PEO INSI

PUBLISHED BY THE NATIONAL ASSOCIATION OF
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THIS MONTH'S FOCUS

PEO OPERATING ENVIRONMENT

SMALL BUSINESS CLIMATE

INSURANCE & BENEFITS

ECONOMIC OUTLOOK

COVER STORY

STEVE POLITIS

ALCOTT HR CEO

NAPEO'S 2023-2024 BOARD CHAIR

THE SOURCE FOR PEO EDUCATION® 707 NORTH SAINT ASAPH STREET, ALEXANDRIA, VA 22314 **WWW.NAPEO.ORG**

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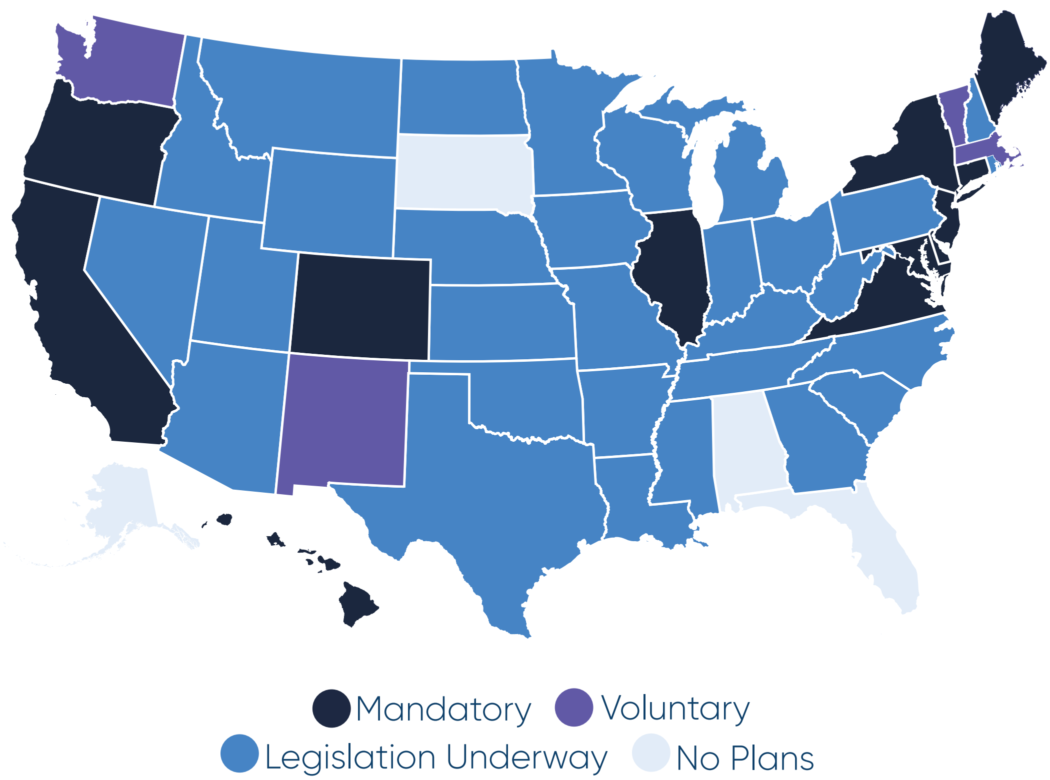
State Mandated Retirement Plans for Small Businesses



Source: Georgetown University for Retirement Initiatives

Is your PEO ready?

Steve Politis

Conte

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NOVEMBER 2023

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WE'RE ALL IN THIS TOGETHER

BY STEVE POLITIS, ESQ.

I hope everyone who attended the annual conference got everything they expected and more out of it. It was great to see friends, network, learn and walk through the marketplace and visit all the vendor partners who support our industry. This year's Annual Conference and Marketplace brought me back to the 90s when this inexperienced 20-something year old first knew he wanted to be in NAPEO (formerly NSLA for you long-timers like me).

I probably should not admit this to you, but being we are all friends here, I will. I remember my first NAPEO Annual Conference because it was in Hawaii. The next year it was in the brand-new (at the time) Venetian Hotel in Las Vegas. I knew right then I wanted to be part of this industry. I may not have understood PEO back then (and some days I question if I even know it today) but I knew I could at least go to great places and stay in nice hotels with some smart and cool people. Fast forward two and a half decades, I have the honor of serving you all as your Chair for the next year.

I have several goals and priorities for the upcoming year, and I encourage you to read about all of them on pages 30-33, however, I've highlighted a few here.

EMBRACING INCLUSIVITY

One of my foremost goals is to elevate our focus on inclusivity. In today's dynamic business environment, we must recognize the value of diverse perspectives and backgrounds. By embracing DE&I initiatives, we not only create a more welcoming industry but also tap into a wealth of innovation that will propel the PEO industry to even greater success.

FORGING PARTNERSHIPS FOR SYNERGY

Collaboration lies at the heart of continued progress. I would like NAPEO to not only be the "Voice of the PEO Industry" but the voice of the SMB community. Groups like the National Federation of Independent Business (NFIB) and Chambers of Commerce could make powerful allies to selectively align with when we advocate for SMBs. By strategically pooling our resources and expertise on an issue, we can drive remarkable synergies that will positively amplify the impact.

KEEPING THOSE WHO SERVED "INVOLVED"

I am a big believer in getting new people involved, and I will continue that as I believe it is incredibly important. I do feel we have not taken advantage of former industry leaders who still want to help the industry prosper. There is an industry joke about the "Dead Chairman's Club". Once a Chair serves out their former Chair year they kind of become forgotten. My thought is why not have them continue to share their knowledge and experiences with the next generation of leaders. I believe we should invite them to Board meetings and strategic planning sessions without any voting rights, but just a voice to share so new leadership can have some of that historical knowledge as they make their decisions for the industry.

My three additional initiatives are nurturing new entrants, re-visiting leadership terms, and seeing how NAPEO can use AI to our advantage. Luckily for you all reading this article, I was limited to 650 words. The joke about all these grand plans is I believe we can get these done because of the extra day we all get with 2024 being a leap year.

I am eager to serve as your Chair and grateful for the trust you have placed in me. We're all in this together! ■

STEVE POLITIS, ESQ.

2023-2024 NAPEO Chair
CEO
Alcott HR

LEADERSHIP

NAPEO BOARD NAMES CASEY CLARK PRESIDENT AND CEO

Following a comprehensive search process, NAPEO recently announced that Casey Clark has been selected as the association's next president and CEO, effective December 5, 2023. Clark will succeed Pat Cleary.

"I am pleased to welcome Casey to the NAPEO team," said NAPEO Chair Steve Politis, chief executive officer of Alcott HR. "With his deep experience in Washington and the association industry, as well as his extensive background as a communication strategist, Casey is the clear choice to advance our industry's interests and tell our story."

"It is truly an honor to have the opportunity to join this exceptional industry," said Clark. "I am looking forward to building on the strong foundation that Pat and the NAPEO team have built to advance the interests of PEOs and the PEO industry all across the country."

Clark currently serves as senior vice president of the American Gaming Association, the leading industry advocate for the $261 billion US casino gaming industry. Prior to joining AGA, Clark was Managing Director of FTI Consulting, a global management consultancy.

NGB

NAPEO GIVES BACK RAISES $300,000

For our fifth year of the NAPEO Gives Back initiative, we partnered with Give Kids the World Village, an organization that provides magical theme park experiences to children with critical illnesses and their families. GKTW allows the kids to take a break from critical care treatments so that they can just be children, experiencing joy and making unforgettable memories.

We raised more money than we ever have, and we were able to hand off a $300,000 check to Give Kids the World Village. This money will bring the joy of Christmas to critically ill children and their families year-round through a remarkable initiative to install millions of LED lights throughout the village's sprawling campus, creating a sparkling winter wonderland every day.

Since 2019, NAPEO Gives Back has made impactful contributions to the host cities where our Annual Conference & Marketplace is held and has collectively raised over $764,000.

KUDOS

THRIVE PEO NAMED BEST HR OUTSOURCING COMPANY FOR THIRD STRAIGHT YEAR

NAPEO member Thrive PEO recently announced that it was named Tulsa's best human resources outsourcing company at this year's Best in the World Awards. Voters recognized Thrive PEO for its best-in-market client support and the comprehensive scope of services it delivers to Oklahoma's SMBs. "We love this great city and couldn't be more grateful to have the efforts of our colleagues recognized as Tulsa's best. We launched Thrive PEO with the goal of providing meaningful business performance solutions to SMBs, and our passionate team of HR superstars is unmatched in the ways they serve our clients," said Jon Scoggins, CEO and co-founder of Thrive PEO. "We're thankful voters see this commitment, and look forward to helping employers thrive for many years to come."

CONGRATULATIONS

EXTENSISHR RECEIVES FOUR COMPARABLY AWARDS

NAPEO member ExtensisHR recently announced that the company has been recognized with four prestigious Comparably Awards, receiving accolades in the Best Company Happiness, Best Company Compensation, Best Company Perks and Benefits, and Best Company Work-Life Balance categories. “We are incredibly honored to receive these four Comparably Awards. Our team is the backbone of our organization, and their happiness and success are our top priorities,” said David Pearson, ExtensisHR’s SVP of people and culture. “We also believe that a highly engaged workforce leads to greater customer satisfaction and these awards affirm our commitment to this principle.”

WIN

NAPEO CELEBRATES WOMEN IN NAPEO WEEK

We celebrated WIN Week from September 18 to September 22 to recognize our female leaders within NAPEO. The week started off with a webinar hosted by Wanda Silva during which a panel of our very own NAPEO members answered some tough questions about the struggles of climbing the corporate ladder as a woman, how to maintain work-life balance, especially as a mother, and some advice for aspiring female executives. On Tuesday, we took to the Women in NAPEO LinkedIn page, where our members were able to recognize some of their role models in the comments of our “Tag a Girl Boss Tuesday” post. On Wednesday, we released a WIN Bingo card, where our members were able to check some of the boxes, all of which were centered around supporting women in and out of the workplace, and submit their bingos to win a prize. On Thursday, we released some clips from the webinar for those who were unable to attend. We ended WIN Week with celebrating American Business Women’s Day, a national observance recognizing all women in the workplace. We look forward to celebrating again next year! ■

SMALL BUSINESS CLIMATE

How to Survive and Thrive as a Small Business Owner

BY ERICA BRUNE

Running a small business is no small feat. It's a journey filled with uncertainties, challenges, and late-night pondering. As we navigate the ever-evolving business landscape, small business owners find themselves confronting a range of pressing concerns. Whether it's the dynamics of returning to the office, the quest for top talent, or the transformation brought about by automation and AI, these challenges redefine the way our clients do business.

In this article, we will explore these pressing concerns and dive into scenarios that paint a vivid picture of the challenges faced by small business owners over the last six months. Additionally, we'll highlight how PEOs are well-positioned to assist business owners in overcoming these obstacles to thrive in an increasingly competitive market.

THE CHALLENGE OF RETURNING TO THE OFFICE

The Concern: The return-to-office dilemma is a defining concern for small business owners. With the COVID-19 pandemic reshaping work dynamics, a fundamental question arises: Should employees return to the office or continue working remotely? The disconnect between employee productivity and the bottom line has prompted many employers to consider bringing their workforce back to the office. However, concerns linger about employee compliance and potential attrition.

Scenario: Imagine a small employer, XYZ Inc., that is grappling with the task of bringing its employees back into the office. These employees have been working remotely for the past few years and have grown accustomed to the flexibility of this arrangement. The business owner understands the resistance to change and the unease it may cause among the workforce. To address this, he or she creates a new classification and hires new employees, designating these new positions as "in-office" while allowing the existing class of employees to remain remote. However, this move inadvertently creates a division within the workforce, with implications for career growth and promotions.

This scenario exemplifies the complex challenge faced by small business owners in navigating the return-to-office issue. It emphasizes the importance of finding a balance between the desire to retain long-term staff and the necessity of aligning business needs with workforce culture.

FINDING TOP TALENT

The Concern: In today's competitive job market, finding and retaining top talent is a paramount concern. Small business owners have encountered a shifting landscape where highly skilled professionals are actively seeking new opportunities due to layoffs and corporate restructuring. However, the salary misalignment resulting from the "great reshuffle" poses a unique challenge.

Scenario: Picture a marketing director who was hired in 2021 by a growing agency. She enjoyed a salary that was 20% above market rate, and her work was exceptionally fulfilling. However, in the 2nd quarter of 2023, the agency initiated mass layoffs as part of a restructuring effort to salvage the investment. Consequently, the marketing director finds herself in a predicament, as job opportunities now offer salaries significantly below her previous earnings. Moreover, she is competing for top positions with job seekers who possess advanced degrees and more extensive experience.

As we navigate the ever-evolving business landscape, small business owners find themselves confronting a range of pressing concerns. Whether it's the dynamics of returning to the office, the quest for top talent, or the transformation brought about by automation and ai, these challenges redefine the way our clients do business.

This scenario vividly illustrates how the job market landscape can rapidly shift, creating both opportunities and challenges for small business owners. It emphasizes the importance of staying competitive in attracting and retaining top talent in a dynamic job market.

