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BULLETIN

October 28, 2014

Contact: Ms. Annmarie Visciano
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R.C. 2378

To: The Members of the Board

**RE: New York Workers Compensation & Employers Liability Manual
New York Experience Rating Plan Manual
Employer Appeal Process Rule and Endorsement
Effective Date: March 1, 2015**

In accordance with the authorization of the NYCIRB Underwriting Committee, and approval by the New York State Department of Financial Services, amendments to the New York Workers Compensation and Employers Liability Manual and the New York Experience Rating Plan Manual, which will increase the visibility to employers of the process available to insureds for appealing Board or carrier decisions, are being implemented. These changes are effective for new and renewal business with effective dates on or after March 1, 2015.

These changes include an update to the Appeal Process rule and a new mandatory endorsement, indicating the availability of an appeal process for insureds, with the purpose of improving communication and awareness of the Rating Board's Appeal Process to New York workers compensation insurance policyholders.

The language under Administrative Rule, Item M. is amended in order to clarify policyholder rights of dispute and appeal of rulings or decisions made by the Board or its member carriers. Additionally, a new mandatory endorsement is being introduced which explains the availability of policyholder's rights to dispute and appeal. The new endorsement, Policyholder Notice of Right to Appeal, WC 31 06 18, is mandatory for all policies with New York Workers Compensation coverage, with effective dates of March 1, 2015 or thereafter.

The following updated Manual Pages are attached with this bulletin:

- **Page P-6, Item M. Appeal Process** – update clarifying the types of decisions that can be appealed by an insured. This language is also provided and indicated on Pages R-3 and R-4 of the NY Experience Rating Plan Manual.
- **Information Page Notes, WC 00 00 01 C** – an update alerting carriers of the obligation to inform their insureds of their right of appeal, including a reference to the new mandatory endorsement WC 31 06 18 required for each policy issued.
- **Page R-1, Item B. Standard Policy** - indicating the new mandatory endorsement requirement.
- **Endorsement WC 31 06 18** - entitled Policyholder Notice of Right to Appeal.

Additionally, these changes are also included in an updated version of the New York Workers Compensation & Employers Liability Manual which is available via the Board's website at: www.nycirb.org.

Very truly yours,

Monte Almer

President

WVT:tg
Encl.

3. Notes on Forms

The notes on the various forms and endorsements are to be used solely as a guide and are not to be included as part of the form or endorsement.

M. APPEAL PROCESS

An insured, or its representative, (hereafter referred to as "insured"), may appeal the application of a rule or procedure contained in this manual. Rules or procedures are defined as those determinations, either by a carrier or the Rating Board, which establish the variables that define the policy conditions. Examples include: classification codes, ownership information, premium audits, and any other determination which may affect the policy.

- ★ To be considered for review, a written request explaining the reason(s) for the appeal must be submitted to the Rating Board. Upon receipt of the request for review, the following actions will be taken:
 1. A staff member will review the request and respond to the insured within sixty (60) days, in writing, either acknowledging receipt of the request, granting the insured its request or sustaining its original ruling.
 2. The insured, if not satisfied with the outcome in 1. above, may then request, in writing, a conference with members of the Rating Board staff. The request must state the nature of the complaint and contain any supporting documents. The appropriate Department Vice President or his or her designated representative, if appropriate, will preside at the conference.
 3. If the dispute is not resolved at the conference, the insured may then appeal to the Underwriting Committee of the Rating Board for a hearing to consider the staff ruling. This appeal must be in writing and must specify the reason(s) for the appeal and the nature of the complaint.

Following receipt of the appeal, the insured will be notified regarding the time and place for the hearing. The appeal will be heard at the next Underwriting Committee meeting for which appropriate time can be given for this matter.

Subsequent to the hearing, the insured will be advised, in writing, of the Underwriting Committee decision regarding its complaint.

4. If the Underwriting Committee ruling is not satisfactory to the insured, the insured may then request a hearing at the New York State Department of Financial Services to consider the decision of the Rating Board's Underwriting Committee.
5. The New York State Department of Financial Services decision may be appealed to a higher court, by either the insured or the Rating Board.

