



**THE WORKERS' COMPENSATION  
RATING AND INSPECTION BUREAU OF MASSACHUSETTS**

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April 23, 1992

**CIRCULAR LETTER NO. 1602**

**To All Members and Subscribers of the Bureau**

**Employee Leasing Companies  
Regulation 211 CMR 111.00**

The Division of Insurance has promulgated attached Regulation 211 CMR 111.00 Workers' Compensation Insurance Requirements Applicable To Employee Leasing Companies And Their Client Companies (Exhibit 1) effective March 31, 1992. This regulation applies to both voluntary and assigned risk business.

The purpose of this regulation is to ensure that any entity which is defined as an employee leasing company, as provided in 211 CMR 111.03, properly obtains workers' compensation insurance coverage for itself and all of its employees leased to another entity (client company), and that premium paid for the coverage for such leased employees is commensurate with the exposure and anticipated claim experience. This section of the regulation also defines "Employee leasing company," "Client company" and "Employee leasing arrangement."

Section 111.04 states that "it shall be the responsibility of the employee leasing company to purchase and maintain a separate policy providing standard workers' compensation and employers' liability insurance for each client company." It further states that "the experience of all of the employees leased to a client company shall be combined with the experience of the employees of the client company for purposes of calculating an experience modification. The experience modification so calculated shall be applied to the client company's policy and all policies maintained for it by a leasing company or leasing companies. Each policy written to cover leased employees shall be issued to the employee leasing company as the named insured. The client company shall be identified thereon by the attachment of an appropriate endorsement indicating that the policy provides coverage for leased employees in accordance with Massachusetts law.

The Commissioner of Insurance has approved attached Massachusetts Employee Leasing Endorsement WC 20 03 04 (Exhibit 2) for use on new and renewal policies effective on and after 12:01 A.M., March 31, 1992, as applicable, when the named insured is an employee leasing company, as defined in the regulation. This endorsement applies only with respect to those employees of the employer leasing company, named in Item 1 of the Information Page of the policy provided to the client company shown in the Schedule of the endorsement, under an employee leasing arrangement. Consistent with the regulation, the endorsement provides that this

arrangement is long term and not used to provide the client company temporary help services during seasonal or unusual conditions; and that Part One (Workers' Compensation Insurance) and Part Two (Employers Liability Insurance) of the policy will apply as though the client company is insured. The endorsement contains special cancelation provisions allowing the insurance carrier to cancel the policy without need of sending notice to the client company, placing this responsibility on the employee leasing company. In addition, the endorsement specifies that certain violations of the regulation shall be considered fraud or material misrepresentation pursuant to Massachusetts law and grounds for cancelation or nonrenewal provided the employee leasing company is given thirty days to cure the violation. Also, in accordance with the regulation, the endorsement states that the experience of the employees leased to the client company shall be separately maintained.

The Commissioner of Insurance has also approved attached Massachusetts Exclusion of Coverage for Leased Employees Endorsement (Employee Leasing Company) WC 20 03 05 (Exhibit 3) for use on new and renewal policies effective on and after 12:01 A.M., March 31, 1992, where the named insured is an employee leasing company, as defined in the regulation, to restrict coverage to its own, non-leased employees. Such non-leased employees should be protected under a separate policy.

Section 111.05 states the obligations of an employee leasing company to its insurer. It specifies the steps that the insurer or the Bureau may take to ascertain exposure under each policy issued to an employee leasing company to collect the appropriate premium and permit the calculation of an experience modification factor by the Bureau for each client company.

Section 111.06 states the obligations of the client company to secure workers' compensation coverage for its own, non-leased employees, and specifies that a client company shall not be eligible for coverage pursuant to a workers' compensation policy issued to the employee leasing company if the client company owes workers' compensation premium to any current or prior insurer.

If the client company has its own, non-leased employees, it must have a separate policy to protect these employees, with the name of the client company shown in Item 1. of the Information Page of the policy.

Section 111.07 pertains to policy cancellation and nonrenewal. Notice procedures are contained in Massachusetts Employee Leasing Endorsement WC 20 03 04.

