

TEXAS DEPARTMENT OF INSURANCE
NOTIFICATION OF WORKERS' COMPENSATION FILING BY
THE NATIONAL COUNCIL ON COMPENSATION INSURANCE

ITEM 05-TX-2014

The National Council on Compensation Insurance (NCCI) filed *ITEM 05-TX-2014—REVISIONS TO BASIC MANUAL RULES, FORMS, AND ENDORSEMENTS FOR PROFESSIONAL EMPLOYER ORGANIZATIONS* (TDI ECase No. 7643) with the Texas Department of Insurance on December 10, 2014, under the workers' compensation manual rule filing procedure adopted in Commissioner's Order No. 3142, dated March 21, 2014. As proposed, *Item 05-TX-2014* would apply to policies with effective dates on or after 12:01 a.m., July 1, 2015.

Item 05-TX-2014 affects the following NCCI manuals:

- *Basic Manual for Workers Compensation and Employers Liability Insurance (NCCI Basic Manual)*
- *Forms Manual of Workers Compensation and Employers Liability Insurance (NCCI Forms Manual)*
- *Statistical Plan for Workers Compensation and Employers Liability Insurance (NCCI Statistical Plan)*

Senate Bill 1286, 83rd Legislature, Regular Session (2013) revised Chapter 91 of the Texas Labor Code (Professional Employer Organizations). SB 1286 established new definitions, required a professional employer services agreement between a PEO and a client, and allowed the client to choose to maintain workers' compensation coverage for its covered employees or to cover them under the PEO's policy. The proposed rules in *Item 05-TX-2014* clarify workers' compensation requirements in both of those situations: when the covered employees of a client are covered under a policy written in the name of the client, and when the covered employees of a client are covered under a policy written in the name of the PEO.

The proposed changes to *NCCI Basic Manual* Rule 3-D include:

- amending the title from "Employee Leasing Arrangements" to "Professional Employer Organizations"
- harmonizing the definitions in the rule with the definitions in SB 1286

- requiring the client and the PEO to specify in the professional employer services agreement whether the parties have elected to obtain coverage for the covered employees, and if so, which party will maintain the coverage
- if the client maintains coverage for its covered employees (client policy basis):
 - requiring the client’s policy to provide coverage for its covered employees and direct employees, if any, under one policy
 - requiring the PEO to maintain separate payroll records and job descriptions of covered employees for each client and to furnish those records to the client’s carrier on request
 - setting forth the carrier’s responsibilities in making the final payroll audits
- establishing requirements if the policy is canceled or nonrenewed when a PEO’s policy maintains coverage for the covered employees (PEO policy basis)
- reiterating that an individual who is the client’s executive employee (as described in Texas Labor Code §406.097) is a covered employee of the PEO and is treated as an executive employee for premium calculation and classification purposes, unless the parties agree in the professional employer services agreement that the individual is not a covered employee
- providing that even if the professional employer services agreement states that the client’s executive employees are covered employees, they may be excluded from the PEO’s policy or the client’s policy under specific situations
- specifying the client’s notification requirements when the client enters into a professional employer services agreement during its policy period
- requiring the PEO’s carrier to provide to the client’s prospective carrier the PEO’s experience rating modification in effect at the time the professional employer services agreement is terminated, and
- specifying that claim information must be provided by the PEO to the client upon request and identifying the timeframe and method of delivery for that information.

In addition to the proposed changes to the rules in the *NCCI Basic Manual*, this filing also proposes withdrawal of the following forms from the *NCCI Forms Manual*:

- Employee Provider (EP-1B and EP-1C) forms
- Texas Employee Provider Client Company Endorsement (WC 42 04 06 D).

The filing proposes establishing the following endorsements in the *NCCI Forms Manual*:

- Texas Professional Employer Organization (PEO) Endorsement (WC 42 03 11), which must be attached to each policy written on a PEO policy basis. This endorsement provides coverage for covered employees of the clients under the PEO policy.
- Texas Covered Employee Exclusion Endorsement for Policy Covering Direct Employees of a Client (WC 42 03 12). This endorsement is attached to a client's policy written for its direct employees only to exclude coverage for the client's covered employees that are covered by the PEO policy.
- Texas Professional Employer Organization (PEO) Executive Employee Inclusion Endorsement (WC 42 03 13), which is attached to a PEO policy to provide coverage for some or all of the executive employees of the clients listed on the endorsement. A separate endorsement is required for each client.
- Texas Professional Employer Organization (PEO) Executive Employee Exclusion Endorsement (WC 42 03 14), which is attached to the PEO policy to exclude coverage for the client's executive employees if the professional employer services agreement specifies that an executive employee is not a covered employee; or if an executive employee is a covered employee and requests to be excluded from coverage, or is an executive employee is excluded from coverage at the option of the carrier.
- Texas Advance Notice of Cancellation to the Professional Employer Organization (PEO) (WC 42 03 15), which is attached to the client policy that is covering direct employees of the client and its covered employees. The endorsement requires the carrier to provide advance notice to the PEO of not less than 10 days before cancellation of the client's policy.
- Texas Professional Employer Organization (PEO) Client Endorsement (WC 42 03 16), which is attached to the client policy to provide coverage for the client's covered employees.

The filing proposes that Part 3, Item F of the *NCCI Statistical Plan* be amended to indicate the unit report must be reported with an E in the Employee Leasing Code field for a PEO policy. In addition, the exposure of covered employees must be reported separately when:

- the PEO provides coverage for a client's covered employees, or
- the client's experience rating modification is applicable under the Texas rules of the *NCCI Basic Manual* and the *National Council on Compensation Insurance Experience Rating Plan Manual for Workers Compensation and Employers Liability Insurance*.

The filing proposes that only unit reports for PEOs are allowed to submit multiple instances of a class code with different exposure and different experience rating modification factors within the same split.

TDI has prepared this description of the proposed amendments. You may review a copy of NCCI's filing in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

The commissioner has scheduled a hearing under Docket No. 2772 at 1:30 p.m., Central time, on February 20, 2015, to consider adoption of *Item 05-TX-2014—REVISIONS TO BASIC MANUAL RULES, FORMS, AND ENDORSEMENTS FOR PROFESSIONAL EMPLOYER ORGANIZATIONS* and *Item 06-TX-2014—REVISIONS TO EXPERIENCE RATING PLAN MANUAL RULES FOR PROFESSIONAL EMPLOYER ORGANIZATIONS* (the notice of that filing is on the TDI website). To comment on the filings, please submit two copies of your comments by 5 p.m., Central time, on March 4, 2015. Refer to TDI ECase No. 7643. Send one copy by mail to the Office of the Chief Clerk, Texas Department of Insurance, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104; or by email to chiefclerk@tdi.texas.gov. Send the other copy by mail to Nancy Moore, Team Lead, Workers' Compensation Classification and Premium Calculation, Mail Code 105-2A, P.O. Box 149104, Austin, Texas 78714-9104; or by email to nancy.moore@tdi.texas.gov. You may also present comments at the hearing.

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