

AGENCY **GROWTH SOLUTIONS**

Why P&C and Employee Benefits Agents Need to Work Together



WHITEPAPER

Employee benefits (EB) and property and casualty (P&C) agents have traditionally had a clear division of labor, with little overlap. To a certain degree, that made sense. The products they sell are distinct from one another, as is the technical knowledge required to sell them. However, that situation has changed in dramatic ways recently that have largely flown below the radar. Regulatory shifts have created new risks for employees and employers— as well as agencies—that require P&C and EB agents to better understand each other’s work and, more importantly, learn to work together. Given these changes, the only way a client can be adequately protected is to take an integrated approach around the risks that are emerging for the property and casualty side and the employee benefits side—a paradigm shift in the way agents have conducted business for decades.

This white paper will reveal the new and developing situation that requires these agents to overcome their differences and work together. We’ll explore a structure for their new relationship so that they can continue to foresee rising risks and address them for their mutual clients. This cooperation goes far beyond simple cross-selling or “rounding out” but a revolutionary, blue-ocean approach.

EB AND P&C AGENTS: LIKE WATER AND OIL

There are several reasons why EB and P&C agents have not worked effectively together. Here are a few of the primary ones:

- **Mindset:** When working with clients, P&C agents typically speak the language of risk—that is, the degree of exposure to financial and reputational loss that policyholders must decide to accept or cover by insurance. By contrast, EB agents usually focus on the features and benefits of health care and retirement plans, with a lesser focus on complying with regulations. They discuss the steps policyholders need to take to manage the costs while appealing to their employees’ interests.
- **Trust:** Since they rarely need to interact, P&C and EB agents haven’t had an opportunity to develop a trusting relationship and may prefer to keep one another at arm’s length. Why risk jeopardizing a client relationship by putting them in the hands of someone who may not provide the same level of service?
- **Training:** P&C agents and EB agents have different licensing requirements. Typically, P&C agents must undergo a longer pre-licensing course. As each continues to acquire more technical knowledge in their field, their paths may further diverge.
- **Habit:** Even when agents work together, it’s likely to be at a distance. One may simply hand off a client to a colleague rather than working together for the benefit of the policyholder.

As you can see, these obstacles are more emotional or habitual than they are logical. There’s no real reason why P&C and EB agents can’t work together—and, as we’ll see, there are many reasons why they should.



WHAT'S CHANGED: THE LEGAL AND REGULATORY LANDSCAPE

So exactly what has happened to make the status quo untenable? Generally speaking, the changes involve regulations and legal decisions that have elevated the bar for employer compliance and fiduciary responsibility around benefits and privacy. These risks are not entirely new, but the passing of the Consolidated Appropriations Act and actions by the Department of Labor (DOL) have led to greater complexity and raised the probability of adverse financial events. This is largely due to the Employee Retirement Income Security Act of 1974 (ERISA) and decisions by the Department of Labor. Here are the details:

ERISA is a federal law that sets minimum standards for most voluntarily established retirement and health plans to provide protection for employees. Among other regulations, ERISA creates fiduciary responsibilities for employers and gives employees the right to sue for benefits and breaches of fiduciary duty. Today, some of the most significant risks facing employers arise from their employee benefit plans. According to many attorneys, ERISA creates the highest compliance standard employers must meet. Likewise, it carries the greatest liability if not met. However, it is uncommon for an EB agent to discuss these risks with an employer. Imagine, instead, an EB agent introducing their client to a colleague specializing in P&C. Together, they could make the employer aware of the risks they face (thus reducing their own E&O risk) and possibly sell additional coverage to protect the employer from litigation.

The U.S. Department of Labor has similarly raised the bar around fiduciary responsibility recently by asserting that it now considers cyber risks as equivalent to fiduciary risks. In other words, employers may be on the hook should an employee's personal data, maintained by a 401k administrator or health insurer, be exposed. The DOL issued guidelines to employers on their responsibilities to secure their employee benefits data from breaches, including a daunting list of steps to take. Working together, P&C and EB agents can bring each other up to speed on these new requirements and determine the best course of action for their mutual client.

WHEN COVERAGES COLLIDE: WORKERS' COMPENSATION VS. GROUP HEALTH

One of the quirks of the insurance industry is that P&C agents typically sell workers' compensation insurance. Yet workers' comp is an employee benefit that can have significant effects on group health coverage. This again is an opportunity for EB and P&C agents to work together, both to inform each other of potential gaps between the policies they sell and to fully inform the policyholder of potential risks. How often are P&C agents left unaware of the terms and conditions of the group health plan that influence how they must program and manage the workers' comp policy? How well versed are they in the details of FMLA and COBRA that could leave employers exposed to denied claims and employee litigation?



