

**OAR 436-180 Worker Leasing  
OAR 436-162 Electronic Data Interchange; Proof of Coverage  
OAR 836-043 Workers' Compensation Insurance Rating System  
and Audit Procedures**

**Minutes**

**Stakeholder Rulemaking Advisory Committee Meeting**

April 28, 2026, 1:00 PM, Room F

**Stakeholders attending:**

| <b>Stakeholders (RSVP'd):</b> |                                                                     |
|-------------------------------|---------------------------------------------------------------------|
| Arin Carmack                  | Cardinal Services                                                   |
| Connie Whelchel               | KPD Insurance                                                       |
| Todd Johnson                  | National Council on Compensation Insurance                          |
| Hannah Walker                 | National Association of Professional Employer Organizations (NAPEO) |
| Ashley Kempf                  | Liberty Mutual Insurance                                            |
| Edwin Herrera                 | Liberty Mutual Insurance                                            |
| Dan Schmelling                | SAIF Corporation                                                    |
| Ivo Trummer                   | SAIF Corporation                                                    |
| Elaine Schooler               | SAIF Corporation                                                    |
| Skylar Hall                   | SAIF Corporation                                                    |
| Thais Lomax                   | Sedgwick                                                            |
| Paul Holtrup                  | Liberty Mutual                                                      |
| Tami Coxen                    | SAIF Corporation                                                    |
| Jamie Powell                  | SAIF Corporation                                                    |
| Shani Racine                  | NCCI                                                                |
| Marla Daves                   | SAIF Corporation                                                    |
| Anne Donovan                  | Xenium HR                                                           |
| Kyle Carlton                  | SAIF Corporation                                                    |
| Kelli MacFarland              | Farmers Insurance                                                   |
| Linda Bello                   | NCCI                                                                |
| Isabel Hernandez              | Healthsystems                                                       |
| Anthony S. Kell               | Kaya HR                                                             |
| Teresa McCormick              | TNT Management Resources, Inc.                                      |
| Paul Hughes                   | Libertate Insurance                                                 |
| Robert Miller                 | SAIF Corporation                                                    |
| Heather Cottings              | SAIF Corporation                                                    |

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**State of Oregon staff members attending:**

|                                                                    |
|--------------------------------------------------------------------|
| Matt West- WCD Administrator                                       |
| Aaron Fellman – coverage & assessments policy analyst              |
| Marie Rogers – rules coordinator                                   |
| Kirsten Schrock – resolution section manager                       |
| Adam Breitenstein – performance manager                            |
| Candice Blanchard -data support specialist                         |
| Jenni Bertels – EDI coordinator                                    |
| Jason Cupp – Self-insurance, registration & reimbursements manager |
| Raven Collins - Senior Policy Advisor with DFR                     |
| Sabrina Wright – compliance specialist                             |
| Caitlin Breitbach – small business ombudsman                       |

**Minutes:** Marie Rogers welcomed the committee members, asked the members to provide advice about any fiscal impacts of possible rule changes, and also to advise about effects on racial equity in Oregon. Marie called a roll of attendees, including stakeholders and State of Oregon employees.

NOTE: Additional summary minutes are included below each issue.

## **Rulemaking Background**

Worker leasing companies, or PEOs, are businesses that contract with client employers to provide payroll, benefits, and insurance to client workers, generally under an “employer of record” model. This service is popular with small and mid-sized employers because it saves them money and gives them access to resources they might not otherwise have.

At the same time, it poses some regulatory challenges. Many workers’ compensation laws and processes are designed with a traditional employment model in mind. Because worker leasing arrangements don’t necessarily fit this model, regulators need special tools to do things like track client coverage, determine responsibility for claims, and deal with bad actors in the worker leasing space.

In response to these challenges, Oregon enacted its first laws on worker leasing arrangements in 1993. These laws defined a worker leasing company as a person that provides workers to clients by contract, for a fee, and on a non-temporary basis. They also required worker leasing companies to be licensed and established clear rules of responsibility for providing coverage under a worker leasing arrangement and processes for reporting that coverage.

By 2025, the number of licensees had skyrocketed, but industry practice had evolved to the point where the original definitions no longer described licensees’ business models. The original paper-based reporting requirements had also become outdated due to advances in electronic reporting.

HB 2800 (2025) addressed these issues by making significant updates to worker leasing law. First, the bill reclassified licensees as professional employer organizations, or PEOs, rather than worker leasing companies. Second, it defined a PEO as a person that enters into agreements with client employers to allocate employer responsibilities for some or all of the client employer’s workers. Third, it made changes to the reporting requirements that apply to PEOs and gave the division the authority to allow or require insurers to use certain coverage models by rule.

The purpose of this rulemaking is to implement HB 2800 and make other updates to rule to reflect the changing nature of the industry. The rules will take effect on July 1, 2027, the operative date of HB 2800.

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**ISSUE No.1 [1539]**

**Rule:** OAR 436-180-0003 et seq and other rules throughout chapters 436 and 836<sup>1</sup>

**Issue:** Adoption of HB 2800 definitions and terminology

**Background:** HB 2800 made a number of changes to the terminology used in Oregon worker leasing law. Key terms updated by the bill include:

| <i>Current term</i>                   | <i>New term</i>                           | <i>New definition</i>                                                                                                                                          |
|---------------------------------------|-------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Worker leasing company                | Professional employer organization or PEO | A person that enters into a PEO relationship with a client employer.                                                                                           |
| Provides workers                      | [Enters into a] PEO relationship          | An agreement between a PEO and a client employer under which certain employer responsibilities for some or all of the client employer’s workers are allocated. |
| Leased worker                         | Covered employee                          | A client worker for whom a PEO has assumed employer responsibilities under a PEO relationship.                                                                 |
| Subject worker employed by the client | Direct hire employee                      | A client worker for whom a PEO has not assumed employer responsibilities under a PEO relationship.                                                             |

The intent of the bill was to bring the statute up to date without significantly changing its application. In other words, almost every person who is licensed as a worker leasing company today will be considered a PEO under HB 2800. A PEO’s responsibilities for covered employees will be identical to a worker leasing company’s responsibilities for leased workers under current law.

To ensure conformity with statute, the new terms listed above should be used instead of the current terms throughout the division. Achieving this will require amendments to practically every rule in current OAR 436-180, as well as rules in other divisions that use the current terms, including OAR 436-050, 060, and 0110 and OAR 836-043.

The issue document will use the new terms from this point on, except when it’s necessary to refer to an old term for the sake of clarity. Draft rule language in subsequent issues will include these changes.

**Recommendation:**

1. Amend all existing rules to use the terms “PEO”, “PEO relationship,” “covered employee,” and “direct hire employee” instead of the current terms.

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<sup>1</sup> See “Housekeeping Issues” for a complete list of revisions outside division 180.

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2. Delete definitions of the current terms and adopt definitions of the new rules consistent with statute.
3. Amend title of division 180 to “Professional Employer Organizations; Temporary Service Providers”

### **Fiscal Impacts, including cost of compliance for small business:**

*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

### **How will adoption of this rule affect racial equity in Oregon?**

*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

**Recommendation:** *COMPLETE AFTER MEETING WITH STAKEHOLDER RAC. STATE WHETHER RULE CHANGE IS RECOMMENDED AND INCLUDE AN EXPLANATION THAT WILL HELP READERS UNDERSTAND THE REASONS FOR THE CHANGE OR THE DECISION NOT TO CHANGE THE RULE.]*

### **Minutes:**

- Aaron Fellman described the issue – see above – and asked the committee for advice.
  - No discussion.
-

**ISSUE No. 2** [New issue]

**Rule:** OAR 436-180-0005 – Definitions

**Issue:** Definition of “employer responsibilities”

**Background:** HB 2800 reclassifies worker leasing companies as “professional employer organizations” or “PEOs.” A PEO is defined in part as:

a person that enters into a PEO relationship with a client employer [...]

HB 2800 further defines “PEO relationship” as:

an agreement between a PEO and a client employer under which certain employer responsibilities for some or all of the client employer’s workers are allocated.

Because assuming employer responsibilities for client workers is a prerequisite for being a PEO, adopting a definition of “employer responsibilities” in rule would help distinguish between PEOs and other providers.

One possible approach would be to define employer responsibilities in terms of the services only a PEO may provide under current law, such as providing workers’ compensation coverage to client employers. Using this approach, a person intending to provide these services would have to license as a PEO, while a person providing other services generally would not.

**Alternatives:**

1. Define ‘employer responsibilities’ as follows:

(#) Employer responsibilities include, but are not limited to:

(a) providing workers' compensation coverage for a client under a policy in the name of the PEO, and

(b) treating covered employees as the PEO’s own employees for payroll tax reporting purposes as permitted by ORS 657.426.

2. Adopt a different definition of ‘employer responsibilities,’ or no definition.

**Fiscal Impacts, including cost of compliance for small business:**

*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

**How will adoption of this rule affect racial equity in Oregon?**

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*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

**Recommendation:** *COMPLETE AFTER MEETING WITH STAKEHOLDER RAC. STATE WHETHER RULE CHANGE IS RECOMMENDED AND INCLUDE AN EXPLANATION THAT WILL HELP READERS UNDERSTAND THE REASONS FOR THE CHANGE OR THE DECISION NOT TO CHANGE THE RULE.]*

### **Minutes:**

- Aaron Fellman described the issue – see above – and asked the committee for advice.
  - Hannah Walker, Vice President of State Government Affairs for the National Association of PEOs (NAPEO) noted that NAPEO’s preference is to adopt no definition or to have a definition that’s a bit more broad. A broad definition might say, for example, something along the lines of: “those employer responsibilities as specified in the client services agreement between the client and the PEO.” Hannah noted that the preference is because every PEO provides services a bit differently and those employer responsibilities are allocated through the client services agreement.
  - Elaine Schooler noted that SAIF Corporation saw a potential conflict in subsection (a) for the employer responsibilities definition. This is a policy in the name of the PEO. If the division works to promulgate a rule requiring or allowing coordinated policies, those policies are issued to the client employer and then tied together through endorsements. So, that would not necessarily be captured under the terminology suggested.
  - Aaron noted that SAIF made a great point and that the division would take a look at that wording.
-

**ISSUE No. 3 [1232]**

**Rule:** OAR 436-180-0005 – Definitions

**Issue:** Definition of “administrative services”

**Background:** HB 2800 defines a PEO as not including:

... a person that provides payroll processing or similar administrative services without assuming employer responsibilities for client workers.

