

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Senator Brownlee at 8:30 a.m. on February 6, 2001 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: April Holman, Legislative Research Department
Robert Nugent, Revisor of Statutes
Lea Gerard, Secretary

Conferees appearing before the committee: Dennis Horner, Kansas Trial Lawyers Assoc.
Seth Valerius, AFL-CIO
Chip Little, National Assoc. of Professional Employer Org.
Bob Manes, Oasis Outsourcing
Phil Harness, Division of Workers Comp.
Dr. Alec Hansen, Economic Competitiveness Group

Others attending: See attached list.

In accordance with KSA 75-3715, a fiscal note concerning **SB 121** was submitted to the Committee (Attachment 1).

Dennis Horner, Kansas Trial Lawyers association, testified in opposition to **SB 121** stating it seeks to create certain statutory rights and immunities of "professional employer organizations" (PEO). If passed, this proposal will encourage litigation over numerous legal issues. The proposed bill has some troubling possibilities when civil law and liability are considered. Individuals or companies dealing with the "professional employment organization" (PEO) may not have a clear picture of which company is the true employer. The proposed legislation will create illusions to third parties without the benefit of contracts between the PEO and the client (Attachment 2).

Seth Valerius, AFL-CIO, testified in opposition to **SB 121** stating due to Worker's Compensation views by creating a co-employer status, it creates confusion with the injured worker that has to file a Worker's Compensation claim. Under this agreement, the PEO undertakes the management of Worker's Compensation and relieves the business from having to handle the claims (Attachment 3).

Bill Maness, Oasis Outsourcing, testified in support of **SB 121** noting that the purpose is to define and acknowledge the responsibilities of the "professional employee organization" (PEO) and the co-employment relationship. The PEO responsibilities include collecting and paying taxes, providing Worker's Compensation and benefits to employees. The PEO helps small businesses with their employment responsibilities by becoming a co-employer. This allows the PEO to offer better and more affordable employee benefits including medical, dental, life and disability insurance, and retirement plans (Attachment 4).

Chip Little, Director of Government Affairs for the National Association of Professional Employer Organizations, testified in support of **SB 121**. His printed testimony provided detailed information regarding the PEO industry and the services it provides to workers across the country. Information was also supplied regarding where legislation has been passed in other states (Attachment 5).

Charles Ranson, President of Kansas Inc., introduced Dr. Alec Hansen, Economic Competitiveness Group and project leader for Kansas Inc. Dr. Hansen presented an update of the structure and it's status.

Dr. Hansen reported the last seven months has been spent working on a three phase project. Phase 1, regarding identification issues and economic analysis is now complete. Phase II, will develop strategy recommendations by using an approach called cluster analysis. This approach samples specific industries that reflect the mood of the economy. The study will indicate market and technology trends, the strategies to meet these needs, as well as what the institutions of government should be doing to support the industries to be more successful in global competition.

Dr. Hansen, in response to a question from the Committee, stated the third phase is when we will issue our recommendations and request implementation support. This is where the legislature and others can take a look at the recommendations and be thinking about practical issues in terms of implementation.

Meeting was adjourned at 9:30 a.m.

Next meeting scheduled February 7, 2001 at 8:30 a.m.

SENATE COMMERCE COMMITTEE

GUEST LIST

DATE: FEBRUARY 6, 2001

NAME	REPRESENTING
Seth Valerius	AFL-CIO
Roger Maudie	KGC
Bill Jarrell	BOEING
Bill Brady	PEO
Chip Little	PEO
John Peterson	PEO
Bill Maness	PEO
Candace Moghon	DoA, DPS
Ray Luber	DoA, DPS
Sherry Brown	KDOC&H
Andre Hattenbach	KTEC
Ben Brough	KTEC
Dobby M. G. Jr	Kansas Inc.
Paul Bicknell	KDHR
Bill Hayes	KDHR
Barb Coart	Ks Trial Lawyers Assoc
Stephanie	KS Trial Lawyers Assoc
Ann Fisher	" "
RICHARD L. CO. MTS	DHR- WORKERS REPRESENTATION
Phil Hansen	DHR-Div. of Workers Comp
Bernie Koch	Wichita Area Chamber
Mike Hill	HSBA
John Peterson	Ks Governmental Consulting

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: 2/6/01

NAME	REPRESENTING
Bill Maness	PEO
Linda DeCoursey	KS Ins. Dept
Jeremy Anderson	KS Insurance Dept
Stephanie Buchanan	DOB
Dennis Rogers	RS-12
Seth Bridge	Sen. Bourgeois
LARRY MAGILL	KAIA

STATE OF KANSAS



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State Capitol Building, Room 152-E
Topeka, Kansas 66612-1575
(785) 296-2436
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Bill Graves
Governor

Duane A. Goossen
Director

February 1, 2001

The Honorable Karin Brownlee, Chairperson
Senate Committee on Commerce
Statehouse, Room 136-N
Topeka, Kansas 66612

Dear Senator Brownlee:

SUBJECT: Fiscal Note for SB 121 by Senate Committee on Commerce

In accordance with KSA 75-3715a, the following fiscal note concerning SB 121 is respectfully submitted to your committee.

SB 121 would create minimum standards applicable to all professional employer organizations. The bill would require each professional employer organization to have a written contract between the client and the professional employer organization outlining responsibilities and duties of each party. The contract would contain a description of the types of services rendered by the organization as well as the rights and obligations of all parties. The bill would not apply to labor unions or organizations utilizing collective bargaining agreements.

The Department of Human Resources and the Division of Personnel Services in the Department of Administration both indicate that the passage of this bill would have no fiscal effect.

Sincerely,

A handwritten signature in blue ink that reads "Duane A. Goossen".

Duane A. Goossen
Director of the Budget

cc: Gerald Schneider, Human Resources
Pat Higgins, Administration

Senate Commerce Committee
February 6, 2001
Attachment 1-N



KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

TO: Members of the Senate Commerce Committee

FROM: Dennis L. Horner
Workers Compensation Committee Chair

RE: SB 121

DATE: Feb. 6, 2001

Chairperson Karin Brownlee and members of the Senate Commerce Committee, thank you for the opportunity to offer comments on Senate Bill 121. I am Dennis L. Horner, an attorney from Kansas City. I am the current chair of the Kansas Trial Lawyers Workers' Compensation Committee.

Proposed Senate Bill 121 seeks to create certain statutory rights and immunities of "professional employer organizations." (Hereafter referred to as PEO) If passed, this proposal will most probably encourage litigation over numerous legal issues.

Employer-employee relationships create certain obligations between the parties. All employers with a \$20,000.00 payroll must furnish workers' compensation to workers. In addition, workers' compensation law has established "statutory employers." Statutory employers are entities that contract with a subcontractor and now have liability for the employees of a subcontractor if the subcontractor is uninsured. Statutory employers are protected from civil liability pursuant to the Kansas Workers' Compensation Act (K.S.A. 44-503, 44-503a and 44-503b) because of the exclusive remedy provisions, but only have liability for workers' compensation if the direct employer is uninsured.

The proposed bill would not provide any greater protection to PEOs because a direct employer is liable for workers' compensation. A general contractor or any company which hires the "client" (direct employer) is protected under the exclusive remedy provision of the law. This proposed bill would not have any impact on the workers' compensation liability to general contractors. If the PEOs wish to have further protection or clarify which of two contracting parties are liable for work related injuries, indemnity agreements can provide specific protection.

The proposed bill has some troubling possibilities when civil law and liability are considered. Individuals or companies dealing with a company/professional employment organization may not have a clear picture of which company is the true employer. The proposed legislation will most likely create illusions to third parties without the benefit of contracts between the PEO and the client.

Terry Humphrey, Executive Director

Jayhawk Tower • 700 SW Jackson, Suite 706 • Topeka, Kansas 66603-3758 • 78

E-Mail: triallaw@ink.org

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Attachment 27

If a truck driver is involved in an accident, is he/she an employee of the client (Sec. 2, (c)) or an employee of the PEO? (Sec. 2, (f)) In Section 1, it states: "Under agreed terms, two entities are both employers of the same employee." This would impose workers' compensation liability to the PEO. However, Sec. 1 continues to suggest the relationship should be based upon the nature of the relationship as defined by written contract as opposed to case law decisions of the appellate courts.

