



REVIEWED COSTS

g.c.g. risk management, inc.

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

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NYS DEPT. OF FINANCIAL SERVICES APPROVES 11.7% AVERAGE REDUCTION IN WORKERS' COMPENSATION LOSS COSTS EFFECTIVE OCTOBER 1, 2018; STATE INSURANCE FUND LOSS COST MULTIPLIER REMAINS UNCHANGED

As anticipated, the New York State Department of Financial Services (DFS) approved the request filed by the New York Compensation Insurance Rating Board (NYCIRB) for an 11.7% average decrease in the overall workers' compensation loss costs level for New York State. The revised loss costs will be applied to policies renewing on or after October 1, 2018.

Notwithstanding the significant drop in the loss cost levels, the State Insurance Fund (NYSIF) will continue its Loss Cost Multiplier (LCM) at 1.27%. As a result, most NYSIF policyholders should see significant reductions in their premiums upon their next policy renewal.

PAYROLL AUDIT COMPLIANCE IS NON-NEGOTIABLE

The calculation of premium in Workers' Compensation is based on payroll, and the accurate verification of that payroll, by means of a payroll audit or payroll report, is essential to develop the correct premium for the policyholder. An incorrect or understated payroll will likely lead to an increase in other components of the workers' compensation premium calculation, including experience modification and policyholder discounts. In extreme circumstances, a failure to obtain accurate verification of payroll can lead to artificially high "estimated" payrolls and "estimated" audits, or, in the case of a private carrier, a non-renewal notice. These measures are designed to force compliance by the recalcitrant policyholder.

A proper payroll audit will include not merely a review of the payroll records of the policyholder, but, it must and will include a requirement to produce the following records:

- Payroll Book
- Payroll Tax Returns (941 Forms, NYS-45s and NYS-45 ATTs)
- Cash Book (Disbursements and Receipts)/Check Book and Any Book With Cash Expenses
- General Ledger of Disbursements
- Corporate Income Tax Return (Form 1120) or Partnership Return (Form 1065) or Schedule C from Form 1040 (whichever is applicable)
- Forms W-2 & W-3
- Forms 1099 & 1096
- Certificates of Insurance obtained from independent contractors covering any months in the audit period
- Copies of Any Relevant Contracts

Policyholders who may be concerned about confidentiality should rest easy in the knowledge that any and all records are reviewed but do not leave your premises. The data is documented by the auditor as a means of cross verification, for the payroll audit to be completed properly. In this way, a correct and accurate premium is developed.

This is also the time where discussion over issues of classification of individual employees should occur between the policyholder and the auditor. Generally, most employers' classifications of employees are correctly coded in the payroll records year over year. However, it may occur that, for an individual who a policyholder believes should be properly

classified as purely clerical, the policyholder may have to show the auditor that such an employee is actually working inside an office with books and records, and not out on a shop floor or in the field. It is important for the policyholder to remember that, if an employee who has been classified in a low risk classification, such as clerical work, sustains an injury doing non-clerical work, such as loading a truck or being in the shop or out in the field, it will be incumbent on the employer to provide a good explanation as to the unique circumstances of the injury and why the employee had stepped outside his non-hazardous employment responsibilities. Failure to do so can call into question any of the employer's classification of employees, not merely the one who was injured doing something he was not supposed to do.

Certificates of Insurance from subcontractors represent a particularly scrutinized area of any audit. All Certificates of insurance provided to an employer, and subsequently to the auditor, are subject to verification of Workers' Compensation Coverage. We have seen numerous instances of fraudulent Certificates of Insurance provided to our clients by their subcontractors. We urge our clients to provide these Certificates of Insurance to us for verification AS SOON THEY ARE PROVIDED TO YOU, before permitting these subcontractors on the job, especially from Out-of-State (non-New York) contractors, and not to wait until the auditor is in your office. You might find that a certificate was provided by a subcontractor, but was then permitted to lapse, for nonpayment, and you were never notified of that cancellation of the certificate, which makes it invalid for any period beyond the cancellation date.

Other issues that arise with Certificates of Insurance involve out of New York State employers, such as trucking companies. State Insurance Fund (NYSIF) requires 3A coverage for Out-of-State (non-New York) truckers delivering and picking up in New York. To be sure an Out-of-State subcontractor/trucker has New York coverage, an employer should obtain a copy of Section 3 of the Workers' Compensation policy for the subcontractor/trucker showing "NY" in Section 3A. The wording "Employees covered while working in NYS" on an ACORD certificate is no longer accepted as proof of New York endorsed coverage. Please note that if, for example, a New Jersey employer has his workers' compensation coverage with the New Jersey assigned risk plan, that coverage does NOT extend to New York State, and any Certificate of Insurance that is provided to you would not be worth the paper it is printed on. This also applies to the PA State Insurance Fund and its certificates.

One of the questions that often comes up is when a policyholder has become accustomed to a particular auditor over the years, one who "knows his business." Then, suddenly, that auditor is no longer coming around and a new auditor has shown up. The policyholder would like the old auditor back. Unfortunately, the nature of this rotation of auditors is to keep everyone "honest", inasmuch as a fresh set of eyes avoids the potential for gamesmanship which might occur with repeated annual visits by the same auditor who might become "comfortable with the policyholder's representations" and not request or require all the records needed to complete the audit.

It is worth noting that the volume of workers' compensation fraud cases brought against employers, who are allegedly hiding payroll or failing to correctly classify workers, far exceeds the number of cases brought against claimants who allegedly defraud the system. It is tempting, obviously, for an employer who is struggling with cash flow, to attempt to "minimize" the premium he will pay, but ultimately this costs all employers more, as system costs increase to compensate for this situation. The industry response has been to tighten the controls on the audit process. This is not merely true at NYSIF, but at all insurance carriers. The electronic data era has made this process much easier, in many respects, as payroll and tax data is cross-referenced at the Workers' Compensation Board compliance level to ensure that employers have the requisite policies under the proper FEIN/TIN.

We cannot stress enough the importance of a timely and complete audit. If you are a member of one of our many safety groups, the absence of completed billed audits can delay the determination and processing of a safety group dividend. This impacts all members of the group. Further, even if a dividend is declared and paid, when a policyholder has an outstanding incomplete audit, which has been billed as an "estimate," a dividend check cannot be released to the policyholder, and the credit remains on the policyholder account until the audit is completed and correctly billed.

At GCG Risk Management, Inc. our staff is happy to assist you in audit preparation, review of required documents, verification of Certificates of Insurance, and any audit questions you may have. Don't wait until the auditor is in your office to ask. After the audit is completed, it is reviewed prior to being billed. So, if you have an audit dispute or issues regarding the conduct of the actual audit, please raise those issues with our staff promptly after the audit, and please provide all documentation necessary to support your dispute.

Employers may now set up audits online. Please reach out to Juliette.payne@gcgriskmanagement.com or stephanie.stopera@gcgriskmanagement.com or Lakota.collier@gcgriskmanagement.com with any audit questions you may have, in advance of your audit date.