

RULEMAKING ADVISORY COMMITTEE MEETING

Sept. 22, 2017, 9 a.m.

Durham Plaza, OSHA PFO Training Room 16760 SW Upper Boones Ferry Rd, Ste 200 Tigard, Oregon

WORKERS' COMPENSATION DIVISION RULES

OAR 436-050, Employer/Insurer Coverage Responsibility, Worker Leasing

Committee members:

Dave Barenberg	SAIF Corporation
Andrea McHenry	Insperty
Daniel Harris	National Association of Professional Employer Organizations
Dawna Oksen	Cascade Comprehensive Care, Inc.
DeAnne Hoyt	SAIF Corporation
Ed Lenz	American Staffing Association
Elaine Schooler	SAIF Corporation
Emily Drew	Liberty Mutual Insurance
Glen Distefano	Sunz Insurance
Heather Rhea	PeopleReady
Jay Morgan	ESAC
Jennifer Flood	Ombudsman for Injured Workers
John Taylor	Travelers Insurance
Ken Harms	Deschutes County
Kim Doster	TNT Management Resources
Kristen McConnell	NW Staffing Resources
Megan Hitchcock	Travelers Insurance
Melinda Majors	Cinder Staffing
Melissa Craig	Quest Staffing Services
Morgan Shapiro	TRUEBLUE
Weisha Mize	Attorney

Agency staff attending:

Angela Blake	Lorrie Baker
Chris Clark	Lou Savage
Daneka Karma	Roger McComas
Fred Bruyns	

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BEFORE THE WORKERS' COMPENSATION BOARD OF

THE STATE OF OREGON

RULEMAKING ADVISORY COMMITTEE

WORKERS' COMPENSATION DIVISION RULES

The proceedings in the above-entitled matter were held in Salem, Oregon, on the 22nd day of September 2017, before Fred Bruyns, Administrative Rules Coordinator for the Workers' Compensation Division.

1 TRANSCRIPT OF PROCEEDINGS

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3 00:00: Because we create a record of these meetings for--actually, we
4 post it to our website, so if you--we discuss anything here today and you want to
5 listen to it again, you can always look it up on our website, should be posted by
6 Monday sometimes anyway. So welcome to you all. My name's Fred Bruyns. I
7 coordinate rulemaking for the Workers' Compensation Division and I've been in
8 touch with, I think, pretty much all of you in the last few weeks and will continue to
9 keep you informed going forward about the meeting, an additional meeting that we
10 have scheduled, and if there is anything more after that, certainly continuing to keep
11 you informed as we move through the rulemaking process, so thanks very much for
12 taking your morning and coming down to join us and we look forward to having your
13 input this morning.

14 There are additional copies of the agenda on the table by the windows
15 over there and I would encourage you to have one of those as we go through. If
16 you're on the phone with us and you don't have an agenda, those are posted to our
17 website under rulemaking. If you have any difficulty navigating to that, just let me
18 know and I can probably you walk right into that.

19 But this is a Rulemaking Advisory Committee, it's an informal process.
20 It's not like a public hearing; it's really a discussion, it's our chance to get advice from
21 all of you, and so I would encourage you to let us know any concerns that you have,
22 any ideas that you have for how to improve these rules, and as we go along, and
23 you may notice on the issues document that we have attached to the agenda that
24 there's a place for recording fiscal impacts, so if you have any input on, you know,
25 costs of anything that we may do, even if it's hypothetical, we would really appreciate

1 having your input on costs or savings to you or the people that you represent so that
2 when we file proposed rules with the Secretary of State, we can estimate what those
3 costs are, and we do rely on information from folks like you, so keep that in mind.

4 With that, if you're on the telephone with us today, thank you for joining
5 us. Keep in mind that we'll pick up background noises in your office sometimes so--
6 even keyboarding, so you can, you know, selectively use your mute button. I do
7 encourage you not to put us on hold because we will get your background music if
8 you happen to have that and there's no way for us to turn that off. You may leave
9 and rejoin the conference call as often as you'd like, so keep that in mind.

10 I've introduced myself, so I think I'd like to begin with the folks on the
11 telephone with us this morning and have you introduce yourself to the committee.

12 02:40: Glen Distefano, Sunz Insurance Company.

13 02:43: Welcome, Glen.

14 02:46: This is Ed Lenz with the American Staffing Association in
15 Alexandria, Virginia.

16 02:52: Welcome, Ed.

17 02:55: Kim Doster with TNT Management Resources.

18 02:58: Good morning, Kim.

19 03:00: Weisha Mize with Keizer Law.

20 03:03: Good morning, Weis.

21 03:09: John Taylor with Travelers Insurance.

22 03:11: Welcome, John.

23 03:13: And Megan Hitchcock--

24 03:13: Ken Harms, Deschutes County.

25 03:15: We'll let Megan come in first. Megan?

1 03:19: Sorry. Megan Hitchcock with Travelers Insurance.
2 03:22: Welcome, Megan.
3 03:25: Ken Harms with Deschutes County.
4 03:27: Good morning, Ken. Anyone else--
5 03:31: Emily Drew--Emily Drew with Liberty Mutual.
6 03:34: Thank you for joining us, Emily. Anyone else?
7 03:40: Dawna Olsen with Cascade Health Alliance.
8 03:42: Welcome. Anyone else?
9 03:48: Jay Morgan with ESAC.
10 03:51: Good morning, Jay. Anyone else? Hearing no one, I'll turn to
11 my left and we'll go around the table here.
12 04:05: I'm Chris Clark, I'm a policy analyst with the Workers'
13 Compensation Division and I support the employer compliance unit and the worker
14 leasing unit.
15 04:12: I'm ^{Gloria} [Lorrie] Baker and I am one of the compliance
16 specialists here at Workers' Compensation Division, the worker leasing program.
17 I've talked to many of you. Hello, welcome.
18 04:23: Angie Blake of Workers' Comp Division, worker leasing
19 program.
20 04:27: Dave Barenberg, SAIF Corporation.
21 04:29: DeAnne Hoyt, SAIF Corporation.
22 04:31: Elaine Schooler, SAIF Corporation.
23 04:33: Heather Rhea, PeopleReady.
24 04:34: Morgan Shapiro, Trueblue.
25 04:36: Jennifer Flood, ombudsman for injured workers, DCBS.

1 04:39: Kristen McConnell, Northwest Staffing Resources.

2 04:42: Melinda Majors, Cinder Staffing.

3 04:45: Daneka Karma, policy manager with the Workers'
4 Compensation Division.

5 04:48: Roger McComas, employer compliance manager with WCB.

6 04:52: I'm Lou Savage, I'm the administrator for the Workers' Comp
7 Division.

8 04:55: Good morning, everyone. I'm Daniel, Harris, I'm with the
9 National Association of Professional Employer Organizations. We are the trade
10 association for the PEOs and we, too, are located in Alexandria.

11 05:05: Good morning, my name's Andrea McHenry, and I'm with
12 Insperity, we're based in Killeen, Texas and we are a PEO.

13 05:12: My name is Melissa Craig, I'm with Quest Staffing Services, I'm
14 also here representing Summit Staffing Solutions.

15 05:18: Okay. Again welcome to all of you and thank you for coming.
16 In just a minute I'm going to turn the conduct of the meeting over to Chris to go
17 through the agenda with us, but before I do that, do you have any questions about
18 what we're--what our plan is go through our agenda items pretty much as they're,
19 you know, in the sequence that they are, and then if there's time at the end, we'll
20 open it up for new issues, and to be honest, I really don't know how long it's going to
21 take us to go through our agenda, so it's possible we will run out of time or we will
22 have time, but if we do run out of time today, we do have a second meeting
23 scheduled for October 16th and so we have that opportunity to (unintelligible) issues
24 at that time. Just to let you know, if you're on the phone with us, we're picking up
25 quite a bit of background noise, I don't know, it almost sounds like wind, if you

1 happen to be outside and you're listening on a cell phone or whatever, but with that,
2 do you have any questions before we begin?

3 06:15: Yes, just real quick. I know the last step of days that talk about
4 next steps, and I didn't know if that was going to cover--there are some things in
5 here that you're proposing that, you know, I don't know if it would be possible to do a
6 new rule, you know, for a regulatory setting like this, some things may have to be
7 done by statute. If it's decided that that's going to be the case, what would be the
8 next step or is that something you're going to get to later?

9 06:49: Well, indeed if we as--with that, even possibly even with legal
10 consultation with our AAG, if we decide something cannot be done by rule and has
11 to be done by statute, that's probably beyond the purview of this group and it would
12 be kind of beyond our ability to influence that. We're a State agency and we have
13 rulemaking authority, but obviously we don't--we can't actually change the underlying
14 law. Occasionally we put in legislative concepts--

15 07:15: Okay.

16 07:16: --and--but that's fairly occasional, and--but we would certainly
17 be interested in any thoughts that the committee had--

18 07:24: Okay.

19 07:25: --on recommendations for that, and sometimes of course, as
20 you know, there are other ways to influence that and then work with your
21 representative and--

22 07:31: Sure.

23 07:32: --get a bill drafted, but we're mostly focused on rulemaking, and
24 then we sometimes find that it's just impossible to get there because the structure of
25 the statute won't allow us.

1 07:42: Right. Okay. All right, thanks.

2 07:44: Yeah, I was--well, just to tag onto what Fred said, I would say
3 that if you think that your position we're going beyond--

4 07:52: Right.

5 07:52: --our statutory authority, we would certainly want to hear that.

6 07:56: Okay.

7 07:57: Andrea--

8 07:57: So just tagging onto Daniel's question, so--and as we go
9 through this document and we establish the issues and then there becomes
10 language that needs to come out of the issues, our next step's the next meeting
11 discussing that specific language or, you know, maybe providing opportunities to
12 give, you know, examples of language they think might be helpful--

13 08:19: That's an excellent question and I'm going to see what Chris
14 maybe can do to address whether we would have draft rules.

15 08:26: I believe we are going to--we're going to do our best to have
16 draft rules for the next meeting for people to review. At any rate, we will file
17 proposed rules and there'll be a time for public comment, so whatever our final
18 decision is, you will have a chance to review it before it becomes law--

19 08:47: Great. Thank you.

20 08:48: Thanks.

21 08:49: Yeah, this is the advisory stage, the advice stage, and then it
22 becomes a little more formal after we propose the rules--

23 08:54: Right.

24 08:54: --then we accept both written testimony and oral testimony at a
25 public hearing that we'll schedule, and we'll keep you all informed about that so that

1 if you want to provide written testimony or come to the hearing here, you're welcome
2 to do either or both.

3 09:07: Great, thank you.

4 09:10: And I guess one thing to follow up on there. Where we had a
5 strong idea of where we may go, we did try to include some of the proposed rule
6 language, so--

7 09:18: I see that.

8 09:20: --but none of that is set in stone at this point, so we're happy to
9 take feedback.

10 09:25: Gotcha.

11 09:28: Okay. All right.

12 09:32: So thank you, everybody, again for coming, we really do
13 appreciate stakeholder feedback and I think it's been sometime since we've done a
14 comprehensive of the worker leasing rules, so this is a really good opportunity for us
15 to just hear about not only these issues, but any other issues you guys have, so if--
16 again if we don't have time to address everyone's issues today, we do have that
17 second meeting and we really, I think, do want to hear as much as we can.

18 I'm going to go through the agenda issue by issue and I may not read
19 the entire issue, so if you do have questions, feel--please feel free to stop me and
20 ask for clarification about anything, but with that, I will just go ahead and start with
21 issue number 1364, this first one.

22 We've received some feedback that it can be difficult for stakeholders
23 to locate the worker leasing rules and their associated definitions. As you may
24 know, all of the Workers' Compensation Division's rules are found in OAR
25 Chapter 436, and Division 50 covers several topics, including coverage

1 responsibilities, insurer registration, self-insurance, and worker leasing. The Division
2 has received feedback that the worker leasing company, temporary staffing
3 agencies, and other affected parties have difficulty locating the provisions specific to
4 them within the rules, so in addition, it's not always clear to the reader that the
5 definitions in Rule 5, -0005, also apply to the worker leasing rules, so to make the
6 rules more user-friendly, it may be helpful to separate these rules into their own
7 division or establish a new rule providing definitions that apply specifically to the
8 worker leasing section of the rules.

9 So with that, I guess what we would really like to hear if that would
10 actually be helpful to people or if it would just create another set of rules that people
11 would have to find somewhere else, if anybody has thoughts.

12 11:33: Just seems like it would be pretty easy to reference that it
13 includes leasing entities. And one of the things in going through the rules, because
14 it is a pretty cumbersome block of rules, a large portion of this references self-
15 insurance, and I wasn't sure if perhaps reference--changing the order of the self-
16 insurance might make it a little bit easier to flow so that you don't have this huge
17 chunk right in the middle that seems irrelevant to, depending on the number of
18 companies that are self-insured versus going through SAIF, Liberty Mutual, another
19 organization.

20 12:15: That makes sense. So to clarify, the 50 rules do cover the
21 entire self-insurance program separate from worker leasing, so while we could look
22 at the order, but I think those rules would still be a significant chunk of this division.

23 12:33: Right, so it's not necessarily taking out, considering the order,
24 and just doing a simple reference, because except for a few little comments about
25 like when it's referencing the rule about PEO being the same as a worker leasing

1 company, those you can--I mean, it just might be just a simple reference, 436-050,
2 including worker leasing companies may be all that's necessary to just make it
3 obvious, "Hey, everybody, these rules include worker leasing companies."

4 13:17: So maybe just increasing the visibility then that worker leasing
5 is in there up front?

6 13:23: Yeah.

7 13:25: Fred, do you know if we can--how much control we have over
8 the title of administrative rules?

9 13:32: We have complete control over the title--

10 13:33: Oh, great.

11 13:34: Yeah.

12 13:35: I didn't know if that was something that can't be changed once
13 it's been final--

14 13:37: No. Not even part of the rules technically, so no.

15 13:45: Any other thoughts on that? Okay.

16 13:52: Is it the view that PEO and worker leasing are synonymous
17 terms?

18 13:59: That is a separate issue, but we can talk about that now. So I
19 believe, so, yes, that our statute references worker leasing companies and so that is
20 also the term that we use in the rules, but we do recognize that PEO is maybe more
21 widely used in the industry, and for the purposes of our rules, we look at those as
22 synonymous, so... I'm looking at Lorrie a lot, you can't see on the phone, but she's
23 the subject matter expert, so...

24 14:35: So, I mean, Daniel and I, you know, we talk about this a lot,
25 right, because we go throughout the country and talk to regulators about updating

1 the statute consistent with our model act, so NAPEO has a model act and it's
2 basically addresses PEOs, and so the definition, the word worker leasing is really
3 foreign to us, you know, and that's mainly because I think the concept of
4 professional employer organization services has progressed over time and so when
5 I read the definition of what a worker leasing company is, I don't really see my
6 company, but I do understand that historically, you know, we've been covered under
7 this provision and, you know, and this is what we have to work with, but I have to be
8 honest; I think the definitions are different than what our business model looks like
9 or, you know, we call ourselves something different in our contracts and it's--could
10 be totally different.

11 15:39: And I'll just piggyback onto that. Andrea's right, and I know that
12 this is something that's going to be covered a little later--

13 15:45: Uh-huh.

14 15:46: --but while we're talking about it, so that's--I think is another
15 thing is one of our biggest concerns from an industry perspective is that this
16 definition could include companies--I mean, this--you say this is intended for PEOs.
17 This definition includes companies, I'm even looking around the table, I'm looking at
18 companies that aren't PEOs and would not like to hold themselves out as PEOs, so
19 Andrea referenced our model act, which provides definition of PEOs, obviously, but
20 also excludes what we define as temporary agencies--

21 16:20: Uh-huh.

22 16:20: --temp staffing and anyone else who, quite frankly, is not what
23 we would deem a legitimate PEO, but I know you're going to get to it later and the
24 reason--

25 16:29: Yeah--

1 16:29: Right, right, right.

2 16:30: --we didn't include that distinction in our--in our comments was
3 because this is a rulemaking process and, you know, not a statutory process, so--

4 16:40: Right.

5 16:40: --a legislative process. So, anyway, I just wanted to put that on
6 the record that we do--

7 14:45: Put that, yeah, just put that on the record.

8 14:45: --that we do share the same concern--

9 14:46: Yeah.

10 14:47: --that perhaps others around the table share.

11 16:51: And I think--just to speak to that a little bit, I--we definitely hear
12 those concerns and I think Oregon passed the statute in--was it 1981? Or 1993 for
13 this one and... And so I guess 1993, but we were--we were one of the leading, one
14 of the first states to adopt worker leasing or employer leasing legislation, and out at
15 that time we were kind of out ahead and things weren't well defined, so I think the
16 legislature went with this broad approach, and we do understand that the industry
17 has evolved certainly since that time, and part of the reason we're doing this is to
18 bring our rules up into that norm as much as we can, but, yeah, like you mentioned,
19 there are things that are beyond the scope of what we have the ability to do, so--

20 17:41: Right.

21 17:45: Okay. With that, unless there's other comments, we can go
22 ahead and move to the second comment and we will come back to that issue in a
23 little bit. So I guess this is somewhat related, but we have a definition of worker
24 leasing company that basically says any person who provides workers by contract
25 and for a fee to work for a client except for on a temporary basis, which I didn't put

1 here but that is in the statute, is required to obtain a license before performing
2 services as a worker leasing company in Oregon. The statute's broad construction
3 allows the Division to regulate all persons performing services as a leasing
4 company, but also requires some entities that are not leasing in the traditional
5 sense, such as a company that only provides workers to a related company to
6 license. The statute also requires a worker leasing company to license even when it
7 only has a small number of leased workers in Oregon who are incidental to their
8 operations in other states. Stakeholders commented that it may not be necessary to
9 make these entities go through the complete application and renewal process, which
10 can be time consuming and costly.

