



May 14, 2020

**CIRCULAR LETTER NO. 2367**

To All Members and Subscribers of the WCRIBMA:

**\* UPDATED TO REFLECT NEW PEO RULES \*  
CLARIFICATION REGARDING THE ISSUANCE AND REPORTING OF  
POLICIES ISSUED TO EMPLOYEE LEASING COMPANIES, PROFESSIONAL EMPLOYER ORGANIZATIONS,  
STAFFING FIRMS & TEMPORARY EMPLOYMENT AGENCIES**

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This circular is being issued to update Circular Letter 2338, *Clarification Regarding the Issuance and Reporting of Policies Issued to Employee Leasing Companies, Professional Employer Organizations, Staffing Firms & Temporary Employment Agencies*, dated September 28, 2018 in light of the new laws and rules applicable to Professional Employer Organizations which were announced in Circular Letter 2360, dated February 25, 2020.

The underwriting and reporting departments of all member companies should review their employee leasing company ("ELC") and professional employer organization ("PEO") policies with Massachusetts listed in 3A to ensure they are being issued and reported properly.

**All ELC and PEO policies must be issued and reported to the WCRIBMA and NCCI in accordance with the following manual rules. The enclosed guidelines are intended to summarize the information in, but should never be considered a replacement for, these manuals.**

- **MA Workers' Compensation and Employers Liability Insurance Manual**
  - Rule IV.D.12. – Premium for Leased Employees
  - Rule IX.E. – Employee Leasing Arrangements
  - Rule IX.F. – Professional Employer Agreements
- **WCIO Workers Compensation Policy Reporting Specifications Manual (WCPOLS)**
  - Header Record (Record 01)
    - Employee Leasing Policy Type Code (Field 9)
  - Name Record (Record 02)
    - PEO or Client Company Code (Field 6)
    - Name of Insured (Field 7)
  - Massachusetts Employee Leasing Endorsement (Record FA)
- **MA Workers' Compensation Policy Data Reporting Guide**
  - Section V.L. – Employee Leasing/PEO/Labor Contractors – *policy issuance requirements*
  - Section VII.F. - Employee Leasing/PEO/Labor Contractors – *electronic reporting requirements*
  - Section VII.A. – Transaction Code 16 – Proof of Coverage a/k/a Notice of Policy Issuance – *contains information on electronically reporting Issue Notices on leasing client policies.*
  - Appendix III.D. – Endorsement Record Types
- **NCCI's Experience Rating Plan Manual**
  - Massachusetts Exception to Rule 5A

**ELCS AND PEOS THAT HAVE BEEN ALLOCATED W/C RESPONSIBILITIES FOR LEASED EMPLOYEES**

An Employee Leasing Company (“ELC”), as described in Massachusetts Regulation 211 CMR 111 and MA Manual Rule IX-E, is an employer who enters into Employee Leasing Arrangements with its Clients that retain for the ELC a substantial portion management functions. An ELC is required to purchase and maintain a separate workers’ compensation and employers’ liability policy for each Client to whom it leases Massachusetts employees.

A Professional Employer Organization (“PEO”), as described in Massachusetts Regulation 454, CMR.30 and MA Manual Rule IX-F, is a co-employer that enters into Professional Employer Agreements with its Clients that allocate to either the PEO or the Client all employer rights, duties and obligations. When the responsibility of obtaining workers’ compensation and employers’ liability insurance is allocated to the PEO, the PEO is required to purchase and maintain a separate workers’ compensation policy for each client company to whom it ‘leases’ Massachusetts employees, just as ELCs are required to do.

The following applies to ELCs and to *PEO Agreements that allocate to the PEO* the responsibility of providing workers’ compensation and employers’ liability insurance for the leased employees:

- The **ELC or PEO shall purchase** and maintain a separate policy providing standard workers' compensation and employers’ liability insurance for each Client to whom it provides Massachusetts employees.
- Each policy written to cover employees leased from an ELC or PEO shall be issued with the ELC or PEO as the **named insured**. Coverage under the policy is limited to the named insured's employees leased to the Client, who is identified on the attached Massachusetts Professional Employer Organization (PEO) / Employee Leasing Endorsement, [WC200304D](#).
- The experience of all employees leased to a Client shall be combined with the experience of the Client for purposes of calculating an **experience modification**. The Client’s interstate or intrastate experience modification and Massachusetts ARAP, so calculated, shall be applied to the Client’s own policy and to all policies maintained for it by an ELC or PEO. The ELC or PEO’s MA Client experience must not be included in the ELC or PEO’s intrastate or interstate experience ratings.
- If the ELC or PEO Client is a **corporation** and the Client’s corporate officers are leased from the ELC or PEO, then those officers will be insured on the ELC’s or PEO’s leasing policy as employees of the ELC or PEO, and the actual payroll they receive from the ELC or PEO will be included on the policy, not subject to the corporate officer minimum or maximum. Additionally, the Department of Industrial Accident (“DIA”) Form 153 is not applicable to leased officers.
- If the ELC or PEO Client is a **sole proprietorship, partnership, or LLC**, and the sole proprietor, partner(s) or LLC member(s) are leased from the ELC or PEO, then those individuals will be insured on the ELC or PEO’s leasing policy as employees of the ELC or PEO, and the actual payroll they receive from the ELC or PEO will be included on the policy, not the Basis of Premium amount.

Employee Leasing Policy Type Code	<i>For Reporting Purposes– Record 01, Field 9:</i> • 5 – Employee Leasing Policy for Leased Workers of a Single Client Company
ELC/PEO and Client Names	<i>For Issuance Purposes:</i> • The ELC or PEO should be the only named insured on the policy. • The Client must not be named as an employer on the policy. • The Client must be named on the Massachusetts Professional Employer Organization (PEO) / Employee Leasing Endorsement, WC200304D.
	<i>For Reporting Purposes - Record 02, Field 6 – PEO/Client Company Code:</i> • Report the ELC or PEO company name as the primary name, and

	<ul style="list-style-type: none"> <li>• Report the ELC or PEO company name as a “P” name, and</li> <li>• Report the Client company name as a “C” name with its own name link code.</li> </ul>
Endorsements	<p><i>For Issuance Purposes:</i></p> <ul style="list-style-type: none"> <li>• WC200304D must be attached to the policy to restrict coverage to employees leased to the one Client named on the endorsement.</li> <li>• The Client’s name, FEIN, and address must be shown on the endorsement.</li> </ul>
	<p><i>For Reporting Purposes – Record FA – MA Employee Leasing Endorsement:</i></p> <ul style="list-style-type: none"> <li>• Report Endorsement number WC200304D.</li> <li>• Report the Client company name, FEIN &amp; address in this record.</li> <li>• See The MA Policy Data Reporting Guide, Appendix III-D for details.</li> </ul>
Experience Rating	<p><i>For Issuance Purposes:</i></p> <ul style="list-style-type: none"> <li>• Use of the Client’s separately maintained intrastate or interstate experience modification and Massachusetts ARAP is required for both voluntary and assigned risk policies.</li> <li>• The ELC’s or PEO’s own experience modification or ARAP must not be applied to a client policy.</li> <li>• The experience from a Client policy must not be included in the calculation of an ELC’s or PEO’s own intrastate or interstate experience modification or ARAP.</li> </ul>

### **PEO CLIENTS THAT HAVE BEEN ALLOCATED W/C RESPONSIBILITIES FOR LEASED EMPLOYEES**

The following applies to *PEO Agreements that allocate to the Client* the responsibility of providing workers’ compensation and employers’ liability insurance for the leased employees:

- The **Client shall purchase** and maintain a separate policy providing standard workers' compensation and employers’ liability insurance for the employees it leases from a PEO.
- The policy written to cover employees leased from a PEO shall be issued with the Client as the **named insured**. Coverage under the policy is limited to the employees leased to the Client from the PEO, who is identified on the attached Massachusetts Professional Employer Organization (PEO) Extension Endorsement, [WC200308](#).
- The experience from policies of Clients of PEOs with the Massachusetts Professional Employer Organization (PEO) Extension Endorsement, WC200308, attached shall be combined with all other experience of the Client for purposes of calculating an **experience modification**. The Client’s interstate or intrastate experience modification and Massachusetts ARAP, so calculated, shall be applied to the Client’s own policy and to any policy maintained to insure leased employees.
- If the PEO Client is a **corporation** and the Client’s corporate officers are leased from the PEO in an arrangement that allocates workers’ compensation to the Client, then those officers will be insured on the PEO’s leasing policy, and the actual payroll they receive from the PEO will be included on the policy, not subject to the corporate officer minimum or maximum. Additionally, the Department of Industrial Accident (“DIA”) Form 153 is not applicable to leased officers.
- If the PEO Client is a **sole proprietorship, partnership, or LLC**, and the sole proprietor, partner(s) or LLC member(s) are leased from the PEO, then those individuals shall be insured on the PEO’s leasing policy, and the actual payroll that those individuals receive from the PEO will be included on the policy, not the Basis of Premium amount.