EMBRACING AUTOMATION AND AI

The Concern: The adoption of automation and artificial intelligence (AI) is transforming industries across the board. Small business owners now have a new option to fill certain roles that have gone unfilled and underfilled since before the pandemic with the choice of embracing these technologies to enhance efficiency and reduce costs. In addition, the transition to automation can create workforce anxieties about job security and adapting to new technologies.

Scenario: Consider a small manufacturing business heavily reliant on manual labor for its production line. Even raising hourly wages, they struggle to fully staff all three shifts and struggle with turnover. The business owner recognizes the need to improve efficiency and reduce operational costs. After extensive research, the business owner decides to implement automation and AI solutions to handle repetitive and physically demanding tasks on the production floor. However, this transition raises concerns among the existing workforce. Some employees worry about losing their jobs to machines, while others are anxious about adapting to new technologies.

In response to these concerns, the business owner takes action to safeguard the company's success. Training programs are introduced to help employees acquire new skills, ensuring that the business remains efficient and competitive. This approach shows a commitment to the business's bottom line while adapting to market changes. This scenario highlights how small business owners must find a balance between using technology to boost profits and meeting the needs of their workforce. It shows that technology can improve the company's overall survival.

PLANNING FOR 2024: MEETING THE CHALLENGES AHEAD

As many clients are currently shaping their 2024 strategic plans and grappling with the challenge of doing more with less, it's evident that almost every expense category has seen an increase, making planning all the more crucial.

With an uncertain economic forecast for 2024, small business owners are navigating a multifaceted landscape filled with pressing concerns. These challenges encompass the return-to-office dynamics, the pursuit of top talent in a competitive market, and the transformative impact of automation and AI. While these concerns may seem daunting, PEOs, with their expertise and resources, offer invaluable support to business owners in tackling these challenges.

In the face of budget constraints, reduced workforce, and lower sales goals, our clients are strategizing and planning meticulously for 2024. These challenges require innovation, adaptability, and the right partnerships to thrive. As PEO operators, we are here to provide the essential support, resources, and expertise that our clients need to address these challenges effectively.

As small business owners continue to wrestle with these pressing concerns, they possess the opportunity to innovate, evolve, and thrive by implementing the right strategies and forming the right partnerships. With the road ahead marked by uncertainty and challenges, a well-developed plan for 2024—crafted in response to these concerns and solutions—can pave the way for small businesses not just to endure but to prosper in the years to come. ■

ERICA BRUNE

CEO
Lever1
Kansas City, MO

The Evolving SMB Landscape

BY CARSON KING

Since the beginning of the PEO industry, PEOs have always played essential roles in supporting small and medium sized businesses. The challenges and evolution faced by these businesses, combined with the ever-growing importance of employee well-being, provide a holistic landscape where PEOs can refine their service offerings so as to cater to emerging demands.

SMBS: THE HEARTBEAT OF THE U.S. ECONOMY

Small businesses may carry the prefix "small", but their influence on the American economy is anything but small. Representing 99.9% of all U.S. firms, these 33.2 million entities are synonymous with innovation, resilience, and job creation. From 1995 and 2021, SMBs were responsible for creating 63% of all new jobs in the U.S. economy and currently account for almost half of America's private sector workforce. SMBs' contribution of 43.5% to the U.S. GDP is a clear indication of the SMB economic behemoth that lays at the foundation of the U.S. economy. This economic dynamism offers PEOs a unique opportunity to tailor services, ensuring that they provide the requisite tools and support these businesses need to thrive.

EMPLOYEE WELLBEING: A CRITICAL DETERMINANT

The evolving landscape of business operations and management signals a significant shift in workplace priorities. While profitability has always been paramount, there is now a more pronounced emphasis on employee mental health and well-being. Seventy-six percent of SMBs now acknowledge mental health as a workplace priority, and even more recognize employee happiness as instrumental to business success. This is a striking divergence from the attitudes of many employers during the last century. However, challenges presented by inflation and dwindling access to capital create profound pressures on employers and business owners.

This is where PEOs shine brightest. Though nascent during the 1980s and 1990s, the contemporary relevance of PEOs is huge. PEOs possess a distinctive capacity to align with the shifting sentiments, demands, and economic terrains that SMBs navigate. This adaptability is intrinsic to PEOs, and it underscores why the PEO model has seen such success and resilience. As the business landscape evolves, PEOs will recalibrate their offerings to offer even more solutions that foster a motivated, efficient, and happy workforce.

THE RESURGENCE OF ENTREPRENEURSHIP

One of the more inspiring narratives emerging from recent years, especially since the challenges of the pandemic, is the indomitable spirit of entrepreneurship in the USA. With a record-breaking 5.4 million new business applications in 2021 and 5.1 million in 2022, the country has witnessed a resurgence in entrepreneurial ventures.

Segments like e-commerce, professional services, and consultancies are rising, and these trends present PEOs with an ever-expanding market. By offering specialized services and tools tailored to these emerging sectors, PEOs can further cement their role as indispensable partners to these new-age businesses.

A DEEPER DIVE INTO SMB TRENDS AND THE PROMISE OF PEOS

In a revealing snapshot of the small business environment, the U.S. Chamber of Commerce Small Business Index saw a notable surge in business owner

confidence, jumping to 69.2 in Q3 from 63.1 in Q2. This increase represents the highest score since the onset of the pandemic in early 2020. A visible shift in sentiment can be observed, with one-third of these businesses now asserting that the U.S. economy is faring well, marking a 9% increase from Q2. This optimism carries over locally, with 38% expressing positive sentiments about their regional economies, also an increase from Q2's figures.

However, not all trends are optimistic. Access to capital, the lifeblood of small businesses, remains a constant concern. The Q1 2023 Small Business Index reveals that only 49% of small business owners felt their access to capital or loans was satisfactory. Along with this challenge, there's an upward trend in working hours for small business proprietors. This uptick sounds alarm bells for potential burnout and a diminishing work-life balance.

Despite these challenges, the health of small businesses themselves is improving; 66% consider their ventures to be in good health – a significant rise from the Q1 figure of 59%. Inflation remains a pressing concern; 52% identify it as a primary challenge. And while concerns about interest rate hikes have lessened, apprehension surrounding employee salary expectations is growing, with 56% finding it tough to match these demands.

In a testament to the uniqueness of small business operations, 82% agree on the unique position of small businesses in offering employees closer ties and support from top-level management. Prioritizing well-being, 70% of these enterprises are actively addressing mental health initiatives. A significant number of SMBs have begun incorporating resources to bolster employee mental health and well-being, in ways such as mental health breaks and provisions for childcare reimbursements.

Given these challenges and opportunities, PEOs emerge as saviors for SMB owners. With expertise in innovative HR solutions attuned to modern demands, PEOs offer invaluable support. Whether it's assisting with capital constraints or providing flexible HR and employee benefit strategies, PEOs alleviate pressures, helping to ensure business continuity and sustainability.

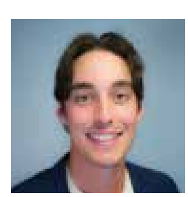
THE PEO ROLE

As always, the narrative for PEOs is changing. As the great American economic tapestry undergoes continuous evolution (with SMBs firmly at its core), the significance of the PEO offering has never been more paramount. PEOs are grounded in adaptability and expertise, and they are poised to play an instrumental role in mitigating challenges and bolstering the ever-evolving demands of the SMB sector. The data points towards a resurgence in entrepreneurship, a heightened focus on employee well-being, and the persistent hurdles SMBs face – be it financial or operational. With such a dynamic landscape, PEOs, through tailored services and a deep-rooted understanding of SMB unique needs, are set to solidify their positions as indispensable allies. As SMBs continue to drive America's economic engine forward, PEOs remain their steadfast co-pilots, ready to navigate through both turbulent skies and clear horizons, helping to ensure a prosperous journey ahead for all. ■

1 "Small Business Index - Summary." Small Business Index - Q3 2023 Summary, **www.uschamber.com/sbindex/summary**

2 Staff, U.S. Chamber. "The State of Small Business in America." The State of Small Business in America | U.S. Chamber of Commerce, U.S. Chamber of Commerce, 11 Sept. 2023, **www.uschamber.com/small-business/state-of-small-business-now**

3 Small Business Index - Summary." Small Business Index - Q3 2023 Summary **www.uschamber.com/sbindex/summary**



CARSON KING

Vice President
Simploy
Saint Louis, MO

INSURANCE & BENEFITS

CULTURE, COMMUNICATION, AND YOUR 2024 BENEFITS PLAN

BY DENISE STEFAN

The goal of any benefits program may vary but the intent is to attract and retain employees. Today, however, it has become more personal while at the same time technology could make it less so. Employees want to feel heard; they want to feel appreciated almost to the point where they want their benefit programs to be personal.

At the same time, employers have been challenged with the need to rethink decades of culture development after the dramatic workforce changes in recent years. Workforce "burnout" is creating conflict with employees who have been happy with their employer but who struggle to stay energized and motivated.

The question is how do employers create a program that solidifies their employees' sense of belonging, supports both personal and professional wellness and growth, but still is a manageable, effective program that supports the company culture, and maximizes the cost an employer must invest to reach its goals?

Generative AI is transforming all aspects of work in today's environment, and it is having its impact on employee engagement as well. It is important to know the difference between using AI to identify trends and make improvements, but not using it to replace a real form of connection with employees.

With benefits being such a large financial commitment relative to employee pay, employers owe it to themselves to maximize their investment. In 2024, there are three main areas that can drive a better ROI outcome for employers.

FOCUS ON FINANCIAL FITNESS

Financial stress is as much of a reality for employees in today's economic climate as it is for employers. And the impact of financial stress has strong ties to employee productivity. Many benefit carriers offer programs that can fit a diverse range of programs to help with financial fitness, education, and planning. We have found that adding financial education programs helps reduce this stress, improves productivity, and drives further confidence between employees and their employers.

BUILD DIVERSITY INTO BENEFITS

Employees have distinct needs. That's why we see varying degrees of participation in different benefits. The key to increasing participation is offering enough options and the right options. How do we know which options? We must do the research and ask.

This is where Generative AI can support leadership and its desire to know and understand the changes and latest trends that are happening. AI can help uncover areas where companies can stay competitive and then work from a baseline of benefits that others are using.

Employees will appreciate being part of the process when you ask them which benefits they value the most. During onboarding and in exit interviews, new and departing employees can also answer survey questions that guide the 2024 benefits design process. You can also conduct 15 minute one on one interviews with employees to get their in-depth feedback. All of these are forms of engagement that connect your employees to you and the investment you are making.

You might find things that surprise you. Having pet insurance might be more valuable than college savings plans to your employees or vice versa. Or that eldercare or more mental health support may be very important. Employee feedback is critical when you're making this investment.

Employers are trying to strike a balance among work from home, return to work, and hybrid environments. People have strong opinions and varied needs regarding the value of the personal connections that in-office jobs bring and the flexibility working at home affords. By including a flexible workplace environment, and adjusting work policies to account for it, you can achieve great returns in employee productivity and overall employee satisfaction.

You might want to introduce new benefits and remove others based on what's important to your employees and their families.

INFUSE COMPANY CUTLURE INTO COMMUNICATIONS

When you infuse company culture into benefits communications, you meet employees where they are.

This is where an employer can truly demonstrate value and connection. And you want communication to be as simple and clear as possible. Very often the complex nature of benefits alone is enough to frustrate employees and is where employers lose the value they are striving to bring. Your benefits communication should incorporate themes that are important to your company culture.

Benefits are about people, your people. Your communication should clearly focus on highlighting the things you already know about your company and your employees. Why do they value working for your company, and what is the top driver of job satisfaction? Reiterate those things and highlight the additional value you are providing that will build on what you've already created. Companies that make a clear connection to the value they already bring, highlight their culture, and provide clear and concise benefit information that shows the investment in employees' personal and professional wellbeing will see dividends in the investments they are making.

How you communicate the benefits also matters. When done correctly employees are left with a feeling of connection to the greater purpose of working there.

When your goal is to drive engagement and participation, online communication is standard today. A stack of flyers and brochures no longer meets the need. Employees want to get the information, understand it, and make their choices all in one place.

The good news is that providers you work with today, most likely offer dedicated open enrollment websites that can be customized with the culture and branding of your company. Providers also offer videos and infographics that explain some of the topics and clarify the different choices. Using different online mediums will help reinforce the importance you place in your benefits program and give people options for how they want to educate themselves. Take advantage of what your partners already offer. If they don't offer this, a small extra investment in a digital communications vendor can accomplish your goals.

The goal here is to simplify the information and make it easy for employees to sign up. Translate the jargon, present the information in bite-size pieces, and make it clear what they need to do next. Your benefits website should be optimized for mobile devices and have fresh content and design. Plan to promote the site regularly as the go-to resource for benefits.

Consider a company that offers benefit coaching solutions. They will provide access throughout the year to an expert that understands your benefits, and can communicate the value to your employees, without bogging down your HR manager. It is a great way to show the importance of the investment you are making. They can also provide one on one coaching sessions, which are far more meaningful and personalized than delivering a mountain of information to a room full of employees.

