



February 14, 2024

Hearing on HB 4005
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OPPOSITION-HB 4005: Written testimony in opposition to HB 4005 and the proposed amendments.

Chairman Holvey and House Business and Labor Committee members, I thank you for the opportunity to comment on legislation currently under consideration by your committee. Specifically, I am in opposition to House Bill 4005 and the proposed amendments for the reasons noted below:

I am an attorney in the state of Florida where I am the principal at the PEO Law Firm. My legal practice focuses primarily on Professional Employer Organizations (PEOs) and alternate employment models such as staffing. In addition, I have represented clients on workers' compensation insurance matters for 33 years. I also serve as the Deputy General Counsel of the Florida Association of Professional Employers (FAPEO). In that capacity, I have been asked by the National Association of Professional Employer Organizations (NAPEO) to review HB 4005 and its subsequent amendments.

NAPEO currently estimates that there are approximately 31,000 (Thirty-one thousand) workers co-employed in Oregon with PEOs and there are approximately 3,000 (Three thousand) onsite/client employers utilizing PEOs in the state of Oregon. As such, PEOs represent a significant contribution to the economy and citizens of the state of Oregon.

PEOs are a valuable resource for the citizens of Oregon. A PEO's client base typically includes companies facing challenges securing workers' compensation coverage through the voluntary market. Many of these companies are start-up businesses that need assistance in order to open and to stay open. Statistically, PEOs have proven to provide a significant advantage for small businesses in staying operational.

This PEO/client relationship is a contractual relationship that is authorized by statute and rule with duties allocated pursuant to that contract. PEOs are also recognized at the federal level, as noted by section 7705(a) of the Internal Revenue Code.

It is therefore a significant concern that the language proposed under HB 4005 and its amendments represents a dramatic change for PEOs licensed in Oregon as

Worker Leasing Companies under ORS chapter 656.850. The proposed legislation, if passed, jeopardizes the ability of PEOs to provide services to the citizens of Oregon.

Specifically, the language proposed under HB 4005 and its amendments eliminates the co-employment model that is the key element of a PEO/client relationship. Without that co-employment relationship, a PEO's ability to form a business relationship in which there is an insurable interest with the client's co-employees is erased.

As such, under this bill, there is no viable means for a PEO to offer to provide workers' compensation coverage, through its insurance carrier, for leased co-employees. The result of this bill would be that PEOs would only be able to secure workers' compensation coverage for their internal staff, thus leaving a large population of Oregon businesses to scramble to find their own coverage. For those businesses that are unable to secure that coverage, the result could be the closure of their business operations and the loss of jobs for its workforce.

Another concern is that this language removes exclusive remedy for the PEO by removing the co-employment relationship from the PEO/client relationship. Of particular concern is the language in HB 4005 (2) and the amendments that are located on Page 9, lines 28-30. That language states that a worker will not be both a PEO and a client employee at the same time. Without a co-employment relationship, the exclusive remedy protections would be eliminated for the PEO. This language would create significant exposure to any PEO that provides services to clients in Oregon.

In that regard, it is important to understand that a PEO is not a workers' compensation insurance carrier nor is it an insurance agency. Like any business, PEOs have to go to market to secure their workers' compensation coverage. Despite that, this language places PEOs in the position of serving as a carrier or agent for their clients as is noted in HB-4005 (2) page 2, Lines 3-22. Those are not activities authorized by a PEO's licensure as a Worker Leasing Company in Oregon.

Despite the language on Page 10, lines 4-7 allowing PEOs to offer health insurance, this bill jeopardizes the ability of the PEO to offer those benefits. Like workers' compensation, employee benefits offered through the PEO are based upon the co-employment model. By removing that co-employment relationship, as this bill requires, the path for health insurers to provide insurance benefits to workers outside of the PEO would likely be closed. This will create an additional negative impact on the citizens of Oregon.

As my father used to tell me, "If it aint broke don't fix it". In this case, Oregon has a system that works for all interested parties. Accordingly, I would ask that you reject this bill and its amendments in their entirety.

Sincerely,



Torben S. Madson, Esq.
The PEO Law Firm, LLC