

Virginia Workers' Compensation Commission

Frequently Asked Questions for Professional Employer Organizations

The information contained herein should not be construed as legal advice or an advisory opinion. Answers to specific questions often vary depending on facts and information that may not be disclosed or be readily apparent. You may wish to seek the advice of legal counsel.

1 Q: When does a business need to register as a Professional Employer Organization (PEO)?

A: Any business desiring to engage in the business of providing professional employer services shall register with the Virginia Workers' Compensation Commission before any such services may be provided.

2 Q: How is "Professional Employer Organization" defined?

A: Pursuant to *Code of Virginia* § 65.2-101:

"Professional employer organization," means any person that enters into a written agreement with a client company to provide professional employer services.

"Professional employer services" means services provided to a client company pursuant to a written agreement with a professional employer organization whereby the professional employer organization initially employs all or a majority of a client company's workforce and assumes responsibilities as an employer for all coemployees that are assigned, allocated, or shared by the agreement between the professional employer organization and the client company.

3 Q: Are the PEO regulations applicable to Employee Leasing?

A: The terms "Professional Employer Organization" and "Employee Leasing" are frequently used interchangeably. A business that provides professional employer services or employee leasing should consider the definition provided in the *Code of Virginia*.

4 Q: How do I register to become a PEO in Virginia?

A: Registration is completed online through the Commission's WebFile system. The first step is to obtain WebFile user access by completing and submitting a PEO WebFile Access (Form 95) www.workcomp.virginia.gov/webfile/peo-access-form.

After access is granted by the Commission, the following instructions in the WebFile Guide for PEOs may be used (www.workcomp.virginia.gov/webfile/webfile-guide-peos) for log in. Once the registration is submitted and approved, a PEO Registration Certificate will be generated.

5 Q: How long does it take to complete the registration process?

A: Registration should be completed within 30 days from the date of initial WebFile user access. The time

needed to complete the registration varies. Allow time to obtain the necessary insurance coverage and ensure that insurance coverage is properly filed by the insurance carrier.

6 Q: What type of information is required to register a PEO?

A: PEO contact information, PEO legal status, approximate number of direct PEO employees and client employees in Virginia, Bureau of Insurance data, designated representative maintaining a Virginia address and Virginia voluntary market workers' compensation insurance coverage in the name of the PEO.

7 Q: Is a PEO allowed to provide PEO client services during the registration process?

A: A PEO must complete all registration information and receive registration approval *before* servicing any client companies in Virginia.

8 Q: How many users can have access to PEO WebFile?

A: A total of two PEO users can be given WebFile user access for each PEO.

9 Q: Is there a filing fee to register as a PEO in Virginia?

A: There is no filing fee or registration fee. There is an annual assessment fee that is based upon payroll.

10 Q: Is a PEO required to have a Designated Representative?

A: According to the Regulations of the Commission 16 VAC 30-100-20, a PEO shall designate a representative maintaining an address in Virginia. This designated representative shall be authorized to receive service of process and communications from the Commission.

11 Q: What is a Parental Guarantee?

A: For a business that holds controlling ownership interest in a PEO, the Parental Guarantee form must be completed and submitted. The form is available at: www.workcomp.virginia.gov/forms/peo-parental-guarantee

12 Q: What types of insurance coverage does the Commission accept for PEOs in Virginia?

A: A PEO may secure and provide all required voluntary market workers' compensation insurance for its coemployees under a master workers' compensation insurance policy in the name of the PEO. For a PEO client company, Virginia will also accept an individual client policy with a Virginia endorsement. The PEO client's policy cannot cover the PEO.

13 Q: Can a PEO obtain workers' compensation in the assigned risk market?

A: *Code of Virginia* § 65.2-803.1 indicates that a PEO may secure and provide all required workers' compensation insurance in the voluntary market.

14 Q: Why is a PEO required to carry workers' compensation insurance coverage when all of the PEO client companies have their own individual policies?

A: In Virginia, a PEO is deemed to be an employer of its coemployees. A business with more than two

part-time or full-time employees is required to carry workers' compensation coverage. This includes a PEO's own employees plus all coemployees. The requirement for coverage does not change if a client has an individual policy.

15 Q: When is a PEO client required to carry workers' compensation insurance coverage?

A: As a general rule, a business with more than two part-time or full-time employees is required to carry workers' compensation coverage. If a business hires subcontractors to perform the same trade, business or occupation, or to fulfill a contract, the subcontractor's employees are included when determining the total number of employees for coverage requirements. Executive officers also count as employees. If the total number of all employees is more than two, workers' compensation is required. Workers' compensation is mandatory for those employers who meet the requirements under the law.

