PEO INSIDER

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23 NATIONAL PEO WEEK
MAY 21-27 2023

THIS MONTH'S FOCUS

LEGAL & LEGISLATIVE

CASE LAW

MULTI-STATE COMPLIANCE

STATE WINS

COVER STORY

MEET CONGRESSWOMAN ERIN HOUCHIN

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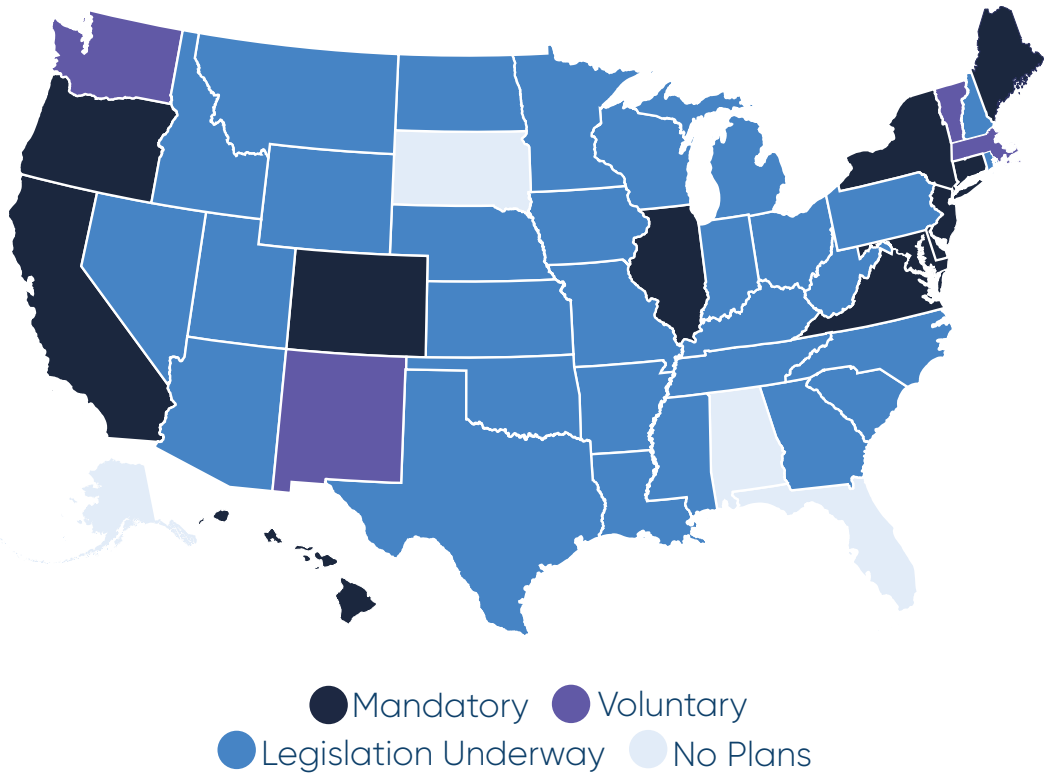
MAY 23

State Mandated Retirement Plans for Small Businesses



Source: Georgetown University for Retirement Initiatives

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DIRECTOR OF MEMBERSHIP DEVELOPMENT
Nancy Benoudiz
703/739-8169
nbenoudiz@napeo.org

DESIGN
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WHAT MATTERS MOST

BY KRISTEN J. APPLEMAN

Abby Appleman

I walk into this May in deep gratitude for joyous celebrations. Like many of us, my daughter, Abby, will graduate from high school. It is a milestone that parents, grandparents, bonus parents, and all parental figures look forward to with delight.

For many years, I took the anticipation of this day for granted. You see, in February 2021, reality hit like a brick wall. My daughter made "an attempt" that would forever change my thinking about mental health and wellbeing.

Thankfully, Abby's story didn't end that day. While it was a monumental twist, she approached it with bravery – as an opportunity to shape, strengthen and mold her, and those around her, including me.

LET ME TELL YOU MORE

Abby has always lived by a steadfast moral compass – she stands up for the values and beliefs she holds most dear – even when it costs her a lot. You can visibly see the genuine care and concern she has for other people in her day-to-day actions. As one of my dear co-workers says, "She's an old soul." The way she lives even her smallest moments, reminds me that those who love the deepest are often the ones who hurt the most.

Fortunately, when faced with challenges, I've always had a "glass half full" mindset. Even when days are filled with dark clouds and rain, I see the rainbow ahead. I whole-heartedly believe every experience in life forms you. Imprints a feeling, memory, value – and is a sentence in your story.

Since that bleak February day, Abby's journey has been centered on seeking the good. We talk regularly about how the brain is a muscle that must be exercised and what we can do to make it stronger. By focusing on embracing being perfectly imperfect, complicated, and messy – accepting our full selves for all our parts – the storm clouds of life will dissipate. Sunshine comes and life's rainbow always glistens. We might just have to turn our necks a little more "this" way to see the spectrum of colors.

WHY I AM SHARING THIS DEEPLY PERSONAL STORY

We are in a position of great privilege. Our industry equips our fellow humans with tools, guidance, and support to make their lives, and their teams, better. This business is built to care for people – including the scrappy, tenacious, and messy; those who are full of moxie and grit. And, when those folks don't feel especially good about themselves, it's our charge to remind them that the rainbow will appear.

I have felt this powerful support firsthand. During the dark days in our journey, my ADP and NAPEO family have been consistently there for me with words of encouragement and friendship.

HONORING THE JOURNEY

At her one-year point, Abby and I honored her journey by getting matching tattoos (something else I never thought I'd do with my teenage daughter). Project Semicolon (projectsemicolon.com) reminds us that her sentence could have ended, and gratefully, it continued.

Please join me in celebrating Abby, and the other Abby's of the world, by recognizing Mental Health Awareness month. One way you can do so is to take action! If you know someone struggling, please reach out for help. There are many resources that helped me and my family including the National Association for the Mentally Ill (nami.org/Home). In addition, the National Suicide and Crisis Lifeline is available 24x7 by calling 988.

To my baby girl, may you always remember you are WORTH IT! You are my WARR;OR and you make me so proud.

Cheers to all of you. Remember to always make your rainbow matter most. ■

KRISTEN J. APPLEMAN

2022-2023 NAPEO Chair
SVP, Health, Wealth, Tax, Compliance & Business Development
ADP TotalSource
Alpharetta, GA

FAREWELL

MELISSA VISCOVICH TO DEPART NAPEO

As anyone at NAPEO can tell you, I am the king of delegation. But some assignments are just too important to delegate. This is one of them.

As most of you know by now, Melissa Viscovich, NAPEO's SVP and COO, is leaving us after 26 years to become COO of the Pharmacy Quality Alliance. She has been the Cher to my Sonny, the Abbot to my Costello, the Frick to my Frack. I have said for 12 years that we make a perfect team in that she is good at everything that I'm not. Turns out, that's almost everything. That's not modesty – I don't have any – that's just the truth. I can tell you from working side by side with her for a dozen years that she has labored long and hard for you, the members, and for this industry, often at great personal sacrifice. We owe her a debt of gratitude.

I have told the board on occasions too numerous to count that we are in outstanding financial shape because of her. When I arrived, our reserve/rainy day fund stood at $200K. Today, we are north of $4m. It's not hard to imagine an existential threat to this industry. We need that money on hand. We thought we'd need it during the pandemic, but thankfully we dodged that bullet.

Melissa makes the trains run – she oversees meetings and membership and all of our finances. But she is more than that. She is one of the smartest people I have ever known – not worked with, but known. She likes to remind folks that she's an English major, but she has a tremendous command of all things financial. And she has an encyclopedic knowledge of this industry and its history, its layers, its ups and downs – because she lived it all.

A graduate of William & Mary, she started at an association management company, AMG, and then was part of the small team that broke off to start NAPEO. Thanks to her steady hand and intellectual wattage – and unbridled loyalty – we have grown to an $11m organization. She is the glue that holds this place together. Every person I have interviewed for jobs here, I tell them this is her wheelhouse. And it is. Every aspect of this organization reflects her guiding hand.

But I can tell you that what she is most proud of is her husband Dave and her two daughters – Anna, a Junior at Wash U in St. Louis and Sophie, a high school senior who's headed to Wash U in the Fall. Both are soccer recruits and next year will be the first time they have played on the same team. They are Melissa's pride and joy.

We will soldier on without her. As I've said to you all, the bones are good, we have a great team. And I'll be here 'til the 4th quarter. All will be well. But we will miss Melissa's knowledge, dedication — and her heart.

Godspeed, Melissa.

PAT CLEARY, *NAPEO President & CEO*

WELL DESERVED

TERESA LAWRENCE NAMED BOARD MEMBER OF THE YEAR BY LA HISPANIC CHAMBER OF COMMERCE

Teresa Lawrence, CEO of NAPEO member Delta Administrative Services, has been named Board Member of the Year by the Louisiana Hispanic Chamber of Commerce. She was recognized for her commitment to making the organization an outstanding resource for the community. Congratulations!

TUNE IN

NAPEO PODCAST "PEOPLE PAT MEETS" AVAILABLE NOW

The wait is finally over! NAPEO's first-ever podcast, People Pat Meets, is now available everywhere you listen to podcasts or scan the QR code below to listen on Spotify. After over a decade in the PEO industry, Pat Cleary has met a lot of people–the industry's founders, absolute newcomers, and everyone in between. Now, he'd like you to meet them, too: Join NAPEO's CEO each week as he sits down with some of the many friends he's made during his tenure. Laugh with him as he explores each guest's journey through the PEO industry, their hidden talents, and more!

KUDOS

PEO INSIDER WINS GOLD TRENDY AWARD FOR BEST MAGAZINE

We're excited to announce that PEO Insider is once-again an award-winning publication. Association Trends presented the Gold Trendy Award to PEO Insider for Best Monthly Trade Association Magazine at the organization's annual award show in March. ■

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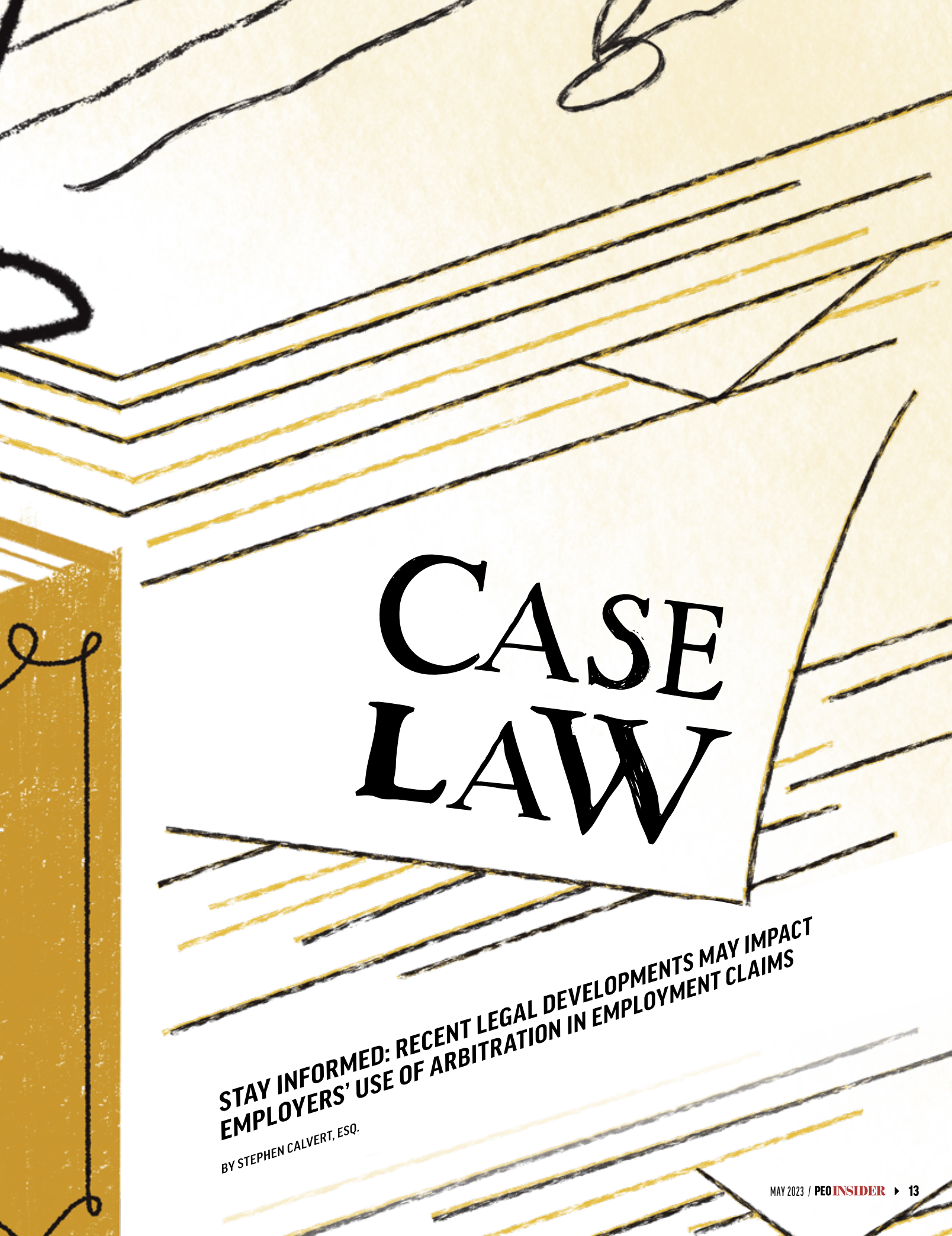


CASE LAW

STAY INFORMED: RECENT LEGAL DEVELOPMENTS MAY IMPACT EMPLOYERS' USE OF ARBITRATION IN EMPLOYMENT CLAIMS

BY STEPHEN CALVERT, ESQ.

