

Van Nice, Peter

From: Van Nice, Peter
Sent: Monday, December 4, 2017 2:27 PM
To: Tom Blue
Subject: RE: Alert: Montana Workers Compensation Payroll Changes

Categories: Red Category

INFORMATIONAL BULLETIN

Premium Determination for Executive/Corporate Officers in Montana

DRAFT

Please see the draft CSI Informational Bulletin, below. Any comments you may have on the draft can be provided to Brett Olin at Brett.Olin@mt.gov, by September 15, 2017.

August 17, 2017

All Workers' Compensation Insurers in Montana

Re: CSI Informational Bulletin -- Premium Determination for Executive/Corporate Officers in Montana

To Whom It May Concern:

The National Council on Compensation Insurance (NCCI) is the workers' compensation advisory organization designated by the Commissioner pursuant to Mont. Code Ann. § 33-16-1023. The information provided by the designated advisory organization assists the Commissioner with "the making of premium rates for workers' compensation insurance issued under compensation plan No. 2 and plan No, 3[.]" Mont. Code Ann. § 33-16-1002. NCCI updated its Montana Advisory on Loss Costs filing on July 1, 2013. That filing included modifications to NCCI's Basic Manual rules regarding Executive Officers, Members of Limited Liability Companies, Partners, and Sole Proprietors⁽¹⁾ to align the Miscellaneous Values and manual rules with Mont. Code Ann. §§ 39-71-118(5), and 401.

NCCI issued an [FYI Plus Circular](#) on July 14, 2017 to clarify the premium determination for executive/corporate officers, and stated in part:

"To be excluded from coverage (and yet have the option for the employer to elect coverage), executive/corporate officers must meet certain criteria as provided in Sections 39-71-401 and 39-71-118 of the Montana Code Annotated. If an executive/corporate officer does not qualify to be excluded from coverage, then that officer is automatically included under the Workers Compensation Act, unless the officer is exempt from the Act as described in *Basic Manual* Rule 2-E-1-b."

If exempt, the employer may elect that the officer or manager be covered under the Workers' Compensation Act, 39-71-118 (5) (a). Section 39-71-118 (5) (d) provides for the election of a minimum and maximum payroll for the exempt officers or managers. The minimum and maximum payroll election does not apply unless the exemption requirements are met. However, as clarified by the NCCI's 2013 Montana Advisory on Loss Costs filing, Montana law requires non-exempt executive/corporate officer payroll to be automatically included in premium calculations.

[1] The proposal modifies references to minimum and maximum coverage levels and replaces those with references to the Miscellaneous Values page (Basic Manual Appendix F). Additionally, the proposal eliminates the payroll limitation in the Basic Manual for executive officers who are automatically included under the Workers Compensation Act.

From: Tom Blue [mailto:tblue@bkjet.com]
Sent: Monday, December 4, 2017 1:20 PM
To: Van Nice, Peter <PVanNice@mt.gov>
Subject: FW: Alert: Montana Workers Compensation Payroll Changes

Peter,
Thank you for your time. I am forwarding you the email notice I received on Friday.

Tom Blue
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BK-JET Insurance Solutions, LLC (CA #0K83281)
999 W. Riverside Ave., Ste 510 | Spokane, WA 99201
T (509) 319-2905 | Mobile (509) 999-0659 | tblue@bkjet.com

From: Travelers Business Insurance [mailto:TRAVINFO@ems.travelers.com]
Sent: Friday, December 1, 2017 7:24 AM

To: Tom Blue <tblue@bkjet.com>

Subject: Alert: Montana Workers Compensation Payroll Changes



Changes in Payroll Reporting Requirements for Automatically Covered Executive/Corporate Officers

Recently, the National Council on Compensation Insurance (NCCI) provided clarification to Workers Compensation insurance carriers regarding the premium determination for executive/corporate officers in Montana. Pursuant to this clarification, insurance carriers must report the actual wages of executive/corporate officers who are automatically included under Montana's workers compensation act, and not payroll minimums/maximums that were previously approved. As a result, as of September 15, 2017, Travelers no longer uses payroll minimums for executive/corporate officers on MT premium audits. Additionally, for MT WC policies effective 02/01/18 and later, the maximum payroll limitations that may have been previously applicable to these officers will no longer apply.

We intend to advise impacted customers of this change at time of renewal. As part of that communication, we will direct them to carefully review the payroll figures on their renewal policy so that it reflects the actual payroll for the company's officers. We will also advise insureds that actual payroll will be verified during the standard premium audit process, and suggest they work with you to submit an endorsement request to have the payroll updated. If as a result of this review, they would like to consider excluding Montana officers from their workers compensation coverage, we will suggest they contact you to discuss coverage needs, review Montana's specific officer exclusion requirements, and submit an endorsement request if appropriate.

If you have any questions in regards to this change, please contact your Travelers underwriter.

Thank you for your business!

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EXHIBIT 1
BASIC MANUAL—2001 EDITION
MONTANA STATE RULE EXCEPTIONS
RULE 2—PREMIUM BASIS AND PAYROLL ALLOCATION
E. EXECUTIVE OFFICERS, MEMBERS OF LIMITED LIABILITY COMPANIES, PARTNERS,
AND SOLE PROPRIETORS
1. EXECUTIVE OFFICERS

b. Premium Determination

Add the following to Rule 2-E-1-b:

Executive/corporate officers that are eligible to elect coverage under the Workers Compensation Act must choose a coverage level at the time of election, and report the amount to the insurance company. For the applicable coverage level that an electing officer may choose, refer to the Montana Miscellaneous Values and Appendix F.

~~Electing officers may choose a coverage level of:~~

- ~~• A minimum of \$860 per month~~
- ~~• A maximum of 1.5 times the state average weekly wage, or~~
- ~~• Any coverage level between the minimum and maximum amounts~~

~~Executive/corporate officers who are automatically included under the Workers Compensation Act must report their actual wage to the insurance company, subject to a minimum of \$500 per month and a maximum of 1.5 times the state average weekly wage.~~

~~Executive/corporate officers who do not receive compensation for the ordinary work of the corporation are not eligible for coverage under the Workers Compensation Act. For election of coverage information, refer to C-1 of Montana's User's Guide.~~

EXHIBIT 2
BASIC MANUAL—2001 EDITION
MONTANA STATE RULE EXCEPTIONS
RULE 2—PREMIUM BASIS AND PAYROLL ALLOCATION
E. EXECUTIVE OFFICERS, MEMBERS OF LIMITED LIABILITY COMPANIES, PARTNERS,
AND SOLE PROPRIETORS

3. Partners or Sole Proprietors

Change Rule 2-E-3 as follows:

Premium for each partner or sole proprietor treated as an employee is based on a minimum and maximum amount. For the applicable minimum and maximum amounts, refer to the Montana Miscellaneous Values and Appendix F. Payroll of partners or sole proprietors must be assigned to classifications and rates under the rules that apply to employees. To determine if a partner or sole proprietor is to be treated as an employee, refer to the Election of Coverages Reference Table in Montana's User's Guide.

**EXHIBIT 3
BASIC MANUAL—2001 EDITION
RULE 2—PREMIUM BASIS AND PAYROLL ALLOCATION
E. EXECUTIVE OFFICERS, MEMBERS OF LIMITED LIABILITY COMPANIES, PARTNERS,
AND SOLE PROPRIETORS
(National Rule to be Discontinued in Montana)**

3. ~~Partners or Sole Proprietors~~

~~Premium for each partner or sole proprietor treated as an employee is based on the payroll amount shown on the state pages. For the applicable state payroll determination formula, refer to Appendix F. Payroll of partners or sole proprietors must be assigned to classifications and rates under the rules that apply to employees. To determine if a partner or sole proprietor is to be treated as an employee, refer to Election of Coverages Reference Table in User's Guide.~~

EXHIBIT 4
BASIC MANUAL—2001 EDITION
APPENDIX F
(Applies in: MT)

STATE PAYROLL DETERMINATION FORMULAS

Appendix F provides the state payroll determination formulas for the following:

- Partners and Sole Proprietor Determination
- Executive Officer Weekly Minimum and Maximum Payroll Limitation
- Code 7370 Employee-Operated Vehicle and Leased or Rented Vehicle Payroll Basis (used in the absence of verifiable payroll records)
- Code 9178 and Code 9179 Weekly Maximum Payroll Limitation

STATE PAYROLL DETERMINATION FORMULA TABLE 1

State	Effective Date	Partners/Sole Proprietor Payroll Determination ¹	Executive Officer Weekly Payroll Limitation		Comments
			Minimum ²	Maximum ¹	
MT	<u>7/1/2013</u>	Minimum = Fixed Wage Weekly Maximum = SAWW x .52- * 1.5 ⁵	<u>Elected Coverage:</u> Fixed Wage	<u>Elected Coverage:</u> SAWW x 1.5 ⁵	Refer to the Montana Miscellaneous Values for the applicable partner/sole proprietor minimum yearly -monthly wage and the executive/ <u>corporate</u> officer minimum weekly payroll limitation

¹ Rounded to nearest \$100.00.

² Rounded to nearest \$50.00.

⁵ Rounded to nearest \$1.00.