§1495-F. Powers of administrator

1. Examinations. The administrator shall establish a program of regular examinations of payroll processors subject to the provisions of this chapter. The regular examinations must be conducted not less frequently than every 18 months. The administrator may, in the administrator's discretion, use an audit report of a payroll processor performed by the processor or another party to supplement or substitute for the administrator's own regular examination. In addition, the administrator may, at any time, conduct a special examination or investigation of any payroll processor the administrator believes has engaged in conduct that is a violation of any provision in this chapter. For purposes of both routine and special examinations and investigations, the payroll processor shall give the administrator free and reasonable access to the offices, places of business and records of the payroll processor, and the administrator may make and procure copies of those records, books, documents or other materials without employing the subpoena powers provided by subsection 2. For purposes of both routine and special examinations and investigations, and in addition to reviewing for compliance with other provisions of this chapter, the administrator may review the safety and soundness of the payroll processor, including but not limited to an examination of its assets and liabilities and its investments of employer funds to ensure that the payroll processor is utilizing prudent investment practices with respect to those funds.

[PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

2. Subpoenas. For the purposes of this section, the administrator may administer oaths or affirmations and, upon the administrator's own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence and require the production of any matter that is relevant to an examination or investigation, including the existence, description, nature, custody, condition and location of any books, documents or other material and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of admissible evidence.

[PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

3. Inspection of records. If the payroll processor's records are located outside this State, that payroll processor, at the administrator's option, shall either make the records available to the administrator at a convenient location within the State or allow the administrator or the administrator's representatives to inspect them at the place where the records are maintained. The administrator may designate representatives, including comparable officials of the state in which the records are located, to inspect them on the administrator's behalf.

[PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

3-A. Accounting standards and escrow requirement. To facilitate the administrator's compliance examination responsibilities, a payroll processor shall maintain a trust account for client funds in accordance with generally accepted accounting principles, international accounting standards or other recognized accounting standards. A payroll processor may not commingle funds held on behalf of its clients with the payroll processor's operating funds.

[PL 2011, c. 308, §6 (NEW).]

4. Maintenance of records. A payroll processor shall maintain records of its payroll processing service activity in conformity with generally accepted accounting principles and practices and in a manner that will enable the administrator to determine whether the payroll processor is complying with the provisions of this chapter. The records need not be kept in the place of business where the activity took place if the administrator is given free access to the records, wherever located. All records relating to payroll processing services must be maintained for at least 6 years from the end of the fiscal year in which the activity took place.

[PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

5. Enforcement. If an individual without lawful excuse fails to obey a subpoena or to give testimony when directed to do so by the administrator or obstructs the proceedings by any means, whether or not in the presence of the administrator, that individual is guilty of contempt. The administrator, through the Attorney General, may file a complaint in the Superior Court of the county in which an act on which the complaint is based was performed or in which the individual resides or transacts business setting forth the facts constituting the contempt and requesting an order returnable in not less than 2 days nor more than 5 days directing the individual to show cause before the court why the individual should not be punished for contempt. If the court determines that the individual has committed any alleged contempt, the court shall punish the offender for contempt.
[PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

6. Expenses. At the discretion of the administrator, the expenses of the administrator necessarily incurred in the examination or investigation of any payroll processor engaged in conduct governed by this chapter may be charged to that payroll processor. That payroll processor may be assessed for the actual expenses incurred by the administrator, including, but not limited to, travel expenses and the proportionate part of the salaries and expenses of examiners engaged in the examination or investigation. Notice of any assessment of those costs must be given to the payroll processor by the administrator as soon as feasible after the close of the examination or investigation and the payroll processor must have the time specified by the administrator to pay the assessment, which may not be less than 30 days.
[PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

7. Rules. The administrator may adopt reasonable rules governing payroll processors in accordance with this chapter. These rules are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.
[PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

SECTION HISTORY

PL 2003, c. 668, §6 (NEW). PL 2003, c. 668, §12 (AFF). PL 2011, c. 308, §6 (AMD).

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