The exclusion for administrative services was intended to distinguish between bona fide PEOs and “administrative services only” providers, or ASOs. ASOs are distinct from PEOs in that they don’t act as employer of record for client workers or directly provide workers’ compensation coverage to clients. Accordingly, they are not required to license.

Adopting a definition of “administrative services” could make it easier to distinguish between PEOs and ASOs when making licensing decisions.

**Alternatives:**

1. Adopt the following definition of “administrative services”:

(#) “**Administrative services**” include:

- (a) Processing payroll at the client’s direction;
- (b) Advising the client on human resources matters;
- (c) Facilitating the purchase of insurance for the client, including workers’ compensation insurance, if that insurance is in the name of the client; and
- (d) Meeting tax reporting obligations on the client’s behalf, if reporting is done under the client’s BIN or FEIN

2. Do nothing.

**Fiscal Impacts, including cost of compliance for small business:**

*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

**How will adoption of this rule affect racial equity in Oregon?**

*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

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**Recommendation:** *COMPLETE AFTER MEETING WITH STAKEHOLDER RAC. STATE WHETHER RULE CHANGE IS RECOMMENDED AND INCLUDE AN EXPLANATION THAT WILL HELP READERS UNDERSTAND THE REASONS FOR THE CHANGE OR THE DECISION NOT TO CHANGE THE RULE.]*

### **Minutes:**

- Aaron Fellman described the issue – see above – and noted that Elaine’s (SAIF’s) comment from the previous issue would be relevant here, too. Aaron then asked the committee for advice.
  - Hannah Walker noted that NAPEO is okay with the alternative number one, as long as it addresses the concern that was addressed earlier. Hannah added that the definition should say “include, but not limited to.” She reasoned that every PEO's services are a bit different, so some flexibility is important.
  - Elaine Schooler noted that SAIF has the the same feedback as NAPEO. SAIF also thought that the “and” in between (c) and (d) links all of those together; SAIF has ASOs who may do one or two of those things. So, changing that “and” to “or” to provide more flexibility would be helpful. Finally, Elaine added that SAIF encounters confusion with smaller businesses as to whether they would be considered a PEO or an ASO; SAIF suggested the division provide a bulletin or industry notice as an additional resource to those small businesses.
-

**ISSUE No. 4 [1802]**

**Rule:** OAR 436-180-0005 – Definitions

OAR 436-180-0120 – Temporary Worker Distinguished from Leased Worker

**Issue:** Definitions of “temporary basis” and “temporary service provider”

**Background:** To qualify as a “temporary service provider” under current rule, a person must meet strict prerequisites. In some cases, this leads to companies that should be classified as temporary service providers being required to license as worker leasing companies.

Under current law, a person that provides workers to a client is categorized as either a worker leasing company or a temporary service provider. The determining factor is whether the workers are provided on a temporary basis, meaning for a “special situation” that is expected to end. If not, or if the person provides some workers on a temporary basis and others on a non-temporary basis, the person must license as a worker leasing company.

OAR 436-180-0120 implements the provisions of current law by providing that:

- A worker is provided on a temporary basis when they are provided to supplement a client’s regular workforce for a special situation; and
- A placement will be considered temporary if the expected duration of the placement is indicated in documents created at the time the placement was made.

Some arrangements that might otherwise be considered “temporary” don’t qualify as such under these requirements. For example:

- A small family farm contracts with a farm labor contractor to supply workers at harvest time. Because the farm has no employees during the rest of the year, it has no regular workforce to supplement.
- A hospital contracts with a health staffing agency to supply traveling nurses due to a staff shortage. The client cannot provide an expected duration for the placement because it does not know when the shortage will end.

Under current rule, these arrangements would be considered worker leasing arrangements, and the providers would be required to license as worker leasing companies. The program area sees this as problematic, because the providers otherwise behave more like temporary service providers: they hire workers directly and retain the right to fire, discipline, or reassign them between clients.

HB 2800 retained the existing definition of “temporary basis,” but expanded the definition of “temporary service provider” to mean a person that:

- Provides workers on a temporary basis;
- Directly employs the workers it provides;
- Retains most employer responsibilities for these workers
- Customarily reassigns them to other clients when they finish an assignment.

The intent of this change was to allow the division to consider a person's business practices when determining if a person is a temporary service provider or PEO. This would allow the division to adopt a broader definition of "temporary basis" without compromising its ability to require bona fide PEOs to license, because if a placement did not clearly qualify as either temporary or non-temporary under that definition, the division could consider additional factors.

However, further rulemaking is necessary for the division to change its approach to these cases.

**Alternatives:**

1. Adopt the following definition of "temporary service provider" under OAR 436-180-0005:

**(#) "Temporary service provider"** means a person that enters into contracts with clients under which:

- (a) The person provides workers to the client on a temporary basis;
- (b) The worker's contract of employment is with the person rather than the person's client. For the purposes of this definition, a person enters into a contract of employment with a worker when they directly contract to pay a remuneration for the services of the worker;
- (c) The person retains all employer responsibilities for the worker, except to the extent necessary to allow the person's client to direct and control the services provided by the worker for the client; and
- (d) The person customarily attempts to reassign the person's workers to other clients when the workers finish each assignment, except for a worker provided as a probationary new hire with a reasonable expectation of transitioning to permanent employment with the client.

2. In addition to alternative 1, amend OAR 436-180-0120 as follows:

**(1) Temporary service providers.**

A person that provides a worker to a client by contract and for a fee will be considered a temporary service provider if the worker is provided on a temporary basis, subject to the following:

(a) "Temporary basis" means the worker was provided ~~to supplement a client's regular workforce~~ for a special situation, as a student worker, or as a probationary hire as described under ORS 656.850849(17)(b). The worker will be considered to be provided on a temporary basis if there is contemporaneous written documentation of the placement;

(b) "Contemporaneous written documentation" means documents that are created at the time the temporary service provider and client make the

arrangements for placement of the worker. ~~The documents must indicate the expected duration of the placement, and:~~

(A) If the worker was provided ~~to supplement a client's regular workforce~~ for a special situation, the ~~documentation documents~~ must describe the special situation. A special situation includes, but is not limited to:

(i) An employee absence or leave, from which the employee is expected to return;

(ii) A ~~professional skill shortage that is expected to be temporary. shortage in skilled professional staff, whether licensed or not, for a known duration of time. Supporting documentation~~ Documents may include license information, and must establish identify whether the worker is provided to supplement or to satisfy a the professional skills required by the client's need for the skill;

(iii) A seasonal or sporadic increase in workload ~~that requires assistance in addition to the client's regular workforce.~~ Documentation Documents must establish the nature of the increase in workload; or

(iv) A special assignment or project outside of the routine activities of the client's business, where the worker will be terminated or assigned to another temporary project upon completion.

Documentation Documents must describe the project and how it is outside of the routine activities of the client's business;

(B) [omitted]

(C) [omitted]

(c) ~~Either the person providing the worker or the client~~ A temporary service provider must maintain contemporaneous written documentation and provide the contemporaneous written documentation it to the director upon request. If ~~a the person provider~~ fails to provide ~~the~~ contemporaneous written documentation, the director will investigate to determine if the contract between the temporary service provider and the client constitutes a PEO relationship as defined by ORS 656.### and these rules. ~~the worker was provided on a temporary basis. If the director determines that the worker was provided on other than a temporary basis, the person will be considered a worker leasing company.~~

**(2) Persons ~~providing leased and temporary workers~~ acting as both a temporary service provider and a PEO.**

If a person ~~providing workers on both a leased and temporary basis that acts as both a temporary service provider and a PEO~~ does not maintain the records required under OAR 436-180-0150(2), all workers will be considered to be ~~leased workers~~ covered employees.

3. Something else.

**Fiscal Impacts, including cost of compliance for small business:**

*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

**How will adoption of this rule affect racial equity in Oregon?**

*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

**Recommendation:** *COMPLETE AFTER MEETING WITH STAKEHOLDER RAC. STATE WHETHER RULE CHANGE IS RECOMMENDED AND INCLUDE AN EXPLANATION THAT WILL HELP READERS UNDERSTAND THE REASONS FOR THE CHANGE OR THE DECISION NOT TO CHANGE THE RULE.]*

**Minutes:**

- Aaron Fellman described the issue – see above – and asked the committee for advice.
- Elaine Schooler noted that SAIF has employers who get confused about whether they're a temporary service, temporary employer or not—a bulletin or industry notice providing something like the above examples would be helpful.
- Hannah Walker noted that NAPEO's preference is for solely the first alternative. NAPEO's concern with the second alternative is the assumption that if they don't meet these certain requirements, they're automatically deemed covered employees under a PEO arrangement. NAPEO is not comfortable with that and feels strongly about the first alternative. And, NAPEO felt that the second option doesn't allow enough flexibility to encompass client direct policies and allow all the plans at play there.
- Paul Hughes (Libertate Insurance) noted that he is an insurance broker and duly licensed in all states. Paul noted that staffing or temporary staffing, as we're referring it to them, and PEOs, are two very different nuanced business models, although under the same veil as a labor contractor. Paul noted that the word “temporary” is hard to define, especially when you have things like contract staffing or you hire a staff of builders to build a two-year project. Is that temporary in nature? Paul suggested looking at a temporary staffing company as somebody that transfers labor as a primary employer to another employer, whereas a PEO is someone that co-employees by agreement with an existing employer, an existing workforce with nothing changing, no time limit, etc. Yeah, I appreciate that point.
- Aaron Fellman responded to Paul noting that the division's hands are a little bit tied by the existence of a statutory definition of “temporary service provider.” Aaron added that looking a little more at what the person's relationship is with the workers they're providing, whether it's a co-employment situation or one in which they are the direct employers, is part of what the division is trying to do. Aaron added that, in regards to alternative two, a lot of this language, particularly around how the division is defining a special situation, is in rule already. So, Aaron sought clarification: is the recommendation from NAPEO to not only not change this rule, but eliminate the existing rule?
- Hannah Walker noted that, when she brought this before the membership, there was discussion about discomfort around the assumption that if they're not one, they're

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considered the other. So NAPEO understands that that is currently in rule and they would prefer that to be removed. Hannah then asked Anne Donovan for additional comments.

