

# **New York Workers' Compensation Payroll Limitation Program**

December 2023



**NYCIRB**

# Background

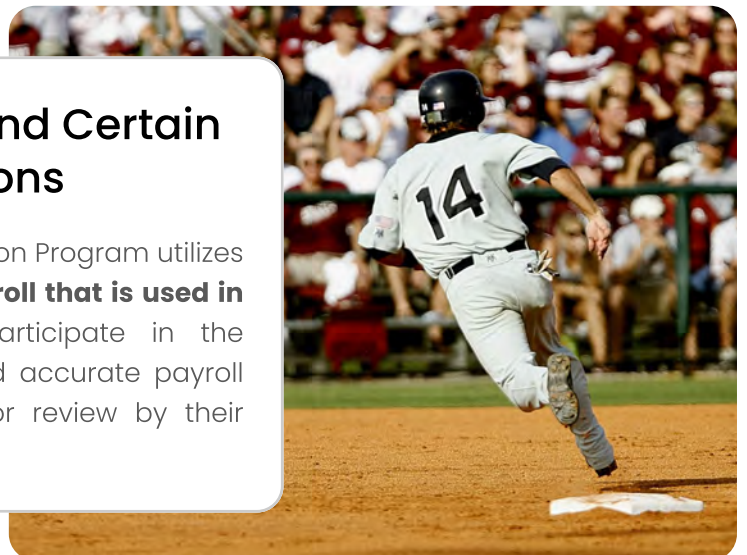
The purpose of the **New York Workers' Compensation Payroll Limitation Program** is to provide a more equitable distribution of premium between high wage paying employers and low wage paying employers. Since indemnity benefits are limited by a statutory maximum, higher wages do not universally equate to higher benefit amounts. Accordingly, to maintain an appropriate relationship between the premiums paid and the losses expected, it is appropriate to limit the payroll utilized in premium determination on certain policies.

**The Payroll Limitation Program** applies to two broad categories of employment classifications, both of which are described in the Rating Board's New York Workers' Compensation and Employers' Liability Manual ("Manual"):



## Construction Classifications and Certain Non-Construction Classifications

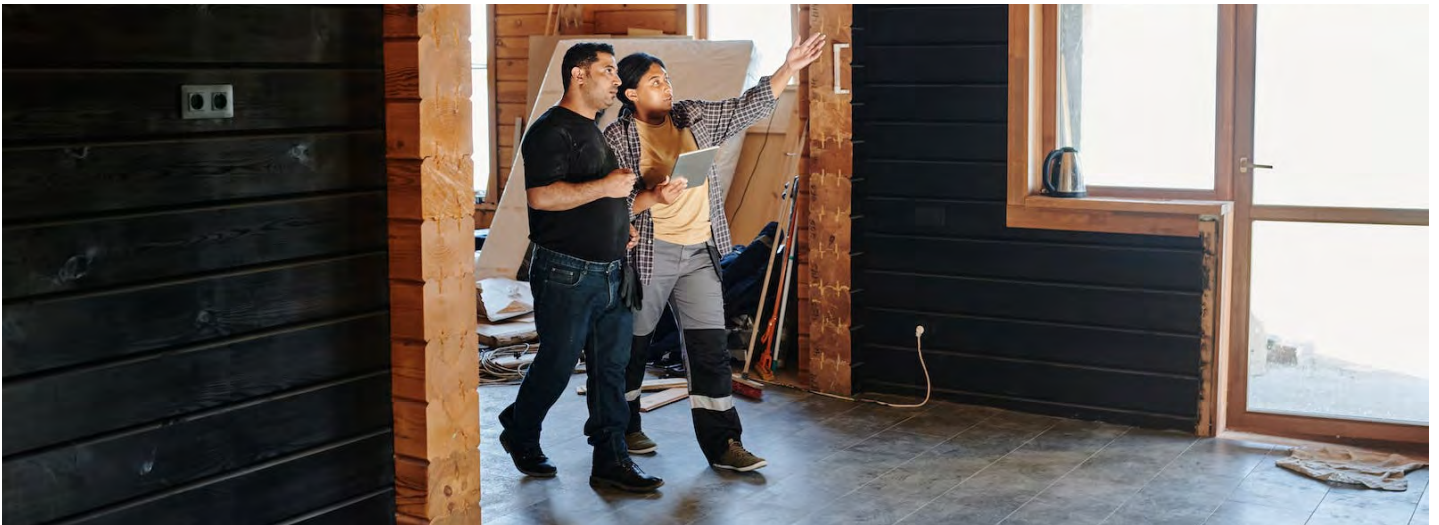
As described in this pamphlet, the Payroll Limitation Program utilizes an employee's weekly wages to **adjust the payroll that is used in premium determination**. Accordingly, to participate in the program, employers must maintain proper and accurate payroll records and make those records available for review by their workers' compensation insurer.