Ultimately, when you refresh your benefits and clearly and concisely communicate their value in a personalized way that reflects your company culture, you can set your company apart from the rest and gain the competitive edge you want your investment to create. ■

DENISE STEFAN

President
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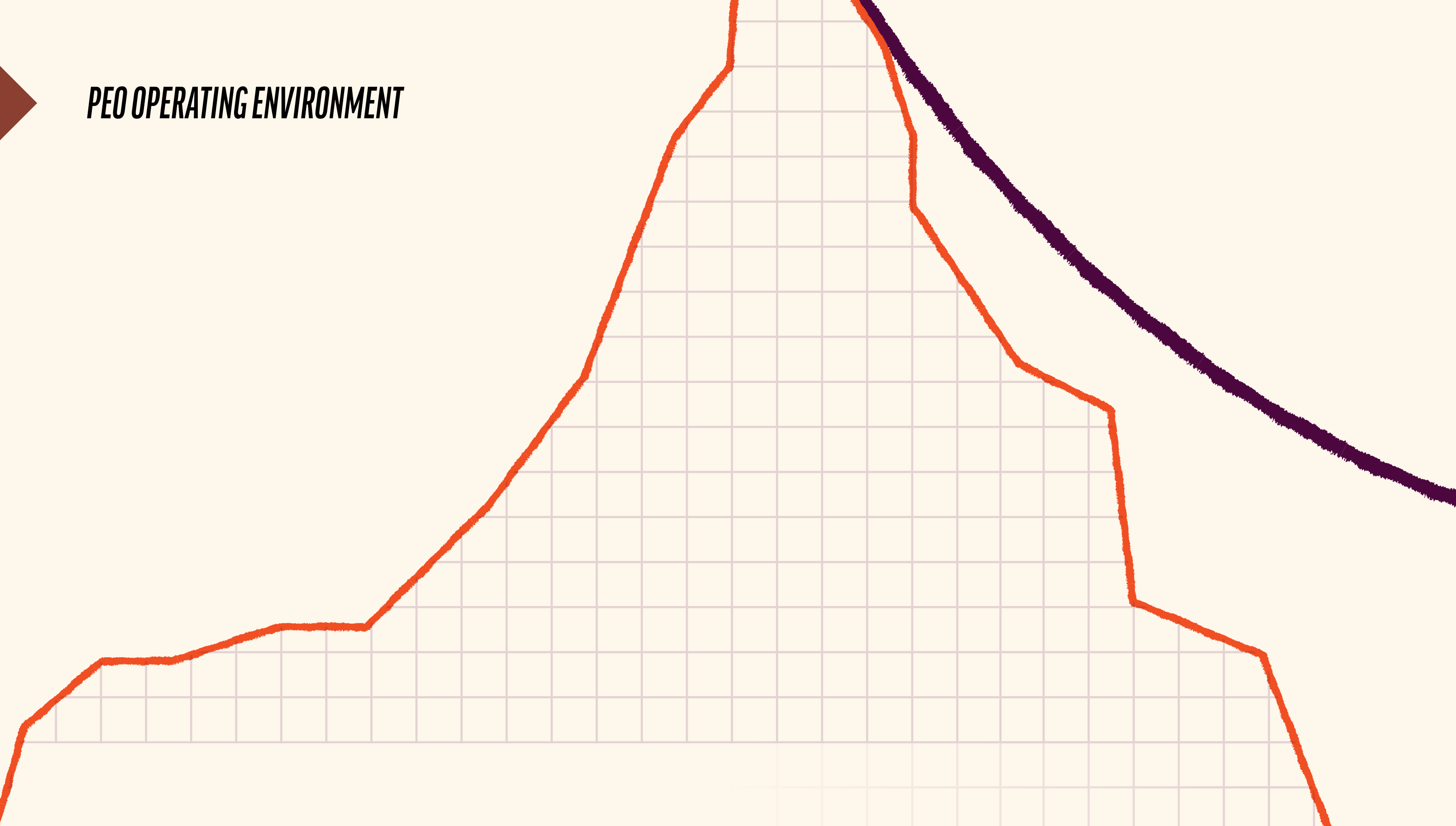


INSURANCE MARKET BAROMETER: FOURTH QUARTER 2023

BY PAUL HUGHES

As we prepare to enter 2024, here is a look at a few key indicators to explore the state of insurance markets. We'll also examine key events that have impacted markets recently.

THE VESTTOO FRAUD

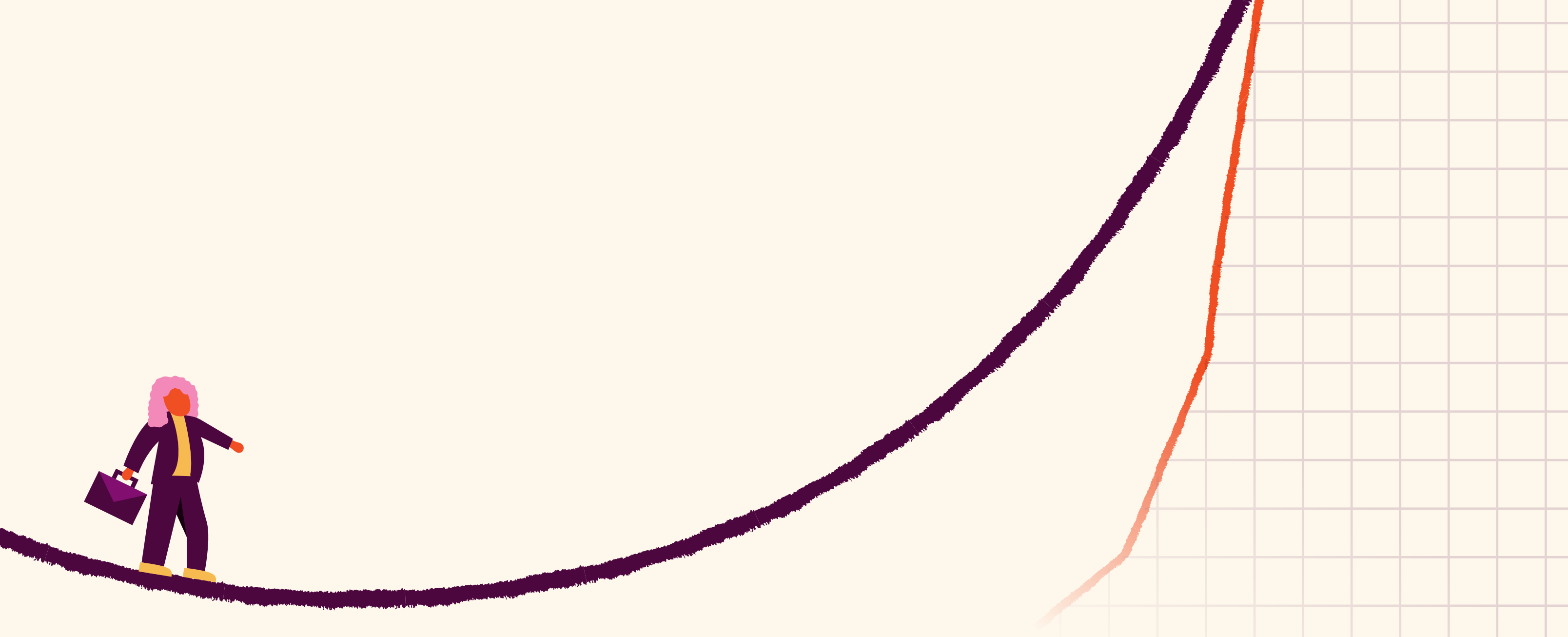
Over the course of the summer, financial fraud was uncovered in the reinsurance industry which has created immediate concerns for certain insurers and market concerns on how this event could have ever happened. The company responsible for this market misconduct is the Israeli Fintech, Vesttoo. Their vision is (was) to connect aspiring "capital-light" entrepreneurs with the global capital markets to compete with the traditional reinsurance industry.

Unfortunately, in this case, it appears that the capital support portion was backed up by $4 billion of fraudulent Letters of Credit (LOC). In essence, the carriers who thought they were just "fronting" the policies, verus taking the actual risk on them.

The parties most impacted are "fronting carriers" who are most exposed as it is their paper now missing the capital support expected behind it, and and the entrepreneurial MGA's that serve as underwrtinging and distribution. A fronting carrier is an insurance company that issues a policy and cedes out all or the majority of the risk to a reinsurer. The State of Florida defines a fronting company as:

A "fronting company" is an authorized insurer which by reinsurance or otherwise generally transfers more than 50 percent to one unauthorized insurer which does not meet the requirements of s. 624.610(3)(a), (b), or (c), or more than 75 percent to two or more unauthorized insurers which do not meet the requirements of s. 624.610(3)(a), (b), or (c), of the entire risk of loss on all of the insurance written by it in this state, or on one or more lines of insurance, on all of the business produced through one or more agents or agencies, or on all of the business from a designated geographical territory, without obtaining the prior approval of the office.[1]

Unlike traditional "balance sheet" authorized reinsurers who provide security to downstream insurance partners based on the liquidity and consistency of their balance sheets, Vesttoo focused on an alternative area of capital support known as Insurance-Linked Securities ("ILS"). These ILS providers put up



Letters of Credit, which in this case, $4 billion of which were not worth the paper they were written on. ILS provides an alternative capital to enter the insurance market and has risen in popularity in accordance with the fronting carriers that rely on it for support. These markets are considered "unauthorized insurers"

The Vesttoo event is being billed as "Unicover 2.0." Many will not have the grey hair to remember these events in the 1990s and the aftershocks provided to the general insurance marketplace; especially to my old friends at Reliance. It was the first time I had heard the term "cash-flow suffocation."

Unicover sold a tremendous amount of reinsurance support to workers' compensation carriers and MGA's that I worked with such as Reliance National, who acted as a fronting carrier. It was a consortium of life insurance carriers (ie CIGNA, Lincoln) who had surplus to deploy and so they formed a reinsurance MGA called Unicover. On paper, they never took any risk on most transactions and never should have lost a dime. Fronting carriers cede all or most of the risk to other supporters ("cedants") of a given transaction, and this was the traditional position of Reliance. They would be paid a fee to in essence take no risk (usually 5-6% of premium), but instead provide others the ability to trade with their paper. The support provided was also not traditional, but instead, Occupational Accident Insurance (unauthorized like ILS), which was endorsed to act like workers' compensation and was better understood by the life insurers that supported the positions. They thought.

When the losses started rolling in and the reinsurers saw they had been duped on the positions they took, instead of paying claims, they litigated. Whether they were right or not, this delay in funding for loss to Reliance quickly rendered Reliance insolvent. While on paper they were making great money and had an "A-" rating, the amount charged to front the policies was a fraction of the money needed to pay all the claims out in time. The 5-6% collected for the fronting fee was nowhere close to the 60-70% typically expected in losses.

IMPACT TO MARKET

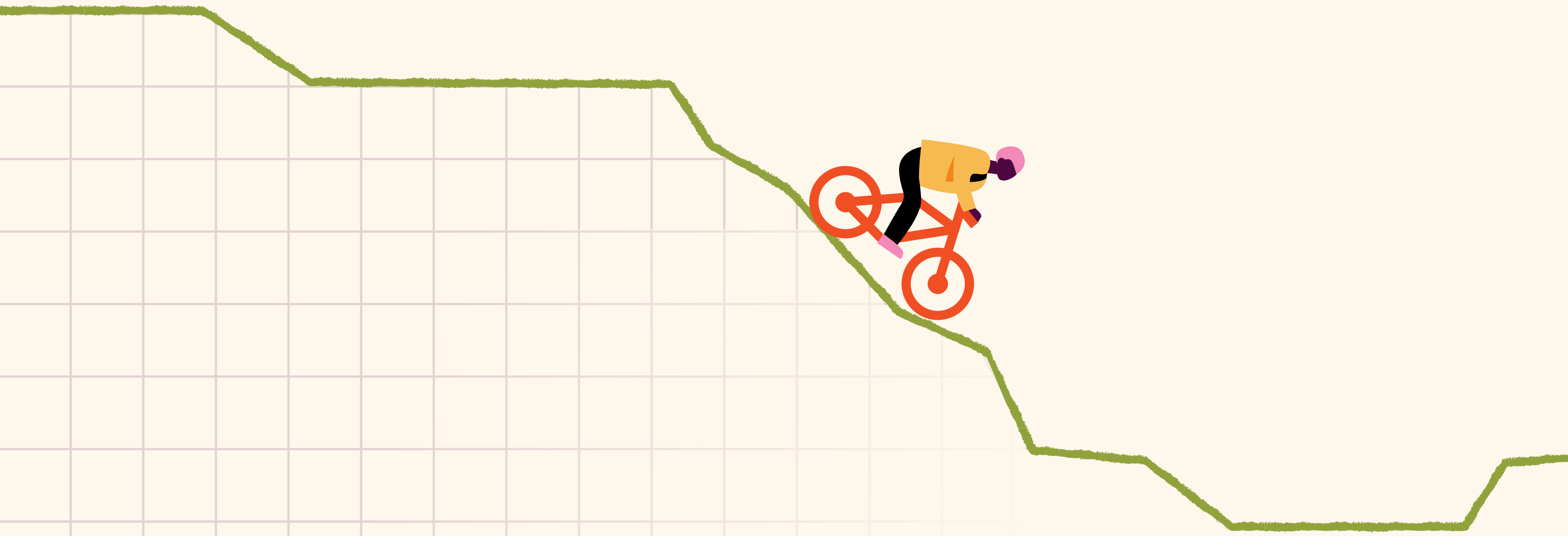
"Asset-light entities are delivering for brokers and insureds, developing new products for some of the most challenging exposures in today's market, including cyber risks and property perils impacted by climate change," said William Pitt, Director, Insurance Research, Conning, in a statement about the report." At a time when data analytics are increasingly pivotal, these agile entities can often move faster than traditional carriers, identifying and developing attractive niche markets and offering speedier submission turnarounds."[2]

