



Elevating Your Employee Experience

For Founders and Administrative Leaders



PROTECTIVE GEAR
“ON CALL”
TRAVEL TIME
EXEMPTIONS
equal pay different hours
Changes In Technology
COMP TIME
UNAUTHORIZED OVERTIME
WORKING AT HOME OR ON THE ROAD
deductions
“HOURS WORKED”
EARLY CHECK-IN
DOCKING
employee status
SCHEDULING SHIFTS
SHAVING HOURS
UNIFORMS
FOOD CREDIT
FLSA NOTICES
pre- and post shift time
RETALIATION
tip credit
TIME CLOCK NOT PUNCHED
Meal Periods
WAITING TIME
“Work Week”
Coffee Breaks
RECORDKEEPING

working “off the clock”

CHILD LABOR LAWS

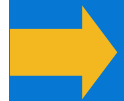
NLRB MOU with the DOL



Memorandum of Understanding Between The U.S. Department of Labor, Wage and Hour Division, and the National Labor Relations Board

○ DOL / WHD Enforces:

- Federal Minimum Wage
- Migrant / Seasonal Agricultural
- Wage Garnishments
- Overtime Pay
- Employee Polygraph Protection
- Davis Bacon Act
- Recordkeeping
- Consumer Credit Protection Act
- Service Contract Act
- Child Labor
- Family and Medical Leave Act



Emphasis on worker misclassification (*both independent contractor and joint-employment relationships*) and retaliation.

DOL Renewed Emphasis on Employee Self-Reporting



DOL-Timesheet App



The image shows two smartphone screens displaying the DOL-Timesheet App. The left screen shows the 'Time Card' interface with fields for 'Hours Worked' (0:30) and 'Break Hours' (0:00). The right screen shows the 'Time Log' interface with a table of work hours for the week of 09/15/2019 to 09/21/2019. The table has columns for 'Day', 'Total Worked (Hours)', and 'Total Break (Hours)'. The data shows 0 hours worked and 0 hours of break for Sunday through Tuesday, and 11 hours worked and 30 minutes of break for Wednesday. Below the screens are buttons for 'Download on the App Store' and 'GET IT ON Google Play'.

Track Your Hours: Just Tap the App

Interested in unions & collective bargaining?

The Worker Organizing Resource and Knowledge (WORK) Center has resources that can help.

[Learn More](#)

How to File a Complaint



[How to File a Complaint with the Wage and Hour Division](#)

Exempt vs. Non-Exempt

- Employees whose jobs are governed by the FLSA are either "exempt" or "nonexempt."
- **Nonexempt** employees are entitled to overtime pay
- **Exempt** employees are not entitled to overtime pay

DOL Exempt Salary Threshold

- **Current** \$684 a week (\$35,568 *annualized*)
- **July 1, 2024: \$844 a week** (\$43,888 per year)
- **January 1, 2025: \$1,128 a week** (\$58,656 per year)
- Additional changes included in the proposal:
 - Adjustments to the exempt duties tests
 - Automatic, periodic increases to the salary threshold based on market data and / or
 - An additional rate increase for highly compensated employees
(current “highly compensated employees” who earn at least \$107,432 are subject to a reduced duties test)



The new rules are being challenged through the courts – stay on the lookout!

Non-Exempt Employees

- **Minimum Wage:** SC/Federal minimum wage = \$7.50 per hour
 - Non-Exempt
 - Exempt
- **Overtime:** All hours worked over 40 each workweek = 1.5 regular rate of pay
- **Hours Worked:** Hours worked ordinarily include all the time during which an employee is required to be on the employer's premises, on duty, or at a prescribed workplace.

- Factors:
 - ✓ How much they are paid
 - ✓ How they are paid
 - ✓ What kind of work they do
- Some jobs are classified as exempt by definition – for example
 - Outside sales = exempt
 - Inside sales = employees are nonexempt

Salary
Basis Test

Job Duties Test

Salary Test

- A **predetermined amount of compensation** each pay period on a weekly, or less frequent, basis.
- Cannot reduce pay because of variations in the quality or quantity of the work.
- Based on **specific facts and circumstances**
- The base pay of a salary basis employee may not be reduced if s/he performs less work than normal




Must receive the full salary for any week in which the employee performs any work, regardless of the number of days or hours worked.