It's a complex, multi-pronged subject, so let's see how it plays out in a straightforward example. Group health insurers require that all members meet specific conditions in order to retain eligibility for coverage for themselves and their dependents. They must be actively at work—as determined by a minimum number of hours per week. The number of hours may vary from plan to plan, but the requirement typically ranges between 28 and 32 hours. If they are not actively at work, their coverage depends on their status according to FMLA or COBRA.

Let's assume a covered employee injures themselves in the course and scope of employment. As a result, the employee is placed on a no-work status, during which the workers' comp policy pays the related medical bills and lost wages for the injured employee.

Now imagine that the same employee—or a dependent—falls ill and requires medical treatment unrelated to the injury. Are they covered? The answer may lie in the knowledge gap between P&C and EB agents. Does the P&C agent know that an injured employee on a no-work status due to a work-related injury may become ineligible for coverage under the group health plan? Is the EB agent aware that when employees go out on a no-work status, they must take additional steps to protect that employee's, and perhaps their dependents', eligibility to remain on the group health plan?

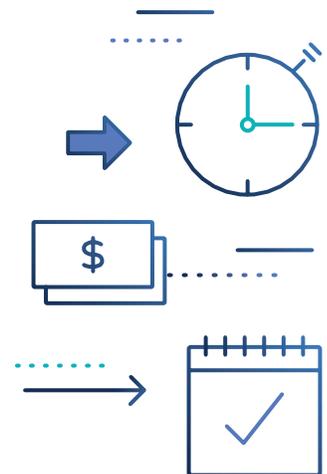
WHAT ABOUT FMLA AND COBRA?

If the employee has not returned to work, they are likely no longer eligible to be covered under the group health plan unless one of these steps has been taken:

- **FMLA:** If the employee qualifies for FMLA (which depends on the size of the company and the employee's length of service with the employer), the employer can initiate FMLA, and the employee will continue to receive coverage from the company's health plan.
- **COBRA:** If the employee is not eligible for FMLA, then the employer should initiate COBRA, which will also continue health coverage.

Employers and employees can expect the group health carrier to request payroll records in the event the employee or covered dependent has a serious medical condition, separate from the work-related injury, to verify eligibility. If the group health carrier discovers that the employee is not on the payroll, they will inquire as to whether they meet the eligibility requirements of FMLA or COBRA.

If the employee has not qualified under any of those eligibility requirements, then the carrier will likely deny the claim and return premium back to the date when the employee became ineligible. This is an extraordinarily serious risk, but also an extraordinary opportunity in the sales process. Again, by working together, P&C and EB agents can pool their knowledge to ensure that the client understands when it is appropriate to initiate either COBRA or FMLA if an employee is on a no-work status.



WHAT IF THE PERSON INJURED AT WORK IS A CORPORATE OFFICER, SOLE PROPRIETOR, OR DIRECTOR?

It is relatively common for corporate officers, sole proprietors, and directors to choose to exempt or exclude themselves from their workers' comp coverage to save money. However, this can create a risk should that person be injured in the course and scope of employment—namely, that they might not be covered under the group health policy. EB agents should confer with their P&C colleagues to determine if officers, owners, or directors are exempt under the workers' comp policy, and if so, to make sure they remain covered by the group health policy in such an event.

GROWING FIDUCIARY RISKS

As mentioned above, ERISA and the DOL create fiduciary responsibilities for employers. But what exactly does that mean? A fiduciary is a person or entity with decision-making authority over a benefit plan covered by ERISA and, more recently, the DOL's decision around employee data. Fiduciary responsibilities under an ERISA-covered plan include acting solely in the interest of plan participants and their beneficiaries, carrying out one's duties prudently, and paying only reasonable plan expenses, among others. Failure to adhere to these requirements introduces fiduciary risk that can result in staggering litigation costs if the employer is sued for errors or omissions in the administration of the plan. In addition, the individual fiduciary can be held personally liable, and their assets may also be at risk if they do not carry out their obligations. Here are a couple of potential traps that agents can avoid with collaboration between EB and P&C:

Retirement plans: We are seeing an escalating risk of fiduciary liability claims due to successful plaintiff court cases arising from 401k plans. Plaintiffs' attorneys are now moving into the group health arena and filing similar fiduciary liability suits as a result of established case law. Fiduciary liability not only puts the employer's business and personal assets at risk but opens the agency to E&O risk as well.

Self-funded health plans: Due to the increasing costs of group health insurance, many employers—including smaller, less sophisticated ones—are purchasing self-funded plans. These plans are exceedingly complex, with lots of moving parts. In addition, some plans have cost containment services with heavy fees that can create fiduciary liability. If an EB agent is selling a self-funded plan, they should plan on bringing in a P&C agent to discuss the need for fiduciary liability insurance coverage.



WHAT HAS TO CHANGE: INTEGRATED SALES

At this point, you might be thinking that there's already a model for EB and P&C agents working together: cross-selling or "rounding out" an account. Cross-selling seems like a great sales technique. Sell more products and make more income. But as we discussed above, cross-selling is still an arms-length relationship.