- Anne Donovan agreed with Hannah: The concern is that the PEO industry will receive something that they are not in control of on the back end. That, Anne explained, feels uncomfortable from a risk standpoint. Because obviously if it's happening on the front end with this decision around “temporary or not,” it seems it would automatically push to the PEO. That scenario doesn't give them the opportunity to properly underwrite that risk and practice due diligence.
  - Aaron Fellman thanked them for their comments and added that, with the passage of HB 2800, it's no longer true from the division's perspective that anybody who does not qualify as a temporary service provider necessarily qualifies as a PEO. They're no longer tied together by that “provides workers” concept. That is a concern of the division's as well, and one that the division is trying to address here. But, the division is happy to take another look at what the proposed rule language and see if we can come up with something that gets a little closer to that ideal.
  - Elaine Schooler added a comment regarding contemporaneous written documentation. SAIF felt that it would be helpful if there could be some examples given as to what kind of documents would be acceptable. SAIF suggested examples could be provided either as part of that industry notice or bulletin or put in the rule.
-

**ISSUE No. 5 [1829]**

**Rule:** OAR 436-180-0005 – Definitions

**Issue:** Definition of “client” and treatment of sister companies

**Background:** Current rule defines a “client” as not including

... a person that shares common majority ownership with the person providing workers under contract and for a fee.

The intent of the exclusion is to exempt persons that only provide services to commonly owned entities, or “sister companies,” from having to license as PEOs. A person doesn’t generally need to license as a PEO to provide coverage to a sister company, because sister companies can already be combined on the same policy under Oregon law and NCCI underwriting rules<sup>2</sup>.

However, some entities that are exempt from having to license have chosen to apply for licensure anyway, often for the purposes of reporting a sister company’s payroll taxes under their own FEINs. The division’s current practice is to grant these licenses, but the fact that sister companies do not technically qualify as “clients” could put them in an ambiguous position, because the statutes on coverage responsibility and exclusive remedy in a PEO relationship only apply to PEOs and their clients.

A secondary issue is that current rule does not provide a method for determining who owns a given entity. This makes it challenging to apply the rules to nonprofits and other entities for which there is no customary method of determining ownership.

**Alternatives:**

1. Adopt the following definition of “client:”
  - (2) "**Client**" means:
    - (a) a person to whom workers are provided on a temporary basis; or
    - (b) a person that enters into a PEO relationship with a PEO.
    - (c) “**Client**” does not include a person that enters into a PEO relationship with another person when the two persons share majority common ownership, unless the other person is licensed as a PEO
2. In addition to alternative 1, amend the definition of “common majority ownership” as follows:
  - (3) "**Common majority ownership**" means the same person or group of persons:
    - (a) Own a majority of issued voting stock in an entity;

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<sup>2</sup> See ORS 737.600 and rule ER-OWNC-CD038 et seq of the Oregon Experience Rating Plan Manual – 2025.

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(b) Comprise a majority of the owners, partners, or members of an entity, if no voting stock is issued; or

(c) Comprise a majority of the board of directors or comparable governing body if subsections (a) and (b) of this section are not applicable.

(d) If an entity owns a majority interest in another entity, which in turn owns a majority interest in another entity, all entities so related are considered to share common majority ownership.

This definition is based on NCCI rules for combining commonly owned entities on a single policy.

3. Something else.

### **Fiscal Impacts, including cost of compliance for small business:**

*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

### **How will adoption of this rule affect racial equity in Oregon?**

*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

**Recommendation:** *COMPLETE AFTER MEETING WITH STAKEHOLDER RAC. STATE WHETHER RULE CHANGE IS RECOMMENDED AND INCLUDE AN EXPLANATION THAT WILL HELP READERS UNDERSTAND THE REASONS FOR THE CHANGE OR THE DECISION NOT TO CHANGE THE RULE.]*

### **Minutes:**

- Aaron Fellman described the issue – see above – and asked the committee for advice.
  - No discussion.
-

**ISSUE No. 6** [New issue]

**Rule:** OAR 436-180-0005 – Definitions

**Issue:** Definition of “person”

**Background:** Under current rule, a “client” is defined, in part, as a person to whom workers are provided. Current rule defines a “person” as

an individual, partnership, corporation, joint venture, limited liability company, association, government agency, sole proprietorship, or other business entity allowed to do business in Oregon.

An entity that does not qualify as a person also cannot qualify as a client. As discussed in issue no. 5, existing law about coverage responsibility and exclusive remedy in a PEO relationship may not apply to non-clients.

One limitation of the “person” definition is that if an entity is not an individual, partnership, etc., it must be a “business entity allowed to do business in Oregon” to qualify as a person. Under this framework, employers that are not businesses and also don’t use a conventional organizational model may not technically qualify as clients.

Another limitation is that an entity must be “allowed to do business in Oregon” to qualify as a person. This could lead to an entity not qualifying as a client due to technical violations of Oregon law, such as failure to register with the Secretary of State.

We recommend replacing the term “business entity” with “employer” and deleting the phrase “allowed to do business in Oregon” to avoid these results.

**Alternatives:**

1. Amend the definition of “person” as follows:

(#) “Person” means an individual, partnership, corporation, joint venture, limited liability company, association, government agency, sole proprietorship, or other Oregon employer.

2. Something else.

**Fiscal Impacts, including cost of compliance for small business:**

*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

**How will adoption of this rule affect racial equity in Oregon?**

*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

## Meeting Minutes

**Recommendation:** *COMPLETE AFTER MEETING WITH STAKEHOLDER RAC. STATE WHETHER RULE CHANGE IS RECOMMENDED AND INCLUDE AN EXPLANATION THAT WILL HELP READERS UNDERSTAND THE REASONS FOR THE CHANGE OR THE DECISION NOT TO CHANGE THE RULE.]*

**Minutes:**

- Aaron Fellman described the issue – see above – and asked the committee for advice.
  - No discussion.
-

**ISSUE No. 7** [New issue]

**Rule:** New rule or rules in division 180 and/or chapter 836, division 043.

**Issue:** Policy model used when providing coverage to a PEO

**Background:** Workers' compensation coverage for PEOs can be provided using either a "master policy" or "multiple coordinated policy" (MCP) model<sup>3</sup>. In a master policy model, a PEO and its clients are all covered under a single policy in the name of the PEO. In an MCP model, a separate policy is issued for each client of a PEO, and endorsements are used to coordinate coverage between the PEO and client policies.

In many jurisdictions, insurers are allowed, or in some cases required, to provide voluntary market coverage using an MCP model. Assigned risk coverage must be provided using an MCP model in states where NCCI administers the assigned risk plan<sup>4</sup>.

Insurers that provide coverage to PEOs in Oregon must do so using a "hybrid master" model<sup>5</sup>. In this model, a PEO and its clients are covered under a single policy in the name of the PEO, but insurers also create "dummy policies" for each client in their systems. These dummy policies do not actually afford coverage; rather, they are a workaround to allow insurers to comply with ORS 737.270, which requires insurers to segregate payroll and loss data for PEO clients so that each client can have its own experience rating modification.

MCPs have administrative advantages over hybrid master policies. They allow insurers to report all data associated with a client under a single policy, unlike the current state, in which coverage data must be reported under the master policy and payroll and loss data must be reported under each client's dummy policy. They also make it easier for insurers and the division to send notices- such as compliance posters- directly to clients.

Because of these advantages, the division intends to allow insurers to begin providing coverage on an MCP basis as soon as possible after July 1, 2027. While we are open to discussion of continuing to allow hybrid master policies as well, stakeholders should be aware that this would require insurers and the division to implement more complicated reporting rules to accommodate the differences between the two.

**Alternatives (pick only one):**

1. Allow insurers to provide coverage to PEOs on either a master policy or MCP basis on or after July 1, 2027.
2. Allow insurers to provide coverage on either basis in the voluntary market, but require assigned risk coverage to be provided on an MCP basis. This requirement would apply to policies incepting or renewing on or after a given date. The date could be later than July

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<sup>3</sup> In Oregon and many other states, clients can also choose to purchase their own coverage.

<sup>4</sup> See NCCI's Nationwide Residual Market Manual, rule RM-PEDE-M1449.

<sup>5</sup> See NCCI's Oregon Basic Manual, rule BM-ELOR-CFA24.

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1, 2027 to give stakeholders more time to prepare.

3. Require insurers to provide coverage on an MCP basis in both the voluntary and assigned risk markets. This requirement would apply to policies incepting or renewing on or after a given date. The date could be later than July 1, 2027 to give stakeholders more time to prepare.

### **Fiscal Impacts, including cost of compliance for small business:**

*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

### **How will adoption of this rule affect racial equity in Oregon?**

*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

**Recommendation:** *COMPLETE AFTER MEETING WITH STAKEHOLDER RAC. STATE WHETHER RULE CHANGE IS RECOMMENDED AND INCLUDE AN EXPLANATION THAT WILL HELP READERS UNDERSTAND THE REASONS FOR THE CHANGE OR THE DECISION NOT TO CHANGE THE RULE.]*

### **Minutes:**

- Aaron Fellman described the issue – see above – and asked the committee for advice.
- Hannah Walker noted that NAPEO strongly advocates for alternative one. NAPEO views this as the broadest approach that allows the most flexibility for all parties. Hannah also noted, to clarify, that when NAPEO says the “hybrid approach,” NAPEO likes the NCCI approach to both master policy, MCP, and of course, still allowing those client direct purchase policies.
- Aaron Fellman noted that, under any of these options, client direct policies would still be allowed. That's a coverage model which is allowed under the law and there's no intention to take that off the table.
- Elaine Schooler noted that SAIF’s preference would be alternative 3, requiring coverage on an MCP basis in both the voluntary and assigned risk market. SAIF would appreciate a later date than July 1st of 2027 to provide adequate time for our internal folks to prepare our IT systems and processes. SAIF doesn't have a specific date in mind yet, but hopes to have that for the division in the coming weeks as the conversation may continue into a second meeting. SAIF does have some issues if there are multiple avenues, either a master policy or an MCP: that further complicates implementation and systems and processes where we have potentially two different tracks and makes it overall more complex to provide the services as an insurer.
- Todd Johnson with NCCI noted that NCCI was present and they had a few people following the discussion today available as resources if there were questions.
- Teresa McCormick with TNT, a local PEO based in the state of Oregon for between 34 and 35 years, noted the preference is definitely option one to allow insurers to provide

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coverage on either master policy or MCP. Teresa added that this is important because, as Oregon has its own rules, it has definitely hindered PEO's ability to get coverage in Oregon. There are carriers that specifically haven't worked with them in the past because of the rules in the state of Oregon. And some of the carriers want a master policy versus just an MCP policy. Teresa added that it's the small businesses that come on with a PEO, and a lot of times their options are not very easy to get on their own. Teresa wants to make sure that PEOs have the flexibility to write the best coverage for clients and really don't want to limit that and then also limit the carriers that are willing to write specifically a PEO in the state of Oregon.

