

Applicable to Assigned Risk Policies Only

STATE RULE EXCEPTIONS

RULE 3—RATING DEFINITIONS AND APPLICATION OF PREMIUM ELEMENTS

Add the following to Rule 3:

D. EMPLOYEE LEASING ARRANGEMENTS *Effective 01 Jul 2001***1. Definitions**

- a. *Employee leasing arrangement* means a verbal or written contractual arrangement whereby one business or other entity leases any or all of its workers from another business. Employee leasing arrangements include, but are not limited to, full service employee leasing arrangements, long-term temporary arrangements, and any other arrangement that involves the allocation of employment responsibilities among two or more entities. For purposes of this rule, employee leasing arrangement does not include arrangements to provide temporary help service.
- b. *Temporary help service* means a service whereby an organization hires its own employees and assigns them to clients for a finite time period to support or supplement the client's workforce in special work situations such as employee absences, temporary skill shortages and seasonal workloads.
- c. *Client (lessee)* means an entity that obtains all or part of its workforce from another entity through an employee leasing arrangement or that employs the services of an entity through an employee leasing arrangement.
- d. *Labor contractor (lessor)* means an entity that grants a written lease to a client through an employee leasing arrangement. In this rule, the labor contractor may also be referred to as an employee leasing company.
- e. *Leased worker (leased employee)* means a person performing services for a client under an employee leasing arrangement.
- f. *Multiple coordinated policies basis* means:
 - (1) (a) Each client must have its own standard workers compensation insurance policy covering its leased workers required to be covered pursuant to the workers compensation laws of the state.
(b) Non-leased workers of a client must not be included on the policy required by (a) above.
 - (2) All policies for clients of the same employee leasing company must be assigned to one insurer in the state.
 - (3) The insurer must arrange to have the same renewal dates for all such policies.
 - (4) The insurer must arrange to have all notices sent to the labor contractor and to have a single master invoice sent to the labor contractor for all policies covering the clients of the labor contractor.
 - (5) If a client leases employees from more than one labor contractor, there must be a separate policy for the leased employees of each labor contractor.
 - (6) The insurer also must issue a policy covering the internal employees of the labor contractor.
 - (7) Appropriate endorsements must be used to restrict the coverage to specific employees and to coordinate coverage between clients and labor contractor.

2. Coverage

- a. A client seeking to fulfill its statutory responsibility to secure workers compensation benefits for leased workers under a state workers compensation insurance plan must secure the coverage by purchasing and maintaining a standard workers compensation insurance policy that covers the leased workers.
- b. A labor contractor seeking to obtain workers compensation benefits for leased workers under a state workers compensation insurance plan must secure the coverage for the leased workers on a multiple coordinated policies basis.

To afford coverage to a labor contractor on a multiple coordinated policies basis, refer to part 4. of this rule.

3. Premium for Leased Workers

Premium must be charged on the policy of the party to an employee leasing arrangement that is securing coverage for the leased workers as indicated below. The party to an employee leasing arrangement that is not securing coverage for the leased workers must furnish satisfactory evidence that the other party to the employee leasing arrangement had workers compensation insurance in force covering the leased workers. For each employee leasing arrangement for which such evidence is not furnished, additional premium must

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be charged on the policy of the party to the employee leasing arrangement that originally did not intend to secure coverage for the leased workers as follows:

- a. The risk must provide a complete payroll record of the leased workers. Premium on such payroll must be based on the classifications and rates that would have applied if the leased workers had been direct employees of the client.
- b. If the payroll records of the leased workers are not provided, 100% of the full employee leasing arrangement price must be established as the payroll of the leased workers. The premium must be charged on that amount as payroll.

Exception to 3-D-3-b:

If investigation on a specific employee leasing arrangement contract discloses that a definite amount of the contract price represents payroll, such amount if deemed reasonable must be the payroll for the premium computation.

- c. If an experience modification has been established for the risk, such experience modification must be applied to the premium developed for the leased workers.

4. Multiple Coordinated Policies**a. Eligibility**

The labor contractor must meet each of the following requirements at application and thereafter to qualify for securing coverage on a multiple coordinated policies basis:

- (1) It is in good faith entitled to insurance required under the workers compensation laws, state and federal, and has been unable to secure such insurance in a regular manner.
- (2) Its officers, directors, and any person with a five percent or greater interest do not owe any undisputed workers compensation premium to the current or prior insurers; and
- (3) It provides all information required under each policy in accordance with this rule.
- (4) It is in compliance with all state laws applicable to employee leasing arrangements.

