WEST VIRGINIA CODE: §33-46A-7

§33-46A-7. Workers' compensation.

- (a) The responsibility to obtain workers' compensation coverage for covered employees in compliance with all applicable law shall be specifically allocated in the professional employer agreement to either the client-employer or the PEO.
- (b) If the responsibility is allocated to the PEO under the agreement:
- (1) The agreement shall require that the PEO maintain and provide workers' compensation coverage for the covered employees from a carrier authorized to do business in this state: Provided, That the provisions of section seven, article two, chapter twenty-three of this chapter may not be abrogated by a PEO agreement and the client-employer shall at all times remain ultimately liable under chapter twenty-three of this code to provide workers' compensation coverage for its covered employees;
- (2) The insurer shall report:
- (A) Payroll and claims data for each client-employer to the commissioner or his or her designated advisory organization in a manner that identifies both the client-employer and PEO; and
- (B) Coverage status with respect to each client-employer in accordance with the proof of coverage requirements provided for in statute and rules.
- (c) Workers' compensation coverage may be provided:
- (1) On a master policy basis, under which a single policy issued to the PEO provides coverage for more than one client-employer, and may also provide coverage to the PEO with respect to its worksite employees: Provided, That on or before July 1, 2008, the commissioner shall promulgate an emergency legislative rule in accordance with the provisions of section fifteen, article three, chapter twenty-nine of this code, and shall also propose an exempt legislative rule for adoption by the industrial council in accordance with the provisions of subdivision (2), subsection (j), section one-a, article one, chapter twenty-three of this code, establishing standards for the reporting of client-employer experience in sufficient detail to enable the assignment of an experience modifier upon termination of the professional employer agreement: Provided, however, That no mandatory workers' compensation coverage may be provided through a PEO arrangement to any client-employers on a master policy basis other than through coverage in the voluntary market, as that term is defined in subsection (u), section two, article two-c, chapter twenty-three of this code.
- (2) On a multiple coordinated policy basis, under which a separate policy is issued to or on

behalf of each client-employer or group of affiliated client-employers with certain payment obligations and policy communications coordinated through the PEO; or

- (3) On any other basis approved by the commissioner.
- (d) This article does not prohibit grouping together the client-employers of a PEO for the purposes of offering dividend eligibility, applying a discount to the premium charged, applying a retrospective rating option arrangement or the use of any other loss sensitive rating options or large deductible policies as allowed under state law.
- (e) The protection of the exclusive remedy provision of section six, article two, chapter twenty-three of this code, shall apply to the PEO, the client-employer, and to all covered employees and other employees of the client-employer irrespective of whether the PEO or the client-employer obtains the workers' compensation coverage.
- (f) The commissioner shall propose rules in accordance with the provisions of subsection (c), section five, article two-c, chapter twenty-three of this code, for adoption by the Industrial Council, to effectuate the purposes of this section, including the manner in which notice of default of a master policy must be given to client-employers.