R.C. 1992

To the Members of the Board:


Workers’ Compensation Board – Proof of Coverage

The Rates Committee has adopted, and the New York State Insurance Department has approved, changes to the New York Workers Compensation and Employers Liability Manual that reference certain Workers' Compensation Board forms.

The New York State Workers’ Compensation Board (WCB) is replacing its Insurance Compliance (IC) System that manages both workers compensation and disability benefits proof of coverage processing. Carriers were notified, in July 2001, that the changes would be implemented during November/December 2001.

The new system mandates the use of the International Association of Industrial Accident Boards and Commissions (IAIABC) proof of coverage (POC) transaction data set for workers compensation reporting. The use of the IAIABC POC standards eliminates several WCB forms currently used for compliance with the filing requirements for issuing policies, cancellations and reinstatements. These changes required that certain rules in the New York Manual be amended to conform to the new filing requirements. The forms eliminated by the WCB are:

- C-220 Notice of Issuance of New Policy or Reinstatement of Policy;
- C-221 Notice of Cancellation or Intention Not to Renew; and
- C-222 Notice of Issuance of Additions to Existing Policies – this form was previously withdrawn by the WCB, however, it is still referenced in the New York Manual

An implementation date has been established for policies issued on or after December 1, 2001 for carriers to electronically submit Proof of Coverage to the Workers’ Compensation Board. Amendments to the Rating Board’s Manual, that reference these forms, are shown on Pages P-1, P-2, P-4, P-5 and D-7 (attached) with an effective date of December 1, 2001.

Printed manual pages will be distributed as soon as they are available.

Very truly yours,

Monte Almer

President
ADMINISTRATIVE RULES AND PROCEDURES

A. GENERAL

The New York Workers Compensation and Employers Liability Manual which contains rules and procedures, classifications and rates has been adopted by the New York Compensation Insurance Rating Board to govern the underwriting of Workers Compensation and Employers Liability Insurance, Voluntary Compensation Insurance and Employers Liability Insurance in the State of New York. This manual does not apply to any insurance under Article 9 of the Workers’ Compensation Law of the State of New York (Chapter 600 of the Laws of 1949).

B. DEFINITIONS

1. Rating Board

The term "Rating Board" as used in this manual refers to the New York Compensation Insurance Rating Board organized under the provisions of Section 2313 of the New York Insurance Law.

2. Department

The term "Department" as used in this manual refers to the Superintendent of Insurance and the New York State Insurance Department.

C. APPROVAL

This manual has been filed with the Department by the Rating Board on behalf of its members and has been approved by the Department pursuant to the provisions of Section 2305 of the Insurance Law.

D. FILING REQUIREMENTS

1. Policies and Renewal Certificates

* Copies of all policy Information Pages and renewal certificates shall be filed with the Rating Board within thirty (30) days after the effective date of the policy. In addition, proof of coverage must be filed, in the electronic format, with the State of New York Workers' Compensation Board within thirty (30) days after the effective date of the policy. Refer to K.1. below.

2. Endorsements

a. Except as noted in (1) and (2) below, a copy of every endorsement affecting coverage in New York State shall be filed with the Rating Board within thirty (30) days after issue. It is not necessary, however, to file a copy of any endorsement which does not require the insertion of any information relating to coverage on the endorsement provided:

(1) Specimen copies of the endorsement have previously been filed with and approved by the Rating Board; and

(2) The identification number and title or authorized symbol of the endorsement is shown on the Information Page which was filed with the Rating Board.

* b. Endorsements showing a name change, additional insured, additional location or classifications or rates promulgated by the Rating Board shall be filed within thirty (30) days after promulgation of the rate.
3. Cancellations or Reinstatements

When a policy is canceled or reinstated, the notice of cancellation or reinstatement shall be filed with the Rating Board. However, if a copy of the policy has previously been filed with the Rating Board and is being canceled flat or has been returned "Not Taken," the regular cancellation notice must be filed with the Rating Board noting on the face of the policy that it has been "Canceled–Not Taken" or "Canceled Flat on Books." This is required even if the effective date of the cancellation is not the same as the effective date of the policy because of statutory requirements. Refer to Section K for statutory provisions in filing "Cancellations," "Reinstatements" or "Notice of Intention Not to Renew."

