



707 North St. Asaph Street
 Alexandria, VA 22314
 703-836-0466
 www.napeo.org

**The National Association of Professional Employer Organizations (NAPEO)
 Statement for the Record**

**Hearing on HB 4005
 February 12, 2024**

OPPOSITION – HB 4005 and amendments

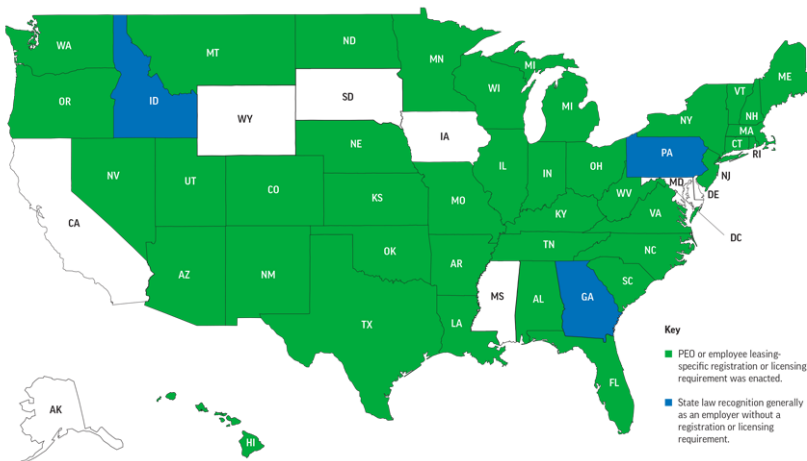
We thank Chairman Holvey for the opportunity to provide comments on legislation under consideration by the House Business and Labor Committee, House Bill 4005 and the proposed amendments.

NAPEO opposes HB 4005 and the proposed amendments.

There are almost 500 PEOs located throughout the United States that provide payroll, benefits, risk management, regulatory compliance assistance and other HR services to nearly 200,000 small and mid-size businesses employing 4.5 million people. Approximately 17 percent of businesses with between 10 and 99 employees' nationwide partner with a PEO.

The PEO industry operates in all 50 states. In Oregon, PEOs serve more than 3,000 small businesses with more than 31,000 employees in industries and sectors as diverse as manufacturing, hospitality, commercial vineyards, healthcare, high tech and nonprofits, to name a few examples.

PEOs are champions for their small business clients and their employees. Through a PEO, the employees of small businesses gain access to Fortune 500-level employee benefits such as: health insurance, dental and vision care, life insurance, retirement savings plans, job counseling, adoption assistance, educational assistance and other benefits. And, by providing payroll, HR and compliance assistance services, PEOs allow small businesses to focus on their core mission, improve productivity and profitability, and grow.



At present, 42 states have some form of PEO regulation. Thirty-nine have PEO-specific licensure and/or registration and an additional three states recognize the PEO as an employer.

These states statutorily recognize PEOs as the employer or co-employer of worksite employees for many purposes, including workers' compensation and state unemployment insurance taxes. Even

states that do not have PEO licensing or registration laws, such as California, Pennsylvania, Georgia and Idaho, do have general regulations or laws that recognize and regulate PEOs.

Since 1993, there has been recognition in Oregon statute of the ability of employee leasing companies (the former name of the PEO industry) to sponsor workers' compensation for their clients' worksite employees. It was the PEO industry that lobbied for that recognition. There is a long history of the PEO industry working with the state of Oregon to improve business practices and to implement important public policy initiatives such as the Oregon Saves Act. We actively partner with the state of Oregon in ensuring compliance with tax, employment, retirement, safety and health, and unemployment compensation laws.

PEOs exist to help both small businesses and their employees navigate complex local, state and federal laws and regulations. When new laws are enacted, they sometimes impact the co-employer arrangement in unintended ways. When this has happened in Oregon, we have worked with the state to make sure that the PEO clients who are required to offer new benefits or participate in a new program do so, and do not attempt to use the PEO arrangement to avoid legal obligations.

At the federal level, the PEO industry is recognized in the Internal Revenue Code and through regulations promulgated by both the Department of Treasury and the Department of Labor. In 2014, legislation was signed by President Obama creating a program that allows PEOs to voluntarily certify with the IRS. The IRS's PEO certification program formally codified PEOs within the tax code and confirms that certified PEOs can pay federal employment taxes under their Employer Identification Number (EIN). The IRS recognized the right of PEOs to withhold and remit federal income and unemployment taxes for worksite employees in section 3511 of the IRS Code. In 2019, the Department of Labor issued regulations stating that for the purposes of the Employee Retirement Security Act (ERISA), a PEO is an employer as defined under Section 3(5) of this Act for the purposes of sponsoring employee benefits. In 2021, the Department of Education made it clear that the employees of non-profits that use a PEO are still eligible for loan forgiveness.

