# 02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

031 BUREAU OF INSURANCE

Chapter 560 WORKERS' COMPENSATION INSURANCE - EMPLOYEE LEASING

1. Purpose

 The purpose of this rule is to ensure that an employer who leases some or all of its workers properly obtains workers' compensation insurance coverage for all of its employees, including those leased from another entity, and that premium commensurate with exposure and anticipated claim experience is paid.

2. Authority

History. -- Effective. 10-1-92.

History. -- Statutory Authority.--24-A M.R.S.A.

§§ 212, 2178, 2364, and 2366; 32 M.R.S.A.

§ 14055(2).

3. Definitions

A. "Employee leasing arrangement" means an arrangement, under contract or otherwise, whereby one business or other entity leases all or a significant number 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 which involves the allocation of employment responsibilities among two or more entities. For purposes of this rule employee leasing arrangement does not include arrangements whereby an organization hires its own employees and assigns them to clients for a finite period of time to support or supplement the client's work force in special work situations such as employee absences, temporary skill shortages and seasonal workloads.

B. "Leased employee" means a person performing services for a lessee under an employee leasing arrangement.

C. "Lessee" means an entity which obtains all or part of its work force from another entity through an employee leasing arrangement or which employs the services of an entity through an employee leasing arrangement.

D. "Lessor" means an entity that grants an oral or written lease to a lessee through an employee leasing arrangement. In this rule, the lessor may also be referred to as an employee leasing company.

E. "Multiple coordinated policies basis" means -

(1) The following:

(a) Each lessee shall have its own policy covering its leased employees required to be covered pursuant to the laws of this state;

(b) If non-leased employees of a lessee are not provided coverage pursuant to a separate policy or pursuant to 39 M.R.S.A. § 23, subsections 2 thru 11, they shall be included on the policy required by subsection (a) above; and

(2) All assigned risk policies for lessees of the same employee leasing company shall be assigned to one servicing carrier in the state and in other states to the extent possible; and

(3) The servicing carrier shall arrange to have the same renewal date for all such policies; and

(4) The servicing carrier shall arrange to have all notices sent to the employee leasing company and to have a single master invoice sent to the employee leasing company for all policies covering the lessees of that leasing company.

(5) If a lessee leases employees from more than one lessor, there shall be a separate policy for the leased employees of each lessor.

(6) The servicing carrier also shall issue a policy covering the internal employees of the employee leasing company unless they are otherwise covered.

(7) Appropriate endorsements need to be used to restrict the coverage to those employees of the lessor leased to the lessee which is the subject of each policy as opposed to other lessees and to coordinate coverage between lessees and lessor.

F. "Premium Subject to Dispute"

 Premium shall be considered subject to dispute only if the insured has provided a written notice of dispute to the insurer or service carrier, has filed a written request for an administrative hearing or a hearing before the committee having authority to review premium disputes, or has initiated litigation regarding the premium dispute. The insured must have detailed the specific areas of dispute and, to the extent possible, provided an estimate of the premium the insured believes to be correct. The insured must have paid any undisputed portion of the bill.

4. Eligibility for policy issuance and continuance

 A. Basic Rule.

Except as provided in Subsection B, a lessee, not authorized to self-insure pursuant to 39 M.R.S.A. § 23, shall fulfill its statutory responsibility to secure benefits under the Workers' Compensation Act by purchasing and maintaining a standard workers' compensation policy approved by the Superintendent of Insurance. The exposure and experience of the lessee shall be used in determining the premium for policy.

 B. Exceptions

A lessor which obtains coverage in the voluntary workers' compensation market and is registered with the Superintendent of Insurance, pursuant to 32 M.R.S.A. § 14052, may, with the voluntary market insurer's knowledge and consent, elect to secure the coverage on leased employees through a standard workers' compensation policy issued to the lessor. The insurer of the lessor may take all reasonable steps to ascertain exposure under the policy and collect the appropriate premium through the following procedures:

(1) Complete description of lessor's operations;

(2) Periodic reporting of covered lessee's payroll, classifications, experience rating modification factors, and jurisdictions with exposure. This reporting may be supplemented by a requirement to submit to the carrier Internal Revenue Service Form 941 or equivalent form on a quarterly basis.

