



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

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CIRCULAR LETTER NO. 1612

To All Members and Subscribers of the Bureau

Revised Basic WC and EL Manual [MA] Rules
Revised Rating Plan Manual [MA] Rules
Revised Massachusetts Employee Leasing Endorsement WC 20 03 04A
Employee Leasing Companies Regulation 211 CMR 111.00

The Division of Insurance has approved the attached revised rules and endorsement to implement Regulation 211 CMR 111.00: Workers' Compensation Insurance Requirements Applicable To Employee Leasing Companies and Their Client Companies which became effective as a permanent regulation on June 19, 1992 following the regulation which was issued effective March 31, 1992 on an emergency basis.

The revised rules and endorsement consistently reflect the wording of the permanent regulation, and include the following non-substantive change made for the purposes of clarification:

Section 111.03: Definitions Employee Leasing Arrangement

The phrase "such as temporary skill shortages or temporary special assignments and projects" has been added.

In addition, Section 111.04: Responsibility for Purchase and Maintenance of Separate Policies [2] has been clarified with respect to its application whenever any employee leasing arrangement is entered into, renewed, or extended on or after the effective date of the regulation.

Also, please note that reference to applicable approved endorsements has been shown in Section 111.04 following the text of this section.

These revised rules are effective 12:01 A.M., March 31, 1992, except where a June 19, 1992 date is indicated, applicable to new and renewal business only.

Massachusetts Employee Leasing Endorsement WC 20 03 04A should be used on new and renewal policies effective on and after 12:01 A.M., June 19, 1992, as applicable.

Revised manual pages containing these changes will be distributed in due course.

NORMAN R. FONTAINE
Vice President of Industry Affairs

NRF/dc 2770
Attachment

Effective March 31, 1992

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

Amend as follows:

E. Employee Leasing

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

111.01: Purpose and Scope

The purpose of 211 CMR 111.00 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

211 CMR 111.00 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 211 CMR 111.00, 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

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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, such as temporary skill shortages or temporary special assignments and projects.

*

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

* Phrase, "such as temporary skill shortages or temporary special assignments and projects," added for purposes of clarification with the adoption of Regulation on a permanent basis on 6/19/92.

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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.

Use Massachusetts Employee Leasing Endorsement WC 20 03 04* when the named insured is an employee leasing company as defined in this regulation. This endorsement applies only with respect to those employees of the employee 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.

* Use revised version Massachusetts Employee Leasing Endorsement 20 03 03A on new and renewal policies effective on and after 12:01 A.M., June 19, 1992, as applicable.

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Use Massachusetts Exclusion of Coverage for Leased Employees Endorsement (Employee Leasing Company) WC 20 03 05 when the named insured is an employee leasing company, as defined in this regulation, to restrict coverage to its own, non-leased employees. Such non-leased employees are protected under a separate policy.

- ** (2) The requirements of 211 CMR 111.04 apply whenever any employee leasing arrangement is entered into, renewed, or extended on or after 6/19/92. These regulations also apply upon the effective date of any new or renewal policy occurring on or after 6/19/92, if such policy provides coverage for leased employees under any employee leasing arrangement in effect prior to 6/19/92.

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;

- ** This sub-section was revised for purposes of clarification with the adoption of the Regulation on a permanent basis on 6/19/92.

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(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 M.G.L., 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: Obligation Of Client Company

(1) Nothing in 211 CMR 111.00 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

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material misrepresentation pursuant to M.G.L. c. 152, s. 35A, 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 211 CMR 111.00 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.

NF/2251

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PART TWO

OPERATION OF THE PLAN

**Add to C. EXPERIENCE TO BE USED IN
A RATING**

11. Employee Leasing

The experience to be used in a rating shall be governed by the provisions of MA Regulation 211 CMR 111.00 contained in Basic Manual for WORKERS' COMPENSATION AND EMPLOYERS LIABILITY INSURANCE MA SPECIAL RULES RULE IX - SPECIAL CONDITIONS OR OPERATIONS AFFECTING COVERAGE AND PREMIUM E. Employee Leasing.

PART THREE

ADMINISTRATION OF THE PLAN

Add To B. OWNERSHIP CHANGES:

Employee Leasing

NOTE: This rule does not apply to new and renewal policies effective 12:01 A.M., March 31, 1992 and thereafter, or to any employee leasing arrangement entered into, renewed or extended on or after such date.

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 work force 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, such as temporary skill shortages or temporary special assignments and projects. 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 cancelation 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 cancelation 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

Note: 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 an entity (client) named in the endorsement Schedule, under a contractual agreement.