Approved: March 7, 2000
Date

MINUTES OF THE HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE.

The meeting was called to order by Chairperson Al Lane at 9:07 a.m. on February 16, 2000 in Room 521-S of the Capitol.

All members were present except: Rep. Jerry Henry - excused
Rep. Mike O'Neal - excused

Committee staff present: Bob Nugent, Revisor of Statutes
Jerry Donaldson, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Bev Adams, Committee Secretary

Conferees appearing before the committee: Bill Maness, Oasis Outsourcing, Wichita
Byron McCurdy, NAPEO
John Thomas, Heart of American Staffing Services Assn.
Patti Bossert, Key Staffing

Others attending: See attached list

A motion was made by Rep. Beggs to accept the minutes of February 9 and 10 as written. It was seconded by Rep. Grant. The motion passed and the minutes were approved as written.

Hearing on: HB 2812 - Regulation of professional employer organizations

Bob Nugent, Revisor of Statutes, gave an overview of the bill to the committee. He went through the bill section by section explaining it to the committee. The bill's intent is to define the relationship between professional employer organizations (PEO), sometimes known as staff leasing companies, and the employers with whom they work. It would create minimum standards applicable to all PEOs. The bill includes definitions and exceptions to the provisions' requirements. It would require that each PEO have a written contract between the client and the PEO explaining the responsibilities and duties of each party. The bill also outlines what the contract must contain, including a description of the services to be rendered by the PEO and the responsibilities the organization must assume. Examples of such responsibilities include paying unemployment taxes and providing workers compensation coverage for the organizations' clients.

Bill Maness, Oasis Outsourcing, Wichita, appeared before the committee as a proponent of the bill. As a Professional Employer Advisor, he represents a new and rapidly expanding industry that has proven to be extremely beneficial to small and mid-sized businesses and their employees in Kansas and other states across the nation. A PEO works with small business owners to provide comprehensive human resource services through a co-employment arrangement. By the use of co-employment , the small businessperson can relieve themselves of the management of payroll, tax reporting and payment, worker's compensation coverage, employee benefits (including health, dental, life and short or long term disability) and human resource assistance. They ask for the passage of the bill to clarify state law to provide the PEO industry with the recognition it needs to operate in Kansas in an efficient and effective manner. He ended his testimony by answering questions from the committee. (Attachment 1)

Byron McCurdy, National Association of Professional Employer Organizations (NAPEO), appeared as a proponent of **HB 2812.** NAPEO represents over 600 member firms who are found in all 50 states and employ the vast majority of work-site employees in PEO arrangements. A PEO contracts with businesses to provide an integrated and cost effective approach to the management and administration of the human resources and employer risks of the business. Early misunderstandings of the industry caused some in regulatory agencies to set up rules and regulations that make it difficult for a PEO to operate and do absolutely nothing to protect employees, businesses and the agencies charged with regulating the industry and protecting the public. Two problems that make it hard to do business in Kansas is the requirement that every PEO client file a separate unemployment tax return and the rule that does not allow PEOs to employ the owner of a business. The bill would resolve these problems, appropriately recognize PEOs as an employer in this state and clarify how they interact with other agencies, insurance regulators and taxing entities. He concluded his testimony by answering many questions from the committee. (Attachment 2)

John Thomas, representing Heart of America Staffing Services Association, appeared as a neutral on the bill. They believe the PEO should be defined narrowly so as to apply only to true PEO arrangements, not temporary help or other non-PEO services. The American Staffing Association and the Heart of America Staffing Services Association recommend that the bill be amended and his testimony contains a balloon with these amendments. He talked with Byron McCurdy before the hearing and they agreed with the changes. (Attachment 3)

Patti Bossert, Key Staffing, testified as an opponent of the bill. She believes that the basic difference between PEOs and staffing firms is not defined in **HB 2812**. She recommends that the bill be amended to closely define a PEO to prevent overly broad legislation that may affect the temporary staffing industry. Attached to her testimony are two pages that define the difference between temporary staffing services and a PEO arrangement. (Attachment 4)

No others were present to testify for or against the bill and Chairman Lane closed the hearing on **HB 2812**.

Chairman Lane adjourned the meeting at 10:15 a.m. The next meeting is scheduled for February 17, 2000.

HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE
GUEST LIST

DATE: February 16, 2000

NAME	REPRESENTING
Patti Bossert	Key Staffing
Terry Leatherman	KCCI
John Thomas	HASSA & ASA
Ron Hein	Heart of America Staffing Services Assn
Don Doesken	KDHR-Legal Services
Paul Bicknell	KDHR
Edwin W Taylor	KDHR
Bill Maness	OASIS OUTSOURCING
Byron McCurdy	National Association of Professional Employers
Kathryn Cunningham	MORESOURCE, Inc.
Jane Kelly Coates	SRS Legal
Sharon Mason	AARP
DICK CARTER	KSIA

Bill Maness Testimony
House Bill 2812

Good morning, ladies and gentlemen. My name is Bill Maness and I am a Professional Employer Advisor with Oasis Outsourcing in Wichita. I am a life long Kansas resident and stand before you today in support of the bill this hearing is for.

I represent a new and rapidly expanding industry that has proven to be extremely beneficial to small and mid-sized businesses and their in employees in Kansas and other states across the nation. It has assisted in the success of small business and provided a multitude of benefits to working Kansans that would have otherwise not been possible.

Simply put, a PEO is a business organization that works with small business owners to provide comprehensive human resource services through a co-employment arrangement. By the use of co-employment, the small businessperson can relieve themselves of the management of payroll, tax reporting and payment, worker's compensation coverage, employee benefits (including health, dental, life and short or long term disability) and human resource assistance. In essence, in a PEO arrangement, the PEO assumes employer responsibility so that the owner of the business may concentrate on its' core business. As I tell all of my clients, you did not go into business to be an employer… you became one by default. With the maze of government compliance issues, both on the federal and state level, today's business owners, especially those with less than 200 employees, face more and tighter regulations with regards to employment issues, not to mention the civil liabilities an employer may face due to those same employment issues if they are not handled properly.

The benefits of the co-employment relationship are many. First, by using a PEO a business frees up the time and energy for more profit-producing activities. Second, the employees receive a better benefits package as well as the opportunity to keep benefits cost down because they are now co-employed in a much larger pool. Third, an employer receives support and expertise with regards to government compliance and human resource issues. And finally, the business has a business ally whose sole purpose is to provide employer services and to protect and minimize the company's employment liabilities.

The House Bill 2812 clarifies state law to provide the PEO industry with the recognition it needs to operate in our great state in an efficient and effective manner. The bill is based upon the experience of the PEO industry in other states and is designed to address the common issues necessary to assure the conformity of the industry with the state's other statutory provisions and to recognize the status of the industry. This bill does not provide the PEO industry with any exclusive rights or remedies, nor does it preclude any one from another industry from continuing their business as is. It not only recognizes the employer rights but also the employer responsibilities of the PEO industry. This bill will statutorily establish the PEO industry in the state of Kansas and provide necessary guidelines for government compliance issues.

I will tell from my experience over the past two years that the small business owner finds our service to provide them with many benefits and views us as a partner in their business. I hope you find that the bill is recognition of a new industry that has come to Kansas and is good for Kansas business. Please join me in your support of House Bill 2812.

Thank You.

House Bill 2812
Kansas Professional Employer Organization Recognition Act

- The National Association of Professional Employer Organizations or NAPEO is the national trade association of PEO industry. NAPEO represents over 600 member firms from small start-ups to large publicly-traded companies. NAPEO members are found in all 50 states and employ the vast majority of work-site employees in PEO arrangements.
- American business is undergoing fundamental changes in human resource management and the Professional Employer industry is one response to market demands. Over the last two decades, the United States has seen a significant increase in employment-related federal, state and local laws and regulations. The expertise required to manage a small to mid-sized business has outgrown the experience and training of many entrepreneurs who started these businesses. In addition, working Americans demand quality, low cost health care, retirement savings plans and other employee benefits for themselves and their families. In response to these demands, the PEO industry evolved from the need to divide the "business of business" into manageable parts and the need for small businesses to achieve economies of scale.
- A PEO contracts with businesses to provide an integrated and cost effective approach to the management and administration of the human resources and employer risks of the business. PEOs assume substantial employer rights, responsibilities and risk through the establishment and maintenance of an employer relationship with the workers assigned to its clients. More specifically a PEO:
  - Assigns workers to client locations and thereby assumes responsibility as an employer for specified purposes
  - Reserves the right of direction and control of the employees
  - Pays wages and employment taxes of the employee out of its own accounts
  - Reports, collects and deposits employment taxes with state and federal authorities
  - Establishes and maintains an employment relationship with its employees which is intended to be long term and not temporary
  - Retains the right to hire, reassign and fire the employees.
- Professional Employer Organizations benefit Kansas businesses by controlling costs, saving time and paperwork hassles, providing professional compliance with government regulations, reducing turnover and attracting better employees, assisting with worker's compensation insurance and unemployment insurance claims management, helping the business to provide better benefits packages and by providing professional human resource management.
- Professional Employer Organizations benefit employees by providing them with access to better health insurance and other benefits, by increasing employer/employee communications, by making sure payroll is on-time and accurate, providing independent third-party conflict resolution, providing statutory protection to employees working at smaller businesses and by providing them with more portable benefits.
- Professional Employer Organizations benefit the state and federal government by consolidating several small companies' employment tax filings into one, by providing more professional preparation and reporting of taxes, by accelerating the collection of taxes, by extending medical benefits to more workers, expanding the communication of government requirements, resolving many problems before they reach court and allowing government agencies to reach many businesses through a single-employer entity.
- Estimates now are that there are over 2,500 Professional Employer Organizations in the United States employing nearly 4 million workers. The industry is growing every year 20 to 30%. PEOs are the way to employ in the 21st century.

Problems with current law and the need for House Bill 2812

- Kansas has two regulations that we believe are unnecessary and protect no one.
- The first is a requirement that every PEO client file a separate unemployment tax return. Instead of a Professional Employer Organization filing one return for hundreds of clients, the taxpayers of this state pay the cost of processing those hundreds of returns separately. Nearly every other state accepts PEOs as the employer for unemployment tax purposes, saving their taxpayers thousands and perhaps even millions of dollars in processing costs. In addition, recognizing a PEO as an employer allows the PEO to handle unemployment claims. The experience of the PEO allows them to make better judgements about which claims are disputable and which are not, allowing the administrative hearing system to remain unclogged and again saving the states many dollars.
- The second problem is the rule that does not allow Professional Employer Organizations to employ the owner of a business. This requires duplicate tax returns for any business that desires to have their employees taken care of by a PEO. It also keeps owners of businesses from participating in health insurance plans of the PEO costing businesses of this state significant amounts and most likely driving up the cost of health insurance. Owners also cannot participate in the PEO's retirement plans, not allowing business owners to save for future years.
- House Bill 2812 will resolve these problems, appropriately recognize PEOs as an employer in this state and clarify how they interact with other agencies, insurance regulators and taxing entities.

Byron G. McCurdy Testimony
Kansas Legislature – House Bill 2812

February 16th, 2000

My name is Byron McCurdy and I am the Immediate Past President of the National Association of Professional Employer Organizations and I have been involved for eighteen years in the Professional Employer Industry. This is the 14th legislature I have testified at. The National Association of Professional Employer Organizations or NAPEO is the national trade association of PEO industry. NAPEO represents over 600 member firms from small start-ups to large publicly-traded companies. NAPEO members are found in all 50 states and employ the vast majority of work-site employees in PEO arrangements.

American business is undergoing fundamental changes in human resource management and the Professional Employer industry is one response to market demands. Over the last two decades, the United States has seen a significant increase in employment-related federal, state and local laws and regulations. The expertise required to manage a small to mid-sized business has outgrown the experience and training of many entrepreneurs who started these businesses. In addition, working Americans demand quality, low cost health care, retirement savings plans and other employee benefits for themselves and their families. In response to these demands, the PEO industry evolved from the need to divide the "business of business" into manageable parts and the need for small businesses to achieve economies of scale.

Let me take a moment to explain what a Professional Employer Organization or PEO is. A PEO contracts with businesses to provide an integrated and cost effective approach to the management and administration of the human resources and employer risks of the business. PEOs assume substantial employer rights, responsibilities and risk through the establishment and maintenance of an employer relationship with the workers assigned to its clients. More specifically a PEO:

- Assigns workers to client locations and thereby assumes responsibility as an employer for specified purposes
- Reserves the right of direction and control of the employees
- Pays wages and employment taxes of the employee out of its own accounts
- Reports, collects and deposits employment taxes with state and federal authorities
- Establishes and maintains an employment relationship with its employees which is intended to be long term and not temporary
- Retains the right to hire, reassign and fire the employees.

We are different from temporary staffing services, facilities management services, payrolling services and placement services in that we establish and maintain long-term relationships with the workers assigned to our clients and assume substantial employer responsibilities and risks. We benefit businesses of Kansas by controlling costs, saving time and paperwork hassles, providing professional compliance with government regulations, reducing turnover and attracting better employees, assisting with worker's compensation insurance and unemployment insurance claims management, helping the business to provide better benefits packages and by providing professional human resource management.

PEOs benefit employees by providing them with access to better health insurance and other benefits, by increasing employer/employee communications, by making sure payroll is on-time and accurate, providing independent third-party conflict resolution, providing statutory protection to employees working at smaller businesses and by providing them with more portable benefits.

We benefit the state and federal government by consolidating several small companies employment tax filings into one, by providing more professional preparation and reporting of taxes, by accelerating the collection of taxes, by extending medical benefits to more workers, expanding the communication of government requirements, resolving many problems before they reach court and allowing government agencies to reach many businesses through a single-employer entity.

Estimates now are that there are over 2,500 Professional Employer Organizations in the United States employing nearly 4 million workers. The industry is growing every year 20 to 30%. PEOs are the way to employ in the 21st century.

So, why are we here requesting your support today? Early misunderstandings of the industry caused some in regulatory agencies to set up rules and regulations that make it difficult for a PEO to operate and do absolutely nothing to protect employees, businesses and the agencies charged with regulating the industry and protecting the public. Kansas has two regulations that we believe are unnecessary and protect no one. They simply make it more difficult to do business in this state.

The first is a requirement that every PEO client file a separate unemployment tax return. Instead of a Professional Employer Organization filing one return for hundreds of clients, the taxpayers of this state pay the cost of processing those hundreds of returns separately. Nearly every other state accepts PEOs as the employer for unemployment tax purposes, saving their taxpayers thousands and perhaps even millions of dollars in processing costs. In addition, recognizing a PEO as an employer allows the PEO to handle unemployment claims. The experience of the PEO allows them to make better judgements about which claims are disputable and which are not, allowing the administrative hearing system to remain unclogged and again saving the states many dollars.

The second problem for the industry in this state is the rule that does not allow Professional Employer Organizations to employ the owner of a business. This requires duplicate tax returns for any business that desires to have their employees taken care of by a PEO. It also keeps owners of businesses from participating in health insurance plans of the PEO costing businesses of this state significant amounts and most likely driving up the cost of health insurance. Owners also cannot participate in the PEO's retirement plans, not allowing business owners to save for future years. All of this occurs with no positive effect on employees, businesses and the State of Kansas. House Bill 2812 will resolve these problems, appropriately recognize PEOs as an employer in this state and clarify how they interact with other agencies, insurance regulators and taxing entities.

Today we ask that you take Kansas into the future with responsible legislation that is tried and proven in other states. Over twenty states have similar legislation in place. Thank you for your kind consideration of this bill.

NAPEO

THE PEO BLUE BOOK

Voice of the PEO Industry

This book has been developed as a resource for legislators and government officials, and is intended to promote a deeper understanding of the complex professional employer organization industry.

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NAPEO at a Glance

NAPEO—the National Trade Association for the Professional Employer Organization Industry

The National Association of Professional Employer Organizations (NAPEO) is the national trade association of the professional employer organization (PEO) industry. Founded in 1985, NAPEO represents nearly 600 member firms. From small start-ups to large, publicly traded companies, NAPEO members are found in all 50 states and employ the vast majority of worksite employees in PEO arrangements.

NAPEO—the Voice of the Industry

NAPEO and its chapters are the recognized voice of the PEO industry in Congress and state capitals. The PEO industry is complex and evolving. To permit the industry to flourish while encouraging responsible and fiscally prudent business practices, NAPEO has led the development of meaningful government regulation for the PEO industry. NAPEO has also established an industry Code of Ethics, which encourages members to serve the public and their clients with the utmost in professionalism and ethical conduct.

