

**INDEPENDENT INSURANCE AGENTS OF LOUISIANA  
9819 BLUEBONNET BOULEVARD  
BATON ROUGE, LA 70810**

**TEL 225 / 819-8007  
FAX 225 / 819-8027  
[www.iiial.com](http://www.iiial.com)**

**TECHNICAL ADVISORY**

**TA 173**

**January 8, 2001**

**SUBJECT: Professional Employer Organizations (PEO)  
Incidental Workers' Compensation Exposures**

**BACKGROUND:** Professional Employer Organizations (PEO) continue to be a growing segment of the insurance marketplace. Some agencies sell PEO services; other agencies compete against them. In either case, one critical issue which arises is: "How do you handle the incidental Workers' Compensation exposure of the client business?"

**MAIN POINTS:** The PEO provides workers' compensation coverage for the leased employees, which are included as part of the PEO services. However, the client business has statutory Workers' Compensation obligations for any full-time or part-time employees who are not included in the PEO services, along with any Workers' Compensation exposures for independent contractors or subcontractors. At first glance, these PEO client businesses may not appear to have such incidental Workers' Compensation exposure. However, as the insurance agent for such businesses, extreme care is needed in determining potential incidental Workers' Compensation exposures. Does the business hire part-time, seasonal or "contract labor" employees outside of the PEO services? Does the client business use "independent contractor" sales persons or producers? Does the client business use janitorial services, computer or equipment repair contractors, or other business services, which could generate uninsured Workers' Compensation exposures? Incidental Workers' Compensation risks can be created in a wide variety of circumstances.

In the final analysis, most businesses have the potential for incidental Workers' Compensation exposure. For a client business, which utilizes PEO services, the only method to cover such incidental Workers' Compensation exposures is

to buy a separate Workers' Compensation policy for the business. Unfortunately, this can also create problems.

First, where are you going to place minimum premium, incidental "if any" Workers' Compensation policy? Most voluntary Workers' Compensation insurers are not willing to write this unknown (probably unknowable) exposure with insignificant minimum premiums. The most likely market would be the Louisiana Workers' Compensation Corporation (LWCC) as the market of last resort. However, LWCC has advised IIAL that they will not issue minimum premium incidental Workers' Compensation policies to cover the incidental exposures of PEO client business. Although LWCC is statutorily required to provide coverage for Louisiana domiciled businesses as the market of last resort, they are not required to provide coverage for one segment of an employer's Workers' Compensation exposure. The bottom line is that providing Workers' Compensation coverage for the incidental exposure of a PEO client business can be difficult.

The second problem is that once you have written a Workers' Compensation policy for the client business, how do you integrate and coordinate that policy with the workers' compensation coverage provided by the PEO? Employees of the PEO could potentially claim coverage under both the PEO Workers' Compensation coverage and the client business Workers' Compensation coverage. Who pays? On what basis? Serious Workers' Compensation claims could give rise to difficult legal questions about the status of coverage and the coordination of benefit payments.

Whether your agency sells PEO services or competes against such services, you should be aware of the potential issues related to the coordination and integration of insurance coverage between the PEO and the client business. Although most PEOs limit their casualty insurance coverages to Workers' Compensation, similar issues could arise if the PEO provides commercial general liability, commercial automobile or other similar casualty coverages.

**NECESSARY  
ACTION:**

Distribute this Technical Advisory to appropriate commercial lines agency personnel. Determine how your agency will deal with these coverage issues, and make certain that agency personnel are trained to resolve these issues on behalf of your commercial customers.