



**ACKNOWLEDGEMENT OF DISCLOSURE FOR  
EMPLOYER-OWNED LIFE INSURANCE POLICIES**

In connection with the purchase of life insurance policies on the following insured (s)  
**(attach extra pages if necessary)**

<b>Name of Insured</b>	<b>Policy Number (if existing policy)</b>
_____	_____
_____	_____
_____	_____
_____	_____

The undersigned acknowledges that:

- The employer named below (“Employer”) has received the document entitled “Disclosure for Employer-Owned Life Insurance Policies” (for New York or Non-New York depending upon contract issue state) and
- Employer is solely responsible for ensuring that it complies with all legal requirements related to life insurance it purchases on its employees.

\_\_\_\_\_  
Employer Name

\_\_\_\_\_  
Signature of Authorized Officer

\_\_\_\_\_  
Name and Title of Authorized Officer  
(Please Print)

## DISCLOSURE FOR EMPLOYER-OWNED LIFE INSURANCE POLICIES (New York Employers)

The attached sample form is intended to help clients satisfy certain notice and consent requirements for employer-owned life insurance (“EOLI”) under federal tax legislation that was enacted on August 17, 2006 as well as under existing New York State insurance law. **Failure to satisfy these requirements can result in loss of income tax-free treatment of the policy’s death benefit.** The following generally describes these requirements as well as a reporting requirement contained in the federal legislation. All clients need to consult their legal counsel to ensure that they comply with all legal requirements related to life insurance they purchase on employees.

### Federal Tax Law

#### *Definition of EOLI*

Internal Revenue Code (“Code”) Section 101(j) defines EOLI as a life insurance contract which:

- is owned by a person engaged in a trade or business (an “employer”) and under which the employer or a related person (collectively, the “applicable policyholder”) is directly or indirectly a beneficiary under the contract and
- covers the life of an insured who is an employee with respect to the applicable policyholder on the date the contract is issued.

Please note the following about this definition:

- First, it does not define when an employer will be deemed to “own” a policy. It is currently unclear whether an employer will be deemed to own policies that are owned by related persons.
- Under this definition, for a contract to be considered an EOLI contract, the applicable policyholder must have an interest in the policy. Accordingly, contracts where the entire death benefit will be paid directly to the employee should not be considered EOLI contracts.

#### *Notice and Consent Requirements*

Generally, Code Section 101(j) provides that, in the case of an EOLI contract, the applicable policyholder’s portion of the death benefit (less premiums paid by the applicable policyholder) is taxable unless notice and consent requirements are met *and* one of the following three exceptions applies:

#### Recent Employees

The insured was an employee of the applicable policyholder at any time during the 12-month period prior to the insured’s death.

#### Directors and Highly Compensated Employees

At the time the contract was issued, the insured was:

- a director of the applicable policyholder, or
- a highly compensated employee of the applicable policyholder. For this purpose, a “highly compensated employee” for any year generally includes an employee who:
  - is among the highest paid 35% of employees;
  - at any time during the year or preceding year was a 5% owner; or
  - had compensation for the preceding year in excess of the dollar limit in Internal Revenue Code Section 414(q) (for 2006, this amount is \$100,000)

### Amounts Paid to Heirs

The applicable policyholder's portion of the death benefit is:

- paid to a family member of the insured,
- paid to an individual who is a designated beneficiary of the insured (other than the employer or a related entity),
- paid to a trust for the benefit of any such family member or designated beneficiary,
- paid to the estate of the insured or
- used to purchase an equity (or partnership capital or profits) interest in the applicable policyholder from
- such a family member, beneficiary, trust or estate.

Note that, although Code Section 101(j) does not specify when the applicable policyholder's portion of the death benefit must be paid or used as above, the legislative history indicates that it should be paid or used by the due date of the tax return for the taxable year of the applicable policyholder in which the death benefit is received.

Thus, if the notice and consent requirements are met, and the contract meets one of the above exceptions, the portion of the death benefit received by the applicable policyholder will not be subject to federal income tax. Under the notice and consent requirements, before the issuance of the contract, the employee must:

- be notified in writing of the applicable policyholder's intent to insure his/her life and the maximum face amount for which the employee could be insured at the time the contract is issued,
- provide written consent to being insured under the contract and to such coverage continuing after he/she terminates employment and
- be informed in writing that the applicable policyholder will be a beneficiary of any proceeds payable upon the death of the employee.

