

4123-17-15 Professional employer organizations.

(A) Definitions.

As used in rules 4123-17-15 to 4123-17-15.7 of the Administrative Code:

- (1) "Professional employer organization" or "PEO" has the same meaning as defined in section 4125.01 of the Revised Code. Requirements for PEOs that coemploy a part of a client employer's workforce are set forth in paragraph (C) of this rule. "Professional employer organization" or "PEO" does not include a service agency that is in the business of employing individuals for the purpose of utilizing the services of the individuals for a temporary period of time.
- (2) "Client employer" has the same meaning as defined in section 4125.01 of the Revised Code. "Client employer" does not mean an employer who is a noncomplying employer as defined in rule 4123-14-01 of the Administrative Code.
- (3) "PEO agreement" means a professional employer organization agreement as defined in section 4125.01 of the Revised Code.
- (4) "PEO reporting entity" means a professional employer organization reporting entity as defined in section 4125.01 of the Revised Code.
- (5) "Assurance organization," "coemploy," "shared employee," "trade secret," and "working capital" have the same meaning as defined in section 4125.01 of the Revised Code.

(B) Where a PEO is required to give notice, register, or make a report to the bureau under rules 4123-17-15 to 4123-17-15.7 of the Administrative Code, the PEO shall do so on forms prescribed by the bureau. Forms must be completed in full, as determined by the bureau, for such notice, registration, or report to be effective.

(C) Partial leases.

- (1) A PEO may enter into a PEO agreement to coemploy part of a client employer's workforce for workers' compensation purposes only to the extent wages are paid by and reported under the tax identification number of the PEO for federal tax purposes.
- (2) Under such partial lease agreement, the PEO shall report under its workers' compensation risk number the payroll associated with the wages paid by and reported by the PEO for federal tax purposes under the PEO's tax identification number. The client employer shall report under its workers' compensation risk number all payroll associated with wages not paid by and not reported under the PEO's tax identification number.
- (3) All of a client employer's payroll within a manual classification must be reported in its entirety under either the workers' compensation risk number of the PEO or client employer; such payroll may not be split between the PEO and client employer.

(D) Obligations of a PEO.

A PEO must perform all of the following functions:

- (1) Provide written notice to each shared employee it assigns to a client employer of the relationship between

and the responsibilities of the PEO and the client employer.

- (2) Pay wages and payroll taxes associated with shared employees as established within the PEO agreement. The responsibility for making payments under this section is not contingent on receipt of payment from the client employer. Shared employee wages must be paid by and reported under the tax identification number of the PEO for federal tax purposes.
- (3) Be responsible for maintaining both adequate and required employment-related records for employees, and for reporting such information as may be required by appropriate governmental agencies.
- (4) Comply with applicable state laws regarding workers' compensation insurance coverage.
- (5) Maintain complete records, separately listing the payroll and claims of its client employers for each payroll reporting period. Payroll shall be kept in a manner that clearly identifies the appropriate manual classifications assigned to each client employer, the payroll reported in each manual classification, and the amount of premiums paid for each client employer for each payroll period covered in the PEO agreement. Claims shall be separately identified according to the client employer.
- (6) Report individual client employer payroll, claims, and classification data under a separate and unique subaccount to the bureau.
- (7) Maintain workers' compensation coverage, pay all workers' compensation premiums and manage all workers' compensation claims, filings, and related procedures associated with a shared employee in compliance with Chapters 4121. and 4123. of the Revised Code, except that when shared employees include ministers or elective coverage persons as those terms are defined in 4123-17-07 of the Administrative Code, payroll reports shall include the entire amount of payroll associated with those persons and shall not be subject to the weekly minimum and maximum provided in rule 4123-17-30 of the Administrative Code. The PEO must maintain workers' compensation coverage under its workers' compensation risk number for all payroll reported under its tax identification number for federal tax purposes.
- (8) Within fourteen days after receiving notice from the bureau that a refund or rebate will be applied to workers' compensation premiums, provide a copy of that notice to any client employer to whom that notice is relevant.

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Prior Effective Dates: 7/1/97; 11/22/04

4123-17-15.1 PEO agreements.