In Sec. 4, the professional employer has language which is diametrically opposite of Sec. 2 in that it seems to distant the professional employer from any civil liability for the acts of the client or client's employee. In one section, the professional employer is seeking protection of the workers compensation act and the exclusive remedy provisions and in the same bill attempting to insulate itself from liability for any act or omission of its claimed employees. Sec. 4, (g)(2) specifically provides the client's employees shall not be employees of the professional organization for purposes of general liability insurance, automobile insurance, fidelity bonds, surety bonds or employers' liability other than workers compensation. Does this mean the unsuspecting and often unsophisticated "clients" are responsible to furnish insurance for general liability and fidelity but not workers compensation? This proposed legislation will certainly lead to continual misunderstandings between the PEO and the client about which one is providing which insurance coverage. Those misunderstandings will then create unnecessary obstacles for injured parties seeking to obtain benefits, whether they be through workers compensation or civil actions.

This proposed bill is troubling in that the PEO claims the employment relationship for protection from liability from employees of clients and two sections later disclaims responsibility for the acts of the client's employees while they carry out their duties.

Example: Acme (client) and PEO have a professional employment relationship. Acme is a construction company operating heavy equipment. Acme's lead foreman, Axle Grease drives an 18-wheel equipment truck at 80 mph, into a school bus killing the bus driver and injuring several children.

Question: Who is responsible for Axle's medical bills?

Answer: Under Sec. 1, Acme and PEO would most likely be considered employers under the workers' compensation act.

Question: Who is responsible for Axle's negligence in driving the truck at 80 mph?

Answer: Is PEO, which has sought to be covered as an employer under the workers compensation law liable for Axle's negligence? Not according to Sec. 4(g)(2) which provides the client's employees are not covered under its insurance.

Question: Is it clear whether Axle is really an employee of the PEO for civil matters but just not insured?

Answer: The proposed statute is not clear on whether the PEO is liable but does suggest the client's employees are not be deemed employees under liability coverage.

Question: If you are the widow of the bus driver, do you know which company is the legal employer of Axle Grease?

Will the law enforcement investigative report provide information about the PEO? There is nothing to suggest anyone but the PEO and the client will know of the agreement.

Question: If the widow seeks legal counsel at the last possible minute and suit is filed, will the widow be capable of determining which entity is the employer with liability for Axle? Will the widow learn before the Statute of limitations runs against her claim?

Answer: Often a party with a valid claim will wait to seek counsel assuming a responsible party will seek to resolve the claim. When this does not happen, victims seek counsel. If done at the last minute, it may be impossible to determine which entity to pursue. It may be that the real party is not named outside the professional employer agreement. If the real party is not timely sued, the victim may never recover damages.

The agreement between the PEO and the client can and should provide indemnity between the two as they see fit. The indemnity provision of the agreement can specify how liability and coverage are to be handled. There is no need to legislate this type of business relationship between two entities that will be unclear to outside individuals or unsuspecting entities that may have legal business with them.

The proposed legislation may also spawn misunderstandings concerning determination of workers' compensation premiums by insurance carriers. Carriers conduct annual audits to determine the classification of workers covered by insurance as well as the payrolls in each classification. If the PEO classifies the worker under a different category than work actually performed, carriers may not receive the appropriate premium for their protection.

In summary, it is suggested this proposed legislation is unnecessary under the workers' compensation law. It is submitted this proposed bill will most likely create illusions in the civil law area as to whether the PEO or client has ultimate responsibility. KTLA suggests common law principles developed by the court should apply as opposed to special interest legislation that will lead to practical problems for victims and "clients."

KTLA cannot support this proposed bill for the reasons set forth and requests no action on this bill.

On behalf of KTLA and the citizens of Kansas, I appreciate the opportunity to appear before your committee. I welcome any questions you may have.

Seth Valerius Testimony Senate Bill No. 121

My name is Seth Valerius. I am here today on behalf of the Kansas AFL-CIO to oppose Senate Bill No. 121 regarding Professional Employer Organizations (PEO).

Senate Bill No. 121 creates a dubious co-employer status for the purpose of relieving primarily small employers from the burdens associated with handling payroll, taxes, workers' compensation, unemployment, and a variety of other normal and customary duties associated with business ownership. I am here today to state for the record that this bill is opposed by the Kansas AFL-CIO.

The reasons for our opposition are the apparent conflicts of Senate Bill No. 121 with the Kansas Workers' Compensation Act are as follows:

1. We believe that confusion will result in the alleged "co-employer" status with reference to the notice provisions of the Workers' Compensation Act. It will also create confusion regarding written claim issues. Under the Oasis Client Service Agreement(CSA), (Attached as Exhibit "A"), the PEO takes the responsibility of managing workers' compensation claims. (Section III, C.) The CSA could be interpreted by the site employer to relieve them from any responsibility to an injured worker. They would be able to refuse to accept accident reports and written claims on the premise that it is no longer by contract, their responsibility.
2. Even though the PEO places the responsibility of managing workers' compensation claims with the PEO, (Section III, C.) the PEO is excluded from **all liability** resulting from their management. (Section III, C.) This exclusion presumably includes liability for violations of the Fraud and Abuse provisions or the Workers' Compensation Act. This would allow the PEO to handle claims in an abusive manner without any liability. At the same time, the PEO could impute liability to their Clients as a result of their actions.
3. The creation of a "co-employer" status for the PEO will also create liability issues in civil actions. For example, in all workers' compensation claims against the PEO and the independent business, where the injured individual has a claim for fraud, intentional tort causing the injury, wrongful termination, Americans with Disabilities Act, or any other civil action, there inevitably will be claims directed against the worker's compensation administrator for the PEO and the PEO directly.
4. Allowing the PEO employer status creates problems in tracking a business' experience rating for the purposes of establishing workers' compensation insurance rates. Mr. Andrew Sabolic, Regional Representative for the National Council for Compensation Insurance, testified before the Kansas

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Workers' Compensation Committee, which is currently considering this issue as it relates to the Kansas Workers' Compensation Act. Mr. Sabolic testified that it will be difficult, if not impossible, to track an individual employers experience.

The PEO allows employers to escape an accurate assessment of their ratings by changing business names or submitting inaccurate employee classifications to the PEO for the purpose of lowering their ratings. Currently, it is our understanding that OASIS Outsourcing Inc. has no provision which would enable them to police their clients and determine independently at the site each individual employee's classification for the purpose of establish their rating.

- 5 The premise that the PEO is a co-employer is also flawed. For the purpose of the Kansas Workers' Compensation Act, the employer is the party that has "control" over the manner in which the employee's duties are performed. The PEO will have no control over the employees of their clients with regard to their assignments and duties. The assertion that the PEO can go to a job site and terminate someone is suspect. The reality is that the PEO would never go to a client's business and fire someone or transfer a client's employee to a different position.

In conclusion, for the foregoing reason's, the AFL-CIO respectfully cannot support Senate Bill 121, and ask that no action be taken at this time.



CLIENT SERVICE AGREEMENT

This AGREEMENT dated _____ is made between _____ and its subsidiaries, (the individual or firm hereinafter referred to as "CLIENT") and OASIS OUTSOURCING, INC., a Florida corporation (hereinafter referred to as "OASIS").

I. TERM OF THIS AGREEMENT.

The term of this Agreement shall be from the COMMENCEMENT DATE as shown on Exhibit A attached hereto until terminated by either party giving forty-five (45) days' written notice. After notice, the termination is to occur at the end of the next calendar month or forty-five days from the date of notification, whichever is later. Until the end of the next calendar month following such cancellation, the parties will continue to meet the obligations set forth in this Agreement. In addition, OASIS may at any time immediately terminate this Agreement in the event of a breach by CLIENT of any of the terms of this Agreement or upon the occurrence of any of the events set forth in Section IV(H). below.

II. PROFESSIONAL EMPLOYMENT SERVICES.

By entering into this Agreement, OASIS has agreed to provide Professional Employment Services as stated under III. DUTIES AND OBLIGATIONS OF OASIS to CLIENT. It is not the intention of this Agreement to insulate CLIENT in any manner from those responsibilities which the law imposes upon it as a business or workplace except as herein expressly assumed by OASIS. Nor is it the purpose of this Agreement for OASIS to provide a pass-through payroll service.

