



Minnesota Workers' Compensation
Insurers Association, Inc.
7701 France Avenue South • Suite 450
Minneapolis, MN 55435-3200

November 2, 2005

ALL ASSOCIATION MEMBERS

Circular Letter 05-1471

RE: New Minnesota Employee Leasing Rules and Endorsements

The Minnesota Department of Commerce has approved the above filing to become effective 12:01 a.m., January 1, 2006, for new and renewal business.

The purpose of the above filing is to create special rules, procedures and forms for the handling of employee leasing arrangements in Minnesota.

Due to an increasing number of inquiries concerning how policies should be written for employee leasing arrangements, the Minnesota Department of Commerce, the Minnesota Assigned Risk Plan Administrator (MWCARP) and MWCIA discussed how to resolve the issues surrounding these types of policies. The rules, procedures and forms contained in this filing are a result of those discussions. MWCIA also solicited feedback from other interested parties including the Minnesota Department of Labor & Industry, the Minnesota Chamber of Commerce, the Insurance Federation of Minnesota and representatives of the PEO industry. MWCIA would like to take this opportunity to thank these parties for their assistance with this project.

As a result of this collaboration, MWCIA staff has prepared the following exhibits:

- Exhibits I and II illustrate the changes necessary to the ***Minnesota Basic Manual*** and ***Experience Rating Plan Manual*** to implement the above filing [note: the highlighted areas in Column 2 of Exhibit II represents the new Minnesota exception language for the ***Experience Rating Plan Manual***.]
- Exhibits III and IV illustrate two new Minnesota endorsements: **Minnesota Employee Leasing Endorsement** (WC 22 03 04); and **Minnesota Exclusion of Coverage for Leased Employees Endorsement** (WC 22 03 05)
- Exhibit V illustrates changes needed to update the index of the ***Minnesota Forms Manual***

In reviewing the exhibits listed above, please note the following program highlights:

- All employee leasing companies, including Professional Employer Organizations (PEO), are responsible for purchasing a separate workers' compensation policy for each client company to cover the exposure of their leased employees
- Each workers' compensation policy is to be issued in the name of both the employee leasing company and the client company, but the policy is maintained by the employee leasing company for premium purposes
- The employee leasing company will be the primary named insured on the policy and the client company will be the secondary named insured on the policy
- **Minnesota Employee Leasing Endorsement** (WC 22 03 04) must be attached to each policy insuring employee leasing arrangements to identify the client company
- Separate policies must be maintained by the employee leasing company and/or the client company for any employees who are not part of the employee leasing agreement
- **Minnesota Exclusion of Coverage for Leased Employees Endorsement** (WC 22 03 05) must be attached to a policy insuring a leasing company's non-leased employees to clarify the policy does not provide coverage for any employees leased to others
- Experience from policies insuring employee leasing arrangements must be combined with the experience of non-leased employees of the client for experience rating purposes
- It is also the responsibility of the leasing company to notify the client company if coverage on a policy insuring their employee leasing arrangement is being cancelled

Please direct any questions you may have regarding this filing item to one of MWCIA's Member & Customer Services staff by calling 952.897.1737 (Option 1) or via e-mail at info@mwcia.org.

MINNESOTA SPECIAL RATING PLANS AND PROGRAMS

E. EMPLOYEE LEASING ARRANGEMENTS

As respects employee leasing arrangements in Minnesota, the following definitions shall apply:

Employee Leasing Arrangements are contractual arrangements whereby an entity (the client company) leases for a fee or other compensation any or all of its employees from another entity (the employee leasing company). Employee leasing arrangements include, but are not limited to, full service or long term leasing arrangements under which the leasing company provides employees to the client company and undertakes some of the employment responsibilities for those leased employees.

Client Company means the entity who obtains any or all of its employees from another entity under an employee leasing arrangement which is identified in Item 1 of the Information Page and on the Minnesota Employee Leasing Endorsement (WC 22 03 04).

Leasing Company means the entity which leases employees to the client company under an employee leasing arrangement and which is identified in Item 1 of the Information Page.

Temporary Help Services means a service under which an entity hires its own employees and assigns those employees to a client for a limited time [generally less than thirty (30) days] to address special circumstances such as temporary skill shortages or temporary special assignments and projects.

