

## Affordable Care Act – Options for Outsourcing Compliance

### Key Findings:

- This report provides a brief overview of some options available to staffing firms for outsourcing ACA compliance. The healthcare reform law brings with it significant new record keeping, reporting and benefit provision requirements that can be alleviated through an outsourcing relationship.
- A Professional Employer Organization (PEO) assumes, through a co-employment arrangement, a significant portion of the employer responsibilities and associated risk for all or part of a company's workforce, including payroll, benefits, unemployment claims and payroll taxes. Compliance with ACA has been added to the menu of services offered by most PEOs, but these firms have become less willing with work with the staffing industry in recent years due to difficulties in maintaining workers' compensation coverage.
- Out of roughly 700 PEOs operating in the U.S., there may be fewer than 20 still initiating business with the staffing industry. We identify two PEO brokers that specialize in match-making between PEOs and staffing firms.
- Another type of resource which we refer to here as "administrative outsourcing" offers many of the same HR functions as PEOs in addition to more comprehensive back office solutions, and does so through an employer of record model. We identify two such outsourcing partners that have customized solutions including ACA compliance for staffing firms.

*The intent of this analysis is to provide you with general information regarding options for ACA compliance. It should not be construed as, nor is it intended to provide, legal advice. Questions regarding specific issues should be addressed by your general counsel or an attorney who specializes in this practice area.*

### **The Increasing Burden of HR Administration**

With implementation of the “play-or-pay” employer mandate provision of the Affordable Care Act (ACA), companies with 50 or more employees are facing a substantial increase in their HR-related administrative requirements. As is typically the case with new regulations, the impact is likely to be felt most keenly by small and midsize businesses, which have a lower level of resources in place in terms of systems and personnel to accommodate the added burden. For firms struggling to determine the most straightforward and cost-effective route to ensuring ACA compliance, outsourcing these functions may be a prudent option to explore.

### **Professional Employer Organizations (PEOs)**

The most established resource for taking on HR administrative functions is the Professional Employer Organization (PEO). A PEO assumes, through a co-employment arrangement, a significant portion of the employer responsibilities and associated risk for all or part of a company’s workforce, including payroll, benefits, unemployment claims and payroll taxes. Typically, according to PEO brokers we consulted, staffing firms that utilize PEOs range up to approximately \$5 million in annual revenue.

Operating at a larger scale allows the PEO to make more efficient use of administrative resources, offering savings relative to the cost a smaller company would face in investing in systems and personnel to maintain its own HR infrastructure. In addition, their heft affords access to a wider range of insurance options at more favorable terms than those available to their client firms on an individual basis.

The additional record keeping, reporting and benefit provision requirements under the ACA add to the suite of HR services that a PEO can offer, and the industry has not been shy about touting its capacity to assist in ensuring compliance with the reform law. This capacity may not fully extend to temporary staffing firms, however, as PEOs have generally become less amenable to doing business with the industry over the last several years due to downward pressure from worker’s compensation underwriters and reinsurers based on their unfavorable loss ratio experience.

While the underlying issues seem to have emanated primarily from the commercial staffing segment, the net result has been a chilling effect on relations between PEOs and the temp staffing sector as a whole. Out of approximately 700 PEOs operating in the U.S., it is estimated that fewer than 20 providers still conduct business with the industry. A staffing

firm seeking a PEO partner may be best served by working with a broker or consultant that specializes in match-making. We have identified two such brokers and included their contact information in the table below:

PEO Brokers		
Firm	Web	Phone
LeastStaff	leaststaff.com	202-302-1212
Staff Brokers	staffbroker.net	866-365-0180

### Administrative Outsourcing

A more recent model has emerged, which we refer to here as administrative outsourcing. These companies offer many of the same HR services as PEOs, as well more integrated back office solutions such as billing and receivables, accounting and risk management. One important technical distinction is that, rather than a co-employment arrangement, these firms become the sole employer-of-record for the workers they cover. Relative to their PEO counterparts, such providers also tend to service customers of a wide range in size, including those at or above \$100 million in annual revenue<sup>1</sup>.

<sup>1</sup>In our recent webinar discussion on this topic, we may have incorrectly specified \$5 million as the upper end of the revenue range of staffing firms that work with administrative outsourcing partners.

The closer tie to the covered employees created by the employer-of-record model along with the depth of risk-management capacity has enabled these outsourcing providers to retain access to worker's compensation coverage for their staffing firm clients. We have identified two outsourcing partners that have customized solutions including ACA compliance for staffing firms in the table below:

Administrative Outsourcing		
Firm	Web	Phone
Employer Solutions Group	employersolutionsgroup.com	952-835-1288
People 2.0	poep20.com	610-429-4111

### The Bottom Line

Utilizing a third-party provider of HR and/or back office capabilities can be an effective way for small and midsize firms to control operating costs and maximize profitability while focusing on growth. In fact, outsourcing non-core functions was one of the most commonly cited "best strategic or tactical decision" in our 2013 Staffing Company Survey. The complexities of ACA compliance only enhance the value proposition of such an outsourcing arrangement for firms that believe their limited resources would be better allocated in more productive areas.