



Pennsylvania Compensation Rating Bureau

United Plaza Building • Suite 1500
30 South 17th Street • Philadelphia, PA 19103-4007
(215)568-2371 • FAX (215)564-4328 • www.pcrb.com

November 15, 2012

VIA OVERNIGHT DELIVERY

The Honorable Michael F. Consedine
Insurance Commissioner
Commonwealth of Pennsylvania
Insurance Department
1311 Strawberry Square
Harrisburg, PA 17120

Attention: Property & Casualty Bureau

RE: PCRB Filing No. 250 - Manual Revisions to Sections 1, 3 and 5

Proposed Effective January 1, 2013

- 1) Section 1, Rule XVII – Professional Employer Organizations, Professional Employer Agreements and Professional Employer Services
- 2) Section 5 – Experience Rating Plan
- 3) Section 3 – Endorsements

Dear Commissioner Consedine:

On behalf of the members of the Pennsylvania Compensation Rating Bureau, I am filing herewith Manual revisions to Section 1 – Manual Rules, Section 3 – Endorsements and Section 5 – Experience Rating Plan. These revisions will bring the Manual into compliance with HB 1055 (Act 102 of 2012), which is effective as of January 1, 2013.

- The Section 1 change adopts a new Manual Rule to include pertinent information on definitions, policy issuance, methods of coverage, use of client data for purposes of experience rating and classification assignment, client obligations and cancellation provisions.
- The Section 3 changes are adoptions of eight endorsements: Labor Contractor Endorsement (WC 00 03 20 A), Professional Employer Organization (PEO) Extension Endorsement (WC 00 03 20 B), Labor Contractor Exclusion Endorsement (WC 00 03 21), Professional Employer Organization (PEO) Exclusion Endorsement (WC 00 03 21 A), Employee Leasing Client Exclusion Endorsement (WC 00 03 22), Professional Employer Organization (PEO) Client Exclusion Endorsement (WC 00 03 22A), Multiple Coordinated Policy Endorsement (WC 00 03 23) and Multiple Coordinated Policy Endorsement (WC 00 03 23 A).

- The Section 5 changes are to wording in Section III – General Provisions, 9. Ownership Changes, (f) Employee Leasing to incorporate new wording regarding master policies and references to the new Rule XVII.

The new Manual rule, Manual wording revision and endorsements are proposed to be **effective January 1, 2013** for new and renewal business to be concurrent with the effective date of the legislation.

The Manual revisions are shown below, and the endorsements are attached as Exhibits 1 through 8.

ADDITION

SECTION 1

RULE XVII – PROFESSIONAL EMPLOYER ORGANIZATIONS, PROFESSIONAL EMPLOYER AGREEMENTS AND PROFESSIONAL EMPLOYER SERVICES

A. DEFINITIONS – PROFESSIONAL EMPLOYER ORGANIZATION (PEO)

An organization whose business it is to furnish workers to another entity (often referred to as the Client) on a long-term basis. Such business is defined as “Professional Employer Services.” Organizations providing Professional Employer Services may be variously referred to as an “employee leasing company,” “professional employer organization” (PEO) or “labor contractor.”

- Client – Any person who enters into a Professional Employer Agreement with a Professional Employer Organization.
- Co-employer – A Professional Employer Organization or Client.
- Co-employment Relationship – A relationship intended to be ongoing rather than temporary, wherein the rights, duties and obligations of an employer which arise out of an employment relationship have been allocated between co-employers pursuant to a Professional Employer Agreement.
- Covered Employee – An individual co-employed by a professional employer organization and a client.
- Department – The Department of Labor and Industry of the Commonwealth.
- Direct Hire Employee – An individual who is an employee of either the Client or the PEO Employee.
- Professional Employer Agreement – A contract by and between a client and a professional employer organization that provides:
 - (1) for the co-employment of covered employees;

- (2) for the allocation of employer rights and obligations between the client and the professional employer organization with respect to the covered employees; and
- (3) that the professional employer organization and the client assume the responsibilities required under Act 102 of 2012.

