



August 12, 2019

VIA SERFF

The Honorable Trinidad Navarro
Insurance Commissioner
Department of Insurance
State of Delaware
1351 West North Street, Suite 101
Dover, DE 19904

Attention: Tanisha Merced, Deputy Insurance Commissioner

**RE: DCRB Filing No. 1904 – Proposed Effective December 1, 2019
Revisions to Basic Manual Rule V – Premium Basis**

Dear Commissioner Navarro and Deputy Commissioner Merced:

On behalf of the members of the Delaware Compensation Rating Bureau, Inc. (DCRB), we hereby submit the proposed filing for revisions to the DCRB Workers' Compensation Manual of Rules, Classifications and Rating Values for Workers' Compensation and Employers Liability Insurance (Basic Manual). These revisions are proposed for policies with effective dates of 12:01 a.m., December 1, 2019 or later. This proposed effective date will align implementation of these changes concurrent with DCRB's normal annual comprehensive residual market rate and voluntary market loss cost filing, which was filed with the Department of Insurance on August 2, 2019. This coordination consolidates necessary changes that our members and other constituents must make to policies, forms and systems so that they occur once annually.

These revisions result from an ongoing national effort by all Rating Bureaus, known as the "Basis of Premium Working Group," where discussions have centered on establishing, where possible, consistent treatment of remuneration in the calculation of workers compensation premium. The revisions codify existing administrative procedure with one exception – the treatment of the fringe benefit component of a prevailing wage situation. Current DCRB procedure allows for the exclusion of the fringe benefit amount of a prevailing wage contract when paid directly to the employee. As part of these revisions DCRB proposes that the fringe benefit amount of a prevailing wage contract be included as remuneration unless payment is directed to a separate group insurance or pension plan or third party administrator. This revision to the treatment of the fringe benefit component of a prevailing wage situation will bring Delaware in conformance with other states and the national perspective.

Details of this filing are provided in DCRB's June 12, 2019 staff memorandum, which is included in this filing. The memorandum describes and explains the reasoning behind the proposed revisions to the Basic Manual language. The memorandum and proposals were reviewed by the DCRB Classification and Rating Committee at the Committee's June 12, 2019 meeting.

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Thank you in advance for your review and attention to this filing. The DCRB is pleased to answer any questions your or the Insurance Department staff may have regarding these proposals.

Sincerely,

William V. Taylor
President

Enclosure: Revisions to Sections 1 & 2



TO: Delaware Compensation Rating Bureau (DCRB)
Classification & Rating Committee

FROM: Vincent Dean
Director – Classification & Field Operations

DATE: June 12, 2019

RE: Basis of Premium Working Group (BOPWG)
Changes to Rule V – Premium Basis

As part of the ongoing BOPWG discussions to establish, where possible, a consistent treatment of remuneration in the calculation of premium, the DCRB is proposing the following changes to Rule V- B Remuneration, Inclusions and Exclusions, effective December 1, 2019. Note these changes basically codify existing administrative procedure with one exception - the treatment of the fringe benefit component of a prevailing wage situation (Inclusion – q; Exclusion – b). Here there is a change in procedure as evident in the change in language. Specifically, the DCRB currently allows for the exclusion of the fringe benefit amount of a prevailing wage contract when paid directly to the employee. With the approval of this proposal the DCRB will be including the fringe benefit amount unless payment is directed to a separate group insurance or pension plan or TPA. In accordance with this proposed change to Rule V the language for the Section 2 Prevailing Wage Payments entry in the General Auditing and Classification section must also be revised. This change to the fringe benefit component of a prevailing wage situation will bring Delaware into conformance with the national perspective.

The DCRB will continue to monitor the recommendations and filings emanating from the BOPWG in other jurisdictions and determine the merits of implementing subsequent changes in Delaware as needed.

**DELAWARE WORKERS COMPENSATION MANUAL OF RULES, CLASSIFICATIONS AND
RATING VALUES FOR WORKERS COMPENSATION AND FOR EMPLOYERS LIABILITY
INSURANCE**

Proposed Effective December 1, 2019

INFORMATION PAGE *remains unchanged.*

PREFACE *remains unchanged.*

MEMBERSHIP *remains unchanged.*

TABLE OF CONTENTS *remains unchanged.*

SECTION 1 – Underwriting Rules-Rule I (General) through Rule IV (Classifications) *remains unchanged.*

RULE V – PREMIUM BASIS

A. *(No change to Item A.)*

B. REMUNERATION – PAYROLL

1. Definition

(No change)

2. Inclusions

Remuneration includes:

- a.** Wages or salaries ~~including retroactive wages or salaries;~~

Remuneration includes:

(No change to Items b. and c.)

- d.** Stock bonus plans – market value of stock at the time it is given to employee (refer to Exclusions, m.) as well as employees' contribution to equity based compensation plans other than stock options.

(No change to Items e. and i.)

- j.** The rental value of housing (e.g. an apartment or a house) provided for an employee based on comparable accommodations;

(No change to Items k. through n.)

- o.** Adjustments necessary to bring employees, such as tipped employees, to federal minimum wage as reported by the United States Department of Labor ~~shall be included;~~

(No change to Item p.)

- q.** Prevailing wage payments and fringe benefits paid directly to employees based on required government-specified minimum wage rates, including but not limited to the Davis-Bacon Act or the Delaware Prevailing Wage Act; (see Section 2 – General Auditing and Classification – Prevailing Wage Payments);

DELAWARE WORKERS COMPENSATION MANUAL OF RULES, CLASSIFICATIONS AND RATING VALUES FOR WORKERS COMPENSATION AND FOR EMPLOYERS LIABILITY INSURANCE

Proposed Effective December 1, 2019

- r. Annuity plans (see ~~Rulings and Interpretations~~ [Section 1 Rule V, F.2](#)– Salary Reduction Plans);
(No change to Items s. through u.)

v. [Deferred or retroactive compensation paid to current employees at time of payment.](#)

3. Exclusions

(No change to Item a.)

- b. Payments made by an employer to a Group Insurance, Pension Plan or [a third party administrator as part of a prevailing wage requirement.](#) ~~to an employee directly in lieu of the foregoing because of the Provisions of a prevailing wage statute, including but not limited to the Delaware Prevailing Wage Act or the Davis-Bacon Act.~~ For additional information please see the General Auditing and Classification Information in Section 2 of this Manual.

(No change to Items c. through o.)

p. [Deferred or retroactive compensation paid to retired or terminated employees not employed during the policy period, provided that records adequately show these employees were no longer employees during the policy period.](#)

SECTION 1 – Underwriting Rules-Rule VI (RATING VALUES AND PREMIUM DETERMINATION) through Rule XVII (MEMBER CARRIER DISPUTES (DISPUTE RESOLUTION CONFERENCE)) *remains unchanged.*

DELAWARE WORKERS COMPENSATION MANUAL OF RULES, CLASSIFICATIONS AND RATING VALUES FOR WORKERS COMPENSATION AND FOR EMPLOYERS LIABILITY INSURANCE

Proposed Effective December 1, 2019

SECTION 2

RATING VALUES *through CLASSIFICATIONS remains unchanged.*

SECTION 2 – GENERAL AUDITING & CLASSIFICATION INFORMATION (Automobile Dismantling through Prefabricated Metal Building Erection –Prefabricated Sheet Metal and Silo Erection – Metal) *remains unchanged.*

PREVAILING WAGE PAYMENTS

Prevailing wage statutes, including but not necessarily limited to the Davis-Bacon Act or the Delaware Prevailing Wage Act stipulate that contractors under Federal or State government contracts, respectively, are required to pay specific minimum wage rates and specified fringe benefits ~~that may be paid into an approved fund for distribution at a later date or paid directly to the employee. Where an employer is unionized, the payments will normally go into a fund. However, if the employer is not unionized, the payments will often be made directly to the employee.~~ When auditing these types of employers, all wages paid to the employees are included for premium calculation. Fringe benefits that are required may only be excluded from premium calculation when paid to group insurance plans, pension plans, or third party administrators. If fringe benefit payments are paid directly to an employee the fringe benefit amount is treated like wages and is included for premium calculation.

SECTION 2 – GENERAL AUDITING & CLASSIFICATION INFORMATION (Product Assembly Definition through Coal Mines) *remains unchanged.*

SECTION 2- CLASSIFICATION UNDERWRITING GUIDE *remains unchanged.*

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(No change)

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(No change to Items b. and c.)

d. Stock bonus plans – market value of stock at the time it is given to employee (refer to Exclusions, m.) as well as employees' contribution to equity based compensation plans other than stock options.

(No change to Items e. and i.)

j. The rental value of housing (e.g. an apartment or a house) provided for an employee based on comparable accommodations;

(No change to Items k. through n.)

o. Adjustments necessary to bring employees, such as tipped employees, to federal minimum wage as reported by the United States Department of Labor;

(No change to Item p.)

q. Prevailing wage payments and fringe benefits paid directly to employees based on required government-specified minimum wage rates, including but not limited to the Davis-Bacon Act or the Delaware Prevailing Wage Act; (see Section 2 – General Auditing and Classification – Prevailing Wage Payments);

DELAWARE WORKERS COMPENSATION MANUAL OF RULES, CLASSIFICATIONS AND RATING VALUES FOR WORKERS COMPENSATION AND FOR EMPLOYERS LIABILITY INSURANCE

Proposed Effective December 1, 2019

r. Annuity plans (see Section 1 Rule V, F.2– Salary Reduction Plans);

(No change to Items s. through u.)

v. Deferred or retroactive compensation paid to current employees at time of payment.

3. Exclusions

(No change to Item a.)

b. Payments made by an employer to a Group Insurance, Pension Plan or a third party administrator as part of a prevailing wage requirement.. For additional information please see the General Auditing and Classification Information in Section 2 of this Manual.

(No change to Items c. through o.)

p. Deferred or retroactive compensation paid to retired or terminated employees not employed during the policy period, provided that records adequately show these employees were no longer employees during the policy period.

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