

PROJECT HISTORY – 2010

GUIDELINES FOR REGULATIONS AND LEGISLATION ON WORKERS' COMPENSATION COVERAGE FOR PROFESSIONAL EMPLOYER ORGANIZATION ARRANGEMENTS (#1950)

1. Background

In 1991 the NAIC adopted an Employee Leasing Model Regulation and an Employee Leasing Registration Model Act. However, because of the evolution of this market over the intervening years, the Model Law Review (C) Working Group of the Workers' Compensation (C) Task Force had recommended in 2003 that these models be discontinued, noting that very few states had ever adopted them, and they had become considered seriously out of date. It was believed that only a complete rewrite should be considered. Therefore, during the NAIC 2003 Winter National Meeting, these two 1991 models were discontinued.

Discusses statutory and structural considerations for implementation; and
Considers key issues that might be essential for successful implementation.

Each of its section titles alludes to the information found within. The section titles are the following:

Executive Summary

Section I: Historical Background of the Guidelines

Section II: Some Legal Issues Relating to Implementation (existing law; key issues beyond the scope of the guidelines)

Section III: Specific Issues Related to the Guidelines (see "Issues Identified" below)

Conclusion

Appendices (The PEO Guidelines; National Council on Compensation Insurance "Alternatives and Technical Supplement on Data Reporting")

7. Issues Identified

Among issues identified which were addressed in Section III of the draft "Implementation Commentary" were the following:

Statutory-Regulatory Framework for PEOs

Master Policies and Client-Level Experience Rating

Lack of

PROJECT HISTORY – 2007

**WORKERS' COMPENSATION COVERAGE FOR PROFESSIONAL
EMPLOYER ORGANIZATION ARRANGEMENTS MODEL REGULATION**

1. Background

The Report on Employee Leasing and Professional Employer Organizations dealt primarily with the ramifications of the “master policy” framework for workers’ compensation insurance coverage. A master policy arrangement is typically characterized by an insurer issuing a single policy covering the employees of all of its clients (employers), including the internal employees of the master policyholder. In most states, the voluntary market allows for master policies to be written at the insurer’s discretion. However, in the res

5. Project Description

The draft NAIC PEO Model Regulation was developed to ensure that the following occurs:

PEOs and their clients properly obtain workers' compensation insurance coverage.
Premiums paid are to be commensurate with anticipated claims experience.
Coverage would need to be obtained for all employees—including both direct hire employees and persons employed under PEO agreements.
Appropriate procedural frameworks would be in place for the inception, continuation, and termination of coverage.

Each of its section titles alludes to the comprehensive information found within. The section titles are the following:

Section 1: Authority and Purpose
Section 2: Definitions
Section 3: Insurance Coverage on PEO Co-Employees
Section 4: Requirements for PEOs
Section 5: Multiple Coordinated Policy Agreement
Section 6: [Option One] Coverage in the Residual Market
[Option Two] Coverage by the [Statutory Carrier of Last Resort]
Section 7: Policy Issuance
Section 8: Premium Payments
Section 9: Verification of Classifications and Payroll
Section 10: Policy Cancellation or Non-renewal
Section 11: Statistical Reporting and Experience Rating
Section 12: Interstate Coverage
Section 13: Confidentiality
Section 14: Remedies
Section 15: Effective Date

6. Significant Issues Raised

Among key issues identified were the following:

Experience rating, including but not limited to modification laundering. The primary issues motivating the old model laws continued to be identified as a significant problem both by regulators and the NCCI.

The need for certainty regarding who is insured, who is the insurer, when coverage begins and ends, and how this is verified with the appropriate regulators.

Ensuring that all affected parties receive the information they need, and that there is due process before coverage is terminated and adequate opportunity to shop for replacement coverage. Affected

Piggybacking: A situation where several PEOs are listed as clients on another PEO's policy and coverage is provided through a master policy.

Coverage for Direct Hire Employees. A "direct hire employee" of a client or a PEO means an individual who is an employee within the meaning of the Workers' Compensation Act and who is not a PEO co-employee as defined in Section 2, Subsection J of the draft.

Responsible Party for the Premium. Should the client pay the PEO a fee in exchange for the PEO being responsible for payment of the insurance company premium that provides the client coverage?

The "unknown employee" exposure. This exposure exists when the client does not have any coverage of its own because it intended to cover its entire workforce through the PEO. However, someone unexpectedly files a claim as an employee of the client—either because the claimant was a new employee who has not yet established a documented relationship with the PEO, or because the claimant was regarded by the client as an independent contractor.

7. Other Pertinent Information

National Conference of Insurance Legislators (NCOIL) Draft PEO Model Act

NCOIL has been developing its own PEO Model Act. However, the NCOIL model is not expected to be as broad in scope as the draft PEO Model Regulation produced by the Professional Employer Organization Model Law (C) Working Group. During the NAIC 2007 Spring National Meeting the Workers' Compensation (C) Task Force formed the NCOIL PEO Model Focus Group, composed of members who were most involved with PEO activities. The purpose of the NCOIL PEO Model Focus Group was to provide comments regarding the recent NCOIL draft for delivery to that organization by its deadline date of March 30, 2007. The comments were submitted by that date. NCOIL next plans to make a decision on its model during the NCOIL Summer Meeting, to be held in Seattle, Washington from July 19—22, 2007. NCOIL is an organization of state legislators whose primary focus is insurance legislation and regulation.

Complementary Paper

During the Professional Employer Organization Model Law (C) Working Group's June 10, 2006, meeting, a suggestion was made for a paper to be developed to complement an adopted NAIC PEO Model Regulation. The intent of the paper (not anticipated to be a white paper) would be to help states determine law changes that need to be made and to indicate whether insurers, bureaus and PEOs are ready to handle the data and other needs addressed in the model. The Working Group agreed to develop such a paper and therefore plans to continue meeting after adoption of the model.