



June 14, 2019

*Electronic Delivery*

Steve Peters, Chair  
Administrator  
Wisconsin Workers' Compensation Division  
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Madison, WI 53702  
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**Re: PEO REFORM**

Dear Mr. Peters:

On behalf of the National Association of Professional Employer Organizations (NAPEO), I would like to thank you for the opportunity to convey NAPEO's support for the proposal before the Advisory Council that would allow Wisconsin employers to maintain their own workers' compensation insurance coverage inside a relationship with a professional employer organization (PEO).

NAPEO is the largest trade association for PEOs, which provide comprehensive HR solutions for small and mid-sized businesses. NAPEO represents approximately 300 PEO member companies that provide services to over 156,000 businesses employing more than 2.7 million workers nationwide. In Wisconsin, our industry's footprint includes over 12 PEOs who report doing business in the state. PEOs pay approximately \$1 billion in worksite wages to Wisconsin workers.

As background, a PEO's services include payroll, the payment of payroll taxes, workers' compensation and other employee benefits. These services are provided pursuant to a contractual co-employment arrangement that allocates specified employer responsibilities between the PEO and the client employer.

Around 15 years ago, NAPEO reached out to Wisconsin in the hopes of securing the passage of a regulatory framework that would give certainty and stability to the emerging PEO business model in the state. At that time, the industry was relatively unknown to regulators and the legislature ultimately passed a package, which we feel has proven to be successful in allowing the industry to mature and has established a positive rapport with the state. As part of that final package, NAPEO compromised with the state in its request that the PEO be solely liable for providing workers' compensation insurance, covering all of its clients and their employees, payable under Section 102. Even at that time, an approach that prohibited **either** the PEO **or** the client to secure workers' compensation coverage while inside a PEO relationship was an outlier compared with the flexibility afforded by the majority of states that had regulated this issue. It was also a departure from NAPEO's policy position, which has always advocated for the option of workers' compensation coverage to be provided either by the client company or the PEO. This public policy position has been and continues to be a part of the industry's model legislation, which has been used as a template for regulatory frameworks across the nation.

To that point, 45 states (including both NCCI and independent rating bureau states) allow for client-sponsored workers' compensation coverage within a PEO agreement. Recent states to adopt this policy include Illinois (2016), New Jersey (2017), and Massachusetts (2018). Additionally, several national well-respected workers' compensation policy setting organizations have endorsed this approach through model legislation and state-level rate filings including the National Association of Insurance Commissioners (NAIC) and the National Council on Compensation Insurance (NCCI). And in July 2018, the National Council of Insurance Legislators (NCOIL) re-adopted a model act expressly allowing for client-sponsored policies inside a PEO relationship. I would highlight Section 5 of NCOIL's Model Act Regarding Workers' Compensation Insurance Coverage in Professional Employer Organization (PEO) Relationships, which reads:

**“A. The responsibility to obtain workers' compensation coverage for Covered Employees in compliance with all applicable law shall be specifically allocated in the Professional Employer Agreement to either the Client or the PEO.”**

This change in policy would not result in a significant shift from the current landscape. NAPEO members will largely continue to provide workers' compensation coverage for its clients and employees because such coverage continues to be a core service of the PEO model, along with HR compliance, payroll administration, and other benefit services. That said, NAPEO supports the adoption of client-sponsored workers' compensation policies when partnering with a PEO because, in limited instances, sophisticated and established companies with multi-state operations have sought out the services provided by NAPEO members but are stymied in their options under current Wisconsin law.

Small and mid-sized businesses in Wisconsin are looking for assistance in complying with increasingly complex federal and state regulatory mandates. They are also seeking access to better and more robust benefit options for the benefit of their employees in order to attract and retain world-class talent. In limited instances, sophisticated businesses that seek out these services may have a pre-existing risk management program, employ in-house risk specialists and have tenured coverage relationships with workers' compensation insurers. Without a sensible change, the current law in Wisconsin will continue to penalize these companies by forcing them to make a choice between abandoning their current risk program in order to avail themselves of a PEO's services; or, keeping their in-house risk program and foregoing the benefits their employees would receive within a PEO relationship.

Thank you again for your time. NAPEO supports this policy change, but please contact me directly should you have any questions.

Sincerely,

Daniel A. Harris  
NAPEO  
Vice President, State Government Affairs

Cc: Stephanie Bloomingdale, Advisory Council Caucus Chair  
Chris Reader, Advisory Council Caucus Chair