



COMPENSATION RATING AND INSPECTION BUREAU

60 PARK PLACE
NEWARK, NEW JERSEY 07102
(973) 622-6014

BONNIE PIACENTINO
Executive Director

KRYSTAL A. ROSS
Associate Executive Director
Chief Actuary

November 22, 2023

MANUAL AMENDMENT BULLETIN #511

TO: All Bureau Members and Subscribers

RE: Payroll Inclusions and Exclusions

Background

The Acting Commissioner of Banking and Insurance has approved an amendment to the New Jersey Workers Compensation and Employers Liability Insurance Manual (Manual) to address various financial considerations that are either included or excluded in the payroll used to calculate premium for workers compensation.

Manual Changes

Part 3, Section 3, Rule 30 (3:3-30) titled "Payroll," Rule 3:3-35 titled "Remuneration Excluded," and Rule 3:3-47.1 titled "Travel Expense Reimbursements and Allowances."

The attached change will be effective January 1, 2024.

JOH:cs
Att.

Effective January 1, 2024

applied in any case where any other manual classification more accurately describes the enterprise or where the language of any manual classification so qualified prescribes other treatment.

- (b) **"NPD"** This expression is an abbreviation of the words "no payroll division." A classification so restricted may be used for division of payroll only in accordance with the following provisions:
 - (i) A classification which carries an **NPD restriction applying only to specific classifications** shall not be used for division of payroll in connection with any of the classifications specified in the restriction unless the operation described by the restricted classification constitutes a separate and distinct enterprise having no connection with the operations covered by any of the classifications specified in the restriction.
 - (ii) A classification which carries an **unqualified NPD restriction** shall not be used for division of payroll in connection with any manual classification (other than the Standard Exceptions or General Exclusions) unless the operation described by the restricted classification constitutes a separate and distinct enterprise having no connection with the operations covered by any other classification applicable to the risk.
 - (iii) **Application to Mercantile, Mining, Construction and Erection Operations.** Rules (i) and (ii) above, in the case of classifications applicable to mercantile or mining operations, apply only to the operations comprising each separate location and, as to construction or erection operations, apply only to the operations comprising each separate job or location.
- (c) **"NO" or "NOT."** A classification which carries a restrictive phrase beginning with "no" or "not," shall not be applied to any risk which conducts any operation described in such restrictive phrase. This restriction, in the case of classifications applicable to mercantile or mining operations, applies only to the operations comprising each separate location and to construction or erection operations applies only to the operations comprising each separate job or location.
- (d) **"INCLUDING."** If a classification carries a descriptive phrase "including" or "&" certain operations or employees, division of payroll shall not be made for such operations or employees even though they are specifically described by some other classification of this Manual or are at a separate location.
- (e) **"TO BE SEPARATELY RATED."** If a classification carries a directional phrase requiring that specified operations or employees are "to be separately rated" or the equivalent phrase, all payroll for such operations or employees shall be separately classified and rated in accordance with the provisions of 3:3-19 of this Manual.
- (f) **"OR."** The word "or" when used in the classification phraseology shall be understood to have the same meaning as though expressed "and/or."
- (g) **"ALL."** If a classification carries a descriptive phrase beginning with "all" as in the expression "all employees," "all other employees," "all operations," "all work to completion," division of payroll shall not be made for any employee or operation (other than the General Exclusions, 3:3-25 or Standard Exceptions, 3:3-26 of this Manual), without regard to the location of such operations, except for an operation not incidental to and not usually associated with the enterprise described by such a classification.
- (h) **"CLERICAL."** The word "clerical" when used in a classification phraseology shall mean "Clerical Office Employees" or "Drafting Employees" as defined in 3:3-26 (a) and (b) of this Manual.
- (i) **"SALESPERSONS."** The word "salespersons" when used in a classification phraseology shall mean "Salespersons—Outside" as defined in 3:3-26 (c) of this Manual.
- (j) **"DRIVERS."** The word "drivers" when used in a classification phraseology shall mean "Drivers, Chauffeurs and their Helpers" as defined in 3:3-26 (d) of this Manual.

Basis of Premium

- ★ **30. Payroll.** Payroll is the basis of premium. Except as otherwise provided in this Manual, payroll is the entire remuneration as defined herein, whether paid in money or a substitute for money, for services rendered by an employee and shall include:
 - (a) Commissions including draws against commissions.
 - (b) Bonuses including stock bonus plans.
 - (c) Payments to employees made on any basis other than time actually worked, including but not limited to piecework, incentive plans or profit sharing arrangements.
 - (d) Wages for holidays, vacation or sickness periods.
 - (e) Board and lodging in accordance with 3:3-31 of this Manual.

