

**BOARD OF EMPLOYEE LEASING COMPANIES
LEGISLATIVE DISCUSSION MEETING MINUTES**

**THE RENAISSANCE TAMPA HOTEL INTERNATIONAL PLAZA
4200 JIM WALTER BLVD.
TAMPA, FLORIDA 33607**

**October 18, 2005
1:00 p.m. EST**

I. CALL TO ORDER

The meeting was called to order at approximately 1:00 p.m. EST by Ms. Celeste Dockery, Board Chair.

II. ROLL CALL

MEMBERS PRESENT

Celeste D. Dockery, Chair
Frank W. Crum, Jr.
Kelly Lanza
Ryan S. Moore

MEMBER ABSENT

Carlos Rodriguez, Vice Chair

STAFF PRESENT

John T. Knap, Executive Director, DBPR
Krista B. Woodard, Government Analyst II, DBPR
Tom Barnhart, Board Counsel, Office of Attorney General
Eric Hurst, Assistant General Counsel, DBPR

OTHERS PRESENT

Andrew Sabolic, Bureau Chief, Department of Financial Services
Tasha Carter, Government Analyst, Department of Financial Services
Michael Miller, Kunkel, Miller & Hamet, P.A. and FAPEO
Timothy Tack, Kunkel, Miller & Hamet, P.A.
Eldridge Bravo, SOI
Kerim Fidel, SOI
John Tenney, PEO Pros
Clay Austin, PEO Pros
John Lacy, Selective HR
Marty Gray, Staff Brokers, Inc.
Bill Schilling, NAPEO
John L. Jones, Accord HR
Elise Lynn, Crum Services
Frank Crum, Crum Services
Tony Giudicy, SBRUS
Gary Johnson, SBRUS
Jacob Nobles, Matrix
Bill Perez, Matrix
Jeff S., Matrix

Katie Scott, Matrix
Carol Hendricksen, HRH of V.B.
Jerry Lancaster, PPC
Jessica Werckman, Risk Transfer, Inc.
Jim Hamilton, StaffMarket
Jeff Rendall, Presidion
Shelli Elmer, SUNZ
Doug Lilak, SUNZ
Doug Mishler, NELCO
Linda Alcathie, NELCO
Janice DiRose, Janice DiRose, P.A.
Bob Beck, AlphaStaff

The meeting was opened with a roll call and a quorum was established.

Ms. Woodard informed the board that Mr. Rodriguez would not be attending the meeting due to a previously scheduled appointment.

Ms. Woodard informed the board that Ms. Clark is ill and that Mr. Tom Barnhart would be attending in her stead.

Ms. Dockery advised the audience of the ground rules for the discussion to maintain relative order. She asked anyone in the audience that wished to address the board to approach the microphone and to speak one at a time, for accurate recording of what is being said. She stated she would do her best to make sure that everyone is heard.

III. REVISION OF WORKERS' COMPENSATION LIABILITY STATEMENT FORM

IV. REQUIREMENTS OF WORKERS' COMPENSATION COVERAGE FOR EMPLOYEE LEASING COMPANIES

Ms. Lanza stated these two issues go hand in hand in that if the board is considering the client-based policies, that the liability statement doesn't really contemplate the circumstances of client-based policies.

She stated there are two areas of interest on the workers' liability form: one area states that an employee leasing company has a guaranteed cost policy that covers all of their clients and the other states the companies have a program of self-insurance and that it has adequate reserves for loss development and a provision for incurred but not reported (IBNR) claims, etc.

She stated if there is a client-based policy, how could anyone determine if they are carrying an incurred loss, paid loss retro, large deductible. She stated a company can not sign this one form that says that all of the clients that have client-based policies are adequately reserved to pay claims.

Ms. Dockery asked if that is the leasing companies' responsibility.

Ms. Lanza stated the workers' compensation statements say that it is. She stated by signing that form the board is requiring them to state that. She further stated that is why the form should be revised. The form should contemplate all of the different

circumstances that may arise in all of the different types of policies being issued on a client-based basis.

Mr. Miller addressed the board stating that FAPEO has prepared a document, for possible utilization, with regards to compliance to Rule 61G7-10.0014, Florida Administrative Code.

