# WEST VIRGINIA
# SECRETARY OF STATE
## BETTY IRELAND
# ADMINISTRATIVE LAW DIVISION

Form #5

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2005 DEC -2 P 4: 06

OFFICE WEST VIRGINIA
SECRETARY OF STATE

## NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW

AGENCY: Workers' Compensation Commission TITLE NUMBER: 85

CITE AUTHORITY: W. Va. Code §§23-1-1a(j)(3)

RULE TYPE: PROCEDURAL ______ INTERPRETIVE ______

EXEMPT LEGISLATIVE RULE X

CITE STATUTE(s) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW
W. Va. Code §23-1-1a(j)(3)

AMENDMENT TO AN EXISTING RULE: YES X NO ___

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 31

TITLE OF RULE BEING AMENDED: Employee Leasing

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ______

TITLE OF RULE BEING PROPOSED: ______

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE EFFECTIVE DATE OF THIS RULE IS January 2, 2006

Authorized Signature

# WEST VIRGINIA
# SECRETARY OF STATE
## BETTY IRELAND
# ADMINISTRATIVE LAW DIVISION

Form #1

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2005 JUL 14 P 1:54

OFFICE WEST VIRGINIA
SECRETARY OF STATE

## NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Workers' Compensation Commission TITLE NUMBER: 85

RULE TYPE: Exempt Legislative CITE AUTHORITY: W. Va. Code §§23-1-1a(j)(3)

AMENDMENT TO AN EXISTING RULE: YES X NO ____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 31

TITLE OF RULE BEING AMENDED: Employee Leasing

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ________

TITLE OF RULE BEING PROPOSED: ________

DATE OF PUBLIC HEARING: August 16, 2005 TIME: 1:00 p.m.

LOCATION OF PUBLIC HEARING: Rooms 207-209
Charleston Civic Center
Charleston, West Virginia

COMMENTS LIMITED TO: ORAL ___, WRITTEN ___, BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

T.J. Obrokta, General Counsel
Executive Offices
Workers' Compensation Commission
4700 MacCorkle Avenue, S.E.
Charleston, WV 25304

Fax # (304) 926-5372

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Authorized Signature

Insuring a Working West Virginia
Workers' Compensation Commission
Gregory A. Burton, Executive Director

**Office of General Counsel**
**4700 MacCorkle Avenue, S. E.**
**Charleston, West Virginia 25304**
**Phone Number (304) 926-3423**
**Fax Number (304) 926-5441**

July 13, 2005

The Honorable Betty Ireland
Secretary of State
State Capitol Complex
Building 1, Room W-157
Charleston, West Virginia 25305

Re: Proposed Rule
Title 85, Series 31
"Employee Leasing"

Dear Secretary Ireland:

Please consider this letter to be my written approval for the filing of the above-noted proposed Rule.

Pursuant to Senate Bill 2013, Second Extraordinary Session, 2003, the Workers' Compensation Commission is established as a government entity separate from the Bureau of Employment Programs. The Board of Managers of the Workers' Compensation Commission has approved the enclosed 85 C.S.R. 31 for filing as a proposed rule of the Workers' Compensation Commission.

Thank you very much for your assistance in this matter.

Very truly yours,

G. A. B.

Gregory A. Burton
Executive Director

Enclosure

## FISCAL NOTE FOR PROPOSED LEGISLATIVE RULES

Rule Title: Title 85 Series 31: Employee Leasing

Type of Rule: X Legislative Exempt ___Interpretive ___Procedural

Agency: Workers' Compensation Commission

Address: 4700 MacCorkle Ave. S.E.

Charleston, WV 25304

### 1. Effect of Proposed Rule

| | Annual | | Fiscal Year | | |
|---|---|---|---|---|---|
| | INCREASE | DECREASE | CURRENT | NEXT | THEREAFTER |
| ESTIMATED TOTAL COST | 0 | 0 | 0 | N/A | N/A |
| PERSONAL SERVICES | 0 | 0 | 0 | N/A | N/A |
| CURRENT EXPENSE | 0 | 0 | 0 | N/A | N/A |
| REPAIRS & ALTERNATIONS | 0 | 0 | 0 | N/A | N/A |
| EQUIPMENT | 0 | 0 | 0 | N/A | N/A |
| OTHER: Benefit related payments | 0 | 0 | 0 | N/A | N/A |

### 2. Explanation of above estimates:

Proposed changes since the last filing for this rule address the responsibilities of client employers and employee leasing firms related to employee leasing arrangements and their workers' compensation coverage together with specific requirements established by the Workers' Compensation Commission (commission), private carriers, and/or the Insurance Commissioner, whichever is applicable, related to employee leasing arrangements and workers' compensation coverage. The above estimates are based on the assumption that the rule changes become effective in the current fiscal year (FY'06). There should be no significant change in the estimated costs associated with the commission as a result of employee leasing arrangements thru 12/31/05. Subject to the governor issuing the proclamation set forth in chapter twenty-three, article 2C of the Code of West Virginia that terminates the Workers' Compensation Commission, after December 31, 2005, any registration requirements for employee leasing firms will be under the authority of the Insurance Commission.

### 3. Objectives of this rule:

This rule establishes and defines the guidelines and requirements established for workers compensation coverage mandated as a result of employee leasing arrangements.

**Rule Title:** Title 85 Series 31: Employee Leasing

4. **Explanation of Overall Economic Impact of Proposed Rule.**

   A. **Economic Impact on State Government.**

   It is expected that the there will be no direct economic impact from the rule changes.

   B. **Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.**

   It is expected that there will be no impact from the rule changes.

   C. **Economic Impact on Citizens/Public at Large.**

   The rule changes will not have a direct economic impact on the citizens of West Virginia.

**Date:** 7/13/05

**Signature of Agency Head or Authorized Representative**

Gregory A. Burton
**Executive Director, Workers' Compensation Commission**

**SUMMARY OF PROPOSED RULE**
**STATEMENT OF CIRCUMSTANCES**
**TITLE 85, SERIES 31**
**Employee Leasing**

Pursuant to Senate Bill 1004, First Special Session, 2005, the Workers' Compensation Commission may terminate. Thereafter, Workers' Compensation insurance in West Virginia will be provided through the successor to the Commission and other private insurance carriers.

This rule is amended to address the termination of the Commission and to transition certain activities to Office of the Insurance Commissioner.

The provisions of this rule create new options under which a private carrier may write workers' compensation coverage to employee leasing firms. The overall purpose of the rule is to ensure that loss experience and payroll information is captured for all of the client employer's leased and direct hire workers and that the employees of the employee leasing firms are classified in accordance with the classification of the client employer for whom services are provided.

FILED

2005 DEC -2 P 4: 06

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**TITLE 85**
**EXEMPT LEGISLATIVE RULE**
**WORKERS' COMPENSATION ~~DIVISION~~ COMMISSION**

**SERIES 31**
**EMPLOYEE LEASING**

**§85-31-1. General.**

1.1. Scope. -- This exempt legislative rule provides for the adoption and implementation of rules to regulate employee leasing arrangements by employee leasing firms.

1.2. Authority. ~~-- W. Va. Code, §§21A-2-6(1) & -6(2); 21A-3-7(b) & -7(c); 23-1-1; and 23-2-4. Pursuant to W. Va. Code, §21A-3-7(c), rules adopted by the compensation programs performance council and the commissioner are not subject to legislative approval as would otherwise be required under W. Va. Code §29A-3-1 et seq. Public notice requirements of that chapter and article, however, must be followed. Pursuant to enrolled committee substitute for house bill 4030, regular session, 1994, the department of commerce, labor and environmental resources was abolished. Pursuant to that same bill and to executive order no. 5-94 by the governor, the commissioner of the bureau of employment programs is empowered to promulgate rules and regulations without the consent or approval of a departmental secretary.~~ W.Va. Code §§23-1-1a. Pursuant to West Virginia Code §23-1-1a(j)(3), rules adopted by the Board of Managers and the Commission are not subject to legislative approval as would otherwise be required under West Virginia Code §29A-3-1 et seq. Public notice requirements of that chapter and article, however, must be followed.

1.3. Filing Date. ~~-- July 20, 2000~~.

1.4. Effective Date. -- ~~September 1, 2000~~.

**§85-31-2. Purpose of Rule.**

The purpose of this rule is to regulate, for workers' compensation purposes, employee leasing firms engaged in employee leasing arrangements and to provide a method to accurately calculate and assess the proper workers' compensation premium tax attributable to leased workers. The rule provides and is designed so that incurred experience is used in calculating loss experience to ensure that premium tax is paid commensurate with exposure and anticipated claims experience. The rule does not apply to temporary help agencies or those businesses engaged in the provision of contracted services, which are the primary or only services provided. However, it does apply to any temporary help agency which engages also in providing leased workers in any employee leasing arrangement, but such application of this rule is limited to those engagements.

**§85-31-3. Definitions.**

As used in this rule, the following terms, words and phrases have the meanings stated unless, in any instance where such term, word or phrase is used, the context expressly indicates that another meaning is intended.

3.1. "Client employer" or "lessee" means an entity whose work force consists of one or more leased workers from an employee leasing firm.

3.2. ~~"Division" means the workers' compensation division within the bureau of employment programs as provided for by W. Va. Code, §§21A-1-4 and 23-1-1, et seq.~~ "Commission" means the Workers' Compensation Commission created pursuant to the provisions of W.Va. Code §23-1-1.

3.3. "Employee leasing arrangement" means an arrangement, under contract or otherwise, expressed or implied, where an employee leasing firm assigns its employees to a client employer and allocates the direction of and control over the leased employees between the leasing firm and the client employer. Employee leasing arrangements include, but are not limited to, full-service employee leasing arrangements and professional-employer-organization employee leasing arrangements. For purposes of this rule, an employee leasing arrangement does not include an assignment of temporary help.

3.4. "Employee leasing firm" or "lessor" means an entity which provides workers to another entity to perform work in furtherance of the industry, service or business of the other entity at the business premises of or at locations designated by the other entity under an employee leasing arrangement.

3.5. "Entity" means and includes, but is not limited to, any person or individual, sole proprietor, firm, partnership, limited partnership, limited liability partnership, professional limited liability partnership, limited liability company, professional limited liability company, joint venture, association, corporation, professional or legal corporation, company, organization, receiver, estate, trust, guardian, executor, administrator, government entity or any other entity regularly employing another person or persons for the purpose of carrying on any form of industry, service or business in this state.

3.6. "Firm" means and includes any business or other entity.

3.7. "Leased worker" means a person who is employed by an employee leasing firm and is working for a client employer under an employee leasing arrangement.

3.8. "Regular or direct employee" means an employee who is not a leased worker.

3.9. "Temporary help agency" means an entity or any affiliate whose principal business is to provide temporary workers to client employers and which hires its own employees and assigns them to client employers to support or supplement the client employer's work force in special situations, such as employee absences, temporary skill shortages or seasonal workloads.

3.10. "Temporary worker" means a person employed by a temporary help agency to perform work for a client employer to support or supplement the client employer's work force in special situations, such as employee absences, temporary skill shortages or seasonal workloads, where the client employer exercises no control over the hiring or assignment of the person provided by the temporary help agency.

3.11. "Workers' compensation act" or "act" means the West Virginia workers' compensation act at chapter 23 of the West Virginia Code.

3.12. "Insurance Commissioner" means the insurance commissioner of West Virginia as provided in section one, article two, chapter thirty-three of the West Virginia Code.

3.13. "Private carrier" means any insurer, including the successor to the Commission, authorized by the insurance commissioner to provide workers' compensation insurance pursuant to chapters twenty-three and thirty-three of the West Virginia Code.

3.14. "Contracted services" means that the labor provided is outside the client employer's general business operation and that the labor provided is the primary or only service provided by the contractor. For example, the provision of security guards to a manufacturing operation would constitute "contracted services."

**§85-31-4. Application.**

4.1. An employee leasing firm which provides leased workers who are persons employed in the service of an employer within the meaning of and subject to the workers' compensation act in this state, as provided in sections 23-2-1, -1a and other provisions of the act, to another business or businesses or another entity or entities, that is, to any client employer, pursuant to any employee leasing arrangement shall make special application (hereafter "application" with the workers' compensation ~~division~~ commission.

4.2. The application shall require such information as is needed to carry out the purposes, provisions and administration of this rule and shall be made in form, forms or format prescribed by the ~~division~~ commission.

4.3. Any person or entity filing an application required by this rule is required to notify the ~~division~~ commission of any changes in any information provided pursuant to this rule within thirty (30) calendar days of such change.