Section 111.08 requires insurers to audit policies issued or renewed pursuant to 211 CMR 111.04 within 90 days of the policy effective date and allows the insurer to conduct interim audits thereafter to determine whether all classifications, experience modification factors and estimated premium utilized with respect to the development of the premium charged to the employee leasing company are appropriate.

Massachusetts Workers' Compensation Insurance Supplemental Application (Bureau Circular Letter No. 1565 dated April 19, 1991) must be completed by an employee leasing company making application to the Massachusetts Workers' Compensation Assigned Risk Pool for each client company under an employee leasing arrangement. An insurer providing coverage for an employee leasing company on a

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voluntary basis should also be guided by the type of information found in the Supplemental Application.

Attached revised Basic Manual (MA) rules (Exhibit 4) and Experience Rating Plan Manual (MA) rules (Exhibit 5) are being submitted to the Division of Insurance for approval. Revised manual pages will be distributed by the National Council.

NORMAN R. FONTAINE  
Vice President of Industry Affairs

NRF/dc 1938  
Attachments

211 CMR 111.00 WORKERS' COMPENSATION INSURANCE REQUIREMENTS  
APPLICABLE TO EMPLOYEE LEASING COMPANIES AND  
THEIR CLIENT COMPANIES

- 111.01: Purpose and Scope
- 111.02: Authority
- 111.03: Definitions
- 111.04: Responsibility for Purchase and Maintenance of Separate Policies
- 111.05: Obligations of Employee Leasing Company to Insurer
- 111.06: Obligations of Client Company
- 111.07: Policy Cancellation or Nonrenewal
- 111.08: Insurer Audit

111.01: Purpose and Scope

The purpose of this regulation is to ensure that any entity which is defined as an employee leasing company as provided in 211 CMR 111.03, properly obtains workers' compensation insurance coverage for itself and all of its employees leased to another entity, and that premium paid for the coverage for such leased employees is commensurate with the exposure and anticipated claim experience.

111.02: Authority

This regulation is promulgated in accordance with the authority granted to the Commissioner of Insurance by M.G.L. c. 152, s.14A, as added by St. 1991, c. 398, s. 38A.

111.03 Definitions

As used in this regulation, the following words will have the meanings indicated:

Client Company means a person, association, partnership, corporation or other entity located or having operations in Massachusetts that utilizes workers provided by a lessor through an employee leasing arrangement.

Commissioner means the Commissioner of Insurance.

Employee Leasing Arrangement means an arrangement whereby one business entity provides workers to another business entity under a contract that retains for the lessor a substantial portion of personnel management functions, such as payroll, direction and control of workers, and the right to hire and fire those workers provided by such lessor, provided, however, that the leasing arrangement is long term and not an arrangement to provide the lessee temporary help services during seasonal or unusual conditions.

Employee Leasing Company means a sole proprietorship, partnership, corporation or other form of business entity whose business consists largely of providing workers to one or more client companies by means of employee leasing arrangements.

111.04: Responsibility for Purchase and Maintenance of Separate Policies

- (1) It shall be the responsibility of the employee leasing company to purchase and maintain a separate policy providing standard workers'

compensation and employers' liability insurance for each client company. The experience of all of the employees leased to a client company shall be combined with the experience of the employees of the client company for purposes of calculating an experience modification. The experience modification so calculated shall be applied to the client company's policy and all policies maintained for it by a leasing company or leasing companies. Each policy written to cover leased employees shall be issued to the employee leasing company as the named insured. The client company shall be identified thereon by the attachment of an appropriate endorsement indicating that the policy provides coverage for leased employees in accordance with Massachusetts law. The endorsement shall, at a minimum, provide for the following:

- (a) Coverage under the policy shall be limited to the named insured's employees leased to the client company;
  - (b) The experience of the employees leased to the particular client company shall be separately maintained;
  - (c) Cancellation of the policy shall not affect the rights and obligations of the named insured as an employee leasing company with respect to any other workers' compensation and employers' liability policy issued to the named insured.
- (2) The requirements of 211 CMR 111.04 apply to new and renewal policies effective on or after the effective date of this regulation.

