

RULE V:

B. REMUNERATION

1. Definition

Compensation or substitutes for compensation are forms of remuneration. These terms are used interchangeably in all rules, classifications and endorsement references, and all shall mean remuneration.

2. Inclusions

- a. Wages or salaries including retroactive wages or salaries;
- b. Charitable Institutions – any money or lodging received by any individual providing services to a charitable institution is to be considered remuneration for premium determination purposes;
- c. Consumer Cooperatives – computation of replacement wages for unsalaried members of a consumer cooperative who may be entitled to workers' compensation insurance benefits shall be based upon a formula using the actual number of hours worked by each member. The actual hours worked are then multiplied by a replacement value equal to the minimum of an hourly wage that would ordinarily be paid to a salaried employee performing the same or similar duties in the community where the work is performed. The classifications to be used are the same as the classifications that would apply to a paid employee;
- d. Deficiency or Retroactive Wages – deficiency or retroactive wage payments are to be included as remuneration for premium determination purposes for the policy term(s) in effect to which the wage payments apply. These payments can be included only for the policy period in which the wage payment was made and for the preceding twelve-month period, if applicable;
- e. Volunteer Remuneration – if volunteers in for-profit corporations are employed by such entity to perform work in connection with the operations of the employer, the work performed is subject to a minimum amount equal to the wages that would ordinarily be paid to another employee performing the same or similar work. If no other employees perform similar work, the carrier is to apply an appropriate replacement wage. This amount shall be included in the basis of premium computation. Volunteers for non-profits are ordinarily not covered unless an election is made;
- f. Hospitals – Volunteer Workers – when insurance is provided for volunteer workers performing duties in hospitals, whether for-profit or not-for-profit, the premium for these volunteer workers is to be based upon the same wage rate that would be paid to a regular employee performing the same or similar work. Such volunteer workers shall also be assigned to the classification applicable to such regular employees;
- g. Relatives of Individuals, Copartners or Corporate Officers – if a spouse or relative of an individual proprietor, member of a co-partnership, or an officer of a corporation is employed by such entity to perform work in connection with the operations of the employer, the actual remuneration of such relative or spouse, subject to a minimum amount equal to the wages that would ordinarily be paid to another employee performing the same or similar work, shall be included in the basis of premium computation. If the records fail to disclose remuneration, the minimum specified above shall be included as remuneration;

- h. Travel Time – Payments made by an employer to an employee representing compensation for time spent traveling to or from work, or to or from a specific job, are to be considered as remuneration and assigned to the manual classification which applies to the work normally performed by such employee;
- i. Expenses Which Are Not Incidental to Employment – Payments made by an employer to an employee, which are not incurred as incidental to the employer's business, are to be considered as remuneration and assigned to the manual classification which applies to the work normally performed by such employee;
- j. Total cash received by employees for commissions and draws against commissions;
- k. Bonuses including stock bonus plans;
- l. Extra pay for overtime work except as provided in Section (E) of this Rule;
- m. Pay for holidays, vacations or periods of sickness. Refer to Rule IV Section (F)(2) of this Manual for allocation of remuneration for employees subject to more than one classification code;
- n. Payment by an employer for amounts otherwise required by law to be paid by employees to statutory insurance or pension plans, such as the Federal Social Security Act;
- o. Payment to employees on any basis other than time worked, such as piecework, profit sharing or incentive plans;
- p. Payment or allowance for hand tools or power tools used by hand provided by employees either directly or through a third party and used in their work or operations for the insured;
- q. The rental value of an apartment or a house provided for an employee based on comparable accommodations, including any rent reductions;
- r. The value of lodging, other than an apartment or house, received by employees as part of their pay, to the extent shown in the employer's records;
- s. The value of meals received by employees as part of their pay to the extent shown in the employer's records;
- t. The value of store certificates, merchandise, credits or any other substitute for compensation received by employees as part of their pay. Refer to exclusions below for certain fringe benefits that are not considered to be remuneration;
- u. Payments for salary reduction, health savings accounts, flexible spending accounts, employee savings plans, employee contributions, retirement or cafeteria plans (IRC 125); which are made through employee authorized salary deductions from the employee's gross pay, other than noted exclusions;
- v. Davis-Bacon wages or wages from a similar prevailing wage law paid directly to an employee;
- w. Annuity plans;
- x. 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;
Note: When it can be verified that the employee was away from home overnight on the business of the employer, but the employer did not maintain verifiable receipts for incurred expenses, a reasonable expense allowance, limited to a maximum of \$75 for each such day, will be permitted. The remaining reimbursements of non-verifiable expenses are included as remuneration.
- y. Payment for filming of commercials excluding subsequent residuals which are earned by the commercial's participant(s) each time the commercial appears in print or is broadcast.
- z. Payout of deferred compensation to current employees from an employer's contributions to previously deferred payroll.
Example: The payout of an employer's contribution from a non-qualified deferred compensation plan to the extent these payments are available in payroll records.

