



September 28, 2018

CIRCULAR LETTER NO. 2338

To All Members and Subscribers of the WCRIBMA:

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

This circular is being issued to provide clarification to the Massachusetts workers' compensation industry with regard to both the issuance and the reporting of policies issued to employee leasing companies, professional employer organizations, staffing firms and temporary employment agencies. The underwriting and reporting departments of all member companies need to review their leasing and staffing policies to ensure that their policies are being issued and reported properly.

MASSACHUSETTS REGULATION

With regard to workers' compensation insurance in Massachusetts, an employee leasing arrangement is defined as an arrangement whereby one business entity provides workers to another business entity under a contract, whether or not in writing, that retains for the lessor a substantial portion of management functions; provided, however, that the leasing arrangement is long term and not an arrangement to provide the lessee with temporary help services during seasonal or unusual conditions. Any such arrangement to provide workers on a long-term basis shall be construed to be pursuant to a contract and subject to the provisions of 211 CMR 111.00 (Workers' Compensation Insurance Requirements Applicable to Employee Leasing Companies and Their Clients). An employee leasing company ("ELC") is a business entity whose business consists largely of providing workers to one or more clients by means of an employee leasing arrangement.

The purpose of 211 CMR 111.00 is to ensure that an ELC properly obtains workers' compensation insurance coverage for itself and its leased employees and that the premium paid for such leased employees is commensurate with the exposure and the anticipated claim experience. The regulation, in relevant part, directs that:

- It is the responsibility of the ELC to purchase and maintain a separate policy for each "client company" to whom it provides employees.
- The ELC shall be the named insured on each such policy.
- The "client company" shall be identified on an endorsement attached to the policy.
- The audit and loss experience from an ELC's client policy shall be combined with the client's own experience for purposes of calculating experience ratings, and such ratings (i.e., experience modifications and ARAPs) shall be applied to the ELC's policies issued to that client.

A Professional Employer Organization ("PEO") provides services similar to an ELC. In other states, a PEO may be able to contractually assign the responsibility of obtaining workers' compensation insurance to the client company, or have both PEO and client named as employers on a workers' compensation insurance policy, but that is not the case in Massachusetts. In Massachusetts, all PEOs are subject to 211 CMR 111.00, as if they were ELCs.

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

- **MA Workers' Compensation Workers' Compensation and Employers Liability Insurance Manual**
 - Rule IV.D.12. – Premium for Leased Employees
 - Rule IX.E. – Employee Leasing Arrangements
- **WCIO's 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.K. – 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

POLICIES INSURING EMPLOYEES PROVIDED TO A CLIENT BY AN ELC OR A PEO

As discussed above, in Massachusetts, ELCs and PEOs are required to obtain and maintain a separate workers' compensation policy for each client to whom they provide Massachusetts employees. Each such policy shall be issued to the ELC or PEO as the named insured, and the client shall be named on an endorsement, specifically the Massachusetts Employee Leasing Endorsement, WC200304B. The client's intrastate or interstate experience modification and Massachusetts ARAP must be applied to this policy, and the experience of the leasing policy will be used in future calculations of the client's ratings. The MA leasing client's experience should not be included in the ELC's or PEO's experience ratings.

If the **leasing client is a corporation** and the client's corporate officers are leased from the ELC or PEO, then those officers will be insured by the policy, and their payroll is not subject to the corporate officer minimum or maximum because they are not corporate officers of the policy's named insured. Additionally, the client company's leased corporate officers cannot exclude themselves from coverage under the leasing policy by submitting a Form 153 from the Massachusetts Department of Industrial Accidents ("DIA") because they are now employees of the ELC or PEO and must be insured by their employer.

If the **leasing client is a sole proprietorship, partnership or LLC**, and the sole proprietor, partner(s) or LLC members are leased from the ELC or PEO, then those individuals will be insured on the client 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.

