



PEO University

Client Service Agreements Operational & Legal Issues

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CSA – Client Service Agreement

- The single most important business document for PEOs.
- Establishes the relationship between PEO and Client.
- Defines and allocates the responsibilities of the parties.
- Allocation is critical:
 - Many PEO licensing laws address allocation
 - Allocation shapes the liabilities of the parties
- Provisions generally divided into client responsibilities, PEO responsibilities, indemnity, and general contract provisions.
- Some tension between legal and operational concerns
 - Be up front.
 - Don't try to hide items uncomfortable topics in the CSA.
 - Ensure you are addressing the right audience

Is there a “standard” contract?

- No such thing as a "standard" PEO CSA.
- NAPEO does not set standards or publish a recommended CSA.
- There are however common issues, driven by:
 - State PEO licensing laws, especially those that directly specify required CSA terms.
 - For CPEO accredited PEOs, the IRS requirements drive the shape of the CSA.
 - ESAC accreditation standards, if your PEO is an ESAC member.

The Big Picture

- Identify the arrangement as a PEO arrangement.
- Describe the relationship between the PEO and the Client.
 - “Joint employer” is different from “co-employer” is different from “common law employer”
- Identify the responsibilities of the Client and of the PEO. Who does what? What functions are shared? Which are the sole responsibility of client or PEO?
- Identify how workers compensation insurance and unemployment insurance are being handled and charged.
- Clearly identifies how fees and expenses are calculated and payment terms.
- Address benefit plan issues, PEO sponsored plans vs. client sponsored.
- Indemnification
- Arbitration or no arbitration of disputes?

Some Key CSA provisions

- Insurance coverage:
 - Does the PEO hold EPLI that provides coverage to client?
 - Client obligation to carry GL and business auto coverage?
 - How is workers' comp being handled?
- Clients obligation to accurately and timely report payroll (and hours worked) to PEO.
- Is the PEO providing “consulting” services – such as safety advice?
- Client and PEO hiring, supervising, and firing responsibilities.
- All of these raise both legal and operational challenges.

Some Key CSA Provisions

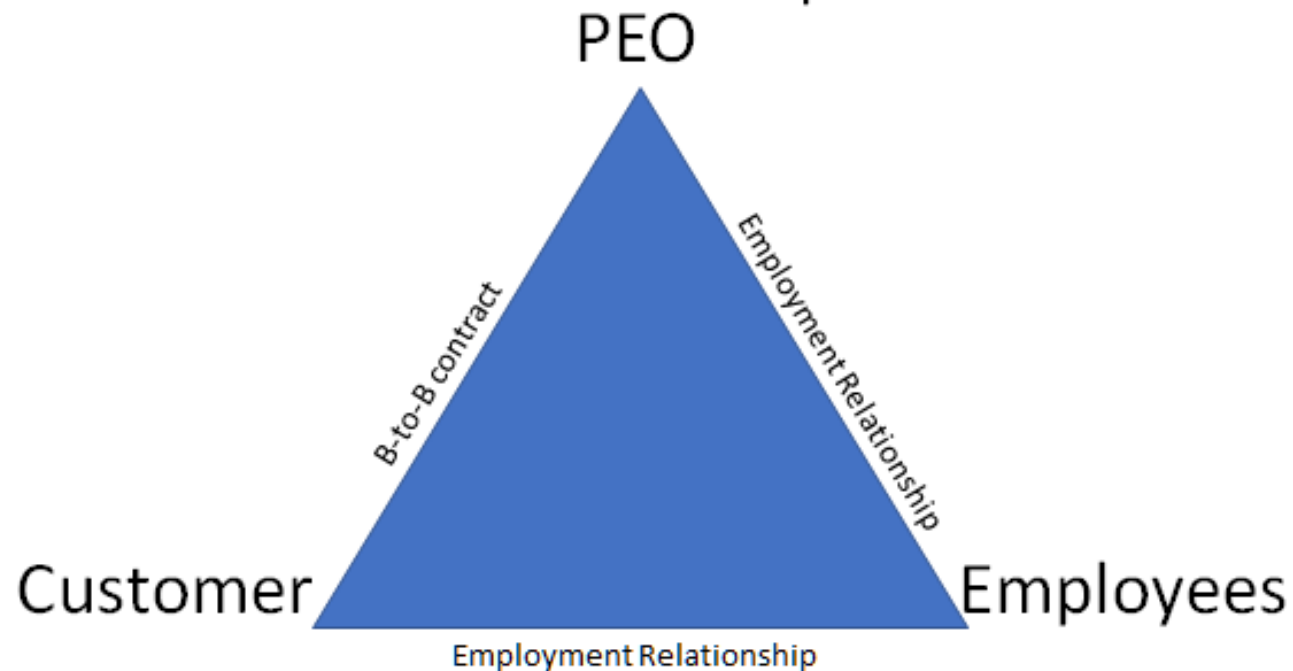
- Payment of Gross Wages prior to pay date
- Insurance coverage, including EPLI
- Confidentiality
- Reporting of payroll information to PEO
- Wages and hours reporting / compliance
- “Consulting” services (HR and safety advice)
- Client and PEO hiring, supervising, and firing responsibilities.