- (A) Where a client employer enters into a PEO agreement:
- (1) Each client employer must establish and maintain an individual account with the bureau.
 - (2) The PEO shall be considered the succeeding employer, solely for purposes of workers' compensation experience, and shall be subject to rule 4123-17-02 of the Administrative Code.
 - (3) If the PEO agreement between a PEO and a client employer is terminated, or if the PEO declares bankruptcy or ceases operation in Ohio, the PEO must notify the bureau and each client associated with that PEO within fourteen days from the effective date of termination. The PEO shall identify on forms prescribed by the bureau the portion of the experience of the PEO related to the client employer that shall be transferred to the client employer.
 - (4) A PEO shall report any transfer of employees between related PEO entities or PEO reporting entities to the bureau within fourteen calendar days after the date of the transfer. The PEO or PEO reporting entity shall include in the report all client payroll and claim information regarding the transferred employees and a notice of all workers' compensation claims that have been reported to the PEO or PEO reporting entity in accordance with the internal reporting policies of the PEO or PEO reporting entity.
- (B) A PEO shall notify the bureau within thirty days when entering into or changing the type of PEO agreement. For payroll reported under the PEO's policy, the PEO must list payroll within the existing manual classifications of the client employer. If the bureau is not notified within thirty days, the bureau will recognize the PEO agreement on the date the bureau receives notice and the client employer shall be responsible for reporting payroll and claims under the client employer's individual policy until the recognized effective date of the agreement.
- (C) A PEO which enters into a PEO agreement with a noncomplying employer or a PEO which fails to comply with rules 4123-17-15 to 4123-17-15.7 of the Administrative Code shall not be considered the employer for workers' compensation purposes. In these instances the payroll of the shared employees shall be reported by the client employer under its workers' compensation risk number for workers' compensation premium and claims purposes, unless prohibited by federal law. Claims that are filed by the client employer's shared employees shall be charged to the experience of the client employer.
- (D) The bureau will not recognize a PEO agreement between a PEO and an out of state client employer where the employees of the out of state client employer do not have sufficient contacts with Ohio to meet the jurisdictional requirements for coverage.

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4123-17-15.2 Registration and reporting requirements.

- (A) The PEO shall register with the bureau not later than thirty days after the formation of the PEO. A PEO operating in this state shall register annually with the administrator.
- (1) The PEO shall submit an initial registration fee as set forth in the appendix to this rule with its initial application. The PEO shall submit an annual renewal fee as set forth in the appendix to this rule to the bureau on or prior to December thirty-first of each year.
 - (2) The PEO shall submit the following information when registering with the bureau:
 - (a) A list of each of the PEO's client employers current as of the date of registration for purposes of initial registration or current as of the date of annual registration renewal, or within fourteen days of adding or releasing a client, that includes the client employer's name, address, federal tax identification number, and bureau of workers' compensation risk number;
 - (b) The name or names under which the PEO conducts business;
 - (c) The address of the PEO's principal place of business and the address of each office it maintains in this state;
 - (d) The PEO's taxpayer or employer identification number;
 - (e) A list of each state in which the PEO has operated in the preceding five years, and the name, corresponding with each state, under which the PEO operated in each state, including any alternative names, names of predecessors, and if known, successor business entities;
 - (f) A list of all corporate officers of the PEO;
 - (g) A list of all related corporate entities;
 - (h) The most recent financial statement prepared and audited in accordance with rule 4123-17-15.4 of the Administrative Code. Such financial statement must be no older than thirteen months at the time it is submitted to the bureau;
 - (i) An attestation of the accuracy of the data submissions from the chief executive officer of the PEO; and
 - (j) Security as required under rule 4123-17-15.3 of the Administrative Code.
- (B) No later than June thirtieth and December thirty-first of each year, the PEO shall provide a semi-annual report of its client employers and total workforce to the bureau.
- (C) A PEO reporting entity that will complete the financial reporting requirements of this chapter for commonly owned or controlled PEOs must register with the bureau and pay an initial registration fee as set forth in the appendix to this rule.
- (1) The PEO reporting entity shall submit the following information when registering with the bureau:
 - (a) A list of each of the PEOs for which the PEO reporting entity will complete financial reporting requirements;
 - (b) The name or names under which the PEO reporting entity conducts business;
 - (c) The address of the PEO reporting entity's principal place of business and the address of each office it

maintains in this state;

(d) The PEO reporting entity's taxpayer or employer identification number;

(e) A list of all corporate officers of the PEO reporting entity;

(f) The most recent financial statement prepared and audited in accordance with rule 4123-17-15.4 of the Administrative Code. Such financial statement must be no older than thirteen months at the time it is submitted to the bureau;

(g) Security as required under rule 4123-17-15.3 of the Administrative Code; and

(h) An attestation of the accuracy of the data submissions from the chief executive officer of the PEO reporting entity.