Effective January 1, 2024

- ★ (f) Gratuities in accordance with 3:3-32 of this Manual, and any service charge as identified by the Internal Revenue Service (IRS) Publication 15, Employer's Tax Guide.
- (g) Extra wages for all overtime work in accordance with 3:3-33 of this Manual.
- (h) Payments or allowances to employees for hand or power tools furnished by employees.
- (i) Payments by the employer of contributions required by law to statutory insurance or statutory pension plans, such as the Federal Social Security Act, which otherwise would be paid by the employee.
- (j) Annuity Plans
- ★ (k) Payments for salary reduction for health savings accounts (HSA), flexible spending accounts (FSA), employee savings plans, stock option purchasing, nonqualified employee stock purchase plans (ESPP), and retirement or cafeteria Plans (IRC 125) which are made through deductions from the employee's gross pay.
- ★ (l) Employer contributions to an employee's cashless exercise of stock options.
- ★ (m) The value of equity-based compensation plans (such as stock transfers, stock warrants, restricted stock, restricted stock units, phantom stock plans and stock appreciation rights), other than stock options or stock purchase plans, at the time of vesting. This applies when vesting is on scheduled or annual basis, such as graded vesting, schedule cliff vesting, performance goals vesting and milestone anniversary vesting.
- ★ (n) Payments of deferred compensation, retroactive wages or salaries to current employees during the policy period.

31. Board and Lodging. Board and lodging when furnished by the employer as part of the wages shall be included as remuneration (except in connection with classifications which specifically provide that board and lodging shall not be included) and valued at \$25 per week, unless the money value of such advantages shall have been otherwise fixed by the parties at the time of hiring.

For Board alone—\$15 per week for each employee

For Lodging alone—\$10 per week for each employee

The above value of board shall be prorated when board is furnished for less than five days per week. (No additional charge shall be made when board is furnished for more than five days per week.)

32. Gratuities. Gratuities received regularly in the course of employment from others than the employer shall be included as remuneration except in connection with classifications which specifically provide that gratuities shall not be included. The actual amount of such gratuities shall be used where the employer has kept a regular daily or weekly record of the amount of gratuities so received. If no such record has been kept, then the amount shall be fixed at \$10 per week (\$2 per day) for each employee receiving gratuities.

33. Treatment of Overtime Remuneration. If the employer's books and records are maintained so as to show separately, by employee and in summary by class of work,

- (a) the extra remuneration earned for overtime in excess of the remuneration which would have been earned for such overtime had the regular rate of pay applied,
- or
- (b) the total remuneration for overtime for those hours worked at increased rates of pay, the remuneration upon which the premium for the policy is based shall exclude, respectively,
 - (i) all of the remuneration in (a) above,
 - or
 - (ii) one-third of the remuneration shown in (b) or, where double time is paid for overtime and the remuneration therefore is shown separately, one-half of the remuneration at double time.
- (c) For the purpose of this rule "Overtime" shall mean those hours worked for which there is an increase in the rate of pay,
 - (i) for work in any day or in any week in excess of the number of hours normally worked but in any event for hours worked in excess of eight hours in any day or forty hours in any week,
 - or
 - (ii) for work performed on Saturdays, Sundays, or holidays.

Provided, however, that in the case of guaranteed wage agreements under which the employee receives a guaranteed wage for actually working any number of hours up to a specified number of hours per week, "Overtime" shall include only those hours worked in excess of such specified number.

Effective January 1, 2024

34. Substitutes for Money. Whenever employees are recompensed in whole or in part by the value of rent or housing, or by store certificates, merchandise, credits, or any other substitute for money, such form of payment shall be considered as remuneration and the equivalent money value thereof included.

- ★ **35. Remuneration Excluded.** The entire remuneration shall be used as the basis of premium, except as provided below:
- (a) Remuneration, other than as provided in 3:3-30 (i) of this Manual, shall not include payments made by the employer (1) to a group insurance or pension plan or (2) to an employee directly in lieu of (1) foregoing because of the provisions of N.J.S.A. 34:11-56 et seq., Section 276A of Title 40 of the United States Code (Davis-Bacon Act), and amendments thereto.
 - (b) Remuneration shall not include special reward for individual invention or discovery.
 - (c) Dismissal or severance payments except for time worked or accrued vacation.
 - (d) Payments made under a formal and established sickness or personal employee benefit program for unused time paid at retirement or termination of employment.
 - (e) Payroll payments, consistent with a standard rate of pay, made to employees during a government-declared, stay-at-home emergency order when the employee is not rendering services during such emergency. These payments are assigned to code 0012, which shall apply during the time of such emergency order and, if appropriate, for such limited time thereafter as is necessary for the employer to return to standard business operations, which in no case shall extend beyond the date established by the Rating Bureau.
 - ★ (f) Deferred compensation, retroactive wages or salaries paid to a retired or terminated employee assuming the payments were after the separation occurred and the employer maintains separate identifying payment records.
 - ★ (g) Employer contributions to a qualified or non-qualified employee stock purchase plan, deferred compensation plan, or the exercise of stock options (except for an employer's contribution to an employee's cashless exercise of stock options)
 - ★ (h) The difference between the market price of a stock and any discounted price paid by the employee to purchase the stock.
 - ★ (i) Equity-based compensation plans that trigger a cliff vesting due to an Initial Public Offering, or a change in majority company ownership where the owners before the change own less than one-half interest after the change.