4.4. Whenever a client employer has not subscribed for coverage under the workers' compensation act because the client employer has no employees who are subject to the act, or for any other reason has not complied with the act, the employee leasing firm, the client employer or the ~~division~~ commission shall make application for a policy account for the client employer so that the provisions of this rule may be effected and administered.

4.5. The ~~division~~ commission shall prescribe such other forms as are necessary to promote the efficient administration of this rule.

~~4.6. Any employee leasing firm which was doing such business which was subject to the workers' compensation act in this state prior to the adoption of this rule shall make special application as an employee leasing firm within thirty (30) calendar days of the effective date of this rule.~~

4.6. Upon termination of the commission, the insurance commissioner may require an employee leasing firm to register as an employee leasing firm with the office of the insurance commissioner and provide such information as is required by the insurance commissioner.

**§85-31-5. Reporting.**

5.1. The employee leasing firm is responsible for and subject to the reporting and payment requirements of the act, for its employees who are leased to a client employer as well as for its regular employees.

5.2. The employee leasing firm is required to file, in a separate periodic premium tax report for each client employer with which the employee leasing firm had an employee leasing arrangement during the reporting period, in form or format prescribed by the ~~division~~ commission, the following information for the reporting period:

(1) The name, business address and policy number of each client employer;

(2) The total gross wages payroll of the leased workers attributed to each client employer;

(3) The premium tax rate for each client employer;

(4) The calculated premium tax and premium tax deposit payment for each client employer; and,

(5) The name and social security number of each leased worker attributed to each client employer.

5.3. The employee leasing firm is required to file, in a separate premium tax report for itself and its regular employees, the total gross wages payroll attributed to its regular employees; the premium tax rate applicable to its regular employees; and, the calculated premium tax and premium tax deposit payment for its regular employees.

5.4. The employee leasing firm is required to file any other information which may be recognized as needed or required by the ~~division~~ commission to administer this rule.

5.5. The requirement that an employee leasing firm shall file a premium tax report and payment does not change or affect the requirement of the act and of the rules that the client employer shall file a premium tax report and payment for its employees who are not leased workers under this rule.

~~5.6. Any employee leasing firm which is subject to the provisions of this rule because it is engaged in any employee leasing arrangement with any client employer on the effective date of this rule or during the periodic reporting period prior to the first day of the next reporting period following the effective day of this rule, shall be required to file its first periodic report and payment under these provisions for leased workers for the reporting period which begins next after the effective date of this rule.~~

5.6. A private carrier, who offers coverage to an employee leasing firm, may change the reporting requirements of this section for employee leasing firms in its contract of insurance so long as the report is in accordance with section nine of this rule. In lieu of such a change in the contract of insurance, the reporting requirements of this section shall apply.

**§85-31-6. Classification of Risk; Loss Experience Assignment.**

6.1. An employee leasing firm shall be placed into a premium rate risk classification and industrial code pursuant to the provisions of the workers' compensation act and applicable rule~~, 85 C.S.R. 9, risk management~~.

6.2. For ratemaking purposes only, the claims experience and gross wages of the leased workers working for or for the benefit of the client employer shall be charged to the client employer. The methodology for experience rating shall be determined ~~by the compensation programs performance council~~ in accordance with ~~its~~ authority under the law applicable to rate making.

6.2.1. The employee leasing firm will pay premium tax for each client employer based on the client employer's premium tax rate before or after the application of any credits as determined in the sole discretion of the private carrier.

6.2.2. Where there is an employee leasing arrangement between an employee leasing firm and a self-insurer, the premium tax rate for the leased employees will be base rated until enough time has elapsed for them to be experience rated.

6.3. The experience modification factor and premium tax rate of the employee leasing firm will be based on the claims experience and gross wages of the regular or direct employees of the employee leasing firm.

6.4. Either the client employer or the employee leasing firm employer, but not both, may litigate and defend employee injury claims made under the act, according to the terms and conditions of their employee leasing arrangement.

6.5. A private carrier, who offers coverage to an employee leasing firm, may change the loss experience assignment requirements of this section for employee leasing firms in its contract of insurance so long as the report is in accordance with section nine of this rule. In lieu of such a change in the contract of insurance, the reporting requirements of this section shall apply.

**§85-31-7. Notification; No Amendment or Abrogation of Employment Law or Employee Rights.**

7.1. The employers are responsible for compliance with the employment laws and tax laws affecting their employment relationships with employees whenever an employment is commenced or terminated so that one may commence or end an arrangement which is regulated partially by this rule. While compliance with those laws should insure that every employee knows who employs him or her, the employer shall further give immediate notice to each affected employee of any employee leasing arrangement in which he or she is employed by the employer. Notification shall be given in writing in form prescribed by the ~~division~~ commission and shall also be posted in a conspicuous place at the chief works of the client employer.

7.2. This rule is not intended to, nor does it, amend or abrogate any employment law or employee right under the law.

**§85-31-8. Coal-Workers' Pneumoconiosis Fund.**

8.1. A client employer may insure itself for coverage under the coal-workers' pneumoconiosis fund by separate subscription.

8.2. An insured subscriber to the coal-workers' pneumoconiosis fund shall report the gross wages of its insured regular employees and its leased workers, if any, and calculate the subscription premium tax and premium tax deposit due on the periodic reports prescribed by the ~~division~~ commission and shall pay the calculated amount to that fund as provided by the workers' compensation act and the rules.

~~8.3. The employee leasing firm may, at the request of the insured client employer, be included as an "additional named insured" on the coal-workers' pneumoconiosis fund policy.~~

**§85-31-9. Transition.**

9.1. Upon termination of the Commission, the relationship between the private carrier, employee leasing firm and the client employer shall be governed in accordance with the terms of the workers' compensation policy issued to the employee leasing firm and any applicable client employers.

9.2. The private carrier may only issue policies that meet the overall purpose of this rule so that incurred experience is used in calculating loss experience to ensure that premium is paid commensurate with exposure and anticipated claims experience.

a. The terms of the agreement shall ensure that loss experience and payroll information is captured for all of the client employer's leased and direct hire workers.

b. The terms of the agreement shall ensure that employees of employee leasing firms are classified in accordance with the classification of the client employer for whom services are provided.

9.3. An employee leasing firm and a client employer in an employee leasing arrangement shall fulfill their statutory responsibility to secure workers' compensation coverage under the workers' compensation act in one of the following ways:

a. The client employer obtains a standard workers' compensation policy from a private carrier on a direct purchase basis, covering all leased and direct hire employees, subject to the same requirements and conditions as if the lessee were the sole employer of its leased employees.

1. "Direct purchase basis" means an arrangement in which all contractual obligations under the insurance policy run directly between the private carrier and the client employer without the involvement of the employee leasing firm.

b. The employee leasing firm purchases insurance for the client employer on a multiple coordinated policy basis in compliance with this rule.

1. "Multiple coordinated policy basis" means an arrangement under which a separate policy is issued to or on behalf of each client employer or group of affiliated client employers but certain payment obligations and policy communications are coordinated through the employee leasing firm.

c. The employee leasing firm purchases a master policy covering the client employer in compliance with this rule.

1. "Master policy basis" means an arrangement under which a single policy issued to the lessor covers more than one lessee. Two or more lessees that are insured under the same policy solely because they are under common ownership are considered a single lessee for purposes of this definition.

d. The employee leasing firm purchases a policy whose reporting and loss experience assignment methodologies are in compliance with sections five and six of this rule.

e. The employee leasing firm purchases a policy approved by the insurance commissioner which adheres to this section and sound underwriting principles.

9.4. A private carrier, who offers coverage to an employee leasing firm, is not required to offer each type of policy option and may offer one or more types of coverage in its discretion.

**§85-31-~~9~~ 10. Severability.**

If any provision of these rules or the application thereof to any entity or circumstance shall be held invalid, such invalidity shall not affect the provisions or the applications of these rules which can be given effect without the invalid provisions or application and, to this end, the provisions of these rules are declared to be severable.

**WEST VIRGINIA WORKERS' COMPENSATION**
**BOARD OF MANAGERS**

| | |
|---|---|
| **IN THE MATTER OF:** | **) HEARING DATE:** |
| | **) AUGUST 16, 2005** |
| **PUBLIC HEARING ON** | **)** |
| **85CSR31, EMPLOYEE LEASING** | **)** |

*****************************************************

**Transcript of proceedings had in the above-styled matter, were held as therein appears at the Charleston Civic Center, Rooms 207-209, 100 Civic Center Drive, Charleston, West Virginia, on the 16th day of August, 2005, 1:15 p.m., pursuant to notice, as transcribed from audio cassette recordings provided by the Workers' Compensation Commission.**

******************************

**BILLANTI AND ASSOCIATES**
**COURT REPORTERS**
**1033 RIDGEMONT DRIVE**
**ELKVIEW, WV 25071**
**304-965-7444**

APPEARANCES

**BOARD MEMBERS**

ROB ALSOP, BOARD CHAIR

GENE F. BAILEY

CHRIS JARRETT

DOUGLAS MERRITT
(via telephone)

BOB PHALEN

CRAIG SLAUGHTER

VIC SPROUSE

EVERETTE E. SULLIVAN

PAUL E. THOMPSON

RICHARD HUMPHREYS

PAUL HARDESTY

**STAFF MEMBERS**

DR. JAMES BECKER

GREGORY BURTON

ALAN DRESCHER

TIMOTHY LEACH

BECKY NEAL

T. J. OBROKTA, JR.

RANDALL SUTER

# I N D E X

PROCEEDINGS

1:00 p.m.

CHAIRMAN ALSOP: Our final rule for public hearing today is Rule 31 related to employee leasing. Two individuals have signed up to speak with respect to this rule. Mr. Brannon is first on the list.

MR. BRANNON: I appear as the individual here today from the National Association of Professional Employer Organizations who I would like to speak first, and then I'll follow up with my comments.

MR. COHN: My name is Todd Cohn and on behalf of the National Association of Professional Employer Organizations, the largest PEO professional trade organization representing over 70 percent of the industry's gross revenues, it is my pleasure to be here today to offer some comments on the Proposed Rule 31.

NAPEO and its members believe that in order to understand the implications of the proposed rule before you on the PEO industry, it's important to understand how PEO's enhance the workers compensation system overall.

PEO's have an overall positive impact and provide value to the workers' compensation system. They significantly improve the workers' compensation performance of small businesses within the system and provide net benefits to workers and to states.

Acknowledging this important role of PEOs, a majority of states in the union have granted PEOs employer status for a broad range for employer purposes, specifically including an insurable interest as employers for workers' compensation and their work site employees.

Responsible PEOs do benefit the Workers' Compensation system. Unlike carriers, TPAs, or insurance brokers, PEOs are co-employers. PEOs establish an employment relationship with work site employees and assume significant employer responsibilities, including paying the wages of their co-employees and maintaining a real-time payroll and loss information.

As the Workers' Compensation policyholder, the PEO has a financial interest in managing these claims, controlling premium leakage, and improving safe workplace practices. These functions routinely performed by PEOs provide the basis for proper premium determination and monitoring of risk classifications.

Furthermore, accurate payroll information maintained by the PEO by client, state, and workers' Compensation classification code substantially reduces the credit and business risk of significant over or underpayment at audit times.

Indeed, responsibly managed NAPEO member companies report that they routinely invest up to 12 percent of their manual premium on proper determination of premium, workplace safety, and risk management. This investment substantially exceeds the investment of most insurance companies in the market and their agents in these functions in the small employer marketplace.

Carriers that write this market segment report loss trends that are superior to the Workers' Compensation market as a whole. A preliminary evaluation by Milliman, Inc. of PEO data supplied by one national broker indicated that PEOs have significantly lower fully trended loss rates than the voluntary market compared by year, state, and classification code.

This loss improvement would likely be higher relative to the small employer segment of the voluntary market because insurers traditionally deliver less loss control service per unit of premium to small accounts as compared to large accounts. The Milliman evaluation, although limited in its scope, reflects more than 20 percent reduction in fully developed and trended loss rates over the voluntary market in general.

NAPEO supports the efforts of West Virginia to bring competition into the Workers' Compensation marketplace. By creating a regulatory environment where PEOs can provide Workers' Compensation policies to their clients in any number of manners, including through a master policy basis, the Commission is ensuring competition in the voluntary market.

To date I know several of our members have had the opportunity to discuss this proposed rule with the Workers' Compensation Commission, and I am confident that both the state and industry are working towards common ground. NAPEO continues to offer our support and wealth of resources to you as you work to transition the system.

If I can provide any additional information for you today, I will be around, but I thank you for your time and for your ears and efforts.

CHAIRMAN ALSOP: Thank you.

BOARD MEMBER HUMPHREYS: Mr. Chairman?