(3) Audit of lessor's operations; and

(4) Any other reasonable measures to determine the appropriate premium.

C. Residual Market Coverage.

A lessor which obtains coverage through the residual market established pursuant to 24-A M.R.S.A. § 2366 must secure coverage on a multiple coordinated policies basis. This requirement applies to all policies issued or renewed, any applications submitted, and any lessees entering into an employee leasing agreement on or after the effective date of this rule. In order to qualify for coverage on a multiple coordinated policies basis, the lessor shall meet each of the following requirements at application and at annual renewal:

(1) Its officers or directors, or any person with a five percent (5%) or greater interest does not owe any premium to the current or prior insurers, except premium subject to dispute; and

(2) Provide such information as is otherwise required by this rule; and

(3) Be registered as an employee leasing arrangement with the Bureau of Insurance.

D. Application data required for residual market.

A lessor which applies for coverage through the residual market shall furnish the following information with the application for coverage:

(1) A list by jurisdiction of each and every name that the employee leasing company has operated under in the preceding five (5) years (including any alternative names and names of predecessors, and successor business entities) along with the policy number and carrier for each workers' compensation insurance policy issued to the employee leasing company under each and every such name in the preceding five (5) years and a copy of the most recent Form 941 filed with the United States Internal Revenue Service by the employee leasing company;

(2) A list of each and every person or entity who owns a five percent (5%) or greater interest in the employee leasing business at the time of application and a list of each and every person or entity who formerly owned a five percent (5%) or greater interest in the employee leasing company or its predecessors, successors, or alter egos in the preceding five (5) years;

(3) For each person or entity identified in the preceding subsection, a list of all other employee leasing companies in which such person or entity owns or owned a five percent (5) or greater interest and a list of all other businesses in which such person or entity owns or owned a fifty percent (50%) or greater interest at the time application is made and in the preceding twelve (12) months;

(4) The Internal Revenue Service Form 941 or equivalent most recently filed with the service with respect to each lessee and a copy of the most recent Form 941 or equivalent filed with the United States Internal Revenue Service by each lessee.

(5) A sworn written statement signed by the owner, partner or officer authorized to bind the lessee legally, that states the policy number and carrier for each workers' compensation insurance policy issued to the lessee under each and every such name in the preceding five (5) years;

(6) The employee leasing company must also furnish for each lessee at the time of application or renewal; a listing of all leased employees along with their social security number, classification code and wages; and

(7) A sworn written statement signed by the owner, partner or officer authorized to bind the lessee legally that states that all of the lessee's non-leased employees are covered by a workers' compensation insurance policy. In addition, the affidavit must provide the policy number, carrier, a listing of the number of non-leased employees, and the aggregate payroll applicable to each classification code.

 A lessor which applies for coverage through more than one residual market policy at one time needs only to furnish one copy of the information required by paragraphs (1) and (3), above. A lessor which applies for coverage through the residual market pursuant to policies to be coordinated with other policies already in force and with respect to which the information required by paragraphs (1) to (3), above, has been provided previously, shall be required only to provide such information as is necessary to update the previously provided information. With respect to unchanged information, a lessor may make reference to its' previous submissions.

 E. Other data required.

 A lessor which applies for coverage or is covered through either the voluntary market or the residual market mechanism shall also maintain and furnish to the insurer or to the principal rating organization through the residual market servicing carrier sufficient information to permit the calculation of an experience modification factor for each lessee. Such information shall include:

(1) The lessee's corporate name or operating name if the lessee is not a corporation;

(2) The lessee's taxpayer or employer identification number;

(3) The lessee's risk identification number;

(4) A listing of all leased employees associated with each lessee, the applicable classification code and payroll; and

(5) Claims information grouped by lessee, and any other information necessary to permit the calculation of an experience modification factor for each lessee.

5. Policy cancellation or nonrenewal

A. Grounds for Cancellation and Nonrenewal.

 In addition to any statutory grounds that may exist, any violation of this rule is grounds for cancellation or nonrenewal provided that the employee leasing company or, if appropriate, the lessee, has been provided a reasonable opportunity to cure the violation.

B. Notice to Lessees.

 If an employee leasing company has received notice that its workers' compensation insurance policy issued on a master policy basis will be canceled or nonrenewed, the leasing company shall notify by certified mail, within fifteen (15) days of the receipt of the notice, all of the lessees for which there is an employee leasing arrangement covered under the to-be-canceled policy.