This is just a sample of the federal and state legislative and regulatory activity that, in many cases, the PEO industry both lobbied for and supported. In addition, there are more than 30 years of case law, regulatory compliance enforcement, and judicial decisions on PEOs and PEO business practices. There is clear legal, regulatory and case law precedent for PEOs to operate throughout the United States.

In reading HB 4005, the proposed amendments and the potential amendments that could be offered to this bill, there seems to be confusion about the PEO's relationship with the employees of their clients. The arrangement is referred to as "co-employment." A good explanation of this concept can be found on the website of the [Oregon Workers' Compensation Agency](#).

Worker leasing is an alternative for employers to manage the administrative functions of their workforce. Under a typical worker leasing arrangement, an employer contracts with a worker leasing company, commonly called a professional employer organization (PEO), to co-employ all or most of the employer's regular workforce. The PEO becomes the employer of record for certain employer obligations, typically payroll, employment taxes, workers' compensation insurance, and Workers' Benefit Fund assessments.

PEOs may also offer other services, such as human resources support, retirement plans, and health plan options. This allows the client employer to operate other aspects of the business.

Worker leasing companies must have a license to legally operate in Oregon. The license is issued by the Workers' Compensation Division and is valid for two years. At expiration, the license may be renewed.

Worker leasing differs from temporary staffing because the employees are permanent. Temporary staffing does not require a license.

There is nothing illicit about this arrangement. It is the basis by which the PEO industry legally operates throughout the country in support of small and medium-sized businesses.

Co-employment is a contractual agreement between a company and a PEO that allocates and divides employer responsibilities. The contract is often referred to as a client service agreement (CSA). In a co-employment agreement, a PEO client's employees (also called worksite employees) are employed by two separate entities, the client company and the PEO.

The client company is the employer who has a direct relationship with the employee and is responsible for:

- all business decisions.
- operations.
- day-to-day supervision of employees.
- job assignments.
- employee reviews and assessments.
- determining the employee's compensation.

The PEO provides services related to employment such as:

- payroll processing.
- payroll tax administration.
- employee benefits.
- human resources services.
- workers' compensation coverage and claims management.
- compliance assistance.
- human resources technology platforms.

The PEO will be responsible for remittance of payroll and employment taxes, may maintain employee records and may retain a limited or general right to hire and fire, as delineated in the CSA. Because the PEO also may be responsible for providing access to workers' compensation coverage, they also focus on and provide assistance with safety and compliance.

In a PEO arrangement, the employees working at the small business remain employees of that business and the client small business is responsible for the direction, supervision and control of its workplace and worksite employees. PEOs do not supply labor to worksites. If a PEO relationship is terminated, then the workers' co-employment arrangement with the PEO ceases, but they will continue as employees of the client.

It is unclear why, after more than 30 years of legally supporting small businesses throughout Oregon, this committee is considering making major changes to the laws and regulations governing PEO operations. The bill before the committee - HB 4005 and the proposed amendments - state there can be only one employer. Enactment of this legislation will end co-employment, shutter the PEO industry in Oregon, and cause huge problems for the more than 3,000 small businesses in Oregon that use our services. They would lose the PEO industry's expertise on workers' compensation, unemployment law and regulations, compliance assistance and a host of other services. Their 31,000 employees would lose access to affordable health insurance, retirement benefits and human resource services normally not available to the employees of small businesses.

Eliminating co-employment will make it impossible for PEOs to provide workers' compensation insurance. If a PEO is not an employer, it cannot offer workers' compensation insurance to its client's employees. PEOs could not sponsor health insurance for their co-employees, or retirement plans, even though the U.S. Department of Labor has recognized the ability of PEOs to sponsor retirement plans. There may also be legal problems for IRS-certified PEOs who are required to remit payroll taxes for their client's employees on their EIN.

Not only would ending co-employment signal the end of PEO industry operations in Oregon, but it would also require the state to unwind the current UI, workers' compensation and other systems in place that regulate PEOs. It would require more than 3,000 small businesses and their 31,000 employees to transition out the PEO arrangement and find new workers' compensation insurance, health insurance and retirement benefits, all within 90 days per HB 4005 or when operable per the proposed amendments. Throwing these companies and employees into chaos is not beneficial to small businesses in Oregon.

A positive step the legislature could take to improve the operations of PEOs in Oregon would be to pass comprehensive PEO industry regulation to provide a clear and succinct set of definitions for the PEO industry as well as the relationship between PEOs, covered employees, and clients. In the past several years, state legislatures in Massachusetts, Kentucky, and Missouri have passed similar industry-supported efforts that have yielded successful regulatory regimes in these markets.

NAPEO and its members are ready to work with the chair and any other members of the Oregon legislature to enact comprehensive PEO regulation. We also are ready to assist the state legislature and the appropriate regulatory agencies in Oregon to address any issues that arise from the PEO arrangement. Instead of improving the PEO marketplace, the solutions being offered in HB 4005 and the proposed amendments would end the ability of PEOs to operate in the state. For this reason, we are opposed to the enactment of HB 4005 and the proposed amendments, and we would ask that the members of this committee oppose this bill.