NAPEO—Approach to Regulation

NAPEO encourages lawmakers and government officials to be proactive in their understanding of the industry. While each state and government agency will differ in its approach to the professional employer industry, certain needs, concerns, and perspectives need to be addressed. Above all else, PEOs are employers with many of the same responsibilities and liabilities of more traditional employers. As such, rights and responsibilities provided by states to more traditional employers should be extended to PEOs. In this regard, NAPEO has advanced legislation to reduce unnecessary regulatory costs and provide uniformity in industry regulation.

NAPEO—Educational Services

NAPEO's hallmark has long been its leadership in advancing the professionalism of the PEO industry by providing comprehensive education and training. NAPEO's meetings, workshops, and publications have established our association as the source for industry professionals to analyze cutting edge industry trends, refine management skills, brush up on financial standards, and stay atop of government rules and procedures.

NAPEO—Ethics

NAPEO member companies are committed to high standards of ethics. Members recognize that the industry provides a critical service to clients and worksite employees and that they must uphold the highest standards of ethical conduct. The Code of Ethics is an integral part of NAPEO's mission and permeates its meetings, workshops, and publications.

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NAPEO Code of Ethics

Objective: The purpose of the Code of Ethics is to establish ethical standards and minimum levels of conduct for members of the National Association of Professional Employer Organizations.

All NAPEO members must read and sign that they support the following Code of Ethics:

ONE: Members shall recognize that they must serve the public and their clients with the utmost professional conduct. In this respect, a member shall be honest, trustworthy, competent, and ethical when managing the affairs of a PEO, and endeavor to pursue the public interest above its own.

No member's business shall allow unlawful discrimination among its employees or clients on grounds of race, sex, national origin, religion, disability, or any other unlawful basis.

TWO: Members shall comply with all applicable federal, state, and local laws and regulations. No member's business shall allow unlawful discrimination among its employees or clients on grounds of race, sex, national origin, religion, disability, or any other unlawful basis.

THREE: Members shall remain informed on issues essential to the conduct of their business and seek the expertise of competent professionals when handling difficult questions or situations. Members shall pursue continuing education.

FOUR: Members shall assist and serve the best interests of their employees. Members are encouraged to cooperate with each other for the assistance of their clients and employees.

FIVE: Members shall assist in improving the public understanding of professional employer services. Toward that end, members shall neither disparage nor engage in conduct that could jeopardize the welfare of NAPEO or its members.

SIX: Members shall use the fact of membership in NAPEO in a professional manner that is consistent with the Code of Ethics.

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ALL ABOUT PEOs

Overview of PEOs

- Definition of a PEO
- PEOs Distinguished from Other Staffing Services
- Facts About PEOs
- Role of PEOs in Today's Workplace

Specifics of PEO Relationship

- PEOs Are Co-Employers
- PEOs Pay Wages and Employment Taxes
- PEOs Enhance Compliance with Employment Laws

Definition of a Professional Employer Organization

A Professional Employer Organization (PEO) is defined as: "an organization that provides an integrated and cost effective approach to the management and administration of the human resources and employer risk of its clients, by contractually assuming substantial employer rights, responsibilities, and risk and, through the establishment and maintenance of an employer relationship with the workers assigned to its clients."

More specifically, a PEO establishes a contractual relationship with its clients whereby the PEO:

- assigns workers to client locations, and thereby assumes responsibility as an employer for specified purposes of the workers assigned to the client locations;
- reserves a right of direction and control of the employees and may share such responsibility with the client, consistent with the client's responsibility for its product or service;
- pays wages and employment taxes of the employee out of its own accounts;
- reports, collects, and deposits employment taxes with state and federal authorities;
- establishes and maintains an employment relationship with its employees which is intended to be long term and not temporary; and
- retains a right to hire, reassign, and fire the employees.

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Professional Employer Organizations Distinguished From Other Staffing Services

New and innovative employment arrangements are emerging in the workplace which do not conform to the traditional criteria used to evaluate employment relationships. The following definitions set forth the major categories of service provided by staffing companies today.

Professional Employer Organizations

A distinguishing characteristic of a PEO is co-employment, the relationship that arises when, in conjunction with their clients, the PEO establishes and maintains a long-term employer relationship with the workers assigned to its clients and contractually assumes substantial employer rights, responsibilities, and risks. Additionally, PEOs usually co-employ the majority of a client's workforce.

... the PEO establishes and maintains a long-term employer relationship with the workers assigned to its clients and contractually assumes substantial employer rights, responsibilities, and risks.

Temporary Staffing Services

Temporary staffing services are services provided by an organization that recruits and screens its own employees, who are then assigned to work at a client's premises to support or supplement a client's existing workforce for limited periods of time in work situations such as short term employee absences, temporary skill shortages, seasonal work loads, and special assignments and projects. The temporary staffing service has responsibility for ensuring the capabilities and skills of the individuals it supplies. The client has supervisory responsibility for the employees and management accountability for the function performed by the employees at the worksite in regard to results or output.

Managed Services

Managed services (also called "facilities management" or "outsourcing") are services provided by an organization that supplies employees to staff and manage a specific client facility or function on an ongoing basis. Examples of managed services include operating a mailroom or data processing center. The organization not only has responsibility for ensuring the capabilities and skills of the individuals it supplies and performing all other employer functions, but also has day to day supervisory responsibility for the employees and management accountability for the facility or function in regard to results and output. Managed Service providers are the sole employers of the employees supplied.

Payrolling Services

Payrolling Services involve arrangements consisting primarily of paying wages and related taxes for the employees of a third party. These actions are undertaken as an agent of the employer and with funds of the employer. As an agent, the payrolling service does not have responsibility or liability for the payment of wages or related taxes if the client does not provide payment in advance; additionally, as an agent, no employment relationship exists between the payrolling service and the client employees.

Placement Services

Placement Services are services provided by an organization that seeks to bring together job seekers and potential employers for the purpose of establishing a regular, full-time employment relationship. Placement service includes "temp-to-perm" arrangements where placement of the worker in a regular, full-time relationship is the specific purpose of the arrangement from the outset. Also referred to as a "try before you hire," a worker in this arrangement is, if hired, the employee of the full-time employer.

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Facts About PEOs

Businesses today need help managing increasingly complex employee related matters such as personnel management, health benefits, workers' compensation claims, payroll, payroll tax compliance, and unemployment insurance claims. Businesses contract with a PEO to assume these responsibilities, which then allows the client to concentrate on the revenue-producing side of its operations.

A PEO provides integrated services which more cost effectively manage critical human resource responsibilities and employer risks for clients. PEOs deliver these services by establishing and maintaining an employer relationship with the workers assigned to its client and by contractually assuming substantial employer rights, responsibilities, and risk.

Benefits of PEO Services

For the business

- Controls costs
- Saves time and paperwork hassles
- Provides professional compliance (e.g., payroll, OSHA, IRCA, EEOC)
- Reduces turnover and attracts better employees
- Claims management (e.g., workers' compensation, unemployment insurance)
- Provides better benefits packages(s)
- Provides professional human resource services (e.g., employee handbooks, forms, policies and procedures)
- Reduces accounting costs

For the employee

- Comprehensive benefits previously unavailable
- Better employer/employee communications
- Payroll on-time and accurate
- Professional assistance with employment-related problems
- Professional orientation and employee handbook
- Extends statutory protection to more employees
- Up-to-date information on labor regulations and workers' rights, worksite safety
- Efficient & responsive claims processing
- Portable benefits (employees can move from one PEO client to another without loss of eligibility for benefits)

For the government

- Consolidates several small companies' employment tax filings into one
- More professional preparation and reporting
- Accelerated collection of taxes
- Extends medical benefits to more workers
- Expands the communication of government requirements and changes to small businesses
- Resolves many problems before they reach court
- Allows government agencies to reach business through a single-employer entity

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PEOs — One Response to Market Demands For Change

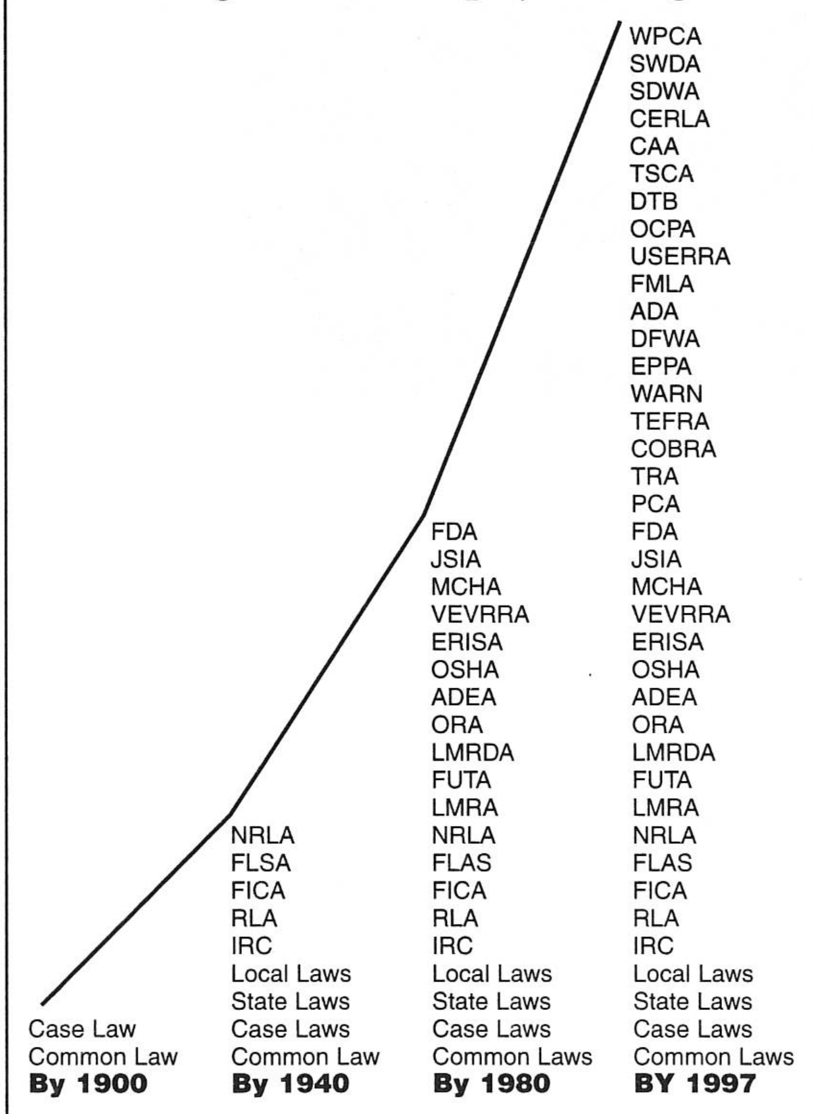
American business is undergoing fundamental changes in human resource management, and the PEO industry is one response to market demands. There are several factors driving the growth of the industry. First, over the last two decades, this nation has seen a significant increase in employment-related federal, state, and local laws and regulations. Second, the expertise required to manage a small to mid-sized business has outgrown the experience and training of many entrepreneurs who started these businesses. Third, working Americans demand quality, low cost health care, retirement savings plans, and other employee benefits for themselves and their families. In response to these demands, the PEO industry evolved from the need to divide the "business of business" into manageable parts and the need for small businesses to achieve economies of scale.

Helping Entrepreneurs With the "Business Of Employment"

PEOs offer to their clients and worksite employees the services and expertise of a personnel department within a large corporation. Few, if any, small businesses can afford a full-time staff consisting of an accountant, a human resource professional, a lawyer, a risk manager, a benefits manager, and a manager of information services. Professional employer organizations offer this expertise to their clients.

By providing these services, professional employer organizations enable their clients to concentrate on their business without the challenges and distractions associated with the "business of employment." As a result, PEOs enhance the profitability of their client companies. Further, costs related to monitoring of, and compliance with, employment laws are reduced, as are the often significant costs of failure to comply with such laws.

The Growing Burden of Employment Regulation



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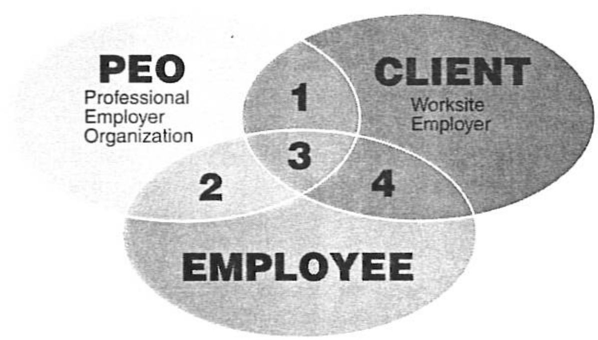
PEOs Are Co-Employers

The PEO relationship involves a contractual allocation and sharing of employer responsibilities between the PEO and the client; this shared employment relationship is called co-employment. When evaluating the employer role of either the PEO or the client, the facts and circumstances of each employer obligation should be examined separately, since neither party alone is responsible for performing all of the obligations of employment. Each party will be solely responsible for certain obligations of employment, while both parties will share responsibility for other obligations. When the facts and circumstances of a PEO arrangement are examined appropriately, both the PEO and the client will be found to be an employer for some purposes, but neither party will be found to be "the" employer for all purposes.

Both the PEO and the client company establish common law employment relationships with worksite employees. Each entity has a right to independently decide whether to hire or discharge an employee. Each entity has a right to direct and control worksite employees – the PEO directs and controls worksite employees in matters involving human resource management and compliance with employment laws, and the client company directs and controls worksite employees in manufacturing, production, and delivery of its products and services.

The client company provides worksite employees with the tools, instrumentalities, and place of work. The PEO ensures that worksite employees are provided with a workplace that is safe, conducive to productivity, and operated in compliance with employment laws and regulations. In addition, the PEO provides worksite employees with workers' compensation insurance, unemployment insurance and a broad range of employee benefits programs.

Illustrating the Co-Employment Relationship



1 Service Contract

2 Employment relationship with/ and responsibilities of the PEO

3 Shared relationship and employer responsibilities

4 Employment relationship with/ and responsibilities of the client

PEOs create an employment relationship with their workers. This relationship exists in fact, not just in form. PEOs can manage the risks attendant to the personnel functions that they perform only if they establish an employment relationship with their worksite employees. Unless a PEO has a right to direct and control worksite employees, as well as a right to hire, supervise, discipline, and discharge these employees, the PEO will merely assume liability without having a means to manage that liability.

PEOs manage their employment liability exposure by monitoring and requiring compliance with employment laws, developing policies and procedures that apply to worksite employees, supervising and disciplining worksite employees, exercising discretion related to hiring new employees, and ultimately terminating worksite employees who do not comply with requirements established by the PEO.

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PEOs Pay Wages and Employment Taxes

PEOs assume responsibility and liability for the "business of employment" by establishing a co-employment relationship with employees who are assigned to work at client locations. The PEO assumes responsibility and liability for the business of employment, and the client company manages product development, product production, marketing, sales, and service. Among the employer responsibilities and liabilities a PEO assumes is the payment of wages and compliance with all rules and regulations governing the reporting and payment of federal and state taxes on wages paid to its employees.

PEOs Are Employers For FICA, FUTA, and Federal Income Tax Withholding Laws

Generally, an entity is an "employer" for federal employment tax purposes, if an employment relationship exists between the entity and the worker under the common law test of employment. In addition, under Internal Revenue Code Section 3401(d)(1), an entity is an "employer" for federal employment tax purposes if the entity has legal control of the payment of wages. While Code Section 3401 applies to federal income tax withholding obligations, the definition of "employer" under Code Section 3401(d)(1) has also been applied to FICA and FUTA taxes.

PEOs establish employment relationships with their worksite employees. PEOs reserve the right to direct and control worksite employees; develop policies and procedures applicable to worksite employees; retain the right to discharge worksite employees; have the legal obligation to pay salaries and wages to worksite employees; provide worksite employees with benefits, including workers' compensation insurance, unemployment compensation insurance, health insurance, retirement saving plans, life insurance, disability insurance, etc.; recruit and screen worksite employees; and reserve discretion with respect to the hiring of worksite employees.

