NEBRASKA ADMINISTRATIVE CODE

TITLE 230 - NEBRASKA DEPARTMENT OF LABOR

CHAPTER 3 - REGULATIONS FOR THE PROFESSIONAL EMPLOYER

ORGANIZATION REGISTRATION ACT

**001. General.**

This chapter is adopted pursuant to *Neb. Rev. Stat.* §§ 48-2701 to 48-2711 (Reissue 2010), the Professional Employer Organization Registration Act, as enacted in LB 579 (Laws 2010). A copy of these regulations will be kept on file in the offices of the Commissioner of Labor, Nebraska Department of Labor, 550 South 16th Street, Lincoln, Nebraska.

**002. Definitions.**

For purposes of these regulations, the following definitions apply:

A. “Act” refers to the Professional Employer Organization Registration Act, *Neb. Rev. Stat.* §§ 48-2701 to 48-2711;

B. "Assurance Organization" means an entity that is authorized by a professional employer organization or professional employer organization group to act on its behalf in complying with the registration and registration renewal requirements of the Act, including the electronic filing of applications and other information, as well as the payment of application and registration fees;

C. "Client" means any person who enters into a professional employer agreement with a professional employer organization;

D. "Co-employer" means either a professional employer organization or a client;

E. "Co-employment relationship" means a relationship which is intended to be ongoing rather than temporary or project-specific, wherein the rights, duties, and obligations of an employer that arise out of an employment relationship have been allocated between the client employer and a professional employer organization, as co-employers, pursuant to a professional employer agreement, these regulations, and the Act.

F. "Covered employee" means an individual who has a co-employment relationship with a professional employer organization and a client and who meets all of the following criteria:

1. The individual has received written notice of co-employment with the professional employer organization; and

2. The individual's co-employment relationship is pursuant to a professional employer agreement subject to the Act.

3. In addition, individuals who are officers, directors, shareholders, partners, and managers of the client, as well as members of a limited liability company that is a client, are covered employees if:

a. The professional employer organization and the client have expressly agreed in the professional employer agreement that such individuals are covered employees; and

b. If such individuals act as operational managers or perform day-to-day operational services for the client;

G. "Department" means the Nebraska Department of Labor;

H. "Direct-hire employee" means an individual who is an "employee" of the professional employer organization, within the meaning of the Nebraska Workers' Compensation Act, but who is not an employee of a client and not a covered employee;

I. "Person" means any individual, partnership, corporation, limited liability company, association, or any other form of legally recognized entity;

J. "Professional employer agreement" means a written contract by and between a client and a professional employer organization that provides:

1. For the co-employment of covered employees;

2. For the allocation of employer rights and obligations between the client and the professional employer organization with respect to covered employees; and

3. That the professional employer organization and the client assume the responsibilities required by the Professional Employer Organization Registration Act;

K. "Professional employer organization" means any person engaged in the business of providing professional employer services. The applicability of the act to a person engaged in the business of providing professional employer services shall be unaffected by the person's use of the term staff leasing company, administrative employer, employee leasing company, or any name other than professional employer organization;

L. "Professional employer organization group" means two or more professional employer organizations that are majority-owned or commonly controlled by the same entity, parent company, or controlling person;

M. "Professional employer services" means the service of entering into co-employment relationships;

N. "Registrant" means a professional employer organization registered under the Act;

O. "Temporary help services" means services consisting of a person:

1. Recruiting and hiring his/her/its own employees;

2. Finding other organizations that need the services of those employees;

3. Assigning those employees:

a. To perform work at or services for the other organizations to support or supplement the other organizations' workforces,

b. To provide assistance in special work situations, including employee absences, skill shortages, or seasonal workloads, or

c. To perform special assignments or projects; and

4. Customarily attempting to reassign the employees to other organizations when they finish each assignment;

P. "Wages," as used in the professional employer agreement, means the covered employee's salary, draw, or regular rate of pay, including bonuses, commissions, severance pay, deferred compensation, profit sharing, or vacation, sick, or other paid time off pay, all of which are the responsibility of the client, unless the professional employer organization has expressly agreed to assume liability for such payments in the

professional employer agreement;

Q. "Working capital" means current assets less current liabilities, as defined by generally accepted accounting principles.