111.05: Obligations of Employee Leasing Company to Insurer

- (1) The insurer or any rating organization licensed under M.G.L. c. 152, s. 52c may take all reasonable steps to ascertain exposure under each policy issued to the employee leasing company and collect the appropriate premium by requiring:
  - (a) A complete description of employee leasing company operations;
  - (b) Periodic reporting of client company payroll, classifications, experience rating modification factors, and jurisdictions with exposure. This reporting may be supplemented by a requirement to submit Internal Revenue Service Form 941 or its equivalent on a quarterly basis and such other payroll reporting forms as may be required by federal and state regulatory authority;
  - (c) Physical inspection of client company premises pursuant to M.G.L., c. 152 s. 64;
  - (d) Audit of employee leasing company operations.
- (2) The employee leasing company shall maintain and furnish to the insurer sufficient information to permit the calculation of an experience modification factor by the rating organization licensed under c. 152, s. 52C for each client company. Such information shall include:

- (a) The client company's corporate or trade name and address;
- (b) the client company's taxpayer or employer identification number;
- (c) A listing of the names, addresses and social security numbers of all leased employees associated with each client company, the applicable classification code and payroll; and
- (d) Claim information.

111.06: Obligations of Client Company

- (1) Nothing in this regulation shall have any effect on the statutory obligation of a client company to secure workers' compensation coverage for employees not provided, supplied or maintained by an employee leasing company pursuant to an employee leasing arrangement.
- (2) A client company shall not be eligible for coverage pursuant to a workers' compensation policy issued to the employee leasing company if the client company owes its current or prior insurer any premium for workers' compensation insurance.

111.07: Policy Cancellation or Nonrenewal

- (1) Any violation of 211 CMR 111.04 or 111.05 shall be considered fraud or material misrepresentation pursuant to M.G.L. c. 152, s. 55A, as added



by St. 1991, c. 398, s. 84, and grounds for cancellation or nonrenewal, provided that the employee leasing company has been provided 30 days to cure the violation.

- (2) With respect to any workers' compensation insurance policy issued to or renewed by the employee leasing company prior to the effective date of this regulation for which notice has been received that such policy will be canceled or nonrenewed, the leasing company shall notify by certified mail, within ten days of the receipt of such notice, any client company for which there is an employee leasing arrangement.
- (3) With respect to any workers' compensation insurance policy issued or renewed pursuant to 211 CMR 111.04, for which notice has been received that such policy will be canceled or nonrenewed, the leasing company shall notify the client company of the receipt of such notice in the same manner as provided in 211 CMR 111.07(2).

111.08: Insurer Audit

Insurers shall audit policies issued or renewed pursuant to 211 CMR 111.04 within 90 days of the policy effective date and may conduct interim audits thereafter. The purpose of the audit will be to determine whether all classifications, experience modification factors and estimated payroll utilized with respect to the development of the premium charged to the employee leasing company are appropriate.

MASSACHUSETTS EMPLOYEE LEASING ENDORSEMENT

As used in this endorsement, "employee leasing" shall mean an arrangement whereby an entity utilizes the services of another entity to provide it with some or all of its workforce for a fee or other compensation under an employee leasing arrangement. The entity providing employee leasing services shall be referred to as an "employee leasing company." The entity receiving the services shall be referred to as a "client company."

This endorsement applies only with respect to those of your employees provided to the client company shown below under an employee leasing arrangement. These are arrangements that are long term and not used to provide the client company temporary help services during seasonal or unusual conditions. Part One (Workers' Compensation Insurance) and Part Two (Employers' Liability Insurance) will apply as though the client company is insured.

The insurance afforded by this endorsement is not intended to satisfy the client company's duty to secure its obligations under the workers' compensation law. We will not file evidence of this insurance on behalf of the client company with any government agency.

We will not ask any other insurer of the client company to share with us a loss covered by this endorsement.

Premium will be charged for your employees leased to the client company shown below.

The policy may be canceled pursuant to applicable law without need for us to send notice to the client company. It shall be your responsibility to notify the client company under the to-be-canceled policy in accordance with Massachusetts regulations. The cancellation of this policy shall not affect your rights and obligations as an employee leasing company with respect to any other workers' compensation and employers' liability policy issued to you.

