

Why PEOs Don't Take the Insurance Headaches Away

BY DANIEL BRETTLER

It's no surprise arrangements with Professional Employer Organizations (PEOs) have become popular in the life science industry. With the promise of allowing business leaders to focus on their core competencies, PEOs handle employee management tasks like payroll, benefits, regulatory compliance and more. They do this by becoming the employer of record for a company's current employees and providing tools and training to improve operations. For small businesses in particular, the PEO model has shown to reduce turnover and help firms grow faster.

This is an attractive value proposition, and one PEOs tout when working with firms in complex industries like life sciences, where companies are already accustomed to outsourcing manufacturing and research roles. But despite the fact that PEOs are in the business of reducing worry, companies should still be wary of the conditions of their partnership.

When it comes to changing your employment structure through a PEO, one of the most important and overlooked aspects to consider is insurance. Firms need two types of insurance for employment-related claims: employment practices liability (EPL) and workers compensation. EPL insurance provides coverage against claims of wrongful termination, discrimination, harassment and more. Workers comp ensures that workers injured on the job receive medical care and compensation for lost income and typically protects employers against lawsuits from injured workers.

Many PEOs are quick to say that EPL and workers comp coverage is "taken care of" as part of the relationship. But a closer review of your PEO's insurance policies may reveal crucial gaps that can implicate your PEO's worksite employees and anyone else who does work for you during the policy period. Without reviewing your collective coverage, you may be operating with significant exposures.

When you make assumptions about your PEO's insurance coverage, you overlook three critical truths about employment practices:

1. You're still legally liable.

As a general rule, you should always consider yourself in the hot seat for any employment matters, even if you engage a PEO.

It's a common misconception that if you enter into a PEO arrangement, your workers transfer employment to the PEO. In reality, your company becomes a joint employer. The PEO may now file your W-2 forms, but you will continue to oversee the employee's work, office space and more. The law takes these nuances into account when designating liability.

In the event of an EPL or worker's compensation claim, the plaintiff can legally implicate both entities. And if you are completely reliant on your PEO's insurance policy, you may lose control over the way the claim is handled.

Take the case of a perpetual harasser in the workplace. If a victim files a claim based on bad behavior, both the PEO and your firm may be considered joint defendants in the lawsuit. Because only the PEO's insurance policy is triggered, the carrier may appoint just one lawyer for the defense. If you and your PEO have different priorities for the case, this can easily lead to arguments over strategies and settlement terms.



When a claim like this threatens your firm's finances and reputation, it's important to have influence over the outcome. By having your own EPL policy in place, you can manage sensitive claims with your carrier, without additional competing interests.

2. Your PEO's insurance coverage isn't enough.

Too many firms assume their PEO's coverage is sufficient. But by digging into your policy, you may find your interests aren't well protected.

It's critical to understand how your PEO's coverage is structured. Typically, a PEO's policy will include two limits. The first is your company's coverage limit – say, \$1 million – which represents the maximum amount the insurer will pay out for claims against your firm. The second limit is known as an aggregate limit, which represents the maximum amount the insurer will pay out for the employees of all of the PEO's client companies. So if your PEO's aggregate limit is \$20 million, the carrier will never pay out more than that amount during the policy period.

Sharing your coverage limit with other companies can be risky. If another one of your PEO's clients incurs a claim that requires a major payout, your own coverage dollars could be exhausted in the process. Rather than betting on unknown and unrelated companies, proactive firms will audit their PEO's insurance plan for coverage gaps and secure the additional insurance they may realistically need.

Workers compensation systems, including guidelines for securing insurance coverage, vary by state. It's important to understand how your state handles workers comp.

3. You must cover your contractors.

Your legal obligation doesn't end with your firm's W-2 employees. Exposure to a worker's comp or EPL claim still exists if you hire an independent contractor. In fact, this is a prevalent and often undetected exposure in the life science industry.

Firms often assert their 1099s are not employees. But in reality, a person doesn't need to be on your payroll to be considered an employee of your company. The consultants, sales reps and scientific advisory board members you hire to advance the approval and commercialization of your products can also represent exposures.

If you're engaging contractors, you will likely be obligated to cover any damages if they become injured while working on your behalf. And because these employees are not considered worksite employees by your PEO, those claims may not trigger your PEO's insurance policy. You must have your own insurance in place and ensure you have an independent contractor code in your policy.

BRINGING IN YOUR BROKER

A specialized broker with experience in the life science industry can identify coverage gaps in your policies and your PEO's policies and piece together a plan that provides proper employment practices coverage. It's best to have this conversation before engaging a PEO, so any supplemental insurance costs don't turn into an unexpected line item in your budget.

Making assumptions about employment insurance can be dangerous, especially when your firm's finances and reputation are at risk in the event of a claim. But addressing these issues upfront can ensure your PEO relationship does not compromise your coverage.

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