 If one or more workers compensation insurance policies issued with respect to one or more lessees are to be canceled or nonrenewed, the insurer or service carrier shall give any required notice to the lessor and to each affected lessee.

C. Experience Modification Factor Following Termination.

(1) Lessee covered on a multiple coordinated basis.

 In the event that an employee leasing arrangement with a lessee is terminated, the lessee shall be assigned an experience modification factor which reflects its experience during the experience period specified by the approved experience rating plan, including, if applicable, experience incurred for leased employees under the employee leasing arrangements.

(2) Lessee covered on a master policy basis.

 In the event that an employee leasing arrangement with a lessee is terminated and the experience of the lessee is commingled with that of other clients on a lessors master policy, then the experience of the lessee shall be developed and reported by the insurer, to the extent possible, for use in development of an experience modification factor for the lessee. If suitable payroll and loss experience is not reported, then the lessors experience modification factor will apply to the lessee for up to three years (3) or until such time as the lessee qualifies for development of its own experience modification factor.

(3) Notice Required

 An employee leasing company shall notify its insurer or service carrier 30 days prior to the effective date of termination or immediately upon notification of cancellation by a lessee of an employee leasing arrangement with a lessee in order to allow sufficient time to calculate an experience modification factor for the lessee.

6. Lessee's obligation

A. Nothing in this rule shall have any effect on the statutory obligation, if any, of a lessee to secure workers' compensation coverage for employees not provided, supplied, or maintained by a lessor pursuant to employee leasing arrangement.

B.

(1) A lessee shall not be eligible for coverage pursuant to a workers' compensation insurance policy issued to a lessor if the lessee owes its current or a prior insurer any premium for workers' compensation insurance, except premium subject to dispute.

(2) A lessee shall not be eligible for coverage pursuant to a workers' compensation policy under a multiple coordinated policy basis in the residual market if the lessee owes its current or a prior insurer any premium for workers' compensation insurance except premium subject to dispute.

7. Insurer or service carrier audit

 All insurers shall audit any policy issued pursuant to Section 4 of this rule within 90 days of the policy effective date and may conduct quarterly 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 lessor are appropriate. An audit conducted pursuant to this section does not prevent or relieve an insurer of any other audit right or responsibility it may have.

8. Premium discounts

 Every insurer which issues workers' compensation insurance policies on either a master policy or a multiple coordinated policy basis which provide coverage with respect to employees subject to an employee leasing arrangement shall file for approval with the Bureau a premium discount schedule applicable to such policies which appropriately reflects cost savings created for the insurer any such arrangements.

 The rating bureau which files rates with respect to the residual market mechanism shall file for approval with the Bureau a premium discount schedule applicable to policies issued on a multiple coordinated basis through the residual market to lessors and/or lessees under employee leasing arrangements which appropriately reflect cost savings created for the residual market and for service carriers by any such arrangements.

9. Penalties

 In addition to any adjustment in premiums, the Superintendent may impose penalties upon a lessor or lessee as provided under 24-A M.R.S.A. § 12-A in any case in which a violation of this regulation or applicable statute has occurred.

10. Effective date

 The effective date of this rule is October 1, 1992. This rule applies to all policies issued or renewed and any applications submitted on or after the effective date of this rule. Policies issued in the residual market pursuant to which coverage is extended to more than one lessee of a lessor pursuant to a master policy concept may remain in effect until their renewal dates, but in the event a lessor enters into an employee leasing arrangement with any client on or after the effective date of this rule, the provisions of this rule relating to multiple policies will be applicable.

History. -- Effective. 10-1-92.

History. -- Statutory Authority.--24-A M.R.S.A.

§§ 212, 2178, 2364, and 2366; 32 M.R.S.A.

§ 14055(2).

This rule is promulgated pursuant to 24-A M.R.S.A. §§ 212, 2178, 2364, and 2366 and 32 M.R.S.A. § 14055(2).

EFFECTIVE DATE (ELECTRONIC CONVERSION): January 14, 1997

APAO WORD VERSION CONVERSION (IF NEEDED) AND ACCESSIBILITY CHECK: July 18, 2025