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Concerns Mount over Ohio's Ballooning Self-Insured PEOs: Top [2013-04-11]

By David Dankwa, Senior Reporter

With the state's economy improving and jobs returning, Ohio's professional employer organizations are getting larger, fueling concerns about whether the current regulatory framework for PEOs provides adequate financial protections for Ohio workers and self-insured employers.

Last month, a new law – SB 139 – that went into effect gave the Bureau of Workers' Compensation authority to deny registration to a PEO that fails to meet certain requirements, and prohibits unrelated PEOs from obtaining joint workers' compensation coverage or forming a self-insurance arrangement under the PEO law.

Much of the new law, however, appeared to focus more on increasing financial disclosure requirements as opposed to regulating PEOs' behavior in the marketplace. For instance, the recent law requires PEOs to file annual financial statements that conform to Generally Accepted Accounting Principles.

Paul Flowers, director of self-insurance at the Ohio BWC, said the department recognizes that more needs to be done and is currently considering additional measures, including regulating PEOs' use of affiliated captive insurers to reinsure their workers' comp liabilities.

"That is another issue that we want to address with the proposed rule introductions that are on the horizon," Flowers told WorkCompCentral. "If you are purchasing reinsurance through an affiliated company, how secure is that reinsurance, because if there's a default probably both of those entities are going under and there's nothing there."

Currently, Ohio does not require PEOs to purchase reinsurance or excess insurance, although six of the nine PEOs that have been granted self-insured status use excess insurance or reinsurance from unaffiliated carriers. The level of reinsurance or excess coverage protection they purchase, however, is decided by the PEOs themselves.

"These PEOs are running wild in Ohio," said Michael Schroeder, president of Roundstone Insurance, a captive insurance manager and broker. "The amount of business moving out of the state fund and into the self-insured PEOs is significant. I've gotten phone calls from a few of them and I tell them 'you have to run it like an insurance company. It's not just about collecting cash.'"

In fairness, PEOs that want to self-insure for workers' comp are required by the BWC to obtain a letter of credit, an amount that Schroeder said is minimal.

According to Flowers, the letter of credit must be able to support 100% of the PEOs' future claims liability. One concern about this requirement is if the PEO is underreserving for future claims, the letter of credit essentially is useless.

Flowers said due to the concern that some self-insured PEOs might underreserve and not give a true reflection of their liabilities for claims, the BWC also requires an independent actuarial study from the PEO every two years.

"That study will verify the claims liability out there. If they are underreporting to us that should be picked up when we receive the independent actuarial study and then we can make the appropriate adjustment to the security at that point in time," he said.

Buz Minor, executive secretary of the Ohio Self Insurers Association and incoming president of the National Council of Self Insurers, said self-insured employers in Ohio in general are concerned about the potential of PEOs underreserving or going bust.

"They are on the hook for any default through the guarantee fund and are concerned that the PEOs are adequately secured, so that in the event of a default the other self-insured employers are not ending up paying their claim," said Minor.

He said the self-insured employers in Ohio place a lot of trust in state regulators to ensure they are probably monitoring the affairs of PEOs. The reason being, unlike other states where the self-insurers run the guaranty fund and association, in Ohio, self-insured employers pay for the fund, but the Bureau runs the fund, decides who gets the privilege of self-insurance, who will be renewed and the amount of security required, said Minor.

"The self-insurers really don't control anything; the bureau sets the rules. We can advise, we make recommendations, but ultimately it's the bureau's call," Minor said.

At least two PEOs are members of the Self Insurers Association, and Minor said many are well-run and properly managed.

"When you look at the PEO model, a PEO is functioning as a real PEO when it is a co-employer with a client and the worker's comp is just another service they provide. When you have a company that is not truly functioning as a PEO, but rather exists simply to put together a fund to pay self-insurance and to pay claims, what you really have is an unregulated insurance company," he said.

Adam Peer, director of state government affairs with the National Association of Professional Employer Organizations, said he expects the trade group to continue to work closely with the Bureau to modernize and update the standards for all PEOs in Ohio. Peer said Senate Bill 139, particularly the requirement that PEOs use an independent auditor and show positive working capital in their financial statements, goes a long way to ensure that PEOs are solvent and well capitalized.

He declined to say, even when pressed, if NAPEO would favor laws requiring a self-insured PEO to purchase reinsurance, insisting only that the organization would welcome that discussion with Ohio regulators.

"PEOs are just different and it makes sense to have rules in place that specifically say what the PEOs need to do and what the department needs to enforce," he said