CHAIRMAN ALSOP: Yes.

BOARD MEMBER HUMPHREYS: May I assume that when the minutes are drafted we will receive a copy of that statement?

CHAIRMAN ALSOP: Yes, sir.

BOARD MEMBER HUMPHREYS: And if there are objectives which can be put in draft language, I would be interested in seeing it.

CHAIRMAN ALSOP: Okay.

MR. BRANNON: Mr. Chairman and members of the Board, my name is Jeff Brannon and I'm here on behalf of American Staffing, who is a PEO here in West Virginia and has been for several years.

Having reviewed the proposed Rule 31 regulations, they did have some comments they would like to make and request that changes be made to the draft of this rule.

In reviewing these, they're not dissimilar to the ones that have been in effect for numerous years now and have governed the PEOs in West Virginia. However, as we move forward into the privatization of this system, there are several regulations that need to be sunsetted at the very least as of January next year when the mutual comes into existence; those being Rules 5 and 6 which deal with the reporting requirements of a PEO to the State and the classification of risk and loss experience assignment to the PEO by the State.

It's our opinion that those are topics which are best left to the private carrier to determine with the policy and their insurers, as opposed to a regulation by the State.

American Staffing is more than happy to provide the information required by the insurance commissioner to monitor this type of activity; however, the requirement that they provide that information has in the past been onerous on them and continues to be onerous and in the future I believe that would be best taken care of by the policy with their insurance carrier.

Also, with relation to the coalworkers' pneumoconiosis fund contained in 85-31-8, we would suggest that the language in

8.3 be corrected to read as, "The insured client employer may at the request of the employee leasing firm be included as an additional named insured on the coalworkers' pneumoconiosis fund policy."

Historically here in West Virginia the policies have been issued in the name of the client employer and not the PEO. In the future the system here should mirror those in other states where the policies are issued in the name of the PEO and not the client employer. This is just one example of something that needs to be considered and possibly changed in these regulations.

Further, with regards to the transition which I am assuming is the main thrust of the proposal of these regulations and on a going-forward basis, the changes that we would recommend are those which are in conflict with the reporting requirements and the rating and classification of risk, those that are in conflict with the portions that we've asked by sunsetted.

It should be changed to reflect again that these regulations should be as minimally invasive as possible into the industry with the insurance carriers for the next two years, the employers mutual, being responsible for monitoring the PEOs and the policies should govern the relationships as opposed to regulations which are enforced by the State.

If you have any questions, I'll be happy to answer them. Thank you.

CHAIRMAN ALSOP: Thank you. Marie Lewis, do you wish to comment?

MS. LEWIS: I don't really have any comments, except one question. I just want to make sure whenever I'm reading through this, I am with Manpower which we are a staffing temporary help service, and I want to make sure that this rule is not going to apply to our industry. That's my comment and my question. Does anybody have any answers for me? Who do I ask these questions to?

MR. OBROKTA: T. J. Obrokta, General Counsel of Workers' Comp. We'd be happy to discuss this after the meeting, but it makes no changes in terms of the scope of coverage, vis-a-vis Manpower or other entities.

MS. LEWIS: Thank you.

CHAIRMAN ALSOP: Chad Porter.

MR. PORTER: My name is Chad Porter, I represent Employers Innovative Network, Work Source West Virginia, and EIN Services.

I would echo the comments of Mr. Brannon and would add with regard to Sections 5 and 6 sunsetting at the termination of the Commission, I would add one additional comment with regard to Section 9.

Perhaps this is just a point of clarification, but in Section 9.3 we believe that it should make it clear that the means of compliance that are detailed in 9.3 are stand-alone means of compliance and that an employer may comply with the rule in any one of those provisions and not just one specific one.

Again, in 9.4 we would ask that it require that any private carrier offer the three or four stand-alone options for compliance when offering policies to PEOs in the state of West Virginia.

CHAIRMAN ALSOP: Thank you. Diane Strom?

MS. STROM: I have no comment.

CHAIRMAN ALSOP: Connie Saunders.

MS. SAUNDERS: Thank you very much for the opportunity to be here this afternoon. My name is Connie Saunders, I'm with Saunders Staffing. I'm the president.

I felt it necessary to come here today and speak because in this rule my industry and the leasing industry seem to be very closely discussed.

Allow me to describe the typical leasing situation that takes place in many states. The client already has a work force. The usual motivation to enter into a leasing arrangement is because if the employees of the client are entered into a larger pool of employees, they will have better healthcare, 401-K, a complete human resources department and a legal department.

The billing rate is much lower because they do not recruit nor do they have the expense of testing, background checking, drug testing, and so on. Where a staffing company has coordinators that recruit and interview all day, a leasing company has a large human resources and legal department.

Leasing companies have no reason to recruit. They do not place employees; they hire other people's employees. This arrangement frees the client to only run his business and not have to be concerned with human resource, payroll, administering healthcare, et cetera.

The majorities of the employers are transferred to the leasing company and then they are leased back to the client. Leasing is not viewed today as the ideal situation. It was thought in the mid-'90s to be the answer to all the problems of running a company.

Leasing is very complicated because of the difficulty the liability insurance companies have determining who the legal employer is. I've discussed this with my own liability insurance company.

The rule is usually around 75 percent to all of the companies' employees are transferred. The owners and directors usually stay as the original company's employees.

To say one or more in the definition of the client employer, and I'm referring to 3.1, is leaving it open to classify every company as a leasing company and in view of the controversy surrounding leasing, that is not a business friendly environment in which to grow business.

This will be an accounting nightmare for everyone, including the newly formed insurance company. I would insert "the majority of the company's employees."

In regard to 3.3, employee leasing

arrangement, I would add at the end after "does not include an assignment of temporary help," the wording, "placement services, contracted services, working interview and payrolling."

In regards to 3.10, the definition of a temporary worker does not include "a working interview." One of the greatest services a staffing company can offer to its applicants and clients is the opportunity to work with each other before either party accepts any permanent employment.

Sometimes the employee does not wish to pursue permanent employment with our client now that they have experienced what it is like to perform the job. They are saved from accepting a permanent position they may later be very unhappy performing.

Sometimes an individual interviews well, but does not adapt well to the work environment. The assignment is ended, our employee comes back into our labor pool and is counseled as to what else they would be interested in.

In any staffing company 50 percent if not more of the assignments that were working interviews turn into permanent positions with benefits. This is usually a 90-day period. This is a standard service in all 50 states. It is not classified as leasing.

Working interview should be inserted as a standard service that is provided by staffing. I have spoken to many staffing companies in the state, as well as bordering states. We all provide this service and it is not considered leasing.

I would like to recommend that we go back to the very beginning when the request is made to open a staffing company or leasing company and require they pass an exam and are licensed.

There are obviously individuals who have other things on their mind than staffing or leasing when they open their company. If I can pass an exam that shows I understand labor law, risk management, record-keeping, et cetera, and receive my license, along with that comes the opportunity for those who could be damaged by negligent and fraudulent acts to inform the person who holds the license the consequences of breaking the rules.

Staffing and leasing are two businesses that are serious considerations. One should not just be able to apply and open without making sure the ability to conduct business with total compliance is present. This would keep those who are not trying to provide employment opportunities, but to deport the system out of the picture.

We are professional employers and we should have a criteria that produces professionals in business. I have passed an exam from American Staffing Association that I felt myself was necessary to be aware and compliant.

An insurance company should receive premium that is according to risk and experience rate on every task that is performed. Get the proper premium and experience rate on every possible classification that you can handle. An insurance company is supposed to make money. That is why they are in business. Get what is due you and provide a good service without being so distracted with an issue that most states are not overly concerned with.

I have heard some very unpleasant stories of abuse that reflects eventually very badly on all the honest employers in our state. I am very sorry that there are people who play games and intentionally distort the picture.

The average employer in this state has endured a system that was not perfect. There has been pain and distrust on both sides. I would ask that the slate be wiped clean after we have rid the state of the less than honorable companies who cause us all problems. Then we can work together to make West Virginia competitive and the great state it is supposed to be.

Thank you very much.

CHAIRMAN ALSOP: Thank you.

MS. SAUNDERS: If there's any questions, I'll be happy to answer them. Thank you for your time.

CHAIRMAN ALSOP: Would anyone else care to speak to Rule 31?

BOARD MEMBER HARDESTY: Mr. Chairman, a comment for T.J. T.J., with respect to what we've heard on Rule 31, I would ask that you look long and hard at this rule during this process and get with some of the stakeholders because some of these leasing arrangements, especially in the extractive industries, we've got to make sure that there's no loopholes in this because I have real concerns.

We have people who are members of our self-insured pool who have up to 30 percent of the work force underground that are contracted out for belt moves, power moves, pillowing, which, we are treating the coal, you know, we're not advancing, they're retreating.

There's a lot of that being done.

I would just ask you to be very cautious and make sure that we have continuity and you've taken a lot of this stuff into consideration because the stakes are much higher in the extractive industry as far as percentages go in work forces.

MR. OBROKTA: Mr. Hardesty, thank you for that comment. I've already met with many of the people who have spoken here today and I will over the next few weeks continue to work with them.

But this is a tricky one, as you know, and we need to balance the interest of protecting, currently protecting the Workers' Comp Fund and going forward with protecting and making sure adequate premiums are paid, balancing that of course with the interest of the industry, which we will try to do in this rule as with all other rules. Hopefully, when we bring this back to you we'll have an agreed to rule.

BOARD MEMBER HARDESTY: Thank you.

CHAIRMAN ALSOP: Any further comments?

(No response.)

If not, we'll close the public hearing for Rule 31.

(WHEREUPON, the hearing was adjourned.)

**REPORTER'S CERTIFICATE**

I, DAVID T. BOLIN, a Court Reporter and Notary Public in and for the State of West Virginia, hereby certify that the foregoing is a true and correct transcript of all proceedings had and evidence adduced, together with all the objections made and rulings thereon, and exceptions thereto, as stated in the caption hereto, as transcribed from an audio cassette recording supplied by the Workers' Compensation Commission and transcribed into the English language.

Given under my hand and official seal this 22nd day of August, 2005.

DAVID BOLIN
Court Reporter and
Notary Public

My commission expires July 27, 2014.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
DAVID T. BOLIN
1033 Ridgemont Drive
Elkview, WV 25071
My Commission Expires July 27, 2014

**WEST VIRGINIA WORKERS' COMPENSATION BOARD OF MANAGERS**
**PUBLIC HEARING**
**AUGUST 16, 2005 – 1:00 P.M.**
**85CSR31 "EMPLOYEE LEASING"**

## ATTENDANCE SHEET

**The Board is required to keep a list of individuals attending its meetings and of those who wish to address the Board.**

| NAME | COMPANY | Do you wish To speak? (Yes/No) |
|---|---|---|
| Chad Porter | The Porter Law Firm, PLLC representing EIN, i.e. Worksource WV | Yes |
| Joe Lefkay | Personnel Mgt. Co. | No |
| Diane Strong-Treister | Manpower | ? |
| Connie Saunders | Saunders Staffing | Yes |
| Roger Tinchar | Steptoe & Johnson | No |
| | | |
| | | |

August 16, 2005

Saunders Staffing Inc.
Connie Saunders
President

Thank you for the opportunity to have input on Rule 31.

In regards to 3.1

Allow me to describe the typical leasing situation that takes place in many states.

The client already has a workforce. The usual motivation to enter into a leasing arrangement is because if the employees of the client are entered into a larger pool of employees, they will have better healthcare, 401-K, a complete human resources department and a legal department. The billing rate is much lower because they do not recruit nor do they have the expense of testing, background checking, drug testing and so on.

Where a staffing company has coordinators that recruit and interview all day, a leasing company has a large human resources and legal department.

Leasing companies have no reason to recruit, they do not place employees, they hire other people's employees.

This arrangement frees the client to only run his business and not have to be concerned with human resource, payroll, administering healthcare, etc.

The majority of the employees are transferred to the leasing company and then are leased back to the client. Leasing is not viewed today as the ideal situation. It was thought in the mid 90's to be the answer to all the problems of running a company.

Leasing is very complicated because of the difficulty the liability insurance companies have determining who the legal employer is. The rule is usually around 75% to all of the companies employees are transferred. The owners and directors usually stay as the original company's employees. To say "one or more" in the definition of client employer, is leaving it open to classify every company as a leasing company and in view of the controversy surrounding leasing, that is not a business friendly environment in which to grow business.

This will be an accounting nightmare for everyone including the newly formed insurance company. I would insert "the majority of the companies employees".

