

INSURANCE  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF INSURANCE

Insurance Producer Standards Of Conduct: Marketing

Activities For Which A Person Must Be Licensed As An Insurance  
Producer Or Registered As A Limited Insurance Representative

Professional Employer Organizations and Employee Leasing Companies

Proposed Amendments: N.J.A.C. 11:17A-1.2 and 1.4

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, and 17:22A-48 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal: PRN 2003-389

Submit comments by November 14, 2003 to:

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The agency proposal follows:

**Summary**

The purpose of the proposed amendments is to clarify those activities undertaken by a professional employer organization (PEO) or an employee leasing company, or by the employees of such entities, which require licensure as an insurance producer.

Pursuant to N.J.S.A. 34:8-67, a “professional employer organization” or “employee leasing company” is a sole proprietorship, partnership, corporation or other business entity,

which devotes a substantial portion of its business to providing the services of employees pursuant to one or more employee leasing agreements and provides services of a nature customarily understood to be employer responsibilities. See N.J.S.A. 34:8-67. These commercial entities typically contract with small to medium size businesses to assume and manage various human resource and personnel responsibilities. While the nature and degree of the responsibilities assumed by the PEO may vary from contract to contract, there appears to be a core of functions that are normally undertaken by a PEO for its customer. These include: payroll; human resources functions, such as recruitment, hiring, training and firing; and administration of employee benefit plans. To the extent that PEOs assume human resources functions, they may be a valuable asset to a company. However, where a PEO exceeds these activities and engages in the business of insurance without proper licensure, the Department must fulfill its regulatory and enforcement responsibilities.

N.J.S.A. 17:22A-29 et seq. provides that a person or entity that sells, solicits or negotiates insurance coverage is required to possess the requisite insurance license. The proposed amendments clarify those activities in which PEOs and employee leasing companies may engage notwithstanding their lack of a producer license.

N.J.A.C. 11:17A-1.2 is being proposed for amendment to include a definition of a "professional employer organization."

Proposed N.J.A.C. 11:17A-1.4(d) identifies activities that are not deemed to constitute the solicitation, negotiation or sale of an insurance contract so as to require licensure, and sets forth related activities that would not trigger the licensure requirement. The amendment provides specifically that when PEOs perform insurance related activities, such as providing information on the single insurance plan available through them or distributing literature on

multiple insurance plans available, they would not be deemed to be engaged in the activity requiring licensure. In the event that a PEO performs an activity deemed to be an activity that requires licensure, the PEO would be subject to the penalty provisions of N.J.S.A. 17:22A-45.

This proposal provides for a comment period of 60 days and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

#### **Social Impact**

The proposed amendments will have a positive social impact on businesses that seek to use the services of PEOs. The Department anticipates that this delineation of the roles performed by PEOs and those performed by licensed producers will ensure that only properly licensed individuals and businesses engage in the business of insurance. Therefore, the general public will be positively impacted.

#### **Economic Impact**

The Department believes that there will be no negative economic impact on the general public as a result of these amendments. Businesses seeking to use the services of PEOs may continue to engage them to perform those activities for which an insurance license is not required. On the other hand, when and where insurance related activities which require licensure are undertaken, such as providing information regarding insurance costs and coverages, only properly licensed producers will be permitted to act. Training costs and fees associated with licensure are part of normal business expenses that would not have an adverse economic impact on those firms.

### **Federal Standards Statement**

A Federal standards analysis is required when any State agency proposes to adopt, readopt, or amend State regulations that exceed any Federal standards or requirements.

The proposed amendments deal with PEOs and those insurance-related activities that require licensure in the State of New Jersey. Insurance licensing requirements are exclusively the subject of State law and are not subject to any Federal standards or requirements. Thus, no Federal standards analysis is required.

### **Jobs Impact**

The Department is not able to determine if any jobs will be generated or lost as a consequence of the proposed amendments. There have been no workforce development studies on this subject and the Department cannot determine if the enforcement of these licensing rules will have an adverse impact on PEOs. Since PEOs should not be engaged in the business of insurance without being properly licensed, these rules should not have any adverse impact. The Department welcomes input on this subject from all knowledgeable commenters.

### **Agriculture Statement**

The Department does not anticipate any impact on agriculture from the proposed amendments.

### **Regulatory Flexibility Analysis**

The Department believes that the proposed amendments will apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., because

some affected PEOs may have fewer than 100 full-time employees. To the extent that these amendments will apply to such small businesses, those PEOs will be required to comply with the rule.

Any PEO that engages in the business of insurance as set forth in the amendments, will have to comply with the applicable licensure requirements or refrain from engaging in the insurance-related practices. Training costs and fees associated with licensure are part of normal business expenses that would not have an adverse economic impact on those firms. Since the licensure laws do not provide for the relaxation of any licensing requirements based on the size of a regulated entity, these amendments also make no exceptions for small businesses. All businesses should be able to comply should be able to comply with the proposed amendment utilizing existing staff, professional services, or resources.

#### **Smart Growth Impact**

The proposed amendments have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposed amendments follows: additions indicated in bold face **thus**; deletions indicated in brackets [thus].

## CHAPTER 17A

INSURANCE PRODUCER AND LIMITED INSURANCE  
REPRESENTATIVE STANDARDS OF CONDUCT: MARKETING

## 11:17A-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

. . . .

**"Professional employer organization" (PEO) means a sole proprietorship, partnership, corporation or other business entity, which would constitute a PEO or employee leasing company as defined in N.J.S.A. 34:8-67.**

. . . .

## 11:17A-1.4 Selling, soliciting or negotiating an insurance contract.

(a) - (c) (No change.)

**(d) Except as provided in (d)1 below, no professional employer organization or its employees, principals and/or agents shall engage in any activities listed in subsection (b) above at any time, including while negotiating and/or conducting business with any client company or prospective client company, unless the activity is conducted or performed by a properly licensed insurance producer.**

**1. Professional employer organizations whose only insurance related activity when enrolling new members is either providing information on the single insurance plan available through the PEO, distributing literature on multiple insurance plans available or performing only those functions described in N.J.S.A 17:22A-30b(2) shall not be deemed to be engaged in activity requiring licensure pursuant to (b)7, 8 or 10 above.**