Under Professional Employer Agreements one business provides workers to another business entity under an agreement wherein all or substantially all of the employees of the Client are thereafter employed by the PEO and leased back to the original employer through a Professional Employer Agreement. The Professional Employer Agreement is long term in nature and is specifically not an arrangement to provide temporary help services to fill seasonal or temporary staffing shortages.

Act 102 of 2012 provides that both the PEO and the client shall be an employer for covered employees assigned to the client for purposes of Act 102 and the act of June 2, 1915 (P.L. 736, No. 338), known as the Workers' Compensation Act.

B. POLICY ISSUANCE

The responsibility to provide workers' compensation coverage for Covered Employees may be specifically allocated to the Professional Employer Organization (PEO) or the Client.

1. When the responsibility to provide workers compensation coverage is allocated to the PEO, the PEO must provide coverage for all Covered Employees assigned to the Client.
2. When the responsibility to provide workers compensation coverage is allocated to the Client, the Client must provide coverage for all of its Covered Employees and Direct Hire Employees.

C. METHODS OF COVERAGE

PEOs and Clients may qualify to self-insure their obligations under the Workers' Compensation Act. In addition, there are three available options for Clients and PEOs that have entered into Professional Employer Agreements to insure their statutory obligations under the Workers' Compensation Act as Co-employers for their Covered Employees. These options are as described following:

1. **Option One** – The PEO provides workers' compensation insurance for Covered Employees of the Client by purchasing a Multiple Coordinated Policy (MCP) to insure such Covered Employees

Under this option, a separate workers' compensation insurance policy is issued to the PEO on behalf of each Client. These policies insure the Client's Covered Employees without leaving uninsured gaps or creating overlaps in coverage with other insurance policies. MCPs issued to a given PEO for its Clients must have a common expiration date and must be written by the same, single insurer. Each policy written on a Multiple Coordinated Policy basis shall be issued to the PEO as the primary named insured and must identify both the PEO and the Client as insureds. The Multiple Coordinated Policy Endorsement (WC 00 03 23 or WC 00 03 23 A) must be added to each such policy,

specifying which Covered Employees are insured by that policy. If the Client has any employees that are not Covered Employees of the PEO (whether Direct Hire Employees or Covered Employees obtained from another PEO), workers' compensation coverage for these other employees must be provided under a separate policy or policies. Attach Employee Leasing Client Exclusion Endorsement (WC 00 03 22) or Professional Employer Organization (PEO) Client Exclusion Endorsement (WC 00 03 22 A) to exclude coverage for liability to employees leased from the PEO named in the endorsement.

- Policies issued to each Client must include the Labor Contractor Endorsement (WC 00 03 20 A) or Professional Employer Organization (PEO) Extension Endorsement (WC 00 03 20 B), which specify that the Client's policy will apply to injuries to Covered Employees obtained from the PEO named in the endorsement as though the PEO were an insured under the policy and that the insurer will not ask the PEO's insurer to share in a loss(es) covered by the endorsement.
- The Labor Contractor Exclusion Endorsement (WC 00 03 21) or Professional Employer Organization (PEO) Exclusion Endorsement (WC 00 03 21 A), which delete coverage for workers leased to Clients named in the endorsement, must be attached to the PEO's own policy so that it insures only the PEO's Direct Hire Employees.
- The insurer must assign risk classifications to each Client based on the totality of the Client's Pennsylvania operations, regardless of whether workers engaged therein are provided under one or more Professional Employer Agreements or are Direct Hire Employees of the Client.
- Policies written on an MCP basis for a PEO as named insured may be combinable by agreement between the PEO and the insurer for purposes of premium discount, retrospective rating, schedule rating and other approved pricing programs. Such approved pricing programs may be based on the combined total standard premium and losses of all Multiple Coordinated Policies issued to the PEO as the primary named insured.