3.3 Employee leasing arrangement

I would add at the end after "does not include an assignment of temporary Help", the wording "placement services, contracted services, working interview and payrolling.

In regards to 3.10

The definition of a temporary worker does not include "a working interview". One of the greatest services a staffing company can offer to its' applicants and clients is the opportunity to work with each other before either party accepts any permanent employment. Sometimes the employee does not wish to pursue permanent employment with our client now that they have experienced what it is like to perform the job, they are saved from accepting a permanent position they may later be very unhappy performing. Sometimes an individual interviews well, but does not adapt well to the work environment.

The assignment is ended, our employee comes back into our labor pool and is counseled as to what else they would be interested in. In any staffing company 50% if not more of the assignments that were working interviews turn into permanent positions with benefits. This is usually a 90 day period. This is a standard service in all 50 states. It is not classified as leasing. Working interview should be inserted as a standard service that is provided by staffing. I have spoken to many staffing companies in the state, as well as bordering states; we all provide this service and it is not considered leasing.

I would like to recommend that we go back to the very beginning when the request is made to open a staffing company or leasing company and require they pass an exam and are licensed. There are obviously individuals who have other things on their mind than staffing or leasing when they open their company. If I can pass an exam that shows that I understand labor law, risk management, recordkeeping, etc. and receive my license; along with that comes the opportunity for those who could be damaged by negligent and fraudulent acts to inform the person who holds the license the consequences of breaking the rules. Staffing and leasing are two businesses that are serious considerations. One should not just be able to apply and open without making sure the ability to conduct business with total compliance is present. This would keep those who are not trying to provide employment opportunities, but to thwart the system, out of the picture.

We are professional employers and we should have a criteria that produces professionals in business. I have passed an exam from American Staffing Association that I myself felt was necessary to be aware and compliant.

An insurance company should receive premium that is according to risk and experience rate on every task that is performed. Get the proper premium and experience rate on every possible classification that you can handle. An insurance company is suppose to make money. That is why they are in business. Get what is due you and provide a good service without being so distracted with an issue most states are not overly concerned with. I have heard some very unpleasant stories of abuse that reflects eventually very badly on all the honest employers in our state. I am very sorry that there are people who play games and intentionally distort the picture.

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**From:** Lisa Teel
**To:** Brunty, Sandy; Miller, Edward; Stark, Tamela Jo; Suter, Randy
**Date:** 10/19/2005 8:09:31 AM
**Subject:** Fwd: Employee Leasing suggestions from Teresa Thibodoux

Please see the comments from Teresa Thibodoux regarding the leasing rule. I haven't read all of it myself yet, but I would appreciate your comments.

>>> <jthibodoux6081@charter.net> 10/19/05 7:45 AM >>>
Hello Lisa,

Sorry I did not get in touch with you today, but I was on my way to Minneapolis for most of the day and I will be in a conference most of tomorrow. I would like to talk to you about this and I will try and give you a call if I can get free. However, in case I do not get in touch with you by phone, I would like to point out some of the problems that I saw in the draft rule of 7/1/05 (attached). I?m not sure if anything has been changed in that rule to reflect some of the discussions that Michael and Tim have had with Randy, so again, I apologize.

Section 3.1 Definition of client employer is very broad. It defines a client employer as an entity whose work force consists of one or more leased workers. NCCI considers an employee leasing arrangement to be all or substantially all of the employees provided to the client from the leasing company ? not 100 out of 1000 and it does not matter if they are in the same business as the ?client? employer or not. In the case of one of our clients ? Winans, they have had as many as 50 accounts opened for them that the Commission has considered leasing. Even under the master policy scenario, even the new draft Rule 31 would still require them (the ?leasing firm, the Mutual or other insurance company) to supply the payroll loss data to the rating organization (the commission or NCCI). I am referencing section 9 where the draft rule states that ?The employee leasing firm purchase a policy whose reporting and loss experience assignment methodologies are in compliance with sections!
five and six of this rule.? Then section five goes into the detail of what a ?leasing employer? is required to file and section 6.2 says ?For ratemaking purposes only, the claims experience and gross wages of the leased workers working for or for the benefit of the client employer shall be charged to the client employer?. This puts us right back where we were in terms of the data exchange even if under the master policy basis, all of the clients are written under one policy.

The Word document labeled Title 85, Series 31 (3).doc (although not my original version) is the suggested changes that I along with Michael Keener and another employer (a true leasing employer that leases to a client employer all or substantially all of the clients workforce) who met with Greg Burton, T.J. Obrokta, and Phil Lynch have for the draft Rule 31. The changes are in red (or green), but I believe these changes still do not address the experience rating problems that will occur with multiple coordinated policies. The changes in this document are consistent with what the leasing employer sees in other states for experience rating of master policies.

I have also attached my original version of the changes that I would like to see to the leasing Rule. These changes address temporary workers and how they should be classified as well. Labeled Employee Leasing 85-31 Teresa.

And finally, so you can see where I got most of my ideas for experience rating, I have attached a copy of NCCI?s rule for experience rating policies of leasing firms (titled Experience Rating Plan Manual page for Linda ? I had our word processing department retype it because I could not send a copy of the actual page from the experience rating plan manual).

Also, I would like to point out the problems with the current scenario as it relates to OP / OD claims. Most ?leased? employees are not working at one mine site or location long enough to meet the rules for chargeability of the OP or OD claim to the client company. So the claim is going back and being charged under the leasing company?s experience modification factor even though the payroll for all these employees has been (and will be according to the rule) recorded under the client company?s policy. The leasing companies e-mod is only made up of its direct and regular employees and they have very little remaining payroll for these direct employees (generally office workers) and may not even be qualified for experience rating due to such a low payroll.

Hopefully, some of this will make sense (I know I have rambled on) and I thank you, Lisa for giving this one more look.

My cell phone number is 304-206-6473, but I do not have it set up for voice mail.

Thank you,

Teresa Thibodoux

TITLE 85
EXEMPT LEGISLATIVE RULE
WORKERS' COMPENSATION COMMISSION

SERIES 31
EMPLOYEE LEASING

'85-31-1. General.

1.1. Scope. -- This exempt legislative rule provides for the adoption and implementation of rules to regulate employee leasing arrangements by employee leasing firms.

1.2. Authority. – W. Va. Code, ' ' 21A-2-6(1) & -6(2); 21A-3-7(b) & -7(c); 23-1-1; and 23-2-4. Pursuant to W. Va. Code, ' 21A-3-7(c), rules adopted by the compensation programs performance council and the commissioner are not subject to legislative approval as would otherwise be required under W. Va. Code ' 29A-3-1 et seq. Public notice requirements of that chapter and article, however, must be followed. Pursuant to enrolled committee substitute for house bill 4030, regular session, 1994, the department of commerce, labor and environmental resources was abolished. Pursuant to that same bill and to executive order no. 5-94 by the governor, the commissioner of the bureau of employment programs is empowered to promulgate rules and regulations without the consent or approval of a departmental secretary.

1.3. Filing Date. -- ~~July 20, 2000.~~

1.4. Effective Date. -- ~~September 1, 2000.~~

'85-31-2. Purpose of Rule.

The purpose of this rule is to regulate, for workers' compensation purposes, employee leasing firms engaged in employee leasing arrangements and to **ensure that employee leasing firms and their clients properly obtain workers' compensation insurance coverage for all of their direct and leased employees ; that premium paid is commensurate with the exposure and the anticipated claim experience; and that an appropriate procedural framework is in place for the inception, continuation, and termination of coverage.** ~~provide a method to accurately calculate and assess the proper workers' compensation premium tax attributable to leased workers. The rule provides and is designed so that incurred experience is used in calculating loss experience to ensure that premium tax is paid commensurate with exposure and anticipated claims experience.~~ The rule does not apply to **long-term and contract help, managed services, payrolling services, placement services, temporary help or temporary to hire services** ~~temporary help agencies or those businesses engaged in the provision of contracted services, which are the primary or only services provided. However, it does apply to any temporary help agency which engages also in providing leased workers in any employee leasing arrangement, but such application of this rule is limited to those engagements.~~

'85-31-3. Definitions.

As used in this rule, the following terms, words and phrases have the meanings stated unless, in any instance where such term, word or phrase is used, the context expressly indicates that another meaningis intended.

3.1. "Client employer" or "lessee" means an entity **that obtains all or substantially all of its** ~~whose~~ work force **from another entity through an employee leasing arrangement.** ~~consists of one or more leased workers from an employee leasing firm.~~

3.2 "Direct or regular employee" means an employee who is not a leased employee.

3.3. "Commission" means the workers' compensation commission on within the bureau of employment programs as provided for by W. Va. Code, ' ' 21A-1-4 and 23-1-1, et seq.

3.4. "Employee leasing arrangement (also known as a professional employer arrangement or agreement)" means an agreement between an employee leasing firm and a client employer pursuant to which all or substantially all of the worksite employees of the client are employed by a leasing firm and are reported as W-2 employees of the leasing firm and employer responsibilities for leased employees are allocated or shared by the leasing firm and a client. Such arrangements are intended to be long term and have a minimum term of one year.

Employee leasing arrangement includes any such arrangement, under contract or otherwise, and whether or not terminology such as "professional employer", "leasing", or other terminology is used by the parties. Employee leasing arrangements are deemed to include any arrangement which involves the allocation of employment responsibilities among two or more entities, even if the written contract purports to designate one party or the other as the sole employer. For purposes of this Rule, employee leasing arrangement does not include "long-term and contract help", "managed services", "payrolling services", "placement services", "temporary help"or "temporary to hire services". ~~@ means an arrangement, under contract or otherwise, expressed or implied, where an employee leasing firm assigns its employees to a client employer and allocates the direction of and control over the leased employees between the leasing firm and the client employer. Employee leasing arrangements include, but are not limited to, full-service employee leasing arrangements and professional employer organization employee leasing arrangements. For purposes of this rule, an employee leasing arrangement does not include an assignment of temporary help.~~

3.5. "Employee leasing firm (also known as a professional employer organization, "PEO" or lessor)" means an entity that enters into an oral or written lease to a client through an ~~which provides workers to another entity to perform work in furtherance of the industry, service or business of the other entity at the business premises of or at locations designated by the other entity under an~~ employee leasing arrangement.

3.6. "Entity" means and includes, but is not limited to, any person or individual, sole proprietor, firm, partnership, limited partnership, limited liability partnership, professional limited liability partnership, limited liability company, professional limited liability company, joint venture, association, corporation, professional or legal corporation, company, organization, receiver, estate, trust, guardian, executor, administrator, government entity or any other entity regularly employing another person or persons for the purpose of carrying on any form of industry, service or business in this state.

3.7. "Firm" means and includes any business or other entity.

3.8. "Leased ~~worker~~ **employee**" means ~~a person~~ an individual performing services ~~who is employed by an employee leasing firm and is working~~ for a client employer under an employee leasing arrangement.

~~3.8. ARegular or direct employee@ means an employee who is not a leased worker.~~

3.9 "Long-term and contract help" is an arrangement where a firm supplies employees to work on long-term, indefinite assignments. Employees are recruited, screened, and assigned by the firm.

3.10 "Managed Services" is an arrangement where a firm assumes full responsibility for operating a specific client function (e.g., mail room) on an on-going basis.

3.11 "Master Policy basis" means an arrangement under which a single policy issued to the employee leasing firm covers the leasing firms leased employees at more than one client. The master policy concept provides that the leasing firm and all of its clients can be written on one workers' compensation policy. The leasing firm's direct employees can also be written on the master policy. The policy should be endorsed with the names of all of the client companies as additional named insureds. The insured named on the policy or the policy Information Page is the leasing firm. The leasing firm must keep payroll and loss information separate for each client corporation. The leasing firm must then report it separately to its insurer, which will pass the information on to its rating organization whenever a client leaves the leasing firm. In situations where the client would like to cover the leased employees under their policy, a master policy may be written for the client, with the leasing company named as an additional insured.

3.12 "Payrolling Service" is where the client recruits workers but asks a firm to hire and assign them to perform services or workers currently employed by the customer are placed on the payroll of a staffing firm. Payrolling is distinguished from employee leasing arrangements in that the workers generally are on temporary assignments and make up a small proportion of the customer's work force.

3.13. "Placement Service" is where a firm brings together job seekers and potential employers for the purpose of establishing a "permanent" employment relationship.

3.14. "Temporary Help Service" means an entity that recruits and hires its own employees, finding other organizations that need the services of those employees; assigning those employees to perform work at or services for the other organizations to support or supplement the other organizations' workforces, or to provide assistance in special work situations such as, but not limited to, employee absences, skill shortages, seasonal workloads, or to perform special assignments or projects; and customarily attempting to reassign the employees to other organizations when they finish each assignment.