**003. Limitations and Exclusions.**

A. The following are not professional employer organizations or professional employment services for purposes of the Act and are not subject to the Act:

1. Arrangements wherein a person, whose principal business activity is not entering into professional employer arrangements and which does not hold itself out as a professional employer organization, shares employees with a commonly owned company within the meaning of sections 414(b) and (c) of the Internal Revenue Code;

2. Independent contractor arrangements by which a person assumes responsibility for the product produced or service performed by such person or his or her agents and retains and exercises primary direction and control over the work performed by the individuals whose services are supplied under such arrangements; and

3. Organizations providing temporary help services;

B. Nothing contained in the Professional Employer Organization Registration Act, in these regulations, or in any professional employer agreement, shall affect, modify, or amend:

1. Any collective-bargaining agreement; or

2. The rights or obligations of any client, professional employer organization, or covered employee under the federal National Labor Relations Act, 29 U.S.C. 151 *et seq*., or the federal Railway Labor Act, 45 U.S.C. 151, *et seq*.

C. Nothing contained in the Professional Employer Organization Registration Act, in these regulations, or any professional employer agreement shall:

1. Diminish, abolish, or remove rights of covered employees as to a client or obligations of such client to a covered employee existing prior to the effective date of the professional employer agreement;

2. Affect, modify, or amend any contractual relationship or restrictive covenant between a covered employee and any client in effect at the time a professional employer agreement becomes effective; nor will it prohibit or amend any contractual relationship or restrictive covenant that is entered into subsequently between a client and a covered employee; nor will a professional employer organization have any responsibility or liability in connection with, or arising out of, any such existing or new contractual relationship or restrictive covenant, unless the professional employer organization has specifically agreed otherwise in writing;

3. Create any new or additional enforceable right of a covered employee against a professional employer organization that is not specifically provided by the professional employer agreement or the act; or

4. Diminish, abolish, or remove rights of covered employees as to a client or obligations of a client to covered employees, including, but not limited to, rights and obligations arising from civil rights laws guaranteeing nondiscrimination in employment practices;

5. Affect, modify, or amend any state, local, or federal licensing, registration, or certification requirement applicable to any client or covered employee;

6. Affect a client company's status or certification as a small, minority-owned, disadvantaged, or woman-owned business enterprise or a historically underutilized business, with respect to a bid, contract, purchase order, or agreement entered into with the state or a political subdivision of the state, because the client company has entered into a professional employer agreement with a professional employer organization or uses the services of a professional employer organization.

D. A covered employee who is required to be licensed, registered, or certified according to law or regulation is deemed solely an employee of the client for purposes of any such license, registration, or certification requirement.

E. A professional employer organization shall not be deemed to engage in any occupation, trade, profession, or other activity that is subject to licensing, registration, or certification requirements, or is otherwise regulated by a governmental entity, solely by entering into and maintaining a co-employment relationship with a covered employee who is subject to such licensing, registration, or certification requirements.

**004. Co-employment Relationship.**

A. No person shall knowingly enter into a co-employment relationship in which less than a majority of the employees of the client in this state are covered employees or in which less than one-half of the payroll of the client in this state is attributable to covered employees.

B. Enforcement of Rights. Except as specifically provided otherwise in the Act, in these regulations, or in the terms of the professional employer agreement, in any co-employment relationship:

1. The professional employer organization is entitled to enforce only such employer rights and is subject to only those employer obligations specifically allocated to the professional employer organization by the professional employer agreement or the Act;

2. The client is entitled to enforce those rights and is obligated to provide and perform those employer obligations allocated to such client by the professional employer agreement or the act; and

3. The client is entitled to enforce any right and is obligated to perform any obligation of an employer not specifically allocated to the professional employer organization by the professional employer agreement or the act.

C. Except as specifically provided otherwise in the Act, in these regulations, or in the terms of the professional employer agreement, a client shall have the sole right to direct and control the professional or registered activities of covered employees and of the client's business. Such covered employees and clients shall remain subject to regulation by the regulatory or governmental entity responsible for licensing, registration, or certification of such covered employees or clients.

**005. Professional Employment Agreement.**

A. Except as specifically provided in the Act, in these regulations, or in the co-employment relationship between the client and the professional employer organization, and between each co-employer and each covered employee, shall be governed by the professional employer agreement.