11 So we are looking at a couple alternatives that might address these
12 different categories. The first is establishing a limited license for worker leasing
13 companies which fall into these categories, so alternatives, what this may look like is
14 a streamlined application process and possibly lower fees for these companies as
15 long as appropriate coverage for Oregon subject workers is maintained, other
16 reporting criteria are met, and I was told to mention that also the statutory
17 qualifications as a worker leasing company are maintained, so-- And the other
18 alternative we would be looking at would only affect the issue of one company
19 providing workers within a corporate umbrella or something like that where we could
20 look at excluding the relationship of a company that provides workers only to entities
21 that they share common majority interests with from the definition of leasing
22 company. And that is based on the NCCI's combinability rules, so combinable
23 entities would not be a worker leasing company client relationship.

24 So, yeah, does anybody have any thoughts about that?

25 20:18: Can I make a suggestion that we talk about these as two--I'm

1 really interested--

2 20:22: Sure, yeah.

3 20:23: I'm really interested in feedback on this and maybe we can take
4 them as two separate issues because I think it's possible that we're conflating two
5 things, maybe starting with the first issue of the idea of a *de mini*--what is often
6 called a *de minimis* license or a truncated license for entities that are PEOs that
7 come into the state but have very little presence here, and we get that a lot, we have
8 national companies, there's probably a few around the table, national companies
9 that maybe have a national client, maybe they have two, you know, home-based
10 employees working on a computer, so that's the only Oregon exposure, and in other
11 states there is what's called a *de minimis* license, and that's one of the things I'd like
12 to kind of hear feedback on, the experiences of other PEOs that have, you know,
13 that have experienced that in other states, maybe what NAPEO has to say about it,
14 what might be of concern that we would have with doing that. Any questions about
15 that?

16 21:30: So I'll just go ahead and talk, thanks, Lorrie. This is--well, a
17 certain part of this is our proposal. I think the overwhelming majority of states that
18 license or regulate PEOs in some form allow limited or *de minimis* license. There's--
19 You know, this is something that our--that NAPEO's model act allows, again a lot of
20 states have followed that in certain situations, so there's a threshold in our model--
21 like there's a threshold-- Well, I'll tell you, it's sort of common with all states, it's
22 allowed for PEOs who are not domiciled in the--in Oregon but they are licensed or
23 registered in another state, they do not solicit clients definitely within the state where
24 they're seeking the *de minimis* license, this is where it sort of differs by state. Our
25 model act calls for a 50 sort of work site employee threshold, some states go

1 hundred, it's not common, some states do 25, 40, but most do 50. That's it,
2 domiciled outside of the state, licensed or registered in another state, and do not
3 maintain office in the state, do not solicit clients. So this is intended, and maybe
4 Andrea can speak a little bit better to this--

5 22:55: Hope you're paying attention.

6 22:55: --this is intended not necessarily just for national PEOs, but,
7 you know, PEOs doing business in Texas and perhaps only in Texas, but for
8 whatever reason their client has moved just a couple of, you know, maybe they have
9 some salespeople in Oregon or another state, instead of that PEO having to become
10 licensed as if it had a thousand work site employees, it's sort of an exception that
11 sort of keeps that relationship together because, you know, sometimes the PEO, it
12 will make the decision not to become licensed and sort of that the financials and
13 other things that the state requires and, you know, someone else, either that client
14 will now be on its own or will, you know, have to take relationship with another PEO,
15 which creates all sorts of conflicts as well. That's the reasoning behind that.

16 23:47: Right, and we have--we wouldn't, you know, take advantage of
17 that provision, we have too many employees here, but I can only speak to, you
18 know, what I know about some smaller companies. A lot of times they get pulled
19 into states by clients, not because they want to be there, and so the client may
20 temporarily place an employee in a state and work them there for 30 days, and the
21 PEO does not want to go through the expense of getting a bond or filing an
22 application or, you know, they don't plan to be there long-term. I think most times
23 what most states would require that when a PEO is--becomes aware that they have
24 an employee there, that they give the state--they have notified the state within
25 30 days or whatever time period is to--and try and get a *de minimis* license within a

1 certain period of time, and so that puts the burden on them, they understand there's
2 some regulatory requirements about it, but you don't have to go through entirely the
3 application process like you would if you work, you know, going to be done, you
4 know, you know, being in the state kind of robustly.

5 25:00: So at the end of the day, you know, one of our primary
6 concerns is that workers in Oregon have coverage, have protection, while the
7 employers have coverage that the workers have protection.

8 25:11: Right.

9 25:12: So, you know, anytime there's an out-of-state entity that doesn't
10 have a presence in Oregon, we need to have some assurance that workers are
11 protected, so, you know, any--you know, any kind of application, limited application,
12 we need to have--we need to have a comfort level for that.

13 25:33: Uh-huh, uh-huh.

14 25:36: So no matter whether the PEO has a full license or a limited
15 license, and I'm not sure what protections you're talking about, but they'd still be
16 required to follow the same rules that all the other--

17 25:51: Oh, I understand that. The question is what happens if they
18 don't? You know, our--you know, our ability to enforce our rules and statute, that's
19 real--that's really what I'm talking about. You know, I'm assuming that, yeah, they're
20 going to have to have coverage, but it's a question of making sure that we can get
21 compliance if we need to.

22 26:15: So I don't know if that would be different than any--again a PEO
23 that has a full license, you would be able to whatever the enforcement mechanism
24 that you currently have under, you know, your regulatory framework, you would still
25 have that same enforcement mechanism against a PEO that had a limited license.

1 The limited license only, would only apply, you know, during the license--the renewal
2 process, so, in other words, you would have the same information; the process
3 would just be a little less arduous for, you know, a PEO who only has, you know,
4 maybe a presence of one or two work site employees here. Does that make--

5 27:00: Yeah, and I was going to kind of jump in a little bit, too, and say
6 I--we would still--if we had a *de minimis* license, we would still require that they
7 register with the Secretary of State, so they'd have to have a registered agent so we
8 would have somebody to serve if we needed to so we have that, you know, we'd
9 have that prong--

10 27:17: That was--that was--that was my point, that was my point.

11 27:19: Yeah.

12 27:20: Yeah.

13 27:20: And the other thing I was going to point out, though, is that you
14 mentioned 50 work site employees, and to me that's a lot, and I just want to kind of
15 push back on that number a little bit and kind of explore that because I would say,
16 you know, the number that came to my head was five, and you were saying 50, and
17 so I'm interested in--that seems like a lot of presence here--

18 27:40: So--

19 27:40: --to not require a license--

20 27:42: Yeah, so our model act says 50, like I said, some states, most
21 states do 50, some work down to 25, I'm just looking at my notes, Carolina's done
22 40. It depends on the state--

23 27:52: Uh-huh, uh-huh.

24 27:52: --quite frankly, our model act is just a model act.

25 27:55: It could be, you know, one client, 50 employees is different than

1 50 clients, too, but still I just--

2 28:03: Yeah.

3 28:04: Right, I think if you saw that 50 clients, that might be evidence
4 that they're not complying with all--you know, if you're to go the route of having a
5 limited license, that could be evidence that they might be soliciting clients--

6 28:16: Yeah.

7 28:16: --which would forbid them from being able to have the limited
8 license.

9 28:20: Uh-huh.

10 28:21: But, I mean, so again this is the sort of what Andrea and I have
11 spoken to, sort of the limited situation where, you know, the PEO's been pulled into,
12 you know, they're doing business in, I don't know, any other state, they've been
13 pulled into--

14 28:36: Uh-huh.

15 28:36: --they're not looking to be in Oregon necessarily--

16 28:38: Right.

17 28:38: They've been pulled, you know, because their client wants to
18 move into Oregon, and once you--of course once you surpass that threshold, you
19 would no longer be--

20 28:46: Yeah, you'd have to get--

21 28:47: Right.

22 28:47: Right.

23 28:47: Uh-huh, yeah.

24 28:59: You know, you couldn't avail yourself to a limited license, but
25 the threshold will be obviously entirely up to the Department.

1 29:04: The cost of a leasing license, what is it now?

2 29:08: Right now it's \$2050 for a two-year license that needs to be
3 renewed every two years.

4 28:13: And what's the timeframe, how long does it take? Like if I apply
5 today, when could I have employees here? I think I read somewhere that you have
6 to apply within 14 days of having employees here? Is that correct?

7 29:25: That's a little bit different--

8 29:27: Okay.

9 29:27: You'd need to have-- The license-- I would say the average
10 time to get a new license if you've never been in our state before is probably around
11 a month, but I say that very loosely because there's a lot of thing, it really depends, it
12 depends on--there's a lot of things we require, so it sort of depends on are your
13 taxes clear, do you have other issues, did you get your Comp filed properly, do you--
14 you know, we have a lot, there's a lot, some educational components that we need
15 to go through with new PEOs to the state because we have some unique rules, I will
16 say.

17 30:01: Just wondering, in hearing you guys talk, if your threshold is
18 five, and you were talking about whatever various states do, feels like a lot of work to
19 make changes; if the threshold is five that, right, maybe making that change doesn't
20 make a whole lot of sense--

21 30:19: For five, right, right--

22 30:20: Right.

23 30:20: --it makes sense more for 25 or 50--

24 30:23: Exactly, exactly--

25 30:24; I mean, we get--we get a lot of PEOs that only have, you

1 know--

2 30:28: Just a few.

3 30:28: --a couple--yeah, and that may happen pretty frequently--

4 30:31: I think she brings up a good point, too, is the cost. You know,
5 you know, for my company it's not an issue, but for a smaller PEO that has only--it
6 only has one client, a \$2000 investment in one client is really big.

7 30:47: Uh-huh.

8 30:48: It is very cost-prohibitive--

9 30:48: And that's the feedback I get--

10 30:49: Yes.

11 30:50: --is it's not--is it's not cost-effective; the only reason they're
12 doing it, of course, is because the--in other states, it matters--

13 30:55: Yes.

14 30:55: --that client they want to keep.

15 30:56: Exactly, so it does become an issue, and it does become.

16 31:01: What's the average cost in other states? Do you know that?

17 31:05: Yeah, I do. The actual--the cost for just a regular license? It's,
18 you know, it varies, but it's a thousand, 500, 1500, these are just for annual licenses,
19 250, I mean, it really runs across the board.

20 31:21: Well, you said that's for annual licenses; Oregon is biannual,
21 so--

22 31:23: (unintelligible) biannual--

23 31:24: For a limited license--

24 31:26: Oh, limited license--

25 31:27: Yeah, a lot of states are biannual, many states are biannual.

1 You know, some are one year.

2 31:33: Yeah, I'm just reading off what it would be annually. Yeah, it's
3 a thousand, 500, it really varies.

4 31:39: Uh-huh. And I will say, too, our license or, rather, our statutes
5 require that our license cover the cost of--it basically funds the program--

6 31:48: Uh-huh.

7 31:48: --by statute it's required to, so that that money is set out for that
8 reason, that's how much it costs to actually--well, it probably costs more than that,
9 but that's a different subject.

10 32:03: How much is a limited license?

11 32:05: A limited license... In, you know, a place like Alabama the
12 actual license is a thousand, the limited license is 500 for the initial one. In Arkansas
13 the full license is a thousand, the limited license is a hundred. In Connecticut the full
14 license is a 1500, the limited is a thousand, so it just really does vary, and I can
15 circulate this information, this is compiled--

16 32:35: But it's clearly less than--

17 32:37: Right--

18 32:37: --maybe half, yeah.

19 32:39: It's a little bit less than, sometimes it's half, sometimes it's, you
20 know, not so much.

21 32:49: So I may be dummifying down the question a little bit, but my
22 notes here in some of this is why wouldn't they just use an existing service? And the
23 example that you provided about how they have a national contract and so they got
24 an individual location here, that makes perfect sense, I mean, that was--that's a
25 good example, but some of those other organizations where it's like they just need to

1 set up their own payroll service to do their own organization, whatever it might be,
2 why don't they just use on that's already in place?

3 33:16: You mean why wouldn't they use a--if they--if a client is moving,
4 let's say, from Texas to Oregon, why wouldn't they just use someone who's already
5 in Oregon--

6 33:24: Yeah.

7 33:24: Because they've already established an employment relation--

8 33:26: Well, no, and I understand that situation; I'm just wondering if
9 there's any other scenarios--I mean, I mean, so if that's the only scenario, maybe
10 create, address that scenario in a possible modification as opposed to addressing a
11 bunch of different situations that may not exist, so--and that's part of the reason why
12 I was--I was, you know, getting some examples, where you had the examples, those
13 were really great because my--like I said, my question in my notes was like, well,
14 why don't they just call us? And so, well--

15 34:01: Right, and, I mean, I think they would if they were--you know, I
16 mean, if they were just going to be here--

17 34:05: Or even a temporary basis, what I'm hearing you say for
18 30 days, well, that seems kind of dumb--

19 34:10: Well, see, but they've already got their payroll set up, yeah,
20 with the other company and--

21 34:14: Right--

22 34:14: And then--and then, you know, with the PEO, that's why we
23 were talking about, that's why PEO is a little different. You're not just paying payroll;
24 you're offering a health benefits plan and then you're Workers' Comp and then
25 you're offering UI contributions, so it's a full package, and so when you have a client

1 and you're offering all of that to these employees over here in Minnesota and you
2 have this one employee in Oregon, all of a sudden you're saying, okay, no, don't
3 give him the health plan that all, you see--

4 34:42: Uh-huh.

5 34:42: --what I'm saying, so... It's-- That's why it's best, you know,
6 when we take a client, we're taking the full workforce. That's why it's important to
7 have the full workforce and there's no splitting--

8 34:55: Uh-huh.

9 34:56: --of a workforce, so when you--when we have a client, we have
10 everyone, and that's why that's important so that all employees get the benefit of all
11 of our services that we offer. But that was a good point, though, that was a good
12 point about, you know, maybe doing something else.

13 35:22: I mean, are there any other scenarios that this would come up
14 where it's not an out-of-state company that's needing to utilize or create a leasing
15 scenario in Oregon? Or is that the only--

16 35:37: That's pretty much it. It's frequent, though, I mean, it--

17 35:40: Right, no, so that's why--

18 35:41: But it is that issue really--

19 35:43: Okay, so really if we're looking at modifying rules, we might
20 consider just addressing that scenario as opposed to creating an entirely
21 encompassing rule that covers potentially all possible scenarios, let's maybe just
22 address the one where an out-of-state entity who's looking to expand locations to
23 Oregon is allowed the opportunity for a diminutive leasing license under these
24 conditions.

25 36:09: Yeah.

1 36:10: So that might be the direction the rule could go?

2 36:12: Uh-huh.

3 36:12: Yeah, and I think if you look at our second alternative here,
4 that's what we were kind of trying to get at and that is based on some advice that we
5 got from (unintelligible). So on that note, there is a slightly different scenario that
6 we've been looking at, and that is when we see people that are leasing according to
7 the statute, but they're not necessarily offering a commercial leasing service or a
8 staffing service, and that is usually when it's within a corporate family, so does
9 anybody have any other thoughts about ways we could recognize that? I mean, if--
10 we definitely still want to monitor this and make sure that, you know, everybody's
11 following the regulations and is taking care of coverage in the way they need to be
12 taking care of it, but--yeah, I think would it be appropriate to extend or do other
13 states extend limited licenses in those scenarios as well or--

14 37:19: The an--no--

15 37:21: Okay.

16 37:22: --and I've never heard of this situation--

17 37:23: Okay.

18 37:23: --that was being described in the issue, and--

19 37:26: So let me--let me explain kind of what it is that our statute
20 captures. Our statute says if you provide workers on contract and for a fee
21 essentially, and there are companies, often large companies, they'll have a parent,
22 they'll have a holding company, they'll have, you know, another entity that, a
23 subsidiary entity that is the holding company for their property, and then they'll put all
24 of their employees, for instance, in another one of their companies, so it's really for
25 either tax, it's tax or administrative benefit there, they're not looking for--they're not

1 looking for clients; they're just--but they are taking all of their employees and putting
2 them in one subsidiary and then essentially providing them on contract and for a fee
3 to others of their--within their group, so different brands perhaps, within their
4 company, and that is captured in our statute and I think that's what we're trying to
5 grapple with here because we--they're not PEOs, and yet--

6 38:25: Yeah.

7 38:25: --they fit.

8 38:27: Yeah, so that's my initial thought. I know you're--the definition
9 for worker leasing is really broad, but it's not PEO, so that's why I had to--that's why I
10 said no, that no other state does it, because most states, their PEO statute really
11 narrows down and focuses on PEOs. This one captures a lot more, so no other
12 state does that, but, I mean, this goes back to my initial question and sort of the
13 initial point that a lot of folks have discussed. If we're trying to limit in one area these
14 rules, we're trying to limit it to PEOs, why, I guess, make another licensing structure
15 for companies that aren't PEOs. Does that make sense?

16 39:14: Yes, that does make sense.

17 39:19: So do you consider those to be traditional temporary
18 employees then or do you consider that somewhere in between a temporary and a
19 PEO--

20 39:25: I don't know--

21 39:27: But they would--to me it's neither, I mean, to me they're just
22 their employees. This is--this is-- I don't know--

23 39:34: Maybe like a management consulting--

24 39:34: Walmart, you know--

25 39:35: Yeah, yeah.

1 39:36: --is actually--I think Walmart's one of my examples of--

2 39:39: Yeah.

3 39:40: --you know, so you've got the Walmart--

4 39:41: So that's totally (unintelligible)--

5 39:41: --and they put all their employees in the Walmart parent, don't
6 quote me, I mean, I'm just making this up, but the Walmart parent, so that all of the
7 payroll runs through there, but there might be, you know, I don't know what other
8 entities are owned by Walmart, but, you know, they've got employees out there, but
9 they're all paid through or leased essentially.