E. ESTABLISHMENT OF CLASSIFICATIONS AND RATES

The Rating Board is empowered to determine, revise or modify the classification(s) or rate(s) applicable to any individual risk. Every policy insuring a risk for which the classification(s) or rate(s) have been established by the Rating Board shall be written in accordance with such classification(s) and rate(s).

If a carrier, upon inspection or audit, finds any change in operations which may require a change in the classification(s) established for the risk, the carrier shall immediately report the change to the Rating Board. No carrier request to authorize a new classification(s) or rate(s) will be considered by the Rating Board unless the carrier has issued and filed, with the Rating Board, a copy of its policy Information Page written in accordance with the previously established classification(s) and rate(s). The classification(s) and rate(s) for any policy shall be subject to correction or modification or both if the Rating Board determines the classification(s) or rate(s) shown in the policy are not applicable to the risk.

F. INCORRECT UNDERWRITING

1. Policies, Renewal Certificates, or Endorsements

The Rating Board will notify the carrier of any policy, renewal certificate, or endorsement which has not been written in accordance with the rules of this manual. The policy, renewal certificate or endorsement must be canceled and rewritten or corrected by endorsement as may be required by the Rating Board.

Following notification by the Rating Board of the required changes, if a carrier does not, within sixty (60) days, furnish satisfactory evidence to the Rating Board of the correction of any error or omission, a second request will be issued requesting this information. If no response is received within sixty (60) days of the second request, a final request for this information will be sent to an executive officer of the carrier by an executive officer of the Rating Board.

All carriers who have not furnished satisfactory evidence within thirty (30) days of the executive follow-up will be subject to a fine of $50 for each delinquent item. An additional fine of $100 for each item will also be levied each additional month for which a response to a Rating Board criticism has not been received.
I. INSPECTIONS AND TEST AUDITS OF PAYROLL

The Rating Board has the authority to inspect the plants, works, machinery and appliances of an insured for the purpose of determining the proper classification(s) and rate(s) and to make test payroll audits. The Rating Board auditor may examine the employer’s books, vouchers, contracts, documents and applicable records to determine the proper premium for the risk. Test audits of payroll are made subject to the following provisions:

1. Prior to the test audit, the carrier shall file a copy of its earned premium bills for the period involved with the Rating Board. If requested, a copy of the carrier’s audit details shall also be submitted to the Rating Board.

2. Notice of a proposed test audit shall be given to the carrier and the Rating Board’s findings shall be forwarded to the carrier after completion of the audit. Within sixty (60) days after such findings have been submitted, the carrier shall comply with the audit of the Rating Board and shall have the right to appeal such findings as in the case of any issue involving a matter of classification and rates. Refer to Item M of this section for further explanation of the appeal process.

J. WRAP-UP CONSTRUCTION PROJECTS

1. Eligibility

Details regarding eligibility for a wrap-up policy are to be submitted by the carrier within sixty (60) days after the effective date of the policy which insures the project. The notice of intent to apply manual Rule VII.F shall be submitted in duplicate if coverage is written on a guaranteed cost basis or in triplicate if written on a retrospective rating basis. Refer to Rule VII.F for further details.

2. Approval Required

The application of Rule VII.F to a specific project requires Rating Board approval. The carrier will be notified of any action taken by the Rating Board.

K. PROVISIONS FOR CANCELLATIONS, REINSTATEMENTS AND NOTICE OF INTENTION NOT TO RENEW

* 1. Cancellations

The State of New York Workers’ Compensation Board regulates the cancellation of coverage and requires that electronic notice of such cancellation be sent to the Chair of the Workers’ Compensation Board:

a. When a cancellation is due to non-payment of premiums, the cancellation shall not become effective until ten (10) days after a notice of cancellation is served on the employer and filed with the office of the Chair.

b. When a cancellation is due to any reason other than non-payment of premiums, the cancellation becomes effective thirty (30) days after the notice of cancellation is served on the employer and filed with the office of the Chair.
Note: If an employer has obtained insurance with another carrier and the effective date of coverage is prior to the expiration of the time stated in the cancellation notice, the cancellation shall be effective as of the effective date of the other coverage.