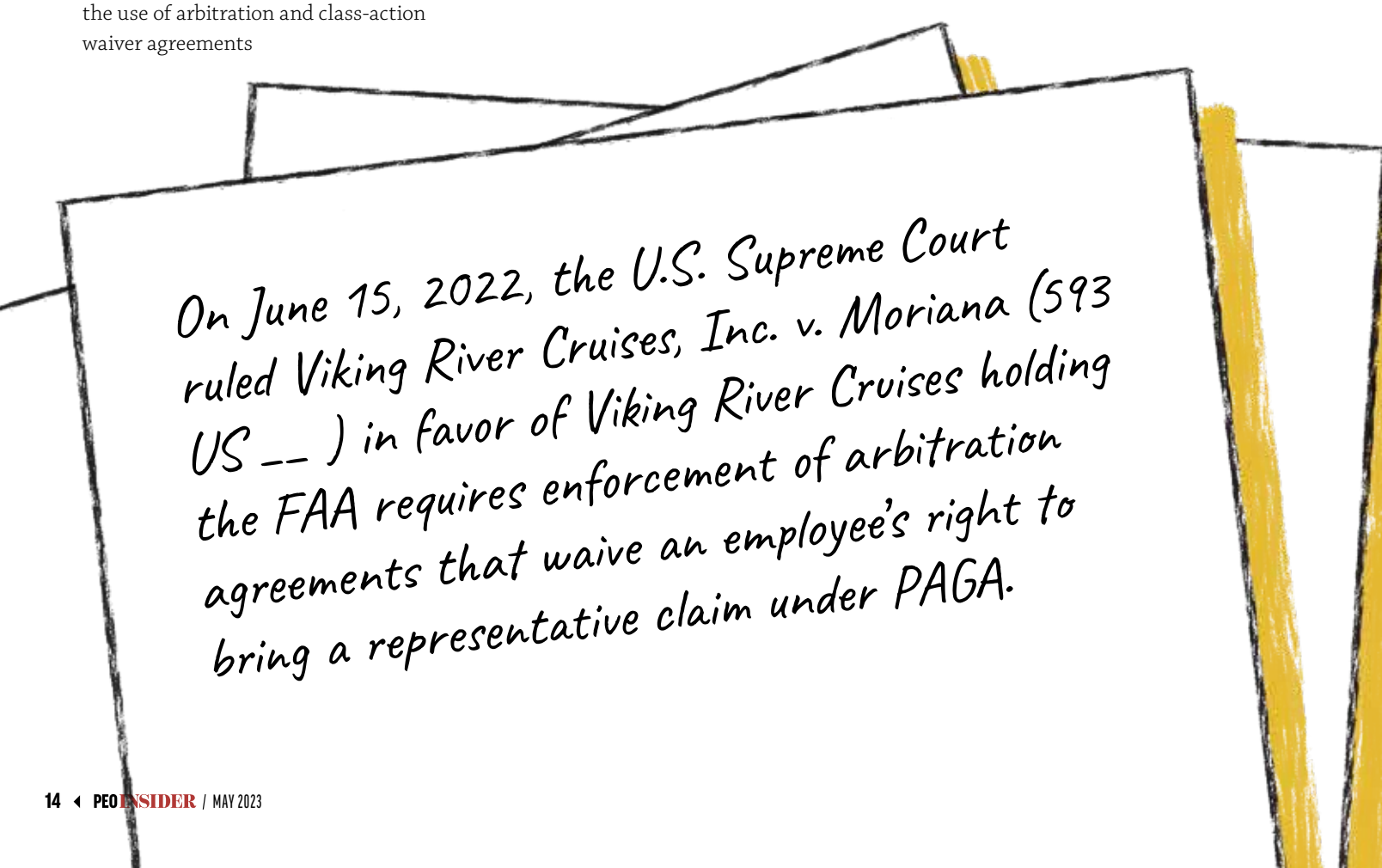
Use of arbitration and class-action waiver agreements allows for the private resolution of employment claims on an individual basis. While arbitration is not a low-cost alternative, it can be a very strong hedge against runaway jury awards and swollen class-action damages.

A flurry of legislative and judicial actions on the application and enforceability of mandatory arbitration and class-action waiver agreements has materialized recently. Several state legislatures passed legislation that limited the use of arbitration in sexual harassment claims prior to passage of the federal Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (EFAA), which invalidates pre-dispute arbitration agreements for sexual harassment and sexual assault claims in matters governed by the Federal Arbitration Act (FAA). In the last year, courts across the country have ruled on the use of arbitration and class-action waiver agreements in a variety of matters including California's Private Attorneys General Act (PAGA) claims, independent contractor agreements, ERISA actions, and the retroactive application of the EFAA.

COURT RULINGS DEAL BLOWS TO PAGA AND AB 51 IN CALIFORNIA

On June 15, 2022, the U.S. Supreme Court ruled in *Viking River Cruises, Inc. v. Moriana* (593 US __) in favor of Viking River Cruises holding the FAA requires enforcement of arbitration agreements that waive an employee's right to bring a representative claim under PAGA. PAGA allows employees to sue their employers for violations of the California Labor Code and seek civil penalties individually and on behalf of other injured employees. The Court found that "PAGA provides no mechanism to enable a court to adjudicate non-individual PAGA claims once an individual claim has been committed to a separate proceeding." The Supreme Court held that Angie Moriana, a former Viking River Cruises employee that filed a PAGA complaint in state court alleging Labor Code violations, consented to arbitration by signing a mandatory arbitration agreement and class-action waiver when she was hired. By agreeing to arbitration, Moriana's individual PAGA claims were subject to the FAA and mandatory arbitration.

Taking its cue from *Viking River*, the Ninth Circuit Court of Appeals issued a ruling on February 15, 2023, regarding California's embattled legislative initiative, AB 51, which sought to prohibit employers from requiring arbitration of claims for violation of the California Fair Employment and Housing Act (FEHA) or the California Labor Code, even if the employee could opt out of the agreement. The Ninth Circuit ruled that the FAA preempts all of AB 51 as applied to arbitration agreements governed by the FAA, noting "the FAA's preemptive scope is not limited



to state rules affecting the enforceability of arbitration agreements, but also extends to state rules that discriminate against the formation of arbitration agreements." (*Chamber of Commerce of the U.S., et al. v. Bonta*, et al.) These rulings preserve the ability to use arbitration and class-action waiver agreements in employment contexts in California.

NEW YORK CASE UPHOLDS ARBITRATION AGREEMENT AND CLASS ACTION WAIVER FOR GIG WORKERS

Earlier this year, the Southern District of New York granted DoorDash's motion to compel arbitration and strike the class-action claims of two New York delivery drivers working as independent contractors (*Mullo v. DoorDash, Inc.* No. 22-cv-2430) . The drivers filed a class action against DoorDash alleging wage and hour violations under federal and state law. The court rejected plaintiffs' arguments to invalidate the agreement, including alleged language challenges and systemic bias in the arbitration process because of a "relationship" between the defendant and the designated arbitration entity.

ARBITRATION OF ERISA CLAIMS REMAINS A DIVIDED ISSUE ACROSS THE COUNTRY

The enforceability of arbitration and class-action waiver agreements in ERISA claims is less certain following competing rulings on their use in various circuit courts recently. The Tenth Circuit Court of Appeals, in *Harrison v. Envision Management Holding, Inc.*, affirmed the district court's denial of defendant's motion to compel arbitration. Referencing the Seventh Circuit decision in *Smith v. Board of Directors of Triad Manufacturing, Inc.*, the Tenth Circuit found that "the problem with the plan's arbitration provision [in the Triad case was] its prohibition on certain plan-wide remedies, not plan-wide representation'" and held that "the same is true with respect to Section 21 of the Plan Document in Harrison's case. It is not Section 21's prohibition on class actions that is problematic. Rather it is Section 21's prohibition of any form of relief that would benefit anyone other than Harrison that directly conflicts with the statutory remedies under 29 U.S.C. §§ 1109 and 1132(a)(2) (a)(3)." The court concluded that enforcing the arbitration provision would prevent the plaintiff's access to the available remedies under ERISA.

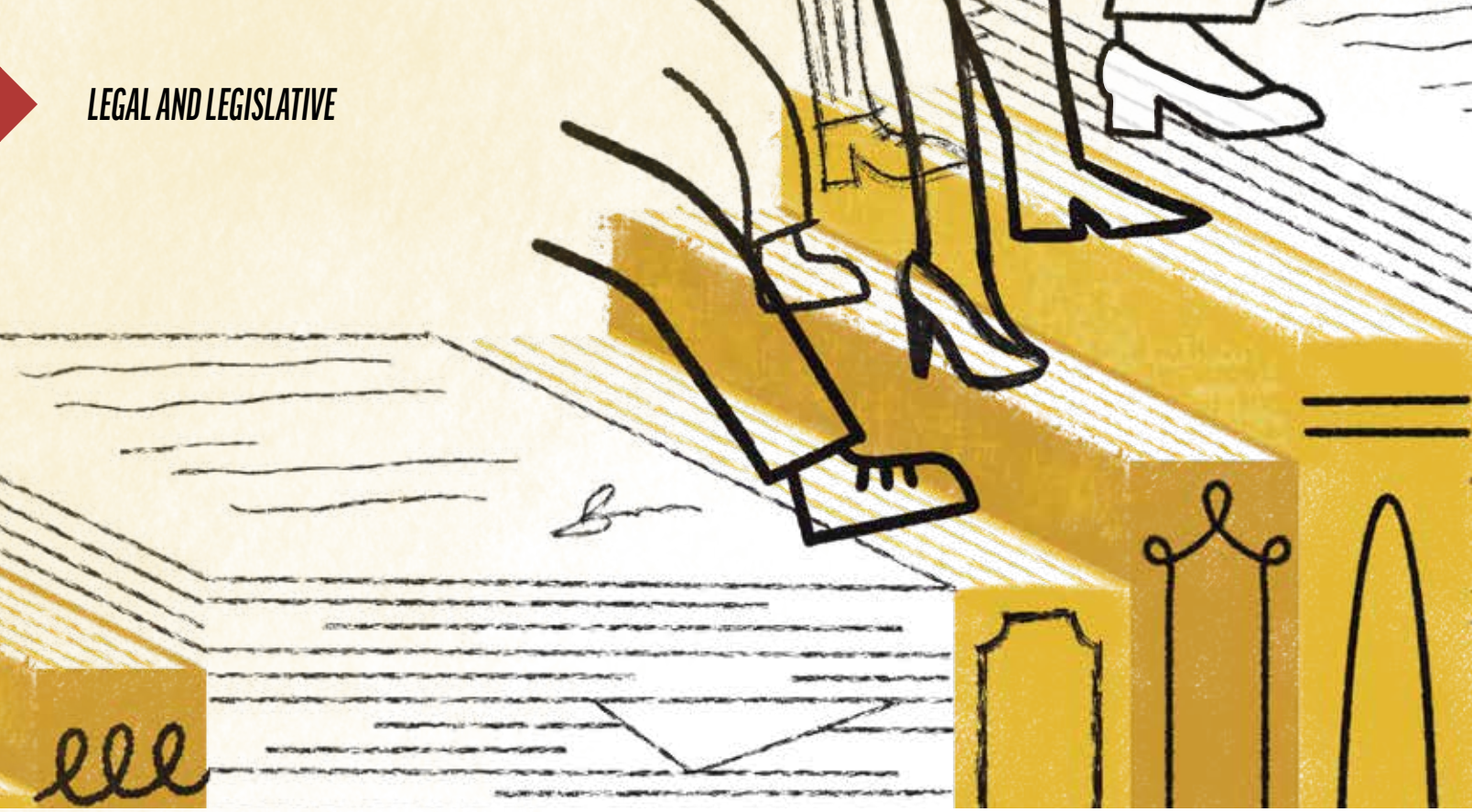
These rulings place the Tenth and Seventh Circuits somewhat at odds with the Courts of Appeals for the Second, Third, Fifth, Sixth, Seventh, Eighth, and Ninth Circuits, which have consistently acknowledged that, generally speaking, arbitration clauses are enforceable as to ERISA claims. Although what that means in practice is often subject to extensive litigation and may depend on where the arbitration provision appears and how it is tailored, it seems the Supreme Court will have to wade into this area to clarify enforceability parameters soon. While the Supreme Court declined to hear the issue in January of this year, the subsequent Tenth Circuit ruling in *Harrison* signals an inevitable showdown at the high court.