## Construction Classifications

The Payroll Limitation Program's application to **construction classification codes** is based on New York State statute. Specifically, the New York State Construction Employment Payroll Limitation Law, which was enacted in 1998, is contained within section 2304 of the New York State Insurance Law and section 89 of the New York State Workers' Compensation Law. These statutes limit the amount of weekly payroll that can be used to determine workers' compensation premiums for employers who perform commercial construction (construction of one or two-family residential housing is excluded from the statutory framework). It bears noting that **payroll limitation does not only apply to new construction**; rather, it is also applicable to remodeling, repair, and maintenance of existing structures.



For premium determination purposes, the New York Payroll Limitation Program **caps an individual employee's weekly payroll at the State's average weekly wage** in the prior calendar year, as published by the New York State Department of Labor. By way of example, as of July 1, 2023, the weekly payroll limitation is \$1,718.15, which was the average weekly wage in New York State in 2022. The current payroll limitation values are provided in the "Miscellaneous Values" table of the Loss Costs section of the Manual.



In determining the payroll amount on eligible classification codes for purposes of premium determination, **an employer's payroll is considered to be the actual weekly payroll per employee** subject to a maximum of the current New York payroll limitation value.



### Eligible Classification 5022 (Masonry)

Employee's Actual Weekly Payroll: **\$2,000.00**

Limited Payroll: **\$1,718.15**

In this example, **\$1,718.15** is utilized for workers' compensation premium determination and results in a payroll reduction and premium savings of **14.3%**.

## List of Eligible Construction Classifications

As of October 1, 2023, there are 79 construction classification codes subject to payroll limitation (listed below) and these codes are identified in Rule V(G)(1) of the Manual.

<b>0042</b>	Landscape Gardening – All Operations to Completion & Drivers
<b>3365</b>	Welding or Cutting – NOC – All Operations to Completion & Drivers
<b>3724</b>	Machinery or Equipment Erection or Installation – NOC – All Operations to Completion & Drivers
<b>3726</b>	Boiler Installation or Repair – Steam – All Operations to Completion
<b>3737</b>	Machinery or Equipment Repair or Servicing at Customers' Premises – NOC – All Operations to Completion & Drivers
<b>5000</b>	Chimney Construction – Not Metal – All Operations to Completion
<b>5022</b>	Masonry – NOC – All Operations to Completion
<b>5037</b>	Painting – Metal Structures – Over Two Stories in Height – All Operations to Completion & Drivers
<b>5040</b>	Iron or Steel Erection – Frame Structures – All Operations to Completion
<b>5057</b>	Iron or Steel Erection – NOC – All Operations to Completion
<b>5059</b>	Iron or Steel Erection – Frame Structures – Not Over Two Stories in Height – All Operations to Completion
<b>5102</b>	Door, Door Frame or Sash Erection – Metal or Metal Covered – All Operations to Completion
<b>5160</b>	Elevator Erection or Repair – All Operations to Completion
<b>5183</b>	Plumbing – NOC – All Operations to Completion & Drivers
<b>5184</b>	Boiler or Steam Pipe Insulating – All Operations to Completion & Drivers
<b>5188</b>	Automatic Sprinkler Installation – All Operations to Completion & Drivers

