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**Small Business Efficiency Act (SBEA) Q&A**

Updated April 17, 2015

Q. **What is the SBEA?**

A. A federal law that recognizes the PEOs – the first federal law to do so explicitly. It is part of the Internal Revenue Code. It passed into law a couple of months ago.

Q**. How does the passage of the SBEA affect the PEO industry?**

A. At least for now, really not that much. It does give the industry a little extra credibility, but since the industry has been recognized by so many states and we’re not in the days of “are PEOs legal?” that’s probably a minor thing. It is possible that in the future other areas of federal regulation may point to CPEOs.

Q. **When will the SBEA take effect?**

A. The SBEA is to take effect for most purposes January 1, 2016. There is some question about whether the IRS will be ready to administer it by then.

Q. **Does the SBEA recognize all PEO relationships?**

A. No. It creates the concept of a “certified” PEO (CPEO).

Q. **Will the law require all PEOs to be certified?**

A. No. A PEO may choose to apply or not.

Q. **How does IRS certification relate to ESAC certification and state licensing?**

A. It’s completely separate. We do anticipate remaining ESAC certified. State licenses/registrations, where they exist, are mandatory whereas certification under the SBEA is voluntary.

Q**. What does it mean to be a CPEO?**

A. A CPEO can enter into relationship with clients that are regulated by the SBEA.

Q. **What are the implications of being in a CPEO relationship?**

A. The SBEA is part of the Internal Revenue Code, and it is only supposed to apply to federal employment taxes. If it applies to a PEO relationship:

* The CPEO is the solely liable employer for purposes of federal employment taxes (FICA, FUTA) on the wages it pays to WSEs. This means that the IRS cannot go after the client if the PEO defaults on those taxes.
* The CPEO can succeed to the client’s federal wage base. So if a CPEO picks up a client mid-year, it does not have to restart the federal wage base. Note, state taxes are not affected by the SBEA so the result may be different depending on the client’s state(s).
* The client is considered the employer for most federal employment tax credits.

Q. **Are there any special contractual provisions a CPEO has to use?**

A. Yes. CPEO service agreements will have to incorporate several clauses, among them some having to do with the PEO to assume responsibility for hiring, firing, recruiting, etc. These clauses are similar to what we’ve seen in some states (one thing everyone’s trying to figure out is how they interact with state-required language), but even broader – so much so that they create exposure for the PEO in other areas of the law even though they weren’t intended to. This is a major downside of being a CPEO.

Q. **How are non-certified PEOs treated differently from certified ones?**

A. At least for now, there are not a lot of practical differences in the legal treatment of certified and non-certified PEOs. Because the IRS regards the client as a taxpayer PEOs can already succeed to wage bases and clients can have the benefit of tax credits. Perhaps the most major difference is that a CPEO is considered the sole liable employer for federal employment taxes on the wages it pays, which would appear to mean that if the PEO fails to pay its obligations, the client cannot be held liable (whereas the client is currently at risk of that in non-certified relationships). Your General Counsel believes, but cannot prove, that if a major CPEO does go belly-up (as happens from time to time), the IRS will try to find a way to hold the clients liable and/or really clamp down on CPEOs going forward.

Q. **How does a PEO become a CPEO?**

A. It will have to go through essentially a licensing process administered by the IRS. This will include meeting certain financial standards, having executives that pass background checks, and posting a bond. The process hasn’t been instituted yet so we don’t know everything that could be associated with it.

Q. **Are there any CPEOs now?**

A. No. The certification process is still being worked out. Anyone who says they’re certified under the SBEA now is lying.

Q. **Can a PEO offer both certified and uncertified services, and if so, will Oasis do that?**

A. It appears that the answer is yes, a PEO can offer both certified and uncertified services (although regulations could change that). If that is the case, Oasis may do that. It will be interesting to see if clients will be willing to pay a premium for certified services, and whether being certified really creates differentiation in the marketplace.

Q**. Does the SBEA affect benefits law or the ACA?**

A. Currently no. There is some possibility that in the future other branches of the federal government might pass regulations that apply only to CPEOs (like for purposes of benefits) but for now that’s entirely speculative.