

Code Rule 59



December 2021 - Report

Introduction

The purpose of this report is to **provide statistics related to New York State's Code Rule 59 program**. By way of background, Section 134 of the New York State Workers' Compensation Law and Department of Labor Industrial Code Rule 59 establish a mandatory workplace safety and loss prevention program ("Program"). **The Program is intended to improve workplace safety and reduce workplace injuries** and applies to employers who have (i) an annual payroll in excess of \$800,000 and (ii) a workers' compensation experience rating modification factor of more than 1.20.

The New York Compensation Insurance Rating Board ("Rating Board") utilizes its data and information to identify employers required to participate in the Program and provides them with Program notification. Employers in the Program are required to retain a workplace safety and loss prevention consultant who evaluates their worksites and provides safety recommendations for implementation.

Employers who fail to comply with the requirements of the Program are subject to a 5% surcharge on their policy premium for the next policy period. The amount of the surcharge increases by 5% each year that an employer remains out of compliance with Program requirements.

The surcharge is identified using statistical code 9747 on the Rating Board's Unit Statistical Report data. The Rating Board only receives data on surcharged policies and not confirmation of Program compliance. It is possible that some policies are not in compliance with Program requirements and also not being surcharged. The data contained in this Code Rule 59 Report is arranged by Notification Year, which relates to the year in which an employer was first notified of their mandatory participation in the Program.



Utilization of Code Rule 59

Exhibit 1 displays the number of employers notified annually that they are subject to the Program as well as the number of policies that were subsequently surcharged. The percentage of policies that were surcharged out of total notifications sent is shown in the right-most column. It is important to note that for the more recent years displayed in the table, the number of policies surcharged, along with the associated percentages, will increase in the future if employers do not comply with Program requirements.

Exhibit 1

NOTIFICATION YEAR	NOTIFICATIONS SENT ¹		SURCHARGED POLICIES	PERCENTAGE SURCHARGED
	ACCOUNTS	POLICIES		
2013	1,045	1,230	58	4.7%
2014	1,224	1,503	69	4.6%
2015	1,452	1,728	84	4.9%
2016	1,789	2,246	94	4.2%
2017	1,216	1,471	68	4.6%
2018	1,314	1,658	76	4.6%
2019	1,171	1,458	38	2.6%
Total	9,211	11,294	487	4.3%

¹ Accounts identified for the Program may be associated with more than one policy.

As noted in the Introduction, if an employer fails to satisfy the requirements of the Program, **an employer is subject to a 5% premium surcharge, and that surcharge increases by 5% for each year of noncompliance** (e.g., the surcharge during the second year of non-compliance is 10%). **Exhibit 2** displays the number of policies that were surcharged for a single year vs. the number of policies that were surcharged multiple years.

Exhibit 2

NOTIFICATION YEAR	POLICIES WITH SINGLE YEAR SURCHARGE	POLICIES WITH MULTIPLE YEAR SURCHARGE
2013	36	22
2014	42	27
2015	44	40
2016	48	46
2017	41	27
2018	38	38
2019	30	8
Total	279	208

Surcharge Timing

Section 134 of the New York State Workers' Compensation Law requires that **employers arrange for a safety consultation and comply with the safety recommendations within certain timeframes.** Exhibit 3 displays the percentage of policies that were surcharged within certain time periods from notification.

Exhibit 3

YEARS TO FIRST SURCHARGE ²	PERCENTAGE OF POLICIES IN THE PROGRAM THAT WERE SURCHARGED
Less than 2	3.3%
2 to 3	0.5%
3 to 4	0.2%
Greater than 4	0.3%

² "Years to First Surcharge" refers to the number of years between the Notification Date and an employer's first surcharge.

Exhibit 4

NOTIFICATION YEAR	SURCHARGED POLICIES	TOTAL SURCHARGE AMOUNT STATEWIDE ³	AVERAGE SURCHARGE PER POLICY	AVERAGE SURCHARGE PERCENTAGE
2013	58	\$725,227	\$12,504	7%
2014	69	\$538,142	\$7,799	9%
2015	84	\$978,793	\$11,652	9%
2016	94	\$896,725	\$9,540	8%
2017	68	\$386,621	\$5,686	8%
2018	76	\$383,677	\$5,048	7%
2019	38	\$95,931	\$2,525	5%
Total	487	\$4,005,117	\$8,224	8%

Surcharge Amounts

Exhibit 4 displays the number of policies surcharged for each Notification Year, the average surcharge percentage and amount per policy,⁴ and the total amount surcharged statewide.



³ If policyholders continue to be out of compliance with Program requirements in future years, surcharge amounts by Notification Year will increase as additional surcharges apply to subsequent policies.