III. DUTIES & OBLIGATIONS OF OASIS.

A. Services. OASIS agrees to provide the following services to CLIENT:

1. OASIS assumes responsibility for the payment of wages to the Assigned Employees without regard to payments by CLIENT to OASIS.
2. OASIS assumes full responsibility for the payment of payroll taxes and collection of taxes from payroll on Assigned Employees.
3. OASIS assumes responsibility for the proper administration and payment of workers' compensation premium(s) and the employee benefit programs, except in the event that applicable law requires the CLIENT to maintain said policies or programs or CLIENT elects to maintain said policies or programs.
4. OASIS assumes responsibility for completion and maintenance of all payroll and benefit records, with the exception of the records of actual hours worked which shall be maintained and verified by CLIENT.
5. OASIS may hire or appoint an on-site administrative coordinator to implement terms and conditions of this Agreement.

B. Client personnel policies and procedures. OASIS agrees that it will assist CLIENT in developing and maintaining a set of personnel policies and procedures in a manner designed to improve human resources management in CLIENT's business. CLIENT acknowledges and agrees that OASIS is not engaged in the practice of law or in the provision of legal services, and that CLIENT alone is completely and independently responsible for its own legal rights and obligations for the acceptance and rejection of personnel policies and procedures discussed with OASIS.

C. Direction and Control. OASIS reserves and retains a right of direction and control over Assigned Employees pursuant to this Agreement, including authority to hire, terminate, discipline and reassign the employees covered in this Agreement. CLIENT reserves the right to accept or cancel the assignment of any assigned employee. In addition, CLIENT reserves sufficient direction and control over the Assigned Employees as is necessary to conduct CLIENT's business and without which CLIENT would be unable to conduct business, discharge any fiduciary responsibility that it may have, or comply with any applicable licensure, regulatory, or statutory requirement of CLIENT. CLIENT acknowledges that it is responsible to maintain a safe working environment, provide proper training in compliance with State,

Federal, and OSHA standards, and establish and maintain such safety programs, safety policies and safety committees as may be required by law. OASIS shall secure workers compensation coverage in such amounts as is required by applicable law. In addition, OASIS shall provide such for the promulgation and administration for employment and safety policies, and responsibility for the management of workers compensation claims, claims filings, and related procedures as is required by applicable law. However, CLIENT acknowledges that OASIS in either providing or not providing such assistance assumes no liability, and in particular assumes no responsibility for unsafe equipment or workplace (including all types of vehicles) utilized by CLIENT.

- D. Indemnification. Notwithstanding the provisions of item III.(G) below, OASIS hereby unconditionally indemnifies, holds harmless, protects and defends CLIENT, and all subsidiaries, affiliates and parent companies, their shareholders, employees, attorneys, officers, directors, agents and representatives from and against any and all claims, demands, damages, injuries, deaths, actions, costs and expenses (including attorney's fees and expenses at all levels of the proceedings), losses and liabilities of whatever nature (including liability to third parties), and other consequences of any sort, arising out of the negligent or willful failure of any non-assigned employee employed by OASIS at its corporate office to comply with applicable workers compensation, withholding tax, or ERISA laws, rules and regulations, or where any action is taken by CLIENT in compliance with a written corporate OASIS policy, procedure, or direction which is illegal under any applicable local, state or federal law.
- E. Assigned Employees. OASIS agrees to furnish to CLIENT Assigned Employees to perform job functions identified by workers' compensation code classifications. CLIENT warrants that the list of workers' compensation classifications is accurate and complete; that employees performing these job functions do so at the locations specified in this Agreement (Exhibit A) as client location. CLIENT understands and agrees that prior written approval from OASIS's workers' compensation carrier must be obtained prior to the addition of any workers' compensation classification or location to this Agreement.
- F. Services. OASIS will provide only the above listed services and no other services shall be provided or implied, including without limitation any strategic, operational or business related decisions with regard to CLIENT's business. Such decisions shall exclusively be the responsibility of CLIENT; and, OASIS shall bear no responsibility nor liability for any actions or inactions by CLIENT. When implementing such decisions, whether or not the actions are implemented by Assigned Employees, CLIENT shall be acting solely on its own volition and responsibility. If OASIS is assigning any supervisory Assigned Employees to CLIENT, such supervisory Assigned Employees' scope of employment is strictly limited to the duties assigned by the CLIENT. Supervisory assigned employee actions which are in violation of law or which result in liability will be outside their scope of responsibility as OASIS supervisory Assigned Employees and in such an event supervisory Assigned Employees will be acting solely as the agents of CLIENT.
- G. Notice. OASIS will provide notice of this agreement, explaining the relationship between OASIS and CLIENT, to all Assigned Employees subject to it in accordance with all applicable Federal and State laws.

IV. RIGHTS & DUTIES OF CLIENT.

- A. Day to day supervision. CLIENT will be responsible for the day-to-day supervision and control of Assigned Employees under this agreement. CLIENT will verify skills and references to determine employment eligibility of Assigned Employees. CLIENT agrees to provide all facilities, supplies, equipment, and all other necessary items that may be required by Assigned Employees to perform their assigned employee services.
- B. Payroll information. CLIENT agrees that it will maintain and provide to OASIS at the end of each pay period records of actual time worked by each assigned employee, verify Assigned Employees' exempt or non-exempt status, and verify that all hours worked by Assigned Employees are accurate and are in accordance with the Fair Labor Standards Act and other laws administered by the U.S. Department of Labor's Wage and Hour Division and any other applicable state and federal law. CLIENT shall verify that such time records are approved, verified and signed by each assigned employee and appropriate supervisor each pay period. These records submitted to OASIS shall become the basis for OASIS to issue all payroll checks. OASIS shall not be responsible for incorrect, improper or fraudulent records of hours worked, or for the improper determination of exempt status. Should CLIENT fail to meet the processing and payment schedule, the delivery of payroll checks by OASIS may be delayed and an out of cycle processing charge may be billed to CLIENT at the option of OASIS. Similarly, any changes to the hours reported to OASIS after the reporting time may be subject to an out of cycle charge at the option of OASIS.

C. **Unpaid benefits.** CLIENT will pay for any accrued but unpaid benefits due to Assigned Employees upon termination of employment, including but not limited to, unused vacation leave. CLIENT also agrees to pay all accrued but unpaid benefits due Assigned Employees if this Agreement is terminated for any reason.

D. **Workplace Safety and Workers' Compensation Compliance.**

1. **Compliance.** CLIENT agrees that it is primarily responsible for complying with all health, safety, and environmental rules, regulations, and statutes and that it will comply at its expense with all safety, health and work environment laws, regulations, ordinances, directives, notices, warnings, and rules imposed by controlling federal, state and local governments, including, but not limited to OSHA and it will immediately report to OASIS, before the end of the current work day or shift, all accidents and injuries involving Assigned Employees. CLIENT agrees to provide OASIS with a complete list of hazardous materials that Assigned Employees may come into contact with, the proper method of handling, and the dangers of each in conformity with the law and Material Safety Data Sheets for each such material. CLIENT also agrees to comply at its expense with any reasonable directives from OASIS, its workers' compensation carrier or any government agency having jurisdiction over the work place, health and safety. CLIENT shall provide all Assigned Employees protective equipment, as required by federal, state or local law, regulation, ordinance, directive or rule or as deemed necessary by OASIS or its workers' compensation carrier. OASIS, its workers' compensation carrier and its liability insurance carriers shall have the right to inspect CLIENT's premises to ensure that Assigned Employees are not exposed to abatable recognized hazards. In no event shall this right, the exercise of this right or the non-exercise of this right affect any of CLIENT's obligations to OASIS, its indemnification to OASIS, Indemnified Parties or the Assigned Employees specified in this Agreement, or to any other person or entity.

2. **Alternate workers compensation policies.** In the event that applicable law requires CLIENT or if CLIENT elects to maintain its own policy of workers' compensation insurance, or a lawful alternative to same, CLIENT shall cause OASIS to be named as alternate employer, or an additional insured on said policy or alternative coverage. In addition, in such situations where CLIENT maintains its own workers compensation policy, CLIENT shall at no time directly pay any workers compensation premiums but shall instead, at least fourteen (14) days prior to the premium due date, remit to OASIS by overnight mail, next day delivery service, a cashiers check sufficient to cover the premium due from CLIENT or OASIS. CLIENT may also provide OASIS, at its option, to direct debit the account of CLIENT for the premiums due to the carrier. OASIS shall have no responsibility in such situation where CLIENT retains its own workers compensation policy other than to remit to the carrier such payments as CLIENT forwards to OASIS.