LIMITS TO RETROACTIVITY OF THE EFAA

The EFAA, signed by President Biden in March 2022, bars mandatory enforcement of arbitration clauses for claims involving sexual misconduct. It is retroactive and voids mandatory arbitration clauses in existing contracts; however, a recent ruling by a New Jersey appeals court confirmed that the Act does not apply to claims or disputes that arose prior to the enactment of the EFAA. The appellate court, in *Zuluaga v. Altice USA*, noted that the language and accompanying statutory notes of the EFAA preclude retroactive application to claims that preexisted passage of the law. "This Act, and the amendments made by this Act, shall apply with respect to any dispute or claim that arises or accrues on or after the date of enactment of this Act." (EFAA § 3, 136 Stat. at 28)

A good arbitration and class-action waiver agreement, one that is properly tailored and sufficiently protective, can provide employers with a tremendous tool in defending against employment-based litigation. But as recent legislative and case law trends indicate, employers must stay vigilant tracking legal developments in this area. Successful enforcement depends on it. ■

STEPHEN CALVERT, ESQ.
Chief Legal Officer, General Counsel
G&A Partners
Houston, TX



SUPREME IMPACT: SCOTUS DECISIONS TO AFFECT PEOS THIS YEAR

BY JOHN POLSON, ESQ. AND RICH MENEGHELLO, ESQ.

The U.S. Supreme Court's (SCOTUS) current term is already well underway, and there are several cases on the docket that will have important implications for PEOs. SCOTUS has already decided one workplace law case this term, and there are several remaining cases that will surely shape labor and employment law in 2023 and beyond. What do PEOs need to know about these recent and pending decisions and their impact on your clients?

HIGHLY PAID EMPLOYEE ENTITLED TO OVERTIME PAY

High-earning workers making more than $200,000 a year might be eligible for overtime pay thanks to a ruling on February 22. To be exempt from overtime pay under the Fair Labor Standards Act's "white-collar" exemptions, employees must earn at least $684 a week on a salary basis, among other requirements. In *Helix Energy Solutions Group v. Hewitt*, an oil rig worker was paid a guaranteed daily rate of at least $963, which is significantly higher than the weekly salary threshold. In a 6-3 ruling, however, SCOTUS said the worker was eligible for overtime pay because he was not paid on a salary basis. This surprising decision is a wake-up call for all employers to review their overtime exemptions to ensure they are compliant with applicable federal and state requirements. See reference 1 to read more.

COURT AGREES TO REVIEW RELIGIOUS ACCOMMODATIONS TEST

The Court agreed to hear a religious accommodation case brought by a mail carrier who was disciplined for refusing to work on Sundays. The United States Postal Service said a blanket Sundays-off accommodation would place too heavy a burden on his coworkers — who would need to cover more weekend delivery demands — and the appellate court agreed. The mail carrier in *Groff v. DeJoy*, however, asked SCOTUS to overturn the ruling – which may reverse a decades-old standard. See reference 2 to read more.

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The Justices heard arguments earlier this year in a case that could make it easier for employers to sue and recover damages from labor unions that damage an employer's property during a strike.

WILL THE COURT MAKE IT EASIER TO HOLD UNIONS LIABLE FOR STRIKE MISCONDUCT?

The Justices heard arguments earlier this year in a case that could make it easier for employers to sue and recover damages from labor unions that damage an employer's property during a strike. The issue before SCOTUS in *Glacier Northwest v. International Brotherhood of Teamsters* is whether federal labor law prevents employers from filing a state law tort claim for intentional damage where workers failed to take reasonable precautions to protect company property. See reference 3 to read more.

JUSTICES WILL REVIEW CRITICAL ARBITRATION CASE

Employers that face lawsuits from employees often seek to move such claims from the courthouse to arbitration. But what happens if the trial court refuses to compel arbitration and the employer appeals the decision? Should the litigation continue at the trial court level while the employer asks the appeals court to weigh in? Or should the trial court pause the proceedings until the appellate court makes a decision? *Coinbase v. Bielski* asks these questions – and the Court's decision could reshape your approach to workplace litigation. See reference 4 to read more.

WILL SCOTUS SHAKE UP REGULATORY AGENCIES?

Many employers are already well aware of how scary it can seem to be on the receiving end of a federal agency's investigation or action – be it the NLRB, the DOL, OSHA, the EEOC, or some other regulatory body. But the Supreme Court is now faced with the question of whether it should give employers more tools to challenge the powers of the federal agencies when administrative proceedings are pending. Depending on how SCOTUS rules in a pair of cases (*Axon Enterprise v. Federal Trade Commission and Securities and Exchange Commission v. Cochran*), employers may get the chance to fight federal agencies from the outset instead of waiting for the administrative process to play out to get their day in court. See reference 5 to read more.

COURT SET TO SCRAP AFFIRMATIVE ACTION ADMISSIONS IN EDUCATION

SCOTUS is poised to decide the future of race-conscious admissions in higher education – and potentially alter the landscape of affirmative action in education across the country. At issue in two pending companion cases are the admissions processes at Harvard College and the University of North Carolina that both consider race as one factor among many in their holistic evaluation of undergraduate applicants. These cases will have wide-ranging implications on admissions processes across the country. See reference 6 to read more. ■

1 https://www.fisherphillips.com/news-insights/highly-paid-employee-entitled-overtime-pay-scotus-decision.html
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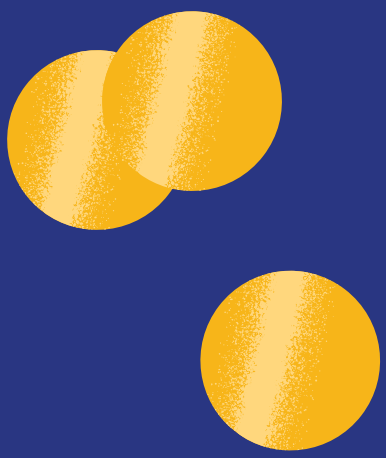


United Healthcare

MULTI-STATE COMPLIANCE

TO TEST OR NOT TO TEST: WORKPLACE DRUG TESTING RULES VARY BY STATE

BY CONOR J. DALE, ESQ.

Over the past few years, state and local governments have materially expanded the legalization of medical and recreational use of marijuana. While it remains illegal under federal law, most states have legalized marijuana use in a number of circumstances, presenting several practical problems for PEOs and staffing agencies— especially those that conduct workplace drug testing. Employers should become familiar with these laws to avoid legal claims from employees in 2023 and beyond.

Despite recent updates, state and local laws still largely state that, similar to alcohol, employers may prohibit employees' on-duty marijuana use and take disciplinary action towards employees who are intoxicated at work. However, drug testing to determine whether an employee is potentially intoxicated has become much more complicated and controversial. For example, New York effectively bars employers from conducting drug testing for marijuana except under extremely limited circumstances. Conversely, Mississippi's Medical Cannabis Act does not prohibit employers from implementing or enforcing a drug testing policy, or from taking an adverse employment action against an applicant or employee because of an individual's use of cannabis. Recent court cases confirm that for still other states, it is not illegal for an employer to terminate an employee for failing a marijuana drug test if the employee fails to timely inform the employer that the employee is an appropriately registered user of medical marijuana.

In states which permit employers to conduct marijuana testing and have medical marijuana laws, employers should be familiar with the laws of the relevant state when there is a positive drug test. For example, some states prohibit discrimination against medical marijuana users while still others may allow an employer to take an adverse employment action if an employee's job is considered "safety-sensitive," i.e. a job with dangerous duties as defined by applicable state law. In states where discrimination is prohibited and the employer has safety concerns, the employer should engage in an individualized assessment and direct threat analysis required under state laws that mirror the accommodation requirements of the federal Americans with Disabilities Act. This process includes discussions with the employee or applicant and their physician, and an assessment of the safety risk of permitting the employee to perform a safety sensitive job even if they test positive for marijuana.

Conducting marijuana testing based on reasonable suspicion of intoxication remains generally permissible in most states because intoxication and/or impairment at work due to marijuana is essentially never permitted under all relevant state laws. Many employers decide to conduct reasonable suspicion testing to rule out drugs and/or alcohol as the cause of an employee's impaired behavior because it is possible that apparently impaired behavior can be caused by something other than drugs

Despite recent updates, state and local laws still largely state that, similar to alcohol, employers may prohibit employees' on-duty marijuana use and take disciplinary action towards employees who are intoxicated at work. However, drug testing to determine whether an employee is potentially intoxicated has become much more complicated and controversial.

and may implicate state or federal disability discrimination laws. Employers should make sure that supervisors and managers are trained to observe and document reasonable suspicion determinations properly, as: (1) these documented observations will be key evidence in a potential lawsuit; and (2) some states like New Jersey provide extremely detailed rules regarding evaluating whether an employee is impaired at work due to marijuana. In states where off-duty marijuana use is protected, employers should also be careful to cite the impaired behaviors since the basis for discipline is the impairment rather than the use of marijuana by itself. Additionally, medical marijuana users can test positive on drug tests because evidence of marijuana builds up in the fatty tissues of the body over time, so it would be unclear when the employee may or may not have used marijuana from the drug test alone.

ADAPTING TO THE NEW LANDSCAPE

Many employers are adapting to this changing legal landscape by abandoning long standing policies permitting drug testing and banning employees' use of illegal drugs; others are simply doing so to assist with employee recruitment efforts. Still others are updating their policies to make them legally enforceable due to business necessity or simply to support and reinforce fundamental company values and culture. Regardless of the reasons for continuing to implement drug policies at work, employers – particularly those operating in multiple states or in states that have legalized some form of marijuana use - should no longer distribute or enforce across the board zero tolerance marijuana policies by arguing that marijuana is illegal under federal law.

Notably, the federal government has effectively not enforced the laws making marijuana illegal for years and has not prevented states from creating and enforcing their own medical and recreational marijuana laws. In fact, the House of Representatives passed a bill in 2022 intending to decriminalize marijuana nationwide, and the U.S. Senate is in the process of drafting separate marijuana legalization legislation. Courts have also recognized that the federal government is allowing states to regulate marijuana and even enforced state marijuana laws despite marijuana's illegal status at the federal level. They have also rejected arguments that federal contractors must follow federal law because the federal Drug-Free Workplace Act does not require drug testing and does not permit employers to regulate off-duty conduct.

Despite these recent developments, employees who are regulated by the U.S. Department of Transportation (DOT) such as truck drivers are still not permitted to use marijuana, and DOT regulations still require testing for marijuana. The DOT has also consistently stated that a medical marijuana card or recreational use that is legal under state law does not excuse a positive marijuana test result.

While it appears that marijuana could eventually be legalized at the federal level, employers must ensure they comply with all existing applicable laws. Specifically, employers should:

- Closely review and tailor drug and alcohol policies to comply with relevant drug testing and marijuana laws.
- Remove marijuana from drug testing panels in locations where testing for marijuana is generally prohibited and off-duty use is protected, and consider removing it in other locations where it may be an obstacle in the hiring process.
- Train human resources employees and managers to engage in the interactive process with employees who use medical marijuana.
- Train supervisors and human resources staff to make legally compliant and timely determinations regarding whether an employee is intoxicated at work following relevant state law guidelines.

It's a confusing time for employers when it comes to drug testing especially with changing marijuana laws and guidance, and employers should consult with employment counsel and/or HR experts to ensure full compliance with the law. ■

CONOR J. DALE, ESQ.
Principal
Jackson Lewis
San Francisco, CA

MY CLIENT MOVES TO A NEW STATE: WHAT ARE MY NEXT STEPS?

The rise in remote work has brought new challenges. Sometimes, a client notifies its PEO that they are hiring an employee in a new state where the PEO might still need to be licensed. So, what should you do? Below are some key points to consider when a PEO does business in a new state.

OBTAIN A BUSINESS LICENSE

First, ensure you are registered to do business in the state. If your company is not registered in the state, you must file for a business license, likely pay a license fee, and establish a registered agent.

CONSIDER THE STATE-SPECIFIC PEO LICENSE REQUIREMENTS

In addition, some states may have specific PEO licensing requirements which require a separate application and the ability for the PEO to show it can comply with the state's PEO standards. For instance, a state might require proof of a minimum working capital, an irrevocable letter of credit, or a bond. For example, Michigan requires a minimum of $100,000 in working capital. The working capital minimum must be reflected in the financial statements when submitting it with the licensing application. If the PEO cannot meet the minimum working capital, the PEO must obtain a bond or irrevocable letter of credit. Some states also offer a limited or restricted license if you meet the requirements. This license type waives the financial condition and is a good choice for a PEO with very few employees in the state. If a PEO obtains a full license, it is the responsibility of the PEO to maintain the required minimum working capital. Some states, such as North Carolina, require a bond regardless of the working capital and an additional bond if the PEO cannot meet the financial requirements. Additionally, depending on the state requirements, the fees for obtaining a license can be nominal or cost a couple of thousand dollars.

