



AMERICAN ACADEMY of ACTUARIES

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS

Proposed Model Act Regarding Workers' Compensation Insurance Coverage in Professional Employer Organizations' (PEOs) Relationships

To be considered by the NCOIL Workers' Compensation Insurance 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 Organizations' (PEOs) 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. "Applicant" means a party applying to register as a PEO.

B. “Client” means any party that enters into a Professional Employer Agreement with a PEO.

C. “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 the employer of an individual for workers’ compensation purposes. States must determine if a PEO agreement is consistent with the law.]

D. “Direct hire employee” means an individual who is an employee of the Client and who is not a Covered Employee.

E. “Professional Employer Organization” or “PEO” means a party that offers professional employer services in this State.

1. A Person **is engaged in** the business of providing professional employer services **is a PEO** regardless of **its whether or not it uses of** the term or **is** conducting business as a “professional employer organization,” “PEO,” “staff leasing company,” “registered staff leasing company,” “employee leasing company,” “administrative employer,” or any other name.

AAA Comment: The aforementioned proposed changes are intended to make this language clearer and more grammatically sound.

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.]

EE. “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.

AAA Comment: The proposed change above corrects the sequence of paragraph lettering, which currently contains two successive paragraph “E”s.

G. “Professional employer services” are services related to the employment of covered employees, including, but not limited to, personnel record-keeping, payroll administration, tax compliance, and/or benefit plan administration.

AAA Comment: the above proposed addition would strengthen the Model Bill’s definition of “Professional Employer Organization.”

FH. “Insurer” means an insurance company authorized to do business in this State.

AAA Comment: The above change continues the proposed revision to paragraph lettering noted above.

GI. “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.

AAA Comment: The above change completes the proposed revision to paragraph lettering noted above.

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 policy to a PEO that is not registered, nor enter into an agreement with an unregistered PEO to issues 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]*.
- C. Policies issued by an authorized insurer to a Registered PEO or Client under a PEO agreement shall be regulated by the *[insert appropriate state agency and code to regulate such activity in this state]* Section ___ of *[insert appropriate section of insurance code]* of the insurance *[statute or code]* regarding

cancellation requirements ~~applies to policies issued to a PEO or a Client under a PEO arrangement.~~

[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.]

AAA Comment: The proposed change above removes redundant and confusing language.

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, such 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 or until terminated.~~

AB. The Client is responsible for maintaining workers' compensation insurance for the Client company'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 remove the Client's responsibility for demonstrating compliance with its State workers' compensation statute.

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AAA Comment: The changes proposed above would eliminate existing ambiguity concerning responsibility for providing workers' compensation insurance for Covered Employees.

B. A PEO may only provide workers' compensation benefits through a policy written by a licensed insurer and shall not utilize a Master Policy for such purposes in order for the requirement for separate Client experience ratings to be fulfilled. A PEO shall not pay claim benefits to injured Covered Employees from its own funds nor charge fees to administer such claims.

AAA Comment: Individual client experience modifications cannot be issued under a Master Policy using existing industry systems and technology.

Section 6. Experience Ratings

A. Workers' compensation insurance premiums with respect to any Client for which a PEO performs services shall be determined based on the experience rating of the Client, provided that the Client has sufficient workers' compensation premium

volume to be experience rated. **Such experience rating shall include 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.

AAA Comment: If Client experience ratings are allowed to omit portions of a Client's history, such as that of either Covered Employees or Direct hire employees, the accuracy of experience ratings would be compromised, and the potential for inadvertent errors and/or intentional manipulation of experience ratings would develop.

- 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.

AAA Comment: Consistent with similar requirements applicable to workers' compensation insurance in the absence of Professional Employer agreements, all relevant disclosures must be made in compliance with applicable law, including but not limited to the Health Insurance Portability and Accountability Act.

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

AAA Comment: Consistent with similar requirements applicable to workers' compensation insurance in the absence of Professional Employer agreements, all relevant disclosures must be made in compliance with applicable law, including but not limited to the Health Insurance Portability and Accountability Act.

- D. At the termination of a PEO agreement, the PEO shall provide the Client with records regarding the loss experience related to workers' compensation insurance provided to Covered Employees. The Insurer of the PEO shall provide the former client's records regarding payroll and loss experience to the designated advisory organization within 90 60 days of termination of the PEO agreement in the manner prescribed by the designated advisory organization.

AAA Comment: Consistent with similar requirements applicable to workers' compensation insurance in the absence of Professional Employer agreements, all relevant disclosures must be made in compliance with applicable law, including but not limited to the Health Insurance Portability and Accountability Act.

[Drafting note: In states with laws that require insurers to give loss information to covered employers, there should be a provision clarifying the applicability of this requirement to clients of PEOs, regardless of who is the named insured on the policy.]

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 [insert appropriate state agencies] as part of this act.

Section 8. Effective Date

This Act shall take effect on *[insert date]*.

Proposed Working Group additions to the draft Model Act indicated by underline.