

## 211 CMR: DIVISION OF INSURANCE

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

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#### 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 111.02, 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: Definitions

As used in 211 CMR 111.00, the following words will have the meanings indicated:

Client Company. 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. The Commissioner of Insurance appointed pursuant to M.G.L. c. 6, § 26, or his or her designee.

Employee Leasing Arrangement. 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 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. 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.

Employee Leasing Company or Leasing Company. 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.

#### 111.03: Responsibility for Purchase and Maintenance of Separate Policies

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:

111.03: continued

- (1) Coverage under the policy shall be limited to the named insured's employees leased to the client company;
- (2) The experience of the employees leased to the particular client company shall be separately maintained; and
- (3) 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.

111.04: Obligations of Employee Leasing Company to Insurer

- (1) The insurer or any rating organization licensed under M.G.L. c. 152, § 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, § 64; and
  - (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, § 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.

111.05: Obligations 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.

111.06: Policy Cancellation or Nonrenewal

- (1) Any violation of 211 CMR 111.03 or 111.04 shall be considered fraud or material misrepresentation pursuant to M.G.L. c. 152, § 55A, M.G.L. c. 398, § 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 or renewed pursuant to 211 CMR 111.03, 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.

111.07: Insurer Audit

Insurers shall audit policies issued or renewed pursuant to 211 CMR 111.03 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.

REGULATORY AUTHORITY

211 CMR 111.00: M.G.L. c. 152, § 14A; St. 1991, c. 398, § 38A.