

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 24.38.101, 24.38.105, and ) PROPOSED AMENDMENT AND  
24.38.111, and the adoption of NEW ) ADOPTION  
RULES I and II pertaining to )  
professional employer organizations )

TO: All Concerned Persons

1. On May 24, 2022, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing via remote conferencing to consider the proposed amendment and adoption of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/89511798088>, Meeting ID: 895 1179 8088, Passcode: 945618; or
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656, Meeting ID: 895 1179 8088, Passcode: 945618.

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on May 17, 2022, to advise us of the nature of the accommodation that you need. Please contact Brandon Kirchgasser, P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-3359, facsimile (406) 444-4140, or Montana Relay Service at 711; or e-mail [BKirchgasser@mt.gov](mailto:BKirchgasser@mt.gov).

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

24.38.101 NEW APPLICATIONS - DENIALS (1) ~~To be eligible to receive a license, a professional employer organization or group (PEO) must submit all application materials required by 39-8-202 and 39-8-207, MCA.~~ An applicant for initial licensure must submit all information and documentation required by statute and rule.

(2) An application that does not contain all required information and documentation is incomplete. Upon receipt of an incomplete application from a newly applying PEO, the department will ~~inform~~ notify the applicant in writing that the PEO has 90 days from the date that the original application was received to submit a completed application.

(a) and (b) remain the same.

AUTH: 39-8-201, MCA

IMP: 39-8-202, 39-8-203, 39-8-207, MCA

REASON: Reasonable necessity exists to amend this rule to avoid duplication of statute in the administrative rules to simplify the rule. The rule also now defines incomplete applications.

24.38.105 RENEWAL APPLICATIONS - DENIALS ~~(1) The department will send a renewal application approximately 90 days prior to the renewal date. A completed renewal application must be received by the department 30 days prior to the expiration date of the license.~~

~~(a) If a completed renewal application is not received 30 days prior to the expiration date, the existing license will automatically expire and a subsequently received renewal application will not be renewed.~~

~~(b) Upon the expiration and nonrenewal of a license under (a), the applicant is subject to the provisions of 39-8-206(2)(b), MCA.~~

~~(c) Any application materials received under (a) will be treated as a new application and will be subject to the provisions of 39-8-203(7), MCA.~~

~~(d) Upon the nonrenewal of a renewal application, the department shall send a letter to all client companies of the PEO notifying the client companies the PEO renewal application has been denied.~~

(1) Except as set forth in (2), a complete renewal application must be submitted to the department at least 30 days prior to the license expiration.

(2) A renewal application submitted less than 30 days prior to license expiration must be accompanied by a request for extension. An incomplete renewal application submitted less than 30 days prior to license expiration is subject to summary denial.

(3) Request for extension will be considered on a case-by-case basis and will be granted in the department's sole discretion. At minimum, the request must contain:

(a) the specific length of extension sought; and

(b) the reason extension is necessary, including circumstances outside the requestor's control.

AUTH: 39-8-201, MCA

IMP: 39-8-202, 39-8-203, 39-8-204, 39-8-206, MCA

REASON: Reasonable necessity exists to amend the rule to clarify the process for renewal of PEO licenses and to set forth a process by which an applicant may request an extension of time in which to submit their renewal.

24.38.111 SUSPENSION, REVOCATION, NONRENEWAL - APPEAL - IMMEDIATE CESSATION OF OPERATIONS ~~(1) Upon the suspension or revocation of a regular or provisional license, or upon the denial of a renewal application, the department shall notify all client companies by mail that the PEO's license has been suspended, revoked, or not renewed.~~

(2) (1) The PEO may appeal the suspension, revocation, or nonrenewal by submitting a written request within 30 days of receiving the notice of suspension, revocation, or denial. The appeal must be submitted to ~~the department's hearings bureau~~ dlierdpeo@mt.gov.

(3) remains the same but is renumbered (2).

AUTH: 39-8-201, MCA

IMP: 39-8-203, 39-8-204, 39-8-206, MCA

REASON: Reasonable necessity exists to amend this rule by striking (1) because it was duplicative of statutory requirements. The rule also provides for electronic submission of appeals.

4. The proposed new rules are as follows:

NEW RULE I PROVISIONAL LICENSE (1) A provisional license may be granted to applicants for initial licensure as set forth in this rule. A provisional license may be in effect solely during the period from granting until a decision to grant or deny a license is made.

(2) A provisional license may be granted only if:

(a) the department determines it is in the best interest of potentially affected clients and employees; and

(b) the initial application is pending and contains proof that, at minimum:

(i) the requirements of 39-8-207(1), (2), (4), and (6), MCA are met; or

(ii) the applicant is licensed as a PEO in another state.

AUTH: 39-8-201, 39-8-202, MCA

IMP: 39-8-202, MCA

REASON: Reasonable necessity exists to adopt this rule to create a procedure for obtaining a provisional license. This rule permits applicants who meet the requirements of the rule to be in compliance with law pending application review.

NEW RULE II PROFESSIONAL EMPLOYER ORGANIZATIONS (1) PEOs must meet all recordkeeping and reporting obligations applicable to all other employers pursuant to the Unemployment Insurance Law.

(2) Concurrent with the report required by ARM 24.11.2711, PEOs must submit quarterly to unemployment insurance a report detailing:

(a) for each client:

(i) client name; and

(ii) client federal employer identification number;

(b) for each leased employee:

(i) name;

(ii) social security number; and

(iii) for each client for which the leased employee worked, the wages paid.

(3) Failure to submit filings pursuant to this rule may subject a PEO license to suspension, revocation, or refusal to renew.

AUTH: 39-8-201, 39-51-301, MCA  
IMP: 39-8-207, 39-8-302, 39-51-1219, MCA

REASON: Reasonable necessity exists to adopt this new rule to clarify statutory requirements for the submission of reports to the Unemployment Insurance Division. While the statutes requiring such reporting remain unchanged, the obligations have been previously ill-defined. This rule specifies for PEOs their reporting obligations to ensure compliance with the law as well as to ensure that the Unemployment Insurance Division receives the information necessary for proper rate and reporting calculations.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Amber Weekes, Employment Relations Division, P.O. Box 1728, Helena, Montana 59624-1728; facsimile (406) 444-4140; or e-mail amber.weekes2@mt.gov, and must be received no later than 5:00 p.m., May 27, 2022.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the contact person in paragraph 2 above or may be made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. Pursuant to 2-4-111, MCA, the department has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

9. Department staff has been designated to preside over and conduct this hearing.

/s/ QUINLAN L. O'CONNOR  
Quinlan L. O'Connor  
Alternate Rule Reviewer

/s/ LAURIE ESAU  
Laurie Esau, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 19, 2022.