

260-RICR-50-05-11

TITLE 260 – DEPARTMENT OF LABOR AND TRAINING

CHAPTER 50 – INJURED WORKER SERVICES

SUBCHAPTER 05 – WORKERS’ COMPENSATION

PART 11 – Emergency Workers’ Compensation Regulation Employee Leasing Workers’ Compensation Insurance

11.1 Purpose

The purpose of this Regulation is to ensure that all leased employees receive workers’ compensation insurance coverage as required by R.I. Gen. Laws so that premium is paid commensurate with exposure and anticipated claim experience and that said coverage is continued timely for Rhode Island lessees and employers to properly manage their affairs in compliance with the law.

11.2 Authority

This regulation is promulgated pursuant to R.I. Gen. Laws §§ 28-29-26 and 28-36-13.

11.3 Definitions

“Beacon Mutual Insurance Company” means the workers’ compensation insurance fund established pursuant to R.I. P. L. 2003, Ch. 410.

“Client” means an entity which obtains all or part of its workforce from another entity through an employee leasing arrangement or which employs the services of an entity through an employee leasing arrangement. In this regulation, the client may also be referred to as lessee.

“Director” means the Director of Labor and Training or his or her designee unless specifically stated otherwise.

“Department” means the Department of Labor and Training.

“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 to provide temporary help service.

“Labor Contractor” means an entity that grants a written lease to a client through an employee leasing arrangement. In this regulation, the labor contractor may also be referred to as an employee leasing company and or a lessor.

“Leased Employee” means a person performing services for a lessee under an employee leasing arrangement.

“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. In this Regulation, a lessee may also be referred to a client.

“Lessor” means an entity that grants a written lease to a lessee through an employee leasing arrangement, including the employee leasing companies who are lessees of employee leasing company and multiple arrangements thereof. In this Regulation, the lessor may also be referred to as an employee leasing company and/or a labor contractor.

“Multiple Coordinated Policies Basis” means the insurer and labor contractor will coordinate workers’ compensation insurance policies providing coverage to leased employees as set forth in § 11.4(C) of this Part.

“Premium Subject to Dispute” means that 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 initiated any applicable proceeding for resolving such disputes as prescribed by law or rating organization rule, or has initiated litigation regarding the premium dispute. The insured must have detailed the specific areas of dispute and provided an estimate of the premium the insured believes to be correct. The insured must have paid any undisputed portion of the bill.

“Temporary Help Service” means a service whereby an organization hires its own employees and assigns them to clients for a limited duration, not to exceed three (3) months, to support or supplement the client’s work force in special work situations such as employee absences, temporary skill shortages and seasonal workloads. If a temporary help service assigns employees to fill a position or to perform substantially the same responsibilities for a client for not more than three (3) months, the employee shall be considered to be a leased employee.

11.4 Eligibility for Policy Issuance and Continuance

A. Basic Rules

1. A lessee shall fulfill its statutory responsibility to secure benefits for leased employees under the Workers’ Compensation Insurance Act by purchasing and maintaining a standard workers’ compensation policy

approved by the Insurance Commissioner. The exposure and experience of the lessee shall be used in determining the premium for policy.

2. A labor contractor shall fulfill its statutory responsibility to obtain workers' compensation benefits for leased employees under the Workers' Compensation Insurance Plan by securing the coverage for the leased employees on a multiple coordinated policies basis, as set forth in § 11.4(C) of this Part.
3. In the event workers' compensation insurance coverage is provided through multiple lessors or by means involving entities other than a single lessor, then the complete legal arrangement shall be in writing explained and provided to the Department (including copies of all pertinent documents).

B. Residual Market Coverage

1. A labor contractor which obtains coverage through the residual market, for leased employees, must secure coverage on a multiple coordinated policies basis, as set forth in § 11.4(C) of this Part, to qualify for coverage on a multiple coordinated policies basis, the labor contractor shall meet each of the following requirements at application and annual renewal:
 - a. A lessor, 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
 - b. Provide such information as is otherwise required by this Regulation; and
 - c. Be registered as an employee leasing arrangement with the Department of Labor and Training.

C. Multiple coordinated policies

1. Multiple coordinated policies shall include the following requirements:
 - a. All assigned risk workers' compensation insurance policies for lessees of the same employee leasing company shall be assigned to Beacon Mutual Insurance Company for employees in state and to one servicing carrier in other states to the extent possible; and
 - b. The insurer shall arrange to have the same renewal dates for all such workers' compensation insurance policies; and
 - c. The insurer shall arrange to have all notices sent to the employee leasing company (labor contractor) and to have a single master invoice sent to the employee leasing company (labor contractor) for

all policies covering the clients of the employee leasing company (labor contractor).

- d. If a client leases employees from more than one labor contractor, there shall be a separate policy for the leased employees of each labor contractor.
 - e. The insurer shall issue a workers' compensation insurance policy covering the internal employees of the employee leasing company.
 - f. Appropriate endorsements need to be used to restrict the coverage to specific employees and to coordinate coverage between lessees and lessor.
2. The labor contractor (lessor) shall meet each of the following requirements to qualify for securing coverage on a multiple coordinated policies basis:
- a. The labor contractor is acting in good faith and entitled to insurance required under the workers' compensation insurance laws;
 - b. The labor contractor, its officers, directors, and any person with a five percent or greater interest does not owe any undisputed workers' compensation premium to the current or prior insurers and or self-insurer;
 - c. The labor contractor provides all information required under each policy in accordance with this regulation; and
 - d. The labor contractor is in compliance with all state laws.
3. The client (lessee) shall meet each of the following requirements to qualify for securing coverage on a multiple coordinated policies basis:
- a. The client is acting in good faith and entitled to insurance required under the workers' compensation insurance laws;
 - b. The client, its officers, directors, and any person with a five percent or greater interest does not owe any undisputed workers' compensation premium to the current or prior insurers and or self-insurers;
 - c. The client provides all information required under each policy in accordance with this Regulation; and,
 - d. The client is in compliance with all state laws.