3.15 "Temporary to Hire Service" is where a firm's employee works for a customer during a trial period in which both the employee and the customer consider establishing a "permanent" employment relationship.

~~3.9. ATemporary help agency@ means an entity or any affiliate whose principal business is to provide temporary workers to client employers and which hires its own employees and assigns them to client employers to support or supplement the client employer's work force in special situations, such as employee absences, temporary skill shortages or seasonal workloads.~~

~~3.10. ATemporary worker@ means a person employed by a temporary help agency to perform work for a client employer to support or supplement the client employer's work force in special situations, such as employee absences, temporary skill shortages or seasonal workloads, where the client employer exercises no control over the hiring or assignment of the person provided by the temporary help agency.~~

3.16. "Workers' compensation act" or "act" means the West Virginia workers' compensation act at chapter 23 of the West Virginia Code.

'85-31-4. Application.

4.1. An employee leasing firm which provides leased workers who are persons employed in the service of an employer within the meaning of and subject to the workers' compensation act in this state, as provided in sections 23-2-1, -1a and other provisions of the act, to another business or businesses or another entity or entities, that is, to any client employer, pursuant to any employee leasing arrangement must secure coverage under a single policy (master policy) for the leased workers that include the class code(s) and payroll of all employees assigned to their clients and their direct employeees. ~~shall make special application (hereafter Aapplication@) with the workers' compensation commission.~~ For related companies which are not truly engaged in employee leasing, but due to their organizational structure may be interpreted as employee leasing, they may also secure coverage under a single policy (master policy). Also, client companies may choose to cover their direct and leased employees together under a single policy.

4.2. The application shall require such information as is needed to carry out the purposes, provisions and administration of this rule and shall be made in form, forms or format prescribed by the commission or on forms approved for use by the insurer~~commission~~.

~~4.3. Any person or entity filing an application required by this rule is required to notify the commission division of any changes in any information provided pursuant to this rule within thirty (30) calendar days of such change.~~

4.3. A client employer who has not subscribed for coverage under the workers' compensation act because the client employer has no employees who are subject to the act, or for any other reason is not subject to the act, then the client employer shall request a certificate of exemption from the commission. The client employer may be named as an additional insured on the leasing company's master policy and may receive a certificate of coverage indicating that the leased workers' are covered for workers' compensation.

~~4.4. Whenever a client employer has not subscribed for coverage under the workers' compensation act because the client employer has no employees who are subject to the act, or for any other reason has not complied with the act, the employee leasing firm, the client employer or the division shall make application for a policy account for the client employer so that the provisions of this rule may be effected and administered.~~

4.5. The commission ~~division~~ shall prescribe such other forms as are necessary to promote the efficient administration of this rule.

~~4.6. Any employee leasing firm which was doing such business which was subject to the workers' compensation act in this state prior to the adoption ofthis rule shall make special application as an employee leasing firm within thirty (30) calendar days of the effective date of this rule.~~

~~§85-31-5. Reporting.~~

~~5.1. The employee leasing firm is responsible for and subject to the reporting and payment requirements of the act, for its employees who are leased to a client employer as well as for its regular employees.~~

~~5.2. The employee leasing firm is required to file, in a separate periodic premium tax report for each client employer with which the employee leasing firm had an employee leasing arrangement during the reporting period, in form or format prescribed by the division, the followinginformation for the reporting period:~~

~~(1) The name, business address and policy number of each client employer;~~

~~(2) The total gross wages payroll of the leased workers attributed to each client employer;~~

~~(3) The premium tax rate for each client employer;~~

~~(4) The calculated premium tax and premium tax deposit payment for each client employer; and,~~

~~(5) The name and social security number of each leased worker attributed to each client employer.~~

~~5.3. The employee leasing firm is required to file, in a separate premium tax report for itself and its regular employees, the total gross wages payroll attributed to its regular employees; the premium tax rate applicable to its regular employees; and, the calculated premium tax and premium tax deposit payment for its regular employees.~~

~~5.4. The employee leasing firm is required to file any other information which may be recognized as~~

~~needed or required by the division to administer this rule.~~

~~5.5. The requirement that an employee leasing firm shall file a premium tax report and payment does not change or affect the requirement of the act and of the rules that the client employer shall file a premium tax report and payment for its employees who are not leased workers under this rule.~~

~~5.6. Any employee leasing firm which is subject to the provisions of this rule because it is engaged in any employee leasing arrangement with any client employer on the effective date of this rule or during the periodic reporting period prior to the first day of the next reporting period following the effective day of this rule, shall be required to file its first periodic report and payment under these provisions for leased workers for the reporting period which begins next after the effective date of this rule.~~

'85-31-5. Classification of Risk; Loss Experience Assignment; Reporting

5.1. Classification. Workers assigned to clients must be classified the same as direct employees of the client performing the same or similar duties, and if the client has no direct employees performing the same or similar duties, leased employees are classified as if they were direct employees of the client entity. ~~An employee leasing firm shall be placed into a premium rate risk classification and industrial code pursuant to the provisions of the workers' compensation act and rule, 85 C.S.R. 9, risk management.~~

5.2 Calculation and application of experience rating modification

a. While a Client is Involved in an Employee Leasing Arrangement
   1) The leasing firm's experience rating modification applies to the master policy as well as any other policy of the leasing firm.
   2) If the leasing firm does not qualify for experience rating, an experience modification factor of 1.00 applies to:
      - the master policy and any other of the leasing firm's policies,
      - Subsequent policies, until the leasing firm is eligible for an experience rating modification

b. Upon Termination of a Client's Employee Leasing Arrangement
   1) The rating organization will revise the leasing firm's experience rating modification to remove the former client's data as reported by the insurer to the rating organization.
   2) The rating organization will calculate the client's experience rating modification using the information provided by the leasing firm. This modification will include experience for the client's leased and non-leased (if any) employees during the experience period. Note: If the client does not have its own experience modification, then the leasing firm's experience rating modification will apply to the client's new policy until the rating organization calculates the client's own experience-rating modification.
   3) Once calculated, the client's new experience rating modification will apply retroactive to the inception of the policy;
   4) If the client is not eligible for experience rating based on the leased and non-leased employees during the experience period, then an experience modification factor of 1.00 will apply until the client is eligible for experience rating.

c. If the provider cannot furnish the information to the rating organization to provide for the transfer of experience from the leasing company to the client
   a. Then for the Client,
      1) An experience rating modification is calculated for the client using experience

developed prior to the employee leasing arrangement or, if available, from policies covering non-leased employees.

2) If an experience rating modification cannot be developed, the leasing firm's experience modification will apply to the client's policy until the client is eligible for its own experience rating modification. However, the leasing firm's experience modification cannot apply for more than three years.

3) After three years, an experience modification factor of 1.00 will apply to a client not eligible for experience rating.

b. And for the Employee Leasing firm,

1) The client's experience remains in the employee leasing firm's experience rating modification

5.3. Reporting. When a client leaves an employee leasing arrangement covered under a master policy, the leasing company's insurance provider is required to report the client's data developed during the employee leasing arrangement to the rating organization on forms prescribed by the commission. The leasing firm is required to maintain separate payroll and loss data by client, cooperate with the insurer in providing requested documentation i.e. client name, tax id number, payroll, classification codes and losses per client, and notify insurer of any terminated employee leasing arrangement in accordance with policy rules or guidelines.

~~6.2. For ratemaking purposes only, the claims experience and gross wages of the leased workers working for or for the benefit of the client employer shall be charged to the client employer. The methodology for experience rating shall be determined by the compensation programs performance council in accordance with its authority under the law applicable to rate making.~~

~~6.2.1. The employee leasing firm will pay premium tax for each client employer based on the client employer's premium tax rate before the application of any credits.~~

~~6.2.2. Where there is an employee leasing arrangement between an employee leasing firm and a self-insurer, the premium tax rate for the leased employees will be base rated until enough time has elapsed for them to be experience rated.~~

~~6.3. The experience modification factor and premium tax rate of the employee leasing firm will be based on the claims experience and gross wages of the regular or direct employees of the employee leasing firm.~~

~~6.4. Either the client employer or the employee leasing firm employer, but not both, may litigate and defend employee injury claims made under the act, according to the terms and conditions of their employee leasing arrangement.~~

'85-31-6. Notification; No Amendment or Abrogation of Employment Law or Employee Rights.

6.1. The employers are responsible for compliance with the employment laws and tax laws affecting their employment relationships with employees whenever an employment is commenced or terminated so that one may commence or end an arrangement which is regulated partially by this rule. While compliance with those laws should insure that every employee knows who employs him or her, the employer shall further give immediate notice to each affected employee of any employee leasing arrangement in which he or she is employed by the employer. Notification shall be given in writing in form prescribed by the commission and shall also be posted in a conspicuous place at the chief works of the client employer.

6.2. This rule is not intended to, nor does it, amend or abrogate any employment law or employee right under the law.

'85-31-7. Coal-Workers' Pneumoconiosis Fund.

7.1. A client employer may insure itself for coverage under the coal-workers' pneumoconiosis fund by separate subscription **for employees for whom they pay social security wages.**

7.2. **A leasing firm that is** an insured subscriber to the coal-workers' pneumoconiosis fund shall report the gross wages **for those employees for whom they pay social security wages.** ~~of its insured regular employees and its leased workers, if any, and calculate the subscription premium tax and premium tax deposit due on the periodic reports prescribed by the division and shall pay the calculated amount to that fund as provided by the workers' compensation act and the rules.~~

~~7.3. The employee leasing firm may, at the request of the insured client employer, be included as an additional named insured on the coal workers' pneumoconiosis fund policy.~~

**'85-31-8. Severability.**

If any provision of these rules or the application thereof to any entity or circumstance shall be held invalid, such invalidity shall not affect the provisions or the applications of these rules which can be given effect without the invalid provisions or application and, to this end, the provisions of these rules are declared to be severable.

# Experience Rating Plan Manual—2003 Edition

## RULES

### RULE 5—SPECIAL RATING CONDITIONS

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*Effective 01 Dec 2003 12:00:01*

**A. EMPLOYEE LEASING/PROFESSIONAL EMPLOYER ORGANIZATIONS**

**(Exceptions: AK, CT, GA, HI,ID, ME, MO, NE, OK ) (User's Guide: AK, AZ, CT, GA, HI, ID, IL, KY, ME, MO, MT, NE, NM, NV, OK, UT, VA)**

**1. Employee Leasing/Professional Employer Organization (PEO) Arrangements**

**(Additional Rules:IN) (Exceptions: IL)**

The **Basic Manual** provides the rules under which policies involving employee leasing arrangements are written. *Refer to the **Basic Manual** state pages for these rules.* An employee leasing company may also be referred to as a labor contractor, professional employer organization, or PEO.

In a normal business environment, a risk may be insured for many years through a direct relationship with one or more insurance carriers. Under employee leasing, clients may move in and out of leasing arrangements or from one arrangement to another. These Plan rules address the calculation and application of experience rating modifications for such arrangements.