Each state has unique requirements; NAPEO's regulatory database is a great source to assist in determining specific state requirements. You can access the database at napeo.org/regulatory-database.

REVIEW THE CLIENT'S STATE REPORTING REQUIREMENTS

Check each state for client reporting requirements and any other ongoing reporting requirements. For example, New York asks for a quarterly client list and proof of continuing tax compliance. In addition, North Carolina and Florida require specific financial disclosures and client reporting every quarter.

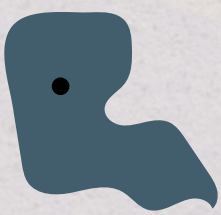
IDENTIFY ANY LABOR POSTER REQUIREMENTS

Federal and state posters are required and differ by state. For example, some states require all workers, even remote workers, to receive labor posters.

In addition, some cities and municipalities have specific posters. For example, New York City requires every employer to notify its employees of the employer's policy regarding sick leave, vacation, personal leave, holidays, and hours.

ENSURE THE CLIENT SERVICE AGREEMENT (CSA) COMPLIES WITH STATE LAWS

Ensure that your client service agreement complies with any state-specific language if required. For instance, some states require that the PEO assumes responsibility for payroll tax collection,



payments, and co-employee wage payments. Consider adding an addendum to the CSA, adding any applicable state requirements.

REVIEW YOUR EMPLOYEE ACKNOWLEDGMENT FORMS

Some states have specific language that must be included in the employee acknowledgment form. For example, South Carolina requires PEOs to advise co-employees of their workers' compensation obligations. Review the statutes and engage legal counsel for guidance if necessary. Ensure all co-employees sign the acknowledgment agreement, confirming their understanding that they are an employee of the PEO and the client.

ORGANIZE YOUR TAX AFFAIRS

PEOs pay client employment taxes and file for the client; therefore, acquiring necessary employment tax accounts with the corresponding state is essential. These accounts should include at least a PEO account for withholding taxes and a state unemployment tax account (SUTA). For SUTA, you must determine if the state allows SUTA to be paid under the PEO's or client's tax ID. If the PEO can file under the PEO's account, then the PEO must open a SUTA account. If the state requires the SUTA to be paid under the client's account, the client must open an account and provide you with the account number and tax rate for reporting purposes. The PEO will also need to establish local tax withholding accounts in some states. The client may also be required to have additional tax accounts for other taxable benefits, such as paid family leave.

REVIEW THE CLIENT'S BENEFITS

Consider the benefits you'll offer the client, such as health insurance and workers' compensation. Review any state-specific requirements on benefits. For instance, some states are considered monopolistic for workers' compensation insurance, requiring state-funded workers' compensation coverage. Illinois requires employers to offer a retirement program or facilitate access to the state's program, Secure Choice. Also, New Mexico has limitations on its multiple employer welfare arrangements (MEWAs). Stay abreast of the state-specific benefit requirements.

UNDERSTAND THE LABOR & EMPLOYMENT LAWS IN THE NEW STATE

Always consider state-specific labor and employment laws to help the client stay compliant with the regulations in their state, not only for purposes of the CSA, as stated above, but also to help your client understand their new obligations as an employer in the new state. In addition,

Always consider state-specific labor and employment laws to help the client stay compliant with the regulations in their state, not only for purposes of the CSA, as stated above, but also to help your client understand their new obligations as an employer in the new state.

the client's lack of compliance with state-specific labor and employment laws may impact the PEO's employer practice liability insurance (EPLI). It may also expose the PEO and the client to penalties, fines, and claims.

The above areas are a starting point for maintaining compliance in a new state. Each state has requirements and laws dictating your relationship with the client and your co-employees. Even though your business will have more responsibilities, operating in a new state opens doors to serving more clients in the future.

If you have any questions or concerns, reach out to your counsel. As you can see, there are numerous factors to consider when contemplating entering a new state. If you cannot meet the requirements to enter a new state, talk to your counsel about alternative solutions you can provide to your client. ■

ELISABETH SHAW, ESQ.
VP, Corporate Counsel
PrestigePEO
Tampa, FL

PAM EMERSON
Director of Compliance
PrestigePEO
Tampa, FL

ANA PACHECO
Labor & Employment Law Analyst
PrestigePEO
Tampa, FL

PAY TRANSPARENCY LAWS SWEEP THE NATION

BY MELISSA L. CIZMORRIS, ESQ. AND BRIAN NUGENT, ESQ.

An increasing number of states and localities across the country have enacted laws expanding pay transparency requirements to even the employment playing field for women and persons of color. Up from several years ago, over 25 states and localities have enacted some form of pay transparency law that: (i) prohibits an employer from requesting or relying on salary history; (ii) requires employers to report salaries across different job descriptions; or (iii) requires an employer to disclose a salary range for any given position in a job advertisement or at various points in the application process or upon a reasonable request by the applicant.

These laws signal a trend that more states will likely follow and require employers to provide more transparency in advertising and setting employee pay. Navigating the requirements across municipalities and states can be challenging for many employers, especially where different requirements apply to different sized employers.

PEOs should stay current with such laws, thereby adding value to clients – particularly clients operating in multiple states. A comprehensive analysis of each state law is outside the scope of this article; however, we address the different types of pay transparency laws and discuss some of the common differences between states. Be sure to consult your attorney to understand the full scope of the law(s) relevant to your operations.

SALARY RANGE DISCLOSURE LAWS

Eight states and four municipalities require employers to disclose a good faith salary range for a prospective position at some point in the application process, and require employers to disclose the actual salary range for a position to existing employees upon request. These laws can be broken down into three general types: those that require pay scales for any job postings, those that require an employer disclose a pay scale for a job at a point during the application process, and those that only require an employer to disclose the pay scale when directly asked.

The most expansive pay transparency laws require an employer to identify a reasonable, good faith estimate of the high and low end of the salary range it expects to pay for any given position. Three states and two localities currently require that job postings by specific employers include a salary range: California, Colorado, Washington, Jersey City, NJ, and New York City, NY, with New York State to join on September 17, 2023. Ithaca, NY and Westchester County, NY also require salary ranges for job postings for jobs either reporting to a physical location in their jurisdiction or companies looking to hire remote employees working in their jurisdictions. However, both laws will sunset when New York State's law becomes effective.

In each of these states, the requirement applies regardless of whether the job posting is posted directly through the employer or through a third party, such as a recruiter or staffing agency. It also applies if the position reports to an office within that state or if the job could be completed in that state.

Some states have additional requirements. Washington, Colorado, and soon New York require that job postings include a general description of benefits such as a healthcare, retirement plans, and paid time off or sick leave above the state-required minimum. Colorado employers have the additional responsibility to provide reasonable advanced notice to all Colorado-based employees

of any available promotional opportunities, so long as there is sufficient time for an applicant to apply for the position. California also has extensive record-keeping requirements, that mandate employers retain records memorializing the job history for all employers throughout their time at the employer and for three years thereafter.

Employers in Connecticut, Rhode Island, Maryland, Nevada, Toledo, OH, and Cincinnati, OH face less public disclosure obligations, but are still required to disclose the salary range for a position under certain circumstances. In Connecticut, employers must provide an applicant with a salary range for the position either when the applicant requests it or the employer makes an offer of employment. For current employees, they are entitled to an actual salary range for their position upon request, if they are transferred or promoted, or upon hiring. In Maryland, employers only need to disclose the salary range for a position upon request. While employers in Nevada must disclose the salary range following an initial interview with an applicant, even if the applicant is a current employee.

Most pay transparency laws apply not to positions where an applicant would report to a physical location within the state, but also where an out of state position could be filled by a remote employee located inside the state. However, there are states where remote employees are expressly not covered. For example, the Nevada law applies only to employees who report to a Nevada worksite. It does not apply to a Nevada-based employee reporting to an out of state worksite. Similarly, the laws in Toledo and Cincinnati only apply where the job application will be reviewed by a person in those cities.

BANS ON SALARY HISTORY

Over 25 states have passed legislation that prohibits an employer, or their agent, from directly or indirectly asking a job applicant to share their salary history. It is important to pay careful attention to existing application forms to confirm they do not include any request for prior salary history. Interviewers must also be mindful that any question where an applicant's prior salary is discussed, unless completely voluntarily disclosed, could expose the employer to liability.

Even if an applicant voluntarily discloses their prior salary, employers generally cannot rely on that information when deciding whether to hire an applicant or what or when determining their pay rate. In each state with a pay transparency law, there are penalties where an employer discriminates or retaliates against an employee or applicant who refuses to disclose their salary history, or where that salary history is used in a manner that would violate the law.

State laws with some form of ban on salary history are not without nuance. For example, in Maryland, employers can use an applicant's salary history after an offer of employment to advocate that the applicant should get more pay, instead of less. In Nevada, Toledo, and Cincinnati employers can ask an applicant their salary expectations and are permitted to use that information when making employment decisions.

Additionally, there are two states that have gone against the trend: Michigan and Wisconsin. In both states, the legislature passed legislation protecting an employer's right to inquire into an applicant's prior salary history.

Eight states and four municipalities require employers to disclose a good faith salary range for a prospective position at some point in the application process, and require employers to disclose the actual salary range for a position to existing employees upon request.

Although most PEOs are not involved in the interview or hiring processes of their clients, PEOs can still provide value as their clients grow and expand into new markets. Our clients look to their PEOs when the move into a new state to ensure they are compliant with that state's laws and requirements. And of course, many PEOs have internal employees in multiple states, and they should not be the "cobbler with broken shoes."

SALARY REPORTING LAWS ARE ON THE RISE

California, Minnesota, and Illinois each require some sort of reporting requirements above those required by the Equal Employment Commission and the Form EEO-1. California employers with 100 or more employees nationwide and at least one in California, must submit pay data reports to the state in May of each year (employees are counted at the client level for purposes of these wage reporting requirements in all three states where such reporting requirements exist).

Employers can no longer rely on their previously filed EEO-1 forms, but instead must use a state-specific form for each establishment or location where it has employees or labor contractors. Each report must contain a snapshot of W-2 or 1099 earnings and break out employees by race, ethnicity, sex, and a variety of job categories. Employers must also provide the number of employees in any pay band, as well as the mean and median wages for each combination of race, ethnicity, and sex for each job category prescribed by the state.

Large employers in Illinois with over 100 employees are required to submit an application each year to the Illinois Department of Labor in order to receive an "Equal Pay Registration Certificate." These applications include a submission of wage records covering just the employer's Illinois-based employees, as well as a signed verification the company complies with federal and state discrimination laws. This attestation must promise a lack of wage disparity between sexes and ethnic backgrounds and that the business corrects any wage and benefit disparities when they are identified.

Minnesota's pay reporting laws are far more limited and only apply to businesses with forty or more employees in Minnesota who want to execute a contract with the state of Minnesota for goods or services worth over $500,000. In that instance, the potential contractor would need to obtain an equal pay certificate directly from the state of Minnesota by providing much of the same pay and salary information requested by Illinois and California.

In conclusion, as states look to address ways to address the income gap between certain segments of their workforces, employers can continue to expect to see more states jumping on board with one or more of these pay transparency laws. PEOs can help their clients navigate these unchartered waters by monitoring developments and by ensuring any forms provided to or used by clients is up to date and compliant with the laws of every state where they are doing business. ■

MELISSA L. CIZMORRIS, ESQ.
Special Counsel, Labor & Employment
Akerman, LLP
Denver, CO

BRIAN NUGENT, ESQ.
Partner, Labor & Employment
Akerman, LLP
Denver, CO

STATE WINS

THE KENTUCKY PEO BILL: A GRASSROOTS STORY

BY KRISTIN BALDWIN

A core mission of our state government affairs efforts is passing the NAPEO Model Act in every state. In states with the model act on the books, PEOs enjoy the benefit of operating in a fair regulatory environment that does not disadvantage PEOs and our small business clients simply because of the unique nature of the PEO business model.

We support the proactive use of the NAPEO Model Act for several fundamental reasons:

1. It provides statutory certainty and a firm foundation of law for the PEO industry.
2. From small start-ups to large PEOs, it creates a level, competitive playing field and diminishes the ability of fly-by-night operations to distort the market or harm legitimate PEOs.
3. It resolves the most common legal issues that can arise in a co-employment context.
4. It promotes a common set of terms and provisions to make operations from state to state as seamless as possible.
5. The model act was developed in 2008, and today more than 40 states have some version of the model act in place. However, these efforts typically take years to come to fruition .

Kentucky is the latest state where NAPEO successfully worked to pass a model act thanks to the efforts of many members. The effort began in late 2019 after a PEO owner reached out to their local state representative to introduce legislation based on NAPEO's Model Act. The model act was ultimately passed in the spring of 2022 and subsequent legislation to clarify specific elements and delay over registration and implementation were passed last month in the 2023 Kentucky legislature.

The nearly five-year effort to pass legislation in the Commonwealth is not usual when working in the legislative and regulatory arena.