3. **Transitional Duty Assignments/Drug Free Workplace.** CLIENT agrees to comply with OASIS's workers compensation transitional duty requirements. CLIENT also agrees to comply with Drug Free Workplace policies, if any, adopted by OASIS.

E. **Insurance.**

1. **Automobile, Liability, Property, Malpractice and Errors & Omission Protection.** If any assigned employee is required to drive a vehicle of any kind for CLIENT, CLIENT will furnish and keep in full force and effect during the term of this Agreement liability insurance to include coverage for public liability, both bodily injury and property damage, with a minimum combined single limit of One Million Dollars (\$1,000,000) and uninsured motorist coverage with a minimum combined single limit of Sixty Thousand Dollars (\$60,000), or the minimum limit required by applicable state law, whichever is higher. If an assigned employee performs any duties in a professional capacity, CLIENT agrees to exercise such direction and control over said employee sufficient to comply with all applicable laws, and CLIENT shall furnish malpractice insurance which shall cover any acts, errors or omissions, including, but not limited to, negligence. The employee shall be deemed the employee of CLIENT for the purposes of this insurance. CLIENT agrees to cause its insurance carrier(s) to name OASIS as additional insured on CLIENT's policy and shall provide evidence of such coverage, and shall issue a Certificate(s) of Insurance evidencing same to OASIS allowing not less than thirty (30) days' notice of cancellation or material change. CLIENT agrees to file against such policy exclusively with respect to any claim for malpractice or errors and omissions or any other claim covered thereunder for any assigned employee engaged in the performance of licensed and/or professional duties. CLIENT agrees to indemnify, hold harmless, protect and defend OASIS and Indemnified Parties, or to cause its insurance carrier to indemnify, hold harmless, protect and defend OASIS from and against any and all liabilities of any kind, including costs and attorney's fees arising out of any such claim, as more fully set forth in Section IV(G).

2. **General Liability Insurance Protection.** CLIENT agrees to keep in full force and effect at all times during the term of this Agreement, a comprehensive general liability insurance policy in the minimum limit of One Million Dollars (\$1,000,000) insuring CLIENT against bodily injury and property damage liability caused by CLIENT's premises, operations, completed operations and/or

products. Said policy shall also include blanket contractual liability and personal injury liability. CLIENT shall provide OASIS with a certificate of insurance naming OASIS as additional insured, and to provide OASIS with thirty (30) days' notice in the event of cancellation of coverage. CLIENT agrees that with respect to any claim or event alleging or resulting in bodily injury or property damage that involves an assigned employee, CLIENT agrees to indemnify OASIS and file for recovery under CLIENT's appropriate liability insurance policy.

3. CLIENT is required for its own protection to secure all necessary forms of liability insurance that CLIENT would feel be reasonably essential to have if OASIS Assigned Employees were the employees of CLIENT.

F. Indemnification. Without regard to the fault or negligence of any party, CLIENT hereby unconditionally indemnifies, holds harmless, protects and defends OASIS its subsidiaries, affiliates, related, and parent companies, their respective shareholders, non-Assigned Employees, attorneys, officers, directors, agents and representatives (all indemnified parties referred to as "Indemnified Parties") from and against any and all claims, demands, damages (including liquidated, punitive, and compensatory), injuries, deaths, actions and causes of actions, costs and expenses (including attorney's fees and expenses at all levels of proceedings), losses and liabilities of whatever nature (including liability to third parties), and all other consequences of any sort, without limit and without regard to the cause or causes thereof or the negligence of OASIS or any Indemnified Party, that may be asserted or brought against OASIS or any Indemnified Party which is in any way related to this Agreement, to equipment or vehicles utilized by Assigned Employees, the products and/or services provided by CLIENT, any claims of negligence, the actions of any assigned employee employed by CLIENT, or of any other individual, including without limitation any violation of any local, state and/or federal law, regulation, ordinance, directive or rule whatsoever, and all employment related matters other than those excluded by item III. (D) above.

G. Special Benefits Administration Agreement.

1. Health Benefits. If this agreement is terminated for any reason, CLIENT shall take all necessary action to replace health care coverage for Assigned Employees covered by this Agreement so as to avoid the implication of a qualifying event as defined by Internal Revenue Code ("IRC") §4980B. If CLIENT fails to provide such health care coverage, OASIS shall be obligated to extend continuation of its health care coverage in accordance with IRC §4980B, and CLIENT shall then remit to OASIS the cost per assigned employee to provide such coverage, and a one time charge of \$ 500 per affected assigned employee. CLIENT agrees that this sum is fair compensation to OASIS for its expense in extending the coverage to Assigned Employees which were covered under this Agreement.

2. Cobra Notifications. CLIENT agrees to comply with the provisions of IRC §4980B and to notify OASIS of any event that would constitute a qualifying event under said statute as soon as it becomes aware of said event. If CLIENT fails to notify OASIS of a qualifying event under IRC and §4980B CLIENT shall be liable for any and all costs or penalties incurred by OASIS as the result.

3. Retirement plans. To assure compliance with the Internal Revenue Code, the Employee Retirement Income Security Act and other related federal regulations, CLIENT certifies that it has properly disclosed the following to OASIS on the required Retirement Plan Questionnaire: (1) any retirement plans currently or previously maintained by the CLIENT or any related entities (within the meaning of the Internal Revenue Code sections 414(h), 414 (c)); (2) listed all of the owners, officers and shareholders (to identify those highly compensated and key employees for purposes of discrimination and top heavy testing); (3) listed/entered any family relationships for owners, officers and shareholders with Assigned Employees. In the event that CLIENT has failed to properly identify and/or properly complete the Retirement Plan Questionnaire, CLIENT agrees to unconditionally hold harmless, indemnify, protect and defend OASIS and Indemnified Parties or any and all liabilities arising therefrom.

Prior to CLIENT merging its retirement plan into the qualified OASIS retirement plan or prior to CLIENT transferring assets from its qualified retirement plan into OASIS's retirement plan, CLIENT understands and agrees that OASIS shall have the right to inspect all retirement plan documents, records, IRS determinations, etc. for compliance with the law.

CLIENT also understands and agrees that if this Agreement is terminated and the CLIENT does not adopt a successor retirement plan and arrange for a transfer of assets from OASIS retirement plan within three (3) months of the termination date, all Assigned Employees covered under OASIS retirement plan will become fully vested in their account balances. Furthermore, CLIENT agrees to reimburse OASIS an administrative fee in the amount of \$500 per annum or any part thereof plus \$25 per assigned employee per annum or any part thereof for administering this provision.

If CLIENT maintained a retirement plan during the plan year (January 1 through December 31) prior to merging its retirement plan with OASIS's retirement plan, CLIENT agrees to provide OASIS with all required information (including but not limited to Box 1 wages and assigned employee deferrals, employer matches, and contributions, etc.) prior to merging its retirement plan with OASIS's retirement plan so OASIS may conduct discrimination testing on a combined basis for the first plan year.

CLIENT agrees that in the event OASIS's retirement plan as adopted by CLIENT becomes top heavy as defined by the prevailing Internal Revenue Code and/or regulations, CLIENT will be solely responsible for making a contribution to non-key employees to satisfy the top heavy test, or CLIENT participants may be subject to returned deferrals.

In addition, CLIENT further warrants that no covered assigned employee is receiving compensation from CLIENT that is not paid by OASIS. CLIENT understands that any payment made to any assigned employee outside this Agreement may result in OASIS retirement plan being disqualified. Should OASIS retirement plan be disqualified as a result of CLIENT failing to report any compensation to covered Assigned Employees, CLIENT will be solely liable for any damages of any nature arising out of the failure to report such compensation to OASIS.

- H. Automatic Termination Conditions. In the event that any one or more of the following conditions occurs, this Agreement will be deemed to have terminated at least twenty four (24) hours immediately before the first of said event(s): (a) any condition of CLIENT which could fit the definition of financial distress under the Worker Adjustment and Retraining Notification Act; (b) the filing by CLIENT of any petition for reorganization or bankruptcy; (c) the closing of any facility or operation where 25% or more of CLIENT'S workforce are Assigned Employees; (d) for non-payment of invoice. OASIS may also terminate this Agreement if, at any time, OASIS in its sole discretion determines that a material adverse change has occurred in the financial condition of CLIENT, or that CLIENT is unable to pay its debts as they become due in the ordinary course of business. This Agreement may also be terminated at any time by OASIS in the event of any Federal, State, or Local legislation, regulatory action or judicial decision which, in the sole discretion of OASIS, adversely affects its interest under this Agreement. Any such termination shall not relieve CLIENT of any obligations set forth herein, including but not limited to its payment obligations to OASIS.