**2. Calculation and Application of Experience Rating Modification**

**(Additional Rules: CO, IL) (Exceptions: AZ, MT, NV, OR)**

a. **While a Client Is Involved in an Employee Leasing Arrangement (Exceptions: AZ, IL ,KY, MT, NV , OR, UT, VA)**

Experience rating modifications apply to PEOs and clients while in an employee leasing arrangement. PEO Table 1 provides the rules for both master policy and multiple coordinated policy (MCP) scenarios. *Refer to the **User's Guide** for examples.*

**PEO Table 1**

**(Exceptions: IL, UT)**

| **The arrangement is covered under a . . .** | **Client** | **PEO** |
|---|---|---|
| Master policy | 1. For master policies covering the client's leased employees, the PEO's experience rating | 1. The PEO's experience rating modifications apply to the master policies as well as any |

| | | |
|---|---|---|
| | modifications apply.<br><br>2. For policies covering the client's non-leased employees, separate experience rating modifications apply, subject to premium eligibility requirements. These modifications will include all the client's experience, if any, prior to the leasing arrangement.<br><br>3. If the client **does not** qualify for experience rating based on its prior experience, a unity (1.00) factor applies to:<br>• The policy covering the client's non-leased employees<br>• Subsequent policies, until the client is eligible for an experience rating modification | other policy of the PEO.<br><br>2. If the PEO **does not** qualify for experience rating, a unity (1.00) factor applies to:<br>• The master policy and any other of the PEO's policies<br>• Subsequent policies, until the PEO is eligible for an experience rating modification |
| Multiple coordinated policy (MCP) basis | 1. The client's experience rating modifications apply to:<br>• The client's policy under the MCP<br>• Any other policies covering the client's non-leased employees.<br><br>These modifications will include the client's experience prior to the leasing arrangement, if any.<br><br>2. Subsequent experience rating modifications will include the client's experience for leased and | 1. The PEO's experience rating modifications apply to the policies covering the PEO's direct employees.<br><br>2. If a PEO **does not** qualify for experience rating, a unity (1.00) factor applies to:<br>• All of the PEO's policies<br>• Subsequent policies, until the client is eligible for an experience rating |

| | | |
|---|---|---|
| | non-leased employees developed during the leasing arrangement, and apply as detailed in 1. above.<br><br>3. If the client **does not** qualify for experience rating, a unity (1.00) factor applies to:<br><br>• The client's policy under the MCP<br><br>• Any other policies covering the client's non-leased employees<br><br>• Subsequent policies, until the client is eligible for an experience rating modification | modification. |

b. **Upon Termination of a Client's Employee Leasing Arrangement (Exceptions: AZ, IL, MT, NM, NV, UT ,VA)**

When a client terminates an employee leasing arrangement, experience rating modifications are impacted. PEO Table 2 provides the rules for both master policy and multiple coordinated policy (MCP) scenarios. *Refer to the **User's Guide** for examples.*

(1) **Master Policy (Exceptions: KY, NM, OR, UT ,VA)**

When a client leaves an employee leasing arrangement covered under a master policy, the PEO's insurance provider reports the client's data developed during the employee leasing arrangement to the rating organization. The NC2745 Form—Experience Rating Data for Former Clients of Labor Contractors is the only acceptable format for reporting this data. The data must be resubmitted prior to each renewal rating effective date.

**PEO Table 2**

**(Exceptions: IL, IN, KY, NM, UT)**

| The arrangement was covered under a master policy and . . . | Client | PEO |
|---|---|---|
| The insurance provider **can** furnish the rating organization with the appropriate experience to provide for transfer of the client's data | 1. The rating organization will calculate the client's experience rating modification using the data reported on the NC2745 Form. This modification will include experience for the client's leased and non-leased (if any) employees during the experience period.<br><br>**Note:** The PEO's experience rating modification applies to the client's new policy **until** the rating organization calculates the client's own experience-rating modification.<br><br>2. The client's new experience rating modification will apply to the client's policy retroactive to the inception of the policy.<br><br>3. If the client isn't eligible for experience rating based on the client's experience for leased and non-leased employees during the experience period, a unity (1.00) factor will apply to the client's policy until the client is eligible for an experience rating modification. | The rating organization will revise the PEO's experience rating modification to remove the former client's data as reported on the NC2745 Form. |
| The insurance provider **cannot** furnish the rating organization with the appropriate experience to provide for transfer of the client's data | 1. Then an experience rating modification is calculated for the client using experience developed:<br><br>• Prior to the employee leasing arrangement | The client's experience remains in the PEO's experience rating modification. |

| | | |
|---|---|---|
| | • From policies covering non-leased employees<br><br>2. If an experience rating modification cannot be developed, the PEO's experience rating modification applies to the client's policy until the client is eligible for its own experience rating modification. However, the PEO's experience rating modification cannot apply for more than three years.<br><br>3. After three years, a unity (1.00) factor will apply to a client not eligible for experience rating. | |

(2) **Multiple Coordinated Policy (MCP) (Exceptions: KY, OR, UT ,VA)**

No special treatment is necessary to develop an experience rating modification for the client when it leaves an employee leasing arrangement covered on a multiple coordinated policy basis. This is because the data is submitted routinely for each client according to the ***Statistical Plan***, and experience rating modifications are calculated and applied as detailed in Rule 5-A-2-a.

# TITLE 85
# EXEMPT LEGISLATIVE RULE
# WORKERS' COMPENSATION ~~DIVISION~~ COMMISSION

## SERIES 31
## EMPLOYEE LEASING

### §85-31-1. General.

1.1. Scope. -- This exempt legislative rule provides for the adoption and implementation of rules to regulate employee leasing arrangements by employee leasing firms.

1.2. Authority. ~~-- W. Va. Code, §§21A-2-6(1) & 6(2); 21A-3-7(b) & 7(c); 23-1-1; and 23-2-4. Pursuant to W. Va. Code, §21A-3-7(c), rules adopted by the compensation programs performance council and the commissioner are not subject to legislative approval as would otherwise be required under W. Va. Code §29A-3-1 et seq. Public notice requirements of that chapter and article, however, must be followed. Pursuant to enrolled committee substitute for house bill 4030, regular session, 1994, the department of commerce, labor and environmental resources was abolished. Pursuant to that same bill and to executive order no. 5-94 by the governor, the commissioner of the bureau of employment programs is empowered to promulgate rules and regulations without the consent or approval of a departmental secretary.~~ W.Va. Code §§23-1-1a. Pursuant to West Virginia Code §23-1-1a(j)(3), rules adopted by the Board of Managers and the Commission are not subject to legislative approval as would otherwise be required under West Virginia Code §29A-3-1 et seq. Public notice requirements of that chapter and article, however, must be followed.

1.3. Filing Date. ~~-- July 20, 2000~~.

1.4. Effective Date. -- ~~September 1, 2000~~.

### §85-31-2. Purpose of Rule.

The purpose of this rule is to regulate, for workers' compensation purposes, employee leasing firms engaged in employee leasing arrangements and to provide a method to accurately calculate and assess the proper workers' compensation premium tax attributable to leased workers. The rule provides and is designed so that incurred experience is used in calculating loss experience to ensure that premium tax is paid commensurate with exposure and anticipated claims experience. The rule does not apply to temporary help agencies or those businesses engaged in the provision of contracted services, which are the primary or only services provided. However, it does apply to any temporary help agency which engages also in providing leased workers in any employee leasing arrangement, but such application of this rule is limited to those engagements.

### §85-31-3. Definitions.

As used in this rule, the following terms, words and phrases have the meanings stated unless, in any instance where such term, word or phrase is used, the context expressly indicates that another meaning is intended.

3.1. "Client employer" or "lessee" means an entity whose work force consists of one or more leased workers from an employee leasing firm.

3.2. ~~"Division" means the workers' compensation division within the bureau of employment programs as provided for by W. Va. Code, §§21A-1-4 and 23-1-1, et seq.~~ "Commission" means the Workers' Compensation Commission created pursuant to the provisions of W.Va. Code §23-1-1.

3.3. "Employee leasing arrangement" means an arrangement, under contract or otherwise, expressed or implied, where an employee leasing firm assigns its employees to a client employer and allocates the direction of and control over the leased employees between the leasing firm and the client employer. Employee leasing arrangements include, but are not limited to, full-service employee leasing arrangements and professional-employer-organization employee leasing arrangements. For purposes of this rule, an employee leasing arrangement does not include an assignment of temporary help.

3.4. "Employee leasing firm" or "lessor" means an entity which provides workers to another entity to perform work in furtherance of the industry, service or business of the other entity at the business premises of or at locations designated by the other entity under an employee leasing arrangement.

3.5. "Entity" means and includes, but is not limited to, any person or individual, sole proprietor, firm, partnership, limited partnership, limited liability partnership, professional limited liability partnership, limited liability company, professional limited liability company, joint venture, association, corporation, professional or legal corporation, company, organization, receiver, estate, trust, guardian, executor, administrator, government entity or any other entity regularly employing another person or persons for the purpose of carrying on any form of industry, service or business in this state.

3.6. "Firm" means and includes any business or other entity.

3.7. "Leased worker" means a person who is employed by an employee leasing firm and is working for a client employer under an employee leasing arrangement.

3.8. "Regular or direct employee" means an employee who is not a leased worker.

3.9. "Temporary help agency" means an entity or any affiliate whose principal business is to provide temporary workers to client employers and which hires its own employees and assigns them to client employers to support or supplement the client employer's work force in special situations, such as employee absences, temporary skill shortages or seasonal workloads.

3.10. "Temporary worker" means a person employed by a temporary help agency to perform work for a client employer to support or supplement the client employer's work force in special situations, such as employee absences, temporary skill shortages or seasonal workloads, where the client employer exercises no control over the hiring or assignment of the person provided by the temporary help agency.

3.11. "Workers' compensation act" or "act" means the West Virginia workers' compensation act at chapter 23 of the West Virginia Code.

3.12. "Insurance Commissioner" means the insurance commissioner of West Virginia as provided in section one, article two, chapter thirty-three of the West Virginia Code.

3.13. "Private carrier" means any insurer, including the successor to the Commission, authorized by the insurance commissioner to provide workers' compensation insurance pursuant to chapters twenty-three and thirty-three of the West Virginia Code.

3.14. "Contracted services" means that the labor provided is outside the client employer's general business operation and that the labor provided is the primary or only service provided by the contractor. For example, the provision of security guards to a manufacturing operation would constitute "contracted services."

## §85-31-4. Application.

4.1. An employee leasing firm which provides leased workers who are persons employed in the service of an employer within the meaning of and subject to the workers' compensation act in this state, as provided in sections 23-2-1, -1a and other provisions of the act, to another business or businesses or another entity or entities, that is, to any client employer, pursuant to any employee leasing arrangement shall make special application (hereafter "application" with the workers' compensation ~~division~~ commission.

4.2. The application shall require such information as is needed to carry out the purposes, provisions and administration of this rule and shall be made in form, forms or format prescribed by the ~~division~~ commission.

4.3. Any person or entity filing an application required by this rule is required to notify the ~~division~~ commission of any changes in any information provided pursuant to this rule within thirty (30) calendar days of such change.

4.4. Whenever a client employer has not subscribed for coverage under the workers' compensation act because the client employer has no employees who are subject to the act, or for any other reason has not complied with the act, the employee leasing firm, the client employer or the ~~division~~ commission shall make application for a policy account for the client employer so that the provisions of this rule may be effected and administered.

4.5. The ~~division~~ commission shall prescribe such other forms as are necessary to promote the efficient administration of this rule.

~~4.6. Any employee leasing firm which was doing such business which was subject to the workers' compensation act in this state prior to the adoption of this rule shall make special application as an employee leasing firm within thirty (30) calendar days of the effective date of this rule.~~

4.6. Upon termination of the commission, the insurance commissioner may require an employee leasing firm to register as an employee leasing firm with the office of the insurance commissioner and provide such information as is required by the insurance commissioner.

## §85-31-5. Reporting.

5.1. The employee leasing firm is responsible for and subject to the reporting and payment requirements of the act, for its employees who are leased to a client employer as well as for its regular employees.

5.2. The employee leasing firm is required to file, in a separate periodic premium tax report for each client employer with which the employee leasing firm had an employee leasing arrangement during the reporting period, in form or format prescribed by the ~~division~~ commission, the following information for the reporting period:

(1) The name, business address and policy number of each client employer;

(2) The total gross wages payroll of the leased workers attributed to each client employer;

(3) The premium tax rate for each client employer;

(4) The calculated premium tax and premium tax deposit payment for each client employer; and,

(5) The name and social security number of each leased worker attributed to each client employer.

5.3. The employee leasing firm is required to file, in a separate premium tax report for itself and its regular employees, the total gross wages payroll attributed to its regular employees; the premium tax rate applicable to its regular employees; and, the calculated premium tax and premium tax deposit payment for its regular employees.

5.4. The employee leasing firm is required to file any other information which may be recognized as needed or required by the ~~division~~ commission to administer this rule.

5.5. The requirement that an employee leasing firm shall file a premium tax report and payment does not change or affect the requirement of the act and of the rules that the client employer shall file a premium tax report and payment for its employees who are not leased workers under this rule.

~~5.6. Any employee leasing firm which is subject to the provisions of this rule because it is engaged in any employee leasing arrangement with any client employer on the effective date of this rule or during the periodic reporting period prior to the first day of the next reporting period following the effective day of this rule, shall be required to file its first periodic report and payment under these provisions for leased workers for the reporting period which begins next after the effective date of this rule.~~

**§85-31-6. Classification of Risk; Loss Experience Assignment.**

6.1. An employee leasing firm shall be placed into a premium rate risk classification and industrial code pursuant to the provisions of the workers' compensation act and applicable rule~~, 85 C.S.R. 9, risk management~~.

6.2. For ratemaking purposes only, the claims experience and gross wages of the leased workers working for or for the benefit of the client employer shall be charged to the client employer. The methodology for experience rating shall be determined ~~by the compensation programs performance council~~ in accordance with its authority under the law applicable to rate making.

6.2.1. The employee leasing firm will pay premium tax for each client employer based on the client employer's premium tax rate before the application of any credits.