<b>5190</b>	Electrical Wiring – Within Buildings – All Operations to Completion & Drivers
<b>5193</b>	Oil or Gas Burner Installation, Service or Repair Shop – All Operations to Completion & Drivers
<b>5213</b>	Concrete Construction – NOC – All Operations to Completion
<b>5221</b>	Concrete or Cement Work – Floors, Driveways, Yards or Sidewalks – All Operations to Completion & Drivers
<b>5222</b>	Concrete Construction in Connection with Bridges or Culverts – All Operations to Completion
<b>5223</b>	Swimming Pool Construction – Not Iron or Steel – All Operations to Completion & Drivers
<b>5348</b>	Marble or Stone Setting – Inside – All Operations to Completion
<b>5402</b>	Greenhouse Erection – All Operations to Completion
<b>5403</b>	Carpentry – NOC – All Operations to Completion
<b>5428</b>	Storm Door, Storm Sash, Screens or Weather-Stripping Installation – All Operations to Completion
<b>5429</b>	Cabinet Works Installation – All Operations to Completion
<b>5443</b>	Lathing – All Operations to Completion & Drivers
<b>5445</b>	Wallboard Installation – Within Buildings – All Operations to Completion & Drivers
<b>5462</b>	Glazier – Away From Shop – All Operations to Completion & Drivers
<b>5473</b>	Asbestos Removal Operations – Contractor – NOC – All Operations to Completion
<b>5474</b>	Painting or Decorating – NOC – All Operations to Completion & Drivers
<b>5479</b>	Insulation Work – NOC – All Operations to Completion & Drivers



<b>5480</b>	Plastering – NOC – All Operations to Completion & Drivers
<b>5491</b>	Wallpaper Hanging – All Operations to Completion & Drivers
<b>5506</b>	Street or Road Construction – Paving or Repaving – All Operations to Completion & Drivers
<b>5507</b>	Street or Road Construction – Sub-Surface Work – All Operations to Completion & Drivers
<b>5508</b>	Excavation – Rock – All Operations to Completion & Drivers
<b>5536</b>	Air Conditioning and Heating Duct Work – Shop and Outside – All Operations to Completion & Drivers
<b>5538</b>	Sheet Metal Work Erection, Installation or Repair – NOC – Shop or Outside – All Operations to Completion & Drivers
<b>5545</b>	Roofing – NOC – All Operations to Completion & Drivers
<b>5547</b>	Roofing – Built-Up – All Operations to Completion & Drivers
<b>5606</b>	Contractor – Executive Supervisor, Construction Executive, Construction Manager, Construction Superintendent or Project Manager
<b>5610</b>	Cleaner – Debris Removal – Construction or Erection
<b>5648</b>	Aluminum, Plastic or Vinyl Siding Installation – All Operations to Completion & Drivers
<b>5651</b>	Carpentry – Dwellings – Three Stories or Less – All Operations to Completion
<b>5701</b>	Wrecking – Buildings – Not Marine – All Operations to Completion & Drivers
<b>5703</b>	Building Raising or Moving – All Employees – All Operations to Completion & Drivers
<b>5709</b>	Wrecking – Not Building or Marine Wrecking – All Operations to Completion