Employee Leasing Policy Type Code	<i>For Reporting Purposes– Record 01, Field 9:</i>
	<ul style="list-style-type: none"> <li>• 9 – Employee Leasing Policy for Leased Workers of a Single Client Company Where the Policy is Purchased by the Client</li> </ul>
ELC/PEO and Client Names	<i>For Issuance Purposes:</i>
	<ul style="list-style-type: none"> <li>• The Client should be the only named insured on the policy.</li> <li>• The PEO must not be named as an employer on the policy.</li> <li>• The PEO must be named on the Massachusetts Professional Employer Organization (PEO) Extension Endorsement, WC200308.</li> </ul>
	<i>For Reporting Purposes - Record 02, Field 6 – PEO/Client Company Code:</i>
	<ul style="list-style-type: none"> <li>• Report the Client name as the primary name, and</li> <li>• Report the Client name as a “C” name, and</li> <li>• Report the PEO name as a “P” name with its own name link code.</li> </ul>
Endorsements	<i>For Issuance Purposes:</i>
	<ul style="list-style-type: none"> <li>• WC200308 must be attached to the policy to restrict coverage to employees leased from the PEO named on the endorsement.</li> <li>• The PEO’s name, FEIN, and address must be shown on the endorsement.</li> </ul>
	<i>For Reporting Purposes – Record FA – MA Employee Leasing Endorsement:</i>
	<ul style="list-style-type: none"> <li>• Report Endorsement number WC200308.</li> <li>• Report the PEO’s name, FEIN &amp; address in this record.</li> <li>• See The MA Policy Data Reporting Guide, Appendix III-D for details.</li> </ul>
Experience Rating	<i>For Issuance Purposes:</i>
	<ul style="list-style-type: none"> <li>• Use of the Client’s separately maintained intrastate or interstate experience modification and Massachusetts ARAP is required for both voluntary and assigned risk policies.</li> <li>• The ELC or PEO’s experience modification or ARAP must not be applied to a Client policy.</li> <li>• The experience from a Client policy must not be included in the calculation of an ELC or PEO’s own intrastate or interstate experience modification or ARAP.</li> </ul>

### **POLICIES ISSUED TO CLIENTS OF ELCs OR PEOs FOR EMPLOYEES THE CLIENT PAYS DIRECTLY**

If the Client of a PEO or ELC has MA employees that it pays directly, the Client must obtain a separate policy providing workers' compensation and employers' liability for those employees. This policy shall name the Client as the insured and shall have attached the Professional Employer Organization (PEO) Client Exclusion Endorsement, WC000322A, which excludes coverage for leased employees.

If a Client of a PEO has been allocated the responsibility of obtaining workers' compensation coverage and that Client also has employees that it pays directly, those two groups of employees cannot be insured on the same policy; the policy for the direct pay employees will have WC000322A, and the policy for the leased employees will have WC200308.

Employee Leasing Policy Type Code	<i>For Reporting Purposes Only – Record 01, Field 9:</i>
	<ul style="list-style-type: none"> <li>• 6 – Client Company Policy For Non-Leased Workers of Client Company</li> </ul>
Employer Name	<i>For Reporting Purposes - Record 02, Field 6 – PEO/Client Code:</i>
	<ul style="list-style-type: none"> <li>• Report the Client name as the primary name, and</li> <li>• Report the Client name as a “C” name</li> </ul>