36. Estimated Payrolls. For each classification there shall be inserted in the policy an adequate estimate of payroll for the policy period, as hereinbefore defined. Estimated payroll shall approximate the actual expenditures as shown by previous records or by inspection.

37. Estimated Payrolls by a New Carrier. When a risk passes from one carrier to another the estimated payroll used by the new carrier shall in no case be less than the payroll shown on the expiring policy unless the carrier of the expiring policy shall concur upon such lesser estimate. The requirements of any carrier as to estimated payroll shall be subject to the approval of the Rating Bureau.

38. Division of Single Employee's Payroll. The payroll of any one employee shall not be divided between two or more classifications. The entire payroll of each employee shall be assigned to the highest rated classification representing any part of his work. This rule shall not apply in the case of construction, erection, stevedoring work or the operation of aircraft where the rules of this Manual permit division of payroll provided the original records of the employer disclose the proper allocation of the individual employee's time.

39. Executive Officers Defined. Executive Officers are defined as the active, regularly constituted officers of a corporation or unincorporated association and shall include those commonly known and styled as President, Vice President, Secretary or Treasurer.

In order to be considered a "regularly constituted" officer, all three of the following criteria must be met:

- (a) Those persons must be duly named in the Corporate or Business Charter as filed with the Secretary of State of the State of incorporation or the Governing body for the trade name filings;
- (b) Those persons must be duly elected or appointed as evidenced and verified in accordance with the By-Laws and shown in the minutes of the Board meeting; and
- (c) Those persons must have decision making authority in the day-to-day operations of the employer via regular and annual meetings of the officers and/ or Board of Directors.

Effective January 1, 2023

Regularly constituted officers are "active" only if at least one of the following conditions are met:

- (a) They have regular duties; or
- (b) They receive remuneration for services rendered.

40. Executive Officers' Payroll. In every instance the payroll of all active executive officers shall be included in the statement of payroll and a premium charge thereon subject to a maximum average individual payroll of three thousand one hundred fifty dollars (\$3,150) per week and a minimum average of seven hundred ninety dollars (\$790) per week.

41. Adjustment of Executive Officer's Maximum and Minimum Payroll. Subject in each and every case to submission to and approval of the Rating Bureau upon the basis of a complete statement of facts, the maximum average and minimum average payroll required by this rule shall be subject to pro rata adjustment where the executive does not devote his entire business time to the risk subject to audit.

42. Appointed or Elected Public Officers. If the insured is the State, a county, a municipality or any board or commission, or any other governing body, including boards of education and governing bodies of service districts, the payroll of all insured appointed or elected officers shall be included in the statement of payroll and a premium charged thereon, subject to the following:

- (a) For a member of a board of education, the minimum payroll shall be eight thousand two hundred twenty dollars (\$8,220) per year.
- (b) For any other insured appointed or elected officer, the minimum individual payroll shall be one thousand six hundred forty dollars (\$1,640) per year.
- (c) If a single individual holds more than one elective or appointive office, the minimum payroll specified above shall apply in connection with each such office.

43. Individual Employers and Partnerships. The New Jersey Workers' Compensation Law permits election, by which an individual proprietor or all partners of any partnership including all partners of a limited liability partnership and all members of a limited liability company may be considered employees for the purpose of receipt of benefits and payment of premiums. All partners or all members must agree to the election. This election does not affect the insurance obligations for employees other than the sole proprietor, partners or members.

The election must be made at the time the policy is purchased or renewed and must be effective at the inception date of the policy. The election cannot be rescinded during the policy period.

Insurers must provide the Notice of Election, Form PP- 1B, included in 3:2 of this Manual with each application for new and renewal coverage for entities not operated as corporations. Where election has been made, the policy shall include the New Jersey Sole Proprietors and Partners Coverage Endorsement, WC 29 03 07.

Where coverage has been elected, the remuneration of the individual proprietor or all partners or all members who provide service for financial consideration shall be included in the payroll upon which the policy premium is determined. For purposes of premium determination, such individuals, partners and members shall be treated in the same manner as corporate officers as provided in 3:3-39 through 41 of this Manual.