B. Each professional employer agreement shall include the following:

1. The allocation of rights, duties, and obligations set forth in the Act and in section 002 of these regulations;

2. A provision that the professional employer organization shall have responsibility:

a. To pay wages to covered employees;

b. To withhold, collect, report, and remit, under the client's employer account number using the client's combined tax rate, payroll-related and unemployment taxes, penalties, and interest owed upon wages earned by covered employees; and

c. To the extent the professional employer organization has assumed responsibility in the professional employer agreement, to make payments for employee benefits for covered employees.

3. A provision that the client is liable for the payment of unpaid combined tax, penalties, and interest owed upon wages paid to worksite employees;

4. A provision that the covered employees shall be considered employees of the client for purposes of the Employment Security Law, as provided in *Neb. Rev. Stat.* § 48-648(3);

5. A provision that the professional employer organization shall have a right to hire, discipline, and terminate a covered employee as may be necessary to fulfill the professional employer organization's responsibilities under the Act, these regulations, and the professional employer agreement.

6. A provision that the client shall have a right to hire, discipline, and terminate a covered employee; and

7. A provision that the responsibility to obtain workers' compensation coverage for covered employees and for other employees of the client from an insurer licensed to do business in this state and otherwise in compliance with all applicable requirements shall be specified in the professional employer agreement in accordance with section 48-2709 of the Act.

8. A provision that the client shall not be relieved of its obligations under the Nebraska Workers' Compensation Act to provide workers' compensation coverage in the event that the professional employer organization fails to obtain workers' compensation insurance for which it has assumed responsibility;

D. Notice of Professional Employer Agreement.

1. Each professional employer organization that has entered into a professional employer agreement shall provide written notice to each covered employee affected by such agreement.

2. The client shall post the notice in a conspicuous place at the client's worksite.

3. The notice shall contain the following information:

a. Notice of the general nature of the co-employment relationship between and among the professional employer organization, the client, and any covered employees; and

b. Any notice required by the state relating to unemployment compensation and the state minimum wage.

E. Responsibilities under the Professional Employer Agreement. Except as otherwise expressly provided in the professional employer agreement:

1. A client shall be solely responsible for the quality, adequacy, or safety of the goods or services produced or sold in the client's business;

2. A client shall be solely responsible for:

a. Directing, supervising, training, and controlling the work of the covered employees with respect to the business activities of the client or when such employees are otherwise acting under the express direction and control of the client; and

b. The acts, errors, or omissions of the covered employees with regard to such activities or when such employees are otherwise acting under the express direction and control of the client;

3. A client shall not be liable for the acts, errors, or omissions of a professional employer organization or of any covered employee of the client and a professional employer organization when such covered employee is acting under the express direction and control of the professional employer organization;

4. It is not intended that the Act or these regulations shall limit any contractual liability or obligation specifically provided in a professional employer agreement;

5. A covered employee is not, solely as the result of being a covered employee of a professional employer organization, an employee of the professional employer organization for purposes of general liability insurance, fidelity bonds, surety bonds, employer's liability which is not covered by workers' compensation, or liquor liability insurance carried by the professional employer organization, unless the covered employee is included for such purposes by specific reference in the professional employer agreement and in any applicable prearranged employment contract, insurance contract, or bond.

6. When a professional employer organization obtains workers' compensation coverage for its clients that is written by an authorized insurer, it shall not be considered to be an insurer based on its provision of workers' compensation insurance coverage to a client, even if the professional employer organization charges the client a different amount than it is charged by the authorized insurer.

7. A professional employer organization shall not offer its covered employees any health benefit plan which is not fully insured by an authorized insurer.

**006. Registration.**

A. Registration Required to Provide Services as a Professional Employer Organization or Professional Employer Organization Group.

1. A person engaged in the business of providing professional employer services pursuant to co-employment relationships in which all or a majority of the employees of a client are covered employees shall be registered under the Act.

2. A person who is not registered under the Act shall not offer or provide professional employer services in this state and shall not use the names PEO, professional employer organization, staff leasing company, employee leasing company, administrative employer, or any other name or title representing professional employer services.

B. Date When Registrations Are Due.

1. Each professional employer organization operating within this state as of January 1, 2012, shall complete its initial registration not later than one hundred eighty days after January 1, 2012. Such initial registration shall be valid until one hundred eighty days from the end of the professional employer organization's first fiscal year that is more than one year after January 1, 2012.

2. Each professional employer organization not operating within this state as of January 1, 2012, shall complete its initial registration prior to initiating operations within this state.