Rationale: Payouts are considered additional income.

- a. Payment by an employer in connection with an employee's cashless exercise of stock options.
Note: A cashless exercise is the purchase of shares of stock from a company by using the proceeds of a pending sale.
- Example:** An employee uses his or her options to buy shares of stock, which they simultaneously sell in order to pay the exercise cost, transaction fees and any withholding taxes due at exercise. They may sell all the shares and retain any remaining cash or sell just enough shares to pay all costs and then keep the remaining shares. For example, an employee exercises his or her option to purchase 1,000 shares of XYZ Corp. at \$2.00 per share and then immediately sells these shares in the market for \$5.00 per share. The employee uses the proceeds of the sale to pay the purchase costs of the shares of stock.
- Rationale:** Cashless exercises of employee stock options are completed without making a cash payment. The company essentially lends the employee the money needed for the option exercise for the fraction of a second that the employee owns the shares.
- b. The amount by which an employee's salary is reduced to fund a pension, deferred compensation plan, equity-based compensation plan, Qualified or Non-Qualified Employee Stock Purchase Plan (ESPP), stock options or other employee-elected deferral plan, when earned, even though such plan is a portion of a cafeteria plan.
Rationale: Since employees' salary dollars fund these plans, those dollars should count in the payroll base to determine premium.
- c. The amount by which an employee's salary is reduced to contribute to the purchase of stock options or Qualified or Non-Qualified Employee Stock Purchase Plans (ESPP), when earned.
Rationale: Since employees' salary dollars contribute to these plans, those dollars should count in the payroll base to determine premium.
- d. The value of equity-based compensation plans (other than Stock Options and Stock Purchase Plans), including but not limited to Stock Transfers, Stock Warrants, Restricted Stock, Restricted Stock Units, Phantom Stock Plans and Stock Appreciation Rights, shall be included at the time of vesting when vesting is on a scheduled or annual basis, such as graded vesting or scheduled cliff vesting, or when vesting is based on the achievement of performance goals or milestone anniversaries.
Note: Amounts contributed by employees are not to be double counted.
Rationale: Easily verifiable by audit.
- e. The amount by which an employee's salary is reduced to contribute to an equity-based compensation plan.
Rationale: Since employees' salary dollars contribute to these plans, those dollars should count in the payroll base to determine premium.

3. Exclusions

- a. Tips and other gratuities received by employees;
- b. Payments by an employer to group insurance or group pension plans for employees, other than payments covered by Section (B)(2)(n) and (u) of this Rule;
- c. The value of special rewards for individual invention or discovery;
- d. Dismissal or severance payments except for time worked or accrued vacation;
- e. Reimbursed expenses and allowances paid to employees shall be excluded, provided all three of

the following conditions are met:

- i. The expenses or allowances were incurred in the course of the employer's business;
 - ii. The amounts are shown separately for each employee in the employer's records; and
 - iii. The amount of each expense reimbursement or allowance payment approximates the actual expenses incurred.
- f. Payments for active military duty, including subsistence allowance paid by the federal government to veterans in training;
- g. Employee discounts on goods purchased from the employee's employer;
- h. Meal allowance when working late;
- i. Work uniform allowances;
- j. 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;
- k. Employer provided perquisites ("perks") such as:
 - i. An automobile;
 - ii. An airplane flight;
 - iii. An incentive vacation (e.g. contest winner);
 - iv. A discount on property or services;
 - v. Club memberships;
 - vi. Tickets to entertainment events;
 - vii. Educational assistance; and
 - viii. Relocation and moving expenses.
- l. Employer contributions to salary reduction, employee savings plans, retirement, or cafeteria plans (IRC 125); contributions made by the employer, at the employer's expense, that are determined by the amount contributed by the employee; and
- m. Payout of deferred compensation to retired or terminated employees who are not employed during the current policy period, provided the employer maintains records that segregate such payments.

Example: The payout from a non-qualified deferred compensation plan to a retiree.

Rationale: Retired / terminated employees are not reflective of the employer's current policy exposure.

- n. Employer contributions in connection with:
 - Qualified or Non-Qualified Employee Stock Purchase Plans (ESPP)
 - The exercise of stock options, other than the cashless exercise of stock options
 - Deferred compensation plans

Rationale: This is in line with industry practice of not counting these employer contributions in the payroll base to determine premium.

- o. The difference between the market price of stock and any discounted price paid by the employee.

Rationale: This is in line with industry practice of not counting these amounts in the payroll base to determine premium.

- p. The market value of equity-based compensation plans shall not be included as remuneration when accelerated cliff vesting is triggered by (1) an Initial Public Offering (IPO) of stock, or (2) a change in majority ownership where the owners(s) prior to the change own less than one-half interest after the change.

Example: A change in majority ownership could include a merger or acquisition if the owner(s) prior to the change own less than a one-half interest after the change.

Rationale: This recognizes that these types of payouts are infrequent, possibly once in lifetime events. As such, they should not trigger a significant increase in premium for a given policy year that is not commensurate with the exposure.

4. Wages Paid for Time Not Worked

a. Idle Time

The entire amount of wages paid for idle time is to be included as remuneration.

Wages for idle time, due to the following circumstances, are to be assigned in their entirety to the classification which applies to the work normally performed by the employee involved:

- i. Suspension or delay of work due to weather conditions;
- ii. Delays while waiting for materials;
- iii. Delays while waiting for another contractor to complete certain work;
- iv. Delays arising from the breakdown of equipment;
- v. “Stand-by” time where employees such as operators of cranes, hoists or other equipment are on the job, but they are not continuously working;
- vi. Special union requirements or agreements between an employer and his/her employee when this employee is paid for idle time;
- vii. Holidays or vacation periods;
- viii. Inability of non-striking employees to perform duties due to other employees who are on strike. If non-striking employees perform absolutely no work for their employer and are not present at their employer’s premises or job sites during a strike period, their remuneration shall be assigned to Code 8810 Clerical Office Employees, provided adequate records are maintained by the employer; and
- ix. Other causes of a similar nature.

b. Wages Paid to Key Employees

When there are no jobs in progress, wages of key individuals of construction, erection, or stevedoring, such as superintendents, foremen or engineers are assigned to the classification applicable to the work the individual would have performed if the job were in progress.

Exception:

If work of key employees consists exclusively of drafting or other office work, or if the employee is completely idle, wages are to be assigned to Code 8810. Code 8810, however, is not available for office time of an Executive Supervisor who qualifies for Code 5606, since it is normally expected that such an employee will spend a considerable portion of his/her time performing office work.

c. Idle Time Other than by Construction, Erection or Stevedoring

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.

- d. Temporarily Reassigned Employees Payments made to employees temporarily reassigned as a result of a request or direct order by civil authorities are to be reported to Code 8873 “Telecommuter Reassigned Employees” for the actual duration of the reassignment, not to exceed thirty (30) days after the expiration or revocation of the aforementioned order by civil authorities.
Code 8873 applies to employees who are unable to report to their regular place of business at

the instruction of civil authorities and are either:

- i.** idle and not performing any work duties; or
- ii.** performing clerical work duties at home.

Separate payroll records must be kept for this reclassification to be authorized.