<b>6003</b>	Pile Driving – NOC – All Operations to Completion & Drivers
<b>6005</b>	Breakwater or Jetty Construction – All Operations to Completion & Drivers
<b>6017</b>	Dam or Lock Construction – Concrete Work – In Connection with Dams or Locks – All Types – All Operations to Completion & Drivers
<b>6018</b>	Dam or Lock Construction – Earthmoving or Placing – In Connection with Dams or Locks – All Types – All Operations to Completion & Drivers
<b>6045</b>	Levee Construction – All Operations to Completion & Drivers
<b>6204</b>	Drilling – NOC – All Operations to Completion & Drivers
<b>6216</b>	Gas or Oil Lease Work – NOC – Natural Gas – By Contractor – All Operations to Completion & Drivers
<b>6217</b>	Excavation – NOC – All Operations to Completion & Drivers
<b>6229</b>	Irrigation System Construction – All Operations to Completion & Drivers
<b>6233</b>	Gas or Oil Pipeline Construction – All Operations to Completion & Drivers
<b>6235</b>	Oil or Gas Well – Drilling or Redrilling – All Operations to Completion & Drivers
<b>6251</b>	Tunneling – All Operations to Completion
<b>6252</b>	Shaft Sinking – All Operations to Completion
<b>6306</b>	Sewer Construction – All Operations to Completion & Drivers
<b>6319</b>	Gas Main or Connection Construction – All Operations to Completion & Drivers
<b>6325</b>	Conduit Construction – For Cables or Wires – All Operations to Completion & Drivers
<b>6400</b>	Fence Erection – Metal – All Operations to Completion
<b>6701</b>	Railroad Construction – All Operations to Completion & Drivers

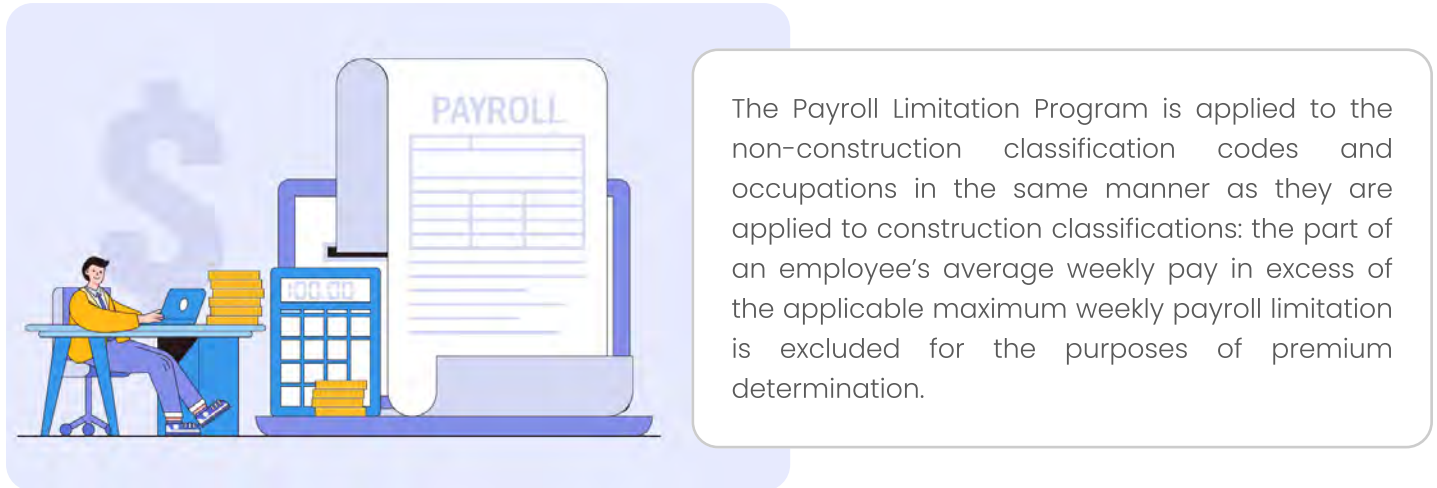


<b>7536</b>	Cable Installation – All Operations to Completion & Drivers
<b>7538</b>	Electric Light or Power Line Construction – All Operations to Completion & Drivers
<b>7601</b>	Telephone, Telegraph or Fire Alarm Line Construction – All Operations to Completion & Drivers
<b>7855</b>	Railroad Construction – Laying or Re-laying Tracks – No Work on Elevated Railroads – All Operations to Completion & Drivers
<b>8227</b>	Construction or Erection Permanent Yard
<b>9526</b>	Scaffolds, Hod Hoists or Construction Elevators – Built-Up From the Ground – Installation, Repair or Removal – All Operations to Completion & Drivers
<b>9527</b>	Scaffolds – Sidewalk Bridges – Not Over One Story in Height – Installation, Repair or Removal – All Operations to Completion & Drivers
<b>9534</b>	Mobile Crane and Hoisting Service Contractors – NOC – All Operations to Completion & Drivers
<b>9539</b>	Awning, Tent or Canvas Goods Erection, Removal or Repair – All Operations to Completion & Drivers
<b>9545</b>	Bill Posting – All Operations to Completion & Drivers
<b>9549</b>	Advertising Co. – All Operations to Completion & Drivers
<b>9553</b>	Sign Painting or Lettering on Buildings or Structures – All Operations to Completion & Drivers