CLIENT agrees it will comply with the Worker Adjustment and Retraining Notification Act and that it will give OASIS at least sixty-two (62) day notice prior to effecting any plant closing or mass lay-off where 25% or more of CLIENT'S workforce are Assigned Employees as defined by law.

- I. Client Compliance. CLIENT warrants that, all wages and benefits for all past and present assigned employee(s) are current and that there is no liability for same to which OASIS and Indemnified Parties could succeed. CLIENT expressly agrees to indemnify, hold harmless and defend OASIS and Indemnified Parties from any and all liabilities, known or unknown, including without limitation costs and attorneys' fees, which could arise out of any allegation, assertion or claim that OASIS or Indemnified Parties are a successor employer of CLIENT.

- J. Compliance with Federal, State, and Local Laws.

1. CLIENT acknowledges, understands and agrees that, notwithstanding any other provisions of this Agreement, the fees charged by OASIS and remitted by CLIENT are not intended to compensate OASIS for the risk associated with the liabilities which may arise out of the improper management of Assigned Employees or for the violation of various local, state, and federal employment statutes. CLIENT is responsible for complying with all federal, state and local laws, regulations and ordinances including, but not limited to, those relating to employment labor and wage and hour issues, safety and health, environmental issues, hazardous waste, access to CLIENT'S premises, and accommodation of protected individuals under the law, just as if, and to the same extent as if this Agreement did not exist.

2. Premises & Accommodation Liability (ADA). The parties agree that any exposure, risk or liability for said access or accommodation or failure thereof, whether imposed by the Americans with Disabilities Act or some other federal, state or local statute, law or regulation, shall be the sole responsibility of CLIENT.

3. Family and Medical Leave Act (FMLA) Compliance. It shall be CLIENT'S sole responsibility to determine the size of its work force, the number of hours of work required to meet the market demand for CLIENT'S service and/or product, assigned employee scheduling, and the suitability of individuals for any specific job duties. Accordingly, for purposes of determining whether and to what extent any individual worker can be allowed to take time off away from work for any purpose, and to what extent if any such time off would require the assignment of a replacement worker, CLIENT shall have the primary responsibility for making such determinations, and OASIS shall have the secondary responsibility for implementing such aspects of said determinations as may be

appropriate under this Agreement. CLIENT shall be solely responsible for all costs to comply with the FMLA, including without limitation the cost of securing a replacement job position for any worker covered by this agreement, and the cost of any benefit plan coverage associated with FMLA compliance. CLIENT shall pay all costs associated with any person placed in a job vacancy created in compliance with FMLA. CLIENT further agrees that it will at all times comply with the Family and Medical Leave Act ("FMLA") and CLIENT's responsibilities to reinstate employees and in all other manner to comply with the FMLA shall survive termination of this Agreement.

- K. OASIS will notify Assigned Employees of this Agreement at inception and termination of this Agreement. CLIENT shall also immediately upon termination of this Agreement notify Assigned Employees of the termination of this Agreement and inform them that they are no longer covered by OASIS's workers compensation policy.
- L. All indemnification's survive the termination of this Agreement.
- M. CLIENT has the duty to cooperate and that duty to cooperate is material to OASIS's duty to perform.
- N. Legal Counsel. OASIS does not provide legal advice. CLIENT acknowledges its responsibility to seek, as it sees fit, whatever legal counsel or advice it deems appropriate or necessary and that it will in no event consider any service, information or suggestion provided by OASIS as anything constituting legal advice or opinion.

V. SERVICE FEES.

- A. Set Up Fees. On or before the commencement date, CLIENT will pay to OASIS an initial enrollment fee for each position shown on Exhibit A attached hereto. A set up fee will also be due when new Assigned Employees are added to CLIENT's payroll (including replacement Assigned Employees for those listed on Exhibit A and any Assigned Employees hired for newly established positions).
- B. The Administrative Fee. The Administrative Fee charged to CLIENT and payable at the end of each pay period will be equal to the rate specified on Exhibit A. Any increase or decrease in the Administrative Fee for statutory increases in employment taxes, shall be effective on the date of such increase or decrease. Workers' compensation and employee health benefit costs will also be adjusted as of the effective dates. A thirty (30) day notification shall be required of OASIS before changes are to be made in OASIS's Administrative Fee (see Exhibit A) charged to CLIENT.

CLIENT expressly agrees and understands that no assigned employee shall become employed by OASIS, covered by OASIS's workers' compensation insurance or any other benefit or term and condition of employment or issued a payroll check, unless the individual has prior to commencing work, completed OASIS's new hire packet employment form (which includes but is not limited to the W-4 & 1-9) all of which must be delivered to OASIS before the assigned employee commences employment. OASIS shall not be considered to be an employer of any individual for any CLIENT until that individual completes this form and CLIENT is notified that the individual has been hired by OASIS as an assigned employee. In addition, OASIS shall not be considered to be an employer of any individual (except as may be required by law) for whom payroll information is not supplied during any payroll period. CLIENT assumes full responsibility for workers compensation claims of individuals paid directly by CLIENT, as well as for other parties hired by or working for CLIENT, whether as an employee, independent contractor, or in any other status.

- C. Other Service Fee Components. CLIENT will pay, at the end of each regular or special pay period all additional costs or expenses incurred at the request of CLIENT, including replacement personnel or temporary personnel provided by OASIS, any assigned field supervisor, safety engineering, fidelity bonding, professional liability insurance, overnight mail charges, continuing education, etc.
- D. Payments. All payments to OASIS by CLIENT will be made upon presentation via a bank draft or direct debit to an account of CLIENT. A late payment charge of two (2) percent will be added to all accounts not paid when due. Bank drafts returned unpaid from CLIENT's bank will be subject to the late payment charge plus any additional costs incurred by OASIS. An unpaid balance will also be subject to a periodic charge of one and one-half (1 and 1/2) percent per calendar month until paid. OASIS reserves the right to suspend the services to CLIENT until full payment has been made of any amount past due.

VI. GENERAL PROVISIONS.

- A. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all agreements, whether oral or written, between the parties with respect to its subject matter. If an action is brought by either party hereto for breach or default of any provision of this Agreement, the prevailing party in such action shall be awarded reasonable attorneys' fees and costs in addition to any other relief to which the party may be entitled.

- B. **Modification.** This Agreement may not be altered or amended except by written agreement duly executed by all parties hereto.
- C. **Successors.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.
- D. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall together constitute but one and the same agreement, binding upon all the parties hereto, notwithstanding that all the parties are not signatories to the original of the same counterpart.
- E. **Headings.** The headings and labels of the paragraphs of this Agreement are inserted solely for the convenience of reference, and in no way define, limit, extend or aid in the construction of the scope, extent or intent of this Agreement or of any term or provision hereof.
- F. **Severability.** Should any term, warranty, covenant, condition or provision of this Agreement be held to be invalid or unenforceable, the balance of this Agreement shall remain in force and shall stand as if the unenforceable part did not exist.
- G. **Arbitration and Mediation.** All disputes and alleged breaches arising out of or relating to this Agreement shall be resolved by way of mediation and arbitration as set forth herein, and the parties hereto waive their rights to bring an action in State or Federal court to resolve such disputes. If a dispute under this Agreement arises, either party may serve written notice on the other that it desires to have the dispute submitted to mediation in accordance with the procedures of the Federal Mediation & Conciliation Service, pursuant to Chapter 44 & 682, Florida Statutes or as otherwise agreed by the parties to the dispute. Once elected, a mediation conference shall be scheduled within 30 days in the City of Palm Beach Gardens, Florida. If the dispute is not resolved through mediation, the parties shall submit their dispute to binding arbitration within 30 days after impasse is declared by a mediator. The Arbitration shall be conducted by a committee of arbitrators (one appointed by OASIS, one appointed by CLIENT and one appointed by the two arbitrators so appointed), in the City of Palm Beach Gardens, Florida, and pursuant to the terms of the American Arbitration Association and their decision shall be final and binding on both parties. Judgment may be obtained on the arbitration award in any court of competent jurisdiction. Completion of mediation until resolution or impasse is a condition precedent to arbitration.
- H. **Choice of Law.** The substantive law of the state of Florida shall control the construction of this Agreement.
- I. **Waiver.** The failure of any party to enforce at any time the provisions of this Agreement shall not be construed as a waiver of any provision or of the right of such party thereafter to enforce each and every provision of this Agreement.
- J. **Assignment.** CLIENT shall not transfer or assign this Agreement or any part thereof without the prior written consent of OASIS. This Agreement may be assigned by OASIS at its sole discretion.
- K. **Default & Termination.** In addition to the means of termination specified in §IV(H) above, this Agreement may also be terminated by CLIENT's default, at OASIS's sole discretion. Acts of default by CLIENT shall include:
1. Failure of CLIENT to pay any monies due under this Agreement.
 2. Failure of CLIENT to comply within the time specified by OASIS with any directive of OASIS when such directive is promulgated or made necessary by (i) a federal, state or local governmental body, department or agency, (ii) an insurance carrier providing coverage to OASIS and/or the Assigned Employees and/or (iii) specific circumstances which currently or potentially affect OASIS, CLIENT or Assigned Employees covered by this Agreement.
 3. Direct payment of taxable wages by CLIENT to Assigned Employees for services contemplated by this Agreement.
- Any breach or default of any material term or condition of this Agreement shall, unless the innocent party elects otherwise in writing, cause immediate termination of this Agreement. Notwithstanding same, the innocent party is required to provide immediate written notice of any material breach or default. The effective date of termination shall be deemed to be the date the violation occurs, not when discovered or when notice is received by either party.
- L. **Notices.** Any notice, request, demand or other communication required or permitted hereunder shall be deemed to be properly given when deposited with the United States Postal Service, postage prepaid, or when deposited with a public telegraph for transmittal, charges prepaid and addressed:

1. In the case of OASIS send to: Legal Department, Oasis Outsourcing, Inc. 4200 Wackenhut Drive, Suite 100, Palm Beach Gardens, FL 33410 or to such other person or address as OASIS may furnish to CLIENT.

2. In the case of CLIENT, to the address shown on Exhibit A, or to such other person or address that CLIENT may furnish from time to time to OASIS.

- M. Time Is Of The Essence. Time is of the essence in the performance of this Agreement.
- N. No Third Party Beneficiaries. The parties acknowledge and agree that this Agreement creates no rights for or in favor of any person or third party not a party to this Agreement, and that no such person may place any reliance hereon.
- O. Acknowledgments. CLIENT acknowledges that it has not been induced to enter into this Agreement by any representation or warranty not set forth in this Agreement including but not limited to any statement made by any marketing agent of OASIS. CLIENT acknowledges that OASIS has made no representations whether OASIS will improve the performance of CLIENT's business.

CLIENT acknowledges that OASIS shall not be liable for any CLIENT loss of business, good will, profits, or other damages.

CLIENT specifically authorizes and acknowledges OASIS will conduct a credit and background reference check on CLIENT and such officers, supervisors, and/or employees of CLIENT as OASIS deems appropriate in compliance with the requirements of law.

This CLIENT acknowledges the Agreement shall be valid and enforceable only upon the signature by an authorized Controlling Person of OASIS.

CLIENT acknowledges that it would be essential to OASIS to have complete knowledge of any government investigation or inquiry or private adversary action which could in any manner impact upon the types of duties contemplated by any Agreement. For example, but not by limitation, an audit by the Bureau of Workers' Compensation could affect the performance of functions under this Agreement. Therefore CLIENT hereby makes complete and full disclosure of any such administrative proceeding (including but not limited to EEOC, NLRB, OSHA and Wage & Hour matters), investigation, lawsuits, or other adversary proceeding, including those which are threatened as well as those not yet asserted, in which CLIENT has been involved during the last five (5) years.

SIGNATURE

CLIENT

Signature: _____ Date _____

Print Name and Title _____

OASIS OUTSOURCING, INC.

Signature: _____ Date _____
Daniel S. McHenry, Controlling Person

Bill Maness Testimony
Senate Bill 121
Senate Commerce Committee
February 6, 2001

Madam Chair, Senators. My name is Bill Maness and I am a District Sales Manager with Oasis Outsourcing in Wichita. I am a life long Kansas resident and stand before you today in support of Senate Bill 121.

I represent 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 in other states across the nation. It assists in the success of small businesses and provides a multitude of benefits to working Kansans that would have otherwise not been possible.

Simply put, a PEO is a business organization that contracts with small business owners to provide comprehensive human resource services through a co-employment arrangement. By the use of co-employment, the small businessman or woman 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 responsibilities 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 employee pool. Third, an employer receives support and expertise with regards to government compliance and human resource issues. And finally, the business has an ally whose sole purpose is to provide employer services and to protect and minimize the company's employment liabilities.

The Senate Bill 121 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 bill 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 three 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 Senate Bill 121.

Thank You.

Senate Commerce Committee
February 6, 2001
Attachment 4-10

Senate Bill 121
Senate Commerce Committee
Kansas Professional Employer Organization Recognition Act
February 6, 2001

- 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.

Senate Commerce Committee
February 6, 2001
Attachment 5-1

N A P E O

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.

Prepared by the
National Association of Professional Employer Organizations (NAPEO)
901 North Pitt Street, Suite 150
Alexandria, Virginia 22314
703-836-0466 Fax 703-836-0976
www.napeo.org

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NATIONAL ASSOCIATION OF PROFESSIONAL EMPLOYER ORGANIZATIONS

THE VOICE OF THE PEO INDUSTRY

**NAPEO at a Glance
NAPEO's Code of Ethics**

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.

NAPEO—Certification and Accreditation

NAPEO believes the continuing professional development of individuals delivering professional employer services is essential to the industry's prosperity and credibility. The

CPES

Certified Professional Employer Specialist (CPES) program was established to recognize qualified individuals who have demonstrated proficiency in operational functions of a professional employer organization.

CPES designation is available to all industry professionals whether or not their companies are NAPEO members. To date, nearly one hundred professionals have earned certification. These individuals have achieved a minimum level of industry experience and education, earned a passing score on a rigorous examination, accumulated continuing education credits, and agreed to abide by NAPEO's Code of Ethics.

In 1995, NAPEO provided the leadership and financial support to establish an independent professional accreditation for firms providing PEO services. Today, the Institute for the Accreditation of Professional Employer Organizations (IAPEO) is an independent organization which has established financial

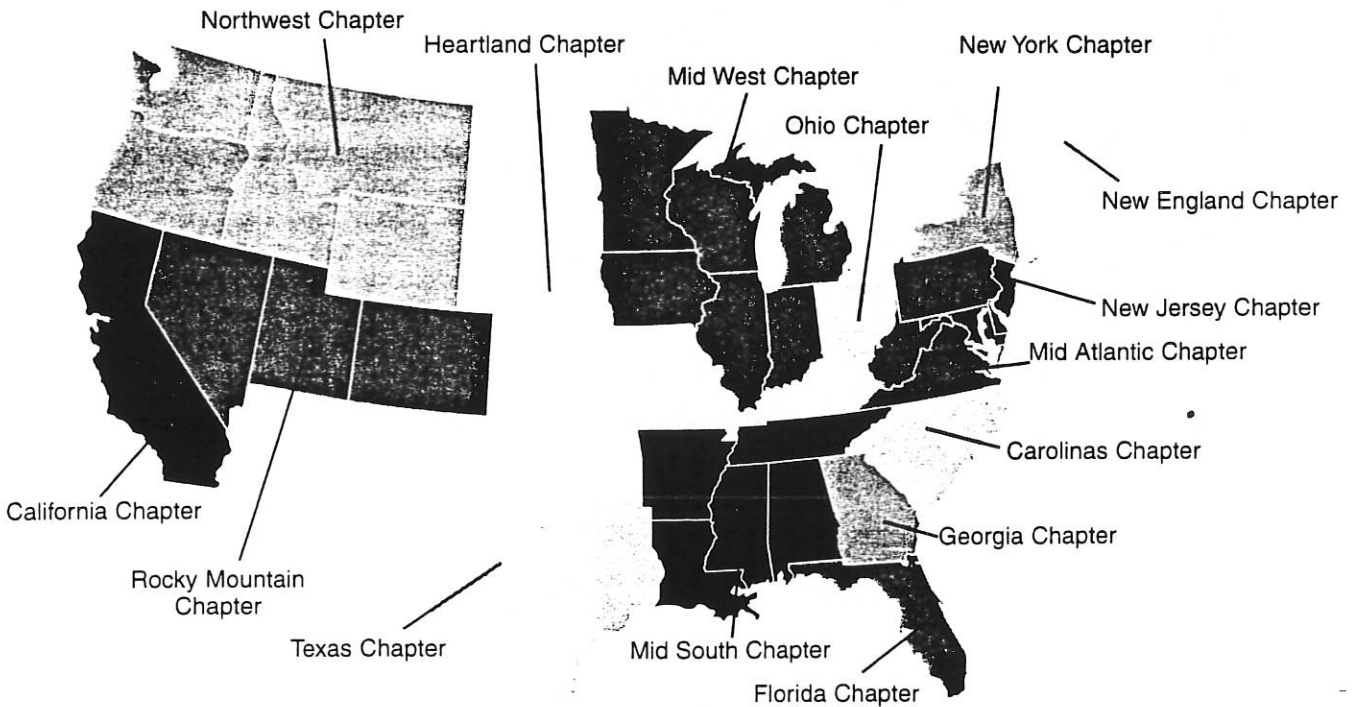
and operational standards for PEOs and which monitors ongoing compliance by accredited PEOs with those standards. Completely independent from NAPEO, IAPEO is governed by a Board of Directors comprised both of industry leaders and outside experts, including former government officials and regulators.

