

State of Rhode Island and Providence Plantations
DEPARTMENT OF BUSINESS REGULATION
Division of Insurance
1511 Pontiac Avenue, Bldg. 69-2
Cranston, Rhode Island 02920

Public Notice of Proposed Rule-Making

Pursuant to the provisions of R.I. Gen. Laws § 42-14-16, and in accordance with the Administrative Procedures Act Chapter 42-35 of the General Laws, the Department of Business Regulation hereby gives notice of its intent to repeal Insurance Regulation 69 Employee Leasing Firm Workers' Compensation Self-Insurance.

The purpose of this repeal is that the regulation is no longer in use, authorized or necessary.

The proposed regulation and concise summary of non-technical amendments are available for public inspection at www.dbr.ri.gov, in person at Department of Business Regulation, 1511 Pontiac Avenue, Cranston, Rhode Island 02920, or by email edwyer@dbr.ri.gov or by calling Elizabeth Kelleher Dwyer at (401) 462 9520.

In the development of the proposed repeal consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

All interested parties are invited to submit written or oral comments concerning the proposed regulations by September 14, 2011 to Elizabeth Kelleher Dwyer, Department of Business Regulation, 1151 Pontiac Avenue, Cranston, Rhode Island 02920, edwyer@dbr.ri.gov. A public hearing to consider the proposed repeal shall be held on September 14, 2011 at 10:15 am at 1511 Pontiac Avenue, Cranston, Rhode Island 02920 at which time and place all persons interested therein will be heard.

All are welcome at the Rhode Island Department of Business Regulation ("DBR"). If any reasonable accommodation is needed to ensure equal access, service or participation, please contact DBR at 401-462-9551, RI Relay at 7-1-1, or email directorofficeinquiry@dbr.ri.gov at least three (3) business days prior to the hearing.

Paul McGreevy
Director, Department of Business Regulation

State of Rhode Island and Providence Plantations
DEPARTMENT OF BUSINESS REGULATION
Division of Insurance
233 Richmond Street
Providence, RI 02903

INSURANCE REGULATION 69

**EMPLOYEE LEASING FIRM WORKERS' COMPENSATION SELF-
INSURANCE**

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Section 1 — Definitions

As used in this Regulation, the following terms shall mean:

- (a) — “Applicant”: an employee leasing firm which proposes to self insure for workers' compensation.
- (b) — “Affiliate”: any entity or business organization of any type which controls the applicant or any entity or business organization of any type which is either controlled by the applicant, or by an entity or business organization which controls the applicant.
- (c) — “Control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or

~~holds proxies representing, ten per cent (10%) or more of the voting securities of any other person. The Director may determine, after furnishing all persons in interest, notice and opportunity for hearing, and by making specific findings of fact to support such determination, that control exists in fact.~~

~~(c) —“Director”: the Director of the Department of Business Regulation or his or her designee appointed pursuant to R.I. Gen. Laws § 42-14-1 et seq.~~

~~(d) —“Department”: the Department of Business Regulation.~~

~~(e) —“Employee Leasing Arrangement”: an arrangement, under contract or otherwise, whereby one business organization leases any or all of its workers from another business organization. Employee leasing arrangements include but are not limited to, full service employee leasing arrangements, long term temporary arrangements, and any other arrangement which involves the allocation of employment responsibilities among two or more organizations. For purposes of this Regulation, employee leasing arrangement does not include arrangements to provide temporary help service.~~

~~(f) —“Temporary Help Service”: a service whereby an organization hires its own employees and assigns them to clients for a finite time period to support or supplement the client's work force in special work situations such as employee absences, temporary skill shortages, and seasonal workloads.~~

~~(g) —“Client companies”: any person which obtains all or part of its work force from an employee leasing arrangement or firm.~~

~~(h) —“Leased Worker (Leased Employee)”: shall mean a person performing services for a client under an employee leasing arrangement.~~

~~(i) —“Employee Leasing Firm”: any person engaged in providing or leasing employees to client companies pursuant to an employee leasing arrangement.~~

~~(k) —“Premium”: that portion of fees charged, collected, or assessed representing the amounts necessary to comply with the workers compensation laws as a self insured organization.~~

~~(l) —“Person”: a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, or any other legal or commercial entity or business organization.~~

Section 2 — Disclosure and Obligations

~~Employee leasing firms shall disclose to client companies possible future or contingent liabilities that may arise and be the responsibility of client companies if loss reserves~~

