

**COAL MINE COMPENSATION RATING BUREAU
OF PENNSYLVANIA**

COMMERCE BUILDING – SUITE 403
300 NORTH SECOND STREET
HARRISBURG, PENNSYLVANIA 17101


CHARLES A. ROMBERGER
EXECUTIVE DIRECTOR

TELEPHONE/FAX
717-238-5020

January 17, 2020

COMPENSATION CIRCULAR CM-482

To: All Coal Mine Compensation Insurance Carriers

From: Charles A. Romberger, Executive Director 

RE: Revisions to Manual Sections One and Two
PCRB Filing No. 301 and PCRB Filing No. 302
Approved Effective: April 1, 2020

The CMCRB has filed and the Insurance Department has approved revisions to the Manual Rules concerning the definitions of inclusions and exclusions from Remuneration – Payroll, the definition of Executive Officers and a few other modest housekeeping changes. These revisions keep the Bureau’s Manual as consistent as possible with the Basic Manual approved for the Pennsylvania Compensation Rating Bureau (PCRB).

This Circular includes a copy of Proposal CM-4-2019. This Proposal tracks the changes made to existing language.

Updated manual pages will be available on our website in the near future at:
<http://www.cmcrbpa.com/Manual.html>

Any questions should be directed to the CMCRB.

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Attachments

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December 20, 2019

The Honorable Jessica K. Altman
Insurance Commissioner
Pennsylvania Insurance Department
1311 Strawberry Square
Harrisburg, PA 17120

Attention: Michael McKenney, Actuarial Supervisor, Property & Casualty Bureau

RE: Proposal CM-4-2019
Revisions to Manual Sections One and Two
PCRB Filing No. 301 and PCRB Filing No. 302
To Be Effective: April 1, 2020

Dear Commissioner Altman:

On behalf of the members of the Coal Mine Compensation Rating Bureau of Pennsylvania (Bureau), the Bureau submits revisions to the Pennsylvania Coal Mine Workers Compensation Manual (Manual). These revisions are being made to keep the Bureau's Manual as consistent as possible with the Basic Manual of the Pennsylvania Compensation Rating Bureau (PCRB).

This Proposal contains two types of revisions.

- 1) Some of these revisions reflect the changes that the PCRB made under PCRB Filing No. 301 and under PCRB Filing No. 302.
- 2) The other revisions involve changes that are more general housekeeping in nature, aligning the Bureau's Manual as consistently as possible by adopting provisions of the Basic Manual of the PCRB that predated PCRB Filing No. 301 and PCRB Filing No. 302.

This Proposal consists of this cover letter and the following pages from the Manual with the proposed changes retained in "tracked" formatting.

- Pages 3, 16, 17, 18, 22 and 23 from Section One – Underwriting Rules and
- Pages 1 and 5 from Section Two – Classifications and Loss Costs.

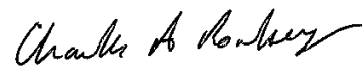
Also, note that the Bureau is not proposing any changes to the Manual Pages that have not been listed above as part of this Proposal.

Our Bureau requests an effective date of April 1, 2020, to maintain conformity with prevailing statewide language. Since we believe that the Department has copies of PCRB Filing No. 301, PCRB Filing No. 302 and the Bureau's current Manual, we have not included copies of these documents with this Proposal.

Our Bureau does not anticipate that these revisions will cause measurable changes to the statistical payroll that is reported to our Bureau going forward. Our Bureau's records do not indicate that we have fielded a single question or concern related to any of the individual elements in our Manual that we propose to change. Consequently, we believe that this Proposal can be reviewed and a decision rendered independently from our pending Loss Costs Proposal, CM-3-2019.

If you have any questions about this Proposal or need copies of the referenced documents, please do not hesitate to contact me.