(2) The PEO reporting entity must renew such registration and pay an annual renewal fee as set forth in the appendix to this rule no later than December thirty-first of each year.

(D) The administrator may grant limited registration to a PEO for reasons specified by the administrator in the certificate of limited registration if the PEO provides all of the following items:

(1) A properly executed request for limited registration on a form prescribed by the bureau;

(2) A limited registration fee as set forth in the appendix to this rule;

(3) All information required for registration in paragraphs (A)(2)(a) to (A)(2)(i) of this rule; and

(4) Information and documentation necessary to show that the PEO satisfies all of the following criteria:

(a) The PEO is domiciled outside of Ohio and does not maintain an office in the state;

(b) The PEO is licensed or registered as a PEO in another state;

(c) The PEO does not participate in direct solicitations for client employers located or domiciled in Ohio; and

(d) The PEO has fifty or fewer shared employees employed or domiciled in Ohio on any given day. For purposes of this paragraph, a PEO is not domiciled outside of Ohio if a commonly owned or otherwise related corporate entity is domiciled in Ohio or maintains an office in the state.

(5) The administrator may require security of the limited registration PEO pursuant to rule 4123-17-15.3 of the Administrative Code.

(E) The bureau shall maintain a list of PEOs and PEO reporting entities registered under this rule that is readily available to the public.

(F) Except to the extent necessary for the administrator to administer the statutory duties of the administrator and for employees of the state to perform their official duties, all records, reports, client lists, and other information obtained from a PEO or PEO reporting entity under this rule are confidential and shall be considered trade secrets and shall not be published or open to public inspection.

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4123-17-15.3 Security requirements.

- (A) Except as permitted in paragraphs (B) and (C) of this rule, a PEO shall provide security in the form of a bond or irrevocable letter of credit assignable to the bureau not to exceed an amount equal to the workers' compensation premiums and assessments incurred for the two most recent payroll reporting periods pursuant to paragraph (A) of rule 4123-17-14 of the Administrative Code, prior to any discounts or dividends.
- (1) The amount of security required for each PEO policy shall be evaluated at least annually. The bureau may, in its discretion, reevaluate the amount of security required for a PEO policy within ninety days of receiving notice required under paragraph (B) of rule 4123-17-15.1 of the Administrative Code that the PEO has entered into a new PEO agreement or changed an existing PEO agreement.
 - (2) The security shall be provided to the bureau annually on or prior to December thirty-first.
 - (3) The administrator shall determine the amount of security for a PEO policy that has not paid premiums and assessments in the two most recent payroll periods.
 - (4) A PEO may appeal the amount of the security required pursuant to this section in accordance with section 4123.291 of the Revised Code.
- (B) As an alternative to providing security in the form of a bond or irrevocable letter of credit, the administrator shall permit a PEO to make advance payments of premiums and assessments.
- (1) A PEO electing to make advance payments of premiums and assessments shall make such payments by utilizing the bureau's online payment system. The PEO electing to make advance payments of premiums and assessments shall report payroll and pay the premiums for the month by the fifth day of that month.
 - (2) A PEO electing to make advance payments of premiums and assessments who fails to report payroll and pay premiums timely pursuant to paragraph (B)(1) of this rule shall provide to the bureau security in the form of a bond or irrevocable letter of credit and may not be permitted to utilize the advance payment option for a minimum of the remainder of the policy year. Subsequent failure to report payroll and pay premiums timely utilizing the advance payment option may result in forfeiture of this option and require a posting of bond or irrevocable letter of credit.
- (C) As an alternative to requiring security in the form of a bond or irrevocable letter of credit, the administrator shall accept the certification of a PEO by an assurance organization approved by the administrator to make such certification.
- (1) An assurance organization desiring to be approved by the administrator to certify PEOs under this rule shall:
 - (a) Submit a written request for approval to the administrator in conjunction with an initial registration fee as set forth in the appendix to rule 4123-17-15.2 of the Administrative Code. Such written request must include:
 - (i) Evidence that the assurance organization has documented qualifications, standards, and procedures used to certify PEOs;
 - (ii) A description of the assurance organization's compliance monitoring services; and
 - (iii) Evidence that the assurance organization is licensed by one or more states to certify the

qualifications of a PEO or PEO reporting entities.

