



December 2009

## **Board Talking Points: Use of Professional Employer Organizations**

Nonprofit organizations are always looking for ways to save on their personnel costs while at the same time offering their employees decent wages and benefits. Some organizations are considering the use of Professional Employer Organizations as a way to reduce their administrative overhead without having to eliminate jobs.

### **Questions:**

1. What is a Professional Employer Organization?
2. Who manages the day-to-day work of employees and makes hiring and firing decisions?
3. Will using a Professional Employer Organization save the organization any money?
4. Are Professional Employer Organizations regulated?
5. Is it necessary to have a written contract?

### **Answers:**

#### **1. What is a Professional Employer Organization?**

A Professional Employer Organization (PEO) is a company that contracts with an organization (the Client) to provide a wide range of human resource related services. The primary function of the PEO is to hire the employees of the Client and then, through contractual relationship, to “lease” the employees back to the Client. Through this arrangement the PEO and the Client become joint employers meaning that they are both responsible for paying wages, remitting withholding taxes, paying unemployment insurance and securing workers compensation. PEOs offer comprehensive workforce management services including administration of payroll, employee benefits, workers compensation and human resource guidance, for which it charges a service fee. The Client retains supervisory authority over the employee.

From the employees’ perspective their day-to-day job function, salary and reporting structure do not change, but they will receive a pay check and benefits from the PEO rather than the organization.

#### **2. Who manages the day-to-day work of employees and makes hiring and firing decisions?**

The Client continues to supervise the day-to-day work of employees and is responsible for supervising professional and licensed activities. When the Client hires a new employee they have a specified period of time to enroll the employee with the PEO. The contract will probably

require the Client to consult with the PEO prior to firing or disciplining an employee if such action could lead to an employment claim because as joint employers both the Client and PEO have potential liability to the employee. New York State law requires that PEO's retain the authority to hire, terminate and discipline employees. New York State Labor Law §922(1)(a)(iii). It is possible to have some employees jointly employed with the PEO and some employees who are solely employed by the Client. The terms of a collective bargaining agreement cannot be modified through the use of a PEO. *New York State Labor Law §917(1)*.

### **3. Will using a PEO save the organization any money?**

Of course, this question can only be answered by actually pricing out the cost of various PEOs and comparing the cost structure to what the organization currently pays for the same services and benefits. The theory is that a PEO will save an organization money because it is a larger employer and can, therefore, get better rates for benefits (such as health insurance), unemployment insurance and workers compensation insurance and that the PEO then passes these savings along to the Client. Also, a PEO may lighten some of the organization's administrative burdens and provide access to human resource tools and professionals that it does not currently have.

### **4. Are Professional Employer Organizations regulated?**

In New York State, PEOs are required to be registered with the New York State Department of Labor (DOL). *New York State Labor Law §919 (1)*. The registration is good for one year. Annually, the PEO must submit audited financial statements to the DOL or post a bond. Additionally, the PEO must submit reports quarterly to the DOL a statement of an Independent Certified Public Accountant that all payroll taxes have been paid. Below is the link to the State Department of Labor registry of PEOs in New York State:  
<http://www.labor.state.ny.us/workerprotection/laborstandards/employer/peo.shtm>.

### **5. Is it necessary to have a written contract?**

New York State law requires a written contract between the PEO and client evidencing an intent to co-employ all or a majority of the Client's employees on an ongoing basis. New York State Labor Law 916(3). Additionally, the agreement has to contain a description of the services to be provided by the PEO and the PEO must agree to: (i) reserve a right of direction or control over employees; (ii) assume responsibility for withholding and remitting payroll taxes; and (iii) reserve the right to hire, terminate and discipline employees. *New York State Labor Law §922(1)(a)*.

*Lawyers Alliance can help boards review contracts with PEOs. For more information please contact Linda Manley, Legal Director, at (212) 219-1800 ext. 239, [lmanley@lawyersalliance.org](mailto:lmanley@lawyersalliance.org).*