Sincerely,



Charles A. Romberger
Executive Director

Enclosures:

- 1) Two (2) printed copies of this Proposal (i.e., Cover Letter and draft Manual pages)
- 2) One (1) printed copy of this Cover Letter
- 3) One (1) SASE

3. Exclusions
4. Payroll
5. [Employee Savings Plans](#)
- C. Estimated Payrolls
 1. Estimated Payrolls by Classification
 2. Determination of Estimated Payrolls
 3. Approval of Estimated Payrolls
- D. Whole Dollars – Payrolls
- E. Payroll Limitation
 1. How Payroll Limitation Applies
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RULE VI – PROVISION FOR CLAIM PAYMENT

RULE VII – CARRIER’S RATE

RULE VIII – LIMITS OF LIABILITY

- A. Workers Compensation and Employers Liability Policy
 1. Part One – Workers Compensation
 2. Part Two – Employers Liability
 3. Show Limits on the Information Page
- B. Voluntary Compensation Insurance
 1. Standard Limits
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 3. Premium Determination
 4. Payroll Records

RULE IX – SPECIAL CONDITIONS OR OPERATIONS AFFECTING COVERAGE AND PREMIUM

- A. Executive Officers
 1. Definition
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- B. Sole Proprietors, Partnerships and Member of a Limited Liability Company
- C. Subcontractors
 1. Law on Contractors and Subcontractors
 2. Coverage
 3. Premium for Uninsured Subcontractors
- D. Ex-Medical Coverage
- E. Deductibles
- F. Safety Committee Credit
- G. Employer Assessments
- H. Terrorism
- I. Catastrophe (Other than Certified Acts of Terrorism)

(2) A correction of a misclassification which results in a premium decrease shall be applied to the insured's policy in effect when the application for correction is made and to the prior policy within twelve months after the termination thereof.

(3) A correction of a misclassification which results in a premium increase shall be applied to the employer's first policy effective at least sixty days subsequent to the date of the Bureau's misclassification notice.

D. SHOW THE CLASSIFICATIONS IN ITEM 4 OF THE INFORMATION PAGE

Show the proper classification wording, with or without notes, and show the code number in Item 4 of the Information Page. Capitalized classification wording may be used instead of the entire wording.

RULE V – PREMIUM BASIS

Item 4 of the Information Page

A. BASIS OF PREMIUM – TOTAL REMUNERATION

Premium shall be computed on the basis of the total remuneration paid or payable by the insured for services of employees covered by the policy.

B. REMUNERATION – PAYROLL

1. Definition

Remuneration means money or substitutes for money.

2. Inclusions

Remuneration includes:

~~a.~~ Wages or salaries;

~~ba.~~ Total cash received by employees for ~~c~~commissions or draws against commissions;

~~cb.~~ Bonuses;

~~d.~~ Stock bonus plans – market value of stock at the time it is given to employee (refer to Exclusions, m.) as well as employees' contribution to equity based compensation plans other than stock options;

~~ee.~~ Extra pay for overtime work;

~~fd.~~ Pay for holidays, vacations or periods of sickness or accrued sick time;

~~ge.~~ Payment by an employer of amounts otherwise required by law to be paid by employees to statutory insurance or pension plans, such as the Federal Social Security Act or Medicare;

~~hf.~~ Payment to employees on any basis other than time worked, such as piece work, profit sharing or incentive plans;

~~ig.~~ Payment or allowance for hand tools or power tools used by hand provided by employees and used in their work or operations for the insured;

~~jh.~~ The rental value of housing (e.g., an apartment or a house) provided for an employee based on comparable accommodations;

~~ik.~~ The value of lodging, other than an apartment or house, received by employees as part of their pay, to the extent shown in the insured's records;

~~lj.~~ The value of meals received by employees as part of their pay to the extent shown in the insured's records;

~~mk.~~ The value of store certificates, merchandise, credits or any other substitute for money received by employees as part of their pay;

~~nl.~~ Adjustments necessary to bring employees, such as tipped employees, to federal minimum wage as reported by the United States Department of Labor shall be included;