C. Unregistered PEOs. If a professional employer organization not registered in this state becomes aware that an existing client not based in this state has employees and operations in this state, the professional employer organization shall either:

1. Decline to provide professional employer services for those employees; or

2. Notify the Department within five business days of its knowledge of this fact and file a limited registration application under this section or a full registration if there are more than fifty covered employees.

D. Interim Operating Permit. The Department may issue an interim operating permit for the period that a registration application is pending, if the professional employer organization:

1. Is currently registered or licensed by another state; and

2. The department determines it to be in the best interests of the potential covered employees to issue an interim operating permit to such professional employer organization.

E. Registration Application: Required Information. Each applicant for registration under the Act shall provide the Department with the following information:

1. The name or names under which the professional employer organization conducts business;

2. The address of the principal place of business of the professional employer organization and the address of each office it maintains in this state;

3. The professional employer organization's taxpayer or employer identification number;

4. A list by jurisdiction of each name under which the professional employer organization 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 that, 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 interest of the professional employer organization;

6. A statement of management, which shall include the name and evidence of the business experience of any individual who serves as president or chief executive officer or otherwise has the authority to act as senior executive officer of the professional employer organization; and

7. A financial statement setting forth the financial condition of the professional employer organization or professional employer organization group.

F. Renewal of Registration. Within one hundred eighty days after the end of a registrant's fiscal year, a registrant shall renew its registration by notifying the department of any changes in the information provided in such registrant's most recent registration or renewal. A registrant's existing registration shall remain in effect during the pendency of a renewal application.

G. Limited Registration.

1. A professional employer organization is eligible for a limited registration under the Act if such professional employer organization:

a. Submits a properly executed request for limited registration on a form provided by the Department;

b. Is domiciled outside this state and is licensed or registered as a professional employer organization in another state;

c. Does not maintain an office in this state or directly solicit clients located or domiciled within this state; and

d. Does not have more than fifty covered employees employed or domiciled in this state on any given day.

2. A limited registration is valid for one year and may be renewed in accordance with the provisions of section 003(F).

3. A professional employer organization seeking limited registration under this section shall provide the department with information and documentation necessary to show that the professional employer organization qualifies for a limited registration.

4. Applicants for limited registration are not required to comply with the financial responsibility requirements set forth in section 48-2705 of the Act or section 009 of these regulations.

**007. Audits.**

A. When Required. A professional employer organization or professional employer organization group shall also submit to the Department a financial audit, as follows:

1. At the time of initial registration, the organization or organization group shall submit its most recent audit, which audit may not be older than thirteen months.

2. Thereafter, the organization or organization group shall file, on an annual basis, within one hundred eighty days after the end of its fiscal year, a succeeding audit.

B. Extensions. An applicant may apply for an extension with the department, but any such request shall be accompanied by a letter from the auditor stating the reasons for the delay and the anticipated audit completion date.

C. 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 such accountant is located and shall be without qualification as to the going concern status of the professional employer organization.

D. A professional employer organization group may submit combined or consolidated financial statements, provided that such statements meet the requirements of section 005 of these regulations.

E. A professional employer organization that has not had sufficient operating history to have audited financial statements based upon at least twelve months of operating history shall meet the financial responsibility requirements of section 48-2705 of the Act, and section 006 of these regulations, and shall present financial statements reviewed by a certified public accountant.

**008. Combined or Consolidated Financial Statements.**

A. Professional employer organizations in a professional employer organization group may satisfy any reporting and financial requirements of the Act on a combined or consolidated basis if each member of the organization group guarantees the financial capacity obligations under the Act of each other member of the organization group.

B. If a professional employer organization group submits a combined or consolidated audited financial statement that includes entities that are not professional employer organizations or are not in the professional employer organization group, the controlling entity of the organization group under the consolidated or combined statement need only guarantee the obligations of the professional employer organizations in the professional employer organization group.