While the NAPEO Model Act was used as the basis for the legislation, the process began unexpectedly. A NAPEO member worked with a state representative to file the bill but did not consult NAPEO staff nor was this action included as part of the larger NAPEO State Action Plan approved by the State Government Affairs Committee (SGAC) and the Board of Directors during 2019. Nevertheless, we kicked off a grassroots campaign.

While Kentucky had statutes and administrative regulations specific to the PEO industry prior to the passage of HB 506, these were outdated to current industry practices. The NAPEO board made the decision to engage with a Kentucky-based lobbying team and begin advocating for the passage of the bill.

Once the legislation was pre-filed in 2019, NAPEO spent a large portion of time working with the Kentucky Department of Insurance, the Kentucky Justice Association, KEMI (the state's workers' compensation carrier of last resort), the Independent Insurance Agents of Kentucky, and the Kentucky Labor Cabinet to address a variety of issues raised by these interested parties.

Time and resources were dedicated to a Kentucky based law firm for purposes of providing NAPEO with a constitutional analysis of proposed legislation, including recommendations of possible solutions once it became clear local counsel was needed for passage due to concerns raised by external stakeholders on issues of constitutionality.

Most work was stalled after the start of the pandemic in mid-March 2020 until the end of 2021.

The start of the 2022 legislative session brought new life and sponsor to the PEO bill. After several months of intense legislative testimony and education, HB 506 was passed in April, and signed

by Governor Andy Beshear to go into effect July 14, 2022.

Education about the role of PEOs related to workers' compensation and a variety of insurance terms were front and center over the lifespan of the legislation. Many of the same issues have been raised by related parties in other states, including exclusive remedy.

While the model act is an incredibly helpful tool, there was a specific section related to Kentucky's jural rights doctrine where the workers' compensation language for exclusive remedy posed a concern for the powerful Kentucky Justice Association.

In addition to NAPEO's local lobbying team secured in 2019, ADP TotalSource brought on their own Kentucky-based lobbyist to assist with the legislative effort. This additional strength greatly assisted in negotiating with all interested parties and legislative leadership to advance the bill once agreements were reached by the groups.

NAPEO's role as the quarterback should not be understated. At each hiccup along the way, NAPEO staff and the working group comprised of NAPEO members continued to address each concern raised with either education or compromise to advance the bill.

NAPEO staff provided testimony before the legislative committees, held meetings to educate legislators and staff about the bill, and drafted speeches to aid legislators during the explanation of the bill on the floor of the House and Senate.

Compromise and communication throughout the entire legislative process is critical to the success of any legislation passing and it was no different with the Kentucky bill.

Once the bill was signed into law by Governor Andy Beshear, the Kentucky Working Group turned their focus to the Kentucky Education and Labor Cabinet which would oversee the implementation of HB 506, including drafting administrative regulations. The education process started again once we started to work with regulators who had a vague understanding of the PEO model and the new legislation.

Advocacy efforts at the administrative level can be just as critical at the legislative level due to the details required for registration and reporting for each PEO doing business in the Commonwealth. Throughout our communications with regulators, it became clear that neither the agencies or the PEO industry would be ready for the January 10, 2023, deadline to fully register and begin reporting their state unemployment tax (SUTA) at the PEO level, instead of the client level. Therefore, legislation was hastily crafted to delay the implementation of HB 506 prior to the January 10, 2023, deadline. In a Hail Mary due to the legislative calendar, we successfully passed SB 10 in four legislative days through both chambers to be signed by the Governor to delay the implementation.

The second bill passed in 2023 focused on clarifying language based on confusion during meeting with Kentucky regulators. The bill also included the option for PEOs to continue filing SUTA at the client level or switch over to the PEO reporting level for their clients. The NAPEO Model Act includes language for PEO level reporting, but many NAPEO members have requested the option to remain at the client level if that's the current practice in the state.

LESSONS LEARNED

Amending any state statute requires time, energy, and resources across a variety of fronts, including valuable NAPEO dues. The state action plan is developed on an annual basis to create and cultivate a favorable state legislative and regulatory climate to support the growth and success of the PEO industry. Ideally, the industry must work together before filing legislation and proactively asking elected officials or regulators to adjust how PEOs operate and are regulated in each state.

After the passage of three PEO related bills in two legislative sessions, we hope the final step will come with the adoption of administrative regulations by the Kentucky Education and Labor Cabinet. However, those regulations are still in draft form at the time of this article. NAPEO will work to support regulators as they draft and finalize these regulations to ensure the legislative intent of HB 506, SB 10 and HB 394 are followed.

TEAM EFFORT

A robust talented team was assembled to assist in the passage of three bills over the past five years. From our NAPEO members who participated in countless working group meetings, to the Kentucky based lobbyists who educated legislators, regulators, and fellow lobbyists, to our various legal teams who drafted and advised us throughout the course of the legislation – thank you. The NAPEO staff is grateful to each of you for your tireless efforts to move these bills to the finish line. ■

KRISTIN BALDWIN
Director, State Government Affairs
NAPEO
Alexandria, VA

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VICTORY IN NEW MEXICO

BY EMILY MARSH

In recent years, NAPEO has seen growing threats to a PEO's ability to offer large group health plans in certain states. In 2018, the US Department of Labor (DOL) issued new rules expanding the availability of Association Health Plans (AHPs), which raised some concerns among state insurance regulators that such plans might be used to exploit consumers . In stark contrast to AHPs, which are sponsored by associations that have no employment relationship with the individuals they purport to cover, PEO-sponsored fully insured health plans have a long track record of providing comprehensive and robust benefits to PEO employees. Also, unlike associations that sponsor AHPs, PEOs are employers and don't exist for the sole purpose of providing or selling health insurance. As a result of the AHP rule's deregulatory action, some states started looking closely at AHPs to prevent substandard plans from being introduced in their markets. Unfortunately, we have seen states inappropriately lump in PEO plans with AHPs. For example, in 2019 some PEOs received "a cease and desist" letter from the New Mexico Office of Superintendent of Insurance (OSI) for operating a multiple employer welfare arrangement (MEWA) without following state rules.

REGULATORY THREATS

Subsequently, in August of 2022, the New Mexico OSI formally released draft Rule 13.19.4 New Mexico Administrative Code that relates to MEWAs and PEOs and would deem an employee leasing company or a PEO that provides health coverage to two or more employers as a MEWA. In addition to requiring a PEO to register as a MEWA, the rule would impose several other registration obligations and notice requirements. In discussions with the OSI to express NAPEO's concerns about the rule before it was formally filed, the OSI stated that their intent was not to restrict a PEO's ability to sponsor a large group plan. However, the proposed rule as written apeared to make it significatnly more difficult for a PEO to offer a large group plan to its client employers. Despite a tight deadline, the NAPEO New Mexico working group, with the assistance of Groom Law Group (NAPEO's outside counsel), submitted comments and a redline to the OSI.

Unfortunately, OSI did not accept any of NAPEO's comments in the formal rule filing. The OSI held a hearing October 6, 2022, on the proposed repeal and replacement of the rule. During the hearing, NAPEO and several member companies provided verbal comments urging the OSI to either amend the rule to remove PEOs altogether or revise the rule to make explicit that PEO-sponsored plans be treated as large group plans as well as revise certain provisions to specifically address PEOs and more clearly reflect how plans sponsored by PEOs operate. Subsequently, NAPEO and others filed written comments reiterating these arguments.

In November 2022, the New Mexico OSI issued responses to comments on the proposed rule and updated the proposed rule to provide a January 1, 2024, effective date. Procedurally, the hearing officer was supposed to issue their findings, conclusions, and recommendations, and shortly thereafter, the Superintendent would issue an order adopting the final rule. The rule has not been adopted to date, but NAPEO secured a lobbyist to assist us in ultimately passing legislation during the 2023 New Mexico Legislative Session to address some of our concerns with the proposed rule. Since the proposed rule would have made it more difficult for a PEO to sponsor large group plans for its client employers, NAPEO and the New Mexico working group viewed it as a potential threat to our industry—in particular the negative precedent it could set in other states.

SEEKING A LEGISLATIVE SOLUTION

HB 255 and SB 204, NAPEO-sponsored companion bills, were filed as a legislative solution to the New Mexico OSI's proposed rule. It would have treated a PEO-sponsored health plan as a single employer welfare benefit plan and clarify PEOs can sponsor large group health plans. After SB 204 was assigned to the Senate Tax, Business and Transportation Committee, the OSI published an unfavorable analysis on our bill, citing ERISA preemption and the recent U.S. DOL's Guidance, which characterizes PEOs as MEWAs. It became apparent these NAPEO sponsored bills would not advance without working with the OSI on a solution. At the request of our bill sponsors, NAPEO and its outside health regulaotry counel Groom Law Group, met with the OSI and were able to come together on a mutually-agreed upon substitute. The legislation concedes to MEWA status, but explicitly states PEOs can sponsor large group health plans for the benefits of its co-employees.

Since the proposed rule would have prevented a PEO from collectively sponsoring large group plans for its client employers, NAPEO, Groom Law Group, and the New Mexico working group viewed that as the largest threat to our industry and the negative precedence it could set in other states. NAPEO, and Malcom Slee and Seth Perretta of Groom Law Group, spent a lot of time on the ground in New Mexico meeting with the

HB 255, passed the House by a unanimous 64-0 margin and passed the Senate by a 30-9 margin the second to last day of the New Mexico Legislative Session on March 17. HB 255 was signed into law March 30 by Gov. Michelle Lujan Grisham (D) and goes into effect June 16, 2023.

OSI on language negotiations, building positive relationships with the OSI, working with our bill sponsors, and testifying on the bills in multiple House and Senate Committees. Our bill sponsors, Rep. Linda Serrato and Sen. George Munoz, remained vigilant and were huge advocates for the industry. HB 255, passed the House by a unanimous 64-0 margin and passed the Senate by a 30-9 margin the second to last day of the New Mexico Legislative Session on March 17. HB 255 was signed into law March 30 by Gov. Michelle Lujan Grisham (D) and goes into effect June 16, 2023. NAPEO will continue to work with the OSI on the implementation of HB 255 and will keep the members informed.

Under HB 255, all PEO co-employees will be considered for the purpose of determining whether the PEO's policy is subject to "large group" or "small group" insurance rules in New Mexico. If the group health policy issued to the PEO is subject to the large group rules, all the workers under the PEO's arrangement will have the opportunity to participate under that policy. This has been a multi-year effort since the OSI has proposed rules for several years that would limit a PEO's ability to offer large group health plans. Again, this effort was so important because of the precedent it could set in other states. NAPEO appreciates the work of our bill sponsors, Groom Law Group, and the New Mexico working group—all helped us get a successful victory in New Mexico. ■

EMILY MARSH

Director, State Government Affairs
NAPEO
Alexandria, VA

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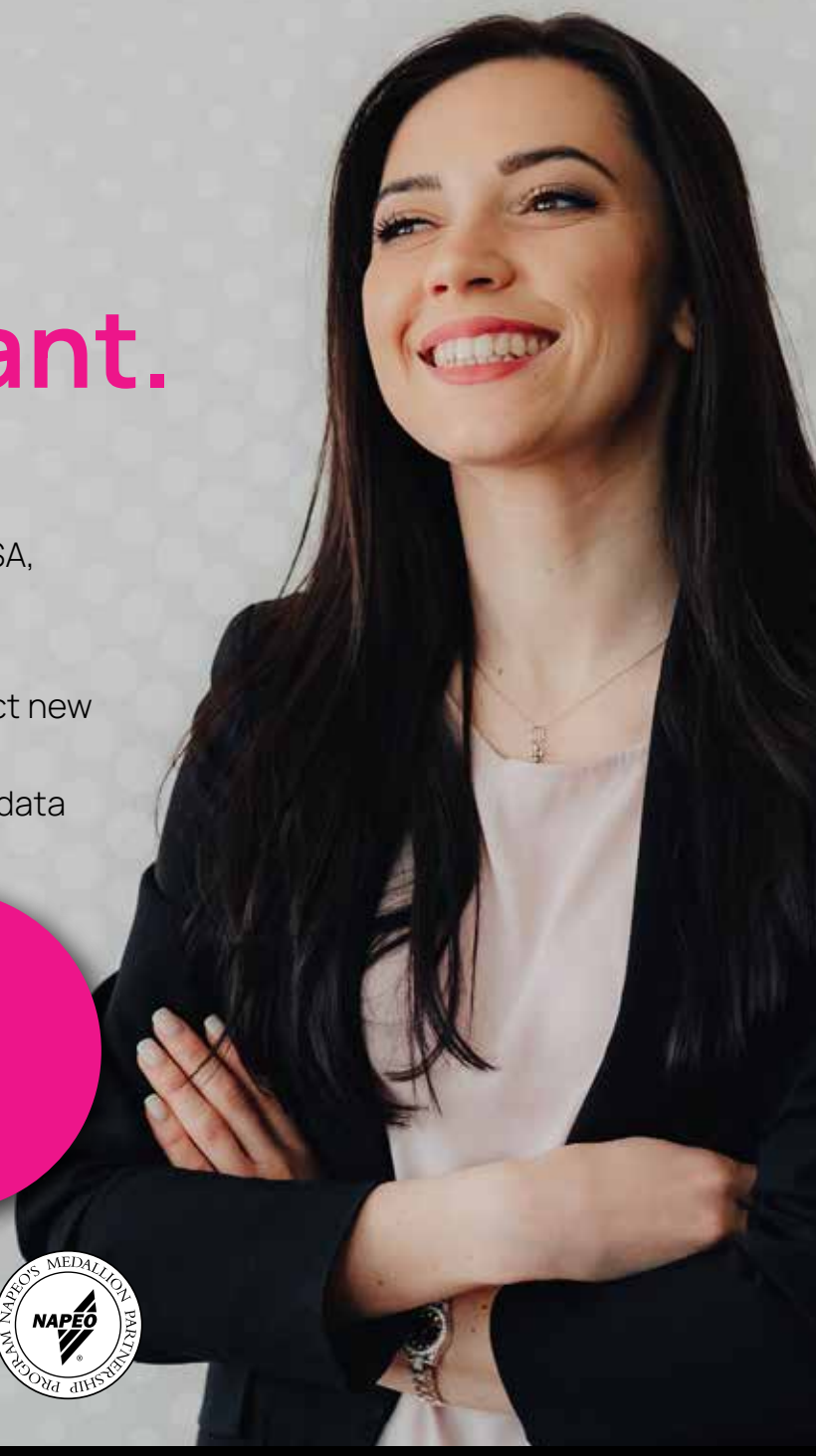

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A Q&A WITH: CONGRESSWOMAN ERIN HOUCHIN

Voters in Indiana's 9th Congressional district elected Congresswoman Erin Houchin to serve in the United States House of Representatives in November 2022. In doing so, Rep. Houchin became the first woman elected to Congress from her district. She also holds the distinction of being the only person elected to Congress who has worked for a PEO.