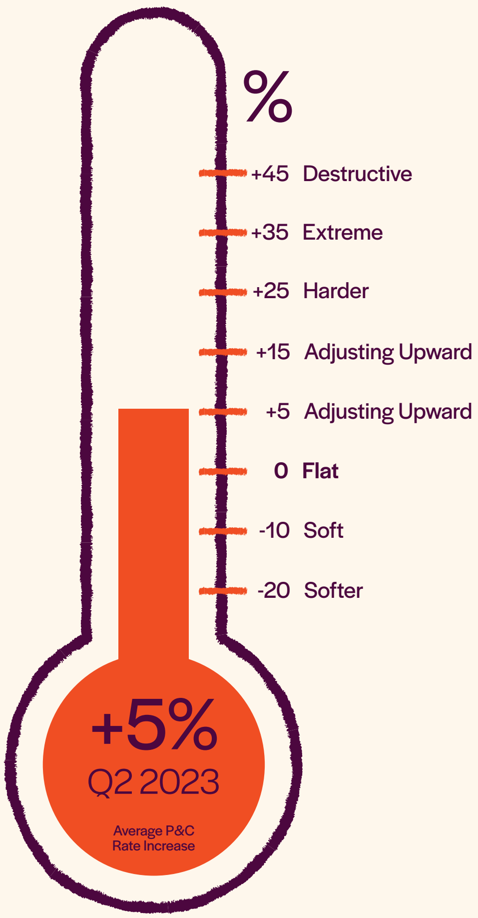
Being a regular attendee at "Target Markets," an association convention supporting the MGA sector and the insurers that support it, it is obvious how quickly the "fronting" sector has grown in the last five years. According to AM Best, "direct premium written on an aggregated groupwide basis by AM Best-rated fronting carriers increased 43% on a year-over-year basis to $10.6 billion in 2022. Fronting companies in the surplus lines/specialty commercial marketplace, particularly hybrid fronting companies, are also growing in number."[3]

A good portion of the support for this explosive growth been fueled by alternative capacity such as ILS. With the cost of money up and now capacity shrinking based on this event, I expect there to be a reduction of "fronting carrier" new entrants and portentially a consolidation of some of the existing ones. The downstream impact will be a flight to quality in the market, especially in casualty lines, towards financial strength and stability. Increased scrutiny of the ILS model and proper collateralization of these alternative capital transactions will impact overall market capacity, especially in lines such as workers' compensation, EPLI, and cyber where it is most deployed. Hopefully regulators recognize the importance of maintaining these alternative vehicles while providing better regulatory framework that it will never happen again.

2024 OUTLOOK

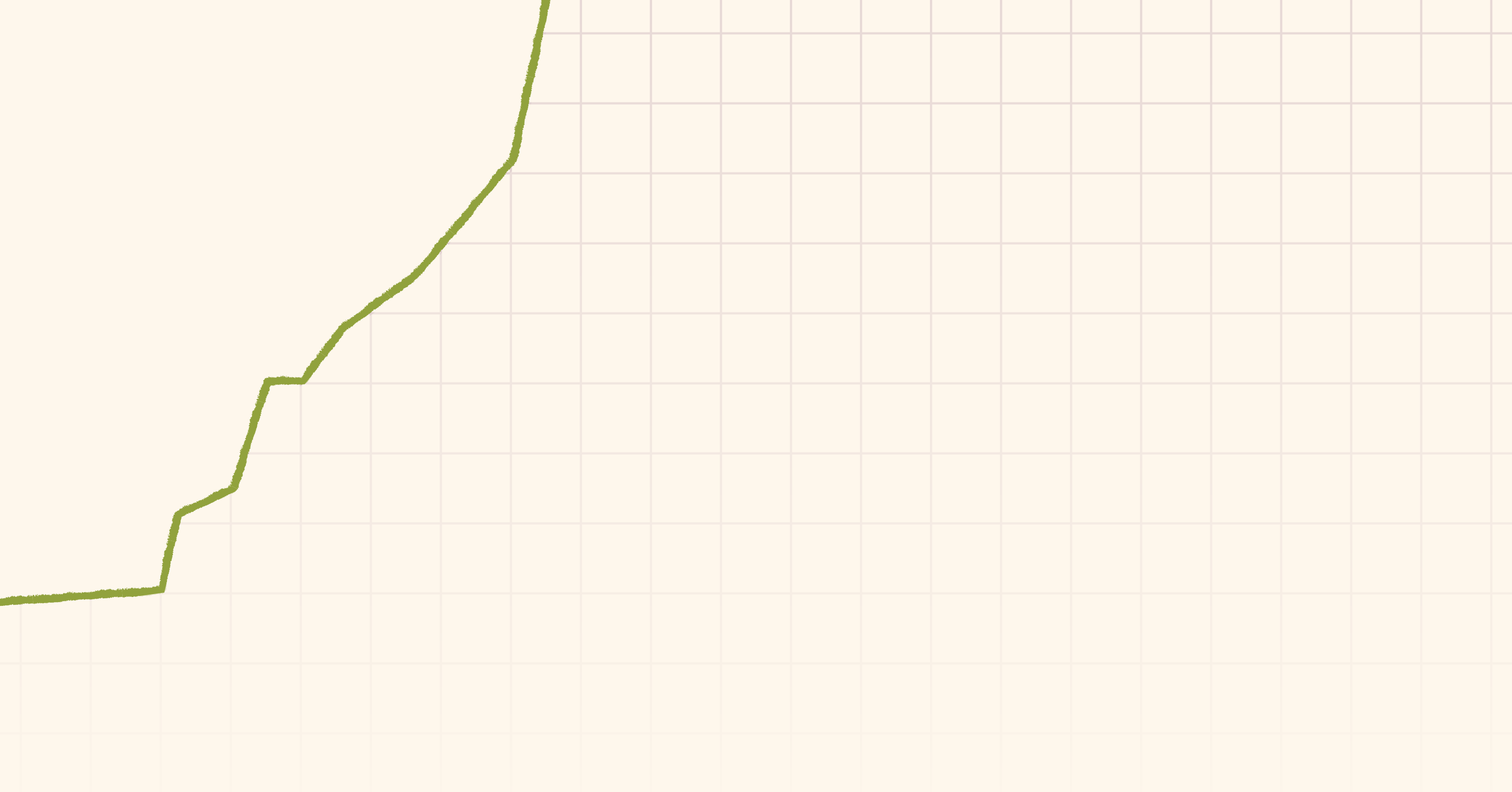
Our friends at MarketScout see an overall 5% increase in the sector with Richard Kerr, its CEO, providing the





Market Barometer

Average P&C Rate Increase



following commentary: "While the composite rate held steady in the second quarter, there was some movement in various lines of insurance. Property, business interruption, general liability and umbrella/excess rates increased, while most other coverage classifications softened a bit."

RATE MOVEMENT BY LINE OF INSURANCE

While the composite index is only moderately up, certain lines of insurance such as property are increasing dramatically, and others such as workers' compensation continue to soften. It should be noted that the below data on workers' compensation occurred prior to recent dramatic rate reductions expected to take place either Ocotber 1, 2023, or January 1, 2024.

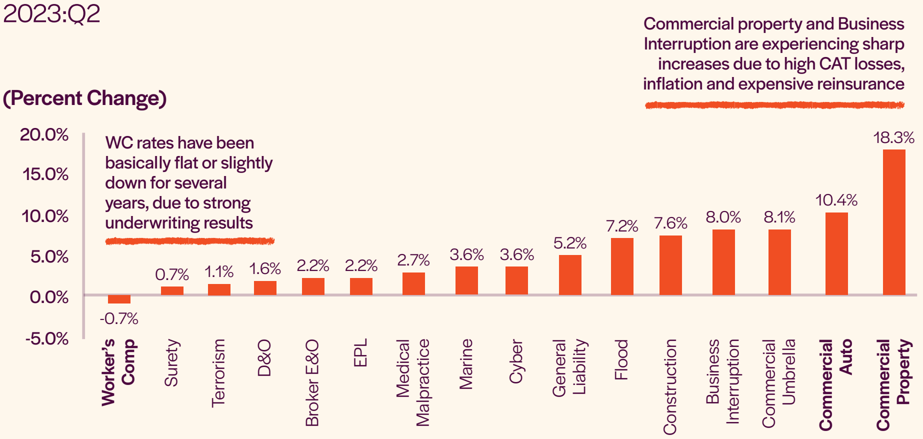
Inflation rate and the Consumer Price Index are two core drivers of insurance rates. As the price of goods increases due to inflation, such as the cost to build, there is more value to insure and replace, and thus higher premiums to be charged. It appears that the Federal Reserve's raising of interest rates has neutralized the rates achieved during the pandemic.

In sum, here are my take-aways going into the fourth quarter of 2023:

1. Property is a disaster everywhere; expect sharp increases at best.
2. Workers' compensation rate decreases across the nation are approaching double-digits, with an expected range of 8-10%.
3. Cyber liability is coming in with some increase, but generally flat.
4. EPLI is still a problem in California and becoming more so in New York and Florida per our underwriters. Expect continued push to increase retentions in these areas, for higher wage earners and certain industry sectors.
5. If you are of the size, consider a captive. Interest rates justify their consideration. ■

Change in Commercial Rate Renewals, by Line:

2023:Q2



All major commerical lines except WC experienced increases in Q2 2023

1 www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0600-0699/0624/Sections/0624.404.html
2 www.carriermanagement.com/news/2023/09/10/252968.html
3 news.ambest.com/newscontent.aspx?refnum=250463&altsrc=175

PAUL HUGHES
Principal
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ECON

OMIC Outlook

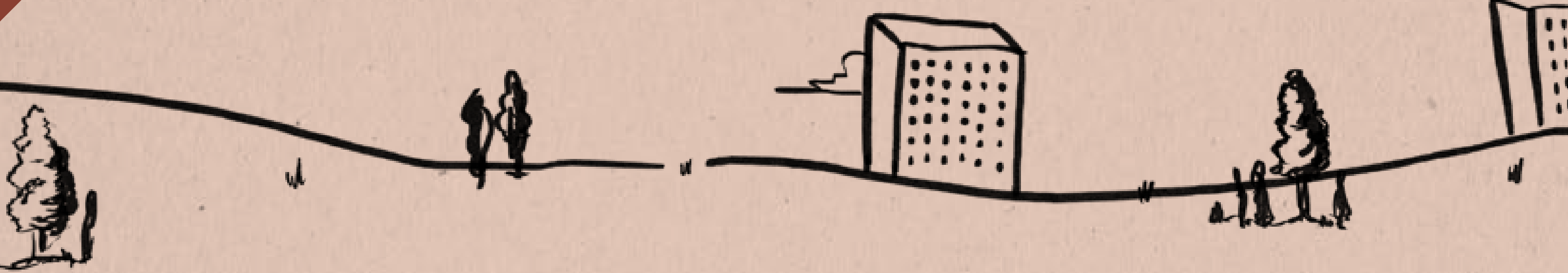
THE ECONOMY, THE MARKET, AND THE NEW TRANSITION

BY JOHN J. SLAVIC

Perspective is at the heart of our understanding of market conditions, the business environment, and economics as a whole. Ideally, that perspective is shaped by data and the accurate historical patterns derived from said data. Understanding historical economic and market patterns can then shed light onto what we can expect from the future, and the better we can anticipate the future, the more successful we will become in the present. With that in mind, we look to the future from the perspective of the past, but the unique period in history we currently find ourselves in may make the endeavor for future guidance more challenging.

The chart below illustrates quarterly growth in our country's inflation-adjusted Gross Domestic Product (GDP), i.e., the total value of the goods and services produced in America during a given time. The chart begins in 2000 and continues through the present day, a 23-year period that encompasses the brief recession of 2001, the 9/11 attacks, and the Great Recession (the deepest and longest economic downturn since the Great Depression).

The tectonic economic jarring of the pandemic, produced by shutdowns and the subsequent monetary stimulus by the Federal Reserve Board and the fiscal stimulus by Congress and two presidential administrations.



In all, \$6 trillion were pumped into the economy within a span of a little more than a year and a half. To provide a little perspective, if \$1 equals one second, it would take over 31,709 years (longer than recorded human history) to reach \$1 trillion. Six times that was the amount of money pumped into the economy in just 18 months. Consequently, we find ourselves now in the unprecedented environment that makes predicting the future so much more difficult.

The tight labor market in the post-pandemic economy is a direct consequence of many workers opting not to return to the workforce, notably women and those workers who were either at or near retirement age. Consequently, the labor force participation rate has only rebounded to 62.8%, as of September 2023. This means that roughly one-in-three potential workers are not actually taking jobs. Further, essentially all the new job growth, relative to pre-pandemic levels, can be attributed to foreign-born individuals rather than native-born workers. All of this in part explains why there is a strong demand for labor alongside a supply of labor that is limited.

Overall, the labor market is not as "tight" as it was a year ago, but "less tight" is still a long way from "loose." Moreover, the increasing number of union strikes across a wide array of industries indicates the muscle in the labor market remains strong because of supply and demand principles at work. When demand significantly outstrips supply in the labor market, it results in upward pressure on wages. From a sentiment perspective, most surveyed workers don't "feel" like they are making more money, despite escalating wages, because in fact they are not. When adjusted for inflation, the buying power of workers has decreased in recent years. This is especially true for workers in lower-wage industries who remain much more sensitive to a price shock at the grocery store than higher-income cohorts.

Another good predictor of future economic conditions is the stock market, which generally has an anticipatory lead

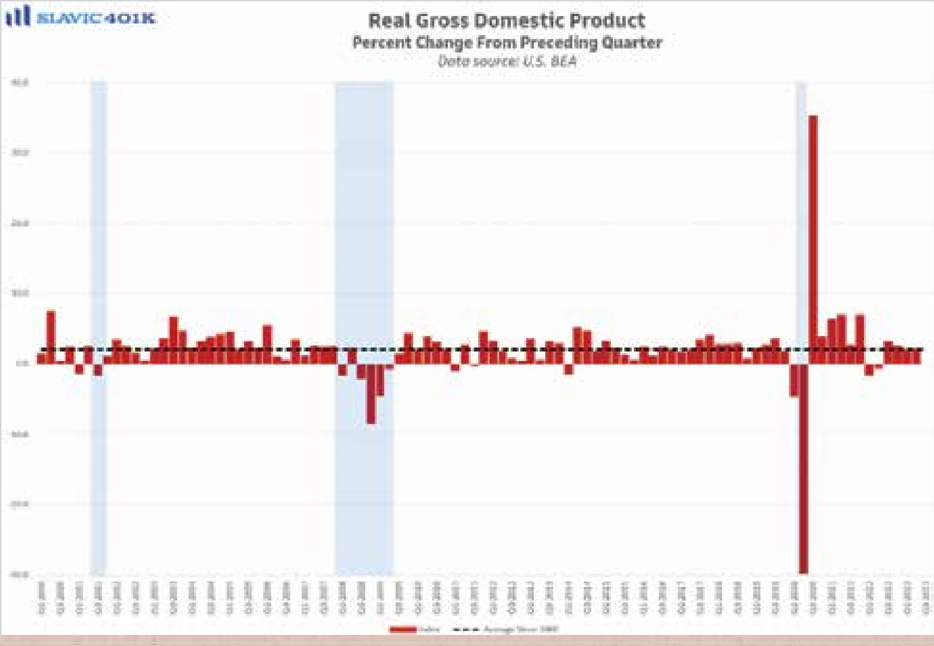


Figure 1

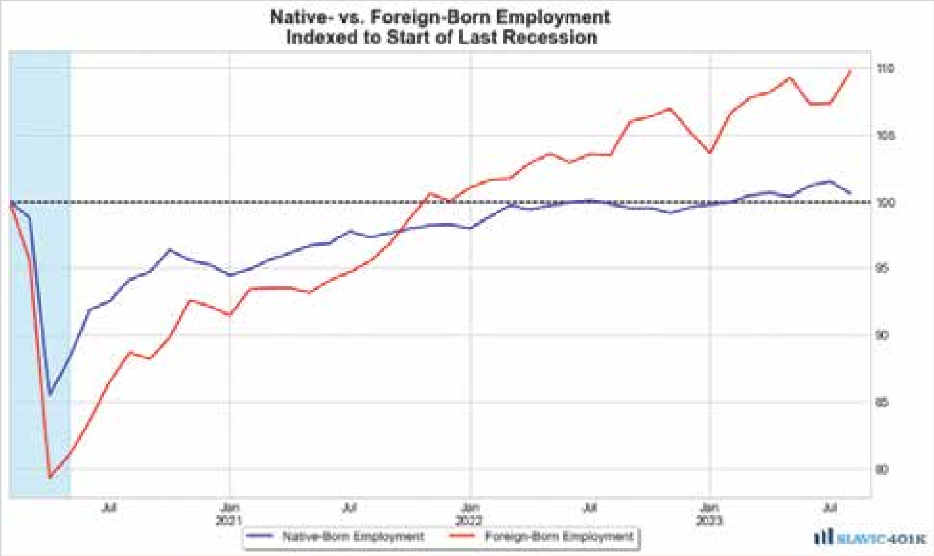
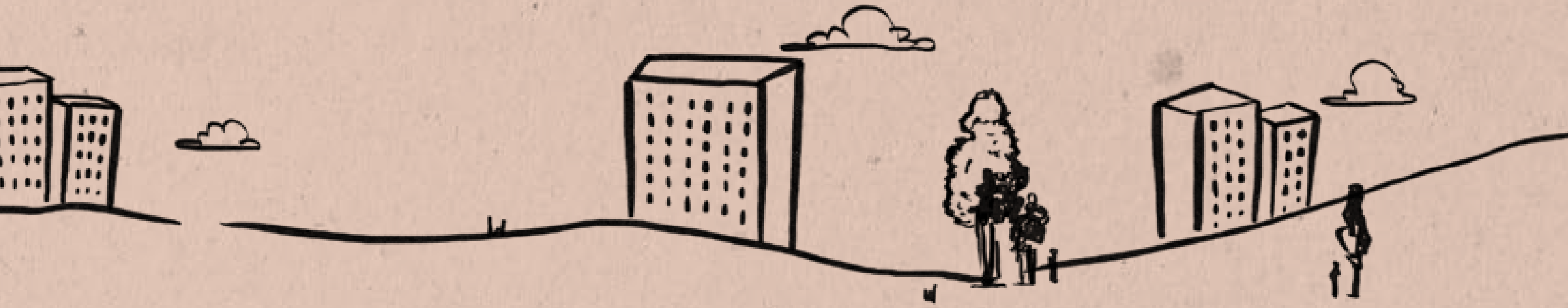


Figure 2



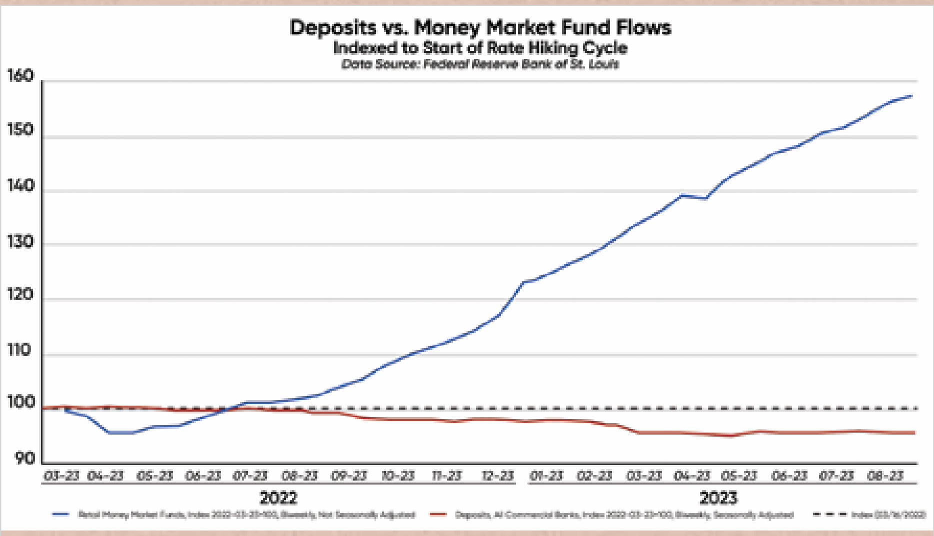


Figure 3

time of roughly 9-12 months. This discounting mechanism is not perfect, but good enough as a guide. The markets over the last month or so have retreated because of concern that inflation is more resilient than previously thought. Bond market yields have risen incessantly, meaning that the market has raised rates, and not the Fed. So, both the stock and bond markets have worked in concert, with a singular view of inflation. What we can expect from here is a potential normalization of the two markets, with a recovery in stocks and a taming of the strong rates environment. An additional variable is money markets now paying 5% or more with essentially no risk compared to the volatility of the stock market.

So far, I have been addressing high-level economics from a macro perspective. However, the PEO industry works in the small- and medium-sized business (SMB) arena. The slight movement up or down in interest rates or the stock market has little long-term bearing on SMBs, whereas supply and demand make all the difference in this environment. Most small businesses are being squeezed by the rising cost of doing business, especially as it pertains to labor costs. Bankruptcies are on the rise as many small businesses are ill-equipped to contend with these pressures. Consequently, the PEO business model is perfect for this emerging environment. The economic headwinds of inflation, tight labor markets, tighter money and credit conditions will prove challenging.

Another element in this new environment is rising regulatory requirements, especially those administered by the U.S. Department of Labor. The Employee Retention Tax Credit (ERTC) is a perfect example of the PEO stepping into a complex labyrinth of regulations to assist small- and medium-sized businesses through what would otherwise be a very convoluted process. Likewise, SECURE 2.0 presents daunting complexities given some of the intricacies associated with the legislation regulating retirement plans. Imbedded in the legislation is a rich source of tax credits that enable companies establishing a new retirement plan for the first time to essentially do so cost-free for the first three years.

Let me conclude with the stock market as a future indicator. First, from a macro perspective, the market looks nine months to a year into the future. The fact that it hasn't fallen substantially from all-time highs indicates that there is a relatively positive expectation on the part of analysts and investors. This view is likely assuming a "soft landing" into a mild recession or period of slower growth following the tectonic shifts of the past few years. Second, the "follow the money" market bet is clearly still on technology and specifically the rise of AI technologies. The transformative potential of AI is likely to have a greater near-term impact on the higher-order tasks of white-collar jobs than the manual labor associated with blue-collar work. In socioeconomic terms, this could be a very healthy development as the shrinking middle class (and prime-age workforce) that our economy, politics, and society has historically depended on, may in fact, resurge in the wake of AI.

So altogether there are several reasons to remain optimistic about the future, but at the same time when looking to the recent past for guidance on the transformation of the economy, expect the unexpected. ■

JOHN J. SLAVIC

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MEET NAPEO'S 2023-2024 BOARD OF DIRECTORS CHAIR: STEVE POLITIS

BY CHRIS CHANEY

A few weeks ago, more than 1,000 industry members gathered in Orlando for our Annual Conference and Marketplace as we welcomed new association leadership. Steve Politis officially took the reins as NAPEO's new Board of Directors Chair. The CEO of Alcott HR, Politis brings 25 years of PEO and leadership experience to the role.

Politis has been active in NAPEO since he first joined the industry as a young corporate counsel. He counts many fellow NAPEO members as friends, a common theme in our industry. He's appreciative of the relationships he's built with other PEO leaders, and the willingness to help one another despite being competitors. Collaboration and teamwork are important hallmarks of the PEO industry; companies work together to solve problems and tackle challenges.

His parents taught him at an early age to always be part of the solution, not the problem. With that spirit in mind, he's excited and ready to get to work serving the industry over the next 12 months. He has big ideas and hopes to bring about new initiatives around DEI, leadership, and government affairs.

JOINING THE INDUSTRY

Politis' PEO career began in the 1990's when his father met a group of Florida businessmen.

"My father said that he knew some people looking to start a business in New York that was big in Florida," Politis recalls, "He didn't understand what it was, but suggested I give them a call because they were looking for a lawyer."

At the time, Politis worked as a lawyer for a bank involved mostly in real estate. He was hesitant about the new opportunity at first, but eventually had his father introduce him to the businessmen and later took at role with their new business. That business happened to be a PEO (still called employee leasing then). First hired as corporate counsel, Politis would serve in many different roles (general counsel, COO, EVP) at a few different PEOs over the next 25 years, including the last nine at Alcott HR where he currently serves as CEO.

He's learned quite a bit about leadership during his time in the industry, but many of the most important lessons and values he learned came from his parents. The son of a Greek immigrant, Politis learned about hard work, grit, and resilience in his family's restaurant businesses.

"We're Greek, we owned diners," he laughs.

In the restaurants, he learned how to do each role from busing tables, taking orders, and preparing food. It gave him an appreciation for how important each role is in an organization. In the PEO world, he's tried to touch everyone's job so he can understand the challenges and assist in fixing them.

Working in the restaurant business also gave him an understanding about the hardships of running a business. He knows firsthand the obstacles and hurdles small business owners have to overcome and how hard it can be to succeed. It's a reason why he's so passionate about the PEO industry.

"I truly believe we do great things for our clients," he says.

In short, PEOs help many businesses including restaurants like the ones he grew up working in to not only keep the doors open but thrive. PEOs have become trusted business partners to clients. No longer are PEOs simply a solution to workers' comp or health insurance.

> *Embracing DE&I programs has become an essential component for industries and businesses hoping to grow, so NAPEO should spearhead efforts to help PEOs understand and implement such programs.*

Strategic HR and consultative business services are part of the value proposition. The PEO industry has evolved quite a bit since Politis first joined, and he hopes it does not stop.

NEW GOALS FOR AN EVOLVING INDUSTRY

If he could pick just one word to describe the outlook for the industry, it's simple: innovation.

"It's like the old phrase if you're not growing, you're dying," he says, "We have to innovate to grow."

The PEO service model and offering has already changed a great deal since the industry's inception. Politis hopes it will continue to do so, but anticipates many changes in the *way* PEOs deliver services.

Anyone can write a handbook, and anyone can run payroll. So how do PEOs separate themselves? That's that central question that should drive industry innovation, he believes. Artificial intelligence (AI) will play a big role. The platforms that already exist are expansive and offer new opportunities.

He understands that many workers may feel apprehensive about AI replacing their jobs. However, he thinks there are many ways that AI could be used to improve job functions or modify job functions.

"If you're really good at what you do, AI is never going to replace the human element," he says.

To be sure, Politis is not calling for every PEO to suddenly adopt AI in all facets, but he wants PEOs to be open to the idea and embrace the opportunity it presents. At the very least, he hopes to gather a small group of industry members to explore the topic.

And what about virtual reality? How could PEOs leverage that technology? Politis suggests one possible idea: a virtual safety walk-through of a client worksite. This would allow for a much more efficient process, as the PEO's safety consultant would not have to spend time traveling to client locations.

Of course, to grow and innovate PEOs need a steady stream of talent flowing into the industry. New people bring new ideas. That's necessary for growth. On the one hand, Politis hopes to mentor and teach new PEO operators by leveraging the expertise of many of our service partners. His idea calls for associate members of NAPEO to lead instructional sessions beyond the 101 level to help new industry entrants really understand the nuances of the PEO model.

Diversity, equity, and inclusion (DEI) programs and initiatives are also a priority for Politis and hopefully will aid in expanding the industry. It's an important task to undertake, and he believes that Lee Yarborough's Women In NAPEO and NextGen program's serve as good springboards and starting points.

"I believe an even more comprehensive DE&I program will encompass awareness, training, and attract great, diverse talent," he says.

"This isn't just about meeting an arbitrary quota; it is about harnessing the power of different thoughts to foster an environment where every voice is heard, and every individual and member can thrive."

Embracing DE&I programs has become an essential component for industries and businesses hoping to grow, so NAPEO should spearhead efforts to help PEOs understand and implement such programs.

To be sure, one major impediment to growth for all businesses is burdensome regulatory schemes. Indeed, the PEO value proposition has only been strengthened as it becomes tougher for small and mid-size businesses to stay compliant. Unfortunately, PEOs face these same obstacles. That's why Politis is also focused on a few key government affairs goals. He hopes that our work on the ERTC will finally result in a positive resolution, and would like to see federal recognition of a PEO's ability to offer single employer large group insurance. He also longs for the day when there is uniformity of PEO regulations across federal and state governments. He recognizes the heavy lift of such a project, but hopes to at least start pushing towards this outcome and motivate future leaders to continue it.

Over the last few years, the PEO industry has engaged heavily with policy-makers and broadened the recognition and awareness of PEOs. Politis wants this to continue so that one day all regulators and legislators will be familiar enough with the PEO model to take it into account before legislation or rules are implemented.

On issues like Paycheck Protection Program (PPP) loans and the ERTC, PEOs have led the charge on behalf of small and mid-size businesses. So, Politis wants NAPEO to be the voice of the entire small business community not just PEOs. Afterall if PEO clients grow, then so will PEOs.

Now comes the hard part: accomplishing all of these goals and priorities. It's a heavy lift, and Politis recognizes that all members who are in leadership roles do so on a volunteer basis. It's also one reason that he thinks a committee should explore whether association leadership terms are the appropriate length. Is one year too little time? He's not putting his thumb on the scale one way or another; there's arguments on both sides that have merit. However, he at least wants the conversation to take place. Additionally, he hopes to capitalize on the expertise of NAPEO's longtime states people.

"Often times at Board meetings we go down rabbit holes and think we've found something novel that's really not novel," Politis says. "These leaders [former Chairs] would be able to share historical knowledge and insight from years past about how these issues were addressed."

To put it simply, Politis sees his role as bringing together stakeholders to achieve common good for the industry. As a young PEO lawyer in a state unfamiliar with PEOs, he leaned on seasoned operators for advice, guidance, and expertise. He's learned a lot from others, and now it's his time to give back. He hopes to inspire others to embrace new ideas and technologies to keep the industry growing. Nothing would make him happier, he says, then if the industry looks very different when he retires. ■

CHRIS CHANEY

Editor, PEO Insider
NAPEO
Alexandria, VA

PEO VOICES

PEOS IN THE COMMUNITY: SYNDEO TAKES CARE OF ONE ANOTHER, AND ITS COMMUNITY

BY EVAN FALLOR

Syndeo Outsourcing prides itself on servicing clients in a humble way. It takes the same approach to its involvement in the community.

Syndeo CEO Bill Maness has long encouraged his executive team to serve on boards of local nonprofits and to take care of one another - not just within the walls of Syndeo, but within the communities his company operates in. In order to take care of his staff and clients, he believes he must take great care of those around him.

To further that mission, the Wichita-based firm this year launched Syndeo Cares, an initiative that encourages corporate social responsibility through company-wide volunteering events and strategic partnerships with nonprofit organizations. The program targets those in need in the greater Wichita area as well as in Lawrence in eastern Kansas, where Syndeo also operates.

The ten-person volunteer committee is made up of Syndeo employees who craft, vet, and pursue volunteering initiatives. Internal employees as well as clients and external organizations are able to submit requests electronically for donations, whether it be money, supplies, or manpower.

Syndeo Chief Financial Officer Todd Matheny provides the volunteering budget, while Director of Human Resources and Payroll Connor Cross provides guidance and additional support. Delegating volunteer decision-making on community requests for support from the executive level to the staff level allows employees to feel empowered in the workplace and in the tangible impact they are leading in the community.

"We are passionate about what we do at Syndeo and passionate about what we do outside of work," Cross said. "Bill pushes us to pursue these things. It's very rewarding."

Volunteering efforts run the gamut. Some employees volunteer at their children's school; groups gather to participate in environmental cleanup outings; others have spent time working with elephants at the Sedgwick County Zoo. Employees can help organize food drives or clothing donations; as long as those in need are benefiting, Syndeo's volunteering mission is being fulfilled.

Recently, the team has devoted time to help Wichita's Littlest Heroes, a nonprofit providing education, resources, and family activities for children battling life-threatening medical conditions. Most things the committee says yes to are kids and pets,

Syndeo has a strategic partnership with Family Promise of Greater Wichita, which helps homeless families and children achieve independence.

Cross said. Wellness and mental health events around town are also big hits.

"It doesn't matter what it is, we just like to hear about it," Cross said.

Syndeo makes it a point to allow its team to pursue their passions when giving back, but also to align itself with the events that clients sponsor as well. Matheny sets aside funds and notes that there are parameters the team must follow, though they "have a lot of rope to work with on those."

For two years, Matheny worked with poverty-stricken children through a local private school-church partnership where volunteers were paired with a child to then spend several hours a week with.

"You could be in class with them or play basketball with them," said Matheny, who also serves as secretary/treasurer for Heartspring, a nonprofit helping children with special needs. "Or you could be friends with their friends and just talk about life. I enjoyed doing that."

Syndeo has strategic partnerships with several local nonprofits, including Family Promise of Greater Wichita, which helps homeless families with children achieve independence. Syndeo has supported their annual gala for six years and counting and with two employees on its board, has been active in providing local families a better life. Syndeo in October received the Community Star Award for its work with the nonprofit. Cross serves as the president of their board and jokingly says her dream job is to manage their closet with stylish clothes.

In addition, Syndeo makes referrals to its staffing company to further help those aided by Family Promise also be placed in jobs. It's an example of how Syndeo Gives Back advances Manesses's longstanding mission to better the community that the PEO has immersed itself in over the past 21 years.

The firm routinely brings on clients free of administrative fees, and in some cases, clients that they will not profit, let alone break even on, solely because Maness is passionate about helping the client and advancing its respective mission.

He encourages team members to volunteer on boards of local nonprofits, something that then morphed into him providing employees eight hours of paid volunteering time off each quarter. Cross said this top-down approach has not only impacted the local community, but also the industry community.

▲ The Syndeo team's volunteering efforts span a wide array of local nonprofits, including area food banks.

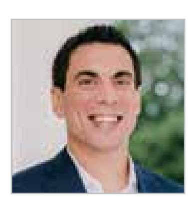
Maness and Syndeo Chief Information Officer Jenna Marceau also serve on the NAPEO Gives Back Committee, which provides an impactful contribution to a local charity that hosts NAPEO's Annual Conference & Marketplace.

A notable volunteering effort that brings out the inner competitor in the Syndeo staff is the annual children's coat drive it has participated in for more than a decade. Syndeo has partnered with a local large client in this effort, making it a goal to be the largest donor. They routinely account for more than half the coats received.

"Our team gets so competitive," Cross said. "There are internal competitions for who has the most stylish coats. We have this tiny conference room filled with all sorts of puffer jackets."

Matheny hopes Syndeo's volunteering budget will continue to grow, and in turn, the opportunities it has to give back.

"We are driven and we are people of excellence, but we are also servants and compassionate," Matheny said. "And there's still a lot of untapped potential." ■



EVAN FALLOR

Director, Communications
NAPEO
Alexandria, VA

#NAPEO23

SAVE THE DATES FOR #NAPEO24 IN ORLANDO! SEPTEMBER 16-19, 2024

Contagious energy. Meaningful connections.

That's how some might describe the mood of our 2023 Annual Conference & Marketplace. More than 1,000 PEO industry members descended upon Orlando, Florida to learn, connect, and relax.

If you attended then you know how excited people were to catch up with old friends, make new connections, and learn the latest information on all things PEO. AI, cybersecurity, sales strategies, financial indicators, legal developments, and new regulations all made up session topics. There was something for everyone.

You also saw plenty of pictures of Pat. They were everywhere. Cardboard cut-outs, a step-and-repeat banner, cookies, towels, and even a few Pat impersonators in the Marketplace (IYKYK).

It was a fitting tribute. This was Pat's last Annual Conference & Marketplace as NAPEO's president & CEO. After more than a decade of guiding the association and industry, Pat will step down at the end of year. We honored his legacy and service on Tuesday. Many industry stalwarts "roasted" Pat to send him off in style. We also presented him with the first annual Pat Cleary MVP Award.

Our keynote speakers Crystal Washington and Mark Schulman delivered electric and engaging presentations. Attendees learned how to harness the power of AI from Washington, and discovered the rockstar's secret to stay in engaged and passionate from Schulman.

The hallways, bars, restaurants, and Marketplace buzzed with excitement as colleagues and peers shared ideas and collaborated. We also came together once again to support NAPEO Gives Back. Collectively, we raised nearly $300,000 for Give Kids the World Village. This staggering sum will allow the organization to install a massive light display to illuminate the village year-round. Give Kids the World provides a place for families with children suffering from severe illnesses to experience a moment of peace and comfort. Families are able to relax and have rare moment of fun, escaping the reality of doctor's appointments and medical procedures. Give Kids the World provides a sense of hope and optimism to those suffering, and our donation will help make the village even more special.

Giving back and coming together is what our conference is all about. It's a forum for PEOs to learn from each other, for service partners to demonstrate the latest products, and for everyone to celebrate PEOs. ■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GIVE KIDS THE WORLD VILLAGE
$ 300,000.00
Three hundred thousand
DOLLARS
MEMO:


WOMEN IN NAPEO
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WORKPLACE CHALLENGES IN USING ARTIFICIAL INTELLIGENCE

BY GORDON M BERGER, ESQ.

Many of us have heard of artificial intelligence ("AI") programs such as Open AI's ChatGPT and Google's Bard. Maybe you even played around with this technology. What is AI? Back in 1994, John McCarthy defined AI in a paper for Stanford University as follows: "It is the science and engineering of making intelligent machines, especially intelligent computer programs. It is related to the similar task of using computers to understand human intelligence, but AI does not have to confine itself to methods that are biologically observable."[1]

PEOs should be aware of what AI tools can do to assist their clients but should also recognize that this is an emerging technology still subject to flaws. This is because increasingly, employers are using AI in the workplace. Examples of such AI use are to locate, recruit, evaluate, and communicate with job applicants. Employers are also using AI to assist employees with benefits or benefits enrollment, training, writing job descriptions, to avert spam attacks, or to translate documents and forms into foreign languages.

However, there are pitfalls and risks of using AI in the workplace. A recent survey by the American Psychological Association found that 38% of U.S. workers are concerned that AI will replace them and will make their jobs obsolete.[2] Concerned workers also may bring discrimination and other claims against an employer for using AI.

Specifically, AI raises a number of questions about whether programs created by humans are inherently flawed and biased. Therefore, the use of AI in the workplace is ripe for employee claims under such laws as Title VII of the Civil Rights Act ("Title VII"), the Age Discrimination in Employment Act, the Americans with Disabilities Act ("ADA") and state law counterparts.

In 2021, the Equal Employment Opportunity Commission ("EEOC") formed an initiative to address AI. As part of the initiative, the EEOC pledged to:

- Issue technical assistance to provide guidance on algorithmic fairness and the use of AI in employment decisions.
- Identify promising practices.
- Hold listening sessions with key stakeholders about algorithmic tools and their employment ramifications.
- Gather information about the adoption, design, and impact of hiring and other employment-related technologies.