In addition, many PEOs enter into written employment agreements with their worksite employees. While a client company may express dissatisfaction with a worksite employee, a client company may not terminate the worksite employee's employment relationship with the PEO, or otherwise affect the agreement between the PEO and the employee.

PEOs Pay Wages Regardless of Adequacy or Receipt of Client Payment

PEOs are employers for federal employment tax purposes under Code Section 3401(d)(1). PEOs are obligated to pay wages and salaries of worksite employees without regard to the receipt or sufficiency of fees. PEOs are contractually obligated to pay these wages and salaries under their agreements with client companies. Further, PEOs are obligated to pay these wages and salaries under state laws regulating the industry.

Case law affirms the principle that the PEO, and not the client, is responsible for the payment of wages and payroll taxes. In a case involving liability for employment taxes in an analogous context, the court in General Motors Corp. v. United States found that a contract labor supplier was the employer of certain engineers provided to General Motors, even though General Motors exercised some direction and control over the engineers, because the labor supplier controlled the payment of wages. Like the contract labor supplier in General Motors Corp. v. United States, PEOs have legal control over the payment of wages to worksite employees, and consequently, are the employers of these employees under FICA, FUTA, and federal income tax withholding rules.

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Professional Employer Organizations Enhance Compliance With Employment Laws

PEOs Enhance Compliance With Employment Laws and Regulations

By becoming co-employers, PEOs fundamentally alter the relationship between worksite employees and clients. PEOs assume substantial liabilities in undertaking human resource functions on behalf of their clients. PEOs provide worksite employees with coverage under the entire spectrum of employment laws and regulations. Some of these liabilities include federal, state, and local discrimination laws, such as Title VII of the 1964 Civil Rights Act, the Age Discrimination in Employment Act, Americans with Disabilities Act, Family and Medical Leave Act, and Pregnancy Discrimination Act. In addition, PEOs assume liability under the Fair Labor Standards Act, Immigration Reform and Control Act, COBRA, the Health Insurance Portability and Accountability Act ("HIPAA"), Employee Retirement Income Security Act ("ERISA"), Federal Insurance Contributions Act ("FICA"), Federal Unemployment Tax Act ("FUTA"), and state unemployment compensation and workers' compensation laws.

PEOs assume responsibility and liability for payment of wages and compliance with all rules and regulations governing the reporting and payment of federal and state taxes on wages paid to its employees.

In many cases, these laws would not apply without the PEO relationship. Generally, the determination of whether an employer is subject to a particular employment statute is based on the number of employees employed during the year. As such, some workers employed by a PEO are protected by these laws only because they are included in the larger work force of a PEO. PEOs develop policies and procedures to ensure compliance with employment laws, supervise and discipline worksite employees with respect to these policies and procedures, exercise discretion related to hiring new employees, and ultimately terminate worksite employees who do not comply with requirements established by the PEO.

PEOs Enhance Compliance With Employment Tax Requirements

PEOs assume responsibility and liability for payment of wages and compliance with all rules and regulations governing the reporting and payment of federal and state taxes on wages paid to its employees. By assuming this liability, PEOs accelerate the reporting and payment of taxes. Prior to entering into a relationship with a PEO, most small to medium-sized businesses accumulate tax liability in an amount requiring only monthly deposits. Because a PEO assumes this obligation, it is not uncommon for its daily tax liability to be over $100,000, thereby requiring daily electronic fund transfers.

Moreover, there is generally a higher rate of compliance with these laws by a PEO than by its clients prior to entering into a PEO relationship. As stated, PEOs are in the business of monitoring and ensuring compliance with these laws. PEOs employ a full-time, specialized staff that is responsible for complying with federal and state employment tax laws. This staff is charged with monitoring changes in these laws and with assuring that employment taxes are calculated correctly and remitted on a timely basis.

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NAPEO'S POSITIONS ON KEY INDUSTRY ISSUES

Summary of NAPEO's Positions on Key PEO Issues

Employment Taxes

A PEO assumes responsibility and liability for payment of wages and compliance with all rules and regulations governing the reporting and payment of FICA, Medicare and federal and state withholding taxes on wages paid to its employees. PEOs are employers for federal employment tax purposes, if an employment relationship exists between the entity and the workers. Under Code Section 3401(d)(1), an entity is an employer for federal employment tax purposes if the entity has legal control of the payment of wages.

Unemployment Taxes

A PEO assumes responsibility and liability for payment of all federal and state unemployment taxes. NAPEO and its member companies are committed to supporting the integrity of each state's fund and rating mechanisms. The PEO arrangement in some cases provides windfall revenues to these funds, when additional taxes are paid on behalf of worksite employees who become employed by a PEO in mid-year, after the client company had already paid taxes on the worker's wages up to the taxable maximum. PEOs prevent potential claims to the trust funds when worksite employees are transferred between client companies. The trust fund benefits because PEOs collect taxes during each payroll cycle, which increases overall tax collection from clients with a high failure and nonpayment rate.

Employee Benefits

As an employer, a PEO sponsors and offers benefit plans including health insurance, retirement savings plans, disability insurance, life insurance, employee assistance plans, and educational benefits to its employees. Because of economies of scale, a PEO can provide and manage these plans at a cost that is affordable. NAPEO supports the position that, at each client location offering benefits, all employees must be offered benefits on a nondiscriminatory basis.

Workers' Compensation/Exclusive Remedy

Safer work environments are created when PEOs are the policyholders for workers' compensation coverage policies. One of the contractual risks assumed by PEOs is that of providing coverage for workers' compensation claims; this assumption of liability ensures that the PEO focuses on every available means of reducing risk of injury to employees. Many of these safety practices are new to the typical PEO client—a small to mid-sized business without the time or expertise to cater to worker safety concerns.

NAPEO members are committed to maintaining the solvency and equity of the workers' compensation system. The incentives PEOs have to further the efficiency and viability of the system and the marked improvement NAPEO members have made in enhancing worker safety, resolving injured worker claims and reducing workplace injury form the basis for an ongoing study of the positive impact PEOs have on the workers' compensation system.

The benefit of exclusive remedy found in workers' compensation statutes should extend both to the PEO and the client as co-employers for workers' compensation purposes in all states. In a co-employment relationship, authority as to the direction and control over the details of the work performed is exercised by each employer. Due to this shared direction and control, courts have extended the exclusive remedy provisions of workers' compensation laws to PEOs and their client companies. They have done so by applying the "loaned servant" doctrine under which the client co-employer is viewed as the special employer and the PEO as the general employer. Additionally, most state statutes which address the PEO relationship grant PEOs the protection of exclusive remedy. Thus, in those states that have not yet addressed this issue, it is NAPEO's position that protection afforded by the exclusivity of the workers' compensation remedy should be extended to both co-employers.

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PEOs Enhance the Unemployment Compensation System

PEOs are Employers of Record

PEOs are the employer of record for payment of federal income and unemployment taxes, recognized by the Internal Revenue Service pursuant to Section 3401(d) of the Internal Revenue Code. See, Rev. Rul. 75-41, 1975-1 C.B. 323. Under Section 3401(d)(1), an entity is an "employer" for federal employment tax purposes if the entity has legal control of the payment of wages. The definition of "employer" under Section 3401(d)(1) has also been applied to FICA and FUTA taxes. Otte v. United States, 419 U.S. 43 (1974).

Because the PEO pays wages and taxes, regardless of receipt or adequacy of payment from the client company, liability for the taxes and withholding rests with the PEO. Case law affirms the PEO's liability for payment of employment taxes when the PEO has assumed responsibility for such payment regardless of receipt or adequacy of payment from the client. *See*, General Motors Corporation v. U.S., 91-1 U.S.T.C. 50,032 (E.D. Mich. 1990). Similarly, many states which statutorily recognize the PEO relationship hold that the PEO is the responsible entity for payment of unemployment taxes and such taxes are based on the PEO's tax rate.

PEOs Create Efficiencies in the Unemployment Compensation System

Collection of unemployment taxes from small businesses is burdensome and costly for the government; in addition, small businesses are often not in complete compliance with all federal and state tax laws. When a PEO assumes liability as employer of record for payment of federal and state employment taxes, the government burden of collecting unemployment obligations from a myriad of small businesses is relieved. In addition, because PEOs hire professional human resource experts, consistent compliance with complex federal and state unemployment tax laws is assured, as is the timely payment of unemployment taxes.

Unemployment compensation claims are reduced as a result of the PEO relationship. As a part of their suite of human resource management services, PEOs offer small to mid-sized companies professional employee relations and professional claims management services. These services include reassigning worksite employees from one client to another to minimize unemployment claims, when reassignment does not interfere with the business interests of the client. Services also include representation at labor board hearings and appeals of labor board decisions. PEOs who do not deliver these services cannot remain viable in a competitive marketplace.

When a PEO assumes liability as employer of record for payment of federal and state employment taxes, the government burden of collecting unemployment obligations from a myriad of small businesses is relieved.

PEOs Maintain the Integrity of Unemployment Insurance Systems

NAPEO members are committed to maintaining the solvency and equity of the unemployment insurance system. PEO arrangements in some cases provide windfall revenues to state funds when additional taxes are paid on behalf of worksite employees who become employed by the PEO in mid-year, after the client company had already paid taxes on the worker's wages up to the taxable maximum.

The incentives PEOs have to further the efficiency and viability of the system are the same incentives shared by every large and small employer—employers whose workers suffer the most involuntary unemployment pay the highest rates.

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PEOs Promote the Workers' Compensation System

PEOs Are Co-Employers

A PEO contracts with client businesses to allocate employer rights and responsibilities. As a co-employer, the PEO maintains workers' compensation coverage, pays wages and taxes, and provides benefits. The PEO establishes and maintains an employer relationship with the workers, addressing worker complaints, retaining the right to hire, reassign and dismiss workers, and maintaining employer records. In a co-employment relationship, some authority as to the direction and control over the details of the work performed is exercised by each employer. As such, it is appropriate that the exclusive remedy doctrine protect both the PEO and the client.

PEOs Create Safer Work Environments

Safer work environments are created when PEOs are the workers' compensation policyholders. Effective safety practices such as pre-employment drug tests, loss control and safety procedures, claims management of injuries, safety training, employee assistance plans, back-to-work programs, and drug-free workplace programs enhance employee safety and well-being. Many of these safety practices are new to the typical PEO client—a small to mid-sized business without the time, expertise, or resources to cater to worker safety concerns. Co-employees benefit from safer workplaces. Employee, PEO, and clients alike benefit from fewer workplace injuries.

The small to mid-sized business market segment traditionally has been underserved by insurance carriers. Accounts that generate a small premium often receive very little in the way of loss control services or claims management services. As a part of their suite of human resource management services, PEOs offer each and every small to mid-sized company professional loss control and claims management services.

PEOs Effectively Resolve Injured Worker Claims

Comprehensive case management ranging from monitoring treatment to carrier contact ensures that injured workers receive proper care. Return-to-Work programs enable workers to benefit from a restoration of normalcy, while the PEO coordinates either a modified job to accommodate the worker's injury or a job at a different worksite employer. Effective, aggressive management of injured worker needs and claims benefits the injured worker, client companies, and the PEO.

Effective safety practices such as pre-employment drug tests, loss control and safety procedures, claims management of injuries, safety training, employee assistance plans, back-to-work programs, and drug-free workplace programs enhance employee safety and well-being.

PEOs Maintain the Integrity of the Workers' Compensation System

NAPEO members are committed to upholding the integrity of the workers' compensation system and working with the carriers, rating bureaus, and regulators who administer the system. The incentives PEOs have to further the efficiency and viability of the system and the marked improvement NAPEO members have made in enhancing worker safety, resolving injured worker claims, and reducing workplace injury form the basis for an ongoing study of the positive impact PEOs have on the workers' compensation system.

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PEOs Provide Quality, Affordable Benefits

PEOs Improve Access to Benefits

PEOs create an opportunity for small businesses to cost effectively provide quality employee benefits, since PEOs provide access to retirement plans, health insurance, employee assistance programs and other valuable benefits.

An analyst at Alex. Brown & Sons estimates that 40% of companies in a PEO co-employment relationship upgrade their total employee benefits package as a result of the PEO relationship and further that 25% of the companies upgrading their benefits are offering health care and other benefits to their workers for the first time. Provision of this better benefits package results in higher workforce retention and satisfaction.

PEOs Offer Quality Benefits, Including Health Insurance

PEOs offer their worksite employees a comprehensive and integrated suite of human resource services ranging from professional human resource management to health insurance, vision and dental care, short and long-term disability insurance, and adoption assistance. State lawmakers have specifically identified the lack of available and affordable health insurance for workers of small businesses as an important policy concern.

One of the benefits worksite employees gain from being in a co-employment relationship with a PEO is affordable, quality health insurance. A study of the PEO industry compiled by KPMG Peat Marwick indicates that the average client of a PEO employs just 16 workers, each with an average salary of $18,178. According to a study by the Intergovernmental Health Policy Project "employees of small businesses. . . are the most likely to be uninsured." The efficiency and economy of scale realized by PEOs brings comprehensive benefits to small businesses and their workers, quality benefits comparable to those offered by a Fortune 500 company.

PEOs Achieve Policy Goals of Small Group Market Reform

Small group market reform efforts, according to the Intergovernmental Health Policy Project study "Small Group Market Reform: States' Experience," have not had either an important adverse or positive effect on the small group market. The same study concludes that small group market reforms "are unlikely to solve the problems of affordability and availability of insurance." A 1992 study by the Federal General Accounting Office (GAO) also concluded that "small business market reforms may have only a limited effect on the affordability of health insurance for most small businesses."

An analyst at Alex. Brown & Sons estimates that 40% of companies in a PEO co-employment relationship upgrade their total employee benefits package as a result of the PEO relationship and further that 25% of the companies upgrading their benefits are offering health care and other benefits to their workers for the first time.

In contrast, PEOs through the co-employment relationship have increased not only the availability of comprehensive employee benefits for small businesses, but also the affordability of those benefits. Because PEOs provide coverage for a cross-section of representative workers, both those previously insured and previously uninsured, small group market pools are not impacted by PEOs and the policy objectives of making health insurance available and affordable are achieved by PEOs. The suite of services offered to a small business, services which allow the business to focus on the "business of doing business" while the PEO focuses on the "business of employment," are so valuable to small businesses and their workers, that PEOs enjoy an incredible 85% relationship retention rate.

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NAPEO Position on State Regulation of the PEO Industry

Each state will invariably be different in its approach to licensing or regulation of the professional employer organization industry. Different needs, problems, and perspectives must be addressed. Yet, we believe that some degree of uniformity is desirable to promote consistency throughout the states. Therefore, NAPEO recommends that the elements included herein be made part of legislative initiatives.

KEY PROVISIONS

1. Professional employer services are a complex and evolving industry. As such, companies should be regulated under a governmental agency which promotes self-regulation. In many states this will be accomplished under departments of professional regulation.

2. The legislation should contain a statement that the legislature recognizes the value of professional employer organizations to the public and to the business community.

3. The definition of professional employer organizations should be broad enough to encompass all staffing arrangements which constitute the provision of professional employer services, yet sufficiently narrow to leave out temporary employment and other forms of alternative employment arrangements. NAPEO and the National Association of Temporary and Staffing Services have agreed upon language to accomplish this objective:

   a. "Professional Employer Organization ("PEO") arrangement means an arrangement under contract, or otherwise, whereby a person agrees to employ a majority of a client's workforce and where employer responsibilities for those employees are in fact allocated between or shared by the PEO and the client. The employer responsibilities are deemed allocated between or shared by the PEO and the client whenever the agreement between the client and the PEO expressly provides for such allocation or sharing, or whenever the factual analysis of the client's business reveals such allocation or sharing. The term "PEO arrangement" is to be liberally construed so as to include any and all such arrangements meeting the above criteria by whatever term known. The following shall not be defined as PEO arrangements:

i. Arrangements wherein a person, whose principal business activity is not entering into a PEO arrangement, shares employees with a commonly-owned company within the meaning of section 414 (b) and (c) of the Internal Revenue Code of 1986, as amended, and which does not hold itself out as a PEO;

ii. Arrangements for which a person assumes responsibility for the product produced or service performed by such person or his agents and retains and exercises primary direction and control over the work performed by the individuals whose services are supplied under such arrangements, or

iii. A temporary help arrangement, whereby an organization hires its own employees and assigns them to a client to support or supplement the client's workforce in special work situations, such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects, or

iv. Any person otherwise subject to this [act, regulation, definition] if, during any fiscal year after the effective date of this act, the total gross wages paid to employees employed by the person in [insert state name] during such period under one or more PEO arrangements do not exceed five percent of the total wages paid to all employees employed by the person in [insert state name] during the same period under all arrangements described above,

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and, provided further, that such person does not advertise or hold itself out to the public as providing arrangements denominated as "PEO," "professional employer" or "employee leasing" in [insert state].