2. Reinstatements

When a policy has been terminated by cancellation or has expired, the policy shall not be reinstated or renewed by certificate. Coverage may be afforded only upon issuance of a new policy. If, however, a notice of cancellation has been mailed to the insured, as provided by statute, the policy may be reinstated at any time before the effective date of the cancellation as shown in the notice. If a policy is to be reinstated before the effective date of cancellation, electronic notification of such reinstatement must be sent to the Chair of the Workers' Compensation Board.

3. Notice of Intention Not to Renew

As provided by statute, no insurer shall refuse to renew a policy unless notification has been sent to the employer, by registered or certified mail, and has also been filed electronically with the Chair of the Workers' Compensation Board at least thirty (30) days prior to the expiration of the policy.

Note: Insurers must also send the Rating Board copies of notices of cancellation and notices of reinstatements which have been filed with the Chair of the Workers' Compensation Board.

L. NEW YORK ENDORSEMENTS

1. Forms—Where Found


Also included are certain standardized forms accepted in New York for use to provide or amend insurance under the United States Longshore and Harbor Workers' Compensation Act, Admiralty Laws or the Federal Employers' Liability Act. All forms which are approved for use in New York may be obtained by contacting the National Council on Compensation Insurance, Director of Publications Services, 901 Peninsula Corporate Circle, Boca Raton, FL 33487.

The title of each form available for use in New York is shown in the Alphabetical List of Endorsements in Part Four.

2. Forms—Standard

The forms shown in Part Four are standard forms approved for use in New York. Prior to using these forms, a carrier must obtain approval to use the form by submitting to the Rating Board, in duplicate, a copy of each form it intends to use.
d. The entire amount of wages paid for idle time to an employee engaged in work other than construction, erection or stevedoring must be assigned, without division of payroll, to the classification which normally applies to that employee.

I. CANCELLATION

1. If a policy is canceled by an insured who continues in business, but no longer has employees, premium should be adjusted in accordance with Rule X of the New York Manual.

2. Procedures for cancellation notices for policies returned to the insurance carrier as "Not Wanted" or "Not Taken":

* a. If such policies are returned to an insurance carrier or to an agent (not a broker) for flat cancellation before the effective date of the policy and the policy has not been filed with the Rating Board and/or the Workers' Compensation Board, a notification of cancellation does not have to be filed with the Chair of the Workers' Compensation Board, or sent to the Rating Board or the employer.

* b. If such policies are returned to an insurance carrier or to its agent (not a broker) for flat cancellation after the inception date of the policy, and the policy has been filed with the Rating Board and/or the Workers' Compensation Board, a notice of cancellation must be sent to the employer and the Rating Board and must also be electronically sent to the Chair of the Workers' Compensation Board in accordance with the Filing Requirements of Rule D.– Cancellations or Reinstatements, in the Administrative Rules and Procedures section of the Manual.

3. A retroactive cancellation of a policy is not permissible even if an insured has retired from business or his operations were concluded prior to the date when the carrier was notified that coverage was not necessary.

J. EMPLOYEE LEASING

The question of whether the nature of a work situation is one of employee leasing or a temporary work situation arises often. One way to distinguish between the two is that, at the onset of an employee leasing arrangement, an employer transfers the payroll of some or all of its employees to a labor contractor and then leases back these same employees. During the duration of the arrangement, the labor contractor assumes such tasks as the administration of payrolls and benefit packages for the employer for a prescribed fee. In this case, the client (or employer) of the labor contractor may initially recruit, interview, hire or fire its workers. Subsequent to the onset of the leasing arrangement, the client and the labor contractor may jointly recruit, interview, hire or fire any new or replacement employees.

An employee leasing arrangement may also exist even if an employer does not transfer its employees to a labor contractor and then lease them back. This can occur in the case of a new business where an employer does not have any employees but chooses to obtain some or all of its workforce from a leasing firm. This differs from the former situation in that the joint recruiting, interviewing, hiring or firing may exist for both the initial group of employees as well as any replacement or additional employees which are subsequently hired for or by the new employer.

Another type of situation which may require the application of the employee leasing rules, as shown in the manual, is when the functions performed by an entire department of an employer are performed by workers obtained from a leasing firm. These workers may operate a mail room or perform other functions such as data processing services at the employer’s place of business.