In order for the labor contractor to secure the coverage for the workers leased to a client, the client must be in good faith eligible to receive the insurance. The client is not in good faith entitled to insurance if any of the following circumstances exist, at the time of application or thereafter, or other evidence exists that the client is not in good faith entitled to insurance:

- (1) If, at the time of application, a self-insured client is aware of pending bankruptcy proceedings, insolvency, cessation of operations, or conditions that would probably result in occupational disease or cumulative injury claims from exposures incurred while the client was self-insured.
- (2) If the client, while insurance is in force, knowingly refuses to meet reasonable health and safety requirements.
- (3) If the client, or an enterprise with a common managing interest, has an outstanding obligation for workers compensation premium on previous insurance that is not the subject of a bona fide dispute.

b. Policy Issuance

Each policy issued to cover the leased workers of a specific employee leasing arrangement on a multiple coordinated policies basis must be issued in the name of the client and in accordance with this rule and all other rules governing the issuance of a standard workers compensation insurance policy for assigned risk business.

A policy issued to cover the direct employees of the labor contractor under a multiple coordinated policies basis must be issued in the name of the labor contractor and in accordance with this rule and all other rules governing the issuance of a standard workers compensation insurance policy for assigned risk business.

c. Deposit Premium

The multiple coordinated policies of a single labor contractor may be combined for the purpose of computing deposit premiums. A deposit premium is payable at the time of application and at the time of renewal.

d. Endorsements**(1) Labor Contractor Policy**

Attach the Labor Contractor Exclusion Endorsement (WC 00 03 21) to the labor contractor's policy to exclude coverage for workers leased to specified clients.

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(2) Client Policy

Attach to each client's policy the Multiple Coordinated Policy Endorsement (WC 00 03 23) to provide coverage for workers leased from the specified labor contractor and the Labor Contractor Endorsement (WC 00 03 20 A) to extend coverage to the labor contractor.

5. Audit

The insurer must audit any policy issued pursuant to 2. above of this rule within 90 days of the policy effective date, and may conduct periodic audits thereafter to determine whether all classifications, experience modifications and estimated payrolls utilized are appropriate.

RULE 4—WORKERS COMPENSATION INSURANCE PLAN RULES

A. WORKERS COMPENSATION INSURANCE PLAN (WCIP) *Effective 01 Jan 2006*

Rule 4-A does not apply. Refer to the North Carolina Workers Compensation Insurance Plan.

3. PROFESSIONAL EMPLOYER ORGANIZATION (PEO) ARRANGEMENTS *Effective 01 Jan 2006*

Rule 4-B does not apply. Refer to the North Carolina Assigned Risk State Rule Exceptions for Rule 3-D.

2. LOSS SENSITIVE RATING PLAN (LSRP) *Effective 01 Sep 2008*

2. LSRP Definitions

c. Deposit Premium

Change Rule 4-C-2-c as follows:

The deposit premium is the minimum premium amount that is required to be paid at the time of application or upon policy renewal. Under the LSRP, deposit premium consists of the WCIP initial or deposit premium and the LSRP contingency deposit premium.

- **WCIP Initial or Deposit Premium**

The employer or its representative must submit the total appropriate WCIP initial or deposit premium to the Plan Administrator at the time of application or the assigned carrier at time of renewal. The WCIP initial or deposit premium is calculated by multiplying the total estimated annual premium by the required deposit premium percentage in accordance with the individual State Rule Exception pages of NCCI's *Basic Manual* or the ACORD[®] North Carolina Workers Compensation Assigned Risk Application form available on www.ncrb.org.

- **LSRP Contingency Deposit Premium**

In addition to the WCIP initial or deposit premium, employers qualifying for the LSRP are required to submit an LSRP contingency deposit premium. The LSRP contingency deposit premium is calculated by multiplying the standard premium by 20%. The contingency deposit premium is intended to collateralize premium that may be due to the assigned carrier as a result of losses incurred during the policy term. The LSRP contingency deposit premium may also be paid for with an irrevocable letter of credit. Refer to Rule 4-C-4-b.

e. Incurred Losses

Change Rule 4-C-2-e as follows:

Incurred losses include paid, outstanding, and any reserves set on open losses. They are used in the rating formula for determining premium under the LSRP for those losses reported under the rules of the North Carolina Rate Bureau's *Statistical Plan Manual*.

f. Standard Premium

Change Rule 4-C-2-f as follows:

For the purpose of the LSRP, standard premium is determined on the basis of authorized rates, any experience rating modification, ARAP, SARAP, assigned risk surcharge programs other than the LSRP, and minimum premiums. Determination of standard premium must exclude:

- Premium discount
- Expense constant
- Premium resulting from the nonratable element codes
- Premium developed by the passenger seat surcharge under Code 7421—Aviation—Transportation of Personnel in Conduct of Employer's Business—Flying Crew