4. Applicants should be required to establish an employment relationship with the workers; to provide written notice to the workers of such employment relationship; and to enter into contractual arrangements which satisfy the following conditions: the PEO reserves a right of direction and control over the workers; the PEO assumes full responsibility for the payment of wages and payroll taxes and benefits without regard to payments by the client; the PEO retains ultimate authority to hire, fire, and reassign; the PEO retains a right of direction and control over safety conditions at the worksite.

5. An adequate level of financial resources and liquidity, should be required to meet the obligations incurred in the operation of its business. Such resources and liquidity can be stated in terms of net worth and working capital or other financial criteria.

6. For companies which self-insure employee benefits plans, adequate fiduciary controls and financial resources to enable the PEO to discharge its obligations should be required.

7. Meaningful penalties for the unlawful operation of professional employer organizations or the willful violation of regulatory requirements must be provided.

8. Legislation should clarify that the licensed, recognized, or registered PEO is the employer of the workers assigned to the client location for purposes of paying wages and withholding and paying taxes, is entitled to be the policyholder for workers' compensation insurance, and that the PEO, as employer, may sponsor employee benefits and welfare plans for the benefit of its employees.

9. State that the PEO and the client are both entitled to immunity as provided by the exclusive remedy provisions of workers' compensation.

10. Provide that employees assigned to work for clients who are themselves subject to other licensure or contract requirements shall be deemed employees of the client for purposes of such licenses or contracts.

11. Provide for de minimus license requirements for out-of-state firms with nominal numbers of employees in the state and no in-state offices or sales activities.

12. A group of related companies doing business under one trade name should be permitted to apply for licensure, registration, or recognition as a consolidated group.

EXAMPLES OF STATES WITH STATUTES REGULATING PEOs*

License States	Registration States	Recognition States
FL	KY	ID
TX	IL	
OR		
NM		

*This lisit includes representative state examples and is not intended to be a comprehensive list of all states which regulate PEOs—please contact NAPEO for a complete and up-to-date list of states which regulate PEOs.

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CONSIDERATIONS WHEN CHOOSING A PEO

NAPEO Guidelines

Answers to Commonly-Asked Questions

NAPEO's Certification Program

NAPEO Guidelines for Selecting a PEO

1) Assess your workplace to determine your human resource and risk management needs.

2) Make sure the PEO is capable of meeting your goals. Sales brochures and fancy proposals are easy to print. Meet the people who will be serving you.

3) Check the firm's financial background, ask for banking and credit references.

   Ask the PEO to demonstrate that payroll taxes and insurance premiums have been paid.

4) Ask for client and professional references.

5) Check to see if the company is a member of NAPEO, the national trade association of the PEO industry.

6) Investigate the company's administrative and risk management service competence, what experience and depth does their internal staff have?

   Have any of the senior staff of the PEO been certified as a Certified Professional Employer Specialists (CPES) or other relevant professional designations?

7) Understand how the employee benefits are funded, are they fully insured or partially self-funded?

   Who is the third party administrator or carrier?

   If required in your state, is their TPA or carrier licensed?

8) Understand how the employee benefits are tailored, do they fit the needs of your employees?

9) Review the service agreement carefully. Are the respective parties' responsibilities and liabilities clearly laid out?

   What guarantees are provided?

   What provisions permit you or the PEO to cancel the terms of the contract?

10) If your state requires a PEO to be licensed or registered, make sure the company you are considering meets all such requirements.

For further information about PEOs and the integrated suite of human resource services provided by PEOs, visit the National Association of Professional Employer Organization's web site at www.napeo.org or write to NAPEO, 901 North Pitt Street, Suite 150, Alexandria, Virginia 22314.

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Common Questions About PEOs Answered

1) What is NAPEO?

As the national trade association for the PEO industry, NAPEO is the recognized voice of the industry, providing education, training, government relations, and a Code of Ethics to its member companies.

2) What is a PEO?

A professional employer organization (PEO) is a company which contractually assumes and manages critical human resource and personnel responsibilities and employer risks for its small to mid-sized businesses by establishing and maintaining an employer relationship with worksite employees.

3) Are PEOs recognized as employers?

The Internal Revenue Service acknowledges that a PEO may be the employer for federal income and unemployment taxes. Seventeen states provide some form of licensing, registration, or regulation for PEOs. Moreover, many states statutorily recognize PEOs as the employer or co-employer of worksite employees for purposes of workers' compensation and state unemployment insurance taxes.

4) What is the difference between employee leasing and a PEO arrangement?

Although many still view these two staffing arrangements as the same, they are, in fact, quite different. The term "employee leasing" means different things to different people and has been, and continues to be, used in many diverse contexts. The confusion surrounding this terminology is one reason NAPEO has been active in defining and distinguishing the PEO concept; however, many commentators, regulators, and statutes use the terms interchangeably.

The genesis of employee leasing envisioned a transfer of certain responsibilities from a client to the employee leasing company and spawned the concept of "fire, hire, and lease back," which does not occur in a PEO arrangement. Some would define employee leasing as a supplemental, temporary employment arrangement where one or more workers are assigned to a customer for a fixed period of time, often for a specific project. This concept creates little long-term equity or investment between the worker and customer (much like leasing a car for two years and knowing that you are using it for a specific need but not building any long-term equity).

A PEO arrangement however, involves all or a significant number of the client workplace employees in a long-term, non-project related, employment relationship. The PEO assumes the employer responsibility for employment tax, benefit plans, and other human resource purposes. Through the use of a PEO relationship, client companies make a long-term investment in their workers, because the PEO provides health insurance, retirement savings plans, and other critical employee benefits for their worksite employees.

5) What is the difference between temporary staffing services and a PEO arrangement?

A temporary staffing service recruits employees and assigns them to clients to support or supplement the client's workforce in special work situations, such as employee absences, temporary skill shortages, or seasonal workloads. A PEO contractually assumes and manages employer responsibilities for all or a majority of a client's workforce. Industry ratios identify the PEO arrangement as a long-term relationship with nearly 90% of our clients and worksite employees remaining with the PEO for a year or longer. Worksite employees participate in the PEO's full range of employee benefits including, health, dental, and life insurance, vision care, and retirement savings plans.

6) Who uses a PEO?

The average client customer of a PEO is a small business with 16 worksite employees, though larger businesses also find value in a PEO arrangement. These small business customers include every single type of business from accountants to zoo keepers and every profession in between including doctors, retailers, mechanics and more.

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7) How many Americans are employed in a co-employment PEO arrangement?

It is estimated that 2-3 million Americans are currently co-employed in a PEO arrangement. PEOs are operating in every state, and the industry has grown between 20-30% per year. Today, there are approximately 2,000 PEO companies who are responsible for over $18 billion in employee wages and related human resource and employee benefits.

8) How does a PEO arrangement work?

In the relationship among a PEO, a worksite employee, and a client company, there exists a co-employment relationship in which both the PEO and client company have an employment relationship with the worker. The PEO and client company contractually allocate some and share other traditional employer responsibilities and liabilities. The PEO assumes responsibility and liability for the "business of employment" such as risk management, personnel management, human resource compliance, and payroll & employee tax compliance. The client company manages product development and production, marketing, sales, and service. The PEO assumes and establishes an employment relationship with the worksite employee and provides a complete human resource and employee benefit package.

9) Why would a small business use a PEO?

Small business owners want to focus their time and energy on the "business of their business" and not on the "business of employment." As businesses grow, most small business owners don't have the necessary human resource training; payroll and accounting skills; knowledge of regulatory compliance; or backgrounds in risk management, insurance and employee benefit programs to meet the demands of being an employer.

10) Does the small business owner lose control of his or her business?

As co-employers, the PEO and small business owner become partners in the employment of their workers. The client retains ownership of the company. As co-employers, the PEO and client contractually share or assume employer responsibilities and liabilities. The PEO assumes most responsibilities and liabilities associated with a "general" employer. The client usually retains those rights and responsibilities associated with "special" employers. The PEO assumes a real and factual employer role. PEOs are responsible for payroll and employment taxes, maintaining employee records, reserve the ultimate right to hire and fire, and have the authority to resolve employee disputes. By shifting these responsibilities to the PEO, the client gains more command of the "core" revenue generating aspects of their business.

11) Why would a worker of a small business want a PEO as an employer?

Workers seek financial security, quality health insurance, a safe working environment, and opportunities for retirement savings. PEOs may provide Fortune 500 quality employee benefits including, health insurance and 401(k) savings plans, and aggressive workplace risk management. Job security is improved as the PEO's economy of scale permits a business to lower employment costs. Job satisfaction and productivity increases when workers are provided quality human resource services like employee manuals, grievance procedures, and improved communications.

12) Is this just a "fired and rehired" scheme?

Workers are never fired by the small business and rehired by the PEO. Instead, a worker becomes an employee of two employers in a contractual co-employment relationship. The PEO assumes employer responsibilities and liabilities for the human resource and personnel obligations of the worksite employees. This responsibility includes the employees wages and employment taxes, workers' compensation and unemployment insurance, and employee benefits. The small business retains employer responsibilities and supervision for the production of the products or the delivery of services.

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13) Is this a scheme to avoid providing health or retirement saving benefits to rank and file workers?

No. In fact, a PEO arrangement is often the only opportunity for a worker of many small businesses to receive Fortune 500 quality employee benefits like health insurance, dental and vision care, life insurance, retirement saving plans, job counseling, adoption assistance, and educational benefits.

14) Who is responsible for the employee's wages and employment taxes?

PEOs assume responsibility and liability for payment of wages and compliance with all rules and regulations governing the reporting and payment of federal and state taxes on wages paid to its employees. The Internal Revenue Service recognizes the PEO as the employer for federal income and unemployment taxes, and case law affirms the principle that the PEO is responsible for payroll taxes.

15) Who is responsible for state unemployment taxes?

As the employer for employment tax and employee benefits, PEOs assume responsibility and liability for payment of state unemployment taxes, and most states recognize the PEO as the responsible entity. A few states require the PEO to report unemployment tax liability under its clients' account number, and four states have laws that hold the client and PEO jointly liable for unemployment taxes.

16) Who is responsible for employment laws and regulations?

PEOs provide worksite employees with coverage under the entire spectrum of employment laws and regulations, including federal, state, and local discrimination laws, Title VII of the 1964 Civil Rights Act, Age Discrimination in Employment Act, ADA, FMLA, HIPAA, Equal Pay Act, and COBRA. In some cases, these laws would not apply to workers at small businesses without the PEO relationship, since many statutes have exemptions based upon the number of workers in a work force. Once included in the PEO's workforce, the workers are protected by these laws.

17) Who is responsible for workers' compensation?

Many states recognize the PEO as the employer of worksite employees for purposes of providing workers' compensation coverage.

18) Does a PEO arrangement impact a collective bargaining agreement?

PEOs work equally well in union and non-union workplaces. The National Labor Relations Board (NLRB) recognizes that, in co-employment relationships, worksite employees may be included in the client employer's collective bargaining unit. Where a collective bargaining agreement exists, PEOs fully abide by the agreement's terms. PEOs endorse the rights of employees to organize, or not organize, according to standards of the NLRB.

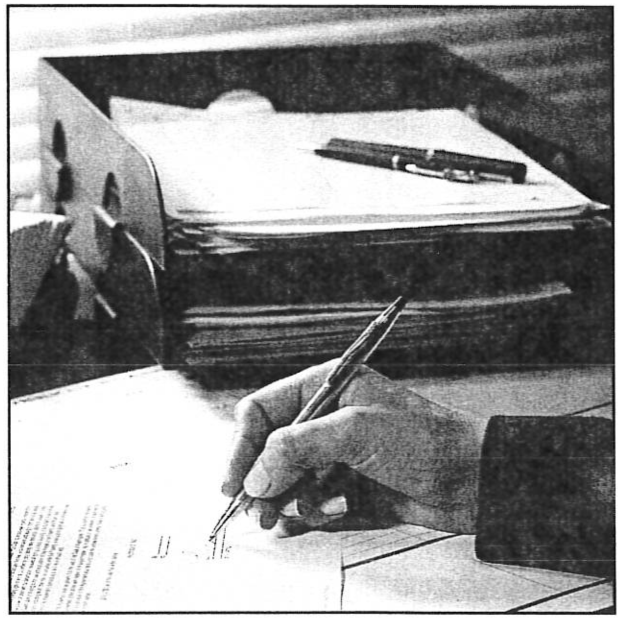
19) Do PEOs need to be licensed to provide insurance benefits to their workers?

A PEO may sponsor employee benefit plans for its worksite employees. Such benefits are either mandated by law, such as workers' compensation and unemployment benefits, or voluntary, but desirable in attracting and retaining quality employees, such as health, life, dental and disability insurance. PEOs are consumers of insurance and procure these benefits from licensed insurance agents and authorized insurers.

20) What is the future of the PEO industry?

American business is undergoing a fundamental change in human resource management, and the PEO industry is one response to market demands for change. The expertise required to manage the human resource elements of a small to mid-sized business has outgrown the experience and training of many entrepreneurs who started these small businesses. The PEO industry is demand driven as business owners seek solutions to the increasingly complex "business of employment." PEOs are one of the growth industries of the 1990s and of the next century.

Certification of Professional Employer Specialists



The National Association of Professional Employer Organizations (NAPEO) believes the continuing professional development of individuals working in professional employer organizations is essential to the prosperity and credibility of the industry. PEO services are a complex business, integrating many disciplines into one off-site department. Up-to-date knowledge in such areas as employment law, insurance, risk management, personnel, and payroll administration is a must in today's work environment.

NAPEO has initiated a certification program based on continuing education and enhancing professionalism. The program awards the Certified Professional Employer Specialist (CPES) designation to qualified individuals, NAPEO and non-NAPEO members, working in the industry.

Requirements for Certification

In order to earn the CPES designation, successful candidates must:

- ☐ Accumulate a minimum of 100 points on the Personal Data Form which is based on education, experience, and industry involvement;
- ☐ Agree to abide by NAPEO's Code of Ethics;
- ☐ Earn a passing score on the CPES examination; and
- ☐ Earn a minimum of the required number of Continuing Education Credits periodically after successfully earning the CPES designation.

CPES

Recertification Requirements

Once certified, the CPES must meet the following requirements for recertification:

- Each applicant must have performed at least 6,000 hours of service with a Professional Employer Organization during the previous four (4) years. The applicant must be able to provide supporting documentation, such as a log book or verification from their employer as to the number of hours worked.
- Each applicant must obtain a minimum of 50 hours of appropriate continuing education units (CEUs) within four (4) years following initial certification or recertification.
- Applicants for recertification may choose to take and pass the current edition of the CPES Certification Examination in lieu of meeting the continuing education requirement. The applicant will be allowed to take the examination two (2) times within a 12 month period to achieve a passing score before the end of the recertification period.

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MEDIA COVERAGE OF INDUSTRY

Media Coverage of Professional Employer Organizations

Media coverage of professional employer organizations has been extensive during the past few years. The media has reported that the exponential growth of professional employer services is "demand driven" by small to medium sized businesses. The professional employer services industry meets critical operational needs of businesses by providing much needed human resource services and employee benefits.

Here's what the media is saying—in their own words:

"It isn't biotechnology, and it has nothing to do with the Internet. . .but the staffing industry is emerging more clearly than ever as a hot entrepreneurial field."

> Roger Ricklefs, The Wall Street Journal, "Worker Staffing Becomes a Hot Entrepreneurial Field," 6/4/97.

"Why will so many go to work for PEO companies? Simply, it's because many small-company owners are tired of being distracted with human resources headaches such as workers' compensation, family and medical leave laws, and discrimination lawsuits."

> Del Jones, USA Today, "Leasing Workers Eases Load for Small Companies," 5/20/97.

"Many medical practices today have found that employee leasing can be an effective strategy to combat the spiraling costs of having a professional and clerical support staff. It can offer financial and administrative benefits to medical practices, which in turn, can increase staff loyalty and reduce turnover . . .Many physicians will find that the personnel services an employee leasing company provides will give them more time to address the efficiency of their practices and the quality of care they provide for patients."

