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Use of Multiple Coordinated Policies for Voluntary Workers' Comp for PEOs

Pursuant to **NH RSA 277-B:9**, an Employee Leasing Company (PEO) is considered to be the employer of its leased employees for the purposes of workers' compensation, and is required to cover all of its leased employees with a workers' compensation policy issued by an insurer admitted to write the coverage in NH.

The law as revised in 2009 allows a PEO to have two workers' compensation insurance policies (one in the residual market and one in the voluntary market) to cover its various client companies/groups of leased employees. It is generally in the best interest of the consumers (i.e. the client companies) that they be moved out of the residual market if possible. Thus, a PEO may have an assigned risk policy for those client companies for which coverage can only be found in the residual market, while also having a voluntary policy for the remainder of its client companies.

Generally speaking, there are two types of policies under which the required workers' compensation coverage may be afforded. The first, called a 'master policy' is a single policy that would cover the employees of multiple clients (and may cover any direct employees of the PEO as well.) The second, called a 'multiple coordinated policy' (MCP) is an arrangement whereby a policy is issued to the PEO, and then a separate policy is issued to each client company, with all the individual client policies tied to that original policy. In NH at the current time, any policy written in the residual market for a PEO is required to be written as an MCP, but voluntary policies are usually written as master policies.

When a PEO maintains two separate policies, several points are raised:

- NH law does not allow for a workers' compensation policy to be issued in the client company name instead of the PEO's name. As a result, in the cases where there are two policies, there is the possibility of questions as to which policy has primary liability for loss.

- In some cases, PEOs may set up separate subsidiaries or affiliates for individual client companies or groups of companies, each with their own Federal Employer Identification Number (FEIN). This allows a separate workers' compensation policy to be issued to each FEIN, making liability quite clear.

- If the PEO does not wish to set up separate FEINs but does maintain two policies, liability may become less clear. The wording of the standard master workers' compensation policy has no way to limit which employees of the employer (PEO) are covered.

The Department issues the following guidance for insurers issuing voluntary market workers' compensation coverage to PEOs.

- We urge insurers to consider **utilizing the MCP model for any voluntary market workers' compensation policy issued to a PEO.** If the PEO brings on a new client company/group of leased employees, there will be a new policy attached to the MCP for that client company/group of leased employees and it will always be clear under which policy each leased employee is covered.

- If it is not possible to issue the voluntary market policy under an MCP, the voluntary insurer should make sure that there is adequate documentation in place to track its own liability. Insurers should develop a process to separately underwrite each new client company's leased employees, and to keep track of which groups of leased employees the insurer is intending to cover. In addition, the insurer should consider how to endorse on, or otherwise keep track of, each new client company/group of leased employees included on its policy.

- Each insurer involved in providing workers' compensation coverage for PEOs should be aware of all of the client companies to which the PEO provides leased employees, and should be aware of where each of these client companies/groups of leased employees is covered by workers' compensation coverage. This may require developing additional underwriting or policy oversight procedures where the PEO's workers compensation coverage is split between two insurers.

For further information or to discuss the content of this notice, please contact Deb Stone, FCAS, MAAA at the Insurance Department. She can be reached at (603) 271-7973 x258 or by e-mail at deborah.stone@ins.nh.gov.