10 40:01: I think I ran across a situation like that in Connecticut, it was
11 like a hotel and, you know, there's a parent company that owned like a lot of different
12 little franchise kind of hotels--

13 40:14: Right.

14 40:15: And they were like they had a managing entity--

15 40:18: Uh-huh.

16 40:18: --you know, where they kind of housed all of these individual
17 employees that worked--

18 40:25: Right.

19 40:25: --for these different hotels. And that's--yeah, that's, really that's
20 different, but they are licensing--you know, there's regulatory structure for that--

21 40:35: For the hours.

22 40:36: --type of service, though. Yeah. It's a policy thing.

23 40:41: For a fee (unintelligible)--

24 40:42: Advisory committee meeting, which (unintelligible) rules that all
25 they've talked about so far for almost an hour--

1 40:47: We're picking up your converse--
2 40:48: --is the freaking licensing process--
3 40:48: Hello? Can you hear--can you hear me--
4 40:50: --which applies nothing to us, but we just--
5 40:51: I don't think they can--
6 40:51: --need them to be licensed so we can add them, but that's it.
7 40:56: They may have a (unintelligible) that we need to use.
8 41:00: I guess what I--I guess oftentimes when we see that when
9 we're auditing--
10 41:04: Yeah.
11 41:05: --a lot of times is this is considered, you know, we think
12 sometimes it's more considered a common paymaster-type situation--
13 41:12: Right, Uh-huh.
14 41:12: --sometimes they may or may not get a fee, but it's really about
15 just the efficiencies--
16 41:18: Yes.
17 41:18: --of the--of--
18 41:19: Right.
19 41:19: --all of them being together--
20 41:20: Yes.
21 41:20: --to do that--
22 41:21: Yeah.
23 41:22: --and not of the leasing--
24 41:24: Right.
25 41:24: --structure, but just a common paymaster--

1 41:25: Exactly, right--

2 41:26: But it is typical to see the fee, and I think that has to do with, I'm

3 assuming it has to do with taxes--

4 41:32: Right--

5 41:32: Right--

6 41:32: --right--

7 41:32: --so there's--but there's like--

8 41:33: --but it's all under the same umbrella at the end of the day,

9 right, so--

10 41:36: Yeah. But--

11 41:37: So the four of you feels like that's a little secondary for that--

12 41:42: But they are separate, completely separate entities, though, I

13 mean, legally--

14 41:45: Right, right, it is--

15 41:46: Yes.

16 41:46: --a complete, it's a subsidiary--

17 41:47: Right--

18 41:47: --but it is actually a legally separate--

19 41:48: That's correct.

20 41:48: --distinct entity--

21 41:48: It is.

22 41:50: --they may have a common owner--

23 41:51: Right.

24 41:52: --they do have a common owner, but--

25 41:53: They're all in--

1 41:54: Yeah, that--Lorrie raised a really good point. What the
2 corporate structure looks like is really important--

3 42:00: Uh-huh. Right.

4 42:01: Yeah, I mean, it's one thing to be a related company, I mean, it
5 really--you know, that separateness is really key to it--

6 42:09: Uh-huh. Yeah. And that's my cons--the concern I have with
7 being, you know, with--when we go to define it, we also have, for instance, PEOs
8 who lease to common, you know, like a PEO may also own a staffing company, I
9 see that, and so that can be a client, in our state it's okay for a PEO to provide
10 services to a staffing company, so that's kind of one of my concerns is making sure
11 that when we--if we carve something out, we don't carve the wrong things out, we
12 need to make sure that we're grabbing the right people so that they're not just a
13 common paymaster; they may actually be a PEO, which goes back to that do they
14 hold themselves out as a PEO? That's why I think you need to think about the other
15 pieces of that.

16 43:04: How many other states have that second tier?

17 43:09: The limited?

18 43:10: Yeah.

19 43:12: The limited license that we discussed 10 minutes ago, I don't
20 know, there's like 40 states that license PEOs, I'd say over half, maybe 25 have a
21 limited license.

22 43:24: So if there's 25 of them-ish, it would be reasonable to speculate
23 that there's probably some of this work has already been done to figure out the what
24 establishes that second level.

25 43:35: Sure, but I don't know if this has ever been--

1 43:36: Has--did you guys provide--
2 43:37: Right, this is--
3 43:38: Yeah--
4 43:39: --I don't know what other states, I think it's because of the way
5 our--
6 43:41: These are--
7 43:42: --definitions are written--
8 43:43: Yeah--
9 43:43: --these are sort of two separate issues in my head--
10 43:45: I think they are, too.
11 43:46: Yeah.
12 43:46: Yeah.
13 43:47: But this issue isn't contemplated because of PEO statute and
14 the definition of PEOs is so much different than what exists currently in Oregon.
15 43:55: Right--
16 43:56: Yeah.
17 43:56: --and in most states--
18 43:57: That's right.
19 43:58: --it isolates PEOs.
20 43:59: Yeah, this isn't even a question, because it's they may capture
21 somebody--
22 44:04: Yeah.
23 44:04: --you know, it's--or somebody maybe trying to hold themselves
24 as, but they're not in compliance with the statute or the definition of PEO. This is
25 different, this includes a lot of different folks.

1 44:15: Right.

2 44:16: Okay?

3 44:17: Well, yeah, so I think one of the themes you'll see throughout
4 this is that we're trying to create more flexibility so there can be more rational
5 outcomes in how we're applying these statutes, so I think that's something we'll
6 continue to look at more internally, and if we have a little firmer idea of the direction
7 we're going, maybe we'll discuss this again and at the next meeting. For the limited
8 license, I think that we need to do some more fiscal analysis and see how feasible
9 that is for us, but I--we really do appreciate NAPEO's input on that.

10 44:52: Thank you.

11 45:04: Okay. So the next issue is, is that our statute refers to worker
12 leasing companies and these businesses are more commonly referred to as
13 professional employer organizations. And we do--in our background research, we
14 did find that there was kind of a more, more of a distinction back when our statute
15 originated and that distinction has become less and less prominent over time. I-- As
16 far as a solution, we do think that, you know, just changing our definition to even use
17 the word PEO or to more accurately capture what a PEO is is really a legislative
18 issue, but we do kind of--would it be helpful for us to at least reference professional
19 employer organizations in our rules so that people have that flag or when you're
20 Google searching it would come up? Because I think we are the only state that says
21 worker leasing company, and that's just because I think these rules are housed in
22 the Workers' Compensation Division and we don't--we don't use the term employee
23 that much, but... And I'm getting some head nods, so, I mean, I know this is not
24 really a substantive fix, but--

25 46:16: No, but just one of--

1 46:17: Yeah.

2 46:17: Again this is one of NAPEO's recommendation, and again it
3 goes back to the question I had before. I wasn't sure, I mean, this would be okay
4 with us, realizing that this is a regulatory process. I wasn't sure whether this would
5 pass muster with whoever is tasked with reviewing these because it would be a little
6 bit of a departure from statute, and so this is fine with us, realizing there's only so
7 much that, you know, your department can do with the rules. But just to plan this out
8 a little bit, assuming that this is not allowed by again whoever reviews these, would
9 there be a willingness by the Department to recommend this to the legislature that
10 they sort of take another look at the definition and sort of get it down to who you
11 actually want to cover with the definition?

12 47:13: I can't speak--

13 47:14: If that makes sense, it's a little--

14 47:15: --to that, but there is somebody in the room who can--

15 47:17: So for folks who are not familiar with the legislative process in
16 Oregon, particularly a State agency, any legislation that the Department would
17 propose would actually be the governor's proposal. We make recommendations to
18 the governor and then the governor would introduce the bill. You know, we ought to,
19 we really ought to have a discussion about this because my initial thought is that
20 your organization really ought to take the lead on this. We would--we would want to
21 be consulting with you to make sure that this went the right way.

22 48:01: Right.

23 48:02: But--

24 48:03: Well, it just seems to me that, you know, throughout, you know,
25 this agenda, that the Department's trying to do exactly, you know, what a lot of us

1 have said, they're trying to narrow down on PEOs, even we start off saying this
2 worker leasing, it's really about regulating the PEO industry, not staffly--not temp
3 staffing or anyone else, so--and it seems like you're trying to make a lot of
4 exceptions to make that happen. It'd probably just be easier if we can work on the
5 definition, and I'm not sure, you know, if the Department wants to go--you know, this
6 is just what I see from reading this agenda. Probably make a lot better sense to
7 really amend the definition, which I know you can't do here, to make it clear that this
8 only applies to professional employer organizations.

9 48:51: But my sense, though, is that you folks are interested in a
10 model act. In other words, it's not just about the def--I mean, if we were only talking
11 about the definition, that's--and again we've already had this conversation offline, but
12 if we're really talking about the definition, that's one thing, that's a fair--that may be a
13 fairly easy fix in--but if you're talking about something more broad--more broad than
14 that, then that's something that I think we would want to hear from you folks as
15 opposed to us starting from scratch.

16 49:27: This is Ed Lenz of the American Staffing Association. I
17 certainly--we worked with NAPEO very closely over really two decades on these
18 issues and we would heartily support a modification of the definition. Whether we
19 need to go so far as to adopt the NAPEO model legislation is a separate discussion,
20 as you say, but the definitions certainly would benefit everyone, including the
21 regulators, if it were narrowed and more specifically defined as that business
22 currently exists today.

23 50:09: Thank you, Ed.

24 50:12: And one point of clarification I do want to point out. We do
25 regulate, I think, more than-- We do regulate more than just, I think, just

1 professional or employer organizations as they're commonly defined; it's all like kind
2 of long-term staffing is what we're looking at. The statute does differentiate between
3 a temporary service provider and a worker leasing company, so we are excluding
4 them to a certain degree. I just wanted to make that clarification that this--we will
5 talk about a little bit distinguishing temporary workers from leased workers or kind of
6 permanent staff placements a little bit, but I just wanted to make that clarification
7 that-- I admit the worker leasing company does not include a person that provides
8 workers on a temporary basis, but that is--that is part of the statutory definition as
9 well, so...

10 51:05: As far as this issue is concerned--

11 51:07: Yeah.

12 51:07: --in 1371, adding PEO again is one of our--

13 51:15: Yeah.

14 51:15: --asks, so it'd be okay with us, but it just seemed--it seemed
15 clear to me, you know, now, I think, just, you know, reading the rules or reading the
16 proposed amendments to the--the Department's proposed amendments to the rules,
17 that you're looking to further narrow it to PEOs and that makes a lot of sense for us.
18 You know, one of the--one of the--our biggest issue across the country is, whenever
19 we go into a state and there's an issue and we say, "All right. What happened?" and
20 they describe a company that is not a PEO, so in those states there's at least a
21 definition of PEO that's certainly excluded, it certainly doesn't make any sense, and
22 here it's easy to see why, you know, these things are sort of mixed because the
23 definition includes a bunch of different things.

24 52:03: Yeah.

25 52:04: So, I mean, it's a priority for us to make sure that wherever

1 possible we can be defined exactly as to who we are.

2 52:14: For the purpose of Oregon, is it--the background information
3 indicates, to be consistent with statute, the Division believes--

4 52:25: (unintelligible) going on for about four hours--

5 52:30: And we're picking up a little bit of background noise on the--on
6 the telephone. If you can hear me--

7 52:34: (unintelligible), yeah, will go get my (unintelligible) right--

8 52:36: Can you hear me?

9 52:38: Any (unintelligible)--

10 52:40: I have to think--

11 52:40: Yeah.

12 52:41: --I'll think about that when we're done as far--

13 52:42: No problem, no problem.

14 52:43: The car company just called, it won't be ready until sometime
15 Monday, I'm out a thousand dollars now--

16 52:50: Oh, my God--

17 52:51: I just tried to mute--

18 52:51: Well, yeah, it's the transmission, carburetor, (unintelligible)
19 starter, tie rod. Did you ask them about (unintelligible) was at--

20 53:01: Goodness. There we go--

21 53:02: Go ahead.

22 53:02: There you go.

23 53:04: Okay. To the--so--and just reading the background
24 information, to be consistent with statute, the Division believes the member should
25 continue to use the term worker leasing company, but the rules could reference the

1 PEO. I mean, if--are we looking to maintain the integrity of the working--worker
2 leasing company or are we look--is this discussion like do we need to change the
3 worker leasing company rules? Because it could be something as simple as adding
4 a definition, professional employer organization means worker leasing company.

5 And--

6 53:44: Right, yes.

7 53:45: --granted, I mean, NAPEO's going to have a fit with that
8 because they are two separate things, but for the purposes of how worker leasing
9 company is defined in the State of Oregon, simply adding a definition of professional
10 employer organization means worker leasing company, that's going to reference
11 everything that says, "Here you go. Yeah, we know it's not perfect, but for right now
12 this is what we have, so we'll deal with all of that later, but for right now this is what
13 we have," that could be just a simple addition to the definitions and it'll do the trick.

14 54:22: Yeah, and I think that's kind of where we ended at in our
15 internal discussions is that we are, you know, a creature of statute and we have to
16 operate within our current statutory definitions. Changing those is, you know, always
17 somebody's prerogative, but that's not our regulatory function at this time, so we
18 were--we kind of landed on, you know, we--at this point we can at least include a
19 reference and make it clear that in Oregon we see worker leasing companies and
20 PEOs as at least in the same category if not--

21 55:02: Well, I'd say synon--

22 55:02: --entirely synonymous, yeah--

23 55:03: --we could say--

24 55:03: They're synonymous, they're the same--

25 55:04: --say synonymous because that is--

1 55:05: Yeah, it's okay, we can say that.

2 55:06: Yeah.

3 55:07: And, you know, and certainly continue the conversation outside
4 of the rulemaking process.

5 55:17: So from that perspective, it would almost be like a number 18
6 definition would--

7 55:25: Sure.

8 55:25: --be added is professional employer organization would be and
9 then proof of coverage would shift down to 19 and so on and so forth--

10 55:34: Yeah, definite.

11 55:37: I guess one of the reasons why I was looking at that is because
12 where it says in here is amend the second option for alternatives is to amend
13 OAR 436 da da da da to provide worker leasing company means a, so that's one of
14 the options there, it doesn't--it can be pretty simple.

15 55:54: Yeah, yeah.

16 55:54: Uh-huh.

17 55:58: And, well, it sounds like there is some value added, we'll at
18 least clarify that, you know, we are talking about the same thing for our purposes,
19 but we do look forward to continuing this conversation maybe outside of the rules
20 process with you all.

21 Okay. So moving on to talk a little bit more about combinable policies.
22 We talked about combinability and how NCCI, which regulates the--or at least in
23 Oregon kind of sets some of the rules for policy underwriting and that sort of thing,
24 the Division has included or understood our prohibition for piggybacking to also
25 include combinable policies. By including combinable policies in that prohibition, we

1 may be unnecessarily--we've heard feedback that we may not--be unnecessarily
2 limiting worker leasing company access to premium discount or other benefits from
3 the policy structure. Is everybody familiar what the term piggybacking means or why
4 it's an issue?

5 57:09: (unintelligible) clarification.

6 57:11: Okay. So basically we have our prohibition against a worker
7 leasing company providing Workers' Compensation coverage to another worker
8 leasing company, and part of the reason we do that is because in Oregon at least
9 there's an automatic extension of coverage for all the, under the current rules, for all
10 the non-leased staff of a client company, so if you have a worker leasing company
11 who is a client and its coverage is extended to them and then vicariously to all their
12 clients, there just becomes a problem with kind of unlimited, unknown exposure and
13 some statistical reporting problems. I think back in, I don't even know when it was,
14 in mid-2000s or early 2000, there were several large bankruptcies associated with
15 this practice, so we put this prohibition into the rule in 2004. We think that the issue
16 of combinability, which is where two PEOs or worker leasing company with similar
17 ownership are both named insureds on a policy, I think SAIF-- Does SAIF write
18 combinable policies?

19 58:28: We write--we write single-entity policies that we combine for--

20 58:32: Okay.

21 58:32: --administrative purposes and through the NCCI rules and we
22 provide a combined premium discount.

23 58:38: Okay. Yeah.

24 58:39: So they get a premium combined discount, even though they're
25 not under one policy number, and it keeps the guarantee contract separate between

1 each, and then we assign under each PEO if they're combinable, we do have some--
2 we have separate policies and then (unintelligible) clients underneath each one of
3 our own numbers to track (unintelligible) purposes.

4 59:01: Yeah.

5 59:03: Statistics, for example (unintelligible).

6 59:06: So, yeah, so I think our interpretation is sometimes when we
7 come across that, we have not allowed policies to be structured in that way, but we
8 think that interpretation may not be correct or may not be necessary--

9 59:18: You mean like you see one policy number for all of them--

10 59:21: Right, well, if we see--or maybe if you can--

11 59:26: Or I was going to say--

12 59:28: But, I mean--

13 59:30: Glen or somebody--

14 59:31: I was going to say a mult-- Yeah, so this is Glen from Sunz
15 Insurance, and thank you for inviting us to participate today, we really appreciate it.
16 We are a carrier that really specializes in PEOs, so we understand a lot of the
17 challenges that you guys are talking about today. And Lorrie and I have spent a lot
18 of time talking about some of these on the phone.