In Minnesota, it is the responsibility of the employee leasing company to purchase and maintain a separate workers' compensation policy for each client company to cover the exposure of their leased employees. The experience of any employees leased to a client company shall be combined with the experience of the non-leased employees of the client company for purposes of calculating an experience modification factor for the client company. The experience modification of the client company shall apply to both the policy for their non-leased employees as well as any policy maintained by an employee leasing company for their leased employees. If the leasing company qualifies for an experience modification factor, it shall be based only on the experience of their non-leased employees. *Refer to the **Experience Rating Plan Manual** for additional information on Employee Leasing Arrangements and experience rating.*

EXHIBIT I

Each employee leasing arrangement requires that a separate policy be issued to cover the leased employees of each client company. This policy does not satisfy a client company's obligation to secure its own workers' compensation policy for employees not covered under the employee leasing arrangement. An employee leasing arrangement further obligates the client company to comply with Part Four (Your Duty If Injury Occurs) of the policy and also recognizes the carrier's rights to defend under Part One and Part Two, their right to audit under Part Five, and the carrier's right to inspect under Part Six. If a policy covering the leased employees is being cancelled, it is the responsibility of the employee leasing company to notify the client company of the cancellation.

[Note: Cancellation of one client company policy does not affect the rights and obligations of the leasing company with respect to any other workers' compensation policy they may have in force to cover other employee leasing arrangements.]

Policies written to provide coverage for employee leasing arrangements must be issued to the employee leasing company. The policy must list both the leasing company and the client company as named insureds under Item 1. The employee leasing company shall be listed as the primary insured on the policy and the client company shall be listed as the secondary insured. In addition, **Minnesota Employee Leasing Endorsement WC 22 03 04** must be attached to each employee leasing arrangement policy identifying the client company on the policy. It is also the responsibility of the employee leasing company to notify the client company if coverage on the policy insuring the employee leasing arrangement is being cancelled.

Separate policies must be maintained by both the employee leasing company *and* the client company to insure the exposures of any leased or non-leased employees that are not part of an employee leasing arrangement are covered in accordance with Minnesota's workers' compensation law. **Minnesota Exclusion Of Coverage For Leased Employees Endorsement WC 22 03 05** must be attached to the leasing company's policy to specify it does not provide coverage for any employees leased to others under an employee leasing arrangement.

EXPERIENCE RATING PLAN MANUAL

PRESENT PHRASEOLOGY:	PROPOSED PHRASEOLOGY:	COMMENTS:
PART ONE	PART ONE	
DESCRIPTION OF THE PLAN	DESCRIPTION OF THE PLAN	
II. DEFINITIONS	II. DEFINITIONS	
NONE	NONE	
NONE	ADD MINNESOTA EXCEPTION:	
NONE	I. EMPLOYEE LEASING ARRANGEMENTS	
NONE	<p><i>Employee Leasing Arrangements</i> are contractual arrangements where an entity (the client company) leases for a fee or other compensation any or all of its employees from another entity (the leasing company). Employee leasing arrangements include but are not limited to full service or long term leasing arrangements where a leasing company provides employees to a client company and undertakes some of the employment responsibilities for those leased employees. An employee leasing arrangement does not include arrangements to provide temporary help services.</p>	<p>CREATE MN EXCEPTION TO CLARIFY SPECIAL RELATIONSHIPS AND RULES CONCERNING EMPLOYEE LEASING ARRANGEMENTS INCLUDING THEIR REQUIREMENT TO REGISTER WITH THE DEPARTMENT OF COMMERCE.</p>
NONE	<p>1. In Minnesota, it is the responsibility of the leasing company to purchase and maintain a separate workers' compensation policy for each client company to cover the exposure of the employees leased under an employee leasing agreement to a particular client company. The experience of any employees leased to a client company shall be combined with the experience of all other employees of the client company for the purposes of calculating an experience modification factor for the client company. The experience modification of the client company shall apply to the client company's main policy for their non-leased employees as well as any policy maintained by an employee leasing company in their name for their leased employees.</p> <p><i>For rules regarding the writing of policies where employee leasing arrangements exist, refer to the Minnesota Special Rating Plans & Programs section of the Minnesota Basic Manual.</i></p>	