NAPEO—State and Regional Chapters

NAPEO's members belong to 15 affiliated state and regional chapters. NAPEO and its chapters provide a valuable partnership in representing local and national industry positions before state officials. This partnership enables the industry to address local issues with the uniformity and coordination required by a national industry.

NAPEO—Source for Information

NAPEO has the information, data, services and materials to inform and assist all legislative and regulatory bodies about the PEO industry. Whether responding to policy needs or developing industry benchmarks, NAPEO is the leader in developing and advancing the PEO industry. Please visit our web site at www.napeo.org or contact us directly at NAPEO, 901 North Pitt Street, Suite 150, Alexandria, Virginia, 22314, (703) 836-0466, Fax (703) 836-0976.



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.

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.



5-9

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.

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

Profile of Typical PEO Client

NAPEO's membership survey, performed by KPMG Peat Marwick, found that in 1997, the average PEO client had 16 workers, each earning an average of \$18,178. KPMG Peat Marwick further found that the average PEO retains 85% of their clients over a one year period.

Alex. Brown & Sons, an investment banking firm, estimates that 40% of companies in a PEO relationship upgrade the overall benefits package offered to employees as a result of the PEO relationship. In addition, Alex. Brown analysts have found that an astounding 25% of the companies upgrading their benefits are offering health care and other benefits to their workers for the first time.

Industry Growth

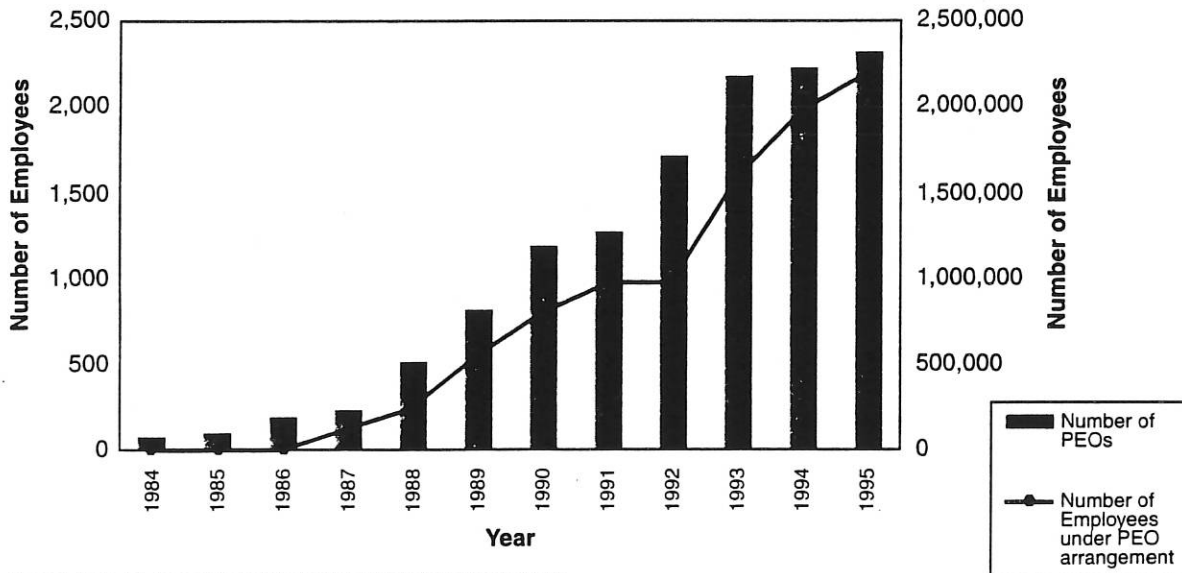
In October 1984, Nations Business reported that the number of employees in PEO arrangements grew from 4,000 to 60,000 in the twelve months since October 1983. By 1997, industry

analysis performed by Lehman Brothers indicated that 2,000 PEOs in the U.S. employ two million workers. Most other current estimates, including those of NAPEO, put the number of employees around 2 to 3 million and the number of PEOs at 2,000 plus, with an industry growth rate of 20-30% per year.

Government Response

State and federal regulatory agencies, the Small Business Administration, and state and federal legislators have shown keen interest and support for the growing industry and for the services provided by PEOs to businesses. Government officials have met with NAPEO representatives and have spoken at industry events on several occasions. Such appearances have been opportunities for educating administrators on the benefits and value of PEOs.

**The Booming Employment Outsourcing Industries
PEO Employees and PEO Organizations, 1984-1995**



Source: National Association of Professional Employer Organizations

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The Role of PEOs in Today's Workplace

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.

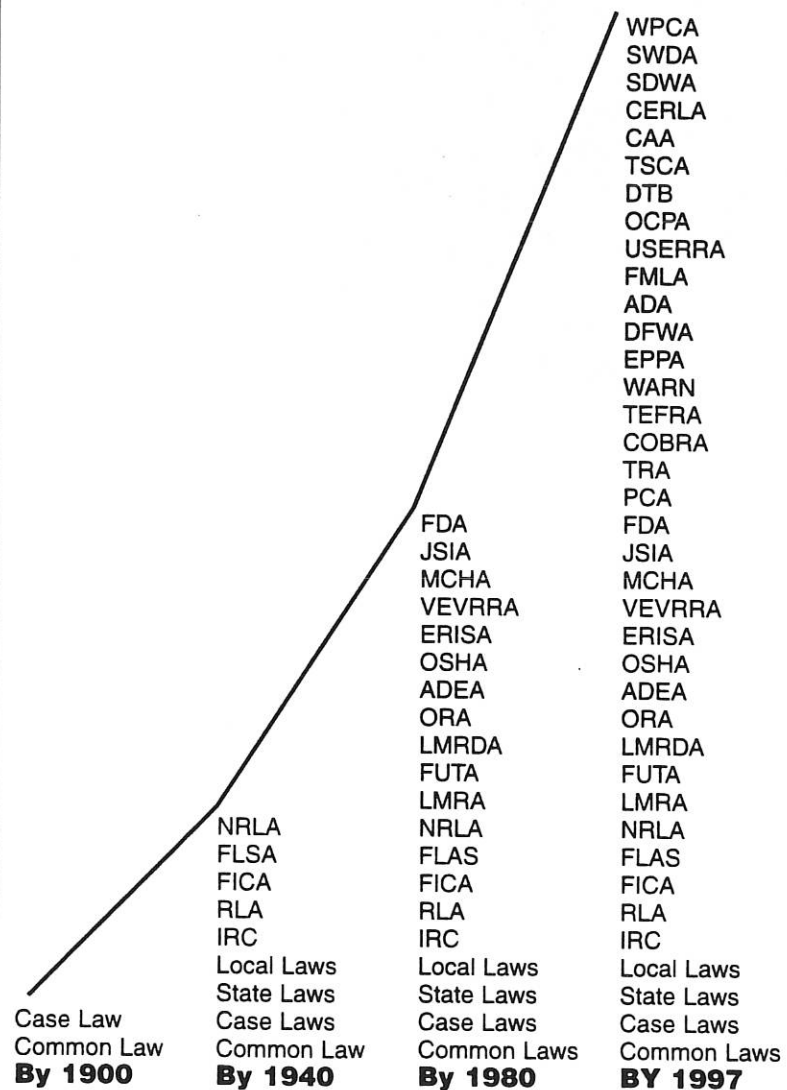
Helping Entrepreneurs With the "Business Of Employment"

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



Helping American Workers and Their Families

In addition to providing important services to their business clients, PEOs offer substantial advantages to worksite employees. In many cases, these employees would not be provided the number, or quality, of benefits that a PEO can offer. These benefits include health insurance, retirement savings plans, disability insurance, life insurance, dependent care reimbursement accounts, vision care, dental



insurance, employee assistance plans, job counseling and educational benefits. Each individual small business's cost of establishing and administering this range of plans would be prohibitive. However, due to economies of scale, PEOs can sponsor and offer these plans at an affordable cost.

