

CSA / PEO Licensing

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The PEO Client Service Agreement (CSA): Best Strategies and Practices

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The CSA - Best Strategies & Practices

- Arguably the most important document of a PEO
- Clarifies “co-employment” and what it means
- Allocates the Obligations and Responsibilities of the PEO and Client
- Describes the services provided and NOT provided
- Details fees and charges
 - PEPM
 - % of Gross Wages
 - Bundled or unbundled?
- Indemnity

The CSA - Best Strategies & Practices

1. PEO provides Workers Compensation Insurance and Health Insurance under “master” policies
 2. PEO provides Workers Compensation Insurance; Client provides Health Insurance
 3. PEO provides Health Insurance; Client provides Workers’ Compensation Insurance
 4. Client provides Workers’ Compensation and Health Insurance
- The form of the relationship changes materially what needs to be in the CSA
 - How will the PEO address?
 - Separate forms of CSA
 - One form of CSA, plus addenda

The CSA - Best Strategies & Practices

- Description of services and products provided
- Fees and payment terms
- Worksite Employees/Co-employees defined
- How will Payroll data be provided/input – and when
- When are funds due
- Which party to provide workers' compensation insurance
- Which party to provide health insurance/other benefits
- Employer responsibilities
- Indemnity
- Confidentiality and Data Privacy
- Termination

The CSA - Best Strategies & Practices

- A CSA should outline how either PEO or Client can terminate the CSA, and when effective, including:
 - Either Party
 - Material breach by either party, following written notice
 - Whether there is a chance to cure the breach
 - PEO
 - Non-payment
 - Material adverse change of the client's financial condition
 - Client cannot pay debts as they become due
 - Any legal, regulatory, or judicial action
 - (Special case) – Client's workers' compensation policy terminates
 - Client
 - PEO should determine whether client can terminate for any reason and/or whether an opportunity to cure is required.
- A CSA should also address what happens and the responsibilities of each party upon termination:
 - Which party notifies worksite employees, including benefits notifications
 - Responsibility of client to obtain workers' compensation
 - Responsibility of client for payments by PEO to worksite employees before termination
 - Whether client must reimburse the PEO for any payments to worksite employees made after termination

The CSA - Best Strategies & Practices

- Many states require the following terms:
 - The PEO reserves the right of direction and control over worksite employees
 - But a client may retain sufficient direction and control over worksite employees as is necessary to conduct the client's business and without which, the client would be unable to conduct its business, discharge its fiduciary responsibilities, or comply with any applicable licensure, regulatory, or statutory requirement
 - The PEO retains authority to hire, terminate, discipline, or reassign worksite employees
 - But a client can retain the right to accept or cancel the assignment of any worksite employee
 - The PEO assumes responsibility for payment of wages
 - *Some states require this regardless of whether the PEO receives payment first from its client*
 - The PEO assumes full responsibility for the payment of payroll taxes and collection of taxes from payroll on worksite employees.
 - The PEO has given or will give written notice of the relationship between the PEO and the client company to each worksite employee.

The CSA - Best Strategies & Practices

- Any CSA should carefully track all state law requirements
- Strongly recommend an all-state addendum
- Examples:
 - Colorado:
 - PEO and Client share responsibility to address complaints, claims, or requests for worksite employees
 - PEO must pay wages from its own accounts and must maintain and secure all records and documents for worksite employees under Colorado's unemployment insurance laws
 - PEO can institute professional guidance programs
 - Florida:
 - Specify that the PEO is responsible for payroll even when Client does not pay
 - The PEO retains a right of direction and control over management of safety, risk, and hazard control at the worksite or sites affecting its leased employees, including
 - Responsibility for performing safety inspections of client equipment and premises.
 - Responsibility for the promulgation and administration of employment and safety policies.
 - Responsibility for the management of workers' compensation claims, claims filings, and related procedures

The CSA - Best Strategies & Practices

- If a PEO has CPEO designation, there are certain CSA requirements
- Keep in mind that CPEO status can be determined “contract by contract”
- Terms required:
 - Assumes responsibility for payment of wages irrespective of payment from client
 - Assumes responsibility for reporting, withholding, and paying applicable taxes....
 - Assumes responsibility for any employee benefits the PEO agrees to provide in the CSA
 - Assumes responsibility for recruiting, hiring and firing of co-employees – BUT in addition to customer’s same responsibilities
 - Maintains employee records

The CSA - Best Strategies & Practices

- Particularly in states with no PEO licensing (i.e., CA) or “light” rules, many PEOs will consider excluding the more “onerous” provisions required by some states’ laws
 - Examples include”
 - PEO must pay wages irrespective of payment from client
 - PEO reserves a right of direction and control
- Need to Consider the “other edge of the sword”
 - Too much avoidance of employer responsibilities could affect the PEO’s ability to assert Employer rights
 - Exclusive Remedy
 - But too much “employer” language could draw the PEO into employer-based disputes or actions
 - This is where the balancing comes in
- Other considerations
 - Providing of risk management and safety advice – can this cause the PEO to be deemed an employer under OSHA regs?
 - HR advice – same analysis; and is it protected from discovery

PEO State Licensing and Registration

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PEO State Licensing and Registration

- State legislation has been critical to ensuring a viable platform in key states
- In virtually every jurisdiction that has passed PEO legislation, the industry has grown
- Presently there is registration, recognition, or licensing in around 42 states

PEO State Licensing and Registration

- Licensing is mandatory, not optional, in those states that have licensing legislation
- Having one or more WSEs in a state usually triggers a licensing requirement, although it may be “*de minimis*” licensing
- The penalties for not complying are potentially substantial, including criminal penalties in some states

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Questions ?

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