Helix Energy Solutions – February 2023



- U.S. Supreme Court
- Supervisor was paid a daily rate – worked 28 days in a row (*12 hours each day*) and 28 days off
- Plaintiff met “duties test”
- Earned more than \$200,000
- Court ruled he was **not** exempt from the overtime provisions of the FLSA

 **Holding:** because the employee was not paid on a salary basis, the employee was not exempt and was entitled to overtime pay.

The Duties Test

- These FLSA exemptions are limited to employees who perform specific job duties and work
- Job titles and job descriptions are irrelevant
 - A secretary is still a secretary even if s/he is called an "administrative assistant,"
 - The chief executive officer is still the CEO even if s/he is called a janitor
 - The Janitor is still a janitor if called Chief Environmental Officer
- It is the actual job tasks that must be evaluated, along with how the particular job tasks "fit" into the employer's overall operations.
- Whether the duties of a particular job qualify as exempt depends on what they are
- Three typical categories of exempt job duties
 1. Executive
 2. Professional
 3. Administrative

Independent Contractor – Who's Asking?

- Department of Labor → Fair Labor Standards Act
- Internal Revenue Service → Agency Principles
- The Courts → Common Law

DOL Independent Contractor Test

Multifactor, totality-of-the-circumstances analysis to determine whether a worker is an employee or an independent contractor under the FLSA.

Practical Considerations

- The factors under the rule overlap with the most recent/previous rule
- Still considers the nature and degree of control of the principal and the individual's opportunity for profit and loss
- The DOL rule doesn't bind federal courts which means caselaw precedent still applies
- Many states have their own standard – Example - FL defers to the federal DOL

The Courts – Common Law

- Source of the instrumentalities and tools
- Location of the work
- Duration of the relationship between the parties
- Right to assign additional projects to the worker party
- Worker's discretion over when and how long to work
- Method of payment
- Worker's role in hiring and paying assistants
- Work is part of the regular business of the hiring party
- the provision of **employee** benefits
- tax treatment of the hired party

- Control is the central inquiry
 - Behavioral control
 - Financial control
 - Relationship of the parties

IRS Control Factors



Behavioral

- When, where and how to work
- What equipment to use
- What workers to hire or to assist with the work
- Where to purchase supplies and services
- What work must be performed by a specified individual
- What order or sequence to follow

Financial

- Cost of expenses
- The extent of the contractor's investment
- Services to the competition
- Basis for payment to the contractor
- Opportunity/risk for profit and loss
- Who provides "tools of the trade"

Structure

- Written contract
- Employee benefits
- Permanency of the relationship
- How integral the services are to the principal activity.

Penalties and Costs of Misclassification

- Back payroll taxes, plus penalties and interest
- Court time and costs for any related litigation
- Out-of-court settlements
- Criminal sanctions, including imprisonment and fines
- Personal liability for corporate officers - up to 100% of the amount the employer should have withheld in payroll taxes
- Invalidity of benefit plans
- Overtime pay under the Fair Labor Standards Act
- Retirement benefits
- Employee benefits
- Workers' compensation benefits
- Unemployment claims

Example 1



News Release

DEPARTMENT OF LABOR OBTAINS JUDGMENT IN RECOVERY OF \$650K FOR 26 DRIVERS MISCLASSIFIED AS INDEPENDENT CONTRACTORS BY ROMERO'S FOOD PRODUCTS INC.

Food manufacturer denied employees overtime wages, other worker rights, protections

SANTA FE SPRINGS, CA – The U.S. Department of Labor has obtained a consent judgment as part of its efforts to recover \$650,000 in unpaid overtime wages for 26 delivery drivers of a Santa Fe Springs food manufacturer that misclassified them as independent contractors exempt from overtime.

The action by the U.S. District Court for the Central District of California requires Romero's Food Products Inc. to pay back wages to the affected employees. The court also forbid the company permanently from future [Fair Labor Standards Act](#) violations and prohibited Romero from employing any worker for more than 40 hours in a workweek without paying them required overtime pay. The court entered the judgment in April 2023.

The department's litigation follows an investigation by the department's [Wage and Hour Division](#) that found that, by misclassifying the drivers as independent contractors, Romero's Food Products denied them the overtime rate required for hours over 40 in a workweek. The company employed the drivers to distribute its products to Walmart, Costco, Albertson's, Stater Bros. Markets and other retail grocery outlets. Romero's also failed to maintain accurate employee records.

