

§ 58-89A-75. De minimis registration.

(a) A person who seeks to offer limited professional employer services in this State shall be eligible for de minimis registration status upon compliance with this section and may operate as a de minimis registrant in this State upon notification pursuant to this section. A person shall satisfy the requirements for a de minimis registration only if the professional employer organization:

- (1) Does not maintain a physical professional employer organization office located in this State;
- (2) Does not employ salespersons who reside or direct their sales activities in this State;
- (3) Does not employ directly or in common control with another person, as defined in G.S. 58-89A-5(12), more than 50 assigned employees in this State;
- (4) Does not advertise through any media outlet physically located in this State;
- (5) Is a licensed or registered professional employer organization in at least one other state of the United States; and
- (6) Is operated by and under the control of persons of good moral character.

A professional employer organization operating under a de minimis registration shall be subject to all of the responsibilities and authority of a licensee under this Article except for G.S. 58-89A-50, 58-89A-60 and 58-89A-70(c), (d), and (e).

(b) A person seeking de minimis registration status shall notify the Commissioner, on a form prescribed by the Commissioner, attesting that the professional employer organization meets all of the eligibility requirements for de minimis registration status under this section and additionally provide, at a minimum, the following information:

- (1) The name of the professional employer organization, the address of its principal office, the name of the contact person, and the taxpayer or employer identification number;
- (2) A list by jurisdiction of each name under which the registrant has operated in the preceding five years, including any alternative names, names of predecessors, and, if known, successor business entities;
- (3) A list of all officers, directors, and controlling person(s) of the registrant and their biographical information in a form to be determined by the Commissioner; and
- (4) The location of the business records of the person.

(c) If the Commissioner finds that the person seeking de minimis registration has not fully met the requirements for de minimis registration, the person shall not be eligible for de minimis registration status, and the Commissioner shall notify the person in writing. Within 30 days after service of the notification, the person may make a written demand upon the Commissioner for a review to determine the reasonableness of the Commissioner's action. The review shall be completed without undue delay, and the person shall be notified promptly in writing as to the outcome of the review. Within 30 days after service of the notification as to the outcome, the person may make a written demand upon the Commissioner for a hearing under Article 3A of Chapter 150B of the General Statutes if the person disagrees with the outcome.

(d) If the Commissioner determines that the notification of eligibility for de minimis registration is incomplete, the Commissioner shall notify the person of the deficiency, and the registrant shall be allowed time, not to exceed 30 days from the date of the notice, to correct the deficiency. Failure of the person to correct the deficiency within the 30-day time period shall result in the de minimis being deemed denied. Except as otherwise provided in this section, a

person notified of a deficiency under this section may continue to operate while the deficiency is being corrected unless the Commissioner determines that the person is ineligible for de minimis registration status or is otherwise not authorized to operate in this State.

(e) After a de minimis registrant's initial notification, a de minimis registrant shall annually notify the Commissioner of its continuing eligibility for de minimis registration status no earlier than January 1 and no later than January 15 of each year. The annual notification shall include the attestation of eligibility for de minimis registration and any change in the information previously provided to the Commissioner under this section.

(f) A person operating under a de minimis registration to engage in professional employer services in North Carolina that ceases to satisfy any of the requirements for de minimis registration under this section shall apply for a professional employer organization license. The de minimis registrant may continue to operate in North Carolina pending approval of the registrant's application for a license provided the application is filed with the Commissioner no later than 30 days after the professional employer organization becomes ineligible for de minimis registration. If the application for licensure is denied or is not filed as prescribed in this section, the de minimis registrant must cease engaging in professional employer services in North Carolina. (2004-162, s. 1; 2005-124, s. 3; 2007-127, s. 14; 2009-570, s. 9.)