2. Option Two – The Client provides workers' compensation insurance for its Covered Employees

If the Client is responsible for providing workers' compensation insurance coverage for its Covered Employees, it may purchase a standard workers' compensation policy through a licensed insurance company insuring its Covered Employees and its Direct Hire Employees, if any.

- The insurer must assign risk classifications to each Client based on the totality of the Client's Pennsylvania operations, regardless of whether workers engaged therein are provided under one or more Professional Employer Agreements or are Direct Hire Employees of the Client.

3. **Option Three** – The PEO provides workers' compensation insurance coverage for its Clients' Covered Employees by purchasing a Master Policy to insure such Covered Employees.

As of the effective date of Act 102 of 2012, requirements (i) and (iii) cannot be met using existing industry and/or PCRB processes, programs, data specifications and procedures. Unless and until all statutory requirements can be so met, Master Policies cannot be used to insure Covered Employees in Pennsylvania. Nothing in this section shall prohibit the continuation until the next normal anniversary rating date of any Master Policy in force as of the effective date of Act 102 of 2012. Upon the expiration of any such Master Policy after the effective date of Act 102 of 2012, the Covered Employees previously insured under such Master Policy must be insured using Option One or Option Two.

Act 102 of 2012 requires the following conditions to be met in order for a PEO to insure Covered Employees of its Clients on a Master Policy basis:

- i. The insurer underwriting the Master Policy must report separate experience data to the PCRB for each Client insured by the Master Policy in a format complying with all requirements of the approved Pennsylvania statistical plan.
- ii. The insurer must assign risk classifications to each Client based on the totality of the Client's Pennsylvania operations, regardless of whether workers engaged therein are provided under one or more Professional Employer Agreements or are Direct Hire Employees of the Client.
- iii. If and when applicable, the insurer must assign separate experience modifications, merit rating adjustments, construction classification premium adjustments and/or Certified Safety Committee Program credits to the exposures of each Client covered by a Master Policy based on the Client's entire Pennsylvania operations.

D. CLIENT OBLIGATIONS

A Client retains the statutory obligation to provide workers' compensation coverage for any and all employees that are not Covered Employees pursuant to a Professional Employer Agreement.

In providing such coverage, the Client may either self-insure those exposures or the Client may purchase a standard workers' compensation policy through a licensed insurance company.

E. CANCELLATION PROVISIONS

1. Cancellation by the Professional Employer Organization (PEO)

- a. If the PEO terminates the Professional Employer Agreement with the Client, termination of workers' compensation coverage for Covered Employees of the Client by the insurer shall be effective the sooner of:

- 1) Sixty (60) days after written notice of the intent to terminate workers' compensation coverage has been given by the PEO to the Client.
 - 2) Fifteen (15) days after written notice of intent to terminate workers' compensation coverage by the insurer for non-payment of premium has been given by the PEO to the client.
 - 3) The date upon which workers' compensation coverage for Covered Employees of the Client is transferred to the Client's own workers' compensation policy or is otherwise replaced.
- b.** All requirements of the PEO in regard to the notification of Clients concerning workers' compensation coverage provided under a policy issued to the PEO for Covered Employees of the PEO continue to apply after written notice is given pursuant to the above.
 - c.** The Client shall pay for all workers' compensation coverage provided by the insurer, including reasonable administrative expenses, subsequent to the termination of the Professional Employer Agreement by the PEO.
 - d.** If worker's compensation coverage is provided through a workers' compensation policy issued to the PEO on behalf of the Client who has been given notice of termination pursuant to the above, the PEO is required to notify the affected insurer of the notification.

2. Cancellation by the Client

If the Professional Employer Agreement is terminated by the Client, the statutory obligation to provide workers' compensation for its employees remains with the Client as of the date upon which termination is requested. The Client may secure coverage for its Covered Employees through another Professional Employer Agreement with a different PEO, through an approved self-insurance program or with a single policy covering all of its employees.