In addition, certain violations of the Massachusetts regulations applicable to employee leasing arrangements shall be considered fraud or material misrepresentation pursuant to Massachusetts law and grounds for cancellation or nonrenewal provided you are given thirty days to cure the violation.

Part Four (Your Duty if Injury Occurs) applies to you and the client company shown below. The client company will recognize our right to defend under Part One and Part Two and our right to inspect under Massachusetts law and Part Six.

The experience of the employees leased to the client company shall be separately maintained.

SCHEDULE

Name of Client

Address

**Notes:**

1. Use this endorsement with a policy showing Massachusetts in Item 3.A. of the Information Page when the insured (employee leasing company) named in Item 1. of the Information Page fulfills its obligation to provide insurance for workers' compensation and employers liability claims made by employees leased to a entity (client) named in the Endorsement Schedule, under a contractual agreement.

**MASSACHUSETTS EXCLUSION OF COVERAGE FOR LEASED EMPLOYEES ENDORSEMENT  
(EMPLOYEE LEASING COMPANY)**

This policy applies only with respect to those of your employees not leased to a client company under an "employee leasing arrangement" as defined in Massachusetts Regulation 211 CMR 111:00.

**Note:** This endorsement must be attached to every policy where the named insured is an employee leasing company, as defined in Massachusetts Regulation 211 CMR 111:00, to restrict coverage to non-leased employees.

Effective March 31, 1992

Present

Proposed  
SPECIAL RULES

**RULE IX - SPECIAL CONDITIONS OR OPERATIONS AFFECTING COVERAGE AND PREMIUM**

**E. Employee Leasing Arrangements**

(This Rule not applicable in Massachusetts)

**RULE IX - SPECIAL CONDITIONS OR OPERATIONS AFFECTING COVERAGE AND PREMIUM**

**E. Employee Leasing Arrangements**

This Rule is replaced as follows:

MA Regulation 211 CMR 111.00 Workers' Compensation Insurance Requirements Applicable To Employee Leasing Companies And Their Client Companies

**1. Purpose and Scope**

The purpose of this regulation is to ensure that any entity which is defined as an employee leasing company as provided in 211 CMR 111.03, properly obtains workers' compensation insurance coverage for itself and all of its employees leased to another entity, and that premium paid for the coverage for such leased employees is commensurate with the exposure and anticipated claim experience.

**2. Definitions**

a. Employee Leasing Arrangement means an arrangement whereby one business entity provides workers to another business entity under a contract that retains for the lessor a substantial portion of personnel management functions, such as payroll, direction and control of workers, and the right to hire and fire those workers provided by such lessor; provided, however, that the leasing arrangement is long term and not an arrangement to provide the lessee temporary help services during seasonal or unusual conditions.

b. Employee Leasing Company means a sole proprietorship, partnership, corporation or other form of business entity whose business consists largely

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Effective March 31, 1992

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of providing workers to one or more client companies by means of employee leasing arrangements.

c. Client Company means a person, association, partnership, corporation or other entity located or having operations in Massachusetts that utilizes workers provided by a lessor through an employee leasing arrangement.

### 3. Responsibility For Purchase And Maintenance Of Separate Policies

a. It shall be the responsibility of the employee leasing company to purchase and maintain a separate policy providing workers compensation and employers liability insurance for each client company. Each policy written to cover leased employees shall be issued to the employer leasing company as the named insured shown in Item 1. of the Information Page of the policy. The client company shall be identified thereon by being shown in the Schedule of Massachusetts Employee Leasing Endorsement WC 20 03 04, which must be attached to the policy, indicating that the policy provides coverage for leased employees in accordance with Massachusetts law.