EXHIBIT II

EXPERIENCE RATING PLAN MANUAL

PRESENT PHRASEOLOGY:	PROPOSED PHRASEOLOGY:	COMMENTS:
PART TWO	PART TWO	
OPERATION OF THE PLAN	OPERATION OF THE PLAN	
C. EXPERIENCE TO BE USED IN RATING	C. EXPERIENCE TO BE USED IN RATING	
11. EMPLOYEE LEASING	11. EMPLOYEE LEASING	
a. If coverage for leased workers was provided under a policy issued to a labor contractor and is subsequently provided under a policy issued to the client and the experience of the client is commingled with that of other clients on the labor contractor's (lessor's) policy, the following procedure shall apply:	SAME	NCCI LANGUAGE – DOES NOT APPLY IN MINNESOTA.
The experience of the client shall be developed and reported to the rating organization by the insurance carrier, to the extent possible, for use in the development of an experience modification for the client. If suitable payroll and loss experience is not reported to the rating organization, the labor contractor's experience modification will apply to the client for up to 3 years or until such time as the client otherwise qualifies for development of its own experience modification.	SAME	NCCI LANGUAGE – DOES NOT APPLY IN MINNESOTA.
b. If coverage for leased workers was provided under a policy issued to a labor contractor and is subsequently provided under a policy issued to the client and the client was covered under the multiple coordinated policies basis, the following procedure shall apply:	SAME	NCCI LANGUAGE – DOES NOT APPLY IN MINNESOTA.
The client shall be assigned an experience modification factor which reflects its experience during the experience period, including experience incurred for leased employees under the employee leasing arrangement.	SAME	NCCI LANGUAGE – DOES NOT APPLY IN MINNESOTA.
NONE	ADD MINNESOTA EXCEPTION:	[SEE NEXT PAGE]

EXPERIENCE RATING PLAN MANUAL

PRESENT PHRASEOLOGY:	PROPOSED PHRASEOLOGY:	COMMENTS:
NONE	ADD MINNESOTA EXCEPTION:	
NONE	<p>a. The experience of the client company in an employee leasing arrangement shall be developed and separately reported to Minnesota Workers' Compensation Insurers Association, Inc. (MWCIA) by the insurance carrier, for use in the development of an experience modification for the client with data from any of the client company's non-leased employees.</p> <p><i>Refer to Part One, Rule II.1 of this manual for more information regarding experience rating and employee leasing arrangements.</i></p>	<p>MN DOES NOT FOLLOW NCCI'S RULES REGARDING EMPLOYEE LEASING. THE CREATION OF THE EXCEPTION LANGUAGE AT LEFT REPLACES NCCI'S LANGUAGE ON PAGE 2 WITH LANGUAGE REGARDING THE SPECIAL HANDLING OF EMPLOYEE LEASING ARRANGEMENTS IN MN.</p>
	<p>b. Only the experience of the leasing company's non-leased employees shall be used in the calculation of an experience modification factor for a leasing company.</p> <p>Refer to Part One, Rule III of this manual for rules on experience rating eligibility.</p>	
PART THREE	PART THREE	
ADMINISTRATION OF THE PLAN	ADMINISTRATION OF THE PLAN	
NONE	NONE	
NONE	ADD MINNESOTA EXCEPTION:	
NONE	G. EMPLOYEE LEASING	
NONE	<p>If an entity (client company) leases employees from another entity (leasing company) under an employee leasing agreement, the leased employees will be viewed as employees of the client company for experience rating purposes.</p> <p>All applicable experience prior to the leasing arrangement and during the leasing arrangement will continue to be included in the calculation of the client company's experience modification.</p>	<p>CREATE MN EXCEPTION LANGUAGE TO CLARIFY THAT EMPLOYEE LEASING ARRANGEMENTS CANNOT BE USED TO AVOID AN EXPERIENCE MODIFICATION FACTOR UNDER THE CHANGE OF OWNERSHIP RULES.</p>

MINNESOTA EMPLOYEE LEASING ENDORSEMENT

This policy applies only with respect to leased employees provided to the client company identified below under an employee leasing arrangement. This policy does not provide coverage for employees that the leasing company leases to other client companies or for employees of the leasing company that are not leased to the client company.

As used in this endorsement, the following words and phrases are defined:

"Employee Leasing Arrangement" means an arrangement whereby an entity leases for a fee or other compensation any or all of its employees from another entity. Employee leasing arrangements include but are not limited to full service or long term leasing arrangements under which the leasing company provides employees to the client company and undertakes some of the employment responsibilities for those leased employees. An employee leasing arrangement does not include arrangements to provide temporary help services.