- Paul Holtrup of Liberty Mutual noted a preference for option three.
  - Paul Hughes asked for clarity regarding a master policy in NCCI's system. Specifically, he asked if these collect the data for the experience mod for each underlying client company at the same time it collects the aggregate bond for the PEO.
  - Shani Racine with NCCI noted that, no, it is a special process. NCCI does collect data in aggregate for the PEO, but the separated data has a separate process under the master policy for Oregon. So, it is a little bit onerous, a little different than any other state. Shani noted that the process does take some manual work.
  - Paul Hughes clarified that, while Oregon has a completely unique system and is one of a kind as far as the systems NCCI works with, NCCI does have coding available to work with Oregon's hybrid system.
  - Shani confirmed that was correct.
  - Paul Hughes followed up asking that, for master policy, is it already flushed out in terms of how it works with EDI, as well as collection of client-specific data?
  - Shani Racine responded by noting there is actually another requirement for client specific data. There is a paper list that she understands has to be submitted to the division – another factor unique to Oregon. Oregon does have a working, functioning master policy system, but it is a hybrid like no other state.
  - Paul Hughes then asked Shani/NCCI what the anticipated burden to insurers would be if Oregon went from its current hybrid system to a normal system like that in another state?
  - Shani noted that Oregon's laws still want the separation of the experience rating, and would still require the client list. The reform in question doesn't get rid of those requirements.
  - Aaron Fellman noted that the division's understanding aligned with NCCI's.
  - Paul Hughes then asked if the only master policy that would be available to Oregonians would be the one that's currently in place versus the one that's in place for all the other states for NCCI?
  - Shani noted that yes, that is NCCI's understanding.
-

**ISSUE No. 8 [1790]**

**Rule:** OAR 436-180-0100– Responsibility for Providing Coverage under a Lease Arrangement  
OAR 436-180-0140– Qualifications, Applications, and Renewals for License as a PEO

**Issue:** Coverage requirements for inactive PEOs

**Background:** Under current rule, it is not clear that a PEO must sometimes maintain coverage even if it has no covered or direct hire employees.

Statute requires a PEO to provide workers' compensation coverage to all of its clients' workers, except when a client provides its own coverage. A PEO must also provide coverage to its own direct hire employees, like any other employer.

In some cases, all of a PEO's clients may have provided their own coverage. If the PEO also has no Oregon workers, it may have no liability under ORS chapter 656.

The division's current policy is to require these PEOs to maintain coverage anyway. This ensures that coverage will be in place if the PEO takes on a new client that does not have its own coverage. This protects the client as well as the PEO, because the client of a noncomplying PEO is not entitled to exclusive remedy protections.

The division bases its policy on OAR 436-180-0140, which requires a PEO to maintain active workers' compensation coverage to qualify for an initial license or renewal. However, the rule does not explicitly require a PEO to maintain coverage at all times while it is licensed. It might be helpful to clarify this point.

The division also requires PEOs that have no current clients to maintain coverage. Again, the motivation behind this policy is to ensure that coverage will be in place if the PEO takes on a new client. However, it may be reasonable to allow a PEO to voluntarily suspend its license in this situation. This would save the PEO the expense of obtaining coverage it does not need, as well as the time and expense of reapplying for a license if it begins operating in Oregon at a later date.

**Alternatives:**

1. Amend OAR 436-180-0100 as follows:

(1) Every PEO that enters into a PEO relationship with a client, and every person licensed to provide services as a PEO, must satisfy the requirements of ORS 656.017 and 656.407.

2. In addition to alternative 1, amend OAR 436-180-0140 as follows:

Qualifications, Applications, Voluntary Suspensions, and Renewals for License as a PEO

...

(#) A person licensed as a PEO that is not currently in a PEO relationship with any client may voluntarily suspend its license by providing notice to the director, subject to the following:

- (a) A suspended license will automatically expire two years after the date it was issued unless renewed as provided in section (6) of this rule.
- (b) The PEO may not enter into a PEO relationship with a client during the period in which its license is suspended.
- (c) The PEO may resume its license by providing notice to the director. Notice must be provided prior to the date on which the PEO intends to resume providing services as a PEO.
- (d) Notwithstanding OAR 436-180-0100(1), a PEO is not required to satisfy the requirements of ORS 656.017 and 656.407 during a period in which its license is suspended and it has no clients.

3. Something else.
4. Take no action.

**Fiscal Impacts, including cost of compliance for small business:**

*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

**How will adoption of this rule affect racial equity in Oregon?**

*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

**Recommendation:** *COMPLETE AFTER MEETING WITH STAKEHOLDER RAC. STATE WHETHER RULE CHANGE IS RECOMMENDED AND INCLUDE AN EXPLANATION THAT WILL HELP READERS UNDERSTAND THE REASONS FOR THE CHANGE OR THE DECISION NOT TO CHANGE THE RULE.]*

**Minutes:**

- Aaron Fellman described the issue – see above – and asked the committee for advice.
  - Hannah Walker noted that NAPO is in favor of the voluntary license, and would love to work with DCBS to ensure that that voluntary license isn't overly burdensome for DCBS or NAPEO's PEO members.
-

## **ISSUE No. 9 [1373]**

**Rule:** 436-180-0105 – Reporting Requirements for Carrier-Insured PEOs (new rule)  
436-180-0110 – Notice of Client Coverage for Self-Insured PEOs; Changes to Coverage Information; Termination; Reinstatements (new title)

**Issue:** EDI-based client coverage reporting

**Background:** Current rule requires PEOs to provide client coverage data to the division via form. The division uses this data to ensure that Oregon employers maintain coverage as they enter and exit PEO relationships.

PEO clients are the only carrier-insured employers whose coverage data is reported using a form-based process. Coverage for most other Oregon employers is reported electronically by their insurers using electronic data interchange (EDI). In EDI reporting, insurers transmit data on their policyholders to NCCI in a standardized electronic format. NCCI then transmits that data to the division and regulators in other states<sup>6</sup>.

EDI reporting is significantly more efficient and accurate than form-based reporting. An important goal of HB 2800 was to enable the division to require coverage data for carrier-insured PEO clients to be reported using EDI.

The transition to EDI reporting will require technical and procedural changes for insurers, PEOs, and the division. As an initial matter, it will also require several rule changes in divisions 180 and 162.

First, current rule 180-0110, which requires PEOs to report coverage data on their clients using forms, must be amended to exclude carrier-insured PEOs. Rule 180-0110 will continue to apply to self-insured PEOs, which do not have access to EDI.

Second, a new rule must be adopted directing insurers of carrier-insured PEOs to report client data to the division as provided by OAR 436-162, the division pertaining to EDI.

Third, conforming changes must be made to OAR 436-162. These changes will be addressed in Issue No. 12 and Minor Issue No. 6 (see page 44).

### **Alternatives:**

1. Replace the term “PEO” with “self-insured PEO” throughout OAR 436-180-0110.
2. Adopt the following new rule, as OAR 436-180-0105:

**Notice of client coverage for carrier-insured PEOs; termination**

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<sup>6</sup> In Oregon, SAIF Corporation reports coverage data to the division directly.

- (1) **Reporting of client data** When a PEO enters into a PEO relationship and the PEO is responsible for providing workers' compensation coverage to the client under OAR 436-180-0100(2), the PEO must notify the insurer.
- (2) **Reporting of proof of coverage data** The insurer of a carrier-insured PEO must file proof of coverage for the PEO and each client to which the PEO provides coverage. Proof of coverage must be filed as provided by OAR 436-162 within 30 days after coverage of the PEO or client becomes effective.
- (3) [See Issue No. 12.]
- (4) [See Minor Issue No. 6.]

3. Something else.

**Fiscal Impacts, including cost of compliance for small business:**

*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

**How will adoption of this rule affect racial equity in Oregon?**

*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

**Recommendation:** *COMPLETE AFTER MEETING WITH STAKEHOLDER RAC. STATE WHETHER RULE CHANGE IS RECOMMENDED AND INCLUDE AN EXPLANATION THAT WILL HELP READERS UNDERSTAND THE REASONS FOR THE CHANGE OR THE DECISION NOT TO CHANGE THE RULE.]*

**Minutes:**

- Aaron Fellman described the issue – see above – and asked the committee for advice.
- Elaine Schooler commented that, under the reporting of client data, when the PEO must notify the insurer, SAIF thought it may be helpful to provide a timeline. It doesn't say when it must be reported—if it's immediately, within seven days, 14 days. Some additional guidance is requested so that information is getting transmitted to the insurer in a timely manner and the insurer can follow up on it. Additionally, Elaine noted that there were questions about when the coverage becomes effective. Is it the time that the PEO notifies the insurer when the proof of coverage is, when filed by the insurer within that 30-day time period, or some other date?
- Aaron Fellman responded that, in terms of the effective date of the coverage, we're bound by statute. Aaron then read from the statute (new language within ORS 656.850 (under subsection (2)), see Appendix). This new statutory language provides that, when a PEO enters into a PEO relationship, the PEO shall satisfy the requirements of ORS 656.017

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and ORS 656.407 and provide workers' compensation coverage for all of the clients, covered employees, and direct hire employees. That replaces the language in existing law which says that this obligation kicks in when the PEO provides coverage to the client. So the point at which they enter the PEO relationship is the point where they begin to have the coverage responsibility under statute, which is when their insurer would be obligated to provide this coverage.