### 4. Obligations Of Employee Leasing Company To Insurer

a. The insurer or any rating organization licensed under M.G.L. c. 152, s. 52c may take all reasonable steps to ascertain exposure under each policy issued to the employee leasing company and collect the appropriate premium by requiring:

(1) A complete description of employee leasing company operations;

(2) Periodic reporting of client company payroll, classifications, experience rating modification factors, and jurisdictions with

Effective March 31, 1992

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exposure. This reporting may be supplemented by a requirement to submit Internal Revenue Service Form 941 or its equivalent on a quarterly basis and such other payroll reporting forms as may be required by federal and state regulatory authority;

(3) Physical inspection of client company premises pursuant to M.G.L., c. 152 s. 64;

(4) Audit of employee leasing company operations.

b. The employee leasing company shall maintain and furnish to the insurer sufficient information to permit the calculation of an experience modification factor by the rating organization license under c. 152, s. 52C for each client company. Such information shall include:

(1) The client company's corporate or trade name and address;

(2) The client company's taxpayer or employer identification number;

(3) A listing of the names, addresses and social security numbers of all leased employees associated with each client company, the applicable classification code and payroll; and

(4) Claim information.

#### 5. Obligation Of Client Company

a. Nothing in this regulation shall have any effect on the statutory obligation of a client company to secure workers compensation coverage for employees not provided, supplied or maintained by an employee leasing company pursuant to an employee leasing arrangement.

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Effective March 31, 1992

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b. A client company shall not be eligible for coverage pursuant to a workers compensation policy issued to the employee leasing company if the client company owes its current or prior insurer any premium for workers compensation insurance.

#### 6. Policy Cancellation or Nonrenewal

a. Any violation of 211 CMR 111.04 or 111.05 shall be considered fraud or material misrepresentation pursuant to M.G.L. c. 152, s. 55A, as added by St. 1991, c. 398, s. 84, and grounds for cancellation or nonrenewal, provided that the employee leasing company has been provided 30 days to cure the violation.

b. With respect to any workers compensation insurance policy issued to or renewed by the employee leasing company prior to the effective date of this regulation for which notice has been received that such policy will be canceled or nonrenewed, the leasing company shall notify by certified mail, within ten days of the receipt of such notice, any client company for which there is an employee leasing arrangement.

c. With respect to any workers compensation insurance policy issued or renewed pursuant to 211 CMR 111.04, for which notice has been received that such policy will be canceled or nonrenewed, the leasing company shall notify the client company of the receipt of such notice in the same manner as provided in 211 CMR 111.07(2).

#### 7. Insurer Audit

Insurers shall audit policies issued or renewed pursuant to 211 CMR 111.04 within 90 days of the policy effective date and may conduct interim audits thereafter. The purpose of the audit will be to determine whether all classifications, experience modification

Effective March 31, 1992

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factors and estimated payroll utilized with respect to the development of the premium charged to the employee leasing company are appropriate.

NF/1925



Effective March 31, 1992

Present

Proposed

PART THREE

PART THREE

ADMINISTRATION OF THE PLAN

ADMINISTRATION OF THE PLAN

B. OWNERSHIP CHANGES:

Add To B. OWNERSHIP CHANGES:

This rule applies to policies issued to be effective prior to 12:01 A.M., March 31, 1992.

If (1) an entity terminates its employment relationship with all, or substantially all, of its employees; and (2) all or substantially all of such employees are thereafter employed by another entity which leases (leasing contractor) such employees to the original employer (the client), the experience that the client incurred prior to the termination of the original employment relationship shall be used in all ratings of the leasing employer (leasing contractor).

SAME

In the instance where more than one employer (client) is involved, the payrolls attributed to each employer (client) and the experience that they incurred prior to the termination of the original employment relationships shall be used in all ratings of the leasing employer (leasing contractor) until such time as the leasing employer (leasing contractor) develops its own experience modification as provided by the Experience Rating Plan.

PART TWO

OPERATION OF THE PLAN

C. EXPERIENCE TO BE USED IN A RATING

Employee Leasing

(a) As required by MA Regulation 211 CMR 110.00, it shall be the responsibility of an employee leasing company to purchase and maintain a separate policy providing standard workers compensation and employers liability insurance for each client company.

Effective March 31, 1992

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Proposed

PART TWO - CONTINUED

OPERATION OF THE PLAN

C. EXPERIENCE TO BE USED IN A RATING

Employee Leasing

(b) The experience of all of the employees leased to a client company, to the extent possible, shall be combined with the experience of the employees of the client company for purposes of calculating an experience modification. The experience modification so calculated shall be applied to the client company's policy and all policies maintained for it by a leasing company or leasing companies.

NF/1870