16 Q: How is the "Contract Date" determined?

A: Virginia is concerned with Virginia exposure, therefore the "contract date" for a client is the date that the client was added in Virginia.

17 Q: Can I send in a Certificate of Insurance to provide proof of insurance coverage for our clients?

A: A PEO must enter in WebFile all client insurance coverage information exactly as it is filed with the National Council on Compensation Insurance (NCCI). Certificates of Insurance are not accepted as proof of coverage as they do not contain sufficient information and will not substitute for data entry in WebFile.

18 Q: Our PEO insurance coverage information is not yet available from the insurance carrier to enter into WebFile. How can I complete the insurance information section?

A: You can request a copy of the insurance binder, from the insurance agent, which provides policy information for entry into WebFile; however, insurance coverage information cannot be validated until the policy has been filed by the insurance carrier with NCCI.

19 Q: WebFile will not accept the PEO insurance coverage information that I try to enter. Help!

A: There are several reasons for difficulty entering PEO coverage information:

- Current, *valid Virginia* coverage must be entered. A PEO that is based out of state with an out of state policy will require that Virginia is listed in Item 3A of the insurance policy.
- You may have future policy information, but the *current* policy information must be entered in WebFile.
- Insurance policy information must be certified with NCCI and registered in the Commission's database. Policy data entered in WebFile, such as policy #, FEIN (Federal Employer Identification Number) and NCCI carrier code (not NAIC code) must match what is listed in NCCI.

20 Q: WebFile will not accept the PEO client insurance coverage information that I try to enter. Help!

A: There are several reasons for difficulty entering PEO client coverage information:

- Navigate in WebFile to the *client coverage tab* and not to the PEO coverage tab.
- If you try to enter the master policy for the client but you have not first entered it for the PEO, it will not be an option for the client. Add the master policy to the PEO first.

- Insurance policy information must be certified with NCCI and registered in the Commission's database. Policy data entered in WebFile, such as policy #, FEIN (Federal Employer Identification Number) and NCCI carrier code (not NAIC code) must match what is listed in NCCI.

21 Q: I mistakenly added a client into WebFile instead of updating coverage. What do I do?

A: If a client is mistakenly added, it is imperative that you correct all information:

- To correct an improperly added client, you must first terminate the newly added client by following the instructions in the WebFile Guide for PEOs (www.workcomp.virginia.gov/webfile/webfile-guide-peos)
- Next, go to the existing client's coverage tab and enter the new coverage information.
- If you mistakenly enter a new client a second time, the existing client information listed under the contact tab appears to display; however, it is no longer in the Commission's PEO WebFile and you must re-enter it in the last three lines of the contact section.

22 Q: When is the Annual Report tab available?

A: The Commission makes the Annual Report tab available on January 1st of each year. The annual report shall be filed by 5 p.m., Eastern Standard Time, on January 31st according to *Code of Virginia* § 65.2-803.1 B and the Regulations of the Commission 16 VAC 30-100-30.

23 Q: How do I file the Annual Report information?

A: In WebFile, navigate to the appropriate PEO:

- Scroll down to the Annual Report section.
- Click the year for which you wish to file.
- Click on the "Edit" button.
- Edit the annual assessment data.

24 Q: Is the Annual Report required for a year when a company has no employees and no payroll?

A: An annual report is required by every registered PEO, annually, regardless of payroll. If the payroll is zero, then the Annual Report is filed with a zero payroll.

25 Q: What do I do if the Annual Report that I filed contains an error?

A: Contact vapeo@workcomp.virginia.gov and advise of the need to make a correction. Once we allow edits, corrections must be made within 10 days.

26 Q: Our PEO terminated, why am I receiving a request for an Annual Report?

A: A PEO is required to provide payroll information and pay the resulting annual assessment for the period of January 1st through the termination date, during which it operated as a PEO in Virginia.

27 Q: How is the annual assessment calculated?

A: The Commission calculates the annual assessment for a PEO required by *Code of Virginia* § 65.2-803.1 I using the following formula from the Regulations of the Commission 16 VAC 30-100-70:

(a/b) x c where,

a = payroll of the PEO for which assessment is being calculated;

b = aggregate annual payroll; and

c = sums necessary for registration and supervision of all PEOs.

28 Q: When is the annual assessment fee due?

A: The assessment is due no later than 60 days from the date of the invoice according to the Regulations of the Commission 16 VAC 30-100-70 C.