He stated the form has the intent of trying to fully comply with what the board is trying to do. He asked the board to review the form and make any changes.

Mr. Miller stated there is no form currently in use that complies with Rule 61G7-10.0014, FAC.

Ms. Dockery asked Mr. Miller to explain what FAPEO's intent was with each section of the form.

Mr. Miller stated Rule 61G7-10.0014, FAC has been in existence for about a year and there has been no form to comply with the rule. He further stated when FAPEO drafted the form, they set forth different criteria.

He stated the first criteria is to set forth the percent of the employees that are covered through a traditional form of insurance between the employee leasing company and an insurance carrier that is admitted in the state of Florida; through a lawful plan of self-insurance; through the client that is maintaining its own policy. Then if the client is utilizing a workers' compensation policy or plan of self-insurance, then the undersigned person, being the chairman of the board, the chief executive officer, the chief financial officer, and each controlling person has to sign that they have personally verified that these policies are in place and that the employees are protected by a workers' compensation policy.

He stated FAPEO placed a "catch all" in Section "b" by stating, "set forth all other workers' compensation arrangements.

Mr. Moore stated in order to have a discussion on this particular form or to even adopt this particular form, he stated the board may want to discuss and decide on the definition of client-based policies.

Ms. Lanza stated this form covers part of what was discussed previously in trying to draft something that complies with the rule.

Mr. Miller stated it may be a good idea to contact the different states that specifically by statute says in clear and unmistakable terms that either the PEO or the client can provide workers' compensation coverage.

Ms. Dockery stated she would be in agreement on FAPEO doing that research.

Mr. Miller asked if a PEO's carrier would allow a particular client to have a compensation policy that has a high deductible.

He further stated he would hope that a PEO would not allow a client to maintain its own policy without informing the carrier.

Mr. Moore stated the carrier would be the first informed of that situation.

Ms. Lanza stated that would be assuming that the PEO has a master policy. However if they are following Chapter 440, F.S., then they are not required to have a master policy because they have less than four employees... who is the carrier?

Mr. Miller asked if a PEO has less than four employees when the PEO has 4000 client-based employees.

Mr. Crum asked if he had a client with a client based policy, would the client's liability cover him as well.

Mr. Miller stated Chapter 440.112 states "if the PEO maintains the policy, then the client is protected."

Mr. Crum stated he is asking about the reverse of that situation.

Mr. Andrew Sabolic, Bureau Chief of Compliance and Policy Coordinator within the Division of Workers' Compensation, addressed the board stating when the workers' compensation policy is issued, by whatever carrier, there's an employers' liability portion that is not separated. He further stated in a situation as described by Mr. Crum in which the client company has separate coverage, if they did, that separate coverage under a standard workers' compensation policy would include an employers' liability portion of that policy, and would not extend over to the PEO.

Mr. Jerry Lancaster of Providence Property and Casualty addressed the board stating he does not think that the carrier would have the liability. He further stated he is concerned that the carrier is going to be burdened with risks that they do not know they have by some of the procedures that have been set up. He stated as a carrier, he would want to know who he is covering before he covers them.

Mr. Lancaster stated the reason the big carriers have pulled out of the PEO business is because they have been treated poorly, in his opinion, by the PEOs. He further stated if the board is not going to protect the carrier by whatever method they agree upon, PEOs will not have anyone to write their business.

Mr. Barnhart stated that Chapter 468.529, F.S. seems to be pretty clear to him in that it states "that an employee leasing company shall be responsible for providing workers' compensation coverage" and it seems to him that some employee leasing companies might be putting themselves out there, in terms of legal liability, if that statute is not complied with. He further stated that Rule 61G7-10.0014, F.A.C. was implemented pursuant to that statute, and it seems that the obligation is clearly upon the leasing company for providing workers' compensation coverage.

He stated pursuant to Chapter 440, F.S., he was not sure of how that could be construed, but it seems as if the intent is to make sure that all of the employees are covered through one source.

Mr. Miller stated when the board enacted Rule 61G7-10.0014, F.A.C., the statute was already in place, and decided the rule was appropriate in that it did allow the client to maintain its own workers' compensation policy. He further stated the language "pursuant to Chapter 440, F.S." is critical and it has been the interpretation of FAPEO that

“pursuant to Chapter 440, F.S.” allows the client to maintain its own workers’ compensation policy as long as Rule 61G7-10.0014, F.A.C. is complied with.

