



REVIEWED COSTS

g.c.g. risk management, inc.

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

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NYS DEPARTMENT OF FINANCIAL SERVICES APPROVES 4.5% AVERAGE REDUCTION IN WORKERS' COMPENSATION LOSS COSTS EFFECTIVE OCTOBER 1, 2017

As expected, the New York State Department of Financial Services (DFS) approved the request filed by the New York Compensation Insurance Rating Board (NYCIRB) for a 4.5% average decrease in the overall workers' compensation loss costs level for New York State. Favorable loss experience for the 2015 & 2016 policy years was cited as the main reason for the decrease. The revised loss costs will be applied to policies renewing on or after October 1, 2017.

DFS also approved a 1.7% premium credit to outstanding policies to reflect the cost savings associated with the April 10, 2017 Workers' Compensation Reform legislation. The 1.7% premium credit will be applied based upon a ratio method utilizing the individual policy's rating effective date. The credit will be applied on audit.

If a portion of a premium credit of 1.7% seems to be much ado about nothing, it is. Bear in mind that the Senate and Assembly members who sponsored the legislation were anxious to take credit for the projected savings from the Workers' Compensation Reform and they insisted that a premium credit be included in the legislation. The legislators will claim that this is merely a down payment on the major reforms promised in the legislation, and that there is more savings to come. In other words "Wait Till Next Year". We can only hope this does not become "Waiting for Godot".

STATE INSURANCE FUND REDUCES ITS LOSS COST MULTIPLIER EFFECTIVE OCTOBER 1, 2017

The Board of Commissioners of the New York State Insurance Fund has approved a reduction in the State Fund's Loss Cost Multiplier (LCM) from 1.33% to 1.27%. This will be applied to State Fund policies renewing on or after October 1, 2017. With this reduction, the third in as many years, the State Fund has now brought its Loss Cost Multiplier to its lowest level since the inception of the Loss Cost system in 2008.

More important, the multiplier is at or slightly below the average Loss Cost Multiplier for all carriers in New York State. With its advance discounts, the State Fund is now positioned to retain its best accounts in a soft market, and to attract new business.

NEW YORK STATE WORKERS' COMPENSATION WEEKLY BENEFIT MAXIMUM INCREASED AGAIN ON JULY 1, 2017

The maximum weekly benefit for Workers' Compensation in New York is based upon two-thirds of the claimant's "average weekly wage". The maximum benefit is indexed to the New York State average weekly wage as reported by the NYS Department of Labor (NYSDOL) for the preceding calendar year. The DOL had previously reported that the 2016 NYS average weekly wage was \$1,305.92. Effective with accidents that occur on or after July 1, 2017, the maximum weekly benefit will increase from \$864.32 to **\$870.61**.

DON'T GO NAKED! LARGE FINES FROM WORKERS' COMPENSATION BOARD PLAGUE ENTITIES THAT FAIL TO GET COVERAGE

At GCG, when we encounter the same problem with three different clients in a brief period, it is usually a good subject for an article here in **Reviewed Costs**. When the State Insurance Fund Policyholder Services Department actually suggests to us that it is a good subject for an article, then we know we are on to something. And so, the subject at hand is what happens when an employer in New York fails to let our office, or their workers' compensation carrier, know when they have formed a **NEW ENTITY**, and, worse than that, transferred payroll to that **NEW ENTITY**, and failed to add that entity to their workers' compensation and their disability benefits policies. The result, as three of our clients just found out, is a **BIG FAT FINE** from the Workers' Compensation Board. Then our office is left scrambling to find a way to get coverage for the new entity backdated, which is nearly impossible to do, to avoid these fines. Suffice to say, this is **NOT** a good situation.

So...first the rules. If you have an entity doing business in New York State, and that entity has more than two owner/officers, or **ANY** employees, even for a day or two, or even if it employs independent contractors who do not otherwise have their own workers' compensation coverage, then that entity is required **BY LAW** to secure a policy for workers' compensation and one for disability benefits. In today's electronic age, everything is keyed to the FEIN number of the employer, and the carrier reports this directly to the Workers' Compensation Board. Coverage can be easily verified at the Board website with the FEIN number.

What often happens, as it did to our clients this past month, is that an employer may set up a new entity. All their payroll may already be running through another entity which is properly insured on their policy. Then the employer decides to shift their payroll from the old entity to the new one. However, they fail to notify the carriers that the new entity must be added to the policy. Suddenly, payroll gets reported on the new entity that has no coverage. Because payroll tax returns are filed quarterly and there is often a time lag before anyone realizes this, months can go by with the entity **NAKED** (no coverage), before an inquiry notice from the Workers' Compensation Board jogs the employer's memory. Sometimes, the notice actually scares the employer into a state of inaction and they don't even respond until the **FINE** notice is sent – a \$2,000 fine for every 10 days of no coverage. Worse than that, if anyone on the payroll of the uncovered entity gets hurt during this time, there can be an uninsured employer situation, with disastrous financial consequences for a serious injury, as the employer becomes "de facto" self-insured.

Happily, this is all avoidable by the employer. First, upon reading this article, all our readers/clients should take a quick look at their Workers' Compensation and Disability Benefits policies and make sure that the list of named insureds includes all of the entities under which they do business. That would include corporations, LLCs, partnerships, etc. If an entity is not listed, then a quick review of that entity to determine if it needs to be listed should be conducted.

- Does the entity have more than two owner/officers? If so, cover it.
- Does it have **ANY** employees other than the two owner/officers or is it likely to have any in the near future? If so, cover it.
- If it has no employees, does it hire independent contractors who might not have their own coverage? If so, it would be advisable to cover it in case a claim is made by an uninsured subcontractor.

Adding an entity to a policy that is already in force is generally easy, provided that the ownership of that entity is 51% similar to the entity on the policy to which it is being added. That is, if you have a policy for ABC Corp. which is owned 1/3 each by A and B and C, and you have another entity ABX Corp. which is owned 1/3 each by A and B and X, it can be added to ABC's policy because A and B represents 2/3 ownership of each entity. If, however, it is AXZ Corp. and there is only 1/3 similarity, then AXZ would have to get its own policies. This is called "combineability" and it is often tested when entities such as LLCs have multiple owners or owner groups.

The safest bet of course is to make sure the new entities have coverage from day one. As we said, it is extremely difficult to convince an insurance carrier to backdate a coverage date as they are assuming a risk of claims that may have already occurred. Sometimes, the best that can be done to salvage this bad situation is to secure coverage going forward, and then the employer bears the risk of fines and claims for the uncovered period.

The point of this article is not to answer all the possible questions on the subject. Rather, the hope is that our readers will take a moment to review their own situations and satisfy themselves that they have the appropriate entities covered on their policies. Should there be any doubt, or should any one of our readers find they are **NAKED**, then please contact our office immediately, so we can help you resolve the matter as soon as possible. Inquires involving coverage issues can be sent to Stephanie.stopera@gcgriskmanagement.com, or Lakota.collier@gcgriskmanagement.com.