~~needed to satisfy leased worker workers' compensation coverage are under funded or under reserved. The disclosure shall be contained in the contract for employee leasing company services. The Director may require employee leasing firms to have client companies enter into an indemnity agreement jointly and severally binding the employee leasing firm and its client companies to comply with the provisions of the Rhode Island Workers' Compensation laws. The employee leasing firm shall also disclose in its contract with client companies that the self insurance certificate may be revoked, suspended, or nonrenewed pursuant to Section 11 of this Regulation.~~

~~*Section 3 — Security Deposits*~~

~~(1) — Each employee leasing firm shall be required to post a security deposit with the Director in an amount not less than one hundred thousand dollars (\$100,000) in form and type acceptable to the Director including but not limited to a trust for the use and benefit of those individuals entitled to compensation in accordance with applicable law. The Director may require a greater deposit to secure any potential liability of the employee leasing firm not otherwise funded by reserves, premium collections, or excess insurance or reinsurance. The Director will consider the excess insurance or reinsurance retention level, loss reserves, and other factors in determining the appropriate security deposit amount.~~

~~(2) — Acceptable securities shall be:~~

- ~~(a) — savings accounts or certificates of deposit in a chartered bank approved by the Director located within the State of Rhode Island and insured through the Federal Deposit Insurance Corporation;~~
- ~~(b) — share accounts or savings certificates in a duly chartered savings and loan association located within the State of Rhode Island and insured through the Federal Savings & Loan Insurance Corporation;~~
- ~~(c) — direct obligations of the United States Treasury such as notes, bonds, or bills which are backed by the full faith and credit of the United States government;~~
- ~~(d) — any bond or security issued by the State of Rhode Island and backed by the full faith and credit of the State;~~
- ~~(e) — surety bonds in a form approved by the Director, issued by a corporate surety admitted in the State of Rhode Island or authorized by the Director to transact such business in the state; and;~~

- (f) ~~a financial guarantee endorsement in a form acceptable to the Director issued as part of an acceptable excess insurance or reinsurance contract.~~

~~**Section 4** **Excess Insurance**~~

~~(1) Each employee leasing firm must maintain excess insurance or reinsurance as follows:~~

- (a) ~~specific excess insurance or reinsurance of limits not less than one million dollars (\$1,000,000) per occurrence. The Director may require employee leasing firms with client companies containing businesses with high risks of multiple injury from a single accident to maintain higher limits. The retention level of the required specific excess insurance or reinsurance coverage shall be the retention level generally available for employee leasing firms with similar exposures and annual premiums or such other level as the Director in his or her sole discretion shall require; and,~~
- (b) ~~aggregate excess insurance or reinsurance with limits above the aggregate retention level of not less than one million dollars (\$1,000,000) or twenty five per cent (25%) of the annual premiums of the employee leasing firm for the term of the policy, whichever is greater. The Director may require employee leasing firms with client companies containing businesses of high risks of multiple injuries from a single accident to maintain higher limits.~~

~~(2) No contract or policy of excess insurance or reinsurance shall satisfy the employee leasing firm's obligations unless such contract or policy complies with all of the following:~~

- (a) ~~it is issued by a casualty insurance company admitted in the State of Rhode Island or authorized to write such business within the state;~~
- (b) ~~it is not cancellable unless the insurer or reinsurer gives written notice by registered or certified mail to the employee leasing firm and to the Director not less than sixty (60) days before cancellation;~~
- (c) ~~it is automatically renewable at the expiration of the policy period unless written notice by registered or certified mail is given to the employee leasing firm and to the Director not less than sixty (60) days before expiration;~~

- ~~(d) — it provides that any contractually authorized commutation shall not relieve the excess insurer or reinsurer of further liability for claims expenses unknown at the time of such commutation or for claims closed which are subsequently revived by a competent authority and that in the event the excess insurer or reinsurer proposes to redeem any future payment for compensation for accidents occurring during the term of the policy by the payment of a lump sum as provided by the policy, the Director shall receive prior notice via certified mail not less than sixty (60) days prior to the date of such commutation by the excess insurer or reinsurer or its agent. In the event of a commutation, the Director shall have the right to require that such sum either be placed in trust for the benefit of the injured employee or employees or be invested in an approved security and deposited in an account so as to ensure such future payment of compensation to the employee or employees; and~~
- ~~(e) — contains a provision that the Director may order that monies due under the terms of an excess insurance or reinsurance contract or policy be paid directly to the injured employee or such other parties as the Director determines is necessary to ensure continued benefit to the injured employee.~~
- ~~(3) — Copies of the complete policies of excess insurance or reinsurance shall be filed with the Director together with certification that such policies fully comply with this Regulation and with applicable law.~~