**009. Financial Responsibility Requirements.**

A. Except as provided in subsections (7) and (10) of section 48-2704 of the Act, and section 006(G) of these regulations, each professional employer organization or professional employer organization group shall provide the Department with evidence of one of the following:

1. If the positive working capital of the professional employer organization is **at least** one hundred thousand dollars, proof of such positive working capital, as reflected in the financial statements submitted to the Department with the initial registration and with each annual renewal, as provided in section 006 of these regulations; or

2. If the positive working capital of the professional employer organization is **less than** one hundred thousand dollars, the professional employer organization shall submit a bond, certificate of deposit, escrow account, or irrevocable letter of credit in an amount of not less than one hundred thousand dollars, at the time of initial registration, and shall submit proof, at the time of each annual renewal, that the bond, certificate of deposit, escrow account, or irrevocable letter of credit remains in effect;

3. If the professional employer organization relies on subsection (A)(1) of this section at the time of initial registration, and a financial statement submitted to the Department, at the time of any annual renewal, indicates that the professional employer organization has a deficit in working capital, below one hundred thousand dollars, the professional employer organization shall submit a bond, certificate of deposit, escrow account, or irrevocable letter of credit, in an amount that is not less than one hundred thousand dollars **plus** an amount that is sufficient to cover that deficit.

B. Enforcement of Financial Commitment.

1. Proof of the commitment to meet the financial responsibility requirements described in subsection (A) of this section shall be in a form approved by the Department, and shall be held in a depository designated by the Department, and shall secure the payment by the professional employer organization or professional employer organization group of any wages, salaries, employee benefits, worker's compensation insurance premiums, payroll taxes, unemployment insurance contributions, or other amounts that are payable to or with respect to an employee performing services for a client if the professional employer organization or professional employer organization group does not make those payments when due.

2. Proof of the commitment to meet the financial responsibility requirements described in subsection (A) of this section shall be established in favor of or be made payable to the Department, for the benefit of the state and of any employee to whom or with respect to whom the professional employer organization or professional employer organization group does not make a payment described in this subsection when due.

3. The professional employer organization or professional employer organization group shall file with the department any agreement, instrument, or other document that is necessary to enforce the commitment to meet the financial responsibility requirements described in subsection (A) of this section against the professional employer organization or professional employer organization group, against any relevant third party, or both.

**010. Records and Forms under the Act.**

A. The Department shall maintain a list of professional employer organizations registered under the Act that is readily available to the public by electronic or other means.

B. All records, reports, and other information obtained from a professional employer organization or professional employer organization group under the Act, except to the extent necessary for the proper administration of the Act by the Department, shall be confidential and shall not be published or open to public inspection other than to public employees in the performance of their public duties.

**011. Electronic Filing and Compliance.**

A. The Department shall permit the acceptance of electronic filings, including applications, documents, reports, and other filings required by the department, by professional employer organizations, professional employer organization groups, and assurance organizations.

B. Electronic filings made pursuant to this section shall be done in conformance with the Uniform Electronic Transactions Act, *Neb. Rev. Stat.* §§ 86-612 to 86-643.

**012. Assurance Organizations.**

A. The Department shall permit a professional employer organization or a professional employer organization group to authorize an assurance organization that is approved by the Department to act on the professional employer organization's or professional employer organization group's behalf in providing satisfactory assurance of compliance acceptable to the Department consistent with or in the lieu of the requirements of the §§ 48-2704 and 48-2705 of the Act, including electronic filings of information and payment of registration fees.

B. Use of an assurance organization is optional and not mandatory for a registrant.

C. Approval of an Assurance Organization. To be considered for approval as an Assurance Organization, the Assurance Organization shall submit a written request for approval to the Commissioner including:

1. Evidence that the Assurance Organization is independent and has an established national program for the accreditation and financial assurance of professional employer organizations based on requirements consistent with these regulations;

2. Evidence that the Assurance Organization has documented qualifications, standards, procedures, and financial assuranceacceptable to the Commissioner and is licensed, registered or otherwise approved by one or more states to certify the qualifications of a professional employer organization;

3. Agreement to provide the information, compliance monitoring services, and level of financial assurance acceptable to the Commissioner, sharing with the Department in a timely manner the information and supporting documentation provided to the Assurance Organization by professional employer organizations and professional employer organization groups that is similar in content to the information and documentation required for registration or renewal of registration under the Act;