3. Notification Requirements

If the Professional Employer Agreement provides for the PEO to provide workers' compensation insurance for Covered Employees, the PEO shall:

- a.** Notify the insurance carrier of record of any cancellation, non-renewal or termination of a Professional Employer Agreement under which the PEO assumed the obligation to provide workers' compensation insurance for Covered Employees within ten (10) days following the date the notification of cancellation or termination is provided to the Client.
- b.** The insurance carrier of record shall notify the licensed rating organization of any cancellation, non-renewal or termination of workers' compensation coverage for Covered Employees by the PEO's insurer or any change in insurers for the Covered Employees within ten (10) days of the effective date of cancellation, termination or change of insurers.

CHANGES

SECTION 5 – EXPERIENCE RATING PLAN

GENERAL RULES

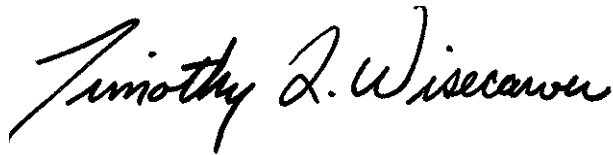
SECTION 111 – GENERAL PROVISIONS

9. Ownership Changes.

- (f) *Employee Leasing.* If (1) an entity terminates its employment relationship with all, or substantially all, its employees, [and] (2) all or substantially all such employees are thereafter employed by another entity which leases such employees to the original employer, and (3) workers compensation insurance for the leased employees is provided under a Master Policy issued to the second entity, the experience incurred prior to the termination of the original employment relationship shall be used in future ratings of the second entity. See Section 1, Rule XVII – Professional Employer Organizations, Professional Employer Agreements and Professional Employer Services for additional information.

As always, the PCRB stands ready to address any questions you or your staff may have regarding these Manual revisions or endorsements.

Sincerely,



Timothy L. Wisecarver
President

TLW/kg
Attachments

LABOR CONTRACTOR ENDORSEMENT

This endorsement applies only with respect to bodily injury to your leased employees in the state named in Item 2 of the Schedule when provided by a labor contractor named in Item 1 of the Schedule. This endorsement does not apply with respect to bodily injury to workers provided to you on a temporary basis.

Certain words and phrases in this endorsement are defined as follows:

Labor contractor means the entity furnishing some or all of the workers to another entity.

Client means the entity using the services of a labor contractor to obtain some or all of its workers.

Temporary worker means a worker who is furnished to an entity to substitute for a permanent employee on leave or to meet seasonal or short-term workload conditions.

Part One (Workers Compensation Insurance) and Part Two (Employers Liability Insurance) will apply as though the labor contractor is an insured. If an entry is shown in Item 3 of the Schedule, the insurance afforded by this endorsement applies only to work you perform under the contract or at the project named in the Schedule.

Under Part One we will reimburse the labor contractor named in the Schedule for the benefits required by the workers compensation law if we are not permitted to pay the benefits directly to the persons entitled to them.

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

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

Premium will be charged for your leased employees while provided by the labor contractor. You must obtain from the labor contractor and furnish to us a complete payroll record of your leased employees provided by the labor contractor to satisfy your obligations under Part Five (Premium), C.2.

The policy may be canceled according to its terms or for violation of rules applicable to employee leasing operations provided that the labor contractor has been provided a reasonable opportunity to cure the violation. If the policy is canceled, we will send notice of such cancelation to the labor contractor.

Part Four (Your Duties If Injury Occurs) applies to you and the labor contractor. The labor contractor will recognize our right to defend under Parts One and Two and our right to inspect under Part Six (Conditions).

Schedule

- | | |
|--------------------------------------|----------------|
| 1. Labor Contractor | Address |
| 2. State Where Work Performed | |
| 3. Contract or Project | |

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective
Insured

Policy No.