Please note that **employers in the construction industry may also be eligible for a premium credit** under the New York Construction Classification Premium Adjustment Program or CPAP. For more information on the CPAP program, please refer to the Learning Center on the Rating Board's website at [www.nycirb.org](http://www.nycirb.org).

### Non-Construction Classifications

The Payroll Limitation Program also applies to the following two categories of non-construction classifications: (i) employers with payroll in classification codes identified in Rule V(F)(1)(a) of the Manual, and (ii) executive officers, members of LLCs, partners, and sole proprietors.



#### I. Employers with Payroll in Classification Codes Identified in Rule V(F)(1)(a) of the Manual

For the classes listed in the table below, **the maximum payroll limitation is set at four times the projected State average weekly wage.** As of October 1, 2023, the payroll limitation for employees in these classifications is \$7,075.

<b>7610</b>	Radio or Television Broadcasting Station – All Employees & Clerical, Outside Salespersons, Drivers
<b>8280</b>	Racing Stables & Drivers
<b>9071</b>	Restaurant – Full Service – Including Entertainers and/or Musicians (Note: payroll limitation only applies to the entertainers or musicians)
<b>9074</b>	Bar, Dance Club, Lounge, Nightclub or Tavern – Including Entertainers and/or Musicians (Note: payroll limitation only applies to the entertainers or musicians)
<b>9157</b>	Theatrical Production in which any Players or Entertainers Dance, Skate or Perform Acrobatic Acts – Players, Entertainers or Musicians
<b>9158</b>	Theatrical Production in which any Players or Entertainers Dance, Skate or Perform Acrobatic Acts – All Other Employees

## Non-Construction Classifications

<b>9159</b>	Theatrical Production – NOC – Players, Entertainers or Musicians
<b>9160</b>	Theatrical Production – NOC – All Other Employees
<b>9178</b>	Athletic Team or Park – Non-Contact Sports
<b>9179</b>	Athletic Team or Park – Contact Sports
<b>9186</b>	Carnival, Circus or Amusement Device Operator – Traveling – All Employees & Drivers
<b>9610</b>	Motion Picture Production – In Studios or Outside – All Operations up to the Development of Negatives & Drivers

### Example



A Broadway actor or actress who dances during their performance would be classified to **code 9157 (Theatrical Production in which any Players or Entertainers Dance, Skate or Perform Acrobatic Acts – Players, Entertainers or Musicians)** and be subject to payroll limitation. If the Broadway actor or actress in this hypothetical makes \$19,230 per week (or \$1,000,000 per year), the payroll utilized for premium determination purposes would be limited to \$7,075 per week (or \$367,900 per year) based on the New York maximum weekly payroll limitation value of \$7,075 effective October 1, 2023.

## II. Executive Officers, Members of LLCs, Partners and Sole Proprietors

For this category, the payroll limitation is set at one and a half times the projected State average weekly wage. As of October 1, 2023, the **payroll limitation for this category is \$2,650.**

### Example



A corporate executive officer classified to **code 8809 (Executive Officers – NOC – Not Foremen, Workers or Salespersons)** would be subject to payroll limitation. If the corporate executive officer in this hypothetical makes \$5,769 per week (or \$300,000 per year), the payroll utilized for premium determination would be limited to \$2,650 per week (or \$137,800 per year) based on the New York maximum weekly payroll limitation value of \$2,650 effective October 1, 2023.

For additional information relating to Payroll Limitation, please visit the Rating Board's website at [www.nycirb.org](http://www.nycirb.org).