Example 2



News Release

US DEPARTMENT OF LABOR RECOVERS \$158K IN BACK WAGES, DAMAGES FOR 91 WORKERS AT CALIFORNIA WAREHOUSE AFTER EMPLOYER FAILED TO PAY WORKERS

DRE Health Corp. hired extra workers to meet demand for COVID-19 masks

BUENA PARK, CA – A U.S. Department of Labor investigation recovered \$158,096 in back wages and liquidated damages for employees of a global medical products manufacturer that failed to pay workers, putting many of them at risk of being unable to provide for their basic needs.

The department's [Wage and Hour Division](#) found DRE Health Corp. – operating as DRE WorldMask USA Ltd. – violated the [Fair Labor Standards Act](#) when it wrongfully [misclassified warehouse workers](#) in Orange County as independent contractors and failed to pay them the wages and overtime pay they earned.

The investigation led to the recovery of \$79,048 in back wages and an equal amount of \$79,048 in liquidated damages for 91 workers. The division also assessed \$4,936 in penalties against the employer.

Correction Considerations

- Back-wages/unpaid overtime?
- Make whole for 401k?
- Make whole for employee benefits?

OR

- Start from scratch?

Our mission

**To help
businesses
succeed so
communities
prosper**



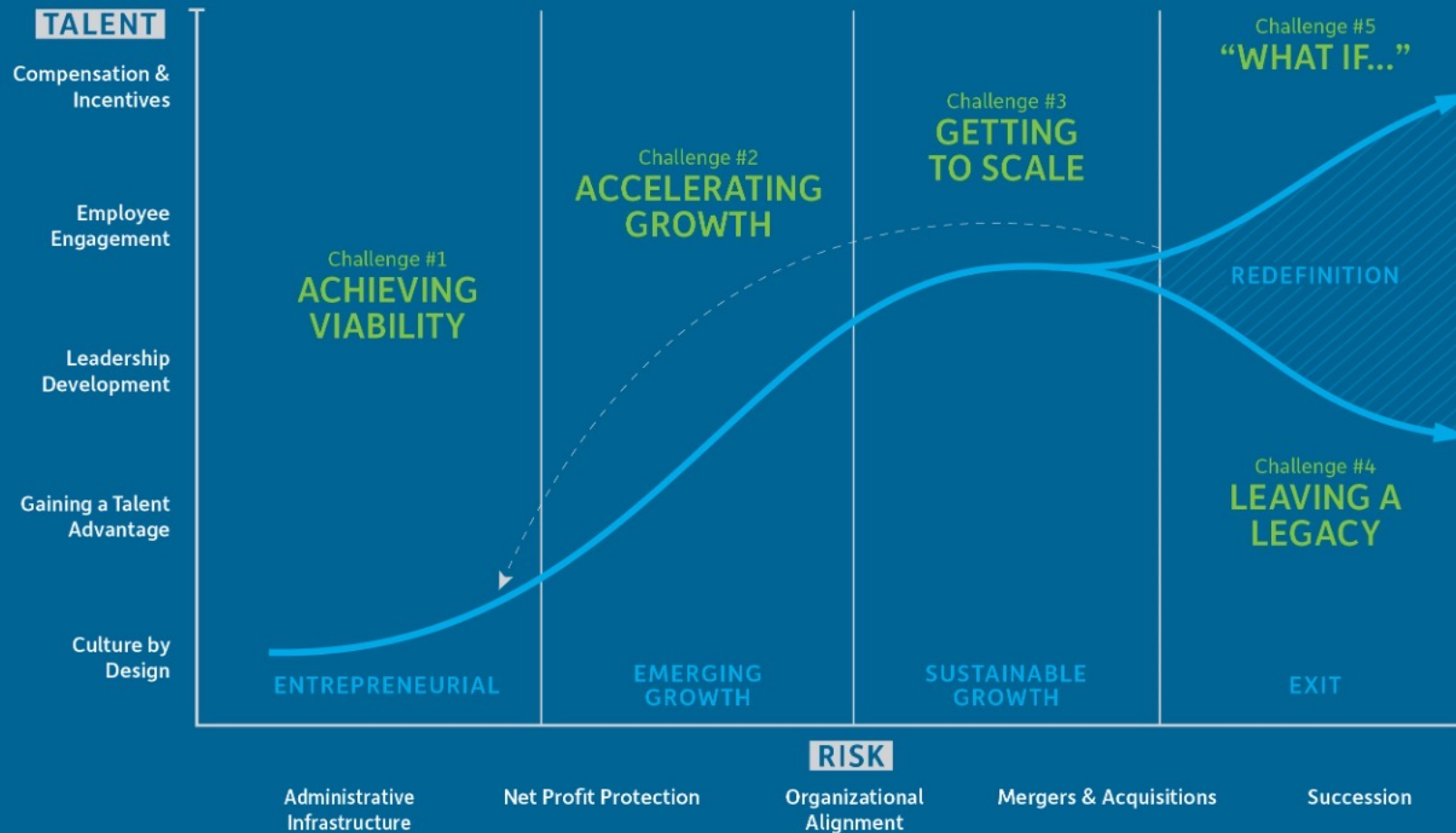
"Culture is like the oil in the engine that makes it all run smoothly but effectively. It's where you get the power. If you don't have oil in the engine, everything breaks down and locks up and you can't move."

