REVIEWED COSTS

g.c.g. risk management inc.

WORKERS' COMPENSATION, INSURANCE, CLAIMS AND LAW FOR THE EMPLOYER

NOVEMBER 2015 **VOLUME XXXV, NUMBER 5**

STATE INSURANCE FUND REDUCES LOSS COST MULTIPLIER BY 5% FOR RENEWALS ON OR AFTER 10/1/15

As we reported in our last issue of Reviewed Costs (September 2015), in response to the overall increase in Loss Costs approved by the New York State Department of Financial Services (NYDFS), the New York Compensation Insurance Rating Board (NYCIRB) issued a list of its Loss Costs for each classification, to be effective for renewals on or after 10/1/15.

As originally reported in that Reviewed Costs, the State Insurance Fund had not made any changes in its Loss Cost Multiplier. Since that publication, the State Insurance Fund issued a notice advising of a reduction of 5% in its Loss Cost Multiplier from 1.53 to 1.45. This reduction is concurrent with the October 1, 2015 Loss Cost revisions. The renewal rates for State Insurance Fund policies renewing on or after October 1, 2015, which had been previously issued, have been revised to reflect the new Loss Cost Multiplier.

A recent bulletin from NYCIRB advised that effective 1/1/16, the New York State Assessment Charge will be reduced to 12.9%. This charge is part of every workers' compensation policy in New York. The State Insurance Fund will continue to bill this charge, based on its premium, AFTER the application of any advance premium discount. This compares favorably with commercial carriers, which are instructed to bill the assessment on experience modified premium before any premium discount. For the past two years, for many State Insurance Fund policy holders, the State Fund has mitigated the Assessment charge with a Temporary Assessment Credit. This credit will expire as of renewals issued for 1/1/16 and thereafter.

STATE INSURANCE FUND AUDIT SCHEDULING IS THE BEST WAY TO AVOID UNNECESSARY PREMIUM CHARGES

Workers' Compensation policies are issued annually based on payroll estimates. Often, these estimates are developed from prior payroll audits, inflated by a percentage increase of 10% for "cost of living". At the time of a policy renewal, the last audit would be almost a year old, so the assumption is made that payroll has increased from that audit for one year, and now for the second year. This is the reason 10% is the usual "load". However, some business payrolls fluctuate from year to year, or sometimes, a business could have sustained a drop-off in payroll. In these instances, supplying payroll documentation to our office, in the form of NYS-45 forms (quarterly payroll tax returns) and weekly or bi-weekly payroll records, may permit our office to have a policy premium reduced for the lower anticipated payroll (this is called a Rebill).

However, in some situations, the policy year is nearly over by the time the policyholder makes us aware of this reduction in payroll. As such, the State Fund would prefer to perform the actual payroll audit for the period, before approving the reduction in payroll going forward. Payroll audits are usually done within 3-5 months after a policy year ends. In some instances, our office can expedite an audit to assist a policyholder in getting the audit credit they may be entitled to. The State Fund is also initiating an online audit scheduling system, so that a policyholder, or GCG, can go online and assist in the scheduling or rescheduling of an audit appointment, or even a location, if payroll records are not at the address of the policyholder (if, for example, the employer has multiple locations, or if the audit is done at an accountant's office).

The most important thing is to get the audit done. Failure by the policyholder to respond to the initial letter, which is a pre-scheduled audit appointment, will result in an estimated audit being issued. This will greatly inflate the premium charges for the year (this is designed to get the policyholder's attention to schedule the actual audit). Estimated audits can

also affect the ability of the policyholder to get the premium discounts they may deserve on their next policy renewal. Compliance with audit procedures of an insurance carrier is mandatory, and perceived non-cooperation in having a payroll audit (even if you are busy and having trouble scheduling a date) is a "red-flag" for carriers. Our office gets copies of estimated audits, and we then contact our clients to get an audit scheduled promptly, and get the estimate rescinded in favor of the correct numbers.

In addition, after the audit, if there are adjustments to which you are entitled, but for which you may not have had the paperwork at the time of the audit (such as certificates of insurance for sub-contractors, separation of overtime, and other such items) we can assist in expediting the resolution of these issues. For payroll audit issues, you may contact juliette.payne@gcgriskmanagement.com, or stephanie.stopera@gcgriskmanagement.com.

EXECUTIVE OFFICER EXCLUSION FROM WORKERS' COMPENSATION POLICY IS A DOUBLE-EDGED SWORD FOR SMALL BUSINESS OWNERS

When small business owners secure a workers' compensation policy, they expect to pay premium charges for their workers. At policy inception, they are faced with a decision whether to exclude themselves as the owner/officer (or sometimes two owners/officers). This is an affirmative exclusion, not an automatic one, in most instances. When an owner/officer excludes himself/herself from coverage under a policy, it is usually done with the cost in mind. Failure to exclude oneself as Executive Officer requires a premium charge to be billed based on the owner/officers payroll and the applicable rate. IF the owner/officer is truly an "executive officer" working all day in the office, with no direct site supervision of employees, this owner/officer can include coverage for himself/herself for a very small premium (the rate per $100 of payroll is less than $0.35). In addition, an annual payroll maximum will apply so the charge is minimal.

On the other hand, if the owner/officer is a "hands on" supervisor, as many small business owners are, and is present on the job-site or in the warehouse or wherever the regular workers are, then the inexpensive Executive Officer rate is often not available, and owner/officer gets the rate of the workers' in his employ. This can result in a large premium charge for the "privilege" of being insured. As a result, most small business owners in this situation will elect the exclusion to save the premium.

There is, however, the consideration that as invincible as a small business owner may feel, work-related injuries do occur to these people as well. Several years ago, an owner/officer of a company, one who had excluded himself from coverage, was electrocuted when his window cleaning pole hit a power line. While he ultimately recovered, he was unable to make a claim for workers' compensation against his policy. Lost wages aside, as that was ultimately not an issue, there were significant medical costs he had to bear in place of the full, first-dollar medical coverage afforded under a workers' compensation policy. Further, had the worst happened, and had he died, his widow and/or children, would have been without benefits which the workers' compensation law affords. While we do not mean to suggest that every owner/officer should rush to cover himself/herself, or not take the exclusion to save the premium, we encourage owners/officers of small businesses to take a realistic look at their risks in their day-to-day job routines, and weigh the cost of their respective coverage against the potential and/or need for benefits, if a serious accident were to happen on the job. GCG is always available to discuss these issues with our clients.

ANSI STANDARDS ON RESPIRATOR PROGRAMS NOW REQUIRE PERIODIC AUDITS

For those employers with Respiratory Protection Programs, the new ANSI Standards on Respirator Programs now require periodic audits by a knowledgeable and objective person NOT directly associated with the program. This is required **in addition** to the regular Respirator Program Director or Administrator's Annual Internal Audit. GCG's health and safety professionals can serve as your "Outside Auditor for Respirator Program". We will provide more information on this to our clients in an upcoming Tool Box Talk (TBT), as part of the monthly safety information provided electronically to our clients who are signed up for this service. If you are NOT signed up for our Tool Box Talks (TBT), please contact angela.goff@gcgriskmanagement.com to do so.

For more information on OSHA compliance and other health & safety issues, please contact, any of the GCG Health & Safety Team, elsie.tai@gcgriskmanagement.com, rudolph.lu@gcgriskmanagement.com, or hamid.abuzaid@gcgriskmanagement.com.