Rep. Houchin spoke to PEO Insider about her decision to seek public office, her experience working for a PEO, and the policies she champions.

PEO INSIDER: What motivated you to first seek public office?

Rep. Houchin: When I was a senior in college [at the University of Indiana] I interned in the Indiana state senate. I was apolitical, my friends were all in the business school and I was a psychology major.

During my internship, the best teacher I ever had, my sixth-grade teacher, showed up at the state house to lobby for a bill to create charter schools. I saw her influence the process and ultimately change the future of education in Indiana. I was struck by that.

After I finished the internship, I called the state house six Fridays in a row until they hired me as a legislative assistant.

I also worked for former Sen. Dan Coats as his regional director when he was in office. I was his representative in my community. This is when I first thought I could seek office and be a policymaker. I had always thought I would be a policy influencer, not a policymaker.

My state senator had been in office for 26 years, so I thought I might have something to offer my constituents. I felt if I could make just one impact then that's a good thing. I had to leave my job with Sen. Coats' office to run, and fortunately won election to the Indiana State Senate in 2014.

PEO INSIDER: Can you share a bit about your experience working for a PEO?

Rep. Houchin: I first met Brent Tilson (CEO of Tilson HR) when I campaigned for Congress in 2016. That's when I learned what a PEO was; I had never heard of PEOs before. I was intrigued by hearing him talk about it.


Rep. Erin Houchin (R-IN)

When I was in the state legislature I worked with small business owners, so I thought the PEO model was an exciting piece of the puzzle for small businesses. Following the 2016 election, I sought out

When I was in the state legislature I worked with small business owners, so I thought the PEO model was an exciting piece of the puzzle for small businesses. Following the 2016 election, I sought out opportunities to work in the PEO industry and worked for Brent Tilson and Tilson HR. It was a great experience!

opportunities to work in the PEO industry and worked for Brent Tilson and Tilson HR. It was a great experience!

When you're trying to grow a small to mid-sized business, a PEO is really beneficial. It can help a small business reduce costs, especially with healthcare by taking advantage of large group pricing.

PEOs allow small businesses to access more sophisticated services than they would otherwise be able to, and take away the headaches of being a business owner. Your strengths are not pushing paperwork, it's building a product or selling a service. If you're spending time on paperwork, you're not pursuing your ultimate mission.

PEO INSIDER: What are the most pressing concerns you hear from small businesses? Do you have ideas to alleviate some of these concerns?

Rep. Houchin: The cost of doing business, certainly. Finding and retaining employees is also hard. Supply chain issues still linger, too.

Onshoring supply chains and reducing the corporate tax rate would help. It seems that the corporate tax rate increases or decreases depending on who is in the White House. I would like to see stability there so business owners know what to expect. If we make it too expensive to do business in the US, then businesses will leave. Lowering the corporate tax rate leads to onshoring of jobs and businesses.

Workforce issues are also important; we're still trying to reengage people who are underemployed or have been out of the workforce for a while.

Congress is much more collaborative, cooperative, and less competitive than at the state level. People are genuinely helpful and want to help you get things done. I didn't expect this to be the case coming from an outsider perspective.

Immigration will also be an issue. I'm not even talking about illegal immigration, but just legal immigration. The waiting period for someone to come to the US to work is too long. We need to reduce that time period.

PEO INSIDER: Improving child literacy is an important priority for you. Can you explain why?
Rep. Houchin: My son is dyslexic, and I have been on this issue since I discovered the gaps in the system for students who struggle to read. It's not just students with disabilities, either. We changed the way we approach teaching kids to read in 1970s and 1980s.

Now, we only teach to the top 20% of kids who are going to learn to read no matter how you teach them. The bottom 20% struggle with dyslexia and need specific help to learn to read. The other 60% of kids in the middle will learn best if we teach them using the same methods we teach kids with dyslexia.

Our reading scores have dropped since we changed our approach. If kids can't read by third grade they are more likely to drop out of school, less likely to enter workforce, and more likely to enter the criminal justice system because third grade is where you go from learning to read to reading to learn.

It all ties back to the workforce. I'm pushing to improve literacy outcomes so we can give kids the best possible head start.

PEO INSIDER: Do you think it's important for small business owners to engage with public officials and participate in the political process?
Rep. Houchin: Absolutely. When I came to Congress I asked some of my colleagues if they had heard of a PEO. Many had not, but they are making laws that can impact PEOs and PEO clients.

In the state legislature, if I saw something that could impact the PEO model I would call Brent and ask his thoughts. So, it's critically important for PEOs and small businesses to engage with elected officials. One thing that slips by could impact the whole business model.

PEO INSIDER: What is a typical day like serving in the U.S. House?
Rep. Houchin: Well, there's no such thing as a typical day. It's a little bit frenetic! Most days start at 8 or 9am and go until 8 or 9 at night. We have lots of meetings with stakeholders and constituents, and a lot of committee work. I serve on three committees (Financial Services, Education & Workforce, and Rules) and five sub-committees, including the Health, Education, Labor and Pensions subcommittee.

The Rules committee is the oldest committee in Congress; we still meet in the Capitol building. Any bill has to go before the Rules committee before it can go to the House floor, so we meet for long hours and sometimes late into the night.

23 NATIONAL PEO WEEK
MAY 21-27 2023

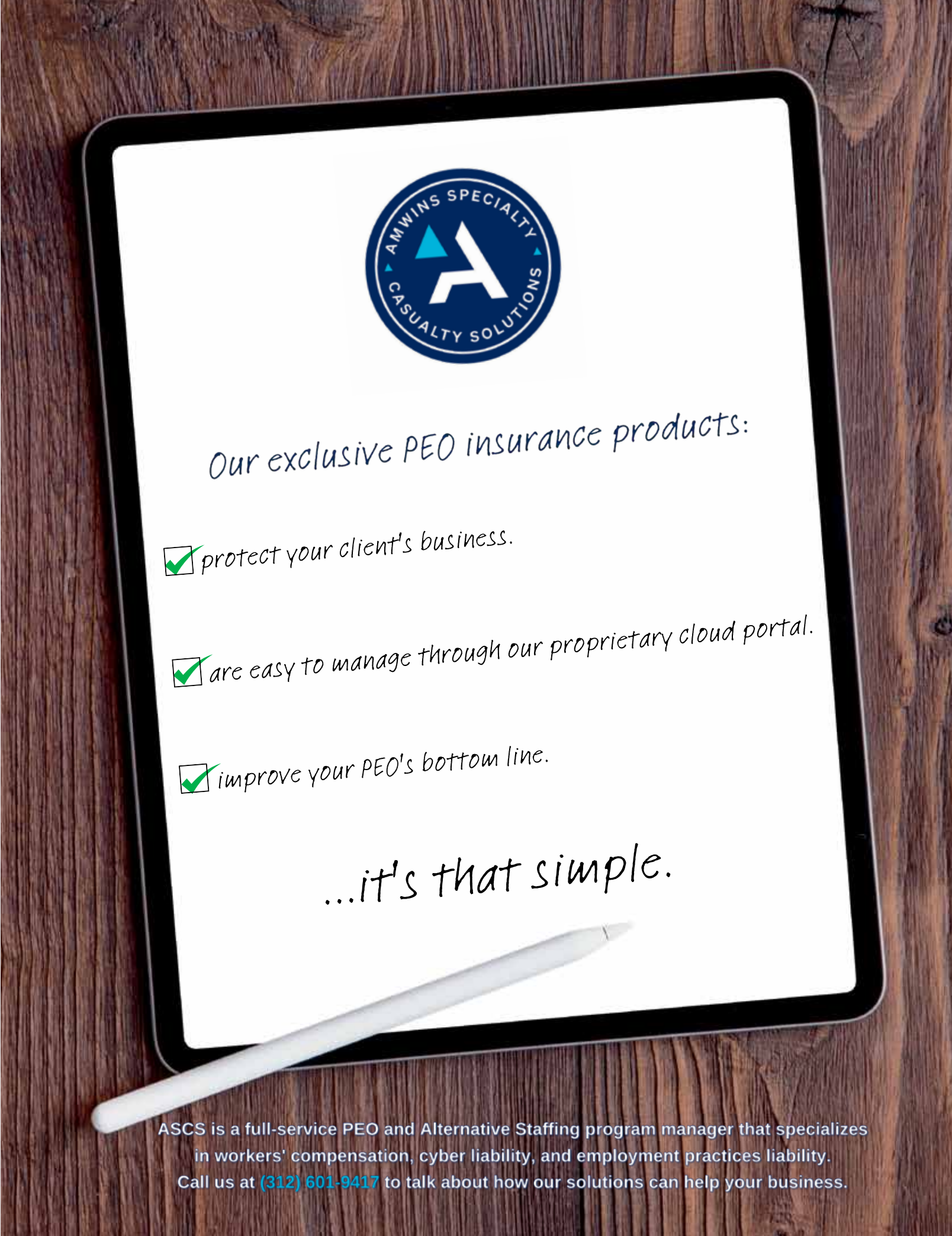
Rep. Houchin introduced a resolution in the House of Representatives recognizing May 21 through 27 as the first-ever National PEO Week. NAPEO members have exclusive access to marketing and communications tools to participate in National PEO Week. Read more on pages 42-44.

It's hard work but enjoyable, and I'm glad to have the opportunity to do so on behalf of my community.

PEO INSIDER: Did anything about serving in Congress surprise you when you arrived in Washington?
Rep. Houchin: In the state legislature we passed a lot of bills unanimously. I really anticipated it [Congress] to not be as cooperative with the other side of the aisle because that's the impression you're given by the media. We've passed 35 bills so far this year and 30 of them passed with Democratic support. I think Americans would have more hope that the system does function if they understood this.

Congress is much more collaborative, cooperative, and less competitive than at the state level. People are genuinely helpful and want to help you get things done. I didn't expect this to be the case coming from an outsider perspective.

It's not complete gridlock, either. When you're 1 of 435 it's less competitive. Most people want to help you succeed. I've welcomed that opportunity. ■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NATIONAL PEO WEEK: MAY 21-27, 2023

BY KERRY MARSHALL

This year, for the first time ever, we will be joining together as an industry to celebrate National PEO Week, May 21-27, 2023. It's an opportunity for us to shine a spotlight on all the ways we help our clients and their employees, the economy, and our communities. We're proud of what we do and how we do it – now it's time to tell our story!

As we all know, PEOs play a critical role in helping the small businesses that are the backbone of our economy survive and thrive, particularly during challenging times. In the dark days of the COVID pandemic, PEOs ensured that that their clients stayed afloat by securing PPP loans and loan forgiveness, managing employee leave and remote work, and applying for available tax credits. In fact, businesses that partner with a PEO were nearly 60 percent less likely to have permanently closed than those that did not use a PEO during the pandemic. We've heard story after story from clients who say they wouldn't be in business today if they had not had a PEO by their side during that time.

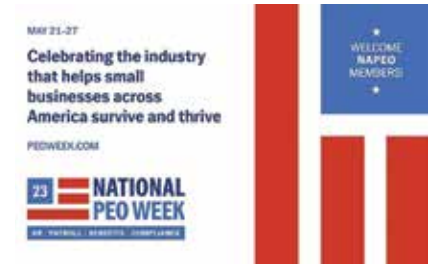
Outside of times of crisis, PEOs help small businesses improve productivity and profitability, focus on their core mission, and grow. PEOs help businesses take care of their employees by enabling them to offer Fortune 500-level benefits at an affordable cost and providing access to experienced HR professionals. We also help ensure that federal and state governments receive the appropriate payroll and unemployment insurance taxes, and that worksite employees entitled to workers' compensation receive these benefits.

