




The Truth About Co-Employment Risk & How to Avoid It

Co-employment isn't new, but there are modern solutions to help with co-employment risk mitigation. While the risks are still real, "Co-Employment 2.0" is safer, more efficient, and makes your life as an employer infinitely easier.

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While co-employment isn't new, there are modern solutions to help with co-employment risk mitigation that you need to know about. And though the risks are still real, "Co-Employment 2.0" is safer, more efficient, and makes your life as an employer infinitely easier.

What is Co-Employment?

Co-employment (also called “joint employment”) is, at its core, a legal structure formed between any two organizations wherein the parties share responsibilities for employees. For example, one co-employer (say, a PEO or staffing agency) handles HR tasks, while the other (the business or workplace) handles the day-to-day operations and employee oversight.

“Co-employment is an arrangement where two companies both have rights and obligations as an employer. In this way, the worker is technically employed both by the business and the co-employer,” says Bluecrew’s Chief Compliance Officer and resident compliance expert, Steve Johnson.

This arrangement, depending on how it is contracted, can render each party responsible for the conduct of the other. In short, you could be held legally responsible if your PEO or staffing provider fails to do its job properly.

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Common Examples of Co-Employment Relationships

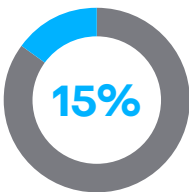
One of the most commonly recognized joint employment relationships is between a PEO and their clients. A professional employer organization [PEO] is an outsourcing firm that

provides services to small and medium-sized businesses.¹ The services provided can encompass many things but are generally administrative in nature.

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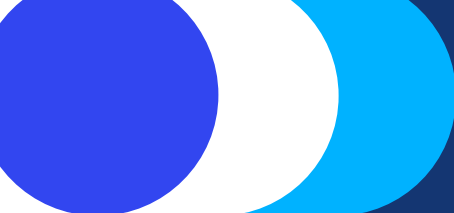
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At the end of 2020, there were 173,000 U.S. businesses working with PEOs, including about 15% of all businesses with 10–99 employees.²

For example, say you've hired a PEO to perform administrative human resources (HR) tasks for your business. If an employee sues the PEO for wrongdoing within the responsibilities or paperwork that they are handling for you, your company could automatically be implicated. Yes, even if



you've done everything right on the HR-related decision making and operational side of things.

If a PEO is handling HR admin for your company, there is almost always a shared “employer” status. This also opens you up to sharing responsibility in a lawsuit.

Another common example? Co-employment can also be in play when a business engages third-party staffing services. These types of agencies provide recruitment and HR admin services for the workers that are assigned via the staffing provider's efforts. The biggest risk in this instance may be that the lack of expertise in—and commitment to—compliance and protecting customers from the legal implications of the staffing provider's actions.

A newer, more flexible co-employment model is the “gig economy”. This modern talent marketplace allows ultimate flexibility for bringing workers on board quickly and temporarily, but it also comes with significantly more risk. In an attempt to absolve customers of such risk, many of these platforms allow only for short-term assignments or jobs. If longer-term relationships are formed with gig workers, it opens employers up to interminable opportunities for misclassification of these workers (and the associated legal risk).

That said, you may be wondering why you might choose to engage in a joint employment scenario at all? And more importantly, what determines your co-employment status—and, therefore, your level of risk?

Let's take a deeper look.

How is Co-Employment Status Determined?

Generally, co-employment designation depends on a few general factors:




Level of worker control retained by each partner



Allocation of responsibilities between staffing and host workplaces



How other nuanced areas, beyond operations management (like timekeeping, benefits, etc.), are handled



Then things get a bit more complicated. To further assess these factors, consider questions like:

1. Who directs or supervises (even indirectly) the employee's work—the PEO or workplace?
2. Who has the power (even indirectly) to hire or fire the employee, change employment conditions, or determine the rate and method of pay?
3. How permanent or lengthy is the relationship between the employee and workplace?
4. Does the employee perform repetitive work or work requiring little skill?
5. Is the employee's work integral to the business?
6. Is the work performed on the business's premises?
7. Who is responsible for functions typically performed by employers, such as handling payroll or providing tools, equipment, workers' compensation insurance, or transportation?

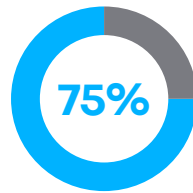
Essentially, the more enmeshed the partner employer is in the process and with controlling the workers, the more likely their business—your business—could be held accountable if the PEO or staffing provider is sued.