How much contract?

- If you have a four-page CSA, then your contract does not deal with the issues properly.
- Yes, yes – but no one will sign a long contract.
 - Not my experience – client companies normally sign the CSA without real objection. Even when reviewed by their own counsel, the objections can be resolved.
 - When they do object: it is either about issues you don't care about, things you can meet the client halfway, or things you cannot change due to state law.

This is why the Contract is long

3 Simultaneous Relationships

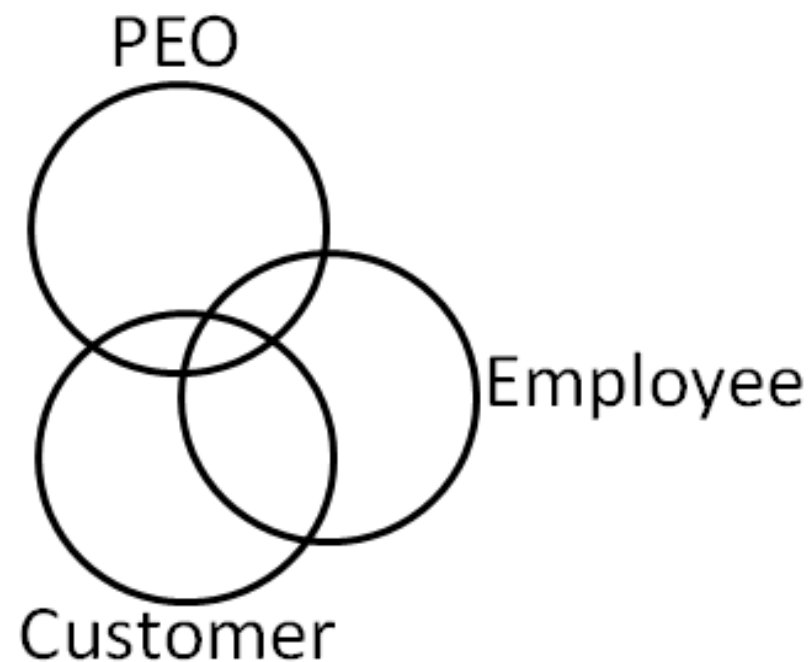


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And this...

Overlapping Responsibilities

- Some things we do.
- Lots of things you keep doing.
- Some things we do together.



WHY is the CSA long?

- The PEO arrangement is not the usual or "normal" kind of employment arrangement – this requires dealing with a large number of issues.
- Must address the three-way relationship that is the PEO co-employment arrangement.
- PEO wants to limit its risks, and ensure Client retains full or sole responsibility for many functions.
- **Lots** of little operational issues have to be addressed.
- Operationally:
 - Have a talk track available to address the key sticking points such as contract length, addendums.
 - Contract provisions protect the PEO, which in turn protects their clients.

Key Issues

- **Define the role of the PEO.** What exactly are you committing to do? Do you really do all those things? Ideally this will be narrow - limited to functions you can effectively manage and control.
- **Define the role of the Client.** Make clear what Client is responsible for. Ideally, this will be very broad.
- **Protect the PEO.** Use the CSA to manage and limit your risks, to the extent practical.

