

## § 58-89A-5. Definitions.

In this Article:

- (1) "Applicant" means a person applying for a license or a group license under this Article.
- (2) "Assigned employee" means an employee who is performing services for a client company under a contract between a licensee and a client company in which employment responsibilities are shared or allocated. "Assigned employee" does not include a temporary employee. Individuals who are directors, shareholders, partners, and managers of a client company are assigned employees to the extent the licensee and the client have agreed that those individuals are assigned employees and provided that those individuals meet the criteria of this subdivision and act as operational managers or perform reviews for the client company.
- (3) "Audited GAAP financial statement" means a financial statement that is audited by an independent certified public accountant and presented in accordance with generally accepted accounting principles.
- (4) "Client company" or "client" means a person that contracts with a licensee and is assigned employees by the licensee under that contract.
- (5) "Control", including the terms "controlling", "controlled by", and "under common control with" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise. Control is presumed to exist if any natural person directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by rule of the Commissioner. The Commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.
- (6) "Financial responsibility" means the current and expected future condition of financial solvency sufficient to support a reasonable expectation that an applicant or licensee can successfully conduct its business without jeopardizing the interests of its assigned employees, client companies, or the public.
- (7) "Good moral character" means a personal history of honesty, trustworthiness, fairness, a good reputation for fair dealings, and respect for the rights of others and for state and federal laws.
- (8) Repealed by Session Laws 2013-413, s. 11.1(a), effective October 1, 2013.
- (9) "Licensee" means a person licensed under this Article to provide professional employer services. The term includes a professional employer organization group licensed under G.S. 58-89A-35(b). Unless specifically stated otherwise in this Article, "licensee" includes persons who are licensed under this Article pursuant to alternative licensing procedures as set forth in G.S. 58-89A-76.
- (10) "Managed services" means services provided by an organization that is the sole employer of employees whom it supplies to staff and manage a specific portion of a company's workforce or a specific facility within a company on

an ongoing basis. The managed services organization has responsibility for ensuring the capabilities and skills of the employees it supplies or provides, for all employer functions, for supervisory responsibility over the employees, and for management accountability of the facility or function.

- (11) "PEO agreement" means a written contract by and between a client company and a professional employer organization that provides:
  - a. For the allocation and sharing between the client company and the licensee of the responsibilities of employers with respect to the assigned employees, including hiring, firing, and disciplining of employees; and
  - b. That the licensee and the client company assume the responsibilities required by this Article.
- (12) "Person" has the same meaning as in G.S. 58-1-5(9).
- (13) "Personnel placement service" means a job placement service offered through an organization that assists persons seeking employment to find a job with companies that are seeking employees. Companies that hire persons through a personnel placement service are the sole employers of the persons hired, and the personnel placement service does not have any responsibility as an employer.
- (14) "Professional employer organization" or "PEO" means a person that offers professional employer services and includes "staff leasing services companies", "employee leasing companies", "staff leasing companies", and "administrative employers" who offer or propose to offer professional employer services in this State.
- (15) "Professional employer organization group" or "PEO group" means a combination of professional employer organizations that operates under a group license issued under this Article or is otherwise subject to group licensure requirements under G.S. 58-89A-35(b).
- (16) "Professional employer services" means an arrangement by which employees of a licensee are assigned to work at a client company and in which employment responsibilities are in fact shared by the licensee and the client company in accordance with G.S. 58-89A-100, the employee's assignment is intended to be of a long-term or continuing nature, rather than temporary or seasonal in nature. "Professional employer services" does not include services that provide temporary employees or independent contractors, a personnel placement service, managed services, payroll services that do not involve employee staffing or leasing, the sharing of employees by commonly owned companies within the meaning of section 414(b) and (c) of the Internal Revenue Code of 1986, as amended, or similar groups that do not meet the requirements of this subdivision.
- (17) "Temporary employees" means persons employed under an arrangement by which an organization hires its own employees and assigns them to a client company to support or supplement the client's workforce in a special work situation, including:
  - a. An employee absence;
  - b. A temporary skill shortage;
  - c. A seasonal workload; or
  - d. A special assignment or project. (2002-168, s. 8; 2004-162, s. 1; 2007-127, s. 12; 2013-413, s. 11.1(a).)