A handwritten signature in orange ink, appearing to read "Paul J. Sarvadi". The signature is fluid and cursive, with a large loop at the end.

Paul J. Sarvadi Chairman
and CEO Insperity

Where is your business going?

JOIN A PEO THAT CAN MAXIMIZE YOUR PRODUCTIVITY AND PROFITABILITY



**What can a
professional employer
organization (PEO)
do for your business?**

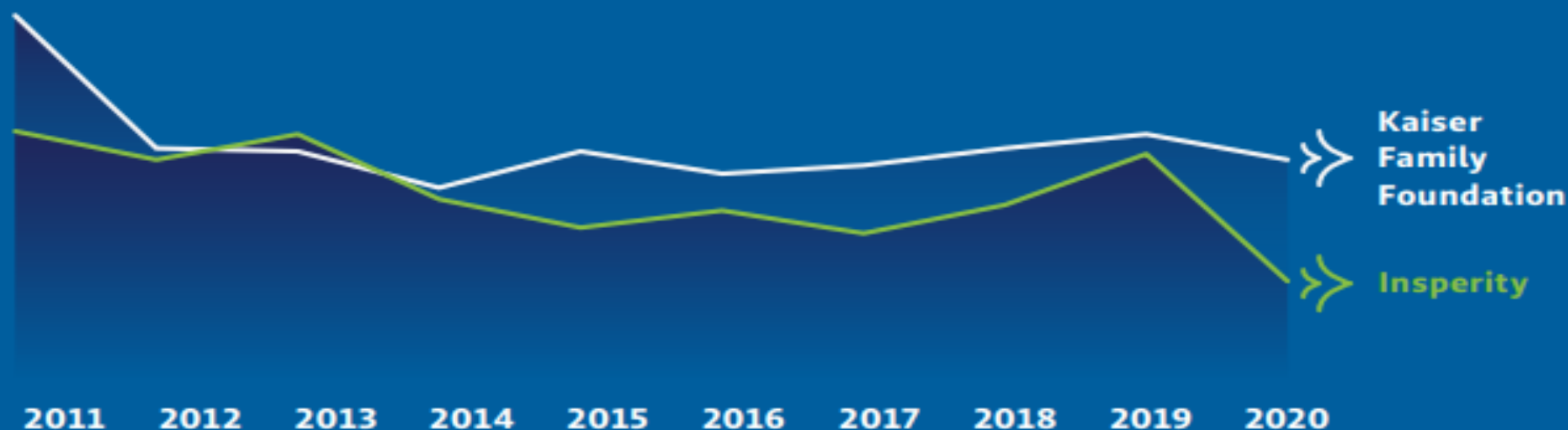
#1 – Access to Comprehensive Benefit Plans

- Your employees gain access to comprehensive benefit plans comparable to those found at large companies.
- **Fortune 500 benefits access**
 - Health Insurance
 - 401K Retirement Plans
 - Health Care FSA/HSA Programs
 - Life/Disability Insurance



INSPERITY TREND VS. KAISER ANNUAL HEALTH SURVEY TRENDS

Insperty's benefit plans are structured and managed for maximum cost efficiency. Over the last 10 years, the annual benefits costs incurred by Insperty have compared favorably to the Kaiser Family Foundation Health Benefit Survey data by an average of approximately 1% per year.



The trend lines above compare the year-over-year percentage change in the benefits costs incurred by Insperty to the year-over-year percentage change in the combined average annual premiums for single and family coverages as published in the Kaiser Family Foundation Employer Health Benefits Survey. Insperty's benefits costs are comprised primarily of health insurance premiums and claims costs (including dental and pharmacy costs), but also include costs of other employee benefits, such as life insurance, vision care, disability insurance, education assistance, a flexible spending account program and a work-life program. The trends reported are primarily based on the overall experience of the Insperty Group Health Plan and are not reflective of past changes or a guarantee of future changes to a client's comprehensive service fee.