- Elaine then asked for further clarification: is that the time of the contract between the PEO and the client employer or a different time? And then, she added, for example, when the proof of coverage would be filed with the division by the insurer.
  - Aaron noted that they supposed it would be when the PEO begins to provide services to the client under the contract. But, that might be something that could bear clarification in the rule.
  - Elaine agreed and added that the concern stems from a potential gap where the PEO may enter the contract with the client, when the insurer is unaware, and then the information is transmitted to the insurer that there's this new client employer, but the insurer hasn't put anything into their system. She asked if that would result in a gap in coverage potentially for that client employer. She added that, alternatively, it highlights the importance of the insurer getting that information as quickly as possible from the PEO to ensure everybody is being provided timely.
  - Aaron noted that the potential reporting gap was a concern under existing law as well. Aaron is unsure that the law change really addresses it, but the division can take another look at the rule and see if we can add some clarity around that point.
  - Shani Racine commented regarding the proof of coverage: if it was an MCP approach, it would flow naturally for proof of coverage into the division's system. So, the burden wouldn't necessarily fall on the carrier if NCCI's reporting the coverage. Because it would be writing a policy under the MCP for that client, they would get that information time.
-

**ISSUE No. 10** [New issue]

**Rule:** 436-180-0105 – Reporting Requirements for Carrier-Insured PEOs (new rule)

**Issue:** Termination notice requirements for carrier-insured PEOs

**Background:** A PEO may terminate its obligation to provide coverage to a client by serving the client with a termination notice and sending copies to the division and its insurer. Under current law, these notices serve several purposes. First, they give the client advance warning that their coverage will be terminated. Second, they give the insurer notice that it will no longer be liable for claims made by client workers as of the termination date. Third, they provide the division with coverage data it would otherwise receive through EDI.

As discussed in issue no. 9, the division intends to require coverage data for carrier-insured PEO clients to be reported using EDI going forward. However, PEOs will still be required to serve clients and insurers with termination notices to terminate coverage obligations, and the division still has an interest in ensuring that clients receive proper notice of termination.

Accordingly, the division may want to adopt requirements for termination notices issued by carrier-insured PEOs. It may not be necessary for these requirements to be as prescriptive as the requirements for self-insured PEOs under current rule 0110. We invite feedback from stakeholders on this point.

**Alternatives:**

1. Require termination notices issued by carrier-insured PEOs to meet some or all of the requirements of current rule 0110. Under these requirements, a termination notice be sent to the client's last known address by mail and must include:
  - A requested effective date
  - The reason for the termination
  - The client's name, FEIN, phone number, email address, and mailing address.
  - The name, phone number, and signature of an authorized representative of the PEO.
2. In addition to alternative 1, require termination notices for both carrier-insured and self-insured PEOs to include additional mandatory language, such as:
  - "Your workers' compensation coverage will end on [date] or 30 days after this notice is received by the insurer, whichever is later."
  - Contact information for the insurer.
3. In addition to alternatives 1 and 2, create a form PEOs may use to meet the requirements of the new rule.
4. Something else.

**Fiscal Impacts, including cost of compliance for small business:**

*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

**How will adoption of this rule affect racial equity in Oregon?**

*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

**Recommendation:** *COMPLETE AFTER MEETING WITH STAKEHOLDER RAC. STATE WHETHER RULE CHANGE IS RECOMMENDED AND INCLUDE AN EXPLANATION THAT WILL HELP READERS UNDERSTAND THE REASONS FOR THE CHANGE OR THE DECISION NOT TO CHANGE THE RULE.]*

**Minutes:**

- Aaron Fellman described the issue – see above – and asked the committee for advice.
  - Hannah Walker noted that NAPEO would be happy to defer to DCBS on what the agency feels is best in this situation. However, NAPEO asks that the new requirement not be any more burdensome or cumbersome than what's in practice today. And to that point, it sounds like Alternative 3, where a form is created for PEOs to use, may be the best approach.
  - Edwin Herrera of Liberty Mutual asked when it references “by mail,” if the current rule is rooted in statute. Edwin asked if a consideration could be made for alternative forms of delivery (e.g. electronic).
  - Aaron Fellman noted that it was a good question, and the concepts of “mailing” are complex. Aaron asked if they could put a pin in that one and get back to the committee with an answer.
  - Edwin said yes, that would be fine.
-

**ISSUE No. 11** [1842]

**Rule:** 436-180-0105 – Reporting Requirements for Carrier-Insured PEOs (new rule)  
436-180-0110 – Notice of Client Coverage for Self-Insured PEOs; Changes to Coverage Information; Termination; Reinstatements

**Issue:** Reporting terminations by operation of law

**Background:** A PEO may terminate its obligation to provide coverage to a client by serving the client with a termination notice and sending copies to the division and its insurer.

A PEO's coverage obligation may also be terminated by operation of law if the client obtains alternate coverage. In this case there is no need for the PEO to file a notice to effect the termination. However, the PEO's insurer still has an interest in knowing that the coverage obligation has been terminated; if it does not, it might accidentally accept a claim made by one of the client's workers. The division also has an interest in knowing that a coverage obligation assumed by a self-insured PEO has been terminated.

Current rule provides- under 0110(3)(d)- that a termination notice must be sent within 30 days after the final date of the PEO relationship or knowledge that the client obtained other coverage. But because the parent section only addresses situations when the PEO intends to terminate a coverage obligation, the requirement to file a notice when an obligation is terminated by the client could be made more clear. The division will also need to adopt requirements for carrier-insured PEOs.

As an alternative, the division could adopt new rules allowing terminations by operation of law to be reported using a simplified form rather than the existing termination notice. This would have the advantage of not requiring a redundant notice to be sent to the client.

**Alternatives:**

1. Amend 0110(3) as follows, and adopt equivalent language under new 0105:

A self-insured PEO ~~must provide written notice to~~ may terminate its obligation to provide coverage to a client, or upon becoming aware that a client has obtained other coverage ~~by providing written notice of the termination~~, subject to the following:

2. Delete language on terminations by operation of law from rule 0110(3), and adopt a new rule requiring PEOs to provide data on these terminations using a new form.
3. Do nothing.

**Fiscal Impacts, including cost of compliance for small business:**

*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

**How will adoption of this rule affect racial equity in Oregon?**

*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

**Recommendation:** *COMPLETE AFTER MEETING WITH STAKEHOLDER RAC. STATE WHETHER RULE CHANGE IS RECOMMENDED AND INCLUDE AN EXPLANATION THAT WILL HELP READERS UNDERSTAND THE REASONS FOR THE CHANGE OR THE DECISION NOT TO CHANGE THE RULE.]*

**Minutes:**

- Aaron Fellman described the issue – see above – and asked the committee for advice.
  - No discussion.
-

**ISSUE No. 12** [New issue]

**Rule:** New rule in division 162

**Issue:** Insurer retention of termination notices

**Background:** Although termination notices submitted by a PEO are procedurally similar to cancelation notices submitted by an employer, they have different retention requirements.

Under ORS 656.423, an employer must give its insurer written notice in order to cancel its coverage. The effective date of the cancelation is based on the date the insurer receives this notice.

Accordingly, current rule requires insurers to retain records of cancelation notices, including proof of the date a notice was received. This is important because the date of receipt would be a key factor in resolving a dispute over when coverage actually ended- for example, if a worker made a claim with a date of injury close to the cancelation date and the employer had not replaced its coverage.

Under ORS 656.850, a PEO must give its client, the director, and its insurer written notice in order to cancel a coverage obligation, and the effective date of a termination is based on the date the insurer receives this notice. This is similar to how cancelation notices work under ORS 656.423.

However, insurers are not required to retain records of termination notices, unlike cancelation notices. To minimize the likelihood of responsibility disputes, we recommend adopting this requirement.

**Alternatives:**

1. Adopt the following new rule:

When a PEO terminates its responsibility to provide coverage to a client by giving written notice of the termination to its insurer, the insurer must:

- (1) Retain a record of the termination, including proof of date of receipt of that notice, for inspection by the division; and
- (2) Provide notice to the director by EDI.

2. Something else.

**Fiscal Impacts, including cost of compliance for small business:**

*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

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### **How will adoption of this rule affect racial equity in Oregon?**

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**Recommendation:** *COMPLETE AFTER MEETING WITH STAKEHOLDER RAC. STATE WHETHER RULE CHANGE IS RECOMMENDED AND INCLUDE AN EXPLANATION THAT WILL HELP READERS UNDERSTAND THE REASONS FOR THE CHANGE OR THE DECISION NOT TO CHANGE THE RULE.]*

### **Minutes:**

- Aaron Fellman described the issue – see above – and asked the committee for advice.
  - Paul Hughes noted that, speaking from a brokerage standpoint, he didn't think any of the carriers he represents would have any issue with the retention of records.
-

**ISSUE No. 13** [New issue]

**Rule:** New rule

**Issue:** Client list requirements

**Background:** Under ORS 656.850 as amended by HB 2800, a PEO must provide the director with reports listing all clients with which it has entered into a PEO relationship or to which it provides coverage. The director must prescribe the form and interval of these reports by rule.

Adopting a standardized electronic format would make it easier for PEOs to provide these reports and for the division to work with the data provided. Data relevant to the division include:

- Client name and assumed business name, if any
- Client FEIN
- Number of Oregon subject workers
- Date PEO relationship began in Oregon
- If the PEO provides coverage to the client, the date Oregon coverage began and ended.
- If PEO is self-insured, approximate client payroll (within bands- e.g. >100k, >500k, >1000K)
- What other services the PEO provides to its clients. In particular, it would be relevant to know whether the PEO provides payroll services, and, if so, whether it reports that payroll to OED under its own FEIN.
- Any other information requested by the director.

A number of current licensees are accredited by the Employer Services Assurance Corporation (ESAC), which requires accredited PEOs to provide monthly client lists. As far as possible, we plan to align our form with ESAC requirements to minimize administrative burdens on PEOs (e.g. by including the same fields in the same order in addition to Oregon-only fields.)