~~**Section 5 — Premium**~~

- ~~(1) — The premium collected from each client company shall be computed by applying appropriate manual rules and rates per payroll code classification by an experience modification factor. Such rules, rates, and modification factors shall be those filed by the National Council on Compensation Insurance or Beacon Mutual Insurance Company and approved by the Director.~~
- ~~(2) — The employee leasing firm may offer advance premium discounts to members, subject to the approval of the excess insurer or reinsurer, and subject to the limitation that such advanced discounts shall not in the aggregate exceed fifteen per cent (15%) of the employee leasing firm's annual premium as computed pursuant to paragraph (1) of this section.~~
- ~~(3) — Each new client company shall pay deposit premium equal to not less than twenty five per cent (25%) of its estimated annual premium and for each and every succeeding month thereafter shall pay premiums based upon actual payroll for that month. This deposit shall not be applied to fund in part or in whole the security deposit required pursuant to Section 3 of this~~

~~Regulation. The employee leasing firm may contract to provide future dividends to client companies, in addition to any premium discounts, based on actual experience development under the employee leasing arrangement.~~

~~***Section 6 — Initial Funding of Employee Leasing Company Capital***~~

~~The premium to capital ratio for employee leasing firms shall be no greater than three to one (3:1). The premium amount shall be based on the greater of the prior years' or the expected current year total written premium for the employee leasing firm or for the first year of self-insured operations, the expected premium for the first year. The security deposit and the excess insurance or reinsurance may be credited to loss reserves and treated as capital subject to the Director's approval.~~

~~***Section 7 — Premium and Servicing Fee and Related Reporting Requirements***~~

~~(1) — Each employee leasing firm shall be required to submit the following documents and reports on a continuing basis:~~

- ~~(a) — quarterly status reports which accurately reflect the financial condition of each open fiscal year shall be filed with the Director within thirty (30) days after the close of each fiscal year quarter and shall be signed by the chairman and chief executive operating officer of the employee leasing firm. A fiscal year is considered open as long as one claim for that year remains unsettled. A listing of any and all delinquent accounts in the amount owed shall be furnished to the Director as part of this report;~~
- ~~(b) — properly classified and audited payrolls for each client company shall be submitted within ninety (90) days after the close of the fiscal year;~~
- ~~(c) — verified copies of the minutes of Board of Director meetings concerning self-insurance and loss claim matters of the employee leasing firm shall be submitted to the Director within thirty (30) days of the meeting date;~~
- ~~(d) — an audited statement of financial condition shall be submitted annually, within ninety (90) days of the close of the employee leasing firm's fiscal year;~~
- ~~(e) — summary loss data for the employee leasing firm and client companies shall be furnished to the Director upon request; and,~~
- ~~(f) — a certified statement from the president and chief executive operating officer of the employee leasing firm that all obligations~~

~~to federal, state or local governmental entities, including but not limited to payment of payroll and other taxes, are current along with monthly reports detailing the prior month's payroll, workers compensation premium by classification and totals, and a breakdown of servicing fee and administrative fees.~~

~~**Section 8 — Dividend Distribution and Deficits**~~

~~(1) — The employee leasing company may request in writing, at least sixty (60) days prior to the proposed distribution date, authorization from the Director to disburse dividends to client companies. The request shall include a current year end balance sheet for the employee leasing firm, a letter from the certified public accountant for the employee leasing firm stating that the proposed dividend will not impair the financial condition of the employee leasing firm, a current quarterly status report, and an actuarial report establishing the adequacy of the reserves in the fiscal year for which the dividend is requested.~~

~~(2) — Before approving any dividend distribution request the Director shall determine that such dividend will not impair the financial solvency of the employee leasing firm.~~

~~(3) — (a) — In the event of a deficit in any fiscal year, the deficit shall be immediately recouped from any of the following:~~

~~(i) — unencumbered loss claim or reserve surplus from any fiscal year other than the current year;~~

~~(ii) — retained earnings of the employee leasing firm;~~

~~(iii) — capital of the employee leasing firm; or,~~

~~(iv) — by such alternative method as the Director may order or approve.~~

~~(b) — The Director shall be notified in writing not less than ten (10) days after the employee leasing firm has knowledge of any deficit.~~