4. Submission to the Commissioner of an application, executed by each professional employer organization or professional employer organization group, requesting that the Assurance Organization be permitted to act on the employer organization's or employer organization group's behalf. Such application shall:

a. Authorize the approved Assurance Organization to share with the Commissioner application and compliance reporting information required under the Act that has been provided to the Assurance Organization by the professional employer organization or professional employer organization group;

b. Authorize the Commissioner to accept information shared by the Assurance Organization for registration or renewal of registration of the professional employer organization or professional employer organization group;

c. Provide the certification of the professional employer organization or professional employer organization group, attesting that the information provided by the Assurance Organization to the Commissioner is true and complete and that the professional employer organization or professional employer organization group is in full and complete compliance with all requirements of the Act; and

d. Provide the certification of the Assurance Organization that the professional employer organization or professional employer organization group is in compliance with the standards and procedures of the Assurance Organization, which are substantially similar to the requirements of the Act, and such employer organization or employer organization group is qualified for registration or renewal of registration under the Act; and

5. Submission of an agreement, by the Assurance Organization, to provide written notice to the Commissioner within two (2) business days of determination by the Assurance Organization of a failure of a professional employer organization or professional employer organization group:

a. To meet the qualifications for registration under the Act; or

b. To meet the qualifications for accreditation or certification by the Assurance Organization.

D. Upon the approval of an Assurance Organization, the Commissioner shall:

1. Issue a letter to the Assurance Organization notifying it that it meets the requirements of this section;

2. Include the Assurance Organization on the list of approved Assurance Organizations that has been posted on the Department’s website.

E. In the event that an approved Assurance Organization no longer meets the requirements of this section, the Commissioner may revoke such approval and conduct a detailed review of all information provided by the Assurance Organization on behalf of each professional employer organization or professional employer organization group that was registered, based upon that Assurance Organization’s certification. The Commissioner will notify each such professional employer organization or professional employer organization group in writing of any deficiencies that have been found, and each such professional employer organization or professional employer organization group shall be given sixty (60) days to correct any deficiencies as may be required to maintain registration.

F. The approval issued to an Assurance Organization shall remain in effect until the Assurance Organization withdraws from the State or until approval is suspended or revoked, provided the approved Assurance Organization remains in compliance with these regulations.

G. In the event of the failure of any professional employer organization or professional employer organization group, which is registered pursuant to the certification of an approved Assurance Organization, to comply with any provision of the Act or these regulations, the Commissioner shall provide the Assurance Organization thirty (30) days written notice prior to taking action against any bond provided by the Assurance Organization to allow the Assurance Organization to otherwise cure the default or pay the claim before a claim is filed against any bond(s).

H. Authorization by the Department of an assurance organization to act on the professional employer organization's or employer organization group's behalf, in complying with the registration requirements of the Act, or for any other reason, shall not limit or change the Department's authority to register or terminate registration of a professional employer organization or employer organization group, or to investigate or enforce any provision of the Act.

**013. Funds.**

Any funds held by the professional employer organization in a fiduciary capacity shall be recorded separately and held in a fiduciary capacity on behalf of each client. The professional employer organization shall keep copies of all the records pertaining to such deposits and withdrawals and, upon request of a client, shall furnish the client with an accounting and copies of the records.

**014. State, County, Municipality, or Political Subdivision Tax Liability.**

A. Covered employees whose services are subject to sales tax shall be deemed the employees of the client for purposes of collecting and levying sales tax on the services performed by the covered employee. Nothing contained in the Act or these regulations shall relieve a client of any sales tax liability with respect to its goods or services;

B. Any tax or assessment imposed upon professional employer services or any registered business, or other fee which is based upon gross receipts, shall allow a deduction from the gross income or receipts of the business derived from performing professional employer services that is equal to that portion of the fee charged to a client, and which represents the actual cost of wages and salaries, benefits, workers' compensation, payroll taxes, withholding, or other assessments paid to or on behalf of a covered employee by the professional employer organization under a professional employer agreement;

C. Any tax assessed or assessment or mandated expenditure on a per capita or per employee basis shall be assessed against the client for covered employees and against the professional employer organization for its employees who are not covered employees co-employed with a client. Any benefit or monetary consideration that meets the requirements of mandates imposed on a client and that is received by covered employees through the professional employer organization either through payroll or through benefit plans sponsored by the professional employer organization shall be credited against the client's obligation to fulfill such mandates; and

D. In the case of a tax or an assessment imposed or calculated upon the basis of total payroll, the professional employer organization shall be eligible to apply any small business allowance or exemption available to the client for the covered employees for the purpose of computing the tax.