Mr. Doug Lilak of SUNZ Insurance Company addressed the board stating there is a huge difference between a company’s right to underwrite and their rights to cancellation under the law.

Mr. Miller stated one of the main questions is how to protect the carrier.

Mr. Jeff Rendall stated the first question that comes to mind is the board requesting a legal opinion with regards to name insured status from the board’s counsel. He stated counsel would do the investigation and would report back to the board.

Mr. Sabolic stated if there is legal opinions drawn in reference to Chapter 440, F.S., that the Department of Financial Services (DFS) would be happy to review it.

Ms. Dockery stated the board requested from DFS, over a year ago, a letter that determines liability or how PEOs can properly maintain and restrict or un-restrict the leasing company, and keep them in compliance with workers’ compensation.

Mr. Rendall stated he would think that the board would want or need a legal opinion with regards to named insured status and how far reaching that is within a PEO environment.

Mr. Miller stated he was sure that board’s counsel would not respond to that if it pertains to Chapter 440, F.S.

Mr. Miller stated he was not sure if Mr. Barnhart or Ms. Mary Ellen Clark would choose to try to interpret Chapter 440, F.S.

Mr. Barnhart stated she would probably ask for assistance from DFS, because that is the statute that they are more familiar with. He stated he could be wrong, but that would be his guess.

Mr. Moore stated it seems to him that as long as the PEO is providing workers’ compensation to the worksite employee, that would be the board’s jurisdiction, and the Department of Insurance’s jurisdiction would be to tell us what statute protects or does not protect the insurance company.

Mr. Moore stated the conversations are covering two different industries with two different codes.

Ms. Dockery stated the intent of this rule was when the market was such that PEOs could not get coverage and the only people able to get coverage were the clients. She stated the board created the rule to save the PEO industry.

Ms. Lanza stated this discussion is a very good first step in trying to get the workers’ compensation liability statement in line with what is going on in the industry now.

Mr. Miller stated there are a lot of different issues that maybe the board has not even thought of.

He stated the first issue is that FAPEO is going to remain adamant that a client should be allowed to maintain its own workers' compensation policy.

He stated the next issue is assuming that policy fails, someone has to consider if the carrier should be responsible for that or should it be the PEO or the client, because it is the client's policy.

Mr. Miller stated there should never be a "carve-out" without the carrier's knowledge.

Ms. Dockery stated she will ask, on behalf of the board, for a legal opinion on the name insured status.

The board agreed not to change the workers' compensation liability form until further discussion.

Mr. Rendall and Mr. Sabolic stated they would draft a list of 8 to 10 questions that are relevant to this discussion and that Mr. Sabolic would walk them through DFS for answers and report back to the board.

Ms. Dockery asked Mr. Rendall to get with Mr. Miller to obtain copies of the correspondence that was previously sent to DFS.

The board recessed at 2:25 p.m.

The board reconvened at 2:35 p.m.

V. STATUS REPORT OF EMPLOYEE LEASING COMPANIES UTILIZING RULE 61G7-10.0014. FLORIDA ADMINISTRATIVE CODE

Ms. Woodard stated there are nine (9) companies utilizing Rule 61G7-10.0014, F.A.C.

Ms. Lanza asked how the board would know if a company is utilizing the rule if there is no liability statement showing the break down.

Ms. Woodard stated the information provided is based on honest employee leasing companies that actually report it with their initial license application or on a form attached to their quarterly report.

VI. POSSIBLE LICENSING OF BROKERS

Ms. Dockery stated in her opinion if you license the broker, you have to license the sales representatives.

Mr. Moore stated, in order to talk about this subject, the board must understand the evolution process of what has transpired over the last couple of year that has increased the demand for an independent broker and what its value is to a PEO, in reference to its profits, but that it also leaves a huge window of exposure and liability.

Mr. Moore stated that brokering has evolved into a major powerhouse and a major use of force in the sales area of most PEOs.