We'll be telling the PEO story and celebrating the industry in a variety of ways during National PEO Week. Since it falls during NAPEO's PEO Capitol Summit, we'll be talking with lawmakers about the critical role PEOs play in helping small businesses, particularly during challenging times. Everyone who travels through Reagan National Airport will see two large scale billboards in the two busiest concourses touting National PEO Week. We'll have National PEO Week swag for all of our conference

National PEO Week T-Shirt

We'll be telling the PEO story and celebrating the industry in a variety of ways during National PEO Week. Since it falls during NAPEO's PEO Capitol Summit, we'll be talking with lawmakers about the critical role PEOs play in helping small businesses, particularly during challenging times.

attendees, and all members of Congress who attend our lunch on Capitol Hill will have their picture taken in front of our National PEO Week banner. We'll also be premiering a new video about the impact of PEOs on small businesses around the country. And we've gotten official recognition of National PEO Week with a proclamation in the Congressional



National PEO Week DCA Airport Ad


National PEO Week Capitol Hill Photo Backdrop

Record, courtesy of Rep. Erin Houchin (R-IN), a former PEO employee, who is featured on our cover this month.

We know many of you will be celebrating in your own communities as well. You can use our National PEO Week logo on your website and social media channels. Order t-shirts and hats for your staff and clients with the logo and make sure to take a picture for social media, #PEOWeek23. Personalize our sample op-ed on the positive impact of PEOs and submit it to your local paper. Use our press release template to tout National PEO Week in your local media. Send letters to your local lawmakers reminding them of all the great things PEOs do every day for small and mid-size businesses.

If you haven't started yet, it's not too late. We have a toolkit of resources available on our website, napeo.org/peoweektoolkit, to help you do all of this and more. It includes our whole system of logos you can use in a variety of ways, social media assets, sample press releases, op-eds, and letters to lawmakers, talking points for various audiences, infographics, and much more.

Whatever you do, make sure you let us know – send your photos and stories to **peoweek23@napeo.org.** ■

KERRY MARSHALL
VP, Marketing & Communications
NAPEO
Alexandria, VA

LIFELINE TURNED MIRAGE: THE ERTC STORY

BY EVAN FALLOR

No good deed goes unpunished.

In the case of PEO clients this punishment is an extended one—with no end in sight.

During the height of the pandemic, thousands of small and mid-sized businesses made an ethical and noble decision: keep their employees on payroll while weathering a once-in-a-generation economic catastrophe.

This was done through the Employee Retention Credit (ERTC), the refundable credit used to reimburse businesses who continued to pay employees despite facing significant financial hardship or shutting down during the COVID-19 pandemic. But instead of a bridge to financial stability, the ERTC has become a months-long, in some cases, years-long nightmare for PEO clients. The economic lifeline has become a mirage.

The IRS has allowed a backlog of Forms 941-X, the application used by businesses to claim the ERTC, to balloon to astronomical levels. As of mid-April, that figure has reached nearly one million outstanding applications, double the 468,000 in January, and nearly a ten-fold increase from the low point of numbers reported by the IRS in August. While they wait for their ERTC claims to be processed, PEO small business clients have had to take additional loans, lay off employees, and get second mortgages on their own homes—all to keep their businesses afloat.

"This administrative logjam is avoidable, unacceptable, and downright cruel to small and mid-sized businesses," said NAPEO President and CEO Pat Cleary. "These funds are the difference between life or death for many of these companies. It is not an issue for the IRS or Congress to take lightly."

With nary a response from the IRS—either on the reason behind the backlog or what is being done to clear it—, NAPEO has made it a point to keep up a steady drumbeat of pressure to get the regulatory body to act. We've continued to intensify the grassroots campaign we

launched in March 2021: we've sent scores of letters to the IRS and Treasury Department demanding answers, written lawmakers to remind them of the ongoing crisis faced by businesses in their state or district, and issued a press release that was picked up by several major outlets. We're in active communication with our lobbyists and contacts on Capitol Hill to be a persistent voice in the ears of those with power to rectify this situation. It's all part of a multi-pronged approach to get clients their deserved monies.

On April 19, NAPEO notched its first victory in its efforts to clear the backlog when IRS Commissioner Daniel Werfel was finally forced to respond to the ERTC crisis before lawmakers.

Werfel told Sen. Mark Warner (D-VA). Werfel that the IRS will redeploy employees working the phones to clear the ERTC backlog now that tax season has concluded. He said he expects 40,000 applications will soon be processed per week, doubling the weekly rate of 20,000 applications per week prior to tax season. He also said that his agency will process the oldest applications—those received in 2022 or earlier—first. As for the reason behind the backlog, Werfel said it has been due in part to concerns of fraud in 941-X filings, and that it is "extremely complicated" to process given it is a paper-based amended return across numerous years.

"It's a filing we're going to be dealing with for years, but I think we're going to make progress," Werfel said. Sen. Warner noted that this testimony was all "on the record" and he will hold him accountable to the 40,000 application-per-week figure.

It is quasi-promising news that comes two days after NAPEO sent a letter to Treasury Secretary Janet Yellen and IRS Commissioner Werfel, as well as to members of the House Ways and Means Committee and the Senate Finance Committee reminding them of the real consequences posed by this ballooning backlog. NAPEO also submitted questions for the record ahead of Werfel's testimony, demanding answers on a situation that continues to spiral out of control.

A survey of 28 NAPEO member PEOs—reflecting about 10% of our membership—found that 13,650 small business PEO clients claiming $2.98 billion in ERTC credits are awaiting

The IRS has allowed a backlog of Forms 941-X, the application used by businesses to claim the ERTC, to balloon to astronomical levels. As of mid-April, that figure has reached nearly one million outstanding applications, double the 468,000 in January, and nearly a ten-fold increase from the low point of numbers reported by the IRS in August.

processing at the IRS. Most have waited months in the double digits. Some have waited up to two years.

And while they wait, the situation grows dire. The testimonials NAPEO has compiled from clients speak for themselves.

"We have exceeded all of our borrowing amounts. Within weeks we will have to close the doors," warned a Utah-based energy company.

A Minnesota-based media company that has waited more than two years for $660,000 in ERTC funds has been forced to take out additional loans and hold a continuous balance on its line of credit, costing it tens of thousands of dollars.

For months and months, the IRS has given radio silence despite pleas from PEOs, clients, and lawmakers. Even in the agency's IRS' 150-page long-term operating plan there was no mention of this current delay or a plan to eliminate the backlog of ERTC claims. It's an uphill battle, but it is one that NAPEO is in for the long haul.

We will continue this drumbeat until small and mid-sized businesses receive the tax credit they need—and deserve. We will turn this mirage into a reality. ■

EVAN FALLOR
Director of Communications
NAPEO
Alexandria, VA

Join us at NAPEO's 2023 PEO Capitol Summit, the only event focused specifically and exclusively on compliance and emerging legal issues for PEOs! Don't miss your opportunity to gather in the nation's capital with your PEO colleagues for valuable policy discussions, legal analysis, and lobbying opportunities. Not to mention an exciting outing to beautiful Nationals Park, where we'll enjoy a game – and great food and drinks – in a fabulous party suite!

Visit **napeo.org/capsummit** to register!

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PRESIDENT BIDEN'S PROPOSED RULE ON RESTRICTIVE COVENANTS

BY GORDON M. BERGER, ESQ.

Restrictive covenants, also known as non-compete agreements or post-employment restrictions, are contractual clauses that limit an employee's ability to work for a competitor or start a competing business after leaving their current employer. These covenants have sparked considerable debate and controversy.

Historically, restrictive covenants are governed by state law, and the rules vary significantly from state to state. Some states, such as California, Montana, and North Dakota, prohibit non-compete agreements altogether, except in limited circumstances such as the sale of a business or the dissolution of a partnership. Other states, such as Texas, have relatively permissive laws that allow employers to use non-compete agreements to protect their legitimate business interests.

The main purpose of restrictive covenants is to protect an employer's trade secrets, confidential information, and customer relationships from being exploited by former employees who leave to work for a competitor or start a competing business. Employers argue that these covenants are necessary to safeguard their investments in research and development, marketing, and training, and to prevent unfair competition.

However, critics of restrictive covenants argue that they unfairly limit an employee's ability to find new employment and pursue their career goals. They argue that these covenants are often used as a tool of intimidation and coercion by employers who seek to monopolize the labor market and stifle innovation. They also point out that restrictive covenants disproportionately affect low-wage workers and marginalized groups, who may be unable to negotiate the terms of their employment contracts.

Courts have developed a number of legal tests to determine the enforceability of restrictive covenants, based on the principles of reasonableness, fairness, and public policy. The basic test is whether the covenant is necessary to protect the employer's legitimate business interests, whether it imposes an undue burden on the employee's ability to earn a living, and whether it is reasonable in scope, duration, and geographical area.

Factors that courts consider when evaluating the reasonableness of restrictive covenants include the nature of the employer's business, the level of the employee's access to confidential information or customer relationships, the geographic scope of the covenant, the

duration of the restriction, and the degree of competition in the relevant market.

Employers who seek to enforce restrictive covenants must be able to demonstrate that the covenant is narrowly tailored to protect their legitimate business interests, that it is not oppressive or unconscionable, and that it is supported by adequate consideration, such as a bonus or a promotion. If the court finds that the covenant is overly broad or unduly burdensome, it may strike down the entire covenant or modify its terms to make it more reasonable.

Even though states have historically governed restrictive covenants, the Biden Administration has stepped in and is attempting to regulate these agreements on the federal level. On July 9, 2021, President Biden issued an Executive Order (EO) asking the Federal Trade Commission (FTC) to "curtail the unfair use of non-compete clauses and other clauses or agreements that may unfairly limit worker mobility." *Executive Order, Section 5(g).* .

So, in keeping with his campaign promise, the EO called on the FTC to adopt rules that curtail non-compete agreements, which then led to the FTC issuing its January 5, 2022, proposed rule.

The rule would make it illegal for an employer to:

- enter into or attempt to enter into a non-compete with a worker;
- maintain a non-compete with a worker; or
- represent to a worker, under certain circumstances, that the worker is subject to a non-compete.

It would apply to relationships with independent contractors and anyone who works for an employer, whether paid or unpaid. It would also require employers to rescind existing non-competes and actively inform workers that they are no longer in effect.

However, the rule would not apply to other types of employment restrictions, like non-disclosure agreements. (The proposed rule is silent about non-solicitation agreements.)

The rule bans any contractual term that operates as a "*de facto* non-compete clause" in its effect and provides these two examples:

1. A non-disclosure agreement between an employer and a worker that is written so broadly that it prevents the worker from working in the same field after the conclusion of the worker's employment with the employer.
2. A contractual term between an employer and a worker that requires the worker to pay the employer or a third-party entity

for training costs if the worker's employment terminates within a specified period, where the required payment is not reasonably related to the costs the employer incurred for training the worker.

The final rule will go into effect 180 days after publication and will apply to all businesses regardless of size. The rule had a 60-day public comment period that was extended until April 19, 2023.

The rule also applies to existing and new non-compete agreements. For existing agreements, an employer that entered into a non-compete clause with a worker prior to the [date that is 180 days after publication of the final rule] must rescind the non-compete clause no later than the [date that is 180 days after publication of the final rule]. A proposed notice is included in the rule.

The rule does not apply to all businesses, however. It does not apply to the following industries: Banks; savings and loan institutions; federal credit unions; common carriers; air carriers and foreign air carriers; and persons and businesses subject to the Packers and Stockyards Act, 1921 (with certain exceptions).

Congress has also stepped into the restrictive covenant foray. In the Senate, a bipartisan bill known as the Workforce Mobility Act of 2023 would effectively eliminate non-compete agreements entered into after the bill becomes law. The bill gives the FTC and the US Department of Labor oversight to enforce it and allow a private right of action to recover damages, as well as costs and attorney's fees.

The act would prevent any person or business from entering into, enforcing or attempting to enforce a non-compete agreement. There is also a notice requirement for employers to inform workers of the ban on non-compete agreements.

But, this is the third attempt to pass such as federal law and there's a long way to go before this would become law.

In conclusion, restrictive covenants in employment are a contentious and complex issue, and the rules governing their use are constantly evolving. Employers should seek legal advice to ensure that any restrictive covenants in their employment contracts are reasonable, enforceable, and consistent with state (and possibly federal) law. ■

GORDON M. BERGER, ESQ.
Partner
FisherBroyles
Greensboro, GA

THE FUTURE OF WORK: 5 GLOBAL EMPLOYMENT TRENDS TO WATCH AND HOW TO STAY COMPLIANT

BY MIRANDA ZOLOT

For companies and employees around the world, the last few years have created opportunities to go beyond traditional ideas of where and how work happens. But, with these new opportunities comes risk. Staying compliant in a world of work that is changing daily requires businesses to be vigilant and proactive.