It doesn't provide the client with the full value that close collaboration and cooperation between EB and P&C agents bring to the table. Rather than cross-selling, agents should be working toward integrated sales.

In contrast to cross-selling, integrated selling makes 1+1=3 by reducing the client's risk when P&C and EB overlap. Agents on either side of the aisle should plan to keep one another informed—not just with the examples above, but on an ongoing basis as new risks come to the fore. Here are a few things to keep in mind when developing this new approach to agent collaboration:

Do your research. Keep ahead of the trends and topics of interest not only in your own wheelhouse, but in related areas. If you sell P&C, make a point of learning more about benefits—particularly how they can create fiduciary risk. If you sell EB, consider where gaps might exist around workers' comp and federal programs like FMLA and COBRA.

Elevate the client conversation. Be prepared to discuss risk with your clients and prospects, even if they're coming to you for an employee benefits package. Invite your colleague to join you in rounding out the discussion.

Read every page of every policy. The only way to know what's covered and what isn't is to read the policy. Once you understand the details of the coverage, you can make your client aware of risks and advise them on how to manage them.

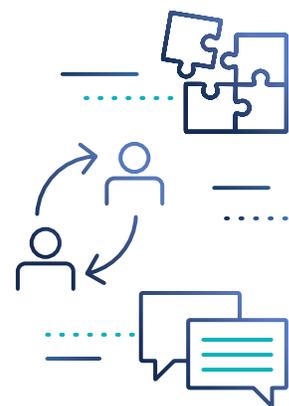
Get expert assistance. Look for a training and coaching partner familiar with the benefits of agent collaboration who can help break the ice and initiate important internal conversations.

Agency leaders can facilitate these developments by cultivating a collaborative culture that encourages information exchange and cooperation to meet the increasingly complex needs of policyholders. In addition, they should consider adjusting compensation structures to foster collaboration over competition.

WHAT'S IN IT FOR AGENCIES AND PRODUCERS

The benefits of agent collaboration are well worth the small degree of effort they require. Here are just a few:

- **Better service:** For starters, you're providing clients with better peace of mind by reducing doubt and ensuring that they are covered in the case of fiduciary risk or gaps between insurance products.
- **Sustainable competitive advantage:** Because you're providing a novel, Blue Ocean service, you're distinguishing your agency from competitors. Unfortunately, the fact is that most producers won't make the effort. Those that do will reap the benefits.
- **Reduced E&O:** The more clearly and comprehensively you lay out the risks to your clients, the less likelihood there is of E&O liability.
- **Increased sales:** Every time you act on your client's behalf to ensure they have the coverage they need, you also sell more insurance products. It's a win-win.



BRING IN A TRUSTED PARTNER TO IMPLEMENT THE CHANGE

Agency Growth Solutions from ReSource Pro can provide training and mentorship to bring EB and P&C agents in sync, elevate client conversations, and increase sales. Agency Growth Solutions combines sales, technical, and prospecting training to align messaging and optimize performance across the sales journey. The goal? To hone the skills that producers need to elevate the conversation and to help buyers make more informed decisions for managing their risk.

As the insurance industry races to the bottom with commoditized offerings and impersonal service, it also opens opportunities for producers and agencies willing to stand out. The future is bright for those willing to provide differentiating service and lead clients toward informed decisions. By doing so, agents can ensure their clients understand the risks they face and ultimately manage them effectively. More and more, this means adding value with an integrated approach that takes a holistic view of policyholder risk and knocking down the traditional silos between EB and P&C producers.

To learn more about Agency Growth Solutions, visit resourcepro.com/ags



ABOUT THE AUTHOR

Frank Pennachio

Frank Pennachio has spent more than 30 years in the insurance industry as an agent and producer, expertise he's leveraged to personally train more than 1,000 insurance professionals. In 2009, he sold his agency and co-founded Oceanus Partners with his partner, Susan Toussaint. Oceanus Partners was acquired by ReSource Pro in 2019, and Frank now serves as Practice Leader, Growth Solutions, helping independent insurance agents and insurance carriers develop risk management expertise and drive new business.

Frank is an expert in the technical elements of workers' compensation, emphasizing the need for agents to understand all aspects of protecting an employers' workforce to provide true value. In addition, Frank is knowledgeable in agency sales and marketing strategies designed specifically to reduce reliance on contingency commissions and increase agency revenues.

Highly regarded as a speaker and thought leader, Frank regularly presents at conferences and publishes articles in outlets as Risk and Insurance, Professional Insurance Agent, WCEC, HR Magazine, and Insurance Journal. When speaking, he hopes to educate, entertain, and provoke his audiences to think in a new way about emerging challenges.

FOR MORE INFORMATION

visit us: resourcepro.com/agencygrowth

email us: fpennachio@resourcepro.com