What Are the Risks?

“Where co-employment becomes an issue is where a co-employer does something that is not proper, resulting in a lawsuit, an investigative audit, or a fine from an administrative agency. Co-employers and workplaces are both responsible for that action, compared to a single employer who would be [solely] responsible,” says Mr. Johnson.

This works both ways—the workplace can also engage in conduct that could put the co-employer at risk as well.

A recent SHRM report paints a vivid picture of co-employment risk. ‘With the rise in the use of external workers, there’s an inevitable rise in associated legal matters,’ it reads.³




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Further, 75% of HR employees are said to be concerned about the risks associated with hiring external workers. This is especially true after the fiasco with Microsoft back in 1997, when the company was required to pay close to \$100M to its external workers after massive litigation.³

Gig economy giants Uber, DoorDash, and GrubHub are also facing lawsuits over worker classification. If these large pioneering corporations are struggling to maintain compliance when it comes to an alternative workforce, imagine how challenging it must be!

Here's why. Most major joint employment complications stem from the many governing authorities, each of which seems to have their own set of regulations on the subject. This includes the Internal Revenue Service (IRS), Department of Labor (DOL), Occupational Safety

and Health Administration (OSHA), Equal Employment Opportunity Commission (EEOC), and National Labor Relations Board (NLRB).³

Then layer on top the assortment of applicable federal employment laws, like the Fair Labor Standards Act (FLSA), Americans with Disabilities Act (ADA), Family and Medical Leave Act (FMLA), and Employee Retirement Income Security Act (ERISA), as well as individual state laws and a myriad of state and local agencies that also regulate local employment relationships.³ California's recent Assembly Bill 5 (AB5) legislation, which deals with the question of workers being independent contractors or classified as employees, is a good example here.

The truth about co-employment risk is simple: with all these fingers in the proverbial pie, so to speak, co-employment risk is a very real, convoluted issue facing joint employers today.

Why Hire a Third-party Partner?

With all this talk of risk mitigation, you might be thinking that you'll just avoid it completely by not outsourcing.

However, if your HR team is maxed out (or you don't have an HR team at all), you might need to engage a PEO to handle vital functions like benefits administration or payroll. Or if you need extra help occasionally and temporarily to meet sudden demand fluctuations, you might have to

turn to a staffing provider or temp agency to fill the gaps.

There are many reasons to partner with a third party, and your motivations will depend on your business needs. Typically, third parties are brought in to fill a skills gap in the organization or to supplement areas critical to business success. It's often more cost effective to hire a third party than to source, hire, and retain full-time in-house staff.

Co-Employment Risk Mitigation

Once you have determined the need to engage a third-party partner, like a PEO or staffing provider, of course you'll want to protect your business and mitigate your risk as much as possible.

Keep in mind, you are always responsible for your employment actions; just because you engage a staffing provider or PEO, discriminatory or otherwise inappropriate conduct towards workers can result in a lawsuit. Conversely,


even if you treat temp workers properly, you could be liable if your co-employer commits violations.

To mitigate your co-employment risk, it's vital to partner with a company you can trust. Start by looking for established experts in the field.

Ready for some really good news?

There's a revolutionary new sector within the co-employment realm, driven by companies who do more to protect you. PEOs tend to be experts in the process of what could be called "people administration". Staffing or temp agencies are expert recruiters. Both are beneficial qualities to have in a partner, but are they enough to protect your business? Bluecrew, for example, is a model of the next generation of joint employers. With us, you get a full-service recruiting and HR experience, plus deep compliance expertise to protect your business, reliable W-2 workers

that you don't have to source or hire, along with effortless automation and consistent support from our sophisticated technology interface.



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FAQ's

What is the most important factor when choosing a co-employment partner?

A dedicated focus on customer and worker protection, plus processes that follow the letter of the law, without a doubt.

As you saw above, employment compliance is extremely complex. You want to work with a reputable company—be that a traditional PEO or next-gen staffing provider—that has considerable bench strength in compliance, legal, and HR. They will be handling sensitive information and performing highly influential, often litigious processes on behalf of your business.