- o. Payments for salary reduction, retirement or cafeteria plans (IRC 125), health savings accounts and flexible spending accounts which are made through employee authorized salary reductions from the employee's gross pay;
 - p. Prevailing wage payments and fringe benefits paid directly to employees based on required government-specified minimum wage rates, including but not limited to the Davis-Bacon Act or the Pennsylvania Prevailing Wage Act; (see Section Two – Classifications and Loss Costs – Prevailing Wage Payments)
 - q. Annuity plans;
 - r. Expense reimbursements to employees to the extent that an employer's records do not substantiate that the expense was incurred as a valid business expense);
 - s. Automatic Gratuities;
 - t. Deferred or retroactive compensation paid to current employees at time of payment.
3. Exclusions
- Remuneration excludes:
- a. Payments by an employer to group insurance or group pension plans for employees, other than payments covered by Rule V-B.2.e;
 - b. Payments made by the employer to a Group Insurance, Pension Plan or a third party administrator as part of a prevailing wage requirements to an employee directly in lieu of the foregoing because of the Provisions of the Pennsylvania Prevailing Wage Act, 43:1-17 Section 276A of Title 40 of the U.S. Code (Davis-Bacon Act) and amendments thereto. For more details see Rules & Interpretations Section of the Manual.
 - c. The value of special rewards for individual invention or discovery;
 - d. Dismissal or severance payments except for time worked or accrued vacation;
 - e. Tips and other gratuities received by employees; ~~-(refer to Inclusions, n.)~~
 - f. Payments for active military duty;
 - g. Employee discounts on goods purchased from the employee's employer;
 - h. Expense reimbursements to employees to the extent that an employer's records substantiate that the expense was incurred as a valid business expense;
 - i. Meal money for late work;
 - j. Work uniform allowances;
 - k. Sick pay paid to an employee by a third party such as an insured's group insurance carrier which is paying disability income benefits to a disabled employee;
 - l. Employer provided perquisites ("perks") such as;
 - (1) Use of company-provided automobiles;
 - (2) An airplane flight;
 - (3) A discount on property or services;
 - (4) Club memberships;
 - (5) Tickets to entertainment or sporting events;
 - (6) Educational assistance;
 - (7) Relocation and moving expenses;
 - m. Stock option plans – difference between market value of stock and lower option price is not included as remuneration;
 - n. Board of Directors' fees;
 - o. Employer contributions to employee benefits plans such as health savings accounts and flexible spending accounts;

p. Deferred or retroactive compensation paid to retired or terminated employees not employed during the policy period, provided that records adequately show these employees were no longer employees during the policy period.

4. Payroll

Payroll means remuneration. The compensation rates of the carrier shall be applicable to the remuneration of all employees of the insured without exception, and compensation policies shall not be written except upon the entire payroll of the risk which is the subject of the insurance, which risk shall be divided into risk classes where specifically permitted or directed by these rules, but not otherwise. Under no circumstances shall a compensation policy be written on any part of the risk leaving another part of the risk uninsured.

5. Employee Savings Plans

Employee Contributions made in the form of an employee authorized salary reduction, which are diverted by an employee for payment, by the employer, into a savings plan shall be included as remuneration for premium computation purposes. Such payments made by the employer into the plan, of employee salary reduction contributions, shall not be employer contributions.

Employer Contributions of employer funds, made by the employer, the amount which being determined by reference to employee contributions, shall not be considered remuneration for premium computation purposes unless same contributions are reported by the employer as current taxable income to the employee.

C. ESTIMATED PAYROLLS

1. Estimated Payrolls By Classification

For each classification shown on the Information Page, the total estimated annual payroll shall be stated in the column headed Premium Basis – Total Estimated Annual Remuneration.

2. Determination of Estimated Payrolls

Estimated payrolls shown on the Information Page shall reflect actual remuneration anticipated by the insured during the policy period. Such estimates shall be subject to substantiation by records or inspections.

3. Approval of Estimated Payrolls

Adequacy of estimated payrolls is subject to approval by the Coal Mine Compensation Rating Bureau.

D. WHOLE DOLLARS – PAYROLLS

All payrolls shall be shown to the nearest dollar. A remainder of \$.50 shall be rounded to the next higher dollar.