⁴ The average surcharge percentage is derived by dividing the total surcharge amount by the modified premium on surcharged policies. Modified premium is determined after the application of an insurer's approved rates and an employer's experience rating modification or merit rating factor.

Policy Size

Exhibit 5 compares the average payroll size of surcharged policies with the average payroll size of policies that were identified for the Program and were not surcharged.

Exhibit 5

NOTIFICATION YEAR	AVERAGE PAYROLL OF SURCHARGED POLICIES	AVERAGE PAYROLL OF POLICIES IN THE PROGRAM WITHOUT SURCHARGE
2013	\$3,650,729	\$8,438,630
2014	\$1,434,187	\$6,896,315
2015	\$2,588,526	\$6,870,320
2016	\$2,064,355	\$7,031,172
2017	\$2,397,670	\$4,668,385
2018	\$2,032,604	\$5,554,042
2019	\$1,931,574	\$7,252,973
Average	\$2,285,639	\$6,647,612

Occupational Classifications

Exhibit 6 displays the top 5 governing class codes by payroll on policies identified for participation in the Program in Notification Years 2013 through 2019. The percentage of payroll that each identified governing class code represents out of total payroll in the Program is also shown.

Exhibit 6 - Top 5 Governing Class Codes of Notified Policies by Payroll

CLASS CODE	DESCRIPTION	INDUSTRY GROUP	CLASS SHARE OF CODE RULE 59 PROGRAM PAYROLL
8832	Physician and Clerical	Professional and Office	6.1%
8810	Clerical Office Employees - NOC	Professional and Office	6.0%
8868	School or College - Professional Employees and Clerical	Professional and Office	6.0%
9026	Building Operation - Commercial - No Dwelling Occupancy Except by Owner or Custodian	Services	5.8%
8833	Hospital - Professional Employees	Professional and Office	5.0%
Total			28.9%

Exhibit 7 displays the top 5 governing class codes by policy count on policies identified for participation in the Program in Notification Years 2013 through 2019. The percentage of policies that each identified governing class code represents out of the total number of policies in the Program is also shown.

Exhibit 7 - Top 5 Governing Class Codes of Notified Policies by Policy Count

CLASS CODE	DESCRIPTION	INDUSTRY GROUP	CLASS SHARE OF CODE RULE 59 PROGRAM POLICIES
8832	Physician and Clerical	Professional and Office	5.2%
8810	Clerical Office Employees - NOC	Professional and Office	5.0%
9028	Building Operation - NOC-Dwelling or Combined Dwelling and Commercial Occupancy	Services	3.6%
8868	School or College - Professional Employees and Clerical	Professional and Office	3.5%
9071	Restaurant - Full-Service - Including Entertainers and/or Musicians	Services	3.2%
Total			20.5%

Occupational Classifications Continued..

Exhibit 8 displays the top 5 governing class codes by payroll on policies that were surcharged in Notification Years 2013 through 2019. The percentage of payroll that each identified governing class code represents out of the total surcharged payroll in the Program is also displayed.

Exhibit 8 - Top 5 Governing Class Codes of Surcharged Policies by Payroll

CLASS CODE	DESCRIPTION	INDUSTRY GROUP	CLASS SHARE OF CODE RULE 59 SURCHARGED PAYROLL
8868	School or College - Professional Employees and Clerical	Professional and Office	8.7%
9026	Building Operation - Commercial - No Dwelling Occupancy Except by Owner or Custodian	Services	8.5%
8810	Clerical Office Employees - NOC	Professional and Office	5.6%
7723	Detective or Patrol Agency and Drivers	Miscellaneous	5.4%
8832	Physician and Clerical	Professional and Office	5.3%
Total			33.5%

Exhibit 9 displays the top 5 governing class codes by policy count on policies that were surcharged in Notification Years 2013 through 2019. The percentages of policies that each identified governing class code represents out of the total number of surcharged policies is also displayed.

Exhibit 9 - Top 5 Governing Class Codes of Surcharged Policies by Policy Count

CLASS CODE	DESCRIPTION	INDUSTRY GROUP	CLASS SHARE OF CODE RULE 59 SURCHARGED POLICIES
9071	Restaurant - Full-Service - Including Entertainers and/or Musicians	Services	6.8%
9028	Building Operation - NOC-Dwelling or Combined Dwelling and Commercial Occupancy	Services	6.6%
8868	School Or College - Professional Employees and Clerical	Professional and Office	5.7%
8810	Clerical Office Employees - NOC	Professional and Office	4.5%
8832	Physician & Clerical	Professional and Office	4.1%
Total			27.7%