



February 13, 2024

House Committee On Business and Labor
900 Court St. NE
Salem, Oregon 97301

RE: Written Testimony in OPPOSITION of HB 4005 and the proposed amendments, "Relating to an individual's performance of services for an employer."

Dear Chair Holvey, Vice Chairs Elmer and Sosa, and Members of the Committee:

Thank you for the opportunity to provide written testimony. I registered to testify at the hearing scheduled for February 12 but due to time constraints was unable to provide input. Since then, there has been considerable material submitted as well as an additional amendment. While there are quite a few technical issues that really require getting into the weeds, the focus of my testimony is keep the bigger picture in mind:

1. The worker leasing/PEO (Professional Employer Organization) industry has been in operation and not changed in 30 years.
2. Branding of PEO vs the worker leasing industry.
3. HB 4005 and its amendments would eliminate the worker leasing/PEO industry.
4. How co-employment is central to the worker leasing/PEO industry.
5. How the worker leasing/PEO industry helps small businesses.
6. How the worker leasing/PEO industry helps employees.
7. Support of modernization, not the elimination of an industry dedicated to small businesses.

1993 Legislative Intent

Reviewing the legislative hearing record on HB 2282, it is clear that a worker leasing company is an employer. There is discussion on separating out duties between the worker leasing company and the client employer which is the common law employer. The leasing company becomes the employer of record 'providing' the employees back to the client employer in a lease agreement, with duties broken out between both parties.

WORKPLACE SOLUTIONS

1.800.342.4742 | www.cardinal-services.com



Branding of Worker Leasing Companies

There is an unbroken continuity between worker leasing companies and PEOs. The term “employee/worker leasing” was the standard in the 1990s. In 1993, when HB 2282 was passed, what is now called the National Association of Professional Employer Organizations was then called the National Staff Leasing Association. Rebranding would have been helpful when I was ‘leased’ from Cardinal Services. Before working for Cardinal, I was hired to work on a political campaign who decided to use a worker leasing company. I was not keen on the process. No one wants to be a “leased worker”. The term is slightly degrading. It should not be a surprise that worker leasing companies rebranded themselves as PEOs. But there is no difference between PEOs and worker leasing companies. All PEOs are licensed as worker leasing companies. A Professional Employer Organization is more descriptive of what a worker leasing company provides.

It is important to note that the division of duties between Cardinal (the leasing company) and the client employer (the campaign) when I signed up with Cardinal in 1997, was the same as in 2024. There is no difference other than the technology used and complexity of being an employer.

Elimination of the PEO/Worker Leasing Industry

For 20 years I was Cardinal's workers' compensation manager. Because our workers compensation coverage is so central to our offering, I became a licensed property and casualty agent. One of the basics you learn in insurance school is that there needs to be an insurable risk. You can insure your home or auto, but not your neighbor's home and auto. In general, you need to have the opportunity for a loss to be present to have an insurable risk. Why is this relevant? HB 4005 and its various amendments state there is only one employer. Each hour of work is assigned to one employer, specifically the common law employer, which in the bill is not the PEO but the client employer. Under HB 4005, it is envisioned that the PEO can offer workers' compensation coverage. However, if the PEO is not an employer, how can they extend workers' compensation coverage as envisioned in the bill and amendments? The PEO would not have an opportunity for loss.

Looking at the current co-employment model, the worker leasing company/PEO and the client employer have risk, an insurable interest. Both employers have risk, because if there are excessive workers' compensation claims, they both get higher rates. HB 4005 and its amendments remove that risk as the PEO will not be an employer.

HB 4005 and its various amendments also mention the PEO offering group health insurance. A core offering. But once again, PEOs will not be co-employers. And not having co-employment, PEOs have no insurable risk to offer health insurance.

And what about other offerings? Worker leasing/PEO is not just about workers' compensation and group health plans. How about dental, vision, life, long term care, or a 401(k)?

WORKPLACE SOLUTIONS

1.800.342.4742 | www.cardinal-services.com



Economic Model Supporting Small Businesses

Being able to offer a standardized set of benefits, like workers' compensation or health insurance, allows the worker leasing company/PEO to negotiate large plans at a discount. Essentially buying in bulk gives small employers the buying power of the big guys.

Another key aspect is the aggregation of all the required paperwork and the corresponding reduction in administrative costs. Instead of 500 workers' compensation policies, one large one. Instead of scheduling 500 workers' compensation audits, one single audit. Instead of 500 health insurance plans, with different carriers, different levels of eligibility, different benefit options to manage, just one large one. Instead of filing 500 separate OQ and 132s (these are the payroll and tax reports for the Oregon Employment Department), one big one submitted electronically. A 401(k) is expensive, primarily due to the required audit for the federal Department of Labor. With one single audit, the cost is so spread out that Cardinal does not even have a separate charge to use the basic Cardinal 401(k).

The buying power and efficiencies of scale are why small employers are attracted to work leasing companies/PEOs, saving them time and money.

Economic Model Supporting Employees

The key to a small business's success are its employees. Retention and recruitment of employees is of vital concern. Small businesses must compete with large employers. Pay is an important aspect but so are benefits. As noted, worker leasing companies/PEOs can negotiate for better rates by pooling the buying power of hundreds of small employers. Usually a small employer can afford better health insurance for employees in a large association plan with the worker leasing company/PEO. Maybe the small employer does not have the expertise to connect a Flexible Spending Account to payroll or expertise in setting up a Health Reimbursement Account. These additional benefits are a given at large employers. Also noted before, there is considerable expense in setting up and administering a 401(k). OregonSaves is a good plan, but does not compare with the options of a 401(k). With the money saved in using a worker leasing company's/PEO's 401(k), the small employer may be able to offer an employer match, which is not allowed under OregonSaves.

Modernization of Worker Leasing/PEO

The current statute needs updating. Worker leasing companies/PEOs have a long history working with agencies and stakeholders creating win-win-win solutions. Worker leasing companies/PEOs are willing to work on solutions, including on finding a better way to report and remit unemployment taxes to the Oregon Employment Department. A win-win-win would be avoiding filing the aforementioned 500 OQ or 132 paper files individually with the Oregon Employment Department (I think it is safe to say that would be their preference), not having each individual client employer review and sign their OQs and 132s, and worker leasing companies/PEOs keeping the overall cost of administration lower for everyone.

WORKPLACE SOLUTIONS

1.800.342.4742 | www.cardinal-services.com



HB 4005 and its amendments are not a solution, not a modernization, but the elimination of an industry primarily supporting small employers.

Thank you,

Arin J. Carmack
CEO
Cardinal Services, Inc.