19 The combinability one for us is really a big one. If an entity is
20 combinable, then, you know, we believe that we should be able to endorse any of
21 the PEO entities on that policy because they are a combinable entity. We
22 understand the whole piggybacking thing, you know, a number of years ago the
23 whole "I'll buy your company for a dollar, you know, you could buy it back at
24 anytime," we haven't seen those kind of practices in years and years. We're truly
25 talking about a combinable policy, and the best example I can give is a number of

1 our policies, the first named insured on the policy is a holding company, and we'll
2 just call it ABC Holdings LLC. That entity itself is not a licensed entity, meaning a
3 PEO licensed entity. And under that holding company, they may own PEO 1,
4 PEO 2, PEO 3, and it really is a burden to us as a carrier to have to issue three
5 separate policies for that entity where, if you were to look at combinability rules and
6 look at every other state, we're allowed to endorse them on as named insured.
7 Again we're not talking about client companies because those are not named
8 insureds on the policy, so they're endorsed locations. And so we would highly,
9 highly support clarification that, if an entity meets the NCCI combinability rules, that
10 we could issue the one new master policy to those covered entities to show the
11 proof of coverage at the PEO, and we'll talk about the client companies later, I think
12 that's on the agenda later, but from that standpoint.

13 1:02:05: Thanks, Glen.

14 1:02:06: Yeah, no, thanks for that information, that's really helpful.

15 Yeah, so I think we're continuing to work with our colleagues at the Division of
16 Financial Regulation and NCCI to just make sure everything's all right, but I think this
17 is something we're strongly looking at, so...

18 1:02:28: At the risk of getting into the weeds a little bit, and I
19 apologize, but, Glen, I'm going to ask a question because I think I need to know.
20 Glen, you mentioned that you're saying clients are endorsed onto the policy, they're
21 not named insureds on the policy. Would that be true in the case of a mas--you
22 know, the Oregon, quote, master policy model that we use here, too?

23 1:02:48: Well, Oregon's a little different because we--you know, we
24 can't really endorse them on the master policy because of the structure--

25 1:02:54: Okay.

1 1:02:54: --that you guys have.

2 1:02:55: Okay. Just wondered--

3 1:02:57: So--yeah. So, yeah, you guys have the--you know, you guys
4 have a very unique, a unique structure, and so we don't actually physically endorse
5 those onto the master policy because of the limitations that you guys have on the
6 proof of coverage side--

7 1:03:16: But typically (unintelligible)--

8 1:03:16: --so we kind of have-- Yeah, I mean, I can tell you master
9 policy, what generally happens is the--in I think every state that does master, I'm not
10 professing that you guys go to a master policy, we'd love for you to, but because of
11 the requirements of individual rating for each client company, let's pretend you didn't
12 have that, yes, entities are endorsed on as endorsed locations, not as named
13 insureds, because there is no combinability with the, well, let's just say the first
14 named insured, which is a PEO, these are completely different ownership structures,
15 different owners. Joe's Plumbing doesn't own anything having to do with a PEO,
16 and so they would be endorsed on as location reported to NCCI with all the various
17 special coding types that it's a client company and they all appear on a location
18 schedule or a similar schedule, all of us tend to do things a little differently.

19 1:04:20: Okay.

20 1:04:21: You know, from a grander scheme, you know, we would
21 really support, because we understand the importance that Oregon wants on
22 keeping that individual history for each of those employers, you know, we would
23 request a traditional MCP model whereby we actually truly issue a policy to that
24 client company that's coordinated up to the--to the--to the master, which would make
25 life easy for a lot of us that are having to deal with this quirkiness of the reporting for

1 you guys, but I understand this, from talking to Lorrie I understand that there are
2 technical challenges with that, and so we'd be happy to work through with your team
3 on that in NCCI, but that's typically how it would work in a master state.

4 1:05:13: Thanks, Glen. And then--and just--

5 1:05:14: You're welcome.

6 1:05:14: --to be clear here for SAIF, you guys don't--you just actually
7 write the different policies. You don't--

8 1:05:22: We create--we create a leasing relationship is how we do it--

9 1:05:24: We create--yeah, we create kind of a--you can call it kind of
10 like a fictitious policy that we do all the unit reporting under for you guys--

11 1:05:34: Okay, and then--

12 1:05:34: --so that you have individual unit reporting for those clients
13 under I can't--I--it's missing my mind what we use for the coding on that. It's a four
14 or a five--

15 1:05:47: Yeah.

16 1:05:47: --but NCCI holds that from clock reporting, but they submit it
17 to you for unit reporting--

18 1:05:51: Right.

19 1:05:52: --so you have it from a unit perspective.

20 1:05:53: Thank you.

21 1:05:54: Right? And forgive me, I can't remember if it's a four or a
22 five, but it's one of those two--

23 1:05:57: All right, okay, I get you. And then--and then I was also
24 asking--we've got SAIF here in the room, too, another insurance carrier--

25 1:06:04: Oh, I'm sorry.

1 1:06:05: No, that's okay, yeah, that's okay. And we basically--

2 1:06:07: Sorry.

3 1:06:08: Yeah. We basically do it the same thing, maybe in a little
4 different format, but, yeah, we have our--we have our what we call our--we create a
5 leasing relationship that we have with what we call our parent policy, which is the
6 leasing company, and then we have all of our--the children and the clients listed with
7 in essence policy numbers that are linked to that--

8 1:06:29: Okay.

9 1:06:30: --and coded appropriately, like he said, fours or whatever
10 they are, for reporting to NCCI so we can segregate the data.

11 1:06:39: Okay. Thanks. Thank you, both, I appreciate that.

12 1:06:43: Is there a reason Oregon won't make a modification to be
13 more in line with other states, why we have such a unique policy?

14 1:06:52: Some of it really, there are some technical challenges that
15 have to do with our kind of an old database that, I mean, some of it is just that.
16 We've been looking at what can we do? Can we make changes, what changes can
17 we make? And we've been looking at it, but, yeah, there are some technical
18 challenges.

19 1:07:15: Yeah, I guess there is--there's a new data standard that has
20 been published by the kind of data agency, the one that sets all the standards. We
21 are kind of pending--I mean, we have discussed looking at, you know, the policy
22 structure issue a little bit more after we have adopted that new standard, but we're
23 not entirely sure when that will be, so...

24 1:07:43: So are you saying you might change the method in which the
25 policies are written to (unintelligible), is that what you're--

1 1:07:50: We just we've--we've heard a lot of people say that, you
2 know, we're so unique, so we've at least kind of committed to looking at it again in
3 the future. I don't know what we'll do, yeah.

4 Okay. So moving to the next issue, unless anybody has anymore
5 policy structure, data reporting questions. I always learn a lot when we have those
6 discussions, so it's not my specialty, but it's very interesting, you get into it. Okay.
7 So we want to talk about the notif--the timeframes for a worker leasing notice.

8 So under OAR 436, Division 50, Rule 410, a worker leasing company
9 must file Form 2465, the worker leasing notice, to the Department of Consumer and
10 Business Services to notify the division that it's providing Workers' Compensation
11 coverage to a client within 14 days after the effective date of the lease arrangement
12 or contract, so this is where that 14 days comes in that somebody had mentioned
13 earlier. NAYPEO (phonetic), NAPPEO (phonetic), I've always--I feel like I'm saying
14 it wrong, but--has suggested that the 14-day timeframe may be too short, particularly
15 when a client employer fails to inform the worker leasing company changes in
16 circumstances, such as when a national client employer moves into or out of
17 Oregon, and has suggested a 30-day requirement may be more appropriate, so... I
18 mean, and if you want to expand on that or clarify anything, please, please do.

19 1:09:40: I mean, I can--I--and I-- It was actually our suggestion--

20 1:09:43: Okay.

21 1:09:43: --to NAPEO. For us, as a national company can be a
22 struggle, particularly when you're dealing with a two-week pay cycle, a lot of times
23 clients don't even think to notify you until the end of the pay cycle, and so that's
24 10 days gone and then you only have four days after that to do whatever it is you
25 need to do, and so usually it's 30 days is probably short for us, but we could

1 probably make, you know, accommodation and do what we need to do within
2 30 days, but it can be difficult because it's really the client driving what we're doing
3 with regard to notifications.

4 1:10:27: Can you speak to me a little bit more about why 30 days
5 would be difficult? Because I understand the pay--wouldn't they be notifying you,
6 you'd have to know--

7 1:10:35: Uh-huh.

8 1:10:36: --at some point because you have to--

9 1:10:37: Oh, yes, yes, oh, yeah--

10 1:10:37: --pay them, so--

11 1:10:38: Oh, yeah, yeah--

12 1:10:39: Yeah.

13 1:10:39: --sometimes they'll--you know, some clients, they move
14 employees and then, you know, 30 days later then we find out, and when I say
15 30 days is difficult, it's just because--

16 1:10:50: Just logistically--

17 1:10:51: Yeah, logistically, I mean, we are--we're a national company,
18 we're--so we're doing it for 50 states.

19 1:10:56: Right.

20 1:10:56: So--

21 1:10:57: And this is a unique requirement.

22 1:10:58: Exactly, exactly. But generally 30 is fine--

23 1:11:02: You can do 30.

24 1:11:03: Oh, yeah, we can do 30, it's fine.

25 1:11:05: Because I think that is consistent with what we require

1 insurers? Is that what we were thinking?

2 1:11:13: I think there's some different requirements.

3 1:11:15: Oh, that's--

4 1:11:15: They have like a 10-day timeframe and sometimes and then
5 30 days another time--

6 1:11:21: Mh.

7 1:11:22: Somebody else, somebody from the insurance industry may
8 be able to speak a little better to that.

9 1:11:28: (unintelligible) what notification (unintelligible)--

10 1:11:30: This is Glen from Sunz again. One of the things that we have
11 done in the past when, you know, all states like Oregon tend to do markets every
12 once in awhile and look at your insurers in the state, and this has come up many
13 times for us, and it's the same argument that, well, just given that, you know, the
14 PEO finds out sometimes two to three weeks after, you know, if it's a biweekly
15 payroll or if it's a monthly payroll, they may find out a month later, and so what we've
16 implemented here is on our request is we've--we have two dates that were given by
17 our PEOs, and this may be something that you may just consider adding to your
18 firm, we have an actual termination date and then we have a known termination
19 date. The known termination date is the day that the PEO was notified. The actual
20 termination date is the termination of the contract, so when it truly takes effect, and
21 we've had great success with our domicile state, State of Florida, when they've
22 come in and looked at the terminations and looked at the timing of the terminations,
23 having that second date that we can refer back to that shows that the PEO notified
24 us within days of them knowing about it, but they may have found out about it
25 14 days later or three weeks later. Something to maybe consider just adding a date

1 on that form and then driving your requirement off of that date rather than the
2 cancellation date.

3 1:13:01: Yeah, I think we're getting a little ahead of ourselves because
4 we're still talking about the commencement of coverage--

5 1:13:08: Not termination--

6 1:13:09: Not termination, but--

7 1:13:11: Initiation, at the beginning end, right?

8 1:13:16: Yeah, so let's--so I did misspeak, Lorrie is correct that the
9 statute is that an insurer must provide us--must file proof of coverage within 30 days
10 after the coverage is effective, so...

11 1:13:34: Well, and is this--because it says lease arrangement or
12 contract, does it--is it more important to reference the date of the contract or the date
13 employees start working?

14 1:13:50: Yeah, I mean, that's an issue I think we've--I put that in here,
15 too, because that is an issue, the verbiage isn't correct--

16 1:13:58: Because, I mean--

17 1:13:59: --repeat that verbiage, yeah--

18 1:14:00: Yeah, because really what we need to make sure is the
19 coverage--

20 1:14:02: It's really for the (unintelligible) of Oregon is really what we
21 mean--

22 1:14:03: Right, exactly--

23 1:14:04: Yeah, payroll--

24 1:14:05: Yeah.

25 1:14:05: --right, I agree. So it could be that potentially 30-day from

1 when the employees are working, their start date, rather than the date of the lease
2 arrangement or contract.

3 1:14:18: Uh-huh. Well, or we're saying that what I was suggesting for
4 that, I don't know, is that part of this same one, is that part of the same--

5 1:14:27: I think so--

6 1:14:27: I think I was saying if the--tell me--tell me what you think of
7 this. I struggled with, you know, do we use date of first payroll or do we use date of
8 contract in Oregon? And I think I landed on contract in Oregon because, you know,
9 once you agree--this is my thinking. Once you agree that you're going to be bringing
10 a client on in Oregon, then I was thinking that that--that would--that would be your
11 trigger to file Comp in Oregon for proof of coverage for that client once you agree to
12 bring them on.

13 1:15:08: Yeah, and I think we--so part of the challenge here is that we
14 don't receive this proof of coverage information electronically for worker leasing
15 companies, so we really do need the--I think we do need the information as soon in
16 the process as possible. I mean, we do understand that 14 days is a short
17 timeframe, and it looks like, somebody can correct me, that--so insurance, it's the
18 30-day timeframe begins with the person's application and approval, I guess, of their
19 application for insurance, so not necessarily when payroll starts--

20 1:15:43: (unintelligible) coverage.

21 1:15:44: What's that?

22 1:15:45: Combining of coverage.

23 1:15:46: Combining of coverage, so... Yeah.

24 1:15:51: Maybe.

25 1:15:52: Lorrie, one piece of just context for that--

1 1:15:54: Uh-huh.

2 1:15:54: --effective date conversation, at least at our level we sign
3 many national contracts--

4 1:15:59: Right.

5 1:16:00: --that govern and that we don't pick up Oregon work for
6 sometimes--

7 1:16:03: Yeah.

8 1:16:04: --months, maybe even a year--

9 1:16:05: Right, uh-huh.

10 1:16:06: --and so looking at effective date as the first date of work
11 would be much more applicable in the business context--

12 1:16:11: First day of work--

13 1:16:12: --because we would understand that now we're actually
14 stepping into Oregon--

15 1:16:14: Uh-huh.

16 1:16:15: --where this contract, the master service agreements--

17 1:16:18: Uh-huh, uh-huh.

18 1:16:18: --been sitting out there, signed at that national level
19 (unintelligible)--

20 1:16:20: So maybe that gets me to what I need because it's first day of
21 work because I'm struggling with the first date of payroll, which if you...

22 1:16:27: If it's a month--

23 1:16:28: Yeah.

24 1:16:28: --then it's, right--

25 1:16:29: Right, right, exactly--

1 1:16:30: Yeah, your first--
2 1:16:30: Your first date of work--
3 1:16:30: Maybe first date of work in Oregon--
4 1:16:32: Certainly--
5 1:16:32: --was certainly what I need, yeah--
6 1:16:33: For our business process that would make (unintelligible)--
7 1:16:34: That would work for you, too, okay.
8 1:16:36: Okay.
9 1:16:38: Thank you.
10 1:16:38: I like that--
11 1:16:41: And would it--would that only be appropriate when, you know,
12 a policy is in place, the worker leasing arrangement has been in place for sometime,
13 and then Oregon exposure begins, if it was, you know, from a different state coming
14 into the state and if it's a worker leasing arrangement entered to a new arrangement
15 in Oregon to maintain--
16 1:17:00: So we're--
17 1:17:00: --you know, that you signed the contract with us--
18 1:17:01: --I think maybe a bit unique, so it's possible that we would
19 have a national master service agreement and then step into Oregon in a special
20 circumstance in that temporary staffing space or in what employee or Oregon
21 recognizes as worker leasing--
22 1:17:17: Yeah.
23 1:17:17: --and we won't know that until we're about to set foot in
24 Oregon with that individual with that client because we won't understand the
25 relationship and what those circumstances are until that worker really comes in, so

1 first date of work, we would have actual information really the contract that's given to
2 that to even know whether that coverage will be required.

3 1:17:39: Well, even from the simplicity of just somebody gets injured
4 on the job whose Comp doesn't go under, so if that leasing date is associated with
5 when that person starts work, then if they're injured on day one, there you go--

6 1:17:52: Uh-huh.

7 1:17:53: --it's under the leasing entity.

8 1:17:54: Uh-huh.

9 1:18:00: Well, and the 30 days also is about--is about, you know,
10 triggering a penalty for violating; it's you'd still be accrue coverage.

11 1:18:06: Right.

12 1:18:08: Yeah.

13 1:18:10: Yeah, I thank you for that input, that's really helpful.

14 1:18:12: Can I just ask a clarifying question? So when some of these
15 rule changes are tied to the NCCI manual, so how does NCCI get the information,
16 will they get this information to make the appropriate changes in its manual?

17 1:18:25: Yeah.

18 1:18:27: Okay. That's just (unintelligible)--

19 1:18:28: Yeah, I mean, they--

20 1:18:28: --work? Okay--

21 1:18:29: I'm not exactly sure how they are--

22 1:18:31: Okay.

23 1:18:31: --what the mechanism is, but I know we are in contact with
24 them and--

25 1:18:34: Okay, okay.

1 1:18:35: --they do make updates to their, you know, the state's specific
2 manual--

3 1:18:38: Because a lot of the suggestions would create
4 inconsistencies, and so that I was just--

5 1:18:41: Uh-huh, right, uh-huh--

6 1:18:42: --(unintelligible) process, okay.

7 1:18:48: Okay. So we're hearing that 30 days would be maybe still
8 short, but at least a little more manageable and that we should definitely be looking
9 at different situations for if it's a new agreement or if it's somebody with a national
10 master policy coming into the state where at least we acknowledge that that
11 scenario is probably pretty common, so... Okay. Okay. Now to kind of get back to
12 John and talk about the terminations--

13 1:19:26: Glen.

14 1:19:31: So I think, though, one thing that we want to clarify here is
15 that the worker leasing company must provide worker written notification of
16 terminated--termination even when the client obtains coverage separately, and I
17 think that's maybe what you were talking about a little bit with the effective date or
18 the actual date?

19 1:19:48: That was Glen, I think, yeah--

20 1:19:49: Oh, Glen, I'm sorry.