Where coverage has not been elected, the remuneration of the individual proprietor, partners or members shall not be included in the payroll upon which the policy premium is determined.

44. Reserved for Future Use

45. Subcontractors Employees. The Employers' Liability Insurance Law, N.J.S.A. 34:15-79, provides that if the employer is a contractor he shall be responsible for compensation to the employees of subcontractors. The proper rates based on the operations in which the contractor is engaged shall be applied to the entire payroll of employees of all subcontractors except for any such subcontractors who have furnished satisfactory evidence of such insurance.

If the contractor cannot furnish a true statement of the payroll of the employees of any subcontractor, the entire contract price of such subcontracted work shall be considered as the payroll of employees of that subcontractor.

For all piece work the entire amount paid under the contract for such piece work shall be included as payroll.

Information as to coverage for subcontractors will be furnished to the carrier of the general contractor upon written request to the Rating Bureau.

46. Hired Vehicles. If vehicles, including drivers, chauffeurs and helpers are employed under contract and if the owner of such vehicles has not insured its compensation obligation and furnished evidence of such insurance, the actual payroll of the drivers, chauffeurs and helpers shall be included in the payroll of the insured employer at the proper rate for the operations

Effective January 1, 2024

in which the insured employer is engaged. If such payroll cannot be obtained, one-third (1/3) of the total amount paid for the hire of such vehicles under contract shall be considered as the payroll of the drivers, chauffeurs and helpers. If the proprietor or partners who own the vehicles are also drivers, one-third (1/3) of the contract amount for the vehicles operated by such proprietor or partners shall be included in the payroll of the insured employer. Such amounts shall exclude fuel surcharge costs provided the employer's books and records are maintained to show such costs separately and in summary.

47. Travel Time. Payments made by an employer to an employee to reimburse him for time spent in traveling to or from work, or to or from a specific job, shall be considered as payroll in accordance with the provisions set forth in 3:3-30 of this Manual, and such payroll shall be assigned to the manual classification which applies to the work normally performed by such employee.

★ **47.1 Travel Expense Reimbursements and Allowances.** Reimbursed expenses or flat expense allowances paid to employees shall not be considered as payroll, provided such expenses or allowances:

- a) were incurred upon the business of the employer, and
- b) are shown separately in the records of the employer for each employee, and
- c) approximate the actual expenses incurred by each employee
- ★ d) are paid to the employee in addition to, not in lieu of, the wages earned by the employee

The addition of this rule confirms the treatment afforded itemized reimbursed expenses and establishes the procedure applicable to flat expense allowances.

RATES

48. Rates—Definition. Except as otherwise provided in this Manual, a rate is the unit of premium for every \$100 of payroll and shall be expressed rounded to two decimal places. Rates shall not be subject to modification because of the application of the Experience Rating Plan.

49. Rates—Limitation. The rates set forth in this Manual are for insurance under Article 2 of the New Jersey Workers' Compensation Law. No rates have been included in this Manual for insurance under Article 1 of the Compensation Law.

50. Rates—Where Found. The manual rate for each classification will be found opposite the identifying code number of the classification in the table in 2:1 of this Manual.

51. Rates for Vessels Classifications are set forth in 3:6 of this Manual, entitled "Maritime or Federal Employments."

52. Rates for Federal Employers' Liability Act. The rates for classifications on the rate pages do not contemplate coverage for insurance against employers' liability under the Federal Employers' Liability Act or voluntary compensation insurance for any operations subject to that Act. Rates for such insurance are set forth in 3:6 of this Manual, entitled "Maritime or Federal Employments."

53. Classifications Which Carry the Symbol "A" or "N." Every risk described by a classification which carries either the symbol "A" or "N" on the rate pages shall be submitted by the Home Office to the Rating Bureau for specific rating.

54. Rates to be Shown in the Policy. For each classification there shall be inserted in the policy the manual rates for the appropriate classification as established by the Rating Bureau.

55. Catastrophe Provisions. The terrorism rate shown in 2:1-3(A) of this Manual is applicable to all new and renewal policies. Refer to 3:9 of this Manual for complete terms and conditions relating to this catastrophe provision. The catastrophe (other than certified acts of terrorism) rate shown in 2:1-3(B) of this Manual is applicable to all new and renewal policies. Refer to 3:9 of this Manual for complete terms and conditions relating to this catastrophe provision.

EXPERIENCE RATING

56. Applying Experience Modification to the Policy. Where a risk is subject to experience rating, the experience modification shall be shown in the policy and applied to premiums in accordance with the rules of this Manual. The experience modification shall appear in the policy exactly as promulgated by the Rating Bureau (as a decimal to three places).

In applying the New Jersey experience modification, the following items shall be set forth in the order stipulated: