



BULLETIN

January 4, 2008

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R.C. 2157

To the Members of the Board

RE: New York Workers Compensation Sole Proprietors and Partners Rule Remuneration for Limited Liability Companies

The Rates Committee has adopted, and the New York State Insurance Department has approved, an amendment to Rule IX, (B) of the New York Workers Compensation and Employers Liability Manual to clarify the definition of a member of a Limited Liability Company.

The Rating Board has received several inquiries as to whether or not employees of a Limited Liability Company (LLC) or a Limited Liability Partnership (LLP) with titles of “officers” qualify for the minimum and maximum remuneration as shown for Sole Proprietors and Partners on Page 5 of the Miscellaneous Values pages of the New York Workers Compensation and Employers Liability Insurance Manual.

In order to clarify this issue, the following guidance was received from the New York Workers’ Compensation Board concerning members of a LLC or a LLP.

Under Section 54 of the Workers’ Compensation Law, members of an Limited Liability Company (LLC) or a Limited Liability Partnership (LLP) are treated the same as partners of a business that is a partnership under the laws of New York State.

If the LLC or LLP has employees, the members of the LLC or LLP, themselves, are automatically excluded from that coverage. The members may elect to have themselves included in that coverage by filing a proper form (C-105.32) with the insurance carrier.

Workers’ compensation coverage is not required for members of a LLC or LLP that does not have employees, or any individuals “volunteering” their services to the LLC or LLP.

However, if a LLC or LLP that has no employees obtains a workers’ compensation policy, the members of the LLC or LLP are automatically included in that policy. The members of a LLC or LLP may elect to have themselves excluded in that coverage by filing a proper form with the insurance carrier.

Individuals, who are not members of a LLC but are providing services to the LLC, are employees and must be covered by workers’ compensation insurance. Since they are not members, there is no cap on the amount of salary for which they can be charged premium.

Therefore, based on the foregoing, only the “members” of a LLC or LLP qualify for the minimum and maximum remuneration as shown on Page 5 of the Miscellaneous Values pages.

The amendment to the Manual stipulating the definition of partner under manual Rule IX. B. 1 and B. 3 is attached with an issue date of January 1, 2008.

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

Very truly yours,

Monte Almer

President

**RK:tg
Encl.**

B. SOLE PROPRIETORS AND PARTNERS

1. Definition

A sole proprietor is a self-employed person. A partner is a partner of a partnership as defined in Section Ten of the Partnership Law, but does not include a "limited" partner.

In general, a limited partner invests capital only, and is exempt from personal liability or risk beyond the investment actually contributed to the firm. Such partners do not hold themselves out as general partners nor participate in the conduct of the business in any manner.

- ★ The definition of partner, as used in this rule, shall also include members (not managers or titled "officers") of a Limited Liability Company ("LLC"), and a Professional Service Liability Company ("PSLC") established pursuant to the Limited Liability Company Law, and partners of a Registered Limited Liability Partnership ("RLLP") established pursuant to the Partnership Law.

2. Law and Status

Sole proprietors and partners may elect to be covered under the policy by filing, upon a form prescribed by the Workers' Compensation Board, a notice of the election of the named individuals.

3. Coverage

- a. Upon election, coverage for a sole proprietor or partner having other persons covered under a policy may be effected by attaching the New York Sole Proprietors and Partners Coverage Endorsement (WC 31 03 13A).
- b. Coverage for a sole proprietor or partner having no other persons requiring coverage may be effected by obtaining a workers compensation policy.

- ★ **Note:** Managers or employees with the title of an "officer" are not considered members and not subject to the payroll cap as shown on the "Miscellaneous Values" page.

- c. A sole proprietor or partner, who has previously elected coverage or has no other persons requiring coverage, may elect to be excluded from coverage. Attach the New York Sole Proprietors and Partners Exclusion Endorsement (WC 31 03 16).

4. Premium Determination

- a. **Sole Proprietor and Partners Not Subject to the Construction Employment Payroll Limitation**

Premium for each sole proprietor or partner that has elected coverage is based on the minimum and maximum payrolls as shown under "Miscellaneous Values" in Part Three—Rates.

- b. **Sole Proprietors and Partners Subject to the Construction Employment Payroll Limitation**

Premium for each sole proprietor or partner that has elected coverage is based on the minimum payroll as shown under "Miscellaneous Values" in Part Three—Rates. The maximum payroll for premium determination is based on the payroll limitations set forth in Rule V.G.3.

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5. Assignment of Remuneration

The remuneration of sole proprietors or partners shall be assigned to classifications and rates under the rules of this manual.

MISCELLANEOUS VALUES

Ambulance-Volunteer Service Company - Code 7370

Applicable in accordance with Manual Rule II-G3	First Ambulance	\$8,936
	Each additional Ambulance	\$4,468

For a group policy subject to the provisions of Section 32.2 of the Volunteer Ambulance Workers' Benefit Law, premium is determined based on a charge for the first ambulance plus the additional ambulance charge for each additional ambulance covered by the group policy.

See Manual rule regarding the application of this charge to antique ambulances.

Construction Employment Geographic Territories and Differentials #

Territory 1 - Counties of The Bronx, Kings, New York, Queens, and Richmond	8.5%
Territory 2 - Counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester	6.8%
Territory 3 - All Other Counties	4.0%

Location of work actually performed determines the territory for premium determination purposes. Territory Differentials are to be applied to each portion of an affected classification's manual premium corresponding to the payroll related to work performed in each territory. Refer to Rule VI.I.

Deductible Program - Deductible credits apply on a per occurrence basis.

Deductible	Percentage Premium Reduction by Hazard Group			
	I	II	III	IV
\$100	0.4%	0.3%	0.2%	0.1%
\$200	0.7%	0.5%	0.3%	0.2%
\$300	1.0%	0.7%	0.4%	0.2%
\$400	1.3%	0.8%	0.6%	0.3%
\$500	1.5%	1.0%	0.7%	0.4%
\$1,000	2.7%	1.8%	1.2%	0.7%
\$1,500	3.7%	2.5%	1.7%	0.9%
\$2,000	4.5%	3.1%	2.1%	1.2%
\$2,500	5.3%	3.7%	2.5%	1.4%
\$5,000	8.7%	6.1%	4.3%	2.5%

Expense Constant - an expense constant of \$200 shall be charged for each policy which becomes effective on or after October 1, 2005, regardless of premium size, except for those policies that insure Per Capita classification operations only. Refer to Rule XIV-F for special instructions concerning policies insuring only Per Capita classifications.

Maximum Remuneration

Executive Officers

Non - Construction Employments - applicable in accordance with Manual Rule IX-A-6-a2	\$1,625
Construction Employments - refer to Manual Rule IX-A-6-a7	-----

Non - Executive Officers - applicable in accordance with Manual Rule V-F for classifications with footnotes limiting the maximum remuneration	\$4,325
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Sole Proprietors and Partners

Non - Construction Employments - applicable in accordance with Manual Rule IX-B-4a	\$1,625
Construction Employments - refer to Manual Rule IX-B-4b	-----

Minimum Remuneration

Executive Officers - applicable in accordance with Manual Rule IX-A-6-a1	\$550
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Executive Officers of not-for-profit unincorporated associations - applicable with Manual Rule IX-A-6-b	\$275
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Sole Proprietors and Partners - applicable in accordance with Manual Rule IX-B-4a and 4b	\$550
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