21 1:19:53: Yeah, I apologize, I had someone walk in my office when you
22 had--I thought you had already been on and done this topic, I apologize. Yeah, I
23 mean, we were just talking about really about kind of that when you have that time
24 difference, when the PEO is notified vers when the coverage actually--when I say
25 the coverage, I'm talking about the contract, the PEO contract or employee leasing

1 contract is actually terminated with that client company. And so, you know, we just
2 have instituted here a known date so that we can always reference back to that if
3 we're questioned by, as an example, Oregon said to us--of course you guys don't
4 take the electronic notifications from the carrier, it's all the PEO side, but if Florida
5 was to say, "Hey, this client was terminated on January 1st, but you didn't notify us
6 until February 15th," we can go back to the notice we received from our insured that
7 says, "True, but we weren't notified because the PEO wasn't notified until
8 February 2nd, so we notified you within, you know, less than 10 days of us knowing
9 that the client was terminated." I understand it's a little different with Oregon
10 because the PEO is actually, for lack of a better term, providing the proof of
11 coverages to Oregon rather than the carrier, but it was just a thought to help the
12 PEOs out so that they--you know, if they appear to be out of compliance, they may
13 not be out of no fault of their own.

14 1:21:34: Yeah, I guess--this is Lorrie, Glen, and I appreciate that point,
15 and I think I would say, because it is a little bit different when we're talking about the
16 PEO versus the carrier because there's another layer that you're dealing with, you
17 can only, you know, act on what you get, but a PEO is, you know, they know that
18 that's their client and I do feel like that's a client management issue and I feel like
19 they should know when they're terminating and we need to know as well, and I'm
20 comfortable, I mean, I'm just going to say that I'm comfortable holding them
21 accountable for making sure that they notify us when they bring a client on and when
22 they eliminate one.

23 1:22:17: I mean, our big concern is that somebody needs to be on the
24 hook for this.

25 1:22:23: So that's kind of just my--

1 1:22:27: Absolutely, I mean, you have to make sure the coverage is
2 there if coverage is needed. I absolutely get--absolutely get that. And I--and I would
3 agree with you, I think the onus needs to be on the PEO because we have that
4 same challenge. You know, if our PEOs are not reporting to us, it's just like claims.

5 1:22:43: Right.

6 1:22:44: If a PEO is late reporting claims to us, that's a challenge,
7 that's a problem, you know, we want it as soon as possible.

8 1:22:50: Right.

9 1:22:51: So, yeah, not challenging who's reporting you on it, I'm good
10 with the PEO still reporting it to you; it's just recognizing the fact that sometimes the
11 PEO is finding out about it, again if I use a biweekly payroll as an example, you
12 know, they may not know about it until three weeks after it actually happens because
13 they try to get the payroll from the client, client finally calls them back and says, "Oh,
14 we're not running with you anymore." That's all I was kind of getting at.

15 1:23:21: Thanks, Glen.

16 1:23:25: And I think, in our terminations, we go back to a statute for
17 that, right? I mean, that's where it originates, our termination requirement, the
18 30 days is a statute, right?

19 1:23:37: Yeah.

20 1:23:37: I believe so.

21 1:23:38: I was just looking just to make sure, I don't want to misspeak.

22 1:23:42: Yeah, that--this rule really evolved from, you know, the fact
23 that we just want to make sure that a PEO doesn't drop coverage from somebody
24 without giving them 30 days notice and that we want to be able to hold them to that
25 30-day period--

1 1:23:55: And also the carrier.

2 1:23:55: --no matter what, but--and also the carrier, yeah, yeah,
3 exactly, we want to be able to assign responsibility clearly, but we also need the
4 information, so I think that's the challenge of this--

5 1:24:06: So, Chris and Lorrie, we don't--we have--we have no issues
6 with 1331. We had sub--and realizing that, you know, the 30-day requirement is set
7 out by statute, we'd submitted a recommendation--

8 1:24:20: Are we on to 1331 now? We were--you made 1330--

9 1:24:24: I'm sorry, I'm sorry, I'm sorry, I'm on the wrong page. 1330.
10 Sorry about that. We have made a recommendation that in cases where the client
11 does not pay the PEO Workers' Comp that there be an immediate term--that the
12 PEO--or that there be an immediate termination. I realize the 30 days is set in
13 statute, but that is also a concern of some of our members.

14 1:24:50: Yeah, we did--we did--we did discuss that internally, and we
15 want to let everybody know that we printed up some copies of yours--

16 1:24:59: Yeah.

17 1:24:59: --so that everybody can have a look. We believe that the--
18 under our statutory scheme and under our rules that the PEO is still responsible for
19 that coverage. We did talk about how feasible a termination, you know, what
20 happens when the end of that relationship between the PEO and the client ends, but
21 I think that we're--yeah, I--yeah, I don't know, I think we were--

22 1:25:35: I think we're--

23 1:25:35: --we had some concerns about moving in that direction.

24 1:25:37: Yeah, I'm not sure that we could because--

25 1:25:39: Yeah.

1 1:25:39: --of the statute and I'm not sure we--I mean, I get what you're
2 saying and I think again, you know, we've got this, the PEO is responsible for the
3 proof of coverage, and as long as we're in that world, I think we need to hold the
4 PEO accountable to make sure that they know what's going on with their client and
5 get us the notices. Their-- You know, that's just--within our structure, that's kind of
6 how we have to--have to do it.

7 1:26:06: Yeah.

8 1:26:06: And I think pretty big issue for us, for obvious reasons, yeah,
9 I think.

10 1:26:15: And I think we view, you know, part of--part of the business
11 model, you know, of providing coverage is that's a big privilege and we understand
12 how important of a part of the PEO model that is, but it's also a big responsibility in
13 how we think it's pretty serious in that--in that relationship or in the coverage
14 responsibility for us, especially since responsibility in these cases can be sticky and
15 workers can be left without--either without coverage or without a clear way to--

16 1:26:48: Right.

17 1:26:48: --move forward with their claim, so...

18 1:26:50: And along that thought, though, is on your suggested
19 modifications--

20 1:26:55: Uh-huh.

21 1:26:55: --or your alternatives is where it's subject to the following, that
22 item A where it says notice of termination must include the effective date and hour of
23 termination, the one benefit about keeping hour in there is for organizations that
24 operate 24 hours a day, for the same purpose that you have a starting point at a
25 specific time, it would be reasonable to have an ending point for just because of the

1 same reason of clarifying who's responsible for that Comp coverage if you have day,
2 swing, and grave shift where you have 24 hours of operation, so--

3 1:27:30: Okay.

4 1:27:30: --it seems--

5 1:27:30: So keep it in.

6 1:27:31: Yeah, it seems like a dumb thing, but for that, you know,
7 injury situation at 12:15 a.m. because it's a grave shift, whose Comp does that fall
8 under?

9 1:27:43: Thank you for saying that, yeah--

10 1:27:44: Yeah--

11 1:27:44: --it's easy to keep in then.

12 1:27:45: We do have some other rules over in the claims processing
13 rules about determining the date of injury when a shift crosses midnight, basically
14 when it spreads into another calendar day, so that may be covered, but we will take
15 another look at that before we (unintelligible)--

16 1:28:03: Well, I know that SAIF and Liberty Mutual would get into a
17 sparring thing about that depending on when the injury occurred, so that's what it
18 really comes down--and I'm just using you guys as example. I mean, if an injury
19 occurred when it talked about with the particular date, there's going to be some--it
20 would create some friction, and when you're referring about trying to make it easy for
21 the employees to understand where to move forward, that would be a sticky
22 scenario.

23 1:28:30: I'm curious for SAIF's thoughts on that or whether calendar
24 day is clear.

25 1:28:36: We cancel coverage 12:01 a.m.

1 1:28:40: So essentially even if an hour was reported, the coverage
2 wouldn't be terminated, at that hour it would be terminated effective 12:01 a.m. the
3 following day.

4 1:28:50: So it may not be an issue.

5 1:28:52: I guess I have some concerns about a client actually telling
6 us an hour.

7 1:28:56: Yeah.

8 1:28:56: Yeah, that was--

9 1:28:57: I think it's--

10 1:28:57: --(unintelligible) about--

11 1:28:57: --that's unrealistic, I think the client will tell you, "Hey, the
12 employee was terminated on 2--you know, 2/12/17," and that's it. I think the hour,
13 getting the hour after there's termination is probably unrealistic--

14 1:29:15: And it's really the question is when is the coverage
15 terminated--

16 1:29:19: Yeah--

17 1:29:19: Right--

18 1:29:19: --so--

19 1:29:19: Right--

20 1:29:20: Right--

21 1:29:20: --right.

22 1:29:21: And if SAIF already has it in a place where it's like, okay, it's
23 going to be this day at 12:01, then that's already in there.

24 1:29:27: I guess, I--and I guess I will need to clarify on client coverage,
25 but, I mean, proof of coverage, coverage always terminates at 12:01 a.m., I don't--

1 I'm not aware that client coverage works differently.

2 1:29:43: No, I mean, that's what I always see people write is 12:01,
3 so...

4 1:29:48: And I apologize, I can't see your name, but just in looking at
5 that, the administrative burden and the business burden of trying to follow up with
6 clients to understand really when that temporary associate or whomever it may be
7 was actually sent away and trying to match coverage termination to that, if we need
8 to do that, I don't--I just don't know that meets the spirit of what we're really trying to
9 ensure here--

10 1:30:09: Uh-huh, I agree with that.

11 1:30:12: Thank you, thank you, everybody, that's very helpful
12 discussion.

13 This next issue, 1331, is almost a housekeeping issue, but we did want
14 to bring it up. So we have forms for endorsements and terminations that are
15 attached to Bulletin 273, but they're not referenced in rule, so we were trying to
16 reference forms wherever we can just to make it more clear; instead of saying
17 something like you must submit information in the form and format described by the
18 Director, we'll tell you exactly what that form and format is, and even where there's
19 not that language, we're just trying to make our processes a little more clear, but we
20 are also promulgating a new form for reinstatements of coverage for a previously
21 terminated client, so part of this is just to make everyone aware that that new form is
22 coming and it may--hopefully is helpful and not just more paperwork, but we believe
23 it's necessary.

24 1:31:18: Chris, what's the best way for us to know when that form's
25 available?

1 1:31:23: Fred? For people to get updates from Shelly about
2 publications?

3 1:31:28: Well, it comes out under cover a bulletin, and if you're on our
4 list, our mailing list, it's almost all done by email now, it's you can sign up on our
5 website and then you would be automatically notified whenever there's a new
6 bulletin with new forms attached--

7 1:31:43: And there would be a bulletin then when this would--

8 1:31:45: I was going to say I will probably do a mass mailing to all of
9 our licensed PEOs, giving them--if we have new forms, then we would definitely
10 send that out special.

11 1:31:55: Yeah, yeah.

12 1:31:56: But it will definitely be attached to Bulletin 273--

13 1:32:00: And there's a small typographical error that it refers at one
14 point to Bulletin 275 on that first line in the background; should have said 273.

15 1:32:10: So I have a question about 2465 form, and this isn't on the
16 agenda. Do you want to wait or, since we're talking about forms?

17 1:32:19: Well, I did want to check in on time and how we're doing and
18 then--

19 1:32:22: Well, yeah, maybe folks would like a break. I know that we've
20 been going for about an hour and a half--

21 1:32:26: Yeah.

22 1:32:26: --now, so, you know, like a 15-minute break or something
23 would be sort of humane, so--

24 1:32:33: But we can start with that form when we come back.

25 1:32:35: Okay.

1 1:32:37: Okay. So if we can all get back together by 10 to the top of
2 the hour, so 10:50.

3
4 (off the record)

5
6 1:33:50: Okay. Welcome back, and I think we were going to talk
7 about a form next, so go ahead.

8 1:33:55: And, yeah.

9 1:33:57: Okay. So--and this is just throwing it out there. The 2465
10 form is used to report that a new leasing client is going to be--I mean, it's reporting a
11 new leasing client. What is the validity or is it an option of making that form
12 required? Because right now it's required only if the entity, the leasing agency is
13 creating new policy for the client, is there value to using 2465 form under all leasing
14 relationships? So you have a where a sub-policy is created for the leasing client,
15 you have the scenario where the leasing client continues their own Comp coverage,
16 but it's getting reported for the leasing agency, or it's just like it's continuing, there's
17 different scenarios, is there value to having the 2465 form get utilized to cover all the
18 different scenarios? So that way, there's a known--there's known who--which clients
19 are leasing clients.

20 1:35:16: Lorrie--

21 1:35:16: Maybe I should answer it.

22 1:35:17: Go ahead--

23 1:35:17: Yeah. Certainly in other states they do that, and we get--we
24 do actually ask that question of our PEOs, we do ask for their client list, including
25 clients who carry their own coverage, so would not be covered under that 2465,

1 whatever the number is--

2 1:35:36: Uh-huh.

3 1:35:37: --yeah, so, you know, I think because we use that as our
4 proof of coverage, we've probably--I mean, just the way we're structured, that's--
5 really that form is our proof of coverage, and so we only want it when that's reflecting
6 that they're providing the coverage. If we ever, you know, went to a different policy
7 model where we were able to get, you know, client coverage to come in through
8 NCCI, for instance, electronically, we might be able to, you know, move to--you
9 know, move to a system where we get a notice every time a new client comes
10 onboard in Oregon, which would be, you know, that's--there's definitely value in that.

11 1:36:15: Well, and part of the reason why I'm asking this question is
12 because there is--there is a new, how do I say this? There's a new program that's
13 being introduced by State of Oregon called OregonSaves, and one of the key pieces
14 that was being evaluated is the OregonSaves loophole, there is a loophole in the
15 process that leasing clients could potentially get left out of the OregonSaves
16 program, and the 2465 form was actually one of the options that the--

17 1:36:47: Oh, right.

18 1:36:47: --OregonSaves RAC used and to consider in saying, well, if
19 we--if the 2465 identified all leasing clients in the State of Oregon, then that could be
20 a resource for other government entities becau--to consider because there's a
21 population of leasing clients that fit under the worker leasing program but are largely
22 unaccounted for because they don't necessarily get reported as being a leasing
23 client, so that's why I was bringing up the question.

24 1:37:20: Yeah, I mean, we wouldn't have anywhere to put that data, so
25 it's a piece of paper--

1 1:37:23: Uh-huh.

2 1:37:23: --and we enter the data in a database, it's our Workers' Comp
3 database, so--

4 1:37:29: Yeah.

5 1:37:29: --the point of that notice is to give us proof of coverage, so
6 there'd be--

7 1:37:33: Yeah.

8 1:37:34: --you could collect the form, but there'd be nowhere to put it--

9 1:37:36: Put, yeah, sure.

10 1:37:37: Yeah, so that wouldn't--it's not going to solve that particular
11 problem.

12 1:37:40: Yeah. Thank you.

13 1:37:43: Uh-huh.

14 1:37:45: Does anybody else have any comments, though, about how it
15 would be beneficial to report all clients or? Okay.

16 1:38:01: I think it'd be beneficial, but we're not talking about it right
17 now, so you--

18 1:38:04: Yeah.

19 1:38:05: (unintelligible) administrative (unintelligible)--

20 1:38:06: We'll let you know.

21 1:38:07: Yeah. I guess the other side of that is it would--it would
22 become a requirement and then--and that would potentially be a cost to people, so--

23 1:38:16: Yeah, and, I mean, and I agree, I mean, there definitely is a
24 fiscal condition there. There's--and it seems dumb, but there's times like where I'm
25 like, oh, crap, I didn't have to do the 2465 form because they've got their own

1 coverage--

2 1:38:28: Right, uh-huh.

3 1:28:38: --so there's sort of it's like, no, I could just do it for everybody,
4 just as easy, but, no, I get that, so I was just bringing it up.

5 1:38:36: All right. No, thank you.

6 1:38:38: I don't--Chris, I don't have any questions or comments about
7 1331 or even about 2465, but we did submit a recommendation regarding
8 Form 2466, the application for Oregon worker leasing license, and I believe this is
9 something, a document, an application that's used both during initial license and a
10 renewal license. Our request, and as you guys know, the Department has a six-
11 page form and it asks, you know, for a plan of operation, you know, list of certain
12 individuals, records of bankruptcies, liens, that sort of information. Our request was
13 that, you know, since this--what this document--what this document requires is
14 voluminous, right? It requires a lot of different information. Our request would be, if
15 there are no changes to any of these documents, that this form--that you only
16 complete this form if you need any updates, assuming that you've already been
17 licensed, so this would only be in instances of a license renewal. Does that make
18 sense?

19 1:39:50: Yeah, it does. If it's okay, I'd like to pin that--

20 1:39:54: Sure, okay.

21 1:39:54: --we are going to talk about all the application requirements--

22 1:39:56: Okay, perfect.

23 1:39:56: --and the application form--

24 1:39:58: Thanks.

25 1:39:58: --further, further down, but--yeah. We talked about 2465

1 forms. Okay. So I think we will actually get to that maybe right after this issue, but
2 we did want to talk about temporary workers being distinguished from leased
3 workers, and that is that our--under the current rule, the Director considers a person
4 to be leasing, so any person that provides workers for under contract and for a fee,
5 so we--I mentioned earlier that we distinguish on a--except for people on a
6 temporary, that are provided on a temporary basis, so we only consider that
7 temporary basis to exist when there's contemporaneous documentation of the
8 duration of work and the special situation that the workers are being provided for
9 under 656.850, so a lot of temporary staffing companies are not aware of these
10 requirements and are found to be leasing by default, which can transfer
11 responsibility for claims to their clients if the client has proof of coverage on file for
12 their own workers. The Division believes that default leasing, the default leasing
13 rules are useful for preventing responsibility disputes, but staff had noted that
14 greater flexibility in the rule may produce fair outcomes when assigning responsibility
15 for claims.

