provided in sections 192 to 203, inclusive, no person shall provide, advertise or otherwise hold itself out as providing professional employer services in the commonwealth, unless such person is registered pursuant to this section.

(b) Each applicant for registration shall provide the department with the following information: (i) the name or names under which the PEO conducts business or will conduct business; (ii) the address of the principal place of business of the PEO and the address of each office it maintains in the commonwealth; (iii) the taxpayer or employer identification number of the PEO; (iv) a list by jurisdiction of each name under which the PEO has operated in the preceding 5 years, including any alternative names, names of predecessors and, if known, successor business entities; (v) a statement of ownership, which shall include the name and evidence of the business experience of any person that, individually or acting in concert with one or more other persons, owns or controls or will own or control if known or reasonably known at the time of registration, directly or indirectly, not less than 25 per cent of the equity interests of the PEO; (vi) a statement of management, which shall include the name and evidence of the business experience of any person who serves or will serve, if known or reasonably known at the time of registration, as president, chief executive officer or otherwise has the authority to act as senior executive officer of the PEO; (vii) A financial statement setting forth the financial condition of the PEO or PEO group; provided, however, that at the time of application for a new license, as part of the financial statement, the applicant shall submit an audit of the applicant, which shall be the most recent audit available and shall not be more than 13 months old; provided further, that nothing in this clause shall be construed as to require the department to conduct the audit; provided further, that a PEO or PEO group shall file

on an annual basis, at the time of renewal, a succeeding audit; provided further, that an applicant may apply for an extension with the department but any such request shall be accompanied by a letter from the auditors stating the reasons for the delay and the anticipated audit completion date; provided further, that the financial statement shall be prepared in accordance with generally accepted accounting principles and the audit shall be conducted by an independent certified public accountant licensed to practice in the jurisdiction in which such accountant is located and shall be without qualification as to the going concern status of the PEO; provided further, that a PEO group or a PEO that is part of an organizational structure in which it is majority owned or commonly controlled by an entity, parent or controlling person may submit combined or consolidated audited financial statements to meet the requirements of this section; and provided further, that a PEO that has not had sufficient operating history to have audited financials based upon not less than 12 months of operating history shall meet the financial capacity requirements in subsections (l) and (m) and shall present financial statements reviewed by a certified public accountant; and (viii) a list of clients including client name, physical address, telephone number and federal identification number.

(c) A PEO shall complete its initial registration prior to initiating operations within the commonwealth. If a PEO that is not registered in the commonwealth becomes aware that an existing client not based in the commonwealth has employees and operations in the commonwealth, the PEO shall decline to provide PEO services for those employees or notify the department within 5 business days of its knowledge of the fact and file a full business registration within 5 business days if there are more than 15 covered employees. The department may issue an interim operating permit for the period the registration applications are pending if: (i) the PEO is currently registered or licensed by another state; and (ii) the department determines it to be in the best interests of the potential covered employees.

(d) Upon expiration of its registration, the registrant shall renew its registration by notifying the department of any changes in the information provided in the registrant's most recent registration or renewal. A registrant's existing registration shall remain in effect during the pendency of a renewal application.

(e) PEOs in a PEO group may satisfy the reporting and financial requirements established pursuant to this section on a combined or consolidated basis; provided, however, that each member of the PEO group shall guarantee the financial capacity obligations pursuant to clause (vii) of subsection (b) for each 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 shall guarantee the obligations of the PEOs in the PEO group.

(f) A PEO that is part of an organizational structure in which it is majority owned or commonly controlled by an entity, parent or controlling person may submit a combined or consolidated audited financial statement provided the controlling entity under the consolidated or combined statement guarantees the obligations of the PEO.

(g) The department shall maintain a list of PEOs registered pursuant to this section and shall make the list readily available to the public by electronic or other means.

(h) The department may prescribe forms necessary to promote the efficient administration of this section.

(i) Applications, documents, reports and other filings shall be submitted in a manner determined by the director, which may also include the acceptance of electronic filings and other assurance by an independent and qualified assurance organization approved by the director that provides satisfactory assurance of compliance acceptable to the director consistent with or in lieu of the requirements of subsections (b) to (g), inclusive, subsection (k) and other requirements of sections 192 to 203, inclusive. The director shall permit a PEO to authorize such an approved assurance organization to act on the PEO's behalf in complying with the registration requirements pursuant to this section, including electronic filings of information and payment of registration fees. Use of such an approved assurance organization shall be optional and not mandatory for a registrant. Nothing in this subsection shall limit or change the department's authority to register or terminate registration of a professional employer organization or to investigate or enforce this chapter.

(j) All records, reports and other information obtained from a PEO for the purposes of this section shall, except to the extent necessary for the department's proper administration of this chapter, be confidential and shall not be published or open to public inspection except to public employees in the performance of their public duties or otherwise in accordance with federal or state law.

(k) The department shall establish by regulation any fee to be charged for initial registration, renewal or group registration.

(l) Except as provided by subsections (e) and (f), each PEO or collectively each PEO group shall maintain: (i) positive working capital, as defined by generally accepted accounting principles, proof of which shall be submitted at registration as reflected in the financial statements submitted

to the department with the initial registration and each annual renewal; and (ii) a surety bond in the amount of \$250,000, proof of which shall be submitted at the time of registration; provided, however, that the surety bond required shall be in a form acceptable to the director and maintained while the license remains in effect or any obligations or liabilities of the registrant remain outstanding.

(m) A PEO or PEO group without positive working capital may provide a bond, irrevocable letter of credit or securities with a minimum market value equaling the deficiency plus \$250,000. Such bond shall be held by a depository designated by the department, 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.

Credits

Added by St.2018, c. 228, § 22, eff. Aug. 10, 2018.

M.G.L.A. 149 § 196, MA ST 149 § 196

Current through Chapter 46, except Chapter 41 of the 2019 1st Annual Session

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