"Temporary Help Services" means a service under which an entity hires its own employees and assigns those employees to a client for a limited time [generally less than thirty (30) days] to address special circumstances, such as temporary skill shortages or temporary special assignments and projects.

"Client Company" means the entity who obtains any or all of its employees from another entity under an employee leasing arrangement and which is identified below and in Item 1 of the Information Page.

"Leasing Company" means the entity which leases employees to the client company under an employee leasing arrangement and which is identified in Item 1 of the Information Page.

Part One (Workers Compensation Insurance) and Part Two (Employers Liability Insurance) will apply as though the client company is the employer and is insured under this policy.

The insurance afforded by this endorsement is not intended to satisfy the client company's duty to secure its obligations under the workers compensation law for employees not covered by the employee leasing arrangement. We will not file evidence of this insurance on behalf of the client company with any governmental agency.

We will not ask any other insurer of the client company to share with us in a loss covered by this policy. Premium will be charged for employees leased to the client company.

The employee leasing company is the policyholder under this policy. If the policy is cancelled, the employee leasing company shall be responsible for notifying the client company. The cancellation of this policy shall not affect any rights and obligations of the leasing company with respect to any other workers compensation and employers liability policy issued to the leasing company.

A violation of Minnesota law governing employee leasing arrangements shall be considered fraud if that condition existed at the time you obtained the policy.

You agree that the employee leasing arrangement shall obligate the client company to comply with Part Four (Your Duty If Injury Occurs) and to recognize the right to defend under Part One and Part Two, our right to audit under Part Five, and to inspect under Part Six.

The experience of the employees leased to the client company shall be separately maintained.

EXHIBIT III

WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY
Original

Effective January 1, 2006

WC 22 03 04
Standard

Schedule

Name of Client:

Mailing Address:

Work Location Address(es):

Client's Federal Employers Identification Number (FEIN):

Client's Minnesota UI Number:

Note:

Use this endorsement with a policy showing Minnesota in Item 3.A of the Information Page when the insured (leasing company) named in Item 1 of the Information Page obtains the policy to fulfill its obligation under a contractual agreement to provide insurance for workers compensation and employers liability claims made by employees leased to an entity (client company) named in the endorsement Schedule.

EXHIBIT IV

WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY
Original

Effective January 1, 2006

WC 22 03 05
Standard

MINNESOTA EXCLUSION OF COVERAGE FOR LEASED EMPLOYEES ENDORSEMENT (EMPLOYEE LEASING COMPANY)

This policy does not provide coverage for employees that you, as a leasing company, lease to another entity under an employee leasing arrangement.

Note:

Use this endorsement to specifically exclude coverage on the employee leasing company's policy for any employees insured under a separate policy covering employees leased to a client company. In Minnesota, entities providing employee leasing arrangements to client companies must obtain a separate policy for each client that includes the Minnesota Employee Leasing Endorsement WC 22 03 04.

EXHIBIT V

INDEX MINNESOTA FORMS MANUAL

The following forms and endorsements in this Minnesota Forms Manual have been approved by the Minnesota Commerce Department and are available for use in Minnesota.

- Introduction
- Workers' Compensation and Employers Liability Insurance Policy Rules
- WC 00 00 00 A Workers Compensation and Employers Liability Insurance Policy
- WC 00 01 01 A Defense Base Act Coverage Endorsement
- WC 00 01 04 A Federal Employers' Liability Act Coverage Endorsement
- WC 00 01 06 A Longshore and Harbor Workers' Compensation Act Coverage Endt.
- WC 00 01 08 A Nonappropriated Fund Instrumentalities Act Coverage Endorsement
- WC 00 01 09 A Outer Continental Shelf Lands Act Coverage Endorsement
- WC 00 01 11 Migrant and Seasonal Agricultural Worker Protection Act Coverage Endorsement
- WC 00 01 12 Notification Endorsement of Pending Law Change to Terrorism Risk Insurance Act of 2002
- WC 00 02 01 A Maritime Coverage Endorsement
- WC 00 02 03 Voluntary Compensation Maritime Coverage Endorsement
- WC 00 02 04 Limited Maritime Coverage Endorsement
- WC 00 03 01 A Alternate Employer Endorsement
- WC 00 03 02 Designated Workplaces Exclusion Endorsement
- WC 00 03 03 C Employers Liability Coverage Endorsement
- WC 00 03 04 Insurance Company as Insured Endorsement
- WC 00 03 05 Joint Venture as Insured Endorsement
- WC 00 03 09 A Rural Electrification Administration Endorsement
- WC 00 03 10 Sole Proprietors, Partners, Officers and Others Coverage Endorsement
- WC 00 03 11 A Voluntary Compensation and Employers Liability Coverage Endt.
- WC 00 03 13 Waiver of Our Right to Recover from Others Endorsement
- WC 00 04 01 A Aircraft Premium Endorsement
- WC 00 04 03 Experience Rating Modification Factor Endorsement
- WC 00 04 05 Policy Period Endorsement