16 So we have a few kind of different alternatives that we want to discuss
17 that touch on different aspects on this, so maybe it'd be most helpful to go through
18 them one by one. The first was to basically provide a 30-day window when that
19 contemporary documentation is not absolutely required, so this would be if a
20 temporary--if a temporary worker was placed at a work site with a client for up to
21 30 days, the program staff would do their investigation to make that on--make that
22 determination of whether it was leasing or temping on a case-by-case determination
23 and would not be bound to the defaulting for lack of documentation. Does that--does
24 that make sense to everyone? So basically now--I mean, I'm getting at it doesn't
25 quite make sense?

1 1:42:24: Nope.

2 1:42:25: So now basically how the rule is written, if you are--say you're
3 a temporary staffing company, you place a temp placement at a client, you are
4 required to create some documentation at that time that says this worker will be
5 there for two weeks and they're there because we have a--you know, it's we're
6 having a rush on sales and we needed some extra salespeople, I guess that's
7 maybe not the best one, but--

8 1:42:56: That's okay.

9 1:42:59: --so we had this higher demand. If that documentation, that
10 written documentation doesn't exist, even though they were only there for two
11 weeks, we would consider them--our rules require us to consider them a leased
12 worker because there was no documentation. So I think the fix we're looking at is
13 saying, if somebody's placed there for up to 30 days, you have some time to get that
14 documentation in place at least. If it's going to be a placement for longer than
15 30 days we would--and it's still a temporary placement, we would expect the people
16 to be able to come up with that written documentation within that period, so--

17 1:43:38: I think I might--sorry, I might--

18 1:43:40: Okay.

19 1:43:40: --say that just a little bit--

20 1:43:41: Sure.

21 1:43:41: --differently, and this is--this is based on a lot of feedback
22 from temporar--you know, we've gone out and done a lot of work talking to
23 temporary staffing companies who struggle with this requirement that you have to
24 have contemporaneous written documentation for every single placement, and what
25 my feedback from staffing companies is, for instance, it might be somebody that's

1 only out there for a day or I might have had a hundred people come in this morning
2 and I needed to place all of them, and that it's a very difficult--it's a very difficult thing
3 to do, and the way our law is written right now, the way our rules are written right
4 now, if you don't have that contemporaneous documentation establishing, you know,
5 Joe Blow's going out for one day, then I have to look at that placement as a leased
6 placement, which changes the way the Comp works and that can create some
7 problems down the road for if there were a claim, so temporary staffing companies
8 have suggested that perhaps we could lose then that contemporaneous
9 documentation requirement, so that's what we're looking at, and I have heard that it
10 would be--we'd--it would go a long way towards solving the problem if we could give
11 temporary staffing companies sort of a 30-day window, so, in other words, if a
12 placement, if you've got a temporary placement that's 30 days or less, I could just,
13 you know, if there's--and you say this is a temporary staffing, this is a temporary
14 placement, and it's--it was for three days or two weeks or whatever, I'm not going to
15 require that you have that contemporaneous documentation; I can just look
16 objectively at the facts, which are that this employee was only there for two weeks,
17 and go, yes, that's a temporary employee, let's move on, you know, it's going to go
18 on the claim--if there were a claim, it would go on the temporary company's policy.

19 If that placement is going on longer than 30 days, then we would want
20 to keep that rule in place, and you have to understand that the rule came into being,
21 this rule that you have contemporaneous documentation, because temporary
22 staffing companies would do things like leased employees, and then when we'd
23 come knocking, they would call them temporary employees that were just being
24 extended, and so that's why we're saying, if you have a longer-term temporary
25 placement, we would require that you document that and we would want to see that

1 documentation. If you don't have that documentation, we would consider it by
2 default leasing, so sort of like trying to solve the problem and yet still be able to
3 regulate what we want to regulate, and that's--I'm interested in feedback on that.

4 1:46:26: And I guess for clarification, the underlying--

5 1:46:28: This is Ed Lenz at the American Staffing Association. I
6 wonder--I guess our reaction to it is that some of the problem or maybe a large part
7 of the problem relating to this documentation requirement could be addressed and
8 substantially ameliorated if the definition of worker leasing were changed, as we had
9 discussed earlier, and I realize that the consensus appears to be that that would be
10 a job for the legislature and not for the regulators, and I think we as an industry
11 group and NAPEO probably would be interested in trying to address that because if
12 you had a--if you had a narrower definition of worker leasing or PEO, that often goes
13 a long way in addressing the issue because if you had a requirement, for example,
14 that to be a PEO you had to supply a substantial portion of the client's workforce and
15 perhaps there would be other elements of that definition, on its face it would be
16 objectively easier to identify the worker leasing companies, which would then obviate
17 the need to investigate to what extent the one or more of the employees in fact were
18 temporary, that would be a moot point. But we're not there yet and we recognize
19 that this forum is not one where those issues could be resolved.

20 I guess a secondary question is it's never been entirely clear to us
21 what the tenure of a worker has anything particularly to do with the issue of whether
22 the entity supplying them is offering coverage or not. It seems to me that question
23 can be addressed much more readily than having to go through these tortuous
24 examinations of whether somebody's temporary or not, but all that said, I think what
25 you're--what you're proposing here given the framework that we're dealing with is

1 laudable. I think we would--I think from our perspective, we would urge you to
2 consider a longer period than 30 days. For example, the NCCI uses a definition, a
3 six-month rule for defining long-term temporary, that would to us comport more with
4 historical notions of what temporary work really is, maybe a shorter period would be
5 acceptable, but 30 days seems to us, while a step in the right direction, doesn't go
6 far enough.

7 1:49:16: And so one point of clarification. We are--we are not
8 suggesting that a temporary placement would be limited to 30 days; we are just
9 saying that a temporary placement without documentation would be limited to
10 30 days. So we think that that 30 days would be adequate for people to get any
11 necessary paperwork or documentation in their file to say, okay, now we think this is
12 a temporary long-term person, we expect them to be here for six months, and this is
13 the reason why we need them there. We just know when it's--when it's a much
14 shorter period when it's only, you know, a day or two, then temporary people are in--
15 you know, usually it's they call you in the morning, you--they want you to show up in
16 an hour, you know, there might--there just might not be enough time to get that
17 documentation in place. So we're not--we're not regulating here the duration of the
18 placement in a hard-and-fast way; it's just that documentation requirement.

19 1:50:13: Yeah, I mean, I cert--I certainly understand that, that--I
20 understand that, that was the purpose of it. I guess we were simply thinking that
21 from an enforcement standpoint and from a resource allocation standpoint from the
22 Department's position it would be far--and not to mention for the--for the temporary
23 staffing firm, it would be far less onerous not to have to begin the elaborate
24 documentation process so soon.

25 1:50:46: The elaborate? You mean for the temporary companies, you

1 think that's elaborate? Is that what you're talking about as elaborate documentation,
2 that place document (unintelligible)--

3 1:50:55: Well, I suppose so, if you have--if--yes, because if--I mean,
4 as the staffing firm, the premise of the rule appears to be that you--that the staffing
5 firm has to establish the temporary status of each and every one of its employees; it
6 might have hundreds. And because if you had just one non-temporary, it would--it
7 would subject you to the worker leasing definition, so the notion that you have to
8 establish through documentation the temporary status of every employee on
9 assignment, it's not even clear over what period of time that is, maybe at any given
10 time over a period of time, it's not clear what the scope of that documentation
11 examination actually is, at least it's not clear to me, and so rather than subjecting
12 yourselves as regulators and the staffing firm as a business to all of that case-by-
13 case fact-by-fact investigation, if you're going to do it at all, it seems to me it might
14 make sense to consider a longer period than 30 days.

15 1:52:11: Thanks.

16 1:52:12: Yeah, we'll definitely take that into consideration, it's...

17 1:52:18: And, you know, we obviously, I mean, because we take your
18 process seriously here, I think it would be--might be helpful to you for if we were to,
19 and prior to the next meeting, maybe summarize some of our views on this in writing
20 to you so you can have it at least as part of the record.

21 1:52:42: Sure, that'd be great.

22 1:52:44: Yeah, we would welcome that. Had you--

23 1:52:45: Oh, yeah, so just recognizing that Trueblue and ASA are
24 completely aligned long-term, but just elaborating on what Ed is saying, certainly for
25 Trueblue and its various companies, something like 90 days would make more

1 sense. I think about this and its applicability if we send someone to a client every
2 Tuesday for two weeks, there we are at 30 days and this person has worked
3 potentially 12 hours.

4 1:53:12: Uh-huh.

5 1:53:12: And so it's that kind of thing, and that is more what our
6 business model looks like, and the implication in our business, 30 days is still pretty
7 quick. We would definitely look at something more like 90--

8 1:53:26: Well, and then also the other impact, too, is the expectation
9 to define temporary versus leasing is already expected with ACA, so Obamacare
10 establishes where if you're not going to--if you're going to provide somebody for
11 indefinite employment, then you have to provide, depending on the size of your
12 organization, you have to provide health insurance for them, so the temporary
13 staffing industry, I think, has already sort of should be in that mindset of establishing
14 that finite period of time where it is temporary, as indicated by basically these
15 scenarios that are already written, so those are a--they should already be fairly in
16 place at 60 days, certainly by 90 days--

17 1:54:14: Well, actually the-- Yes, 90 would be that--I think you make a
18 fair point. The ACA in fact has a--I mean, they don't define temporary work per se,
19 but they do--they do give certain front-end safe harbors before coverage must be
20 offered or must be effective and before penalties apply. It's not that's not of course
21 addressed solely or specifically to the staffing industry, but it is a 90-day period, as
22 you say, and that might--that might be more consistent with traditional notions of
23 what temporary work is.

24 1:54:55: Thanks, everyone, that was very helpful. Okay. And so the
25 second thing we were looking at here is that the statute kind of provides some

1 situations and such as in our rules written to say that it must be one of those
2 situations, one of these situations written in Rule 420(1)(a) through (f). We've kind of
3 done some review and we think that those were meant to be examples, and so that
4 list should be a limited but not--or including but not limited to kind of list, so we just
5 are proposing that change. I think that's pretty straightforward.

6 And then we did want to make some clarifying revisions to the actual
7 language surrounding those special situations. I'll explain what they are, but there
8 are some example language in the alternative section if you want to follow along
9 there. So the first one is that we wanted to clarify that the seasonal employee
10 special situation does not apply when workers are provided as a seasonal
11 employer's normal workforce; a temporary employee needs to be supplementing the
12 normal workforce, and in those cases we believe the leased work--or the leased
13 workers in this case would be the normal workforce. Looking at Lorrie to make sure
14 I got that right, but...

15 1:56:22: Well, wouldn't be--we're not talking about leased here; we're
16 talking about temporary, so--

17 1:56:27: Right, but we would--

18 1:56:28: --their other workers wouldn't be leased--

19 1:56:29: We--

20 1:56:29: --they'd just be workers.

21 1:56:30: Right, they would be...

22 1:56:32: Just a regular workforce.

23 1:56:34: Right, but--okay. So if a temporary service provider--

24 1:56:42: Can you clarify what the reference to subsection (c) in that--in
25 that bullet is?

1 1:56:47: Sure. So one of the special situations which a tempor
2 worker--temporary worker can be provided, "Is the staff a seasonal or sporadic
3 increase in workload indicated by a temporary increase in demand upon an
4 employer's normal workload that requires additional assistance to meet the
5 demand?" And I think what we are trying to say is that when a person receives their
6 entire seasonal workforce and it's just seasonal from a staffing company, be that a
7 temporary staffing company or a lease staffing company, we would consider those to
8 be not temporary workers.

9 1:57:29: Well, def--yeah--

10 1:57:30: Well... So you're saying that that couldn't be a temporary--
11 that couldn't be considered a temporary placement? It would have to be a leased
12 placement? Is that what you're say--

13 1:57:39: Because their--

14 1:57:40: No--

15 1:57:40: Yeah, okay--

16 1:57:40: --we're not saying it, it's nothing to do with--

17 1:57:41: Okay.

18 1:57:41: --leased, I think that's the point. This is a def--this is a
19 definition of temp--

20 1:57:46: Oh, right, it's--

21 1:57:47: --and what we're really doing is adding some information
22 there to help with the definition that's already there. The definition says it needs to
23 be, you know, temporary workers in general supplement a regular workforce. If you
24 are seasonable, seasonal, your regular workforce would then be seasonal. That's
25 not a temp; that's your regular workforce. Even if they're only six months of the year,

1 a landscaper--

2 1:58:10: Right, if they are--

3 1:58:11: --that would be an example--

4 1:58:12: Yeah--

5 1:58:12: Yeah, got it--

6 1:58:13: Okay.

7 1:58:13: Yeah.

8 1:58:14: But they would by default then become leased if they're being
9 provided by a staffing company? If they're not temporary, by default they become
10 leased, they weren't--

11 1:58:23: Yeah--

12 1:58:24: Well, they--

13 1:58:24: Because of this rule, that's how that, yeah--

14 1:58:26: Well, if they didn't have contemporaneous documentation to
15 establish that, yeah, I guess, I mean, that's not really the point here; the point is--

16 1:58:32: Right.

17 1:58:33: --yeah, don't think that you--as a temporary company, don't
18 think that if you place somebody for six months, you know, in the summer for a
19 landscaper that that's necessarily just--that's not seasonal, that doesn't fit this
20 carve-out necessarily; I mean, there's you need to know kind of what the reason for
21 the placement is. Are you supplementing a reg--the point is, are you
22 supplementing a regular workforce--

23 1:58:57: A regular worker--

24 1:58:58: Or just that's trying to make that more clear. If that's not
25 making it more clear, then we're not getting (unintelligible)--

1 1:59:02: Yeah, but that's pretty, but that's pretty standard, I mean,
2 that's what seasonal increase is. I mean, most companies--well, there's exceptions,
3 I mean, you have carnivals that might come into town and they only need employees
4 for a short period of time, but it seems seasonal increase relates to a company who
5 has X number of employees January 1st through December 31st, and then
6 depending on what their season is, they're going to ramp up for and bring on
7 additional--

8 1:59:30: Right.

9 1:59:30: --staff to cover that seasonal, so that added staff is outside of
10 their regular workforce for that temporary condition, and seasonal can be any
11 number of things, so is--are you saying that that's--that those are temporary or not?

12 1:59:48: I was saying this situation you just described would be
13 temporary, yeah, because they're supplementing the regular workforce--

14 1:59:53: Right, and that's what I understand for that--

15 1:59:54: --but if the only employees there are are the ones that get--
16 you know, get hired every--

17 2:00:00: Sure.

18 2:00:00: --season, you know--

19 2:00:02: If it's an orchard, for example, even though they have
20 administrative staff full-time--

21 2:00:07: Yeah, right. Well, and so, yeah--

22 2:00:09: That's how their business functions, they need those orchard
23 workers--

24 2:00:13: Uh-huh.

25 2:00:13: That's their regular workforce.

1 2:00:14: Uh-huh--

2 2:00:14: Yeah.

3 2:00:15: Okay.

4 2:00:16: And that can be confusing, which is why we're trying to help--

5 2:00:20: Yeah.

6 2:00:20: --explain it, but, you know--

7 2:00:21: So I think maybe the distinguishment that we're really looking
8 for there is that the relationship between those workers and the client and at the end
9 of the season and they would not be expected to be coming back the next season or
10 something like that situation, but I think we can work on that a little bit more.

11 2:00:45: Yeah, that needs a little work, and I guess that the ongoing
12 question is--well, maybe it just has to be part of the larger conversation about how
13 we might consider modifying the definition of leasing in the first instance. All of this
14 becomes, I think, less critical if you have--if you have clear and frankly more narrow
15 definitions of PEO, then even if you if--someone mentioned earlier consider a long-
16 term, whatever that means, long-term temporary work as part of the--part of your
17 regulatory mission under the--under the statute, there's a--there could be a way of
18 dealing with that without this laborious documentation issue, because the more you
19 have objective tests, the easier it is for you to do your job as regulators and it's a lot
20 easier for us to know what we're supposed to comply with.

21 2:01:57: Thanks, Ed.

22 2:01:58: But we'll work on that with you.

23 2:02:04: I'll definitely flag this particular issue as something that we
24 need to revisit next time and we'll try to have some revised language there, and we
25 do--we do understand that the--a clearer definition might free us from some of this,

1 but at this point we're kind of locked into this scenario, so we'll--like I said before, we
2 can definitely continue that conversation outside of the rulemaking--

3 2:02:30: Sure.

4 2:02:30: --process.

5 2:02:32: Yep.

6 2:02:34: Okay. So the second clarification here is to--just to clarify
7 that work experience programs are not only provided by school districts and
8 community colleges. We may--we may look for some more refined language there
9 that puts some boundaries on that and, you know, makes sure it's an accredited
10 institution, but essentially we--I think we came--we had an example where a school
11 or a private school had a work experience program and it didn't technically fall under
12 this, even though it was providing the exact same kind of relationship.

13 And then the last issue here is just to clarify that a client employer's
14 pre-established probationary period may be established by the service agreement
15 between the temporary staffing provider and the client themselves, so we know that
16 a lot of times people will contract with the temporary staffing companies who actually
17 set up this temp-to-hire program and they don't have that program established
18 before they actually enter into that agreement, so we just kind of want to make a
19 clearer process there for they can--they can create the probationary period and the
20 placement programs collaboratively, I guess.

21 2:03:53: Well, or, yeah, this is one of those where again, you know, I
22 was getting feedback from folks in the temp field, so to go back, we've got--we are
23 constrained again by a statute, but the statute says that there needs to be a pre-
24 established probationary period, and the rule takes it a little bit farther and so we
25 were trying to think of a--and the feedback from temporary companies was that it's

1 pretty typical in a temp-to-hire situation that you would have that temp-to-hire
2 verbiage in your agreement with your client, that's what I'm understanding from the
3 temp world is that if we temp-to-hire, it says it in our contract, and so would that be
4 sufficient? And so this is what we're trying to say is that, before, you know, the rule
5 really sort of didn't allow for that and we're trying to add that language in so that we
6 can allow that as one of the--you know, that would be one option, a pre-established,
7 you know, program could be in place by your client, but if that doesn't exist, if you,
8 you know, had that written into your contract, if we were to go look and say, "Are you
9 in fact a temp?" you could show that contract and that would--with the client and that
10 would be, you know, that would get at that.