- (b) Apply for renewal of approval on an annual basis, and submit an annual renewal fee as set forth in the appendix to rule 4123-17-15.2 of the Administrative Code
- (2) Upon the administrator's approval of an assurance organization, the assurance organization and the bureau shall enter into a memorandum of understanding.
- (a) The memorandum of understanding shall set forth, at a minimum:
 - (i) The policies and procedures with which the assurance organization will comply in certifying a PEO to the bureau; and
 - (ii) The circumstances under which the assurance organization shall provide notice of change in the financial circumstances of a PEO it has certified under this rule.
 - (b) Failure to comply with such memorandum of understanding may result in immediate revocation of the administrator's approval of the assurance organization.
- (3) The administrator's approval of an assurance organization is not transferable to successor corporate entities.
- (4) Upon the bureau's request, an assurance organization must provide to the bureau all information requested regarding a PEO it has certified that has failed to pay its workers compensation premium and assessments, audit findings, or other moneys due and owing the bureau within thirty days of the due date. Failure to provide such information within thirty days of the request will result in the administrator's revocation of approval for the assurance organization to make certification under this rule.
- (5) If the administrator revokes the approval of an assurance organization to make certification under this rule, any PEO certified by that assurance organization shall have sixty days to provide evidence of certification by another assurance organization, submit security under paragraph (A) of this rule, or make advance payments as set forth in paragraph (B) of this rule.

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4123-17-15.4 Financial requirements.

- (A) A PEO shall prepare financial statements in accordance with generally accepted accounting principles and submit them electronically for registration and registration renewal pursuant to section 4125.05 of the Revised Code.
- (1) The financial statements shall be audited by an independent certified public accountant authorized to practice in the jurisdiction in which that accountant is located.
- (a) The resulting report of the auditor shall not include either of the following:
- (i) A qualification or disclaimer of opinion as to adherence to generally accepted accounting principles;
 - (ii) A statement expressing substantial doubt about the ability of the PEO or PEO reporting entity to continue as a going concern.
- (b) If a PEO does not have at least twelve months of operating history on which to base financial statements, the financial statements shall be reviewed by a certified public accountant.
- (2) A PEO reporting entity may submit a combined or consolidated financial statement for its member PEOs to satisfy the requirements of this paragraph. If the combined or consolidated financial statement includes entities that are not PEOs or that are not in the PEO reporting entity, the controlling entity of the PEO reporting entity that is submitting the consolidated or combined financial statement shall guarantee that the PEOs of the PEO reporting entity have satisfied the requirements under paragraph (B) of this rule and shall include supplemental combining schedules to guarantee that the requirements under paragraph (B) of this rule are satisfied by the PEO or PEO reporting entity.
- (B) A PEO or PEO reporting entity shall maintain positive working capital at initial or annual registration, as reflected in the financial statements submitted to the bureau under paragraph (A)(2)(h) of rule 4123-17-15.2 of the Administrative Code. If a deficit in working capital is reflected in the financial statements submitted to the bureau, the PEO or the PEO reporting entity shall:
- (1) Submit to the bureau a quarterly financial statement for each calendar quarter during which there is a deficit in working capital, accompanied by an attestation of the chief executive officer of the PEO that all wages, taxes, workers' compensation premiums, and employee benefits have been paid by the PEO or members of the PEO reporting entity.
- (2) Obtain a bond, irrevocable letter of credit, or securities with a minimum market value in an amount sufficient to cover the deficit in working capital. Such security shall be required in addition to the requirements of rule 4123-17-15.3 of the Administrative Code, and shall be held by a depository designated by the administrator to secure payment by the PEO or PEO reporting entity of all taxes, wages, benefits, or other entitlements due or otherwise pertaining to shared employees, if the PEO or PEO reporting entity does not make those payments when due.

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4123-17-15.5 Self-insuring PEOs.