### *Reporting Requirements*

Code Section 6039I imposes certain reporting requirements on every applicable policyholder who owns EOLI contracts. Specifically, they are required to file a return with the IRS for each year the contracts are owned showing:

- the number of their employees at the end of the year,
- the number of such employees that are insured under EOLI contracts at the end of the year,
- the total amount of insurance in force at the end of the year under such contracts,
- the name, address and taxpayer identification number of the applicable policyholder and the applicable policyholder's type of business and
- that the applicable policyholder has a valid consent for each insured employee (or, if such consents are not obtained, the number of insured employees for whom such consent was not obtained).

### *Effective Date*

The above rules generally apply to life insurance contracts issued after August 17, 2006, with a possible exception for certain contracts issued pursuant to an Internal Revenue Code Section 1035 exchange. Note, however, that material increases in the death benefit or other material changes will generally cause an existing contract to be treated as a new contract that may be subject to the above rules.

## **New York State Insurance Law**

For a New York employer to purchase life insurance on the life of an employee, the employer must have an “insurable interest” in the employee as defined by New York State Insurance Law. An employer will generally be considered to have an insurable interest in an employee in two circumstances:

- First, under New York State Insurance Law Section 3205(a)(1)(B), an employer has an insurable interest in the lives of “key persons.” The definition of “key person” for this purpose is generally based on the federal definition above for “highly compensated employee.”
- Second, under New York State Insurance Law Section 3205(d), an employer has an insurable interest in the lives of any of its or its affiliates’ employees who are not key persons but who are participants in an employee benefit plan established or maintained by the employer, provided that, among other requirements, the employer:
  - notifies prospective insureds in writing prior to or at the commencement of life insurance coverage that coverage is being obtained on their lives,
  - requires that prospective insureds consent in writing to such coverage,
  - provides each consenting insured the right to have any coverage discontinued at any time,
  - describes in the notice the method the insured may use to terminate the coverage,
  - notifies the insured of the right to discontinue such coverage at the time the insured’s employment terminates, provided, however, that no such notification is required if the insured employee possesses a present or prospective right to receive any of the benefits under an employee benefit plan being financed, in whole or in part, by such coverage and
  - notifies the insured of his/her right to discontinue such coverage upon the termination of an employee benefit plan being financed, in whole or in part, by such coverage or a reduction of the benefits provided thereunder.

Note that, currently, neither AXA Equitable nor MONY Life nor AXA Distributors, LLC offers a life insurance product for the non-key employee market.

*Circular 230 Disclosure: Please be advised that this document is not intended as legal or tax advice. In addition, U.S. Treasury Regulations require us to inform you that “any tax information provided in this document is not intended or written to be used, and cannot be used, by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer. The tax information was written to support the promotion or marketing of the transaction(s) or matter(s) addressed and you should seek advice based on your particular circumstances from an independent tax advisor.”*

**SAMPLE NOTICE AND CONSENT FORM FOR  
EMPLOYER-OWNED LIFE INSURANCE  
(New York Employers)**

*This is a specimen document only. It is being furnished solely to provide a client's tax advisor with sample language. A client's tax advisor or legal counsel should review and modify this document before it is utilized for any purpose.*

**NOTICE**

You are hereby notified that:

- \_\_\_\_\_ ("Employer") intends to purchase a life insurance contract insuring your life;
- the maximum face amount for which your life could be insured is \$\_\_\_\_\_; and
- Employer will be a beneficiary of the following portion of the proceeds payable from the life insurance contract upon your death:

\_\_\_\_\_  
\_\_\_\_\_.

You have the right to discontinue this life insurance coverage at any time by: **[employer must specify the method by which the insured may terminate coverage]**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

**CONSENT**

I, \_\_\_\_\_, hereby consent to the life insurance coverage described above and to such coverage continuing after I terminate employment with Employer.

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Employee Name (Please Print)

\_\_\_\_\_  
Date