

Atlantic Corporate Center
2317 Route 34, Suite 2B
Manasquan, NJ 08726
7312-201-4133
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NATIONAL COUNCIL OF INSURANCE LEGISLATORS

Model Act Regarding Workers' Compensation Insurance Coverage in Professional Employer Organization (PEO) Relationships

*Readopted by the Executive Committee on November 24, 2013 and by the Workers' Compensation Insurance Committee on November 21, 2013. Originally adopted by the Executive Committee on November 17, 2007, and by the Workers' Compensation Committee on November 15, 2007. Sponsored by Sen. Carroll Leavell (NM)
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Section 1. Short Title

This Act may be called the Model Act Regarding Workers' Compensation Insurance Coverage in Professional Employer Organization (PEO) Relationships.

Section 2. Purpose

The purpose of this Act is to require the registration of professional employer organizations (PEOs) and to regulate the use of experience ratings for workers' compensation insurance in PEO relationships.

[Drafting Note: This model is specifically designed to address the registration and use of experience ratings by PEOs in workers' compensation insurance. Some states may wish to address additional PEO rights and responsibilities, or require PEOs to be licensed.]

Section 3. Definitions

- A. "Client" means any employer that enters into a Professional Employer Agreement with a PEO.
- B. "Covered Employee" means an employee of the Client whose employment responsibilities are shared between the Client and a PEO.

[Drafting Note: Workers' compensation law governs whether or not the PEO is considered to be an employer of an individual for workers' compensation purposes. States must determine if a PEO agreement is consistent with the law.]

C. "Direct hire employee" means an individual who is an employee of the Client and who is not a Covered Employee.

D. "Professional Employer Organization" or "PEO" means an entity or group of entities that offers professional employer services in this State under a PEO agreement.

1. An entity engaged in the business of entering into professional employer agreements, as defined herein, is acting as a PEO regardless of its use of other terms such as "staff leasing company," "registered staff leasing company," "employee leasing company," "administrative employer," or any other name.

2. A PEO does not include:

a. temporary help services (an entity that recruits and hires its own employees; assigns them to clients on a temporary basis to support or supplement the Client's work force in special work situations such as employee absences, temporary skill shortages, and seasonal workloads; and customarily attempts to reassign the employees to other clients when they finish each assignment) or

b. independent contractor arrangements

[Drafting Note: This definition establishes a single regulatory category and terminology for these entities, regardless of the terminology used by the parties. In particular, this category of "PEOs" is intended to encompass what was once commonly referred to as "employee leasing firms." Therefore, states with existing laws governing employee leasing should repeal those laws to the extent that they are superseded by this Model Act or otherwise obsolete, and should update the terminology and substance of any remaining provisions as necessary.]

E. "Professional employer agreement" or "PEO agreement" means an agreement between a PEO and a Client under which the PEO agrees to assume specified employment responsibilities for all or part of the Client's work force.

F. "Insurer" means an insurance company authorized to do business in this State.

G. "Designated advisory organization" means the entity designated by the [insurance authority in the state] for the reporting of claims and experience data and for the administration of the workers' compensation experience rating system.

Section 4. Registration Requirements

A. A PEO shall be registered as a Professional Employer Organization with the [insert appropriate state agency]. An insurer may not issue a workers' compensation insurance policy to a PEO that is not registered, nor enter into an agreement with an unregistered PEO to issue policies to Clients of the PEO.

B. An applicant shall file an application for registration with the [insert appropriate state agency] on a form approved by the [insert appropriate state agency] accompanied by a [insert application and fee amounts].

[Drafting Note: Requirements including PEO registration information, timeframe of the initial registration, and renewal procedures should be consistent with existing state law, if any. States that do not currently have statutory PEO registration requirements may wish to review requirements codified by other states.]

Section 5. General Rules

A. The responsibility to obtain workers' compensation coverage for Covered Employees in compliance with all applicable law shall be specifically allocated in the Professional Employer Agreement to either the Client or the PEO. If such responsibility is allocated to the PEO under any such agreement, the agreement shall require that the PEO maintain and provide workers' compensation coverage for the Covered Employee from an insurer authorized to do business in this State, for as long as the agreement is in effect.

B. The Client is responsible for maintaining workers' compensation insurance for the Client's Direct Hire and Covered Employees, either through a PEO agreement for covered employees or through an authorized insurer doing business in this state. The PEO agreement shall not relieve the Client of its responsibility for demonstrating compliance with this State's workers' compensation statute. A policy that excludes coverage for the Client's Direct Hire Employees shall not be accepted as proof of coverage pursuant to Section [insert appropriate reference to proof-of-coverage statute] of the Workers' Compensation Act.

C. A PEO may only provide workers' compensation benefits through a policy written by a licensed insurer. The licensed insurer shall be responsible for the payment and administration of all workers' compensation claims.

Section 6. Experience Rating

A. Workers' compensation insurance premiums with respect to any Client for which a PEO performs services shall be determined based on the experience modification factor of the Client, provided that the Client has sufficient workers' compensation premium volume to be experience rated. The Client's experience modification factor shall be based on exposures and claims for both Covered and Direct Hire employees of the Client. Otherwise the premiums shall be at the rate approved by [insert appropriate state agency] for an employer that cannot be experience rated.

[Drafting Note: A state may consider that alternative rating mechanisms could be permitted as long as the PEO and insurer are in agreement and both the clients and the integrity of the experience rating system are protected.]

B. The PEO shall maintain separate payroll records and separate records of work-related injuries and illnesses for each Client company and shall report these in a timely and ongoing manner to its insurer.

C. The insurer shall report all loss and payroll information to the designated advisory organization in a manner approved by the commissioner [or other state official if appropriate] that identifies the Client and allows the calculation of an accurate experience rating for the Client on an ongoing basis.

D. Within 60 days after the termination of a PEO agreement, the PEO shall provide the Client with records regarding the payroll and loss experience related to workers' compensation insurance provided to Covered Employees.

Section 7. Severability

If any section, paragraph, sentence, clause, phrase, or any part of this Act passed is declared invalid, the remaining sections, paragraphs, sentences, clauses, phrases, or parts thereof shall be in no manner affected and shall remain in full force and effect.

[Drafting Note: States should consider whether to include rulemaking authority for the appropriate state agencies as part of this Act.]

Section 8. Effective Date

This Act shall take effect on [insert date].

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