6.2.2. Where there is an employee leasing arrangement between an employee leasing firm and a self-insurer, the premium tax rate for the leased employees will be base rated until enough time has elapsed for them to be experience rated.

6.3. The experience modification factor and premium tax rate of the employee leasing firm will be based on the claims experience and gross wages of the regular or direct employees of the employee leasing firm.

6.4. Either the client employer or the employee leasing firm employer, but not both, may litigate and defend employee injury claims made under the act, according to the terms and conditions of their employee leasing arrangement.

**§85-31-7. Notification; No Amendment or Abrogation of Employment Law or Employee Rights.**

7.1. The employers are responsible for compliance with the employment laws and tax laws affecting their employment relationships with employees whenever an employment is commenced or terminated so that one may commence or end an arrangement which is regulated partially by this rule. While compliance with those laws should insure that every employee knows who employs him or her, the employer shall further give immediate notice to each affected employee of any employee leasing arrangement in which he or she is employed by the employer. Notification shall be given in writing in form prescribed by the ~~division~~ commission and shall also be posted in a conspicuous place at the chief works of the client employer.

7.2. This rule is not intended to, nor does it, amend or abrogate any employment law or employee right under the law.

**§85-31-8. Coal-Workers' Pneumoconiosis Fund.**

8.1. A client employer may insure itself for coverage under the coal-workers' pneumoconiosis fund by separate subscription.

8.2. An insured subscriber to the coal-workers' pneumoconiosis fund shall report the gross wages of its insured regular employees and its leased workers, if any, and calculate the subscription premium tax and premium tax deposit due on the periodic reports prescribed by the ~~division~~ commission and shall pay the calculated amount to that fund as provided by the workers' compensation act and the rules.

8.3. The employee leasing firm may, at the request of the insured client employer, be included as an "additional named insured" on the coal-workers' pneumoconiosis fund policy.

**§85-31-9. Transition.**

9.1. Upon termination of the Commission, the relationship between the private carrier, employee leasing firm and the client employer shall be governed in accordance with the terms of the workers' compensation policy issued to the employee leasing firm and any applicable client employers.

9.2. The private carrier may only issue policies that meet the overall purpose of this rule so that incurred experience is used in calculating loss experience to ensure that premium is paid commensurate with exposure and anticipated claims experience.

a. The terms of the agreement shall ensure that loss experience and payroll information is captured for all of the client employer's leased and direct hire workers.

b. The terms of the agreement shall ensure that employees of employee leasing firms are classified in accordance with the classification of the client employer for whom services are provided.

9.3. An employee leasing firm and a client employer in an employee leasing arrangement shall fulfill their statutory responsibility to secure workers' compensation coverage under the workers' compensation act in one of the following ways:

a. The client employer obtains a standard workers' compensation policy from a private carrier on a direct purchase basis, covering all leased and direct hire employees, subject to the same requirements and conditions as if the lessee were the sole employer of its leased employees.

1. "Direct purchase basis" means an arrangement in which all contractual obligations under the insurance policy run directly between the private carrier and the client employer without the involvement of the employee leasing firm.

b. The employee leasing firm purchases insurance for the client employer on a multiple coordinated policy basis in compliance with this rule.

1. "Multiple coordinated policy basis" means an arrangement under which a separate policy is issued to or on behalf of each client employer or group of affiliated client employers but certain payment obligations and policy communications are coordinated through the employee leasing firm.

c. The employee leasing firm purchases a master policy covering the client employer in compliance with this rule.

1. "Master policy basis" means an arrangement under which a single policy issued to the lessor covers more than one lessee. Two or more lessees that are insured under the same policy solely because they are under common ownership are considered a single lessee for purposes of this definition.

d. The employee leasing firm purchases a policy whose reporting and loss experience assignment methodologies are in compliance with sections five and six of this rule.

9.4. A private carrier, who offers coverage to an employee leasing firm, is not required to offer each type of policy option and may offer one or more types of coverage in its discretion.

**§85-31-~~9~~ 10. Severability.**

If any provision of these rules or the application thereof to any entity or circumstance shall be held invalid, such invalidity shall not affect the provisions or the applications of these rules which can be given effect without the invalid provisions or application and, to this end, the provisions of these rules are declared to be severable.

# TITLE 85
# EXEMPT LEGISLATIVE RULE
# WORKERS' COMPENSATION ~~DIVISION~~ COMMISSION

## SERIES 31
## EMPLOYEE LEASING

### §85-31-1. General.

1.1. Scope. -- This exempt legislative rule provides for the adoption and implementation of rules to regulate employee leasing arrangements by employee leasing firms.

1.2. Authority. ~~-- W. Va. Code, §§21A-2-6(1) & -6(2); 21A-3-7(b) & -7(c); 23-1-1; and 23-2-4. Pursuant to W. Va. Code, §21A-3-7(c), rules adopted by the compensation programs performance council and the commissioner are not subject to legislative approval as would otherwise be required under W. Va. Code §29A-3-1 et seq. Public notice requirements of that chapter and article, however, must be followed. Pursuant to enrolled committee substitute for house bill 4030, regular session, 1994, the department of commerce, labor and environmental resources was abolished. Pursuant to that same bill and to executive order no. 5-94 by the governor, the commissioner of the bureau of employment programs is empowered to promulgate rules and regulations without the consent or approval of a departmental secretary.~~ W.Va. Code §§23-1-1a. Pursuant to West Virginia Code §23-1-1a(j)(3), rules adopted by the Board of Managers and the Commission are not subject to legislative approval as would otherwise be required under West Virginia Code §29A-3-1 et seq. Public notice requirements of that chapter and article, however, must be followed.

1.3. Filing Date. ~~-- July 20, 2000~~.

1.4. Effective Date. -- ~~September 1, 2000~~.

### §85-31-2. Purpose of Rule.

The purpose of this rule is to regulate, for workers' compensation purposes, employee leasing firms engaged in employee leasing arrangements and to provide a method to accurately calculate and assess the proper workers' compensation premium tax attributable to leased workers. The rule provides and is designed so that incurred experience is used in calculating loss experience to ensure that premium tax is paid commensurate with exposure and anticipated claims experience. The rule does not apply to temporary help agencies or those businesses engaged in the provision of contracted services, which are the primary or only services provided. However, it does apply to any temporary help agency which engages also in providing leased workers in any employee leasing arrangement, but such application of this rule is limited to those engagements.

### §85-31-3. Definitions.

As used in this rule, the following terms, words and phrases have the meanings stated unless, in any instance where such term, word or phrase is used, the context expressly indicates that another meaning is intended.

3.1. "Client employer" or "lessee" means an entity that obtains all or substantially all of its ~~whose~~ work force ~~consists of one or more leased workers from an employee leasing firm~~ from another entity through an employee leasing arrangement.

3.2. ~~"Division" means the workers' compensation division within the bureau of employment programs as provided for by W. Va. Code, §§21A-1-4 and 23-1-1, et seq.~~ "Commission" means the Workers' Compensation Commission created pursuant to the provisions of W.Va. Code §23-1-1.

3.3. "Employee leasing arrangement" means an arrangement, under contract or otherwise, expressed or implied, where an employee leasing firm assigns its employees to a client employer and allocates the direction of and control over the leased employees between the leasing firm and the client employer. Employee leasing arrangements include, but are not limited to, full-service employee leasing arrangements and professional-employer-organization employee leasing arrangements. For purposes of this rule, an employee leasing arrangement does not include an assignment of temporary help or contract services.

3.4. "Employee leasing firm" or "lessor" means an entity which provides workers to another entity to perform work in furtherance of the industry, service or business of the other entity at the business premises of or at locations designated by the other entity under an employee leasing arrangement.

3.5. "Entity" means and includes, but is not limited to, any person or individual, sole proprietor, firm, partnership, limited partnership, limited liability partnership, professional limited liability partnership, limited liability company, professional limited liability company, joint venture, association, corporation, professional or legal corporation, company, organization, receiver, estate, trust, guardian, executor, administrator, government entity or any other entity regularly employing another person or persons for the purpose of carrying on any form of industry, service or business in this state.

3.6. "Firm" means and includes any business or other entity.

3.7. "Leased worker" means a person who is employed by an employee leasing firm and is working for a client employer under an employee leasing arrangement.

3.8. "Regular or direct employee" means an employee who is not a leased worker.

3.9. "Temporary help agency" means an entity or any affiliate whose principal business is to provide temporary workers to client employers and which hires its own employees and assigns them to client employers to support or supplement the client employer's work force in special situations, such as employee absences, temporary skill shortages or seasonal workloads.

3.10. "Temporary worker" means a person employed by a temporary help agency to perform work for a client employer to support or supplement the client employer's work force in special situations, such as employee absences, temporary skill shortages or seasonal workloads, where the client employer exercises no control over the hiring or assignment of the person provided by the temporary help agency.

3.11. "Workers' compensation act" or "act" means the West Virginia workers' compensation act at chapter 23 of the West Virginia Code.

3.12. "Insurance Commissioner" means the insurance commissioner of West Virginia as provided in section one, article two, chapter thirty-three of the West Virginia Code.

3.13. "Private carrier" means any insurer, including the successor to the Commission, authorized by the insurance commissioner to provide workers' compensation insurance pursuant to chapters twenty-three and thirty-three of the West Virginia Code.

3.14. "Contracted services" means that the labor provided is ~~outside the client employer's general business operation and that the labor provided is~~ the primary or only service provided by the contractor. For example, the provision of security guards to a manufacturing operation would constitute "contracted services."

**§85-31-4. Application.**

4.1. An employee leasing firm which provides leased workers who are persons employed in the service of an employer within the meaning of and subject to the workers' compensation act in this state, as provided in sections 23-2-1, -1a and other provisions of the act, to another business or businesses or another entity or entities, that is, to any client employer, pursuant to any employee leasing arrangement shall make special application (hereafter "application" with the workers' compensation ~~division~~ commission.

4.2. The application shall require such information as is needed to carry out the purposes, provisions and administration of this rule and shall be made in form, forms or format prescribed by the ~~division~~ commission.

4.3. Any person or entity filing an application required by this rule is required to notify the ~~division~~ commission of any changes in any information provided pursuant to this rule within thirty (30) calendar days of such change.

4.4. Whenever a client employer has not subscribed for coverage under the workers' compensation act because the client employer has no employees who are subject to the act, or for any other reason has not complied with the act, the employee leasing firm, the client employer or the ~~division~~ commission shall make application for a policy account for the client employer so that the provisions of this rule may be effected and administered. If the leasing firm or commission applies for a policy account on behalf of a client employer, notice shall be given to the client employer prior to the policy being opened.

4.5. The ~~division~~ commission shall prescribe such other forms as are necessary to promote the efficient administration of this rule.

~~4.6. Any employee leasing firm which was doing such business which was subject to the workers' compensation act in this state prior to the adoption of this rule shall make special application as an employee leasing firm within thirty (30) calendar days of the effective date of this rule.~~

4.6. Upon termination of the commission, the insurance commissioner may require an employee leasing firm to register as an employee leasing firm with the office of the insurance commissioner and provide such information as is required by the insurance commissioner.

**§85-31-5. Reporting.**

5.1. The employee leasing firm is responsible for and subject to the reporting and payment requirements of the act, for its employees who are leased to a client employer as well as for its regular employees.

5.2. The employee leasing firm is required to file, in a separate periodic premium tax report for each client employer with which the employee leasing firm had an employee leasing arrangement during the reporting period, in form or format prescribed by the ~~division~~ commission, the following information for the reporting period:

(1) The name, business address and policy number of each client employer;

(2) The total gross wages payroll of the leased workers attributed to each client employer;

(3) The premium tax rate for each client employer;

(4) The calculated premium tax and premium tax deposit payment for each client employer; and,

(5) The name and social security number of each leased worker attributed to each client employer.

5.3. The employee leasing firm is required to file, in a separate premium tax report for itself and its regular employees, the total gross wages payroll attributed to its regular employees; the premium tax rate applicable to its regular employees; and, the calculated premium tax and premium tax deposit payment for its regular employees.

5.4. The employee leasing firm is required to file any other information which may be recognized as needed or required by the ~~division~~ commission to administer this rule.

5.5. The requirement that an employee leasing firm shall file a premium tax report and payment does not change or affect the requirement of the act and of the rules that the client employer shall file a premium tax report and payment for its employees who are not leased workers under this rule.