> Tony L. Sullivan, Journal of Medical Practice Management, "Employee Leasing: A Strategy to Reduce Staff Administration, Maintain Benefits, and Reduce Employee Liability Exposure," 8/96.

"Analysts believe that with total payroll dollars of about $18 billion nationwide, employee leasing has tapped barely 2% of its potential market. They expect the industry to increase revenues and earnings by 30% a year for up to the next 10 years."

> David Medina, Crain's New York Business, "Employee Leasing Firms' New Lease on Life," 6/9/97.

"Many employers are finding that PEO relationships work well and meet their goals for saving money and increasing efficiency."

> Jennifer Laabs, Personnel Journal, "PEOs Make HR Easier with Staff Leasing," 12/96.

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Worker Staffing Becomes a Hot Entrepreneurial Field

Spurred by Outsourcing Trend, Employment Agencies Enjoy Rapid Growth

By Roger Ricklefs
Staff Reporter of The Wall Street Journal

It isn't biotechnology, and it has nothing to do with the Internet. But the mundane staffing industry is emerging more clearly than ever as a hot entrepreneurial field. Revenues are soaring, and more companies are going public.

"We'll probably grow at least 50% again this year," says Ronald Bray, president of Simplified Employment Services Inc., Auburn Hills, Mich. The company, which saves other companies red tape by "leasing" employees to them, last week moved into a building three times as large as it had before.

Last year, Inc. magazine's list of 500 small closely held companies with exceptional growth rates included 38 staffing concerns, such as Simplified Employment Services, up from 29 the previous year and 21 in 1992. A spot check shows that these companies are enjoying more rapid growth so far this year. Spurred by the outsourcing trend, the fastest growing concerns are typically in temporary employment and "employee leasing."

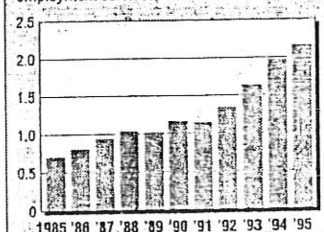
Signs of a boom abound as deals proliferate. Staffing Industry Report, a Los Altos, Calif., newsletter, says acquisitions in the staffing field nearly doubled last year from a year earlier. Since the beginning of May, three companies in the field have filed to make initial public offerings, the newsletter adds.

Bright Future

Employee-leasing companies see a particularly bright future. "This industry is growing around 30% a year, and we feel that rate can be sustained," says Milan P. Yager, executive vice president of the National Association of Professional Employer Organizations in Alexandria, Va. The association's member PEOs take responsibility for their client companies' payroll, benefits administration and other services. They become the work force's employer or co-employer and "lease" the employees, primarily permanent workers, back to the client company.

Temps in Demand

Average daily employment by U.S. temporary employment services, in millions



Source: National Association of Temporary and Staffing Services

In handling all the red tape of employment for companies, the employee-leasing companies benefit from companies' growing desire to outsource as many functions as possible. Besides, the leasing concerns can often obtain health insurance and other benefits more cheaply than their clients, mainly small companies.

Six companies in the field have gone public so far and a number of others are preparing to do so, Mr. Yager adds.

Some companies have positioned themselves to grow faster than others. Revenue of TriNet Employer Group Inc., San Leandro, Calif., increased to $82 million last year from $44.7 million in 1994 and is again increasing rapidly this year, says Martin Babinec, president. The company focuses on serving emerging-technology companies. Some of the fast-growing technology companies are under such intense pressure from investors to develop products quickly that they try to outsource other functions as much as they can, Mr. Babinec says.

Temporary employment agencies are also profiting from the outsourcing trend. Hoping to keep their permanent staffs as lean as possible after downsizing, many companies rely on outside employment agencies to provide "temps" when they need extra help. The average daily employment of temporary employment services was 2,162,000 last year, nearly double the 1990 level, says the National Association of Temporary and Staffing Services of Alexandria, Va.

Going Public

In the past year, about 10 agencies entirely or heavily involved in temporary staffing have gone public, the association says. Robert W. Baird & Co., an investment firm in Milwaukee, has helped take four such companies public in the past two years and has another in the pipeline, says Judith Scott, a managing director. "This will be a tremendous growth area for a long time," she adds.

Low unemployment rates particularly push employers to turn to temporary agencies, says Richard Carroll, chief executive officer of Grafton Inc., a Kansas City, Mo., temporary agency. "Low rates make it hard to recruit, but our pipeline is full of candidates we can place," he adds. Company revenue soared to $5.5 million in 1995 from $496,000 in 1990, and rose another 28% from a year earlier in this year's first quarter, Mr. Carroll adds. The company's staff has grown to 30 from two seven years ago, he adds.

Temporary agencies specializing in high-technology industries are booming too. Revenue at Advanced Technical Resources, Sunnyvale, Calif., increased 50% last year and is rising even faster so far this year, says Jerry Brenholz, president.

Some companies are expanding so fast they are looking for relief. Holland Group Inc., Murfreesboro, Tenn., is purposely slowing its growth to 15% or 20% this year from 25% last year, says Jim Holland, president. "We felt we ought to take some time to ensure that we have infrastructure in," he adds. The company focuses on light manufacturing, in smaller towns and cities, mainly in the Southeast.

Indeed, temporary employment services have increased so fast that another fast-growing industry has sprung up to finance them. The temporary agencies commonly have to pay their employees long before the client companies get around to paying their bills. So Tricom Inc., Milwaukee, makes its living supplying 120 temporary agencies with money to meet these payrolls. The company, which had revenue of $4 million last year, will "definitely grow more than 25% this year," says John Leopold, president. He says at least five other companies now provide a similar service.

The only cloud in the sky for Tricom is the consolidation trend in the industry. "We will lose some clients through this process," Mr. Leopold says. "There is some maturing going on, which is not great for us."

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COVER STORY

In a quiet workplace revolution, many small and midsize businesses are leasing their workers from professional employer organizations. The shift is changing the employee-employer relationship.

NEW BOSS, SAME JUNGLE

Leasing Workers Eases Load For Small Companies

In the squawking tropics of Parrot Jungle and Gardens exists a thin slice of workplace revolution.

Despite the noise, this upheaval is peculiarly quiet. But within 10 years, the 102 Parrot Jungle employees will be working for perhaps the largest private employer in the country, bigger than WalMart or General Motors.

The business is not chain stores or autos. The business is workers, leasing workers.

Chances are you'll be swept up by the upheaval, too, if you work for a company with fewer than 500 employees, and 70% of the labor force does.

Cost clippers: Vincam Group helps small companies such as Parrot Jungle cut costs and focus on their areas of expertise. Here, handler Eddie Reyes, left, helps Pamela Watt with parrots.

Companies that lease workers are growing by such bounds that they will employ 37 million by 2007, up from 2.5 million in 1995. Go to work for one and you will report to the same job at the same place and to the same manager.

But you will have to resign your present employer. Your new employer of record – which keeps personnel files and has the ultimate authority to hire and fire – will be Staff Leasing, Administaff or another of the companies scrambling to establish themselves in this new industry. Although

Is best known as employee leasing, the industry now calls itself professional employer organizations (PEOs) in a bid to improve its image after a decade of fraud and bankruptcy.

Don't confuse PEOs with temporary agencies. PEOs don't send over a few workers when things get busy. PEOs permanently employ everyone at a small company from the president down. PEOs have been growing as fast as temporary agencies, more than 30% in employees and revenue a year, and there's little to threaten that pace. The potential market of companies with fewer than 500 employees is $2 trillion, and only 2% so far has been captured.

Dennis Chookaszian, CEO of the nation's largest commercial insurer, CNA, says the industry presents a "10X change," a term borrowed from Intel CEO Andy Grove to define a change so transformational that its impact will be at least 10 times greater than typical changes.

Human resources headaches

Why will so many go to work for PEO companies? Simply, it's because many small-company owners are tired of being distracted with human resources headaches such as workers' compensation, family and medical leave laws, and discrimination lawsuits. Large companies combat it all with an army of lawyers, accountants and other specialists. Small companies are deciding it's worth turning over their payrolls plus 14% to 30% and relinquishing ultimate control of their workers just to get it all off their backs.

In many ways, it's leveling the playing field between small and large companies. Consider Parrot Jungle, a sort of Sea World with feathers, whose employees have been working for The Vincam Group since 1989. Vincam knows nothing about parrots. But with 28,000 other employees – up from 12,000 a year ago – Vincam is an expert in screening out undocumented immigrants, and it knows proper performance reviews are crucial when defending against wrongful-termination lawsuits. It also knows there are solvents used to clean bird cages that must be on a list of toxic materials or the company could be slapped with a $7,500 fine.

Not just a payroll service

Vincam has the clout to strike volume deals with health insurance providers. Vincam CEO Carlos Saladrigas, who was smuggled out of Cuba as a child, used his family's extensive political clout in south Florida to try to amend Parrot Jungle's zoning in 1993 so it could stay open later at night. The attempt failed, resulting in 23 layoffs. Vincam made sure the layoffs didn't hit minorities and women disproportionately, gave employees post-layoff counseling and helped them find other jobs.

Such expertise does not come cheaply. Parrot Jungle owner Bern Levine turns over his annual $1.6 million payroll to Vincam, plus a fee of more than $300,000 a year. But he says it's worth it so he can focus on mission critical duties – like getting cockatoos to bicycle along the high wire.

A blind man came to Parrot Jungle one day and insisted on bringing his guide dog. "Our birds are afraid of dogs," Levine says. He offered an employee escort, then didn't take it seriously when the blind man turned the escort down and threatened to sue. But Vincam's seven-lawyer law department convinced Parrot Jungle to start desensitizing its birds by gradually introducing them to docile dogs.

There are other things Vincam can afford to do for small companies that they would never dream to do on their own. It spends $5 million a year on technology and has a computer room dubbed "the spaghetti bowl" because of its complexity. It has a doctor and 40 nurses on staff, whose duties include training hotel maids to protect themselves from AIDS and hepatitis.

Vincam's motivation is cutting costs. The biggest chunk of its profits comes from lowering the cost of workers' compensation, and that means slashing workplace injuries. Applicants at all Vincam client companies take drug tests. Forklift operators take safety courses. Injured workers who are capable of doing lighter work must do so. This month, Vincam reassigned workers to weed-pulling at client company Costa Nurseries because they were under doctors' orders not to do heavy lifting at other client companies.

Unemployment insurance costs are likewise driven down by taking workers who are laid off at one client company and assigning them jobs at another. They never become unemployed because they continue to work for Vincam.

The success of the strategy is apparent at Vincam's bulging four-story headquarters. Envelope stuffing goes on in the hall, and workers must share office space, even chairs. The hectic pace receives a boost each afternoon when sweet, caffeine-laden Cuban coffee is passed out.

But despite the culture of cost-cutting vigilance, "the biggest winners of this whole thing" are the millions of leased employees, says Wall Street analyst Mercedes Sanchez of Raymond James.

That's because employees of PEO client companies are getting benefits once offered only by large corporations. Parrot Jungle employees pay just $5 a month for health insurance and can pay extra for vision and dental. They get a $10,000 life insurance policy and disability policy for free. Next month, they begin enrolling in a 401(k) plan with 15 investment options.

While large companies are increasingly outsourcing functions such as travel departments and janitorial services to eliminate the cost of benefits, small companies joining PEOs almost always boost benefits. Sheri Mott, a single mother and secretary with 170-employee Hagopian Cleaning Services in Detroit, says her contribution for health insurance fell $100 a month when Hagopian signed with Vincam.

Changing image

Yet, the industry continues to fight the image it earned in the 1980s when worker payrolls dried up due to bankruptcy and fraud. It remains a fragmented industry of more than 2,000 companies, and there are enough questionable players for the PEO trade association to warn small companies to do their homework.

Most recently, stock in Phoenix-based PEO Employee Solutions plunged from $29 a share last November to less than $6 a share in February. The company has been hit with multiple shareholder lawsuits accusing management of intentionally understating the future cost of workers' compensation, thereby artificially boosting profit and the stock price. Employee Solutions says the lawsuits are without merit.

Employee Solutions also was an insurance company, assuming the risk of workers' compensation, analysts say. But most PEOs are moving out of the insurance business. For example, Staff Leasing, by far the largest PEO, with 93,000 worksite employees, is second only to UPS among Liberty Mutual's largest customers.

Because PEOs and their client companies are essentially co-employers, courts are only starting to sort out who is on the hook when an employee files charges of sexual harassment or job bias. Vincam is being sued by an injured motorcyclist who had an accident with a valet at a Miami Beach client hotel. Not surprisingly, plaintiffs sue both co-employers. That's why client companies, which in most cases are allowed to pick their own workers, must relinquish the ultimate hiring and firing decisions to the leasing company.

The industry's growth is attracting the attention of some big hitters. Insurance company CNA, which does business with 300,000 small companies, announced this month that it will open a PEO division. CNA hopes to lend credibility to the industry, an attempt similar to Marriott entering the time-share industry and Sears going into the roofing business.

Other major companies in insurance, technology and banking are sure to follow CNA's entrance into the industry. Saladrigas predicts the industry will consolidate into about a dozen major players. If so, most will surpass 675,000-employee WalMart by 2007. The 80 million employees now working for small companies won't have a voice in the matter.

Those who have been through the transition warn that anxiety comes with the changeover. But the anxiety erodes.

Says parrot trainer Eddie Reyes, "Paychecks still come every other Thursday."

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Medical Practice Trends

Employee Leasing: A Strategy to Reduce Staff Administration, Maintain Benefits, and Reduce Employee Liability Exposure

Tony L. Sullivan*

ABSTRACT

Physicians seeking ways to spend more time on professional matters and less time on administrative duties are increasingly turning to "employee leasing." This alternative to traditional staffing can help reduce the time and cost of employee administration, eliminate exposure for personnel-related legal matters, and reduce recruitment time, employee turnover, and benefits planning. Due to economies of scale, employee leasing firms can purchase "big-company" benefits for medical practices at lower costs than practices can purchase on their own. Employee leasing can benefit everyone in a medical practice—physicians, through reduced costs, greater administrative efficiency, increased productivity, and reduced liability, and the practice's employees, through better benefits.

Key words: Employee leasing; personnel administration; employee liability.

OVERVIEW

Physicians seeking ways to spend more time on professional matters and less time on administrative duties are increasingly turning to employee leasing. This alternative to traditional staffing can help reduce the time and cost of employee administration, eliminate exposure for personnel-related legal matters, and reduce recruitment time, employee turnover, and benefits planning.

As the term implies, employee leasing can be a cost-effective staffing method. It allows physicians to lease back their staff members from a leasing company. Since 1972, various types of professional practices have used it for a variety of reasons. Some look to employee leasing as a more efficient way to handle employee administration. Others want to provide health benefits in a more cost-effective manner. For most physicians who are proficient in running their businesses but do not want to be personnel administrators, employee leasing allows them to get back to the basics of managing their practices profitably.

The employee leasing concept is simple. When a practice enters into an agreement with an employee leasing company, the employee leasing firm hires the practice's staff and leases it back to the practice. The leasing company becomes the recognized legal sole employer and assumes responsibility for all employee administration. That relieves physicians of the time and expense of such burdensome tasks as payroll preparation, hiring and firing, W-2 form preparation, federal and state withholding tax computations and filing, and Worker's Compensation claim administration.

"BIG-COMPANY" BENEFITS FOR MEDICAL PRACTICES

In addition, due to economies of scale, employee leasing firms can purchase "big-company" benefits for medical practices at lower costs than practices can purchase on their own. These benefits include comprehensive medical and dental insurance, life insurance, disability insurance, and pension plans. Through the employee leasing arrangement, physicians can provide their leased employees with a benefits package equal to that of any large corporation at a cost comparable to or even less than what they were paying for minimal benefits.

> *The leasing company [through employee leasing] becomes the recognized legal sole employer and assumes responsibility for all employee administration.*

Hence, for a set fee, a medical practice can gain a complete personnel/human resources department, a benefits planner and administrator, and a payroll service while eliminating its exposure for employer-employee liability. If desired, physicians can even get comprehensive benefits and a pension plan for the leased employees and tax and pension advantages for themselves. With employee leasing, then, everyone in a medical practice can receive benefits: physicians, through reduced costs, greater administrative efficiency, increased productivity, and reduced liability, and the practice's employees, through better benefits.