E. PAYROLL LIMITATION

1. How Payroll Limitation Applies

For executive officers, sole proprietors, partners and members of a Limited Liability Company (LLC) that have obtained coverage and classifications with notes which indicate payroll limitation, the payroll on which premium is based shall exclude that part of the employee's average weekly pay in excess of the applicable weekly limitation, which has been approved and published in the Pennsylvania Compensation Rating Bureau Manual, provided:

- a. Books and records are maintained to show separately the total payroll earned by each employee whose average weekly pay for the total time employed during the policy period exceeds the weekly payroll limitation, and

Bodily Injury by Accident: \$100,000 – each accident

Bodily Injury by Disease: \$100,000 – each employee

Bodily Injury by Disease: \$500,000 – policy limit

The limit of liability for Bodily Injury by Accident applies to all bodily injury arising out of any one accident.

The limit of liability for Bodily Injury by Disease – each employee – applies as a separate limit to bodily injury by disease to any one employee and the limit of liability for Bodily Injury by Disease – policy limit – applies as an aggregate limit for all bodily injury by disease, regardless of the number of employees who sustain bodily injury by disease.

2. Increased Limits

The standard limits under Part Two Employers Liability for employees subject to voluntary compensation insurance may be increased. The premium for the increased limits shall be determined by using the Table in Rule A.2.b.

3. Premium Determination

Premium shall be determined on the basis of the workers compensation rules and classifications in this Manual and the carrier's rates for the state workers compensation law designated in the schedule in the Voluntary Compensation and Employers Liability Coverage Endorsement.

4. Payroll Records

When voluntary compensation insurance is provided for a group of employees, separate payroll records shall be maintained by the insured for the designated group of employees.

RULE IX – SPECIAL CONDITIONS OR OPERATIONS AFFECTING COVERAGE AND PREMIUM

A. EXECUTIVE OFFICERS

1. Definition

Executive Officers of a corporation are the President, Vice President, Secretary, Treasurer or any other officer appointed or elected in accordance with the charter or by-laws of the corporation.

2. Law and Status

Executive Officers of a corporation are covered under the Pennsylvania Workers' Compensation Law and have the same status as employees under the policy.

Exceptions to 2. Above:

a. Elected officers of Pennsylvania or its political subdivisions are not considered employees, therefore, they are not covered by the policy.

b. An executive officer, who has ownership interest in a Subchapter "S" corporation or has at least 5% ownership interest in a Subchapter "C" corporation, may elect not to be covered for benefits provided by the PA Workers Compensation Act. Such individuals must be covered for benefits provided by the Federal Mine Safety and Health Act, as amended. If the election is made, the named Executive Officer shall be excluded from benefits under the PA Workers Compensation Act, and their remuneration shall not be included in the calculation of the Traumatic or State OD premium. Their remuneration shall be included in the calculation of the Federal OD premium. In order to be excluded from coverage under the PA Workers Compensation Act, both the employer and the individual Executive Officer must complete and file the appropriate forms with the PA Department of Labor and Industry, Bureau of Workers Compensation. The Executive Officer Exclusion Endorsement (WC 37 03 10 CB) must be completed and attached to the policy,

indicating that the individual Executive Officer is to be excluded from coverage under the PA Workers Compensation Act.

3. Premium Determination

Premium for executive officers, other than the exceptions noted in A.2 above, shall be based on their total payroll, subject to the following:

- a. The requirements of Rule V-E.
- b. The minimum individual payroll for an executive officer is the value published and approved in the Pennsylvania Compensation Rating Bureau Manual.
- c. The maximum individual payroll for an executive officer is the value published and approved in the Pennsylvania Compensation Rating Bureau Manual.
- d. These limitations apply to the weekly payroll of each executive officer for the number of weeks the officer was employed during the policy period.
- e. A part of a week shall be considered a full week in determining the weekly payroll.

4. Assignment of Payroll

Payroll shall be assigned to the classification which applies to the principal operations in which the executive officer is engaged.

Exceptions to 4 above:

Payroll of an executive officer who regularly and frequently engages in duties which are ordinarily performed by a superintendent, foreman or worker shall be assigned to the appropriate classification for that type of work.