- (A) A PEO registered with the bureau under rule 4123-17-15.2 of the Administrative Code may apply to pay compensation directly as a self-insuring risk.
- (1) The PEO must meet all eligibility requirements set forth in section 4123.35 of the Revised Code.
 - (a) The PEO shall provide five years of financial records as set forth in division (B)(1)(e) of section 4123.35 of the Revised Code. The administrator shall not waive this requirement.
 - (b) Shared employees will be considered employees of the PEO for the purposes of meeting the requirements of division (B)(1)(a) of section 4123.35 of the Revised Code only if both of the following criteria are met:
 - (i) The PEO demonstrates to the bureau that it is in compliance with all of the following:
 - (a) The duties of organization regarding shared employees set forth in section 4125.03 of the Revised Code, as amplified by paragraph (C) of rule 4123-17-15 of the Administrative Code;
 - (b) The requirements of section 4125.05 of the Revised Code, as amplified by rules 4123-17-15.2 and 4123-17-15.3 of the Administrative Code; and
 - (c) The requirements of section 4125.07 of the Revised Code, as amplified by paragraphs (A)(3) and (A)(4) of rule 4123-17-15.1 of the Administrative Code.
 - (ii) All of the client employer's wages shall be paid and reported under the tax identification number of the PEO for federal tax reporting purposes.
 - (2) Any PEO application for self-insured status will be referred to the self-insured review panel pursuant to paragraph (F)(1) of rule 4123-19-14 of the Administrative Code.
 - (3) Any application to add a PEO to an existing self-insured entity will be referred to the self-insured review panel pursuant to paragraph (F)(1) of rule 4123-19-14 of the Administrative Code.
- (B) A PEO granted the privilege of self-insured status must do all of the following:
- (1) Furnish security as provided by paragraphs (F), (G), and (H) of rule 4123-19-03 of the Administrative Code.
 - (a) The security required by the bureau will be no less than one hundred percent of the outstanding claim liabilities associated with the self-insured policy, as determined by the bureau.
 - (b) The PEO is not permitted to use an assurance organization to meet its security requirements under this rule.
 - (c) The bureau may, pursuant to paragraph (M) of rule 4123-19-03 of the Administrative Code, require the PEO to furnish additional security within thirty days of receiving the notice required under paragraph (B) of rule 4123-17-15.1 of the Administrative Code.
 - (2) Submit to the bureau every two years, or upon the bureau's request, an actuarial estimate of the PEO's unpaid loss and loss adjustment expense liabilities performed by an independent actuary with a fellow of

the society of actuaries or casualty actuary society credential.

- (3) Make contribution to the self-insuring employers' guaranty fund as set forth in rule 4123-19-15 of the Administrative Code. For purposes of this rule, the premium as reported on the total of the last two full six-month semi-annual payroll reports shall include the premium of the PEO and all its client employers.
 - (4) Pay all assessments levied upon self-insuring employers under rule 4123-17-32 of the Administrative Code.
 - (5) Reimburse the bureau for disabled workers' relief fund payments on claims for which the PEO or its client employers are employer of record, pursuant to paragraph (B) of rule 4123-17-29 of the Administrative Code.
 - (6) Make a quarterly report to the bureau that details the PEO's active clients, all claims, and the claim reserves for each claim.
- (C) For purposes of this rule, "paid compensation" means all amounts paid by the PEO and its client employers for living maintenance benefits, all amounts for compensation paid pursuant to sections 4121.63, 4121.67, 4123.56, 4123.57, 4123.58, 4123.59, 4123.60 and 4123.64 of the Revised Code, all amounts paid as wages in lieu of such compensation, all amounts paid in lieu of such compensation under a nonoccupational accident and sickness program fully funded by the PEO or its client employers, and all amounts paid by a PEO and its client employers for a violation of a specific safety standard pursuant to Section 35 of Article II, Ohio Constitution and section 4121.47 of the Revised Code. Any reimbursement received from the surplus fund pursuant to section 4123.512 of the Revised Code by the PEO or its client employers for any such payments or compensation paid shall be applied to reduce the amount of paid compensation reported in the year in which the reimbursement is made. Any amount recovered by the PEO or its client employers under section 4123.931 of the Revised Code and any amount that is determined not to have been payable to a claimant in any final administrative or judicial proceeding shall be deducted, in the year collected, from the amount of paid compensation reported.
- (1) For a PEO that is a self-insured risk for which paragraph (I) of rule 4123-17-32 of the Administrative Code is applicable, paid compensation includes any amounts paid by the state insurance fund for claims directly attributable to the PEO and any client employers of the PEO. In determining the applicability of paragraph (I) of rule 4123-17-32 of the Administrative Code to a PEO, the bureau shall use the date on which the PEO was added to the self-insured risk policy if such date is after the effective date of the self-insured risk policy.
 - (2) If a client employer enters into a new PEO agreement with a PEO that is a self-insured risk for which paragraph (I) of rule 4123-17-32 of the Administrative Code is applicable, paid compensation shall include any amounts paid by the state insurance fund for claims directly attributable to that client employer.
- (D) A PEO granted the privilege of self-insured status shall not:
- (1) Enter into PEO agreements to provide workers' compensation coverage through the state insurance fund.
 - (2) Enter into a partial-lease agreement.