In 1972, when employee leasing began for medical practices, no regulations existed for the employee leasing industry and very few regulations existed for pension plans. Despite the initial lack of legislation, the first employee

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leasing companies still operate today in much the same way as they began. Although the original leasing companies provided pension benefits to the staff, other companies promoted leasing as a way to help practices avoid providing pension benefits to employees. Their premise was that, if a practice leased its staff, the only employees were the physicians, who could maintain their own plan without including the leased employees.

TABLE 1. The Benefits of Employee Leasing

Employee leasing can offer physicians many benefits because it transfers the employee-based administrative, legal, and compliance responsibilities of running a professional practice to the leasing company. The benefits of employee leasing include elimination of tasks associated with:

- Payroll preparation and distribution.
- Payroll tax deposits.
- Benefits planning and administration.
- Worker's Compensation premiums.
- Unemployment claims.
- Required federal, state, and local governmental reporting.

In addition, physicians eliminate much of their legal exposure as an employer. This is an important benefit because a mistake in the employer/employee relationship could financially and psychologically affect a medical practice. Some of the serious and costly legal problems that physicians can eliminate by leasing employees include:

- Wrongful discharge defense and financial losses.
- Discrimination (EEOC) claims and hearings including age, race, and sex.
- Department of Labor hour and wage dispute.
- Penalties for failure to comply with labor laws, such as COBRA and the Immigration Act.

ABUSES RECTIFIED

Congress soon became aware of this situation and, in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), it addressed employee leasing for the first time. TEFRA enacted a new tax code section that stated that leased employees must be treated as employees of a practice for pension plan purposes. As an end to the abuses of some companies, the new tax code section gave employee leasing companies two options to provide pension plans.

The first option was for the employee leasing company to provide the leased employees with a separate retirement plan that was comparable to or better than the physicians' pension plan. With this option, physicians could maintain their own plans without making any additional contributions for the employees.

The second option was for the employee leasing company to operate under the tax code as a "safe harbor" company. If the employee leasing company provided the employees with a 7.5% defined contribution pension plan, physicians could exclude their leased employees entirely from their own plans.

Through the employee leasing arrangement, physicians can provide their leased employees with a benefits package equal to that of any large corporation. . . .

Congress soon realized that the pension benefit the leased employees were receiving under the second option was, in most cases, far less than the benefit the physicians were receiving in their own plans. In keeping with its efforts to include as many employees as possible in pension plans, Congress amended the safe harbor in the Tax Reform Act of 1986. The safe harbor was changed so that the leasing company had to provide a 10% defined contribution pension plan and business owners could lease only 20% of their staff.

This change to the safe harbor did not affect the employee leasing companies that operated under the first option. Today, under current legislation, physicians can still lease 100% of their staff members without making contributions for the employees in the practitioners' pension plans as long as the employee leasing company provides the leased employees with a "comparable" pension plan.

CURRENT REGULATIONS

Under current law, physicians who lease their employees must do one of the following:

- Include the leased employees in their plan; or
- Show that the leasing company provides the employees with a pension plan that is comparable to or better than the physicians' plan.

In the second option, the leased employees are actually included as participants in the physicians' plan. However, the plan receives a "credit" or "offset" for the pension benefits provided by the employee leasing company. When the leasing company provides a comparable or better benefit, physicians do not have to make any additional contributions for the leased staff.

[Under TEFRA] . . . leased employees must be treated as employees of a practice for pension plan purposes.

Many physicians thought that the change in the safe harbor in 1986 eliminated the cost savings of employee leasing. If physicians lease only 20% of their employees with a safe harbor company, this is the case. However, to include all employees in the sole-employer leasing company's plan is more cost-effective than including them in the physician's plan.

ADVANTAGES OF EMPLOYEE LEASING

An employee leasing company can have thousands of employees in its pension plan and health benefits package. Hence, it wields more purchasing and administrative power and can provide a more cost-effective package than a practice can alone. The employee leasing company's fee is usually less than the practice's current costs to provide similar benefits. In addition to the cost savings, physicians can direct the investments in their own plans based on their individual goals because their investment choices will not affect other employees.

Beyond the pension advantages, employee leasing offers physicians other staff-related benefits. As the legal employer, the leasing company processes the payroll, provides employee handbooks and annual reviews, and complies with employer-related regulations (such as COBRA and the Immigration Act). It also assumes the legal liability for unemployment, Worker's Compensation, and other employee claims. Physicians are removed from the liabilities and daily administrative aspects of being an employer (see Table 1).

... physicians can still lease 100% of their staff members without making contributions for the employees in the practitioners' pension plans as long as the employee leasing company provides the leased employees with a 'comparable' pension plan.

COSTS OF EMPLOYEE LEASING

The fee for employee leasing depends on the leasing company and the benefits selected. Most pension plan employee leasing companies offer a comprehensive package, including medical, dental and life insurance, vacation, and sick leave. However, some companies do not offer pension programs, but they do provide health insurance and other benefits. Other employee leasing companies offer flexible programs that exclude health benefits. When making a decision about an employee leasing company, physicians should choose one based on the goals and budget of their practice as well as their personal needs.

How fees are charged also varies from one leasing company to another. In general, most pension plan employee leasing companies charge a flat fee based on each individual employee's salary. In addition to being charged for the salaries, physicians generally will also be billed a total fee that includes administration, pension contributions, health insurance premiums, payroll taxes, and Worker's Compensation contributions.

Many leasing companies that do not offer pensions as part of the benefit package charge on a cost-plus basis. Their invoices typically include separate line items for salaries, taxes, Worker's Compensation, check processing, and recruiting. Fees are usually a percentage of the gross payroll.

HOW TO CHOOSE AN EMPLOYEE LEASING COMPANY

When shopping for a leasing company, physicians should deal with reputable firms. Select an employee leasing company that offers a pension plan and be sure to find out if the leasing company will be the sole employer or if the practice will be a coemployer. In a coemployer situation, the practice can be held liable if the leasing company does not pay payroll taxes or insurance premiums or if it improperly terminates an employee. With a sole employer company, the practice is indemnified of employer legal liabilities.

Physicians should also ask a prospective employee leasing company detailed questions to clearly understand the company's offerings, charge structure, indemnification policy, and other operational matters. Some suggested questions include the following:

- Does the company provide the employees with a pension plan comparable or superior to the plan the practice offers?
- Does the company provide its customers with an enrolled actuary's comparability opinion letter that shows that the employees are receiving a plan that is comparable to the practice's?
- Does the company provide an amendment for the practice's plan to be used to determine qualification?
- Does the company provide the practice with an annual actuarial certification letter?
- Is the company a true sole employer, and will it, in writing, indemnify the practice of its legal liabilities?
- Does the company furnish quarterly audit letters from an independent accounting firm that certify all payroll taxes, insurance premiums, and pension fund contributions are paid fully and in a timely manner?
- Can the company provide bank references to verify financial stability?
- Will the practice be billed before the staff is paid or after?
- Will the practice be bound by an annual contract, or can the agreement be canceled within a given period of notice?

Physicians [through employee leasing] are removed from the liabilities and daily administrative aspects of being an employer. ....

CONCLUSION

Many medical practices today have found that employee leasing can be an effective strategy to combat the spiraling costs of having a professional and clerical support staff. It can offer financial and administrative benefits to medical practices, and employees can receive better benefits, which in turn, can increase staff loyalty and reduce turnover.

As physicians weigh the decision about whether to lease, they should review their health benefit and retirement plan costs as well as the time and costs associated with employee administration and government compliance. Many physicians will find that the personnel services an employee leasing company provides will give them more time to address the efficiency of their practices and the quality of care they provide for patients. ⊞

Employee leasing firms' new lease on life

Mergers, IPOs rampant as industry rebounds: safeguards cut risk, state may lower costs

BY DAVID MEDINA

Richard Gersh Associates, a mid-Manhattan publicity agency, lost a lot of money in 1992 when its employee leasing company went bankrupt and failed to deposit money collected for withholding taxes and medical insurance.

But Arlene Gersh, who runs the agency with her husband, says she never considered going it on her own. She signed up a new firm, Employee Management Inc., within days.

"I wouldn't have been able to get insurance for seven employees at the rates I could get with a leasing company," she says. "And doing it on your own is tedious—a lot of forms to fill out. With a leasing company, it's out of your hands."

More New York companies may be following Ms. Gersh's lead, thanks to recent developments in employee leasing. Private employer organizations—as they like to be called—are bouncing back after a period in the early Nineties in which several firms collapsed and left hundreds of clients owing taxes and premiums. New firms are entering the market, the industry is stepping up self-policing and the Pataki administration is pushing changes that could encourage the use of PEOs.

Large PEO making acquisitions

Four months ago, NovaSource Inc. of Bradenton, Fla., acquired upstate's TPI Group, becoming the country's second-largest PEO, covering 38,000 workers. Now NovaSource is eyeing leasing firms in and around New York City, and targeting health care employees.

Early last year, tax attorneys John Iorillo and Gregory Slamowitz formed Ambrose Employer Group in Silicon Alley exclusively for technology companies. Ambrose has already signed up 11 of them—covering about 200 high tech workers.

And the Pataki administration is readying plans that would help lower PEOs' insurance premiums. One change would allow the firms to list themselves as the employer of record on workers' compensation insurance. Another would let the firms count all employees at their separate client companies as one workforce.

"We see PEOs establishing themselves all over the country and would like to allow for their growth in New York," says Wendy Burns, project manager for the governor's Office of Regulatory Reform, who is spearheading the workers' comp move.

PEOs hire a company's workers, then lease them back for a fee and take responsibility for all payroll and benefits management.

Industry spokespeople say new safeguards such as proof of tax deposit receipts, bonding and firms' getting their own insurance protection have made employee leasing risk free. In fact, says Louis Basso, president of the state Association of Employee Leasing Companies, revenues statewide have increased 15% to 20% a year since the fallout. What's more, the number of leased workers in New York has doubled, to 60,000. Mr. Basso says 6,000 of them work at 350 small firms in the city.

Mr. Basso and other insiders say the workers' comp issue is key to several merger deals in the works between national leasing firms and smaller local operators.

Many firms going public

Some of the larger firms—Administaff of Kingwood, Texas, and Vincam of Coral Gables, Fla.—have gone public in the last year in preparation for a move into the New York market. NovaSource expects to make an initial public offering this year.

Other IPOs and mergers should follow. "We're poised to do both—whatever makes sense," says Steve Rosenthal, president of Employee Management of Metuchen, N.J.

Ambrose's Mr. Iorillo says tapping the New York market has been hard because businesses here are so demanding. "Down south, it's all about cheap insurance," he says. "But people here want the complete human resource play."

That means providing health care and retirement plans comparable with those at the Fortune 500, and handling discrimination, harassment, unemployment complaints and even performance reviews.

Analysts believe that with total payroll dollars of about $18 billion nationwide, employee leasing has tapped barely 2% of its potential market. They expect the industry to increase revenues and earnings by 30% a year for up to the next 10 years.

Why? Says an exhaustive study by Raymond James Associates of St. Petersburg, Fla., "Once a subscriber becomes accustomed to having its non-core functions managed by a PEO, it is typically unwilling (and probably incapable) to assume this administrative burden again." ■

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PERSONNEL JOURNAL

■ Creative Staffing Strategies

PEOs Make HR Easier With Staff Leasing

Smaller companies usually choke on high employment costs. But many small- to medium-size firms now outsource many types of HR services to professional employer organizations (PEOs)—from payroll and benefits to the drastic move of outsourcing HR administration for their entire workforce. It may be just the solution your company is looking for.

By Jennifer J. Laabs

Imagine what would happen if one day your company woke up and no longer had to be responsible for human resources issues. A new anti-sexual harassment law was just released? No problem. A new COBRA regulation just came out? No sweat. You need instant training for a new sales associate? Not to worry. Another company will take care of it immediately.

What if all you had to do was pick up the phone whenever you had a problem and talked to an HR expert who had all the answers you needed? Or, what if *your* workers weren't actually *your* employees, so if they had an employment issue you just sent them to someone else to take care of their concerns? Too good to be true? If this were possible, you might feel as if you had died and gone to heaven.

If your company outsourced its human resources concerns, or if it actually outsourced the administrative issues of its entire workforce (called employee leasing), to any one of the nearly 2,500 professional employer organization (PEO) firms that have sprung up around the nation over the past decade, you actually could be this nonchalant about HR issues, because you would have completely taken care of your employment obligations—without all the day-to-day headaches.

Outsourcing HR activities and leasing staff members to a PEO can be a great idea for some companies. It can save money, reduce risks, improve efficiency, help the company focus on its core business and attract a better workforce. But outsourcing HR and leasing employees through PEO firms also has its limitations and risks. Read more to see if the right HR staff for your firm is one that isn't onsite and whether the right employer for your workers is one that isn't you.

What PEOs are and what they do. When the first professional employer organizations formally started offering services in 1984, PEOs were known only as *employee leasing* firms because their primary service is leasing employees—meaning that some or all of their clients' employees technically become the leasing company's employees of record, even though the employees continue to work at the client firms. A leasing arrangement usually consists of employees being on lease for long periods of time, although some employees are leased on shorter, more temporary assignments. The major advantage of employee leasing is that the leasing firm takes care of some, or all, of the employment issues for those leased employees, depending on what kind of arrangements the company buying the services wants to purchase.

But employee leasing is only one service that PEO firms offer. Now also known as *professional employer organizations*, PEOs offer a variety of additional human resources services including the administration of payroll, unemployment insurance, workers' compensation and payroll-tax compliance. PEOs can provide job descriptions, employee manuals, employee assistance program (EAP) services and handle employee grievances. In addition, PEOs can keep clients abreast of new labor laws and can ensure compliance with existing laws and regulations, such as Title VII, the Americans with Disabilities Act and the Family and Medical Leave Act. "It's one-stop shopping," says Milan P. Yager, executive vice president of the National Association of Professional Employer Organizations (NAPEO), based in Alexandria, Virginia, who says his organization's membership is growing by 30 percent a year.

Firms don't have to buy all of a PEO's services, or even lease employees. Other services can be hand-picked depending on business need, such as training design and delivery, compensation plan design and implementation, wage or employee-opinion surveys and affirmative-action plans. "We have those capabilities, but not every client has those needs, so those are à la carte services that a company can obtain from a PEO," says Kirk Scoggins, president of NAPEO, who's also the chairman, president and CEO of TeamStaff, a Tampa, Florida-based PEO firm responsible for clients' employees in 42 states.

However, professional employer organizations typically bundle HR services together for clients so they can lower their overall employment-related costs—costs that most small firms have a difficult time controlling, especially if they don't have human resources experts on staff. According to the U.S. Small Business Administration, most smaller businesses with 100 employees or fewer don't have a human resources professional on staff. It's something companies usually can't afford until they've grown much larger.

According to a January 1996 research report on the employee-leasing industry by Bankers Trust Co. based in New York City, small-business owners generally save 3 percent to 5 percent of their payroll expenses by outsourcing to PEOs, primarily due to lower costs for workers' compensation, unemployment and health insurance. The report says that some companies save as much as 10 percent or more of their gross wages.

PEOs can provide HR services at lower costs because they're able to negotiate lower costs with companies that provide health, dental and vision care because they can pool employees together from several client companies for greater group discounts. In turn, these lower costs help smaller employers offer better benefits and employee services to workers. Although many small companies couldn't afford to offer benefits to workers before using PEO services, businesses often can offer benefits to workers after signing up. Plus, offering better benefits helps many smaller businesses attract the same caliber of employees that larger employers usually attract with top-notch benefits, savings plans and retirement funds.

"[As PEOs], we can do payroll at the same cost or lower than what a payroll service can do [it for]," says Yager. "Most small businesses pay 40 percent higher workers' comp rates than larger businesses. We can provide workers' comp insurance to a small business somewhere between 0 percent to 40 percent less than what a small business is getting it for because we're big businesses." Yager points out that most small businesses can't afford to offer health insurance, pension plans or 401(k)s on their own, because these benefits are too costly both to purchase and to administer. But after contracting with a PEO, they're often able to offer employees these benefits.