5. Flight Duties

Payroll of an executive officer who is a pilot or member of the flying crew of an aircraft used in the insured's business shall be assigned as follows:

- a. For each week during which the executive officer did not perform flight duties, assign the officer's payroll as provided in Rule IX-A-4.
- b. For each week during which the executive officer performed flight duties, assign the officer's payroll for that week to Code 7421 Transportation of Personnel for Business. If an executive officer's non-flying duties in such a week are subject to a higher rated classification, that higher Bureau loss cost classification shall be assigned in that week. Rules 5a and b apply on the basis of the pilot's log book required under Federal regulations or other verifiable records.
If Code 7421 Transportation of Personnel for Business applies and verifiable records are not maintained to indicate those weeks during which flying is performed by executive officers, their payroll shall be assigned to the highest Bureau loss cost classification which applies to any of their operations.

6. Executive Officers of Unincorporated Associations

Executive Officers of an unincorporated association are the President, Vice President, Secretary, Treasurer or any other officer appointed or elected in accordance with the charter or by-laws of an unincorporated association. Executive Officers of an unincorporated association may not elect to be excluded under the law. Premium for an executive officer of an unincorporated association shall be based on their total payroll, subject to the minimum and maximums established for corporate executive officers.

B. SOLE PROPRIETORS, PARTNERSHIPS AND MEMBERS OF A LIMITED LIABILITY COMPANY

Sole proprietors, partners and members of a Limited Liability Company (LLC) are not mandatorily covered by the Pennsylvania Workers' Compensation Act or the Pennsylvania Occupational Disease Act. A sole proprietor, partner or member of a Limited Liability Company (LLC) may be able to purchase and/or be insured under a standard workers compensation

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CLASSIFICATIONS AND LOSS COSTS

Except for rates for U.S.L. & H.W. Act coverage, Act 44 of 1993 prohibits the CMCRB from filing full workers' compensation rates effective December 1, 1993. In compliance with this act, the CMCRB will only file for the Provision for Claim Payment (i.e., Loss Costs) of each class.

This section of the manual does not contain full rates, but only the Provision for Claim Payment approved for the CMCRB.

Workers Compensation Coal Mine Classifications

Occupational Disease Classifications

Workers Compensation Loss Costs – Coal Mine Classifications

Workers Compensation Manual Rates – Coal Mine Classifications (for U.S.L. & H.W. Act)

Employer Assessment Factor (for Coal Mine Classifications)

Occupational Disease Loss Costs – Coal Mine Classifications (State and Federal)

[Separate Payroll Records](#)

[Prevailing Wage Payments](#)

SEPARATE PAYROLL RECORDS – DEFINITION

In limited circumstances, the payroll of an employee may be divided between two or more classifications, provided the employer has maintained the requisite separate payroll records. Specifically, the employer's payroll records should be supported by original time cards, hourly labor postings, labor cost entries or time book entries which show separately, both by individual employee and in summary by operations performed, the remuneration earned by such employee. A standard format for the records is not required but these records must be original and they must be summarized, i.e., totaled, by operation. This allows employers the flexibility to use a variety of methods and technology to record the required information. The accuracy of the summaries must be verifiable by reviewing the original, individual employee records. Data elements must be contemporaneously recorded (originating at the same time) and summarized. If the employer fails to keep complete and accurate records as provided in this definition, the entire remuneration of the employee shall be assigned to the highest valued classification applicable to any part of the work performed by the employee. A permissible payroll separation should be based on a time card(s) or invoice(s) showing the actual number of hours worked for a given employee. Payroll may not be divided by means of percentages, averages, estimates, or any basis other than specific time cards, hourly labor postings, labor cost entries or time book entries.

Types of records reviewed include but are not limited to payroll records, master control reports, and job cost records.

PREVAILING WAGE PAYMENTS

Prevailing wage statutes, including but not necessarily limited to the Davis-Bacon Act or the Pennsylvania Prevailing Wage Act stipulate that contractors under Federal or State government contracts, respectively, are required to pay specific minimum wage rates and specified fringe benefits. When auditing these types of employers, all wages paid to the employees are included for premium calculation. Fringe benefits that are required may only be excluded from premium calculation when paid to group insurance plans, pension plans or third party administrators. If fringe benefit payments are paid directly to an employee, the fringe benefit amount is treated like wages and is included for premium calculation.