11 2:05:17: One potential concern about the how specifically this is
12 worded, the client employer that establishes the probationary period, probationary
13 period implies benefits and it may--if that could be construed where the probationary
14 period encompasses that period of time where that client is expected to extend
15 benefits as if the employee that was placed there, those hours worked apply to that
16 same period, that probationary period--so I didn't say that very clearly. So
17 probationary period implies you have to go through a period of time that's dictated by
18 the company's policies, where after that probationary period and you're determined
19 to be a good match for what the job requires, then the benefits will be allowed after
20 that probationary period. This verbiage could potentially be construed that the
21 probationary period while the employee is in temporary status is counted as
22 probationary period for hiring, and that could be, from a health insurance
23 perspective, some health insurance companies may be nervous about that, so an
24 option could be, instead of saying that the client employer that establishes the
25 probationary period, it could be the hiring period.

1 2:06:54: Yeah, we can--we can take that into consideration. The term
2 pre-established probationary period is a statutory term, so we can maybe clarify--
3 2:07:05: We could say pre-established--
4 2:07:07: Hiring--
5 2:07:07: --probationary period, so--well, I would say I think we need
6 to--we're taking it from the statute, but if it's really--
7 2:07:12: Yeah
8 2:07:12: --clear that that's what we're talking about is that statutory
9 wording--
10 2:07:15: Yeah.
11 2:07:16: --I think it's probably going to be--
12 2:07:17: Yeah--
13 2:07:17: Right, which in the previous it's not--I mean, yeah, so it just, I
14 think that particular verb--I mean, that particular word implies other situations with
15 regards to benefits and continued employment.
16 2:07:35: (unintelligible) paperwork have documentation that says
17 you're only eligible for benefits after 90 days on our payroll.
18 2:07:42: What's that?
19 2:07:43: What if the client themselves in their hiring report indicates
20 that you're only eligible for those benefits after 90 days of employment on our admin
21 (unintelligible)--
22 2:07:51: In a lot--yeah, in a lot of ser--
23 2:07:53: --(unintelligible) should--
24 2:07:53: Yeah, I mean, in a lot of circumstances, it depends on the
25 formality of the client, I mean, especially when you start getting into the leasing, a lot

1 of companies use leasing services because they don't have all those, those
2 formalities in place. If you have a company, Gloria's Secret Café, who Gloria makes
3 all of her food, she doesn't necessarily want to have those policies in place, that may
4 not be part of her forte, so there's--they may not have that policy, so it--and they may
5 not even have benefits really, but--

6 2:08:27: I think our position and understanding would be that the
7 situation you mentioned where the hours worked via the staffing agency are counted
8 as part of that probationary period are the expected outcome of this change, that is
9 what we want to occur, there's--I think there may be differing views on that.

10 2:08:47: Yeah, so if an employee passes the probationary period on a
11 temporary service and they get hired by the client, they are frequently going to be--
12 have to go through another probationary period...

13 2:09:08: For a new (unintelligible)--

14 2:09:09: --in order to get those benefits because the--so let's say that
15 client has health insurance. Some health insurance companies don't count the
16 hours worked as a temporary employee towards insurance because the
17 probationary period that they're on there doesn't count as the probationary period on
18 the--

19 2:09:29: I hear you, but I think--

20 2:09:29: --client's benefits--

21 2:09:30: --in the spirit of this it's about Workers' Compensation
22 coverage and making sure that that's adequate and really not stepping into that
23 whole (unintelligible) debate, I think we would consider in looking at our contractual
24 language that those probationare--that probationary period is while that individual is
25 still under the employ of the staffing agency and the effectiveness and intent of that

1 is related to Workers' Compensation coverage, not necessarily the other employer
2 benefits.

3 2:09:57: Yeah, and what--I think what we're really looking at is, is the--
4 is the hiring process. I mean, you're correct about that, but I think--I think you
5 mentioned the outcome we're looking for is the same, so we'll--we can look at some
6 verbiage and maybe see if there's some way we can clarify, you know, that this
7 doesn't--this probationary period does not have to create the--it doesn't have to
8 create an employment relationship; just the expectation that an employment
9 relationship may follow, so--

10 2:10:24: Uh-huh.

11 2:10:25: Okay. Okay. So moving on to this next issue, we basically
12 want to add some clarification that the Director will review only complete
13 applications, so--and we want to clarify in subsection (6)(j) that provides, currently
14 provides that the Director may refuse to issue or renew a license when the applicant
15 has failed to provide documents the Director has requested, that that includes
16 documents in--asked for on the application form. So I--so we have a few small
17 changes and then I think this is also probably a good time to talk about the renewal
18 process and what's required at that time--

19 2:11:28: Well, and just--

20 2:11:29: Yeah.

21 2:11:29: --really fast.

22 2:11:30: Yeah.

23 2:11:30: And I'm just going to say, you guys, I just did a RAC, Rules
24 Advisory Committee, for a different subject recently, so I'm sorry I've been talking a
25 lot, but this is it's become a comfort zone to--

1 2:11:45: Yeah, absolutely, yeah, yeah--

2 2:11:46: --be involved in one of those things, so I'm sorry about, so,

3 yeah. I--issue 1360 is the leasing application requirements--

4 2:11:55: Okay.

5 2:11:55: Issue 1060 is--and 1061 sort of relate to the items involved in

6 the leasing, and so I just was wondering if maybe we talk about the requirements in

7 general before changing the requirements. So--because--

8 2:12:18: Okay, yeah.

9 2:12:19: --1060 and 1061 sort of relate to specific requirements as

10 part of the leasing application, what I was wondering is, well, if you talk about the

11 leasing application requirements first, it might be decided that we don't even need

12 that requirement, so there's no point in modifying it.

13 2:12:35: That sounds reasonable--

14 2:12:37: Uh-huh.

15 2:12:37: Yeah.

16 2:12:38: Sorry, it was just--

17 2:12:38: So we can skip to 1360, number 1360. Is that--

18 2:12:42: 13--

19 2:12:42: Yeah--

20 2:12:43: 1360--

21 2:12:44: Yeah, which is on--

22 2:12:44: 13--

23 2:12:45: Well, that's just one requirement.

24 2:12:47: So, yeah, thirt--

25 2:12:48: 1360 on page 10 has some bigger changes to the what's

1 required with the application, is that what you wanted to move to?

2 2:12:55: Yeah, so--

3 2:12:56: Yeah--

4 2:12:56: Oh, I see what you (unintelligible)--

5 2:12:56: --so 1360 is the general licensing application--yeah, so--

6 2:12:59: Yep.

7 2:12:59: --1360 is licensing application requirements.

8 2:13:02: Uh-huh. Gotcha.

9 2:13:03: Yeah. Okay. So basically we reviewed the application and
10 came up with some suggestions on ways that we can simplify the application
11 process to make it a little less onerous, we do understand that there's going to be a
12 process, and in addition to being a lot of information for you all to provide, it's a lot of
13 information for us to read through as well, so...

14 2:13:34: So we're skipping from page 9 to the bottom of page 10--

15 2:13:35: Yeah, bottom of page 10 and really the issue is described on
16 page 11, so--yeah. Sorry, yeah, thank you for clarifying. So I guess I can go
17 through these one by one, I'm not sure if that's the most efficient thing, but for the
18 sake of clarity and the people on the phone, I think that might be easiest, so very
19 quickly, and just maybe I'll run down these and stop me if you have questions or
20 concerns, so the first one is to only require one primary phone number instead of an
21 in-state and out-of-state number. We want to-- And as long as we're on the public
22 record, I'll go ahead and make this clear and we have another issue about it, but we
23 only want to require federal employee identification numbers; if a client does not
24 have an FEIN and they only--they use their Social Security number, we do not want
25 that information submitted to us. And I do not think we can even ask for it, so... We

1 do not need to get the type of business information because we already get that
2 information from the Secretary of State. We are just going to clarify that we want
3 legal names and assumed business names. We are--we'd like to start requiring the
4 names and contact information for just a primary and secondary contact that can
5 address licensing and coverage emails or--

6 2:15:18: (unintelligible) just a clarifying question about that--

7 2:15:19: Yeah.

8 2:15:19: --or just maybe some context there?

9 2:15:21: Yeah.

10 2:15:23: Most of the people who complete this form on our behalf are
11 not positioned to understand the structure of many of our larger clients in this way.
12 We typically have like a primary contact for the purpose of billing--

13 2:15:34: Okay.

14 2:15:35: --and then people who supervise those temporary or leased
15 employees, depending on the situation we're in, here leased, I--we would just be
16 administratively challenged to provide you with this information in an accurate way--

17 2:15:49: Okay.

18 2:15:51: Just a heads-up, not something (unintelligible)--

19 2:15:53: So I think--

20 2:15:53: So can I, so clarifica--I'm sorry, go ahead--

21 2:15:55: Oh, no--

22 2:15:55: --maybe you were going to say. I took this to mean just the
23 name of a contact at the PEO and not on an individual client basis--

24 2:16:04: Yeah--

25 2:16:04: Yeah.

1 2:16:05: --yeah.

2 2:16:06: That makes--

3 2:16:07: Yeah.

4 2:16:07: --far more--or, yeah, we can get them then, okay. Thank you,
5 that's helpful.

6 2:16:16: Yeah, and also I was just going to clarify that I don't think
7 we're looking for a primary and secretare--and secondary, we're not looking for four
8 total contacts there, like one for one licensing person and their backup and one
9 contracting person and backup; we just want kind of the person that we should call
10 to get those questions answered.

11 We would like to no longer require the initial applicant to provide copies
12 of their license and registrations, recognitions or certifications and only require a list
13 with some--the verifiable data with the license number, the expiration dates, and a
14 verifiable statement that all licenses are in good standing in the--any states that are
15 not--that information is not provided for, do not require the license.

16 We would like to--oh, just to be consistent with actual practice, we'd
17 like to amend the requirement for verification of compliance with the Department of
18 Revenue and the IRS to just require a release of information form that we can use to
19 get that verification.

20 We would like to add a subsection that requires evidence of a person's
21 competency in providing leased workers to be consistent with the rule in 440(6)(g)--

22 2:16:48: Now--

23 2:16:48: --which--yeah. Go ahead --

24 2:16:49: Okay. Well, a question about that, because you're wanting to
25 add a subsection requiring evidence of that--

1 2:16:56: Uh-huh.

2 2:16:58: Item M is a--that's already existing, is a record of any present
3 or prior experience of providing workers by contract and for a fee in any state by the
4 person, I mean, there's already item M that's already--

5 2:18:12: Yeah--

6 2:18:12: --asking for experience--

7 2:18:14: We see that, I think what we want to do is basically if
8 somebody has--if they do not have a record of present or prior experience, then we
9 want them to be able to submit some qualifications to us--

10 2:18:25: Right, so how--

11 2:18:26: Yeah.

12 2:18:26: --does what you want to add differ from item M?

13 2:18:31: So I guess we would say if M does not exist, if somebody
14 says, "I have no record of present or prior experience providing workers by contract
15 or for a fee in any state under M," then they would say, "But I do have experience
16 being an HR manager of a payrolling company or I"--you know, we would--we would
17 expect them to say, "Well, if you don't have experience, you know, I--but this is why I
18 should still get a license, this is why I'm qualified for the license," so I think it is really
19 a...

20 2:19:10: So could M--

21 2:19:11: If no on M, yeah--

22 2:19:13: Right, so could M be modified a little bit to accommodate
23 that?

24 2:19:18: I think this can be--that can be made more clear--

25 2:19:21: So instead of adding a new one, just modify what's already in

1 there?

2 2:19:24: Sure--

3 2:19:24: So it could be this or--

4 2:19:25: So--

5 2:19:25: --if you don't have this--

6 2:19:26: Yeah.

7 2:19:26: --then that.

8 2:19:28: Yeah.

9 2:19:29: That gets us the same thing, yeah--

10 2:19:30: Right.

11 2:19:31: Yeah.

12 2:19:36: Did we do this one, Chris?

13 2:19:40: Oh, I did skip over one. So going back up to J, if you go on
14 ahead, we want a list of controlling persons and then we want an organizational
15 chart or another description of ownership structure and affiliations to help us
16 determine kind of how--what--how the applicant exists in a larger context and
17 confirm really who the owners are. We are--we do not want to require all owners to
18 include--oh, for privately held entities to include all owners, because if it's a large
19 shareholder organization, we don't necessarily need to know who all the chairmen
20 members are; we just need to know the ones with substantial ownership interests,
21 so...

22 Going back down to amending N to P, we just want to separate out our
23 requirements for reporting of your financial risk background and your criminal
24 background and we also want to require some information regarding foreclosures
25 and collections. And then we'll restructure that just to be a little more clear.

1 2:21:04: So can I ask a--

2 2:21:05: Yeah.

3 2:21:05: --question about that? So in the context of a controlling
4 person, are you interested in their individual personal? Let's say if they had their
5 own personal--I mean, because in a corporate entity, you know, the owner would not
6 have liability for the corporation's bad deeds or whatever that occurs--

7 2:21:34: Yeah.

8 2:21:34: --so stringing that whole logic through, should you use the
9 fact that someone's home was foreclosed upon individually and not in the context of
10 them being an officer of a company? Should you hold that against them? I guess
11 that's just--that--

12 2:21:57: Yeah, and, I mean, I think the answer to that is, yes, you
13 could. I mean, I wouldn't say that one foreclosure's going to matter, but when
14 you're--when I'm doing an evaluation for solvency issues and fraud, for instance,
15 those are the two things I'd be concerned about there, so we're taking it out of the
16 Comp context now and we're looking at it, you know, we're bringing the business
17 into our state that is, you know, could be taking on a lot of responsibility for a lot of
18 different companies and it's our job to make sure that they're solvent, that they're not
19 going to bankrupt a carrier, that they're not going to--

20 2:22:30: So that's sort of a consumer protection clause--

21 2:22:31: Yes, exactly, and so we would look at things like, we do look
22 at things like, you know, have, you know, have the controlling people, and that's the
23 question is who do you define as controlling people--

24 2:22:42: Right, right, right, because if you--

25 2:22:44: --you know, are they--you know, do they--do they have, you

1 know, criminal backgrounds, you know, there's, you know, are they--do they have
2 personal problems with debt? That would be something that I think would be
3 relevant, so those--that's kind of what--where we're at, that's what we're getting at
4 there.

5 2:23:00: To what extent could that be an invasion of personal
6 information? So if you have--

7 2:23:05: Well--

8 2:23:06: --if you have somebody that is a controlling interest of a
9 business and the business says, "Hey, I want to do this," it's like "Oh, well, ha ha ha,
10 you know, I had this little issue," Dave's Killer Bread, for example, I mean, just to
11 throw up his--to throw out an example, and I have no relationship or affiliation with
12 Dave's Killer Bread other than just watching the news--

13 2:23:25: Uh-huh.

14 2:23:25: --but there's some history there, so how would him, as an
15 example, be construed at the evaluation process?

16 2:23:34: Uh-huh.

17 2:23:35: Because that's a matter of public record to a certain extent,
18 so--

19 2:23:37: Right.

20 2:23:38: --would that be--would that be held against Dave's Killer
21 Bread as a leasing candidate?

22 2:23:47: I mean--

23 2:23:47: We--yeah. I would say a conviction or a guilty plea that
24 involves one of the items, so, you know, fraud, theft, burglary, embezzlement, that
25 would be considered as part of the application process. Yeah, and, I mean, it would

1 be weighed, it's not an automatic--
2 2:24:08: Right.
3 2:24:08: --well, it could be an automatic disqualification--
4 2:24:10: And I don't think it would be--
5 2:24:11: Yeah.
6 2:24:11: --I mean, it would be weighed, yeah--
7 2:24:12: Yeah, it would be weighed. We'd have to--we--I would--I
8 would have to defer to our legal counsel to say if--we believe that would--it is within
9 our authority to ask, but we would have to ask them, and we can definitely get their
10 advice, too, for the next meeting--
11 2:24:28: Is--as leasing entit--I mean, you guys take any of that into
12 consideration when you're doing sales?
13 2:24:35: Doing say--during our hiring people--
14 2:24:35: Or, I mean, just so, I mean, how many leasing client--are
15 you--are--so with Trueblue, what kind of--
16 2:24:41: We're a multi-billion-dollar publicly held corporation, you
17 know, we sort of have these kind of issues (unintelligible)--
18 2:24:48: Well, no, but when you're--when you're--
19 2:24:50: Well, yeah, you would have a CEO, though, and--
20 2:24:51: Yeah--
21 2:24:51: Yeah.
22 2:24:52: --you would--
23 2:24:52: --yeah, whether you--
24 2:24:53: --yeah, you have controlling people, so what--
25 2:24:54: Yeah (unintelligible) yeah--

1 2:24:54: --they're saying is like they would look at the CEO--
2 2:24:57: Right.
3 2:24:57: --the CFO, the VP of contracts--
4 2:25:02: Yeah.
5 2:25:02: --and they would look at them individually because they're a
6 controlling person--
7 2:25:05: Right--
8 2:25:06: --and they would have to be on the license--
9 2:25:08: Yeah--
10 2:25:08: --and they would ask them, "Okay, CEO, have you ever--
11 have you ev--had you--had you ever had a house home that has been foreclosed
12 upon?"
13 2:25:15: Right.
14 2:25:16: Which is kind of like--yeah--
15 2:25:16: I'm trying to remember how this actually played out for us in
16 2016, we just went through this, I don't know, (unintelligible)--
17 2:25:24: I mean, I can't--I mean, I wouldn't speak to your specific--
18 2:25:27: That feels like eons ago, so, right--
19 2:25:29: Yes, it does.
20 2:25:30: I mean, we certainly have had, you know, we absolutely have
21 had, you know, controlling people that have disclosed, "Yeah, I was in, you know, we
22 went through a bankruptcy, I was going through a divor"--
23 2:25:38: Yeah.
24 2:25:39: --I mean, they do, absolutely--
25 2:25:40: Yeah, it does happen, yeah, yeah--

1 2:25:41: Yeah, sure--

2 2:52:42: Right, right, right--

3 2:52:43: And that doesn't mean that, you know, that I would deny a

4 license because of that, and if we ever denied a license that, you know, that's not,

5 you know--

6 2:25:50: So--

7 2:25:50: --that would be discussed, you know--

8 2:25:53: So at that point then--

9 2:25:54: --at a higher-level decision--

10 2:25:55: --so are you making a subjective evaluation or is it an

11 objective evaluation at that point?