PEOs usually offer services from a distance. That is, they aren't onsite, but usually offer most of their services from a nearby location. "We make onsite visits on a regular basis," says Barry Shorten, vice president of The Alcott Group, a PEO service firm based in Farmingdale, New York. After making the initial presentation to employees about the PEO company's role as the primary employer, the services it provides and the benefits employees will receive, PEO representatives return to the worksite from time to time to update employees on new or changed benefits or programs.

PEO firms service clients with an average of 43 employees. So the majority of companies using these services are small businesses. "In the last year or so, however, that has changed dramatically," says Yager. "More companies that have 100 to 200 employees are saying, 'If this is so good for smaller companies, why isn't it good for me, too?'" So, more medium- to large-size companies are now seeking PEO services. "If you have more than 300 employees, because of economies of scale, you're probably better off doing HR yourself," says Yager. "But until then, this is really the new American mousetrap."

He adds: "No one goes into business

to be an employer. And yet, the most important thing you can do in business is to be an employer. But being an employer brings no revenue; it only brings nightmares, problems and challenges because you've got to meet tons of forms and regulations and deadlines." Outsourcing HR helps many companies focus on their core business—what they're best at—and why they went into business in the first place.

Outsourcing—it's often as good for employees as it is for employers. Servo Corp. of America, a commercial aerospace firm based in Hicksville, New York leases all of its 58 employees from The Alcott Group. Servo has one of the more traditional service packages that employee-leasing firms offer.

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Two years ago, Servo had 250 employees and a three-person HR staff, including an HR director. Then the firm sold its major product line which represented approximately two-thirds of the company's revenue and reduced its staff to 50 employees. "In the process, we asked ourselves, 'What are we going to do with our human resources department?'" remembers Servo President Steve Barre (pronounced "berry"), shortly after the company downsized. "That's what got us thinking about the employee- leasing idea." By January 1, 1996, the firm decided to go with the leasing concept. Now, The Alcott Group takes care of all of Servo's employee-related issues.

Barre says there are three main reasons why Servo decided to sign an employee-leasing contract. First, having Alcott provide benefits to employees allows the organization to offer employees a much more flexible benefits package, with more choices and at a lower cost to the company than it could have provided on its own.

Second, after the downsizing, the firm no longer could afford to maintain a human resources department, but still needed HR services. "My senior vice president of finance and administration, who needed to spend most of his time on financing and controlling company resources, was spending a lot of time trying to decipher all of the complicated changes in the labor law, benefits rules, ERISA regulations and so forth," says Barre. "We basically turned all that over to Alcott to worry about." He emphasizes that Servo executives still have to think about these things, but they spend a lot less time on them these days.

"Third, there's a real return on investment in terms of out-of-pocket costs because we pay Alcott less than we were paying the myriad labor lawyers and consultants when we had our own HR function," says Barre.

But he realizes there are trade-offs to not having an HR professional on staff. "Right now, people development is basically a responsibility of me and my managers," says Barre. "And while we try to do a good job at it, I won't pretend that it gets the same day-to-day attention it would get if we had somebody who was focused on that every day."

Barre says he liked it when the company had an HR director onsite who could take care of employee issues. But often, it comes down to money, and sometimes HR is better outsourced than kept in-house. And sometimes, it just doesn't matter to employees who the HR professional is, as long as workers feel well-served.

For example, when Barre was considering employee leasing, he was worried about what employees would think about being employees of another firm. "I thought there might be an initial feeling of 'Gee, what has Steve done? He has sold us off into slavery to Alcott and what's going to happen to us?'" Employees' reactions pleasantly surprised him. From the first time Barre explained the concept, employees have been much more curious about their new benefits packages and other advantages than they are about the technicalities of being employees of a second party. "I think it's well understood that the leasing process benefits everybody and doesn't change the working relationship at all," says Barre. "I haven't seen any significant negatives."

Like Barre, Ken Blankenhorn, president of Rapid Rack, a City of Industry, California-based manufacturer of metal racks, is another senior executive who sees many benefits to employee leasing. For one, the company has a large fluctuation in its business from month to month, and appreciates being able to expand and contract its workforce based on business needs.

"One month we'll do \$2 million in sales and the next month we'll do \$4 million," says Blankenhorn. "Orders fluctuate in different months, but we also need to be able to change people from one operation to another. So in one month, we'll have heavy [demand for people to work in] packaging, and the next month [that area] will have light demand. Having a leased labor force gives us the ability to hire people and lay people off very easily and quickly; whereas, if we have our own full-time employees, it's very difficult to just lay them off today and bring them back tomorrow because of workers' comp laws, payroll regulations and all the rest. [Employee leasing] helps us match our [business] needs."

Rapid Rack leases approximately 200 of its 265-employee workforce. About 45 of the 65 regular employees are exempt, such as accountants, engineers and salespeople. Rapid Rack primarily leases lower-skilled laborers for its manufacturing area, rather than leasing higher-skilled workers, such as structural or electrical engineers. "For that type of [more-skilled] labor pool, we typically have to advertise or go through headhunters, which WorldTec also does for us," says Blankenhorn. WorldTec Group International, a PEO in Cerritos, California, takes care of Rapid Rack's payroll services and issues related to the leased employees.

Because the company leases only two-thirds of its workforce, it still maintains a small HR department which takes care of the employment needs of the rest of the staff and oversees the PEO contract and interactions.

Blankenhorn thinks the leasing arrangement works perfectly for his organization. "If the nature of your business is such that you have to fluctuate your workforce, then [employee leasing] is definitely the best way to go," says Blankenhorn. "But, then again, if you start a business tomorrow and need 30 solid people, then you might really want to hire them yourself. The needs are different for different types of companies."

Staffing firms are different from PEOs, but some services overlap. Advo Inc. is one of those companies that has a different need for staff leasing. It backed into a staff-leasing arrangement after first working with a more traditional staffing organization. Advo, a direct-mail advertising firm with 600 employees in Compton, California, started out working with Staff Control Inc., a temporary placement firm also based in Cerritos, California, and a sister company to WorldTec Group International. Advo later converted approximately 100 of the employees it originally sourced through Staff Control into an employee-leasing arrangement with WorldTec. Advo doesn't buy the other PEO services that companies usually buy when they lease employees, such as workers' comp insurance, payroll processing and benefits administration.

"We refer to [these workers] as leased employees, but they are, by and large, operating like a temp workforce," says Dennis Cisneros, HR manager for Advo. "The nature of our business—light industrial production—doesn't lend itself well to leasing," says Cisneros. "I think it works better in industries that are more long-term, such as service industries with massive workforces." By that, Cisneros means not only that his company has a constant need for a flexible workforce whose work hours vary greatly from week to week, but also that the number of workers the firm needs on a weekly basis changes rapidly. So, a leasing arrangement that's more like a temporary workforce is the best answer for his organization.

These types of temp-to-lease arrangements, like the kind Advo has arranged, are being provided by an increasing number of traditional staff leasing firms. They're also offering PEO services in response to clients' requests for a single-source provider to satisfy all of their HR needs. Although traditional staffing firms typically provide clients with long-term, as well as short-term staffing solutions, one of the chief differences between the two types of companies is in the services that employees themselves receive. "Temporary or staffing firms, whether short-term or long-term, probably would never provide a 401(k) program or health care," explains Peg Reinhart, vice president of sales and marketing for The Synergy Advantage Inc., a PEO franchise firm based in Chicago.

However, the kinds of benefits employees have don't always provide the clue. Experts in the temporary employment area disagree that temps rarely get benefits. "If by benefits we mean group health, life and pension benefits for which the employer makes a contribution or pays for fully, those kinds of benefits are less prevalent, but they're by no means unavailable to temporary employees," says Ed Lenz, senior vice president and general counsel for the National Association of Temporary and Staffing Services (NATSS) based in Alexandria, Virginia. Lenz explains that often after a certain period of time, usually 300 to 400 hours on the job, temporary employees are eligible for health-insurance benefits, incentives and cash awards, such as vacation pay and sick pay. "The story on benefits isn't as bleak as some people might portray it," he says.

According to Lenz, the real key to understanding the PEO employment relationship is where the employees start out. "The main difference under a PEO arrangement is that employees almost always are individuals who already are employed by the client firm and the firm contracts with the PEO to provide services to that already existing workforce," says Lenz. "Whereas temp firms, in most cases, recruit workers from the general labor market and then assign them on a temporary or supplemental basis to their clients. So the original source of the workers is the essential difference." According to Lenz, the length of employment also is key. Workers under a PEO company contract tend to be long-term and leave their jobs at the normal rate for their industry, whereas workers under a staffing company tend to complete assignments faster and then move on to other employers.

Whether you use PEO services as more of a short-term or long-term service, it can be an advantage, especially for the small employer. Although his firm has a less traditional employee leasing arrangement, Cisneros says he thinks employee leasing is generally a good idea because it allows firms to direct more of their resources toward producing the company's product or services, rather than spending so much money on the administration of employee services.

You can lease either portions of your workforce, or the entire group. Typically, smaller companies (with fewer than 300 employees) tend to lease their entire workforce, rather than just a portion of it. They also tend to buy the complete HR services package. However, larger *Fortune 500*-type firms tend to lease only a portion of their workforce.

"What you're trying to accomplish is to functionally outsource the administrative parts of being an employer, and if you keep your own employees, then you still have to perform the functions. Therefore, you don't gain the advantage of outsourcing, so it doesn't really make any sense for a partial workforce except in the case of very large corporations," says NAPEO's Scoggins.

But certainly there are times when it can make sense to lease a portion of your workforce. "We've seen most of the cases [of partial workforce leasing] occur because of head-count problems in situations in which there's been a hiring freeze or a restructuring," explains Shorten. "We've also seen it happen when there was a department established for a short period of time and the company didn't wish to take on the responsibility or the burden of having to hire and then terminate employees. So we [served as the PEO for that group] for a period of about two years in one case."

In another case, Your Staff Inc., a PEO company, took on 1,000 employees for a client that wanted those employees to have benefits similar to its in-house employees, but for budgeting reasons, it couldn't bring them on staff permanently. "Or, we may take 500 to 800 part-time employees for a large company or take care of just a few part-time employees for a big company's satellite offices," says James R. Conner, general manager of Your Staff based in Chula Vista, California. Your Staff is the PEO arm of Kelly Services Inc. based in Troy, Michigan, one of only a few large staffing organizations that also provides PEO services nationwide.

Conner says in one case, an employer had problems with high turnover of its part-time employees in satellite offices because they weren't eligible for company benefits. "So we were able to provide some benefits for these people and already we're seeing some improvement on their turn over rate," says Conner. Also, for those workers who want to work more hours, Your Staff is able to work closely with Kelly's 900 U.S. staffing offices to find other part-time jobs to fill in the gaps. "So it has really been a win-win situation," he says.

Understand your responsibilities and liabilities. According to most firms that step into the employee-leasing arena, not much about the day-to-day relationship with employees changes once employees are leased to a PEO. "Employees work for the same people they used to work for," says Barre. "They don't all of a sudden say, 'I'm now an employee of [the PEO] and therefore I don't have to do what you tell me to.'"

Are PEOs a Threat to HR Professionals?

The obvious question you're probably wondering is: Are professional employer organizations (PEOs) a threat to my job as an in-house human resources professional? That's a good question. At this point, it's anyone's guess how the outsourcing of human resources activities will affect the profession in the near or distant future. But here's an educated guess.

Overall, outsourcing HR services has become increasingly common in the past few years. According to a 1996 survey of 160 employers regarding HR outsourcing by Lincolnshire, Illinois-based Hewitt Associates LLC, 93 percent of employers currently outsource some part of their HR activities. Another 4 percent are considering it. Only 1 percent have thought about it but have decided against it.

Hewitt Associates' survey indicates that the most common HR-related functions to be outsourced are the administration of health and group benefits (95 percent), defined contribution plans (91 percent) and defined benefit plans (68 percent). In addition, the survey shows that HR activities are most frequently outsourced so HR can focus on strategic business responsibilities and to save money.

However, until professional employer organizations showed up en masse starting around 1983, companies couldn't outsource the *entire* HR function. Until then, HR activities were outsourced on an ad hoc basis. But with the advent of PEOs, companies no longer have to have an HR person on staff to function at optimal efficiency in handling employment issues.

At this point, however, the majority of PEOs serve companies that don't yet have an HR person on staff and in fact, aren't really large enough to have one. It's still an industry servicing primarily smaller firms with fewer than 50 employees. At those firms, PEOs take over the HR headaches for the often small, senior-executive staff.

In some cases, a small- or medium-size company will decide to disband its HR staff and completely outsource its HR concerns, and often also will lease its employees to a PEO. But most larger companies that use PEO services still maintain their own HR departments. In those cases, PEO services are used simply to take care of the more administrative types of HR activities, such as the administration of payroll, benefits and workers' compensation. In so doing, PEOs simply help existing HR managers have more time to be strategic.

Many PEO experts say HR professionals shouldn't see them as job threats. "I think it's potentially a great thing for people in the HR profession," explains Kirk Scoggins, president of the National Association of Professional Employer Organizations (NAPEO) based in Alexandria, Virginia. "I see a lot of opportunity in this industry for HR professionals to migrate our way." According to Scoggins, PEOs present an interesting new business that features HR and HR services as a profit center, rather than as a cost center. Becoming a money-making entity is an idea that many HR professionals strive to achieve.

"[Outsourcing to PEOs] allows your people who used to dedicate their time to employee administration and compliance issues, to now spend time working in areas that would be considered more productive to the bottom line," says Scott Avery, president of WorldTec Group International, a PEO services firm based in Cerritos, California.

And certainly, as with any type of HR outsourcing, someone has to still oversee the process. And often in medium- to large-size organizations, that's still an in-house HR professional. Someone is still needed to collect and interpret employee data and forecast staffing needs. Once a company reaches a certain size (usually about 100 to 300 employees), the economies of scale that make outsourcing HR activities in smaller companies a good idea no longer apply because it becomes more cost-effective to take care of HR business in house. And, as organizations continue to rely on HR professionals to help them venture into new markets and cross global business boundaries by providing solid human resources forecasting advice and know-how, companies simply won't be able to survive without HR expertise.

And that expertise will have to come from somewhere. Whether the HR professionals providing that knowledge are in-house professionals or outside consultants will be determined in the future. But for now, since everyone's agreeing that HR services must be provided in a strategic and cost-effective way, HR isn't going away anytime soon. And neither are you.

—JJL

However, there are differences in some key areas, such as in cases of an employee dispute. Although the PEO firm executives would be the first people the authorities would go looking for, both organizations would be at risk since there are two employers.

"We're the employer, so if there's a complaint, we're going to be the first ones that are contacted by the agencies and we have to respond," says Shorten. PEOs usually provide ongoing programs to let people know that if something occurs, they should report it first to the PEO which will investigate the problem immediately and take all the proper actions. "We take corrective action when necessary," adds Shorten. "And sometimes, it *has* been necessary."

I thought there might be a feeling of "What has Steve done? He has sold us into slavery. What's going to happen to us?"

In reality, it's co-employment, shared employment. Although the PEO firm has absolute control over certain areas such as payroll, hiring and terminating, the day-to-day supervision over the employee and his or her work performance rests with the client company managers and supervisors. "They're the best ones to judge employees' capabilities and we do take their recommendations. Responsibility is shared," says Shorten.

That's why employers shouldn't look upon the leasing situation as a cure-all—that once they outsource, they're completely off the liability hook. "Just because an employer is leasing somebody from another company, doesn't necessarily mean that the onsite employer is 100 percent protected from liability," says Laura Wilson Shelby, an associate with the Los Angeles law offices of Seyfarth, Shaw, Fairweather & Geraldson.

Shelby has broad experience in labor and employment law, and nontraditional employment situations, and says she has seen problems occur when onsite employers become too comfortable with the leased employees and forget they can't act in the role of the primary employer by offering things like vacation benefits or other perks. "The analysis is similar to the independent contractor situation in which a worker isn't really an independent contractor if you're supervising what he or she is doing every day, telling the person to be there from nine to five, giving him or her benefits and doing all the things you normally do with employees," she says.

Shelby says the key to staying out of trouble is in the supervision of leased employees. "I think some companies are running into problems in this area because they have their leased employees reporting to the onsite employers' supervisors," says Shelby. "What they really should be doing is either lease the supervisors as well, or make sure the leased employees report to the leasing company so the PEO is really doing the supervising." If it begins to look like you're treating leased employees exactly like nonleased employees, the courts can treat you as the primary employer, or as a co-employer at the very least, if a problem should arise.