Endorsements	<i>For Issuance Purposes:</i>
	<ul style="list-style-type: none"> <li>• WC000322A must be attached to the policy to exclude coverage for leased employees.</li> </ul>
Endorsements	<i>For Reporting Purposes – Record FA – MA Employee Leasing Endorsement:</i>
	<ul style="list-style-type: none"> <li>• Report Endorsement number WC000322A</li> <li>• Report the PEO’s name, FEIN (optional) &amp; address in this record</li> <li>• See The MA Policy Data Reporting Guide, Appendix III-D for details.</li> </ul>
Experience Rating	<i>For Issuance Purposes:</i>
	<ul style="list-style-type: none"> <li>• Use of the client’s separately maintained intrastate or interstate experience modification and Massachusetts ARAP is required for both voluntary and assigned risk policies.</li> </ul>

### **POLICIES INSURING THE NON-LEASED EMPLOYEES OF AN ELC OR PEO**

The ELC or PEO shall purchase and maintain a separate policy providing standard workers' compensation and employers' liability insurance for its own non-leased employees, including any temporary employees it may provide. To this policy shall be attached the Massachusetts Exclusion of Coverage for Leased Employees Endorsement, [WC200305B](#), which restricts coverage to the ELC or PEO's own non-leased employees.

Employee Leasing Policy Type Code	<i>For Reporting Purposes – Record 01, Field 9:</i>
	<ul style="list-style-type: none"> <li>• 3 – Employee Leasing Policy for Non-Leased Workers of ELC</li> </ul>
ELC/PEO Name	<i>For Issuance Purposes:</i>
	<ul style="list-style-type: none"> <li>• The ELC or PEO should be the only named insured on the policy.</li> <li>• Clients must not be listed as named insureds.</li> </ul>
	<i>For Reporting Purposes - Record 02, Field 6 – PEO/Client Code:</i>
	<ul style="list-style-type: none"> <li>• Report the ELC or PEO name(s) as a “P” name(s).</li> </ul>
Endorsements	<i>For Issuance Purposes:</i>
	<ul style="list-style-type: none"> <li>• WC200305B must be attached to restrict the policy’s coverage to the ELC’s or PEO’s own employees not leased out to client companies.</li> <li>• If the ELC or PEO does employee leasing and provides temporary employees, then a policy with this endorsement will provide coverage for the temporary employees.</li> </ul>
	<i>For Reporting Purposes – Record 07:</i>
	<ul style="list-style-type: none"> <li>• Report Endorsement WC200305B.</li> </ul>
Experience Rating	<i>For Issuance Purposes:</i>
	<ul style="list-style-type: none"> <li>• Use of the ELC’s or PEO’s intrastate or interstate experience modification and Massachusetts ARAP is required for both voluntary and assigned risk policies</li> </ul>

### **POLICIES INSURING TEMPORARY EMPLOYMENT AGENCIES / STAFFING FIRMS**

Residual market policies written for **temporary employment agencies and staffing firms** must include the Massachusetts Exclusion of Coverage for Leased Employees Endorsement (Labor Contractors), WC200305B, to notify the employer that if they enter into any long term arrangements that should be considered employee leasing arrangements, then they will need to obtain separate policies to insure those leased workers. **As such, residual market carriers must identify all policies currently being written for temporary employment agencies and staffing firms to ensure this endorsement is attached to those**

**policies.** Voluntary carriers may optionally attach endorsement WC200305B to the policies they are writing for temporary employment agencies and staffing firms.

Employee Leasing Policy Type Code	<i>For Reporting Purposes – Record 01, Field 9:</i>
	<ul style="list-style-type: none"> <li>• 1 - Non- Employee Leasing Policy</li> </ul>
Employer Name	<i>For Reporting Purposes - Record 02, Field 6 – PEO/Client Code:</i>
	<ul style="list-style-type: none"> <li>• Leave blank.</li> </ul>
Endorsements	<i>For Issuance Purposes:</i>
	<ul style="list-style-type: none"> <li>• On residual market policies, WC200305B must be attached to restrict the policy's coverage so that employees leased to client companies are not insured.</li> <li>• On voluntary policies issued to temporary employment agencies and staffing firms, use of WC200305B is optional.</li> </ul>
	<i>For Reporting Purposes – Record 07:</i>
	<ul style="list-style-type: none"> <li>• If used, report Endorsement WC200305B.</li> </ul>
Experience Rating	<i>For Issuance Purposes:</i>
	<ul style="list-style-type: none"> <li>• Use of the temporary employment agency's or staffing firm's intrastate or interstate experience modification and Massachusetts ARAP is required for both voluntary and assigned risk policies</li> </ul>

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