**015. Notice Related to Nondiscrimination in Employment.**

In the event that a coemployer receives a notice relating to rights and obligations arising from any civil rights laws guaranteeing nondiscrimination in employment practices related to covered employees, the coemployer shall, immediately after receipt of such notice, notify the other co-employer of such receipt, and shall transmit a copy of the notice to the other co-employer within ten business days after such receipt.

**016. Retirement and employee welfare benefit plans.**

A. A client and a professional employer organization shall each be deemed an employer under the laws of this state for purposes of sponsoring retirement and employee welfare benefit plans for its covered employees.

B. A fully insured employee welfare benefit plan offered to the covered employees of a single professional employer organization shall be for purposes of state law a single employee welfare benefit plan, shall not be considered a multiple employer welfare arrangement, as defined in *Neb. Rev. Stat.* § 44-7603, and shall be exempt from the registration requirements of the Multiple Employer Welfare Arrangement Act.

C. For purposes of the Small Employer Health Insurance Availability Act, a professional employer organization shall be considered the employer of all of its covered employees and all covered employees of any client participating in a health benefit plan sponsored by a single professional employer organization shall be considered employees of the professional employer organization. Subject to any eligibility requirements imposed by the plan or policy, the insurer shall accept and insure all employees of the client and all beneficiaries of those employees.

**017. Workers' compensation coverage.**

Worker's compensation coverage shall be provided in accordance with the section 48-2709 of the Act.

**018. Fees.**

A. Fees imposed pursuant to this section shall be paid to the Department and thereafter remitted to the State Treasurer for credit to the Professional Employer Organization Cash Fund, administered by the Department for the implementation of the Act.

B. Any money in the Professional Employer Organization Cash Fund that is available for investment shall be invested by the state investment officer in accordance with the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

C. Fees for registrations shall be as follows:

1. For initial registration, the fee shall be two thousand five hundred dollars ($2.500.00);

2. For an annual renewal of registration, one thousand five hundred dollars ($1,500.00);

3. For an initial limited registration, one thousand dollars ($1,000.00);

4. For an annual renewal of a limited registration, one thousand dollars ($1,000.00);

5. For an interim operating permit, two hundred fifty dollars ($250.00).

**019. Prohibited Acts and Disciplinary Action.**

A. A person shall not knowingly:

1. Offer or provide professional employer services in this state or use the names PEO, professional employer organization, staff leasing, employee leasing, administrative employer, or other title representing professional employer services unless such person is registered under the Act;

2. Provide false or fraudulent information to the department in conjunction with any registration, renewal, or report required under the act; or

3. Enter into a co-employment relationship in which less than a majority of the employees of the client in this state are covered employees or in which less than one-half of the payroll of the client in this state is attributable to covered employees.

B. Any person violating section 48-2711(1) of the Act, or subsection (A) of this section, is guilty of a Class I misdemeanor.

C. The Department is authorized by the Act to take disciplinary action against the following;

1. A person offering professional employer services, for a violation of section 48‑2711(1) of the Act, or subsection (A) of this section;

2. A professional employer organization or a controlling person of such employer organization, upon the conviction of an employer organization or controlling person thereof, of a crime that relates to:

a. The operation of the professional employer organization; or

b. The ability of a registrant or a controlling person of a registrant to operate a professional employer organization;

3. A professional employer organization or a controlling person of such employer organization for knowingly making a material misrepresentation to an insurer, an insurance producer, the department, or other governmental agency; or

4. A professional employer organization or a controlling person of such employer organization for a willful violation of the act or any order or regulation issued by the Department under the Act.

D. Disciplinary actions may be taken by the Department against those described in section 48-2711(2) of the Act, or subsection (A), (B) or (C) of this section:

1. After notice, an opportunity for hearing, a hearing (if requested by the respondent), upon a finding of the commission of a prohibited act or a violation of this section of the regulations, and subject to any appeal required;

2. Disciplinary actions may include one or more of the following:

a. Denial of an application for registration;

b. Revocation or restriction of, or refusal to renew, a registration;

c. Imposition of an administrative penalty, in an amount not to exceed one thousand dollars ($1,000.00) for each material violation;

d. Placement of the registrant on an administrative probation, for such period and subject to such conditions as the Department specifies; or

e. Issuance of a cease and desist order.

E. A decision by the Department to take disciplinary action, as described in section 48-2711 of the Act, or this section of these regulations, may be appealed in accordance with the Administrative Procedure Act.