State Law Drives Some Parts of the CSA

- Some PEO state statutes require specific contractual language in order to comply.
- If you operate in multiple states, the CSA must comply with ALL of the states in which you operate – every state where you have employees.
- These state law requirements are non-negotiable. Must be in the CSA in order to have a PEO arrangement.

Example – Texas PEO Statute

The Texas PEO statute requires the CSA to provide that:

- PEO share with the client the right of direction and control over covered employees;
- PEO assumes responsibility for the payment of wages to the covered employees without regard to payments by the client;
- PEO assumes responsibility for the payment of payroll taxes and collection of taxes from payroll on covered employees;
- PEO shares with the client the right to hire, fire, discipline, and reassign the covered employees; and
- PEO shares with the client the right of direction and control over the adoption of employment and safety policies and the management of workers' compensation claims, claim filings, and related procedures.

NAPEO Regulatory Database

- NAPEO database should be primary resource to understand statutory responsibilities
 - State compliance
 - Federal compliance
 - CPEO Certification
- Login through NAPEO.org
- Accessible to all employees of NAPEO members
- Ensure to consult attorney on new legislation or whenever appropriate

NAPEO Regulatory Database

The screenshot shows the NAPEO Regulatory Database website. At the top, there is a navigation bar with the NAPEO logo, 'Regulatory Database', and 'Member Site' text. Below this is a menu with buttons for 'Dashboard', 'Compliance Topics', 'Reports', 'Search', 'Favorites', 'Account', and 'Help'. The main content area is titled 'My Dashboard' and features two primary sections: 'IRS CPEO / SBEA' and 'State Regulatory Database'. The 'State Regulatory Database' section includes a map of the United States. To the right, there is a 'Recent Topic Updates' section with a table of updates for the state of Oregon (OR). Below this are two maps: 'PEO Regulatory Framework' and 'Government Affairs Action Plan'. At the bottom, there are two columns of links: 'Additional NAPEO Resources' and 'Other Useful Links'. A photograph of the U.S. Capitol building is also visible in the lower-left quadrant of the dashboard area.

NAPEO Regulatory Database Member Site

home favorites

Dashboard Compliance Topics Reports Search Favorites Account Help

My Dashboard

IRS CPEO / SBEA

State Regulatory Database

Recent Topic Updates Favorites All Topics

State	Topic
OR	Starting or Terminating the PEO-Client Relationship
OR	Corporate Activity Tax (CAT)
OR	Annual Withholding Tax Report
OR	Application of Small Group Health Care Reform Laws
OR	Permitted Forms of Workers' Compensation Coverage
OR	Basic Workers' Compensation Coverage Information
OR	Application of MEWA Laws

PEO Regulatory Framework

Government Affairs Action Plan

Additional NAPEO Resources:

- [NAPEO Homepage](#)
- [NAPEO Staff Contacts](#)
- [Government Affairs](#)
- [Member Resources](#)
- [PEO Insider Magazine](#)
- [NAPEO Events](#)
- [Leadership & Committees](#)

Other Useful Links:

- [National Governors Association](#)
- [National Conference of State Legislatures](#)
- [National Conference of Insurance Legislators](#)
- [Council of State Governments](#)
- [National League of Cities](#)
- [U.S. Conference of Mayors](#)
- [National Association of Insurance Commissioners](#)

Federal Regulatory Database

NAPEO Regulatory Database

- State Specific



State Regulatory Database - Compliance Topics

Qualifying to do Business Generally

PEO Registration & Licensing

Unemployment Insurance

Workers' Compensation

Health and Other Benefits

Sales and Other Corporate Taxes

Other State Requirements of a PEO Doing Business in This State

Starting or Terminating the PEO-Client Relationship

Records & Record Retention

Texas Reports

Texas Articles

Jurisdiction:

Category:

	Type	Requirement	Updated	Category
★	Initial Application	Application for Certificate of Authority A business formed outside Texas must obtain permission to do business in Texas from the Secretary of State's Corporations Section. The proper... More	3/26/2021	Qualifying to do Business Generally
★	Initial Application	State Unemployment Account Registration All employers who have established unemployment tax liability in Texas are required to register with the Texas Workforce Commission (TWC) within... More	3/26/2021	Qualifying to do Business Generally
★	Informational	Required Workplace Posters The Texas Workforce Commission (TWC) requires all businesses in the state to post State and Federal employee notices in a conspicuous place where... More	3/26/2021	Qualifying to do Business Generally
★	Ongoing Reporting	Franchise Tax The Texas franchise tax is a privilege tax imposed on each taxable entity formed or organized in Texas or doing business in Texas. The tax applies... More	3/29/2021	Qualifying to do Business Generally

NAPEO Regulatory Database

- Report builder

State Regulatory Database - Report Builder

Step One: Select Report(s)

General Business

Select All

- State Requirements for Doing Business Generally
- State Registered Agent / Documentation Requirements
- Agency Contact Information

PEO Registration / Licensing

Unemployment Insurance

State Taxes

Health Insurance

Workers' Compensation

Step Two: Select State(s)

Select All States

<input type="checkbox"/> Alabama	<input type="checkbox"/> Louisiana	<input type="checkbox"/> Ohio
<input type="checkbox"/> Alaska	<input type="checkbox"/> Maine	<input type="checkbox"/> Oklahoma
<input type="checkbox"/> Arizona	<input type="checkbox"/> Maryland	<input type="checkbox"/> Oregon
<input type="checkbox"/> Arkansas	<input type="checkbox"/> Massachusetts	<input type="checkbox"/> Pennsylvania
<input type="checkbox"/> California	<input type="checkbox"/> Michigan	<input type="checkbox"/> Rhode Island
<input type="checkbox"/> Colorado	<input type="checkbox"/> Minnesota	<input type="checkbox"/> South Carolina
<input type="checkbox"/> Connecticut	<input type="checkbox"/> Mississippi	<input type="checkbox"/> South Dakota
<input type="checkbox"/> Delaware	<input type="checkbox"/> Missouri	<input type="checkbox"/> Tennessee
<input type="checkbox"/> Florida	<input type="checkbox"/> Montana	<input type="checkbox"/> Texas
<input type="checkbox"/> Georgia	<input type="checkbox"/> Nebraska	<input type="checkbox"/> Utah
<input type="checkbox"/> Hawaii	<input type="checkbox"/> Nevada	<input type="checkbox"/> Vermont
<input type="checkbox"/> Idaho	<input type="checkbox"/> New Hampshire	<input type="checkbox"/> Virginia
<input type="checkbox"/> Illinois	<input type="checkbox"/> New Jersey	<input type="checkbox"/> Washington
<input type="checkbox"/> Indiana	<input type="checkbox"/> New Mexico	<input type="checkbox"/> Washington DC
<input type="checkbox"/> Iowa	<input type="checkbox"/> New York	<input type="checkbox"/> West Virginia
<input type="checkbox"/> Kansas	<input type="checkbox"/> North Carolina	<input type="checkbox"/> Wisconsin
<input type="checkbox"/> Kentucky	<input type="checkbox"/> North Dakota	<input type="checkbox"/> Wyoming

[Step Three: Click here to Build Report](#)

Need for CSA to Match Reality

- CSA needs to match the reality of what services are being delivered, and how the PEO arrangement is really working.
- Mismatch between contract and reality, is a recipe for trouble.
- What did the sales team *actually tell* the client?
- Are there additional services that are not covered in the standard contract?
 - COVID PPP loans
 - ERT Credits
 - Social Security deferrals
 - 5500 filings for client level welfare plans
 - Recruiting
- MUST know where the employees are. Are you licensed in all states where the client has employees. What about subsequent new hires?