#2 – Relief from Payroll & HR Admin. Overload

- Pass off many of your daily HR Duties – administering benefits, managing employee paperwork, processing payroll and tax reporting – to a group that specializes in HR!
- Payroll Processing
- Tax Reporting & Deposits
- Paycheck/paystub
- Garnishments





#3 – HR-Related Government Compliance Assistance



- It's Insperity's job to constantly monitor changes to state and federal labor laws that could affect your business, as well as advise you on what actions you need to take to comply.
- Unemployment Claims Administration
- OSHA
- Employment Verifications (I-9 / E-verify)



#4 – Workers' Compensation coverage and claim resolution

- Specialists will guide you through the process surrounding work – related injuries, including monitoring claims and assisting injured workers' return to work.
 - Workers' Compensation Coverage
 - Safety Programs
 - Claim Management
 - Return-to-work Programs



#5 –

A GO-TO team of experienced HR professionals

- Whether you need help with feuding employees or an EEOC claim investigation, Insperity employs knowledgeable professionals who can provide guidance on sensitive employee-related issues.
 - Employee-Relations Support
 - EEOC investigation, Reporting and Mediation
 - Employee Training & Development
 - Employee Handbooks/policies/etc.



PROOF THAT PEOs WORK

10%

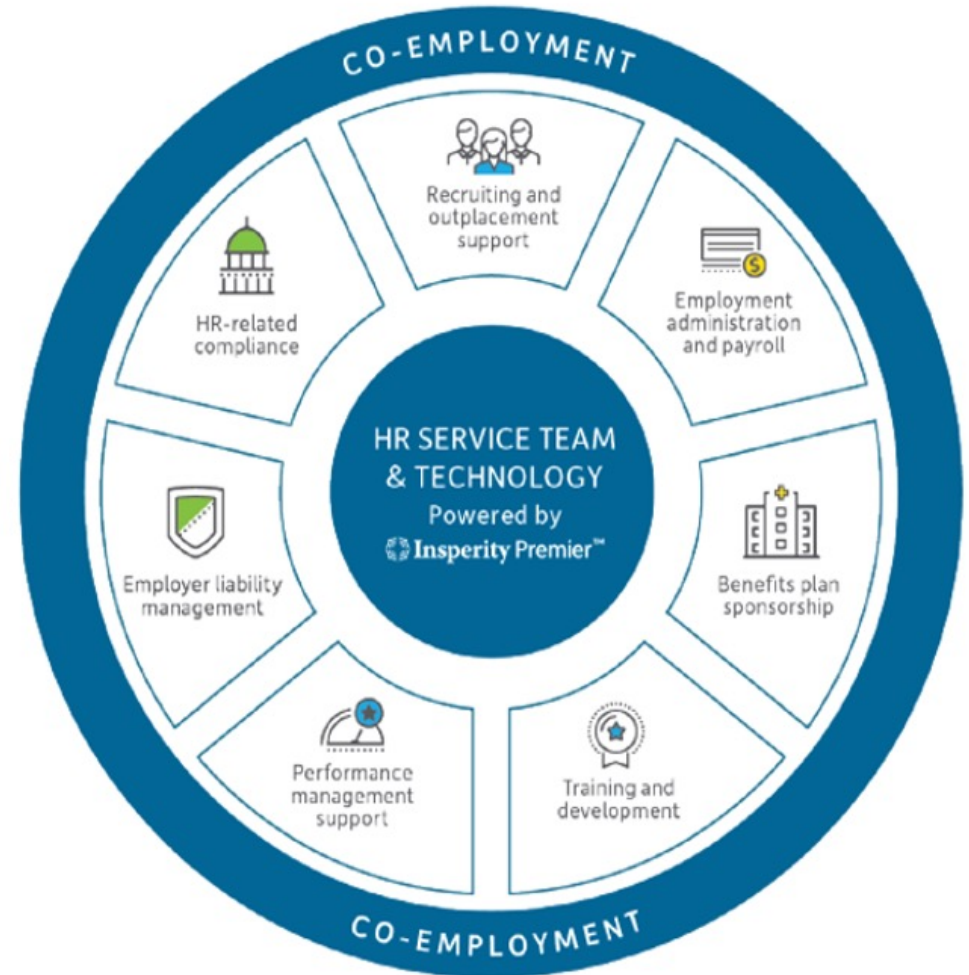
Small businesses that use a PEO have an employment growth rate that's nearly 10 percent higher than small businesses that don't.