"You can never be 100 percent protected," says Shelby. "You can have the contract, you can do all the things your lawyer tells you to do, and there's still risk. The key is to minimize risk and protect yourself as much as possible [by following these guidelines]."

Because of the risks involved with leasing, it's important that you choose your PEO wisely because you don't want the primary employer of your workers making any mistakes in the highly regulated area of employment and HR issues. "Make sure you're working with a reputable company who knows the law and knows how to protect you," adds Shelby. "They've got your future on the line."

Despite the risks, many employers are finding that PEO relationships work well and meet their goals for saving money and increasing efficiency. Whether it can work for your firm will depend on your company's business and staffing needs and overall comfort level in allowing another firm to manage your workers. It's just one more HR option in a sea of cutting-edge, employment-management choices. ■

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H.B. 2812 and its impact on temporary staffing

The employee leasing industry has adopted the term "professional employer organization" (PEOs) and has proposed H.B. 2812 to recognize PEOs as employers in Kansas.

The PEO industry has promoted H.B. 2812 as a means to clarify their employer status.

PEOs are businesses that assume employer responsibilities for substantially *all* of the workers employed by their clients. PEOs generally do not recruit, train, hire, discipline, assign and reassign their own employees to clients as staffing firms do. Rather, PEOs assume responsibility for a client's existing workforce.

The American Staffing Association and the Heart of America Staffing Services Association believes that "PEO" should be defined narrowly so as to apply only to true PEO arrangements, not temporary help or other non-PEO services.

Recommended Action

The American Staffing Association as well as the Heart of American Staffing Services Association recommends inserting a "majority of the workforce" test into the definition of PEO arrangements so as to limit the scope to those arrangements in which the service provider assumes employer responsibility for 50% or more of the client's existing workforce. Such a narrow definition would prevent overbroad state employee leasing recognition and licensing laws.

HOUSE BUSINESS, COMMERCE & LABOR
2-16-00
Attachment 3

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Session of 2000

HOUSE BILL No. 2812

By Committee on Business, Commerce and Labor

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AN ACT relating to professional employer organizations; establishing certain minimum standards applicable to all professional employer organizations operating in the state.

Be it enacted by the Legislature of the State of Kansas:

Section 1. It is hereby declared that the professional employer organization provides a valuable service to commerce and the citizens of this state. The rights and responsibilities of the professional employer organization must be clearly defined. Two entities may both legitimately be an employer of the same employee. The recognition of this relationship should be based on the nature of the relationship as defined by a written contract between a professional employer organization and a work-site employer rather than left to the common law of the state. Professional employer organizations shall be the coemployer or the employing unit for all employees covered by a professional employer contract, and a professional employer organization may aggregate all employees under the individual contracts to the extent allowed by law.

Sec. 2. Unless the context clearly requires otherwise, these terms are defined as follows:

(a) "Administrative fee" means those amounts charged by the professional employer organization to the client over and above amounts applied to the mandatory state and federal taxes, wages of assigned workers and amounts applied to premiums or contributions for benefits provided for assigned workers.

(b) "Assigned worker" means a person having an employment relationship with both the professional employer organization and the client.

(c) "Client" means a person who contracts with a professional employer organization to obtain employer services from another person through a professional employer arrangement.

(d) "Person" means an individual, an association, a company, a firm, a partnership, a corporation or any other form of legally recognized entity.

(e) "Professional employer arrangement" means an arrangement, under contract or whereby:

(1) A professional employer organization agrees to employ all or a majority of a client's workforce ~~assigns workers to perform services for a client~~;

(2) the arrangement is intended to be, or is, ongoing rather than temporary in nature;

(3) employer responsibilities for ~~assigned~~ workers under the arrangement are in fact shared by the professional employer organization and the client; and

(4) for the purposes of this act, a professional employer arrangement shall not include:

(A) Arrangements wherein a person, whose principal business activity is not entering into professional employer arrangements, shares employees with a commonly owned company within the meaning of section 414(b) and (c) of the federal internal revenue code of 1986, as amended, and which does not hold itself out as a professional employer organization.

(B) Arrangements in which a person assumes full responsibility for the product or service performed by such person or such person's agents and retains and exercises, both legally and in fact, a right of direction and control over the individuals whose services are supplied under such contractual arrangements, and such person and such person's agents perform a specified function for the client which is separate and divisible from the primary business or operations of the client.

~~(C) A temporary help arrangement whereby an organization hires its own employees and deploys them to a client to support or supplement the client's employees.~~

(D) Any person otherwise subject to this act if, during any fiscal year of the person commencing after July 1, 2000, the person pays total gross wages to employees employed by the person in the state under one or more professional employer arrangements which do not exceed 5% of the total gross wages paid to all employees employed by the person in the state during the same fiscal year under all arrangements described in paragraph (4) and that each person does not advertise or hold itself out to the public as providing services as a professional employer organization.

(f) "Professional employer organization" means any person engaged in providing the services of employees pursuant to one or more professional employer arrangements or any person that represents itself to the public as providing services pursuant to a professional employer arrangement.

~~(g) "Temporary employee" means a worker employed by an organization which hires its own employees and deploys them to a client to support or supplement the client's full-time workforce~~.

Sec. 3. This act shall not apply to labor organizations as defined by the national labor relations act or to any political subdivision of the state, the United States, and any programs or agencies thereof, or to any entity which meets the definitions contained in paragraph (e)(4) of section 2 and amendments thereto. A professional employer arrangement shall have no effect on any existing collective bargaining agreements. Notwith-

standing any statements in this subsection to the contrary nothing in this act shall prohibit a client which is a party to a collective bargaining agreement from contracting with a professional employer organization provided that the labor organization consents to such arrangement.

Sec. 4. (a) Each professional employer organization shall meet the following standards:

(1) Have a written contract between the client and the professional employer organization setting forth the responsibilities and duties of each party. The contract shall contain a description of the type of services to be rendered by the professional employer organization and the respective rights and obligations of the parties and the contract shall also provide that the professional employer organization:

(A) Reserves a right of direction and control over workers assigned to the client's location. However, the client shall maintain such direction and control over the assigned workers as is necessary to conduct the client's business and without which the client would be unable to conduct its business, discharge any fiduciary responsibility which it may have, or comply with any applicable licensure;

(B) assumes responsibility for the withholding and remittance of payroll-related taxes and employee benefits from its own accounts, as long as the contract between the client and professional employer organization remains in force; and

(C) retains authority to hire, terminate, discipline and reassign workers.

(2) Provide written notice of the general nature of the relationship between the professional employer organization and the client to the assigned workers located at the client work site.

(b) A professional employer organization shall be considered an employer for the purposes of withholding state income tax of the assigned workers pursuant to the Kansas income tax act.

(c) As long as the professional employer organization's contract with the client remains in force, the professional employer organization shall have a right to and shall assume the following responsibilities:

(1) Pay wages and collect, report and pay employment taxes of its assigned workers from its own accounts;

(2) pay unemployment taxes as required by the employment security law;

(3) secure and provide all required workers compensation coverage for its assigned workers either in its own name or in its clients name.

(d) Both client and the professional employer organization shall be considered the employer for the purpose of coverage under the workers compensation act.

(e) Both the professional employer organization and its client shall

be entitled to protection of the exclusive remedy provision of the workers compensation act irrespective of which entity secures and provides such workers compensation coverage.

(f) A recognized professional employer organization shall be deemed the employer for the purposes of sponsoring and maintaining benefit and welfare plans for its assigned workers.

(g) In the absence of any contrary provisions contained in the contract between the client and the professional employer organization, the professional employer organization arrangement that exists between a professional employer organization and its clients shall be interpreted for the purposes of insurance and bonding as follows:

(1) A professional employer organization shall not be liable for the acts, errors or omissions of a client or of any assigned worker when such client or worker is acting under the direction and control of a client. A client shall not be liable for the acts, errors or omissions of a professional employer organization or of any assigned worker of a professional employer organization when such professional employer organization or worker is acting under the direction and control of the professional employer organization. This section shall not limit any contractual liability, as may be expressly agreed upon, between the professional employer organization and the client, nor shall this section limit the liabilities of any professional employer organization or client as defined elsewhere in this act; and

(2) assigned workers shall not be deemed employees of the professional employer organization for purposes of general liability insurance, automobile insurance, fidelity bonds, surety bonds or employer's liability insurance other than workers compensation insurance carried by the professional employer organization unless the assigned workers are included by specific reference in the applicable prearranged employment contract, insurance contract or bond.

(h) The sale of professional employer services in conformance with the provisions of this chapter shall not constitute the sale of insurance for purposes of chapter 40 of the Kansas Statutes Annotated.

(i) A professional employer organization is not engaged in the unauthorized practice of an occupation, trade, or profession that is licensed, certified or otherwise regulated by a governmental entity solely by entering into a professional employer arrangement with a client that is so licensed, certified or regulated.

Sec. 5. (a) Financing of unemployment insurance benefits for workers assigned by a professional employer organization to a nonprofit organization or a unit of government shall be paid by the unit or organization as provided by the employment security law. Unemployment insurance benefits for workers assigned by a professional employer organization to

any client other than a nonprofit organization or governmental unit shall be made in accordance with the provisions of this section.

(b) During the term of a professional employer organization agreement, a professional employer organization is liable in accordance with the provisions of employment security law, for the payment of contributions, penalties and interest on wages paid to employees assigned to a client company. The professional employer organization shall report and pay all contributions under its state employer account number, using the applicable contribution rate. The provisions of this section do not apply to an entity that provides temporary employees, as defined in this act, if the entity is liable as an employer for the payment of contributions on wages paid to temporary employees.

(c) When a client ceases to pay wages, such client shall be subject to termination of its employer account and experience rating records in the same manner as any other employer, in accordance with the provisions of employment security law. If a client which has ceased to pay wages subsequently resumes paying wages, it will be assigned the appropriate experience rate in accordance with the provisions of employment security law.

Sec. 6. (a) Nothing in this act exempts a client of a professional employer organization, nor an assigned worker, from any other state, local or federal license or registration requirement.

(b) Any individual who must be licensed, registered or certified according to law and who is an assigned worker is deemed an employee of the client for purposes of the license, registration or certification.

(c) A professional employer organization does not engage in an occupation, trade or profession that is licensed, certified or otherwise regulated by a governmental entity solely by entering into a professional employer arrangement with a client company or an assigned worker.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

Patti Bossert
President

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February 16, 2000
Testimony before the
House Committee on Business, Commerce and Labor
By Patti Bossert
President, Key Staffing

Mr. Chairman and members of the committee:

My name is Patti Bossert, and I am President of Key Staffing, a temporary staffing firm, in Topeka. Thank you for giving me the opportunity to express my opposition to HB 2812 in its current form.

Enactment of HB 2812 as proposed would give special statutory employer status to PEOs, thereby suggesting that other staffing firms, such as mine, are not the employer of their temporary workers. My firm recruits, screens, tests, trains, schedules, conducts performance reviews, administers payroll, and terminates employees that are assigned to client worksites. My staffing firm is recognized as the employer of assigned employees in all instances and for all purposes. PEOs are not. PEOs generally take over all of a clients existing workforce and share employer responsibilities between the PEO and the client. This basic difference between PEOs and staffing firms is not defined in HB2812. I have attached two pages from the National Association of Professional Employer Organizations website. These pages define the difference between temporary staffing services and a PEO arrangement.

I recommend that HB2812 be amended to closely define a PEO to prevent overly broad legislation that may affect the temporary staffing industry.

Thank you for the opportunity to explain my opposition to HB 2812.

HOUSE BUSINESS, COMMERCE & LABOR
2-16-00
Attachment 4

NAPEO National Association of Professional Employer Organizations

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NAPEO membership
member directory
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educational calendar
PEO resources

Common Questions About PEOs Answered

1) What is NAPEO?

As the national trade association for the PEO industry, NAPEO is the recognized voice of the industry, providing education, training, government relations, and a Code of Ethics to its member companies.

2) What is a PEO?

A professional employer organization (PEO) is a company which contractually assumes and manages critical human resource and personnel responsibilities and employer risks for its small to mid-sized businesses by establishing and maintaining an employer relationship with worksite employees.

3) Are PEOs recognized as employers?

The Internal Revenue Service acknowledges that a PEO may be the employer for federal income and unemployment taxes. Seventeen states provide some form of licensing, registration, or regulation for PEOs. Moreover, many states statutorily recognize PEOs as the employer or co-employer of worksite employees for purposes of workers' compensation and state unemployment insurance taxes.

4) What is the difference between employee leasing and a PEO arrangement?

Although many still view these two staffing arrangements as the same, they are, in fact, quite different. The term "employee leasing" means different things to different people and has been, and continues to be, used in many diverse contexts. The confusion surrounding this terminology is one reason NAPEO has been active in defining and distinguishing the PEO concept; however, many commentators, regulators, and statutes use the terms interchangeably.

The genesis of employee leasing envisioned a transfer of certain responsibilities from a client to the employee leasing company and spawned the concept of "fire, hire, and lease back," which does not occur in a PEO arrangement. Some would define employee leasing as a supplemental, temporary employment arrangement where one or more workers are assigned to a customer for a fixed period of time, often for a specific project. This concept creates little long-term equity or investment between the worker and customer (much like leasing a car for two years and knowing that you are using it for a specific need but not building any long-term equity).

A PEO arrangement however, involves all or a significant number of the client workplace employees in a long-term, non-project related, employment relationship. The PEO assumes the employer responsibility for employment tax, benefit plans, and other human resource purposes. Through the use of a PEO relationship, client companies make a long-term investment in their workers, because the PEO provides health insurance, retirement savings plans, and other critical employee benefits for their worksite employees.

5) What is the difference between temporary staffing services and a PEO arrangement?

A temporary staffing service recruits employees and assigns them to clients

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to support or supplement the client's workforce in special work situations, such as employee absences, temporary skill shortages, or seasonal workloads. A PEO contractually assumes and manages employer responsibilities for all or a majority of a client's workforce. Industry ratios identify the PEO arrangement as a long-term relationship with nearly 90% of our clients and worksite employees remaining with the PEO for a year or longer. Worksite employees participate in the PEO's full range of employee benefits including, health, dental, and life insurance, vision care, and retirement savings plans.

6) Who uses a PEO?

The average client customer of a PEO is a small business with 16 worksite employees, though larger businesses also find value in a PEO arrangement. These small business customers include every single type of business from accountants to zoo keepers and every profession in between including doctors, retailers, mechanics and more.

7) How many Americans are employed in a co-employment PEO arrangement?

It is estimated that 2-3 million Americans are currently co-employed in a PEO arrangement. PEOs are operating in every state, and the industry has grown between 20-30% per year. Today, there are approximately 2,000 PEO companies who are responsible for over $18 billion in employee wages and related human resource and employee benefits.

8) How does a PEO arrangement work?

In the relationship among a PEO, a worksite employee, and a client company, there exists a co-employment relationship in which both the PEO and client company have an employment relationship with the worker. The PEO and client company contractually allocate some and share other traditional employer responsibilities and liabilities. The PEO assumes responsibility and liability for the "business of employment" such as risk management, personnel management, human resource compliance, and payroll & employee tax compliance. The client company manages product development and production, marketing, sales, and service. The PEO assumes and establishes an employment relationship with the worksite employee and provides a complete human resource and employee benefit package.

9) Why would a small business use a PEO?

Small business owners want to focus their time and energy on the "business of their business" and not on the "business of employment." As businesses grow, most small business owners don't have the necessary human resource training; payroll and accounting skills; knowledge of regulatory compliance; or backgrounds in risk management, insurance and employee benefit programs to meet the demands of being an employer.

10) Does the small business owner lose control of his or her business?

As co-employers, the PEO and small business owner become partners in the employment of their workers. The client retains ownership of the company. As co-employers, the PEO and client contractually share or assume employer responsibilities and liabilities. The PEO assumes most responsibilities and liabilities associated with a "general" employer. The client usually retains those rights and responsibilities associated with "special" employers. The PEO assumes a real and factual employer role. PEOs are responsible for payroll and employment taxes, maintaining employee records, reserve the ultimate right to hire and fire, and have the authority to resolve employee disputes. By shifting these responsibilities to the PEO, the client gains more command of the "core" revenue generating aspects of their business.

11) Why would a worker of a small business want a PEO as an employer?

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