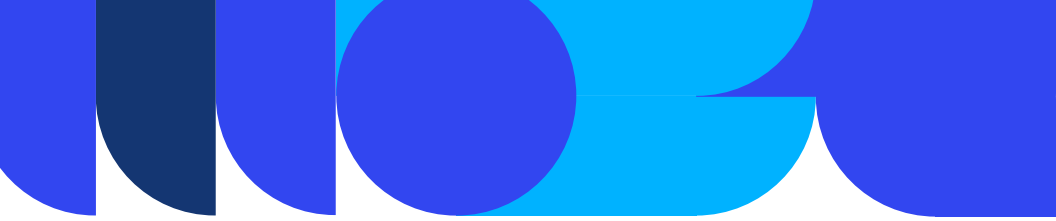
The partner company you choose should be comprised

of true professionals with a deep respect for the far-reaching implications of their work and the risk to which they're exposing their clients. They should have processes in place to mitigate co-employment risk, and this level of concern should filter down through everything they do.

Seek out references and look for a track record of the company doing their due diligence, adhering to all employment rules and regulations, and going above and beyond to protect stakeholders.

How do I avoid a co-employment situation?

First, assess why you want to avoid a co-employment scenario. Is it the risk that



makes you wary? If so, you have two options:

1. Enter into a co-employment relationship with a reputable company that is known for their compliance expertise and has reliable failsafes in place to ensure compliance.
2. Don't enter into a co-employment relationship or any other employment partnership at all, which leaves all that work for you to do.

Is Bluecrew a PEO? A traditional staffing/ temp agency?


No, we're even better. Bluecrew is ushering in the era of "Co-Employment 2.0"!

All kidding aside, Bluecrew is not a traditional PEO, nor

are we defined as a PEO. We are an all-in-one workforce management solution providing unsurpassed flexibility and a software product backed by industry expertise. We are dedicated to protecting and partnering with our clients to provide compliant solutions for their unique workforce needs.

What makes a partnership with Bluecrew so different from a typical co-employment relationship?

Bluecrew expands upon the focus areas of typical PEOs and staffing companies by providing a full spectrum of employee-lifecycle HR expertise. And, taking a cue from the popular gig



marketplace, Bluecrew offers employers ultimate flexibility with their temporary workforce, no matter the length of that relationship. Then we combine those strengths with incredible compliance expertise and worker/client protection to make sure it's all being done right.

“That’s the difference between Bluecrew and the PEOs and traditional staffing firms that exist. We’re a workforce management company,” Steve clarifies.

When you’re entering into a co-employment relationship with another company, it is paramount for that company to not only handle your sensitive information with care, vet employees thoroughly, and follow all employment laws and

regulations. More than that, you should be able to trust that they are making high-value people decisions with sound judgement. thoroughly, and to ensure that they’re following all employment laws and regulations.

With Bluecrew, you have peace of mind knowing that our compliance-based process has your back. We have designed our end-to-end solutions to protect ourselves and our partners, like you, from potentially disastrous co-employment lawsuits.

Plus, it’s all supported and automated by Bluecrew’s software and app, on-demand data, and revolutionary matching technology that aligns your jobs with qualified W-2 workers who are a great fit.

The Bluecrew Advantage

Customer's Responsibility

- ✓ Directing workers to achieve assigned objectives
- ✓ Control work site conditions, ensuring the site is safe
- ✓ Determine the requested length of the assignment
- ✓ Site-specific training

Bluecrew's Responsibility

- ✓ Work authorization check (I-9 and e-verify)
- ✓ Pre-screening, reference check, behavioral assessment, drug-screening, background check, etc.
- ✓ Hiring and firing
- ✓ Establishing pay rates
- ✓ Paying the worker and all related taxes and benefits
- ✓ Providing worker's compensation and unemployment coverage
- ✓ Assigning workers to jobs
- ✓ Complying with wage and hour laws and other employment regulations
- ✓ Obtains job descriptions and selects qualified candidates
- ✓ Manages Crew Members Benefits including approval and payment of sick time
- ✓ Maintains regular contact with the temporary workers and provides performance feedback to them
- ✓ Handles all personnel issues and maintains all "personal files"
- ✓ Manages all workers' problems and concerns directly
- ✓ Ensures that all workers are properly trained

It's Simple to Get Started with Bluecrew!

To learn more and get in touch with us directly, visit www.bluecrewjobs.com/contact.

We look forward to partnering with you to solve your toughest workforce challenges.



Endnotes

1. Wikipedia, Professional employer organization
2. NAPEO, The PEO Industry Footprint 2021
3. SHRM, LEGAL DO'S & DON'TS, FACTS & MYTHS