Mr. Moore states there are professional and unprofessional brokers, and if you have a broker acting as PEO, transposing or participating in risk deductible, that is an absolute violation and the broker should come under the letter of the law.

However, if you have a broker that has been provided a code of ethics for the broker to follow, then that person should follow the law, and if they do not abide by the law a PEO should kick them out of the system and refuse payment.

Mr. Moore stated the whole idea of brokering is to have some type of code of ethics or some type of requirement that you could issue a certificate of authority to do business with a PEO and that PEO would receive some type of certificate that this broker or agency follows the rule of the law and is ok to do business with. He stated that was his suggestion.

Ms. Lanza asked how the board would discipline unlicensed individuals.

Mr. Moore stated it is the PEOs responsibility to know whom they are doing business with, and his assumption is that the responsibility would fall upon the PEO.

Mr. Crum stated his company has wonderful brokers. However, there have been some that they have had to release along the way that did not abide by the rules.

Mr. Crum stated he spoke with Ms. Clark about possible licensing or certification for a broker that states that the broker is a licensed PEO in the state of Florida. He stated the requirements would be a 220 or 440 license, a good understanding of the PEO industry and a nominal licensing fee each year, keeping current on education of the PEO industry. He further stated the client would know that the person is qualified.

Mr. Moore stated there are two definitions of general brokers that are with the employee leasing companies. He stated there are independent representatives, who are just PEO people only and then there are insurance agents, which are also contracted with the PEO company to solicit business.

Mr. Crum stated there is a lot of concern from the State in regards to the broker issue, that needs to be addressed.

Ms. Lanza asked if all brokers are independent or do they work directly for the PEOs.

Mr. Moore and Mr. Crum stated they are paid by the PEOs, but not employees of the PEOs.

Ms. Lanza stated her concern is that there are unlicensed individuals out there discussing insurance matters and class codes that really fall under licensed activity.

Ms. Dockery stated that is when you get into the "heart" of the employee of employee leasing companies, which is something that they based their sole business on was having employees and not using the brokers because, they were not as educated on the PEO process.

Ms. Elise Linn, General Counsel for Crum Services, addressed the board stating that the broker network has evolved until there are different layers of broker. She stated once the service goes down that line, the PEO has no idea of what is being represented to the

client, until the client comes to the PEO stating what was, or was not represented by the broker.

Mr. Jim Hamilton of StaffMarket addressed the board stating that the broker concept has grown as more PEOs are using brokers. He stated his company has a code of conduct, that has a 90-day probationary period for the brokers, that during that time, they are watching how the brokers interplay with the clients. This allows them to weed out unprofessional brokers. He stated his company also does not interfere with clients dealing directly with the PEOs.

Mr. Moore asked Mr. Miller how FAPEO feels about the definition of a broker.

Mr. Miller stated FAPEO has asked him to listen and monitor and report back to them. He stated FAPEO does not have a position that they are ready to enunciate at this time.

Mr. Moore stated he would suggest that FAPEO and the board appoint a task force to come up with some suggestions or opinions that would help the board become a proactive voice when the State inquires about the issue of brokering.

Mr. Bob Beck of AlphaStaff addressed the board stating his company deals with licensed insurance brokers as its main distribution channel, but he wanted to know how the board defined broker.

He stated he defines it as follows:

- Independent PEO brokers
- CPAs who will refer an account
- Lawyers that refer an account
- P & C insurance agents
- Life insurance agents and financial planners
- Health insurance agents
- HR consultants; and
- Your own clients who acts in that capacity by referring new clients

He stated there are two basic arrangements with brokers: the PEO broker that originates the client, and handles all the sales process with the client and then delivers the client to the PEO with the client service agreement; the other arrangement is the referral broker that will identify someone that could use the PEO services and refers them to the PEO.

Mr. Beck stated the “bottom line” is that a lot of PEOs are using brokers in one capacity or another.

Mr. Marty Gray of Staff Brokers addressed the board stating he has been a broker for over five years and wanted to know what type of license would the board be looking for.

Ms. Dockery stated she remembered the PEO rule was written the way it was to exclude the sales representatives and to exclude any type of broker relationships.

Mr. Miller stated the decision back then was not to license brokers.