10-14
PERCENTAGE POINTS

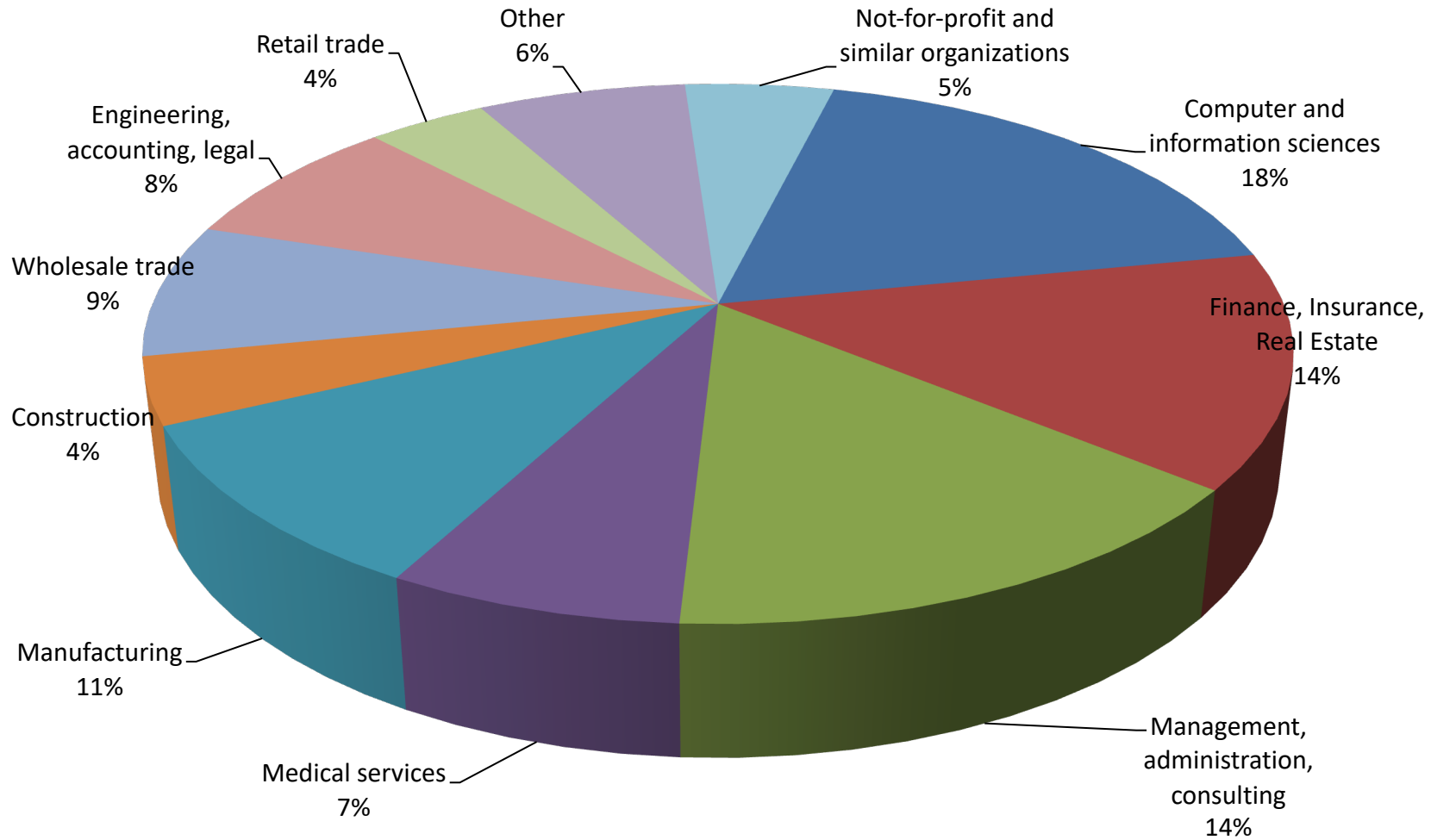
The employee turnover rate for PEO clients is 10 to 14 percentage points lower per year than that of comparable companies.

50%

Businesses that use PEOs are approximately 50 percent less likely to go out of business from one year to the next.¹



Workforce Optimization Client Mix





Thank you,

Meghan Fleming

Certified Business Performance Advisor

704-737-4545

Meghan.Fleming@Insperity.com



Questions?





Elevating Your Employee Experience

For Founders and Administrative Leaders

