

EMERGENCY RULE AND REGULATION 81
EMPLOYER SERVICE ASSURANCE ORGANIZATIONS

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SECTION 1. AUTHORITY

This Rule and Regulation is promulgated and adopted by the Insurance Commissioner for the State of Arkansas ("Commissioner") pursuant to the authority vested in the Commissioner by Section 1 of Act 1750 of 2003, codified as Arkansas Code Annotated §§23-92-401, et seq., by Act 652 of 1993, codified as Arkansas Code Annotated —§§23-61-709, and by Arkansas Code Annotated §§23-61-108 and 25-15-201, et seq.

SECTION 2. PURPOSE

The purpose of this Rule and Regulation is to set forth the need for the licensing of employer service assurance organizations (hereinafter "ESAOs"), to establish minimum standards for the conduct of those organizations, and for promulgating procedures for their licensing.

SECTION 3. EFFECTIVE DATE - EMERGENCY

Pursuant to the Commissioner's authority under Ark. Code Ann. §23-61-108, §§25-15-201, et seq., and other applicable laws and rules, the effective date of this Rule and Regulation is October 15, 2003.

SECTION 4. DEFINITIONS FOR PURPOSES OF THIS RULE AND REGULATION

Unless otherwise noted, definitions applicable to this rule and regulation shall be the same as found in Ark. Code Ann. §23-92-402.

SECTION 5. FEES

- (a) The initial fee for an ESAO shall be \$500.00 for the initial fee and \$500.00 for each bi-annual renewal.
- (b) All fees are non-refundable.

SECTION 6. EMPLOYER SERVICE ASSURANCE ORGANIZATIONS

(a) The Commissioner has determined that it is in the best interest of the State of Arkansas to license one or more ESAOs pursuant to the authority granted under Ark. Code Ann. § 23-92-415 and § 23-92-419 in order:

(1) to provide greater financial protection for the State and for the clients and employees employed by a professional employer organization (“PEO”) that is qualified to participate in the services of a ESAO; and

(2) to assist the Commissioner in minimizing the cost of administration of the licensing of all ESAO qualified PEOs in accordance with Act 1750 of 2003. Pursuant to the Commissioner’s authority under Ark. Code Ann. §23-92-414, the Commissioner shall accept an affidavit of a licensed ESAO provided on behalf of a duly qualified PEO in lieu of the requirements under §§ 23-92-404 through 23-92-406 and § 23-92-408, and the fees provided for in § 23-92-407, provided the EASO is in compliance with §§ 23-92-415 through 23-92-418 and applicable provisions of this Rule and Regulation 58.

(b) Every initial application required under Ark. Code Ann. § 23-92-415 shall be submitted by using the Arkansas Department of Insurance ESAO-A1 Licensing Application and shall be accompanied by the initial licensing fee of \$500.00 as required by Section 5(a).

(c) The license issued to an ESAO shall remain in effect until the licensee withdraws from the State or until the license is suspended or revoked, provided the licensee remains in compliance with all provisions of §§ 23-92-415 through 23-92-418.

(d) As a condition of continued licensing, the Commissioner may request any information available to the ESAO about any PEO for which the ESAO has submitted an affidavit.

(e) In the event of the failure of a professional employer organization, which is licensed pursuant to an ESAO affidavit, to comply with any provision of Act 1750 of 2003 or with any provision of Rule and Regulation 58, the Commissioner shall provide the ESAO with thirty (30) days written notice prior to taking action against any bond provided by the ESAO under § 23-92-415(c)(1)(E) to allow the EASO to otherwise cure the default or pay the claim before a claim is filed against the bond(s).

(f) If a claim is filed by the Commissioner against the one hundred thousand dollar (\$100,000) bond provided by a licensed EASO under § 23-92-415(c)(1)(E)(i)(b), the EASO must provide as a condition of continued licensing an additional one hundred thousand dollar (\$100,000) bond or equivalent security acceptable to the Commissioner within thirty (30) days of written notice of the filing of a claim.

SECTION 7. LICENSE NOT ASSIGNABLE

A licensee may not conduct business under any name other than that specified in the license. A license issued under this Rule and Regulation is not assignable. A licensee may not conduct business under any fictitious or assumed name without prior written authorization from the Commissioner. A licensee may not conduct business under more than one name unless it has obtained a separate license for each name.

SECTION 8. INTERPRETATION

This Rule and Regulation shall be construed in accordance with Act 1750 of 2003.

SECTION 9. SEVERABILITY

If any provision of this Rule and Regulation, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of this Rule and Regulation which can be given effect without the invalid provision or application, and to that end the provisions of this Rule and Regulation are severable.

MIKE PICKENS
INSURANCE COMMISSIONER

DATE