

TECHNICAL ADVISORY

INDEPENDENT INSURANCE AGENTS OF LOUISIANA

TA 164

August 11, 2000

SUBJECT: Louisiana Department of Insurance (LDI)
Directive #00-156
Professional Employer Organizations (PEOs)
August 11, 2000

BACKGROUND: Over the past several years, a new provider of insurance services, known as Professional Employer Organizations (PEOs), has developed. PEOs are a modern version of employee leasing based upon a relatively new legal concept known as "co-employer." The concept is that a PEO may provide a wide array of employer support services to its clients as a "co-employer" under the umbrella of the PEO operations. Under this concept, PEOs claimed a number of inherent advantages in their ability to provide products and services, including payroll, tax administration, human resources management, group employee benefits and various insurance coverages.

Numerous IIAL members ran into competitive situations with PEOs, in which the PEO insurance proposals were not written in compliance with existing insurance statutes and regulations. Four specific problem areas developed:

1. PEOs claimed that they were not insurance providers subject to Title 22.
2. PEOs claimed that they were not required to have an insurance license to sell their products which included insurance coverages.
3. Property / casualty coverages, including Workers' Compensation coverage, were not rated in compliance with approved Louisiana Insurance Rating Commission (LIRC) guidelines. Specifically, PEOs did not use proper classifications, apply client experience modifications and publish individual premiums for each client.
4. PEOs did not write and rate group health and related benefits subject to state and federal small group statutes and regulations.

PEOs argued that they were buying insurance coverages as one umbrella employer under their "co-employer relationship" with the client and were not selling individual client business insurance coverage. As a result, PEOs claimed inherent advantages over other insurance providers in delivering insurance coverages outside the established insurance regulatory structure.

In response to these problems experienced by IIAL members, IIAL initiated discussions with the Louisiana Department of Insurance (LDI) about the need to regulate PEOs in the same manner as the rest of the insurance industry. IIAL was joined in these LDI discussions by the Louisiana Workers' Compensation Corporation (LWCC), the Louisiana United Business Association (LUBA), Blue Cross of Louisiana, and the Louisiana Association of Self-Insured Employers (LASIE). IIAL would like to recognize and express its deep appreciation for the cooperative efforts of Steve Cavanaugh and Dickie Patterson of LWCC, David Bondy and David Tatman of LUBA, Michele Calandro of Blue Cross, Gary Patureau and Steve Glusman of LASIE. This industry coalition conducted extensive discussions with LDI about the need to regulate PEOs.

MAIN POINTS:

After seven months of extensive negotiations with the insurance industry, the PEO industry, and exhaustive independent research, the Louisiana Department of Insurance (LDI) issued [Directive #00-156, Professional Employer Organizations](#), dated August 11, 2000. This Directive is intended to protect policyholders and their employees from the unregulated PEO industry, and create a level playing field within the insurance industry. IIAL would like to express its deepest appreciation to Insurance Commissioner James H. "Jim" Brown who displayed great leadership by establishing a clear regulatory structure for this unregulated PEO industry. We would also like to recognize the following LDI staff members who assisted Commissioner Brown in the research and development of this regulation: Craig Johnson, Brenda Nation, Chris Faser, Chad Brown, Rich Piazza, Kathlee Hennigan, Noel Wertz and Richard O'Shee. IIAL has special appreciation for Executive Counsel Brenda Nation who led the LDI effort on this PEO directive.

Directive #00-156 is attached for your convenience. Following is an executive summary of some of the key points of this PEO directive:

1. The statutory authority for the Commissioner of Insurance to regulate the insurance operations of PEOs is established.
2. Activities which PEOs may conduct that would fall under the statutory definitions of "transacting the business of insurance" are outlined.
3. Clarifies that a PEO acting as an insurance solicitor, agent or broker by securing insurance coverage on behalf of the client or purchasing insurance coverage in the name of the PEO for "co-employees" requires an appropriate agent license. This includes soliciting PEO services based solely or primarily on the representation of insurance cost savings, advising a prospective

- client regarding insurance coverage, or selling a policy of insurance to a client.
4. Clarifies that insurance activities of PEOs must comply with Louisiana Insurance Rating Commission (LIRC) prior approval of workers' compensation rates, rules and plans.
 5. Clarifies that the insurance operations of PEOs are subject to the prior approval requirements of the Department of Insurance in the use of policy forms.
 6. Prohibits PEOs from providing group health coverage in a manner that does not comply with the small group statutory and regulatory requirements in violation of federal and state law.
 7. Prohibits PEOs from using a "bundle" of benefits and requires separate policies which will allow LDI, LIRC and other state regulators to track loss experience and coverage, using the traditional employer arrangement.
 8. Prohibits PEOs from engaging in unfair trade practices.
 9. Outlines the statutory penalties established for intentional violation of provisions of the Insurance Code.
 10. Establishes a clear desire on the part of LDI to work with PEOs to bring PEO operations into compliance with Louisiana Insurance Code Title 22.

**NECESSARY
ACTION:**

Circulate this Technical Advisory to appropriate commercial lines producers and customer service representatives.

IIAL will take a leadership position in reporting PEO violations under the terms of this Directive to LDI. Agents will most often be aware of these violations in competitive situations in the marketplace. IIAL members who experience violations of Directive 00-156 should gather all pertinent information and materials and forward them to IIAL Executive Vice President Jeff Albright. IIAL will work closely with LDI to monitor and regulate PEO violations. IIAL will report violations without the involvement of the member agency when requested by the member. IIAL intends to be extremely aggressive in monitoring and reporting PEO violations.

If you have any questions, need additional information or have information about PEO violations, please contact Jeff Albright at 225/819-8007.