Aspects of the Employment Relationship

- The CSA typically allocates responsibility between PEO and Client for various aspects of the employment relationship.
- Such as:
 - Which one will carry the WC insurance?
 - What will the PEO's role be with respect to workplace safety?
 - Client or PEO responsible for supervising and controlling work of the co-employees.
 - What is the PEO's role in hiring and firing of co-employees.
 - What is PEO's role in investigating employee complaints

Pricing, Billing, Payment Terms and Changes

- Clearly define how your services are priced
 - Per employee per month (PEPM), % of payroll or hybrid
- Define what is charged in addition to the service or admin fees
 - Employee new hire fees
 - Employee termination fees
 - Shipping
 - Implementation fees
 - Late payroll submission or approval
- Outline the service model
 - Bundled vs unbundled?
 - EPLI a separate charge?
- Deal with when and how you can *change* pricing
 - Automatic admin fee increases or some other method
 - W/C renewals and premium increases
 - Benefit plan renewals and increases
- Define payment terms
 - Fees for ACH rejections
 - Late fees
 - Address the circumstances under which the PEO can fire the client

Legal Issues re Indemnity

- Ideally the CSA will require the Client to broadly indemnify the PEO for as much as possible.
- Ideally, the PEO gives only a narrow indemnity back to the client.
- A tool to encourage the Client to promptly settle an employee lawsuit, including obtaining a release for the PEO.
- I've been doing this for 20+ years: Suits to enforce indemnity agreements are very, very rare. Threatened more often.

Operational Life of a Contract

- Preparation of the CSA for specific services agreed
 - Ensure sales provides details of items out of norm
 - What systems are used for creation- .PDF, Salesforce, Word?
 - What is the timing?
 - Review before distribution
- Know what department provides the CSA to the newly signed client
 - What is the company position on providing a draft to a prospect
 - Is there room for negotiation? If so, who is authorized
 - What systems are used for distribution- email, secure site?
- Tracking the process
 - Distribution date
 - Modification date- communicating modifications and be prepared to implement
 - Client execution and return date
 - PEO execution- who is authorized to sign?
 - Filing date and process

Operational Life of a Contract

- Subsequent CSA updates
 - What are the triggers for reviewing an existing CSA?
 - Is there a regular cadence?
 - Who is responsible to maintain changes in PEO law, benefits law and other changes that effect the CSA?
 - What internal controls exist to identify?
- Other
 - Create a system/database to maintain contracts
 - List all financial components
 - List any modifications
 - Ensure executed contracts are on file
 - Do you track the changes you made?
 - Do you have addenda for variations or changes in the contract?
 - Make sure internal processes are documented
 - Ensure controls exist
 - Consider pre-implementation call with client

Terminating the CSA

- A CSA should outline how either PEO or Client can terminate the CSA, and when effective, including:
 - Either Party
 - Material breach by either party, following written notice
 - Whether there is a chance to cure the breach
 - PEO
 - Non-payment
 - Material adverse change of the client's financial condition
 - Client cannot pay debts as they become due
 - Any legal, regulatory, or judicial action
 - (Special case) – Client's workers' compensation policy terminates
 - Client
 - PEO should determine whether client can terminate for any reason and/or whether an opportunity to cure is required.
- A CSA should also address what happens and the responsibilities of each party upon termination:
 - Which party notifies worksite employees, including benefits notifications
 - Responsibility of client to obtain workers' compensation
 - Responsibility of client for payments by PEO to worksite employees before termination
 - Whether client must reimburse the PEO for any payments to worksite employees made after termination

Operational Issues - Termination for Non-payment

- Know how to identify warning signs
 - Returned ACHs or failure to pay invoices
 - Termination of client's executive staff or key contacts
 - Decrease in wages or employer contribution to be employees 401k, health, etc.
 - Material reduction in staff
- Ensure processes exist once non-payment is identified
 - Who will contact the client and when?
 - Is there a security deposit in place?
 - Are there mitigating circumstance
- Know the law in the states where employees are paid. PEO statute may be an issue. CPEO or ESAC.
- When in doubt, contact legal counsel

Enforcing the CSA

- When does the PEO take affirmative action to enforce its rights under the contract.
- Do you threaten legal action?
- Invoke penalty or fee provisions under the contract?
- Be prepared – if you sue the client, they will counter-sue for something. Not a risk free choice.
- Can you actually collect?

Questions?

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