D. Application Data Required for Residual Market

1. A lessor which applies for coverage through the residual market shall furnish the following information with the application for coverage:
 - a. A list of 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 or its equivalent 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 company 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 each such person or entity owns or owned a five percent (5%) or greater interest and a list of all other businesses in which each such person or entity or combination of two or more such persons or entities owns or owned a fifty percent (50%) or greater interest at the time application is made and in the preceding twelve (12) months;
4. A list by jurisdiction for each lessee, along with any other name(s) such lessee has operated under in the preceding five (5) years and the Internal Revenue Service Form 941 or its equivalent most recently filed with the service with respect to each lessee and a copy of the most recent Form 941 or its 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 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 numbers, classification codes 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 sworn written statement must provide the policy

number, carrier, a listing of the number of non-leased employees, and the aggregate payroll applicable to each classification code.

11.5 Lessor's Obligation

- A. Each lessor which applies for coverage or is covered through either the voluntary market, Beacon Mutual Insurance Company, or the residual market mechanism shall maintain and furnish to the Director the following information within five (5) days:
 - 1. Each lessor's and lessee's corporate name;
 - 2. Each lessor's and lessee's taxpayer or employer identification number;
 - 3. Each lessor's and 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.
- B. Each lessor has a continuing duty to notify the Director of any changes in § 11.4(C)(1)(e) of this Part within five (5) days. Failure to notify the Director within five (5) days may result in suspension or revocation of certificate of compliance and/or shall be subject to prosecution for a misdemeanor and upon conviction thereof may be punished by a fine of not more than two hundred fifty dollars (\$250.00) for each offense.
- C. Within fourteen (14) calendar days before expiration of any current workers' compensation insurance coverage complete, a lessor shall file final, and binding agreements for subsequent continuation of workers' compensation insurance coverage for leased employees signed by an official of the coverage for leased employees signed by an official of the entity ultimately providing such coverage and bearing the risk of loss under such policy with the Director. For failure to comply with this Section, the lessor shall be barred from providing workers' compensation insurance coverage or purporting to offer workers' compensation insurance to any lessee.

11.6 Lessee's Obligation

- A. A lessee which applies for coverage or is covered through either the voluntary market, Beacon Mutual Insurance Company, or the residual market mechanism shall maintain and furnish to the Director the following information within five (5) days:
 - 1. Each lessee's corporate name;

2. Each lessee's taxpayer or employer identification number;
 3. Each 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.
- B. Each lessee has a continuing duty to notify the Director of any changes in § 11.4(C)(1)(f) of this Part within five (5) days. Failure to notify the Director within five (5) days may result in suspension or revocation of certificate of compliance and/or shall be subject to prosecution for a misdemeanor and upon conviction thereof may be punished by a fine of not more than two hundred fifty dollars (\$250.00) for each offense.
- C. Within fourteen (14) calendar days before expiration of any current workers' compensation insurance coverage complete, a lessee shall file final, and binding agreements for subsequent of continuing workers' compensation insurance coverage for leased employees signed by an official of the entity ultimately providing such coverage and bearing the risk of loss under such policy with the Director. Failure to notify the Director as provided above may result in suspension or revocation of certificate of compliance and/or shall be subject to prosecution for a misdemeanor and upon conviction thereof may be punished by a fine of not more than two hundred fifty dollars (\$250.00) for each offense.

11.7 Policy Cancellation or Nonrenewal

- A. Grounds for cancellation and Nonrenewal
1. In addition to any statutory grounds that may exist, any violation of this Regulation is grounds for cancellation or nonrenewal provided that the employee leasing company has been provided a reasonable opportunity to cure the violation.
- B. Notice to Lessees
1. If an employee leasing company has received notice that its workers' compensation insurance policy will be cancelled or non-renewed, the leasing company shall notify by certified mail, within fifteen (15) days of the receipt of the notice, the Director and all of the lessees for which there is an employee leasing arrangement covered under the to -be-cancelled policy.

11.8 Insurer or Services Carrier Audit

Insurers shall audit policies issued pursuant to § 11.4 of this Part within ninety (90) days of the policy effective date and may conduct audits as the insurer deems appropriate. 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.

11.9 Penalties

Any lessor or lessee who fails to comply with the provisions of R.I. Gen. Laws Chapters 28-29 and 28-36, or who violates any provision of this Part shall be subject to the civil penalties set forth in R.I. Gen. Laws Chapters 28-29, 28-36, and this Part. Any lessor, lessee, person, corporation, entity which fails to provide workers' compensation insurance coverage for leased employees shall be subject to the criminal penalties imposed in R.I. Gen. Laws Chapter 28-36.

11.10 Severability

If any provision of this Part is held invalid, such invalidity shall not offset other provisions or applications of this Part.

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**PART 11 - EMERGENCY WORKERS' COMPENSATION REGULATION EMPLOYEE
LEASING WORKERS' COMPENSATION INSURANCE (260-RICR-50-05-11)**

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