**Alternatives:**

1. Adopt the above requirements and require client lists to be submitted to the division electronically using an approved form.
2. In addition to alternative 1, require client lists to be submitted on a quarterly or biannual basis.
3. Something else.

**Fiscal Impacts, including cost of compliance for small business:**

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**How will adoption of this rule affect racial equity in Oregon?**

## Meeting Minutes

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**Recommendation:** *COMPLETE AFTER MEETING WITH STAKEHOLDER RAC. STATE WHETHER RULE CHANGE IS RECOMMENDED AND INCLUDE AN EXPLANATION THAT WILL HELP READERS UNDERSTAND THE REASONS FOR THE CHANGE OR THE DECISION NOT TO CHANGE THE RULE.]*

### **Minutes:**

- Aaron Fellman described the issue – see above – and asked the committee for advice.
  - Hannah Walker noted that NAPEO is in favor of client lists being submitted electronically, following the same ESAC format. And, NAPEO’s preference is to submit these on an annual basis.
  - Elaine Schooler asked if the division will be cross-checking the reported client list from the PEO with the proof of coverage on file from the insurers. And, should there be a discrepancy, she asked if there is any intended follow up by the division to notify the insurer or the PEO that they have conflicting information.
  - Aaron Fellman noted that yes, one of the division’s intentions in putting this client risk requirement to statute is to provide a basic check on the information the division is getting through the EDI stream. We are still developing the procedures that will follow in working with this data. So, Aaron was unable to say how the division would respond to detecting a discrepancy. But, Aaron noted that it is one of the intentions of collecting this data.
  - Elaine then commented that, to the extent that would be a process versus part of the rule, SAIF would be open to that discussion and what that might look like if it is part of a rule.
-

**ISSUE No. 14 [1519]**

**Rule:** New rule

**Issue:** Compliance poster requirements

**Background:** ORS 656.056 requires every Oregon employer to display a compliance poster provided by the division in their workplace. Compliance posters advise workers of their rights and provide the employer’s policy information.

The division sends compliance posters to most employers automatically upon receiving a proof of coverage filing via EDI. Under current rule, PEO clients are an exception, because client coverage is not reported via EDI. Instead, PEOs must make copies of their own compliance poster and provide these to clients, or request additional copies from the division.

[Bulletin 273](#) provides that a PEO must ensure that compliance posters are posted in clients’ workplaces. It also provides that a PEO must ensure that compliance posters are removed when it ceases providing coverage to a client. These requirements do not currently appear in rule.

Under the new rules, the division anticipates being able to automatically send compliance posters to PEO clients whose coverage is provided under an MCP. The division may or may not be able to automatically send posters to clients whose coverage is provided under a master policy.

New rule language should be added clarifying who is responsible for ensuring compliance with ORS 656.056 under a PEO relationship.

**Alternatives:**

1. Adopt rule language providing that the client of a PEO is responsible for complying with ORS 656.056, and add language to termination notices instructing clients to remove compliance posters.
2. Something else.

**Fiscal Impacts, including cost of compliance for small business:**

*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

**How will adoption of this rule affect racial equity in Oregon?**

*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

**Recommendation:** *COMPLETE AFTER MEETING WITH STAKEHOLDER RAC. STATE WHETHER RULE CHANGE IS RECOMMENDED AND INCLUDE AN EXPLANATION THAT*

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*WILL HELP READERS UNDERSTAND THE REASONS FOR THE CHANGE OR THE DECISION NOT TO CHANGE THE RULE.]*

### **Minutes:**

- Aaron Fellman described the issue – see above – and asked the committee for advice.
  - Hannah Walker noted that NAPEO is in favor of moving the responsibility to the client level. She added that the PEO is the administrative employer and provides the administrative services. PEOs do not have direction or control over the work site of the clients. So, it's impossible for PEOs to go down and make clients take those posters down.
-

**ISSUE No. 15** [New issue]

**Rule:** 436-180-0140 – Qualifications, Applications, and Renewals for License as a Worker Leasing Company

**Issue:** Status of existing licenses

**Background:** Current law provides that a person must have a license to provide services as a worker leasing company. Once issued, a worker leasing license remains in effect for two years.

HB 2800 reclassifies worker leasing companies as PEOs effective July 1, 2027. As under current law, a person must have a license to provide services as a PEO.

Most outstanding worker leasing licenses will remain in force past July 1, 2027. Technically these licenses do not allow a licensee to provide services as a PEO, but requiring licensees to reapply early would serve no purpose and be inconvenient for both stakeholders and the division.

**Alternatives:**

1. Adopt the following language under OAR 436-180-0140:  
  
(#) A worker leasing license issued prior to July 1, 2027 is also a license to provide services as a PEO on or after that date.
2. Something else.

**Fiscal Impacts, including cost of compliance for small business:**

*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

**How will adoption of this rule affect racial equity in Oregon?**

*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

**Recommendation:** *COMPLETE AFTER MEETING WITH STAKEHOLDER RAC. STATE WHETHER RULE CHANGE IS RECOMMENDED AND INCLUDE AN EXPLANATION THAT WILL HELP READERS UNDERSTAND THE REASONS FOR THE CHANGE OR THE DECISION NOT TO CHANGE THE RULE.]*

**Minutes:**

- Aaron Fellman described the issue – see above – and asked the committee for advice.
  - No discussion.
-

**ISSUE No. 16 [1849]**

**Rule:** 436-180-0140(3) – Qualifications, Applications, and Renewals for License as a PEO

**Issue:** Requiring ownership information with license application

**Background:** The division routinely requests that applicants for PEO licenses provide organization charts showing their parent companies, affiliates, and subsidiaries. The division uses this information in multiple ways:

- To ensure that when multiple PEOs are covered by the same policy, it is because they share majority common ownership and not because one or more PEOs are improperly providing coverage to other PEOs.
- To identify cases where a parent company is in financial or legal difficulties that could create issues for a subsidiary licensee.
- To prevent persons with a history of financial crimes from controlling a licensee through indirect ownership.

The division has the authority to request this information under 436-180-0140(3)(d), which requires applicants to provide “any additional information requested by the director.” However, the licensure process could be made more efficient if applicants were required to provide organization charts with their initial application, rather than as follow-up documentation at the director’s request.

**Alternatives:**

1. Amend current rule to require an applicant to provide an organization chart showing all persons with which the applicant shares common majority ownership.
2. In addition to alternative 1, require an organization chart to show:

All persons that own more than 10 percent of the applicant. For the purpose of this subparagraph, if a person owns an interest in another person, which in turn owns more than 10 percent of the applicant, the first person is considered to own an interest in the applicant in proportion to its interest in the second person.

For a definition of “common majority ownership,” see issue no. 5.

3. Something else.
4. Do nothing.

**Fiscal Impacts, including cost of compliance for small business:**

*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

**How will adoption of this rule affect racial equity in Oregon?**

*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

**Recommendation:** *COMPLETE AFTER MEETING WITH STAKEHOLDER RAC. STATE WHETHER RULE CHANGE IS RECOMMENDED AND INCLUDE AN EXPLANATION THAT WILL HELP READERS UNDERSTAND THE REASONS FOR THE CHANGE OR THE DECISION NOT TO CHANGE THE RULE.]*

**Minutes:**

- Aaron Fellman described the issue – see above – and asked the committee for advice.
  - Hannah Walker noted that it is NAPEO’s preference to do nothing and keep the current practice in place; it is NAPEO’s understanding that these charts are not requested every time. So, to ensure additional burdens aren't placed on PEOs, NAPEO would like to keep current practice and do nothing.
-

**ISSUE No. 17** [New issue]

**Rule:** 436-180-0140(3)(a)(H) – Qualifications, Applications, and Renewals for License as a Professional Employer Organization

**Issue:** Updating process for verifying tax compliance

**Background:** As part of its PEO licensure process, the division verifies that applicants are in compliance with state and federal tax law. Current rule requires an applicant for a PEO license to provide signed releases authorizing the division to obtain certificates of tax compliance from the Oregon Employment Department (OED), Oregon Department of Revenue (DOR), and Internal Revenue Service (IRS).

The division’s past practice was to forward these releases to the appropriate agency, at which point the agency would provide the necessary certificate. However, DOR and IRS no longer accept releases from third parties. Instead, a business must submit its release directly to the agency, at which point the agency will send a certificate of tax compliance to DCBS.

A related issue is that some applicants may not be able to obtain certificates due to compliance issues. The division would not necessarily decline to issue a license in that situation, because sometimes the issues involved are relatively minor. However, staff would need more information to make that decision. Requiring applicants that cannot obtain certificates to explain why they are not in compliance as part of the application process, rather than at the division’s request, would make the process more efficient.

**Alternatives:**

1. Amend the rules to require an applicant for a PEO license to obtain certificates of tax compliance from OED, DOR, and the IRS for the three years preceding the application.

(Although OED still honors releases from third parties, we recommend amending the rule for it as well in the interest of maintaining a consistent process.)

2. In addition to alternative 1, amend the rules to require an applicant who cannot obtain certificates to explain why it is unable to do so and provide documentation.

If this alternative is adopted, it may be advisable to amend OAR 436-180-0140(9)(j) to provide that the division may deny a license application based on nonpayment of taxes notwithstanding the applicant’s explanation.

**Fiscal Impacts, including cost of compliance for small business:**

*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

**How will adoption of this rule affect racial equity in Oregon?**

*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

**Recommendation:** *COMPLETE AFTER MEETING WITH STAKEHOLDER RAC. STATE WHETHER RULE CHANGE IS RECOMMENDED AND INCLUDE AN EXPLANATION THAT WILL HELP READERS UNDERSTAND THE REASONS FOR THE CHANGE OR THE DECISION NOT TO CHANGE THE RULE.]*

**Minutes:**

- Aaron Fellman described the issue – see above – and asked the committee for advice.
  - No discussion.
-

**ISSUE No. 18** [New issue]

**Rule:** 436-180-0140(6) – Qualifications, Applications, and Renewals for License as a PEO

**Issue:** Extension of licenses

**Background:** Current OAR 436-180-0140(6) provides that a license automatically expires two years after the date it was issued unless renewed by the licensee. To renew a license, a licensee must submit a renewal application at least 90 days before the expiration of the license. A renewal application must include much of the information included on the initial application, as well as disclosures of any information that has changed.