	<ul style="list-style-type: none"> The client must not be named as an employer on the policy because they are not in fact the employer and because the client is not (typically) combinable for experience rating purposes with the ELC or PEO. The client must be named on the Massachusetts Employee Leasing Endorsement, WC200304B.
	<i>For Reporting Purposes - Record 02, Field 6 – PEO/Client Company Code:</i>
	<ul style="list-style-type: none"> Report the ELC or PEO company name as the primary name, and Report the ELC or PEO company name as a “P” name, and Report the Client company name as a “C” name with its own name link code.
Endorsements	<i>For Issuance Purposes:</i>
	<ul style="list-style-type: none"> WC200304B must be attached to the policy to restrict coverage to employees leased to the one client named on the endorsement. The client’s name, FEIN, and address must be shown on the endorsement.
	<i>For Reporting Purposes – Record FA – MA Employee Leasing Endorsement:</i>
	<ul style="list-style-type: none"> Report Endorsement number WC200304B. Report the client company’s name, FEIN & address in this record. See The MA Policy Data Reporting Guide, Appendix III-D for details.
Experience Rating	<i>For Issuance Purposes:</i>
	<ul style="list-style-type: none"> Use of the client’s separately maintained intrastate or interstate experience modification and Massachusetts ARAP is required for both voluntary and assigned risk policies. The ELC’s or PEO’s own experience modification or ARAP should not be applied to a client policy. The experience from a client policy should not be included in the calculation of an ELC’s or PEO’s own intrastate or interstate experience modification or ARAP.

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

If the ELC or PEO has **non-leased employees** in Massachusetts (employees who are not leased out to client companies – which can include temporary employees if the ELC or PEO does both leasing and temping), those employees must be insured on a policy with endorsement WC200305A, the Massachusetts Exclusion of Coverage for Leased Employees Endorsement.

Employee Leasing Policy Type Code	<i>For Reporting Purposes – Record 01, Field 9:</i>
	<ul style="list-style-type: none"> 3 – Employee Leasing Policy for Non-Leased Workers of ELC
ELC/PEO Name	<i>For Issuance Purposes:</i>
	<ul style="list-style-type: none"> The ELC or PEO should be the only named insured on the policy. Clients must not be listed as named insureds.
	<i>For Reporting Purposes - Record 02, Field 6 – PEO/Client Code:</i>
	<ul style="list-style-type: none"> Report the ELC or PEO company name(s) as a “P” name(s).
Endorsements	<i>For Issuance Purposes:</i>
	<ul style="list-style-type: none"> WC200305A must be attached to restrict the policy’s coverage to the ELC’s or PEO’s own employees not leased out to client companies. 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.
Experience Rating	<i>For Issuance Purposes:</i>
	<ul style="list-style-type: none"> 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

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), WC200305A, so the employer is notified 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 WC200305A 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"> • 1 - Non- Employee Leasing Policy
Employer Name	<i>For Reporting Purposes - Record 02, Field 6 – PEO/Client Code:</i> <ul style="list-style-type: none"> • Leave blank.
Endorsements	<i>For Issuance Purposes:</i> <ul style="list-style-type: none"> • On residual market policies, WC200305A must be attached to restrict the policy's coverage so that employees leased to client companies are not insured. • On voluntary policies issued to temporary employment agencies and staffing firms, use of WC200305A is optional.
Experience Rating	<i>For Issuance Purposes:</i> <ul style="list-style-type: none"> • 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

POLICIES ISSUED TO CLIENTS OF ELCs OR PEOs

Clients of ELCs and PEOs, who lease some but not all of their workers from the ELC or PEO, must maintain policies in their own name to insure any workers they pay directly. No special endorsements are required on those policies.

Employee Leasing Policy Type Code	<i>For Reporting Purposes Only – Record 01, Field 9</i> <ul style="list-style-type: none"> • 1 - Non- Employee Leasing Policy
Employer Name	<i>For Reporting Purposes - Record 02, Field 6 – PEO/Client Code:</i> <ul style="list-style-type: none"> • Leave blank.
Endorsements	<i>For Issuance Purposes:</i> <ul style="list-style-type: none"> • No special endorsements are required.
Experience Rating	<i>For Issuance Purposes:</i> <ul style="list-style-type: none"> • Use of the client's separately maintained intrastate or interstate experience modification and Massachusetts ARAP is required for both voluntary and assigned risk policies.

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