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Then, on May 18, 2023, the EEOC issued technical guidance on the use of AI to assess job applicants and employees under Title VII. In short, AI tools can violate Title VII under a disparate impact analysis, which looks at whether persons in protected classes (e.g., race, sex or age) are hired at disproportionately lower rates compared to those outside of the protected classes.

Further, EEOC Chairwoman Charlotte Burrows is on record as saying that more than 80% of employers are using AI in some form of their work and employment decision-making. Given the apparent volume of employers using AI, the EEOC will certainly focus on AI-related discrimination in employment.

Note that the EEOC looks at disparate impact discrimination by using the "four-fifths rule" enumerated in 29 C.F.R. § 1607.4(D). According to the four-fifths rule," a selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact." The EEOC guidance uses the following example to illustrate this rule: if an algorithm used for a personality test selects Black applicants at a rate of 30% and White applicants at a rate of 60% resulting in a 50% selection rate for Black applicants as compared to White applicants (30/60 = 50%), the 50% rate suggests disparate impact discrimination because it is lower than 4/5 (80%) of the rate at which White applicants were selected.

One example of possible AI bias is related to the EEOC lawsuit against a company that was using AI for job candidate screening (*EEOC v. iTutorGroup, Inc., et al.*, Civil Action No. 1:22-cv-02565 in U.S. District Court for the Eastern District of New York). That company paid $365,000 to settle the lawsuit in which the EEOC alleged age discrimination by disqualifying more than 200 female workers over the age of 55 and males over 60.[3] An applicant who was not considered for a position with the company resubmitted a job application with a more recent birth date but the remainder of the information was identical to the original (rejected) application. She was offered an interview when she presented as being younger.

> *PEOs should be aware of what AI tools can do to assist their clients but should also recognize that this is an emerging technology still subject to flaws.*

Other agencies have addressed AI in the workplace. On the same day that the EEOC issued its technical guidance on AI, the Department of Justice posted its own guidance on AI-related disability discrimination and how the use of AI could violate the ADA.

On the state level, Illinois led the way in 2019 with one of the first AI workplace laws, the Artificial Intelligence Video Interview Act, which regulates employers that use an AI to analyze video interviews of applicants for positions based in Illinois. Employers are required to make certain disclosures and obtain consent from applicants if they use AI-enabled video interviews. And, if employers rely solely on AI to make certain interview decisions, they must keep applicant demographic data, including race and ethnicity, which must be submitted annually to the state to look at whether there was racial bias in the use of the AI.

Then came Maryland in 2020, which passed a law restricting employers' use of facial recognition services during pre-employment interviews until an employer receives consent from the applicant.

Takeaways:

- AI should not be solely relied on with respect to employment decisions. If AI is making hiring or termination decisions, management or HR should still review and ensure that decisions are made with an unlawful purpose (i.e., not based on a protect classification, including race, religion, age, gender, disability, etc.).
- AI is known to make up information. You may have heard about a law firm that used AI for legal research and the AI provided case law citations that did not exist (i.e., fictitious cases) which resulted in the law firm being sanctioned by the court.
- Employers are not excused from complying with the law if AI gets it wrong. Per the EEOC, employers are liable under Title VII for "algorithmic decision-making tools even if the tools are designed or administered by another entity, such as a software vendor".[4]
- Check state and local law for any AI-specific requirements. For

instance, New York City has a law that prohibits employers from making certain employment decisions using AI unless notice has been given to employees or candidates who live in the City.[5] And, California Gov. Gavin Newsom recently issued an executive order on AI that includes a number of provisions intended to review potential threats to and vulnerabilities of California's critical energy infrastructure by the use of GenAI. ■

1 **www-formal.stanford.edu/jmc/whatisai.pdf**

2 **www.apa.org/pubs/reports/work-in-america/2023-work-america-ai-monitoring**

3 **www.eeoc.gov/newsroom/eeoc-sues-itutorgroup-age-discrimination**

4 U.S. Equal Emp. Opportunity Comm'n, Select Issues: Assessing Adverse Impact in Software, Algorithms, and Artificial Intelligence Used in Employment Selection Procedures Under Title VII of the Civil Rights Act of 1964, EEOC, **www.eeoc.gov/select-issues-assessing-adverse-impact-software-algorithms-and-artificial-intelligence-used**

5 N.Y.C. Local Law No. 144 (2021); N.Y.C. Admin. Code § 20-871 (2023)

This article is designed to give general and timely information about the subjects covered. It is not intended as legal advice or assistance with individual problems. Readers should consult competent counsel of their own choosing about how the matters relate to their own affairs.

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WHEN IT RAINES IT POURS

EXPECTATIONS OF PRECIPITOUS LITIGATION ON THE HEELS OF AN EXPANDED DEFINITION OF "EMPLOYER" IN CALIFORNIA

BY NICHOLAS P. KAPIOTIS, ESQ.

The California Supreme Court's recent decision in *Raines v. U.S. Healthworks Medical Group* could create additional exposure for PEOs under California's employment discrimination laws. The *Raines* decision expands liability under California's Fair Employment and Housing Act (FEHA) for third parties acting "as an agent of an employer"—directly or indirectly and without regard to joint-employer principles. Thus, the *Raines* decision could make it easier for plaintiffs to file discrimination claims against PEOs in California, increasing the frequency of such claims, particularly where PEOs directly assist their clients with employment-related services.

BACKGROUND & ISSUE

Plaintiffs were two job applicants who received offers of employment conditioned on successful completion of preemployment medical screenings, which were conducted by a third party.

Both plaintiffs alleged that the third-party screening company required them to complete a written health questionnaire that included inappropriate questions, such as requesting details about the applicants' history of venereal disease and menstrual cycles. The evidence in the case did not indicate whether the questionnaire was created by the screening company or the employer.

Plaintiffs state-court lawsuit against the screening company was removed to federal court. The federal district court dismissed the discrimination claims, concluding that FEHA does not impose liability on the agents of an employer. Plaintiffs appealed.

After oral argument, the Ninth Circuit asked the California Supreme Court to address the underlying question of whether a third-party service provider can be directly liable for discrimination under FEHA without direct or joint-employer status. Specifically, the Ninth Circuit asked the California Supreme Court to respond to the following question:

> Does California's Fair Employment and Housing Act, which defines "employer" to include "any person acting as an agent of an employer" … permit a business entity acting as an agent of an employer to be held directly liable for employment discrimination?

THE CA SUPREME COURT'S DECISION

The Court's August 21 decision framed the issue by stating that FEHA's "agent" language could be interpreted one of two ways:

> First, the "agent" language could be interpreted as merely incorporating the common law principle of *respondeat superior*—meaning that liability for FEHA would reside with the employer, not the employer's agent.In the alternative, the language could be interpreted to mean that an employer's agents are subject to the obligations and liabilities that FEHA imposes on the employer itself.

The Court considered the language of FEHA, its legislative history, and federal court decisions involving federal antidiscrimination laws that use similar "agent" language. After analyzing each of these components, the court concluded that, consistent with FEHA's language and purpose, a business-entity agent can bear direct FEHA liability when it carries out FEHA-regulated activities on behalf of an employer:

> The California Fair Employment and Housing Act, which defines "employer" to include "any person acting as an agent of an employer" (§ 12926, subd. (d)), permits a business entity acting as an agent of an employer to be held directly liable as an employer for employment discrimination in violation of the FEHA in appropriate circumstances when the business-entity agent has at least five employees and carries out FEHA-regulated activities on behalf of an employer.

The Court distinguished arguments regarding general agency principles or that FEHA prohibits an employer from delegating its FEHA obligations.

> The question we decide here is not whether an employer may delegate its FEHA obligations to its business-entity agent, but whether, under the language of the FEHA, the

business-entity agents of an employer can be liable for violations of *their own* FEHA obligations. We have concluded that, by statute, business-entity agents can be considered "employers" for purposes of FEHA liability, and as such, they are independently liable for violations of the FEHA. Stated another way, a business-entity agent's obligation to comply with FEHA and its consequent liability for FEHA violations results from the entity's own engagement in FEHA-regulated activities on the employer's behalf.

The Court did not identify the specific scenarios in which a business-entity agent will be subject to such liability under FEHA—leaving that for further proceedings in the current case and further court decisions in other cases.

The Court also held that this outcome was supported by public policy and, in language potentially concerning to PEOs, stated the following:

> This reading of section 12926, subdivision (d) also finds support in the public policy underlying the enactment of the FEHA. If a business entity contracts with an employer to provide services that will affect that employer's employees, and if, in providing those services, the business-entity agent violates FEHA's antidiscrimination policies, causing injury to the employer's employees, it is consistent with sound public policy to treat the business entity as an employer of the injured employees for purposes of applying the FEHA. This interpretation imposes FEHA liability not only on the employer but also extends it to the entity that is most directly responsible for the FEHA violation. ***Moreover, when, as is often the case, the business-entity agent has expertise in its field and has contracted with multiple employers to provide its expert service, this interpretation extends FEHA liability to the entity that is in the best position to implement industry-wide policies that will avoid FEHA violations.*** (Emphasis provided).

THE ANTICIPATED IMPACT ON CALIFORNIA LITIGATION AGAINST PEOS

Sometimes PEOs are named in FEHA claims filed against customers. Prior to *Raines*, PEOs defended these claims by asserting a lack of joint employer status, and they did so with a fair measure of success. However, when a PEO directly participated in a discriminatory act perpetrated by a customer, it is more difficult to defend these claims. This is because the PEO may have created the appearance of joint employer or direct employer status under FEHA through hands-on involvement. Plus, PEOs are supposed to be experts when it comes to these things, creating a subjective impediment to eliminating the PEO from a case when the PEO contributes to an error.

Difficulty Springing Free From Lawsuits

Similarly, under the *Raines* decision, a PEO may find it difficult to extricate itself from a FEHA case when it participated in the alleged discriminatory act, either at the direction of its client or through the PEO's own actions, policies, or procedures.

Increased PEO Involvement in Lawsuits

Nevertheless, the *Raines* case likely will increase the frequency of PEOs being named in FEHA actions.

Decreased Chances of Dismissals

Furthermore, courts may be less likely to dismiss PEOs from FEHA cases, since the evidentiary burden to prove agency will now be much lighter than the burden required to prove joint-employer status.

Silver Lining for PEOs?

PEOs may find solace in existing FEHA regulations governing temporary agencies, which by way of analogy may help PEOs as well. Title 2, section 11008(c)(5) of the California *Code of Regulations* states that temporary staffing agencies are liable "with regard to such terms, conditions and privileges of employment under the control of the temporary service agency," while the customer is liable "for such terms, conditions and privileges of employment under the control of that employer."

Section 11008(c)(5) in practice should mean that liability is allocated based on control of the conduct in question. This concept might be used to clarify that merely executing an action in and of itself is not enough to trigger the agency liability contemplated by the *Raines* court, in contrast to executing with some control over the underlying decision leading to the action.

Pursuant to the regulation, PEOs might successfully argue that even if the plaintiff can establish that the PEO is an agent of its customers, it is not liable for things that are unknown to the PEO and outside the PEO's control. The court left the door wide open for the argument with this statement:

> We do not decide the significance, if any, of employer control over the act(s) of the agent that gave rise to the FEHA violation, and we also do not decide whether our conclusion extends to business-entity agents that have fewer than five employees.

CONCLUSION

While the Raines case could make it easier for plaintiffs to file discrimination claims against PEOs in California, there may not be reason to panic. The court left open the door for continued defenses to claims focusing on lack of control over the underlying action. PEOs should work with counsel to revisit client service agreements and business practices to mitigate any increased exposure created by this decision. ■

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NAVIGATING THE COMPLEXITY OF EARNED WAGE ACCESS FOR PEOS

BY BRIAN BREAREY

In the not-so-distant past, the idea of a worker requesting an advance of their paycheck prior to pay date was not only limited in the options with how to do so, but was potentially expensive for the employee and potentially held a potential negative sigma by segments in our society. However, in the past five years, this mindset has changed greatly in the way employers are viewing these requests (i.e., early access to wages) and they are now looked upon as a necessity as a benefit they need to provide to their employees. Now early or earned wage access (EWA) is looked at as a commonplace event from a payroll perspective with a lot of different options on how to administer it. It is something that PEOs must manage while being extremely mindful of EWA from a process and compliance perspective.

There are a number of studies that have been conducted recently that show the increased adoption for EWA programs and why they are growing in popularity.

KEY FINDINGS

The ability to put aside money by employees from their paychecks has decreased significantly in the past couple of years. Recent studies show that 55%-63% of Americans are living paycheck to paycheck.[1]

This is not limited to lower wage earners. According to Wills Towers Watson, 36% of U.S. employees with salaries of $100,000 or more are living paycheck to paycheck, double the share from 2019.[2]

Personal finance is ranked as a leading cause of employee stress in the U.S. and nearly 50% of American employees suffer from financial stress. Financially stressed employees lose about a month worth of productive workdays each year due to shifted focus and they are twice as likely to seek a new job opportunity.[3]

The growth of the gig economy is expanding three times faster than the total US workforce. Over 50% of the US workforce is likely to participate in the gig economy by 2027 with a majority of this population being made up of workers in the 18-34 age range.[4]

Macro-economic conditions make access to employee wages prior to a scheduled pay date for workers more critical than ever. Rising interest rates, increased inflationary pricing for key consumer goods, and stagnant wage growth means employees are struggling to wait until pay date to access their paychecks.

