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March 14, 2017

Docket Clerk
Hearings and Appeals
Division of Insurance
1000 Washington Street
Boston, MA 02118-6200

Re: Comments on Docket No. G2017-08, Proposed Amendments to 211 CMR 111.00

To Whom It May Concern:

On behalf of the National Association of Professional Employer Organization's (NAPEO's) New England Leadership Council, I would like to convey NAPEO's appreciation for the opportunity to provide comments on the proposed amendments to 211 CMR 111.000, Workers Compensation Insurance Requirements Applicable to Employee Leasing Companies and Their Client Companies. NAPEO is opposed to the proposed changes to the definition of "employee leasing arrangement" as we believe a written contract is critical to the co-employment relationship and of benefit to the PEO, client company and worksite employees. Further, contractual certainty is critical to the health and efficiency of the workers' compensation system.

NAPEO is the largest trade association for professional employer organizations (PEOs), which provide comprehensive HR solutions for small and mid-sized businesses. NAPEO represents approximately 300 PEO member companies that provide services to over 156,000 businesses employing more than 2.7 million workers nationwide. **In Massachusetts, NAPEO's footprint includes 70 member companies who report doing business in the Commonwealth, almost 30,000 worksite employees and over a billion dollars in worksite wages.**

A PEO – the modern term of art for what the regulations deem an employee leasing company – undertakes a co-employer role to provide human resources services such as administration of workers' compensation insurance, medical benefits, and payroll and wage-related tax withholding to a client workforce. By law and by a contract commonly referred to as a client services agreement (CSA), the co-employment relationship involves a sharing of employer rights and responsibilities between the PEO and the client. In some cases they are shared, in others they are co-equal but separate, and sometimes they are allocated to one or the other through the CSA, statute or regulation.

PEOs and Workers' Compensation

NAPEO members are committed to upholding the integrity of the workers' compensation system and working with the carriers, rating bureaus, and regulators who administer the system. PEOs have positive incentives to further the efficiency and viability of the system and to improve worker safety, resolving injured worker claims, and reducing workplace injury.

Safer work environments are created when PEOs are the workers' compensation policyholders. Effective safe practices such as pre-employment drug tests, loss control and safety procedures, claims management of injuries, safety training, employee assistance plans, back-to-work programs, and drug-free workplace programs enhance employee safety and well-being. Many of these safety practices are new to the typical PEO client – a small to mid-sized business without the time, expertise, or resources to cater to worker safety concerns. Co-employees benefit from safer workplaces, employee, PEO and clients alike benefit from fewer workplace injuries.

Comprehensive case management ranging from monitoring treatment to carrier contact ensures that injured workers receive proper care. Return-to-Work programs enable workers to benefit from a restoration of normalcy through either a modified job to accommodate the worker's injury or a job at a different worksite employer. Effective, aggressive management of injured worker needs and claims benefits the injured worker, client companies, the PEO and the Commonwealth.

Definition of Employee Leasing Arrangement

The existing definition of employee leasing arrangement properly explains the role of a PEO. However, we have concerns with the addition of the phrase “whether or not in writing” and the related additional sentence in the proposed amendments because it would cause uncertainty. An unintended consequence of this change would be ambiguity in employment status, which would be of detriment to all parties involved. As explained above, the complex nature of a PEO relationship requires a CSA allocating roles and responsibilities. The CSA provides needed clarity to the PEO and client in this regard. Further, this contractual specificity is of benefit to employees as it ensures either the PEO or the client is deemed the responsible party for all employment matters, including workers' compensation coverage.

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We appreciate your consideration of our comments on Docket No. G2017-08, the proposed revisions to 211 CMR 111.000. Should you have any questions with respect to the issues discussed herein or NAPEO's position on such matters, please contact me at (781) 314.1120 or Melissa Kelly of NAPEO at (703) 739-8179.

Sincerely,



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