In some cases, licensees have not been able to provide all the information required on a renewal application before the expiration of their current license. The division generally will not renew a license based on an incomplete application. At the same time, allowing the license to expire would be undesirable, because it would force the licensee’s clients to obtain alternate coverage at short notice.

One alternative would be to allow a licensee to request a short-term extension to its license, to be granted at the division’s discretion. This would minimize the disruption to clients and give the licensee more time to address its issues without the risk of renewing a license based on an incomplete application.

**Alternatives:**

1. Amend current rule as follows:

(6)(a) License renewal. A license will automatically expire two years after the date it was issued unless renewed by the licensee or extended by the director. To renew a license, the PEO must:

...

(b) The effective period of a license may be extended at the sole discretion of the director, subject to the following:

(A) A request for extension must be made in writing and must identify the reason why the PEO is unable to timely apply for a renewal and how it intends to resolve the matter. The PEO may use form ##### for this purpose.

(B) A license may be extended for not more than 60 days.

2. Something else.

**Fiscal Impacts, including cost of compliance for small business:**

*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

**How will adoption of this rule affect racial equity in Oregon?**

*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

**Recommendation:** *COMPLETE AFTER MEETING WITH STAKEHOLDER RAC. STATE WHETHER RULE CHANGE IS RECOMMENDED AND INCLUDE AN EXPLANATION THAT WILL HELP READERS UNDERSTAND THE REASONS FOR THE CHANGE OR THE DECISION NOT TO CHANGE THE RULE.]*

**Minutes:**

- Aaron Fellman described the issue – see above – and asked the committee for advice.
  - No discussion.
-

**ISSUE No. 19** [New issue]

**Rule:** 436-180-0140 – Qualifications, Applications, and Renewals for License as a PEO

**Issue:** Voluntary cancelation and nonrenewal of licenses

**Background:** Current OAR 436-180-0140(6) provides that a license automatically expires two years after the date it was issued unless renewed by the licensee. To renew a license, a licensee must submit a renewal application at least 90 days before the expiration of the license.

If a licensee does not intend to renew its license, the division requires the licensee to provide written notice. Having this notice helps the division ensure that any remaining clients find alternate coverage on a timely basis. However, the notice requirement is not explicit in rule.

Rule also does not provide a process for a PEO to voluntarily cancel its license (as opposed to voluntarily suspending its license, as discussed in issue 8.) Having such a process, and requiring notice to the division, would help ensure smooth offboarding of clients.

**Alternatives:**

1. Revise rule and adopt new rule language as follows:

(6) License renewal. A license will automatically expire two years after the date it was issued unless renewed by the licensee or extended by the director<sup>7</sup>. [...]

...

(e) If the PEO does not intend to renew its license, it must provide written notice to the director at least 90 days before the expiration of its license. The notice must certify that as of the date the license expires, the PEO will have no clients with which it has entered into a PEO relationship. The PEO may use form ##### for this purpose.

(f) A PEO may cancel its license prior to expiration by providing written notice to the director at least 90 days before the intended date of cancelation. The notice must certify that as of the intended date of cancelation, the PEO will have no clients with which it has entered into a PEO relationship. The PEO may use form ##### for this purpose.

1.2. Do nothing.

**Fiscal Impacts, including cost of compliance for small business:**

*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

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<sup>7</sup> See previous issue.

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### **How will adoption of this rule affect racial equity in Oregon?**

*[PLACEHOLDER TO RECORD INPUT FROM THE ADVISORY COMMITTEE, BUT WE MAY RECORD PROBABLE IMPACTS AS SOON AS WE KNOW WHAT THEY ARE.]*

**Recommendation:** *COMPLETE AFTER MEETING WITH STAKEHOLDER RAC. STATE WHETHER RULE CHANGE IS RECOMMENDED AND INCLUDE AN EXPLANATION THAT WILL HELP READERS UNDERSTAND THE REASONS FOR THE CHANGE OR THE DECISION NOT TO CHANGE THE RULE.]*

### **Minutes:**

- Aaron Fellman described the issue – see above – and asked the committee for advice.
- Hannah Walker noted that NAPEO is in favor of doing nothing (option 2) just to ensure that there's not additional burdens for PEOs.
- Elaine Schooler commented that SAIF thought it would be helpful for the insurers to also receive notice when the license is no longer in effect; this would help to ensure that all issues on the insurer's end are concluded and there aren't open situations with that PEO that the insurer needs to address.

## Minor Issues

Addressing the following issues would require rule changes, but the program area doesn't anticipate any meaningful impact on stakeholders. Accordingly, these issues are being presented in summary form. Policy is happy to facilitate a fuller discussion if the committee prefers.

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### Minor Issue No. 1 (new issue)

#### **Rule:** OAR 436-050-0005– Definitions

Current law defines a worker leasing company as a person that provides workers to a client “by contract and for a fee.” HB 2800 deletes this term and replaces it with the term “PEO,” defined as “a person that enters into an agreement to assume employer responsibilities for client workers.”

In very rare cases, the division has determined that persons who would otherwise qualify as worker leasing companies were not required to do so because they did not provide workers for a fee- for example, a company owned by a family that provided services exclusively to farms owned by members of that family. Arguably, these persons would be required to license under HB 2800, which does not explicitly provide that an agreement must involve a fee to qualify as a PEO relationship.

To maintain continuity with current law, we recommend defining “agreement” as “a verbal or written contract to provide services for a fee.”

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### **Minutes:**

- Aaron Fellman described the issue – see above – and asked the committee for advice.
- Hannah Walker noted that NAPEO is strongly against allowing for verbal agreements. She noted that these are complex legal documents that outline complex liabilities, responsibilities.

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### Minor Issue No. 2 (1540, 1541)

#### **Rule:** OAR 436-050-0110(2)– Notice of Client Coverage for Self-Insured PEOs; Changes to Coverage Information; Termination; Reinstatements

Current rule requires PEOs to report client coverage data using division forms. The content of these forms is prescribed by rule, but in some cases fields that appear on the forms are not required by rule.

The division recommends updating the rules for consistency with the forms. We don't anticipate any impact to PEO stakeholders because they are already providing the requested information.

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We recommend the following changes:

- Add date of reinstatement as a required field in form 5361 “Reinstatement Notice.”
- Add PEO name, Oregon license number, and FEIN as required fields on form 3271, “PEO Termination Notice.”

We also recommend deleting the requirement that PEOs report updates to clients’ NAICS codes and NCCI class codes when submitting update forms.

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### **Minutes:**

- Aaron Fellman described the issue – see above – and asked the committee for advice.
  - No discussion.
- 

### **Minor Issue No. 3** (1520, 1521, 1522, and 1845)

**Rule:** OAR 436-180-0140– Qualifications, Applications, and Renewals for License as a Worker Leasing Company

Current rule requires an applicant for a PEO license to submit form 2466, “Worker Leasing License Application,” or form 5362, “Worker Leasing License Application – Limited.” The content of these forms is prescribed by rule, but in some cases fields that appear on the forms are not required by rule.

The division recommends updating the rules for consistency with the forms. We don’t anticipate any impact to PEO stakeholders because they are already providing the requested information.

We recommend the following changes:

- Add a requirement that applicants provide a contact person for questions about client proof of coverage issues.
- Add a requirement that applicants disclose the date a controlling person started in their current position.
- Add a requirement that controlling persons pledge to comply with ORS 656.850 and OAR 436-180 by signing form 2466 or 5362.

We also recommend deleting the requirement that a PEO disclose the expiration dates of its licenses in other states, as well as the requirement that applications be notarized.

### **Minutes:**

- Aaron Fellman described the issue – see above – and asked the committee for advice.
  - No discussion.
- 

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### **Minor Issue No. 4** (new issue)

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### **Rule:** OAR 436-180-0140– Qualifications, Applications, and Renewals for License as a Worker Leasing Company

A first-time applicant for a PEO license will sometimes submit its application materials in several stages, usually because it is trying to obtain coverage or a certificate of compliance from a third party. The division is generally willing to accommodate these applicants. However, the division rejects applications that are not completed within certain timeframes, because earlier-submitted materials may no longer be up to date.

Current rule does not provide a timeframe for completing an application. For transparency, we recommend adopting the following rule:

(#) An applicant must submit its application and all required documentation within a period of no more than six months. An application that is not completed in this period will be rejected.

### **Minutes:**

- Aaron Fellman described the issue – see above – and asked the committee for advice.
  - Elaine Schooler asked, for clarification, if as part of the application, the PEO applicant is required to supply proof of coverage in order to obtain the license. Or, she added, can that coverage be secured once the license has been obtained?
  - Aaron Fellman responded that they need to have coverage in order to qualify for a license.
- 

### **Minor Issue No. 5** (new issue)

#### **Rule:** OAR 436-180-0140– Qualifications, Applications, and Renewals for License as a Worker Leasing Company

#### OAR 436-180-0160– Suspension or Revocation of License

Current rule provides that the director may deny an application for a worker leasing license on the basis of having previously denied an application for the same applicant. Current rule also provides that when a worker leasing company’s license is suspended or revoked, the suspension or revocation may be applied to a new worker leasing company created by the transfer of the original company’s assets to another person.

As discussed in Issue No. 1, we intend to update references to worker leasing companies throughout the chapter, including in the above rules, to refer to PEOs. However, to ensure that WCD is able to take licensing decisions involving worker leasing companies into account, we recommend adding the following language to both of these rules:

For the purposes of this rule, “PEO” includes a person licensed as a worker leasing company prior to July 1, 2027.

### **Minutes:**

- Aaron Fellman described the issue – see above – and asked the committee for advice.

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- No discussion.
- 

### **Minor Issue No. 6** (new issue)

#### **Rule:** OAR 436-050-0200– Assessment of Civil Penalties

Current rule provides that the director may assess a civil penalty against a PEO that fails to comply with ORS 656.850, 656.855, OAR 436-180, or the orders of the director.

This list excludes one statute specific to self-insured PEOs: ORS 656.403(4), which requires self-insured PEOs to comply with the PEO-specific requirements of ORS chapter 737. Notably, ORS 737.270(2) requires PEOs to report payroll and loss data for their clients to NCCI so that experience rating modifications can be calculated for former clients.