GREATER ADOPTION OF EWA REGULATIONS

To manage this growing popularity in administering EWA, approximately 20% of companies (employing 15 million hourly workers) now have the ability to provide EWA programs to these employees according to a report from Gartner.[5] Since EWA is a relatively new payroll service offering and one that has expanded rapidly with a number of vendors entering the space, regulation and compliance in the space is evolving quickly. New legislation has been enacted recently in many states.

Nevada was the first state to adopt EWA laws this past June.[6] It includes provisions like required licensing by EWA providers, defining the services offered by EWA providers, and that EWA is not a loan. Missouri has followed this with their own legislation in July 2023.

Other states are now ramping up efforts to implement legislation to

This increased demand for evolution in the payroll industry from EWA is creating challenges for PEOs because of the way these wages are recognized and administered. As the co-employer for their clients, PEOs have to carefully navigate unique requirements.

regulate EWA programs. They include (but are not limited to) California, Georgia, Kansas, Mississippi, New York, North Carolina, Texas, Vermont, and Virginia.

At the federal level, there is still ambiguity on how EWA should be managed. In 2020, the Consumer Financial Protection Bureau (CFPB) issued some advisement that EWA services as defined today is not considered a loan or extended credit as part of the Federal Truth in Lending Act. Additional guidance was supposed to come in June 2022 from the CFPB but to this point, nothing of substantial consequence has been provided.[7]

This increased demand for evolution in the payroll industry from EWA is creating challenges for PEOs because of the way these wages are recognized and administered. As the co-employer for their clients, PEOs have to carefully navigate unique requirements (especially at the state level) because of the way the wages are classified, the timing of paying them, how they are calculated, and to ensure they meet appropriate statutory minimums. In addition, because payroll providers have traditionally administered the payment of wages on a defined cycle (i.e., structured pay period for hours worked with regular paid on date), this is a significant process change for payroll providers to change their processes and technology to administer timely and accurately. Because employees view their payroll income as an area of credibility from their employer, it is critical that PEOs are able manage EWA compliantly and accurately as the adoption of EWA only continues to expand and evolve.

There is a generational shift in the workforce that is occurring with employees demanding a need for a modern pay experience that supports financial flexibility and a sense of fairness for workers. This means that EWA is here to stay in the PEO industry as a hot topic and an issue for our industry to manage appropriately. ■

1 Steele, J. & Martin E.J. (2023, September 18th) Living Paycheck to Paycheck Statistics. Bankrate.com. Living Paycheck to Paycheck Statistics | Bankrate

2 Iacurci, G. (2022, June 16th) Amid high inflation, 36% of employees earning $100,000 or more say they are living paycheck to paycheck. CNBC. 36% of high earners are living paycheck to paycheck (cnbc.com)

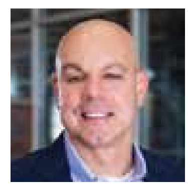
3 Automatic Data Processing (2022) Earned Wage Access: Tapping into the Potential of Flexible Pay for Today's World of Work. ADP. adp_ewa_study_whitepaper.pdf

4 Team Stage (2023) Gig Economy Statistics: Demographics and Trends in 2023. Gig Economy Statistics 2023: Demographics and Trends | TeamStage

5 Gangemi, J. (2021, April 28th) What Is Earned Wage Access, and Should You Provide It? Staffing.com What Is Earned Wage Access? Should You Provide It? | Staffing.com

6 Coniglio, L. (2023, June 23rd) Nevada Becomes First State to Enact Earned Wage Access Law. Payroll.Org Nevada Becomes First State to Enact Earned Wage Access Law (payroll.org)

7 Consumer Financial Protection Bureau (2020, November 30th) Consumer Financial Protection Bureau Finalizes Advisory Opinions Policy and Announces Two New Advisory Opinions Consumer Financial Protection Bureau Finalizes Advisory Opinions Policy and Announces Two New Advisory Opinions | Consumer Financial Protection Bureau (consumerfinance.gov)



BRIAN BREAREY

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Winter Park, FL

THE PEO INDUSTRY FOOTPRINT:
NAPEO'S 2023 WHITE PAPER

During our Annual Conference and Marketplace last month, we unveiled the findings of our latest white paper. This year's study is the twelfth issue in the series and was conducted by noted economists Dr. Laurie Bassi and Dan McMurrer of McBassi & Company. Titled PEO Industry Footprint 2023, the study provides an updated look at the size and scope of the PEO industry.

Overall, at the end of 2022, there were 523 PEOs in the United States. They employed a total of 4.5 million worksite employees (WSEs), who were paid a total of $308 billion. These employees worked for over 208,000 different PEO clients, a count that represents 17 percent of all businesses with 1099 employees. Each of these numbers represents an increase from the 2020 findings reported in our 2021 NAPEO white paper. Taken together, the findings indicate a dynamic industry that continues to experience a very solid rate of growth. You can read the entire study at **napeo.org/whitepaper**.

Time to Renew Your NAPEO Membership

We look forward to continuing to serve you and your staff through NAPEO membership in 2024. To avoid disruption in your member services, please complete your membership renewal and submit your membership dues to NAPEO before December 31.

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The National Association of Professional Employer Organizations
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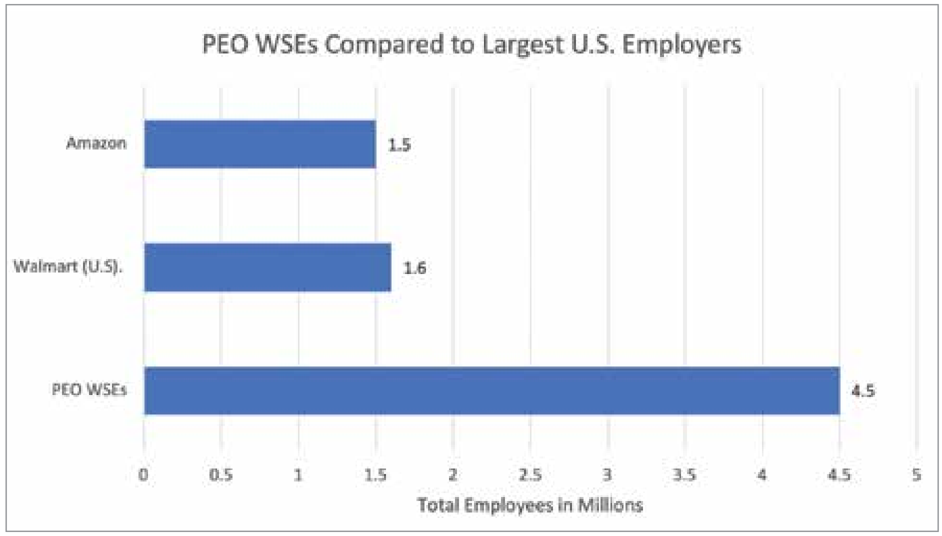
Past white papers have focused on analysis of PEOs and their relationships with clients. Topics have included PEOs' impact on client organizations (higher business survival rates, higher growth rates, lower employee turnover, and greater resilience throughout the difficult first year of the pandemic economy), as well as industry-related data (including the number of PEOs and the aggregated size of the industry).

All previous white papers are available at **www.napeo.org/whitepapers**. ■



	2020	2022	% Change Per Year
Number of PEOs	487	523	4%
PEO WSEs	4 million	4.5 million	7%
Annual WSE Wages	$216 billion	$308 billion	19%
Number of PEO Clients	173,000	208,000	10%

AD INDEX

Boldface type indicates NAPEO Medallion Partner

LETTER FROM THE NAPEO PRESIDENT

IN GRATITUDE

BY PAT CLEARY

So, this is my penultimate column for *PEO Insider*. I've written 12 years of columns, ten per year—minus one, next month's, my final one, which is already written. I don't want to give away the ending just yet. And so I decided to use this month to thank everyone who made this wonderful ride possible. At my wake at the Annual Conference, I was able to publicly thank all the former board chairs who have served during my tenure, and all the board members. It was a little choppy at first, but over time, the board became wonderfully constructive and collegial. What a concept, I know. They have developed into a cohesive and supportive group, and have guided this organization in stellar fashion.

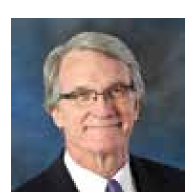
I also thanked NAPEO staff, past and present. There were several alums in the audience—Daniel Harris of TriNet, Melissa Kelly of ADP TotalSource, Michael Kreiter of Insperity, and Melissa Viscovich who came back from her new gig to be with us. She was my right hand for 12 years and owns a piece of any success I had. I can't say enough about the current staff, as they have been terrific. As I tell them, every email, every call, every member interaction adds up to a reputation of first-rate member service. They have delivered again and again.

Farrah Fielder has moved seamlessly into the COO role, Thom Stohler has put us on the government affairs map, Kerry Marshall has overseen explosive growth in our marketing and communications budget and has the results to show for it. Robin Schlesinger, well, there's only one Robin, adored by all and who delivers quality conferences every time. Nick Kapiotis was conscripted from the industry to guide our legal efforts, and he has. Hannah Walker, also an industry draftee, has hit the ground running, handling all of our state issues which proliferate with our growth. Nancy Benoudiz has overseen explosive growth in associate members and with it, non-dues revenue. It has been an honor to be part of this team. It was so gratifying to hear the thunderous applause from the crowd when they were introduced; it warmed my heart. You get it.

At the wake, we had a few "roasters," folks who came to, uh, pay tribute (but not really). Mark Perlberg sandwiched a second trip to Orlando between business and family obligations. He has been a friend and mentor and I'm grateful for that. Midge Seltzer re-engaged with us, to our great benefit. Everyone was happy to see her. Daniel Harris almost stole the show—almost—and John Slavic, industry giant, kicked it off and didn't disappoint. John Polson hilariously copped out by using a ChatGPT-generated poem. Lee Yarborough shed her sweet image to roast me all too well. And of course, Abram Finkelstein came through as only he could.

Finally, the roast ended with my pride and joy, my daughter Maggie, who struck everyone's heartstrings. I know she struck mine. That girl is going places. What can I say? The apple fell far from the tree. And I thanked my wife Kathleen, who's been with me through thick and thin, a 40-year career of demanding jobs and assignments that cost her nights, weekends, and a few vacations. Through it all, she persevered, she endured.

I think about the many friends I have made in this industry, and I am grateful. I tell everyone it's like college—you don't stay in touch with everyone, but you stay in touch with your friends, and I will. In the meantime, as I said, you are part of something special, and I am thankful to have shared that journey with you for the past 12 years. Lest I spend this entire column looking back, allow me one important prospective observation: I've been spending a fair amount of time with Casey Clark, our incoming CEO, and I can tell you that he really is terrific. He had dinner with the senior staff in October and fit in seamlessly with this boisterous, irreverent group. The following day he met with the entire staff, and as he spoke, you could feel their comfort level rise. Again, he fit in seamlessly with the group. I am excited for his arrival and for everything that he will bring to this job. ■



PAT CLEARY

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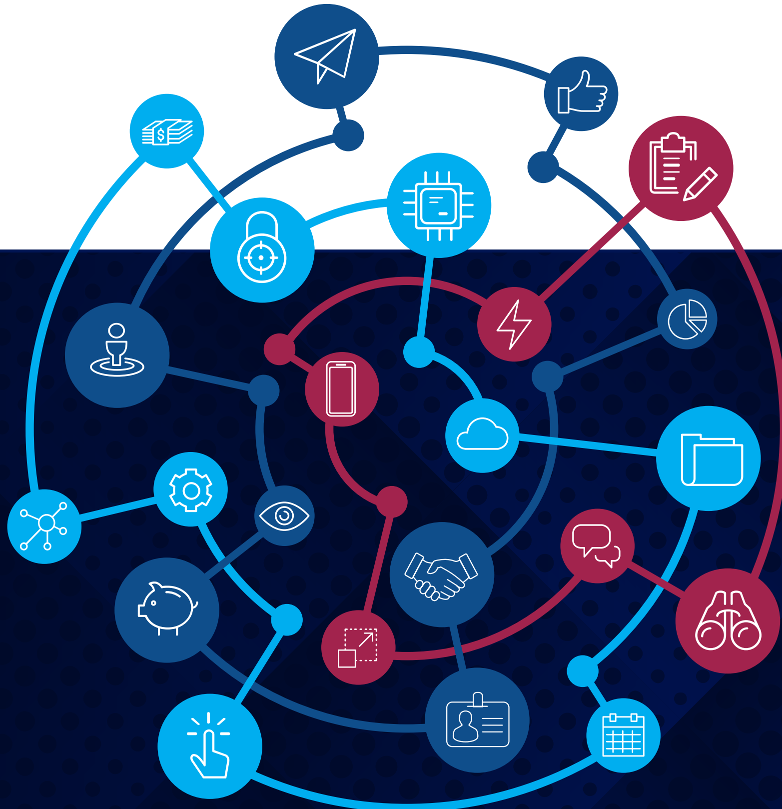
THINKWARE



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