8. Unity (1.00) Factor

A unity (1.00) factor may apply to a risk for reasons including, but not limited to:

- It does not qualify for experience rating. *Refer to rule 2-A for premium eligibility requirements.*
- It does not meet the minimum data requirements. *Refer to Rule 4-C for an explanation.*
- It is a new business with no data available for calculation of an experience rating modification.
- It qualifies for experience or merit rating, with the calculation resulting in a 1.00 modification.
- Data could not be provided as a result of an ownership change. *Refer to Rule 3-E for an explanation.*

D. ADMINISTRATION

1. The Rating Board determines the applicability of all Plan rules.
2. The experience rating modification is calculated, issued and, if necessary, revised by the Rating Board.
3. Unless otherwise provided by this Plan, experience rating modification issuance and revision is limited to the current and two preceding experience rating modifications.
4. The calculated experience rating modification factor is applied by the carrier(s) in accordance with this Plan, other applicable rules, statutes, and regulations.
5. The Rating Board publishes experience rating information for each eligible risk on a secure website. The carrier of record is provided access to the experience rating worksheets for its own insureds on this site. Producers, other carriers and all other registered subscribers may also access the website, but only the experience modification is available for these users. Registration for access to this website can be obtained by contacting the Accounting division of the Rating Board.
6. Individual insureds, carriers, and other authorized representatives of record may request rating worksheets, as well as Employer Experience Reports, by contacting the Rating Services Division of the Rating Board. These requests must be in writing. For someone who is not the current representative of record, a signed letter of authorization must accompany the written request. The request and letter of authorization from the insured on the insured's letterhead must be submitted to the Rating Board via mail (not fax or email) and Rating Services will only accept the original of the authorization letter. There is a fee charged for these services. *Refer to the Rating Board's website, www.nycirb.org, for a schedule of these charges.*

E. APPEAL PROCESS

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Subsequent to the hearing, the insured will be advised, in writing, of the Underwriting Committee decision regarding its complaint.

- ★ 4. If the Underwriting Committee ruling is not satisfactory to the insured, the insured may then request a hearing at the New York State Department of Financial Services to consider the decision of the Rating Board's Underwriting Committee.
- ★ 5. The New York State Department of Financial Services decision may be appealed to a higher court, by either the insured or the Rating Board.

INFORMATION PAGE NOTES

1. The sequence of Items 1 through 4 of the Information Page may not be changed except for Item 3.D. (See Note 11.) The format of each item may be rearranged and these suggested headings may be used: 1. Insured; 2. Policy Period; 3. Coverage; and 4. Premium.
 2. The name of the insurer is to be shown prominently on the Information Page in the space above Item 1. Multi-company groups must make appropriate reference to the name of the member of the group providing the insurance.

The address and kind of insurer (stock, mutual, or other) are to be shown on the Information Page, the policy, or a policy jacket.
 3. The policy number must be appropriately labeled and shown in the space reserved above Item 1 on the Information Page. This number should be unique to the company and remain constant during the policy period. It should be used on all endorsements issued after the policy is issued.

The policy number appearing on the Information Page should be the same as the policy number contained in the carrier's internal statistical records.

The five-digit NCCI carrier code number and the NCCI Interstate Risk Identification Number must be shown and appropriately labeled on the Information Page.
 4. Use appropriate text on the Board copy of a renewal policy Information Page to designate the prior policy by number.

New business may be designated "New." At its option, the company may show this on the insured's copy of the Information Page.

The policy number of a rewritten or replaced policy must also be on the Information Page.
 5. List in Item 1. the exact name of the employer insured and indicate whether the employer is an individual, partnership, joint venture, corporation, association or other legal entity.

Also include the respective federal employer's identification number (FEIN), appropriately labeled, for each entity included on the policy.

If separate legal entities are insured in a single policy, consistent with the manual of rules, separately show the complete name of each insured employer and indicate each employer's legal entity status.
 6. List in Item 1 or by schedule all usual workplaces of the insured that are to be covered by the policy.
 7. The effective date and hour of the policy, and its expiration date and hour must be shown in Item 2. The hour may be included as part of the printed form at the company's option.
 8. List in Item 3.A. states where state workers compensation insurance is provided. If none is provided, "none" or "not covered" may be shown.
 9. Show limits of liability separately for bodily injury by accident and by disease in Item 3.B.
 10. States may be shown in Item 3.C. by name or by designation, but do not name or designate a state listed in Item 3.A. a monopolistic state fund state, or a state where the insurer will not provide this coverage.

The following entry may also be included: "All states except North Dakota, Ohio, Washington, Wyoming, states designated in Item 3.A. of the Information Page and _____."
- If the company learns that the insured is conducting operations in a 3.C. state, and if the company agrees to continue coverage, the company should add that state to Item 3.A. and remove it from Item 3.C. Normal company procedures apply when the state is added to Item 3.A.

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11. Item 3.D. may be omitted so long as the list of the policy's schedules and endorsements appears somewhere on the Information Page.
12. The content of Item 4 may be rearranged by the company. If the policy is issued for less than one year, the company may state whether the premium information is shown for the policy period or for an annual period.
13. In Item 4, the development of estimated annual premium shall be displayed separately for each classification by state. This same display of premium development must be shown on any classification schedules attached to the policy.