In many cases, employees of small businesses would not be protected by employment laws in the absence of the PEO relationship. Because worksite employees are included in the larger workforce of a PEO for purposes of determining statutory coverage, they are in many cases covered by employment laws that would not have otherwise applied. Further, there is generally a higher rate of compliance with these laws by a PEO than by its clients because PEOs provide full-time staff who are responsible for monitoring and ensuring compliance with such laws.

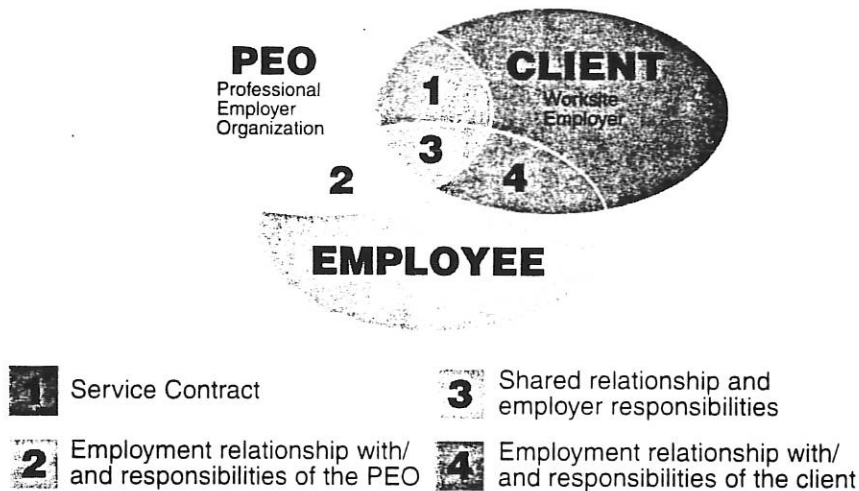
PEOs Are Co-Employers

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

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



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.

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.

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.

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,

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.

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.

NAPEO'S POSITIONS ON KEY INDUSTRY ISSUES

Summary of Positions

- Analysis of Key Issues
- Unemployment Insurance
- Workers' Compensation
- Provision of Benefits

Position on State Regulation

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 non-discriminatory 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.

Employer Liability

The explosion of employment-related litigation has been a major factor in the growth of the use of PEO services by small businesses. PEOs assist clients in reducing the liability they face through the application of preventive case management techniques. PEOs continuously seek to improve compliance with employment, labor, and civil rights laws and to minimize liability for their clients. In a co-employment arrangement, employer risk and liability are contractually shared between the PEO and client.

COBRA

In some instances, workers co-employed by a PEO obtain the benefit of COBRA rights and the protection of other employment laws and regulations, only because they are included in the larger workforce of a PEO. In addition, there is generally a higher rate of compliance with COBRA and other laws by a PEO than by its various clients. PEOs employ staff who are knowledgeable about these laws and regulations, and who are responsible for addressing employment concerns of worksite employees.



Title VII, FMLA, ADA, HIPPA

In addition to providing benefits to working Americans, the objectives of PEOs are consistent with many policy goals of federal laws – providing workers with work environments that are safe, conducive to productivity, and free from discrimination. NAPEO supports these policy objectives, as embodied in Title VII, the Americans with Disabilities Act, Health Insurance Portability and Accountability Act and the Family and Medical Leave Act. In fact, PEOs are identified as the “primary” employers for purposes of FMLA compliance. PEOs have professional staff who are responsible for addressing employment concerns of worksite employees. Finally, because of the unique relationship created between a PEO and its clients, PEOs are able to influence the hiring and employment practices at client worksites and help develop policies and promote training which furthers the intended goals of social legislation.

Unions

NAPEO endorses the rights of employees to organize, or not organize, according to standards of the National Labor Relations Board (NLRB) and other governing bodies. A PEO arrangement works equally well in union and non-union workplaces. The 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 abide by the agreement’s terms, but are generally not a party to the collective bargaining agreement.

Fiscal Responsibility

NAPEO believes that responsibility for payment of employee wages, regardless of the receipt or adequacy of payment from the client, is retained by the PEO. PEOs are not agents of small business clients. PEOs establish an employment relationship with their worksite employees and contractually assume the responsibility and liability for payment of wages and related taxes.

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 man-

agement 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.

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 policy-holders. 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.

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.

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,

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 list 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.

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.

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.

**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.

ENTERPRISE

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."

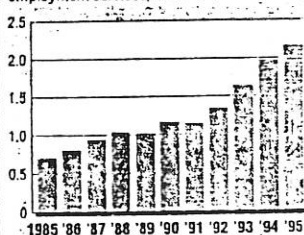
Signs of a boom abound as deals proliferate. Staffing Industry Report, a Los Altos, Calif., newsletter, says acquisitions in the staffing field nearly doubled last year from a year earlier. Since the beginning of May, three companies in the field have filed to make initial public offerings, the newsletter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

Temps in Demand

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



Source: National Association of Temporary and Staffing Services

ployer 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.

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 \$196,000 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 Tricon Inc., Milwaukee, makes its living supplying 120 temporary agencies with money to meet these payrolls. The company, which had revenue of \$1 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 Tricon 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."

USA TODAY

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Money

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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.

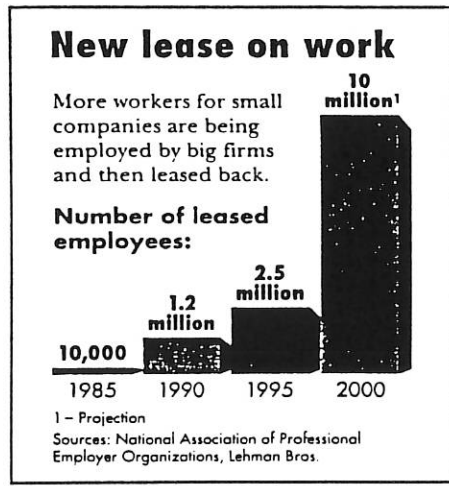
Despite the noise, this upheaval is peculiarly quiet. But within 10 years, the 102 Parrot Jungle employees will be working for perhaps the largest private employer in the country, bigger than WalMart or General Motors.

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



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.



the labor force does.

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

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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.

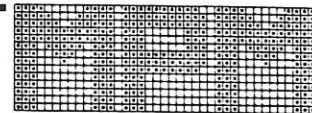
Because PEOs and their client companies are essentially co-employers, courts are only starting to sort out who is on the hook when an employee files charges of sexual harassment or job bias. Vincam is being sued by an injured motorcyclist who had an accident with a valet at a Miami Beach client hotel. 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."



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.

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

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.

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 co-employer 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 prac-

tice with an annual actuarial certification letter?

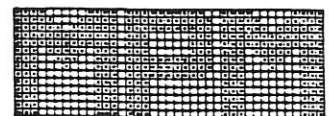
- Is the company a true sole employer, and will it, in writing, indemnify the practice of its legal liabilities?
- Does the company furnish quarterly audit letters from an independent accounting firm that certify all payroll taxes, insurance premiums, and pension fund contributions are paid fully and 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

Ronald Gersh Associates, a multi-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 Paraski 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 Iovillo and Gregory Sliamowitz 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 Paraski administration is reading 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—Administrative 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. Iovillo 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 pro-

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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 compa-

nies 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

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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.

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 con-

Small-business owners generally save 3 percent to 5 percent of their payroll expenses by outsourcing to PEOs.

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tract 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.

—JL

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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."

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 non-traditional 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. ■

Jennifer J. Laabs is the associate managing editor at PERSONNEL JOURNAL.

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?"

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