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TO: Delaware Classification and Rating Committee

FROM: Betty Ann Campbell
Director – Rating Rules & Policy Reporting

DATE: July 23, 2009

RE: Professional Employer Organization - Executive Officers/Limited Liability Company Members Salary Limitation

Bureau staff has recognized that there exists confusion in the treatment of executive officer/limited liability company (LLC) members' salaries when a corporation/LLC enters into an agreement with a professional employer organization (PEO) for the leasing of ALL of the entity's employees, including corporate officers/LLC members. Questions have arisen as to whether a corporate officer's/LLC member's salary should be limited when they are covered by the policy of the PEO.

Staff has researched this procedure by investigating other jurisdictions handling of corporate officer/LLC members salaries and has found that, in the vast majority of other states which have PEO rules, regulations and procedures, salaries of corporate officers/LLC members are not limited when the entity enters into an employee leasing arrangement.

In order to clarify our procedure, staff recommends adding the following to the Manual with a proposed effective date of **December 1, 2009.**

SECTION 1 – UNDERWRITING RULES

RULE IX – SPECIAL CONDITIONS OR OPERATIONS AFFECTING COVERAGE AND PREMIUM

A. EXECUTIVE OFFICERS

4. Executive Officers Remuneration – TREATMENT OF:

8. Professional Employer Organization (PEO) – Corporate and Limited Liability Clients

The full remuneration of an executive officer(s) or owner member(s) of a Limited Liability Company (LLC) shall be included in the payroll of the PEO without payroll limitation. Executive officers or member owners of an LLC may elect to not to be subject to the Delaware Workers Compensation Law. Refer to Rule 2. – Law and Status of this section for officer exclusion procedure. The corporate entity or LLC may also obtain a separate policy of insurance for their officer(s) or LLC member owners.

AGREEMENT BY EXECUTIVE OFFICER(S)/LLC MEMBERS(S) NOT TO BE SUBJECT TO THE DELAWARE WORKERS' COMPENSATION LAW

Executive officers of corporations and members of Limited Liability Companies (LLCs) are covered under the Delaware Workers' Compensation Law. However, up to eight (8) executive officers who are stockholders of a corporation or up to four (4) members of an LLC may elect not to be subject to Delaware Workers' Compensation Law by completing this agreement with their corporation/LLC. ***SPECIAL NOTE:*** - ***CONSTRUCTION*** corporations/ LLCs subject to Title 30, Chapter 25 of the Delaware Code may elect to exclude up to four (4) executive officers who are stockholders of a corporation or up to four (4) members of an LLC. Executive Officers are the president, any vice president, secretary, treasurer or any other executive officer(s) elected by the board of directors in accordance with the charter and the regularly adopted by-laws of the corporation . This Executive Officer/LLC member Exclusion Procedure must be repeated each time a corporation/LLC wishes to change the status of any executive officer/LLC member and/or secures coverage from a different carrier group.

Name of business

_____

Address of business

_____ _____ _____ _____

Street/Road/PO Box Town/City State Zip code

Federal Employer Identification Number ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

Business ***has*** employee(s) (other than those listed below) - please check here ____
Business ***does not have*** employee(s) (other than those listed below) - please check here____

Please check type of business

□ **Corporation** Not Subject to Title 30, Chapter 25 (non construction) – *Maximum 8 exclusions*
□ **Corporation** Subject to Title 30, Chapter 25 (**construction**) – *Maximum 4 exclusions*
□ **Limited Liability Company** (LLC) – *Maximum 4 exclusions*

_____ _____ _____

Signature of Representative of Corporation or LLC ***Title*** ***Date***

Named below are the executive officer(s)/LLC member(s) electing not to be subject to the Delaware Workers Compensation Law:

NAME(s) (Print name)	TITLE	MEMBER OFFICER(S) SIGNATURE	STOCKHOLDER YES/NO	DATE

Additional space below cannot be used by Title 30, Chapter 25 corporations or any limited liability company.

IMPORTANT: If you have workers compensation insurance, you *must* submit the *original* of this completed form to your insurance carrier, together (in the case of a corporation) with the shareholders resolution(s), shareholders agreement(s), and/or shareholders written consent(s) evidencing the executive officer status of the electing executive officer(s), or together (in the case of an LLC) with the operating agreement and/or certificate of formation evidencing the member status of the electing member(s). If you are a subcontractor, you *must* also provide a copy of the same documents to each general contractor by whom you are hired.