Endorsement No.
Premium

Insurance Company

Countersigned by _____

WC 00 03 20 A
(Ed. 2-92)

PROFESSIONAL EMPLOYER ORGANIZATION (PEO) EXTENSION ENDORSEMENT

This endorsement applies only with respect to bodily injury to your leased workers in the state named in Item 2 of the Schedule when provided by a PEO named in Item 1 of the Schedule. This endorsement does not apply with respect to bodily injury to workers provided to you on a temporary basis.

Certain words and phrases in this endorsement are defined as follows:

Professional Employer Organization (PEO) is an entity or group of entities who are or were formally related by common management or ownership that provides workers to its client(s) through a PEO arrangement for a fee, pursuant to an agreement, written or otherwise. Without limitation, a PEO may also be referred to as a labor contractor, employee leasing company, lessor, or other similarly administered arrangement.

Client is an entity that obtains all or part of its workforce for a fee, pursuant to an agreement, written or otherwise, from another entity through a professional employer organization (PEO) arrangement or that employs the services of an entity through a PEO arrangement. Without limitation, a client may also be referred to as a lessee.

Temporary worker is a worker who is furnished to an entity for a finite period of time, including but not limited to one or more of the following work situations:

- Replace an absent worker who will return, such as during an authorized leave of absence, vacation, jury duty, or illness
- Fill a short-term or temporary professional skill shortage
- Staff a seasonal workload
- Staff a special assignment or project where the worker will be terminated or assigned to another temporary project upon completion
- Satisfy the requirements of the employer's overall employment program, such as a probationary period before new workers are granted permanent employee status

Part One (Workers Compensation Insurance) and Part Two (Employers Liability Insurance) of your policy will apply as though the PEO is an insured. If an entry is shown in Item 3 of the Schedule, the insurance afforded by this endorsement applies only to work you perform under the contract or at the project named in the Schedule.

Under Part One we will reimburse the PEO named in the Schedule for the benefits required by the workers compensation law if we are not permitted to pay the benefits directly to the persons entitled to them.

The insurance afforded by this endorsement is not intended to satisfy the PEO's duty to secure its obligations under the workers compensation law. We will not file evidence of this insurance on behalf of the labor contractor PEO with any governmental or regulatory agency.

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

Premium will be charged for your leased workers while provided by the PEO. You must obtain from PEO and furnish to us a complete payroll record of your leased workers provided by the PEO to satisfy your obligations under Part Five (Premium), C.2. You are jointly liable with the PEO for the contributions, premiums, forfeits, or interest attributable to the wages of the workers leased to you by the PEO.

The policy may be cancelled according to its terms or for violation of rules applicable to PEO arrangements, provided that the PEO has been provided a reasonable opportunity to cure the violation. If the policy is cancelled, we will send notice of such cancellation to the PEO and provide you with a notice regarding the status of your coverage.

Part Four (Your Duties If Injury Occurs) applies to you and the PEO. The PEO will recognize our right to defend under Parts One and Two and our right to inspect under Part Six (Conditions).

- | | | |
|-------------------------------|----------|---------|
| | Schedule | Address |
| 1. PEO | | |
| 2. State Where Work Performed | | |
| 3. Contract or Project | | |

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective
Insured

Policy No.

Endorsement No.
Premium \$

Insurance Company

Countersigned by _____

LABOR CONTRACTOR EXCLUSION ENDORSEMENT

As used in this endorsement, "employee leasing" shall mean an arrangement whereby an entity utilizes the services of a third party to provide its workers for a fee or other compensation. The third party providing employee leasing services shall be referred to as a "labor contractor." The entity receiving the services shall be referred to as a "client."

This endorsement applies only with respect to workers provided by you to a client under an employee leasing arrangement to engage in work for the client. Your policy does not provide coverage for workers you lease to the clients listed below.

Schedule

Client**Address**

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective
Insured

Policy No.