~~5.6. Any employee leasing firm which is subject to the provisions of this rule because it is engaged in any employee leasing arrangement with any client employer on the effective date of this rule or during the periodic reporting period prior to the first day of the next reporting period following the effective day of this rule, shall be required to file its first periodic report and payment under these provisions for leased workers for the reporting period which begins next after the effective date of this rule.~~

**§85-31-6. Classification of Risk; Loss Experience Assignment.**

6.1. An employee leasing firm shall be placed into a premium rate risk classification and industrial code pursuant to the provisions of the workers' compensation act and applicable rule~~, 85 C.S.R. 9, risk management~~.

6.2. For ratemaking purposes only, the claims experience and gross wages of the leased workers working for or for the benefit of the client employer shall be charged to the client employer, except under a master policy scenario. The methodology for experience rating shall be determined ~~by the compensation programs performance council~~ in accordance with its authority under the law applicable to rate making.

6.2.1. The employee leasing firm will pay premium tax for each client employer based on the client employer's premium tax rate before the application of any credits.

6.2.2. Where there is an employee leasing arrangement between an employee leasing firm and a self-insurer, the premium tax rate for the leased employees will be base rated until enough time has elapsed for them to be experience rated.

6.3. The experience modification factor and premium tax rate of the employee leasing firm will be based on the claims experience and gross wages of the regular or direct employees of the employee leasing firm, except under a master policy scenario.

6.4. Either the client employer or the employee leasing firm employer, but not both, may litigate and defend employee injury claims made under the act, according to the terms and conditions of their employee leasing arrangement.

## §85-31-7. Notification; No Amendment or Abrogation of Employment Law or Employee Rights.

7.1. The employers are responsible for compliance with the employment laws and tax laws affecting their employment relationships with employees whenever an employment is commenced or terminated so that one may commence or end an arrangement which is regulated partially by this rule. While compliance with those laws should insure that every employee knows who employs him or her, the employer shall further give immediate notice to each affected employee of any employee leasing arrangement in which he or she is employed by the employer. Notification shall be given in writing in form prescribed by the ~~division~~ commission and shall also be posted in a conspicuous place at the chief works of the client employer.

7.2. This rule is not intended to, nor does it, amend or abrogate any employment law or employee right under the law.

## ~~§85-31-8. Coal-Workers' Pneumoconiosis Fund.~~

~~8.1. A client employer may insure itself for coverage under the coal-workers' pneumoconiosis fund by separate subscription.~~

~~8.2. An insured subscriber to the coal-workers' pneumoconiosis fund shall report the gross wages of its insured regular employees and its leased workers, if any, and calculate the subscription premium tax and premium tax deposit due on the periodic reports prescribed by the division commission and shall pay the calculated amount to that fund as provided by the workers' compensation act and the rules.~~

~~8.3. The employee leasing firm may, at the request of the insured client employer, be included as an "additional named insured" on the coal-workers' pneumoconiosis fund policy.~~

## §85-31-9. Transition.

9.1. Upon termination of the Commission, the relationship between the private carrier, employee leasing firm and the client employer shall be governed in accordance with the terms of the workers' compensation policy issued to the employee leasing firm and any applicable client employers.

~~9.2. The private carrier may only issue policies that meet the overall purpose of this rule so that incurred experience is used in calculating loss experience to ensure that premium is paid commensurate with exposure and anticipated claims experience.~~

~~a. The terms of the agreement shall ensure that loss experience and payroll information is captured for all of the client employer's leased and direct hire workers.~~

~~b~~9.2. The terms of the agreement shall ensure that employees of employee leasing firms are classified in accordance with the classification of the client employer for whom services are provided.

9.3. An employee leasing firm and a client employer in an employee leasing arrangement shall fulfill their statutory responsibility to secure workers' compensation coverage under the workers' compensation act in one of the following ways:

a. The client employer obtains a standard workers' compensation policy from a private carrier on a direct purchase basis, covering all leased and direct hire employees, subject to the same requirements and conditions as if the lessee were the sole employer of its leased employees.

1. "Direct purchase basis" means an arrangement in which all contractual obligations under the insurance policy run directly between the private carrier and the client employer without the involvement of the employee leasing firm.

b. The employee leasing firm purchases insurance for the client employer on a multiple coordinated policy basis in compliance with this rule.

1. "Multiple coordinated policy basis" means an arrangement under which a separate policy is issued to or on behalf of each client employer or group of affiliated client employers but certain payment obligations and policy communications are coordinated through the employee leasing firm.

c. The employee leasing firm purchases a master policy covering ~~the client employer in compliance with this rule.~~ regular and client leased employees and is reflective of the employee leasing firm's experience. While the employee leasing firm and client employer are under contract, the leased employee payroll and claims activity shall be included on the employee leasing company policy for ratemaking purposes. The experience including payroll and claim activity shall be segregated by the employee leasing company for each client employer that is insured under the master policy and the experience shall be transferred to the client employer upon termination of the contract.

1. "Master policy basis" means an arrangement under which a single policy issued to the lessor covers more than one lessee. Two or more lessees that are insured under the same policy solely because they are under common ownership are considered a single lessee for purposes of this definition.

d. The employee leasing firm purchases a policy whose reporting and loss experience assignment methodologies are in compliance with sections five and six of this rule.

9.4. A private carrier, who offers coverage to an employee leasing firm, is not required to offer each type of policy option and may offer one or more types of coverage in its discretion.

9.5. Calculation and application of experience rating modification

a. While a Client is Involved in an Employee Leasing Arrangement
   1) The leasing firm's experience rating modification applies to the master policy as well as any other policy of the leasing firm.
   2) If the leasing firm does not qualify for experience rating, an experience modification factor of 1.00 applies to:
      - The master policy and any other of the leasing firm's policies
      - Subsequent policies, until the leasing firm is eligible for an experience rating modification

b. Upon Termination of a Client's Employee Leasing Arrangement
   1) The rating organization will revise the leasing firm's experience rating modification to remove the former client's data as reported by the insurer to the rating organization.
   2) The rating organization will calculate the client's experience rating modification using the information provided by the leasing firm. This modification will include the experience

for the client's leased and non-leased (if any) employees during the experience period. Note: If the client does not have its own experience modification, then the leasing firm's experience rating modification will apply to the client's new policy until the rating organization calculates the client's own experience rating modification.

3) Once calculated, the client's new experience rating modification will apply retroactive to the inception of the policy.

4) If the client is not eligible for experience rating based on the leased and non-leased employees during the experience period, then an experience modification factor of 1.00 will apply until the client is eligible for experience rating.

c. If the provider cannot furnish the information to the rating organization to provide for the transfer of experience from the leasing company to the client,

1) Then for the client,
   - An experience rating modification is calculated for the client using experience developed prior to the employee leasing arrangement or, if available, from policies covering non-leased employees.
   - If an experience rating modification cannot be developed, the leasing firm's experience modification will apply to the client's policy until the client is eligible for its own experience rating modification. However, the leasing firm's experience modification cannot apply for more than three years.
   - After three years, an experience modification factor of 1.00 will apply to a client not eligible for experience rating.

2) And for the employee leasing firm:
   - The client's experience remains in the employee leasing firm's experience rating modification

9.6. Reporting. When a client leaves an employee leasing arrangement covered under a master policy, the leasing company's insurance provider is required to report the client's data developed during the employee leasing arrangement to the rating organization on forms prescribed by the commission. The leasing firm is required to maintain separate payroll and loss data by client, cooperate with the insurer in providing requested documentation (i.e. client name, tax ID number, payroll, classification codes and losses per client) and notify insurer of any terminated employee leasing arrangement in accordance with policy rules or guidelines.

**§85-31-~~9~~ 10. Severability.**

If any provision of these rules or the application thereof to any entity or circumstance shall be held invalid, such invalidity shall not affect the provisions or the applications of these rules which can be given effect without the invalid provisions or application and, to this end, the provisions of these rules are declared to be severable.

**From:** "The Porter Law Firm" <porterlaw@wvdsl.net>
**To:** "'Randy Suter'" <rsuter@wvwcc.org>
**Date:** 11/14/2005 11:29:14 AM
**Subject:** FW: Rule 31

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From: The Porter Law Firm [mailto:porterlaw@wvdsl.net]
Sent: Thursday, November 10, 2005 10:25 AM
To: 'tobrokta@wvwcc.org'
Cc: 'jmullins.ein@charterinternet.com'; 'gbowling.ein@charterinternet.com'; 'Daniel Murdock'
Subject: Rule 31

T.J.

I wanted to take the opportunity to thank you again for meeting with us yesterday to address the concerns surrounding Rule 31. It appears that the biggest issue we now face is Section 6.2.1. As it is written, this section creates a real problem for my clients, in retaining their current clients and attracting new clients. That is because it makes no sense for an employer to use an ELF, if they are going to have to pay a higher rate, through the loss of any applicable discounts. After speaking with my client, I think you will find that NCCI states allow employee leasing firms to earn discounts. I think a good compromise on this issue might be for the Rule to provide that if an ELF would independently qualify for such a discount, through its own policies and procedures, (instead of all of the employer's credits flowing through automatically to the ELF) then they are entitled to the credit. For example, my client hires (as one of their own employees) a safety director that is on site at the employer's place of business, who implements a stringent safety plan, which usually far exceeds the safety measures already in place at the work site. Therefore, why should the employer have to end up paying a higher rate by using my client, when in fact, my client has improved the safety measures in place at the work site?

I am also working on revised language for Section 3.3, per your request. I sincerely hope that we are able to work together to solve the issues surrounding Rule 31. I realize that you are tremendously busy at this time, and I truly appreciate your prompt and courteous attention to our concerns.

Very truly yours,

Chadrick R. Porter

The Porter Law Firm, PLLC

**Response to Comments**
**85 CSR 31**
**"Employee Leasing"**

**Teresa Thibodoux-Acordia**
**§General Comment:** The Commission should adopt requirements similar to NCCI in its development of the rule.
**Response:** It is anticipated that the current methodology will be supplemented by the Mutual and other private carriers rating manuals that will more fully explain the types of leasing policies available.

**Teresa Thibodoux-Acordia**
**§General Comment:** Chargeability for occupational disease claims are problematic for employee leasing operations because the employees do no meet the minimum requirements for each work site.
**Response:** The Commission is aware of this concern and may address the problem in another rule.

**Connie Saunders/Saunders Staffing**
**§General Comment:** Employee leasing firms should be licensed and its principals should pass an exam.
Response: This is beyond the scope of this workers' compensation rule and more appropriate for the Legislature, although the OIC may require the leasing firm to register under the current proposal.

**Teresa Thibodoux-Acordia**
**Connie Saunders/Saunders Staffing**
**§3.1**
**Comment:** Provisions concerning "client employer" is too broad.
**Response:** No change. Data gathering is essential to properly pricing coverage for employee leasing operations.

**Connie Saunders/Saunders Staffing**
**§3.3.**
**Comment:** Requests an expansion of the term "temporary help."
**Response:** No change made.

**Connie Saunders/Saunders Staffing**
**§3.10.**
**Comment:** suggest including "working interviews" into the definition of "temporary worker.'
**Response:** No change made.

**Chad Porter**
**§6.2.1.**

**Comment:** Requests change to language of the section so that employee leasing firms might gain the benefit of client employer credits.
**Response:** Language of 6.2.1 changed to allow this type of credit at the discretion of the carrier.

**Timothy Huffman/Henry Bowen/Michael Keener**
**§5.6 & 6.5.**
**Comment:** Change requested to allow private carriers to opt for different reporting and loss experience assignment methodologies.
**Response:** Change made with certain limitations in concert with §9 of the rule.

**Jeff Brannon/American Staffing**
**Chad Porter**
**§§5 & 6.**
**Comment:** Sunset these reporting provisions.
**Response:** No change.

**Jeff Brannon/American Staffing**
**§8.3.**
**Comment:** Requested change in language.
**Response:** Se response as follows.
**Internal Comment**
**§8.3.**
**Comment:** This provision should be deleted as it does not provide practical value in a private carrier scenario because the carrier will ultimately decide who it wants to cover.
**Response:** Subsection deleted.

**Jeff Brannon/American Staffing**
**Comment:** Rule should be minimally invasive.
**Response:** The rule vastly expand the options available to private carriers in offering this coverage and guarantees that sufficient information will be collected so that the product will be properly priced.

**Chad Porter**
**§9.3. & 9.4.**
**Comment:** Employers should have to comply with any one of the methods outlined for coverage of employee leasing options.
**Response:** No change. The options available are at the discretion and ability of the carrier to offer the products for coverage.

**Timothy Huffman/Henry Bowen/Michael Keener**
**§9.3.e.**
**Comment:** Request made for additional methods of insuring employee leasing operations.

**Response:** Change made to allow for an alternative plan of employee leasing if approved by the insurance commissioner, if in accordance with section 9 of the rule and which follows sound underwriting principles.