Total Estimated Standard Premium must be shown by state on the Information Page or on a schedule attached to the policy.
14. The experience rating modification factor shall be shown in Item 4 for risks subject to the experience rating plan, unless this factor is not available when the policy is issued. The company then may make an appropriate entry in Item 4 to show that the factor is not available. See the Experience Rating Modification Factor Endorsement for more information.
15. Premium discount must be shown in Item 4, the Premium Discount Endorsement, or both.
16. All charges or credits affecting the total estimated premium must be shown in Item 4. The deposit premium and the interim adjustment period must also appear on the Information Page.

The date and place of policy issuance, date and place of countersignature and other related information may also be shown on the Information Page.
17. Three-Year Fixed Rate Policies must be so designated on the Information Page as required by Rule XI of the Basic Manual.
18. Other entries may be made on the Information Page as authorized by Notes to Endorsements, including: Anniversary Rating Date; Defense Base Act Coverage; Voluntary Compensation Maritime Coverage Endorsements and the endorsements that apply to the inclusion and exclusion of executive officers and sole proprietors and partners.
19. The company may use its own method of execution and place the execution clause at the end of the Information Page, at the end of the standard policy, or on a policy jacket.
- ★ 20. Provide and reference the Employer's Appeal Process (explained in Item M of the Administrative Rules and Procedures Section of the New York WC & EL Manual) for classification, ownership, premium auditing, or any other ruling or decision pertaining to this policy. This is satisfied through the attachment of mandatory Endorsement WC 31 06 18, New York Policyholder Notice of Right to Appeal.

PART ONE—RULES

RULE I - GENERAL

A. WORKERS COMPENSATION

Workers Compensation as used in this manual means workmen's compensation, workers compensation or occupational disease.

B. STANDARD POLICY

Standard Policy means the standard provisions Workers Compensation and Employers Liability Insurance Policy and the Information Page approved by the New York State Department of Financial Services. Every policy affording coverage under the New York Workers' Compensation Law must have the following endorsements attached:

- WC 31 03 08 - New York Limit of Liability Endorsement;
- WC 31 03 19G - New York Construction Classification Premium Adjustment Program Explanatory Endorsement;
- ★ • WC 31 06 18 - New York Policyholder Notice of Right to Appeal
- WC 00 04 14 - Notification of Change in Ownership
- WC 00 04 19 - Premium Due Date Endorsement;
- WC 00 04 21C - Catastrophe (Other Than Certified Acts of Terrorism) Premium Endorsement
- WC 00 04 22A - Terrorism Risk Insurance Program Reauthorization Act Disclosure Endorsement

Exception: The Standard Policy (WC 00 00 00C) shall not be used to provide coverage for employees subject to the New York Volunteer Firefighters' Benefit Law or the New York Volunteer Ambulance Workers' Benefit Law. Such coverage can be afforded only by means of a Volunteer Firefighters' Benefit Law Policy (WC 31 00 00A) or a Volunteer Ambulance Workers' Benefit Law Policy (WC 31 00 02A), respectively.

C. ENDORSEMENT FORMS

Endorsement forms means authorized endorsements listed in the Alphabetical List of Endorsements in Part Four of this manual. All endorsements must be used in the form prescribed in this manual.

D. POLICY AND ENDORSEMENT FORMS

Refer to the Policy Forms and Authorized Endorsement section of this manual for a complete description of coverages and instructions on use of policy and endorsement forms.

E. APPLICATION OF MANUAL RULES

Rules apply separately to each policy, except as allowed by Rule VII - Premium Discount.

F. EFFECTIVE DATE

1. Manual

This manual applies only from the anniversary rating date which occurs on or after the effective date of this manual.

**NEW YORK WORKERS COMPENSATION
POLICYHOLDER NOTICE OF RIGHT TO APPEAL**

Policyholder Disputes

Policyholders are entitled to inquire, challenge and dispute issues relating to classification, ownership, premium auditing, and/or other New York Compensation Insurance Rating Board (NYCIRB) rulings or decisions pertaining to this policy. Please refer to the Employer's Appeal Process noted below.

Inquiries may also be directed to the New York State Department of Financial Services (DFS) at:

<http://www.dfs.ny.gov/about/contactus.htm#consumer>

or by calling the Consumer Hotline at 800- 342 – 3736 (Monday through Friday, 8:30 AM to 4:30 PM).

Policyholder Right to Appeal

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