Endorsement No.
Premium

Insurance Company

Countersigned by _____

WC 00 03 21
(Ed. 2-92)

PROFESSIONAL EMPLOYER ORGANIZATION (PEO) EXCLUSION ENDORSEMENT

As used in this endorsement, a PEO arrangement is an arrangement under contract or agreement, written or otherwise, whereby one entity obtains or leases any or all of its workers from another entity for a fee or other compensation. The third party providing PEO services will be referred to as a "PEO." The entity receiving the services will be referred to as a "client."

This endorsement is used to exclude workers you lease to specified clients from your policy, which only covers your direct (non-leased) workers. Your policy, to which this endorsement is attached, does not provide coverage for workers you lease to any clients listed below or others added subsequent to policy issuance even if not endorsed on the policy. Any changes to such information must be reported to the carrier immediately.

Schedule

Client

Address

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement
Insured

Effective Policy No.

Endorsement No.
Premium:

Insurance Company

Countersigned by _____

WC 00 03 21 A
(Ed. 1-06)

EMPLOYEE LEASING CLIENT EXCLUSION ENDORSEMENT

As used in this endorsement, "employee leasing" shall mean an arrangement whereby an entity utilizes the services of a third party to provide its workers for a fee or other compensation. The third party providing employee leasing services shall be referred to as a "labor contractor." The entity receiving the services shall be referred to as a "client."

This endorsement applies only with respect to your leased workers engaged in any work provided under an employee leasing arrangement. Your policy does not provide coverage for workers you lease from labor contractors listed below.

Schedule

Labor Contractor

Address

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective
Insured

Policy No.

Endorsement No.
Premium

Insurance Company

Countersigned by _____

PROFESSIONAL EMPLOYER ORGANIZATION (PEO) CLIENT EXCLUSION ENDORSEMENT

As used in this endorsement, a PEO arrangement is any arrangement under contract or agreement, written or otherwise, whereby one entity obtains or leases any or all of its workers from another entity for a fee or other compensation. The third party providing PEO services will be referred to as a "PEO." The entity receiving the services will be referred to as a "client."

This endorsement is used to exclude leased workers from your policy, which only covers your direct (non-leased) workers. Your policy, to which this endorsement is attached, does not provide coverage for workers you lease from any PEO(s) listed below or others added subsequent to policy issuance even if not endorsed on the policy. Any changes to such information must be reported to the carrier immediately.

Schedule

PEO

Address

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement
Insured

Effective Policy No.

Endorsement No.
Premium:

Insurance Company

Countersigned by _____

WC 00 03 22 A
(Ed. 1-06)

MULTIPLE COORDINATED POLICY ENDORSEMENT

The multiple coordinated policy to which this endorsement is attached provides coverage for the workers you lease from the labor contractor listed below and does not provide coverage for any other workers leased or non-leased.

Schedule

- | | |
|---|----------------|
| <ol style="list-style-type: none"> 1. Labor Contractor 2. State Where Work Performed 3. Contract or Project 4. Labor Contractor Policy Number | Address |
|---|----------------|

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective
Insured

Policy No.

Endorsement No.
Premium

Insurance Company

Countersigned by _____

WC 00 03 23
(Ed. 2-92)

MULTIPLE COORDINATED POLICY ENDORSEMENT

Your policy, to which this endorsement is attached, provides coverage for the workers you lease from the professional employer organization (PEO) and in the state listed below on a multiple coordinated policy basis. Your policy does not provide coverage for any other workers, leased or non-leased.

Schedule

- | | |
|---|----------------|
| <ol style="list-style-type: none"> 1. PEO 2. State Where Work Performed 3. Contract or Project 4. PEO Policy Number | Address |
|---|----------------|

THIS ENDORSEMENT CHANGES THE POLICY TO WHICH IT IS ATTACHED AND IS EFFECTIVE ON THE DATE ISSUED UNLESS OTHERWISE STATED.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement
Insured

Effective Policy No.

Endorsement No.
Premium

Insurance Company

Countersigned by _____

WC 00 03 23 A
(Ed. 1-06)