Section 9 — Application Requirements

- (1) — An application shall be accompanied by the following:
- (a) — a copy of the by-laws of the employee leasing firm which shall include the employee leasing firm's assessment and dividend policies;
 - (b) — copies of all forms of contract between the employee leasing company's and client companies;
 - (c) — evidence of the financial ability of the employee leasing firm to meet its obligation under applicable law;
 - (d) — a listing of the estimated annual premium to be developed by the employee leasing firm at its inception or approval date;
 - (e) — proof of payment by the employee leasing firm at its inception or approval date that not less than twenty-five percent (25%) of the estimated annual premium has been collected and deposited into a depository institution located within the State of Rhode Island and insured through an instrumentality of the United States government;
 - (f) — confirmation of excess insurance and/or reinsurance in amounts required by the Director;
 - (g) — names, addresses, and current business affiliations of the senior level management and Directors of the employee leasing firm;
 - (h) — proof of all fidelity bonds required by and in amounts and form acceptable to the Director;
 - (i) — proof of all surety bonds or other acceptable security in amounts and form acceptable to the Director;
 - (j) — a breakdown of all projected administrative expenses for the year, both in dollar amounts and percentage of premium;
 - (k) — proof that the employee leasing firm has within its organization ample facilities and competent personnel to service its program with respect to underwriting, industrial safety engineering, claims adjusting, and reporting of loss data or has contracted for any or all such services;

- ~~(l) — an individual application for each client on a form approved by the Director;~~
- ~~(m) — actuarial feasibility study to determine appropriate premium and loss reserves;~~
- ~~(n) — disclosure of and verified copies of all contracts or arrangements and any modifications thereof, or a verified summary of any unwritten contract or arrangement pursuant to Section 10 of this Regulation; and,~~
- ~~(o) — such other information that the Director, in his or her sole discretion, requires.~~

~~***Section 10 — Contract Services and Affiliated Transactions***~~

- ~~(1) — The employee leasing firm shall notify the Director not less than ten (10) days prior to the effective date of any contract to provide underwriting, industrial safety engineering, claims adjusting and/or data reporting services to the employee leasing firm, and the parties to the contract.~~
- ~~(2) — All claims adjusting services provided by or on behalf of an employee leasing firm shall be performed by persons having at least three (3) years experience in workers' compensation claims or subject to the direct supervision of an individual having such experience.~~
- ~~(3) — All persons performing industrial safety engineering service for a employee leasing firm shall have not less than three (3) years experience in safety engineering.~~
- ~~(4) — Employee leasing firms shall disclose and provide verified copies of all contracts or arrangements and any modifications thereof, or a verified summary of any unwritten contract or arrangement, the consideration of which exceeds ten thousand dollars (\$10,000) or in the aggregate exceeds such level during any six month period, between an employee leasing firm and an affiliate or client company that furnishes services or products exclusive of the self insurance and employee leasing arrangement services contract. The employee leasing firm shall be required to notify the Director not less than ten (10) days prior to the effective date of the contract or modification. The Director may also require an employee leasing firm to file in such form as the Director may require full information with respect to any purchase from or sale to an affiliate or client company, whether or not made in pursuance of a continuing contract or arrangement.~~

Section 11 — Revocation or Termination of Authority

(1) — Any of the following may constitute cause for revocation or termination of the authority to operate as a self-insured employee leasing firm:

- (a) — failure to comply with any of the provisions of this Regulation;
- (b) — failure to comply with any order of the Director;
- (c) — failure to comply with any provisions of law;
- (d) — failure to pay any assessment or penalty;
- (e) — failure to maintain required reserves, security deposits, or excess insurance reinsurance coverage;
- (f) — failure to maintain proper fiscal control over assets; or
- (g) — failure to provide proper claims adjusting, underwriting, and safety engineering services.

(2) — Termination or revocation may be ordered after written notice to the employee leasing firm and opportunity for hearing.

Section 12 — Fidelity and Surety Bonds

Fidelity bonds for officers and directors shall be a minimum of fifty thousand dollars (\$50,000). The Director may require a higher level of fidelity bond. The surety bonds shall be in the amounts necessary to secure the security deposit and acceptable to the Director. Fidelity and surety bonds shall only be obtained from insurance companies admitted in the State of Rhode Island or authorized to write such business within the state.

Section 13 — Internal Rules and Regulations

The employee leasing firm shall develop and follow rules governing maintenance of client company's past, present, and future loss experience data; premium computations; safety programs; employee leasing firm marketing programs; and other matters as required by the Director may require. Copies of such rules shall be filed with the Director. Any changes to such rules shall be filed with the Director not less than ten (10) days after taking effect. The Director shall have the right to order the employee leasing firm to remove or modify any rule that is in violation of this Regulation or applicable law.

EFFECTIVE DATE: ~~October 19, 1993~~
AMENDED: ~~None~~
REFILED: ~~December 19, 2001~~