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4123-17-15.6 Client employer information.

- (A) A PEO with whom a shared employee is coemployed shall provide a list of all of the following information to the client employer upon the written request of the client employer:
- (1) All premiums and payroll associated with that client employer;
 - (2) All workers' compensation claims, and the compensation and benefits paid, and reserves established for each claim; and
 - (3) Any other information available to the PEO from the bureau regarding that client employer.
- (B) The PEO shall provide the information required under paragraph (A) of this rule in writing to the requesting client employer within forty-five days after receiving a written request from the client employer. A PEO has provided the required information to the client employer when:
- (1) The information is received by the United States postal service; or
 - (2) When the information is personally delivered, in writing, directly to the client employer. For purposes of this rule, a communication sent via electronic mail is personally delivered at the time the communication was sent by the PEO to a valid electronic mail address for the client employer.
- (C) If a PEO fails to comply with a client employer's written request for information, the client employer may submit a complaint to the bureau.
- (1) The bureau will investigate the complaint to determine whether the PEO has met the requirements of this rule.
 - (2) If the bureau finds the PEO has failed to meet the requirements of this rule:
 - (a) The bureau will provide the requested information to the client employer. All administrative costs associated with investigation and providing the information to the client employer will be assessed to the PEO;
 - (b) The bureau will provide the PEO's client employers with notification of the failure to comply with the rule, and advise the client employers of their ability to request information under this rule.

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4123-17-15.7 Denial or revocation of PEO registration.

- (A) The administrator shall deny or revoke the registration of a PEO or PEO reporting entity if it fails to comply with the requirements of rule 4123-17-15.4 of the Administrative Code.
- (B) The administrator may deny or revoke the registration of a PEO or PEO reporting entity and rescind its status as a coemployer upon finding that the PEO or PEO reporting entity has done any of the following:
 - (1) Obtained or attempted to obtain registration through misrepresentation, misstatement of a material fact, or fraud;
 - (2) Misappropriated any funds of the client employer;
 - (3) Used fraudulent or coercive practices to obtain or retain business or demonstrated financial irresponsibility;
 - (4) Failed to appear, without reasonable cause or excuse, in response to a subpoena lawfully issued by the administrator;
 - (5) Failed to comply with the requirements of rules 4123-17-15 to 4123-17-15.5 of the Administrative Code.
- (C) A PEO may appeal a denial or revocation of status under this rule pursuant to the administrative hearing procedure set forth in Chapter 119. of the Revised Code.
- (D) The administrator's decision to deny or revoke a PEO's registration or to rescind its status as a coemployer is stayed pending the exhaustion of all administrative appeals by the PEO.
- (E) Upon revocation of the registration of a PEO, each client employer associated with that PEO shall file payroll reports and pay workers' compensation premiums directly to the administrator on its own behalf at a rate determined by the administrator based solely on the claims experience of the client employer.
- (F) When an employer contacts the bureau to determine whether a particular PEO is registered, if the administrator has denied or revoked that PEO's registration or rescinded its status as a coemployer, and if all administrative appeals are not yet exhausted when the employer inquires, the appropriate bureau personnel shall inform the inquiring employer of the denial, revocation, or rescission and the fact that the PEO has the right to appeal the administrator's decision.

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