As an employment lawyer for 25 years and the General Counsel at Oyster HR, a global employment platform that employs talent all over the world, it's my job to create systems that support employers and employees across multiple jurisdictions.

As companies, employees, and governments race to define the next era of work, there are a number of growing trends and practices I expect will accelerate over the coming months and years. Here's what to watch for and how to stay compliant.

CONTINUED GROWTH OF REMOTE AND HYBRID WORKFORCES

COVID was a sea change in how we work. Companies and knowledge workers realized that much of their work didn't need to be done at the office. Simultaneously, many workers began enjoying the "extra" time they gained by no longer commuting.

Lawyers are a great example of this. Because client calls can be taken over the phone, on Zoom, or at the client's business, there's almost no need to go into an office on a daily basis. Because of this shifting perspective on how we work, the growth and demand for remote and hybrid workplaces will continue.

For companies, this will mean access to larger talent pools and significant savings on leases and other real property costs. For employees, this will mean that their ability to work within their chosen field will be

untethered from the need to live in large cities or to sacrifice their quality of life because of high costs and long commutes.

HIRING OUTSIDE USUAL GEOGRAPHIC FOOTPRINTS

Remote work has empowered companies to look for candidates outside their normal hiring pool—both because they can and often because they need to address talent shortages.

And it's not just large companies, either. Small companies are starting to take the leap of hiring outside of their home jurisdictions and thinking about the best ways to do this safely and compliantly.

In conjunction with the continued growth of remote work, the trend to hire in new jurisdictions is accelerating and surfacing challenges around implementation, employee and contractor classification, and workforce management. HR tech and legal tech sectors will grow to meet these new demands from companies hiring geographically diverse workforces. These companies will enable even small businesses to hire across borders.

INCREASED TRANSPARENCY

US companies hiring in more worker-friendly jurisdictions will need to adjust to greater corporate operational transparency. Because of strong unions and regulatory directives, it is common and expected in many places for an employer to share information about salary ranges, and even actual salaries. Regulated transparency will lead to strategic transparency in employers of choice.

Armed with more information and an openness to sharing their individual situations, their wants, and needs, workers are keen to advocate on their own behalf.

It can be uncomfortable for employers who have never had to be so transparent in the past or who are not used to outspoken workers. Those companies would do well to evaluate their approach to worker compensation, and communication, as well as consider management training around balancing transparency and discretion. Knowing what to say to whom and when is more important now than ever.

REMOTE VISAS AND WORK-FROM-ANYWHERE POLICIES

Alongside companies looking to hire beyond their typical geographies, we're also seeing an increasing number of "local" workers who want to go somewhere else, regardless of where you hired them. Remote employees, in particular, often think that because they are remote from their employer, it means they can be anywhere.

From a legal and regulatory standpoint, that's not true. And, for organizations, it's tricky. You need to worry about taxation,

how long people have been in certain places, and whether they're traveling for work or personal reasons.

Simultaneously, governments across the world are codifying remote work into their immigration policies, which means workers may want to make the most of these opportunities. Take Spain's recent digital nomad visa, for example.

So, as interest in work-from-anywhere continues, companies need to be prepared. That means understanding business risks, creating policies, and clearly communicating them to employees.

GOVERNMENT HYPERSENSITIVITY

Governments are challenged right now. Once upon a time, issues around work and taxation were fairly straightforward when the employee was going to a factory down the street.

As people travel and companies continue hiring across borders, we will see a period of regulatory scrutiny as governments try to figure out how to keep their citizens safe and employed without losing out on revenues.

Undoubtedly, it will be a tricky few years while we determine what remote work means to our nation-states.

AVOIDING RISK IN A GLOBAL EMPLOYMENT SETTING

The world is small and getting smaller. For companies wading into the world of global employment, compliance is non-negotiable. As an employer looking to hire talent outside of your home jurisdiction, you'll need to ask questions like:

- "What do I want my corporate presence to look like in this jurisdiction?"
- "What is my plan for benefits, compensation, and potentially equity?"
- "Is my business set up in a way where I can easily comply with local employment laws?"

For employers with workers on the move, know where your employees are and consider where you want them to be. Be realistic about what you can and cannot support as an organization, and create and communicate policies to address the needs and questions of your workforce.

Most importantly, engage partners to help you hire, register, and manage health and safety in places outside of your jurisdiction. Find good counsel or a good partner to advise you on how to operationalize these policies so you can remain compliant and mitigate any corporate, financial, or employment risks. ■

MIRANDA ZOLOT, ESQ.

General Counsel
Oyster
Oyster is a globally distributed workplace

OBJECTIONS: REAL OR BS?

BY CLAY KELLEY, SHRM-SCP

There are only three authentic objections—every other objection is BS.

Maybe it's not entirely BS. If we are truly honest with ourselves, maybe it's a failure on the part of the salesperson to qualify, build rapport, build trust, or build a business case. Make no mistake if there is no trust, or no rapport, there will be no client relationship.

Successful salespeople gain client relationships because they qualify opportunities, build rapport, earn the trust of the client, discover the needs of the client, and build a business case for outsourcing.

The following objections were presented at a recent sales conference. When we sorted through them and the BS, we agreed on the following truths about the salesperson who presented the objection:

- They failed to "qualify" the opportunity
- They were going after clients in an "existing PEO relationship"
- They did not earn the "trust or the rapport" of the client
- They "talked (too much)" about features and benefits instead of discovering the client's issues and building a business case
- They promised "savings"
- They were trying to "force" a sale on an uninterested client

THE KEY TO OVERCOMING OBJECTIONS: QUALIFYING

If you don't want to get a bunch of objections, then become better at qualifying prospects. It is the responsibility of salespeople to work opportunities that are real—not BS. If a salesperson is getting a bunch of objections, then they likely did not qualify the opportunity at the beginning of the process.

Some time ago, I wrote an article on client selection that included the criteria for qualified opportunity. Here's a quick review: Qualified prospects operate ethically, can pay our invoice, have all decision makers and stakeholders present for meetings, are open to change, have issues that we can solve, are willing to invest in solutions, want a solution on a reasonable timeframe, and are willing to part ways with existing relationships. No BS—meet all these criteria, you have a qualified client.

A WORD ABOUT CLIENTS IN AN EXISTING PEO RELATIONSHIP

I'm going to be blunt here: you will go broke "quoting" business with an existing PEO (Quoting is a word I hate). Unless the client

OBJECTION	BS
We looked at PEO two years ago and it didn't make sense for us	Qualify, Trust
No reason to make a change, no problems	Qualify, Existing PEO relationship
I don't have the time to make a change	Qualify, Trust, Rapport
This is how we've always done it	Qualify, Rapport, Talked too much
I don't want our employees to feel like they work for someone else	Trust, Rapport, Talked too much
There's not enough savings to change	Savings
Lose control	Trust, Rapport, Talked too much
Waiting for another proposal	Qualify
Won't provide documents needed	Trust, Rapport
Sounds too good to be true	Trust, Rapport, Talked too much
Need to discuss with partner	Qualify, Trust
Requires board approval	Qualify, Trust
We're too small for a PEO	Qualify, Force
Recession fears	Qualify, Trust, Rapport

is so unhappy with their present provider that they have come to a decision that they are making a change, change is not coming without significant financial incentives.

Pursuing business that has a present PEO relationship, especially in a predatory manner, is not good for our industry. Let's be better than that.

You can qualify a prospect who has an incumbent PEO relationship with one question; *"Have you made the decision to part ways with your current provider?"* If the prospect affirms that the decision has been made, then there are a lot of additional discovery questions that need to be asked. That is a subject for another time, maybe.

THE THREE AUTHENTIC OBJECTIONS

The three authentic objections are: timing, money and what I refer to as a "Richy Harder" objection.

TIMING

Timing is a qualifier. There are a lot of reasons why the timing may not be

optimal such as a recent renewal. Perhaps it is their busy time of year; think of a CPA firm from mid-January through April. I have experienced delays due to changes in leadership or an acquisition.

Trying to force a sale will only backfire and make a salesperson look desperate. If a client is truly interested, the timing will be right in the future. A competent salesperson can identify a client's timeframe very early in the discovery process with one simple question; *"When would you want to implement a solution?"*

MONEY

The money objection is authentic and may not be discovered until proposal. There are times when it just does not make financial sense for a client to engage a PEO solution. It is the job of a sales professional to build the financial case as much as they build the business case for outsourcing. This requires the salesperson to gain the documents needed to prepare an accurate comparison of existing costs and/or budget.

It could be that the PEO costs for SUTA, workers' compensation or benefit premiums are higher than what the client is currently paying. In a recent opportunity I was referred to, the client had a .61 SUTA, a .72 workers' compensation modifier and their premiums for health insurance on the dependent side were 8% lower than the PEO's health plan. The financial side of the business case did not make sense. However, by not attempting to force a sale, the client's trust was earned and is maintained, and there may be an opportunity in the future—if things change.

THE RICHY HARDER OBJECTION

The Richy Harder objection is where the client has a long-standing, loyal relationship that they would never abandon. Richy Harder has been my best friend since the seventh grade. We have done life together through good times and hard times—he is a true, loyal friend. There is no one who can come between our relationship.

Great salespeople can discover a Richy Harder relationship early in the discovery process. Salespeople who attempt to interfere with a loyal, authentic relationship will fail in this endeavor—miserably.

Until we get together again, remember *"Don't be desperate to sell, be hungry to serve."* ■

CLAY KELLEY, SHRM-SCP
claykelley.com
Arlington, TX

PEO INDEX DECLINE REFLECTS BUSINESS OWNER PESSIMIISM

BY JOHN J. SLAVIC

It has long been a question in my mind—which is the leading indicator, the PEO Employment Index or Gross Domestic Product (GDP)? The decline that is exhibited in the latest release of the Index, clearly reveals that the Index is the leading indicator. The downturn in the Index reflects the growing pessimism among small and medium-sized business owners, that has been prominent in various business owners' sentiment surveys. There are several countervailing economic trends like continued wage strength and continued job turnover and quits ratios, but the environment is decidedly negative compared to six months ago. ■

JOHN J. SLAVIC
CEO & President
Slavic401k
Boca Raton, FL

AD INDEX

Boldface type indicates NAPEO Medallion Partner

CELEBRATING NATIONAL PEO WEEK

BY PAT CLEARY

For our May edition, I would normally say "Welcome to the Cap Summit issue!" but I'll get to that in a minute. Instead, I'll say "Welcome to the National PEO Week issue!"

Thanks to the combined creativity of Kerry Marshall and the execution of Thom Stohler, we are celebrating the first-ever National PEO Week during our PEO Capitol Summit, May 21- 27. By now, you should have received our e-mail with a copy of the proclamation placed in the congressional record by Rep. Erin Houchin (R-IN), a former PEO employee. This is next level—and well deserved—recognition for our burgeoning industry. By now you will also have received information about how you can be part of NPEOW—look we have an acronym! We hope you will celebrate with your teams, clients, and communities. Can a hallmark card be far behind…?

For those of you lucky enough to be in Washington for our PEO Capitol Summit, NPEOW will be our organizing banner that we will fly under all week, especially on Capitol Hill day. The NPEOW logo below will be on display. And our lineup is fantastic: Our CEO forum speaker is Pam Talkin, the former Marshal of the Supreme Court, the first woman to ever hold that job. Before we go to the Hill on Tuesday, we'll hear from Representative Wesley Hunt of Texas. On the Hill, we'll hear from a bipartisan group of members of congress. At our conference, sponsored by Women in NAPEO (WIN), well hear from Janine Driver an expert on body language and a consultant to both the FBI and the CIA. And of course, you'll get your regular dose of politics at lunch with my old friend Bob Cusack, editor of The Hill and consummate political observer and insider.

As for what we will do on Capitol Hill, we will continue to pound away on the ERTC backlog. Our work—*your* work—is showing progress. Ten members of the Ways & Means committee—half supported by NAPEO and our PAC—have sent a letter to IRS Commissioner Danny Wuerffel, requesting a meeting to talk about the ERTC backlog. At a hearing in April, Senator Warner (D-VA) pressed Wuerffel on the backlog. The Commissioner committed to reduce the backlog by 40,000 a week, double the current rate. As Senator Warner reminded him, that's on the record. We intend to hold him to it.

On Capitol Hill day, we will keep up the pressure. NAPEO Chair Kristen Appleman has been making visits, her first foray into lobbying. I joke that we have created a monster. She has been a tremendous advocate and is a believer in the importance and ease of doing these meetings if you haven't already, come check out her video on our website, emphasizing how critical—and easy—it is to make visits. She did the video in one take after a day of visits!

> *For those of you lucky enough to be in Washington for our PEO Capitol Summit, National PEO Week will be our organizing banner that we will fly under all week, especially on Capitol Hill day*

So again, we look forward to seeing so many of you in DC. And if you're not in DC, we hope you will carry the NPEOW flag and message to your communities far & wide. ■

PAT CLEARY
President & CEO
NAPEO
Alexandria, VA

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