- WC 00 04 06 A Premium Discount Endorsement
- WC 00 04 09 Premium Determination Endorsement — Former Self-Insurers 1
- WC 00 04 10 Premium Determination Endorsement — Former Self-Insurers 2
- WC 00 04 12 Contingent Experience Rating Modification Factor Endorsement
- WC 00 04 14 Notification of Change in Ownership Endorsement
- WC 00 04 19 Premium Due Date Endorsement
- WC 00 04 20 Terrorism Risk Insurance Act Endorsement
- Policyholder Disclosure Notice of Terrorism Insurance Coverage
- Policyholder Disclosure Notice of Terrorism Insurance Coverage
- WC 00 05 03 A Retrospective Premium Endorsement — One Year Plan
- WC 00 05 04 A Retrospective Premium Endorsement — Three Year Plan
- WC 00 05 05 A Retrospective Premium Endorsement — Long-Term Construction Project
- WC 00 05 08 Retrospective Premium Endorsement Aviation Exclusion
- WC 00 05 09 A Retrospective Premium Endorsement Changes
- WC 00 05 10 Retrospective Premium Endorsement Non-Ratable Catastrophe Element or Surcharge
- WC 00 05 11 Retrospective Premium Endorsement Short Form
- WC 00 05 12 A Retrospective Premium Endorsement One Year Plan — Multiple Lines
- WC 00 05 13 A Retrospective Premium Endorsement Three Year Plan — Multiple Lines
- WC 00 05 14 A Retrospective Premium Endorsement Long Term Construction Project — Multiple Lines
- WC 00 05 15 Retrospective Premium Endorsement Flexibility Options
- WC 00 06 03 Benefits Deductible Endorsement
- WC 89 06 09 B Policy Termination/Cancelation/Reinstatement Notice
- WC 22 00 00 A Minnesota Amendatory Endorsement
- WC 22 00 01 Information Page
- WC 22 03 01 Minnesota Compliance with Applicable Trade Sanction Laws
- WC 22 03 02 Minnesota Independent Contractors Coverage Endorsement
- WC 22 03 03 Minnesota Third Degree of Kindred Family Member Exclusion Endt.
- WC 22 03 04 Minnesota Employee Leasing Endorsement
- WC 22 03 05 Minnesota Exclusion of Coverage for Leased Employees Endorsement

- WC 22 04 01 Minnesota Contracting Premium Adjustment Program Endorsement
- WC 22 04 02 Minnesota Anniversary Rating Date Endorsement
- WC 22 06 00 Minnesota Policy Change Endorsement
- WC 22 06 01 C Minnesota Cancellation and Nonrenewal Endorsement
- WC 22 06 02 Minnesota Policy Information Page Endorsement Insured's Name
- WC 22 06 03 Minnesota Policy Information Page Endorsement Policy Number
- WC 22 06 04 Minnesota Policy Information Page Endorsement Effective Date
- WC 22 06 05 Minnesota Policy Information Page Endorsement Expiration Date
- WC 22 06 06 Minnesota Policy Information Page Endorsement —
Insured's Mailing Address
- WC 22 06 07 Minnesota Policy Information Page Endorsement —
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- WC 22 06 16 Minnesota Policy Information Page Endorsement —
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- WC 22 06 18 Minnesota Policy Information Page Endorsement —
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- WC 22 06 19 Minnesota Policy Information Page Endorsement Carrier Number
- WC 22 06 20 Minnesota Entity Address Schedule