12 2:25:59: It's subjective right now, I mean, there's nothing objective in

13 the--

14 2:26:04: And that's the challenge, I'm having a hard time thinking of a

15 scenario, like how extreme something would have to be for that--

16 2:26:10: Uh-huh.

17 2:26:11: --to be even impactful really--

18 2:26:12: Uh-huh.

19 2:26:13: --to outweigh all of these other things--

20 2:26:13: Yeah--

21 2:26:14: Yeah, I would probably think if you had multiple homes that

22 were foreclosed upon, then maybe that's a sign of an issue. I think our biggest

23 concern, and this is just so that you know, you know, when we have officers of

24 companies that complete these applications and we want this personal information

25 and we start delving deep and deep and deep and deep, it gets to be, you know,

1 they're like "Hey, I'm just VP of, you know, the mucky-mucks here"--
2 2:26:40: Uh-huh.
3 2:26:41: --"you know, asking me, you know, what, you know, what
4 home I had years ago and why I had to foreclose upon," sometimes it delve--it
5 delves too deep--
6 2:26:51: Uh-huh.
7 2:26:52: --I think, into their personal finances, and it becomes a
8 deterrent--
9 2:26:57: Uh-huh.
10 2:26:58: --sometimes as to whether or not people want to be
11 promoted--
12 2:27:01: Uh-huh.
13 2:27:02: --you know, to higher-level positions because it's like, "Mm,
14 they're going to be delving much, much deeper than I would like for them to go," and
15 I have had officers say that to me, you know, just so you know--
16 2:27:14: Uh-huh--
17 2:27:14: Yeah--
18 2:27:14: So--
19 2:27:15: I do wonder about implications in timing of sourcing that
20 information, so if we don't actually have that information putting us in violation of all
21 these ban-the-box that are popping up--
22 2:27:25: Right.
23 2:27:26: --we may not always be in a position to...
24 2:27:29: To ask--
25 2:27:29: --legally ask--

1 2:27:30: Oh, that--
2 2:27:30: --for that information--
3 2:27:31: That is true, that is true.
4 2:27:32: --that is neck--that is definitely a federal law complication
5 there, I mean, and we're on the wrong side of (unintelligible), I think about California
6 and all of these different ban-the-box jurisdictions popping up, a very, very small
7 window when you can even ask for that information legally, and if we're outside of
8 that window, how we would provide it to (unintelligible).
9 2:27:51: Yeah, I can--
10 2:27:52: Well, actually the way our--I mean, just to be clear--
11 2:27:55: Yeah.
12 2:27:55: --just to be, the controlling person's the one that provides the
13 information, so, but I guess you'd be requiring them to do it--
14 2:28:02: Yeah--
15 2:28:02: And we would ask to--
16 2:28:03: Yeah, I think that's why--
17 2:28:03: It'd be--it would be a job--
18 2:28:05: Yeah--
19 2:28:05: --requirement--
20 2:28:06: Yeah--
21 2:28:06: It's an interesting legal question because--
22 2:28:08: Uh-huh--
23 2:28:08: Uh-huh--
24 2:28:09: --it could certainly create--
25 2:28:09: Yeah. I can say--

1 2:28:10: Because that, I mean, that, you know, that goes to the issue
2 of, you know, felony convictions and stuff, which is, you know, I definitely would care
3 about those--

4 2:28:19: Yeah, definitely--

5 2:28:20: I mean, it depends on the kind of felony conviction, but, you
6 know, I mean, that is an interesting point because I definitely care about if you were
7 convicted for, you know, shareholder fraud or something, I need to know that--

8 2:28:32: Oh, that's--

9 2:28:33: Oh--

10 2:28:33: --important, yeah, convictions--

11 2:28:34: Yeah--

12 2:28:34: --I think are fair--

13 2:28:35: Yeah, but I'm saying--

14 2:28:35: --yeah, I think that's fair game--

15 2:28:36: --this whole ban-the-box thing, you know what I'm saying--

16 2:28:39: Uh-huh--

17 2:28:39: So--but what is the obligation for WCD to be the consumer
18 protector for that?

19 2:28:45: That is--that is one of our--that is part of our mission--

20 2:28:48: Yeah, we are--

21 2:28:48: Okay.

22 2:28:50: So I was interested in the next part, foreclosures and
23 collections, I was interested in what we're looking for on for collections. So
24 disclosing--

25 2:28:58: Again we're going to solvency, so that's a good question, too.

1 2:29:01: It seemed kind of--
2 2:29:01: Yeah--
3 2:29:02: Yeah, probably need to be more specific, yeah--
4 2:29:04: Yeah--
5 2:29:04: I think, yeah, we'll take another look at this and--
6 2:29:08: Uh-huh.
7 2:29:08: --maybe we will look at if we're overstepping or asking for
8 some personal information there and maybe check with our legal counsel--
9 2:29:14: I think if you just like define what's objective and what's
10 subjective, that would help, because subjective is where you are allowed or it's
11 implied that there's personal interpretation; objective is less interpretation based on
12 personal perspective--
13 2:29:30: We--it is subjective and we examine these things in the
14 totality of what's submitted to us, so, I mean, it's I think having a rule that said, "It's
15 objective if you have a foreclosure or, you know, you've been sent to collections
16 more than twice, you are automatically denied," we do not want a rule like that--
17 2:29:50: I can say, though, in knowing we're licensed in 40 states, this
18 question's never come up--
19 2:29:58: Okay.
20 2:29:58: --so I've never had to ask one of my controlling persons this
21 particular question.
22 2:30:02: Uh-huh.
23 2:30:02: So this would be something different if I had to bring this to
24 them.
25 2:30:07: Okay.

1 2:30:07: That's the only reason why I bring it up.

2 2:30:12: Okay. So I'm hearing, yeah, it would be unusual, there may
3 be some compliance issues, just that you have your own limitations on what
4 information you can get from employees.

5 2:30:23: I mean, you could even take it so much further as potential
6 data breach of personal information because that's such a huge deal now with cyber
7 security, having that information in the system. I know that's out there, but--

8 2:30:35: Yeah.

9 2:30:35: --I mean, this is where you discuss things like that--

10 2:30:38: Sure, yeah.

11 2:30:41: I'm guessing, though, that if you guys deny an application,
12 you have--there's some justification as to why you denied it--

13 2:30:46: Sure, and I--

14 2:30:46: Right--

15 2:30:47: --and I believe that the--

16 2:30:48: --so I think that there is some--

17 2:30:48: --denial would be able--someone would be able to appeal it
18 as well--

19 2:30:51: Right--

20 2:30:52: It is, yeah--

21 2:30:52: And the ban-the-box, that means we can't ask prior, but it
22 doesn't mean that we don't have access to that information.

23 2:30:59: Well, in some jurisdictions we cannot ask during ongoing
24 employment, and so that's more my concern. I was just--I was more personally
25 curious, want to do my own legal research and sort of understand what that

1 implication can mean because if we have missed that conditional offer window to
2 inquire, I don't know.

3 2:23:18: Or if they're--if it happened after they were hired. So like
4 there was an example mentioned earlier, somebody gets promoted into that position,
5 you're not going to necessarily--not going to necessarily do a background check to
6 assess their qualifications; they get promoted into a CEO job and that company
7 applies for the leasing certification and that information comes to light after the
8 applic--I mean, it's after the fact sort of.

9 2:31:51: Okay. Well, we'll--I think we're going to probably take a pretty
10 hard look at this and only move forward with that if we really feel it's critical to
11 evaluate and will help with the--

12 2:32:07: So you're not currently doing that now; this would be in
13 addition--

14 2:32:09: Currently we ask for, we do ask for a record of bankruptcies,
15 liens, and other actions, but there has to be some sort of formal action against the
16 person at a more administrative or criminal level, so I think the foreclosures and
17 collections are more kind of between a person and a financial institution. And we're
18 really, we are looking for better ways to gauge solvency. As you mentioned before,
19 if a client, you know, defaults on payment to a PEO, it's a problem in the same way
20 that if a PEO were to default on payment of premium to an insurer and all of a
21 sudden all these workers with their--lose their coverage, you know, that's a problem
22 for us, too, so we want to make sure an entity's and the person behind the entity are
23 financially viable before licensing them, but I do think we'll look some more at what
24 information is appropriate to ask for to get a sense of that.

25 2:33:09: Can I ask a process question? As it would seem to be--

1 2:33:12: Yeah.

2 2:33:12: --approaching the witching hour and I think it would be useful
3 to know if there are other additional issues that people want to put on the table for
4 discussion in the next meeting beyond what you had just so we can start thinking
5 about them--

6 2:33:26: Sure.

7 2:33:26: --a little bit, and I appreciate Daniel's NAPEO piece that, you
8 know, lays out their broader concerns just so we can think about those, too. Does
9 that seem to make sense?

10 2:33:39: Yeah. Yeah. And I did want to touch on Daniel's--what
11 Daniel brought up about just if we're requiring all this information all the time, does
12 the way that we're simplifying things make that easier for people to get--

13 2:33:53: Yeah, I (unintelligible) required on the renewals, I think the
14 same information (unintelligible).

15 2:34:00: Yeah, no, what we were saying is, you know, and actually
16 this was the point where Jay should come in because this--ESAC--

17 2:34:08: Yeah.

18 2:34:08: --would be the best answer to that--

19 2:34:10: Yeah, I mean, it's maybe longer than 10 minutes--

20 2:34:12: Right, yeah, right, it's, yeah, so--

21 2:34:13: It's more than 10 minutes, yeah.

22 2:34:13: --yeah, we're just--

23 2:34:15: Okay.

24 2:34:15: But we just had a comment from our compliance manager
25 that Oregon requires, this is the most paperwork-intensive renewal process in all of

1 our states--

2 2:34:23: Okay.

3 2:34:23: --and so she was just saying some states would just ask for
4 changes as opposed to redoing the whole application again, so you have the
5 application, but you only report the changes to what you submitted previously.

6 2:34:39: If we--and I appreciate what you guys are saying and we
7 definitely are going to be looking at a renewal application that is different from our
8 application, but it will not be that, and I would love that, and if I had an electronic
9 system, it--that would be doable. As it is now, we have a piece of paper, as you
10 know, quite a few pieces of paper, and because of that limitation we're probably
11 going to be making people--I don't know, they may have made it worse because at
12 least if you redo the application as it looked before, you--

13 2:35:15: Copy it, send it in?

14 2:35:16: Yeah--

15 2:35:16: Yeah--

16 2:35:16: --we're hoping that if people--

17 2:35:17: --that's what (unintelligible)--

18 2:35:18: --have that information compiled already--

19 2:35:19: Yeah, so I just said but--

20 2:35:19: --it's not too onerous to recompile, but...

21 2:35:22: Well, Jay Morgan, who's in--he's on the phone, but, yes, is
22 he--he has a great product that we work--he works with PEOs and it's a whole
23 streamlining of all of the application processes--

24 2:35:39: I don't know if Jay is still on the phone--

25 2:35:40: I don't know, I don't know--

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2:35:41: Yeah--

2:35:41: --if he made it all--

2:35:42: Are you still with us, Jay?

2:35:43: Jay--

2:35:44: There you go--

2:35:44: --Jay is still with you.

2:35:47: He hung on, he hung on.

2:35:50: I have hung in there.

2:35:54: So--

2:35:54: Yeah, if you could allow me two minutes, I could speak to that.

2:36:00: Go ahead.

2:36:01: I am general counsel for ESAC and I'll first upfront come clean and state that our ask is for the Department to consider becoming the 21st state PEO licensing agency to approve ESAC and do so via a rule or otherwise.

We're an independent nonprofit established in 1995 to build trust and integrity and reliability for the PEO industry, and we do so principally by providing accreditation for qualified PEOs and financial assurance to those PEO's clients and employees and insurers and regulators. And of the states that are presently licensing or registering PEOs, ESAC's compliance verification services are accepted by 20 agencies, saving them time and providing them an extra layer of compliance monitoring at zero cost to the state and without relinquishing any regulatory authority, so your licensing law, the administrative rules, and your license application requires similar information as is required for ESAC accreditation, and for its accredited PEOs doing business in Oregon, ESAC has already received and verified

1 this information, it's continuously updated and can be efficiently and securely
2 provided to the Department, as I strived to demonstrate on Tuesday to Lorrie, Adam,
3 and Roger via a webinar.

4 In many states' statutes and rules, ESAC is referred to as an
5 assurance organization and some states have approved ESAC based upon express
6 assurance organization, statutory, or rulemaking authority while other states have
7 approved us based upon general authority that does not specifically mention an
8 assurance organization, and then agencies also issue approval letters and we
9 sometimes enter into memorandums of understanding with them.

10 So for the committee's consideration, I've submitted draft language
11 consistent with the part of NAPEO's model on point and have cited rulemaking
12 authority within Oregon's Occupational Safety and Health Act and your Workers'
13 Comp Act and your Uniform Electronic Transactions Act, but one or more of those
14 statutes could arguably be interpreted to grant your Director the present authority to
15 provide for electronic filings and approve ESAC without having to go through rule
16 promulgation, but I'll leave that to your lawyer to decide. So the draft I've submitted
17 would allow for qualified worker leasing companies to elect to use the services of an
18 approved assurance organization as an alternative means of satisfying the
19 requirements for licensure contained in your statutes and rules and provide for the
20 acceptance of electronic application and compliance filings in conformance with your
21 UETA act.

22 So--and the last thing I'll say is that it also makes clear that such an
23 approved assurance organization's going to certify to you the qualifications for
24 licensure of the PEO and will provide satisfactory assurance of compliance in a
25 manner acceptable to the Director and that the use of an approved assurance

1 organization is optional, it's not mandatory, and nothing limits or changes your
2 authority to license, suspend, revoke, assess penalties, investigate per your statutes
3 or rules. And I've provided some other documents and information regarding ESAC
4 and stand ready to answer questions and help the committee in any way I can.
5 Thanks, thanks a bunch for inviting me to participate.

6 2:40:22: Thank you, Jay. And just a reminder to everybody, we have--
7 Jay's input is over on the table there as along right next to NAPEO's input.

8 2:40:36: And if you--if you caught that what Jay was saying, we did
9 have--we had him do a demo for us--

10 2:40:41: Oh, super.

11 2:40:42: --so that we are actually looking at that. It wouldn't--it would
12 only solve problems for--

13 2:40:46: For fee, yes, for (unintelligible)--

14 2:40:47: --Insperity (unintelligible) one of them anybody who happens
15 to have that compliance--

16 2:40:52: Yeah, my compliance manager would love, love--

17 2:40:53: Yeah, and you're not the only one, so we are--

18 2:40:53: --love (unintelligible)--yeah--

19 2:40:55: --that is something we're considering, yeah, so--

20 2:40:58: Yeah, it just reduces the paperwork.

21 2:41:00: Yeah.

22 2:41:02: But getting to David's--

23 2:41:03: Yeah.

24 2:41:03: --point about additional agenda items, we are, you know,
25 we're just like almost a minute from noon now, and I don't know that we could do

1 justice to even getting them all out for us to record, so if you have additional agenda
2 items that are not on here for us before the October meeting, well in advance of the
3 October meeting if possible, if you could send them to my attention, I'll make sure
4 Chris has them and others here so that we can--we can kind of try to understand
5 them and do whatever research we might need to do before we get back with you,
6 so...

7 2:41:40: Dave, did you--did you have a specific issue or?

8 2:41:43: No.

9 2:41:44: Oh.

10 2:41:45: Just to see what else is out there.

11 2:41:47: Yeah, that was a very good point and a good kind of good
12 opportunity for us to reach out for whatever, because we are not--several people
13 asked me if there was going to be time for new agenda items today, and I said, you
14 know, we might run out of time, and sure enough, we kind of did. We almost made it
15 through our agenda.

16 2:42:08: Hey, Fred, I just want to thank you for the opportunity to
17 come and address some of these things with you and for putting all this together,
18 thank you very much.

19 2:42:18: Yeah. Well, thank you, all, for coming. I will stay in touch
20 with you, I will post an audio recording of this meeting next week, although I'm--I
21 don't know that you'll need to refer back to that, but if you'd like to you're welcome to.
22 Typically the transcription that we have done, that takes a little longer, and that will
23 be posted eventually as well, but please send me any additional thoughts, not just
24 new agenda items, but if there's anything that we talked about today and you have
25 additional input for us on one of these agenda items, just send it to me and I'll make

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sure we distribute it within the Division so we can really consider it. But with that, I guess we'll just let you all go, and you've been a really nice group and appreciate your time very much.

2:43:02: Thank you, Fred--

2:43:02: Thank you. Thanks.

:(WHEREUPON, the proceedings were adjourned.)