Mr. Kerim Fidel of Strategic Outsourcing stated if the board is considering creating a licensing scheme for PEO brokers, the board should think about whether they would be encroaching on the insurance licensing scheme.

Mr. Ambrosia addressed the board stating if a PEO chooses to use a broker, the board should have the authority for discipline of the PEO if the broker causes harm to the public.

The board recessed at 3:40 p.m.

The board reconvened at 4:00 p.m.

VII. SAMPLE SCENARIOS OF EMPLOYEE LEASING COMPANIES WITH OR WITHOUT WORKERS' COMPENSATION COVERAGE

Mr. Hurst stated there are two issues and he has provided the board with hypothetical scenarios of each issue. He stated the first issue is if the board is going to require PEOs with fewer than four employees to have workers' compensation coverage and the other issue is will the board allow client based policies.

Mr. Hurst stated he needed an answer to the two questions so that he will know how to handle the pending cases.

Ms. Dockery stated in her opinion is that she doesn't think that a PEO should be treated any different than any other employer. She further stated if Chapter 440 states that if there are fewer than four employees, you are not required to have workers' compensation coverage, then she does not believe that you should have to have workers' compensation coverage.

Ms. Dockery further stated that Chapter 468, Part XI, F.S. states that in order to become a licensed employee leasing company, you must have a policy of workers' compensation insurance.

Mr. Miller stated he was speaking on behalf of his clients that have current cases before Mr. Hurst in that the statute states that "an initial or renewal license may not be issued to any employee leasing company unless the employee leasing company first files with the board evidence of workers' compensation coverage for all leased employees in this state."

Mr. Miller asked if the employee leasing company does not have leased employees in the State, what is there to file?

Mr. Miller stated that Chapter 468.529(1), F.S. states in part that the employee leasing company shall be responsible for providing workers' compensation coverage pursuant to Chapter 440. He stated if the board agrees, Chapter 440 states that workers' compensation coverage is not needed if there are fewer than four employees.

Mr. Miller stated if FAPEO's draft of the statute is adopted by the Legislature, it will state that all PEOs in the state of Florida have to maintain workers' compensation coverage.

Mr. Crum stated that the problem the probable cause panel was encountering was when

finding probable cause on a case, the panel would be required to tell which statute they were basing the finding of probable cause on.

Ms. Dockery stated her understanding of when the law was written was that an employee leasing company would have workers' compensation coverage no matter what the situation.

Mr. Hurst stated an administrative law judge is going to apply the literal wording of the Statute not what the intent was.

Ms. Lanza asked if any of the pending cases would be willing to relinquish their license.

Mr. Hurst replied that some would agree to relinquish their license.

The board agreed that the intent of Chapter 468.529, F.S. was for all employee leasing companies to have workers' compensation coverage.

The board agreed to issue a letter of guidance and any new cases would be cause for disciplinary action.

Mr. Hurst asked if the board is going to allow client based policies.

The board agreed that it is ok to have client based policies.

VIII. NEW BUSINESS

Mr. Bill Schillings of NAPEO addressed the board in regards to Employers' Securities Assurance Corporation (ESAC) alternate licensing provision.

He stated that ESAC would like for the board to consider the alternate licensing provision that enacts the authority for the licensing agency to allow for an alternative method of licensing or certification in the state of registration.

If the state licensing agency determines that there is an independent outside entity that provides oversight, supervision, and reporting requirements that are adequate to the board, ESAC would provide an alternative to going through the specific licensing provisions, but it would have to be completely acceptable to the licensing agency.

Mr. Schilling stated if the board could put the authority in the statutes now, it would be a mechanism that could be used to allow a state to provide to this board an alternative method of licensing. He stated ESAC would not take away from the board's authority.

Mr. Knap asked if the board agreed and the Legislature adopted the language, that anyone who is certified by ESAC would automatically be approved for licensure in Florida.

Mr. Schilling stated that would be true if the board implemented by rule and regulation, then it could accept reports from a central repository which would be ESAC.

Ms. Dockery thanked Mr. Schilling for his presentation.

V. ADJOURNMENT

MOTION: Mr. Crum moved to adjourn.

SECOND: Ms. Lanza seconded the motion and it passed unanimously.

The meeting adjourned at 5:00 p.m.