We recommend adding failure to comply with ORS 656.403(4) to the list of reasons the director may assess a civil penalty. We consider this a minor change, because we can already assess penalties for this reason under our statutory authority.

#### **Minutes:**

- Aaron Fellman described the issue – see above – and asked the committee for advice.
  - No discussion.
- 

### **Minor Issue No. 7** (new issue)

#### **Rule:** OAR 436-162-0035(4)– General Filing Information

Current rule 162-0035(4) provides that a policy filing for a PEO does not eliminate the PEO’s requirement to file worker leasing notices under OAR 436-180-0110. Because rule 180-0110 will only apply to self-insured PEOs going forward, rule 162-0035(4) should be updated to refer to new rule 180-0105 instead.

The rule should also be updated to provide that a PEO must file termination notices rather than worker leasing notices, because this is the only form of notice that must be reported to the division under the new rules.

We recommend amending rule 162-0035(4) as follows:

PEO policies will be accepted by EDI, subject to the same data and transaction editing standards as other policies. A policy filing for a PEO does not eliminate the PEO’s requirement to file ~~worker leasing termination~~ notices under OAR 436-180-~~0110~~ 0105.

#### **Minutes:**

- Aaron Fellman described the issue – see above – and asked the committee for advice.
  - No discussion.
-

## **Housekeeping Issues**

- Updates to terminology used in division 180.
- Various grammatical changes (see issue 1511)
- 0003: Standardize “purpose and applicability” section with other divisions (see issue 1716)
- 0140: Add reference to Bulletin 271 (see issue 1517)
- 0140: Add cross-reference to language in OAR 436-180-0160 allowing suspensions or revocations to apply to new PEOs created through the sale, transfer, or conveyance of ownership or of the PEO’s assets to another person (see issue 1855)
- 0110: Add reference to Bulletin 273 (see issue 1823)
- 060-0025(4)(a)(A): Amend reference to worker leasing company with PEO
- 105-0005(1): Amend definition of “client” to reflect new regulatory scheme
- 110-0005(1): Amend definition of “client” to reflect new regulatory scheme
- 110-0310(1)(d): Amend reference to worker leasing company with PEO
- 836-043-0005(9)(b), 0024(6), 0041(2)(c) and (2)(d), 0044(10), 0053(2), and 0068(1)(f): Update terminology for consistency with HB 2800.
- 836-085-0215(7): Update terminology for consistency with HB 2800.

## **Minutes:**

- Marie asked the committee for any last comments or questions before ending the meeting.
- Anne Donovan, who operates a local PEO, asked for clarification regarding the unique statutory issue that was discussed earlier in Oregon: why would the hybrid NCCI model not work in Oregon?
- Aaron responded that, because it is complex, they would like to put together a written response to that question.

**Appendix: ORS 656.849, 656.850, and 656.855, effective July 1, 2027**

**656.849** As used in ORS 656.018, 656.403, 656.702, 656.850, 656.855 and 737.270 and this section:

- (1) “Client worker” means an individual who performs services for compensation for the client of a professional employer organization.
- (2) “Covered employee” means a client worker for whom a PEO has assumed employer responsibilities under a PEO relationship.
- (3) “Direct hire employee” means a client worker for whom a PEO has not assumed employer responsibilities under a PEO relationship.
- (4) “Multiple coordinated policy basis” means an arrangement under which a separate policy for workers’ compensation coverage is issued to or on behalf of each client or group of affiliated clients of a PEO, which coordinates the premium obligations and stated policy communications with respect to the policy.
- (5) “PEO relationship” means an agreement between a PEO and a client employer under which certain employer responsibilities for some or all of the client employer’s workers are allocated.
- (6)
  - (a) “Professional employer organization” or “PEO” means a person that enters into a PEO relationship with a client employer.
  - (b) “Professional employer organization” or “PEO” does not mean a person that solely provides workers to a client on a temporary basis or a person that provides payroll processing or similar administrative services without assuming employer responsibilities for client workers.
- (7) “Temporary basis” means providing workers to a client:
  - (a) For special situations, including but not limited to employee absences, employee leaves, professional skill shortages, seasonal workloads and special assignments and projects with the expectation that the position will be terminated when the special situation ends.
  - (b) As probationary new hires with a reasonable expectation of transitioning to permanent employment with the client, if the client uses a preestablished probationary period in its overall employment selection program.
- (8) “Temporary service provider” means a person that:

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(a) Regardless of the terminology the parties use to describe the relationship, enters into contracts with clients under which:

(A) The person provides workers to the client on a temporary basis;

(B) The worker's contract of employment is with the person rather than the person's client; and

(C) The person retains all employer responsibilities for the worker, except to the extent necessary to allow the person's client to direct and control the services provided by the worker for the client; and

(b) Customarily attempts to reassign the person's workers to other clients when the workers finish each assignment, except for workers provided as described in subsection (7)(b) of this section.

---

### **656.850**

(1)

(a) A person may not provide services as a professional employer organization (PEO) in this state without first having obtained a license from the Director of the Department of Consumer and Business Services.

(b) No person required to obtain a license under this section shall fail to comply with this section or ORS 656.855 or any rule adopted pursuant to such sections.

(2)

(a) When a PEO enters into a PEO relationship, the PEO shall satisfy the requirements of ORS 656.017 and 656.407 and provide workers' compensation coverage for all of the client's covered employees and direct hire employees unless, during the term of the PEO's agreement with the client, the client has proof of coverage on file with the director.

(b) If the client has proof of coverage on file with the director, the client's coverage shall extend to all of the client's covered employees and direct hire employees.

(c) If the client allows the coverage to expire and continues to employ covered employees or direct hire employees, the client shall be considered a noncomplying employer unless the PEO has complied with subsection (4) of this section.

(3) When a PEO enters into a PEO relationship, the PEO shall ensure that the client provides adequate training, supervision and instruction for the client's covered employees to meet the requirements of ORS chapter 654.

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(4) If a PEO enters into a PEO relationship and the PEO is responsible for providing workers' compensation coverage to the client under subsection (2) of this section, the PEO shall:

(a) If the PEO is a carrier-insured employer, notify the insurer in writing. The insurer shall file proof of coverage with the director within 30 days after workers' compensation coverage of the client becomes effective.

(b) If the PEO is a self-insured employer, notify the director in writing.

(5)

(a) A PEO's responsibility to provide workers' compensation coverage under subsection (2) of this section shall continue until the earlier of the date on which:

(A) The client obtains alternate coverage; or

(B) The PEO terminates its responsibility to provide coverage.

(b) For purposes of paragraph (a)(A) of this subsection, if a client obtains alternate workers' compensation coverage, the PEO's responsibility to provide coverage ends on:

(A) The effective date of a policy for which an insurer makes a proof of coverage filing on behalf of the employer;

(B) The date on which another PEO becomes responsible for providing coverage to the client; or

(C) The date on which the client becomes a self-insured employer.

(c) For purposes of paragraph (a)(B) of this subsection:

(A) A PEO may terminate its responsibility to provide coverage by giving written notice of the termination to:

(i) If the PEO is a carrier-insured employer, the client, the director and the insurer. The insurer shall file notice of termination with the director within 10 calendar days after the effective date of the termination or the date on which the insurer receives notice from the PEO, whichever is later.

(ii) If the PEO is a self-insured employer, the client and the director.

(B) Unless a later date is specified, the termination shall become effective at 12 midnight on the 30th day after the date on which the notice is received by:

(i) An authorized representative of the insurer; or

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(ii) If the PEO is a self-insured employer, the director.

(6) When a PEO satisfies its responsibility to provide workers' compensation coverage to a client under subsection (2) of this section by obtaining a workers' compensation insurance policy, coverage of the client under the policy shall continue until:

(a) The PEO's coverage under the policy ends under ORS 656.419 (4); or

(b) The PEO's responsibility to provide workers' compensation coverage ends under subsection (5) of this section.

(7)

(a) A PEO shall submit reports to the director that list:

(A) All clients with which the PEO has entered into a PEO relationship;

(B) Each client to which the PEO provides workers' compensation coverage; and

(C) The date on which the coverage begins.

(b) The director shall prescribe the interval and form of these reports by rule.

(8) The director may adopt any rules necessary for the implementation of this section, including but not limited to:

(a) Prescribing the form and content of notices required under this section, including requiring electronic transmission and filing; and

(b) Requiring insurers that provide coverage to PEOs to do so on a multiple coordinated policy or other basis.

(9)

(a) Notice to the client under this section shall be given by mail, addressed to the client at the client's last-known address.

(b) If the client is a partnership, notice may be given to any of the partners.

(c) If the client is a corporation, notice may be given to any agent or officer of the corporation upon whom legal process may be served.

(d) If the client is a limited liability company, notice may be given to any manager.

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- (e) If the client is a member-managed limited liability company, notice may be given to any member.
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### **656.855.**

(1) In accordance with any applicable provision of ORS chapter 183, the Director of the Department of Consumer and Business Services, by rule, shall establish a licensing system for professional employer organizations.

(2) The system established by the director shall include, but not be limited to:

- (a) Prescribing the form and content of and the times and procedures for submitting applications for license issuance or renewal.

- (b) Prescribing the term of the license and the fee for original issuance and renewal of the license. The fees shall be set in an amount necessary to support the administration of this section and ORS 656.850.

- (c) Prescribing those violations of this section or of ORS 656.850 for which the director may refuse to issue or renew or may suspend or revoke a license.

- (d) Prescribing the form and contents of records a licensee is required to maintain and specifying the times, places and manner of audit by the director of those records.

(3) All moneys received by the director pursuant to this section shall be credited to the Consumer and Business Services Fund and are appropriated continuously to the director to carry out the provisions of this section and ORS 656.850.

### **Minutes:**

Marie Rogers thanked attendees for joining and ended the meeting. She invited people to provide feedback regarding the issues via email to [marie.a.rogers@dcbs.oregon.gov](mailto:marie.a.rogers@dcbs.oregon.gov). She noted that comments should be directed to the division before May 6, 2026. She also noted that the meeting scheduled for May 12, 2026, which was designed to cover any overflow from this meeting, would likely be cancelled. She noted the division would send out a notice of cancellation before the end of the week.